



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Observatory

Best practices: Inter-Agency cooperation

Version 0.3 –13/09/2013

Project/Service	Project 4 2013		
Status	DRAFT		
Approved by owner			
Authors	VOR	Editor	
	JPA	Author of Study	
Contributors	CG	Peer review	
	JFG	Peer review	
	JGC	Peer review	

Revision History

Version	Date	Author	Description
0.1	05/09/2013	JPA/VOR	Incorporation of the study
0.2	10/09/2013	VOR	Incorporation of peer reviews
0.3	13/09/2013	VOR	Incorporation of latest JPA amendments

Quality Criteria (to be used by reviewers)

--

TABLE OF CONTENTS

VERSION 0.3 – 13/09/2013 1

REVISION HISTORY 2

QUALITY CRITERIA (TO BE USED BY REVIEWERS) 2

Study 4-29

Peer review by Charles Gielen
30-32

Peer review by John Gormley
33-36

Peer review by Javier Guillem
37-41

**Inter-agency co-ordination at national and international level:
An assessment of best practices for improving IPR enforcement**

**European Union Observatory on Infringements of Intellectual Property Rights
OHIM
Alicante**

Contents

Executive Summary	2
Introduction	3
1. Definitions and Strategic Overview	6
2. United Kingdom	8
3. Denmark	12
4. Hungary	14
5. France, Italy and Romania	17
6. European Union and other member states	19
7. United States and International organisations	21
8. Comparisons, Conclusions and Best Practices	23
9. Some Case Studies	25
Acknowledgements, Notes and References	27

Executive Summary

- **There are many types of inter-agency co-operation and the main differences in ‘type’ are between established and ‘new’ MS; the co-ordination bodies themselves also have many different forms and objectives**
- **There is virtually no involvement of the Judiciary in inter-agency co-operation bodies in the EU**
- **Creation and development of inter-agency bodies has been affected by global ‘push-back’ on enforcement of IPRs generally by the public and emerging economies**
- **In the UK, several bodies are recognised and there is considerable bilateral and plurilateral co-operation including with the private sector but overall situation is confusing and unstable**
- **Denmark has a good reputation for inter-institutional and inter-agency co-operation – especially on international matters**
- **Hungary has one of the more comprehensive inter-agency co-operation bodies**
- **France, Italy and Romania all have similar centrally located organisations which could form the basis of best practice**
- **The EU itself is developing a best practice inter-agency organisation with the Observatory at OHIM**
- **Finland has a widely known operational co-operation body; and the new Slovakian example could be a guide for new MS**
- **Some EU MS have no discernable inter-agency co-operation mechanisms at all**
- **The USA and the International Government Organisations (the Global Congress and operations led by INTERPOL are good examples for best practice generally. The US IPR Center brings together more than 20 individual agencies**
- **Best practice for strategy could be CNAC from France, and for operations, the Finnish PCB; for ‘all-rounders’ the US and Hungarian examples are suggested**
- **Note the effectiveness of temporary structures put in place for major sporting events**

Inter-agency co-ordination at national and international level: An assessment of best practices for improving IPR enforcement

Introduction

The Legal Issues Working Group of the European Union (EU) Observatory on Infringements of Intellectual Property Rights have identified inter-agency co-operation on IPR enforcement at national and international level as an area to be examined in terms of finding best practices to be shared with Member States.

The existence of co-operation between institutions and agencies which are involved in Intellectual Property Rights (IPR) enforcement on behalf of the state – that is essentially anti-counterfeiting and anti-piracy activities of various types – is sporadic and varied across the EU and where it does exist it can be at very different levels of authority or, in some cases, of ‘public-private partnerships’ led by either government institutions or by non-governmental organisations such as trade associations. Some co-ordination bodies are established by law (not always by parliamentary legislation however) and some are simply established as semi-permanent administrative or operational committees and take on an ad hoc responsibility for cross government and cross-agency co-operation.

In fact, there are as many types of inter-agency co-operation as there are Member states, let alone third countries and regional or international levels of co-operation. The reasons for this are clear: different political, legal and cultural traditions, different levels of economic development and, partly, different geographies and demographics. The differences are most marked between ‘EU 15 and ‘new’ Member States (but with one or two interesting exceptions); between common law and code law countries, and marginally between north and south Europe. It is also interesting to note that some inter-agency co-operation effectiveness could be attributed to the pressure of a single institution or agency within a member state – and sometimes this is not the obvious ‘lead’ institution for IPR enforcement – very often due to inherited legal responsibility for IPR enforcement.

A crucial responsibility factor that differentiates these inter-agency groups is whether they deal only with ‘industrial property’ (counterfeits); intellectual property (copyright piracy or trade in unauthorised content) or whether they deal with both (unless otherwise stated ‘IPRs’ in this report refers to all industrial and intellectual property rights – see following section on Definitions). Further, it is not always the obvious institution that takes the lead in IPR enforcement co-ordination. This can be partly explained by the differences noted above but it makes the design of a model set-up and a simple set of best practices a challenge to create.

With this diverse typology, inter-agency co-operation in itself can take many forms and the committees, working groups or task forces formed can have widely differing objectives and responsibilities. Some are purely advisory but others may have executive enforcement roles in proposing legislation or legal procedures, directing resources, collecting and sharing intelligence, carrying out operations such as investigations and raids, and co-ordinating prosecutions or other legal actions.

In essence there are obviously two main inter-agency organisation types: inter institutional - government departments or agencies involved in policy and strategy; and inter-agency – operational police and border protection forces, customs offices, prosecutors, market surveillance inspectors and trading standards offices. While there is often overlap between all of these bodies, both vertical (for example co-operation between police forces and ministries of the interior on the wider links between IPR infringements and serious crime) and horizontal (for example between police and customs officers where imports of illicit material are tracked in order to discover the possibly criminal receivers as well as the illegal sources), it is clear from this assessment that the

co-ordination of strategy is more common than the co-ordination of actual enforcement operations. It is also interesting to note the extent to which judges and the judiciary are involved in different co-operation bodies across the EU and beyond – almost none at all!

It is also generally important to note that as well diverse inter-agency and inter-institutional structures, there equally varied and differently accountable agencies in the Member States (MS) and other major economies. For example the almost all-powerful (in IPR enforcement terms) responsibilities of the French Customs Service can be compared with the limited effectiveness of Romanian Customs who have virtually no powers; and some MS have up to three or four different national police agencies – see Portugal for example (and see comment in UK section on numbers of ‘local’ agencies).

There is also a varying degree of co-operation on sharing of pure intelligence – mainly criminal intelligence since this is often controlled by other entities than those dealing directly with IPR enforcement and is also often complicated by unrelated laws, for example on data-protection.

For some of the member states’ co-operation structures there will be a brief examination of where other stakeholders fit in: especially private sector entities including IPR protection associations and groups (and in some case individual businesses), consumers, the press, trade unions and intermediaries such as shippers.

In looking more closely at some existing institutional structures in the EU (and a comparative look at the situation in the USA plus one or two other third countries and more generally at International Organisations’ co-operation) it should be possible to draw some conclusions about the efficiency and effectiveness, in achieving comparable objectives, of the different types of bodies.

The whole issue of the enforcement of intellectual property rights (IPRs) is fraught with misunderstanding and political, social and cultural bias so the first section of this paper deals with definitions and a ‘strategic overview’ which sets the context of the examination with, for example, the so-called ‘development agenda’ of the emerging economies; the unstable balance between freedom of expression, the right to information and knowledge and consumer choice on the one hand and the rights of creators and entrepreneurs to earn a living and make profits from their work on the other; and the often disputed claims about the economic and social impact of IP infringements and crime.

In the second to fourth section there is a fuller examination of the situations in the UK, Denmark and Hungary. The UK has had a longer history of inter-agency co-operation than many MS and the current status of the UK IP Crime Group will be assessed; Denmark also has a good reputation in this field and set up the Permanent Danish Network Against Counterfeiting and Piracy in 2008. Hungary has also recently established an organisation: The National Board Against Counterfeiting: Also set up in 2008 it is one of the more comprehensive inter-agency co-operation bodies and covers the whole range of IPR protection and enforcement as a Public-Private partnership.

The fifth section looks briefly at the situations in three more EU member states which have particular and unique approaches to inter-agency co-operation all the more notable because they are at first impression quite similar. France, Italy and Romania all have centrally located organisations which bring together almost all public and private interests: the *Comité National d’Anti-Contrefaçon (CNAC)* under the *Institut National de la Propriété Industrielle (INPI)* in France, the *Consiglio Nazionale Anticontraffazione (also CNAC)* under the Ministry of Economic Development in Italy and the Intellectual Property Rights Group in Romania led by the Prosecutor General’s Office in the Public Ministry.

In sections six and seven the experience of inter-agency co-operation at EU, International and US levels will be described and analysed.

Finally the paper will assess, compare and contrast the effectiveness of the relevant inter-agency

and inter-institutional co-operation bodies presented in this report and suggest both a list of best practices for such groups and finally a 'model' organisation and outline model memorandum of understanding (MOU) to describe the ideal objectives, responsibilities and accountabilities for such groups

1. Definitions and Strategic Overview

The whole issue of the enforcement of intellectual property rights (IPRs) is fraught with misunderstanding and political, social and cultural bias so this first section of the paper deals with definitions and a 'strategic overview' which sets the context of the examination with, for example, the so-called 'development agenda' of the emerging economies; the unstable balance between freedom of expression, the right to information and knowledge and consumer choice on the one hand and the rights of creators and entrepreneurs to earn a living from their work on the other; and the often disputed claims about the economic and social impact of IP infringements and crime.

This report generally considers the enforcement of IPRs as defined in EU Law – specifically the Customs Regulation concerning enforcement of IPRs:

IPR (intellectual property right) means: a trade mark; a design; a copyright or any related right as provided for by national or Union law; a geographical indication; a patent as provided for by national or Union law; a supplementary protection certificate for medicinal products or for plant protection products; a Community plant variety right or as provided for by national law; a topography of semiconductor product as provided for by national or Union law; a utility model in so far as it is protected as an intellectual property right by national or Union law; a trade name in so far as it is protected as an exclusive intellectual property right by national or Union law.

But it should be noted that despite harmonisation and approximation of MS national laws there are still very many differences of legal definition and interpretation within the 28 MS – What may be a crime in trade mark law in one country is not necessarily so in another.

It would be useful to have some definition or common description of the different institutions and agencies involved in IPR enforcement but this would be almost impossible for reasons noted in the Introduction. Most reasonable observers working in the field of IPR protection will know broadly what Customs services responsibilities are; how Ministries of Culture are generally set up to protect copyright and relate rights and so on.

This report needs to recognise the political and cultural and economic context of the campaign against the trade in fake goods generally although it would not be appropriate to examine or assess this context in any great detail. However it is important to note that the actors which would reasonably be expected to participate and contribute to inter-agency and inter-institutional structures for IPR enforcement are in the main political or are resourced politically in response to much wider social and economic concerns. And it is clear that any political motivation for greater co-operation at all levels has been considerably affected in recent years by a push-back from the public generally and the emerging economies specifically on the whole principle of the need for the protection of IP. The ongoing stalling of the ACTA (Anti-Counterfeiting Trade Agreement) process, especially in the EU and specific EU MSs, is the most obvious manifestation of this. But equally at IGO level, resistance by emerging economy governments has almost totally stopped the development of more effective inter-agency and inter-institution co-operation on IPR enforcement. At national level it is clear that it is a lack of economic resources (caused partially by the recent financial crisis – especially in Spain for example) underpinned by a lack of political will that prevents more than simple acknowledgement of the problem. It is also suggested that several MS are 'giving up' on their natural responsibility for direct IPR enforcement in the hope that the EU Observatory will either step in or will provide resources (of all kinds) to assist them in the task.

2. The United Kingdom

The UK has had a longer history of inter-agency co-operation than many MS but there is still no single inter-agency organisation which deals with all IPR enforcement. There are several 'plurilateral' groups which have co-operative responsibilities and there is evidence that there are considerable further mechanisms for these organisations to co-operate and co-ordinate. These are described briefly below.

The inter-agency activity is now generally led and co-ordinated by the United Kingdom Intellectual Property Office (UKIPO) and has developed from relatively low level co-operation on exchange of information between the UKIPO and various UK Trading Standards Departments (UKTSDs). Now, as will be seen below, all the main IPR Enforcement agencies are involved – and active. As well as The UKIPO and UKTSDs, there is the Customs and Revenue service (HMRC), the Police in the guise of the Serious Crime Agency (SOCA) (soon to be the National Crime Agency) and the Economic Fraud specialists from the City of London Police. The Medicines and Healthcare Products Regulatory Authority (MHRA) are also linked in. The UK Local Government Regulation Office and the National Trading Standards Board play an important role also. Most important to note is that the private sector is closely involved in some if not all of the co-ordinating groups: pan and single industry groups, lawyers and other professionals, as well as intermediaries such as Internet Service Providers (ISPs).

The UKIPO also seeks to co-ordinate national policy on IPR Strategy with the relevant ministries: The Department for Business Innovation and Skills, the Department for Culture, Media and Sport, the Department for Food and Rural Affairs, the Home and Foreign Offices, the Department for Health and, of course, the Ministry of Justice.

The IP Crime Group (IPCG) has emerged as the main enforcement co-ordinating body in the UK. It is not operational but meets regularly to monitor and share information about IPR enforcement and to help drive the national IP crime strategy published in 2011. On occasion, this has also led to collaboration, intelligence sharing and operational action by some of the agencies, enforcement bodies etc. which have a seat at the IPCG's table.

The UKIPO provides the secretariat the IPCG, which has the following work streams:

- discussion on strategic policy issues in relation to IP crime
- identifying strategic priorities for collaborative action
- identifying and disseminating good practice
- raising awareness of IP crime
- training of key actors including enforcement officials

A key piece of work for the group and secretariat is the publication of the annual IP Crime Report which provides readers with an overview of the scale of counterfeiting and piracy in the UK and the enforcement actions, practices and initiatives that have taken place over the preceding 12 months. The report is used by government, industry and enforcement policy makers and practitioners to enhance their anti-counterfeiting and piracy strategies and showcase 'best practice' procedures.

The UKIPO Intelligence Hub is one of the key co-ordinating mechanisms of IPR Enforcement and it provides the environment for collecting, processing and sharing data in accordance with the National Intelligence Model. The first IP Crime Strategy issued in 2004 called for the IPO to create a central repository for IP crime intelligence which could be used to better inform policy and practical enforcement of IP crime. In response, in 2006 the IPO created its Intelligence Hub, which initially had 3 dedicated staff supported by an experienced Trading Standards officer and a Police officer on secondment from their enforcement agencies. It worked with Trading Standards and industry partners to collect and share knowledge and intelligence on active IP criminals impacting

on the UK. To store and analyse this information they created the first national IP crime intelligence database (TELLPAT).

The IPO is a government executive agency - it, and its Hub, have no operational enforcement powers as such. However in 2009 the Hub acquired Competent Authority Status from the UK's Serious Organised Crime Agency (SOCA) and Europol, charging the Hub to act as the point of contact for all IP crime intelligence in the UK and also acquired Relevant Authority status to conduct financial investigations under the Proceeds of Crime Act (POCA), providing the Hub with the same legal status as any other law enforcement agency in England and Wales.

The Hub currently consists of 10 dedicated IPO people trained in a variety of Intelligence disciplines such as crime analyst, intelligence officer, financial investigator, intelligence researchers and intelligence manager. It is led by two retired police officers with extensive experience in the intelligence arena and operates a new national Intelligence Database called IPID which all law enforcement, government and industry groups can utilise via Memoranda of Understanding in line with UK data sharing legislation.

Data collected by the Hub from a wide range of sources, allows practitioners to better understand the *modus operandi* of IP criminals and identify other law enforcement agencies with a common interest. This approach allows for better use of limited enforcement resources and better, more informed identification and targeting of offenders.

Since its creation the Hub has initiated and supported hundreds of IP crime investigations as well as supporting more mainstream crime investigations such as drug and people trafficking, immigration, tax evasion and fraud and is viewed by stakeholders as an integral part of the enforcement community. This government led initiative shows clear benefit in a collaborative intelligence led approach to reducing the threat from IP crime.

Other UK inter-agency groupings with various different stakeholders, functions etc are:

The UK Government Agency Intelligence Network (GAIN) is a series of units across the country which includes police, TSDs, the Department of Work & Pensions (benefit fraud), Department of Communities & Local Government, HMRC (e.g. VAT and immigration issues), the Vehicle and Operators Service agency (VOSA), Security Industry Administration and others. GAIN supports the Home Office strategy of Local to Global which promotes a 'dare to share' culture amongst enforcement, government and industry partners using the legal gateway under Section 29 Data Protection Act 1998.

The purpose of the network is to liaise with stakeholders and partners both within and outside the government agency environment to lawfully, safely and confidentially share intelligence to maximise enforcement opportunities against both individuals and organised crime groups (OCGs). It helps to support the NIM (National Intelligence Model) by having partners in different external agencies to support the three levels of NIM in relation to local/national issues, cross border issues, and organised crime. It plays a fundamental role in supporting a region's forces by the gathering and analysis of intelligence and information from a number of sources. The units are also directly linked to Regional Serious and Organised Crime Units, the Regional Asset Recovery Teams (see below) and have a close association with the Home Office, SOCA (NCA) Regional Intelligence Groups via Regional Tactical, Tasking and Co-ordination processes.

A very important component in the IPR enforcement landscape is the UK's Regional Asset Recovery Teams (RARTs). The RARTs have been set up following recommendations embodied in the Government's organised crime strategy articulated several years ago in 'Extending Our Reach' (Home Office) to maximise asset recovery. Their original purpose was to assist Police Forces and other agencies to increase the numbers of confiscation cases and to increase the value of assets seized. Their role has since evolved, the emphasis now being very much on tackling serious organised crime targeting those individuals who cause our communities most harm. The RARTs

are made up of officers and staff from various police forces, HM Revenue & Customs, the UK Crown Prosecution Service and the Serious Organised Crime Agency.

RARTs fully use the Proceeds of Crime Act 2002 and money-laundering legislation as required, in order to trace and confiscate assets suspected of being connected to criminal activity, and to prosecute those involved. They also target 'professional' facilitators, such as solicitors and accountants, whose activity allow organised crime groups to launder criminal property and funds.

Most of the co-ordinating bodies described here have been established as administrative functions, and not all of them have executive powers. Clearly, individual police forces, HMRC, and representative bodies such as the National Trading Standards Board all have certain powers to direct operations, and gather, store and disseminate intelligence, and to enforce IP rights, whether at the frontier, or within our borders.

Finally, most if not all of these bodies have private sector representation, or, if not direct membership, much more collaborative work is now done by law enforcement etc. in specific operations with industry.

In the above bodies, or in working with them, industry is mainly represented by trade associations and their anti-piracy units or specialist staff. For example, the UK Anti-Counterfeiting Group (ACG) now has an Intelligence Coordinator who sits on the boards of and/or works closely with SOCA, IPO, National Markets Group, GAIN, National Fraud Intelligence Bureau (NFIB), UK Police forces, and Trading Standards departments, Department of Work and Pensions, UK Border Force, HMRC and others.

The Intelligence Co-ordinator acts as a single point of contact for ACG members and enforcement agencies in sharing and actioning intelligence and preparing cases. Some companies are represented by their lawyer or investigator, and increasingly, individual brand owners/ACG members are also joining the boards, for example of the SOCA IP Crime Group.

In conclusion although the UK situation may be useful as a framework best practice it is in current practice arguably somewhat diverse and confusing. There are no obvious designated responsibilities or accountabilities – no apparent single institution or agency which takes the lead, possibly because there are simply too many institutions and, especially, agencies. Both the UK's police forces and trading standards departments are based on local government structures and there tens if not hundreds of them. Although specialists units in the Police have been formed to cut across different force boundaries, these units rarely stay the same for long enough to establish authority. And similarly with institutions – although the UKIPO has remained relatively steady, its political masters (most recently ministers at the Department of Business, Innovation and Skills) have been constantly changed over the past years and their actual responsibilities have also been too fluid.

3. Denmark

Following a review of IPR Enforcement Strategy in 2008, the Danish authorities set up the Permanent Danish Network Against Counterfeiting and Piracy (the Network). This body consists of the main public sector players in the IPR enforcement scene:

- The Danish Patent and Trademark Office (DKPTO)
- Danish Customs Task Force on Counterfeiting
- Danish Ministry of Culture
- Danish National Police
- State Prosecutor for Serious Economic and Economic Crime
- Danish Health and Medicines Authority
- Danish Safety Technology Authority
- Danish Competition and Consumer Authority
- Danish Veterinary and Food Administration
- Danish Business Authority
- Ministry of Foreign Affairs

Detailed information on the purpose and strategy for the network is included in the “Danish Government’s report on Counterfeiting and Piracy March 2008” (the report of the above mentioned review) which recommends the setting up of the Network:

“Increased cooperation among authorities, both national and international

Typically, counterfeiting and piracy involve activities across borders and police jurisdictions. This type of crime is characterised by increased professionalism. Therefore the committee has made recommendations to enhance the current cooperation between authorities.

Increased cooperation between Danish authorities

The committee finds that to achieve the necessary impact joint coordination of the various efforts taken by national authorities to fight counterfeiting and piracy is very important. Furthermore, the committee indicates that there is a need for strengthening the knowledge of Danish authorities concerning counterfeiting and intellectual property rights. By strengthening such knowledge, the authorities will be better equipped to fight counterfeiting and piracy.

Therefore the committee recommends that:

A permanent interdepartmental counterfeiting network should be established, consisting of authorities with close contact to industry and industrial organizations. This network should also examine the need for structured education of authorities in the field of intellectual property rights.”

The network consists of public sector representatives only. The network considers this to be an advantage, as it facilitates a very open dialogue, a large extent of information sharing and a close cooperation between the authorities in the daily work which among other things, includes cooperation on international operations targeting counterfeiting and piracy. The network has two annual meetings, where all network members participate. The main advantage of the network is that it has facilitated a very close and informal dialogue and cooperation between the authorities in their daily work to fight counterfeiting and piracy. Twice a year the Network invites representatives of right holders and other private parties and stakeholder bodies, including consumer organisations, to discuss subjects previously agreed on between the involved parties. This forum has enabled a structured and continuous dialogue between the public and private sector. In

addition - and possibly even more important - the forum has also facilitated informal dialogues and cooperation between the public and private sector in their daily work to combat counterfeiting and piracy.

The network has dealt with the implementation of various initiatives recommended in the above mentioned review, for example, a recent increase of the criminal sanctions on all types of IPR infringement of up to 6 years' imprisonment.

The Network maintains a website containing three portals, which are specifically targeted at consumers, businesses and public sector authorities. The Danish version of the website is far more extensive than the English version and includes a news report facility, which is used to communicate relevant news from all the bodies in the network on a regular basis - e.g. news on new policy initiatives, co-ordinated enforcement actions and new criminal case law with links to the anonymised judgements. A yearly report of the network's activities will soon be initiated.

The website is relatively good at what it purports to be. It contains consumer guides and guides for businesses. It also links to international reports and studies on IPR crime and to various tools, including strategy tools. Although there is some overlap between the portals for consumers, businesses and public authorities, the information is generally very good and helpful and the news sections are up to date. The 'Legal Framework' section however only explains the laws relating to protection of IPRs as opposed to enforcement.

There has so far not been a specialised unit within the Police or Prosecutors' offices with whom to co-operate (as opposed to Customs). This has several disadvantages not least of which is the lack of knowledgeable police officers and prosecutors to deal with serious IP crimes. However, the Danish Director of Public Prosecutions has from July 2013 initiated a number of new initiatives including a stronger operational role for the State Prosecutor for Serious Economic and International Crime. It is expected that the State Prosecutor as a centralized authority will get to play a stronger role in enforcement against IP crime, but the establishment of a substantial dedicated unit is not expected. The effect of the initiatives will be evaluated in 2014.

To facilitate the work in the local police districts the Director of Public Prosecutions has prepared a set of guidelines concerning IPR enforcement and IP crime.

4. Hungary

Hungary has a more recently established organisation: The National Board Against Counterfeiting (NBAC) which was set up in 2008 is one of the more comprehensive inter-agency co-operation bodies and covers the whole range of IPR protection and enforcement as a Public-Private partnership. From 2008 to 2010 it was an administrative initiative of the Hungarian IP Office (HIPO) but from 2010 it was 'renewed' by an amendment to Patent Act and the operation of NBAC was laid down by law:

“HIPO shall operate, pursuant to the provisions of specific legislation, the National Board Against Counterfeiting, and it shall also contribute in other ways to the establishment and development of a system of conditions required for the effective enforcement of intellectual property rights”

(Art. 115/K of the Patent Act)

The NBAC also derives executive authority and legitimacy through the various laws underpinning the administration of its members – for example the national tax and customs laws (and the EU Regulation on Customs Control of Counterfeiting and Piracy) are the basis for actions and strategies of the National Tax and Customs Authority within the NBAC.

It is worth listing all the participants:

Public Sector

Ministry of Public Administration and Justice
Hungarian Intellectual Property Office
Ministry of Human Resources

- State Secretariat for Health
- State Secretariat for Culture
- State Secretariat for Education

Ministry of Rural Development
Ministry for National Economy
National Tax and Customs Authority
Headquarters of the National Police
National Office for Consumer Protection
National Media and Info-communications Authority

Private Sector

American Chamber of Commerce in Hungary
Hungarian Association of Brands
National Federation of Associations for Consumer Protection
Hungarian Association for the Protection of Industrial Property and Copyright
Hungarian Publishers & Booksellers' Association
Hungarian Pharmaceutical Manufacturers' Association
Hungarian Trademark Association
Confederation of Hungarian Employers and Industrialists
ProArt Association for the Protection of Copyright
National Association of Entrepreneurs and Employers

Most interesting to note from these two lists is the inclusion of consumer organisations – from both

the government side AND civil society; and the inclusion of media and employers – but not trade unions.

The responsibilities of the NBAC are:

- Drafting and carrying out the national strategy and action plans against counterfeiting
- Co-ordination and support of the government activities relating to international and European initiatives and programmes against counterfeiting
- Analysis and systemization of statistical data regarding counterfeiting
- Launching and co-ordinating awareness raising and information campaigns and monitoring the implementation thereof
- Training the enforcement agency officers (and judicial authorities)
- Participation in drafting legislative amendments regarding IPR enforcement

The NBAC operates through a supervising Plenary Meeting and an Operations Management Board above four working groups with a secretariat run by the HIPO:

- Enforcement
- Trade and Industry
- Against medicine counterfeiting
- Against counterfeiting works of art

The NBAC is closely linked, if not almost wholly integrated, into the HIPO IPR enforcement infrastructure. As noted, the HIPO provides the secretariat and the Vice-President of NBAC is the President of HIPO, NBAC's budget and resources are controlled by HIPO, and the President of HIPO is a member of the EU Observatory.

Following the legal establishment of the NBAC in 2010 a new five-year action plan was put in place for 2011-2015. The main objectives are:

- More efficient enforcement! (HIPO's punctuation...)
 - To reduce offline and online supply of counterfeit products
- Better informed consumers and internet users
 - To reduce demand for counterfeit products
- Proving the economic importance of fighting against counterfeiting and helping companies in their enforcement activities.

The NBAC strategy is thus separated into three important areas of the campaign against the trade in fakes: First reducing supply, secondly reducing demand and thirdly pinning down the economic impact. These three areas are further divided into discrete areas of operations or activities: For reducing supply there is the fight against imports of counterfeits from third countries; the fight against the manufacture and distribution of counterfeits domestically; the fight against online infringements (but not against downloading of unauthorized content); and capacity building for enforcement institutions and agencies in terms of training and infrastructure. Somewhat proscriptively, the sectorial directions for reducing demand are only four specific areas: Creative industries; Food and pesticides; Medicine; and Works of art. Reducing demand divides into raising public (consumer) awareness and education of 'youth'. And finally the 'economic aspects' of the strategy are first macroeconomic monitoring and secondly awareness raising for entrepreneurs.

Pointing to possible best practice, the HIPO carried out a survey of their Trade and Industry Working Group and found that around half of the respondents were suffering from counterfeiting issues which affected their market share and more than half those respondents indicated that they would need assistance with enforcement of their IPRs. Asked what kind of help was needed the answers are a strong indication of the need for inter-agency co-operation, in this case, the need for improvement of an existing infrastructure. The responses were:

- Information, information centre, advisory services, consultation
- Contact points for competent authorities or organisations
- Web-site, newsletter, publications, newspaper articles
- Conferences, seminars, exhibitions
- Training, including one-day training
- More efficient controls, raids and procedures of authorities
- Publication of case studies

NBAC already makes good use of a web-site, social media posts, and a weekly newsletter. All of these highlight the latest developments both in Hungary and internationally, reproducing reports and surveys, transcripts of conferences, descriptions of exhibitions etc. The web-site includes an FAQ section for both consumers and businesses. There is a good attention the law: the current situation, proposed amendments and other government initiatives and also – most importantly, reports of actions, seizures and court cases.

In terms of direct enforcement actions, it is the National Tax and Customs Authority (itself a full member of the NBAC) which is responsible. It deals with criminal affairs and customs actions; processes the customs applications from businesses under the EU Customs Regulation, and exchanges information with the national counterpart authorities (other members of NBAC) but especially with the Police and Market surveillance authorities.

5. France, Italy and Romania

This section looks briefly, but still in some detail because of the relevance and importance of the examples, at the situations in three more EU member states which have particular and unique approaches to inter-agency co-operation - all the more notable because they are at first impression quite similar. France, Italy and Romania all have centrally located organisations which bring together almost all public and private interests.

The *Comité National Anti-Contrefaçon (CNAC)* under the *Institut National de la Propriété Industrielle (INPI)* in France is a central and very active organisation comprising several public institutions, including enforcement agencies, and even more private organisations covering the whole range of those with an interest in the campaign against the trade in fake goods. INPI's 'Minister in Charge of Intellectual Property' is under the supervision of the Minister for Small and Medium Sized Enterprises, Innovation and the Digital Economy.

The key missions of the CNAC, founded in 1995, are: the fight against sale of counterfeit goods through enforcement and international co-operation and the reduction in the demand for fakes through education of consumers; exchange of information, sharing of best practices, co-ordination of direct action and elaboration of new initiatives and strategies. CNAC is always chaired by a member of the French Parliament and the Secretariat is provided by INPI.

It is worth noting the full extent of the membership of the CNAC: on the public side the list starts with the national organisation representing Chambers of Commerce and goes through all possible relevant ministries and specialist divisions of the relevant enforcement agencies. There is also the national IP research institute and... the Musee Rodin! On the private sector side again the full range of commercial, trade and industry organisations, including those specifically set up to campaign and act against the trade in fakes (*Union des Fabricants*), those covering single industries – of all types, authors' and artists' societies and foundations and finally, and this is almost certainly unique, several major multinational companies that suffer greatly from the trade in fakes of their products: including for example, LVMH, Chanel, Lacoste, Microsoft France, Renault and so on.

Although there was no formal role in CNAC for HADOPI (*Haute Autorité pour la diffusion des œuvres et la protection des droits sur internet*) – effectively the official body for copyright enforcement on the internet, [it has just been confirmed that HADOPI will be disbanded and its role will be subsumed into the responsibilities of the *Conseil Supérieur de l'Audiovisuel (CSA)* – also not represented on CNAC], there is considerable informal representation through private sector organisations such as the Business Software Alliance and various audiovisual content protection associations.

The very important role of the French Customs Service (*Direction générale des douanes et des droits indirects – DGDDI*) in actual investigations and IPR enforcement operations against the trade in fakes in France should be recognised at this point and as such the wide-ranging remit of the DGDDI almost imitates the status and action of an inter-agency body.

Although the *Consiglio Nazionale Anticontraffazione (CNAC)* under the Ministry of Economic Development in Italy has the same acronym as its French counterpart, it is a much smaller and more overtly public sector organisation. Small does not imply ineffectiveness however and it is arguable that having a tighter group of institutions with clearly defined powers is in fact a more effective mechanism for IPR enforcement. The Italian CNAC is indeed an inter-ministerial body with headquarters in Rome which co-ordinates the initiatives taken by any internal agency in the campaign against the trade in fakes. Including all the relevant ministries, the CNAC is supported by a committee of 9 experts some of whom are drawn from the private sector. And there are 13 'sub-committees' representing different industrial and commercial sectors such as clothing, toys, films, etc. There is also some involvement of 'consumer associations'.

The CNAC is clearly a strategic council. It recently, in December 2012, published a National Anti-Counterfeiting Plan as a tool to define the strategic framework for the fight against counterfeiting and Piracy and to offer guidelines to lead government action and policy makers. It is not, and nor is there, an inter-agency organisation which deals exclusively with co-operation on enforcement operations. There have however been instances of successful co-operation, for example between the Customs and the Tax Police, on investigations and joint operations. But most important to note is that the various law enforcement authorities in Italy are setting up a joint database (*Sistema Informativo Anticontraffazione*) which aims to acquire and share information useful for IPR enforcement.

It is interesting to note here that there is also a Franco-Italian co-operation committee on IPR enforcement which is in effect a 'bilateral' inter-agency co-operation body. Even more interesting is the fact that the Union des Fabricants (the French national trade association for anti-counterfeiting) has called for more of these 'bilateral' committees to be set up – the implication being that they quite effective!

The Romanian Intellectual Property Rights Working Group is an organization initiated by the Prosecutor General's Office in the Central Government's Public Ministry. It is commonly agreed that this body represents a practical and effective network in relation to the challenges faced by both the public and private sector in the campaign against the trade in fakes (counterfeits and unauthorised content) in Romania. It is clear that a robust strategic decision was made, in relative terms, at a very early date in the history of the campaign in Romania, to train the relevant staff and agents in the different institutions and to engage with external co-operation (in this case including a comprehensive EU Twinning project on building capacity of institutions involved in IPR enforcement). The Group's objective is to bring together all the institutions and agencies with a stake in IPR enforcement.

The Intellectual Property Rights Working Group was set up by administrative Protocol (it has no executive status) in 2006, signed by all the main actors in the field of IPR enforcement at both strategic and operational levels. Led by the specialist unit within the Prosecutor General's Office in the Public Ministry set up to deal with IP Crime, the Group comprises the two main IP offices (Industrial and Intellectual), the main enforcements agencies (Police, Border Police and Customs), National Consumer Protection body and, most importantly and relatively uniquely, a good cross section of Private sector interests. Even more uniquely, the Group contains the Judiciary (Magistrates and Ministry of Justice). The members of the Group are involved in different projects and activities related to training of officials, police and customs officers, and of course, consumer education and public awareness. The Group is also a consultative body in relation to certain aspects of IP legislation. In terms of effective enforcement of IPRs (as opposed to co-ordination of strategy), the working group has only had limited success.

6. European Union and other Member States

The focus of inter-agency co-operation in the European Union (EU) at strategic level has now been firmly established at the EU Observatory on Infringements of IPRs at the Office for the Harmonisation of the Internal Market (OHIM) in Alicante, Spain. The three points of the enforcement triangle (IP Office, Police and Customs) are now present in the structures of the Observatory for both strategy and enforcement operations. As well as OHIM itself, the European Patent Office (EPO), Europol and the Commission Directorate General for Taxes and Customs (DG TAXUD) – as well as Eurojust (Prosecutors), and the Commission's *Office pour la Lutte Anti-Fraud* (OLAF) are all now linked in to the inter-agency co-operation that has become important and effective in the campaign against the trade in fakes.

A good recent example of this EU-wide inter-agency co-operation was a conference in November 2012 organised by the Observatory to tackle the threat of illegal pesticides. Representatives from enforcement agencies in 25 member states plus Iceland, Croatia and Australia joined industry representatives and EU officials to discuss the threat posed by these illegal products, and ways to counteract them. The conference was in fact 'co-organised' by the Commission, Eurojust, OLAF, Europol and OHIM.

There are some very contrasting structures in the other EU MS (apart from those described in sections 2 to 5). Spain for example has no discernible inter-agency co-operation at all either formal or informal whereas Finland has probably one of the most efficient and effective structures – the so-called PCB (Police, Customs and Border Guard) cooperation has a long tradition in Finland with established PCB coordination mechanisms and structures existing at both national and regional levels several decades. The Finnish PCB cooperation has been internationally recognised as an exceptionally well-functioning and cost-efficient inter-agency co-ordination structure. The underlying principle of the PCB cooperation (governed by the Act on Cooperation between the Police, Customs and the Border Guard (687/2009, "the PCB Act"), is that the different agencies can carry out each other's tasks under the supervision of the PCB authority in charge. The purpose of the PCB Act is to promote cooperation between the PCB authorities and implement the joint strategies of PCB authorities so that the tasks laid down for these authorities and individual measures that are connected with the prevention, detection and investigation of crimes (combating of crime), control and monitoring and related international cooperation are carried out in an appropriate, efficient and cost-effective manner (PCB Act, section 1). The police, customs and border guards have access to common databases and information systems where information entered by one party is available for everyone who is involved in the inter-agency cooperation.

Some MS may have 'dormant' inter-institutional or inter-agency co-ordinations structures set up in preparation for EU accession. For example in the Czech Republic there are references to the government 'preparing' a project on inter-agency co-operation in 2001 but no current evidence that it was ever carried out.

There appears to be very little inter-agency co-operation of any kind either strategic or operational in Cyprus, Malta, Estonia, Latvia, Lithuania, or Bulgaria. However in Poland, Portugal and Slovakia there are recent developments on inter-agency co-operation – there is a new Commission for Co-ordination and Co-operation on Counterfeiting and Piracy in Slovakia which could be studied as a 'best practice' when it is more firmly established. In Poland there is a residual network of enforcement co-ordination which was established during the UEFA European Football Championships in 2012 and Portugal has recently established a co-ordinating body for all the national police forces.

Several MS (and, for example, Switzerland) have inter-organisation groups co-operating on awareness raising only and in general these are small public- private partnerships.

There is no information available at this stage on Ireland, Germany, Slovenia, the Netherlands,

Belgium, Sweden, Croatia, Austria, Greece or Luxembourg.

7. The USA and International Organisations

A short section on the structure of inter-agency co-operation in the USA is included due to the global importance of activity in that country and because it is arguably one of the 'best practices' available and in pure IPR enforcement terms – one of the most effective.

The US Office of the Intellectual Property Enforcement Coordinator (IPEC) is a statutory office, within the Office of Management and Budget, under the Executive Office of the President. The IPEC's primary function is to help coordinate the work of the federal agencies that play a role in intellectual property enforcement to improve the effectiveness and efficiency of anti-counterfeiting and anti-piracy efforts. In collaboration with representatives from numerous Executive Branch agencies, the IPEC develops an Administration-wide strategic to set priorities for IP enforcement efforts, provides an annual report to the US Congress regarding those efforts, and where appropriate, develops legislative proposals for IP-related statutory or regulatory enhancements to existing laws. The IPEC has also taken on a leadership role in bringing together stakeholders within the private sector. To date, the IPEC has a relatively small staff but it is complemented by secondees from its agency partners such as Customs and Border Protection (CBP) and the Federal Bureau of Investigation (FBI).

The IPEC was established pursuant to the PRO-IP Act of 2008. While the IPEC provides input for legislation and develops enforcement priorities, it does not have explicit authority to direct its partner agencies.

For IPR enforcement at the federal level in the USA, the National IPR Coordination Center has been in operation for several years, bringing together over 20 individual agencies including the FBI, Immigration and Customs Enforcement (ICE) - Homeland Security Investigations, CBP, the Food and Drug Administration (FDA) Office of Criminal Enforcement, etc. The IPR Center also includes representatives from INTERPOL, EUROPOL, Royal Canadian Mounted Police (RCMP), and the Mexican Revenue Service, to assist with cross-border issues.

At the state and city level, similar coordination has also been seen - perhaps most notably in New York City, where the Mayor's Office of Special Enforcement brings together law enforcement and code enforcement agencies as part of its nuisance abatement program; similar efforts have also been undertaken in Los Angeles. In Mississippi, the Attorney General has assembled a state-wide task force bringing together law enforcement officers from across the state. Specialized units to address IP crimes are becoming more frequent throughout the US, particularly in major metropolitan police departments.

Neither the IPR Center nor the IPEC formally include the private sector. Each however frequently interacts with the private sector (and with consumers as well). The IPR Center provides an opportunity for consumers and retailers to report IP crimes in addition to providing a public awareness role. In addition, the IPR Center works closely with the private sector (IPR owners, trade associations) to provide training to law enforcement personnel, to share intelligence and best practices, etc. The IPEC, likewise, provides opportunities for public input and comment from all types of stakeholders through the Federal Register notice-and-comment procedures that are standard throughout the U.S. government.

At International level, The Global Congress on Combating Counterfeiting and Piracy has been established by a unique public-private partnership with leaders from INTERPOL, the World Customs Organization (WCO), the World Intellectual Property Organization (WIPO), the International Chamber of Commerce/BASCAP initiative (ICC/BASCAP) and the International Trademark Association (INTA). Although it is purely consultative as an inter-agency structure, the close network that has been formed through the Congress has resulted in much improved international, regional and national strategies for IPR enforcement and, especially through INTERPOL, some very successful international enforcement operations involved different agencies from different countries (see case studies in the penultimate section of this report).

In early 2004, the need to address the rapidly growing global problem of counterfeiting and piracy had emerged as a key priority for national governments and intergovernmental organizations concerned about the myriad adverse costs to social welfare and economic development that was resulting from the rampant theft of intellectual property. Notably, trade in counterfeit goods was rising dramatically worldwide and had spread to almost every conceivable type of product. Billions of dollars in revenues were being lost to the black economy. Counterfeit drugs were putting lives at risk. And there was growing evidence that transnational organized crime networks were using profits from trade in counterfeit and pirated goods to fund their activities.

It was clear that better strategies based on more effective cooperation between stakeholders at national and international level – were needed to combat the multiple threats posed by this damaging trade. To this end, the first Congress was convened by the World Customs Organization (WCO) and INTERPOL with the support of the World Intellectual Property Organisation (WIPO).

The three international government organizations (IGOs), each with a wealth of experience in different aspects of combating counterfeiting and piracy, called together representatives from governments, industry and enforcement agencies. Together they determined to pool their forces with the objectives of pushing the fight against counterfeiting and piracy up the global political and business agenda; of establishing a high level public-private partnership to pursue collective action; and of generating conditions which would lead to greater investment of human and financial resources in enforcement measures. Their overall goal was to improve the understanding of the full range and extent of these costs so as to assist member governments confronting decisions on how investments in IP protection (through legislation and regulatory enforcement) are related to and can improve other social and development priorities, such as economic development, employment, tax base, consumer health and safety, technology transfer, law enforcement and fighting organized crime. Their resolve laid the foundations for a global process, now approaching its tenth year having organised the sixth congress recently in Istanbul, Turkey.

A steering group was established with key partner organizations from the IGOs and the global business community in order to build the global public-private partnership and to ensure that recommendations were carried through.

8. Comparisons, Conclusions and Best Practices

It is challenging to say the least to attempt to outline a best practice for inter-institution or inter-agency co-operation on IPR enforcement either at national or international level. A perfectionist might argue that several different best practice models are required to cover co-operation on strategy, on operations, on intelligence and on, for example cross border investigations and prosecutions.

In terms of learning from comparing existing arrangements, there are very many different types of co-operation structures - as noted in the introduction – from all inclusive groups such as the CNAC in France on the one hand, to simple ad hoc co-operative frameworks in most of the smaller, newer, EU MS. Thus direct comparison is difficult and possibly nugatory in any event. As noted in the introduction, the different traditions of legal and political culture have evolved different ways of [attempting to] achieving the same goals and this would be true in many areas of public administration and of both inter-agency co-operation and public-private co-operation.

One item which stands out generally is that co-operative structures with input either formal or informal, from the private sector, appear to more effective (UK, Hungary, France, USA) and in some of these this is particularly true of co-operation on enforcement (UK, USA).

Clearly it is preferable for inter-agency enforcement co-operation bodies to be based on legal provisions although this can sometimes limit their abilities to be innovative and flexible; the best practice appears to be a body that is 'led' or strongly influenced by a single institution or agency (such as the Customs Service of France) whether based on law, administration or informal networks.

In EU terms, and certainly for strategy, the models of both the CNACs – in France and Italy - are worth being used to distil down a best practice model – with some input from the structure and protocol of the Romanian IPR Working Group. For operations the UK system has some good points but is very unstable – better examples would be the US National IPR Co-ordination Center and the Finnish PCB (Police, Customs and Border Control) co-operation. In the US system there appears to be first a clear priority and direction from the top through the Office of the Intellectual Property Enforcement Co-ordinator (under the Office of the President). For intelligence co-operation, despite its flaws, the UK Intelligence Hub is a good example.

The success of 'temporary' structures put in place to enforce IPRs at major sporting events: the Olympics in London, UK, in 2012 for example and also the committees formed in Poland and the Ukraine for UEFA 2012 could be examined again for possible guidance on best practice for enforcement agencies (and for businesses!).

Of course at EU level generally, the model provided by the new EU Observatory on Infringement of IPRs provides an excellent blueprint for co-operative structures – especially at strategic level but also increasingly with training and joint activities with agencies (EUROPOL) at a quasi –operational level. And this brings in a notable point – that many of the MS structures discussed albeit briefly in this report, for example, the Danish Model is arguable better at co-operation and co-ordination at an international level than at national level.

One of the single most important 'best practices' which could be instituted more widely is laying down guidelines for continuity and consistency. Continuity of involvement will help overcome the difficulties that arise from frequent efforts to transfer knowledge, particularly tacit knowledge¹. Selection of personnel to participate in co-operative meetings should be guided by the idea of selecting the most appropriate individual(s); those who have concrete knowledge and experience and who have the appropriate level of authority.

¹ Tacit knowledge is not written down but is an accumulation of knowledge arising from experience

In terms of an example of a 'best practice' strategy for an inter-institutional group there will be few better than the short, sharp objectives of the Hungarian IPO National Board Against Counterfeiting:

- More efficient enforcement! (HIPO's punctuation...)
 - To reduce offline and online supply of counterfeit products
- Better informed consumers and internet users
 - To reduce demand for counterfeit products
- Proving the economic importance of fighting against counterfeiting and helping companies in their enforcement activities.

For a 'simple' best practice at operational enforcement level the Finnish structure – the so-called PCB (police, customs and border police) is an excellent example of successful sustained co-operation.

A model best practice structure would ideally cover both strategy and operations or at least be established in such a way that these two activities were strongly linked and benefitted mutually from effective work in either case. As noted elsewhere in the report it would be difficult to prescribe which institutions and agencies should participate and or contribute to such co-ordination structure because of the different responsibilities of all the different institutions and agencies in all the MS – and more widely. One only has to look at the membership and participants list of the French CNAC to see the complete diversity of organisations that can participate or contribute. And similarly with the subjects, issues and activities to be covered by such structures – especially the operational ones – almost every country could have a different list depending on political, cultural and legal traditions. However, a starting point for such a list – the 'heads of agreement' almost which could form a model MOU or Protocol defining the areas of potential co-operation could be:

- New and Amended Legislation relating to IPR protection and enforcement;
- Criminal, Civil, Administrative Procedure where this relates to IPR infringements or related crimes such as fraud or the involvement of organised crime;
- Relationships with the Judiciary – some form of dialogue (which hardly exists in current arrangements) which informs Judges and magistrates etc. of the true nature of IP crime is required.
- Publication of case studies in order to examine precedents of successful prosecutions – Suitably edited and with relevant commentary
- Training for all agencies and officials (and 'seminars' for judges[!] in all aspects of IPR protection and enforcement from 'what is intellectual property' to 'how do you close down an illegal factory');
- Economic and social impact (statistics) are essential to the public awareness case for IPR enforcement and for the political justification for enforcement – methodologies are being researched.....
- Information and data sharing including the secure collection, storage and availability of relevant criminal intelligence;
- Internet and online piracy could possibly be the subject of entirely separate best practice protocols or MOUs but it is important that they are also included in any wider structure dealing with IPR enforcement generally – the criminal very rarely see the distinction between counterfeiting and piracy nor do mind which intermediary is used to sell the illegal products;
- International co-operation and cross border actions co-operation is clearly a priority in terms of co-operation at national level; the vast majority of the trade in counterfeits and unauthorised content is international cross-border;
- Co-ordination structures should be given important control over public awareness campaigns to make sure that messages are consistent and targeted and that different campaigns are sustainable and measurable.

- Education for all – but especially for schoolchildren and students should be a priority for any structure aiming for more effective IPR enforcement
- Training and information for businesses, especially SMEs and intermediaries who do not have resources for in-house expertise of IPR protection and enforcement;
- Successful co-ordination structures should at the very least attend and make presentations to appropriate conferences, seminars, exhibitions; in some cases it might also organise them;
- For businesses especially (and even more especially for SMEs) there needs to be co-operation on national web-sites, possibly newsletters, local or regional information centres and advisory services; consistent individual contact points in different institutions and agencies are most important.

9. Some Case Studies

There are very few available details of case-studies describing actions that could be directly attributable to inter-agency co-operation in EU MS. In response to this writer's request the IACC in the USA noted that the IPR Center (see above section on US) has played an instrumental role in the on-going "in our sites" collaboration between federal law enforcement agencies to address the trafficking of counterfeit goods online.

As regards the UK, there have been several notable cases resulting from multi-agency partnership working – (see the UK IP Crime Report 2012-13). For the sake of brevity there is one example below which the UK ACG's Intelligence Coordinator has already been involved in. There have been several other cases including

- a major Europol-coordinated seizure and a successful prosecution and dismantling of an organised crime group,
- identifying a London based organised crime group involved in the importation and distribution of counterfeit clothing, money laundering and fraud, leading to a successful prosecution
- disrupting the activities of an OCG involved in the manufacture and distribution of counterfeit products across London.

As recently reported to ACG members, there was a great outcome at a Crown Court recently, in a case which resulted directly from the work of the ACG Intelligence Coordinator.

It involved a London-based trader known as FD Express, which turned out to be an organised crime group (OCG) involved in the large scale importation and distribution of counterfeit goods via postal hubs and sea ports. This OCG was also engaged in money laundering, had been active since 2008 and was impacting on several ACG members.

The brand which was the main victim alerted the Intelligence co-ordinator to the activities of this trader and he researched and developed the intelligence, then passed the case to the IPO for further intelligence work. This resulted in a joint IPO/ACG referral into the SE GAIN.

The SE RART then took on the investigation (further supported by the brand) and effected raids, made 3 arrests and recovered a large amount of counterfeit product, leading to the OCG being dismantled and a Proceeds of Crime (POCA) confiscation hearing is also to follow.

This is a good example of how prolific offenders can be tackled effectively through a multi-agency, intelligence led partnership approach as between industry and law enforcement.

On the international scene, in September 2011 the UK MHRA took part in Operation PANGAEA IV, a week of action to tackle illegal websites worldwide that supply counterfeit, illegal and substandard medicines. The operation involved 81 countries globally with activities being coordinated via INTERPOL. The aim of the operation was to foster cooperation between the participants and raise public awareness, as well as targeting the three essential components needed by fraudulent websites to conduct their illegal trade. Internet Service Providers (ISP's), Electronic Payment System (ESP), and mail delivery services. The operation focussed attention on suspending websites, disrupting payment services and intercepting illegal medicines in the postal system.

In the UK the MHRA assisted the Metropolitan Police e-crime unit with the takedown of 12,842 illegal websites, removed 600 adverts from auction sites, seized 461 packages at the UK postal hub and seized 1,300,000 tablets valued at over £2 million, of these 56,000 were counterfeit medications. 14 warrants were executed leading to the arrest of 13 persons, 94,000 tablets seized

valued at £180,000. Worldwide, dozens of arrests, 2.4 million tablets seized valued at \$6.3 million. Following the operation, 1,000 different articles were published in 30 countries containing important public health messages warning the public of the dangers of buying medicines on the internet and the risks posed by counterfeit medicines.

And a final case study from what must be considered as an excellent example of inter-agency co-operation at international level: A joint INTERPOL-Europol operation targeting fake and substandard food and drink, as well as the organized crime networks behind this illicit trade, which resulted in the seizure of more than 135 tonnes of potentially harmful goods ranging from everyday products such as coffee, soup cubes and olive oil, to luxury goods such as truffles and caviar. A further 100 tonnes of mis-declared and/or potentially hazardous food was confiscated during investigations linked to Operation Opson II.

Operation Opson II (3 - 9 December), which involved 29 countries from all regions of the world, resulted in the recovery of more than 385,000 litres of counterfeit liquids including vodka, wine, soy sauce and orange juice in addition to fish, seafood and meat declared unfit for human consumption, as well as fake candy bars and condiments.

Coordinated by INTERPOL and Europol, the week-long operation was supported by customs, police and national food regulatory bodies in addition to partners from the private sector. Checks and raids were carried out at airports, seaports, shops, markets and private homes.

Among the key aims of Operation Opson (meaning food in ancient Greek) were the development of practical cooperation between national law enforcement, food and drug agencies and private companies, the identification of the organized criminal groups behind the trafficking, and raising awareness among consumers and governments about this type of crime.

Acknowledgements, Notes and References

The facts and figures contained in this report have been gathered from various sources – mainly open-source websites on the internet. Several of the correspondents noted below have also contributed their versions of the relevant facts and figures and the writer has also contributed based on his own experiences directly in many EU MS. However the method of presenting all the facts and figures and more specially the interpretation of them is entirely the responsibility of the writer. Needless to say all the final assessments and any recommendations made are the sole responsibility of the write.

But it is necessary to acknowledge the contributions of some key people:

Ruth Orchard, Director General of the UK Anti-Counterfeiting Group
Erik Madsen, Corporate IPR Manager, Louis Poulsen, Denmark
Hanne Weywardt, Lawyer, MAQS Law firm, Denmark
David Saussinan, Lawyer, Union Des Fabricants, France
Silvio Paschi, Secretary General, Indicam, Italy
Travis Johnson, Vice President, The International Anti-Counterfeiting Coalition, USA
Board and members of the Global Anti-Counterfeiting Group, GACG Network
D'Arcy Quinn, Director, Anti-Counterfeiting, Croplife International
Chairman and members of the European Union Sub-Group of the International Trademark Association (INTA) Anti-Counterfeiting Committee
Chairman and members of the Anti-Counterfeiting and Parallel Trade Team, MARQUES

And some key web-sites/conference presentations:

UKIPO - "Enforcement within the UK and the IP Crime Group"
DKPTO – www.stoppiraterne.dk
HIPO – "National Board Against Counterfeiting, Hungary: Support Initiatives for Enterprises"
CNAC, France – www.contrefacon-danger.com
CNAC, Italy – www.cnac.gov.it

PEER REVIEW REPORT by Prof. Charles Gielen

on

Inter-agency co-ordination at national and international level: An assessment of best practices for improving IPR enforcement

1. I have been asked to review the draft Report by the Observatory of OHIM called "Inter-agency co-ordination at national and international level: An assessment of best practices for improving IPR enforcement" and in particular to assess whether there is sufficient comparison between the different Member states and if the analysis is sufficient to support the "heads of agreement" proposed towards the bottom of page 26 of the draft report.
2. One of the things that struck me was the lack of information with respect to a number of MS, in particular regarding Germany, the Benelux countries and Sweden. Major economies like Germany, Sweden and the Benelux do have active institutions in the fight against IPR infringements and although this does not mean that the conclusions and recommendations of the report would be different, the examples of these MS/region could have made the conclusions and recommendations stronger and more convincing.
3. In terms of an example of successful co-operation in the private sector mention could be made of the activities of the Dutch based foundation REACT (www.react.org), a not for profit institution that was started years ago by the Amsterdam Chamber of Commerce and is now a cross border co-operation of many enterprises who combined their efforts in combatting counterfeiting and piracy and that also actively takes part in discussing such matters with the relevant authorities and educating customs and other enforcement bodies, both nationally and internationally.
4. In Chapter 7 the system in the US is being described. In the final analysis I miss a reference to this system, because that system is being described as "one of the 'best practices' available and in pure IPR enforcement terms – one of the most effective." It would be worthwhile using that system as an example in the final analysis.
5. I have been asked to explicitly look whether there is sufficient comparison between the different Member States and also whether the analysis is sufficient to support the "heads of agreement" proposed in chapter 8. With respect to the first point, as I said above under 3, I miss information with respect to some of the important Member States/regions in the EU that from an economic perspective and in terms of IP enforcement institutions and agencies are important as well. Furthermore some Member States are given quite some detailed attention in relation to others, which can partly be caused by lack of information or simply nonexistence of sufficient cooperation or coordination structures. However, the report is quite rich regarding some Member States, in particular regarding the UK, Denmark and Hungary and to a lesser extent with respect to France, Italy and Romania.
7. With respect to the second point, namely whether the analysis is sufficient to support the "heads of agreement" proposed in chapter 8, I compared those with what is described as practices in the Member States. Hereunder I will repeat those points and refer to the

practices as described. The conclusion will be that the "heads of agreement" are supported by those practices; in referring to those practices I will use the same abbreviations as used in the report to indicate different national institutions.

a. *New and Amended Legislation relating to IPR protection and enforcement.*

The Danish Network has dealt with the implementation of various recommended initiatives, for example, a recent increase of the criminal sanctions on all types of IPR infringement. Similar activities in helping to improve legislation were done by CANC France and CNAC Italy as well as NABC.

b. *Criminal, Civil, Administrative Procedure where this relates to IPR infringements or related crimes such as fraud or the involvement of organised crime*

A good example of this practice are the activities of the UK's Regional Arrest Recovery Teams, in particular the co-ordination of procedures to increase the number of confiscation cases as well as the value of assets seized and to tackle serious organized crime. Reference is also made to the so-called PCB co-operation in Finland, dealing among others with implementing the joint strategies of PCB authorities with the aim of carrying out in an appropriate, efficient and cost-effective manner tasks laid down for these authorities and individual measures that are connected with the prevention, detection and investigation of crimes (combating of crime), control and monitoring and related international cooperation.

c. *Relationships with the Judiciary – some form of dialogue (which hardly exists in current arrangements) which informs Judges and magistrates etc. of the true nature of IP crime is required.*

The Danish Network examines the need for structured education of authorities in the field of IP rights. Also in Hungary NABC trains enforcement agency officers and judicial authorities.

d. *Publication of case studies in order to examine precedents of successful prosecutions – Suitably edited and with relevant commentary*

A good example of this point is the website of NABC.

e. *Training for all agencies and officials (and 'seminars' for judges[!]) in all aspects of IPR protection and enforcement from 'what is intellectual property' to 'how do you close down an illegal factory'*

The Danish Network examines the need for structured education of authorities in the field of IP rights. Also in Hungary NABC trains enforcement agency officers and judicial authorities. Furthermore IPCG's work involves training of key-actors including enforcement officials. The Romanian IPR Working Group does similar training.

f. *Economic and social impact (statistics) are essential to the public awareness case for IPR enforcement and for the political justification for enforcement.*

The UK IP Crime Group published an annual IP Crime Report with information on the scale of counterfeiting and piracy in the UK. In Hungary NABC's responsibility among others is to launch and co-ordinate awareness raising and information campaigns and to monitor the implementation thereof.

g. *Information and data sharing including the secure collection, storage and availability of relevant criminal intelligence.*

In the UK the UKIPO Intelligence Hub is a good example of information and data sharing of relevant criminal intelligence and so is GAIN. NABC in Hungary counts among its responsibilities the analysis and systemization of statistical data regarding counterfeiting. I also refer to the initiative of CNAC in Italy to set up a joint database which aims to acquire and share information useful for IPR enforcement.

h. *Internet and online piracy could possibly be the subject of entirely separate best practice protocols or MOUs but it is important that they are also included in any wider structure dealing with IPR enforcement generally – the criminals very rarely*

see the distinction between counterfeiting and piracy nor do mind which intermediary is used to sell the illegal products.

The five year action plan set by NABC in 2010 involves reduction of online supply of counterfeit products and to better inform internet users.

- i. *International co-operation and cross border actions co-operation is clearly a priority in terms of co-operation at national level; the vast majority of the trade in counterfeits and unauthorised content is international cross-border*
One of the Danish Network's tasks is to enhance co-operation regarding counterfeiting and piracy both at a national and international level. One can also point at the Franco-Italian co-operation committee on IPR enforcement, a bilateral inter-agency co-operation body.
 - j. *Co-ordination structures should be given important control over public awareness campaigns to make sure that messages are consistent and targeted and that different campaigns are sustainable and measurable.*
In the UK one of the work streams of IPCG is to raise awareness of IP crime.
 - k. *Education for all – but especially for schoolchildren and students should be a priority for any structure aiming for more effective IPR enforcement.*
In Hungary NABC's strategy encompasses in particular the education of youth.
 - l. *Training and information for businesses, especially SMEs and intermediaries who do not have resources for in-house expertise of IPR protection and enforcement.*
Reference can be made to the activities of the UK ACG. Although not mentioned in the report, I also point at similar activities of training and information by the international organization React in Amsterdam.
 - m. *Successful co-ordination structures should at the very least attend and make presentations to appropriate conferences, seminars, exhibitions; in some cases it might also organise them.*
The Danish Network examines the need for structured education of authorities in the field of IP rights. Also in Hungary NABC organizes conferences, seminars and exhibitions. As an example of such co-ordination reference should also be made to the seminar organized by the Observatory in November 2012 to tackle the threat of illegal pesticides.
 - n. *For businesses especially (and even more especially for SMEs) there needs to be co-operation on national web-sites, possibly newsletters, local or regional information centres and advisory services; consistent individual contact points in different institutions and agencies are most important.*
The Danish Network maintains a website containing three portals, which are specifically targeted at consumers, businesses and public sector authorities. It includes a news report facility, which is used to communicate relevant news from all the bodies in the network on a regular basis - e.g. news on new policy initiatives, co-ordinated enforcement actions and new criminal case law with links to the anonymised judgements. I also refer to the website used by NABC in Hungary.
The conclusion of this is that the "heads of agreement" are clearly supported by and reflected in the practices described in the report.
6. I finally like to mention that to my opinion the conclusion that the best practice strategy taken from the Hungarian example is a very good starting point is correct .

Amsterdam, September 9, 2013

***‘Inter-agency co-ordination at national and international level:
An assessment of best practices for improving IPR enforcement’***

Peer Review Report of John Gormley, Barrister, Independent Expert

I — Overview

1. The Observatory’s Legal Issues Working Group has identified inter-agency co-operation on IPR enforcement at national, EU and international level as an area to be examined in terms of identifying best practices to be shared with Members States.
2. The report acknowledges in its introduction that the existence of co-operation between institutions and agencies which are involved in Intellectual Property Rights (“IPRs”) enforcement on behalf of the state – *i.e.* essentially anti-counterfeiting and anti-piracy activities of various types – is both sporadic and varied across the EU, and that, where it does exist, it can be at very different levels of authority or, in some cases, of ‘public-private partnerships’ led by either government institutions or by non-governmental organisations such as trade associations. It then acknowledges that there are as many types of inter-agency co-operation as there are Member states, and that is before one then considers cooperation at international level.
3. The premise underlying the report is that, by looking closely at some existing institutional structures in the EU and then comparatively at the situation in the USA, as well as at that more generally at that pertaining at the level of international organisations, it should be possible to draw some conclusions about the efficiency and effectiveness, in achieving comparable objectives, of the different types of bodies and structures that are operating. To this end, the substantive chapters of the report provide a detailed synopsis of the forms of cooperation in the United Kingdom, Hungary, France, Italy and Romania and the United States., as well as considering the Global Congress on Combating Counterfeiting and Piracy.
4. The limited coverage (to date) of the Member States is clearly a significant disadvantage, but it is one that the report recognises. Thus, it candidly acknowledges that no information is so far available on Ireland, Germany, Slovenia, the Netherlands, Belgium, Sweden, Croatia, Austria, Greece or Luxembourg. It further acknowledges (presumably some information is available) that there is very little inter-agency co-operation of any kind, be it strategic or operational, in Cyprus, Malta, Estonia, Latvia, Lithuania, or Bulgaria. It notes, however, that in Poland, Portugal and Slovakia there is some evidence of cooperation in that there are some recent developments on inter-agency co-operation, to which it then refers briefly.

5. Given the absence on information on Germany, the EU's leading economy, as well as several other Member States with strong economies, such as the Netherlands, Austria and Sweden, where one might have expected an impetus towards at least inter-agency and strategic cooperation, it would seem that the relatively limited degree of coordination identified by the survey reveals a possible absence of political will to assist the owners of IPRs in pursuing infringements of their rights. This might particularly be the case with trade marks owners or investors in related rights pursuing the enforcement of their rights, unless the scale of infringement (such as where organised crime is at the background) or threat of infringement is both great and immediate (as a result of major sporting events like the recent 2012 Olympics in the United Kingdom or the UEFA European Football Championships in Poland and the Ukraine taking place), or where the infringing goods are dangerous. In this respect, many Member States may not be convinced of the need, or even justification (particularly in these recessionary times) for committing resources to assist trade mark owners who make their goods in third countries such as China India and Bangladesh- to mention just a few. They may consider that rightholders should exercise their rights by pursuing civil actions and that, in general, direct assistance from public authorities should not be necessary. It may therefore prove difficult to convince Member States to commit more resources to enhanced inter-agency, strategic and operational cooperation, such as that proposed in the survey. Indeed, the report acknowledges, in its executive summary, that the "*creation and development of inter-agency bodies has been affected by global 'push-back' on enforcement of IPRs generally by the public and emerging economies*".

II — Selected issues arising from the report

6. One important issue that emerges is the extent to which it is appropriate to have private sector, essentially rightholder involvement, in coordinating bodies. Should private parties be directly involved in shaping strategy in respect of public bodies involvement in the enforcement of IPRs or should that not be left essentially to public stakeholders? The report asserts that: "*One item which stands out generally is that co-operative structures with input either formal or informal, from the private sector, appear to more effective*". This may be true, but the ambit of that input would need to be carefully circumscribed.
7. Another issue is whether a goal of strategic coordination should be to work towards a common or harmonised definition of what should constitute criminal breaches of IPRs, particularly of trade mark rights. In this respect, the report acknowledges that what may be a crime in trade mark law in one country is not necessarily so in another. It is difficult to see the basis for extended or deeper coordination between Member States or at EU level, and particularly for greater coordination at the operational level in respect of the enforcement of criminal provisions, in the absence of some such consensus. Arguably Article 118 TFEU would provide a legal basis for the adoption of measures to harmonise what types of infringements are to be classified by Member States as criminal or penal in

nature, insofar as this could be considered “*necessary to provide uniform protection of intellectual property rights throughout the Union and for setting up centralised Union-wide authorisation, coordination and supervision arrangements*”. However, the political will for such a consensus would be a prerequisite before any such measures could be envisaged, let alone adopted.

8. The report also speaks with surprise at the absence of judicial involvement in different co-operation bodies across the EU and beyond, which it notes, with the exception of the Romanian ‘Intellectual Property Rights Working Group’, which was set up by administrative protocol (without executive status) in 2006 on the initiative of the Romanian Prosecutor General’s Office. From the perspective of those Member States with a common law tradition, it is wholly unsurprising, as the judiciary is not involved in the investigation of alleged criminal offences. For those Member States where the judiciary has such a role, it would not seem inapt for the judiciary to be involved as regards aspects of coordination of strategy or operational issues regarding the investigation and trial of alleged criminal offences and issues arising therefrom. As regards a possible more general judicial involvement, it is difficult to see how it would be apt, save as regards consultation on possible law-reform proposals and judicial training in respect of development in IPR law.
9. The report concludes that: “*A model best practice structure would ideally cover both strategy and operations or at least be established in such a way that these two activities were strongly linked and benefited mutually from effective work in either case.*” It acknowledges that “*it would be difficult to prescribe which institutions and agencies should participate and or contribute to such co-ordination structure because of the different responsibilities of all the different institutions and agencies in all the MS – and more widely.*” This is certainly true. It would seem unlikely that EU measures could be introduced (even assuming there were a political will for same) to compel Member States to involve their agencies in a certain or desired manner, as any such compulsion, assuming there would be a potential legal basis for same, would sit very uneasily with the principle of subsidiarity. Thus, the approach of the report in suggesting a list of subjects that could be the subject of discussion for further coordination, perhaps under the auspices of the Observatory itself, would seem wise.
10. The report concludes by suggesting the following list
 - New and Amended Legislation relating to IPR protection and enforcement;
 - Criminal, Civil, Administrative Procedure where this relates to IPR infringements or related crimes such as fraud or the involvement of organised crime;
 - Relationships with the Judiciary – some form of dialogue (which hardly exists in current arrangements) which informs judges etc. of the true nature of IP crime is required.
 - Publication of case studies in order to examine precedents of successful prosecutions – Suitably edited and with relevant commentary
 - Training for all agencies and officials (and ‘seminars’ for judges in all aspects of IPR protection and enforcement from ‘what is intellectual property’ to ‘how do you close down an illegal factory’;

- Economic and social impact (statistics) are essential to the public awareness case for IPR enforcement and for the political justification for enforcement – methodologies are being researched.....
- Information and data sharing including the secure collection, storage and availability of relevant criminal intelligence;
- Internet and online piracy could possibly be the subject of entirely separate best practice protocols or MOUs but it is important that they are also included in any wider structure dealing with IPR enforcement generally – the criminal very rarely see the distinction between counterfeiting and piracy nor do mind which intermediary is used to sell the illegal products;
- International co-operation and cross border actions co-operation is clearly a priority in terms of co-operation at national level; the vast majority of the trade in counterfeits and unauthorised content is international cross-border;
- Co-ordination structures should be given important control over public awareness campaigns to make sure that messages are consistent and targeted and that different campaigns are sustainable and measurable.
- Education for all – but especially for schoolchildren and students should be a priority for any structure aiming for more effective IPR enforcement
- Training and information for businesses, especially SMEs and intermediaries who do not have resources for in-house expertise of IPR protection and enforcement;
- Successful co-ordination structures should at the very least attend and make presentations to appropriate conferences, seminars, exhibitions; in some cases it might also organise them;
- For businesses especially (and even more especially for SMEs) there needs to be co-operation on national websites, possibly newsletters, local or regional information centres and advisory services; consistent individual contact points in different institutions and agencies are most important.

Some of these issues may prove controversial and some would clearly need to be refined, but that could be the work of the next phase of this project. Such a further phase would, in my view, be enriched by input of primary information as regards what is happening by way of relevant inter-agency coordination in more Member States.

Conclusion.

The subject –matter of the Report concerns policy matters rather than legal considerations .It will require much effort to achieve the desired results.

Peer Review by Dr. Javier Guillem Carrau

The report adequately responds to its objective. There are other studies in relation to the implementation of the EU Action Plan to combat Intellectual Property Right Infringements focused on Customs practices² and in relation to the enforcement of intellectual property rights in third countries³. However, the particularly significant value of the report lies in its specific goal, the inter-agency co-ordination at national and international level.

From a comparative perspective, a revision of the situation in such a large number of Member States, the USA, as well as several International Organizations is quite interesting in order to check the existing best practices. In addition, the assessment is clear and well-justified and in coherence with previous works dealing with these issues in the EU.

This peer review contains both general and detailed comments about some of the questions which arise in the study and I aim to offer a balanced opinion based on my expertise and background.

1.- General comments

The report states a wide concept of IPR in connection with the definition of the EC Customs Regulation no. 608/2013. It highlights a completed view of “enforcement”, which is not a one-sided concept. From an academic point of view, “enforcement” means not only enforcing IP holders’ rights, but it also means enforcing balance, exceptions and limitations, fair use, civil rights, privacy rights, and antitrust (or competition) policy. Concerning enforcement, the study questions whether it is more efficient to deal with all of the IPR or not. On this key point, the report suggests that it is more efficient to cover both industrial property (TM, designs, patents, etc.) and intellectual property (copyright, software, etc.).

Following on from this, there is a realistic approach to the existence of two operational schemes (inter-institutional government departments and inter-agency operational police and border protection forces). A robust finding of the study is that in most inter-agency strategies, the judiciary is not often involved, hence identifying one of the weaker aspects of the systems.

In this context, the revision of the state of the question in such a large number of Member States and the USA and several International Organizations can be strengthened by adding some data concerning Germany, the Benelux, Spain and Portugal and other information about inter-agency international cooperation. In any case, the USA scheme could be completed as the best compared reference.

To conclude these general comments, the model of organization proposed is realistic and feasible and the list of best practices has been completed, all of which make up the most valuable contribution of the report. Although the list of best practices is extended, some practices could be added. The comparisons and conclusions are well focused. Some recent operations have been proposed as case studies.

2.- Detailed comments

This point contains a set of specific recommendations, which are, firstly, to add some information concerning Benelux, Germany, Spain and Portugal in relation to the inter-agency enforcement of IPR and to describe the main items of the 2013 USA Joint Strategy Plan on IPR enforcement; secondly, to incorporate compared references from other trade regional areas and from bilateral or multilateral international co-ordination structures; and, thirdly, to sum up some other best practices.

- **Inter-agency enforcement of IPR: additional information concerning some MS and about 2013 USA Joint Strategy Plan**

In relation to the enforcement inter-agency coordination, additional information can be selected

² Among others: see: COMMISSION STAFF WORKING DOCUMENT, Report on the implementation of the EU Customs Action Plan for the Years 2009 to 2012, Brussels, 23.10.2012, SWD(2012) 356 final; and Guidelines of the European Commission concerning the enforcement by EU customs authorities of intellectual property rights with regard to goods, in particular medicines, in transit through the EU, Brussels, 1.2.2012.

³ COMMISSION STAFF WORKING DOCUMENT, Report on the protection and enforcement of intellectual property rights in third countries, Brussels, 5.2.2013, SWD(2013) 30 final.

from the state of the arts in **Benelux**, which are relevant as an increasing amount of counterfeit goods and goods obtained by piracy enter the European market through their ports and find their way to Europe's consumers. Of particular relevance for legal practitioners in the three Benelux countries is the Benelux Office for Intellectual Property, which succeeded, on 1 September 2006, to the existing Benelux Trademarks Office and Benelux Designs Office. The Office is an example of specific operational cooperation (or of a "Joint Service" as it is called in the terms of Art. 40 Benelux Treaty)⁴. However, the differences in the treatment of counterfeiting cases within these three countries are still an ongoing problem, as the Dutch Customs is very proactive and it could warrant a more extensive study⁵.

The German case is interesting because of the inter-services cooperation scheme includes some specific cooperation with other national patent offices. In **Germany**, close cooperation with patent attorneys, represented by *Patentanwaltskammer* (Chamber of Patent Attorneys) and *Bundespatentgericht* (Federal Patent Court) is of fundamental importance for the work of the German Patent and Trade Mark Office (*DPMA*). In addition, there are many other fields of cooperation with interest groups and other patent offices (India, Japan, Brazil, etc.)⁶. Together with *Zentralstelle Gewerblicher Rechtsschutz* (central unit of industrial property protection) of the customs services, the DPMA attends important fairs in order to provide information on product piracy and trade mark counterfeiting. Customs have their internal database which is not shared with the Police.

In **Spain**, there has been an inter-agency Committee since 2000 (Royal Decree 114/2000), which was created to study and propose guidelines to combat activities against the intellectual property, to survey and control the implementing measures adopted by the competent authorities and to co-ordinate them from an operational view, as well as to implement training and diffusion activities. Public authorities with competences on these items have had a representative in the Committee (Ministries of Culture, Police and Defense, Justice, Tax, Industry, Agriculture and Fisheries, Public Health and Consumer protection, Foreign Office). There are as well several working groups where private representatives of TM owners Association and other IPR collective management associations [(ANDEMA, AFYVE (Asociación Fonográfica y Videográfica Española), SGAE (Sociedad General de Autores y Editores) between others]. Nowadays, the name of the Committee has changed to *Comisión Intersectorial para actuar contra las actividades vulneradoras de Derechos de Propiedad Industrial*⁷ and Regional and local governments have been added to the membership because, in Spain, they have powers in relation to IP Law.

Since 2006 there has been a Steering Committee which is responsible for the proposal of a communication plan and a training plan for members of National Police and *Guardia Civil* (*Fuerzas y Cuerpos de Seguridad del Estado*), Local Police (*Policía Municipal*) and Judges (*Poder Judicial*); it has also supplied national-scope statistical data on an annual basis.

There is a web site containing the activities of the Committee and the Steering Committee, which is <http://oepm-stopfalsificaciones.es/en/index.html>. The Committee is based on the National Patents and Trade Mark Office (OEPM) where the meetings are hold. The items of the last meeting of the Committee were the following: revision of the proposal of modification of the Criminal Code in relation to IPR crimes; Statistical report about Police and *Guardia Civil* interventions; Campaigns and activities to promote the respect of IPR and to combat counterfeiting; Training Plan for officials and agents; Meetings with the European Observatory; and Working Groups in promotional campaigns, legal framework and statistics.

In **Portugal**, *Grupo Anti-Contrafacção* has been created to co-ordinate the authorities in charge of

⁴ Benelux Office for Intellectual Property, see www.boip.int, accessible on September the 9th 2013.

⁵ Dutch Customs is connected with the KLPD (national police), municipal police and the FIOD-ECD. All cooperate against counterfeit products, sometimes in special taskforce teams. In addition, they have produced a "Guidelines issued by the Public Prosecution Service" (<https://zoek.officielebekendmakingen.nl/stcrt-2011-22925.html>).

⁶ To find basic information about the German scheme, see http://www.deutsches-patentamt.de/english/the_office/cooperation/index.html, accessible on September the 9th, 2013.

⁷ Real Decreto 1224/2005, de 13 de octubre, por el que se crea y regula la Comisión intersectorial para actuar contra las actividades vulneradoras de los derechos de propiedad industrial (BOE 28/10/2005).

IPR's enforcement. Its mission is to strengthen cooperation, exchange statistical data on the seizure of counterfeit goods, raise public awareness and improve the legal system in the field of anti-counterfeiting. Another of the functions of the GAC is to cooperate with the EU Observatory and to develop training plans for officials⁸. There is a web page <http://anti-contrafacciao.com> which, as well as hosting an "online complaints" system, also contains information on the entities that make up the GAC and their anti-counterfeiting activities, in addition to statistics on seizures.

The members of the Grupo are "Polícia Judiciária" (Criminal Police), or PJ; the "Autoridade para a Segurança Alimentar e Económica" (Authority for Food and Economic Safety), or ASAE; the "Guarda Nacional Republicana" (National Republican Guard), or GNR; the "Polícia de Segurança Pública" (Public Security Police), or PSP. Basic information on each of these Police bodies and/or definitions can be consulted on the Portal of the Anti-Counterfeiting Group. Nevertheless, there is no common database for information on IP right infringement in Portugal at the present time (not even on the GAC Portal).

In the EU system, there are some issues to be mentioned. Concerning the data sharing, the COPIS system is an EU electronic system for registering and disseminating among customs companies' applications for action. It must be stressed that it is a useful tool in relation to the data sharing efficacy. In relation to the **Observatory's strategic plan** from 2014 and beyond, the Work Programme 2013 was presented at the meeting of the Administrative Board of the Office on 17 November 2012 and received strong support.

In the framework of the so-called transatlantic dialogue, the report correctly analyses the USA as the most interesting compared reference of inter-agency co-ordination at a national level. Some reference of the **2013 USA Strategy Plan** could be added as, for instance, the cooperation and coordination among agencies and federal, state and local level (p.21) and the special attention given to the internet issues (p.30 and 31)⁹. Therefore, the US Plan should be added to the list of best practices at the end of the reports.

Therefore, some modifications should be made on pages 20 and 21 of the report where these countries are mentioned and the last sentence in page 21 should be modified, should additional information about the other countries be included.

- **International co-ordination structures: recent multilateral and bilateral experiences**

At international level, the report identifies the *Global Congress on Combating Counterfeit and Piracy* which is a very useful consultative forum where private (ICC/BASCAP, INTA) and public (WCO, WIPO, INTERPOL) partnership is being built and strengthened in the international arena.

In relation to economic and politics declarations, in the framework of G8 and G5 meetings, the **Heiligendamm Process** is intended to enhance the dialogue and the Exchange of best practices in several issues like IP enforcement¹⁰.

In other regional trade areas, like **Mercosur and Andean Community** common understandings could be referred as example of trade areas convergence. Although, they have not published any global strategy on IPR enforcement, there are some activities linked to this goal like Judges' Seminars and training plans¹¹.

In the framework of the **Council of Europe**, we have seen the adoption of the Convention on the counterfeiting of medical products and similar crimes involving threats to public health, so-called **MEDICRIME Convention**¹².

Concerning these specific products, there is also an international reference in **WHO** concerning the specific enforcement of IPR in medicines with the establishment of an International Medical Products Anti-Counterfeiting Taskforce (**IMPACT**) of governmental, non-governmental and

⁸ Portaria n.º 882/2010, de 10 de Setembro, criou o Grupo Anti-Contrafacção e regulou o seu modo de funcionamento.

⁹ Available at <http://www.whitehouse.gov/sites/default/files/omb/IPEC/2013-us-ipecc-joint-strategic-plan.pdf> on September the 9th, 2013.

¹⁰ See, for instance, <http://www.mofa.go.jp/policy/economy/summit/2009/declaration2-a1.pdf> accessible on September the 9th, 2013.

¹¹ <http://www.comunidadandina.org/unasur/Convergencia11-%20Propiedad%20Intelectual.pdf>

¹² See http://www.coe.int/t/DGHL/StandardSetting/MediCrime/Default_en.asp accessible on September the 9th, 2013.

international institutions¹³. In March 2013, the Interpol and WHO announced an initiative, which proposes to address “pharmaceutical crime,” including counterfeits. The **Interpol Pharmaceutical Crime Programme** will focus on the prevention of all types of “pharmaceutical crime,” including branded and generic drug counterfeiting, a press release said, and will also serve to identify and dismantle organized crime networks linked to this activity. Interpol said such products threaten the health of millions of people. The three-year programme will cost €4.5 million (approximately US\$5.8 million) and will build on the work of Interpol’s Medical Product Counterfeiting and Pharmaceutical Crime unit. A total of 29 pharmaceutical companies are part of the agreement, among which are Abbott, Bayer, Bristol-Myers Squibb, Merck, Novartis, Roche and Sanofi¹⁴. From a bilateral point of view, firstly, the **Free Zone Exchange Agreements** are the first step in order to state the basic lines of IPR enforcement. There are a lot of examples on this practice. Given the fact it was recently signed, a useful reference is the **Accord de libre-échange (ALE) Suisse-Chine**, (signed on July the 6th 2013)¹⁵. Usually, this type of agreement is completed by a more specific protocol and a customs-based technical assistance or mutual recognition program. Another example of bilateral agreement to be referred to is the **USA-Russian Federation Intellectual Property Rights Action Plan**, which is more completed¹⁶. To conclude, some specific projects, like **EU-China IPR2**, are good samples of international cooperation to provide technical assistance to third countries in order to support a better enforcement of IPR (www.ipr.org).

- **Comparison, conclusions and best practices**

The report concludes on a **crucial point** which is that fight against counterfeiting and piracy would have much greater chances for success if there is an **inter-institutional group**, involving all the relevant stakeholders from public (the IP offices, customs, police and justice) and private (leading manufacturing, retail and consumer organizations, associations of right holders, copyright societies); that means **with input from the private sector**. A valuable conclusion of the study is the affirmation that the body in charge of the coordination must be **housed in a single institution or agency**.

In relation to the **best practice at operational enforcement level** (the Finnish example) further information could be added from the Dutch scheme. It is clearly concluded that one of the single most important best practices consist of laying down guidelines, uniform rules and best practice of customs authorities in the area of border measures and better coordination between countries; at an international level, all this is desirable to improve enforcement. Actions to be promoted in this field range from training activities to the organization of joint customs operations

The study provides a complete list of areas of potential co-operation for the inter-agency model or protocol. In addition to those listed, it can be suggested **other activities or structures like to have smaller specialized committee that deal, with more specialized intellectual property issues** such as the drafting of new legislation, on line issues, etc.; **to distinguish specifically the enforcement of IPR of medicines**; and **to hosting an “online complaints” system**.

- **Some case studies**

In June 2013, **Operation Pangea VI** has engaged police, customs and national regulatory authorities to target websites supplying fake and illicit medicines, and to increase awareness of the serious health risks connected to purchasing medicines online. It was coordinated by Interpol, with Europol, the World Customs Organization, the Permanent Forum of International Pharmaceutical Crime, the Heads of Medicines Agencies Working Group of Enforcement Officers, the Pharmaceutical Security Institute, and supported by the Center for Safe Internet Pharmacies and private sector companies including Visa, MasterCard, PayPal and Legitscript (see www.europol.europa.eu) .

¹³ <http://www.who.int/medicines/services/counterfeit/RomeDeclaration.pdf> accessible on September the 9th, 2013.

¹⁴ See <http://www.interpol.int/News-and-media/News-media-releases/2013/PR031> accessible on September the 9th, 2013.

¹⁵ See <http://www.seco.admin.ch/themen/00513/02655/02731/04118/index.html> accessible on September the 9th, 2013.

¹⁶ See <http://www.ustr.gov/about-us/press-office/press-releases/2012/december/us-russia-agree-action-plan-ipr> accessible on September the 9th, 2013

In June 2013, Europol participated in Project Transatlantic Two, along with several MS such as Belgium, France, Romania and the UK and executed coordinated seizures of 151 top-level European-based domains under “**Operation in Our Sites**” of USA IPR Center (see www.ice.gov)

Javier Guillem Carrau