



Alicante, February 2014
VOR

Legal Working Group Meeting

26 February 2014

Subject: Note on Final Best Practice reports and follow-up studies

Summary: This note relates to item number three of the Legal working group meeting “Final Best Practice reports and follow-up studies”.

1. Introduction/Background

At its meeting in February 2013 the working group decided that three areas of possible best practice should be studied:

- a. Costs and Damages
- b. Storage and Destruction
- c. Inter-agency cooperation

Draft reports on each area were submitted to the working group and discussed at the meeting in September 2013. An additional period for written comments was also provided.

a. Costs and Damages

The study proposes that a screening and assessment of relevant case law in the area of costs and damages should be undertaken. Such screening will hopefully reveal instances where a particularly sound methodology was followed in order to ensure appropriate compensation of damages and costs suffered/incurred as a result of IPR infringement, or in the consideration of some of the factors relevant for the awarding of costs and damages. This should build a factual and sound basis in support of any findings that the LWG would find appropriate to bring forward, including for example a set of practical (and obviously nonbinding) guidelines on practical approaches to the quantification of damages.

b. Storage and Destruction

The study proposes that a screening and assessment of relevant case law in the area of storage and destruction has merit. There was a consensus within the working group that in order to enhance the data on storage and destruction a study to calculate the cost to

Member States and right holders of the current practice of having to pay up front the cost of storage of seized goods would be desirable.

However, confining the assessment to case law is likely to be insufficiently comprehensive. Storage and destruction can arise as an issue not only in civil infringement actions but also in criminal proceedings. Here case law, if accessible, would be a useful source of information. However, there is also the issue of customs seizures where storage and destruction is also an issue. This would require more than a study of case law.

A comprehensive study, not confined to case law, will be undertaken to quantify the cost to Member States and right holders of the current practice of storage and destruction of seized goods.

c. Inter-agency cooperation

This interim study is largely based on a draft report by John Anderson which was commissioned by the Observatory. The report was in turn subject to peer review by three separate independent experts. Additionally, the LWG was consulted on the draft report and the comments received have been taken into account in the drafting of this report.

The draft report covered only six EU Member States in any detail. In order to supplement this information Observatory public sector representatives of the Member States were circulated with a questionnaire in November 2013. The responses received so far cover a total of sixteen of the current twenty eight Member States. A reminder has been sent to the Member States who have not responded.

Until more extensive information is received this study can be considered to reach only interim conclusions. Nevertheless the findings do have some value.

ANNEXES

1. Costs and Damages report
2. Storage and Destruction report
3. Inter-agency cooperation report