



Alicante, February 2014  
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## **Legal Working Group Meeting**

**26 February 2014**

**Subject: Note on Enforcement in non-EU countries**

**Summary:** This note relates to item number six of the Legal working group meeting “Enforcement in non-EU countries“.

### **A) Country guides and reports**

#### **Introduction**

At the beginning of 2013 the plan was for the preparation of five documents (then called country reports) describing the situation on enforcement of intellectual property rights (IPR) in the respective countries. In the course of preparing the documents it became clear that two different audiences needed to be addressed.

The first group consists of EU enterprises operating in third countries that need help with protecting their intellectual property rights in those jurisdictions. They and their advisers need an introduction to the law and practice in the relevant countries with clear guidance on where to obtain more detailed information. The vast majority of this information will be from public sources.

The second audience is the EU Commission (COM) which has the responsibility for dialogue, consultation and negotiations with third countries. Here the need for reliable information on the concrete difficulties faced by EU enterprises in enforcing their IPR in third countries. The nature and source of this information is quite different from the first. A number of joint activities between the Observatory and DG TRADE will be directly connected to the preparation of material to be used in the compilation of country reports (see under: Third country information and intelligence). The identification of countries to be the subject of country reports will largely be driven by the priorities and rhythm of COM negotiations.

In order to draw a distinction between the two the document for guidance to enterprises will be called “country guides” and the information for COM will be referred to as “country reports”. The information for country reports will have a number of sources: information supplied by enterprises and their advisers; information from representative associations; information from EU delegations and EU national authorities; etc. By its nature much of this information will be of a confidential nature.

## **2013**

During 2013 the Observatory has drafted five guides for EU businesses operating in third countries to help them with protecting their intellectual property rights. The five countries, which were selected for 2013 by the Working Group are: Brazil, Russia, India, China and Turkey.

The focus is on providing material in as clear and simple a way that will enable businesses without expertise in enforcement of intellectual property rights to know what to do, where to seek information and advice and identify the agencies that are involved in enforcement. While the outline of each report is broadly the same the approach for each country is slightly different to reflect the real differences that exist between the systems in each of the five countries.

The country guides were circulated to the Working Group and an opportunity was given for members of the Working Group to submit comments and propose changes at the September 2013 meeting of the Working Group and subsequently in writing. The guides which have been revised in the light of comments are attached.

They will be published on the Observatory website. Printed copies of the guides have been circulated to EU delegations.

## **2014**

We will work with DG ENTERPRISE to ensure that we co-ordinate our guidance with those that exist under the remit of the IPR Helpdesks in China and the ASEAN and Mercosur regions.

### **B) Third Country Information and Intelligence (ACRIS and enterprise and interest survey databases)**

#### **Introduction**

As mentioned in the section on country guides and country reports The EU Commission (COM) has the responsibility for dialogue, consultation and negotiations with third countries and needs reliable information on the concrete difficulties faced by EU enterprises in enforcing their IPR in third countries. A number of joint activities between the Observatory and DG TRADE will be directly connected to the preparation of material to be used in the compilation of country reports. There are three aspects of this:

- Anti-counterfeiting Rapid Intelligence System (ACRIS)
- Survey of enterprises operating in third countries
- Additional intelligence gathering

#### **ACRIS**

This project was originally conceived as one to be developed by DG TRADE and subsequently handed over to the Observatory. However, in the course of 2013 it was agreed that the development be carried out by the Observatory in close consultation with the Commission. It is included in the Observatory Work Programme 2014.

#### Scope

ACRIS will

- Allow EU companies to report information about IPR infringements and the geographical locations where those infringements occurred using a structured format;
- Allow EU companies to provide follow-up information about the treatment of IPR infringement cases by local authorities using a structured format;
- Guarantee the confidentiality of detailed data provided by EU companies;

- Generate aggregate information from the detailed data provided by EU companies in a way that guarantees the anonymity of such companies;
- Produce relevant statistical information for the purpose of assessing the level of efficiency of actions taken by enforcement authorities against counterfeiting, using anonymised data provided by EU companies, and make that information available for consultation only by the involved companies, by the Commission and by interested and authorised third parties;
- Be accessed by authenticated and authorised parties via a Web Interface or via Web Services both for data reporting and for intelligence consultation

ACRIS will not:

- Be accessed by companies that do not agree to volunteer their data on IPR violations;
- Be accessed by non-authenticated or not authorised third parties
- Interact with other possibly existing systems for surveillance of IPR compliance;
- Deploy any client-side application either for the EU companies involved in data reporting or for any of the stakeholders involved in intelligence consultation.
- Publicly disclose statistical data

### Technology

The intention is to reuse the technology underlying that of the Enforcement Database to the extent that this is possible.

### Timing

Subject to approval of the project brief by the Observatory Programme Board the project will begin development during 2014 and be rolled out during 2015. Part of the project involves the marketing of the tool to interested parties (enterprises and representative associations) because it is from them that the information will originate.

### Consultation

The views of the Working Group are sought so that they can be reflected in the final project brief.

### **Survey of enterprises and interest groups**

In the past COM, DG TRADE, has carried out surveys for the purpose of gathering the experience of interested parties on the protection of their IPR in third countries. The establishment of the Observatory is seen as an opportunity to put such surveys into a context that is focussed on enforcement and can be supported in a sustained fashion. The intention of this project is to establish an online periodic survey to gather the information previously gathered by COM.

### Scope

The activity is comprised of three parts:

- Building a tool that will enable European enterprises to be surveyed on line in relation to their experience of enforcing their intellectual property rights in third countries. The tool must have an initial capacity of dealing with hundreds of enterprises, in respect of forty countries. The initial requirement must be easily scalable.
- Carrying out the surveys within the initial capacity in 2014.
- Producing reports in accordance with requirements agreed in advance with COM.

### Timing

The tool should be in place and the first survey launched in 2014.

### Technology

The project approach will be to find an existing open sourced technology that can be readily customised.

### Consultation

The views of the Working Group are sought so that they can be reflected in the final plans.

## **C) Third Country Intelligence**

The ACRIS and survey databases will provide almost all of the intelligence that will form the Observatory's evidence base and input to DG TRADE's negotiations. However, there are advantages to creating a systematic network to capture other information related to third country infringement. The Observatory has therefore been working to develop:

- A network of IP contacts within EU Delegations in priority countries (China, India, Brazil, etc.) in order to ensure that the Observatory, DG TRADE and EU Delegations can exchange information and expertise in real time.
- A series of business breakfasts, seminars, etc. held 'in country' particularly in the run-up Free Trade Agreement or other high level bilateral discussions.

This interactive discussion will also allow us to gather the information to put together more targeted capacity and knowledge building programmes in priority countries.

This work stream will include a two-day conference for EU Delegation IP leads to be held in March 2014 to build their knowledge of IP (if required) and inform them of the work of the Observatory.

### **Verification of data gathered**

Both the Observatory and DG TRADE are already in receipt of information about difficulties experienced by enterprises in enforcing their IPR in third countries. The Observatory and COM will make arrangements to ensure that such information is stored, verified and shared. This will be done in a way that protects the level of confidentiality attaching to the information. No special tools will be needed for this process to operate. The suppliers of the information will be informed of the use that has been made of the information supplied.

### **Knowledge and capacity building**

It has now been agreed that the Observatory will set the strategic direction for any enforcement related work within OHIM. The Observatory will also design all enforcement related capacity and knowledge building work carried out by OHIM, whether in OHIM's own bilateral trade mark programmes, or through its delivery of IP wide projects such as IP Key in China on behalf of DG TRADE. Wherever possible, the evidence base captured through the various mechanisms outlined in this paper will be the basis on which we build the programmes.