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REPUBLIC OF THE SUDAN



WORLD INTELLECTUAL  
PROPERTY ORGANIZATION

**WIPO NATIONAL SEMINAR ON COPYRIGHT,  
RELATED RIGHTS, AND COLLECTIVE MANAGEMENT**

organized by  
the World Intellectual Property Organization (WIPO)

in cooperation with  
the Ministry of Culture

**Khartoum, February 28 to March 2, 2005**

**FIGHTING COPYRIGHT PIRACY**

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## Three Pillars of the Intellectual Property System

- Any efficient IP system must include:
  - 1) appropriate legislation
  - 2) management mechanisms
  - 3) enforcement mechanisms

## Factors Influencing Enforcement

- 1) Very big amounts involved in counterfeiting/ piracy activities (5-7 % of world trade)
- 2) Clear links to organised crime
- 3) Many counterfeited/pirated products dangerous (deficient spare parts or computer programs, useless medicines, etc)
- 4) Huge tax losses for governments

## Important considerations

- 1) Sanctions must be sufficiently severe
- 2) Important that remedies can be applied quickly.

## International instruments relating to enforcement

- 1) Some general provisions in the Berne and Paris Conventions and WCT and WPPT
- 2) Detailed standards in TRIPS
- 3) Some conventions on recognition of judgements.

So far, no instruments concerning applicable law

## Enforcement Standards

- Part 3 of the TRIPS Agreement
- Regional standards, e.g. European Union on Enforcement Directive

## TRIPS Enforcement Standards

- 1) General Principles
- 2) Obligations for specific fields:
  - a) Civil and administrative measures
  - b) Border measures
  - c) Criminal procedures

## Some other comments on enforcement

- 1) Standing to institute proceedings
- 2) Usefulness of rules of presumption
- 3) Publication of judgements
- 4) Monitoring the manufacture of optical discs, etc.
- 5) Protection of encryption and other technical protection measures
- 6) Institution of criminal proceedings

## WIPO Enforcement Committee

- Advisory Committee on Enforcement of Intellectual Property Rights.
- Mandate: advice, cooperation and coordination of enforcement measures. No standard-setting.
- Controversial committee.

## WIPO Enforcement Committee

- First Session in 2003: discussion about mandate and activities
- Second Session in 2004: the role of the judiciary.
- Third Session in 2005: measures concerning awareness-building and training.

## Authorities/bodies involved in enforcement

- Police
- Prosecutors
- Judiciary
- Collective management organisations
- Other interest organizations

## The Judiciary

- Increased litigation. Reasons
  - 1) Greater importance IP law in general.
  - 2) Increase of economic interest involved
  - 3) The enormous diversity of situations to be covered by IP/copyright law
  - 4) the "information society"

## The Judiciary

- IP issues to be dealt with
  - 1) by courts of general competence, or
  - 2) specialised courts (China, Thailand, Malaysia),or
  - 3) by special chambers of general courts.

## The Judiciary

- Points of litigation in copyright cases; examples
  - a) the level of originality required
  - b) whether performance is "public"
  - c) moral rights
  - d) ownership of rights in employment situations
  - e) penal sanctions; who is liable?

## The Judiciary

- The legal instruments to be used.
  - 1) The IP law law itself
  - 2) Competition law
  - 3) Penal law and laws on criminal or civil procedure
  - 4) Trade law (e.g. concerning exhaustion).



## The Judiciary

- Some elements of proceedings.
  - a) Rules of evidence; burden of proof
  - b) The role of expert evidence on
    - legal issues
    - technical issues (computer programs)
    - identification of fake goods
  - c) The importance of provisional measures

## The Judiciary

- Litigation issues (Enforcement Committee)
  - a) litigation costs
  - b) calculation of damages
  - c) the specialization of the judiciary
  - d) the level of penal sanctions

## Final observation

- Much information on the WIPO website
- [www.wipo.int](http://www.wipo.int) under "Enforcement"
- IPIEIS Forum (WIPO forum for exchange of information on enforcement).

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