



Global Congress on Combating Counterfeiting and Piracy

Third Global Congress on Combating Counterfeiting and Piracy

Shared Challenges, Common Goals

Geneva, January 30 and 31, 2007

SUGGESTIONS EXTENDING FROM THE THIRD GLOBAL CONGRESS

Background and overview

The Third Global Congress on Combating Counterfeiting and Piracy was convened by the World Intellectual Property Organization (WIPO), the International Criminal Police Organization (Interpol) and the World Customs Organization (WCO) in cooperation with the Global Business Leaders Alliance Against Counterfeiting (GBLAAC), the International Trademark Association (INTA), the International Chamber of Commerce (ICC), and the International Security Management Association (ISMA). Each year since its inception the Global Congress has been hosted on a rotating basis by the respective lead IGO. This year's Global Congress was hosted by WIPO. The Congress was held on January 30 and 31, 2007, in Geneva, Switzerland; over 1,000 delegates attended.

Extending from recommendations made at the First Global Congress (Brussels, May 2004), the purpose of the Congress is to raise awareness on the growing counterfeiting and piracy problems, share relevant information, develop strategies to combat the illegal trade and identify practical actions and potential solutions. The Lyon Declaration, developed at the Second Global Congress in 2005, identified four priority areas which have come to serve as the Congress's mandate and outline for action: (1) Raising Awareness; (2) Improving Cooperation and Coordination; (3) Building Capacity; and, (4) Promoting Better Legislation and Enforcement.

Drawing from this outline, the Third Global Congress was organized to enable participants to analyze progress made and suggest actions oriented towards the remaining challenges in each of the priority areas. Notably, the Congress also featured a special session on health and safety risks associated with counterfeiting and piracy; and this focus will become a fifth pillar of the Congress' priority focus. In the course of the presentations and discussions, a number of suggestions were made and proposals announced on how the various stakeholders might more effectively combat counterfeiting and piracy. These suggestions and proposals have been collected informally in this document, with no official endorsement by the audience at-large, by the Global Congress Steering Group collectively, or by the individual convening organizations of the Global Congress. Nonetheless, the following extract from the discussions generates a valuable body of knowledge that significantly advances the concept of a global consensus on priority actions that must be collectively undertaken by governments and industry in meeting their common goal of reducing counterfeiting and piracy.

To further strengthen the assembly of participants and the diversity of input generated by the first three Global Congresses, these outcomes will be consolidated with the objective to create a reference set of objectives and actions for review at the fourth Congress.

I. ENHANCING COOPERATION AND COORDINATION

There was general consensus that the global problems of counterfeiting and piracy are too great to be solved by individual governments, business sectors or companies. Therefore, it will be critical to increase and improve the cooperation and coordination among and between these actors.

- Establish better cooperation and coordination among countries that are interested in more effective and efficient enforcement of IP rights with the aim of harmonization or at least approximation of laws and procedures.
- Encourage focused cooperation between national governments to set up effective standards at the sub-regional, regional and/or international level to combat counterfeiting and piracy.
- In cooperation with the private sector, establish special units/task forces in national administrations that would serve as focal points for the coordination of anti-counterfeiting and anti-piracy activities, specifically data collection and information sharing.
- Establish task forces/procedures that facilitate communication and cooperation between the private sector and governments.
- Encourage national governments to set up IP focal points in their respective embassies.
- Where appropriate, and in partnership between the public and private sectors, establish anti-counterfeiting/anti-piracy help-desks to support and provide information to local businesses and those investing abroad.
- In order to avoid overlap or duplication, encourage clear delineation of the responsibilities of the various national authorities involved in the fight against counterfeiting and piracy.
- Put in place clear regulations or, where more appropriate, guidelines for cooperation procedures amongst governments, their agencies and the private sector.
- Strengthen cooperation between customs authorities and the private sector by providing simple and free-to-use mechanisms for customs registration, in particular to help small and medium-sized enterprises (SMEs) to use the system.
- Collect and exchange successful strategies and/or good practices that companies employ to protect their intellectual property and to fight against the illegal trade in counterfeit and pirated goods.
- Encourage the further development and wide use of databases that provide IP enforcement-related information, including, for example, the WCO Customs Network (CEN), and the Interpol Database on International Intellectual Property Crime (DIIP).
- Promote the exchange of intelligence at the international and regional levels to respond to the increasingly sophisticated criminal networks driving counterfeiting and piracy.
- Continue to support and further develop concerted regional action against counterfeiting and piracy such as Interpol's Operation Jupiter.

II. PROMOTING BETTER LEGISLATION AND ENFORCEMENT

There was general consensus that even if good laws are in place, they are often poorly enforced. Speakers called on countries to further improve civil, administrative and penal provisions in legislation dealing with the enforcement of IP rights, to streamline procedures and to allocate more resources to improve the enforcement of intellectual property rights, by both adhering to international standards and implementing and enforcing effective national and regional IP protection regimes.

- Consider providing for criminal sanctions for commercial scale IP violations, which fully reflect the current dimension of counterfeiting and piracy and to underline that they are serious economic crimes.
- Encourage the review of sanction structures to ensure that they are strong enough to serve as effective deterrents, and encourage courts and competent administrative authorities to use criminal sanctions.
- Examine whether, and under which circumstances, consumers should also be penalized for purchasing and/or possession of counterfeit and pirated products in countries that don't already have such measures.
- Encourage countries to strengthen civil remedies and procedures, such as effective provisional measures, and provide more adequate compensation for rights holders through appropriate methods for the calculation of damages.
- Analyze and, as appropriate, eliminate jurisdictional inconsistencies concerning judicial interpretation of law, for example in the context of the release of goods and the issue of parallel importation.
- Encourage governments to further develop and clarify legal standards for the availability of civil remedies, including damages and their calculation, and procedural law.
- Reduce litigation costs for the use of the civil system to enforce IP rights.
- Take appropriate measures to ensure Free Trade Zones provisions are not unfairly and illegally manipulated by counterfeiters
- Elaborate rules for Free Trade Zones to facilitate seizures of counterfeit and pirated goods and to prevent the trade in counterfeit and pirated goods, most particularly by eliminating the practice of disguising the origin of products.
- Establish legislative standards on prohibiting the movement of counterfeit and pirated goods that are in transit or in the transshipment process.
- Explore the proposal by the Government of Japan to develop an international treaty on the manufacturing and distribution of counterfeit and pirated goods, as well as consumer education.
- Explore options for improvement in international legal framework systems for sanctions against IP crimes, either separately or in connection with another international instrument, e.g., on organized crime in general
- Formulate and/or finalize guidelines for global protection of IP rights, such as the WCO Framework of Standards, and promote and support their wide adoption by governments to further strengthen national customs administrations in their efforts to combat counterfeiting and piracy.

- Develop a set of good practices to ensure that legitimate businesses are made aware of the serious consequences of participating in the production, shipment, distribution and retailing of counterfeit and pirated goods.
- Collect and make available good practices on how to effectively combat counterfeiting and piracy. Consider how these good practices should be promoted and implemented.
- Enhance efforts and actions against importers and distributors of counterfeit and pirated products in developed countries, particularly those that obtain such goods from cheap manufacturing sources in less developed countries.
- Integrate efforts to identify solutions to the growing challenges of trade in counterfeit and pirated goods over the Internet including the special problems relating to detection and enforcement caused by illegal downloading and misuse of Internet auction houses. Self-regulation should be considered as a support tool to enforcement.

III. BUILDING CAPACITY

The Congress recognized that a country's effectiveness in protecting IP rights is dependent upon its capacity to do so. Therefore, in addition to prescriptions for better legislation, stronger enforcement and penalties, speakers also suggested methods for improving knowledge, training and skill capacities.

- Identify deficiencies and duplication and explore partnerships to respond more effectively to the strong demand for capacity building at all levels concerned with the enforcement of IP rights. In particular, efforts should be focused on the sufficient resourcing for services rendered by the judiciary, the prosecution, police and customs officials to ensure effective implementation of anti-counterfeiting and ant-piracy legislation and enforcement procedures.
- Encourage national governments to sufficiently equip their IP enforcement units to enable efficient enforcement action and effective sanctions against counterfeiting and piracy.
- In the framework of activities aimed at capacity building, pay particular attention to the many links and overlaps between the enforcement of IP rights and the enforcement of law in general. The above is intended to assist in identifying and fostering synergies between law enforcement, in general, and IP enforcement, in particular.
- Provide better information on the relationship between the level of counterfeiting and piracy in a country and the perceived level of corruption.
- As a response to the increasingly sophisticated counterfeiting and piracy businesses, explore the appropriate use of security and authentication technologies.
- Design training programs according to the particular needs and circumstances of the geographic location and the target group ("tailor-made solutions").
- Cooperate more closely with right holders for the purpose of better identifying counterfeit and pirated goods at borders.
- Support the use of e-learning programs, for example the WCO e-learning modules on anti-counterfeiting and the entire distance learning programs of the WIPO Worldwide Academy.
- Regularly evaluate capacity building programs by analyzing tangible results, and then develop them further on the basis of such assessments.

IV. RAISING AWARENESS

Many speakers addressed the need to increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. They also agreed some priority should be given to educating young consumers. Greater steps in raising awareness can lead to informed consumers that better understand harms associated with purchasing and consuming counterfeit and pirate goods; likewise, informed policymakers have sufficient information to make decisions, implement policies and allocate resources.

- Support the preparation and completion of global studies on the economic and social impacts of counterfeiting and piracy such as the current OECD study, the first part of which is expected to be published in early 2007. Make wide use of the results to inform policy makers, law enforcement agencies, and the public at large.
- Further increase awareness raising efforts at all stakeholder levels (i.e. politicians, enforcement, consumers) to raise political will.
- Support awareness raising efforts among law enforcement agencies to ensure that counterfeiting and piracy at a commercial scale are perceived and dealt with as serious crimes.
- Develop tailored communication strategies for awareness-raising activities reflecting particularities of geographic, social, economic and demographic categories.
- Develop a stable of articles on losses/experiences by local entrepreneurs and artists to help counter the widespread misconception that counterfeiting and piracy are crimes against wealthy, foreign right holders.
- Increase consumer awareness campaigns in order to target the “demand side” of the counterfeit and piracy problem. Campaigns should focus on possible health and safety risks for the individual consumer, and the dangers to the public order caused by organized crime involvement.
- Reduce end-user demand through better information on the economic consequences of counterfeiting and piracy on the countries of residence of the end users including those for employment.
- Develop and integrate legal alternative business models, and include in awareness campaigns issues of ethics and responsibility.
- Support a balanced international dialogue on the economic and social impact of effective protection of intellectual property rights and for making promoting an environment conducive to inventive and creative activities.
- Evaluate the impact of awareness campaigns, for instance through public surveys, and share results with stakeholders at the national and international level to further optimize such campaigns.
- Focus awareness campaigns that address young people and involve them in the design of such campaigns.
- Start consumer education on the consequences of counterfeiting and piracy as early as possible, preferably at pre-school or school level.
- Design specific awareness campaigns that address the illiterate.

V. HEALTH AND SAFETY RISKS

The Congress widely recognized that counterfeiting and piracy harm society in many ways that are not easily understood. This is particularly true for counterfeit products are not tested to the same safety standards and can therefore be dangerous for consumers. In addition to health hazards presented by fake auto parts, electrical goods, foods and toys, speakers addressed the growing problem of counterfeit pharmaceuticals and drew particular attention to the fact persons in need of medication often acted in good faith and were not aware of, and therefore not in the position to assess, the risk.

- Encourage governments to establish well-equipped and competent national drug regulatory authorities that will ensure control and regular inspection of entities involved in the manufacture, trade and distribution of pharmaceuticals.
- Encourage governments to establish legislation that the manufacture and distribution of counterfeit drugs are punishable as serious, potentially life-threatening crimes.
- Better coordinate, at the national, regional and international levels, preventive and investigative efforts by involving drug regulatory authorities, law enforcement agencies, manufacturers of pharmaceuticals, professional associations of medical practitioners and pharmacists, as well as consumer protection groups, to strengthen concerted action against the manufacturing and distribution of counterfeit pharmaceuticals.
- Establish strict regulations for licensing wholesalers to ensure maximum control of legitimate supply chains of pharmaceuticals, car parts and other sensitive merchandises.
- Monitor the Internet and take action whenever possible and appropriate to discourage the distribution of fake pharmaceuticals, as well as the illegal supply of narcotic drugs.
- Support international authorities such as the International Narcotics Control Board (INCB) in developing guidelines for governments to counteract the spread of illegally operating Internet pharmacies.
- Liaise with enforcement agencies working against fake narcotic drugs to explore synergies and disclose links between the manufacturing and distribution of counterfeit pharmaceuticals on the one hand, and that of fake narcotic drugs on the other.
- Raise awareness among consumers on the dramatic level of health and safety risks resulting from the use of counterfeit drugs, fake car parts or electric or electronic devices.
- Encourage companies to improve the packaging of pharmaceuticals to make counterfeiting more difficult.
- Further strengthen cooperation between all stakeholders involved in the fight against counterfeit drugs, including supporting the work of the WHO International Medical Products Anti-Counterfeiting Taskforce (IMPACT).
- Support the further collection and updating of data to continue to assess the full extent of health and safety risks for consumers from counterfeiting and then assist in communicating this information to policy-makers, law enforcement agencies, and the public.
- Intensify training of law enforcement authorities, especially customs administrations, that focus on counterfeit products posing health and safety risks.

VI. RECOMMENDATIONS ADDRESSED TO THE GLOBAL CONGRESS STEERING GROUP

- Hold the Fourth Global Congress in the first quarter of 2008 under the auspices of WCO. Consider a relocation of the Fourth Global Congress outside Europe.
- Conduct one or two Regional Congress events in the course of 2007, either in the ASEAN region or in the Gulf countries or in both.
- Focus the work of the Global Congress to categorically follow up on the suggestions emanating from the Third Global Congress and from previous Congresses.
- Actively publish and promote results from the Congress.
- Prepare case studies to be presented at the Fourth Global Congress to assess the progress made since the Third Global Congress.
- Focus the agenda more concretely on specific zones/countries where counterfeiting and piracy are particularly acute and assist in the preparation of tailor-made technical assistance.
