



## **Workshop on Adjudication of Intellectual Property Infringement Cases: Final Report**

### **Executive Summary**

Effective enforcement of Ukraine's intellectual property laws is critical for the attraction of foreign investment and compliance with international rules such as the WTO TRIPS Agreement. Ukraine was listed on the 2010 Special 301 Report Watch List. Key concerns cited in the report included weak enforcement of intellectual property rights, widespread retail piracy, the transshipment of pirated and counterfeit goods, and inefficiencies in the judicial system.

The National School of Judges and the Higher Commercial Court of Ukraine have identified a number of important specific issues, which remain problematic in the adjudication of intellectual property infringement cases. A workshop, where these issues are thoroughly examined and possible solutions proposed, is a first important step to respond to the need for increased efficiency of intellectual property judiciary enforcement in Ukraine. Thus CLDP, in cooperation with the National School of Judges and the Higher Commercial Court of Ukraine, held a three day Workshop on Adjudication of Intellectual Property Infringement Cases. In attendance were judges from commercial courts and courts of general jurisdictions as well as experts of the National School of Judges.

The workshop focused on such issues as the conflict of trademarks and industrial designs, the practice of preventive measures in IPR disputes and problems of adjudication of disputes involving evidence found on the internet and will feature presentations as well as practical and effective training in IP adjudication skills through the use of country-specific case studies and interactive discussions. The faculty for the program included U.S. Federal District Court Judge Bernice Donald and Douglas F. Halijan, Esquire, Adjunct Professor of Law at the University of Memphis School of Law.

### **Program Description**

On Day One, the opening statements were followed by a practice-oriented review of theoretical foundations for the recognition and enforcement of intellectual property. Professor Halijan continued with a detailed discussion of issues in disputes over trademarks, industrial designs and trade dress. His presentation dealt not only with distinguishing capacity and likelihood of confusion of trademarks, but also the importance of and methods for clear delineation of trademarks and industrial designs.

The afternoon session started with a presentation by Ukrainian judges on the international and national registration of trademarks. This was followed by a case study and a break-out group discussion involving trademark issues. Day One was completed with a presentation by Judge Donald on procedural aspects of considering court cases on IPR, such as injunctive relief.

Day Two commenced with an in-depth presentation by Professor Halijan on determining infringement in copyright cases. The presentation was illustrated with numerous practical examples, which helped Ukrainian participants understand the concepts, which are still novel in Ukraine's legal system. The participants then worked on a number of case studies which dealt with numerous practical aspects of implementation of copyright law in Ukraine. Day Two was completed with a panel on collective management organizations, where both Ukrainian and US participants discussed Ukraine's specific problems in this area.

Day Three started with a detailed presentation on trade secrets, which was followed by a presentation on case management. The participants went on to discuss problems of IPR cases involving the internet, such as the issue of taking evidence located on web sites.

The afternoon session on Day Three featured a case study requiring the participants to utilize all the knowledge they obtained during the workshop and use their analytical skills to answer numerous questions contained therein. Day Three was completed with thorough discussions of recommendations for the next steps to be taken after the workshop. The recommendations made by the participants in the discussions are included in Annex 1 to this report. The judges gave very high marks to the workshop in general as well as to its agenda, which was adapted to the Ukrainian legal system and practice, the interactive method of the presentations and the case studies, developed, presented and discussed on a country-specific basis.

### **Annex 1. Recommendations for future programs made by participants at the Workshop on Adjudication of Intellectual Property Infringement Cases**

- For future programs it is important to continue the practice of inviting judges to train Ukrainian judges.
- It is useful to have Ukrainian and US court cases analyzed side-by-side.
- Future programs should also cover the methods of training.
- Ukrainian judiciary should develop detailed recommendations for the judges on interpretation of the relevant laws, especially considering certain inconsistencies and discrepancies in the legislation.
- It is important to continue the work on case management. The relevant issues would range from the deadline for completing the case to the process of preparing the texts of court decisions.
- Problems of expert assessment and acceptability of evidence should be studied more deeply.
- Ukrainian judges should get more time as presenters.