

**REGIONAL WORKSHOP ON  
INTELLECTUAL PROPERTY ENFORCEMENT  
IN THE SOUTHERN AFRICA REGION:  
THE ADJUDICATION OF CASES**

**Gaborone, Botswana  
May 13-15, 2010**

**FINAL COMMUNIQUE FOR THE WORKSHOP**

**PREAMBLE**

- 1) In the Southern Africa region, intellectual property (IP) enforcement is critical to continued economic expansion and future innovation. It is also a prerequisite to the attraction of foreign and domestic investment. It is clear that effective, efficient, and internationally compliant protection of IP coupled with the strong enforcement of laws preventing counterfeiting and piracy are the *sine qua non* of improved investment and trade in the Southern Africa region.
  
- 2) As Africa seeks to develop globally recognized value-added products and recruit investment in knowledge-based industries, it must build effective institutions and regimes that adequately protect and enforce IP rights – the IP rights of both its own citizens and those that invest in the region. Integral to such a regime is the fair, consistent, and efficient adjudication of IP cases. Strengthened capacity in this area will no doubt enhance the Southern African region’s business environment and boost the region’s chances of increasing trade and attracting future investment.
  
- 3) IP piracy and counterfeiting are wide-spread problems in the Southern Africa region; problems that hinder economic development, jeopardize health and safety, and impede future innovation. Victims of IP piracy and counterfeiting include individual rights holders, companies, and consumers who purchase sub-standard products.
  
- 4) It is critical to note that poverty is a driving force fueling piracy and counterfeiting. Indeed, poverty is a powerful driver of all crime – the theft of IP is no exception to this rule. Thus, it is impossible to consider enhanced protection of IP rights without noting the impact that poverty has on fueling the demand side of the piracy equation and recruiting lieutenants for large

scale counterfeiting operations.

## CONFERENCE

1) During this three-day conference in Gaborone, Botswana, over 100 participants from the Southern African region gathered to address the adjudication of IP cases. Participants included judges and magistrates from Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia, as well as the host country's Administration of Justice, Attorney General's Chambers, the Registrar of Companies and Intellectual Property, the Copyright Society of Botswana, the Botswana Police Service, the Unified Revenue Services, and the Department of Immigration and Citizenship. These individuals joined with regional practitioners and academics from the University of Botswana for a series of panel discussions, practical exercises, and exchanges of ideas and best practices.

2) The conference was designed to increase the skill and knowledge of the participants so that they might more fairly, consistently, and efficiently adjudicate IP cases in the region. Furthermore, the conference sought to increase awareness of the benefits of enhanced IP enforcement through the participation of U.S. Federal Court Judges and prosecutors who shared their experience in adjudicating the many prevalent and difficult issues in trademark, patent and copyright matters.

3) As part of the ongoing collaboration between the U.S. Government and the Southern African Region, the U.S. Department of Commerce Commercial Law Development Program (CLDP) and the U.S. Department of Justice (USDOJ), jointly with the Republic of Botswana Administration of Justice (AOJ); with participation from the U.S. Patent and Trademark Office (USPTO), the U.S. Federal Courts, and the RSA Department of Trade and Industry (DTI) sponsored the three-day conference entitled **Regional Workshop on Intellectual Property Enforcement in the Southern Africa Region: The Adjudication of Cases**. The conference was made possible with funding from USAID and the U.S. Department of State.

## **FINDINGS AND RECOMMENDATIONS**

### *1) Implementation of IP Laws*

- a. While all Member States have some form of IP law – statutory, based in common law, or both – there is a distinct imbalance in the manner in which these laws are written and administered.
- b. Each Member State should take steps to ensure that their police, customs, and civil sector officials are aware of the relevant IP laws and possess the skills to prevent violations and bring offenders before the system of justice; there is a major concern that more IP cases are not being brought.
- c. Member States should ensure that strong IP laws do not merely sit unused in legal texts; rather, law enforcement officials and rights holders should be willing and able to refer violations of IP laws to the judicial system.
- d. Member States should ensure that the different non IP legal tools available to deter IP violations are also used, including, but not limited to: asset forfeiture, tax evasion, money laundering, fraud, smuggling, non declaration of currency, and criminal customs laws, among others.

### *2) Legal Protection for All*

- a. As noted in the Preamble, poverty is a major factor motivating a great deal of IP theft. In addition, poverty represents a major impediment to the equal distribution of justice when IP rights are violated.
- b. Each Member State should ensure that there are facilities and resources to assist indigent litigants to register their IP rights and protect them when their IP rights are violated; all people should receive equal protection under the law.

### *3) Prioritization of IP Issues*

- a. Many law enforcement personnel believe that pursuing allegations of IP theft represents a distraction from the pursuit of other more pressing crimes.
- b. Each Member State should take steps to ensure that law enforcement personnel understand the significant economic harm that results from IP theft and encourage such personnel to devote available resources to prevention and apprehension of offenders.
- c. Each Member State should encourage their respective law

*4) Improving the Uneven IP Legal Framework in the Region*

- a. It has been observed that some Member States have very old IP statutory frameworks in place, while others have more contemporary IP schemes. Some Member States have a substantial number of IP decisions while others are still waiting for an IP case to be brought in their judicial system.
- b. SADC should work with its Member States to establish a standardized IP statutory framework throughout the Region. SADC is the best-placed entity to convene and coordinate the establishment of such statutory guidelines.

*5) Consistent Review and Revision of Existing IP Statutes*

- a. In order to address current realities of an information-based digital world, Member States should consistently review and revise their IP statutory framework to ensure that it addresses issues raised by current technologies and deters the most contemporary threats.
- b. Each Member State should take regular steps to engage the legislative branch to close “loopholes” that may exist in their respective IP statutory frameworks. During the course of this process, it is imperative that elected officials in the Member States are engaged and committed to this project.

*6) Increasing Public Awareness of IP Rights*

- a. Many members of the public do not appreciate the importance of IP in our increasingly digital economy. Many people are not aware of laws forbidding the unauthorized reproduction of protected IP. Indeed, even the most informed among us might mistakenly purchase pirated materials.
- b. Each Member State should work with their artistic, law enforcement, and civil sector communities to ensure that they are collaborating and educating the population about IP issues and protection.
- c. SADC should work with its Member States and various artistic organizations to spread the “No Hologram; No Buy” message for

- d. Additional training opportunities – including longer training programs – should be pursued for all levels of the judiciary. Future training programs need not be limited to the workshop format. Because the base of knowledge is disparate, future trainings should include a lecture on IP addressing the basic aspects of intellectual property and how they would differ in the civil and criminal context when it comes to burden of proof and actionable claims, so that there is a common frame of reference. Future workshops should also incorporate a comparative study of the legal frameworks of the different countries to enable the participants to compare their respective frameworks and identify the areas where harmonization is needed. Furthermore, it is important to keep the focus on the laws of the region more so than on U.S. law or general provisions of international treaties.
- e. To also ensure that sensitization to the unavoidable reality of cross-border IP violations is addressed, the topics of transnational jurisdiction, applicable cross-border laws, and mutual foreign legal assistance, including extraditions, should be incorporated in all future Workshops related to IP enforcement. This will help to ensure that the participants are adequately prepared to address and contemplate such issues before they arise.
- f. Finally, reference materials should be provided to participants during the Workshop to allow them to further their educational process after the Workshop.

*7) Calling for a Continent-Wide Africa IP Summit*

- a. In order to maximize the impact of conferences and capacity building workshops, the U.S. Government and international organizations must remain engaged with the Member States on this topic.
- b. SADC should take a leadership role in coordinating the participation of its Member States in an Africa IP Summit to be held in 2011 that will tell the real IP story in economic terms to the entire African population.
- c. In addition to participation by the judiciary and relevant IP governmental agencies, legislators and other elected officials

8) *Creation of a Southern Africa Intellectual Property Enforcement Monitoring Committee*

- a. In order to facilitate the implementation of the findings and recommendations outlined above and ensure that the work of the conference is translated into concrete deliverables, the Member States call for the formation of a “Southern Africa Intellectual Property Enforcement Monitoring Committee” (SAIPEMC).
- b. The SAIPEMC will take the initiative to meet quarterly, with the first meeting to occur in September 2010. If it is impossible to convene in person, the SAIPEMC shall request the assistance of Member State Embassies, the U.S. Embassy, or other U.S. agencies to facilitate such meetings and to provide video conference facilities as may be necessary. A summary report of each meeting shall be provided electronically to the participants of Member States who have requested to receive it, as well as to the U.S. agencies who have also so requested.
- c. As an initial matter, the SAIPEMC shall be comprised of this conference’s Committee of Rapporteurs:
  - i. The Honorable Judge Zondi, South Africa
  - ii. The Honorable Justice Dr. Dingake, Botswana
  - iii. The Honorable High Court Judge Muyovwe, Zambia
  - iv. The Honorable Justice Siboleka, Namibia
  - v. The Honorable Judge Fonseca, Mozambique
- d. The SAIPEMC shall also include the SADC professional dedicated to IP issues (directly before the Opening Ceremonies of this conference, SADC reported that they hope to have a full-time IP professional on staff shortly).