



Final Report:

**Workshop on the Improvement of Interagency Coordination of Intellectual
Property Protection
in Ukraine**

**Lviv, Ukraine
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Executive Summary

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 role of the Ukraine as a transshipment hub for counterfeit products damages right holders and sellers of legitimate goods worldwide, including the United States. These concerns can be attributed to a lack of coordination and lack of consistent application of laws.

There are three major factors which determine the efficacy of Ukraine's IPR enforcement efforts: (a) coherence and uniformity of application of newly adopted laws, (b) ability of the customs and other officials to identify counterfeit and pirated products, and (c) coordination of activities of various government agencies responsible for IPR enforcement.

In order to improve Ukraine's system of IPR enforcement and accomplish the above mentioned steps, CLDP held a Workshop on the Improvement of Interagency Coordination of Intellectual Property in Ukraine.

Experts from the World Customs Organization, U.S. Patent and Trademark Office, and Immigration and Customs Enforcement, as well as Ukrainian officials and experts, shared their knowledge about the impediments to efficient IP protection and the benefits of improved communication, coordination, and collaboration among the various agencies tasked with enforcement and protection of intellectual property rights in Ukraine. The workshop included participants from the State Intellectual Property Service, the Anti-Monopoly Committee, the Higher Commercial Court, the Court of Appeals, the Prosecutor General's Office, the State Customs Service, and the Ministry of Internal Affairs.

The workshop discussed the need for a mechanism to improve communication, coordination, and collaboration in the enforcement and protection of IP rights. An informal coordination structure was debated. The workshop concluded that there would be a benefit in such a coordinative mechanism, but that it would have to be a formal structure under the auspices of the Cabinet of Ministers.

Program Description

On Day One, after the opening statements, a WCO representative discussed the impact of counterfeiting and piracy upon the society in general and its trade and investment regime in particular. The presentation included numerous practical examples, which not only illustrated the points made by the presenter, but also served as guides for customs officials in typical situations.

The next presentation by the senior commercial officer in the US Embassy Kyiv focused on trade aspects of intellectual property enforcement and its impact upon opportunities for trade.

The participants went on to discuss the impediments to effective IPR enforcement, such as inconsistent interpretation of legislation by various agencies, insufficient interagency coordination, and inadequate financial support. The panel members representing Ukrainian and US agencies lead the discussion, sharing their most recent information and views on the matter.

In the afternoon session, the WCO representative provided the participants with numerous examples of regional interagency coordination and its impact upon enforcement of IPR. This was followed by a presentation by a USPTO representative on the positive experience of improved IPR coordination in Brazil, which included the discussion of the measures taken by the government and the private sector to provide for better coordination and enforcement.

Day Two started with an in-depth discussion of Ukraine's laws on IPR enforcement, including newly adopted legislation, such as the Customs Code of Ukraine. This was followed by a panel on the US perspectives for effective and efficient coordination of IPR enforcement.

The afternoon session of Day Two focused on a case study, which enabled the participants to discuss, in break-out sessions and then in a general discussion, dozens of topical problems of coordination of IPR enforcement in Ukraine.

Day Three started with a panel on issues in the enforcement process from interdiction to adjudication. The panel provided for an opportunity to identify numerous legislative and institutional issues which still impede coordinated enforcement of IPR in Ukraine.

Conclusion

The workshop ended with a detailed discussion of next steps and workshop recommendations. The discussion resulted in the approval by the workshop participants of recommendations, contained in Annex 1 to this report.

Annex 1. Recommendations from the Workshop on the Improvement of Interagency Coordination of Intellectual Property Protection in Ukraine

Participants of the Workshop on the Improvement of Interagency Coordination of Intellectual Property Protection in Ukraine,

Cognizant of the positive impact of the efficient and effective protection of intellectual property rights on the Ukrainian economy and the health and safety of Ukrainian citizens, and of the need to improve the efficiency and effectiveness of IP protection in Ukraine,

Mindful of the negative effect of Ukraine being moved to the U.S. Government Special 301 Priority Watch List from the Watch List, in light of serious and growing concerns relating to counterfeiting and rampant piracy, including piracy over the Internet, and inefficiencies in IP adjudication,

Conscious of the fact that the Government of Ukraine formally adopted the IPR Action Plan in February 2011, a result of the bilateral US-Ukraine 2010 Trade and Investment Council meeting, which includes, *inter alia*, increasing public awareness, strengthening enforcement, and reforming legislation of IP,

Confident that there are three major factors which determine the efficacy and efficiency of Ukraine's IP protection efforts: (a) the coherence and uniformity of application of newly adopted and existing legislation, (b) the capacity of customs and other IP protection officials to identify counterfeit and pirated products, (c) the coordination of activities of various government agencies responsible for IP protection and enforcement,

And, desirous of a way to improve on the above stated factors, have made the following recommendations:

There shall be an Interagency Forum (affiliated with the Cabinet of Ministers) on the administration, protection and enforcement of intellectual property rights with the following objectives:

1. Training to increase the capacity of the government officials to identify counterfeit products.
2. Coordinated work to develop a common understanding and uniform application of IPR legislation.
3. Amendments to Article 43-2 of the Commercial Procedural Code of Ukraine to authorize the courts to take injunction measures to record existing Internet content through the relevant screenshots and to display the appropriate action in court records.
4. Amendments to Article 43-2 of the Commercial Procedural Code of Ukraine to provide for an injunction measure in the form of prohibition for the customs authorities to take action on customs clearance of goods which might be infringing intellectual property rights. The issue of entering security by the relevant person who applied for such measures should also be resolved.
5. Improving communication between the private sector and the government authorities.

6. Improving the awareness of consumers in the fight against copyright piracy.

7. Making amendments to legislation concerning the financing of expert assessments in the field of intellectual property.

8. Memorandum of cooperation with Internet providers and other Internet intermediaries (such as search engines, social networks, etc.) that would help promptly resolve issues to combat the spread of pirated and counterfeit goods.

9. Recommend that the right holders should develop the markets for the distribution of legitimate products.