

## **Joint G8 Business Paper**

### **Strategies of G8 Industry and Business to Promote Intellectual Property Protection and to Prevent Counterfeiting and Piracy**

*(as agreed upon on 18 April 2007)*

#### **In collaboration with:**

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Bundesverband der Deutschen Industrie (BDI) (Germany)  
Canadian Anti-Counterfeiting Network (CACN) (Canada)  
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Intellectual Property, Information and Technology Trade Policy Foreign Affairs and International Trade Canada (Canada)  
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Private Sector Representative (Japan)  
Russian Chamber of Commerce and Industry (Russia)  
Transatlantic Business Dialogue (United States of America)  
U.S. Chamber of Commerce (United States of America)  
European Brands Association (AIM) (European Union)  
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Intellectual property is the basis for innovative societies and an indispensable precondition for a positive economic development worldwide particularly relating to innovative processes. The prevention of counterfeiting and piracy primarily represents a major challenge to States and national administrations. A number of political, administrative and judicial measures are available at the national level to this end. International cooperation among countries contributes importantly to meeting this challenge effectively and efficiently.

The Business Community and individual companies are also increasingly developing strategies to prevent IPR counterfeiting and piracy in the physical and on-line market. This applies to the goods producing industry as well as the creative industries, purchasing and distribution networks, service providers and merchandisers. Against this background, the business communities of G8 countries, in concert with G8 administrations, have prepared a compilation of measures that includes a wide range of practices and outlines current prevention strategies.

The following is a listing of the measures and potential tools systematically broken down into different categories. This list is not intended to be comprehensive or final. This compilation can inspire the private sector to improve the combat against counterfeiting and piracy and also lead to improved public private sector partnership. However, the list has no binding effect and should not be understood to represent a voluntary commitment.

Note also that even if companies take all of the steps listed below, there will still be problems with counterfeiting and piracy: even the most diligent right holder cannot prevent counterfeiting without strong efforts by government and law enforcement agencies and the introduction, and enforcement, of robust laws with effective and deterrent sanctions. The G8 Business Community explicitly supports all efforts by governments to strengthen the international framework of intellectual property protection.

## A. Legal Measures

### **1. Strategies for managing and enforcing intellectual property rights**

- selection of the relevant and most appropriate instruments offering legal protection, also with respect to territorial application and taking full account of the special features of foreign jurisdiction (specific IP rights / protective mechanisms)
- Decide whether or not to apply for registration of IPRs
- utilization of global, international and regional instruments (see annex with specific indications on institutions)

### **2. Registration of IPRs**

- national registration (national patent and trademark offices)
- international/regional registration/coverage where possible (e.g. WIPO, EPO, OHIM)

### **3. Resolute measures against violations (which might require registration beforehand)**

- review by the holder of rights (Internet monitoring, monitoring at trade fairs and technical exhibitions, advertisements, efforts by field staff)
- cooperation between companies and the national/regional customs and law enforcement authorities
  - procedures for controls at borders with regard to import, export, transit and transshipment and free trade zones including through filing applications for customs



interventions

- training measures including right holders and customs/law enforcement authorities particularly with the objective to familiarise the authorities with products and trends, and right holders with required procedures and ways to communicate useful intelligence.
- development of information and materials by right holders for customs and law enforcement authorities, including the use of available secure Intranet platforms
- immediate reaction – cease and desist letters, initiation of legal proceedings etc.
- requesting Internet Service Providers (ISPs) to take steps to prevent copyright infringement and the sale of counterfeited and pirated products on the Internet
- Requesting persons/companies using the Internet for trading purposes (on-line sellers, traders, auction sites, publishers etc.) to take steps to prevent copyright infringement and the sale of counterfeited and pirated products on the Internet.

#### **4. Taking account of IPR in contractual relationships**

- limit licenses to necessary technology, know-how or rights
- ensure exact and clear wording in contracts including consumers' terms and conditions
- include subcontractors and sub-licenses
- non-disclosure agreements or provisions as needed
- specify the circumstances under which manufacturers can distribute products
- include a specific clause allowing for the licence/rights owner to exert regular monitoring control of production sites

### **B. Policy Measures**

#### **1. Dissemination of information to consumers, customers, and manufacturers**

- information channels
  - websites (e.g. packaging of information to let companies/consumers know about their rights and possibilities in specific countries; setting up of central portals to offer information above all to SMEs)
  - information campaigns, e.g. brochures with recommendations to consumers and firms operating at various stages of the supply chain or regular bestowal of public awards which pillory production of fakes or imitations
  - the positioning of the topic in the media
  - formal educational institutions like school and universities
  - make use of international campaign days
- information contents
  - promoting a general understanding of the role of IPR in the society



- description of the threats posed by counterfeits - such as health and safety - by product-specific campaigns
- identification of the economic damages incurred as the result of IPR infringements to the economy (tax revenues), society (job losses, threat to creativity)
- an emphasis on the legal consequences of the trade in or purchase of counterfeited or pirated goods
- assist companies (especially SMEs) with information on how to make use of IPRs
- information on links between counterfeiting and piracy and organized crime networks
- provide information on raids and seizures

## **2. Cooperation between the business sector and enforcement authorities at the international, regional and national level**

- working with governments to provide legal systems that are effective and efficient. In cases where infringements of intellectual property rights are dealt with by the civil courts, persuading governments to ensure that the system works fairly for right holders.
- business should be encouraged to provide intelligence on products, routing and production, as well as knowledgeable and up to date contact names to customs and other enforcement authorities.
- working with governments to encourage them to invest resources to enforce intellectual property laws. Appropriate resources include specialized courts and enforcement units, as well as customs officers who are trained both in risk analysis techniques to spot infringing goods and to liaise with right holders (e. g. WCO capacity building/training programs).
- working with governments to invest resources to research the social and economic impacts of counterfeiting and piracy. In order to improve information on counterfeiting and piracy stakeholders need to work together to develop statistics that are collected systematically, comparable and comprehensive.
- exchange of information and experience via special fora and membership of anti-counterfeiting or trade associations at national level which organise events and maintain international contact databases, to enable networking, exchange of information and provision of technical assistance for law enforcement.
- encouragement of data exchange at international level through cooperation of the customs and law enforcement agencies of various countries and international organisations (e. g. Interpol), within confidentiality limits as required by law.
- make use of common digital databases that allow easy and swift exchange of intelligence between the business sector and law enforcement authorities (e. g. Interpol database on international intellectual property).

## **3. Cooperation between the business community and law enforcement authorities in third countries**

- cooperation on procedures and laws to detect counterfeited and pirated products



including raids in the country where the counterfeit/pirated goods are discovered

- meetings held at regular intervals on new developments in the field of security technology
- participation of the business community in building capacities in developing countries and emerging economies such as the training of judges and lawyers abroad
- organisation of seminars to discuss legal issues with those who are in charge of legislation

#### **4. Cooperation between national and foreign business associations, especially in countries where IPR violations are very frequent (including emerging economies)**

- cooperation of companies through their network of national and international chambers of commerce and international non-governmental organisations
- support for establishment of associations in or with third countries, e.g. in the field of foreign trade
- bilateral cooperation agreements between national and foreign business associations covering the following possible components:
  - joint condemnation of violations of IPRs
  - joint strategies to strengthen the implementation of IPR, particularly in the respective partner country:
    - support for the partner country in efforts to lay legal foundations for combating counterfeiting and piracy and implementing relevant measures
    - focus on Internet piracy and counterfeiting
    - measures to strengthen the awareness of IP by consumers and companies
    - cooperation by business and industrial associations to prevent violations of IPR at trade and technical fairs
  - exchange of experience at regular intervals such as semi-annually
    - explanation of the systems of enforcement at borders and domestically
    - information on trade fairs

#### **5. Cooperation to fight Internet Counterfeiting and Piracy**

- Internet Service Providers (ISPs) are the gatekeepers to the Internet. Therefore, work with service providers and governments, who have a vital role to play in requiring ISPs to engage in the fight against piracy and counterfeiting on the Internet.
- work together with government to create a clear legal framework for persons/companies using the Internet for trading purposes (on-line sellers, traders, auction sites, publishers etc.)

### C. Business Management Measures



## **1. Careful planning of business transactions in home jurisdiction and before transactions overseas**

### **2. Internal company and marketing strategies**

- commitment to IP compliance by high level company management
- central contact bureau for the protection of IPRs in individual companies taking into account requirements of adequate budget funding as well as qualified and active staff
- establish an in-house system that verifies genuine goods from counterfeited and pirated articles
- compilation of internal documentation on products, their features, their associated rights and previous experiences of counterfeiting
- make the staff, purchasing managers, and distribution offices sensitive to the issue and provide for information dissemination about IPR to all relevant sections within each company; educate relevant personnel
- prescribe confidentiality and penalty clauses against violations in labour contracts and company rules
- ensure secure logistics with stable supply and delivery chains
- define core elements of an intelligent risk management system and due diligence strategy in cooperation with authorities and companies in the supply chain and when pursuing joint ventures and licensing agreements
- information risk management: selecting and considering to what extent information and data will be transferred to a foreign country before extending operations into that country
- strengthening data management by using restricted data labels as “top secret” or “in strictest confidence” limiting access to confidential, sensitive, and proprietary data, controlling the flow of documents and data, enforcing confidentiality agreements with retired or former employees, restricting access to production sites
- undertake collaborative research with other companies and conduct joint raids to save costs especially since such cooperation will likely expand information sharing and networking

### **3. Special features for manufacturers**

- add value with aspects which are harder to copy illicitly, e. g. production-accompanying service such as maintenance, additional or customized services, updates and systems solutions
- consider working with manufacturers that adhere to internationally recognised best practice principles (such as IRMA optical disc replication standards for the music and software industry, including use of Source Identification Codes and rights verification procedures).
- handling of third-country requirements in terms of testing procedures for certificates (plant inspections by foreign inspectors, mandatory product documentation)



- no need for automatic response to all questions about technical product details concerning company know-how; instead, determine if response is needed to demonstrate that standards have been met; possibly negotiate with the certifying office on this point, with option of not entering the market in the relevant third country.
- reliance on the appropriate authorities to meet requirements for certification in third countries; for this purpose, there should be cooperation with the desired service-provider and early application should be made to the foreign certification office.

#### **4. Special features in the field of trade and wholesaling**

- careful selection of suppliers with clause(s) that the contract can be voided in case of IPR infringements
- contractual sanctions in case of IPR violations by supplier
- cooperation of producers and wholesalers with distributors via the Internet in order to prevent the merchandising of products that infringe on rights, particularly through Internet platforms
- cooperation with ISPs to ensure that IPR infringement is prevented or addressed. In most contracts it is clearly stated that users will be suspended or their contracts terminated if they sell counterfeits/infringe copy right regulations
- address problem of unintentional technology transfer, particularly to regions where no protection is enjoyed in respect of inventors or otherwise

#### **5. Cooperation with scientific and academic community**

- where cooperating with scientific institutions and universities, take care to ensure that IPR is only shared with the right holders permission
- raise the awareness in scientific institutions of this problem.
- ensure proper contracts for collaborative research before beginning cooperation, to clearly allocate intellectual property rights developed during or affected by the research

### D. Technical Measures

- 1. Business and industry associations are encouraged to share information on technical measures for IPR protection with associations and interested companies, especially SMEs.**
- 2. Actively use modern security technologies and inform enforcement authorities of this use**
  - track-and-trace systems
  - special lettering and captions such as holograms, micro-printing, and other types of

labels that allow distinctions between genuine and fake products.

- support research and development on security technology in the public and private research sector.

### **3. Protect products and technologies**

- apply technology but retain key IPRs
- design products on modular basis so that modules can be provided to the various right holders with suppliers receiving only partial know-how
- package together key functions in essential components that are developed and produced only in the parent company which should retain packaging of key functions with essential components being developed, produced and delivered to the company's own systems integration facilities
- know-how, documents, customer relations, concepts, strategies, update planning, etc. are to be passed on to foreign suppliers only in accordance with the need-to-know
- the company's own logo should be removed or strictly controlled on technical drawings in order to restrict curiosity and illicit interest; drawings should not be dispatched through ordinary postal channels, particularly not through e-mail; IT systems should be protected; make sure that moulds used by a manufacturer to produce the goods are destroyed or returned to the right holder upon termination of the lifecycle of the product or upon termination of the agreement
- protection of software: consider incorporating parts of the software into the hardware; such chips destroy themselves upon removal from overall system

## **E. Trade Fairs and Technical Exhibitions in and outside the G8 countries**

### **1. Information material for exhibitors and visitors in the form of brochures, which can be sent out to the exhibitors at the same time as applications for registration:**

- close cooperation of right holder with trade-fair organiser, e.g. informing the exhibitors about situation of IPRs including design protection and expelling attendees who fail to respect IPRs
- information on IPRs, options for protection, procedures, e.g. investigation measures
- contact data of the person responsible for IPR at the exhibition, local district attorney's office and customs/law enforcement authorities, local specialized attorneys who are also available on weekends
- information to national exhibitors at foreign fairs

### **2. Inclusion of special rules in the General Terms of Participation:**

- no right to participation (access to trade fair) where IPR infractions have been proven and immediate suspension of rights to exhibit with IPR violations

- exhibitors and visitors found to have infringed IP in the trade fair may be barred from participating
- memorandum of understanding of the organisers

### **3. Cooperation with attorneys, courts, and enforcement authorities at trade fairs**

- in advance of a trade fair, information to the courts and patent and trademark dispute chambers responsible for the fairgrounds in order to improve legal protection, particularly on weekends by means of special standby-duty service
- delivery of court decisions and legal motions at exhibition stands by the organiser; provision of rooms, free of charge, to conduct hearings at fairgrounds
- provision of authorized interpreters of the country who can facilitate communications in the case of disputes with foreign exhibitors
- development of mediation proceedings; establishment of a dispute settlement unit and conflict consulting facilities at which exhibitors can discuss disputes with experts
- provision of a legal emergency service for the rapid imposition of legal sanctions against IPR infringement at fairs
- establishment of contact with customs/law enforcement authorities prior to the fair in order to impound articles by a special squad at the fairgrounds in a manner that can be highly publicized
- work with undercover observers on fairgrounds to detect fakes at stands