



## THE EUROPEAN UNION

### Protection of Intellectual Property Rights

As counterfeiting and piracy continue to threaten commerce on both sides of the Atlantic, the European Union and the United States have joined forces to protect intellectual property rights (IPR). In the wake of an historic IPR agreement that includes the first joint enforcement program of its kind, the EU and the U.S. also continue to address challenging bilateral issues.

#### EU-U.S. Cooperation Against IPR Piracy and Counterfeiting

At the EU-U.S. Summit in Vienna, Austria in June 2006, Europe and America launched an aggressive new action program to combat intellectual property rights infringement. The program provides for:

- Closer customs cooperation, including joint border enforcement actions where EU and U.S. customs officials will work closely together.
- Joint enforcement in “third countries” (i.e., not the U.S., not EU Member States), with teams of EU and U.S. diplomats sharing data and intelligence and undertaking joint surveillance activities.
- Greater collaboration with and support of the private sector when confronted with infringement of intellectual property rights.

Initial efforts focus on China and Russia, and secondarily on other parts of Asia and Latin America and the Middle East. Six months into this new cooperation process, the EU and the U.S. have worked together to:

- Issue a strong statement at the G8 promoting the fight against piracy and counterfeiting, while supporting OECD efforts to assess the economic impact of intellectual property theft.
- Jointly urge (together with Japan and Switzerland) WTO members to strengthen the fight against piracy and counterfeiting while cooperating on IPR aspects of the WTO accession of Russia and Vietnam.
- Participate in each other’s technical assistance programs in Asia and Central Europe.
- Facilitate small and medium-sized enterprise (SME) outreach efforts and

development of on-line educational and professional resources as well as guidelines for trade fairs on IPR enforcement.

- Jointly resolve problems in Beijing and Moscow through on-the-spot cooperation by EU and U.S. experts.
- Share working and training methods and plan joint customs actions.
- Promote increased cooperation between European and U.S. industry.

**Intellectual Property Theft: On the Rise and Changing in Character.** Growth in counterfeited imports in Europe and America has been dramatic in recent years. Between 1998 and 2005, counterfeit item seizures at EU borders rose from 10 million to more than 75 million, an increase of over 750 percent. At U.S. ports of entry, seizures of counterfeit goods more than doubled from 2001 to 2004.

In the 1980s, nearly three-quarters of all counterfeit items were fake luxury goods, such as imitation name-brand clothes or watches. Today, the volume, nature, and geographical distribution of counterfeit goods have increased dramatically, as have the safety risks involved.

In 2005, more than five million fake foodstuff items and drinks were seized at EU borders, a more than 200 percent increase in two years. Also on the market were fake airplane parts, electrical appliances, toys, and perhaps most worrying, counterfeit pharmaceuticals, thought to account for almost 10 percent of 2004 world trade in medicines.

EU Trade Commissioner Peter Mandelson points out that “the lion’s share of the 800,000 counterfeit medicines seized in 2004,

twice as much as the year before, had as their final destination the least developed countries of the world. That is life threatening and why [the EU and the U.S.] have acted together.”

**IPR Protection: Key to Competitiveness & Innovation.** Intellectual property protection is at the heart of EU and U.S. competitiveness in the global economy. High-value products made on both sides of the Atlantic often contain protected intellectual property developed at great expense to European and American business. “Our industry won’t be able to win the global race with rock-bottom prices and low quality,” EU Vice President and Commissioner for Enterprise and Industry Guenter Verheugen noted at the 2006 EU-U.S. Summit. “The only way forward is innovation, invention and quality. When ideas or brands and products are pirated and counterfeited, [such a strategy] is doomed.”

*continued*

#### “euquote”

*“The issue of intellectual property protection goes to the heart of the ability of the EU and the U.S. to compete in the global economy because our high-value goods have strong intellectual content. Stepping up the enforcement fight requires a joint strategy [with] some teeth.”*

—Peter Mandelson  
EU Commissioner for Trade

## Protecting Intellectual Property at Home and Abroad

**Within the EU.** The EU and its 25 Member States provide a high level of protection of intellectual property rights. The result of efforts to create a unitary system that guards against infringement across the Union, common enforcement rules stop pirates and counterfeiters from taking advantage of loopholes or discrepancies between national laws. Simplified and cost-free EU-level procedures for rights-holders guarantee swift action by customs authorities to combat trafficking in counterfeits. To a large extent, EU standards of protection and enforcement exceed those provided by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**The International Level.** Having exclusive jurisdiction over international trade matters for all Member States, the EU works to:

- Promote effective standards for global intellectual property protection through legal instruments such as the TRIPS Agreement and the international treaties managed by the World Intellectual Property Organization (WIPO).
- Negotiate and implement bilateral agreements including IPR provisions.
- Promote global enforcement of intellectual property rights and lead the fight against infringement in non-EU countries.

- Provide technical assistance to developing countries, where the introduction and enforcement of intellectual property laws is challenging.

**2004 Strategy for the Enforcement of IPR in Third (Non-EU) Countries.** Global protection of European intellectual property rights is a top EU priority. Since setting out its basic strategy in 2004, the European Union has: created specific dialogues with key partners such as China and Russia; led the debate at the WTO; shifted technical assistance resources to enforcement; worked closely with industry; and reinforced cooperation with countries such as the U.S. and Japan that are actively fighting piracy and counterfeiting in the global economy.

Bilateral trade agreements (with detailed IPR sections going beyond minimum TRIPS standards) are increasingly a weapon in the war against piracy and counterfeiting. The EU is working towards ambitious bilateral agreements with partners such as India, ASEAN, and Korea that will include strong, EU-type IPR protections.

**Priority Countries for Enforcement.** In October 2006, the EU established a list of priority countries and regions on which to focus activity and resources, beginning with China and also including Russia, the Ukraine, Turkey, Chile, ASEAN, MERCOSUR and Korea. Retaining the right to ultimately seek redress through the WTO if necessary, the Union is pushing for greater protections and enforcement and, indeed, already has commitments from some priority countries to improve their record of IPR enforcement.

The EU has boosted resources to help businesses find reliable suppliers, spot IPR risks, and deal with local authorities, putting in place mechanisms between rights-holders and enforcement authorities in China, Russia and Ukraine. The EU is also working cooperatively with China as well as ASEAN and countries in the Balkans, providing technical assistance and pursuing joint efforts to improve protection of intellectual property rights.

**Fair Trade.** In today's global marketplace, Europe has to compete harder than ever before. While conceding the comparative advantages of labor and production costs in emerging economies, however, Europe must see that its own comparative advantages are respected and that, as with the sale of any other product or commodity, trade in intellectual property is fair trade.

### EU-U.S.: OUTSTANDING IPR ISSUES

Despite extensive cooperation on IPR matters, there has been a distinct lack of U.S. progress in resolving two longstanding IPR-related disputes, leaving the U.S. as the only WTO Member to be noted as having failed to implement decisions regarding infringement of intellectual property rights.

**"Irish Music" Case.** Under U.S. law, most commercial premises in the U.S. (bars, restaurants, shops, etc...) can retransmit broadcasted music without paying any royalties to copyright holders. In 2000, the WTO found Section 110(5)(B) of the U.S. Copyright Act to be incompatible with the TRIPs Agreement. The EU and the U.S. then reached an interim agreement through which the United States provided compensation to European musicians' societies pending legislative action to put the U.S. in compliance with WTO rules. The interim agreement expired in December 2004 and neither final compliance nor a second interim compensation agreement has been forthcoming from the U.S.

**Section 211 ("Havana Club") Case.** More than four years after WTO condemnation of Section 211 of the 1998 Omnibus Appropriations Act, concerning discrimination in the enforcement and registration/renewal of a U.S. mark, trade or commercial name, the U.S. has not yet implemented the WTO ruling.



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