



Transatlantic IPR Collaboration Project

**An explorative analysis on the subject of
counterfeiting and piracy**

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From disparity to unity: paving the way towards a coherent IPR policy



- Main Objective: To analyse transatlantic positions on IPR policies and increase public awareness among policymakers and SMEs
- Implemented by five partners:
 - Austria Wirtschaftsservice GesmbH
 - KMU Forschung, Subcontractor Technopolis
 - EUROCHAMBRES
 - U.S. Chamber of Commerce
 - AT Consult
- Financed by the European Commission, DG Relex

Determining the status quo



- Analysis of current IPR policies and current SME programs for IPR protection in the EU and the US
- Definition of concrete areas of enhanced mutual cooperation and cooperation with SMEs in the fight against counterfeiting and piracy
- Sharing of ideas on ways to improve the enforcement against infringements

The status quo (II)

- Increasing public awareness of dangers and the need to address infringements
- Initiation of efforts to cooperate on IP protection and enforcement in third countries
- Analysis on SME-specific aspects
- Conduction of a comprehensive study, organization of a roundtable in Brussels and high-level conference in Washington DC, also to foster dialogue

SMEs and the big, wide IP world



- Roundtable in Brussels on 16th June 2008
- Main topics:
 - Most IPR tools are in place
 - IPR registration and management is essential
 - Costs of domestic and/or International IPR Protection
 - Time spent to register and enforce IPR vs. speed of counterfeiters
 - Priority: to protect home market
 - Internationally enforceable IPR
 - Customer relation maintenance and supply chain control

IP has the same value on both sides of the Atlantic



- Conference in Washington on 27th – 28th June 2009

- Main topics:
 - IPR promotes innovation and creativity – the major drivers of the EU and U.S. economies
 - Diverse IPR competency: scattered in EU – centralised in U.S.
 - Continue and promote the establishment of an IP coordinator on both sides
 - Enhance cooperation of the U.S.-EU IP Working Group

Study methodology

- Literature and desk research
- Interview programme
 - open-ended, qualitative
- 12 in-depth company case studies
- Proceedings and input from:
 - SME roundtable in Brussels
 - Conference in Washington DC

Private sector: some findings



- Especially SMEs learn from counterfeiting activities “...by viewing copies in the window displays of other companies (large competitors)” (case study nr. 5 FANI GIOELLI)...
- ...or when suddenly IP infringing products, brought onto the market by larger well-established competitors, appeared “on the shelves” (case study nr. 1 HABERMAN Associates).
- Larger companies also seem to use active scanning techniques, e.g. by conducting regular Internet searches or by cooperating with private investigators.
- While the provenance of most goods is outside of Europe (the U.S.), many firms complained especially about the sale of counterfeits in the home market.

Some findings (II)

- Considering IPR registration is an important first step
 - Registering IPR alone is, however, considered insufficient
 - Monitoring and contingency plan
- Infringed company must be prepared to take legal action, despite the fact that actual litigation takes rarely place
- Informal protection mechanisms are widely used alongside IPR, and sometimes – as ‘de facto’ strategies – replace IPR in circumstances where IP enforcement is nearly impossible

Some findings (III)

- **Are SMEs affected differently by counterfeiting and piracy?**
 - Yes, because of different internationalisation levels (Blind 2009)
 - They also react differently:
 - ◆ Large enterprises use their formal IP more often
 - ◆ Small enterprises increase their usage of informal IP protection mechanisms
 - However, if a small company is hit by counterfeiting/piracy it might find itself much faster struggling for survival

Some findings (IV)

- **Common pitfalls and basic advice**
 - Market environment screening
 - Utility models as trade barriers
 - Regional coverage of IPR
 - Underestimating IP enforcement actions
 - Costs assessment
 - Success attracts imitators
 - The critical nature of joint ventures
 - The importance of relationships
 - Preparedness for legal negotiations
 - The 'lack of respect'/'being a colonial'-trick
 - Levels of powers assigned to managers in 3rd countries
 - Protection of sensible data and information

Recommendations for policy makers in the EU



1. Establish stronger coordination between the different directorates of the EC on the topic of IPR and IP enforcement.
2. Establish clear goals and effective performance measures for IPR policies and IP enforcement actions.
3. Continue efforts to establish a unified European patent and a European patent court.
4. Improve the overall effectiveness of IP support provided at member state level by facilitating the exchange of good practices.
5. Improve effectiveness of support provided to firms by increasing their visibility.

Top-5 considerations for firms



1. Establish a dedicated business-specific IP strategy which makes use of the full spectrum of formal IP rights as well as less formal protection mechanisms.
2. Set up a dedicated communications strategy for IP enforcement.
3. Focus anti-counterfeiting activities, especially in the light of scarce resources available.
4. Pay attention to common pitfalls and follow basic advice.
5. Stay innovative and offer good quality at reasonable prices.

Top-5 considerations for communication policies to the public



1. Implement coherent and effective communications campaigns geared towards the general public.
2. Clearly define and research the target groups and tailor the communications strategy to the characteristics of these groups.
3. Demonstrate credibility and trustworthiness through inter-institutional collaboration and by sticking to facts.
4. Address other key stakeholder groups through dedicated actions.
5. Educate the youth.

Top-5 recommendations for future EU-US strategies



1. Focus political will and give IP enforcement priority.
2. Improve overall reliability of data on the scope of the problem of counterfeiting and piracy as well as on the effectiveness of policy actions taken in this field.
3. Tackle the challenge of the Internet as a distribution channel for counterfeits and pirated goods.
4. Preserve an effective international IP legal framework that fosters and protects innovation.
5. Continue and expand collaboration between the EU and the U.S.



Thank you for your attention!

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Project Website:

www.ipr-policy.eu