

ANNEX II

Questionnaire for right holders / associations

On the 10th of November 2004, the Commission adopted a Strategy for the Enforcement of Intellectual Property Rights (IPRs) in Third Countries¹. This Strategy is an action plan, aiming at reducing the level of counterfeiting and piracy beyond EU borders, in particular in countries where it has reached worrying proportions and is seriously harming EU right holders.

The replies to the questions below will be taken into consideration in order to allow DG Trade to define and review its priorities regarding the enforcement of intellectual property rights in third countries, as established in section 1) of the Enforcement Strategy. Furthermore it will bring up to date the 2006 IPR Enforcement Survey² currently published on the Commission External Trade website.

Since the purpose of this exercise is to focus on of the fight against infringements of IPR outside the borders of the European Union, data relating to the situation in the 27 EU Member States fall outside the scope of the questionnaire.

Right holders should reply to one questionnaire per country. Replies can be provided for as many countries as deemed necessary by right holders. The identity of the companies / associations will not be disclosed.

Unless otherwise stated, the questions refer to the period between **1 April 2005** and **31 March 2008**. This is done in order to limit the scope of the analysis.

Section A of the questionnaire includes a brief description of the respondent. In Section B, the Commission seeks specific information about actual infringements suffered by right holders, including the measures they have undertaken against such infringements and the response obtained from the national authorities. Section C should provide the Commission with more general information about the state of enforcement in the country concerned, the overall approach adopted by national authorities to counter the problem, as well as its main strengths and weaknesses.

Should you require any additional information regarding this questionnaire, please contact:

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The replies to this questionnaire should be **received no later than 31 May 2008**. Replies should be sent to the address above. A copy of the reply sent by e-mail would be appreciated.

¹ Available on DG Trade website:

http://ec.europa.eu/trade/issues/sectoral/intell_property/strategy_tc.htm

² http://ec.europa.eu/trade/issues/sectoral/intell_property/survey2006_en.htm

COUNTRY:
(Concerned by this submission)

A. DETAILS

Name of company / association:

In the case of associations, or any other grouping of companies or individual right holders, provide a brief description of your membership (number, origin EU / non EU and, if possible, identity of members):

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.....

Contact person:

Phone:

Fax:

E-mail:

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B. SPECIFIC INFORMATION

1. What type of presence does your company have in the country?

- ☐ Wholly-owned foreign enterprise
- ☐ Equity or contractual joint venture
- ☐ Representative office
- ☐ Agent
- ☐ None

2. Describe your sector / activity in the country:

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3. In the case of associations, or any other grouping of companies or individual right holders, indicate the number or proportion of your members affected by IPR infringements in the country:

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.....

3. What type of infringement(s) have you been confronted with?

- ☐ Piracy of *copyrights* (music, film, software, books, etc.)
- ☐ Counterfeiting of *trademarks* (textiles, footwear, luxury items, drinks, toys, etc.)
- ☐ Infringement of *patents* (pharmaceuticals, agro-chemicals, machinery, etc)
- ☐ Infringement of *geographical indications*
- ☐ Infringement of *designs*
- ☐ Theft of *trade secrets*
- ☐ Other, please specify:

4. What is the nature of the infringement(s) suffered?

- ☐ Local production
- ☐ Local use
- ☐ Local sales
- ☐ Illicit parallel importation (from EU or third countries)

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☐ Exportation (to EU or third countries)

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☐ Transit (from/into EU or third countries)

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5. State whether you have registered the rights infringed in the country or whether they are *ex officio* or otherwise protected (*copyright, well-know trademarks, designs*)?

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.....

6. Do you use other methods to increase your protection against IPR violations?

☐ No

☐ Yes:

☐ Holograms

☐ CID codes

☐ Watermarks

☐ Coding

☐ Scrambling

☐ Other, please specify:

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.....

7. In the country concerned, was it possible to identify:

i) The counterfeiters or pirates responsible for the infringements of your IP rights?

☐ Yes

☐ No

☐ Don't know

ii) The place where they operate?

☐ Yes

☐ No

☐ Don't know

8. What type of measures have you undertaken with the country's authorities in order to react against the infringements of your IP rights?

☐ Administrative procedures (police, etc)

☐ Judicial procedures (civil or criminal)

☐ Customs procedures

☐ Arbitration

☐ Political demarches

☐ Contacts with local association (trade, industrial, IP)

☐ Other:.....

9. Describe the response of the competent authorities to the initiatives undertaken in reaction against the violation of your IP rights.

On a scale of 1 (poor) to 5 (very good) state your perception about the:

- Ease of identifying the competent authorities: ☐1 ☐2 ☐3 ☐4 ☐5

- Availability/commitment to treat the requests: ☐1 ☐2 ☐3 ☐4 ☐5

- Length of their reaction to the requests: ☐1 ☐2 ☐3 ☐4 ☐5

- Effectiveness of the measures adopted by the authorities ☐1 ☐2 ☐3 ☐4 ☐5

How do you consider the costs of the proceedings?

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.....

Are there any difference of treatment between nationals and foreigners?

☐ No

☐ Yes, explain why:.....

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[illegible]

C. GENERAL INFORMATION

13. Indicate your perception regarding the implementation of each of the enforcement mechanisms listed below. Justify briefly your answer, in particular if you chose option ii) or iii). Take into consideration factors such as length, cost, accessibility, equity, effectiveness, etc:

13.1 CIVIL JUDICIAL PROCEDURES AND REMEDIES, including injunctions for a party to desist from an infringement, the attribution of adequate damages and expenses, destruction or removal from the channels of commerce of infringing goods, materials or machinery used in the production of such goods and the closure of facilities where production or trade of infringing goods take place.

- | | | |
|-----|--|--------------------------|
| i | Effective | ☐ |
| ii | Deficient | ☐ |
| iii | Available in the law but not implemented | ☐ |
| iv | Not available in the law | ☐ |
| v | Don't know | ☐ |

Justification:
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13.2 PROVISIONAL OR TEMPORARY PROTECTIVE MEASURES to prevent, in a prompt and effective manner, the infringement of an IPR from occurring and/or to preserve relevant evidence in regard to an infringement (such as raids, seizures, suspensions of release into trade channels, provisional closing of facilities, etc.), including, in urgent cases, measures issued *ex parte* (at the request of one party and without previous notification of the other party).

- | | | |
|-----|--|--------------------------|
| i | Effective | ☐ |
| ii | Deficient | ☐ |
| iii | Available in the law but not implemented | ☐ |
| iv | Not available in the law | ☐ |
| v | Don't know | ☐ |

Justification:
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13.3 ADMINISTRATIVE MEASURES, adopted by police or other entities, of a nature similar to those described in a) and b) above.

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|-----|--|--------------------------|
| i | Effective | ☐ |
| ii | Deficient | ☐ |
| iii | Available in the law but not implemented | ☐ |
| iv | Not available in the law | ☐ |
| v | Don't know | ☐ |

Justification:
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13.4 **CRIMINAL PROCEDURES, leading to the imposition of deterrent penalties such as fines or imprisonment terms, seizure, forfeiture and destruction of the infringing goods and machinery or materials used in the production of such goods, closing of retails or outlets, etc.**

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|-----|--|--------------------------|
| i | Effective | ☐ |
| ii | Deficient | ☐ |
| iii | Available in the law but not implemented | ☐ |
| iv | Not available in the law | ☐ |
| v | Don't know | ☐ |

Justification:

13.5 **CUSTOMS PROCEDURES destined to prevent imports, exports and/or transit of IP infringing goods, including the availability of a mechanism to lodge preliminary applications by right-holders and the practice of *ex officio* seizures by customs authorities, as well as the granting to right-holders of the right of information and inspection and of the possibility to obtain from the competent judicial authorities the definitive elimination of the infringing goods seized.**

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|-----|--|--------------------------|
| i | Effective | ☐ |
| ii | Deficient | ☐ |
| iii | Available in the law but not implemented | ☐ |
| iv | Not available in the law | ☐ |
| v | Don't know | ☐ |

Justification:

14. What do you consider as the main weaknesses / problems of the current system in place?

- ☐ Deficient **legislation**
- ☐ Insufficient or incorrect **implementation** of the TRIPs requirements (in case of WTO members)
- ☐ Deficient **enforcement** of the domestic IPR regulations
- ☐ Cost of proceedings
- ☐ Length of proceedings
- ☐ Uncertainty of the outcome
- ☐ Possible adverse effects on local business operations (risk of retaliation)
- ☐ Lack of trained officials
- ☐ Lack of resources
- ☐ Lack of political will
- ☐ Corruption
- ☐ Other:

15. Overall, how has the local IPR enforcement situation evolved in the last 3 years?

☐ Improved

☐ Unchanged

☐ Deteriorated. If so, please explain why:

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16. Please describe the main positive points/improvements:

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17. Have you provided or participated in any enforcement related technical assistance and/or awareness raising initiatives in the country during the period of reference (1 April 2005 to 31 March 2008)? Please provide details.

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18. Are you prepared to work together with the competent authorities in the country in order to assist them in combating IPR infringements? If so, which kind of co-operation would you envisage?

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19. Did you participate in the previous European Commission Enforcement Survey covering the period 1 January 2003 to 31 March 2005?

☐ Yes

☐ No