



## Topic 2 – A Balanced Approach to Enforcement of Intellectual Property Rights (IPRs) and Building Respect for IP

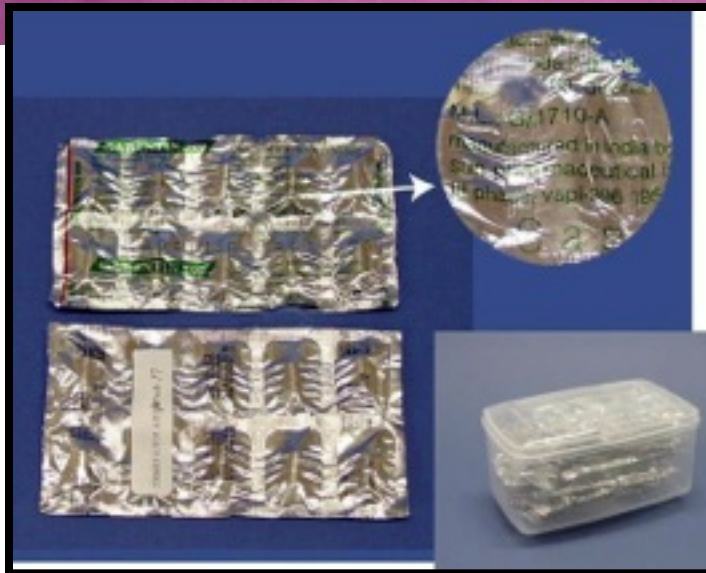
National Workshop – Enforcement of IPRs for Law Enforcement Agencies

**Chisinau, Moldova**  
**November 2, 2016**

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# The Problem



# The Problem

Today almost every kind of product is concerned

## Examples of common affected products

<i>Industry/Sector</i>	<i>Examples of products affected by counterfeiting and piracy</i>
Audio-visual, literary and related copyright work	Music, films, software, computer/video games
Pharmaceuticals	Medicines used for treating cancer, HIV, malaria, diabetes, cholesterol, cardiovascular diseases, antibiotics
Automotive	Engine parts, tires, disc brake pads, oil, filters, engine components, belts, brake fluid
Food, drink, toiletry and other household products	Conserved vegetables, milk powder, baby food, instant coffee, drinks. Shampoos, detergents, toothpaste.

Source: OECD, the Economic Impact of Counterfeiting and Piracy

# The Problem

■ OECD estimated the value of pirated and counterfeit tangible goods in international trade at US\$250 billion in 2009



■ Figures challenged - Difficulties to get reliable data as to the scope and impact of counterfeiting and piracy – Work being done (WIPO/ACE; OECD; EU Observatory...)

# IP Infringements, Counterfeiting & Piracy

## ■ Impact for Right Holders:

- Unfair competition
- Negative impact on brand value and reputation
- Negative impact on sales (market shares), royalties and licensing
- Negative impact on innovators and creators

# IP Infringements, Counterfeiting & Piracy

## ■ Impact for Consumers:

- Threats to health and safety

- Misleading (origin of the product, quality, etc.)

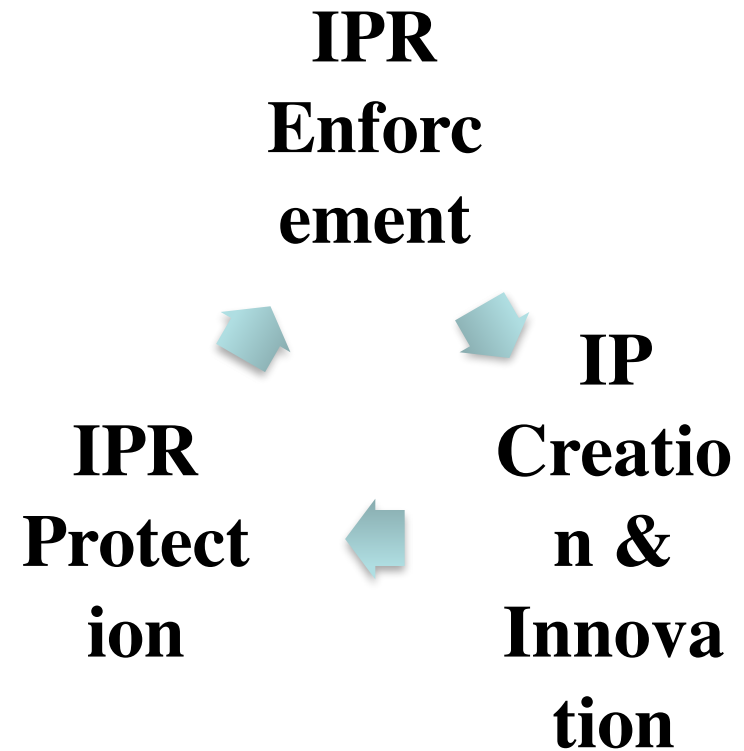
# IP Infringements, Counterfeiting & Piracy

## ■ Impact for Public Authorities:

- Negative impact on innovation & creativity
- Discouraging international trade and **foreign direct investments (FDI)** – impact on transfer of technologies
- Undermining **legitimate employments**
- Losses of revenue (taxes)
- Could strengthen criminal networks
- Impact on social values
- Impact on cultural identity

# Remedies

Ensuring effectiveness of the IPRs








# Remedies

## A) IP Enforcement

- At international level: **TRIPS, Part III** (“*Enforcement of IPRs*”)
  - Civil and administrative procedures & remedies;
  - **Provisional measures;**
  - **Border measures;**
  - Criminal procedures.
  
- At international level:
  - **Paris Convention**: Art. 9; 10; 10*ter* (see TRIPS, Art. 2);
  - **Berne Convention**: Art. 13; 15; 16 (see TRIPS, Art. 2);
  - **WCT**: Art. 11; 12; 14 – **WPPT**: Art. 18; 19.

# Remedies

## A) IP Enforcement

-  Plurilateral (ACTA, FTAs); Bilateral
-  Regional
-  National

# Remedies

## B) International Cooperation

- WTO
- World Customs Organization (WCO)
- Interpol
- World Health Organization (Substandard/Spurious/Falsely-Labelled/Falsified/Counterfeit Medical Products)
- Universal Postal Union (UPU) : amendment to Art. 15 of the Universal Postal Convention – insertion of counterfeit & pirated goods in list of prohibited items (entry into force: 01/01/2010) – cooperation with customs authorities.
- Other (incl. regional – EU Observatory, Europol, etc.)
- ... and **WIPO**

# WIPO's Role: Building Respect for IP

- WIPO and IP Enforcement : WIPO is not a **supranational** operational agency in the field of IP enforcement
- **Policy Framework: Strategic Goal VI**
  - International Cooperation on **Building Respect** for IP
  - What is meant by “Building Respect for IP”?
    - **Broader approach than IP Enforcement**
    - Aims at the creation of an enabling environment that promotes respect for IP in a sustainable manner in a balanced way between the right holders, the consumers and the social and economic development

# WIPO's Role: Building Respect for IP

■ Recommendation 45 of the WIPO Development Agenda  
[Art. 7 TRIPS] :

*“To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that « [t]he protection **and enforcement** of intellectual property rights should contribute to the promotion of **technological innovation and dissemination of technology**, to the mutual advantage of producers and users of technological knowledge in a manner conducive to **social and economic welfare**, and to a balance of rights and obligations » in accordance with Article 7 of the TRIPS Agreement”*

# WIPO's Role: Building Respect for IP

## ■ Objectives of Strategic Goal VI:

- Further progress in the **international policy dialogue** among WIPO Member States ;
- **Technical assistance: Enhanced capacity at the national level** to develop and give effect to IP enforcement policies and measures, taking into account socio-economic and development-oriented concerns;
- **Cooperation and coordination** between WIPO and other international stakeholders;

# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

- Established in 2002
- All WIPO Member States + accredited observers
- “advisory” => no norm-setting !**
- Mandate: (i) coordination with certain organizations and the private sector to combat counterfeiting and piracy; (ii) public education; (iii) assistance; (iv) coordination of national and regional training; (v) exchange of information.
- Work program agreed by the ACE
- Work and discussion supported by studies
- Working documents/studies for each ACE session available at: [http://www.wipo.int/meetings/en/topic.jsp?group\\_id=142](http://www.wipo.int/meetings/en/topic.jsp?group_id=142)
- “Market place of ideas to build respect for IP”***



# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

- 1<sup>st</sup> Session: 2003
- 2<sup>nd</sup> Session: 2004 - the role of the judiciary and the prosecution in enforcement activities
- 3<sup>rd</sup> Session: 2006 - education and awareness-building, including training
- 4<sup>th</sup> Session: 2007 - cooperation and coordination at the different levels – focus on criminal enforcement
- 5<sup>th</sup> Session: 2009 - contribution of, and costs to, right holders in enforcement of IPRs



# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

6th (2010), 7th (2011) and 8th (2012) Sessions:

- Review of methodologies and gaps in the existing studies re. counterfeiting & piracy

- Disposal of counterfeit goods

- Alternative models, such as “soft law” developments

- Consumer attitudes and perceptions on counterfeiting and piracy

# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

9<sup>th</sup> + 10<sup>th</sup> Sessions :

- Practices and operation of alternative dispute resolution (ADR) systems in IP areas;

- Preventive actions, measures or successful experiences to complement ongoing enforcement measures with a view to reducing the size of the market of counterfeited or pirated goods

# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

9<sup>th</sup> Session (2014) - Preventive Actions – one example: **Preventive measures in the online environment:**

Spain: The Administrative and Judicial Procedure Concerning Internet Infringements

UK: Efforts to tackle online IP infringement, including legislative framework, interventions, understanding consumer behavior, industry initiatives

Russia: New 2013 legislation concerning the protection of IP in IT networks

Alibaba: IP protection practices under the Internet platform-based business model

Motion Picture Association (MPA): US Center for Copyright Information (copyright alert / oversight); UK Operation Creative

# WIPO's Role: Building Respect for IP

- Advisory Committee on Enforcement (ACE)

- 10<sup>th</sup> session (2015) - Preventive Actions – one example: **Preventing infringements in the online environment:**

- “Copyright Enforcement in the Digital Age: Empirical Economic Evidence and Conclusions” (D. Branaher *et al.*)

- Denmark: Voluntary codes of conduct

- France: Work of CNAC and of the cyber-counterfeiting unit of Customs

- Rep. of Korea: Work of Copyright Protection Center + KIPO

- Two industry initiatives:

- Work of the Internet Unit of the Swiss Watch Industry

- Interactive Advertising Bureau (Poland): “Follow-the-money” approach

# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

### 11<sup>th</sup> session (*September 5-7, 2016*)

- Three-Day Meeting

- 186 participants

- 69 Member States

- 1 Non-State Member

- 23 Observers

- 38 speakers and panelists

# WIPO's Role: Building Respect for IP

## Advisory Committee on Enforcement (ACE)

11<sup>th</sup> session (*September 5-7, 2016*) – Work Program

- **Exchange of information on national experiences** relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner.
- **Exchange of information on national experiences** in respect of WIPO's legislative assistance, with focus on drafting national laws of enforcement that take into account the flexibilities, the level of development, the difference in legal tradition and the possible abuse of enforcement procedures, bearing in mind the broader societal interest and in accordance with member States priorities.
- **Exchange of information on national experiences** on awareness building activities and strategic campaigns as a means for building respect for IP among general public, especially the youth, in accordance with Member States educational or any other priorities
- **Exchange of success stories on capacity building** and support from WIPO for training activities at national and regional levels for Agencies and national officials in line with relevant Development Agenda Recommendations and the ACE Mandate.

# WIPO's Role: Building Respect for IP

## ■ Advisory Committee on Enforcement (ACE)

11<sup>th</sup> session (*September 5-7, 2016*) – Work Program

- **Enforcement Functions of National Intellectual Property Offices:** China, Colombia, Paraguay, Philippines (WIPO/ACE/11/6)
- **Coordinating** Intellectual Property Enforcement **at the National Level:** Canada, Georgia, India, Italy, Pakistan, Portugal, United Arab Emirates, and United States of America (WIPO/ACE/11/8)
- **Mechanisms to Resolve Intellectual Property Disputes in a Balanced, Holistic and Effective Manner:** Pakistan, Portugal, Russia, Thailand, South Africa, United Kingdom, ICTSD/CEIPI, ICC (WIPO/ACE/11/7)

# The Canadian ANTI-FRAUD CENTRE Chargeback Project

- Collaboration between CAFC, credit card companies and banks.

## ■ Goals and Strategy

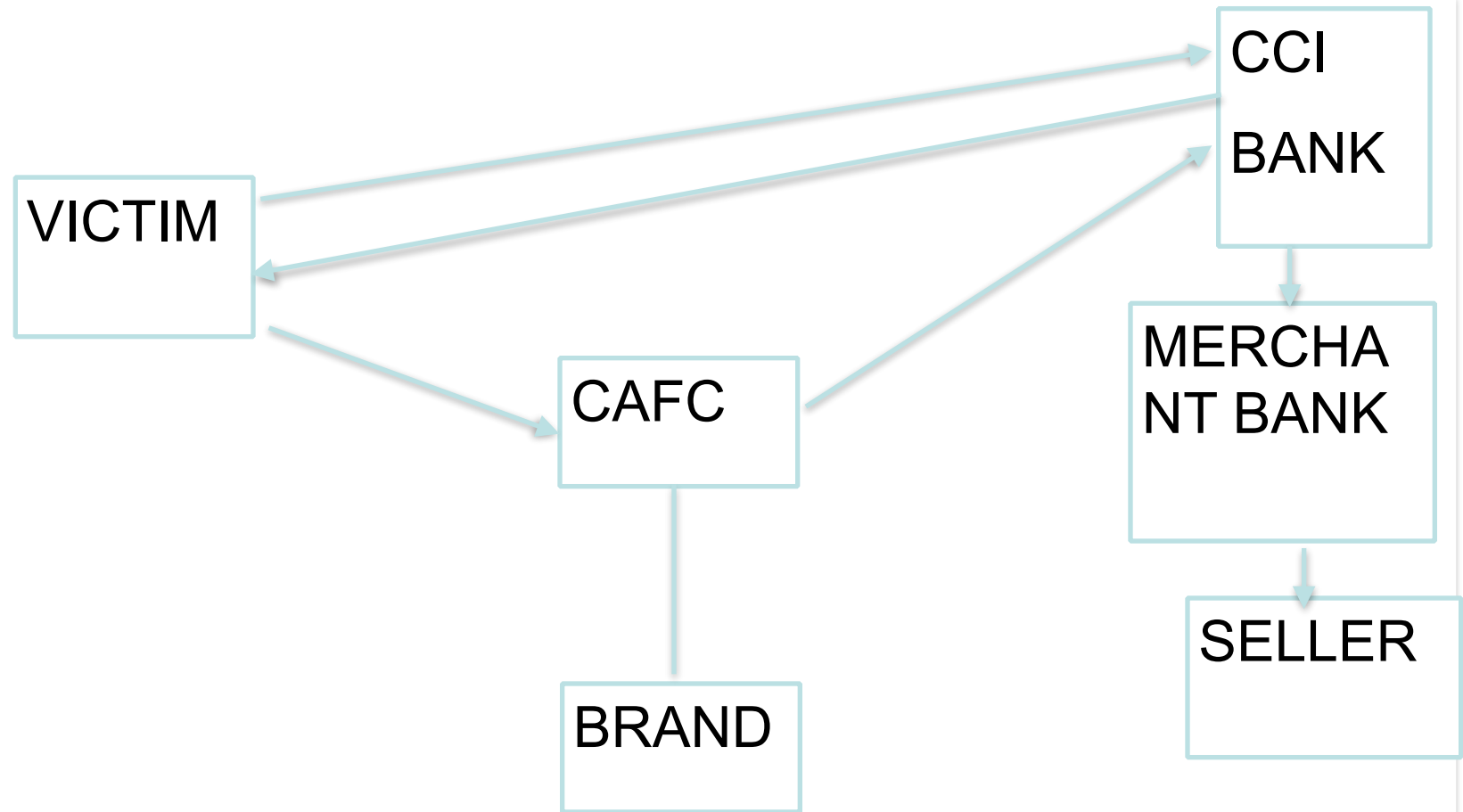
- Refund for consumers, reduce profit of CF and Piracy, support and protect brands.

## ■ Chargeback Project, WHY:

- Negative impact on the local economy(Canada Goose,Ugg Boots, Lululemon, Arcteryx, Michael Kors, Coach) .
- Negative impact on the Canadian consumers
- Negative impact on the global economy



# The Canadian ANTI-FRAUD CENTRE Chargeback Project Process



# UK enforcement landscape



# WIPO's Role: Building Respect for IP

## WIPO Secretariat (Building Respect for IP Division)

■ Upon request of the Member State(s) at stake :

■ **Technical and Legislative Assistance** : comments, opinions and advices on draft laws in enforcement areas.

# Legislative Assistance

- Only **on request** of WIPO Member States or regional organizations.
- Provided on a **confidential basis**.
- Examination of the compatibility of current or draft legislation with enforcement-related obligations **under Part III of the TRIPS Agreement**.
- If need be, following a diagnostic assessment in the requesting Member State of the legislative and institutional framework in place.

# WIPO's Role: Building Respect for IP

## WIPO Secretariat (Building Respect for IP Division)

■ Upon request of the Member State(s) at stake

■ **Capacity-Building Activities** for law enforcement officials, members of the judiciary, etc. (see: [http://www.wipo.int/about-wipo/en/activities\\_by\\_unit/units/building\\_respect.html](http://www.wipo.int/about-wipo/en/activities_by_unit/units/building_respect.html))

■ See: **WIPO/ACE/11/10** and **WIPO/ACE/11/9** ([http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=39546](http://www.wipo.int/meetings/en/details.jsp?meeting_id=39546))

# Capacity-Building

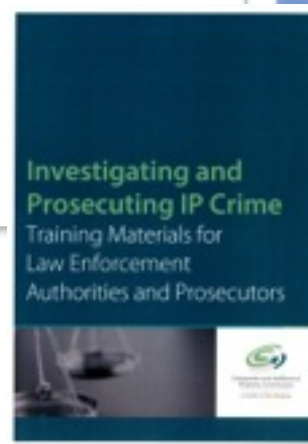
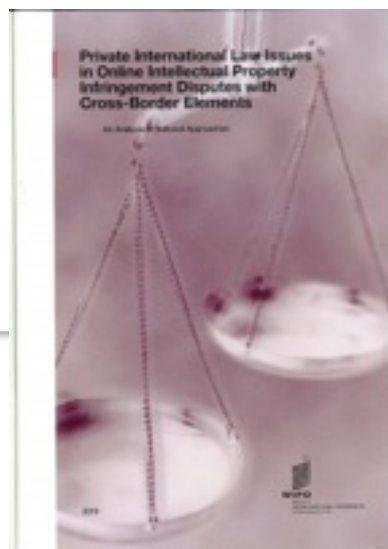
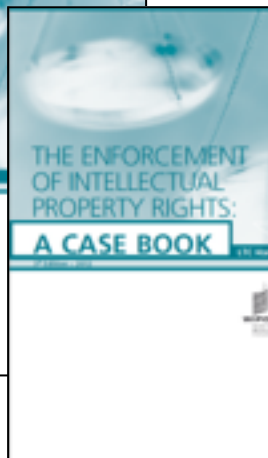
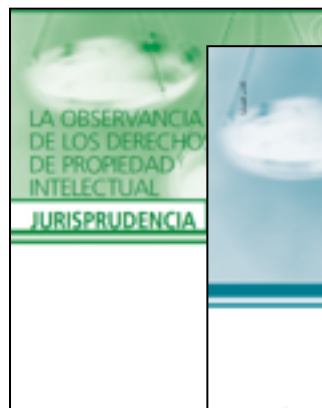
- (Co-)organization of (Sub-)regional and national workshops, meetings, courses, colloquia, study visits targeted at comprehensively addressing Building Respect for IP – co-organized with public partners
- In addition to our involvement in activities organized by others

# Capacity-Building

Target Audiences – depending on request

- Law Enforcement Officials
- Members of the Judiciary
- People dealing with awareness-raising (teachers and ministry of education; IP offices, consumers' associations, media)
- Role of private stakeholders

# Resource Tools





# WIPO's Role: Building Respect for IP

## WIPO Secretariat (Building Respect for IP Division)

- Upon request of the Member State(s) at stake - *increasing* :
- **Awareness-raising activities** – Assistance to Member States to plan BRIP national strategies and implement tools and campaigns to combat counterfeiting and piracy, incl. developing deliverables
  - See [http://www.wipo.int/edocs/mdocs/mdocs/en/wipo\\_ace\\_9/wipo\\_ace\\_9\\_11.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_ace_9/wipo_ace_9_11.pdf)
  - See <http://www.wipo.int/ip-outreach/en/tools/>

# WIPO's Role: Building Respect for IP

## WIPO Secretariat (Building Respect for IP Division)

■ Exchange of Information, incl. newsletter (<http://www.wipo.int/enforcement/en/newsletter/>), casebooks ([http://www.wipo.int/freepublications/en/archive.jsp?cat=intellectual property](http://www.wipo.int/freepublications/en/archive.jsp?cat=intellectual%20property))

## ■ ***International Cooperation***

■ Cooperation with WTO, WCO, UNEP, UNECE, EU Observatory, INTERPOL, etc.

■ Cooperation with NGOs, private stakeholders

■ Global Congress on Combating Counterfeiting and Piracy

# International Cooperation

## Current Partners



[and more...]



2013  
ISTANBUL, 24-26 APRIL

## 7<sup>th</sup> Global Congress on Combating Counterfeiting and Piracy EVOLVING CHALLENGES - INNOVATIVE RESPONSES



- Organized in public-private cooperation: WIPO, WCO, INTERPOL and the private sector (ICC-BASCAP, INTA)
- Key statements: podcasts of the sessions and other information available at <http://www.ccapcongress.net/>
- 7<sup>th</sup> Congress Istanbul, April 24-26, 2013
  - Opened by Turkish Prime Minister
  - Over 850 delegates from more than 100 countries
- Topics:
  - Building Respect for IP
  - Determining Jurisdiction in Cross-Border Cases
  - Public-Private Partnerships and other Self-Regulatory Measures
  - Capturing the Elusive Infringer on the Internet
  - Awareness and Education
  - Etc.

# Thank you!

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