



International Chamber of Commerce
The world business organization

An ICC initiative

BASCAP
Business Action to Stop
Counterfeiting and Piracy

Foreign Minister Masahiko Koumura
Ministry of Foreign Affairs
Kasumigaseki 2-2-1, Chiyoda-ku
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Japan

5 June 2008 GS/JH/tfn

Dear Minister,

The International Chamber of Commerce created BASCAP – Business Action to Stop Counterfeiting and Piracy – to represent member companies concerned by the global magnitude and increasing damages and dangers caused by the illicit trade in fake and pirated goods. Counterfeiting and piracy pose huge risks for consumers and to the growing importance of intellectual capital to research, innovation, international trade, investment, and sound economic growth and development.

We have provided our views on this matter and our recommendations for priority action to G8 Ministers prior to summits in Gleneagles, St. Petersburg and Heiligendamm. We recognize that G8 leaders have progressively advanced their understanding of and resolve to tackle this global challenge. This was evidenced by the declaration in Heiligendamm, which stated, “the benefits of innovation for economic growth and development are increasingly threatened by infringements of intellectual property rights worldwide.” Moreover, we were encouraged by the G8 leaders’ decision to “strongly reaffirm our commitment to combat piracy and counterfeiting.”

Unfortunately, there has been little indication that these words have been translated to action.

While we are again pleased that protection of intellectual property rights will be among the priority topics for discussion at this year’s G8 Summit, Hokkaido Toyako presents an excellent opportunity for the G8 to demonstrate leadership and to carry through on past declarations through attention to two priorities:

1. The establishment of the Heiligendamm Process to address the issues of product counterfeiting and copyright piracy has the potential to provide a tangible, enduring implementation mechanism. Continued commitment to the Heiligendamm Process is indispensable to the ability of the G8 to contribute value to the resolution of counterfeiting and piracy and to provide leadership to the many non-G8 governments who look to the guidance and precedents established by the G8. Therefore, as you prepare for the Summit this year, we urge you to commit the resources and political direction necessary for the Heiligendamm Process to effectively work against intellectual property theft and facilitate innovation and economic development.

... / ...

International Chamber of Commerce

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2. The Hokkaido Toyako Summit also comes at a time when seven of the eight G8 governments are actively negotiating the proposed Anti-Counterfeiting Trade Agreement (ACTA). These negotiations provide the first real opportunity in years to build upon existing multilateral frameworks, provide tangible deterrents to IP crimes, and elevate standards for government performance in protecting against intellectual property theft. We would hope that one of the key outcomes of the Hokkaido Toyako Summit will be a strong, visible commitment to a swift conclusion of an Anti-Counterfeiting Trade Agreement that sets new, higher standards for national and international government action to deal with counterfeiting and piracy. A declaration from the G8 Summit calling on the negotiators to conclude a substantive agreement will help ensure we enter a new era where governments around the world assume the responsibility to curb this brazen, illegal activity.

ICC's BASCAP initiative represents a visible and tangible example of the commitment by the international business community to contribute, on its own and in collaboration with governments, to develop and implement programmes to bring an end to counterfeiting and piracy and improve the protection of intellectual property. BASCAP stands ready to support the Heiligendamm Process, elaboration of ACTA and initiatives you may put forward this year that will help deal with this growing international problem.

Kind regards,

A handwritten signature in black ink, appearing to read 'Guy Sebban', is positioned below the text 'Kind regards,'.

Guy Sebban

Attachments:

BASCAP 2007 Statement
2008 Business views on ACTA



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BASCAP
Business Action to Stop
Counterfeiting and Piracy

Statement on protecting intellectual property

Presented to the 2007 G8 Summit, Heiligendamm

Counterfeiting and piracy continue to be a global threat

Previous G8 summits in 2005 in Gleneagles and in 2006 in St. Petersburg have taken significant steps towards recognizing the social and economic perils of counterfeiting and piracy and outlining commitments for implementing stronger measures to fight this growing problem.

The business community welcomes these steps – not only as a clear political sign of the determination of G8 governments, but because many non-member governments look to the leadership and precedents established by the G8. It is incumbent upon governments around the world to take concrete actions to curb this illegal activity.

It is no longer acceptable to ignore the myriad adverse costs to social welfare and economic development associated with the growth of counterfeiting and piracy. These losses hinder governments' ongoing efforts to improve social welfare and stimulate economic development. This illicit activity has broad impacts on employment, consumer health and safety, technology transfer, tax revenues and public finance, law enforcement and organized criminal activities.

The global business community is hopeful that joint actions against counterfeiting and piracy agreed by the G8 countries will be effective in stopping the flow of unsafe, unhealthy and poor quality products and curbing the drain on the creative community's reward for effort and innovation and the deterioration of diverse products and content. Today's economic growth is increasingly based on investment in intangible, knowledge-based assets. Where such assets are at risk of being stolen, companies are less likely to invest in research and development, thereby diminishing foreign direct investment, slowing dissemination of innovative products, and cutting back on the transmission of knowledge, through transfer of technology.

Despite G8 governments' past pledges of attention to counterfeiting and piracy, we in the business community see a continued need for concrete action. While certainly there are competing priorities on the public agendas of G8 member countries, present and future competitiveness in the "knowledge economy" demands immediate attention to the problem of intellectual property theft. We therefore urge the leaders meeting at Heiligendamm to consider the following activities:

- Abolish known counterfeiting markets* The Gleneagles statement declares that G8 governments will “*strengthen effective intellectual property enforcement, where appropriate, in areas such as the seizure and retention of suspected counterfeit or pirated goods.*” There are many actions that must be taken to improve enforcement, and as a first tangible step we suggest that G8 governments take immediate measures – all of which are within existing capabilities – to abolish all known counterfeiting and pirate markets (physical and online/internet) within the borders of G8 countries. These markets operate in flagrant violation of the law, operate with little fear of penalty and openly target consumers and tourists who can easily be duped into buying counterfeit and pirated goods. Such unfettered conduct of criminal activity sends a strong signal to consumers and pirates alike that lawlessness of a certain kind is tolerated, including the documented links to organized crime syndicates. We urge G8 leadership to establish legal precedents, including civil and criminal liability for landlords of these markets. There is also a need for enforcement techniques for abolishing retail counterfeiting markets selling illicit goods, which would serve as a valuable model for all countries endeavouring to end open air markets selling counterfeit and pirate goods.
- Prohibit transshipment of counterfeits through free trade zones* While free trade zones are recognized as important and valuable for reducing barriers to global free trade, transshipment and transit of goods through these areas now contribute significantly to the trafficking of counterfeit goods around the world. G8 countries, in conjunction with competent international organizations, most notably the WCO, are urged to improve the legal framework governing free trade zones so as to eliminate illegal pirate activity in these areas. To this end, a strengthening of the provisions of the Kyoto Convention governing customs controls in free trade zones as well as adoption of WCO model legislation should be considered.
- Suggested steps include: (i) prohibit the admission to, processing in, and export from free trade zones of counterfeit and pirated goods, irrespective of country of origin of such goods, country from which such goods arrived, or country of destination of such goods; (ii) provide customs administrations with the authority over free zones and goods in transit; (iii) empower customs authorities to proactively exercise this authority before the entry and after the exit of goods into a free trade zone, and to inspect goods in a free trade zone or a free port to ensure that no offense as to trafficking in counterfeit goods is being committed; and (iv) ensure the applicability and enforcement of anti-counterfeiting criminal and civil laws to check the activities of trafficking in counterfeit goods in free trade zones and free ports.
- Endorse WCO framework standards* The St. Petersburg statement declares that G8 governments will “*enhance cooperation among the G8 and competent international organizations, notably the World Customs Organization (WCO),*” and “*better target the trade of counterfeit goods and combat intellectual property crime at the borders, including by examining effective strategies already being implemented within the G8 Customs Administrations as models for broader cooperation.*” ICC endorses the WCO’s recent draft of a new border control framework of standards. These standards are currently being promoted by the WCO to establish minimum

performance levels and improve the harmonization of customs activities, deterring pirates from transiting counterfeit goods through countries with lower risks of detection.

Given that all G8 members are also members of the WCO, we urge the G8 to take a leadership role in being the first to adopt, implement and promote the WCO's framework of standards, including the provision of budgetary assistance to support their implementation.

Moreover, ICC also recommends that G8 leaders work together to expand the powers of customs authorities to be able to interdict and stop shipments exiting their jurisdictions based on legally accepted and recognized terms of probable cause and acting on reliable sources of information. Any strong border control regime requires governments to significantly increase inspections of exports to find shipments of counterfeit or pirated goods and refer those cases to appropriate authorities for investigation and prosecution.

Extend standards to other key areas, such as adjudication process

The new standards established by WCO provide for "a minima" measures that harmonize policies and practices to protect IPR in the area of border control and customs. These new standards serve as a model for G8 governments to encourage and resource actions by appropriate intergovernmental bodies to develop and promote similar "standards" for other key aspects of an effective IPR enforcement regime. The Gleneagles statement declares that G8 governments will "*strengthen effective intellectual property enforcement, where appropriate, in areas such the use of clear, transparent and predictable judicial proceedings.*" We suggest that G8 governments begin this process of developing global "minimum standards" in the area of adjudication of infringement cases presented to authorities.

Looking forward, the ICC would support the evolution of various sets of such standards into an international instrument to further tackle threats to IP rights. To this end, and in light of various proposals, we urge G8 governments to empower the G8 IPR Working Group to initiate a serious global dialogue about what instruments or new standards or other form of international agreements can be put in place.

Again, any new instruments must be accompanied by a commitment of resources, including funding and manpower allocations and complementary measures of technical assistance and capacity-building in order to support developing countries in creating and/or enhancing their IPR frameworks and procedures.

- Assess capabilities and allocate indicated resources* The St. Petersburg statement declares that G8 governments “*give priority to promoting and upholding... procedures to strengthen intellectual property enforcement...*” ICC suggests that G8 governments charge the IPR Working Group with responsibility for assessing law enforcement, border control, and adjudication capabilities of G8 member countries, as well as key developing countries. As a first step, the Working Group should consider convening a meeting with WCO, Interpol and WIPO (individually or collectively) to determine how these organizations can participate and assist in this assessment, including sharing current knowledge on capabilities in their member states. Findings from this assessment will be valuable to G8 governments seeking to identify areas that deserve greater attention, manpower and funding within national IP protection programs. These findings constitute valuable technical assistance that will also help developing countries evaluate policy options and set priorities.
- Full accounting of social and economic costs...* The Gleneagles statement urges G8 governments to “*take concrete steps to strengthen and highlight analysis of the underlying trends, issues and domestic and international enforcement actions.*” It is imperative for the G8 to generate an accounting of the full range and extent of the social and economic costs associated with counterfeiting and piracy. This information is essential to G8 member governments (and world governments) confronting decisions on how investments in IP protection (through legislation and regulatory enforcement) are related to and can improve other social and development priorities, such as economic development, employment, tax base, consumer health and safety, technology transfer, law enforcement and fighting organized crime.
- ...to encourage priority allocation of government resources* Research done in this area must be properly funded, backed by governments and fully comprehensive, so as to avoid limitations experienced by the OECD’s recent effort to estimate economic impacts. For example, the OECD report concentrated on economic losses associated with counterfeit and pirate goods crossing international borders, with no accounting of the full scope of economic and social losses, such as: (1) internet sales; (2) fake goods produced and sold within a country’s border; and (3) losses to society (direct and indirect) in terms of employment, economic growth, and law enforcement costs.
- Fortify criminal sanctions* The WTO TRIPs Agreement Article 61, obliges members “*to provide for criminal procedures and penalties to be applied at least in cases of willful trade mark counterfeiting or copyright piracy on a commercial scale.*” G8 governments are encouraged to take a leadership approach in demonstrating proactive enforcement of laws against counterfeiting and piracy and implementing strong criminal sanctions and associated criminal penalties that provide real deterrents to IP crimes. As a first step, we urge that G8 governments ensure that penalties for IP theft – at a minimum – match existing legal penalties for theft of physical merchandise and that these penalties be applied to both online and off-line transactions. At the same time, enforcement agencies within the G8 must be correspondingly empowered to enforce these more stringent penalties. Clear decisions and actions from the G8 to establish and enforce criminal sanctions can also usefully establish a precedent for a more uniformly

dissuasive system of punishment for IP infringement cases worldwide.

- Business commits to support governments efforts to combat IP piracy* With respect to the Gleneagles statement that G8 governments “*improve co-ordination of anti-counterfeiting and anti-piracy crime strategies, and ensure closer co-operation [...] between governments and the private sector,*” ICC reiterates its commitment to support G8 governments as they seek to translate Summit outcome statements into action and achievements. ICC through its own initiative known as BASCAP – Business Action to Stop Counterfeiting and Piracy – is committed to continue to assist governments in the elaboration and implementation of effective programmes. ICC is also committed to employing its national committees, located in 90 countries worldwide, and its global membership to petition for action and support of G8 proclamations by local and national legislatures. In order to facilitate this contribution, future meetings of the G8 IPR Working Group would benefit from the more frequent inclusion of representatives from the private sector so as to create a durable and transparent structure where business and government can work together.
- Model IP policies for business* In recognition that the private sector has responsibilities to institute effective measures against counterfeiting and piracy, ICC, in concert with the global business community, has developed a set of model IP compliance guidelines that provide detailed information to businesses on what practical steps they can take to improve their compliance with IP laws. The guidelines provide specificity on good IP practice, addressing internal IP use, supply chain practices, relations with intermediaries, and the handling of third-party IP. The guidelines are therefore useful for dealing with counterfeiting and piracy in all its forms within companies, from IP development to component sourcing, manufacturing, wholesaling, retailing and internal corporate use. Over the course of the year, ICC commits to working with companies worldwide to secure their endorsement and promotion of the guidelines.
- Country gateways* With respect to the St. Petersburg statement “*to create in each G8 country a website providing [greater] information on mechanisms available and procedures necessary to secure and enforce intellectual property rights,*” the ICC notes the existence of the web-based BASCAP country gateways and submits these gateways as a framework for G8 governments to augment with additional content¹.

¹ <http://www.iccwbo.org/bascap/id6169/index.html>