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CLDP
COMMERCIAL LAW DEVELOPMENT PROGRAM



FINAL REPORT

CONSULTATIONS ON AN INTERAGENCY APPROACH TO THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS: GHANA, KENYA, LIBERIA, AND NIGERIA

Washington, D.C.
August 1-5, 2011

BACKGROUND

In Sub-Saharan Africa, intellectual property (IP) protection is vital to attracting foreign and mobilizing domestic investment, which in turn, is indispensable to achieving sustainable economic growth and development. However, the lack of effective IP protection and enforcement in those markets has resulted in an increasing trade in pirated and counterfeited goods, impeding the growth of trade and investment, and posing an unacceptable risk to the health and safety of the consumers. It is therefore crucial to establish comprehensive and effective intellectual property rights protection and enforcement regimes to promote economic growth and protect public health and safety. Key to achieving such comprehensive IP regimes, is improved communication, cooperation and coordination between the different agencies administering and enforcing IP rights.

INTRODUCTION

In the past three years, The U.S. Department of Commerce (USDOC), through its Commercial Law Development Program (CLDP) and Patent and Trademark Office (USPTO), have engaged Sub-Saharan African countries and regions to assist them to improve their IP protection and enforcement regimes. Through workshops and other interventions, USDOC has initiated or facilitated the concept of improved communication, cooperation and coordination, through an interagency approach to IP protection and enforcement. In Ghana, Kenya, Liberia, and Nigeria, initial interagency workshops have given rise to the need for a follow on intervention to further the goal of developing an IP interagency capacity. The participants deemed it important to learn about how the U.S. conducts an interagency approach to IP enforcement on both policy and operational levels.

USDOC in collaboration with the U.S. Department of Justice (DOJ), the U.S. State Department (DOS), and the U.S. Immigration and Customs Enforcement (ICE) provided a U.S. based five-

day program of Consultations on the Interagency Approach to the Enforcement of Intellectual Property Rights for a selected group of government officials from Ghana, Kenya, Liberia and Nigeria.

Utilizing expertise from various U.S. government agencies and the private sector, these Consultations, held on August 1-5, 2011, allowed a selected group of about six officials from each of the four countries to determine the best practices to achieve communication, collaboration and coordination among U.S. agencies and the private sector, with the goal of improved IP protection and enforcement. And, allow them to frame a plan of action to facilitate an IP interagency approach in their respective countries.

WORKSHOP

Over the course of the week-long consultations, participants from Ghana, Kenya, Liberia, and Nigeria participated in discussions with each other and USG officials on, *inter alia*, the following: the Importance of Intellectual Property Protection and Enforcement; Protecting and Enforcing local culture and works of authors; Trademark & Counterfeiting Issues, Federal IP enforcement structure in the US from the DOJ Perspective; Lessons Learned In Prosecuting IP Cases, Issues in Operating a Customs Recordation System and Coordination with IP Offices; Targeting Importations: Risk Analysis Discussion and Interagency Cooperation; IPR Investigations and Border Enforcement, and the Role of the U.S. Intellectual Property Enforcement Coordinator. Likewise, crucial lessons from the US perspective on interagency enforcement were highlighted, including IP legislations in force; historical challenges US agencies faced in IP enforcement; how interagency collaboration was achieved and which agency was the de facto driver/leader; experiences in prosecution and how they influenced the revision of IP law; how the collaboration/cooperation was anchored in law; and the effects of this arrangement on counterfeiting in the US.

In a novel discussion with the private sector both US and abroad, opened by DOC Principal DAS John Andersen, the delegates engaged with rights holders over concerns about IP protection and enforcement. The dialogue included representatives of BASCAP, US Chamber of Commerce, Microsoft, Pfizer, INTA, and IIPA on best practices for public-private partnership in the fight against counterfeiting and piracy. Another dozen rights holders participated via teleconference. The delegates visited the Intellectual Property Rights Center on the fourth day of the consultations to see how the US enforcement agencies work together daily on an operational basis. The week-long consultations wrapped-up on the fifth day with a focus on the next steps in the development of regional IP task force coordination action plans for each country with the goal of facilitating an improved IP interagency approach, and thus a more effective protection and enforcement of IP in their respective countries.

The workshop illuminated the impact of counterfeiting and piracy in Ghana, Kenya, Liberia and Nigeria on health and safety and economic development. The workshop also identified the specific and general needs for greater collaboration, coordination and communication amongst the different agencies and with the private sector in order to improve the protection and enforcement of IP in the West and East Africa regions. Consensus was built around the

desirability of establishing Interagency Task Forces as the most effective mechanism to achieve those goals.

Individual country action plans were drafted, which outline the scope and reach of envisioned IP interagency working group as well as the strategy to achieve the establishment of such working group. A matrix will be prepared by each delegation to indicate extant IP legislation, relevant lead agencies and any pending legislation. The matrix would also likewise list the authority held by the Police and Customs and any existing units dedicated to anti-counterfeiting and piracy. The following are consensus set of recommendations reached by the Ghana, Liberia, Kenya, and Nigeria delegations on actions to take moving forward:

CONSENSUS RECOMMENDATIONS

- Establish interagency working groups at the national level to enhance communication, collaboration, and coordination in the enforcement and protection of intellectual property rights.
- Establish an active partnership between the private sector and the interagency working groups.
- Encourage regional interagency communication, collaboration, and coordination on enforcement and protection.
- Establish regional intelligence sharing mechanisms for IP infringement and enforcement.
- Establish an Africa Interagency Consultations GIPA 2011 Listserv, as coordinated by the heads of delegation.
- Regional IP policies should encourage the establishment of interagency IP working groups.
- Enhance capacity building in intellectual property.

ACTION PLANS

I. GHANA

MISSION

- Establish a National Inter-Agency Working Group (NIAWG) to enhance coordination, collaboration and communication for the enforcement and protection of Intellectual Property (IP) Rights in Ghana.

COMPOSITION

- Registrar General's Office
- Copyright Office
- Ministry of Justice (MOJ)
- Ministry of Trade and Industry (MOTI)
- Ghana Standards Board
- Customs Division of Ghana Revenue Authority

- Ghana Police Service
- Food and Drugs Board
- Commercial Court
- Film and Music Stakeholders
- Association of Ghana Industries

AUTHORITY

- To be established under the joint auspices of Ministry of Trade and Industry (MOTI) and Ministry of Justice (MOJ).
- By Executive Instrument.

STRUCTURE

- MOTI and MOJ in co-leadership to provide Secretariat for administrative matters.
- IP Coordinating Units to be established at the agency level as focal points to the NIAWG.
- Constituent agencies to provide two (2) representatives each on the Task Force.

IMMEDIATE PLAN OF ACTION

- Convene a meeting of the Ghanaian interagency delegation to finalize the structure and scope of a National Interagency Working Group (NIAWG) for IP Rights enforcement and protection. The broad *Goals* and corresponding *Implementing Strategies* for a long term Action Plan will be outlined. **[30 -31 August 2011]**
- Submit proposal based on work done to the Ministers of MOTI and MOJ to secure approval for the establishment of NIAWG for IP Rights enforcement and protection. **[In September 2011]**
- Proposal on establishment of NIAWG goes for cabinet approval **[In October 2011]**
- Ministerial accent (Executive Instrument) to authorize the establishment of NIAWG. **[In November 2011]**
- Ghanaian interagency delegation to Prepare Draft Guidelines to govern the operations of the NIAWG **[By end of November 2011]**
- MOTI /MOJ to organize a Consultative meeting of Heads of relevant government agencies and industry representatives / right holders for broad consultations and acceptability, and to create awareness and sensitize them towards the inception of the NIAWG. **[In December 2011]**
- Formation of NIAWG and inauguration of Membership. **[By end of December 2011]**
- Based on broad *Goals* and *Implementing Strategies* to be outlined in the Action Plan below, the established NIAWG will as a matter of urgency, further identify and

develop *Specific Actions and set out their Priorities* to complete an Action Plan to ensure effective delivery of its mandate. [By end of January 2012].

GHANA

GOALS	IMPLEMENTING STRATEGIES	SPECIFIC ACTIONS	PRIORITY
1. Provide coordinated responses to IP infringement at the national level.	<ul style="list-style-type: none"> ➤ Establish IP Coordinating Units at the agency as focal points. ➤ Provide for Harmonization and coordination of procedures on IP enforcement and administration across the relevant and constituent member agencies. ➤ Provide timely exchange of information between and amongst agencies and the private sector 		
2. Promote Capacity building of constituent agencies in IP knowledge and systems			
3. Encourage Legislative and regulatory reform of constituent agencies to better protect and enforce IP to the level of international best practices			
4. Promote Outreach and Training- Public/Legislative/Educational			
5. Promote Regional			

GOALS	IMPLEMENTING STRATEGIES	SPECIFIC ACTIONS	PRIORITY
collaboration of IP protection within West Africa Sub-region			

II. LIBERIA

A. ACTION PLAN FOR INTERAGENCY APPROACH TO IPR IN LIBERIA

This Action Plan is based on the format presented to each country by the organizers of the consultations but was developed by issues in each subsection were developed by the delegation. The plan includes:

- Immediate briefing of Liberian embassy near dc by delegation today
- Comprehensive report on the one-week consultations to be prepared by end of next week, which is shared with all relevant stakeholders;
- Preparation of a paper containing specific policy proposals, to enhanced IPR protection and enforcement. This will be presented to the cabinet by the minister of commerce
- Establishment of an inter agency task force within the next 60 days, which will comprise of several ministries and agencies of government that will ensure effective government response to IP issues, including public awareness, training; and regional engagements with other countries.
- Creation of IP units in the bureau of customs, the bureau of immigration, police and other key agencies;
- Law reforms-looking at our existing IP laws;
- Investment in procuring necessary equipment for testing; technical know how relative to identifying brands and counterfeits, etc
- Massive public awareness: to work with and also educate rights holders, users of rights, and government officials/technicians;

- Training and capacity building programs
- Appointment of a national focal person/national coordinator on ip rights;
- Regional engagements
- Addressing challenges posed by porous borders by working with other countries

B. DETAILS OF THE INTERAGENCY TASK FORCE

- Method of creation: task force to be created by an executive order to be issued by the president;
- Objective: to ensure that there is a viable policy and operational framework for adequate attention and resources for IP awareness, protection and enforcement in Liberia;

C. COORDINATION/LEADERSHIP: TO BE LED BY THE MINISTRY OF COMMERCE

Membership of task force:

- Ministry of Commerce (Including the Copyright Office/Trademarks)
- Ministry of Justice (Including Police, Immigration and DEA)
- Law Reform Commission
- Ministry of Finance (Including Bureau of Customs)
- Ministry of Health and Social Welfare
- Ministry of Agriculture
- Ministry of State for Legal and Economic Affairs
- National Port Authority

- National Bureau of Investigations
- Ministry of National Security
- Ministry of Planning and Economic Affairs
- Central Bank of Liberia
- Ministry of Postal Affairs
- Private Stakeholders and Industry
- Other Relevant Agencies to Be Identified From Time To Time

D. TYPES OF COMMUNICATION/INTERACTION NEEDED OUTSIDE LIBERIA

- Communication/interaction must be preceded by the establishment of a network of national focal points/coordinators that will have the responsibility of coordinating and communicating and sharing.
- List service
- Web blog
- Regional meetings
- Study tours

E. NATIONAL INTERAGENCY GROUPS WORKING ON A REGIONAL BASIS

- Regional networking of national focal persons/coordinators
- Regional coordination of enforcement, awareness, and policy initiatives;
- Collaboration on policy harmonization, and advocacy engagement with ECOWAS

F. ISSUES FACED BEYOND EACH COUNTRY

- Importation of counterfeit and pirated goods from: (1) within the region and (2) from out of the region, especially Asia/China
- Inadequate awareness/knowledge of (1) rights holders and (2) consuming public about IPR and its implications on health and safety;
- Borders security and enforcement

G. POST-CONSULTATIONS PROGRESS

Since its return to Liberia, the delegation has made some basic achievements that are paramount to the full implementation of the action plan. These include:

1. The delegation has had two meetings at which this report was developed and the plan of action affirmed. Further, the delegation has assigned specific tasks to each member and will review progress at its subsequent meeting;
2. The delegation has met with a number of authorities and stakeholders for purposes of briefing them on the proceedings of the conference or consultations and soliciting their active involvement in IPR pursuing issues.
3. The delegation has engaged in discussions with relevant individuals to establish an intellectual property unit at the Louis Arthur Grimes School of Law and the possibility of introducing intellectual property as a seminar course for interested students and later, its inclusion in the School's curriculum.

III. KENYA

Introduction:

- Agencies involved in IP: DPP, KIPI, KEBS, KEPHIS, KeCoBo, W&M, ACA, KACC, Customs, Police, KAM (private sector), and Public Procurement and Oversight Authority (PPOA).
- Coordination of activities:
 - Enforcement activities
 - Public awareness activities

Activities – anchored on Vision 2030 (flagship projects)

Strategy:

1. Establish CEOs forum

- ▶ The first CEO forum shall be convened by ACA by Sept 2011
- ▶ The CEOs forum to establish a mechanism/task Force to review current IP legislations with a view to harmonizing them and enhancing inter-agency cooperation

2. Come up with a Memorandum of Understanding (MOU)

- ▶ Retreat to draft MOU. The MOU will provide rules of engagement to govern the interagency collaboration.
- ▶ To be in place by November 2011

3. A) Establish IPR Enforcement Committee

- ▶ Enforcement committee shall be defined in the MOU
- ▶ The national enforcement committee shall organize all inspectors under the Anti-Counterfeit Act for future training, communication, cooperation, and coordination, etc.
- ▶ Enforcement committee shall be composed of persons who head the enforcement departments in the respective agencies, as defined by the MOU.

B) Establish other committees as and when need arises under the forum of CEOs.

4. Membership:

- ▶ **The Inspector General of Police should be represented in both organs (enforcement and CEO's forum).**
- ▶ **Co-opt other relevant members**

5. Establish formal mechanisms for private-public consultations on enforcement of IPR

6. Activities:

- ▶ **Promulgation of research on counterfeits and the effect on the Kenyan economy**
- ▶ **Joint campaign against counterfeit between the private sector and the ACA and other IPR enforcement agencies**

7. Policy/legislation:

- ▶ **Recommendation that the Kenyan government adequately support IPR and IPR enforcement agencies**
- ▶ **Finalize draft National IP policy**

▶ **Amendment to the IP laws (harmonization)**

8. Mechanism that brings together various tribunals that enforce civil IPR

IV. NIGERIA

In order to translate the outcomes of the Consultations on an Interagency Approach to the Enforcement of Intellectual Property Rights to concrete programmes the delegation of Nigeria acknowledges the need for further action at the national level. To this end, the following next steps will be recommended as part of a composite Report to the Heads of the agencies represented at the U.S. meeting:

1. Convene a re-entry meeting of the attendees at the U.S. Consultations (representing their respective agencies) to review the outcome of the Consultations. [By August 12, 2011]
2. Disseminate the Report of the Consultations to other agencies that are involved in the enforcement of intellectual property rights although not represented at the U.S. meeting. A follow-up larger meeting of these agencies will obtain further inputs. [By August 19, 2011]
3. Formation of an interagency working group to promote coordination, collaboration, and communication as well as identify existing legal framework for IP protection and enforcement in Nigeria. [By September 2011]
4. Organize an inter-agency consultative meeting with the private sector. [October, 2011]
5. Initiation of a an inter-ministerial process to present a memo to the Federal Executive Council on the urgent need for a national IP policy and strategy as a step towards redefining the country's priority and direction in the field of IP. [From November 2011]
6. Formulate national IP policy and development strategy for better protection,

administration, use and enforcement of IP as a tool of national development.

7. Develop national strategy on interagency cooperation in the following areas:
 - Public education and awareness creation to promote consumer vigilance and respect for IP.
 - Promotion of the use of IP by industries, including SMEs, for economic development.
 - Strengthening of guilds and associations to promote self regulation and standards in IP industries.
 - IP protection and enforcement (internal and border measures).
 - Coordination between relevant enforcement agencies.
 - Regional and international collaborations.
 - Innovation promotion programmes and the infusion of IP into the country's mid and long-term strategic development plans.
8. Identify mechanism for funding and logistic support through public private sector initiatives.
9. Design and build in a mechanism for periodic review of the activities of the inter-agency platform.
10. Organise briefing forums to generate the critical buy-in from the political and policy-making arms of Government including the relevant Committees of the Senate and House of Representatives; Judges, etc.
11. Organise national awareness and education programmes for stakeholders, officials and IP administrators.

PARTICIPANT LIST

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**Washington DC, USA
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GHANA DELEGATION

Kwame Fosu

Director
Legal Affairs
Project Coordinator
MOTI Swiss Ghana IP Project
Ministry of Trade & Industry (MOTI)

Felix Koku Mawusi

Director
Commercial Crimes Unit
Criminal Investigations Department
Ghana Police Service

Patrick Gyan

Chief Collector
RILO National Contact Point
International Affairs
Ghana Revenue Authority
Customs Division

Dr. Stephen Kwabena Opuni

Chief Executive Office
Ghana Food and Drugs Board

Joseph Charles Tetteh Armah

Deputy Executive Director
Ghana Standards Board

Grace Ama Issahaque

Principal State Attorney
Department of Registrar General
Ministry of Justice

KENYA DELEGATION

Dr. John Akoten

Deputy Director
Research and Awareness Department
Anti-Counterfeit Agency

Raymond Michuki

Chief Manager
Market Surveillance Department
Kenya Bureau of Standards

Eric Kiraithe

Senior Assistant
Commissioner of Police
Kenya Police Service

Evan Mboi Misati

Senior Patent Examiner
Kenya Industrial Property Institute

Stephen Mallowah

Executive Director
Anti-Counterfeit Agency

Sheldon Mugogo

Senior Assistant Commissioner
Kenya Revenue Authority

Aquilino Mwithalii
Kenya Revenue Authority
Revenue Officer
Legal Appeals Unit

Edward Sigei
Chief Legal Counsel
Kenya Copyright Board

LIBERIA DELEGATION

Jallah Allen Barbu
Vice Chairman
Law Reform Commission

Aletha Browne
Assistant Minister of Commerce
Ministry of Commerce & Industry

William L. Buku
Assistant Commissioner
Operational Policy and International
Relations
Department of Revenue
Ministry of Finance
Bureau of Customs and Excise

Fanta Conde Barclay
Intellectual Property Lawyer
Intellectual Property Systems Office
Ministry of Commerce & Industry

Negbalee T. Warner
Chairman
Copyright Management Board

NIGERIA DELEGATION

John Ohireime Asein
Director
Nigerian Copyright Institute
Nigerian Copyright Commission

Umaru Kawu
Director
Legal Services
Standards Organization of Nigeria

Emmanuel Chike Nwoye
Sergeant
Nigerian Police Force

Tajudeen Olanrewaju
Deputy Comptroller of Customs
Strategic Research & Policy Department
Nigeria Customs Service, Hqtrs. Abuja

Edet Effiong Otu
Principal Assistant Registrar
Trademark Oppositions
Trademark, Patents & Designs Registry
Commercial Law Department
Federal Ministry of Commerce