



The European Observatory on Counterfeiting and Piracy

2012 looks like being a significant year for intellectual property enforcement in the European Union. Whilst the ecommerce directive is unlikely to be reopened, the customs regulations are currently being considered, the Intellectual Property Rights Enforcement Directive (IPRED) is likely to be in the second half of the year and at some point the Anti-Counterfeiting Trade Agreement (ACTA) will come to the parliament for approval. As significant as these though will be the regulation extending the remit of the European trade mark office (OHIM/OAMI) to include responsibility for the delivery of the work of the European Observatory on Counterfeiting and Piracy.

If that sounds like a slightly dull technocratic shuffling of the European bureaucratic deck-chairs, then think again. Whilst policy will remain with Unit D3 of DG Internal Market and the stakeholders of the Observatory will continue to set direction, OHIM will bring the capacity and resources actually needed to execute and deliver on many areas which have struggled to gain critical mass amongst competing priorities in Member States. A brief explanation of the history of the Observatory so far, its areas of work and where this new arrangement might lead should help to illustrate the significance of this move.

The Observatory was announced in April 2009, at the second high level conference on counterfeiting and piracy, but its origins lie in the French presidency of the European Council. In October of that year the first plenary meeting of the “private sector” stakeholders was held. This consisted of dozens of trade associations representing a myriad of sectors, both national and Europe-wide, as well as SME groups and the European consumers’ association umbrella group. Five areas of work were set out: measurement; the legal framework; public awareness and perception; best practice sharing between the private sector and best practice sharing between public sector bodies. In November the Member State stakeholders met in Stockholm to cover the same ground. A cross party MEP forum was set up at the same time.

Three working groups were set up and met from the end of 2009. The group on measurement was tasked with helping to draft the terms of reference for a tender that D3 put out for a contract to establish a way to measure the impact of counterfeiting and piracy on the European Union. The legal working group looked at the way that various aspects of the civil system were working in Member States, and produced reports and recommendations which are available on line. The public awareness working group has focused on trying to establish a tool kit of resources that can be used to make delivery of awareness efforts easier and more efficient. This includes research about consumer attitudes, the messages that resonate; those that do not, which messengers are more influential; and guidance on how to build campaigns based on that research and example campaign materials.

With a staff of two officials working part time, and no budget other than for the tender, these meetings were infrequent and progress between meetings was slow. This period of the Observatory was marked by a lot of individual efforts from staff and stakeholders to help to deliver reports and events, such as the week long exhibition of counterfeits at the European parliament and the competition for schools “Real Fake” which culminated in a prize-giving with Commissioner Barnier, Yasmin Le Bon, several parliamentarians and around 150 children.

In many ways, the Madrid meeting of both the private and Member State stakeholders in June 2010 marks the end of that period, even though the working groups did continue to

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meet through until around February of 2011. From that July until the release of the EU IP Strategy on 25 May 2011, much of the Commission's resource was engaged in laying the ground for the involvement of OHIM in taking on the support for the Observatory. RAND had won the tender for the measurement work and the Commission published its consultation on the IPRED review. As part of the May IP strategy, a memorandum of understanding between OHIM and DG Markt was signed, setting out how OHIM would start to engage on Observatory work pending the passing of the regulation now under consideration.

In this current phase of the Observatory, OHIM has jumped in with gusto. It has held workshops with Member States on public awareness, agreed with the European Patent Office to take on future EU funded capacity building work (like the previous IPR2 project with China) and held discussions with Interpol about using their materials. Plenary sessions for the private sector in October and the Member States in December 2011 introduced the OHIM team and their ambitions to deliver some trial public awareness campaigns with member states in 2012 based on a completed tool kit. In February OHIM's president will present prizes for their "hands off my design" competition with Commissioner Barnier.

The EU needs an effective agency to bring efficiency to capacity building and technical assistance, and to make those efforts more transparent and accountable. OHIM looks well placed to do this. In the US there has been a renewed effort in this direction by the USPTO as part of the strategy of the IP Enforcement Coordinator based in the White House. If Member States are to deliver on their various promises to raise awareness about piracy and counterfeiting and to change perceptions about social acceptability then having the support of a well-resourced partner in OHIM again makes sense.

There are questions about how far this will lead, as with any EU level initiative. Member States worry about sovereignty and about the role of their offices. Trade mark owners are rightly concerned that their services are not neglected and that their registration fees are not all diverted to fund economic studies of the operation of the protection of semiconductor topographies or the like. The OHIM board will need to play its role, as will the stakeholders in the Observatory, to ensure that OHIM remains accountable and focused on true priorities, as it seems to be at this point, but there is good reason to be optimistic that actions not just words will characterise activity on IP enforcement in 2012.

For more details see:

http://ec.europa.eu/internal_market/iprenforcement/observatory/index_en.htm

Chris Oldknow, 9 January 2012