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Intellectual Property Rights im Blog

IP|Expertennotizen: Fighting counterfeiting and piracy in the current economic climate

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by Dr. Duncan Matthews

Die Expertennotizen von IP|Notiz sollen ein Forum für Experten im sogenannten „Grünen Bereich“ und daran angeschlossenen Rechtsgebieten bilden. Unser Ziel ist, damit den öffentlichen Austausch – auch im Medium Internet – in unseren Rechtsgebieten zu fördern und Praxis und Wissenschaft einander anzunähern. Die Transparenz des wissenschaftlichen Austausches für die Öffentlichkeit ist ein weiteres Ziel dieser Reihe.

I notice, in the current economic climate, that greater attention is being paid to the fact that trading conditions can be undermined by piracy and counterfeiting – and the fact that many of the infringing goods being sold on European markets originate from developing countries. [The Organisation for Economic Co-operation and Development \(OECD\) has estimated that the international trade in pirated and counterfeit goods could amount to \\$200 billion worldwide.](#)

The need to reduce levels of piracy and counterfeiting globally has led [the World Customs Organisation \(WCO\)](#) , [the World Health Organisation \(WHO\)](#) , [Interpol](#) to announce different initiatives on piracy and counterfeiting

Meanwhile the draft Anti-Counterfeiting Trade Agreement (ACTA) [currently being discussed by developed country governments](#) would introduce a new bilateral treaty to require trading partners to demonstrate new, higher standards of intellectual property enforcement than are set out in the TRIPS Agreement. You might have seen already that ACTA [could criminalize peer-to-peer file sharing, subject iPods to border searches and allow internet service providers to monitor their customers’ communications.](#)

The EU – like the United States – is also taking steps to require trading partners to strengthen the enforcement of intellectual property rights by [updating the terms of its existing \(and any future\) trade agreements](#) .

But news this week that the Irish Republic [is willing to hold a second referendum](#) on the EU’s Lisbon Treaty raises the prospect that a little-known new power will allow the European Parliament to have a greater say in any future intellectual property enforcement provisions of trade agreements signed by the EU.

Recently, I was asked to give evidence to the European Parliament’s Committee on International Trade about this. [In the resulting report](#) I pointed out that, if the Lisbon Treaty does eventually come into force, the European Parliament will have new powers to influence – and ultimately veto – intellectual property enforcement.

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I warned the European Parliament that, in addition to the benefits that enhanced intellectual property enforcement provisions in trade agreements could bring in terms of fighting piracy and counterfeiting, such measures could have a negative impact, increasing costs and reducing the scope for developing countries to utilise TRIPS flexibilities – and one of the most significant flexibilities is the freedom for WTO Members to determine for themselves the procedures for enforcement of intellectual property rights.

I pointed out various ways that the EU could help offset the potential costs of improved intellectual property enforcement for developing countries – such as by the EU providing technical and financial assistance to help train police, customs, judiciary and other government officials in how to deal appropriately with pirated or counterfeit goods.

Yet ultimately, in my view, intellectual property rights are private rights and, as such, the main responsibility for enforcement should lie with individual rights holders themselves, not with developing country governments at all. In my opinion, private enforcement proceedings brought before national courts by rights holders, not the activities of customs officials and police officers, should form the core of an effective enforcement strategy. In the current economic climate that might be a controversial position to take.

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