# Report of the Third Study Commission

The infringement of copyrights and other intellectual property (IP rights) especially through the use of internet.

## 1. Introduction

At its 2012 annual meeting the third study commission examined whether and how legal systems of member countries cope with the infringement of IP rights.

The purpose of the questionnaire distributed to member countries prior to the annual conference was to explore the extent to which member countries have implemented legislation with regard to IP rights and in how far such legislation – including international agreements and treaties – is effective in addressing these offences.

## 2. Questionnaire results and discussion

**2.1** The commission received 28 responses to the questionnaire: Algeria, Australia, Armenia, Argentina, Austria, Belgium, Canada, Costa Rica, Denmark, Estonia, France, Georgia, Germany, Greece, Israel, Japan, Kazakhstan, Latvia, Lithuania, Mozambique, the Netherlands, Poland, Portugal, Senegal, Spain, Sweden, Switzerland, United States of America.

35 delegates from 26 countries participated in two Study Commissions sessions on the subject and provided valuable contributions to our discussions.

**2.2** Almost all countries that participated in the questionnaire have signed international agreements and treaties. To mention a few:

* the Agreement on Trade-related Aspects of intellectual property rights (TRIPS);
* the Berne Convention for the protection of Literary and Artisic Works;
* the Rome convention for Protection of Performers, Producers of Phonogram and Broadcasting Organizations and
* the Budapest convention on Cybercrime.

All countries that participated, except Georgia, are bound by agreements between two or more countries.

The Anti-Counterfeiting Trade Agreement (ACTA) is still under discussion. The Agreement itself was rejected by the European Parliament in July 2012. Finally it is good to mention the Worldwide Organization of Intellectual Property on Copyright (WIPO).

These international conventions are considered to be a good instrument also to exchange information.

**2.3** Almost all of the Third Study Commission member countries have more or less specialized agencies to investigate and identify the violations of copyrights and other intellectual property.

Israel for instance has an intellectual property unit within the Fraud Department of the Police Force. This Police unit includes five investigation teams, one of which belongs to the State unit, and the other four to geographical Police districts.

Other countries have no special agency, but the duties lie within the Police, Customs and Prosecution Service. In some countries there is collaboration between several governmental agencies.

**2.4** The deliberations during the Study Commission meetings made it clear that international cooperation is absolutely necessary to cope with the issue of IP crime and other cybercrime. Also in this field, especially through the worldwide use of internet, the world is a global village. Companies operate in different continents and applicable laws in countries differ. The delegates however did not support the idea that the principle of universality should be applied. They considered that this principle should be used only for the gravest crimes (like terrorist attacks).The current legal instruments are sufficient.

**2.5** The general opinion of the participating delegates was that Criminal Law should only be used as the ultimate remedy. Delegates stressed that the first approach should be recourse through civil cases. Given the lengths of the procedures and the enormous costs of lawyers and experts however, there must always be an open eye for settlement outside court or in forums of mediation.

If Judges are involved the delegates agree that it is necessary that the Judges have sufficient instruments (including training) to properly decide these legal issues.

During the meetings there were interesting discussions on the role of the expert or an expert witness in these matters. Given the often complexity of the legal issues at hand they are of imminent importance. But what is their role? The differences between the Common Law and Civil Law system made it, once again, clear that that is difficult to define.

**2.6** In conclusion one could say that the delegates agree that not the Criminal law procedures, but Civil law is the best instrument to safeguard the interest of IP in general. Next to that the owner of an IP should be active in safeguarding his rights. On the other hand the consumer must be held responsible for his own actions. The same counts for the owner a website.

## 3. Subject for 2013

The topic chosen for next year questionnaire and conference is

*ENVIRONMENTAL POLLUTION: is Criminal law a good instrument?*

## 4. Election of the presidency committee

During the meeting the president and vice presidents were reelected for a period of two years.

Washington DC, November 2012

Frans G Bauduin, President

Märit Bergendahl, vice president

Virginie Duval, vice president

Charles Simpson, vice president