

## How UN Agency Will Enforce Anti-piracy Agenda

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August 11, 2008: A United Nations agency dealing with postal services may soon be used to help to police or enforce violations of intellectual property rights in a move that has been little noticed by many developing countries; policy makers.

The 24th Universal Postal Congress (UPC) has been meeting in Geneva from 23 July to tomorrow August 12 2008. The UPC is the supreme authority of the Universal Postal Union.

A Committee of the UPC, on 1 August, discussed the issue of counterfeit and pirated items sent through the post. Three proposals on this topic were made, and two of them were adopted by vote.

The discussions on the proposals showed that many countries, including some developed countries, were concerned that the postal services at national level were being roped in to fight against counterfeit products when they did not have the legal and other expertise or the scope to deal with this, including on determining whether a product is counterfeit or violates intellectual property laws.

Despite concerns raised by many countries, two of the proposals were adopted, because the UPU Committee makes decisions based on a vote (after discussions that are brief and limited, compared to the length of discussions allowed in other UN organisations), rather than by consensus (as is the case in most other UN organisations).

The proposals discussed were: (1) a Resolution 40 on "Counterfeit and pirated items sent through the post"; (2) an amendment to the UPU Convention on the list of articles prohibited through the post; and (3) an amendment to the Convention on sender's liability.

The proposed Resolution and the amendment on the list of prohibited articles were adopted by member states while the amendment concerning sender's liability was rejected.

According to a source from the UPU, there has been increasing pressure from the World Customs Organisation (WCO) to adopt proposals on counterfeiting and pirated items.

The WCO is among the international organisations that are being used to push forward an "Anti-Counterfeiting Agenda" drawn up by major developed countries. Other organisations are the World Health Organisation (WHO) and the World Intellectual Property Organisation (WIPO).

The UPU, with its Headquarters in Berne, is the primary forum for cooperation between postal-sector players. It has 191 member countries and is a UN specialised agency. It sets the rules for international mail exchanges and makes recommendations to stimulate growth in mail volumes and to improve the quality of service.

According to a policy expert on IPRs, Susan Sell, proponents of the IP maximalist agenda are using the concepts of "counterfeiting", "piracy" and "enforcement" in international organisations to push their agenda to set or enforce higher IP standards.

Sell, who is Director of the Institute for Global and International Studies and Professor of Political Science and International Affairs at George Washington University (USA), in a recent paper said the IP anti-counterfeiting and enforcement agenda involves hundreds of OECD-based global business firms and their foreign subsidiaries.

It also includes initiatives and programmes such as the Anti-Counterfeiting Trade Agreement (ACTA); Interpol's Standards to be Employed by Customs for Uniform Rights Enforcement (SECURE); the US Chamber of Commerce's (USCC) "Coalition against Counterfeiting and Piracy Intellectual Property Enforcement Initiatives: Campaign to Protect America"; the Security and Prosperity Partnership of North America (SPP); WHO's "International Medicinal Products Anti-Counterfeit Taskforce" (IMPACT); WIPO's Advisory Committee on Enforcement (ACE) discussions; bilateral and regional free trade agreements, investment treaties and Economic Partnership Agreements.

These new anti-counterfeiting and enforcement initiatives are the latest mechanisms to achieve the goals of what Sell calls the "IP maximalists", which is to "ratchet up" IP protection and enforcement worldwide, beyond the TRIPS Agreement.

Part of the aim is to counter recent setbacks in raising IP standards at the multilateral level, and to counter public campaigns such as the access to knowledge and medicines movement, says Sell.

The proposals before the UPU signify that UPU is the latest addition to the "strategic forum shifting" for pushing forward the "Anti-Counterfeiting" Agenda. Resolution 40 which was adopted (with an amendment proposed by Brazil), in its operative paragraphs: "Urges UPU member countries in the context of national legislation to encourage their postal administrations to:

- take all reasonable and practical measures to support Customs in their role of identifying counterfeit and pirated items in the postal network;
- cooperate with the relevant national and international authorities to the maximum possible extent in awareness-raising initiatives aimed at preventing the illegal circulation of counterfeit goods, particularly through postal services."

To implement the actions, the Resolution mentions several "performance indicators", including assistance given to designated operators to develop strategies at a national level in cooperation with national customs authorities.

France, in introducing the Resolution, said that the postal network was used to send counterfeit and pirated items, adding that it was the international customs organisation which raised the issue.

#### Failed vote

Despite several countries wishing to make statements on the issue, the Chair cut the debate short and called for a vote.

In response, South Africa raised a motion to continue debate, which was put to vote, but the vote did not succeed, and as a result, the Resolution was put to vote.

95 countries voted in favour of the Resolution, 22 against and 20 countries abstained from voting.

The result of the outcome has now led several countries to file an appeal to the plenary session, when the Resolution comes up for final adoption.

The appeal is co-sponsored by Egypt, India, Jordan, Libya, Malaysia, Pakistan, Saudi Arabia, South Africa, Syria, China and Turkey.

France and Italy supported by Great Britain and Netherlands also introduced a proposal to amend Article 15 of the 2004 Bucharest Convention which pertains to the list of articles prohibited (to be sent by post).

They proposed to include in the list of prohibited articles: (1) a new para 2.1.2bis on "counterfeit and pirated articles"; (2) the word "other" in front of "articles the importation or circulation of which is prohibited in the country of destination"; and (3) a new paragraph 2.1.5bis on "where prohibited articles are identified, they shall be treated in accordance with the national legislation".

The proposal added that "with the introduction of the article, the sender will be obliged to take responsibility for the content of the item when she signs the CN 23 form".

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