



**DIRECTORATE FOR SCIENCE, TECHNOLOGY AND INDUSTRY  
COMMITTEE ON INDUSTRY, INNOVATION AND ENTREPRENEURSHIP**

**DSTI/IND(2008)15/REV2  
For Official Use**

**DRAFT OECD RECOMMENDATION ON COMBATING COUNTERFEITING AND PIRACY**

**Meeting to be held on 30-31 October 2008**

*This document is being referred to the CIIE Delegates for consideration and decision, under item 7 of the agenda.*

For further information, please contact Danny Scorpecci (+33 1 45 24 94 33);  
[danny.scorpecci@oecd.org](mailto:danny.scorpecci@oecd.org)

**JT03253903**

## SECRETARIAT NOTE

1. This paper sets out a revised draft text for an OECD Recommendation on Combating Counterfeiting and Piracy that takes into account a number of drafting suggestions received from Delegations made on document DSTI/IND(2008)15/REV1. Amendments are shown in revision mode in this draft for ease of reference.
2. Delegates should note that this redraft does not take into account comments made on the earlier draft that would require policy decisions to be made by the Secretariat. In particular, this affects a request received from a number of OECD countries and the European Commission to broaden the scope of the Recommendation by replacing most references to counterfeiting and piracy with “Intellectual Property Rights infringements”. This is a significant policy issue which is outside the ability of the Secretariat to resolve through further drafting, and will need to be discussed by the CIIE.
3. Following a discussion of the draft, and the resolution of any outstanding policy issues, Delegates to the CIIE are invited to:
  - i.* **agree** a draft Recommendation (on Combating Counterfeiting and Piracy or broader application) that can be submitted to the OECD Council (via their Executive Committee) for adoption.

## DRAFT OECD RECOMMENDATION ON COMBATING COUNTERFEITING AND PIRACY

### Introduction

4. This document presents a proposal for an OECD instrument concerning measures to combat intellectual property infringements, in particular trademark counterfeiting and copyright piracy, as defined by the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights. This builds on the analysis, conclusions and recommendations of the 2007 OECD study on *The Economic Impact of Counterfeiting and Piracy*, conducted under the auspices of the Committee on Industry, Innovation and Entrepreneurship (CIIE).

5. The study showed that international trade in counterfeit and pirated products could have been up to USD 200 billion in 2005. This total does not include domestically produced and consumed counterfeit and pirated products, nor the significant volume of pirated digital products being distributed via the Internet. If these items were added, the total magnitude could well be several hundred billion dollars more.

6. Counterfeiting and piracy are illicit businesses in which criminal networks thrive. The study shows that counterfeited and pirated items that are produced and distributed are often substandard and can even be dangerous, posing health and safety risks. Economy wide, counterfeiting and piracy undermine innovation, which is key to economic growth. The CIIE study concluded that the magnitude and effects of counterfeiting and piracy are of such significance that they compel strong and sustained action from governments, businesses and consumers.

7. Various existing international treaties address the protection of intellectual property rights (IPRs). The most comprehensive multilateral legal instrument which provides an enforceable requirement for governments to provide minimum standards of protection and enforcement for IPRs is the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).<sup>1</sup>

8. Although the WTO membership encompasses 153 countries, and the TRIPS Agreement includes enforceable provisions for consultation and dispute prevention and settlement between governments with respect to related intellectual property rights, widespread counterfeiting and piracy continues in physical and digital form.

~~6. A number of relevant international instruments currently exist (eg The Convention on Cybercrime of the Council of Europe) that relate to counterfeiting and piracy and most OECD Members are currently engaged in negotiations aimed at establishing an Anti Counterfeiting Trade Agreement.~~

---

<sup>1</sup> Various international treaties administered by the World Intellectual Property Organisation, such as the WIPO Copyright Treaty and Performances and Phonograms Treaty, also include important IPR-related commitments. Provisions in some regional trade agreements and other regional instruments provide more stringent obligations than the TRIPS Agreement with respect to the treatment of IPRs, but these agreements cover much smaller groupings of countries than the WTO membership (e.g., the parties members of the North American Free Trade Agreement or members of the European Communities).

~~Notwithstanding these, there is broad agreement that there is an urgent need for action at the OECD level to combat counterfeiting and piracy.~~

9. The objective of an OECD instrument on counterfeiting and piracy is to establish an indication of the expectations incumbent upon OECD member countries with respect to effective protection and enforcement of intellectual property rights. The promulgation of such an instrument would be a useful reaffirmation by OECD members of the importance placed on effectively dealing with counterfeiting and piracy, and the mutual responsibility of upholding intellectual property rights, while serving as a signal to potential members of the expectations in this regard.

~~8. OECD Member countries have also highlighted the importance of adequate protection of intellectual property rights in a range of other OECD instruments, such as the Declaration and Decisions on international investment and multinational enterprises, the OECD Code of Liberalisation of capital markets and certain other bilateral investment treaties, as well as other instruments of the Organisation. OECD Members bilateral investment treaties also provide protection to intellectual property rights insofar as they qualify as an investment.~~

~~9. Further, the OECD Seoul Declaration for the Future of the Internet Economy commits Ministers to combine efforts to combat digital piracy with innovative approaches which provide creators and rights holders with incentives to disseminate works in manner that is beneficial to creators, users and economies as a whole. The Declaration also encourages new collaborative internet-based models and social networks for the creation, distribution and use of digital content that fully recognise the rights of creators and the interests of users.~~

10. In preparing the draft Recommendation presented herein the CIIE has consulted the Committees on Competition; Consumer Policy; Information, Computer and Communications Policy; Investment; Scientific and Technological Policy and Trade.

11. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

#### THE COUNCIL

- a) noted document C(2008)XX;
- b) adopted the draft Recommendation of the Council on Combating Counterfeiting and Piracy set out in the Annex to document C(2008)XX and agreed to its declassification;

ANNEX

**DRAFT OECD RECOMMENDATION  
ON COMBATING COUNTERFEITING AND PIRACY**

Industry, Innovation and Entrepreneurship

THE COUNCIL,

Having regard to Articles 3 and 5 (b) of the Convention on the Organisation for Economic Co-operation and Development of 14<sup>th</sup> December 1960;

**Recognising** that trademark counterfeiting (“counterfeiting”) and copyright piracy (“piracy”) in both physical and digital form affect both OECD Member countries and non-member economies;

**Recognising** that counterfeiting and piracy are national and global problems that necessitate simultaneous action on different fronts to combat them, including in areas such as legislation and regulation, investigation and law enforcement, border control, education and public awareness, consumer protection, international trade and investment;

**Recognising** that counterfeiting and piracy are illicit activities in which criminal networks thrive, and where production and distribution result in goods that are often substandard and can even be dangerous, posing potential health and safety risks that can be life-threatening;

**Recognising** that counterfeiting and piracy undermine various private and international economic activities, and that adequate protection of intellectual property rights is essential to ensuring thriving environments for innovation and business, including for international investment, which are especially sensitive to the level of protection of these rights; ~~and to provide creators and rights holders with incentives to create and disseminate works in a manner that is beneficial to themselves, users and our economies as a whole;~~

~~**Noting** the development of new collaborative internet-based models and social networks for the creation, distribution and use of digital content that fully recognise the rights of creators and the interests of users;~~

**Recognising** the existing international and other agreements concerning protection and enforcement of intellectual property rights, such as those administered under the auspices of the World Intellectual Property Organisation (WIPO), and the World Trade Organisation’s Agreement on Trade-Related Aspects of Intellectual Property Rights (WTO TRIPS Agreement), which together establish an internationally-accepted legal framework that recognises intellectual property and lays out rights and procedures with respect to this property, including minimum standards of protection and enforcement;

**Noting** existing anti-counterfeiting and piracy initiatives, including efforts of Members to enhance IPR enforcement through examination and improvement of the global framework;

Noting that OECD Member countries have also highlighted the importance of adequate protection of intellectual property rights in a range of other OECD instruments, such as the Declaration and Decisions on international investment and multinational enterprises, and the OECD Code of Liberalisation of Capital Movements;

Noting the OECD Seoul Declaration for the Future of the Internet Economy that commits Ministers to combine efforts to combat digital piracy with innovative approaches which provide creators and rights holders with incentives to disseminate works in manner that is beneficial to creators, users and economies as a whole. The Declaration also encourages new collaborative internet based models and social networks for the creation, distribution and use of digital content that fully recognise the rights of creators and the interests of users;

**Considering** that the current magnitude and the economic, health and safety effects of counterfeiting and piracy are of such significance that they compel strong and sustained action from governments, business and consumers.

On the proposal of the Committee for Industry, Innovation and Entrepreneurship, in consultation with the Committees on Competition; Consumer Policy; Information, Computer and Communications Policy; Investment; Scientific and Technological Policy and Trade:

#### **I. RECOMMENDS:**

- (1) That Member countries develop and implement strong and sustained measures to respond to the challenges of counterfeiting and piracy building upon a foundation of compliance within their jurisdictions with at least the standards for intellectual property rights protection and enforcement provided under the WTO TRIPS Agreement, as well as with their obligations under those WIPO Agreements and other relevant agreements to which they are party.
- (2) That Member countries implement and make full use of existing agreements and arrangements for mutual international legal assistance in order to combat counterfeiting and piracy and where appropriate enter into new agreements or arrangements for this purpose.
- (3) That Member countries provide remedies set at levels sufficient to redress effectively the damage caused and that constitute an effective deterrent to future acts of counterfeiting and piracy.
- (4) That Member countries ensure that measures taken to protect against counterfeiting and piracy do not unduly impede commerce and innovation, undermine consumer privacy, or restrict the fair and legitimate use and flow of information.
- (5) That Member countries provide border measures of sufficient strength to impede the international flows of counterfeit and pirated goods, including where applicable by ensuring that Free Trade Zones (FTZs) and similar areas in their territories are within the jurisdiction of the competent intellectual property enforcement authorities.
- (6) That Member countries, consistent with their domestic and international legal obligations, consult and otherwise co-operate with appropriate authorities in other economies in investigations and other

legal proceedings concerning specific cases of counterfeiting and piracy through such means as appropriate sharing of information spontaneously or upon request, and the provision of evidence.

- (7) That Member countries collect and publicise enforcement data as appropriate to enhance transparency and deterrence.
- (8) That Member countries, in carrying out investigations and enforcement activities, consider the manner in which coordination and collaboration, on a voluntary basis, with stakeholders (including rights-holders, industry, intermediaries and consumers) might usefully contribute to combating counterfeiting and piracy activities, while respecting rights of defence and the principle of proportionality and preserving legitimate commerce, innovation and the lawful use of information. In particular, where appropriate Member countries should consider promoting public/private partnerships as well as collaboration agreements between enforcement authorities that can help in the early detection and effective reduction of counterfeiting and piracy.
- (9) That Member countries encourage the holders of intellectual property rights and their representatives to support the competent enforcement authorities in the fight against counterfeiting and piracy in an effective way, for example by exchanging relevant information.
- (10) That Member countries take the necessary steps to ensure the availability of adequate enforcement resources and to competent authorities for the effective implementation of measures described in this Council Recommendation.
- (11) That Member countries promote consumer awareness of the negative impacts associated with counterfeiting and piracy, and facilitate and encourage the provision and communication of balanced and relevant information, in a timely manner, to all stakeholders with regard to counterfeiting and piracy activities.
- (12) That Member countries seek to enhance collaboration with and assist non-member economies in the development and implementation of strategies for combating counterfeiting and piracy activities.
- (13) That public authorities of Member countries, at various levels, provide support to SMEs confronting counterfeiting and piracy in view of the significant contribution of such enterprises to innovation and in view of the limited resources available to them for the enforcement of their IPRs.
- (14) That Member countries encourage industry to take adequate and proportionate measures against counterfeiting and piracy including through the development and use of new technologies.

**II. INVITES** non-member economies to associate themselves with this Recommendation and to implement it.

**III. INSTRUCTS** the Committee for Industry, Innovation and Entrepreneurship:

- to serve as a forum to Member countries and non-member economies that have associated themselves with this Recommendation, for sharing experience under this Recommendation;
- to promote this Recommendation with other relevant Committees and Bodies of the OECD;
- to report to Council in five years on experience with this Recommendation.