



Foreign & Commonwealth Office

Record of roundtable discussion on EU Enlargement at the Intellectual Property Office, London, 19 June 2014

On 19 June 2014 the following participants took part in a roundtable discussion at the Intellectual Property Office:

- Catriona Hammer, CIPA President
- Andrew Yeates, BCC Director
- Carrie Hartnell, techUK
- Kate O'Rourke, The Institute of Trade Mark Attorneys

1. Participants began by noting that the creative industries are second only to the financial services in terms of importance to the UK's economy. This had been in line with the wider shift in the UK from a goods to a services-based economy. As one of the largest markets, it was therefore important that the UK continued to have a say in matters that could affect Intellectual Property (IP) policy with the EU, including EU Enlargement.
2. Participants agreed that, regardless of the specific area of IP being considered, the major challenge was the extent to which accession countries would need to adapt in order to reach acceptable levels of competence on IP issues. This was a lesson learnt from the previous 'big bang' enlargement of 2004.

Enforcement of EU IP Regulation, and the capacity of accession countries

3. Participants agreed that the accession of further countries into the EU, while offering commercial opportunities, also presented risks regarding piracy, illegal streaming, and counterfeit operations. All agreed that this could have a significant and negative impact upon UK prosperity objectives if left unaddressed. Some agreed that the accession of candidate countries could help ensure the EU had direct engagement with Member States, which might help reduce these risks. Others noted that the key to solving these issues lay not only in meeting the *acquis* and transposing EU directives into national law, but in the effective implementation of these laws. A key concern was that countries sign up to EU

directives but that, through a lack of capacity, political will, or both, these directives are not enforced. There was a suggestion, for instance, that some countries which were new to some of the concepts relating to IP were pushing for trade secrets to be shared under litigation procedures. These potential infringements needed to be addressed.

4. Participants believed that part of the solution was for the Commission to take a strong steering role to aid implementation of the necessary regulations in accession countries where capacity was low. One participant suggested that a review of accession countries' enforcement of IP laws would not necessarily be sufficient; significant reform in order to raise capacity and harmonise accession country law with (e.g.) common law in the UK may be necessary. Participants agreed that, provided the correct legislation was enforced, these difficulties would be surmountable. One participant noted that the Community Trade Marks System, in the Office for Harmonisation in the Internal Market, held financial surpluses which could be used to assist Member States increase capacity and strengthen governance systems.
5. Montenegro was cited as an example where there was no separate IP Court and limited resources to cover the area; separate support for the development of IP courts was suggested as an area of focus for future enlargement rounds.
6. The Unified Patent Court was also raised with a concern that if the MS were able to choose the location for their hearing, there would be a risk that some MS (particularly some of the potential accession states) may be biased towards patent holders in order to encourage the hearings in their country, for economic reasons.
7. There was a discussion between participants about enlargement increasing the risk of trade mark conflicts when a CTM is automatically extended to a new MS but a similar national mark already exists.

Piracy, counterfeit goods and patent trolls

8. Participants highlighted some particular concerns. The patchy implementation of IP protection legislation (for instance, customs checks) in some countries could present serious risks, as could ambivalent or complicit behaviour over counterfeit goods. Dangers included counterfeit goods being transported from a third country to another third country, with a stop-off in an EU Member State. If customs checks were not sufficiently robust, the goods could find themselves within the EU, taking full advantage of the freedom of goods within the

Single Market. While this alone was a serious commercial concern, the risks went deeper; counterfeit products in the aviation and medical industries could have dangerous consequences for public safety, and such illicit trade was proved to fund organised crime and terrorist organisations.

9. Participants also noted a risk that was previously flagged during previous accession rounds. There was a concern that significant quantities of counterfeit goods would be shipped to an accession country, ready for onward transmission when the country was let into the Single Market. These fears did not come to pass, though there was a risk of it happening during a future enlargement round.
10. Participants agreed that, should some EU MS develop a poor record on issues such as counterfeit goods, piracy and illegal streaming, the EU's strong voice on the matter in the international community could be seriously compromised in the future.
11. Some participants noted there was a risk that, without sufficient capacity or the local laws to cover IP issues adequately, local courts in accession countries may become the base of 'patent trolls', who make speculative attempts to take licensing fees from companies despite the fact that they do not make goods or supply services based on the patent in question.

The role of the EU in enforcing IP protections

12. Participants supported the need for Treaty compliance checks to assess that new and acceding Member States were meeting the relevant *acquis*. This would result in an extension of competence by the EU over Member States. Aside from the wider political context, participants thought that the impact on the UK would be negligible; standards and enforcement in the UK are high and risks to the UK IP industry would be minimal.