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**UN/ECE ADVISORY GROUP ON THE PROTECTION AND IMPLEMENTATION OF
INTELLECTUAL PROPERTY RIGHTS FOR INVESTMENT**

Addendum 1

**Report on the Consultative Visit to Estonia
6 -7 April 2000, Tallinn**

Introduction

1. The current report presents the conclusions of the Consultative Visit to Estonia by the UN/ECE Advisory Group for the Protection of Intellectual Property Rights for Investment. The objective of the Consultative Visit was to discuss, with experts from the Government of Estonia, the situation regarding intellectual property rights in Estonia and to develop jointly recommendations for the improvement of intellectual property protection.

Participation

2. The consultative meeting with the Government of Estonia was conducted by members of the Advisory Group (see the list of participants). The meeting was attended by government representatives from the Ministries of Culture, Foreign Affairs, Justice and Economic Affairs as well as by representatives from the Estonian Competition Board, National Customs Board, National Police Board and the Patent Office. Several representatives of the judiciary also attended: from Estonian Supreme Court, Tallinn District and City Courts, and the Tallinn Administrative Court. Representatives from the United Nations Resident

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Coordinator's Office in Estonia and the European Union's Office in Tallinn were also present. The following rights holders' associations also attended the meeting: Estonian Authors Society, Phonogramme Producers Association, Association of Motion Pictures, Audiovisual Authors, Business Software Alliance and Nordic Copyright Bureau.

3. The list of participants is attached.

Discussion and Recommendations

4. The meeting was opened by Mr. Priit Pallum, Deputy Under-Secretary, External Economic Policy and Consular Affairs.

5. After the opening session, the meeting was organized in the following four sessions:

- (I) Status Report on the Intellectual Property Rights Situation in Estonia
- (II) Intellectual Property Legislation
- (III) Intellectual Property Rights Enforcement, and Foreign and Domestic Investment
- (IV) Education, Training and Enforcement Procedure
 - (a) Civil Servants involved in Intellectual Property Rights Enforcement
 - (b) Education and Training in Intellectual Property Rights Enforcement

6. A summary of the major discussion points and recommendations for each of the above sessions is given below. This is followed by a list of further actions to be taken.

I. Status Report on the Intellectual Property Rights Situation in Estonia

7. At the beginning of this session, Ms. Irina Savelyeva and Mr. Steven Jennings of the Advisory Group highlighted the status of intellectual property rights (IPR) enforcement in Estonia and gave an overview of the legislative and enforcement structure with reference to the background paper prepared by the consultants.

8. They noted that over the last two to three years, Estonia has implemented a number of laws related to intellectual property, all of which were based on international treaties. In general terms, these laws provide adequate intellectual property protection. At the same time, with reference to the background paper prepared for the consultative visit, the representatives of the Advisory Group drew the attention of the meeting to several legal provisions, which the Estonian legislature might wish to revise in the future.

9. The government representatives informed the meeting of forthcoming revisions in Estonian intellectual property legislation, which were intended to improve its quality and foster IPR protection.

Copyright

10. A representative of the Ministry of Culture highlighted the latest developments in the area of copyright legislation. The instruments of accession to the International Convention for the Protection of Performers, Producers of Phonogrammes and Broadcasting Organisations (Rome Convention) and to the Convention for the Protection of Producers of Phonogrammes against Unauthorised Duplication of their Phonogrammes (Geneva Phonogrammes Convention) were deposited on 3 January 2000. Now Estonia is a member of both

conventions: of the Rome Convention since 28 April 2000 and the Geneva Convention since 28 May, 2000. The future ratification of the new World Intellectual Property Organization (WIPO) treaties is connected with the process of adoption of the new EU copyright directive, which is currently under discussion in the European Union.

11. A new draft of amendments to the Estonian Copyright Act is under preparation with the goal of introducing certain provisions connected with the collective administration of rights. However, further amendments in line with the WIPO treaties may be introduced earlier within the scope of the draft amendments to the Estonian Copyright Act currently under preparation.

12. The following amendments to the Copyright Act, in order to bring it into line with existing international standards, were discussed:

- bringing the definition of a “phonogram” in line with the international conventions concerning the initiative and responsibility for first fixation,
- extending of the notion of publication to cover simultaneous publication;
- clarifying the relationship between copyright and neighbouring rights;
- introduction of “presumption of ownership” with respect to neighbouring rights;
- clarifying the notion of exhaustion of distribution rights (on a national basis),
- including the “making available right” in accordance with the newest WIPO treaties.

13. The representative of the Ministry of Culture also informed the meeting that as a part of drafted amendments to the Copyright Act the Government intended to licence “approved” collective societies to represent rights holders.

14. The meeting welcomed the forthcoming legislative changes and emphasized the importance of the introduction of a “presumption of ownership” clause for neighbouring rights in the same way as it is established for copyright because this would facilitate the ability of enforcement bodies to take action against neighbouring rights infringements.

Patents

15. The Chairman of the Estonian Patent Office informed the meeting that a new patent law was being drafted and was scheduled to be implemented by 1 July 2002, which is the date when Estonia accedes to the European Patent Convention.

16. The new law will address the two issues noted by the authors of the background paper as weaknesses of the current legislation. With regard to the first issue, the law will describe the mechanisms for attributing a specific value to compulsory licences so that the owner is adequately compensated. With regard to the second, it will stipulate the rights of licensees to bring an action as a beneficial owner without having an obligation to record the licence.

Trademarks

17. The meeting agreed that in the areas of both patents and trademarks, Estonian laws had closely followed the stipulations in the TRIPS agreement. The Advisory Group experts had also referred to several stipulations in the existing laws and practice which might be worth revising in the future. The government representatives made several clarifications regarding the legal texts currently in force and informed the meeting of forthcoming amendments in practice and interpretation.

18. The representative of the Patent Office confirmed that, based on current legislation, in opposition proceedings the opponent could object to the registration of a trademark on all the relative and substantial grounds upon which the Patent Office itself could refuse the application. He also informed the meeting that the Vienna classification system was used for device mark classification.

19. The meeting agreed that Community-wide (as opposed to international) exhaustion of rights would be advisable when Estonia acceded to the European Union. According to the information provided by government representatives, this provision would be incorporated in the relevant legislation when that legislation was next revised.

20. The meeting noted that it would be desirable for the right holders to have an opportunity to register trademarks for sounds and smells. The Patent Office informed the meeting that it currently envisaged accepting such trademarks for registration, providing these trademarks could be represented graphically.

21. It was also agreed that the “test for acquired distinctiveness” should be “re-modelled” so that instead of the WIPO test for a “famous mark” a more practical and attainable standard of a “mark with a reputation” could be used.

22. Finally, the meeting noted that the speed of disseminating innovation could be increased if the conditions for issuing specific licences were modified. These conditions are in fact modified in the draft Trademarks Act. In particular, this draft states that in cases where the proprietor has consented to use of its trademark, no specific licence needs to be produced or recorded. The Patent Office representative confirmed that for patents this requirement would be addressed in the same way.

II. Intellectual Property Legislation

23. This session discussed administrative and legal measures that needed to be implemented for better IP enforcement. The areas concerned were principally matters of national civil, criminal and administrative law and the procedures under which IP laws were implemented through various administrative and enforcement bodies, including the courts.

24. While discussing criminal and other sanctions available in Estonia, one of the most significant points highlighted at the meeting was the need for the “mere possession” of an infringing article to be considered as an offence (this is not the case under the legislation in force). This was identified as creating particular problems for the police in their role in enforcing IP rights. While certain aspects of the Customs Act seem to comply with this requirement already, it was considered desirable to incorporate such provision into the new Criminal Code and other legislative acts.

25. The Advisory Group will provide to the Government more information on the experience of other jurisdictions regarding this stipulation to help demonstrate its importance for enforcement.

26. It was also noted that the existing term of imprisonment for IPR offences of up to 3 years under the Estonian Criminal Code would not be sufficient for combating organized crime which is nowadays seriously involved in IP piracy. It was proposed to consider this matter in the process of preparing the new Criminal Code taking into account infringements committed by a group of people on initial conspiracy and violations committed as organized crimes.

27. The meeting fully appreciated the information provided by the Ministry of Justice on the reservations that may exist in relation to extending prison sentences in general and for criminal IP matters, in particular. The meeting discussed this issue at length and agreed that, to become a more important deterrent, prison sentences for the most important piracy cases should be extended by at least one year to 4 years. In this way, large-scale piracy (and particularly the element run by organised crime) could be re-classified as a “serious” crime, creating an additional stimulus for the Police to investigate IPR infringement violations.

28. The Government representatives confirmed that there was no criminal responsibility stipulated by the Estonian Criminal Code for managers or directors within a company committing infringing acts. The meeting agreed that such a responsibility would foster enforcement because this would not allow counterfeiters to reduce the risk of criminal pursuit through operating under a company, rather than as a private person.

29. The Advisory Group will make available to the Government information on how the situation regarding the criminal liability for individuals infringing IP rights is handled by other countries so that an appropriate model can be found and, perhaps, incorporated in the new Criminal Code.

30. In the process of discussing the existing court system in Estonia it was mentioned that in some countries the best option is to have specific courts or chambers specializing in IP matters. However, in Estonia, given the likely volume of cases, such a court could not be a realistic solution. The meeting agreed that, instead, a group of judges should be trained to develop a higher expertise in this area of law in order that IPR cases could be directed to them. Such a scheme was already envisaged when taking the decision that Patent matters would be exclusively decided in the City Court of Tallinn. The meeting requested the Advisory Group to explore ways and means to assist the judiciary system with such training.

31. The judges present informed the meeting that those individuals who were convoked to appear in court and did not turn up effectively frustrated the legal process. The meeting discussed several potential remedies to deal with this situation. One of them would be the implementation of the “mere possession” provision (see above), which would create a presumption of guilt and enable a “judgement in default”.

32. The meeting requested the Advisory Group to provide information and examples as to how “judgements in default” were used in other jurisdictions. Legal provisions condemning offenders for “contempt of court” in the case of repeat offences could be also an effective means of combating both repeat offenders and non-attendance of court sessions by individuals (as under German or British law, for example). The Government might wish to consider whether similar stipulations should have a place in their country’s legal system and the Advisory Group agreed to provide examples from both of the aforementioned jurisdictions.

33. As for administrative remedies available under the Code of Administrative Offences, the government representatives confirmed that while legal persons were not subject to criminal law they were pursued under administrative law. The latter permits the imposition of heavy fines, and the seizure of both the infringing goods and the technical means for their production.

34. Currently, Administrative Law stipulates that the case must be heard two months after it is filed. To give both rights holders and enforcement bodies more time to assemble the necessary evidence, there is a proposal to stipulate that the hearing should be fixed between six and 12 months from the filing of the complaint.

35. The meeting considered, however, that such a stipulation would not be conducive to prompt enforcement and advised the Government to consider more appropriate ways of amending the Administrative procedure without necessarily forfeiting, in all cases, the ability to speedily and urgently treat cases.

36. One proposed solution, without altering the basic rule, would be to allow for limited extensions of time for delaying a hearing (where needed), provided that the party concerned could adequately substantiate the need for a delay to a judge. The Advisory Group agreed to provide information to the Government on how such 'extensions of time' were made possible in legal proceedings in other jurisdictions.

37. The meeting noted that, according to current civil procedure legislation, no *ex-parte* search and seizure order or interlocutory relief procedure was available in Estonia. The government representatives explained that certain measures for "securing evidence" were available under Article 156 of the Code of Civil procedure; however these seem to be rather limited in their scope. The meeting considered that it would be very useful if the government bodies concerned could actually verify the correct interpretation of Article 156 and, if required, introduce procedural improvements.

38. It was also noted that the rights owners require the possibility to request an *ex parte* order without having to specify the possible damage of an eventual infringement. The Advisory Group agreed to provide examples of best practices of *ex parte* orders or interlocutory procedures in other countries, so that this instrument could be better known and, if so desired, incorporated in the Code of Civil Procedure.

39. Government experts confirmed that under current criminal procedure search and seizure were possible, although only upon their reliable identification as counterfeits (i.e. it was not possible to make a temporary seizure pending confirmation of the counterfeit nature of the goods). In this context, the experts of the Advisory Group referred to a selection of European best practices in this area and expressed their hope that temporary seizure and search and seizure orders might find their way into the Criminal Procedure Code as effective anti-piracy measures.

40. The meeting agreed that the current Civil Code did not provide clear rules for the calculation of damages. According to the Estonian experts speaking at the meeting, the relevant guidelines may be present in the new draft regulation act.

41. The government experts informed the meeting that the use of private investigators' services to collect evidence and information on unlawful IP practices needed further consideration in Estonia, particularly with regard to the "surveillance" laws. This will help to clarify the circumstances under which evidence can be legally obtained and used in legal proceedings.

42. The Advisory Group will provide to the Government translated copies of the "surveillance" laws of various countries. This will allow the Government to then assess to what extent Estonian laws might be revised in line with other national practices with regard to facilitating the means of gathering evidence and information to counter piracy.

43. It was not clear to the Advisory Group experts whether the Competition Act extended to cover intellectual property matters. The meeting requested the Competition Authority to provide clarification on this subject. The representative of the Competition Board mentioned that the current Competition Act did not directly cover intellectual property matters. The Advisory Group agreed to provide the Government with pertinent examples from other jurisdictions.

44. There was a consensus agreement that, in order to make enforcement effective, government agencies concerned should not content themselves with identifying minor offenders, usually final distributors of pirated and counterfeit goods. Rather, they should endeavour to find major offenders who are producing and managing the distribution of those goods.

III. Intellectual Property Rights Enforcement, and Foreign and Domestic Investment

45. At the beginning of this session, a member of the Advisory Group, Mr. Stefan Krawczuk, made a presentation on the contribution of branded industries to economic growth, based on a study commissioned by the International Brand Association. These industries, which include the recording industry, but also the pharmaceutical, aircraft and automobile industries, base their production on the results of R&D embodied in patents, trademarks (brands) and copyright, and therefore depend heavily on IP protection. As an example, in Europe the recording industry has annual sales of about USD 13 billion and employs some 600,000 people. About 10-15 percent of annual turnover is re-invested into research and development (R&D).

46. The investment in the R&D based industries is particularly risky. For example, fewer than 2 projects out of 10 in the recording industry are successful. In countries with high piracy levels, pirates copy only the successful records, depriving record companies of return on their investment into these projects. There is a strong deterrent, therefore, for companies dependent on patents, trademarks and copyright, to invest in economies with high IP piracy rates.

47. During the general discussion, participants called attention to the detrimental consequences of counterfeiting and piracy. These consequences are true for all countries, even those that are very developed. However, they noted that these effects of counterfeiting and piracy were not well known among the population, nor even among some officials. Therefore, they noted that it was worthwhile recalling these consequences as outlined below.

- Illegal copies of drugs, food and alcohol products could harm or even cause the death of consumers as a result of poor quality control and/or the use of illegal or sub-standard ingredients. Illegal copies of replacement parts for cars, trucks and aircraft also can endanger lives.
- The economy loses employment because, as was already mentioned, neither foreign nor domestic companies want to invest in economies where the return on their innovation can not be assured. In addition, companies often either fail to expand or are forced to reduce their workforces as a result of sales lost to counterfeit or pirated goods.
- Other losses linked to inadequate IPR enforcement include those of tax revenues from lower and unpaid value-added tax, unpaid import tariffs (from smuggled goods) and unpaid corporate taxes both from companies whose business was stolen and from the many sellers of such products who operate on the black market. As a result, less money is available for government support of local culture, infrastructure development and essential services.
- Local culture suffers because artists lose revenues owing to royalty non-payment and cannot support themselves. Even if their own works are not pirated, the pirated copies of international artists' works become cheaper than legal copies of local artists' works, resulting in lost sales.

- Poor enforcement of intellectual property rights are detrimental to a country's ability to fulfil its international obligations under the World Trade Organization (WTO) and various international conventions.
- Counterfeiting and piracy are often linked to organized crime and the laundering of money from drugs and other illegal activities. In addition, widespread counterfeiting and piracy create a small population of manufacturers and sellers that operate in an environment where illegal and criminal activities are accepted and have a tendency to spread into other areas.

48. The participants also recalled the policy measures by Governments required to strengthen IPR enforcement and support investment. Those included: (a) adequate IPR legislation; (b) sufficient staffing of enforcement agencies and adequate technical means to enforce the legislation; (c) support to companies conducting domestic R&D and implementing innovation projects; (d) and programmes of support to domestic culture (composers, film-making, radio and television broadcasting, etc.).

49. The meeting noted that the Government has modified legislation to foster innovation. For example, with reference to the relevant articles of the current Competition Act, several important exemptions ("block exemptions") pertaining to IPRs have been introduced by the Government. These block exemptions relate to the following categories of restrictive agreements: technology transfer, specialization, franchising, and research and development.

50. A representative of the Estonian Phonogramme Producers indicated that while in legislative terms the level of IP protection was sufficient, it still caused serious problems in terms of practical enforcement.

51. The representatives of local rights holders indicated that certain steps by the Government also helped support Estonian culture: for example 30 per cent of music broadcast by non-commercial government-sponsored radio stations has to be of local origin. Every year, government subsidies to local publishers of classical and contemporary music amount to one million Estonian kroon. Still, according to a representative of Estonian Phonogramme Producers Association, all Estonian popular music records are produced with the help of sponsors.

52. The representative of the Ministry of Culture informed the meeting of a study being conducted under the auspices of the PHARE programme by the Institute of Economic Research to ascertain the relative levels of piracy in Estonia. The Advisory Group requested the Ministry of Economic Affairs to send the Group more information on this study and, if possible, when the study has been completed, a summary of the findings translated into English.

53. The meeting agreed that better enforcement could contribute to the broadening of the local market, encourage foreign and domestic investment, and increase the tax receipts of the Government.

IV. Education, Training and Enforcement Procedure

(a) Civil Servants Involved in Intellectual Property Rights Enforcement

54. This part of the session discussed the structure of the enforcement bodies under the Government. The participants also exchanged opinions on ways to raise the efficiency of these bodies, including the issue of coordination between enforcement officials belonging to different government agencies and the judiciary. The members of the Advisory Group shared their views on the experience of other jurisdictions and suggested some improvements in the Estonian enforcement system.

55. In particular, the experts of the Advisory Group informed the meeting of the use of officers responsible for “compliance with market standards” for the purposes of enforcement in other European countries. For example, inspections by trading standards officers in the United Kingdom permit the rapid seizure of illegally copied and pirated products from that market, as a matter of “non-compliance” with the trademarks register.

56. In Italy, a clear distinction is made between the civil and criminal sides of the fight against infringement. The former is mostly dealt with by the private sector, while the latter is the responsibility of state bodies, such as Customs, the Financial Brigade and the Judicial police. Finally, in France, the private sector (rights holders) has the possibility to call on the services of a court bailiff (“huissier de justice”) who has the competence to directly seize infringing goods and submit these to the courts as evidence.

Customs

57. A representative of the Customs Board explained that his institution had the right to detain the goods only in the customs control zone (at borders and ports) if there was reason to believe that those goods were counterfeit. The goods detained can be destroyed by Customs if the rights holders prove that they were counterfeit. The Central Customs Board has one official specializing in pirate and counterfeit goods, and his colleagues at border checkpoints help coordinate IP matters. A problem that frequently occurs relates to the difficulty of finding the actual rights holders in the case of seizure. In terms of the time limits set for evaluating the samples, the Customs follows the rules based on the TRIPS agreement. If the rights holder cannot be found within the time limits set by the law, Customs are obliged to return the goods to the importer.

58. The Advisory Group informed the meeting that in many countries trademark owners register their trademark with the Customs office, so that the compliance of the goods imported under that trademark can be monitored. The fee that is charged for this registration could constitute a useful additional source of revenue for the Customs and could help to finance the extra IP experts needed. A representative of the Customs noted that since 15 February 1999, that body had been accepting applications from rights holders for registration of their trademarks. Unfortunately, so far this opportunity has not been actively used: only 8 applications had been submitted by the time of the meeting. In order to ensure a greater use of these facilities, customs should in future notify interested parties of such changes of law and practice.

59. The representative of the Ministry of Economic Affairs informed the meeting that a database on registered trademarks maintained by the Patent Office was available to the Customs Board and could be used for the above-mentioned monitoring.

60. The meeting recommended that the rights holders should be able to register their trademarks with the Customs against a certain fee, while the Customs Board would monitor the registered branded goods with the help of an uninterrupted on-line access to the above-mentioned database. This would enable additional protection of certain branded goods particularly sensitive to counterfeiting, and, at the same time, facilitate the identification of right holders and/or their representatives in Estonia (licencees, law firms, agents, etc.). The same or a similar procedure should also be available for other categories of IP owners.

61. A representative of the Estonian Authors’ Society noted that Customs always had access to the expertise of the right holders’ representatives (associations and other local representatives) in order to identify the counterfeit goods. The authors’ societies and local record companies have tried to set up a joint procedure to differentiate the legal imports from the illegal imports. The system is simple: the authors’ society has

bilateral agreements with its counterparts in surrounding countries. These agreements confirm the principle of national exhaustion in force in Estonia (in relation to copyright) and stipulate that authors' societies outside Estonia will not licence sound carriers for the Estonian market. As a result, all imported sound carriers of Estonian authors and/or performers can be considered illegal. In addition, Customs has received a list of the official licencees of the major record companies, which enables it to identify suspect shipments. Whilst appearing simple and efficient, this system, does not however, work in practice. In 1999 Customs seized only 546 CDs, whereas thousands and thousands must have crossed the border. According to Customs, there were two reasons for such low numbers. Firstly, the lack of experience of the Customs. This lack of experience can be overcome if the rights holders could provide more information to this body. Secondly, the lack of authority of the representatives of rights holders to declare the imported goods a counterfeit means that Customs frequently have to return counterfeit goods to the importer.

62. The representative of the Customs confirmed that they always notified the genuine proprietor of seized counterfeit goods. The meeting suggested using the services of patent and trademark attorneys representing proprietors for that purpose. They should be informed of an infringement by the customs, especially when the rights holder is based abroad and a specific power of attorney should be developed in liaison with the Customs so that the attorneys can represent the rights holders for the purposes of identifying counterfeit goods. The same role should be given also to IP rights holders associations or any body possessing an appropriate power of attorney from the rights holder.

63. It was also mentioned that there was only one IP expert in the central office of this service. There are also IP experts in individual customhouses at ports, borders and in two custom checkpoints. They deal, however, not only with IP infringements but also with other non-complying products as tobacco and alcohol. He emphasized that Customs would need an increase in its budget in order to be able to hire additional IP experts.

64. The meeting agreed that, to be efficient, custom officers must be well trained to technically recognize counterfeit goods. In the same way, Customs should have the resources to store the detained goods and have a means of transporting them.

Police

65. The representative of the Police Board informed the meeting that the economic department of the police central unit in Tallinn had 52 staff. This department's task is to act against any economic crime, including those involving IP infringements. The unit takes *ex officio* action and also works on private complaints. Last year, as many as 29 cases of IPR violations were brought to the courts. The improvement in practical results of police work is handicapped by lack of resources.

66. The meeting participants recommended that police should work more closely with the judiciary and with Customs officials. Courts should be more pro-actively involved in criminal IP infringement cases, and judges should request further investigation if there is evidence of economic crime. In this case, the police should receive copies of the court files and investigate them further. According to the police, the time limit on criminal procedure has been a major constraint, since the IP investigation can be particularly time-consuming. The abolition of this time limit in the new Code of Criminal Procedure might facilitate a more thorough investigation.

67. There are no specific formalities that rights holders have to take into account when requesting police intervention in alleged cases of piracy. However, as mentioned by representatives of rights holders, in practice the system is far from effective. When the rights holder sends a request for police intervention, often by the time the police arrive, the pirates have disappeared. Most of police interventions on IP matters are based on the information obtained by the police itself.

68. A representative of the Ministry of Justice informed the meeting of the existence of a Consumer Protection Board in the Ministry of Economic Affairs. Among other objectives, this Board also has an assignment of dealing with counterfeit goods, performing, in fact, the function of compliance officers. This Board is in a position to fight against violations of industrial property (but not copyright) by imposing administrative fines. The meeting recommended that the Consumer Protection Board should be used more actively to fight counterfeiting, closely coordinating its activities with the other Government agencies concerned.

69. The meeting agreed that Customs and Police Boards were understaffed and were not able to take effective action against the wide range of piracy and counterfeiting in Estonia. Equally important is the fact that fighting the IP-related crime is not of highest priority for those agencies as compared with serious offences against physical persons.

(b) Education and Training in Intellectual Property Rights Enforcement

70. This subsession discussed ways to develop awareness of IP issues in the local private sector and public at large, as well as ways to educate consumers to inform them of the dangers and hidden costs of counterfeit products. The education and training modules available to enforcement officials in the past and new training requirements in this area were also discussed.

71. A representative of the Ministry of Justice explained that the provision of information on IPR issues was one of the objectives of the Consumer Protection Act. So far, however, there had been no special programme by the Consumer Protection Board to raise the awareness of consumers. On the other hand, a successful campaign against software piracy had been implemented. The meeting agreed that such campaigns should be followed up by enforcement actions (e.g. seizures of pirated goods) by the government bodies in charge.

72. Speaking about the education of the judiciary, a representative of the Ministry of Justice informed the meeting of the existence of an on-line database of Supreme Court decisions. However, no statistics on IP cases were available. He also indicated that several law schools provided courses on intellectual property issues. A new law on patent attorneys would require them to have a higher legal education (this is not the case now).

73. A representative of the judiciary informed the meeting that there were insufficient contacts with judges from other countries. Broadening of such contacts could facilitate learning from others' experience. In the same way, there is a lack of reference materials on IP issues available to the judiciary. The meeting agreed that the problem could be solved if the reference materials were displayed on the Internet site of the Advisory Group and requested assistance from the Group in that matter.

74. The meeting confirmed its earlier recommendation that training a group of judges in IP matters would be a more practical and cost-effective solution to better enforcement than institutionalizing a specialized IP court.

75. Representatives of the Police Board and of the Customs Board reported to the meeting on the availability of IP-related training programmes and reference materials. According to the Police Board, no specialized training on IP issues was available to police officials and such training programmes would be desirable at the Police Higher School. This would enable the police to have its own experts in this area. In 2000, the rights holders have started to provide intensive courses on IP matters to police.

76. According to the representative of the Customs Board, specific training was needed for customs officers at borders and ports aimed at identifying the counterfeit goods. No training from the World Customs Organization (WCO) had been received so far.

77. Representatives of the rights holder associations noted that some anti-piracy manuals and guides prepared by those associations had been made available to police and Customs. According to them, the real problem of enforcement was related, not to a lack of training, but rather to the existing priorities within the police and Customs boards. According to the representative of the Customs Board, the major problem was the lack of personnel, not permitting the specialization of customs officers.

78. The meeting called for a closer collaboration between the police and Customs boards to make the fight against piracy more successful. In particular, it thought that joint raids might prove efficient.

Further action

79. The meeting decided that the draft report of the Consultative Visit would be delivered to the Government for comments at the beginning of June 2000. The Government will communicate to the Advisory Group its comments, corrections and clarifications, and provide additional inputs to this report, if required.

80. If so desired by the Government, several members of the Task Force participating in the Consultative Visit would be prepared to re-visit Estonia for further consultations.

81. The Government will consider the recommendations resulting from the Consultative Visit and develop an action plan on the basis of those recommendations, including areas where the Advisory Group could provide further assistance.

82. At the end of the last session, Mr. Priit Pallum thanked the participants for a productive discussion. He expressed the hope that the recommendations developed by the Consultative Meeting would provide a useful input to the Government and legislature in their decision-making, and would contribute in a practical way to the improvement of the IPR situation in Estonia.

83. The outcome of this Consultative Visit will be reported to the Advisory Group for the Protection of Intellectual Property Rights for Investment at its second meeting on 27 September 2000. [For the report from this meeting, please see document TRADE/WP.5/2000/7/Add.2.]

Annex I

Proposal for training

1. The Advisory Group proposes a three-day training seminar for Estonian Judges, Police and Customs officials. This proposal results from the discussions held during the consultative meeting.

Day 1 - Judges Training

2. At the consultative meeting, it was agreed that training a selected group of judges in IP matters would be a practical and cost-effective way to improve the knowledge of the judiciary of the enforcement practices in other countries. The objective of the proposed seminar will be to demonstrate the value placed on IPRs in other market economies and, through a selection of case studies, show how the relevant laws are implemented. The seminar will also provide information on the costs borne by the local economy and consumers due to poor IPR enforcement, and highlight the obligations resulting from TRIPS and WIPO treaties.

3. This one-day event will bring judges from several market economies, for example Finland, Denmark, Germany and France, to exchange information and experience with the selected group of Estonian judges. Discussion with the Estonian judges' representatives will determine whether training will be appropriate for civil law judges, criminal law judges, or a selection of both. Some western and Estonian lawyers will be also attending, while EU representatives will be invited to highlight the importance of accession issues.

4. During the seminar, the Advisory Group will provide information on the reference materials on IP issues available on the Advisory Group WWW site, on the international organizations dealing with IP issues and industry rights holders' associations.

Days 2 and 3 - Police and Customs Training

5. The participants of the consultative meeting agreed that a closer cooperation between police and Customs could result in a more efficient fight against piracy and counterfeiting. Consequently, the objective of the second and third day of the seminar will be to discuss ways and means of developing a joint Police and Customs task force focusing on better enforcement, and the advantages of such collaboration. The target audience of the seminar will consist of selected Customs officers, police officers, and representatives of the special group established by the Tallinn police to deal with counterfeit products in the Kadaka market.

6. The seminar will also aim to improve cooperation between rights holders and enforcement bodies, and demonstrate how local rights holders can help enforcement bodies identify the owners of pirated products. It will contain both practical and theoretical sessions.

7. The practical session of the seminar will be attended by brand owners and rights holders from a variety of industries, who will bring samples of counterfeit products and demonstrate how to identify them. This practical session will be followed by a general information session on brands, copyright issues and trademark identification.

8. The World Customs Organization, which has considerable experience of this type of events, has been invited to support and cooperate in organizing this seminar. Representatives from French Customs, as well as representatives from the Finnish and Danish police who will be also invited, are expected to further promote the exchange of experiences, professional support and international collaboration among the government bodies in question.

Annex II**LIST OF PARTICIPANTS**

(in alphabetical order of surnames)

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