Panel 1: Current IP Enforcement – A Curtain Raiser

A Multistakeholder View of IP Enforcement

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Outline

- Introduction: A Wide Understanding of IP Enforcement
- The Three Main Groups of Stakeholders
- Potential Diversity within the Main Groups
- Conclusion: The Need to Tailor IP Enforcement to the Domestic Needs
Introduction: A Wide Understanding of IP Enforcement

To delineate Stakeholders in IP Enforcement, need to identify role in IP system and interests in IP protection.

Further actors can be distinguished based on their (general law- or IP-) enforcement specific role, function and interests.

Hence wide understanding of IP Enforcement which not only covers means to give effect to exclusive rights, but also ensures exceptions and limitations to IP rights.
The Three Main Groups of Stakeholders

- **Right Holders**: main interest in *giving effect to the (exclusive) rights* granted by the national IP laws; chiefly responsible for enforcement of their private rights

- **Users** (incl. *general public*): defensive interest in (reasonably) limiting the enforcement of IP rights; offensive interests in *enforcing exceptions and limitations to IP protection* (securing access, public domain)

- **State authorities**: facilitate (domestic) innovation; *policy space on law enforcement priorities*; uphold fair and equitable procedures
The Three Main Groups of Stakeholders

- Apart from these three main groups, a fourth group are intermediaries involved in the (physical or digital) transfer or dissemination of IP protected material, most prominently internet service providers (ISPs):
  → They are increasingly targeted to hold special responsibilities in IP enforcement (e.g. preventing alleged infringements)

- As the further analysis of the respective roles and interests in IP enforcement will show, this division in 3 (+1) main groups however is not specific enough…
# Potential Diversity within the Main Groups

<table>
<thead>
<tr>
<th>Right holders</th>
<th>Users</th>
<th>State bodies</th>
<th>Intermediaries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Authors, Performers</td>
<td>Consumers (non commercial uses)</td>
<td>IP administration offices</td>
<td>Internet Service Providers (ISPs) and other digital network intermediaries</td>
</tr>
<tr>
<td>Exploiters of IP protected material</td>
<td>Commercial users; incl. competitors</td>
<td>Judicial authorities</td>
<td></td>
</tr>
<tr>
<td>Investors, able to benefit from BIT protection</td>
<td>Licensees (consumers or com. Users)</td>
<td>Public law enforcement bodies</td>
<td>Others involved in the (physical) transfer, distribution of IP protected material</td>
</tr>
<tr>
<td>Collection Societies</td>
<td>General Public</td>
<td>Customs authorities</td>
<td></td>
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</tbody>
</table>
Potential Diversity within the Main Groups

Various Types & Interests of Right Holders

- **Authors**: interests in *statutory remuneration or collective licensing schemes*; fair contract terms

- **Exploiters**: as *holders of private rights*, main actors *responsible for their enforcement*; demand for *effective tools against infringements*

- **Investors**: ‘full protection and security’ BIT standard as *state duty to act against IP violations*?

- **Collection Societies**: *Representing authors and performers* in the exercise of certain rights
Potential Diversity within the Main Groups

Differences Among Users

- **Consumers**: defensive interests against criminalisation; offensive interests in the prevention of deceptive labelling, low quality; *enforcement of IP exceptions* (also against TPMs, DRMs)

- **Commercial Users**: Enforce *IP-grant requirements* (maintain broad public domain); limitations of IP which *ensure competitive markets*

- **Licensees**: effective review of licensing terms

- **General Public**: Need for IP enforcement to be *responsive to public policies; recognition of societal values* (proportionality of enforcement)
Potential Diversity within the Main Groups

Distinct Roles and Interests of State Bodies

- **IP administration offices**: Upholding granting requirements; offer pre/post-grant review

- **Judicial authorities**: impartial & independent; safeguarding both parties’ procedural rights and fair & equitable procedures in general

- **Public enforcement bodies**: discretion in devising (criminal) law enforcement resources

- **Customs authorities**: prevent illegal trade without creating barriers to legitimate trade; action only against visible infringements
Conclusion

- Three main groups of stakeholders with clear roles and interests
- Within those, diverse subgroupings exist
- Their importance, role and interest is likely to differ depending on the domestic environment and IP regime
- This diversity demands for sufficient domestic policy space to tailor the national IP enforcement system to the needs of all relevant actors involved
Thank you for your attention!

Any comments and critique to

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