



Standing Committee on **Trade Secrets**

2017



Date: 15th October 2017

REPORT Standing Committee on

Trade Secrets

Chair: Sture RYGAARD

Responsible Reporter: John Osha

1) Report on the activities of your Standing Committee during the reporting period

Please provide a general overview of the activities of your Standing Committee over the last 12 months, including at least:

- a) Internal meetings of the Standing Committee during the reporting period (whether by telephone, video conference or in person);

The Standing Committee on Trade Secrets was established in September 2017 and had its inaugural telephone meeting on 21 October 2017.

- b) any external representation on behalf of AIPPI by any member of your Standing Committee;

No.

- c) any contribution by your Standing Committee to any external consultations; and

The Standing Committee members and other AIPPI members from the EU have been asked to reply to a study from EUIPO/KPMG on "the baseline of Trade Secrets Litigation in the EU".

- d) any studies or analyses undertaken or position papers prepared by your Standing Committee, with a brief summary of the outcome(s).

No.

2) Key issues/developments during the reporting period

Please include any significant case law, legislative or regulatory developments, or policy initiatives, including their relevance and/or any implications for the work of your Standing Committee or for AIPPI more generally.

EU - The EU Trade Secrets Directive, (2016/943, see <http://eur-lex.europa.eu/legal-content/DA/TXT/?uri=CELEX%3A32016L0943>), aims to harmonize national laws in the EU and have some overall good definitions. The Directive was adopted on 8 June 2016, and EU countries must implement into national laws by 9 June 2018 to comply with the Directive. Trade secrets do not constitute an intellectual property right and are not considered an exclusive right (contrary to TRIPS) through which trade secrets

don't benefit from the European Enforcement Directive (e.g. relating to evidence gathering). Evidence gathering is believed to be of key importance for protection of trade secret owners, and attention has to be paid in this respect for while updating the national EU laws. There are many open questions in the directive and the European Court of Justice (CJEU) will have to shape the details and it will be interesting to see how CJEU case law develops. The exceptions about free press, whistleblowing, worker's legitimate disclosure, are fully harmonized. The remedies and the right to compensation for damages are harmonized. However, the Directive does not include criminal sanctions, which are left to the national EU member states.

For the first time in EU legislation the EU Observatory is going to report on the function of the new rules.

JAPAN - The government is discussing the implementation of a trade secret law to protect big data.

3) Any recommendations for AIPPI involvement/action for the next 12 months

This need not be limited to recommendations for your Standing Committee but can be recommendations for AIPPI more broadly. For example, please include:

In each case, please explain why such involvement/action is recommended, by whom it should be undertaken and any relevant time frames.

- a) any recommendations for involvement/action in relation to any upcoming or foreshadowed case law, legislative or regulatory developments, or policy initiatives;

See below re the EU Trade Secrets directive.

- b) any other recommendations for AIPPI involvement/action;

No.

- c) any recommendations for the work programme of your Study Committee.

not responded

4) Outline of the work programme of your Standing Committee for the next 12 months

Please set out specific activities and priorities having regard to the matters in 1) - 3) above, including any relevant time frames.

The SCoTS has decided to make sub-groups which will look into the following for initial subjects:

Company Trade Secrets Policies

Best practices and guidelines for employees should be established which could benefit in countries worldwide.

Implementation of the EU Trade Secrets Directive

Governments of all EU countries are currently implementing the Trade Secrets Directive. The SCoTS will follow the development closely. The SCoTS will consider whether AIPPI should guide, draft papers and comment on best practices for national governments on the implementation.

Trade Secrets in Preservation of Evidence and Court Proceedings

In the EU the preservation of evidence rules in the EU Enforcement Directive does not apply to trade secrets. What should the standard of proof to obtain preservation of evidence be and how should the rights of both the plaintiff and the defendant be balanced. Further, how should confidentiality during court proceedings be secured.

Cross Border aspect

Compared to other IPRs, trade secrets protection is lacking in harmonisation between countries, both as to the substantive law and also as to the procedural mechanisms implicated in enforcement. Trade secrets are however every bit as likely as other IPRs to require cross-border, multijurisdictional enforcement action, often on an urgent basis (and increasingly so in the digital age). It is therefore crucial that practitioners are at least aware of the routes by which trade secrets can be protected effectively between countries. Our proposal is that we examine the availability of relevant enforcement mechanisms internationally, considering the extent to which interim and final civil judgments/orders can be enforced across borders, as well as considering relevant criminal or other channels.

AIPPI

Names and Functions of Committee Members

Chair(s)	Sture RYGAARD	Denmark
Co Chair(s)	Miki GOTO	Japan
Secretary	Linda LECOMTE	United States
Members	Merve Bihter AKICI	Turkey
	James J. AQUILINA	United States
	Yves BIZOLLON	France
	Nicolaj BORDING	Denmark
	Hector CHAGOYA	Mexico
	Thomas CUCHE	France
	Lorenza FERRARI HOFER	Switzerland
	Erik FICKS	Sweden
	Won-Kee JUNG	Korea
	Dominique KAESMACHER	Belgium
	Esa KORKEAMÄKI	Finland
	Yulan KUO	Taiwan
	Mary Rose MCGUIRE	Germany
	Junko MUKOYAMA	Japan
	Vitor PALMELA FIDALGO	Portugal
	Caterina PASCHI	Italy
	Vilhelm SCHRÖDER	Finland
Loek STEFFANIE	Netherlands	
Ludwig VON ZUMBUSCH	Germany	
Justyna TOKARZEWSKA	Poland	
Annsley WARD	United Kingdom	