

France gets an A+ from the US for its anti-consumer intellectual property related policies

Date: 8 September 2011

Source: KEIonline.org

Link: <http://keionline.org/node/1254>

In this cable dated February 2010, Chargé d'Affaires Mark Pekala, --on the basis of industry submissions-- recommends against the inclusion of France on the 2010 Special 301 Watch List. According to the cable, "France has, in fact, improved the pharmaceutical R & D environment" and the cable author Mark Pekala sees no evidence of lack of IPR protection or market access. In addition, France has also been "at the forefront of copyright protection and anti-counterfeiting on the Internet," with the first graduated response enforcement mechanism in Europe and a public-private sector charter against online counterfeits.

Below I highlight how Sarkozy's France is doing everything and more to please the pharmaceutical lobby and the copyright industry.

It starts with "PhRMA concerns" that the French government "is employing different strategies to limit the cost of its reimbursable drug program, including aggressive use of generics and campaigns to reduce consumption." To make matters worst (for PhRMA), it is not that simple to get a drug on the reimbursable list. First it is necessary to "approach France's "Transparency Committee," made up of epidemiologists, pharmacologists, medical doctors and other experts." The Committee assigns "an "innovation" rating from ASMR I to ASMR V (I representing a "major therapeutic advance," V "no treatment benefit") based on clinical criteria." Price negotiations can only start once the rating has been set. The complicated process is well described in paragraph 3 of the cable.

However, the picture is not all grim since: "the structure of pharmaceutical sales in France has changed in recent years to favor more expensive products." The French patients and doctors apparently "prefer innovative and expensive drugs, even when less expensive ones are as effective," therefore the possibility of "higher prices for innovative specialties makes France an attractive location for the early commercialization of innovative therapies."

It gets better. According to the cable, and noted favorably in PhRMA's Special 301 submission, President Sarkozy is also personally involved in helping PhRMA prevent parallel imports: "President Sarkozy personally re-convened the relatively inactive Strategic Council for Health Industries (ref B) that brought together himself, five government ministers, and 15 CEOs of major U.S. and other foreign pharmaceutical and medical device

companies to discuss how the health sector can become an engine of economic recovery in France. During the meeting, the GOF announced it will begin to allow pharmaceutical companies to charge two prices for drugs: one fixed price for drugs reimbursed by government health services and an unregulated price for non-reimbursable drugs and/or exports. This pricing strategy would prevent parallel imports that undercut market strategy and sales in export markets, a key issue for U.S. firms. Sarkozy and the CEOs also signed an agreement for a newly-established 140 million euro (USD 208 million) investment fund for innovative firms in the medical biotech sector."

And, on the whole, PhRMA is rather pleased with France.

And when it comes to copyright..."France's Aggressive Copyright Protection" seems to be "may be more stringent than the U.S.!" France is even described as "a trailblazer" regarding internet and copyright enforcement. Of course, France is sometimes misguided, for example, as to their idea to "tax online ads (the "Google tax") as a way to compensate authors (mainly publishers) for their losses." According to the cable, President Sarkozy is taking an anti-competitive approach and French authorities are now studying whether Google abused its dominant position in the online advertising market."

In conclusion, "France is at the forefront of IPR protection in Europe" and "in the case of aggressive three strikes laws, may be more stringent than the U.S." And "France's national health insurance cost containment efforts do not deny adequate and effective IP protection to the U.S. pharmaceutical industry, nor do they prevent fair and equitable market access." The US Embassy, the " Post" therefore "will continue to support U.S. pharmaceutical industry efforts to expand markets in France." What's good for the US pharmaceutical industry is good for the French consumers?

Keywords: France / US / Intellectual property