



2017 Situation Report on Counterfeiting and Piracy in the European Union

A joint project between Europol and the European Union Intellectual Property Office



2017 SITUATION REPORT
ON COUNTERFEITING
AND PIRACY IN THE
EUROPEAN UNION



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FOREWORD

2017 SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION

This situation report prepared by the EUIPO and Europol once again puts the spotlight on the importance of tackling the international criminals who are among the principle beneficiaries of IPR infringements in the European Union.

It builds upon the previous 2015 report, also jointly developed, by tracking the evolution of counterfeiting and piracy, updating the key conclusions and offering new insights into some of the emerging trends.

IP crime affecting the European Union continues to represent a cause for concern. Criminal activity in this area not only causes potential harm to the health and safety of EU citizens, but also to the environment. It also affects legitimate economies, contributing to reduced revenues for the affected businesses, decreased sales volume and job losses.

The present study confirms that IPR infringements are an important source of income for organised criminal groups. These groups are also often engaged in other crimes, such as drug trafficking, excise fraud, human trafficking or money laundering. Their activities are increasingly facilitated by the use of corruption and document fraud.

Online marketplaces, as highlighted in *SOCTA 2017*, have increasingly become key distribution channels for counterfeit goods, with criminals attempting to copy the notable success of legal online business models.

Other threats are emerging however, and amongst potential challenges, this report explores the expanding use of rail transport between China and the EU, and how IPR infringers may be exploiting this.

In the digital world, the online dissemination of protected content has been identified as a particular issue, with illegal television broadcasts and digital piracy posing a further challenge for enforcement authorities.

The current report continues the efforts undertaken by both EU agencies to develop a clearer picture of the extent of the problem of counterfeiting and piracy, working with leading partners.

It complements, in particular, the EUIPO's development of databases to assist the efforts of enforcement authorities and the EUIPO-Europol collaboration within the recently established Intellectual Property Crime Coordinated Coalition (IPC3). This centre, which has been set up to increase information gathering and to monitor trends in the field of online IP crime and related areas, is already producing significant results. Europol has used it to help take down websites

used to sell counterfeit merchandise, to target pirated TV decoders, and to shut down illegal operations using the 'bitcoin' digital currency.

This report confirms that counterfeiting and piracy in the EU is a continuing challenge, with organised criminal groups often 'pulling the strings' and benefiting financially.

It demonstrates that the need for ongoing, enhanced cooperation and education amongst stakeholders and intermediaries is of the utmost importance, to ensure that the fight against such criminality and its effects becomes ever more cohesive and well informed.



Rob WAINWRIGHT
Executive Director, Europol



António CAMPINOS
Executive Director, EUIPO

EXECUTIVE SUMMARY

2017 SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION

This report, drawn up in partnership between Europol and the EUIPO, is intended to update policymakers, practitioners, businesses and the general public on the current counterfeiting and piracy landscape in the European Union (EU).

It explores Intellectual Property Rights (IPR) and their value, key product sectors, notable trade routes and countries of provenance for counterfeit products. It also outlines and examines the threat of piracy and other online infringements, and demonstrates how IPR and their protection are foundation stones of the EU economy and society.

The report analyses how organised criminal groups (OCGs) are involved in IPR crime and uses a number of case studies to highlight the dangers posed by their activities. It goes on to examine some of the challenges faced when tackling IPR crimes, and includes a review of a series of initiatives that are in place to combat these crimes.

A number of future outlooks are set out and investigated, including some emerging threats in the world of IPR protection.

The value and stability that IPR-intensive industries lend to society is reflected in the finding that such enterprises remained particularly resilient during and immediately after the global economic crisis, when many other sectors struggled. For the 2011-2013 period, IPR-intensive industries contributed 86 % of imports and 93 % of exports to EU external trade, and 42 % to GDP¹.

IPR crimes, which were calculated to be worth up to USD 461 billion annually worldwide², now taint nearly all types of product and geographical areas. The impact of such criminality leads to a series of hidden knock-on effects on citizens, businesses and governments, and limits the opportunity for legitimate IPR-intensive businesses to reinvest in research, development and employment, which constitutes a serious threat to future growth.

For certain product types, some Member States (MS) seize a lower proportion of counterfeits by value than their ratio of overall legitimate imports may indicate. This suggests that authorities fighting IPR crime at the external borders in some regions may benefit from risk

1 - European Patent Office and the European Union Intellectual Property Office, *Intellectual property rights intensive industries and economic performance in the European Union*, 2016, p. 6. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf.

2 - OECD/EUIPO (2016), *Trade in counterfeit and pirated goods mapping the economic impact*, 2016, p. 11. Available at: <http://www.oecd.org/gov/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

assessments of a given product group in order to target illegal imports more effectively. The work of customs authorities to detain IPR-infringing goods at the external borders continues to be very important, even though they are only able to stop a relatively low proportion of the total counterfeit imports arriving in the EU annually.

China remains the key country of provenance for counterfeit goods, and Hong Kong acts as a transit point for goods originally manufactured in China, but other countries also have specific trading characteristics. For instance, Turkey has been linked with Bulgaria and Belgium through trade in counterfeit labels, tags and stickers, which facilitates internal manufacture.

Free trade zones (FTZ) continue to be associated with a number of IPR crimes, and harmonised enforcement standards are still required in certain geographical areas.

EU-based criminals rely predominantly on manufacturers based abroad, but then organise importation, transportation, storage and distribution of the counterfeit goods within the EU. However, this report demonstrates how some are also active manufacturers within the EU. Such internal counterfeit manufacture is facilitated by the use of fake labels and packaging imported from outside the EU and is often orchestrated by OCGs; there are indications that such criminality is on the rise.

Counterfeit goods are increasingly distributed via online marketplaces. Products sold on the internet are usually distributed in small parcels via postal and express freight services, often directly to customers, and the growing role of technologies in IPR crime has been noted.

OCGs linked to IPR crime are often poly-criminal, and are also engaged in other crimes, such as drug trafficking, excise fraud, human trafficking and money laundering. Document fraud and corruption continue to greatly facilitate criminal activities in this area.

In the digital world, the online dissemination of protected content has been identified as a particular issue. Illegal television broadcasts pose a further challenge for enforcement authorities and fraud also continues to be rife and closely connected to acts of digital piracy.

This report highlights and defines how those at the forefront of fighting IPR crime still operate under a number of constraints and face specific challenges, such as the need to coordinate cross-border investigations and tackle new technologies that criminals are using to hide their locations and activities.

Low penalties render IPR crime attractive to criminals and, with the prospect of punishing a defendant with an extremely low penalty, pursuing such cases in the first place may not appeal greatly to certain authorities in some MS.

Terrorism, cybercrime, migrant smuggling, drug trafficking, and other areas of criminal activity have all moved centre stage in the global law enforcement environment and IPR crimes have

become less of a priority. This update reveals how IPR crime is still one of the most lucrative criminal enterprises however, and it continues to be closely linked to other criminal activities.

Nevertheless, new threats in the IPR crime landscape are emerging and this report sets out specific concerns regarding the increasing use of rail transport as a method of cargo conveyance between China and the EU, and how IPR infringers may be exploiting this in a hitherto unquantified manner. Digitalisation of trading and transport systems is expected to bring new opportunities for criminals.

In all aspects of IPR crime enforcement, there is an identified and ongoing need for enhanced cooperation and education amongst all stakeholders and intermediaries to ensure that the fight against such criminality and its effects becomes more cohesive and well informed.

Finally, IPR crime and the criminals associated with it are fluid in nature and many of the threats and situations detailed in this report are developing on a daily basis. The overarching conclusion however, is that in all areas of IPR crime, complacency or acceptance at any level would be ill-advised.

INTRODUCTION

2017 SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION

This report builds on the observations of the 2015 *Situation Report on Counterfeiting in the European Union*, by revisiting a number of the original key conclusions and assessing their evolution and current impact on the 2017 EU IPR-crime enforcement landscape. The aim is to produce an up-to-date assessment of the threats identified in 2015, as well as to offer insight into some of the emerging counterfeiting and piracy trends that have developed since the publication of the original study. Furthermore, the report addresses a series of product groups and the phenomenon of piracy, subjects that were not covered in the first study, but are now considered to be evolving and therefore, appropriate issues in the world of IPR enforcement.

This update should facilitate and support the activities of national authorities and EU institutions related to IPR enforcement. It is intended to improve understanding of the current scope and impact of IPR infringements on the EU and to form a basis for decision-making and the exchange of information on IPR infringements between relevant bodies and institutions.

METHODOLOGY

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The methodology used was to conduct an extensive literary review of relevant industry reports, intelligence updates and of renewed datasets that have become available since the original 2015 *Situation Report on Counterfeiting in the European Union*, and thereby to offer relevant insights into any evolution or developments that may have had an impact on the situation as previously reported.

The document draws on a number of further sources, such as the European Commission Directorate-General for Taxation and Customs Union (DG TAXUD) external border seizures database, Europol's *SOCTA 2017*³, and publications and experiences from beyond the EU. In addition, the findings of a discussion held in 2016 by the European Observatory on Infringements of Intellectual Property Rights (Observatory) amongst leading EU judges on sentencing practices were another source of information, to ascertain the attitudes and opinions of those directly affected by product counterfeiting and piracy, either at enforcement level or as victims. Data was also collected during the Europol, EUIPO and Eurojust joint knowledge-building seminars that have taken place since the publication of the original study.

Illustrative case studies have been used to contextualise the tangible nature of the topic under scrutiny where possible, providing deeper insight into the challenges faced by those at the forefront of protecting IPR, either through direct enforcement or policymaking.

3 - *SOCTA 2017: EU Serious and organised crime threat assessment*. Available at: http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/EUR/ViewPublication-Start?PublicationKey=QL3013253.

COUNTERFEIT GOODS IN THE EU: EXTENT OF THE PROBLEM

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Scale and impact of counterfeiting

For the 2011-2013 period, and despite the slow overall recovery from the economic crisis, IPR-intensive industries nevertheless remained relatively constant in terms of their contribution to total external trade (86 % of imports and 93 % of exports) and to GDP (42 %)⁴, compelling testimony to the value that IPR-intensive industries continue to add to the EU economy and society.

This level of contribution that IPR-intensive industries make, combined with the relatively low penalties associated with IPR crime in some countries, has led to counterfeiting and allied infringements becoming global industries in their own right. Such infringements are now estimated to touch most brands and product types, both within the EU and beyond.

From low-level personal imports (often the result of internet commerce) to the vast quantities of illegal products traded by organised international networks, counterfeit and IPR-infringing goods had an overall impact on EU imports to the tune of up to 5 % in 2013, amounting to approximately EUR 85 billion. IPR-infringing products now originate from virtually all geographical areas and economies globally, constituting up to 2.5 % of all global trade, worth up to USD 461 billion in 2013⁵.

Apart from the direct economic impact that IPR infringements have had on the EU, such as reduced revenues for the affected businesses, decreased sales volumes and lost jobs, there are a number of associated consequences and ramifications that are less obvious. IPR infringements affect not only EU citizens directly, but also businesses and, ultimately, governments.

One significant implication of revenue losses for IPR-intensive industries is the impact on financial resources that could have been reinvested in research and development. Counterfeiters tend to copy commercially successful products, with which legitimate industries generate the largest share of their profits and investment capacity. This issue has been raised by the pharmaceutical industry in particular, but the vast majority of IPR-intensive businesses are to some extent research focused, due to the innovative nature of the goods with which they are associated. A cut in research funding therefore, adversely affects future growth

4- European Patent Office and the European Union Intellectual Property Office, *Intellectual property rights intensive industries and economic performance in the European Union*, 2016, p. 6. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf.

5- OECD/EUIPO (2016), *Trade in counterfeit and pirated goods mapping the economic impact*, 2016, p. 11. Available at: <http://www.oecd.org/gov/risk/trade-in-counterfeit-and-pirated-goods-9789264252653-en.htm>.

opportunities, not only because there is less direct financing, but also because of the lost jobs and government revenues.

The financial implications of IPR crime aside, counterfeits almost always represent some form of risk to consumer welfare, because there are invariably scant quality controls or certification protocols in place during manufacture. This affects the tobacco, food or pharmaceutical industries, but also has less obvious consequences in the form of the health dangers associated with substandard (flammable) clothing, dangerous toys, inferior sports shoes or ineffective sunglasses, all of which, if used in good faith, threaten end users with potentially serious and ongoing health risks. IPR crime also affects the environment. Counterfeit pesticides often contain toxic substances that may contaminate soil, water and food.

External border seizures

Defence at the borders is still considered far more effective than detaining items once they are in circulation⁶.

In the 2014-2015 period, despite a drop in caseload (Chart 1), the overall number of counterfeit products detained at the EU external borders increased (Chart 2)⁷. This indicates the interception of higher unit numbers per case year by year, and is an indication that IPR infringers continue to ship large volume consignments, usually as marine container transport.

Despite evidence of the ongoing use of large-scale cargo shipments by IPR infringers, Chart 3 shows how, since 2012, the majority of external border seizures have been recorded as postal traffic. Such a method of conveyance does not usually lend itself to large-scale shipments in terms of units⁸.

The simplified procedure for small packages afforded by Regulation (EU) No 608/2013⁹ may allow for many EU customs procedures to become less onerous and therefore, more numerous.

Counterfeited and IPR-infringing goods had an impact on overall EU imports to the tune of up to 5 % in 2013, amounting to approximately EUR 85 billion. Applying this 5 % ratio to the 2015 legitimate import statistics¹⁰ and comparing this with the 2015 seizure statistics¹¹ reveals

6 - Alfadhel, L., 'TRIPS and the Rise of Counterfeiting: a comparative examination of trademark protection and border measures in the European Union and the Gulf Cooperation Council', *Trade, Law and Development*, Vol. 7, No 2, National Law University, Jodhpur, 2015, p. 6. Available at: <http://www.tradelawdevelopment.com/index.php/tld/article/viewFile/7%282%29%20TL%26D%20388%20%282015%29/262>

7 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2015. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jpr_statistics.pdf.

8 - With the possible exception of tobacco, labels/packaging and pharmaceuticals.

9 - Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013, OJ L 181, 29.6.2013, pp. 15-34 Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0608&from=EN>

10 - Available at: <http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tet00018&language=en> and http://ec.europa.eu/eurostat/statistics-explained/index.php/International_trade_in_goods.

11 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2015, p. 7. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jpr_statistics.pdf.

that the overall results of customs IPR enforcement at the borders of the EU represents a low percentage of counterfeited goods entering the EU by value.

Postal consignments constituted 70 % of cases in 2015 but only accounted for 2 % of the number of detained articles, indicating that bulk cargo remains the main threat in terms of the volumes and values of counterfeit goods that have an impact on the EU economy.

CHART 1: EXTERNAL BORDER CASES 2013 - 2015

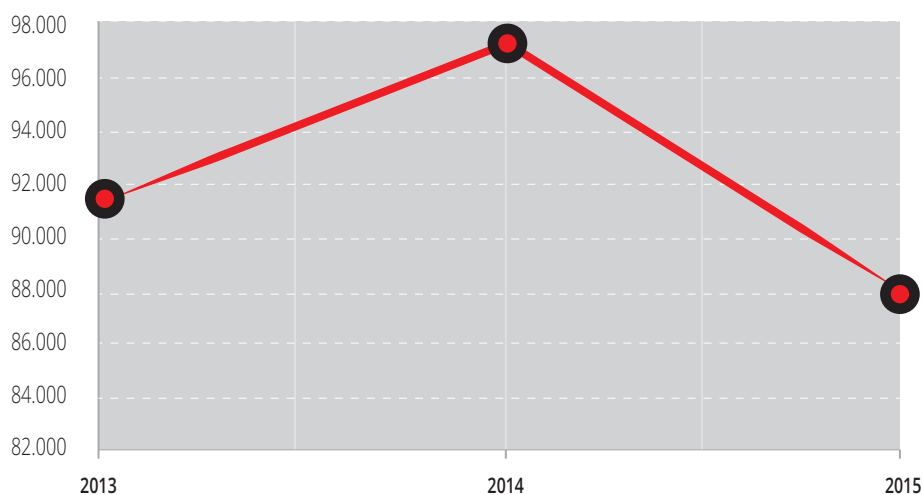


CHART 2 EXTERNAL BORDER UNITS 2013 - 2015

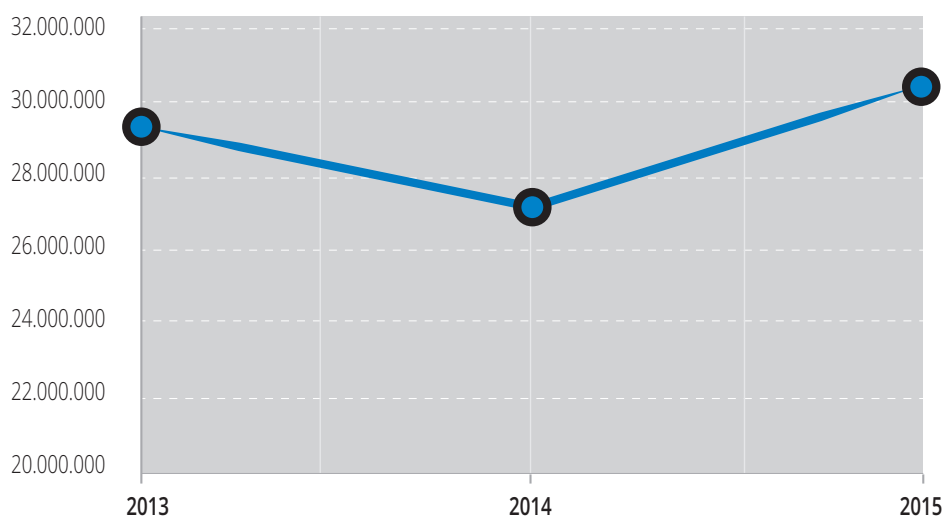
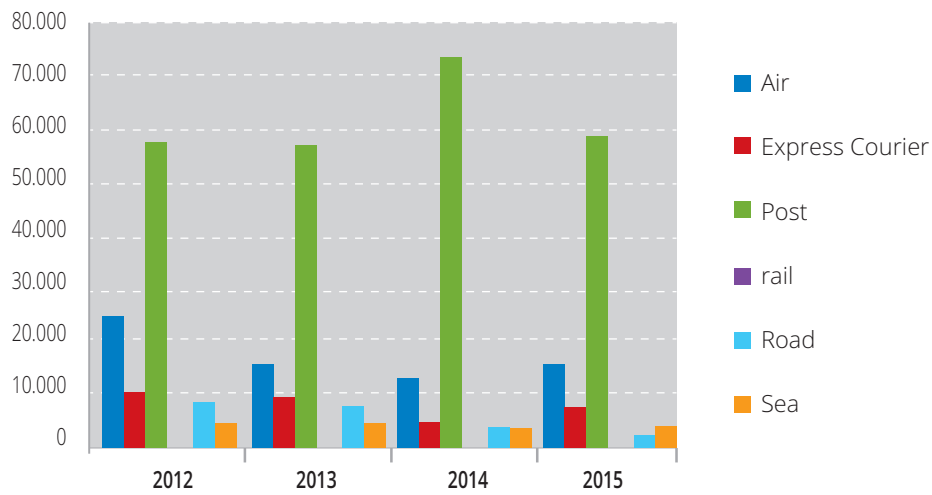


CHART 3 EXTERNAL BORDER CASES BY TRANSPORT METHOD 2012 - 2015



KEY PRODUCT SECTORS

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The range of counterfeit products recovered in the EU remains broad and includes nearly all types of goods and also, increasingly, everyday products, such as cosmetics, shampoos, toothpaste, toys, medicines, food and beverages, and household products. Various technical products, such as bearings, electronic chips, and mechanical parts are also often counterfeited.

Counterfeit goods sold in the EU tend to be of lower value and increasingly include spare parts or other elements used in combination with genuine products. This development is reflected in the increasing seizures of low-value goods, such as replacement parts for mobile phones, including replacement screens or batteries. These spare parts are easy to ship because of their small size and can be assembled into a final product in the destination country.

Regarding product types, the top categories of detained articles at the external borders in 2015 were cigarettes, which accounted for 27 % of the overall amount of detained articles, followed by other goods (10 %), toys (9 %), labels, tags and stickers (8 %) and foodstuffs (7 %). These percentages are by unit volume however, and by caseload the leading results were sports shoes (17 %), bags/watches/purses (15 %) and clothing (14 %). By value, watches prevailed (24 %), followed by wallets/purses (9 %) and clothing (7 %)¹².

Although not entirely harmonised, it has been possible to compare datasets showing legitimate product import ratios by value, to the ratios of IPR-infringing seizures reported by each MS at the external borders over a series of product categories and a comparable timeframe.

Depending on the product group or MS in question, a number of countries were found to be intercepting a much lower proportion of IPR-infringing goods by value than the legitimate import figures indicated would be likely, suggesting that there may be potential for enhanced focus on certain product types by bodies tasked with assessing and prioritising risks in terms of identifying the goods most likely to be subject to IPR infringements in a given MS.

With a number of product groups, MS that reported a high proportion of IPR-infringing seizures compared with their legitimate share of the market often neighboured MS that reported incongruously low seizures compared with genuine imports. One explanation for this is that the MS reporting higher than expected seizure rates at the external borders may, in some cases, be established points of entry for illegal products that would subsequently have been distributed in neighbouring states, if they had not been intercepted at the point of entry.

¹² - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2015, pp. 16-18.

A full analysis and additional insight into what effect counterfeiting in each of these sectors has on wider EU society can be found in Appendix A.

Labels/packaging and increasing intra-EU production

The issue of labels, packaging and products being sent to the EU separately is a growing concern. Such items combined constituted one of the largest product types seized at the external borders. In 2015 they ranked second overall by units seized (behind finished, packaged tobacco)¹³. A sizeable number of the counterfeit labels, tags and stickers intercepted at the external borders pertained to batteries manufactured by two of the world’s leading electronics giants, leading to the suspicion that they may have been counterfeit stickers used to disguise lower-end batteries as genuine branded articles and that the counterfeits would be passed off as genuine at a significant profit.

FIGURE 1: 1 000 000 ITEMS OF BATTERY PACKAGING AND LABELS FOUND IN THE NETHERLANDS



Source: Dutch Customs

13 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2016, p. 29. Available at: http://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf.

Counterfeit sportswear and fashion labels have also been reported in relatively high volumes. This is of particular significance, as EU-based counterfeit clothing and footwear manufacturers, potentially criminal groups, may be importing labels and tags to append to unbranded clothing in order to manufacture and distribute counterfeits within the EU. Evidence of such domestic manufacturing was found in Italy, where most of the counterfeit manufacturing and sales in Catania were by non-Europeans¹⁴. Chinese gangs made the shoes on the Italian mainland or smuggled them in from Asia through the port of Naples. Brand logos were often not added until they reached the point of sale, to avoid scrutiny from authorities.

However, most seizures of packaging materials were of items associated with tobacco products (74 % of units recovered).

The majority of this packaging was stopped at the United Kingdom, the Netherlands or French borders and was recorded as having originated predominantly from China and Hong Kong. Large numbers of branded counterfeit tobacco pouches are manufactured in China and Hong Kong, but possibly not the counterfeit tobacco itself. This could be shipped separately as an unbranded product, manifested as a non-IPR-infringing import, and therefore not be liable to seizure.

FIGURE 2: 64 000 ITEMS OF COUNTERFEIT TOBACCO PACKAGING FOUND IN THE NETHERLANDS



Source: Dutch Customs

14 - Associated Press, 'In Italy, seized knock-off shoes go to help new migrants', 12 May 2015. Available at: <http://www.dailymail.co.uk/wires/ap/article-3078188/In-Italy-seized-knock-shoes-help-new-migrants.html>.

KEY COUNTRIES OF PROVENANCE, SMUGGLING ROUTES AND TRANSPORTATION METHODS

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China

China has long been recognised as the engine of the global counterfeiting industry. Counterfeit goods are estimated to amount to approximately 12.5 % of China's total exports and over 1.5 % of its GDP. This results in estimations that 72 % of counterfeit goods currently in circulation in three of the world's largest markets for such products, namely the EU, Japan and the USA, have been exported from China¹⁵.

Altogether, 49 % of all IPR-infringing seizures made in the United States in 2015 emanated directly from China¹⁶. Simultaneously, Japan reported 91 % of all cases being of Chinese provenance¹⁷. EU statistics show Chinese exports as amounting to 56 % of all recoveries by caseload¹⁸. In combination, Chinese counterfeit exports recovered in the EU, Japan and the United States were valued at EUR 1 083 823 626 in 2015 alone, contributing significantly to the estimation that up to 2.5 % of all global trade and up to 5 % of EU imports concern IPR-infringing products. The long-distance cargo train connections between China and the EU may also offer a new advantageous route for transportation of counterfeits.

China is not just responsible for direct exports however, and a number of transit countries are also known to contribute significant numbers of Chinese-made counterfeits to the overall picture.

Hong Kong

Seizures from Hong Kong contributed only 4.2 % to the Japanese caseload in 2015, but a much larger 34 % to US figures and 26 % to those of the EU, indicating that the territory plays a

15 - US Chamber of Commerce, *Measuring the magnitude of global counterfeiting: creation of a contemporary global measure of physical counterfeiting*, GIPC, Washington DC, 2016, p. 3. Available at: http://www.theglobalipcenter.com/wp-content/themes/gipc/map-index/assets/pdf/2016/GlobalCounterfeiting_Report.pdf.

16 - US Customs and Border Protection Office of Trade, Homeland Security, *Intellectual Property Rights: fiscal year 2015 seizure statistics*, CBP, Washington, 2016, p. 13. Available at: <https://www.cbp.gov/sites/default/files/assets/documents/2017-Jan/2015%20IPR%20Annual%20Statistics.pdf>.

17 - Japan Customs, *2015 Seizure statistics of IPR border enforcement*, Customs and Tariff Bureau, Tokyo, 2016, p. 5. Available at: <http://www.customs.go.jp/mizugawa/chiteki/pages/statistics/statistics2015.pdf>.

18 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2016. Available at: http://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf.

major role in handling illegal exports destined for locations outside of Asia. Hong Kong is not a leading counterfeit manufacturing hub in its own right however, and many of the IPR-infringing goods seized internationally of Hong Kong provenance are believed to have originally been manufactured in China. One of Hong Kong's main communications assets is the port of Hong Kong, which has been recorded as the world's busiest container port and the largest serving southern China¹⁹. EU border seizure statistics for 2015 show that 21 % of all units recovered of Hong Kong provenance at the external borders arrived by maritime transport, indicating that the port may to some extent be used to facilitate the bulk export of Chinese counterfeits from Asia to Europe by sea.

A second element in Hong Kong's status as a global logistics centre is its airport, which was the world's busiest for air cargo throughput, handling 4.38 million tonnes. In all, 66.3 % of inward traffic emanated from Asian territories and 15.4 % of outward movements were destined for Europe, suggesting that a degree of this statistic corresponded to Chinese exports transiting Hong Kong airport and in the process, acquiring Hong Kong provenance²⁰.

The country's air communications continue to play a significant role in the illegal supply chain for IPR-infringing goods destined for the EU. Altogether, 33 % of units recovered at the EU external borders in 2015 of Hong Kong provenance arrived by air freight. Generally, express courier traffic, international post and air freight in combination constitute the most commonly used transport methods. The seized consignment arriving in the EU from Hong Kong consisted of 10 items or less. This is strongly indicative of internet trade and may be the result of Hong Kong based entities fulfilling low-volume electronic orders made in Europe, either as a subsidiary of large-scale Chinese counterfeit manufacturers or independently, based on bulk imports from mainland China.

Finally, Hong Kong shadow companies are increasingly being used to engage in counterfeiting and other infringing activities in China²¹. These companies do not generally conduct business in Hong Kong, but carry out counterfeiting and other illegal activities in mainland China under the Hong Kong company name, with the intention of misleading consumers and avoiding legal liabilities in mainland China. A new trend has been identified in China, whereby online vendors increasingly use shadow companies to set up e-shops, thereby misleading consumers as to their whereabouts. Counterfeit goods manufactured and sold by such companies in China are deliberately shipped through Hong Kong, in order to maintain the pretence of their having originated in the territory.

Overall in 2015, China and Hong Kong together were the provenance of 86 % of global counterfeiting and USD 396.5 billion worth of counterfeit goods and in combination, they form the largest ongoing threat to global IPR integrity²².

19 - *Hong Kong Yearbook 2007*, p. 249. Available at: <http://www.yearbook.gov.hk/2007/en/pdf/E13.pdf>. Accessed 26 March 2017.

20 - Hong Kong International Airport, *Monthly Digest of Statistics*, January, 2016, Hong Kong, Trade Statistics Processing Section, Census and Statistics Department, p. 5. Available at: <http://www.statistics.gov.hk/pub/B71601FA2016XXXXB0100.pdf>.

21 - Michisita, R., *Hong Kong shadow companies are increasingly being used to engage in counterfeiting and other infringing activities in China*, Bird & Bird, London, 2015. Available at: <http://www.twobirds.com/en/news/articles/2015/global/brandwrites-december/hong-kong-shadow-companies-are-increasingly-being-used-to-engage-in-counterfeiting>. Accessed 26 April 2017.

22 - US Chamber of Commerce, *Measuring the magnitude of global counterfeiting*, 2016, p. 3. Available at: http://www.theglobalipcenter.com/wp-content/themes/gjpc/map-index/assets/pdf/2016/GlobalCounterfeiting_Report.pdf.

Turkey

The third highest country of provenance in the external border seizure statistics by caseload in 2015 was Turkey, which was the reported provenance of 4 217 of IPR-infringing consignments that year, 37 % of which were intercepted at the Bulgarian border²³. All but one of these involved road traffic, and infringing products were frequently encountered in volume, indicating that a proportion of the consignments, if they had not been stopped, would have been intended for wider distribution subsequently.

There would also appear to be a relationship between Turkey and Belgium, where 864 interceptions of IPR-infringing goods of Turkish provenance were reported over the year. Antwerp, Bruges, Ghent and Ostend have in the past been identified as points of entry for large infringing consignments and have often been cited as the reason that Belgium consistently reports high numbers of recoveries annually. Nearly all consignments from Turkey recorded by Belgium arrived either by air (45 %) or by post (51 %), with the remainder being shown as road transport. Furthermore, 310 of Belgium's 373 clothing seizures from Turkey pertained to five items or less, indicating personal imports, most likely the result of internet commerce²⁴.

Further analysis of EU-wide external border seizure data relating to Turkey reveals that only 18 maritime interceptions were reported across the EU in 2015 and that, with the exception of road traffic crossing the Bulgarian border, IPR-infringing seizures were far more likely to be sent by air, either by traditional air freight or by post. Ready-to-wear clothing consistently topped seizures of Turkish provenance by unit volumes, but the country also shipped large volumes of counterfeit labels, tags and stickers, frequently to the same MS to which the clothing was sent. This was seen most frequently in Belgium, Bulgaria, Germany and Italy and could be indicative of domestic manufacture, or of goods and labels sent separately, with the final products assembled within the EU.

Seizures of Turkish provenance are increasingly likely to be lower unit volume consignments, intercepted in higher frequency, most probably sent as small packages.

Thailand

Another notable country of provenance was Thailand, which appears to have had specific links to the United Kingdom and Germany. Altogether, 1 154 interceptions of items of Thai provenance were recorded in the United Kingdom, and a further 866 by Germany in 2015²⁵. Once more, the vast majority of these seizures involved airborne consignments and in the case of Germany, the key product types were labels, tags and stickers in combination with ready-to-wear clothing. Notably, very few of the Thai clothing seizures in the United Kingdom

23 - Based on data supplied to the EUIPO by DG TAXUD.

24 - Based on data supplied to the EUIPO by DG TAXUD.

25 - Based on data supplied to the EUIPO by DG TAXUD.

and Germany were large scale, with the majority (1 079) comprising only one or two items. This is again highly indicative of internet commerce and may be a signal that Thai e-shops are specifically targeting the United Kingdom and German markets or that distributors operate from these regions.

Singapore

Singapore was found to be a significant contributor to the German, Belgian and Italian caseload statistics in 2015. Mobile phones (or their accessories) formed the bulk of exports to Belgium and Germany, and these were again predominantly recovered in volumes of one or two items²⁶. The accessories for mobile phones that were shipped from Singapore to Italy were recovered in significantly higher unit volume consignments however, indicating that they were due for subsequent distribution.

During the anti-fraud daily activity performed in 2015, the Customs Anti-Fraud Unit of the Italian airport of Milan Malpensa seized 793 counterfeit branded mobile phone covers: 715 Chanel, 77 Adidas, 1 Jack Daniels.

The counterfeit goods were identified at the postal office of Linate Pozzolo: 12 suspected postal consignments containing several famous branded goods coming from Singapore to Milan Malpensa were not accompanied by commercial documents and were all destined for Naples, in the same street but to be delivered to six different consignees.

Both the scanning inspection and the technical expertise provided by rights holders confirmed that goods were counterfeited. All consignees were unknown.

Source: Italian Customs



In 2015, 14 million smartphones fewer were sold by the legitimate industry across the EU than would have been the case in the absence of counterfeiting²⁷. This translates into approximately EUR 4.2 billion lost due to the presence of counterfeit smartphones in the EU marketplace, corresponding to 8.3 % of the sector's sales. After China and Hong Kong, Singapore was the third highest country of provenance for IPR-infringing seizures of such items at the EU external borders by caseload in 2015.

²⁶ - Based on data supplied to the EUIPO by DG TAXUD.

²⁷ - EUIPO, *The economic cost of IPR infringement in the smartphones sector*, 2017, p. 6. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study11/smartphone_sector_en.pdf.

Malaysia

Although the country barely features in terms of caseload, significant numbers of IPR-infringing items were sent from Malaysia to France, Slovenia and, to a lesser extent, Spain in 2015. The French statistics are almost entirely accounted for by a single detention of 1 000 000 body care items that arrived by maritime container, and are compounded by a further seizure of 10 800 items of foodstuffs, again sent by sea. Slovenia reported a series of very large-scale recoveries of toys, labels, office stationary, bags and sports shoes, virtually all of which were the result of maritime container interceptions. Spain recorded a series of bulk shipping container seizures of parts and technical accessories for mobile phones, ready-to-wear clothing and sports shoes. In total, Malaysia was recorded as the provenance of 2 615 869 IPR-infringing items seized at EU container ports in 2015.

Vietnam

There were 496 000 packets of counterfeit cigarettes of Vietnamese provenance seized in a single maritime consignment in Greece, and a further 500 000 packets were recovered whilst being transported by road into Poland. Not only are these seizures indicative of a Vietnamese speciality of tobacco counterfeiting, they also shine some light on potential transport routes within the EU, whereby goods enter by ship in Greece and are subsequently moved by road to their ultimate destination. Greece seized 7 306 656 packets of cigarettes in 2015, indicating either that the MS may be a significant point of entry for such products, or that Greek customs may have prioritised detentions of cigarettes.

The above seizures show how the EU is affected on two levels by two different types of IPR crime business models. The first being e-shops or distributors that supply IPR-infringing items to end customers in the form of frequent, small consignments, and secondly bulk exporters that continue to favour large-scale freight consignments as a means of transportation but may also supply e-shops, which will subsequently export the goods in smaller numbers. The existence of particular relationships between specific countries may be the result of distinct cultural, geographical or fiscal associations.

Key routes

The majority of counterfeit goods continue to arrive at the EU external borders from countries in Asia, via sea, air or land routes.

The imported goods arrive typically from third countries to the major ports of entry in the EU and transit via other MS to their final destination. However, once the goods are there, they can be reshipped to other countries in the EU. This emerging pattern aims to diversify the routes and disguise the origin of the goods. Goods shipped from EU MS are seen as at less risk of interception than goods from outside the EU.

In recent years, Europe has also been used as a transit region for counterfeit goods such as pharmaceuticals and mobile phones destined for African countries. Counterfeit goods also transit the EU on their way from China to Russia, often via Scandinavian or Baltic countries.

In this regard, the enforcement of IPR rights has recently been significantly strengthened with the introduction of the 2016 European Union Trade Mark Regulation²⁸. The proprietor of an EU trade mark is now entitled to prevent all third parties from bringing goods into the Union without being released for free circulation there, where such goods, including packaging, come from third countries and bear a trade mark without authorisation. Therefore, EU customs authorities may now take action in relation to goods from third countries that are transiting the territory without being released for free circulation, if they bear an identical or essentially identical trade mark to an EU trade mark²⁹. This will have to be taken into account in the customs enforcement of IPR, including goods in transit on their way from a third country to another country, or under a storage procedure in a free zone.

Transportation methods

The traditional transport methods continue to be used. Counterfeit goods trafficked to and intended for distribution in the EU are typically shipped in bulk using maritime shipping containers. The volume of counterfeit goods detected in the EU having arrived in this manner reflects the enormous production capabilities in Asia. The use of roll-on roll-off (ro-ro) ships³⁰ as a means of transport for counterfeit products can pose a risk, and with the expanded capacity of the Tanger Med FTZ, this risk may increase in the coming years, affecting mostly the Mediterranean area and seaports with ro-ro terminals. Counterfeit products also arrive in the EU by air freight as postal shipments.

Upon arrival at the seaports or airports, goods continue to be transported by road, in trucks, vans or passenger cars, or even aeroplanes. Certain goods are transported across EU land borders in lorries and even on long-distance buses, predominantly in the south.

In addition, long-distance cargo trains between Europe and China offer a possibility for quick and relatively cheap transportation of goods and could be abused by criminals. Beijing to London by train, a distance of nearly 12 000 km, only takes 18 days, about half the time of maritime consignments. Despite the rising number of trains arriving from China at the EU external borders, seizure figures attributed to this method of transport have remained consistently low. In 2013, 6 cases were reported, 12 in 2014 and only 2 in 2015. This number of interceptions

28 - Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015, which entered into force on 23 March 2016. Available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2424&from=EN>.

29 - <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:244:FULL&from=EN>.

30 - Ro-ro ships (roll-on roll-off) are vessels designed to carry wheeled cargo, such as cars, trucks, trailers, and railroad cars, which are driven on and off the ship on their own wheels or using a platform vehicle. They are different from lo-lo (lift-on lift-off) ships, which use a crane to load the cargo.

would appear to be especially low when considered against the advantages that rail transport could potentially offer to international IPR-infringing criminal networks. Counterfeiters often need to produce and ship products quickly, usually in reaction to emerging product trends and demands in their chosen marketplace. Such goods are frequently cheap at the point of sale and the use of air freight, despite being fast, is often too expensive. The average shipping container can take up to 6 weeks and, although maritime transport still appears to be the preferred means of transporting bulk shipments, largely because it is the most economic option, the time delay incurred could impede a fast route to market for certain IPR-infringing goods. Therefore, such rail connections could offer concrete advantages to international IPR-infringing criminal networks, and should be kept on the radar. Alongside the traditional transport methods, criminals increasingly use parcel and postal services to import and distribute counterfeit products, this being closely related to the growing online sales.

Counterfeit goods or their spare parts are often sent as small parcels via postal or courier services. This high-volume, low-quantity traffic makes controls and detections of counterfeits more difficult, especially given the increasing flow of goods sold online and shipped in small consignments. The increased use of postal freight and express freight for distribution of counterfeit medicine is especially alarming.

Small consignments, now regulated by Article 2(19) and 26 of Regulation (EU) No 608/2013, are defined as postal or express courier consignments that contain three units or less or that weigh less than two kilograms. Postal and courier traffic constituted 77 % of all detentions in 2015, even if detentions in postal traffic dropped by more than 20 % compared to 2014. The most prevalent product types in postal traffic were electronic equipment (32 %) and medicines (16 %)³¹. These are items that are widely available online and the vast majority of these interceptions were likely to be personal imports purchased by individuals online, either as 'knowing' customers, or as innocent parties. This decrease of 20 % was directly related to the fact that applicants did not want to apply for the small consignments procedure. Regulation (EU) No 608/2013 did facilitate a simplified procedure for processing IPR-infringing small packages but, on the other hand, it limited access to data on origin, provenance, means of transport and transshipment. In addition, it does not allow IPR holders to keep trace of cases infringing their rights, which could have deterred some of them from applying for customs actions in the first place³². Overall, the new Regulation is viewed as a more effective measure for controlling small consignments, albeit that the process established for 2014 temporarily placed extra administrative burdens on rights holders and customs, regarding reapplications and the recording and processing of data.

31 - European Commission Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights Results at the EU border 2015*, p. 7. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf.

32 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, Publications Office of the European Union, Luxembourg, 2016, p. 7.

Free trade zones

External FTZs continue to pose a threat in the counterfeiting landscape, because the areas afford counterfeiters the capacity to land consignments, adapt or otherwise tamper with the loads or associated paperwork and then potentially re-export the products without customs intervention, thus disguising the true origin and the nature of the goods, as well as the identity of the original supplier.

Currently there are an estimated 3 500 free zones and special economic zones around the world, indicating the speed with which new areas are becoming established³³. Current FTZs do not just service maritime traffic, as many are also located at international airports and at national frontiers from which goods can be transported overland.

The challenge of regulating activities in FTZs stems largely from the absence of harmonised IPR-enforcement standards. A small number of IPR-related incidents involving FTZs have resulted in judicial enforcement but, despite widespread infringements associated with FTZs and transshipments of infringing goods being suspected, relatively few cases have been reported concerning enforcement of IPR in FTZs or in transit³⁴.

Weaknesses continue to be found in several FTZs; some facilitated a series of organised crimes, including narcotics trafficking, the illegal ivory trade, people smuggling and the counterfeiting industry³⁵. The seizure of a consignment of pharmaceutical products at Heathrow airport in London, in transit from the Sharjah FTZ in Dubai, to a pharmacy located in the FTZ of Freeport, Bahamas, is one example³⁶.

Other cases variously involved counterfeit handbags, wallets and electrical equipment and, whilst these incidents may not have a direct impact on the EU, they nevertheless demonstrate that FTZs are used to facilitate international IPR crime³⁷.

33 - World Free Zones Organization, *Message from our CEO*, <http://www.worldfzo.org/Pages/CeoMessage.aspx>. Accessed 26 March 2017.

34 - Business Action to Stop Counterfeiting and Piracy, *Controlling the zone: balancing facilitation and control to combat illicit trade in the world's free trade zones*, ICC, Paris, 2013, p. 25. Available at: <http://www.ip-watch.org/weblog/wp-content/uploads/2013/05/FTZ-report.pdf>.

35 - DuBarry, S., Ametova, E., *The paradox of free trade zones: economic prosperity and transnational crime*, Florida International University, Miami, 2014, p. 4. Available at: https://maga.fiu.edu/academic-tracks/capstone-project/2014-capstone-working-papers/socom-capstone_dubarry_ametovav_edited-final_dawndavies.pdf.

36 - DuBarry, S., Ametova, E., *The paradox of free trade zones: economic prosperity and transnational crime*, Florida International University, Miami, 2014, p. 4. Available at: https://maga.fiu.edu/academic-tracks/capstone-project/2014-capstone-working-papers/socom-capstone_dubarry_ametovav_edited-final_dawndavies.pdf.

37 - National Association of Foreign-Trade Zones, *Zones Reports*, Washington, NAFTA. Available at: <http://www.naftz.org/publications/zones-report/>. Accessed 26 March 2017.

PIRACY

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Legal supply chain (digital)

‘Copyright and related rights protected content’ covers a wide area of original works, performances, recordings and broadcasts including films and other audiovisual works, television and radio broadcasts, musical compositions and lyrics, recorded music, digital games and software, e-books and other literary works, or even entire databases.

The legal digital supply chains for the different content types are not identical, but some commonalities nevertheless apply.

In electronic gaming, for instance, with so many different digital platforms, methods of accessing media, and consumer preferences in the electronic gaming world, comes a multitude of different supply chain models. For the purposes of this section, the supply chain will reflect accessing content by downloading a finished product to a digital platform (either legally or illegally) and, for clarity, both of the models have been simplified to very basic forms.

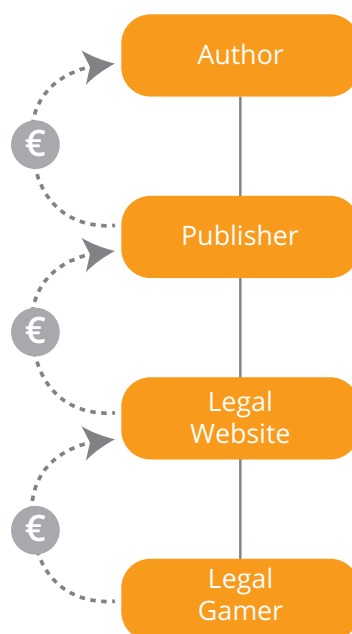
In the legal digital games supply chain, authors create the games and the publishers finance, market and distribute them to retailers. The retailers then supply end customers.

Whilst many of the major digital games hardware manufacturers develop their own games, the EU also has a thriving industry of third-party authors and publishers that sell games created on their own or by other independent development studios.

Legitimate sales to the end customer would take place through a trusted (and often proprietary) website where, for a fee, the game could be downloaded.

With each link in the chain paying the previous one, the profits flow in the other direction and each entity is remunerated accordingly.

FIGURE 3:



Illegal supply chain (digital)

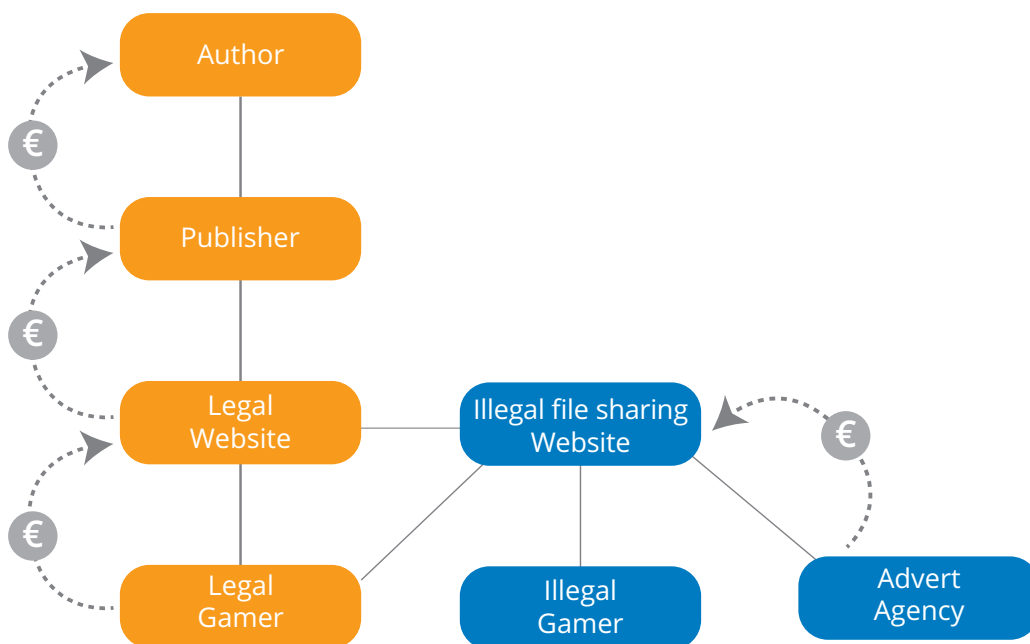
In its most basic form, the illegal supply chain contains only two entities, both of which are knowingly acting illegally.

As an illegal file-sharing website does not develop software itself, there is no illegal manufacture, production or publishing in the strictly illicit model and, as the illegal gamer downloads the software free of charge, there is no financial incentive for other intermediaries to involve themselves in the process. This supply chain as a business model is somewhat compromised therefore.

In order to overcome the issue of obtaining the digital games that are made available for free downloading, and in order to generate revenues, the illegal digital games supply chain integrates itself both with the legal model and with selected intermediaries.

Firstly, the infringers must gain access to an original copy in order to make the game available illegally. This may be achieved by sourcing a genuine game from a legal paid download and then re-engineering it, or by sourcing media from an end user that can then be used to produce the copy for free downloading.

FIGURE 4:



However, no funds are generated when the digital game is downloaded. This shortcoming is often overcome by the sale of advertising space on illegal file-sharing sites and this process is facilitated by advertising intermediaries.

Games (digital)

An average of 49 % of people aged from 11 to 64 in Germany, Spain, France and the United Kingdom played some kind of digital game in Q1 2016, demonstrating the reach that this industry now has³⁸.

With the plethora of types of digital games, platforms and ways to access content comes a multitude of opportunities to commit IPR crime, and many of these have long been exploited by infringers.

In terms of hardware, counterfeiters have targeted games controllers in the past and a number of instances of fakes in the apparently legitimate marketplace have been reported.

Counterfeiters have also been known to target games consoles themselves.

A further form of IPR infringement in the digital gaming industry is the counterfeiting of packaged games, usually intended for use with a PC or games console. However, more recently, newer technologies and faster internet speeds and accessibility have resulted in a rise in video-game piracy and a corresponding decline in the production of packaged counterfeit games.

Some (but not all) further examples of IPR infringement in the digital gaming environment would be purchasing a hacked paid game or the sale of paid game codes, cheating paid subscriptions, downloading a game that has been 'cracked', whereby the password protection or security may have been removed, purchasing existing passwords, user account numbers or downloading a full game, with access codes, directly onto a chosen platform.

Whichever of these activities the illegal gamer chooses to pursue, there are numerous websites offering the above services or products as free downloads or torrent files, and it is by downloading that the majority of players will access their IPR-infringing content.

38 - ISFE Gametrack, *GameTrack Digest: Quarter 1 2015*, Brussels, ISFE. Available at: http://www.isfe.eu/sites/isfe.eu/files/attachments/gametrack_european_summary_data_2015_q1.pdf. Last Accessed 26 March 2017.

Business models (digital)

Over the last two years, infringements of digital content protected by copyright and related rights³⁹ have attracted increasing attention as an area of criminal threat against IPR holders, consumers and general societal interests⁴⁰.

While digital piracy still exists in a physical form as illegal CDs⁴¹ and DVDs, the most prevalent current threat stems from the online dissemination of protected content. Well known acts of piracy on the open internet include the sharing of protected content through BitTorrent⁴² networks, illegally facilitating downloading or streaming from central sources and (under certain conditions) illegally making links⁴³ to IPR-protected content freely available without rights holder consent.

Television broadcasts using internet protocol television (IPTV) are digital and are available on a variety of platforms such as mobile phones, tablets, smart TVs and set-top boxes (STBs).

In recent years, the use of STBs to access large numbers of television channels, films and other protected content has increased due to low prices, improving quality of services, reliability and user friendliness. The illegal servers are almost always hosted with companies based outside the jurisdiction of the countries targeted by the provider.

On 20 July 2016, the presumed founder of the most popular file-sharing website was arrested in Poland and faces extradition to the USA for prosecution following federal charges against him for extensive criminal copyright violations.

Wired. *KickAss Torrents' alleged founder arrested after Apple hands over record*. Available at:

<http://www.wired.co.uk/article/kat-alleged-founder-arrested>. Last Accessed 26 March 2017

39 - On 21 September 2016, the EUIPO published a consumer-friendly frequently asked questions (FAQ) service in all official EU languages. The FAQ addressed a number of practical issues concerning copyright protection and provided information about legal and illegal activity, especially in the online environment. The FAQ are available here: <https://euiipo.europa.eu/ohimportal/en/web/observatory/faqs-on-copyright>.

40 - In the second EUIPO and EPO study on the contribution of copyright intensive industries to the European economy it was estimated to be 6.8 % of GDP and 7.1 % of employment. The study is available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/IPContributionStudy/performance_in_the_European_Union/performance_in_the_European_Union_full.pdf.

41 - In the EUIPO report, *The economic cost of IPR infringement in the recorded music industry* (published 24 May 2016), it is noted that in the largest market for recorded music, Germany, 75 % of music is sold in physical format. The report is available at: https://euiipo.europa.eu/ohimportal/en/web/observatory/ipr_infringement_music.

42 - EUIPO, *Research on online business models infringing Intellectual Property Rights: phase 1*, EUIPO, Alicante, 2017, p. 12. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/Research_on_On-line_Business_Models_IBM/Research_on_On-line_Business_Models_IBM_en.pdf.

43 - The Court of Justice of the European Union has defined in a number of judgments when linking to protected content is legal or illegal, most notably the *GS Media* ruling of 8 September 2016, C 160/15. Available at: <http://curia.europa.eu/juris/liste.jsf?num=C-160/15>.

A typical subscription to an illegal service provides the customer with access to potentially thousands of television channels and often also offers the client access to 'video on demand' (VOD) and music catalogues as part of the subscription. The number of operators providing illegal IPTV appears to be on the rise and this trend is expected to continue at an accelerated rate in the future.

In a Danish criminal case that was investigated and prosecuted in 2014-2015, a young man had launched a website making links to streamed popular television broadcasts freely available. The only (very limited) revenue was generated from voluntary donations. The website ran from 27 November 2013 to 28 January 2014, when he let two friends take over the website. They immediately revised the business model to include advertising revenue. The new website ran from May/June 2014 to August/September 2014.

Three persons were convicted for copyright and related rights infringement and sentenced to 10 days' suspended imprisonment, 60 days' suspended imprisonment and 8 months' suspended imprisonment (in conjunction with other charges) respectively.

District Court of Aalborg, 22 April 2015, and District Court of Næstved, 1 October 2015. Available at: <http://www.stoppiratkopiering.dk/domssamling.aspx>

Card sharing (CS) involves several people sharing one or more legally purchased subscription cards. Such card-sharing networks consist of several connected servers, making it possible to access television signals. In practical terms, it is actually only the control codes (a small amount of specific data) that are shared in the networks, rather than the broadcast signal itself. When such signals are encrypted by the commercial providers of legal broadcasts, they have to be decrypted for the user to actually see the broadcast on a television set. By sharing the control codes in the card-sharing network, users can gain access to the broadcast signals for a fee that is substantially lower than a legal subscription.

Whilst previously popular networks with restricted or permissioned access are still used to share protected content, the use of hidden internet services like Darknet⁴⁴, although still comparatively limited, appears to be increasingly facilitating the illegal sharing of e books, entire databases and, especially, illegally retrieved access codes to legitimate subscription services, which allow unauthorised access to large libraries of IPR-protected films, music and other media.

In terms of financing the organised sharing of IPR-infringing digital content online, the main source of revenue for infringing web services continues to be derived from advertising, but illegal profits are also generated through subscription payments, payments per download and

44 - Ibid., pp. 14 and 17-18.

voluntary user donations. Altogether, 51 % of advertising on 280 suspected piracy websites available in Europe in the summer of 2015 were connected to various types of malware (malvertising) and 91 % of this publicity originated from only 10 advertising intermediaries. Furthermore, 41 % of the illegal websites identified were also engaged in further advertising fraud, such as stacked pixel stuffing⁴⁵.

Malware connected to copyright infringement can also be found embedded in website content itself, predominately in the form of executable files containing software and digital games downloads. During 2017, the EUIPO plans to expand upon its existing research into the particular threats to IPR that different types of malware pose, including an exploration of the specific functionalities of malware regarding piracy websites⁴⁶.

Payment options for pirated content are often traditional credit card payments, but in recent times, a number of services have increasingly been seen to provide payment options in virtual currencies⁴⁷, and certain sites have even limited the payment options exclusively to virtual currencies.

The entities behind such infringing websites have increasingly developed and employed methods to conceal their true identity and location. Legally available privacy shields and other ways to conceal their identities have been effectively applied by the infringers. The websites also often use several domain names and host identical content simultaneously at different internet locations, thus avoiding disruption of services should law enforcement or civil action be taken against them. This is very often combined with encouraging users of the websites to bypass blocking orders and hide their identities, by way of reverse proxies and virtual private network (VPN) services⁴⁸.

Along with the perceived increase in the number of illegal websites, legal sources providing access to digital content have also been increasing year by year, and such sites have evolved significantly, both in terms of the number of services that they offer, and the quality and variety of their content⁴⁹. However, for many users, identifying whether a service is legal or not continues to be a challenge. It is known that some European internet users continue to mistakenly take the fact that a digital content service is freely available online without the authorities having taken action as a sign that the service provides legal access to digital content⁵⁰.

45 - OHIM, *Digital advertising on suspected infringing websites*, OHIM, Alicante, 2016. Available at: <https://euiipo.europa.eu/ohimportal/documents/11370/80606/Digital+Advertising+on+Suspected+Infringing+Websites>.

46 - EUIPO, *Observatory work programme 2017* (DW4 initiative), 2017, p. 16. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/about_us/observatory_work_programme_2017_en.pdf.

47 - EUIPO, *Research on online business models infringing Intellectual Property Rights: phase 1*, 2017, pp. 13-14.

48 - Office of the Intellectual Property Enforcement Coordinator, *Supporting Innovation, Creativity & Enterprise: Charting a Path Ahead* (US Joint Strategic Plan on Intellectual Property Enforcement FY 2017-2019), White House, Washington DC, 2016, pp. 22-24. Available at: <https://obamawhitehouse.archives.gov/sites/default/files/omb/IPEC/2016jointstrategicplan.pdf>.

49 - On 3 October 2016, the EUIPO launched agorateka (<https://agorateka.eu/ea/>), which provides access to national portals with links to legal online digital content.

50 - EUIPO, *Test case: legal online offers of music*, EUIPO, Alicante, 2016. Available at: <https://euiipo.europa.eu/ohimportal/documents/11370/80606/Test+case++Legal+on-line+offers+of+music+%28Oct+2016%29/d33bc6c6-30d6-4b01-a1bc-55bc0c2fb5c2>.

CRIMINAL NETWORKS AND INFRASTRUCTURES

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Criminal groups

IPR crime is an area that allows a variety of criminal groups to operate. Criminals involved in IPR crime may be part of an OCG or act as individuals. They can engage either in separate stages of the illicit activity, such as production, transportation, distribution or retail, or be involved throughout the entire process. The scope of their involvement partially depends on their resources, expertise and focus (either explicitly in IPR crime or also in other crime areas).

Since the production of counterfeit goods continues to take place predominantly outside Europe, EU-based OCGs catering for the EU market rely heavily on manufacturers of counterfeit goods abroad. These groups therefore, are not directly involved in the production. Instead, they place orders with the producers and manage the next stages of the criminal activity: importation, transportation, storage and distribution of the counterfeit goods.

Only a limited number of OCGs are involved in the production of counterfeit goods in the EU. However, these groups tend to control the entire process, from the supply of raw materials and machinery, the establishment of a clandestine production facility and production of goods, to their transportation, storage and retail. Criminal groups involved in large-scale production often display substantial financial resources and links to other forms of crime, typically money laundering, excise fraud or drug trafficking. Other EU-based OCGs focus on the production of small quantities of counterfeit products, such as clothes and leather products.

Although OCGs involved in counterfeiting tend to operate independently, contacts with other groups may be established on an ad hoc basis to carry out specific activities. Criminal groups may outsource certain activities, such as importation or transportation, to benefit from other groups' expertise, resources or competitive advantages, such as favourable locations for EU entry points.

The majority of identified OCGs are hierarchically structured. The leader manages the overall activity, gives orders to subordinates, and recruits new group members. He or she is also in charge of the financial side, controls the profits, and decides on possible reinvestments. The leader often also has the primary access to the network of contacts, including to corrupt officials collaborating in the activities. In such centrally managed groups, the tasks and roles are clearly divided between the members. Typically, different group members are responsible for organising the import, transportation, storage, sales, and distribution of the counterfeit goods

The Neapolitan area of Italy is characterised by the presence of counterfeit manufacturing sites specialising in producing leather goods and footwear, products that have been legitimately manufactured in the region for generations. Whilst legal industry has reduced in size, the necessary know-how for the production of illicit goods remains and this is used to manufacture counterfeits. There is also the phenomenon of local factories that produce licit and illicit products in parallel.

The area is also an important point of entry for foreign goods, in particular from countries such as China, Egypt and Turkey, from which many counterfeits originate, as well as unbranded products that are subsequently labelled in Campania with counterfeit logos and packaging.

The presence of the abovementioned ex-employees and their associated know-how ensures the process of production runs successfully.

Recent times have seen the arrival of a large community of Asian citizens, especially Chinese, who have created their own IPR-infringing business areas, which may include the import and/or manufacture of such goods.

A further challenge for authorities in this area is that many people pay little attention to the provenance of goods, even if buying counterfeits results in purchasing an item that is of a lower quality than the original. Large amounts of counterfeit goods (except food, medicines and cosmetics) are sold by street vendors and their non-authenticity is clearly evident and fully accepted by the customer, who wishes to fulfil a desire for luxury items at a low cost.

Organised criminals in the area rarely produce counterfeits directly but involve themselves in the following ways:

- through their control of the territory, they acquire a right to a share of the profits originating from those who manage the local production of counterfeited goods. Because this is an illegal activity that is relatively easy for law enforcement to detect, the counterfeiters appreciate the guarantee of protection offered by organised crime;
- with finances to invest in the counterfeiting activities, which offer high profitability and a reduced risk of lengthy criminal sentencing compared with other criminal activities, such as drugs or extortion.

Whilst there are many business models, the predominant illegal IPR-infringing phenomena in this region are:

- wholesale importation of counterfeits, which are either sold locally or dispatched to other areas of the country;
- importation of unbranded goods, in particular from the clothing sector, which are then transformed locally with the addition of fake logos to produce counterfeits;
- local production of counterfeited goods, particularly leather goods and shoes, copying the authentic models and reproducing fake labels and logos;
- local production of identification marks (also boxes, labels and other objects) for the transformation of the final product into a counterfeit;
- counterfeits being openly sold by small street traders in various market areas.

Source: Public Prosecution Service, Naples, 2017

or parts thereof. The common roles include drivers, logistics support, storage keepers, front men or women, couriers, distributors, and people securing the import and its transportation. In addition, some group members are explicitly tasked with laundering the profits from the criminal activity. These groups generally bring together several nationalities; they are highly mobile and are usually active in several countries inside and outside the EU.

Certain criminal groups involved in counterfeiting consist of members linked by ethnic ties or kinship. Groups composed of members of Asian origin remain especially active in the EU and often take advantage of an extended network of contacts across Europe and in their countries of origin. Such groups are particularly hierarchical, well organised and disciplined. They rely on a strong concept of belonging and solidarity among members and potential affiliates. Moreover, these groups are often poly-criminal and engage in other crime areas, such as trafficking in human beings or drug trafficking.

However, family-based OCGs tend to have a more egalitarian approach towards their members. They usually have similar functions and importance in the group.

The majority of the identified OCGs are large in size. They typically consist of more than 12 members, with 5-6 core members on average. This may be explained by the number of different tasks within the supply chain that have to be carried out.

Use of expertise

The level of specialisation, and the need for it, varies throughout the stages of the illicit activity.

The production and import of counterfeit goods, unlike distribution, often require specific expertise. For instance, OCGs make use of chemists for the production of certain goods, such as counterfeit pharmaceuticals or pesticides. Some criminal groups also seek specialists at later stages of their activity, primarily to develop and manage their illicit businesses. Financial experts, lawyers or other specialists with a strong knowledge of EU trade and migration law tend to be used in advisory roles. The increasing importance of online trade also requires a specific set of IT skills. However, the offline distribution of goods does not involve any particular expertise and can be widely carried out by non-professionals.

In the area of piracy, IT specialists are used to create and manage sharing and streaming platforms. They also establish a network of uploaders (people who contribute the IPR-infringing content), who are paid depending on the quality of supplied product, linked to the number of downloads. In some very limited cases, coding, knowledge of malware and specific software used for illicit financial transactions can be in demand.

Generally, the overriding purpose behind the involvement of experts and specialised tools is to perfect the criminal activity and avoid detection.

In May 2016, a criminal network specialised in the illegal distribution of pay TV channels was dismantled in Spain. The OCG imported decoders from China and was able to design the firmware used to decrypt the TV signals and use internet protocol television (IPTV) technology to illicitly distribute over 1 600 TV channels. The group displayed a high level of expertise, operating through a complex network of shell companies and laundering its proceeds through bitcoin (XBT) mining. The operation led to the arrest of 30 suspects, the dismantling of 6 bitcoin mining centres, with XBT 78.3 (value EUR 31 320), and the seizure of 48 800 decoders, significant amounts of cash and bitcoins, as well as IT equipment, luxury vehicles and a private plane.



Europol Press release, 25 May 2016, 'Spanish network behind the illegal distribution of pay TV channels'

Business models (OCGs)

The modi operandi in counterfeiting and piracy have partially changed over the past few years and are expected to evolve further in the future. The growing role of technology and online trade shapes the new dynamics within this crime area. Almost every stage of organised criminal activity can be increasingly influenced by technological developments. This only proves that, to a certain extent, the evolution of the trade in counterfeit products resembles the evolution seen in the legal business sector.

A digital business

Technology continues to facilitate the organisation and coordination of criminal activities. Communication between members of criminal groups is no longer confined to telephones and the internet, but also increasingly relies on encrypted communication tools and anonymisation software. In some cases, malware, stolen payment cards and bitcoins have been reported to be at the disposal of criminal groups. With increased accessibility of technologies, criminals tend to have very limited personal contact with each other, even when counterfeit goods are moved and transported.

This is particularly true for the procurement of counterfeit goods. The internet greatly enables contacts with providers or manufacturers of goods located in other countries, often in Asia.

Businesses run by criminals increasingly develop and maintain online trade relations with manufacturers in source countries. Transactions are now often exclusively finalised via the internet, without the necessity of travelling to the source country to negotiate and conclude the trade deal. An example of one EU-based OCG shows how easily available technology has contributed to the cost-efficiency of its operating methods. In that case, trade deals were finalised between Europe and Asia entirely digitally. Pictures of counterfeit goods, including clothing, shoes, watches, perfumes and pharmaceutical products were sent to the mobile phones of the criminals. Following price negotiations, the goods were also ordered by mobile phone. These transactions were quickly concluded and did not require any personal contact between the parties involved.

Distribution and sales follow a similar approach. Online marketplaces have become key distribution channels for counterfeit goods. Fake products are sold on major, widely available and trusted platforms, or by online pharmacies. Even space in containers can be purchased on some of the well-known online marketplaces.

Thousands of internet websites offer IPR-infringing merchandise.

In 2016, Operation In Our Sites (IOS) VII resulted in the seizure of 4 780 domain names and associated online shops selling counterfeit merchandise. It led to the arrest of 10 people and seizure of goods worth over EUR 1.75 million. The operation tackled copyright-infringing websites and third-party marketplace listings selling luxury goods, sportswear, spare parts, electronics, pharmaceuticals, toiletries and other fake products.

Europol Press release, 28 November 2016, 'Over 4 500 illicit domain names seized for selling counterfeit products'

An increase in online trade offers numerous advantages for criminal groups. Counterfeit goods are available to a large number of potential buyers and as a result, stable profits for OCGs are ensured. Secondly, the internet allows for greater anonymity of sellers and possibilities of covering their tracks. The borderless nature of the internet is instrumental in facilitating criminal activities that, to a large extent, take place internationally. A website may be registered in one country, the bank account for payments in another, consignments are sent from yet another country — all of these elements can be easily coordinated by criminals that do not reside in any of these countries. It is also relatively easy to introduce counterfeit goods into the online marketplace. They can enter undetected and become part of the broad range of products already available online, on numerous e-shops and platforms. Consumers buying from online platforms provide their own product specifications and have access to a greater variety of counterfeit products. The counterfeit goods sold on the internet are usually distributed in small parcels via postal and express freight services, often directly to customers.

The online distribution of counterfeit pharmaceutical products is particularly dangerous. In 2016, Europol supported Operation Pangea IX, led by Interpol, which specifically targeted online vendors of counterfeit medicines. It led to the arrest of 393 suspects, the seizure of potentially dangerous medicines worth more than USD 53 million and the suspension of 4 932 websites selling illicit pharmaceuticals. The seized items ranged from lifestyle medicines, hormones, life-threatening fake cancer medication to various types of medical devices, including substandard HIV and diabetes testing kits, counterfeit dental equipment and illicit surgical equipment.

The operation also targeted the main areas exploited by organised crime in the online medicine trade: rogue domain name registrars, electronic payment systems and delivery services.

Europol Press release, 10 June 2016, 'Online sale of fake medicines and products targeted in Operation Pangea'

Counterfeiters are also well aware of the importance of online marketing. They tend to use social media platforms to advertise their products and steer potential consumers to online sales platforms. On the other side of the advertising industry, websites selling IPR-infringing products also financially benefit from the advertisements. Sometimes, even famous brands unconsciously publish their advertisements on such websites, causing damage to their reputation and bringing no return on investment⁵¹. Such practices are risky as the advertisements placed on commercial-scale IPR-infringing websites and apps may lead to malware or spyware. Both the brands and advertising companies bear some responsibility in this regard. The legitimacy of online platforms should be duly verified in order to prevent or minimise any additional revenue for IPR-infringing websites.

The internet is borderless and online trade in counterfeit goods affects all EU countries and increasingly all products.

An illegal mirror economy

The trade in counterfeit goods continues to resemble the licit trade. First of all, criminal groups tend to operate like businesses, following the logic of trade and aiming to increase their effectiveness and profits. In order to succeed, illicit trade, very much like the trade in legitimate goods, has significantly shifted to online marketplaces. It also increasingly makes use of online advertising and other effective sales techniques. Secondly, criminals, driven by financial profit, are capable of expanding their activities by engaging in sales of a broader range of counterfeit products, diverting fake goods from one country to another or even shifting to other crime

⁵¹ - OHIM, *Digital advertising on suspected infringing websites*, OHIM, Alicante, 2016. Available at: <https://euiipo.europa.eu/ohimportal/documents/11370/80606/Digital+Advertising+on+Suspected+Infringing+Websites>.

areas. For the very same reason, improving profitability, intra-EU production continues to attract criminal groups. It reduces transportation costs and lowers the risks of detection by customs. Thirdly, like successful legitimate businesses, OCGs involved in IP crime continue to adapt to the changes in the environment they operate in. They remain well informed about trade laws and customs procedures and use loopholes in the system to increase their financial profits. Criminal groups continue to monitor market demand and differences in prices of products across the EU in order to move counterfeit products quickly from one country to another.

Finally, similarly to legitimate companies, criminal groups involved in IP crime rely heavily on commonly used business structures in order to carry out their activities effectively.

Legal business structures and infiltration of the legal supply chain

Criminal groups continue to set up or infiltrate existing legal business structures. In order to operate, they tend to establish numerous multipurpose companies to organise import/export, transportation, delivery and distribution of goods. The process of setting up such companies is often facilitated by the use of illegally obtained documents, such as visa or work permits, or fraudulent identity cards.

To diminish their liability whilst developing and maintaining illegitimate business links with manufacturers in other countries, criminals often rely on various front companies. These companies often incorporate a well-known brand name with the intention of misleading the customers.

Generally, these business structures are often used to merge legal and illegal profits and to maintain a facade of legitimacy.

Criminals infiltrate legitimate supply chains at different levels, often by means of fraudulent documents and/or corrupt practices. They are also specialised in diverting trade from one country to another based on the differences in demand and price of products. Diverted counterfeit pharmaceuticals pose a special risk. To enter the supply chain in another country, where prices for medicines are higher, they are often repacked and contain translated instruction leaflets. Criminal groups also insert counterfeit products into discarded genuine packaging, in order to introduce them into the legitimate supply chain.

OCGs may also infiltrate production lines and wholesalers. Wholesalers and semi-wholesalers are weak points, especially for counterfeit technical products, such as fake semiconductors or ball bearings. Some cases have highlighted that even a secure supply chain of official wholesalers or major international companies can be abused by criminal groups and result in companies unintentionally purchasing counterfeit products.

In June 2016, one of the biggest online sellers of counterfeit products was arrested in the Spanish province of Malaga. The individual, originating from Italy, specialised in the distribution of high volumes of counterfeit sport items. The economic damage to one brand alone was estimated to reach EUR 2 million. The offender would establish contact with potential clients via online platforms and provide them with samples for which a deposit was paid. After confirmation of the purchase, the goods would be delivered and the payment finalised. Investigations revealed links with legal business structures in Brazil, China and Hong Kong for sourcing materials and laundering the criminal profits.

Europol press release, 29 June 2016, 'One of Europe's biggest online sellers of counterfeit products arrested'

Easy access to resources

To be able to carry out such a variety of activities, criminal groups need stable access to resources. However, this does not seem to pose any major difficulty for criminals. Widely available and affordable information and communication tools increasingly facilitate their activities. Being in possession of properties, often used as warehouses, and vehicles, used for transportation of goods, makes it easier for criminals to operate. In addition, capability to recruit new members ensures smooth running of the criminal business. Last but not least, OCGs are able to finance their actions. Their capital has often been obtained from other criminal activities.

Poly-criminality

The example of financial resources derived from other criminal activities reinvested in IPR crime shows the typical poly-criminal nature of crime groups involved in this area. They frequently engage in other criminal activities, mostly in drug trafficking, excise fraud, human trafficking and money laundering.

In addition, criminals acting as distribution networks tend to traffic more than one illicit product. Their portfolio is diverse and often includes the distribution of other illegal product types, such as illicit drugs.

Even OCGs that are exclusively dedicated to IPR crime often need to rely on VAT fraud and acts of corruption in order to operate. Money laundering is also frequently an indispensable element of IPR crime.

In 2015 and 2016, Europol supported an operation targeting an Italian OCG selling counterfeit champagne in various Member States. Investigations in Italy and Germany revealed that one of the main suspects was also involved in the trafficking of cocaine.

During house searches in Germany, investigators seized more than 12 000 bottles of fake champagne. The investigation also uncovered links to VAT and excise fraud.

Europol, SOCTA 2017

Document fraud

Document fraud continues to play a key enabling role in trafficking of counterfeit goods to the EU. Fraudulent documents are widely used to facilitate the transportation, distribution and sale of counterfeit goods.

For the purpose of importation, counterfeiters provide false shipping documents, such as bills of lading, to conceal the content of containers of packages and the origin of shipments. They often use false invoices issued for imported goods in declarations to customs. This practice is also used to undervalue their imported products.

At the stage of distribution of counterfeit goods, fraudulent retail licences enable the infiltration of the legitimate supply chain.

Generally, in order to run their illicit businesses, OCGs establish companies and bank accounts using fraudulent identity documents or under the name of a front person, and regularly make use of bogus invoices. The OCGs purchase or rent vehicles using fake documents. Number plates of cars belonging to criminal groups are registered abroad or under a fake identity.

Corruption

Corruption also continues to greatly facilitate criminal activities in this area. For instance, corrupting public servants enables the import and transit of counterfeit products. Issuance of visa or work permits by corrupt officials may also allow criminal actors to legally establish companies involved in IPR crime. A network of brokers and agents uses corrupt practices to infiltrate the legitimate supply chain, especially during distribution and sales. Bribes are also used to persuade owners of legitimate businesses to cooperate with criminal groups along the supply chain.

Criminal finances and money laundering

IPR crime proves to be a lucrative business. OCGs involved in counterfeiting and piracy regularly launder their criminal proceeds. The capital is often moved through various bank accounts

established in different countries, under different company names. OCGs make use of money transfer services to move finances internationally and between the numerous bank accounts of their companies.

Illicit financial gains are often introduced into the legal economy, mostly through real estate investments or purchases of luxury products and gold. Legal businesses, owned by criminals, remain an essential element of money-laundering activities. They enable trade-based schemes that do not often involve the physical movement of cash and provide a facade of legitimacy for money transfers.

Some OCGs use their illicit proceeds to expand their criminal activity.

In December 2016, a criminal network involved in intellectual property crime and money laundering was dismantled in La Junquera, Spain. The criminals imported clothing and accessories from companies in various countries, mainly China, Portugal and Turkey. Some products, (leather goods and belts) were counterfeited in Spain through the purchase of 'white' label products to which they applied logos and names of recognised brands. The goods were distributed through legal retailers. Secret warehouses concealed behind fake walls were used to hide the newest merchandise in the event of police intervention. The network was structured in three homogeneous groups with no clear hierarchical leader and operated in a perfectly coordinated way to share supply channels, warehouses and money-laundering mechanisms. They relied on a sophisticated network of fictitious companies and front persons to launder the proceeds of their criminal activities (estimated at EUR 9 million). Investigation led to the seizure of 150 bank accounts, 30 high-end vehicles, EUR 13 000 in cash and about 265 000 products infringing intellectual property rights (textiles, footwear, watches, sunglasses, leather goods and jewellery).

Europol press release, 9 December 2016, 'Main European Union hub for distribution of counterfeit goods dismantled'

CHALLENGES IN FIGHTING PRODUCT COUNTERFEITING AND PIRACY

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The move online

The shift towards online trade in counterfeit goods poses new challenges for law enforcement. The internet allows criminals to employ international operating methods. These increase the challenges for cross-border investigations, and often hamper prosecutions in multiple jurisdictions.

Products sold online are frequently distributed in parcels via postal services. It remains difficult to detect illicit goods within the increased overall traffic of parcels. Criminals identify this low-risk opportunity and exploit it to their advantage. Whilst sending counterfeit goods, component parts or labels via postal services, criminal groups tend to use fraudulent identities. This significantly complicates operational activities such as controlled deliveries and searches performed by law enforcement. In addition, they seem to adjust the volume of their shipments to reach the potential level of tolerance shown by customs and rights holders. One box of counterfeit shoes may not necessarily lead to an investigation into IPR crime, as opposed to one seized container of such products. Moreover, the increased intra-EU production has an impact on the work of law enforcement. It has been reported that identifying and dismantling domestic clandestine production facilities proves difficult, partly due to the effective methods used by criminals to conceal their activities.

Techniques

Over recent years, criminal groups and individuals involved in IPR crime have developed a good understanding of law enforcement techniques. They are able to regularly use various, predominantly traditional, countermeasures. In the first place, criminals aim to secure their communications by regularly changing telephone numbers, using numerous foreign SIM cards or prepaid mobile cards, and encrypted communication tools. They sometimes also communicate using different dialects or codes.

Other operating practices regularly used by criminals also hamper the detections made by law enforcement. For instance, OCGs often separately import and transport different parts of counterfeit products to be assembled later. Counterfeit goods are also often shipped together with genuine products. When transported in bulk in containers, they are usually well hidden between other legally declared product types. To further conceal their criminal activities, criminals frequently change vehicles, often hired or leased using fraudulent IDs, and rely on cash payments not to leave any tracks of unlawful transactions. Such approaches

require increasingly more time and resources invested by law enforcement authorities in detection and investigation of IPR crime. However, this is often a challenge in itself, mainly due to a continuously complex law enforcement landscape and particularly, the division of the IPR-crime-related responsibilities and roles between various authorities in EU Member States. More efficient coordination and collaboration between the relevant actors and better streamlining of efforts are needed.

Powers

In certain MS, the relevant authorities still lack adequate powers to effectively tackle counterfeiting. Under criminal procedures, they cannot seize counterfeit goods or start investigations into IPR crime without the rights holder's confirmation of the IPR infringement. IPR holders might also opt for a civil procedure to enforce their rights in some instances. A low number of criminal investigations may partially result in a fragmented intelligence picture of IPR crime. The limited enforcement powers within the FTZ remain especially challenging. Unspecialised or insufficient resources also hamper the efforts of law enforcement to prevent and combat this crime.

Acceptance

Over recent years, customers of counterfeit goods have developed a higher level of tolerance towards this crime. Due to the perceived low financial damage and apparent common social acceptance of the phenomenon, they may sometimes refrain from reporting these incidents to the authorities. Consequently, they remain uninvestigated.

Generally, a lack of satisfactory enforcement, combined with low sanctions for IPR crime continue to attract OCGs into this crime area.

Priorities

The threat and prevention of terrorist acts in their many forms, as well as addressing other serious organised crimes, often overshadow other priorities. IPR crime nevertheless continues to be one of the most lucrative criminal enterprises, and the fact that the illegal funds generated have been linked to organised crime means that tackling IPR crime should remain on the EU law enforcement and policymaking radars, not least to deprive those involved in other criminal enterprises of their revenue streams.

Customs focus

The number of overall detentions at the external borders has remained relatively stable in recent years, indicating that customs administrations may be working close to their maximum capacities allocated to IPR enforcement. However, an overall reduction in customs resources, along with the fact that they are facing the challenge of processing ever-increasing numbers

of small packages, could cause the total amount of counterfeit products entering the EU to remain stable.

Penalties

Criminal sanctions for trade mark and copyright infringements remain a matter for MS individually and the measures available differ.

The average maximum number of years that a defendant can be sentenced to for trade mark infringements is four⁵². The average maximum fine (derived from submissions from 12 MS) amounts to EUR 126 691. For copyright offences, the maximum period of imprisonment is again on average four years and the maximum average fines stood at EUR 120 183.

Certain MS have the capacity to apply substantial punitive measures for the commission of IPR crime. Indeed, some theoretically have the power to levy very substantial sanctions. However, the above penalties apply only in the most severe and often repeat levels of commercial scale IPR crime, and at the lower end of the spectrum, where it is a first offence or there are other mitigating circumstances, sentencing in some MS stands at short-term imprisonment, often suspended, or a fine of as little as EUR 38.

IPR crime is not only attractive to criminals as the sentences are low, but in addition, with the prospect of punishing a defendant with a fine of EUR 38 or one month's imprisonment (if at all), pursuing such cases may not have great appeal for prosecutors or investigators in some MS and therefore, some cases may not come to court in the first place.

Storage and destruction

When an IPR-infringing seizure is made, the illegal products and the associated packaging must ultimately be destroyed, subsequent to being stored (securely and potentially for a long period) and used as evidence in legal proceedings. In over 90 % of the external border seizures performed by EU customs in 2015, the goods were either destroyed, or the rights holder initiated a court case to establish IPR infringement, usually resulting in destruction, and constituting a financial commitment⁵³.

Regarding destruction costs in criminal proceedings, the MS usually bore the financial burden, but in customs proceedings it was the rights holder that was frequently liable for the costs of both storage and destruction. Where storage and destruction costs could be recovered by the MS, significant differences were found in the level of restitution.

52 - EUIPO, Seminar for Intellectual Property Rights and enforcement judges and prosecutors, held in May 2016.

53 - European Commission, Directorate-General for Taxation and Customs Union, *Report on EU customs enforcement of intellectual property rights: results at the EU border 2015*, 2016, p. 7. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_ipr_statistics.pdf.

Article 29 of Regulation (EU) No 608/2013 attempted to address these variations in storage and destruction costs and policies by decreeing that customs authorities may decide that the holder of the decision should reimburse all the costs incurred by the customs authorities in taking action to enforce his or her intellectual property rights.

Industry concern focuses mainly on the possibility that rights holders, be they large companies or SMEs, may not be prepared, or could not afford to pay for storage and destruction costs in the more expensive MS. Although enforcement of IPR under the rules of Regulation (EU) No 608/2013 is a cost-effective measure for rights holders to protect their rights, due to the fact that there is no fee for submitting an Application for Action (AFA), the obligation for rights holders to bear the storage and destruction costs, along with the lack of control over the costs, may deter some of them from submitting the AFA. The danger of this is that counterfeit goods may enter the EU undetected as the authorities have not been alerted to the potential existence of illicit consignments.

WHAT IS BEING DONE

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Despite the complex challenges, there are many initiatives and good practices aiming to address them.

OECD-EUIPO studies: improved understanding

The successful launch of the joint OECD-EUIPO report on Trade in Counterfeit and Pirated Goods (the 2016 Study) has triggered the attention of numerous public stakeholders. Follow-up topics to be analysed from 2017 to 2018 are the role of FTZs in the process of illicit trade, postal and courier/express distribution streams of illicit trade, as well as an analysis of illicit trade conducted via the internet. Furthermore, selected in-depth quantitative investigations in the area of trade in counterfeit and pirated products will be produced. The planned work will result in four main, stand-alone, joint OECD-EUIPO studies, addressing the main intelligence gaps in the area of IPR.

It will be undertaken as an activity of the OECD Task Force on Countering Illicit Trade in the context of the OECD High Level Risk Forum in collaboration with other relevant OECD bodies, including the Committee on Industry, Innovation and Entrepreneurship (CIIE), international organisations (such as the WCO, WIPO, Europol and Interpol), civil society and, private stakeholders.

Europol Intellectual Property Crime Coordinated Coalition (IPC3) and EUIPO enforcement tools: supporting the work of national law enforcement authorities

To strengthen the fight against counterfeiting and piracy online and offline, Europol and the EUIPO joined forces to launch the Intellectual Property Crime Coordinated Coalition (IPC3) in July 2016.

The IPC3, located at Europol and funded by the EUIPO, provides operational and technical support to law enforcement agencies and other partners in the EU and beyond. Among other activities, it facilitates and coordinates cross-border investigations, monitors and reports online crime trends and emerging modi operandi, raises public awareness of this type of crime and provides training to law enforcement officers on how to combat it. Currently, the IPC3 supports more than 50 IPR-infringing cases, all classified as high priority. The operational and technical support provided by the IPC3 to law enforcement agencies and other partners is increasing steadily⁵⁴.

54 - <https://www.europol.europa.eu/about-europol/intellectual-property-crime-coordinated-coalition-ipc3>.

The Enforcement Database (EDB)

The EDB is built on existing EUIPO databases, such as TMview for trade mark information and DesignView for registered Community designs. It is endorsed by the European Commission, which has agreed to connect it to their EU customs' secure network.

Customs authorities from the 28 MS currently use the EDB, as do a number of national police authorities. They can view information and product details, making it easier for them to identify counterfeits and take action. The database is integrated with the EU law enforcement agency, Europol, and the European anti-fraud office, OLAF.

Companies from various sectors of industry doing business in the EU are already using the database — from small businesses to multinational corporations⁵⁵.

Anti-Counterfeiting Intelligence Support Tool (ACIST)

The EUIPO, through the Observatory, works with EU enforcement authorities to establish best practices in data collection across the EU. ACIST converts the collected data into a harmonised format so that it can be compared and aggregated. Currently, ACIST provides information on the counterfeited and pirated goods detained at all EU MS borders. It also provides information on the national markets of 17 Member States. ACIST is a good source of information, also used for the purpose of this report in order to present a comprehensive picture of IPR infringements across the EU.

Virtual Training Centre (VTC) on IPR

Based and located on the CEPOL⁵⁶ e-net, as of October 2017, the VTC on IPR will offer learning content and other useful material provided by the EUIPO and its partners. It is designed for students from law enforcement authorities of the EU Member States enforcing IP rights at national and local level (police and customs officers, prosecutors, judges and market inspectors).

Learning content will be organised in knowledge areas and levels: basic, intermediate and advanced.

The VTC on IPR will also have an area dedicated to training the trainers. Learning content will be offered as e-learning modules, live and recorded webinars, presentations and video materials⁵⁷.

Other useful materials cover reports and studies of the Observatory and other relevant EU and international bodies.

55 - <https://euiipo.europa.eu/ohimportal/en/web/observatory/enforcement-database>.

56 - CEPOL is the European Union Agency for Law Enforcement Training.

57 - https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euiipo/the_office/work_programmes/EUIPO_Work_Programme_2017_en.pdf.

THREATS REVISITED

2017 SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION

The *2015 Situation Report on Counterfeiting in the EU* identified a series of potential future threats to EU IPR integrity and this section of the report will first review developments in the fields originally covered, before assessing any further issues that have arisen, or could materialise in the coming years.

Tanger Med

Concerns were raised around the then unfinished works to extend the size of Tanger Med as an FTZ and free port by 2017, and the potential dangers that the FTZ could pose to EU IPR integrity, given its proximity to Spain. It was thought that the extension of Tanger Med could provide an opportunity for counterfeiters to tranship and prepare products for distribution in the EU from just outside the borders.

Tanger Med is now believed to be operating close to the full capacity predicted but the full impact of this facility so close to EU external borders in terms of IPR integrity has yet to be quantified. No noticeable increase in seizures from this region at the Spanish borders was recorded in 2013–2015, with the vast majority of Spanish IPR-infringing cases emanating from China and Hong Kong⁵⁸.

Certification labels

The misuse of certification labels, not just in relation to safety and quality certificates applied to counterfeit or substandard industrial machinery, but also in the food and beverage sector, was highlighted in 2015.

Depending on the product, or a product's intended application, there are many organisations globally with core competencies in safety and quality certification. In many cases, evidence of endorsement by one of these entities is compulsory by law. Counterfeiters therefore regularly falsify these certification marks and apply them to fake products to make them appear genuine.

One such organisation has recorded approximately 400 current known abuses of their certification labels or certificates, through their being counterfeited and used illegally on unsafe products⁵⁹.

58 - DG TAXUD.

59 - http://www.tuev-sued.de/product-testing/_services/markets_and_competition/quality_and_test_marks/abuse_of_quality_marks/black_list.

It is evident therefore that the misuse and counterfeiting of certification labels continues to be a major issue for rights holders in a series of diverse industries, especially as such marks purport to testify to the quality and safety of a product that, if counterfeit, is likely to be substandard and potentially highly dangerous.

Organic and certified origin food labels

In 2015, the food industry saw a growth in the abuse of 'organic' labels attached to products that did not comply with the organic certification but had higher retail prices, and a growth in the misuse of such labels in the future was anticipated.

The value of falsely labelled geographical indication infringing (GII) products in the EU remains high, with the main producers of the original products, such as Germany, Spain, France, Italy and Greece, being the most affected by counterfeit labelled comestibles⁶⁰. The products affected included wine, other spirits, cheese, meat, fruit, vegetables and cereals⁶¹.

There were reported seizures of 16 618 items of such goods at the EU external borders in 2014, but very few in 2015. The current low number of AFAs concerning GII could also partly explain the low number of customs detentions concerning this type of IPR. Regardless of the fact that very few seizures were recorded, the risk of GII products remains substantial, but potentially it is more a matter for domestic enforcement, because many of these goods are manufactured and traded in proximity to the regions in which they claim to be legitimately manufactured.

Doping products and food/herbal supplements

These products were identified in 2015 as an increasing phenomenon in the EU, developing in parallel with increased demand for lifestyle drugs and organic foods, EU MS started to see growing seizures of doping products and food/herbal supplements arriving by parcel post.

Since 2013, when 2 062 items of foodstuff were intercepted as express courier traffic, minimal recoveries of such infringing product types in this, or any other, transport stream have been recorded in the external border seizure statistics. Nevertheless, food and beverage counterfeiting in its many forms is clearly still a serious issue for EU IPR integrity and consumer welfare.

60 - EUIPO, Infringement of protected geographical indications for wine, spirits, agricultural products and foodstuffs in the European Union, EUIPO, Alicante, 2016, p. 7. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical_indications_report/geographical_indications_report_en.pdf.

61 - EUIPO, Infringement of protected geographical indications for wine, spirits, agricultural products and foodstuffs in the European Union, EUIPO, Alicante, 2016, p. 7. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/Geographical_indications_report/geographical_indications_report_en.pdf.

In September 2015, a joint US Drug Enforcement Administration and Europol operation targeted every level of the illegal anabolic steroid industry — from the manufacturers in China to the traffickers that market the lethal doses in Europe and beyond.

In total, 135 000 steroid dosage units were seized, as well as 636 kg of raw steroid powder of Chinese origin. USD 2 million and assets were also seized, and dozens of search warrants were executed on targets, resulting in 92 arrests and the seizure of 16 rogue steroid laboratories. Raw ingredients, equipment and instructions on how to make complex, illicit and potentially dangerous pharmaceuticals are often found in these underground steroid laboratories. The above products are frequently obtained by the criminals on the internet from Chinese chemical manufacturing companies.

Europol, Operation Underground 2015

Other foodstuff and beverage infringements

In 2016, EUR 1.3 billion of revenue and taxes were directly lost annually to the MS through such IPR infringements, along with EUR 3 billion of lost sales to the EU economy, and job losses of about 23 400⁶².

This type of IPR infringements continues to pose a threat. The methods are increasingly diverse, and range from the abuse of geographical indications to more traditional counterfeiting, such as refilling high-end bottles from recognised producers or the use of fake labels and packaging.

62 - EUIPO, *The economic cost of IPR infringement in spirits and wine*, EUIPO, Alicante, 2016, p. 5. Available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study8/wines_and_spirits_en.pdf.

In 2016, an illicit alcohol production and a distribution network were identified in Greece. Three illicit factories counterfeiting famous brands of alcohol were dismantled. The alcohol was produced in Greece using genuine empty bottles smuggled from Bulgaria; in all, 7 439 bottles and 4 000 counterfeit labels were seized. Investigation revealed collusion between the producers and another criminal network led by the deputy director of a chain of off-licence shops. Both criminal groups developed a partnership to distribute the illicit bottles. The alcohol, mainly whisky and vodka, was sold in bars and night clubs in the Attica region.



More widely, the joint Europol-Interpol Operation Opson V ran over the course of four months (November 2015-February 2016) across 57 countries. It resulted in the total seizure of 11 131.18 tonnes, 1 449 056.40 litres and 5 549 328 units of either counterfeit or substandard food and beverages, as a result of checks carried out at shops, markets, airports, seaports and industrial estates across the globe.

Europol-Interpol, Report Operation Opson V, October 2016.

In February 2016, Italian Guardia Di Finanza found over 9 000 bottles of counterfeit Moët & Chandon in Padova, describing the seizure as 'one of the most significant seizures of counterfeit bubbly in Europe'. The illicit batch was estimated to have a potential resale value of EUR 350 000, making it one of the largest seizures of counterfeit champagne in Europe. Along with the fake Moët & Chandon bottles, 40 000 counterfeit labels were also discovered, estimated to be worth a further EUR 1.8 million, if they had been used to produce further counterfeit bottles.

Guardia Di Finanza, 2016

3D printing

The *2015 Situation Report* identified 3D printing as a possible emerging threat, both in terms of the opportunity these devices could afford counterfeiters to produce illegal replicas of existing objects, and the potential for entities currently involved in the production of conventional counterfeit toner cartridges to diversify into producing fake raw materials for use with 3D printers.

Many of the concerns expressed have yet to materialise however, largely due to the fact that in the most part, current 3D-printing technology lends itself more to low-volume, time-consuming and, arguably, costly manufacture. In order for a counterfeit product to be viable, it would generally need to be produced in high volumes, at a low cost and quickly, none of which are features of most current 3D-printing solutions available publicly. That is not to say that 'counterfeits' have not already been seen however.

In 2015 Nintendo filed a patent for a new digital games controller, to be launched alongside the company's new system in 2016.

Soon afterwards, rumours of the device's revolutionary design and pending launch began to circulate on digital gaming forums and associated social media. As interest grew, photos of the device, looking remarkably similar to the patent previously filed by Nintendo, were subsequently uploaded by different Reddit users.

Those products were counterfeits, created with the use of 3D-printing technology.

They were not functional or intended as counterfeits in the traditional sense, but nevertheless, the cases demonstrate that if IPR criminals are willing to apply themselves, as the technology inevitably becomes more accessible, affordable and expeditious, 3D printing has the potential to pose an increasing threat to IPR integrity in the future.

Source: Polygon, 'A pair of elaborate fakes convinced the internet this was the Nintendo NX controller', March 2016, <http://www.polygon.com/2016/3/25/11303690/nintendo-nx-controller-hoax>. Last accessed 2 May 2017.

OUTLOOK

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More changes to IPR crime business models are expected in the future.

The trade in counterfeit goods will continue to increasingly take place online. Equally, online marketplaces will become even more popular with a wider group of customers. The range of counterfeit goods sold online is expected to further broaden and diversify. In addition, the use of social media for advertising counterfeit products is expected to continue in the future. Online marketing will be even better directed at the ever-increasing number of internet and particularly, social media users.

Many of the counterfeit goods that are sold online will continue to be distributed in parcels via postal services. Due to reinforced checks and monitoring of the express freight couriers, counterfeiters may make increased use of postal freight. Targeting and controlling suspicious shipments in postal freight are a great challenge however, as not only are there implications for law enforcement resources, but also, unlike freight, express couriers and postal services are not managed by an integrated operator and include parcels from different companies.

The increasing digitalisation of the trading and transport system may bring new opportunities for OCGs in future. The more widespread use of electronic bills of lading may be increasingly exploited by criminals and lead to other risks such as hacking or e theft. Replacing paper-based transport and customs procedures with electronic ones does not eliminate all kinds of possible abuses by OCGs, even though, through the use of electronic risk analysis systems, customs are in a better position to identify illicit cases.

In terms of new transport methods, trains may become more frequently used in future.

In January 2017, London became the 12th European city to be directly linked to China by freight train and currently, there are 39 lines connecting Europe with 16 Chinese cities, all offering freight services⁶³. With cargo trains offering logistics solutions between China and the EU for nearly half the price of air freight, which take approximately half the time of traditional container shipping, the rail solution would appear to be a logical choice for many counterfeit consignments. Add to this the number of EU destinations that are now directly served and the potential opportunity to offload infringing goods en route, then the very low number of rail-borne seizures reported at the external borders to date appears somewhat discordant. As rail freight services between the EU and China become more numerous and efficient, and China develops its Belt and road transport infrastructure, which are planned for the coming years, it is thought likely that increasing numbers

⁶³ - Webb, J., *The New Silk Road: China launches Beijing-London freight train route*, Forbes.com, New York, 3 January 2017. Available at: <https://www.forbes.com/sites/jwebb/2017/01/03/the-new-silk-road-china-launches-beijing-london-freight-train-route/2/#6d93fe447446>.

of IPR-infringing consignments may arrive at the eastern EU external borders by train from where, if they are not intercepted, they could then travel throughout Europe.

Fully automated self-storage facilities may also be exploited by criminal groups in future and increasingly used for more anonymised trade, reducing the risks of detection.

Moreover, criminal groups will continue taking advantage of the Darknet. They will use it to communicate and exchange information between members. Trade in counterfeit products may increasingly take place on the Darknet. This can be partially explained by the increasing oversight and control measures against IPR crime taken by intermediaries, such as online sales platforms and social media on the open internet.

Document fraud and money laundering will continue to facilitate illicit trade in counterfeit products. Criminal groups will make regular use of fraudulent documents at different stages of their activity, particularly during transportation, distribution, infiltration of the legitimate supply chain and retail. Money laundering will be consistently used to introduce the proceeds of crime into the legitimate economy. Profits will be increasingly obtained via online trade and as a result, more technologically advanced methods of money laundering are expected to be used in the future. In order to react to these changes, the 'follow the money approach' will need to be implemented increasingly in order to identify and disrupt the money trail of commercial-scale IPR-infringing activities. This will require closer cooperation and information exchange, including on suspicious transactions potentially linked to IPR crime, between law enforcement and private companies, and banks.

Adequate legislative measures will continue to play a crucial role in the fight against IPR crime. The 2016 European Union trade mark regulation brought significant changes to the protection of trade marks in the EU. In particular, the right to prevent the entry of goods infringing European Union trade marks that are in transit and are destined for third countries could have a positive impact on the seizures of counterfeit products in the EU. The legal situation at the national level, and especially whether IPR crime is handled in administrative or criminal proceedings, is expected to have an impact on the effectiveness of the fight against such activity.

In parallel, criminal groups will continue to exploit all possible legal loopholes in order to carry out or expand their illicit activities. They stay informed of legislative developments and adapt quickly to changes in the environment. Any future change in legislation or trade agreements may have an impact on the dynamics of this crime area.

With the increased involvement of technology, IPR crime is expected to become more complex and diversified. Therefore, in order to tackle the new challenges, a stronger partnership between private and public partners is necessary. The role of intermediaries, such as postal and packet services, online sales platforms, the advertising industry, payment service providers, transport companies and shippers, will be instrumental in combating IPR crime. Better information exchange between law enforcement and some of the private industries, such as express couriers, money transfer services or payment service providers, will contribute to a more effective fight against IPR infringements.

CONCLUSIONS

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IPR-intensive industries proved resilient during the economic crisis, which demonstrates the economic value and importance of these sectors and the key role that IPR protection plays in the EU.

This type of illegal activity is increasingly attractive for criminal enterprises, and counterfeiting and allied IPR infringements are now considered 'global industries'.

IPR crime impacts on businesses, reducing financial resources that can be reinvested in research and thus threatening future growth.

IPR infringing food and beverages pose a specific risk to health, as do toys. Counterfeit components are also a concern, as there are serious safety implications.

Labels and packaging are being imported increasingly, which allows the subsequent EU internal production of counterfeits.

Seizures at the EU external borders are estimated to be only a small part of the total amount of imported counterfeited goods, and enforcement against larger IPR-infringing shipments continues to be of great importance.

China remains by far the main country of provenance for counterfeit products. Hong Kong's shipping terminals and airport are transit points for goods manufactured in China.

Turkey is another important hub for counterfeits, which enter the EU through large truck consignments.

Thailand and Singapore were the provenance of large numbers of small-scale consignments, potentially indicating the presence of e shops in these territories or of distributors.

Organised criminal groups are infringing IPR heavily in the EU, organising importation, transportation, storage and distribution. Some are also manufacturers.

These groups linked to IPR crime are typically poly-criminal, and are also involved in other criminal activities, often related to the distribution of illegal commodities such as illicit drugs as well as document fraud and corruption. Money laundering is often an indispensable element of their business model, along with corruption and document fraud, which greatly facilitate criminal activities in this area.

Online marketplaces have increasingly become key distribution channels for counterfeit goods. Products sold online are subsequently distributed via parcel and postal services. The digitalisation of the trading and transport systems will continue to affect the IPR crime landscape. Criminals will take advantage of methods to anonymise their activity, from self-storage facilities, to the Darknet.

Piracy is an activity that will have to be monitored closely in the future. The unauthorised online dissemination of protected content is a major concern. The illegal use of television broadcasts also poses a challenge. Fraud in this field is often also connected to acts of digital piracy.

The growing use of cargo train transport between China and the EU is a concern and there are many reasons why IPR infringers could exploit trains as a means of conveyance.

Technologically, IPR crime is expected to become more complex and diversified. In order to tackle it more effectively, cooperation between all stakeholders should be a focus.

A global focus on other areas of criminality and terrorism has resulted in a drop in IPR crime as an enforcement priority. Nevertheless, IPR crime continues to be one of the most lucrative criminal enterprises, and this report has shown how it is frequently closely linked to other serious crimes. Any efficient response to IP crime requires total cooperation between all stakeholders.

SELECTED ABBREVIATIONS

2017 SITUATION REPORT ON COUNTERFEITING AND PIRACY IN THE EUROPEAN UNION

ACIST	Anti-Counterfeiting Intelligence Support Tool
CEPOL	European Union Agency for Law Enforcement Training
CIIE	Committee on Industry, Innovation and Entrepreneurship
CS	Card sharing
DG TAXUD	Directorate-General for Taxation and Customs Union
EDB	Enforcement database
EPO	European Patent Office
EU	European Union
EUIPO	European Union Intellectual Property Office
Europol	European Union Agency for Law Enforcement Cooperation
FAP	Federación para la protección de la propiedad intelectual
FTZ	Free trade zone
HS	Harmonised product description and coding system
IPC3	Europol Intellectual Property Crime Coordinate Coalition
IPR	Intellectual Property Rights
IPTV	Internet protocol television
ISFE	Interactive Software Federation of Europe
MS	Member States
NCTS	New computerised transit system
Observatory	European Observatory on Infringements of Intellectual Property Rights
OCG	Organised crime group
OHIM	Office for Harmonisation in the Internal Market
PIPCU	British Police Intellectual Property Crime Unit
SOCTA	EU Serious and Organised Crime Threat Assessment
STB	Set-top box
UK IPO	UK Intellectual Property Office
VOD	Video on demand
VPN	Virtual private network
VTC	Virtual Training Centre
WCO	World Customs Organization
WIPO	World Intellectual Property Organization

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APPENDIX A — KEY PRODUCT SECTORS BY IMPORTS (COUNTERFEIT/GENUINE)

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Although DG TAXUD uses its own product sector coding system to categorise seized items, the alternative HS is used by many other bodies to classify goods by type and allows for measurements of legitimate trade in a given product sector to be established. The two systems do not overlap exactly however, but categorising DG TAXUD seizures by HS codes is possible in certain cases, and analysts at the Observatory have identified sufficient parallels to facilitate a breakdown of import routes into the EU for a number of key product types.

The Eurostat international trade statistics dataset (Comext) was used to measure the proportion of overall EU imports of a given product type by MS in 2013, by value. The DG TAXUD data was then used to measure the proportion of IPR-infringing seizures that took place in each MS for the same product type between 2011 and 2013, again by value. These two statistics were then overlaid, in order to establish if there were significant geographical incongruities either in terms of MS that reported a very high seizure ratio compared with the proportion of legitimate imports of the same product type by value or, conversely, a significantly lower proportion of the overall seizures that legitimate import shares may indicate probable.

Ultimately, five broad product sectors were investigated and patterns differed, according to which type of commodity was scrutinised, and to which MS the analysis was applied. Malta, for instance, was found to frequently record seizure values far higher than the country's legitimate trade statistics would indicate probable. This is because with a low population ratio, Malta does not import a high overall proportion of any product type in the legitimate market but, as an important maritime transport hub, the MS frequently records a high percentage of overall IPR-infringing seizures by value, because customs focus on container traffic and therefore, much higher volumes of products than those MS that focus more on small packages.

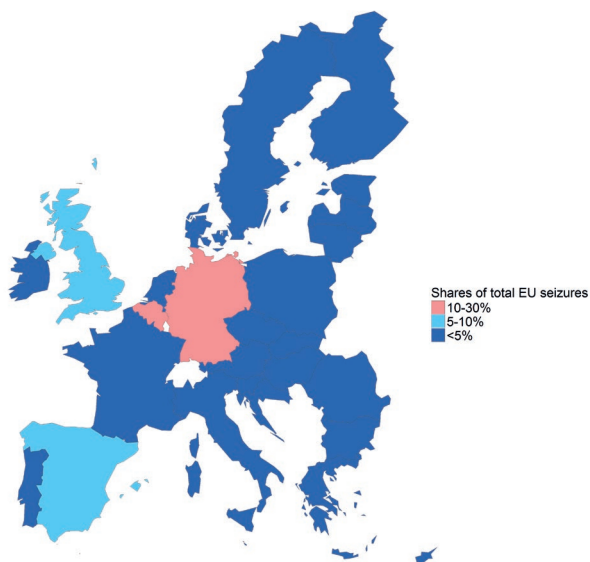
Cosmetics and personal care sector

The legitimate cosmetics industry in Europe loses approximately EUR 4.7 billion of direct revenue annually due to counterfeit products, which corresponds to 7.8% of the sector's overall sales. If we add the knock-on effects on other industries, counterfeiting in this sector causes approximately EUR 9.5 billion of lost sales and 80 000 job losses. Government revenue losses are estimated at EUR 1.7 billion each year⁶⁴.

⁶⁴ - OHIM, *The economic cost of IPR infringement in the cosmetics and personal care sector: report of a pilot study*, OHIM, Alicante, 2015, p. 7. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/quantification-of-infringement-cosmetics_en.pdf.

MAP 1

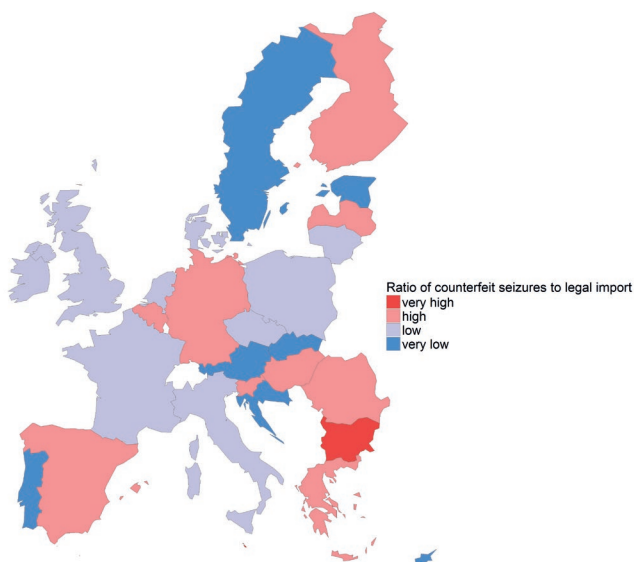
Share of seizures in the EU
(HS 33 - Perfumery, cosmetic or toilet preparations)



© EuroGeographics for the administrative boundaries

MAP 2

Seizures of counterfeits/legal import ratio
(HS 33 - Perfumery, cosmetic or toilet preparations)



© EuroGeographics for the administrative boundaries

The Comext database⁶⁵ shows that in 2013 alone, EUR 5.8 billion worth of legitimate cosmetics were imported into the EU, with the major importing MS being France (24%), the United Kingdom (22%) and Germany (20%).

Statistically, Germany also recorded a high proportion of overall European counterfeit seizures by value (26%). Map 1 shows that by ratio, this MS was relatively consistent in its legitimate import/infringing seizures figures in this product sector.

Far less homogeneous was Bulgaria however. Despite only 0.2% of genuine cosmetics imported in 2013 entering the EU via this MS, Bulgarian customs recovered 3.2% of the overall seizures by value. If Germany can be seen as consistent, as it imported an approximately 20% share of the genuine cosmetics, and customs recovered approximately the same proportion of the overall IPR infringing products reported over the time frame, then the figures for Bulgaria reveal a counterfeit recovery figure that is far higher than would be expected based on the country's legal imports.

Map 2 shows the remaining EU MS by the proportion of counterfeits they recovered compared with the proportion of their share of total imports into the EU. Apart from Bulgaria, countries such as Belgium, Germany, Greece, Spain, Latvia, Hungary, Malta, Romania, Slovenia and Finland all recovered proportionally more of the share of counterfeits than would be expected, given the proportion of genuine products that they imported. With other MS⁶⁶, the reverse is true, where the proportion of counterfeits recovered was less than the proportion of genuine cosmetic imports.

65 - Comext is Eurostat's reference database for detailed statistics on international trade in goods.

66 - The Czech Republic, Denmark, Estonia, Ireland, France, Croatia, Italy, Cyprus, Lithuania, the Netherlands, Austria, Poland, Portugal, Slovakia, Sweden, and the United Kingdom.

Clothing, footwear and accessories sector

When taken in combination, counterfeit versions of these products cost the legitimate EU industry EUR 26.3 billion annually in lost sales, which is 9.7 % of the sector’s overall revenues. It is further estimated that 363 000 job losses are directly incurred because of counterfeiting and that the overall direct and indirect financial impact amounts to approximately EUR 43.3 billion of lost sales and EUR 8.1 billion in lost government revenues. Combined employment losses are thought to be as high as 520 000 annually⁶⁷.

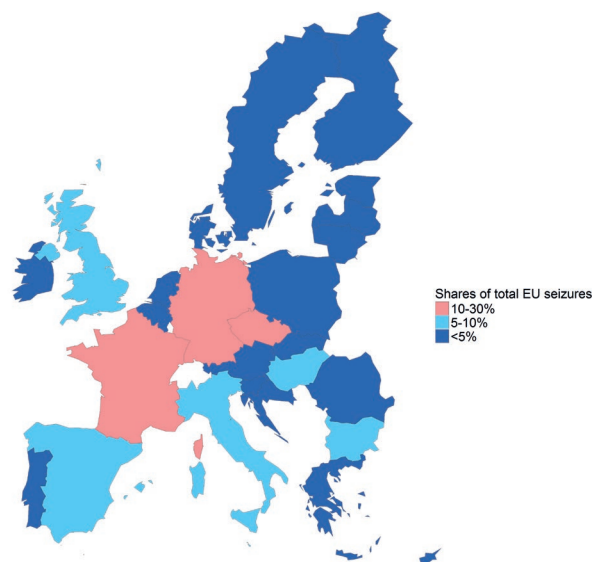
In 2013, EUR 33.7 billion worth of clothing that was not knitted or crocheted was imported into the EU, with the major importing MS being Germany (23 %), the United Kingdom (16 %) and France (13 %). In terms of the proportion of counterfeits that were recovered at the external borders over the 2011-2013 period (Map 3), the Czech Republic seized the highest proportion by value (15 %), followed by Germany (11 %) and France (10 %), resulting in the MS appearing in pink. At the other end of the scale, countries such as Denmark, Ireland, Greece, Croatia, Cyprus, Latvia, Lithuania, Austria and Sweden each reported less than 1 % of overall EU IPR-infringing clothing items seizures by value over the time frame.

Proportionally, much of the north-western EU can be seen to have recovered IPR-infringing garments in approximately the same magnitude as they imported genuine ones, resulting in these areas of Map 4 appearing in lilac. The exception is Portugal, which is recorded as having imported 0.2 % of genuine garments, whilst intercepting 2 % of counterfeits by value.

Significant disproportionalities can be seen in much of the south-eastern EU, most notably in the

MAP 3

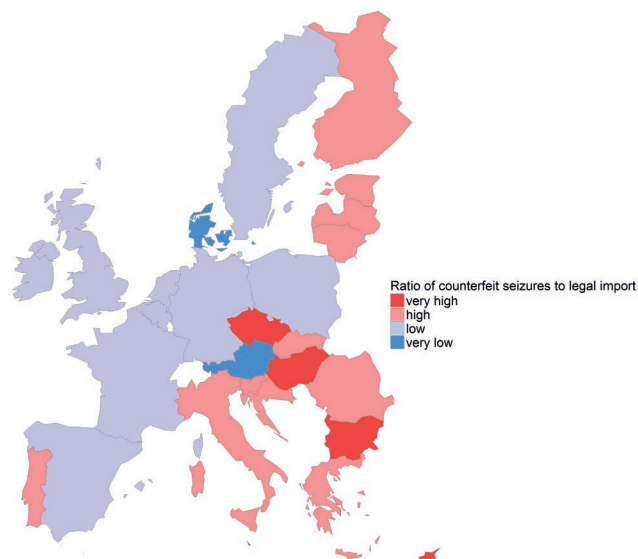
Share of seizures in the EU
62 - Articles of apparel and clothing accessories, not knitted or crocheted)



© EuroGeographics for the administrative boundaries

MAP 4

Seizures of counterfeits/legal import ratio
62 - Articles of apparel and clothing accessories, not knitted or crocheted)



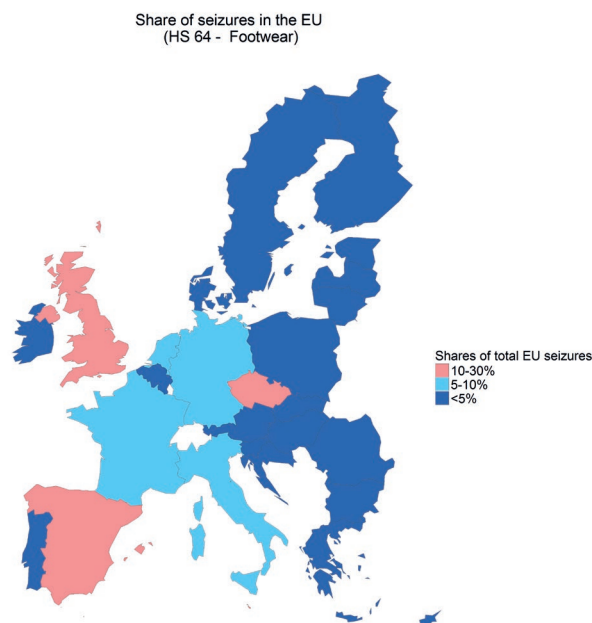
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67 - OHIM, *The economic cost of IPR infringement in the clothing footwear and accessories sector*, OHIM, Alicante, 2015, p. 7. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study2/the_economic_cost_of_IPR_infringement_in_the_clothing_footwear_and_accessories_sector_en.pdf.

case of Malta, which intercepted significantly more counterfeits than its genuine import ratio statistics would predict. Research shows that Malta is in fact consistently in such a position; this is thought largely to be the result of customs in this small MS frequently targeting large-scale container traffic that may be transiting Malta, ultimately bound elsewhere. Bulgaria, with 0.11 % of genuine imports by value, stopped 7 % of all fakes recovered in the time frame (far more times than the number that could be expected) and Hungary, which intercepted a notably higher value of IPR-infringing clothes than its genuine import statistics would indicate probable. In all, 16 MS⁶⁸ reported seizures of counterfeit clothing that were proportionally higher than their genuine import figures would indicate probable, strongly suggesting that counterfeit garments may be entering the EU from the east, as this is where the highest proportion of external border seizures were made. It is also thought possible that counterfeits may to some extent be displacing genuine items in some of these markets, as certain MS appear to be encountering counterfeit apparel in a much higher proportion to their share of legitimate imports, when measured by value.

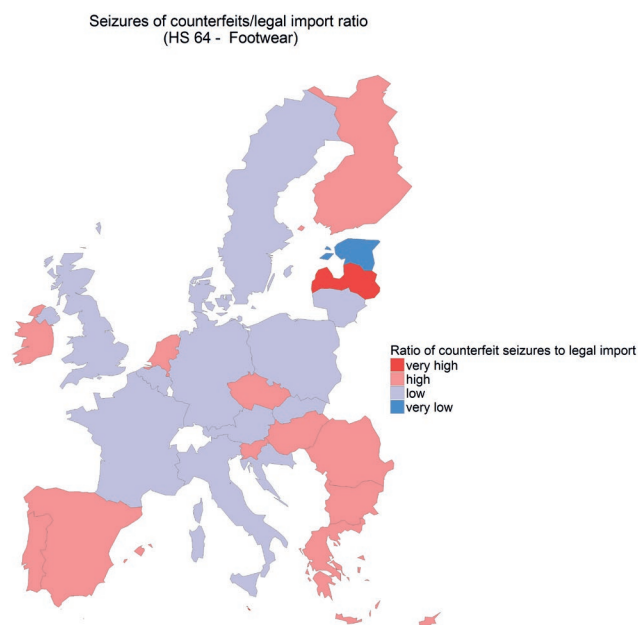
Footwear was encompassed in the above referenced sectorial report but is a category in its own right in the HS classification and DG TAXUD statistics. Comext statistics indicate that in 2013, EUR 15.7 billion worth of footwear items were legitimately imported into the EU, and in 2013 the top importing MS were Germany (20 %), the United Kingdom (15 %) and Italy (15 %). Conversely, the three MS with the lowest share of EU legal footwear imports by value were Latvia, Luxembourg and Malta, largely due, it is believed, to their relatively low populations.

MAP 5



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MAP 6



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68 - Bulgaria, the Czech Republic, Estonia, Greece, Croatia, Italy, Cyprus, Latvia, Lithuania, Hungary, Malta, Portugal, Romania, Slovenia, Slovakia and Finland.

In terms of where the highest values of IPR-infringing footwear seizures took place from 2011 to 2013, Map 5 shows the Czech Republic, Spain and the United Kingdom to be particular hot spots. In fact, statistically, Malta once more topped the footwear seizure figures by value over the time frame, largely for the aforementioned reason that high unit volume container traffic is a specific focus for this MS, resulting in recovery figures that far outstrip common expectations.

Despite importing only 0.03 % of genuine items, Malta seized 18 % of the IPR-infringing footwear recovered at the external borders from 2011 to 2013, followed by the United Kingdom (13 %), the Czech Republic and Spain, which both recovered 12 % of IPR-infringing shoes and boots.

Taking the proportion of genuine footwear that each MS imported in 2013, and overlaying the proportion of seizures that each MS reported for the 2011-2013 period gives the results seen in Map 6. The MS that can be seen in red in Map 6, and the only one (beyond Malta) to record seizures higher than ten times the proportion of legitimate imports is Latvia, which accounted for 0.04 % of the genuine import figure and 0.6 % of the IPR-infringing figure.

What will also be noted from Map 6 is that Latvia's immediate neighbour, Estonia, recorded an incongruously low legal/illegal import ratio. The country recorded the third lowest proportion of legitimate imports (after Malta and Luxembourg) and the lowest share of seizures (0.01 %). Whilst this could be an indication that externally manufactured footwear is not a popular product in Estonia, the presence of Latvia in the vicinity and that country's ranking in Map 6 could suggest that counterfeit products enter the region via Latvia and are potentially subsequently distributed in the Baltic States.

Research reveals that 14 MS⁶⁹ recorded seizures of IPR-infringing footwear that were higher in proportion than their share of legitimate trade. Therefore, as with the other relevant maps, there appear to be a number of MS (14 in this case) where the proportion of counterfeit seizures of a given product would be expected to be higher, given the country's share of legitimate EU imports. These can be seen in Map 6 in blue/lilac.

Jewellery and watches sector

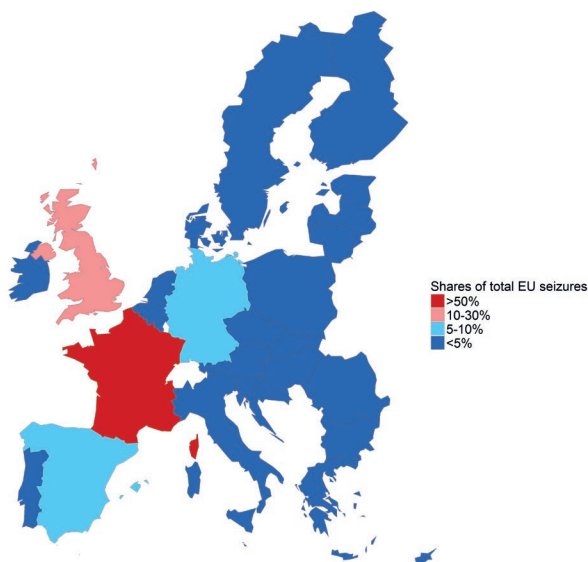
It is estimated that legitimate jewellery and watches industry losses are approximately EUR 1.9 billion annually due to the presence of counterfeits in the EU marketplace, corresponding to 13.5 % of the sector's sales. Counterfeiting causes losses of approximately 15 000 jobs directly and when knock-on effects on other industries are included, approximately EUR 3.5 billion of lost sales to the EU economy and employment losses of about 28 500 jobs. Furthermore, counterfeiting in this sector results in the annual loss of EUR 600 million in government revenues⁷⁰.

69 - Bulgaria, the Czech Republic, Ireland, Greece, Spain, Cyprus, Latvia, Hungary, Malta, the Netherlands, Portugal, Romania, Slovenia and Finland.

70 - OHIM, *The economic cost of IPR infringement in jewellery and watches*, OHIM, Alicante, 2015, p. 7. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study5/jewellery_and_watches_en.pdf.

MAP 7

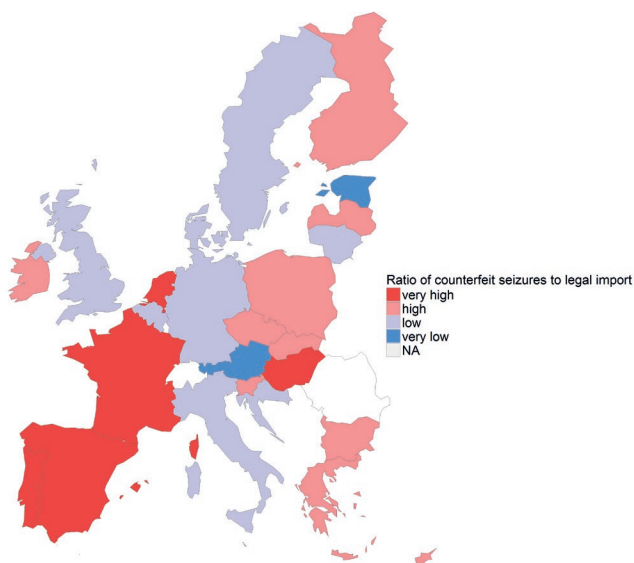
Share of seizures in the EU
(HS 71 - jewellery)



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MAP 8

Seizures of counterfeits/legal import ratio
(HS 71 - jewellery)



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Analysis of legitimate imports in the jewellery sector shows that EUR 56.3 billion worth of such goods was imported overall in 2013 alone and it was the United Kingdom that was responsible for by far the largest share (40%). This was followed by Belgium (23%) and Germany (17%). Bulgaria, Croatia and Cyprus imported the least by value in the same time frame. It is perhaps of interest to note that Malta did not record an especially high proportion of either legitimate imports or IPR infringing recoveries in this sector, potentially because jewellery is rarely subject to the maritime container transport on which Malta customs concentrates.

Map 7 shows a high proportion of IPR-infringing recoveries by value between 2011 and 2013 to have taken place in France (56%) and, to a lesser extent, the United Kingdom (10%).

Conversely, much of the southern and eastern EU, Ireland and Portugal reported relatively low proportions of jewellery seizures, potentially indicating that there is more of a demand for counterfeit items of this nature in the central and south-western MS of the EU.

The ratio of IPR-infringing seizures to the share of legitimate jewellery imports by MS can be seen in w 8. It is apparent that France, which recorded a relatively low legal import share (5%) and a high proportion of seizures (56%), recovered proportionally far more counterfeits by value than its level of legal imports may suggest likely. Spain, Hungary and Portugal all recorded 18-20 times more seizures by value than their legitimate import share.

In all, 11 MS⁷¹ recorded counterfeit seizure values that were proportionally lower than their share of the legitimate jewellery import statistics in 2013 and these can be seen on the map roughly forming a north-south axis.

71 - Belgium, Denmark, Germany, Estonia, Croatia, Italy, Lithuania, Malta, Austria, Sweden and the United Kingdom.

Watches, encompassed in the aforementioned sectorial study, are listed under the HS designation ‘Clocks and watches and parts thereof’ and can be compared to the DG TAXUD product category 5c (watches).

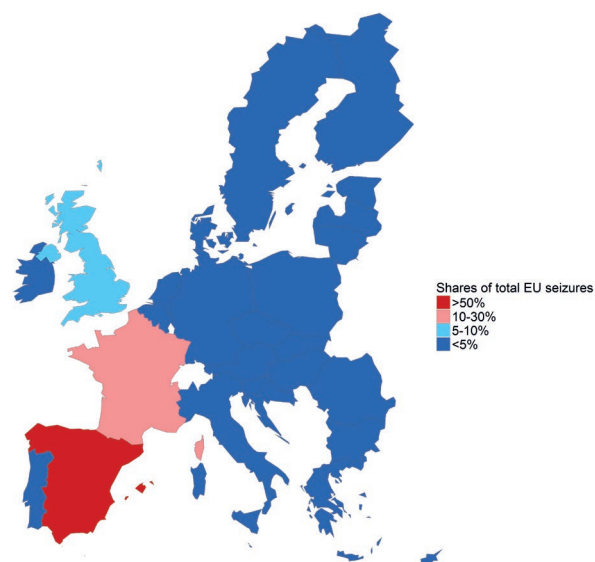
Overall, EU imports of watches in 2013 were valued at EUR 6.9 billion and 25 % of all watches and clocks were imported by France. This was followed by Germany (25 %) and Italy (14 %). The value of imports of Estonia, Ireland and Latvia was the lowest over the same period. Map 9 shows that the highest proportion of seizures of IPR-infringing watches by value over the time frame was reported by Spain, which recorded a relatively low genuine import ratio of 6 % of the total, as against seizures valued at 57 % of all EU 2011-2013 recoveries. France also reported a relatively high seizure ratio of 10 %, but this should be seen in the context of this MS having a 25 % share of legitimate imports in 2013. Bulgaria, Croatia and Slovakia imported the lowest number of seizures by value.

Unlike many of the legal/illegal import ration maps seen in this Appendix, none of the MS was found to have a very high value of seizures compared with its legal import share.

Perhaps unsurprisingly, Spain recovered a higher proportion of counterfeits by value than its share of the legitimate total imports may indicate probable. Eight times more watches and clocks were seized by value in Spain than its standing in the legitimate import figures would predict. Apart from Spain, only 7 MS⁷² reported seizure values that were proportionally higher than their share of the legitimate market, with all others recovering proportionally fewer counterfeit watches and clocks than their 2013 genuine import figures may indicate probable.

MAP 9

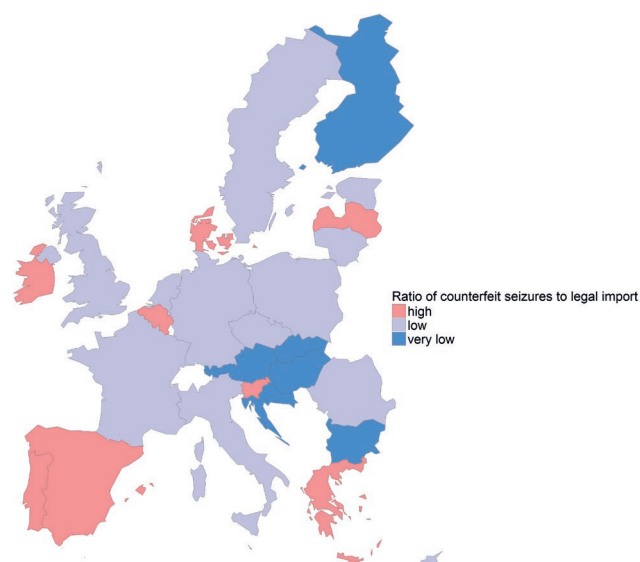
Share of seizures in the EU
(HS 91 - Clocks and watches and parts thereof)



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MAP 10

Seizures of counterfeits/legal import ratio
(HS 91 - Clocks and watches and parts thereof)

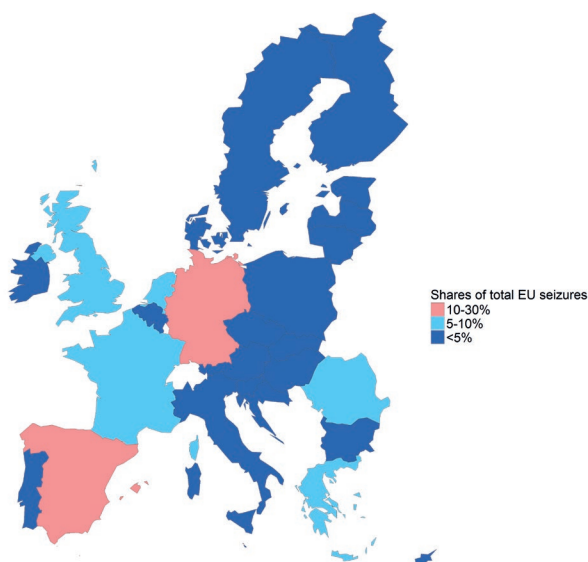


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72 - Belgium, Denmark, Ireland, Greece, Latvia, Portugal and Slovenia.

MAP 11

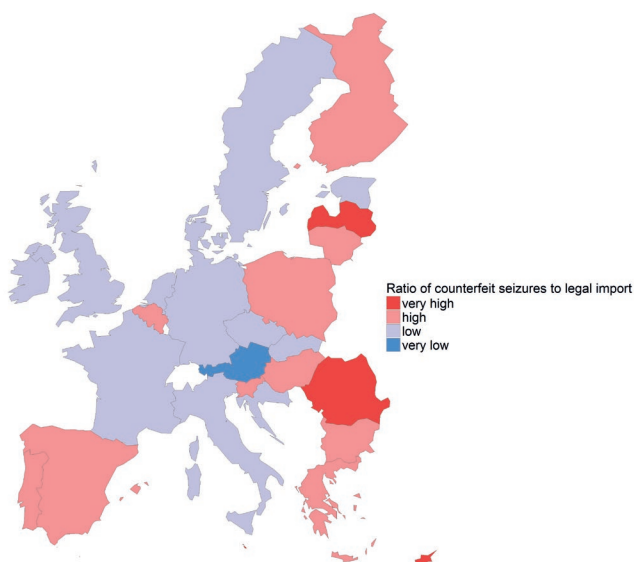
Share of seizures in the EU
(HS 95 - Toys, games and sports requisites)



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MAP 12

Seizures of counterfeits/legal import ratio
(HS 95 - Toys, games and sports requisites)



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Sports goods and toys and games sectors

In the sports goods manufacturing sector, legitimate industry loses approximately EUR 500 million annually due to the presence of counterfeit products in the EU marketplace, which is 6.5 % of the sector’s sales. This translates into direct employment losses of approximately 2 800 jobs annually and knock-on effects (direct/indirect) of EUR 850 million of lost sales to industry, overall employment losses of about 5 800 jobs and a loss of EUR 150 million in government revenues⁷³.

Annual legitimate industry losses in the toys and games sector are estimated at approximately EUR 1.4 billion and correspond to 12.3 % of the sector’s sales. These lost sales translate into direct employment losses of approximately 6 150 jobs, and much higher figures when knock-on effects are factored in — EUR 2.3 billion of lost sales to the EU economy, overall employment losses of 13 200 and a loss of EUR 370 million in government revenues⁷⁴.

In combination therefore, sports goods and toys and games face a very high risk of counterfeiting.

Legitimate EU imports in this product category stood at EUR 13.1 billion in 2013 and the largest share went to the United Kingdom (25 %), followed by the Netherlands (18 %) and Germany (17 %). At the other end of the scale, Cyprus, Luxembourg and Malta all imported less than 0.1 % of the European total by value.

Map 11 shows the seizure percentages by value for toys, games and sports requisites between 2011 and 2013. Germany and Spain are revealed as particular hotspots. Germany once more was relatively constant with a 20 % seizure share (as against a 17 %

73 - OHIM, *The economic cost of IPR infringement in sports goods*, OHIM, Alicante, 2015, p. 7. Available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study3/sports_reports_en.pdf.

74 - OHIM, *The economic cost of IPR infringement in toys and games*, OHIM, Alicante, 2015, p. 7. Available at: https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study4/toys_games_en.pdf.

legal import share) but Spain appears somewhat discordant, having recorded a 5% share of legal imports, as against a 15% proportion of overall IPR-infringing seizures.

Overlaying the above proportions of total seizures with the proportion of legitimate imports by value that each MS reported in the product category gives the results seen in Map 12, and Cyprus, Latvia and Romania can be seen to have seized proportionally more counterfeit products by value than they imported legitimately. Malta once more topped the statistics.

As with the other elements in this section however, it is perhaps not the MS that seized a higher proportion than could be expected that are of interest, so much as those whose seizure ratios fell below those of their legitimate imports. Altogether, 13 MS⁷⁵ found themselves in this position to a lesser or greater extent during the 2011-2013 period.

Pharmaceutical sector

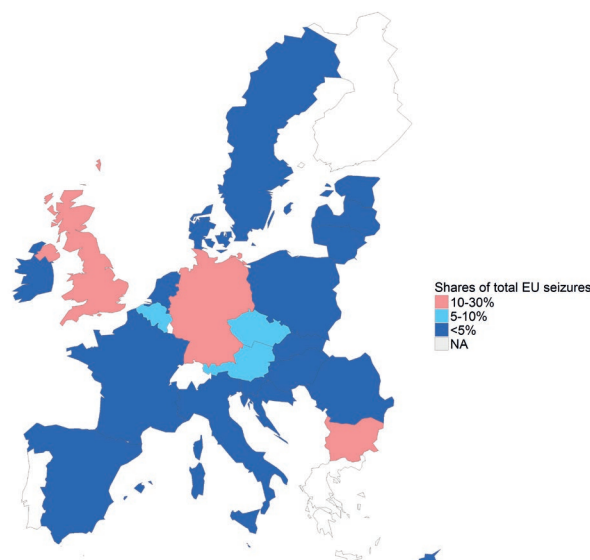
The legitimate pharmaceutical industry in Europe is denied of approximately EUR 10 billion of revenue annually, due to the presence of counterfeit medicines in the marketplace, corresponding to 4.4% of the sector's sales. If the knock-on effects on other industries and on government revenues are added, counterfeiting in this sector causes approximately EUR 17 billion of lost sales to the EU economy annually, which leads to employment losses of about 91 000 jobs and a loss of EUR 1.7 billion in government revenues⁷⁶.

75 - The Czech Republic, Denmark, Germany, Estonia, Ireland, France, Croatia, Italy, the Netherlands, Austria, Slovakia, Sweden and the United Kingdom.

76 - EUIPO, *The economic cost of IPR infringement in the pharmaceutical industry*, EUIPO, Alicante, 2016, p. 5. Available at: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/research-and-studies/ip_infringement/study9/pharmaceutical_sector_en.pdf.

MAP 13

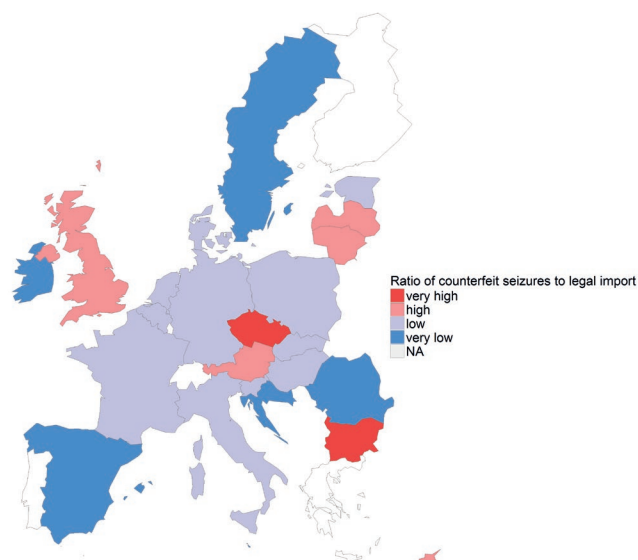
Share of seizures in the EU
(HS 30 - Pharmaceutical products)



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MAP 14

Seizures of counterfeits/legal import ratio
(HS 30 - Pharmaceutical products)



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In 2013, EUR 49.6 worth of pharmaceuticals was imported into the EU, with the major importing MS being Belgium (22 %), Germany (16 %) and the Netherlands (13 %).

Map 13 shows that Germany also reported a relatively high proportion of the overall IPR-infringing recoveries (20 %), but that it was UK customs that stopped the highest percentage (24 %), despite taking only 11 % of legitimate trade.

As with cosmetics, Bulgaria reported seizures in far higher proportions than legitimate import figures might predict. In fact, 0.2 % of genuine pharmaceuticals were imported through Bulgaria in 2013, but the MS reported recoveries of 20 % of the overall seizures by value, indicating that it may be a hotspot as an attempted point of entry to the EU for this type of product.

Map 14 shows the remaining EU MS by the proportion of counterfeits they recovered compared with the proportion of their share of total imports into the EU and, once more, it is the MS shown in dark blue that recorded a lower ratio of IPR-infringing seizures to legitimate imports.

Ireland took 3 % of overall imports but recorded 0.005 % of the seizure total, Romania was the point of entry for 0.92 % of all 2013 EU imports, compared to registering 0.009 % of the overall IPR-infringing seizure total and Spain showed 6 % of recorded pharmaceutical imports, as against recording 0.19 % of the external border seizure total.

All maps in Appendix A: © EuroGeographics for the administrative boundaries



2017 SITUATION REPORT
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AND PIRACY IN THE
EUROPEAN UNION