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EU strategy to enforce Intellectual Property Rights in third countries - facts and figures

What is the dimension of the problem?

Between 1998 and 2002 the number of counterfeit or pirated articles intercepted at the EU's external frontiers increased by more than 800%. Figures published by the European Commission in November 2003¹ show that customs seized almost 85 million counterfeit or pirated articles at the EU's external border in 2002 and 50 million in the first half of 2003. This illicit trade is worth the equivalent of more than 2 billion euro on the legal Community market.

These figures only tell us what is being caught at the Community borders. As is the case with other types of illegal traffic, seizures by the authorities represent only the tip of the iceberg and show us little about the dimension and value of the illicit goods that end up being sold in markets and streets worldwide.

This is why it is extremely difficult to quantify the exact values involved in the global trade of fake goods. Some estimations point to figures representing between 3% and 9% of the total world trade, i.e., 120 to 370 billion euro a year. Studies carried out by the OECD in 1998 and by the International Chamber of Commerce in 1997, estimated then that counterfeits accounted for 5 to 7% of world trade and were responsible for the loss of 200,000 jobs in Europe.

Which IP rights are violated and which sectors are most affected?

One frequent misconception is that piracy and counterfeiting mainly affect some luxury, sports and clothing brands, music and software CDs/DVDs, and little else. The reality is that virtually every IP is being violated on a considerable scale and that the variety of fake products ranges from cereal boxes to plants and seeds, from aeroplane spare parts to sunglasses, from cigarettes to medications, from AA batteries to entire petrol stations. Big software producers are as likely to be harmed as small makers of a certain type of tea. The annual statistics published by the Commission's customs services regarding the number and the nature of seized pirated and counterfeit goods originating from third countries provide detailed and reliable information about the dimension and the growth of the problem².

¹ http://europa.eu.int/comm/taxation_customs/customs/counterfeit_piracy/counterfeit8_en.htm

² http://europa.eu.int/comm/taxation_customs/customs/counterfeit_piracy/index_en.htm

Why focusing now on third countries?

The WTO Agreement of intellectual Property Rights (TRIPs) establishes for the first time a single, comprehensive, multilateral set of rules covering all kinds of IPR. It contains also a detailed chapter setting minimum standards of IPR enforcement to be adopted by all members of the WTO.

However, despite the fact that, by now, most of the WTO members have adopted legislation implementing such minimum standards³, the levels of piracy and counterfeiting continue to increase every year. These activities have, in recent years, assumed industrial proportions, because they offer considerable profit prospects with often a limited risk for the perpetrators.

Within the Community and at its external borders there have been a number of important initiatives in the last 10 years. In 1994 the EU adopted the Customs Regulation (Regulation (EC) No 3295/94), allowing border control of imports of fake goods. Later, in 1998, the Commission issued its Green Paper on Combating Counterfeiting and Piracy in the Single Market. As a result of responses to the Green Paper, the Commission presented an Action Plan, on 30 November 2000. This Action Plan has been translated into a Directive⁴ published last April, harmonising the enforcement of intellectual property rights within the Community, a Regulation⁵ improving the mechanisms for customs action against counterfeit or pirated goods set by the previous Customs Regulation, the extension of Europol's powers to cover piracy and counterfeiting, etc.

The situation is, however, different outside the borders of the Community. The internal instruments available to Community right-holders in the case of violations of their rights within the Community or in the case of imports of fake goods into the EU are not usable when these violations occur in third countries and the resulting goods are either consumed domestically or exported to other third countries. Although such violations occur outside, they directly affect Community right-holders. Hence the need for an Enforcement Strategy focussing on third countries.

Why should developing countries concentrate their limited resources in areas like justice, police or customs on the fight against the sale of copies of goods and brands belonging to right-holders from rich and developed countries?

The trade of fake goods is no longer limited to cheap copies of luxury brands and recordings of music and films consumed mostly by tourists looking for a bargain souvenir. Nowadays, almost every conceivable product is being illegally copied: from food to pharmaceuticals, from toys to car and plane parts, from toasters to mineral water. The risks to public health and consumer safety incurred by frequently unaware purchasers are obvious. Consumers in the poorest countries are particularly exposed to sales of these dangerous products.

³ Least Developed Countries have until 2006, at least, to adapt their legislation to the TRIPs requirements.

⁴ Directive 2004/48/EC, of the European Parliament and of the Council of 29 April 2004

⁵ Council Regulation (EC) No 1383/2003 of 22 July 2003

Another reason why every country, rich or poor, should be concerned has to do with the undeniable role played by organised crime networks in the spread of piracy and counterfeiting. Until this activity is no longer seen as a low risk / high profit type of crime, it will continue to spread and to put in the hands of criminal organisations entire sectors of the economy. It is therefore also a question of public order, security and good governance.

Effective enforcement of IP rights is also essential to attract foreign investment, transfer of technology and know-how, as well as to protect the local right-holders in developing countries.

It is also an indicator of international credibility and respect of the rule of law. Finally, in the mid-to-long term, it will encourage more domestic authors, inventors and investors and contribute to the development of these countries.

Why does the Commission target the problem in third countries when pirated and counterfeited goods are so easily available within the EU?

Generally speaking, the Community and its Member States are acknowledged for protecting and enforcing IPR according to very high standards. In practical terms, reports like the one published annually by the European Commission give a clear idea of the results achieved by each Member State in terms of seizures of fake goods at the borders. This has already led to an increase of more than 800% in the volume of such confiscations between 1998 and 2002 (from 10 million to more than 85 million articles).

The recently approved Directive harmonising the enforcement of intellectual property rights within the Community will not only help to improve the situation, but it also constitutes an example to third countries of measures that proved effective in some Member States and that are now being extended to the entire Community.

The challenge is now to ensure that enforcement takes place beyond the EU borders, in third countries.

What is in the Enforcement Strategy?

The Enforcement Strategy is a Communication of the Commission determining the priorities and optimising the use of resources in order to obtain the most effective results in terms of IPR enforcement in third countries.

The actions in detail:

1. Identifying the priority countries: EU action will focus on the most problematic countries in terms of IPR violations. These countries will be identified according to a regular survey to be conducted by the Commission among all stakeholders and should be the basis for renewing the list of priority countries for the subsequent period.
2. IPR mechanisms in multilateral (incl. TRIPs), bi-regional and bilateral agreements: This would include: raising enforcement concerns in the framework of these agreements more systematically; consulting trading partners with the aim of launching an initiative in the WTO TRIPs Council, sounding the alarm on the growing dimension of the problem, identifying the causes and proposing solutions; strengthening IPR enforcement clauses in bilateral agreements..

3. Political dialogue: Making clear to trading partners that an effective protection of IP, at least at the level set in TRIPs, is essential; launching joint initiatives focusing on IPR enforcement with countries sharing or affected by similar concerns; providing training and implementing networking mechanisms for officials in EU Delegations in third countries facing enforcement problems.
4. Incentives-Technical Co-operation: Ensuring that technical assistance provided to third countries focuses on IPR enforcement, especially in priority countries; exchanging ideas and information with other key providers of technical co-operation, like the World Intellectual Property Organisation (WIPO), the US or Japan, with the aim of avoiding duplication of efforts and sharing of best-practices.
5. Dispute settlement / Sanctions: Recalling the possibility that right-holders have to make use of the Trade Barriers Regulation in cases of evidence of violations of TRIPs or of bilateral agreements; making *ex officio* use of the dispute settlement mechanisms included in multilateral and/or bilateral agreements in case of non-compliance with the required standards of IP protection.
6. Creation of public-private partnerships: Supporting-participating in local IP networks established in relevant third countries; using mechanisms already put in place by Commission services (IPR Help Desk and Innovation Relay Centres) to exchange information with right-holders and associations; building on the co-operation with companies and associations that are very active in the fight against piracy/counterfeiting.
7. Awareness raising / Drawing on our own experience: Promote the inclusion in technical co-operation programmes and in public-private partnership initiatives of information destined to raise public awareness about the impact of counterfeiting (loss of foreign investment and technology transfer, risks to health, link with organised crime, etc.) and raise the awareness of Community right-holders doing business in problematic countries about the risks incurred; make available to the public and to the authorities of concerned third countries a "Guidebook on Enforcement of Intellectual Property Rights".
8. Institutional co-operation: Improving the exchange of information and the co-ordination between the services in charge of the different aspects of IPR enforcement; simplifying the identification and the access of external entities (right-holders, third country authorities, etc.) to the service responsible for the specific issue concerning them.

Is this an attempt to impose on poor countries additional TRIPs plus, one-size-fits-all mechanisms of IP enforcement? Is this an attempt by developed countries to gang up against developing countries?

No and no. The strategy paper does not impose any additional, TRIPs plus obligations on any developing country. It is just focused on enforcement of existing rules.

We are not trying to gang up with or to copy other countries that may share our concerns. We believe however that we can create synergies and rationalise our efforts in areas like technical assistance with partners that also believe in the use of such mechanisms to improve the situation.

On the other hand, we don't believe in pre-formatted solutions. It will be necessary to have a flexible approach that takes into account the different needs, the level of development, the membership or not of World Trade Organisation (WTO), and the main problems in terms of IPR (country of production, transit or consumption of fake goods) of the country with whom we are talking. We believe that any proposed solutions will only be effective if they are prioritised and indeed felt as important in the recipient country.

Which are the most problematic countries?

In July 2003, the European Commission issued the results of a survey on enforcement issues in the area of intellectual property rights⁶, aimed at assessing in a detailed manner the situation in third countries.

The countries considered then as most problematic according to the results of the survey were China, Thailand, Ukraine, Russia, Indonesia, Brazil, Turkey and South Korea. Respondents considered these as the main countries where production of pirated and counterfeit goods, both for domestic consumption and for export, reached worrying dimensions.

Results of the survey in detail:

- **China:** In the area of **copyright**, there is widespread piracy in all formats (CDs, VCDs, cassettes, DVDs). There are also extensive illegal digital downloads and distribution of films, music and software. Regarding **trademarks**, estimates that around 15-20% of all brand products sold in China are fakes, and that the portion has risen significantly in recent years. Information was received regarding fake clothes, footwear, leather goods, watches, toys, cigarettes, pharmaceutical products, car parts and entire cars, electronic devices, lighting products, small electrical appliances (hairdryers, irons, kettles), semiconductors, large industrial machines, lubricants and even entire petrol stations. In the area of **patents**, there are reports of infringements on pharmaceutical products, electrical domestic appliances, industrial machinery, etc.
- **Thailand: Copyright** - generalised piracy of music, movie, business and game software in CD, DVD and VCD format. **Trademarks** - There is an important counterfeiting problem in this country, regarding well know brands of cloths manufacturers.
- **Ukraine: Copyright** - Production and dissemination of audio-visual products, in particular CD's and copying and dissemination of unlicensed software are most acute. About 95% of software in Ukrainian computers are estimated to be illegally installed. **Trademarks** - Clothes, alcohol, cigarettes, fertilizers, agrochemicals and increasingly foodstuffs. The violations in this area ranged from the illegal use of trademark or mixing it in a misleading way with a proper trademark, to the illegal use of a company name, to the divulging of commercial secrets. **Patents** - Pharmaceuticals.
- **Russia:** There is a high level of **music piracy** (more than 60% of the market in 2002). The same situation is witnessed by other copyright related industries (e.g. video and film, software industries). Internet based piracy is also extensive. There is also a significant level of **counterfeiting of pharmaceuticals**, (accounting for around 12% of the Russian pharmaceutical market), counterfeits of drinks, food, and other fast moving consumer goods products etc.

⁶ http://europa.eu.int/comm/trade/issues/sectoral/intell_property/survey_en.htm

- **Brasil: Copyright piracy:** during 2001, the legitimate industry reported losses of over 300 million € caused mainly by the growth of piracy. This figure represents 55% of the recorded music in Brazil. During the same period, the software industry lost around € 300 million which represents 58% of the computer software programs sold. **Trademark counterfeiting**, notably clothing, sport items, toys, perfumes, tobacco, etc. (€ 150 million in 2001). The legitimate clothing industry loses 1.5 million € per year due to counterfeiting.
- **Turkey: Copyright** - Piracy (cassettes and CDs) is the main area of violation in the music industry. Piracy in Turkey is estimated between 50 and 75% of the market, with the higher figure reflecting piracy of international repertoire. **Trademarks** - Extensive and systematic counterfeiting of trademarks on clothes, footwear, leather goods, apparel, car parts and others..
- **South Korea: Trademarks and designs** - counterfeiting of high value luxury consumer goods, estimations that Korea was in 2002 the third producer of counterfeit goods in the world. **Copyrights** - Music piracy in all format, CDs, VCDs, cassettes and illegal digital downloads and distribution. **Industrial design** -There are also reports of counterfeiting of designs in sports equipment (mainly footwear)
- **Indonesia: Trade marks and industrial design:** Extensive counterfeiting of apparel and of automotive products. But also **copyright** violations of music, films and software.