



2015 Situation Report on Counterfeiting in the European Union

A joint project between Europol and the Office for Harmonization in the Internal Market
April 2015





Foreword

Intellectual Property Rights (IPR) help ensure that innovators and creators get a fair return for their work, encourage investment in research, and create growth and quality jobs. They also contribute to the health and safety of consumers by allowing them to make informed choices about the products they buy.

IPR intensive industries account for more than a quarter of all jobs and more than a third of GDP in the EU. This illustrates the value of these rights for the economy and society in the EU, as well as the scale of potential damage that can be caused when they are undermined.

The EU has acknowledged the need to protect consumers and safeguard intellectual assets simultaneously, in order to ensure that creativity and innovation continue to be major drivers of growth. In this context, Europol's Serious Organised Crime Threat Assessment (SOCTA) has identified commodity counterfeiting and violating health and safety regulations as a new priority area in the EU policy cycle 2014-17.

However, despite the worrying growth in counterfeiting, its acknowledged links to organised crime and the damage it does to businesses and consumers, there is still no comprehensive picture of its criminal dimension in the EU.

This situation report, prepared by Europol and OHIM through the European Observatory on Infringements of Intellectual Property Rights, is a first attempt to capture a complex and dynamic reality. Relying essentially on contributions from Member States' enforcement authorities and the private sector, the report identifies the main traits of the phenomenon and provides illustrative case studies.

It also identifies the need to develop a more structured and systematic intelligence effort.

In this respect, Europol and OHIM are already strengthening their cooperation on IP crime through the European Observatory on Infringements of Intellectual Property Rights, and the results of this could be used to build a more complete picture and support operational initiatives in Member States¹.

This is even more important, given the evidence that counterfeiting activities not only harm businesses and consumers but are also a source of funding for organised crime.

The ever-changing and complex setting of the digital environment also makes it difficult for enforcement officers to tackle this type of economic crime. However, addressing the financial basis of illegal web-shops through increased collaboration with advertising companies and payment processors could be a promising avenue.

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1 - Furthermore, OHIM is now implementing an innovative methodology to quantify the global economic impact of counterfeiting and piracy in the European Union through the Observatory, in collaboration with the Organisation for Economic Co-operation and Development (OECD).

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To address this digital challenge, OHIM will support Europol's efforts in the fight against the infringement of IP rights by (a) financing Europol initiatives intended to increase information and intelligence gathering and monitoring trends in the field of IP crime, with a special focus on the online environment and (b) providing easy and secure access to IT tools developed to facilitate the exchange of information between right holders and enforcement authorities. This will increase Europol's knowledge and capacity in this specific field, for the benefit of both national law enforcement authorities and right holders.



A handwritten signature in black ink, appearing to read 'Rob Wainwright'.

Rob Wainwright
Europol Director



A handwritten signature in black ink, appearing to read 'António Campinos'.

António Campinos
OHIM President



Executive Summary

Counterfeit goods, especially goods that affect the health and safety of consumers and substandard goods have become an enforcement priority for Member States.

This report sets out to fill in information gaps for policymakers, practitioners, businesses and the general public.

It has been drawn up in partnership between Europol, the EU's law enforcement agency, and OHIM, the Intellectual Property Agency that supports the fight against counterfeiting, acting through the European Observatory on Infringements of Intellectual Property Rights.

The two agencies hope to contribute to a better understanding of the phenomenon by joining forces, and to provide a comprehensive assessment of the production and trafficking of counterfeit goods in the EU.

This report is based on quantitative and qualitative evidence from case studies, and it underlines that counterfeiting is now regarded by criminals as having lower risks and providing higher returns than drug trafficking. It has emerged as an ever-increasing and profitable transnational business in which organised crime networks manufacture and distribute counterfeit products widely, taking advantage of advances in technology and the rise of e-shopping and e-commerce.

The production of counterfeits is generally thought to be an external phenomenon. Indeed, customs statistics clearly indicate that the majority of source countries for counterfeits are outside the EU.

The main countries involved include not only China, which remains a major source although it is increasingly attempting to tackle its counterfeit production, but also other Asian countries that are specialised in certain categories (e.g. India for medicines, Egypt for foodstuffs, and Turkey for perfumes and cosmetics).

Transit points for transportation of goods from Asia to Europe, which act as major hubs for container traffic because of their large free trade zones (FTZs), have also become significant enablers for the activities of counterfeiters.

FTZs appear to be used increasingly as locations to change, document and relabel container loads, not only concealing the place of origin of the goods but also completing the manufacturing process by adding trademarks or packaging.

Counterfeiters are considered the main abuser of this world-wide infrastructure of 3 000 FTZs in 135 countries, including 82 in the European Union.

The projected growth of the Tanger Med Free Trade Zone in Morocco, only 15 km from the EU, could offer additional opportunities to criminal networks to export larger amounts of counterfeit goods to the EU in this context.

However, a new pattern seems to be emerging, with evidence of domestic EU production of counterfeit goods, which is now considered a better, cost-effective option with lower risks of detection by customs and has lower transport costs. The report cites examples of organised crime groups, mainly originating from EU Member States, which have joined forces in order to establish production sites for counterfeits within EU territory.

Large scale production of counterfeits, such as those as identified in the case studies, implies well-resourced and well-organised networks. These networks have links with other forms of crime such as fraud, document forgery, tax evasion and trafficking in human beings (mainly for labour exploitation) as well as with criminal groups, such as mafia-type organisations. In return, the profits generated by counterfeiting are also used to fund other criminal activities.

The production and distribution of counterfeit goods appear purely opportunistic and as such cannot be attributed to any particular crime group or nationality. The modus operandi and routes are adapted to suit the commodity and law enforcement activity, demonstrating counterfeiters' awareness of enforcement tactics.

One interesting aspect, supported by several case studies in the report, is that organised crime networks originating from different countries in and outside the EU are developing closer ties, having recognised the possible synergies of working together.

As is the case for legitimate businesses, distribution, is a critical issue for the operations of the counterfeiters, who use and abuse weaknesses in infrastructure and supply chains to cover their tracks and make detection more difficult.

Tactics used include the corruption of brokers between producers and distributors, who can earn more with counterfeits, and the encouragement of factory overruns, which is facilitated by the lack of factory inspections. This is accompanied by the falsification of documents, counterfeit trademark relabeling, repackaging of products and the abuse of certification labels such as the 'organic' designation.

It is hardly surprising that the internet is the most significant enabler for the distribution of counterfeit goods, because of its apparent anonymous character, its ability to operate across various jurisdictions, and its potential for presenting sophisticated replicas of official web shops.

In particular, the introduction by the Internet Corporation for Assigned Names and Numbers (ICANN) of the so called new 'generic Top Level Domains' (gTLDs) such as .sport, .fashion, .movie, .market, etc. may serve to confuse consumers performing online purchases even more, since it will be easier to deceive customers by selling counterfeit goods.

Counterfeit websites appear to benefit not only from revenues from sales but also to a certain extent from advertising revenues based on their popularity.

For this reason, good practices, which have proved successful in undermining the commercial profitability of illegal sites, such as the 'follow the money approach', targeting advertising revenues and payment intermediaries, could also be explored for web-shops selling counterfeit goods.

In the current environment, major online retailers and social media platforms are being forced to devote more resources to monitoring counterfeit activity.

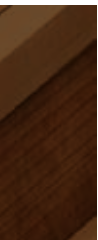
The situation report highlights entry points where private operators and enforcers could leverage their interventions most effectively to tackle this 'low risk/high profit' crime area.



It also identifies a need for more innovative and inclusive global responses from public and private stakeholders that address both the demand and supply sides of this illicit trade.

This means building a comprehensive and proactive strategy to focus on raising current levels of awareness and to provide enforcers with the knowledge and tools they need to work together and take effective remedial action.

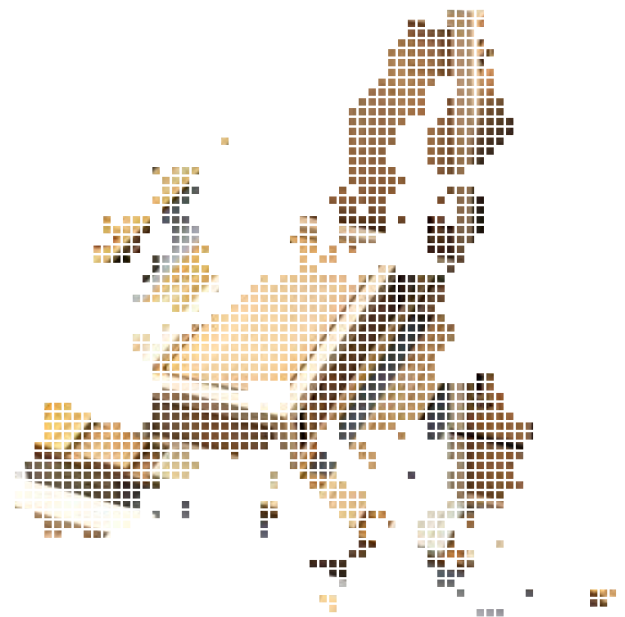
The evidence shows that an ever-increasing spectrum of everyday goods are being counterfeited, ranging from batteries, chargers, cosmetic and personal care products to electronic goods, household products, pesticides, food and beverages, and even medicines. However, the exact scope and scale of the counterfeiting business is not known and it is probably fair to assume that the reality exceeds all estimates and projections.

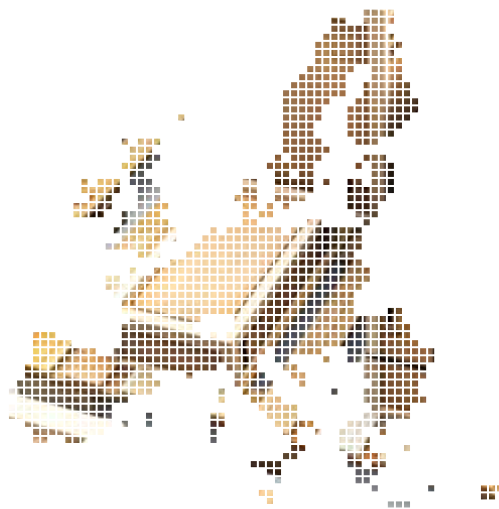




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