

**SWISS EXPERIENCES WITH
INTELLECTUAL PROPERTY ENFORCEMENT
IN THE DIGITAL AGE**

WIPO ACE/14 MEETING

GENEVA, 3 SEPTEMBER 2019

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I. INTRODUCTION AND STATISTICS

- **TRIPS Agreement background**
- **Swiss customs statistics**
 - Counterfeit branded products (commercial and tourist goods)
 - 2018: 14,388 imports
 - 2017: 10,686 imports
 - 2016: 13,604 imports
 - Trade in counterfeit pharmaceuticals
 - 2018: 3,203 imports
 - 2017: 1,060 imports
 - 2016: 1,028 imports
 - 300 % increase in 2 years
 - Estimates: 20,000 illegal consignments of pharmaceutical products per year
- **European Union:** Percentage of counterfeit and pirated goods among total EU imports
 - 2016: 6.8 %
 - 2013: 5 %
- **Switzerland's trade** in counterfeit products mostly through commercial goods traffic

https://www.ezv.admin.ch/ezv/fr/home/documentation/publications/fakten_und_zahlen.html

<https://www.bag.admin.ch/bag/fr/home/medizin-und-forschung/heilmittel/heilmittelfaelschung-illegaler-handel.html>

OECD/EUIPO (2019), Trends in Trade in Counterfeit and Pirated Goods, Illicit Trade, OECD Publishing, Paris/European Union Intellectual Property Office.

II. LEGAL FRAMEWORK

a. Trademark Law

- Private purposes: import, export or transit prohibition
 - Article 13(2)*bis*, Swiss Trademark Act

b. Collaboration with customs

- Efficiency of Swiss collaborative means
- Importance of European protection for Swiss companies

c. Swiss Copyright Law

- Download, upload v. Copyright and Data protection
- Main revision goals of the Swiss Copyright Act
 - Fight against uploading
 - Focus on hosting providers

Decision 1C_285/2009.

<https://www.ige.ch/en/law-and-policy/national-ip-law/copyright-law/revision-to-copyright-law/all-about-the-draft-amendment/fighting-piracy-efficiently.html>. Art. 39d Draft Copyright act

III. BLOCKING OF WEBSITES

➤ **United Kingdom**

- Website-blocking injunctions

➤ **Switzerland**

- No legal rules for blocking websites
- Judges' limited injunctions
- However: possible to order the transfer of litigious domain names of websites that distribute counterfeit products

Benhamou Yanniv, Website blocking injunctions under Swiss law. From civil and administrative injunctions to criminal seizure or forfeiture, in: Expert Focus, 2017, no. 11, p. 885-893

Decision of the Court of Justice of the Canton of Geneva, ACJC/646/2016 of 6 May 2016.

IV. ROLE OF INTERMEDIARIES AND PARTNERSHIPS

- **Domain name usurpation**
- **Trading platforms' internal control procedures**
- **Intermediaries**
 - Financial institutions
 - Advertising agencies and their clients
 - Shipping agencies
- **Swiss Anti-Counterfeiting and Piracy Platform**

https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_10/wipo_ace_10_22.pdf.
<https://www.ip-watch.org/2017/09/14/many-layers-best-practices-fight-counterfeiting-piracy/>.
<http://www.stop-piracy.ch/>

V. BLOCKCHAIN SOLUTIONS?

- Track and Trace solution
- Evidence tools v. Anti-counterfeiting solutions
- Time-stamping
- Use in NDAs
- Protection of trade secrets
- Evidence of date of creation made easier?

VI. CONCLUSION

- Some positive experiences against counterfeiting and piracy
- Keep up the fight in collaboration with the private and public sectors
- Legal framework adaptations at the national AND international level
- Combating IP infringements as a priority for IP right holders AND their business partners

THANK YOU FOR YOUR ATTENTION!

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New Technological Opportunities for Intellectual Property Rights Protection and Enforcement

Blockathon

Fighting Counterfeits Through Blockchain Technology

Claire Castel

Head of the IP in the digital world and awareness service
European Observatory on Infringements of IPR, European Union Intellectual Property Office

3 September 2019

OVERVIEW

- Blockchain technology – opportunities and challenges in relation to intellectual property
- Blockchain and proactive measures
- EUIPO Blockathon - Co-creating the next level of the EU anti-counterfeiting infrastructure using blockchain
- Looking into the future

OPPORTUNITIES AND CHALLENGES FOR IP (1)

Digital ledger/database, which is

- ✓ Automated
- ✓ Secure
- ✓ Incorruptible
- ✓ Immutable
- ✓ Immediate; direct

because of

Algorithms
Cryptography
Distributed
No deletion
No intermediary

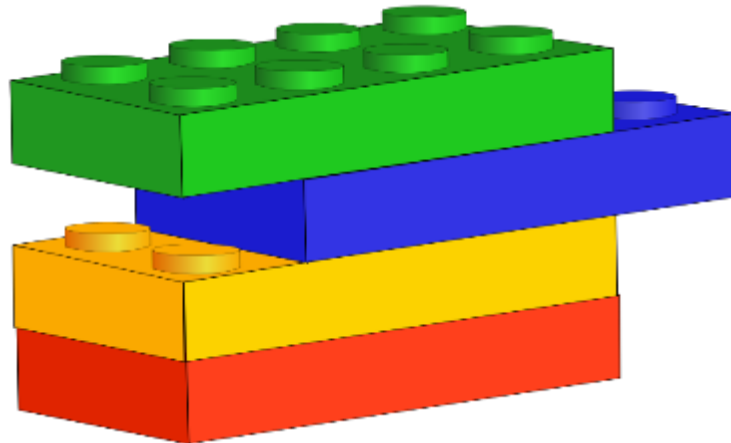
OPPORTUNITIES AND CHALLENGES FOR IP (2)

- Blockchain industry use of IP
- Non-blockchain industry use of the blockchain technology
- Registration and deposit systems concerning IP
- Blockchain used as a vehicle for crime



OPPORTUNITIES AND CHALLENGES FOR IP (3)

- Blockchain industry use of IP
 - New start-ups being formed at a rapid pace
 - Assess how to protect their innovations
 - Assure that they are not infringing IPR of third parties



OPPORTUNITIES AND CHALLENGES FOR IP (4)

- Non-blockchain industry use of the blockchain technology
 - Track and trace – supply chain protection
 - Digital IP rights management



OPPORTUNITIES AND CHALLENGES FOR IP (5)

- Registration and deposit systems concerning IP
 - Incorruptible and immutable nature of the technology benefits public services
 - Potential for IP register or deposit system



OPPORTUNITIES AND CHALLENGES FOR IP (6)

- Blockchain used as a vehicle for crime
 - Blockchain piracy bittorrent network
 - Smart contract marketplace for counterfeits



BLOCKCHAIN AND PROACTIVE MEASURES

- Immutable record of chain from manufacturer to point of online sale (supply chain protection)
- Potential cooperation with public sector authorities
- Verification of genuine products vs sharing of data

EUIPO BLOCKATHON (1)



48 hours coding competition of the best teams in the world

EUIPO BLOCKATHON (2)

Challenge:

Co-create the next level of the
EU anti-counterfeiting infrastructure
using blockchain

EUIPO BLOCKATHON (3)

- Use-Case: Three-tracks
- Customs: Automated, Faster, Targeted, Interconnected
- Consumers: Reliable, Authentic, Connected
- Logistic operators: Shared, Certain, Trusted, Secure



EUIPO BLOCKATHON (4)

All working together to solve a common problem

High support from private sector:

- endorsing the competition with logos,
- contributing to the programme with experts,
- supporting communication and promotion of the Blockathon.

The highest level of the EC support

EUIPO BLOCKATHON (5)

SUPPORTING PARTNERS



EUIPO BLOCKATHON (6)



>/EU// BLOCKATHON >><
CONNECT // CODE // CO-CREATE



<https://www.youtube.com/watch?v=26GNUetRbUI>

EUIPO BLOCKATHON (7)

THE WINNERS

- **Cryptomice**
- **Fides**
- **The Pirate Busters**



EUIPO BLOCKATHON FOLLOW UP (8)

The follow-up of the Blockathon:

1. Set-up of the Anti-counterfeiting Blockathon Forum 
2. Further definition of the Use Case and a pilot test

Mission of the Anti-Counterfeiting Forum (9)

Our Mission

Define, pilot and implement the next level of anti-counterfeiting infrastructure

Our Activities

Collaborate and exchange information with experts.

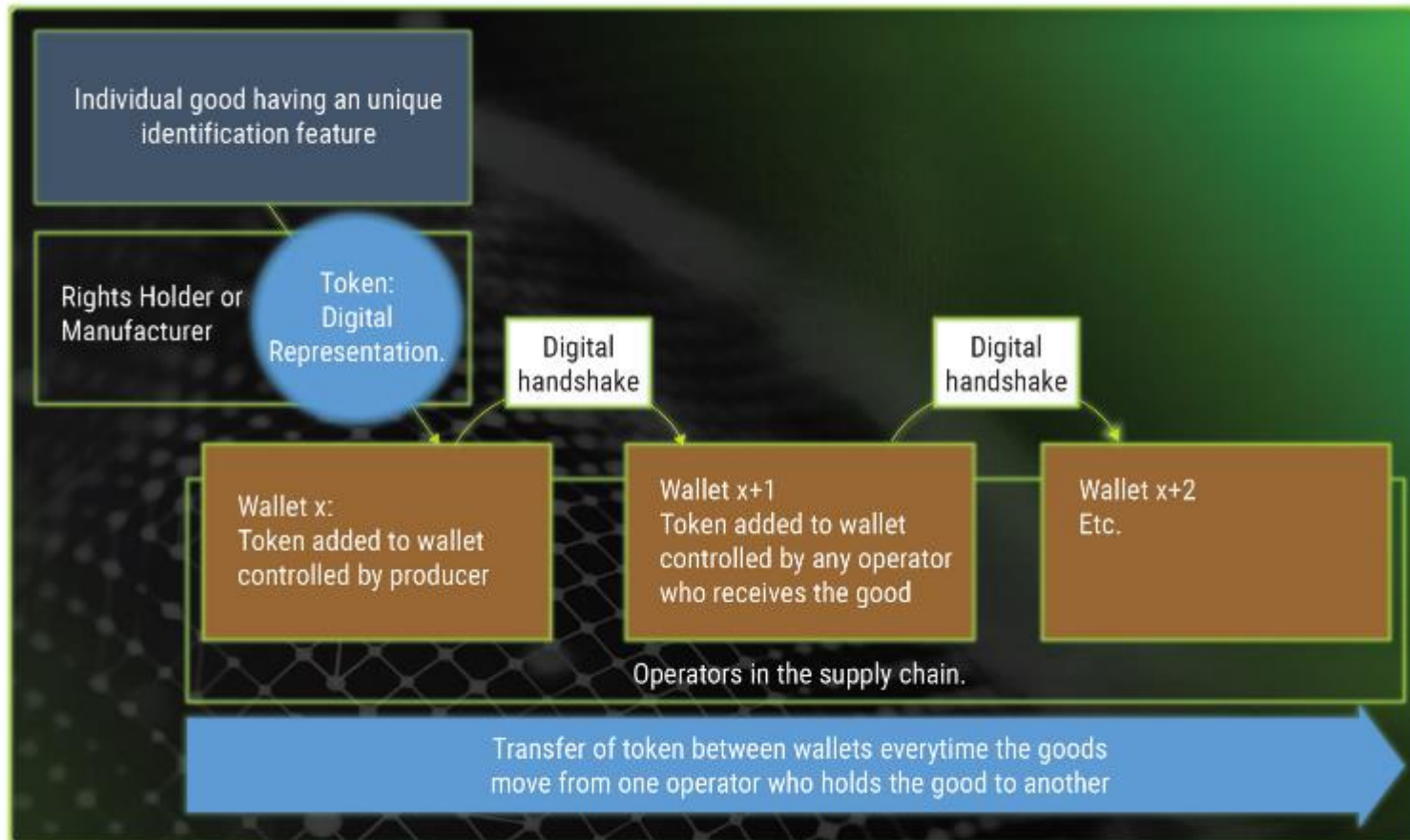
Define a use case for the future anti-counterfeiting infrastructure.

Create a pilot demonstrating the potential to realise the infrastructure.

See the pilot through to implementation.

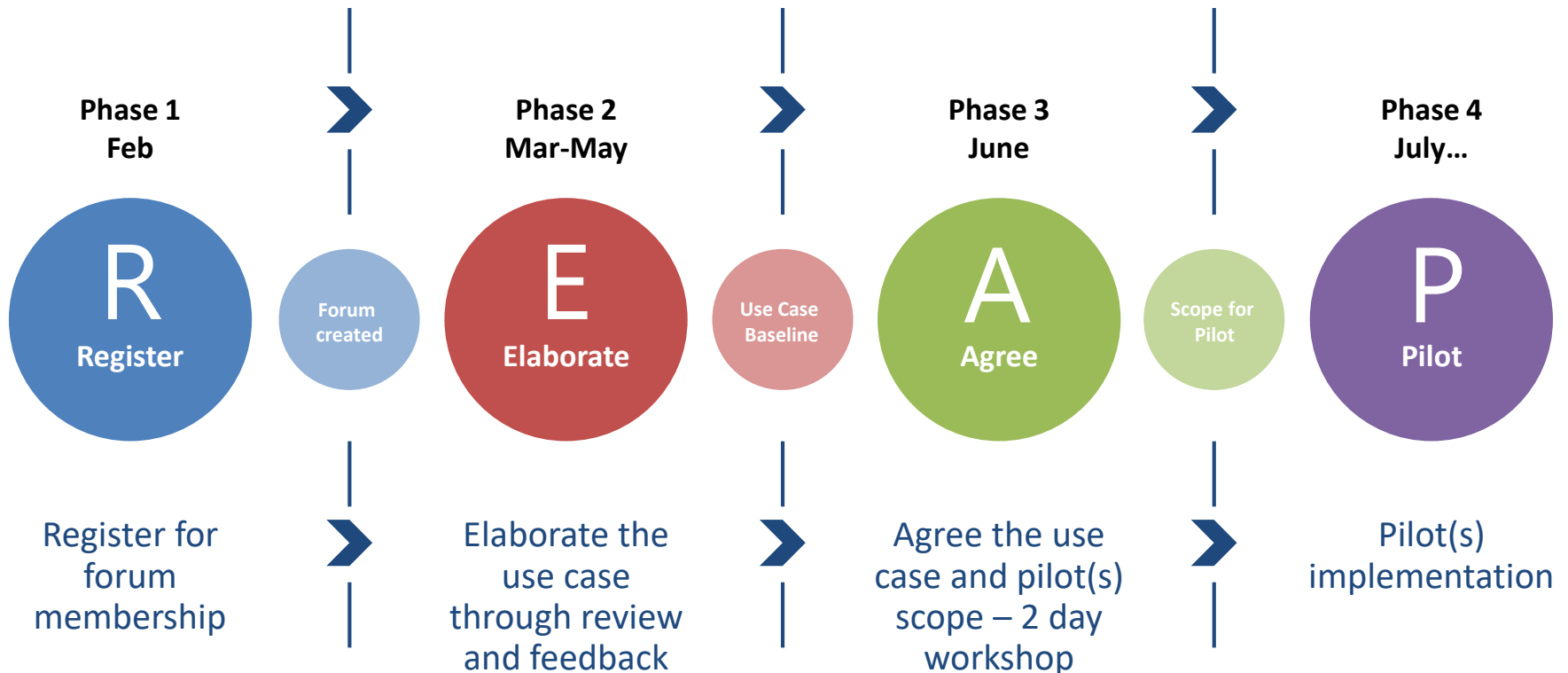


Anti-Counterfeiting Use Case (10)



Anti-Counterfeiting Use Case (11)

Use Case Phases



Anti-Counterfeiting Forum Invitation (12)

Contribute

Open to anyone with a vision that can help us achieve our mission

Join

Interested in working together to implement the next level of anti-counterfeiting infrastructure?

Register to join the Forum!

www.blockathon.eu



ANTI-COUNTERFEITING
BLOCKATHON FORUM

LOOKING INTO THE FUTURE (1)

- Maturity
- Governance
- Standardization
- Interoperability
- Costs
- Scalable business models



LOOKING INTO THE FUTURE (2)

- Digital identity
- Blockchain new generation
- Interoperability
- IOT
- High level of automatization





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Thank you