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**COUNTERFEITING AND PIRACY: ECONOMIC CRIMES**

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## **Intellectual property rights are rights under civil law**

Both industrial property and copyright are rights under civil laws. This means that the law grants certain categories of persons/beneficiaries certain time-limited rights to authorise or prohibit various types of exploitation of the protected subject matter.

Violations of the rights which are thus granted entail various sanctions. Those may be either civil sanctions, such as damages or seizure and destruction of infringing material. or they may be criminal sanctions, generally fines or imprisonment.

An important part of the rights under copyright law is the right of reproduction, which means the right to make copies of the protected work or other subject matter in any manner or form. A patent gives the right-owner a monopoly right to exploit an invention and a right under trademark law gives its owner an exclusive right to use the protected trademark as a sign for distinguishing the owner's goods or services from those of other traders.

## **Intellectual property rights have a considerable economic value**

All those rights have an economic value which is in some cases quite considerable. For example popular music and popular films on video or DVS are very attractive. The same goes for, for instance computer programs and books. Popular trademarks governments, that is connected to organised crime, drug trafficking and terrorism.

## **The rise of counterfeiting and piracy**

It should be underlined that this is a very important aspect which is taken very seriously for instance in Europe. It is a phenomenon that goes far beyond losses for right-owners or individual companies. Much is said about pirated CDs or DVSs the problem of counterfeiting and piracy extends to, for instance aircraft parts, food, pesticides and medicines, just to mention a few.

The seriousness of to-day's counterfeiting and piracy is illustrated, for instance, by a statement by a statement by the Secretary General of Interpol (the international police organization) which was reported in Financial Times on October 13, 2004. He said: ***"This is a multi-billion dollar problem that affects the safety of people, the security of governments, that is connected to organised crime, drug trafficking and terrorism."***

As mentioned before there is ample evidence in Europe that such is indeed the case. A few examples come to mind where counterfeiting or piracy activities have proved to have disastrous consequences.

## **Which are the consequences of counterfeiting and piracy ?**

Some of the direct consequences of counterfeiting and piracy are reasonably well known.

### ***No royalties to right-owners***

In the copyright field one of the main consequences is that it deprives authors of the economic remuneration for their works, as the pirates certainly pay no royalties.

### ***Prevents the establishment of domestic markets***

In addition, piracy and counterfeiting effectively prevents the development of domestic creative activities. For instance, in the West Indies with their rich musical culture, artists have realised that they can not bring their recordings to the market because they are immediately copied/pirated and they derive no benefit from them any more. Also in Africa, the artists complain that it is impossible to compete on the market which is flooded by cheap imported illegal products.

### ***Loss of taxes for the government***

Normally, those involved in illegal counterfeiting and piracy activities do not pay any taxes which means considerable losses for the public authorities.

### ***Organised crime.***

And then we have the links between the lucrative counterfeiting activities and organised crime. The reason why organised crime has entered this kind of activities is simple. The profits are generally much higher than in the case of, for instance, drug trafficking and the risks are very small. Either no action is taken against them or the sanctions are merely symbolic and can be absorbed as costs for the activities.

### **Counterfeiting and piracy as dangerous activities.**

Over the years a number of incidents have been reported where counterfeit or pirated products have in fact caused major accidents. Examples of such reports are for instance the following.

The tail part of a Norwegian aircraft had been repaired using bolts which were not genuine ones but counterfeit ones. The tail broke off and a number of persons were killed in the accident. In some cases the fake spare parts are delivered with fake certificates of authenticity.

Counterfeit helicopter spare parts have been used, causing accident with, in some cases, deadly consequences.

Counterfeit spare parts to car brakes have been sold; sometimes those fake parts were made of wood and consequently highly dangerous for the drivers.

In some African countries counterfeit pesticides had been sold which had no effect, the result being that a large amount of the coffee crops were destroyed.

Counterfeit medicines are sold, particularly over the Internet, which are either dangerous or, in the best of cases, completely useless.

Pirated computer programs are said to have been used in vehicles in some space programs and also in some military equipment.

These are but a few examples which show that counterfeiting and piracy are a phenomenon that affects not only the right-owners and their interests but also, as the head of Interpol put it, the safety of people and the security of governments.

These are only a few examples of activities that involve counterfeiting and piracy. As considerable economic interests are involved, also the ingenuity of the traders in this area is considerable. In the Far East, for instance, the smugglers of pirated CD's use underwater sealed compartments, in the form of a submarine which is tugged by a boat but invisible from the

surface. Also, in the Far East, the well known "Triads" are heavily involved in counterfeiting and piracy activities.

Just because the involvement of organised crime and big economic interests at stake, violent gang wars and murders are not uncommon, for example in countries in the former Soviet Union.

Consequently, counterfeiting and piracy is an activity of growing importance and clear links to other types of criminal activities and organised crime. This is an aspect that the judiciary very much should have in mind in trying such cases.

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