



Counterfeiting & Piracy – A Global Overview

National Workshop on IP Enforcement -
Indonesia

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**Xavier Vermandele
Legal Officer, Building Respect for IP Division**

1. Introduction

- Scope of Counterfeiting;
- Impact of Counterfeiting;
- Remedies against Counterfeiting.

2. Scope of Counterfeiting

- Difficulty of Measuring Counterfeiting & Piracy

- Various Attempts
 - *e.g.: « The volume of tangible counterfeit and pirated products in international trade could be up to USD 200 billion in 2005 » (OECD, The Economic Impact of Counterfeiting and Piracy, 2008 – www.oecd.org)*

 - OECD November 2009 update:
 - up to USD 250 billion in 2007
 - Increase of share of counterfeit and pirated goods in world trade from 1.85% in 2000 to 1.95% in 2007.

2. Scope of Counterfeiting

- Today almost every kind of product concerned.
- Shift from luxury items to consumer goods.

2. Scope of Counterfeiting

Examples of common affected products

<i>Industry/Sector</i>	<i>Examples of products affected by counterfeiting and piracy</i>
Audio-visual, literary and related copyright work	Music, films, software, computer/video games
Pharmaceuticals	Medicines used for treating cancer, HIV, malaria, diabetes, cholesterol, cardiovascular diseases, antibiotics
Automotive	Engine parts, tires, disc brake pads, oil, filters, engine components, belts, brake fluid
Food, drink, toiletry and other household products	Conserved vegetables, milk powder, baby food, instant coffee, drinks. Shampoos, detergents, toothpaste.

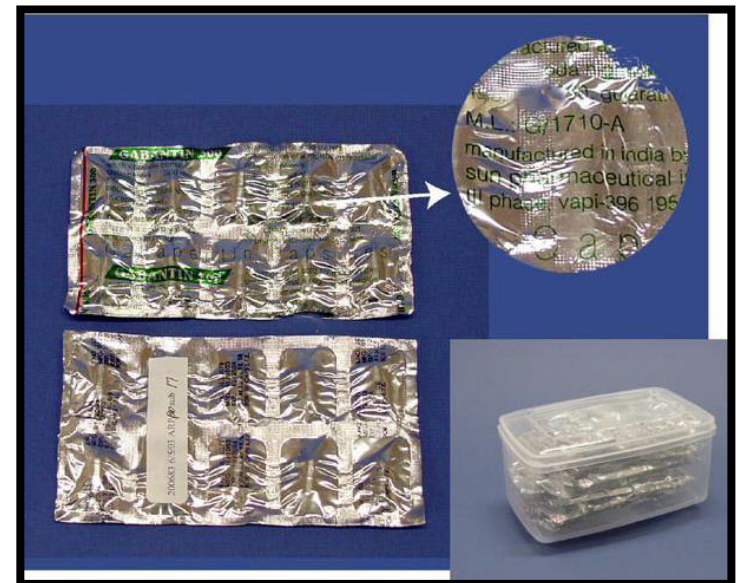
Source: OECD, the Economic Impact of Counterfeiting and Piracy

2. Scope of Counterfeiting

- Growing trade in fake pharmaceuticals (WHO 2007: scope of fake pharmaceuticals from 1% in industrialized countries to 10%-30% in some developing countries).
- Expanding distribution channels for counterfeit (e.g., infiltration of legitimate supply chains, Internet distribution).
- Significant role of criminal networks.

3. Impact of Counterfeiting

■ Health:



3. Impact of Counterfeiting

■ Safety:



3. Impact of Counterfeiting

■ Social Values:



■ Cultural identity:



3. Impact of Counterfeiting

- Impact for Right Holders:

- Unfair competition.

- Negative impact on brand value and reputation.

- Negative impact on sales (market shares), royalties and licensing.

3. Impact of Counterfeiting

- Impact for Consumers:

- Serious threats to health and safety.

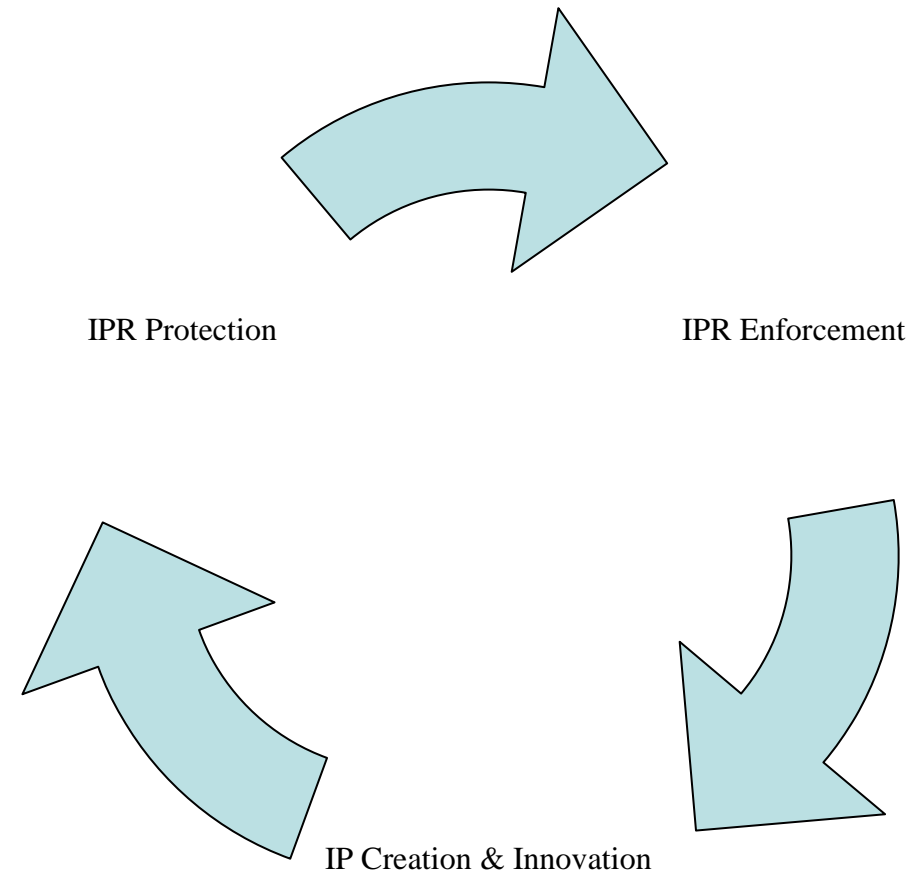
- Misleading (origin of the product, quality, etc.).

3. Impact of Counterfeiting

- Impact for Governments:
 - Negative impact on innovation & creativity.
 - Discouraging international trade and foreign direct investments (FDI) – impact on transfer of technologies.
 - Undermining employments.
 - Losses of revenue (taxes).
 - Strengthening of criminal networks.

4. Remedies against Counterfeiting

Ensuring effectiveness to
IPRs



4. Remedies against Counterfeiting

A) IP Enforcement

- At international level: TRIPS, Part III (*“Enforcement of IPRs”*)
 - Civil and administrative procedures & remedies;
 - Provisional measures;
 - Border measures;
 - Criminal procedures.

4. Remedies against Counterfeiting

- TRIPS, Art. 69: International Co-operation between Member States.
- TRIPS, Art. 7: « The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and obligations ».

4. Remedies against Counterfeiting

B) International Co-operation:

- World Customs Organization.
- Universal Postal Union : amendment to Art. 15 of the Universal Postal Convention – insertion of counterfeit & pirated goods in list of prohibited items (entry into force: 01/01/2010) – cooperation with customs authorities.
- Interpol.

4. Remedies against Counterfeiting

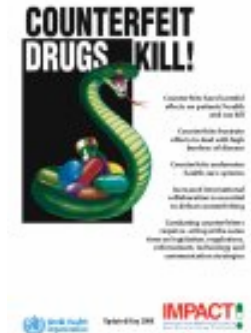
- International Medical Products Anti-Counterfeiting Taskforce — IMPACT

<http://www.who.int/impact/about/en/>

(+ Council of Europe: Medicrime)

- Global Congress on Combating Counterfeiting & Piracy: Public-private partnership WIPO, WCO, Interpol + ICC-BASCAP, INTA.

<http://www.ccapcongress.net/>



WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

4. Remedies against Counterfeiting

C) WIPO's Role

Program and Budget for the 2010/11 Biennium

→ Strategic Goal VI: “International Cooperation on Building Respect for IP”

- Goal: Creating an enabling environment promoting respect for IP in a sustainable manner
- Means: Balanced strategy (right holders – consumers – society and public authorities) based on international co-operation → Program 17

4. Remedies against Counterfeiting

■ Inspiration: Recommendation 45 of the WIPO Development Agenda

- “To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that “*the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”*, in accordance with Article 7 of the TRIPS Agreement.”

4. Remedies against Counterfeiting

Implementation of Strategic Goal VI: Program 17 – “Building Respect for IP” → twofold purpose:

- International level: Informed and empirically well-founded policy discussions to support the creation of an enabling environment promoting respect for IP in a sustainable manner.
- National level: Strengthening the capacity of the Member States for the effective enforcement of IPRs in the interests of social and economic development and consumer protection.

4. Remedies against Counterfeiting

Program 17 → Concretely:

- The Advisory Committee on Enforcement (ACE) ;
- The Building Respect for IP Division.

4. Remedies against Counterfeiting

Advisory Committee on Enforcement

- Established in 2002
- All WIPO Member States + accredited observers
- “advisory” => no norm-setting
- Mandate: (i) coordination with certain organizations and the private sector to combat counterfeiting and piracy; (ii) public education; (iii) assistance; (iv) coordination of national and regional training; (v) exchange of information.
- Annual work program agreed by the ACE
- Discussion supported by studies
- Working documents/studies available at:
<http://www.wipo.int/enforcement/en/ace>

4. Remedies against Counterfeiting

- 1st Session: 2003
- 2nd Session: 2004 - the role of the judiciary and the prosecution in enforcement activities
- 3rd Session: 2006 - education and awareness-building, including training
- 4th Session: 2007 - cooperation and coordination at the different levels – focus on criminal enforcement
- 5th Session: 2009 - contribution of, and costs to, right holders in enforcement of IPRs
- 6th session: 2010
 - Review of methodologies and gaps in the existing studies re. counterfeiting & piracy ;
 - Consumer attitudes and perceptions re. C&P;
 - Socio-economic factors supporting C&P;
 - Disposal of counterfeit goods.

4. Remedies against Counterfeiting

- Current work program, initiated with 6th session – A shift in focus:
 - Three elements:
 - 1) Better understanding the socio-economic effects of counterfeiting and piracy
 - 2) Analysis of reasons that fuel counterfeiting and piracy, including consumer behavior and motivations
 - 3) Analysis of enforcement efforts and alternative models, from an economic welfare perspective

5. Remedies against Counterfeiting

Building Respect for IP Division

- Upon request of the Member State at stake:
 - legal assistance : comments, opinions and advices on draft laws and in enforcement areas.
 - strategic assistance on capacity-building.
 - => consultations & meetings with senior civil servants and magistrates.
- International Co-operation.
- Training & awareness-raising activities.
- Exchange of information.

5. Conclusion

- Combating counterfeiting & piracy is an essential policy issue :

“Well-functioning IP enforcement mechanisms are the best means to limit the number of violations of IP rights and to ensure that right holders and the society as a whole can reap the benefits from the IP system.”



THANK YOU FOR YOUR ATTENTION!



www.wipo.int/enforcement/en/