

Advisory Committee on Enforcement

Sixth Session

Geneva, December 1 – 2, 2010

A STUDY RELATING TO EXISTING METHODS OF DISPOSAL AND DESTRUCTION OF
COUNTERFEIT GOODS AND PIRATED GOODS WITHIN THE ASIA PACIFIC REGION

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* The views expressed in this document are those of the author and not necessarily those of the Secretariat or of the Member States of WIPO

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I. TERMS OF REFERENCE

Background

1. The Advisory Committee on Enforcement (ACE) of the World Intellectual Property Organization (WIPO) was set up in 2002. Among other objectives, it seeks to promote the exchange of relevant information on issues associated with intellectual property enforcement.
2. At the Fifth Session of the ACE in December 2009, Member States agreed on a topic for the Sixth Session of the Committee, embracing four elements, the fourth of which paved the way to this Study, namely:
 - “Developing on the substantive study contained in WIPO/ACE/5/6, analyze and discuss IPRs infringements in all its complexities by asking the Secretariat to undertake...
 - 4. Analysis of various efforts, alternative models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges”.

The present Terms of Reference outline the specific issues to be covered in the envisaged Study.

Purpose

3. Conduct an examination of current practices within the Asia-Pacific Region relating to the storage, disposal and destruction of counterfeit and pirated goods pursuant to national legislation based on the provisions of the Agreement on Trade-Related Aspects of intellectual Property Rights (TRIPS Agreement 1994); with a view to identifying practical opportunities to enhance the efficiency and effectiveness of these practices and with the effect of building respect for IP rights. The Study is intended for use as a working document for discussions in the Sixth Session of the ACE to be held from December 1 to 3, 2010.

Objectives

4. The Study should:
 - a. Identify the issues that impact on the disposal and destruction of infringing counterfeited and pirated product within seven countries in the Asia-Pacific Region (namely, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Thailand and Vietnam) and, particularly, report on successful procedures currently used within the region (or elsewhere) to dispose of such goods efficiently, effectively and safely.
 - b. Explore the potential for multilateral co-operation and the development of initiatives in partnership with other intergovernmental organizations and the private sector.
 - c. The extent to which infringing goods can be used (subject to the agreement of the affected rights holders) to provide support for relief operations linked to humanitarian disasters.
 - d. Advise on opportunities associated with the destruction of counterfeit and pirated goods that enhance public education, support the civil society and nurture a respect for IP rights.

5. Strategic Drivers

- Desirability of undertaking initiatives to assist the building of respect for IP rights in civil society and among consumers.
- Increase in volume and diversification of counterfeit and pirated goods available in Asia-Pacific commerce which present a threat to public health and safety.
- Need to ensure that the methods to destroy infringing goods are consistent with global environmental standards.
- Substantial costs to governments and the private sector in storing and disposing of infringing goods to ensure compliance with obligations under the TRIPS Agreement and other national statutory requirements.
- Potential to mitigate the impact of humanitarian disasters through the distribution of infringing counterfeit goods to affected populations, by way of charitable donation and with the agreement of rights holders.
- Desirability of identifying and sharing successful techniques relating to the storage and destruction of counterfeit and pirated goods among Asia-Pacific.

II. INTRODUCTION

6. It is axiomatic to many of the issues surrounding the storage and disposal of IPR infringing goods to develop an understanding as to the physical volume of infringing goods that currently compete with legitimate trade. This is important because it provides a potential measure of the quantity of goods that will require storage or disposal assuming that all infringing goods are detected by enforcement authorities.
7. Achieving such an understanding is hampered by the absence of aggregated global statistics relating to seizures by law enforcement authorities. Notwithstanding these limitations and noting the various caveats that apply to the source studies, it is possible to get an indicative sense of the current scale of the counterfeiting and piracy problem.
8. In November 2009, the OECD assessed the share of counterfeit and pirated goods (excluding those infringing goods that are in the marketplaces of the country of manufacture) in world trade during 2007 as 1.95%¹.
9. It is known that in 2007, the total physical volume of imported maritime containerized cargo globally was 120.2 million TEU². A TEU (Transport Equivalent Unit) is the equivalent of a fully loaded twenty foot shipping container. This must be uplifted by 2% which is the international trade by volume that is carried by air transport³. It however excludes cargo which is transported across frontiers by road transport and rail.
10. Combining these two statistics provides a picture of the actual volume of infringing physical goods in international trade. In real terms, it means that the physical volume of counterfeit product being traded annually as the equivalent of approx. 2.39 million TEU.
11. Therefore, *prima facie*, on any day of the year, the volume of counterfeit and pirated goods passing through official controls en route to domestic markets is the equivalent of approx 6,500 TEU.

¹ OECD report “Magnitude of Counterfeiting and Piracy of Tangible Products: An Update”- November 2009

² HIS Global Insight, World Trade Service/World Shipping Council – 5 March 2010. A TEU is a “Transport Equivalent Unit”

³ Transport Intelligence Ltd – January 2006 TIGAC0601

12. It is known that the volume of these infringing goods being detected by enforcement agencies such as Customs is increasing.⁴ It is a reasonable assumption that the level of detentions will continue to rise and this is likely to be driven by a number of factors:
 - The continued progressive implementation of the Enforcement provisions of the TRIPS Agreement;
 - The positive impact of the delivery of capacity building and technical assistance programs;
 - A maturing of co-operation and partnership with the private sector and;
 - The development of bi-lateral or multi-lateral information sharing initiatives.
13. With respect to the ultimate disposal of infringing goods, a continued narrowing of the gap between the actual scale of counterfeit or pirated goods in the international trade supply chain and the level of detections by enforcement authorities will have a profound impact for Governments and the intellectual property rights holders in Asia Pacific. Ensuring that the cost of this burden properly falls on the counterfeiters, will require close partnership and co-operation between government agencies and affected rights holders.
14. The volume of infringing goods subject to disposal, in and of itself, is but one dimension. The range of counterfeit industrial and domestic goods is widening considerably and this is also occurring at a time that there is a growing global consciousness of the need to manage Man's impact on our environment.
15. As a consequence, the disposal of counterfeit goods is becoming much more technically complex, costly and increasingly onerous as Governments and rights holders seek to implement TRIPS compliant measures that also take into account the need to mitigate environmental impact and achieve compliance with other national legislative requirements.
16. Allied to the wider environmental concerns are direct threats to the health and safety of the general public. The range of counterfeit goods which now present real risks to consumers is vast. While it provides additional urgency to identify infringing goods in international trade or in the marketplace, it also underlines the need that infringing goods are disposed of in a manner that such goods cannot find their way back to shops, the shelves of market stallholders, internet commerce or the wider black market.
17. Finding methods and procedures that achieve the aim of fulfilling the obligations of the TRIPS Agreement, while also mitigating environmental impact and protecting consumers, presents a contemporary challenge for Governments and rights holders. Sharing information on successful procedures and methodologies is an effective way of achieving this.
18. There are many examples of disposal methodology of infringing products around the world. Generally, the methods used are recycling, open air burning, shredding, crushing, burying in landfill and donation but methods vary depending on nature of goods to be destroyed or recycled.
19. As an example, in Serbia, one of the major obstacles to destruction of counterfeit goods was the lack of suitable facilities for destroying plastics, rubber and other material in an environmentally friendly way. During 2006, new facilities approved by the Serbian Ministry

⁴ WCO publication "Customs and IPR Report 2009"

of the Environment saw large quantities of counterfeit running shoes being cut into pieces instead of burning resulting in an improved environmental outcome.⁵

20. Similarly in Ghana during 2010, infringing 14-inch and 21-inch television sets were destroyed at a landfill site in a destruction overseen by the Environmental Protection Agency.⁶ The form of destruction was ordered by the Court because of the hazard they posed to users.
21. Thousands of counterfeit exercise machines were detected by New Zealand Customs in 2007/2008 following the filing of a border protection notice. To ensure that the machines would not find their way into the channels of commerce they were destroyed in a scrap metal yard by crushing through the use of specialized machinery.⁷
22. The destruction of a ten ton consignment of counterfeit Lego bricks in 2004 by Finnish authorities is an example of the win-win benefits of adopting environmentally sensitive methods of destruction. Having ensured that the counterfeit bricks did not contain toxic poly vinyl chloride or cadmium, after initial granulation, the counterfeit bricks were incinerated in a waste-to-energy plant.⁸

III. THE TRIPS FRAMEWORK

23. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994) contains specific Articles which bear on the issue of the disposal of counterfeit and pirated goods and provide minimum standards and a framework for Contracting Parties.
24. The principal Articles are:
 - (i) Section 2: Civil and Administrative Procedures and Remedies

“Article 46 – Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.”

⁵ <http://www.petrosevic.com/resources/news/2007/02/000>

⁶ <http://www.graphicghana.com> – “Court Orders Destruction of Fake Sanyo TVs”

⁷ New Zealand Government Press Release (Minister of Customs) of 6 March 2008

⁸ www.helsinginsanomat.fi/english

(ii) Section 4: Special Requirements Related to Border Measures

“Article 59 – Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.”

(iii) Section 5: Criminal Procedures

“Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed willfully and on a commercial scale.

“Article 69 International Cooperation

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administration and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.”

IV. RELEVANT FINDINGS OF WTO PANEL REPORT (DS362)

25. In 2007, the United States filed a complaint with the WTO against various Chinese IP enforcement measures for not complying with the TRIPS Agreement and requested a Panel be constituted to consider the matter.
26. This included consideration of various customs measures relating to the disposal of infringing goods. The WTO Panel Report assists interpretation of Articles 46 and 59 of the TRIPS Agreement⁹.
27. In addressing the text of China Customs IPR Regulations, which provide a series of options to be used for the disposal or destruction of goods determined to infringe intellectual property rights, the Panel considered the scope of Articles 46 and 59 of the TRIPS Agreement.¹⁰

Article 27, China Customs IPR Regulations states:

⁹ WT/DS362/R of 26 January 2009

¹⁰ Ibid. Para 7193

“Where the confiscated goods which infringe on intellectual property rights can be used for the social public welfare undertakings, Customs shall hand such goods over to relevant public welfare bodies for the use in social welfare undertakings. Where the holder of the intellectual property rights intends to buy them, Customs can assign them to the holder of the intellectual property rights with compensation. Where the confiscated goods infringing on intellectual property rights cannot be used for social public welfare undertakings and the holder of the intellectual property rights has no intention to buy them, Customs can, after eradicating the infringing features, auction them off according to law. Where the infringing features are impossible to eradicate, Customs shall destroy the goods”.

28. The Panel also considered the related Implementing Measures which entered into force in July 2004¹¹. The following is the relevant text:

“Article 30 Customs shall dispose of infringing goods it has confiscated according to the following provisions:

- a. Where the goods concerned may be used directly for the social public welfare or the holder of the intellectual property rights wishes to purchase the goods, Customs shall hand the goods over to the relevant social welfare bodies for the use in social public welfare or assign them to the holder of the intellectual property rights with compensation;
- b. Where the goods concerned cannot be disposed of in accordance with Item (1) but the infringing features can be eradicated, they shall be auctioned off according to law after eradicating the infringing features. The proceeds arising from the auction shall be turned into the state treasury; and
- c. Where the goods concerned cannot be disposed of in accordance with Items (1) and (2), they shall be destroyed.

29. When Customs destroys the infringing goods, the holder of the intellectual property rights shall provide necessary assistance. In cases where relevant social welfare bodies use the infringing goods confiscated by Customs for the social public welfare, or the holder of the intellectual property rights assists Customs in destroying the infringing goods, Customs shall carry out necessary supervision”

30. The Panel’s conclusions in relation to the various optional processes outlined in both Article 27 of the IPR Regulations and Article 30 of the Customs Implementing Measures included:

- a. Donation to social public welfare bodies: In examining the claimant’s allegations relating to, inter alia, harm to reputation and later sales of donated goods, the panel found that it had not been demonstrated that China Customs lacked authority to order disposal of infringing goods in a manner that would avoid any harm to the rights holder. As a matter of administrative practice, China Customs have a Memorandum of Understanding with the Chinese Red Cross which establishes the conditions on which the infringing goods have been made available.¹²

¹¹ Ibid. Para 7.194

¹² Ibid. Para 7.286 – 7.324

- b. Sale to the Right Holder: The Panel found that it had not been established that sale to the right holder would preclude any authority required by Article 59, and hence Customs did not lack the authority to order disposal of infringing goods in accordance with the principles set out in the first sentence of Article 46.¹³
- c. Auction: The Panel found that this was not a form of disposal outside the channels of commerce. Yet, the remedies mentioned in Article 59 of the TRIPS Agreement were not exhaustive and, therefore, such a method of disposal was not inconsistent per se with that Article.¹⁴ However, the Panel found that, in regard to counterfeit trademark goods, China's Customs measures provided that the simple removal of the trademark unlawfully affixed was sufficient to permit release of the goods into the channels of commerce in more than just exceptional cases. Those measures were hence found to be inconsistent with Articles 59 and the incorporated principle set out in the fourth sentence of Article 46.¹⁵

V. THE PRIVATE SECTOR PERSPECTIVE

31. The views of IPR rights holders were sought at an Asia Pacific meeting of the IPR Business Partnership at a meeting in Hong Kong on May 3, 2010 and subsequently the Study also benefited from the private sector contribution at the WIPO Regional Workshop on the Disposal of Goods held at Siem Reap from July 12 to 14, 2010.
32. A Resolution of the International Trademark Association (INTA) of March 7, 2005, outlined their Members expectations with respect to the disposal of infringing product:

“Therefore, in order to ensure a more effective customs enforcement regime against cross-border trafficking of counterfeit goods, the ACEC recommends that the governmentstake appropriate steps to reduce or eliminate the burdens on trademark owners of suffering costs of storage and destruction of counterfeit goods. Governments should also take appropriate steps to ensure that all counterfeit goods are compulsorily destroyed, definitively removed from channels of commerce, or disposed of with the rights holders' consent where there is no health and safety risk.”
33. Private sector contributors outlined their willingness to work with authorities in Asia Pacific and to provide advice and assistance on the disposal of counterfeit consignments. Generally, they seek procedures that are cost effective and which ensure that the infringing products do not find their way into the channels of commerce. Specifically, they drew attention to the need to ensure that:
 - Responsibility and authority for the disposal of infringing goods is clearly defined.
 - Procedures provide adequate accountability and verification where the goods are disposed of either by destruction; or donation to charities for use in humanitarian relief.
 - Methodologies used in destruction processes are effective and that the goods are put beyond further use. Care needs to be exercised to ensure that de-trademarked goods cannot simply be re-labelled and then find their way back into the channels of commerce.
 - Regional procedures are harmonized and that at the national level, there are common policies and procedures used by enforcement agencies.

¹³ Ibid. Para 7.325-7.326

¹⁴ Ibid. Para 7.327

¹⁵ Ibid. Para 7.356 - 7.394

- Procedures should recognize the need to mitigate storage, transport and destruction costs. This can be assisted by permitting infringing consignments to be moved from high cost storage facilities to lower cost storage.
 - Cost containment can also be achieved by the use of “simplified procedures” which permit the swift destruction of goods where their detention is uncontested; and civil or criminal procedures are not contemplated.
34. There is also broad acceptance that while the need to ensure that infringing goods are not permitted back into the channels of commerce; the disposal procedure can also create opportunities to reduce costs but also to provide substantial social good.
35. In that sense, at the Fifth Session of the WIPO Advisory Committee on Enforcement, Mr. Ronald Brohm, SNB-REACT Netherlands, reiterated the situation with respect to the costs relating to the storage and destruction of counterfeit goods:
- “Storage and destruction of counterfeit goods have become a major issue in a substantial number of countries. Warehouses pile out and the waste of resources is tremendous and at the end of the day mostly costly.”
36. He also outlined an initiative that SNB-REACT (a not-for-profit, association of rights holders) operates a storage and destruction facility in the Netherlands, which has the support of law enforcement agencies and rights owners, while also creating jobs for physically challenged employees.
37. Upon detention by Netherlands Customs, the infringing goods are transferred to a storage facility owned by SNB-REACT. The facility is under the administrative control and oversight of the Customs authorities. Once the legal processes are finalized, the infringing goods are recycled (where that is appropriate) resulting in job creation and ensuring that where possible the emphasis is on recycling rather than just creating environmental waste by simply burning infringing goods. In this respect, an example is the conversion of components of infringing footwear into compounds for synthetic sports surfaces.
38. Recycling of counterfeit goods is a solution that should always be considered. For example, the possible recycling of the constituents of infringing household goods by the injured rights holder or the shredding of pirated DVD/CD’s into poly carbonate granules for later conversion into other products.
39. The issue of environmental impact cannot always be addressed so simply. This is exemplified by the dilemma that exists with respect to the disposal of counterfeit agricultural chemicals. In 2009, 500 ton of fake pesticides were seized by Police in Ukraine. Stored in a military bunker, the storage and disposal of this seizure pose serious risks. There are very few of the special facilities in the world necessary to destroy these toxic products safely.¹⁶
40. According to the International Union of Pure & Applied Chemistry (IUPAC), the destruction methods required for pesticides are neither cheap nor simple. In general, high temperature incineration is the most widely used method yet it can still create toxic emissions and the incineration process also leaves ash that is hazardous; and the filters that remove the toxic emissions, themselves become toxic.
41. IUPAC states “The technology to deal with hazardous chemical waste safely does not currently exist in most developing countries. Providing temporary solutions such as repackaging and storage in the hope that a better solution will emerge in the foreseeable

¹⁶ ICC Counterfeit Intelligence Bureau – The International Anti-Counterfeiting Directory 2009

future is unacceptable since long term security and integrity of the pesticides and their containers cannot be guaranteed. The search for environmentally benign destruction technologies has also so far been unsuccessful and therefore at present the only available technology.....is dedicated high temperature incineration”.¹⁷

42. This case, albeit at the extreme end of the risk scale, illustrates the difficulties facing both Government agencies and rights holders in terms of the availability of technical solutions and the inherent costs involved in complying with obligations under the TRIPS Agreement relating to the disposal of infringing products. It reinforces the need for close consultation between all parties to ensure the best solution.
43. As an example of the shift to new, imaginative and environmentally sensitive methods of disposal, the Southwark Trading Standards Service, United Kingdom, that has traditionally incinerated infringing products, after consultation with rights holders have adopted the following new methods of disposal¹⁸:
 - Clothing & footwear is now collected by a registered charity “His Church” who de-brand items and export them as humanitarian aid e.g. remote orphanages in Liberia.
 - Fake handbags/purses/DVD cases are donated to Police for use in the training of detector dogs.
 - DVD’s, CD’s and other plastic goods are shredded and used in the manufacture of pens, pencil cases and binders.
 - Fake batteries are recycled safely and in an environmentally sensitive manner by the local Council’s waste contractors.
44. The “His Church” charity has reached agreement with the UK Federation against Copyright Theft (FACT) who have accredited them to undertake the de-branding and re-badging of the infringing clothing with the charity’s own brand “His”. The clothing is then exported as humanitarian aid.
45. Building effective consultation between government agencies, charities and rights holders in such circumstances is essential to ensure that adequate steps are taken to protect the private intellectual property rights at risk. Understandable compassion must be matched with robust steps that are conceived to prevent diversion of the goods into the normal channels of commerce.
46. Some acts of charity have attracted criticism. In the aftermath of Hurricane Katrina in 2005, US Customs & Border Protection donated more than US\$20,000,000 of seized wearing apparel, towels, pillows and other items to the victims of the disaster.¹⁹ The procedures adopted in making the infringing goods available were the subject of negative comment relating to the lack of consultation with rights owners and concerns about the efficacy of procedures adopted to ensure they could not be re-introduced into the channels of commerce.²⁰
47. It highlights the need to have in place pro-active procedures which are agreed, understood and implemented by the critical triangle of interest – government agencies, rights holders and charities.

¹⁷ IUPAC – “Obsolete Pesticides” – <http://agrochemicals.iupac.org>

¹⁸ http://www.southwark.gov.uk/info/200098/trading_standards/1777/anti-counterfeiting/3

¹⁹ CBP news release of 12 December 2005 – http://www.cbp.gov/xp/cgov/newsroom/news_releases

²⁰ “Shelter chic: can the U.S. government make it work?” by Kristina Rae Montanaro, Vanderbilt Journal of Transnational Law, 1 Nov, 2009, ISSN 0090-2594

VI. DISPOSAL METHODOLOGIES WITHIN ASEAN²¹

Cambodia

48. National legislation provides for the issue of detention/seizure or destruction orders arising from civil and criminal proceedings.
49. Border Measures may be activated either based on a complaint by a rights holder or through ex-officio action taken by Customs or officials of Camcontrol. The suspended goods are then stored awaiting a Court judgment. Reciprocal measures apply to infringing goods seized during raids from warehouses, dwellings and public places. In both situations, the Court may order the goods to be destroyed or disposed of outside the channels of commerce. In doing so, the Court is required to take account of the requirements of legislation relating to solid waste management. Pirated goods must be destroyed.
50. Court orders may approve disposal for humanitarian purposes provided that they do not pose a threat to public health and that they will not be re-introduced into the channels of commerce.
51. Destruction of infringing goods is achieved either by burning or burying in landfill. Recent destructions have involved 19.280 ton of fake pharmaceuticals and substantial quantities of pirated CD's.
52. Cambodia is a signatory to the ASEAN Framework Agreement on IP Cooperation and also has bi-lateral cooperation agreements with Thailand and the United States.

Indonesia

53. In suspected trademark infringements there is civil law provision for a Judge of the Commercial Court to order the surrender of counterfeit goods once the decision of the Court is final and binding. Rights holder may seek a provisional decision from a Judge of the Commercial Court to prevent entry of the goods subject to the allegation.
54. Provision also exists for a state investigator to confiscate material and goods which can be later used as evidence in a subsequent criminal trial relating to trademark infringements.
55. Similarly, a copyright holder may request the Commercial Court to order confiscation of infringing products and also seek a provisional decision to ensure all evidence is preserved. There are also parallel powers for state investigators to confiscate goods and evidence for use in copyright criminal trials. There is specific statutory direction that copyright infringing goods that are the subject of criminal prosecution, shall be seized and destroyed.
56. Under Border Measure legislation²², upon the request of a trademark or copyright owner, the Chief Judge of the District Court may issue a written order to Customs officials to suspend the clearance of alleged infringing goods from the Customs area. Destruction may only be done at the request of the importer/exporter and as with the disposal of other prohibited or restricted goods, this would be supervised by Customs officials.

²¹ Summarized from Country Reports presented at WIPO Regional Workshop on the Disposal of Goods, Siem Reap, Cambodia on July 12/14, 2010.

²² Border Measures/Export-Import Control Law No. 10 (as amended by Law No.17/2006)

57. The Government of Indonesia has established a storage facility RUPBASAN²³ to safely store all goods confiscated by the State. Disposal of confiscated goods is enforced by the Public Prosecutor and is witnessed by the Head of RUPBASAN.
58. Under Indonesian law, a single method of disposal is mandated – destruction. With respect to the destruction of counterfeit goods, Judges are required to consider the environmental impact. Destruction must avoid or prevent environmental damage.
59. To permit infringing goods to be used for humanitarian purpose current national legislation would need to be modified.
60. Indonesia is a signatory to the ASEAN Agreement on Intellectual Property Co-operation and is also involved in the APEC Intellectual Property Rights Expert Group (IPEG).

Lao PDR

61. Civil and Criminal measures are available in national legislation to give relief to rights holders affected by counterfeiting and piracy. Customs have generic powers to inspect goods and seize those that violate intellectual property rights.
62. Lao PDR shares international land borders with five neighboring nations and the issue of border enforcement in and of itself is very difficult. There are no storage facilities at many border checkpoints which complicates the detention of infringing consignments. The lack of resource and training is a critical issue.
63. Much has been done to publicize the destruction of infringing goods with the intention of raising public awareness to counterfeiting and piracy. It is also an opportunity to acknowledge teamwork between the various ministries and departments with a responsibility in the administration and enforcement of intellectual property rights.

Malaysia

64. Within the national IP framework, the following legislation empowers officials to confiscate and dispose of counterfeited and pirated goods:
 - Optical Disc Act 2000
 - Copyrights Act 1987
 - Trade Descriptions Act 1972
 - Criminal Procedure Code
65. The Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC) operate two main warehouses which are available for storage of seized infringing goods. The warehouses are also used to store other goods seized by enforcement officials. In June 2010, more than 60,000 pairs of infringing footwear were seized and stored in the facility together with the large volumes of ink cartridge toner previously seized.
66. With respect to the disposal procedures the following are examples of the procedures used:
 - CD/DVD/VCD are disposed of by heavy duty shredding and the waste is sent for recycling;
 - Car air conditioning units are destroyed by hammer and then sent for recycling; and
 - Apparel such as jerseys, t-shirts, footwear are mutilated using scissors and then dumped in landfill.

67. The Department of Environment (DOE) is the competent government agency consulted on the method of destruction. Their advice is particularly sought when the goods contain hazardous substance such as mercury, lead & zinc etc. The DOE has recommended all goods containing hazardous residue should be disposed of through incineration to guarantee a pollution-free environment. The cost of incineration however is extremely high – as an example, the cost of incinerating 20 x TEU's (twenty foot container) is approx. US\$30,000. Currently, there is only one licensed company to undertake such an incineration.
68. There is close co-operation with local authorities and partnership with the local private sector to carry out dismantling and disposal procedures and associated logistics.
69. Donation of counterfeit goods to provide support for relief operations linked to humanitarian disasters is often denied by rights holders. In particular, permission was refused to provide seized footwear to flood victims in southern Malaysia.

The Philippines

70. National legislation provides for civil, criminal and administrative remedies which include the seizure and destruction of counterfeit and pirated goods.
71. In civil actions for infringement of intellectual property rights, following the issue of a writ, the responsible Sheriff undertakes a search for the goods described in the writ and takes them to a bonded or government warehouse for safekeeping. The applicant is responsible for meeting the expenses incurred in the seizure and storage.
72. The court may order that infringing goods (and materials or implements used in their production) may be disposed of outside the channels of commerce; or destroyed.
73. With respect to Border Measures, the general provisions relating to forfeiture under the Tariff and Customs Laws are relevant. This includes any articles of which importation or exportation is effected contrary to law; or any prohibited articles.²⁴
74. When IP infringing goods that are unfit for use or sale; or injurious to public health have been detained as a result of border action and subsequently found to be forfeit following administrative or judicial proceedings, the process of disposal is overseen by a three member Condemnation Committee appointed by the local Collector of Customs, who examine the goods and recommend their destruction. The Collector of Customs then orders their destruction in such manner as the case may require.
75. One member of the committee is a representative of the Department of Health or a local health officer; and the other two members of the Committee are responsible Customs officials, one of whom must be an appraiser.
76. In general, goods must be destroyed by burning or otherwise be destroyed in such a manner as to render them worthless. Destructions are witnessed representatives from the Commission on Audit, Department of Justice, Bureau of Customs and if possible, a member of the private sector.
77. The Director of the Bureau of Legal Affairs is also empowered to dispose of seized goods as appropriate. Such processes can include sale, donation to distressed local governments, charitable or relief institutions, exportation or recycling into other goods. Partnership with rights holders has seen the donation of clothes, footwear and electrical generators for charitable purposes.

²⁴

See Section 216 of the Intellectual Property Code Law on Trademarks, Service Marks, and Trade Names

78. Courts are expected to take into account environmental issues when considering orders for disposal. The Philippines Clean Air Act 1999 prohibits open burning which causes the emission of toxic and poisonous fumes. Materials include plastic, polyvinyl chloride, polypropylene, paints, ink, wastes containing heavy metals, organic chemicals, petroleum related compounds, ozone depleting substances etc.

Thailand

79. Under the Customs Act²⁵, there is a general requirement for all forfeited goods to be disposed of, as directed by the Director General of Customs.
80. Disposal of counterfeit and pirated goods is achieved by burning, burying, cutting up, shredding and smashing. In undertaking the destruction, the methods have to comply with the Enhancement and Conservation of the National Environment Quality Act 1992.

Viet Nam

81. National legislation²⁶ requires that counterfeit goods and other infringing goods including materials and equipment used in their production be destroyed unless there is compelling reason that the goods should be distributed for non-commercial purposes.
82. Destruction depending on the nature of the goods is undertaken in accordance with an administrative circular issued by the Ministry of Finance²⁷ and is generally achieved by burning, burying, crushing, use of chemicals or other methods as may be prescribed. A Destruction Board is established to oversee the destruction and they are required to file a report at the conclusion of the destruction. The Report covers:
- The reason for the destruction;
 - The date and time of the destruction;
 - The Members of the Destruction Board; and
 - The type of goods and the method of destruction.
83. The Board will normally include a representative of the Office of Environmental and Natural Resources to ensure that environmental issues are considered. The destruction can be done by using specialist private sector companies who possess appropriate equipment such as incinerators or recycling equipment to process the counterfeit or pirated goods. This normally occurs in main metropolitan cities such as Ha Noi and Ho Chi Minh City.

VII. SUMMARY OF ISSUES ARISING FROM CONSULTATIONS

84. During the consultations, a number of issues emerged which are directly relevant to the efficiency, effectiveness and safety of storage and disposal procedures. While these are based on the experience of those economies consulted during the course of the study, it is anticipated they will have some relevance to the wider Asia Pacific region.

Physical storage of detained or seized infringing goods

85. Mitigating the cost of demurrage and warehousing is of considerable concern to governments and rights holders. In a border measure situation, demurrage charges accumulate very quickly if the container is detained and not released back to the shipper. The calculation of demurrage varies widely but generally, the importer is given a fixed short

²⁵ Section 25, Customs Act B.E. 2469 (1926)

²⁶ Article 31, Decree 105/2006/ND-CP of 22 September 2006

²⁷ Circular 12/2010/TT-BTC of 20 January 2010

period of free time and beyond that, a daily charge is imposed. For a 20ft container, these are typically between US\$30 - \$50 per day. In addition, storage charges may be levied by the wharf authority or the owner of a private warehouse into which the goods may have been transferred. If litigation becomes protracted, the cost of storage can become very onerous.

86. Similarly, where substantial quantities of infringing goods are seized as a result of market control activities, storage costs can also be considerable. This situation has been addressed by officials in Indonesia, Malaysia and the Philippines, where government warehouses or defence facilities are used to store the goods seized.
87. The security of storage facilities is a paramount consideration and should seek to ensure that:
 - Infringing goods are held securely and do not migrate to the channels of commerce.
 - Environmental risks are mitigated.
 - Other legal requirements, such as the payment of import duties and customs requirements are not prejudiced.
88. There is a practical difficulty in Lao PDR where storage facilities do not exist at remote land border crossings and manpower is limited. Rights holder support is limited or non-existent in these remote area and detained goods need to be transported to the nearest main centre.

Public Education

89. The destruction of infringing goods provides an opportunity to reinforce important messages to the community that counterfeiting and piracy is responsible for economic harm and the endangerment of consumer health and safety.
90. As in many parts of the world, all the countries consulted generate very good media publicity by ensuring that the destruction is attended by prominent politicians, representatives of ministries, enforcement agencies and rights holders. Publicizing these destructions on national television and prominently in print media are useful tools in educating and shaping public attitudes. In doing so, they contribute to the goal of building respect for intellectual property rights.
91. While these events are targeted at national audiences, there is additional opportunity to present some persuasive messages at a regional, sub-regional or national level. An aggregation of national statistics arising from seizures/destructions would permit the development of messages such as:
 - “In the past year, [ASEAN/Asia-Pacific] enforcement authorities seized and destroyed 3000 tons of counterfeit and pirated products that threatened the health and safety of the regions consumers.”
 - “[ASEAN/Asia-Pacific] enforcement authorities removed 800 ton of counterfeit pesticides from regional trade. The seized pesticides posed a direct threat to the environment, agriculture production and international trading reputation.”
 - “The environment benefited through the recycling of 4000 ton of counterfeit and pirated products within [ASEAN/Asia-Pacific] during the past year”.
92. Such an approach would be consistent with the objectives of the APEC Model Guidelines for Effective Public Awareness Campaigns on Intellectual Property Rights which advise “Key campaign awareness themes might include how the effective use of IPR systems can benefit the IP owner and the economy, the importance of consumer responsibility, civil and criminal liabilities for infringement, and health and safety implications of IPR infringement.”

Regional Co-operation Arrangements

93. There are currently no regional co-operation arrangements to facilitate the storage and destruction of IPR infringing goods. Similarly, the existing regional frameworks or work programs²⁸ lack detailed information or guidance on storage and disposal. This is understandable because it is very much at the cutting edge of contemporary IPR enforcement issues. Fueled by the ever increasing range of counterfeited goods and growing seizures by enforcement agencies it is however, an issue that would benefit from regional dialogue and initiative.
94. On face, the increasing sophistication and costs associated with the environmentally sensitive destruction plant that are necessary to render counterfeit or pirated product unusable, could be assisted by use of a regional/sub-regional/bi-lateral processing centre.
95. Complicating implementation of such a concept are issues such as geographic distance, associated transport cost and public sensitivities. The movement of such products (where applicable) would also need to conform to the requirements of multi-lateral environmental agreements (MEA) such as the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal; and the Montreal Protocol on Substances that Deplete the Ozone Layer.
96. An incremental approach was suggested by delegates. As an initial step they considered that there would be much benefit if there was a regional co-operation mechanism to enable the sharing of technical information and Members experiences relating to the destruction of infringing product. Delegates from Customs administrations indicated that this was a service that could possibly undertaken by the World Customs Organization's Regional Intelligence Liaison Office (RILO).

Protracted litigation processes

97. The length of time it takes to conclude legal proceedings, sometimes up to 6 years, is a major factor in the accumulation of storage costs. When proceedings are initiated, the goods seized and stored are considered to be in *custodia legis* and subject to the control of the courts. A motion from the rights holder with respect to the disposal of the goods is often contested by the owner or importer of the goods.
98. There is a genuine danger that slow, expensive litigation will dissuade rights holders from using the border procedure process or taking effective market control action. There should be added concern that such a derogation could be counterproductive to the achievement of wider public policy objectives relating to consumer safety and the environment. It is shared problem that requires close partnership to find effective solutions. The following paragraphs outline five possible approaches which jointly or severally could improve the situation:
 - (a) **Specialized judiciary.** Some countries consulted, considered that the disposal process would be expedited by the availability of specialized judiciary to consider cases that often require consideration of highly technical and complex issues.
 - (b) **Admissibility of representative samples and photographic evidence.** The Study also benefited from a report from the Philippines where one third of IP cases are finalized by judicial decision.²⁹ Recognizing rights holder concerns over delays and to minimize the lengthy storage of goods the subject of litigation and the appeals

²⁸ ASEAN Framework Agreement on Intellectual Property Co-operation

²⁹ 33% of cases are also settled out of court and the remaining 33% are struck out after technical challenges to the validity of search warrants etc.

process, IP Philippines has recently presented draft Special Rules on IP Litigation to the Supreme Court. Relevant to the issue of storage is draft Rule 19 which prescribes the procedures and conditions for the destruction and detention of alleged infringing goods. This will permit the admissibility into evidence of samples or photographs of the goods, subject to the following procedures being undertaken:

- Representative samples and photographs are taken prior to destruction
- Proper identification and inventory is kept of the evidence retained
- The process is undertaken in the presence of the accused/respondent or their counsel, the complainant/plaintiff and their counsel and the relevant public officials
- A bond is posted by the rights holder
- The remaining goods can then be destroyed

(c) **Prescribed timeframe for IP litigation.** In Indonesia, the prescribed timeframe for IP proceedings relating to trademark and copyright criminal and litigation is as follows:

	Trademarks (Law No. 15/2001)	Copyright (Law No.19/2002)
Decision rendered	90 days from filing date (Article 80.8)	90 days from filing date (Article 61.2)
Appeal to the High Court	N/A	N/A
Time limit for requesting Cassation from Supreme Court	14 days after the decision (Article 83.1)	14 days after the decision (Article 62.2)
Decision on Cassation	90 days after the Supreme Court received the request (Article 83.9)	90 days after the Supreme Court received the request (Article 64.3)
Enforcement of the Decision of the Court of first instance	Immediately enforced (Article 80.9)	Immediately enforced upon request (Article 61.3)

Such a framework establishes a process that is not open-ended and which reduces the opportunity for litigants to use continuous applications to delay judicial decisions as to the disposition of the infringing goods.

(d) **Use of “simplified” administrative procedures.** The use of a simplified procedure as practiced within some Member States of the European Union can also assist reduce the costs involved relating to storage and destruction of infringement consignments detained by Customs.³⁰ The procedures enable the Customs authorities, with the agreement of the affected rights holder, to destroy abandoned goods under customs control without the need to establish that there has been an

³⁰

Article 11, Council Regulation (EC) No 1383/2003 of July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights

infringement of intellectual property rights according to national law. In short, the format of the procedures is as follows:

- The rights holder must advise Customs within 10 days (extendable by a further 10 days if warranted) that the goods infringe an intellectual property right and if appropriate, also furnish the agreement of the importer (or declarant) to abandon the goods for destruction
 - The importer can also directly advise Customs of their agreement to abandon the goods
 - The agreement of the importer can be presumed if they do not oppose abandonment and destruction within the prescribed period. If the importer objects to the destruction of the goods, then the standard TRIPS border measure procedures are followed. In these circumstances, the goods will be released to the importer unless the affected rights holder advises the initiation of proceedings
 - The destruction is carried out at the cost and under the responsibility of the rights holder. Customs take and retain samples of the infringing goods
- (e) **Other administrative remedies.** In a similar vein, the Philippines Bureau of Legal Affairs has administrative authority to deal with cases of IP infringements up to a monetary threshold. The remedies they may impose include:
- Issuing a cease and desist order
 - Accepting a voluntary assurance of compliance or discontinuation
 - Condemnation or seizure of infringing goods.
 - Forfeiture of paraphernalia and real and personal property
 - Administrative fines, cancellation or suspension of permits, licenses, registration granted by the IP Office
 - Assessment and imposition of damages
 - Other penalties or sanctions

Resources

99. Costs of storage and disposal are of considerable concern to both governments and rights holders. The length of time that tainted goods are required to be stored and the costs associated with the increasingly technical and complex conditions necessary for destroying the often high volume of infringing goods, place considerable pressure on existing budgets.
100. In both developing countries and lesser developed countries there is often not the infrastructure (warehouses, destruction facilities) nor the flexibility within budgets to accommodate contingent or unbudgeted costs for such destruction. Much reliance is placed on the support of rights holders in meeting costs.
101. In addressing this issue it is often easy to lose sight of where the true liability rests – that is, with the counterfeiter, importer or rogue trader. Civil, criminal and administrative measures should provide relief for these costs where the culpable party can be identified. It is helpful therefore that the litigation processes are not only swift and efficient but that they also ensure that Governments and rights-holders are compensated for the costs.
102. A possible approach that could generate the level of funding necessary to address the issue of IP enforcement costs is through the use of Proceeds of Crime legislation. Increasingly used in many parts of the world to seize property and assets derived from criminal activity, it has the potential to provide an alternative funding stream to directly support national law enforcement activity.

103. An example is the United States Treasury Forfeiture Fund (TFF) which derives its funding base from the forfeited assets of criminal enterprises.³¹ The proceeds are then used to fund programs and activities which seek to disrupt and dismantle criminal infrastructures.
104. In the United States (US), the TFF benefits from non-tax forfeitures made by the Internal Revenue Service Criminal Investigation Division (IRS-CI), U.S. Secret Service (USSS), Immigration and Customs Enforcement (ICE), Customs & Border Protection (CBP) and the U.S. Coastguard. It is available to meet the costs associated with destructions and storage of counterfeit and pirated goods.
105. Unexplained wealth is often a signal of criminal activity and around the world counterfeiters generate considerable wealth. It seems highly appropriate to use funds derived from criminal sources to support law enforcement actions against counterfeiting.

Humanitarian Relief

106. Countries within the Asia-Pacific Region are particularly vulnerable to natural catastrophes such as earthquakes, flooding, tsunami and other civil emergencies with consequent constant demand for humanitarian relief. The use of forfeited infringing goods to relieve the suffering of populations affected by humanitarian emergencies varies among those ASEAN countries consulted. Most of the countries consulted have not used this form of disposal. In the case of Indonesia, this is because their legislation requires that all infringing goods must be destroyed.
107. In the Philippines, there have been several successful instances of infringing clothing and footwear being provided to the victims of natural disasters. In these instances, the trademarks have been removed and the goods are clearly individually marked that they are for humanitarian relief.
108. In some cases, it has been possible to deliver the de-trademarked goods to the site of the emergency within a short time frame but in others seeking the agreement of affected rights holders has also been the cause of considerable delay. This is said to be in part due to an absence of corporate policy. Requests from the Malaysian government agencies for humanitarian disposals have been declined by rights holders.

VIII. CONCLUSIONS

109. There is a convergence of discrete influences that are impacting on the storage and disposal of counterfeit and pirated goods detected by enforcement authorities around the world, including the Asia Pacific Region. It is a cutting edge policy issue and the solutions and responses to these new challenges, in many respects, are still evolving.
110. Within Asia Pacific there are a number of contemporary and environmental factors which all impact on the efficiency and effectiveness of existing disposal practices. To a significant extent, they mirror the tension between the increasing volume and range of infringing goods being detected by enforcement authorities and the finite resources available to Governments for enforcement and justice; and the private sector for brand protection.
111. While the existing storage and disposal procedures are under pressure to cope with the volume of infringing goods that are being identified it has been impressive to learn of the efforts of government agencies and the private sector in the ASEAN economies who very helpfully assisted this Study and its associated research.

³¹ Presentation by Peter.N.Fowler, Senior Counsel, Office of Policy and External Affairs, USPTO to WIPO Regional Workshop on the Disposal of Goods, Cambodia – July12/14, 2010

112. It can be anticipated that the gap between the volume of IP infringing goods in international or domestic trade and the level of successful enforcement interventions will continue to narrow. The result will be that larger amounts of infringing goods requiring disposal will be detected by authorities and the task will be increasingly onerous. Among those countries that assisted this Study, this will be positively influenced by:
 - The progressive implementation of the enforcement provisions of the TRIPS Agreement 1994.
 - The impact of the delivery of capacity building and technical assistance programs.
 - Maturing co-operation and partnership with the private sector.
 - Continued private sector investment in investigation and enforcement activities.
 - Information sharing initiatives at the bi-lateral and multi-lateral level.
113. The provisions of Articles 46, 59 and 61 of the TRIPS Agreement provide the international legal framework for the procedures that are adopted to dispose of goods that infringe trademarks or copyright. The broad scheme of these provisions is that infringing goods should be disposed of in such a way which precludes them entering the channels of commerce.
114. The TRIPS processes, which are predicated on the protection of private intellectual property rights, are now overlaid with increasing public interest considerations. Of significant concern are the many counterfeit goods being seized by law enforcement authorities that present a serious risk to the environment; and to public health and welfare. Safe, secure disposal and storage of these goods is critical to ensure that environmental risks are mitigated and that harmful goods are disposed of in a manner that prevents diversion.
115. These include, but are not limited to : Agricultural chemicals (pesticides and insecticides), adhesives, dry cell batteries containing cadmium, electronic goods containing mercury, DVD's containing poly carbonates, alcohol, pharmaceuticals, foodstuffs, personal care products, consumer electrical goods, cigarettes, motor vehicle parts, fire extinguishing equipment, industrial, electrical wiring and equipment and security equipment.
116. Responding to this changing landscape represents a challenge to both Governments and rights holders. If it is to be confronted effectively, it will require the development of new relationships. In particular, the highly technical nature of the issue will need the advice of competent national agencies with responsibility for environmental protection and where necessary, with specialist private sector contractors who possess the necessary plant and equipment to render the infringing goods harmless to the environment.
117. Complicating the issue of storage and disposal are difficulties that arise in ensuring that the parties responsible for the illicit consignment or the availability of counterfeit and pirated goods in domestic trade ultimately meet the costs. Where they can be identified – and that is problematic in many cases – it is essential that the respective civil and/or criminal litigation processes provide swift determination and ultimate financial relief for the affected rights holders or Government treasuries.
118. The efficiency and timeliness of legal procedures, where that course of action is pursued, is a paramount consideration which bears directly on the issue of storage and disposal. The longer the infringing goods need to be in secure storage, the greater the costs and depending on the nature of the goods, the greater the potential environmental risks. The speed with which the final judicial determination can be made is often dependent on availability of specialist judges, case volume, and applications by the defendants or respondents. The effect of this can be to delay the process by many years.

119. The availability of specialized judges, the establishment of prescribed timeframes for IP litigation, the use of “simplified” administrative procedures and the admissibility of representative samples and photographic evidence can all assist the expediting of legal determinations and hence the prompt disposal of infringing goods. In doing so, they can also reduce the level of public and private sector expenditure that is currently directed toward unproductive spending on storage.
120. The use of Proceeds of Crime legislation, where it exists, may also provide a funding source to meet contingent costs arising from the storage and disposal of infringing goods, particularly, where action is taken against willful counterfeiting or piracy on a commercial or criminal scale. In addition, storage costs can also be mitigated by utilizing government or military warehouses where they are available.
121. Infringing goods can also be used for humanitarian purposes to relieve suffering during natural or civil disasters, provided:
 - They are suitable for donation and do not present a danger to the health and well-being of citizens.
 - The rights holder agrees to their donation. With respect to border enforcement, this could initially be indicated at the time that the application for border measure protection is lodged. It is good opportunity at that time, to clearly outline the brands policy with respect to disposal issues and this will assist swift downstream decision making and offer predictability, in circumstances where future humanitarian relief might be contemplated.
 - Procedures exist to ensure that the goods are used for the approved purpose and not diverted into the channels of commerce e.g. verification by enforcement authorities, de-trademarked, the existence of Memoranda of Understanding with suitable relief agencies that prescribe the conditions and expectations of all parties: government, rights holder and the relief agency.
122. It would be helpful to reinforce the issues relating to the storage and disposal of infringing goods in IP enforcement training programs. This will assist the development of robust organizational solutions and the necessary professional technical knowledge and skills. Introducing the subject as a substantive topic in advanced IP enforcement programs and providing instruction on the legal base, methods of destruction, environmental issues, case studies etc. would form the basis of a very useful session. At the national level, the development of specific Standard Operating Procedures (SOP) would provide a consistency of approach and contribute to overall efficiency and effectiveness.
123. The disposal landscape reinforces the need for regional, sub-regional and bi-lateral co-operation with respect to the disposal of counterfeit and pirated goods. As an initial step it would be helpful if explicit guidance on the substantive issue of disposal was contained within existing frameworks such as the ASEAN Framework Agreement on Intellectual Property Co-operation and the APEC Intellectual Property Rights Experts’ Group work program.
124. Similarly, the World Customs Organization Asia Pacific Regional Office of Capacity Building (ROCB), Bangkok might consider exploring the possibility of establishing a regional co-operation mechanism to share information on successful methods and techniques. Such an approach could provide a stepping stone to the future sharing of destruction facilities where this is found to be possible or practical; and the challenges of distance, transport cost and any public perceptions can be managed effectively.
125. Recycling counterfeit materials makes good sense if it can be done with the consent and co-operation of the rights holder and in an environmentally sensitive manner. It also provides opportunity for industry development and job creation. Converting pirated DVD’s

into poly-carbonate granules, reconstituting the content of counterfeit personal care products into the production of legitimate products, converting footwear components into synthetic sporting surfaces, utilizing footwear and clothing for humanitarian purposes, utilizing counterfeit products for law enforcement.

126. Removing environmental and consumer risks from trade has the potential to make a contribution to the wider goal of Building Respect for IPR as it enhances understanding as to the dangers of counterfeit and pirated goods. Informing this through public education programs and communication strategies at the national, regional and international level is likely to positively shape opinion with respect to the need for effective IPR enforcement. There is opportunity to use the destruction or donation of infringing goods to positively build community respect for intellectual property rights. Much excellent publicity is done now within the Asia-Pacific region relating to individual destructions but the aggregation of national, regional or global periodic statistics based on:
- the volume of toxic goods destroyed;
 - the number of people who benefited from infringing goods donated for humanitarian relief;
 - the volume of infringing goods.

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