Guardia di Finanza experience in fighting online counterfeiting

Col.t.ISSMI Vincenzo Tuzi
Guardia di Finanza Headquarters

Advisory Committee on Enforcement Twelfth Session

Geneva, September 4 to 6, 2017
Guardia di Finanza experience in fighting online counterfeiting

Agenda

- Framework analysis
- Investigative approach
- Case analysis
- Conclusion
Guardia di Finanza experience in fighting online counterfeiting

Framework analysis

Ordinary and young people
Bidirectional
• A buyer could be a supplier at the same time and vice versa

Street vendors
• Very poor quality
• Few pieces
• Lower gains

Internet sellers
• Better quality
• More pieces
• Greater gains
Guardia di Finanza experience in fighting online counterfeiting

Information on brand
Data Bank
Reports
Operating warnings

Home Office
Prefectures - TGO
Law Enforcement
County Police

SIAC
Companies

Reporting
Analysys
Statistics

Co.Ab.

SIAC
People

SIAC
G. di F.

Practical Advices
Latest news
Factsheets

Events
F.A.Q.
Thematic Library

https://siac.gdf.it/
Holistic approach
Guardia di Finanza experience in fighting online counterfeiting

Judicial proceedings

with UC investigations

Websites inhibition

Measure by the Judicial Authority

Follow the money phase

Check for handling of cash

Expert evaluation

- Fake items
- Cooperation with IPR’s owner

Delivering goods

- Provenance, consignor
- Cooperation with Express courier

Simulated purchase

- UC investigations
- Judicial Authority authorization

Website close examination

- Cooperation with IPR’s owner
- Hard discount of price or fake items by photo

Web Monitoring

- Find out illicit website
- Cooperation with IPR’s owner

https://siac.gdf.it/

Investigative approach
Guardia di Finanza experience in fighting online counterfeiting

Case analysis

Modus operandi

- Few pieces/zero stock
  - stock up only when negotiations had been concluded
- Cooperation with others
- Expedition through postal system
  - No payments with electronic money
  - Payments with cash upon delivery
- Only first contact on social
- Subsequent contacts on whatsapp

Luxury Italia

Orologi Rolex

Buongiorno a tutti.. Orologio acquistato lunedì arrivato oggi !!! "datejust ", grazie mille volevo ringraziare Marco per il tutto :) )
Guardia di Finanza experience in fighting online counterfeiting

Case analysis

Relevant information

Mobile phone number

Italian guys

EU woman

Name

Guardia di Finanza

experience in fighting online counterfeiting
Guardia di Finanza experience in fighting online counterfeiting

Case analysis

Payments

Untill late 2013
- Postepay, Paypal and bank transfer

From 2014
- Cash upon delivery

Bank and postal investigations
Follow the money
- Total amount € 764,013

Credit Cards/Bank Account
A company XY was established too

- on June 12, 2015
- marketing and advertising purposes
- 51% of company shares
- figurehead as legal representative with 49%
- his Q5 Audi in the name of the company
- registered office based at his home

- Rental contract
Guardia di Finanza experience in fighting online counterfeiting

Financial Investigations

XY Company

July 31 2015
Rental contract

€ 9.600 per year

self-laundering

BAD GUY

Bank transfers for capital increases

Case analysis
Guardia di Finanza experience in fighting online counterfeiting

and in the end...

Offenses charged

Conspiracy aimed at counterfeiting
Counterfeiting
Self-laundering

Two persons arrested
Seizures
- XY Company shares
- Two Bank accounts
- An Audi Q5
- 200,000 euros

Ongoing investigations for customers

Case analysis

October 6 2016
Online counterfeiting is surely one of the most important threat to the future.

Need for greater collaboration of those working in the area of electronic payments to perform more positive results in "follow the money" approach.

Collaboration with Intellectual Property Rights holders is the most effective response to this challenge.

Incentive of undercover operations as simulated purchases would be desirable.

Conclusion
The possibility to perform undercover ops in combating counterfeiting on the web would have two positive effects

- **Repressive**
  - Quite clear

- **Preventive**
  - make available information that law enforcement and other anti-counterfeiting organizations are going to buy counterfeit products on the web especially for social network sellers
Proliferation of counterfeit sales through social network market places
Conclusion

Thank you

Col.t.ISSMI Vincenzo TUZI
Guardia di Finanza
Headquarters
tuzi.vincenzo@gdf.it
+39 06 44223409
https://siac.gdf.it/
Advisory Committee on Enforcement (ACE)
Twelfth Session
Geneva, September 4 to 6, 2017

The Italian Experiences in the Fight Against Intellectual Property Infringements on the Internet

Stefano Vaccari

Department of Central Inspectorate for fraud repression and quality protection of agro-food products

ICQRF
Table of contents

- ICQRF: a few words about us
- G.I. and web: ICQRF TOOLS FOR PROTECTION
- the ecommerce legal framework
- G.I. and web: ICQRF Tools for Protection:
  - MoU Ebay
  - MoU Alibaba
  - Cooperation with Amazon
- Italian Results
- Final Considerations
Department of Central Inspectorate for fraud repression and quality protection of agri-food products

ICQRF is The Law Enforcement Body of the MIPAAF
(Italian Ministry of Agriculture, Foodstuff and Forestry Policies)

Carrying out Official Controls according to (EC) Reg. No. 882/2004 (by means of Inspections, Chemical Analyses and, if the case, working as Police under the coordination of a Public Prosecutor).

FOOD FRAUD CONTACT POINT

Issuing fines or other sanctions as result of inspection or analyses findings. ITALIAN SANCTIONING AUTHORITY for wine, olive oil, EU agrifood frauds....

Authorizing private or public control bodies for certificating foostuffs as PDO, PGI and Organic. Supervising the activities of the aforementioned private or public control bodies.

Monitoring compliance with the contractual rules in the sale of agri-food products reporting irregularities to AGCM
GI and web: ICQRF Tools for protection

"EX OFFICIO" protection PDO/PGI (EU)Reg. No. 1151/2012

MS Authorities

OWNER
PDO/PGI/wine/spirits

WEB TOOLS

MOU WITH EBAY

COOPERATION WITH AMAZON

MOU WITH ALIBABA

EU Liaison body
Reg. No. 555/2008 (wine/spirits.)

MS Authorities

MS Authorities

MS Authorities
E-commerce legal framework and liability of Host providers

E-commerce legal framework

**US Digital Millennium Copyright Act 1998** a United States Law that implements two 1996 treaties of the World Intellectual Property Organization (WIPO);

**E-commerce Directive 2000/31/EC** on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

**Trade Dispute Rules** used by Alibaba Group

Host Provider Liability

As a condition for limited liability online hosts must expeditiously remove or disable access to content they host when they are notified of the alleged illegality:

- **Orders by Court**;
- **Orders by Administrative Authority**;
- **Notification of infringements by IPRs owner**.
### Total reports to Marketplaces and other websites

<table>
<thead>
<tr>
<th>Products</th>
<th>Cases (n)</th>
<th>ebay (n)</th>
<th>Alibaba (n)</th>
<th>Amazon (n)</th>
<th>Other sites (n)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecco</td>
<td>673</td>
<td>101</td>
<td>15</td>
<td>92</td>
<td>465</td>
</tr>
<tr>
<td>Parmigiano Reggiano</td>
<td>371</td>
<td>95</td>
<td>67</td>
<td>65</td>
<td>144</td>
</tr>
<tr>
<td>Wine kit</td>
<td>281</td>
<td>22</td>
<td></td>
<td>9</td>
<td>250</td>
</tr>
<tr>
<td>Aceto Balsamico di Modena</td>
<td>76</td>
<td>33</td>
<td>11</td>
<td></td>
<td>32</td>
</tr>
<tr>
<td>Pecorino Siciliano</td>
<td>37</td>
<td>37</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asiago</td>
<td>35</td>
<td>19</td>
<td>10</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Dauno (olio EVO)</td>
<td>34</td>
<td>34</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pecorino Toscano</td>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td>25</td>
</tr>
<tr>
<td>Campi Flegrei</td>
<td>21</td>
<td>21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Asti</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td>20</td>
</tr>
<tr>
<td>Sicilia (olio EVO)</td>
<td>20</td>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terra di Bari (olio EVO)</td>
<td>17</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prosciutto di Parma</td>
<td>17</td>
<td>2</td>
<td>3</td>
<td></td>
<td>12</td>
</tr>
<tr>
<td>Barolo</td>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td>17</td>
</tr>
<tr>
<td>Gorgonzola</td>
<td>16</td>
<td>7</td>
<td>5</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Toscano (olio EVO)</td>
<td>15</td>
<td>12</td>
<td></td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Salsiccia di Calabria</td>
<td>13</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pecorino Romano</td>
<td>12</td>
<td>3</td>
<td>6</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Other products</td>
<td>208</td>
<td>146</td>
<td></td>
<td></td>
<td>62</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,908</strong></td>
<td><strong>571</strong></td>
<td><strong>117</strong></td>
<td><strong>168</strong></td>
<td><strong>1,041</strong></td>
</tr>
</tbody>
</table>
GI and web: ICQRF Tools for protection
The Italian experience

MoU with e-commerce players

Cooperation with

- eBay
- Alibaba
- Amazon
# ICQRF Results

## Italian GIs protection on the marketplaces

<table>
<thead>
<tr>
<th>REPORT</th>
<th>No.</th>
<th>G.I.</th>
</tr>
</thead>
<tbody>
<tr>
<td>EBAY</td>
<td>582</td>
<td></td>
</tr>
<tr>
<td>ALIBABA</td>
<td>117</td>
<td>Aceto balsamico di Modena, Prosecco, Pecorino Romano, Gorgonzola, Asiago, Parmigiano Reggiano</td>
</tr>
<tr>
<td>AMAZON</td>
<td>168</td>
<td>Asiago, Prosecco, Gorgonzola, Parmigiano Reggiano, Aceto balsamico di Modena</td>
</tr>
<tr>
<td>Total</td>
<td>867</td>
<td></td>
</tr>
<tr>
<td>% OF SUCCESS</td>
<td>99%</td>
<td></td>
</tr>
</tbody>
</table>
Cheesekit «Parmesan» – «Feta»

Listing removed
Parmesan Asiago & Romano

Listing removed
Winekit BAROLO

Listing removed
Prosecco in can

Listing removed
MoU between MIPAAF and Alibaba

Memorandum for the protection of Italian GIs on the web through the Alibaba Protection platform (ALIPROTECT) to enable IPRs’ owners to notify to Alibaba any listing encroaching on Intellectual Property Rights.
“Parmigiano Reggiano Italian cheese”
... “Cheese powder”

<table>
<thead>
<tr>
<th>Quick Details</th>
<th>Company Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Product Type: Cheese</td>
<td>Hard Cheese</td>
</tr>
<tr>
<td>Processing Type: Raw</td>
<td>Type: Cattle</td>
</tr>
<tr>
<td>Shape: Block</td>
<td>Fat Content (%): 28.4</td>
</tr>
<tr>
<td>Weight (kg): 30</td>
<td>Place of Origin: Italy</td>
</tr>
<tr>
<td></td>
<td>Cheese Type: Parmigiano Reggiano</td>
</tr>
<tr>
<td></td>
<td>Packaging: Box, Bulk, Sachet</td>
</tr>
<tr>
<td></td>
<td>Shelf Life: 2 years</td>
</tr>
</tbody>
</table>
Since 20/10/2016 ICQRF can submit IPR complaints across multiple platforms:

www.taobao.com

www.tmall.com

www.aliexpress.com

www.1688.com
好伯 帕尔玛火腿切片 意大利式风干火腿
100g 优质发酵火腿片低脂
www.taobao.com

Prosciutto di Parma in Chinese language
Cooperation with AMAZON

The Italian Ministry of Agriculture has been sending to the AMAZON legal Department many reports relating to illegal listings/advertising detected on the European AMAZON’s platforms.
Vegan Parmesan cheese
Final considerations

- Today the Internet is an «ordinary market place»;

- Protection of consumers on the web needs new tools and new approaches;

- MoU and cooperations between MIPAAF/ALIBABA-EBAY-AMAZON have been proving that G.Is’ Protection on the web is possible.....

- More cooperation between EU Authorities is necessary
Thank you!

CONTACTS

Department of Central Inspectorate for fraud repression and quality protection of agro-food products

(ICQRF)

Stefano Vaccari

ICQRF.capodipartimento@politicheagricole.it

+39 0646656610

Via Quintino Sella, 42

ROMA

ITALY
Institutional Arrangements put in place in the Republic of Korea to address the Proliferation of Counterfeit Goods Online

September 5, 2017

Lim, Junyoung
Assistant Director, Multilateral Affairs Division
Korean Intellectual Property Office
CONTENTS

01 Special Investigation Police & Intellectual Property Online Monitoring System (IPOMS)

02 Counterfeit Goods Reporting Center & Counterfeit Goods Reporting Reward System

03 Anti-Counterfeit Council

04 Cooperation with Overseas Online Markets

05 Challenges & Future Plan
Special Investigation Police launched in Sept. 2010

Online Law Enforcement Task Force launched in Nov. 2011
Intellectual Property Online Monitoring System (IPOMS)

- 24-hour Online Monitoring System against Distribution of Counterfeits through Open Markets, Online Shopping Malls, Portal Sites and SNS

**Monitoring Targets**

**Open Markets**
- Suspending Sales (Deletion of Posts)

**Online Shopping Malls**
- Shutting out/Closure of Shopping malls

**Information Collection**
- Collect information on counterfeits distribution through open markets, portal sites, SNS, online shopping malls

**Identification/Check**
- Search keywords, blacklist or price comparison
- Identify automatically and check information on counterfeits

**Response**
- Open Market: Delete posts on counterfeits
- Shopping Mall: Shut-out/close websites with counterfeits

**Analysis**
- Manage blacklist
- Analyze trend of counterfeits
# Online Anti-Counterfeiting Enforcement Activities of KIPO

<table>
<thead>
<tr>
<th></th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Markets (Stopped sales)</td>
<td>4,256</td>
<td>4,422</td>
<td>5,348</td>
<td>5,673</td>
<td>5,888</td>
<td>25,587</td>
</tr>
<tr>
<td>Shopping Malls (Shut down)</td>
<td>505</td>
<td>828</td>
<td>454</td>
<td>418</td>
<td>368</td>
<td>2,573</td>
</tr>
<tr>
<td>Criminal Charges</td>
<td>109</td>
<td>117</td>
<td>41</td>
<td>170</td>
<td>159</td>
<td>596</td>
</tr>
<tr>
<td>Confiscated Goods</td>
<td>25,949</td>
<td>9,099</td>
<td>3,182</td>
<td>38,007</td>
<td>31,948</td>
<td>108,185</td>
</tr>
</tbody>
</table>
SIP Counterfeit Control Case

- The arrest of a criminal distributor of counterfeit designer goods valued at 275.5 million USD

Case Outline

- Arrested 23 people involved in importing 150,000 fake designer goods from country ‘A’
- Based in an office in the city of Gwangju with nationwide distribution via online channels
- 3 people received jail sentences and 20 received non-jail sentences
Totaled 22,000 products including fake Louis Vuitton bags (worth 27 million USD in market value for genuine goods)

Obtained the sales records of 150,000 counterfeit goods (worth 275.5 million USD in market value for genuine goods)
SIP Counterfeit Control Case (continued)

Characteristics

- Distributed counterfeit goods through online channel across the country

- Managed a systematic operation of nationwide distributors
  - Adjusted the selling price among counterfeit distributors
  - Supported fleeing culprits financially

- A “business-like” crime of selling 150,000 counterfeit products
  - Annual net profit of 947 thousand USD
An online website to eliminate the distribution of counterfeit goods and collect information
**Counterfeit Goods Reporting Center**

**Enforcement procedure from a claim on online shopping malls**

1. **Receive report about online website**
2. **Conduct investigation** (if evidence and statement of reporter is secured)
   - **Ask validation of authenticity** (if counterfeit goods are secured)
     - **Identify as counterfeit goods**
     - Usually takes 2 days to 2 weeks
   - **Secure server** (if statement of seller is secured)
3. **Cooperation of telecommunications companies**
4. **Check the communication details** (ex. Phone number) and business registration certificate
5. **Crack down on the site after tracing the address**
6. **Issue warrant**
Counterfeit Goods Reporting Reward System

- A reward system to facilitate the reporting of counterfeit goods and to raise public awareness of the illegality of counterfeit goods

### Counterfeit Goods Reporting Reward in Online Sales

<table>
<thead>
<tr>
<th>Year</th>
<th>Cases</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>12</td>
<td>6.9</td>
</tr>
<tr>
<td>2011</td>
<td>5</td>
<td>2.2</td>
</tr>
<tr>
<td>2012</td>
<td>4</td>
<td>1.7</td>
</tr>
<tr>
<td>2013</td>
<td>2</td>
<td>0.9</td>
</tr>
<tr>
<td>2014</td>
<td>5</td>
<td>3.3</td>
</tr>
<tr>
<td>2015</td>
<td>7</td>
<td>5.7</td>
</tr>
<tr>
<td>2016</td>
<td>23</td>
<td>19.2</td>
</tr>
</tbody>
</table>

(unit: cases, thousand USD)
Anti-Counterfeit Council

- Consists of 62 organizations and companies to make up a public-private cooperation system
- Facilitates cooperation between trademark right holders and online market operators
- Participates in joint enforcement activities
In 2014, a global e-commercial enterprise and KOIPA signed an MOU to work towards a resolution issue of counterfeit goods.

Cooperation with the enterprise resulted in the block of 19,621 counterfeit products (worth approximately 30.7 million USD) in 2016.
Challenges

- Habitual distribution websites with servers located overseas
- Illegal activity continue with subtle variance in domain after initial shutdown
- Ineffective investigations where only the nominal head resides locally while the actual administrator is overseas
- Changing structures of counterfeit goods distribution from small business dealers to corporations
Strengthen Enforcement Cooperation System

**Challenges and Future Plan**

**Prosecutor’s Office**
- Direct investigation & prosecution

**Domestic Stage**
- **Police**
  - Arrest of counterfeiters (Judicial punishment)
  - Joint control

- **KOIPA (Korea Intellectual Property Protection Agency)**
  - Offline control supporting team
  - Operation of online monitoring system

**International Stage**
- **Korea Customs Service**
  - SJP control on export and import of counterfeits (Judicial punishment)

- **Local Government**
  - Regulation on local mall retailers (Corrective recommendations)

- **Police**
  - Red notice request to INTERPOL
  - Arrest through repatriation

**KIPO**
- SIP (Judicial Punishment) enforcement on mass production and distribution of counterfeits
- Operation support
  - Information
- Joint control

---

"05" Challenges and Future Plan

Korean Intellectual Property Office
Enhance Public-Private Cooperation
THANK YOU
Challenges in Prosecuting Online IP Infringement Cases
Established on 17th November 1997

Office of The Attorney General

Department of Intellectual Property & International Trade Litigation
Office of the Attorney General
ติดต่อเรา

ที่อยู่ของเรา

ที่อยู่:
DVD JUMBO
เว็บไซต์: www.dvdjumbo.com
e-mail: dvdjumbo20@gmail.com

โทรศัพท์:
089-4291669
## BLURAYMAESA.COM - Domain Information

<table>
<thead>
<tr>
<th>Field</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domain</td>
<td>BLURAYMAESA.COM</td>
</tr>
<tr>
<td>Registrar</td>
<td>PDR LTD. D/B/A PUBLICDOMAINREGISTRY.COM</td>
</tr>
<tr>
<td>Registrar URL</td>
<td><a href="http://www.PublicDomainRegistry.com">http://www.PublicDomainRegistry.com</a></td>
</tr>
<tr>
<td>Whois server</td>
<td>whois.PublicDomainRegistry.com</td>
</tr>
<tr>
<td>Created</td>
<td>22-Feb-2012</td>
</tr>
<tr>
<td>Updated</td>
<td>09-Sep-2012</td>
</tr>
<tr>
<td>Expires</td>
<td>22-Feb-2014</td>
</tr>
<tr>
<td>Time Left</td>
<td>127 days 16 hours 17 minutes</td>
</tr>
<tr>
<td>Status</td>
<td>clientTransferProhibited</td>
</tr>
<tr>
<td>DNS servers</td>
<td>1.NSEASY.COM 67.18.247.2</td>
</tr>
<tr>
<td></td>
<td>2.NSEASY.COM 67.18.248.82</td>
</tr>
<tr>
<td>Field</td>
<td>Value</td>
</tr>
<tr>
<td>---------------</td>
<td>------------------------------</td>
</tr>
<tr>
<td>IP Address</td>
<td>67.23.226.3</td>
</tr>
<tr>
<td>Host</td>
<td>bluraymaesai.com</td>
</tr>
<tr>
<td>Location</td>
<td>US, United States</td>
</tr>
<tr>
<td>City</td>
<td>Orlando, FL 32801</td>
</tr>
<tr>
<td>Organization</td>
<td>HostDime.com</td>
</tr>
<tr>
<td>ISP</td>
<td>HostDime.com</td>
</tr>
<tr>
<td>AS Number</td>
<td>AS33182 HostDime.com, Inc.</td>
</tr>
<tr>
<td>Latitude</td>
<td>28°54'45&quot; North</td>
</tr>
<tr>
<td>Longitude</td>
<td>81°37'06&quot; West</td>
</tr>
</tbody>
</table>
ช่องทางการชำระเงิน

1. กรุงไทย สาขา บ้านริมแม่น้ำเจ้าพระยา
   เลขที่บัญชี: 457-2-37047-5
   ชื่อบัญชี: เรียบร้อย รหัสเงินเดือน

2. ไทยพาณิชย์ สาขา บ้านริมแม่น้ำเจ้าพระยา
   เลขที่บัญชี: 816-2-36095-4
   ชื่อบัญชี: เรียบร้อย รหัสเงินเดือน

3. กรุงเทพ สาขา กาญจนาภิเษก
   เลขที่บัญชี: 531-0-72758-0
   ชื่อบัญชี: เรียบร้อย รหัสเงินเดือน

4. กรุงไทย สาขา แพร่
   เลขที่บัญชี: 375-0-28951-4
   ชื่อบัญชี: เรียบร้อย รหัสเงินเดือน

แจ้งเบอร์ 083-3189913 ( ส่งเร็ว EMS ทุกวัน )
กรณีเงินอั่นต้น 12.00 น. จัดส่งสินค้าภายในวันที่ใน
ส่งสินค้าทุกวัน จันทร์-ศุกร์
Proposed Solutions

- Better Cooperation from IPR Holders
- Investigative Power & Discretion to Reject Small Cases
- Awareness
THANK YOU

Department of IP & IT Litigation
Office of the Attorney General
Email: ppty@ago.go.th
Online Intellectual Property Infringements and Court-ordered Site Blocking

WIPO Advisory Committee on Enforcement 12th Session

Geneva, 5 September 2017

Mr Justice Richard Arnold
Overview

1. Website-blocking injunctions following *Cartier v Sky* in the Court of Appeal.

2. Injunctions requiring ISPs to block streaming servers: *Premier League v BT.*
1. **Website-blocking injunctions following *Cartier v Sky* in the Court of Appeal**

- The Court of Appeal has confirmed the jurisprudence built up at first instance since 2011.

- The courts of England & Wales have jurisdiction to grant website-blocking injunctions to combat trade mark infringement (and by implication any other IP right) despite the absence of specific implementation by the UK of third sentence of Art 11 of the Enforcement Directive (unlike Art 8(3) InfoSoc Directive).

- The courts’ jurisdiction is adequately prescribed by law.
The threshold conditions for the grant of such an injunction are that

(i) the defendants are intermediaries,

(ii) the users and/or operators of the website are infringing the claimants’ rights,

(iii) those users and/or operators are using the defendants’ services to infringe and

(iv) the defendants have actual knowledge of this (which may be as a result of being notified by the right owner).
• In order for an injunction to be granted it must be
  (i) necessary,
  (ii) effective,
  (iii) dissuasive,
  (iv) not unduly costly or complicated,
  (v) avoid barriers to legitimate trade,
  (vi) strike a fair balance between the fundamental rights engaged,
  (vii) proportionate and
  (viii) safeguarded against abuse.

• Of these factors, proportionality is the key one, since consideration of the
  other factors feeds into the proportionality analysis.
• In considering the proportionality of the injunction, an important consideration is the nature of the technical measures which the ISPs are required to adopt and hence their efficacy, costs and impact on lawful users. Unlike in Austria, the technical measures are specified in the order.

• Although website-blocking injunctions are quite easily circumvented, it does not follow that they are ineffective. On the contrary, the evidence shows that they are effective in reducing traffic to targeted websites. Whether the extent of the reduction warrants the cost of implementing the injunction is a question of proportionality.

• To date the courts have ordered that the costs of the application for the injunction are to be paid by the right owner, while the costs of implementation are to be paid by the ISPs, but the door has been left open to different orders. (This issue is now before the Supreme Court, and may be referred to the CJEU following McFadden.)
• An important practical point is that the orders enable right owners to notify to the ISPs any other IP address or URL whose sole or predominant purpose is to provide or facilitate access to the target website, which must then be blocked.

• Various procedural safeguards are incorporated in the orders: the ISPs can apply to set aside or vary the order in the event of a change of circumstances, users and website operators can also apply, information about the block must be displayed, there is a sunset clause.

• Unlike in Germany, there is no requirement for the right owner to sue or attempt to sue the website operators first or to prove that it would be pointless to try.
2. Injunctions requiring ISPs to block streaming servers: *Premier League v BT*

- In this case the High Court made an order requiring ISPs to block the IP addresses of streaming servers used to stream infringing copies of live broadcasts of Premier League football matches.

- The order provided for the target servers only to be blocked for the duration of each match.

- The list of target servers was to be updated every week, and could be updated more frequently if necessary.
In addition to the usual safeguards in website-blocking orders, the hosting providers which hosted the targeted streaming servers had to be notified of the order and could apply to set it aside.

The first order came into effect on 18 March 2017 and lasted until 22 May 2017 (the end of the season). It was varied on 10 May 2017 to enable the list of Target Servers to re-set every two weeks rather than every week, since this would enable them to be identified more efficiently.

On 25 July 2017 a second order was made to cover the period from 12 August 2017 to 13 May 2018 (the 2017/2018 season). The evidence showed that the first order had been very effective. The second order differed from the first order in three minor respects which were designed to make it even more effective.
How Europol tackles IP Crime

Geneva
4 Sep 2017
12 July 2016: Opening IPC³
IPC³ main objectives

Operational and technical support
- provide operational and technical support to the competent authorities

Facilitate and coordinate
- facilitate and coordinate cross-border investigations

Monitor and report
- monitor and report online crime trends and emerging modi operandi

Harmonisation and standardisation
- enhance the harmonization and standardization of legal instruments and operating procedures to counter intellectual property crime globally

Raise awareness and train
- Reach out to the public and law enforcement by raising awareness and providing training on this specific field of expertise
IPC³’s operational support
Operation IOS
# History

<table>
<thead>
<tr>
<th>IOS</th>
<th>Countries</th>
<th>Referrals</th>
<th>Seizures</th>
</tr>
</thead>
<tbody>
<tr>
<td>IOS I</td>
<td>5</td>
<td>231</td>
<td>132</td>
</tr>
<tr>
<td>IOS II</td>
<td>12 (14)</td>
<td>439</td>
<td>328</td>
</tr>
<tr>
<td>IOS III</td>
<td>14 (16)</td>
<td>894</td>
<td>706</td>
</tr>
<tr>
<td>IOS IV</td>
<td>17 (20)</td>
<td>604</td>
<td>188</td>
</tr>
<tr>
<td>IOS V</td>
<td>19 (22)</td>
<td>2005</td>
<td>292</td>
</tr>
<tr>
<td>IOS VI</td>
<td>21 (24)</td>
<td>1219</td>
<td>999</td>
</tr>
<tr>
<td>IOS VII</td>
<td>27 (31)</td>
<td>8468</td>
<td>4580</td>
</tr>
</tbody>
</table>
Operation In Our Sites
Project TransAtlantic III / Project Cyber Monday IV

This domain name has been seized

Operation In Our Sites-Project TransAtlantic III is a coordinated effort by U.S., European, and Hong Kong law enforcement agencies targeting websites and their operators that sell counterfeit goods.
Communication

- Press release
- Social media campaign:
Media campaign

AWARENESS CAMPAIGN ON ONLINE COUNTERFEITING

The Internet has become an essential channel for e-commerce. Its instant global reach and anonymity make it possible to sell nearly anything to anyone at any time. Counterfeiters know it and are increasingly exploiting the unlimited opportunities offered by the World Wide Web.
Media campaign

LOOK FOR THESE RED FLAGS:

If the price seems too good to be true, it probably is.
Be suspicious of websites offering highly discounted prices. Scam websites use low prices to lure shoppers to quickly sell fake or non-existent items.

Check if the “About us” and “Contact us” pages contain full details: name of the company, address, phone number or an official email address.
If the site does have a ‘Contact us’ page but only offers a form to fill out, this can also be an indicator of a fraudulent website.

Check if there are grammar and spelling mistakes or the site looks...
Operation OPSON I, II, III, IV, V and VI
 Participating countries OPSON V

EU Countries

Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, The Netherlands, Portugal, Romania, Spain, Sweden, United Kingdom

Non EU Countries

Africa
Burundi, Comoros, Côte d'Ivoire, Eritrea, Nigeria, Kenya, Rwanda, Seychelles, South Sudan, Sudan, Tanzania, Togo, Zambia

Asia Pacific
Australia, Fiji, Indonesia, South Korea, Thailand, Vietnam

America
Argentina, Bolivia, Colombia, Ecuador, Paraguay, Peru, Uruguay, USA

Europe
Albania, Bosnia&Herzegovina, Iceland, Norway, Turkey

Middle East
Jordan
OPSON VI General results

Quantities

<table>
<thead>
<tr>
<th>Measurements</th>
<th>Quantities</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>9,800 tonnes</td>
</tr>
<tr>
<td></td>
<td>26.4 million</td>
</tr>
<tr>
<td></td>
<td>13 million</td>
</tr>
</tbody>
</table>

Measurements

<table>
<thead>
<tr>
<th></th>
<th>Opson IV</th>
<th>Opson V</th>
<th>Opson VI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tonnes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Litres</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Units/items</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Case examples

85 tons of olives coloured with copper sulphate – Italy

8,6 tons of counterfeit sugar contaminated with fertilizer – Sudan

Production of counterfeit alcohol - Greece
2015 Situation Report on Counterfeiting in the European Union

A joint project between Europol and the European Union Intellectual Property Office
CRIMINAL LANDSCAPE:
- OCG's in EU heavily involved in importation, storage and distribution
- Poly-criminal
- Business model: money laundering, document fraud corruption
- Intensify the fight against the fake trade via internet: IOS, social media, darknet, cyber patrolling, ...
- Intensify the follow the money trail Ex: Ops Kasper, Ops Fake, ...
- Intensify the cooperation with intermediaries: shippers, couriers, ...
Chris Vansteenkiste - IPC³

0031703531575
0031624823040
chris.vansteenkiste@europol.europa.eu
CROSS-INDUSTRY VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY

Geerart Bourlon
Senior Legal Counsel
Motion Picture Association

WIPO, 5 September 2017
THE CHALLENGES OF ONLINE PIRACY

INTRODUCTION
24% Internet Traffic
Infringing Content 2013

1,700 Per Minute
Google Link Removals Of Pirate Material

€ 1,78 Billion Lost Revenues
Harm To Spanish © Industry 2016
ESTIMATE OF ONLINE PIRACY METHODS

- **BitTorrent**: 43%
- **Streaming/linking video**: 43%
- **Usenet**: 2%
- **Direct download (cyberlockers)**: 10%
- **Other file sharing**: 2%
VOLUNTARY MEASURES

NEW OR UNKNOWN ?
“Voluntary Measures” refer to agreements or arrangements, whether formal or informal, between copyright owners and an intermediary, service provider or business to:

- (i) **cease providing services** to websites that are dedicated to piracy, or

- (ii) **take steps or adopt best practices to prevent** the intermediary’s platform or services from facilitating copyright infringement or being abused for infringement.
service providers have a duty to act, under certain circumstances, with a view to preventing or stopping illegal activities; this Directive should constitute the appropriate basis for the development of rapid and reliable procedures for removing and disabling access to illegal information; such mechanisms could be developed on the basis of voluntary agreements between all parties concerned and should be encouraged by Member States; it is in the interest of all parties involved in the provision of information society services to adopt and implement such procedures;
Member States shall encourage:

(a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;

(b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.
17 Years
E-Commerce Directive °2000

28 EU MS
IP driven economies

<20 Voluntary Agreements
Room For Progress; Commission MoUs
VOLUNTARY MEASURES

WHAT AREAS?
VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY
FOLLOW THE MONEY -- PAYMENT PROCESSORS

- Targets Websites dedicated to copyright infringement (incl. cyberlockers)
- Implementation of policies and best practices
- Monitoring of circumvention of sanctions
- Result: popularity drop
VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY
FOLLOW THE MONEY -- ONLINE ADVERTISERS

- USA
  - Trustworthy Accountability Group (TAG): ad industry, right holders and tech platforms
  - Brand Integrity Program Against Piracy: screen websites
- EU: MoU On Online Advertising And IPR
- UK
  - Operation Creative // Partnership: PIPCU – right holders – UK advertising industry
  - Infringing Website List (IWL): resource for ad industry, maintained by PIPCU
  - Model exported to other countries
VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY
DOMAIN NAMES

- MPAA Trusted Notifier
  - Donuts
  - Radix
- New top level domain name registries
- Suspension of domain name of pirate site, based on evidence pack
- Result: frustration of user’s experience; weakens pirate site’s brand; migration to less known TLDs
VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY HOSTING PROVIDERS

- Disruption, migration to other hosts
- Linking/torrent sites vs. hosting sites (cyberlockers)
- Establishment of VMs as a result of litigation
- Europe: trusted referral programs

- Also applied by non-signatories
VOLUNTARY MEASURES TO REDUCE ONLINE PIRACY
ACCESS PROVIDERS

- Disabling access for subscribers
- Establishment of VMs as a result of litigation
- Europe: MoU’s in Denmark, Iceland and Portugal, other de-facto cooperation in more countries
- UK: Voluntary Copyright Alert Programme
VOLUNTARY MEASURES

INCENTIVES & BENEFITS
INCENTIVES TO ENGAGE IN VOLUNTARY MEASURES

Right Holders
- Reduction piracy

Intermediaries
- No association with illegal activities
- Avoiding to be named as co-conspirators (US)
- Perceived as a better alternative than government regulation and costly litigation

Creating internet ecosystem that is
- more hospitable for legitimate commerce
- safer for consumers
How the government can encourage VM development

1. Hold hearings to explore how pirate websites are supported by local internet intermediaries and service providers
2. Encourage collaboration with right holders to end support of pirate sites
3. Enact high-level laws that embrace “responsibility without liability” (cfr. Article 8(3) Infosoc), drivers for VMs
4. Task law enforcement agencies to develop VMs
HOW GOVERNMENTS CAN ENCOURAGE VOLUNTARY MEASURES AND THE BENEFITS OF DOING SO

Benefits

1. Fewer demands for LEAs and less need for legislation / regulation
2. More flexible than legislation (updates)
3. Less demand of the judicial system since less litigation is required
4. More legitimate commerce, tax income
5. Safer internet for consumers
VOLUNTARY MEASURES

CONCLUSION
CONCLUSION

Reduction of online copyright infringement via

- Civil and criminal enforcement
- Increased legal offers
- **Voluntary measures**

Win-Win for all stakeholders

- Intermediaries – no connection with illegal activities
- Governments – tax revenue
- Consumers – safer internet
- Right holders – increased protection

Deserves interest and support from governments to foster VMs

- Undervalued instrument
- Government encouragement fosters adoption
Thank you for your attention.

geerart_bourlon@mpaa.org