



THE ENVIRONMENTALLY SAFE DISPOSAL AND DESTRUCTION OF INTELLECTUAL PROPERTY INFRINGING GOODS

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Aims of the Study

- ▶ Main issues surrounding environmentally safe storage, disposal and destruction of intellectual property (IP) infringing goods
- ▶ Map out applicable legal and practical frameworks
- ▶ Summarize environmental, public health and safety concerns for disposal/destruction of a range of IP infringing goods
- ▶ Analyze the challenges for environmentally safe storage and destruction or disposal of IP infringing goods
- ▶ Analyze opportunities for improvement

Introduction

- ▶ Trade in counterfeit and pirated goods is a growing international problem
- ▶ All types of IP protected products are infringed
- ▶ IP infringing goods are profitable because.....
- ▶ IP infringing goods are often of a sub-standard quality or unknown composition/purity
- ▶ IP infringing goods can represent a significant public health and environmental threat



Introduction

- ▶ Environmentally safe storage and destruction of IP infringing goods - difficult and complex goal to achieve – especially in developing countries
- ▶ Storage can become limiting
- ▶ Hazardous materials require correct segregation and adequate storage to avoid fire, leakage and explosion risks
- ▶ Open burning - most inappropriate disposal method for IP infringing goods
- ▶ Disposal to non-sanitary and open landfills
- ▶ Not destroyed – re-enter channels of commerce
- ▶ High volume of IP infringing goods seized results in liabilities



IP Perspective- legal and policy frameworks

- ▶ TRIPS Agreement (articles 46, 59 & 61) and national IP regulations
- ▶ Evident is a lack of harmonization across States – criminal, civil, administrative and custom proceedings
- ▶ Who pays for storage and destruction and litigation timeframes vary across remedies and countries
- ▶ WIPO Development Agenda and UN Sustainable Development Goals (SDG's)
- ▶ All parties must buy into the concept of sustainable development and recognize their contributions



Environmental Perspective – legal frameworks

- ▶ Multilateral agreements - Basel Convention, Stockholm Convention, Rotterdam Convention, Bamako Convention, Montreal Protocol, Minimata Convention
- ▶ Environmental Principles;
 - ▶ Polluter pays principle
 - ▶ Precautionary Principle
 - ▶ Duty of care principle
 - ▶ Proximity principle
- ▶ Key driver – strength of existing national environmental policy and legislative framework.



Environmental and Public Health & Safety Concerns

- ▶ Selected disposal methods – based on specific nature of the IP infringing goods (hazardous or not), the available technology or expertise, and costs
- ▶ Infringing pesticides – sold untested and unauthorized -often highly toxic – lower flashpoints, will require testing, complex disposal

Organic pesticides - High temperature Incineration

Inorganic or metal containing – chemical treatment (e.g. alkaline hydrolysis)

Small quantities – land treatment, composting or release to air

- ▶ Infringing pharmaceuticals and cosmetics – health sensitive – lack or reduced active ingredients, no therapeutic benefits, include heavy metals or other toxic ingredients – infringing medical equipment-mercury & cadmium

- ▶ Incineration
- ▶ Crushing, shredding
- ▶ Concrete Encapsulation followed by landfill



Environmental and Public Health & Safety Concerns

- ▶ Infringing electronic goods – wide ranging - telephones, headphones, computers, accessories - can explode or catch fire (e.g batteries, chargers)
 - ▶ Toxic materials but valuable metals,
 - ▶ Avoid informal recycling – worker safety, highly polluting
 - ▶ Formal recycling following ESM principles, lots of guidelines – Basel Convention, Partnership for Action on Computing Equipment (PACE), MPPI, ITU
- ▶ Infringing clothing and footwear – environmental footprint vs donation vs liability
 - ▶ Disposal - shredding dumping in landfill, Innovative use – shoe soles for playground floors.
 - ▶ Donation – Reduced environmental footprint, humanitarian benefits
 - ▶ Sensitive issue for rights holders – brand image, liabilities, re-enter marketplace



Main Challenges Impacting the Environmentally Safe Storage & Destruction & Disposal of IP infringing goods

- ▶ Challenges are numerous
 - ▶ Lack of storage, disposal or recycling infrastructure, weak legislation or lack of financial resources
 - ▶ Many parties involved – enforcement, environmental agencies, phyto-sanitary & health, rights holders, judiciary
 - ▶ Appropriate technical knowledge and environmental awareness of parties may be inadequate.
 - ▶ Lack of specific monitoring and statistics on destruction/disposal practices for IP infringing goods
 - ▶ High costs of both storage and destruction of IP infringing goods
 - ▶ Protracted litigation



Opportunities for Improvement: Training and Capacity Building

- ▶ Improved technical capacity and environmental awareness urgently required
- ▶ Achieved through collaborative efforts between International organizations;
 - ▶ IP training- WIPO, Interpol, WCO
 - ▶ Environmental matters – United Nations Environment Programme (UNEP)
 - ▶ Relevant thematic areas – Food and Agriculture Organization FAO, World Health Organization (WHO)
 - ▶ Private sector – knowledge of waste disposal/recycling could contribute expertise



Opportunities for Improvement: Training and Capacity Building

Training could cover;

- ▶ definition and types of hazardous IP infringing goods;
- ▶ definition and types of health sensitive IP infringing goods;
- ▶ **appropriate storage and segregation of hazardous IP infringing goods;**
- ▶ laboratory analysis of hazardous IP infringing goods;
- ▶ **description of available options for recycling, destruction / disposal of IP infringing goods;**
- ▶ destruction / disposal hierarchy of IP infringing goods;
- ▶ **disposal methods for showcase events;**
- ▶ alternative disposal options and recycling methods for IP infringing goods;
- ▶ standard operating procedures for destruction / disposal of IP infringing goods;
- ▶ **monitoring and reporting on the storage and destruction / disposal of IP infringing goods; and**
- ▶ national and local coordination for environmentally sound storage and disposal of IP infringing goods.

Opportunities for Improvement: Public Awareness & Education

- ▶ Improved public awareness and education
- ▶ Showcase events
 - ▶ Open burning
 - ▶ Should demonstrate alternatives
- ▶ Should be communicated that the method was selected to minimize environmental harm
- ▶ Well prepared media materials



UNODC
United Nations Office on Drugs and Crime

COUNTERFEIT
DON'T BUY INTO ORGANIZED CRIME

EVIDENCE EVIDENCE EVIDENCE

Unethically produced

Exploited labour and environmental damage are just some of the ethical concerns linked to the illicit production and sale of counterfeit goods.

Don't buy into organized crime

www.unodc.org/counterfeit #counterfeitcrime

The graphic features a mobile phone inside a clear plastic evidence bag. The bag has 'EVIDENCE' printed on it in three locations. The UNODC logo is in the top left, and the 'COUNTERFEIT' logo is in the top right. The text 'Unethically produced' and 'Don't buy into organized crime' are prominently displayed. A yellow banner at the bottom contains the website and hashtag.



Opportunities for Improvement: Alternative disposal options

- ▶ Potential alternative disposal options
- ▶ Cement kilns
- ▶ For health sensitive counterfeit products - encapsulation
- ▶ Rights holders need to support the concept of formal recycling of IP infringing goods
- ▶ Rights holders - Extended producer responsibility programmes (e.g. Unilever)



Opportunities for Improvement: Humanitarian Donation

- ▶ Right holders - humanitarian donation -liabilities
- ▶ Reduction of Environmental footprint - Social benefits
- ▶ New Mechanisms developed- product testing
- ▶ Improved global standard of relabeling or rebranding investigated
- ▶ Specific agreements developed indicating responsibilities and expectations of parties and accountability for ensuring goods do not return to the marketplace



Opportunities for Improvement: Physical & Financial Resources

- ▶ Options for addressing costs and length of time of litigation include;
 - ▶ Legislative mechanism based on the Treasury Forfeiture Fund (TFF- USA) whereby all storage and destruction costs are paid from funds derived from forfeited criminal assets
 - ▶ Infringer to pay a financial warranty based on prima facie evidence of infringement
 - ▶ Several other measures to reduce protracted litigation and thus costs for storage were proposed in an earlier study (Blakemore, 2010)



Opportunities for Improvement: Monitoring and Data Gathering

- ▶ Development of a monitoring and information platform - standalone or integrated with current data gathering initiatives
- ▶ The system should gather information on;
 - ▶ Nature of the IP infringing goods (hazardous, health sensitive or not)
 - ▶ How the goods are stored and the method for destruction, disposal or recycling
 - ▶ What entities are responsible for this task
 - ▶ Level of cost incurred
 - ▶ Whether any administrative, social or environmental issues were encountered
 - ▶ Provide information on any technological advances, lessons learned or training that would help improved technical expertise or environmental awareness



CONCLUSION

- ▶ Recognize that IP infringing goods represent a major waste item and can pose additional problems due to their often sub-standard quality or unknown composition
- ▶ IP infringing goods are illicitly produced and trafficked by criminal enterprises and there is an understandable reluctance for responsibility or accountability of these goods and the often high costs incurred by enforcement agencies and rights holders.
- ▶ If environmentally safe storage, destruction and disposal of such goods is to be achieved more effort is needed on building **technical and administrative capacity and improving procedures, monitoring and support, especially for developing countries**
- ▶ This can only occur through more pro-active collaboration and committed engagement amongst the affected parties