SWISS EXPERIENCES WITH INTELLECTUAL PROPERTY ENFORCEMENT IN THE DIGITAL AGE

WIPO ACE/14 MEETING

GENEVA, 3 SEPTEMBER 2019
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I. INTRODUCTION AND STATISTICS

- **TRIPS Agreement background**
- **Swiss customs statistics**
  - Counterfeit branded products (commercial and tourist goods)
    - 2018: 14,388 imports
    - 2017: 10,686 imports
    - 2016: 13,604 imports
  - Trade in counterfeit pharmaceuticals
    - 2018: 3,203 imports
    - 2017: 1,060 imports
    - 2016: 1,028 imports
    - 300 % increase in 2 years
    - Estimates: 20,000 illegal consignments of pharmaceutical products per year
- **European Union**: Percentage of counterfeit and pirated goods among total EU imports
  - 2016: 6.8 %
  - 2013: 5 %
- **Switzerland’s trade** in counterfeit products mostly through commercial goods traffic

https://www.ezv.admin.ch/ezv/fr/home/documentation/publications/fakten_und_zahlen.html
II. LEGAL FRAMEWORK

a. Trademark Law
   - Private purposes: import, export or transit prohibition
     o Article 13(2)bis, Swiss Trademark Act

b. Collaboration with customs
   - Efficiency of Swiss collaborative means
   - Importance of European protection for Swiss companies

c. Swiss Copyright Law
   - Download, upload v. Copyright and Data protection
   - Main revision goals of the Swiss Copyright Act
     o Fight against uploading
     o Focus on hosting providers

Decision 1C_285/2009.
III. BLOCKING OF WEBSITES

- **United Kingdom**
  - Website-blocking injunctions

- **Switzerland**
  - No legal rules for blocking websites
  - Judges’ limited injunctions
  - However: possible to order the transfer of litigious domain names of websites that distribute counterfeit products

Benhamou Yanniv, Website blocking injunctions under Swiss law. From civil and administrative injunctions to criminal seizure or forfeiture, in: Expert Focus, 2017, no. 11, p. 885-893
IV. ROLE OF INTERMEDIARIES AND PARTNERSHIPS

- Domain name usurpation
- Trading platforms’ internal control procedures

- Intermediaries
  - Financial institutions
  - Advertising agencies and their clients
  - Shipping agencies

- Swiss Anti-Counterfeiting and Piracy Platform

http://www.stop-piracy.ch/
V. BLOCKCHAIN SOLUTIONS?

- Track and Trace solution
- Evidence tools v. Anti-counterfeiting solutions
- Time-stamping
- Use in NDAs
- Protection of trade secrets
- Evidence of date of creation made easier?

VI. CONCLUSION

- Some positive experiences against counterfeiting and piracy
- Keep up the fight in collaboration with the private and public sectors
- Legal framework adaptations at the national AND international level
- Combating IP infringements as a priority for IP right holders AND their business partners
THANK YOU FOR YOUR ATTENTION!

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New Technological Opportunities for Intellectual Property Rights Protection and Enforcement

Blockathon
*Fighting Counterfeits Through Blockchain Technology*

Claire Castel
Head of the IP in the digital world and awareness service
European Observatory on Infringements of IPR, European Union Intellectual Property Office
3 September 2019
OVERVIEW

- Blockchain technology – opportunities and challenges in relation to intellectual property

- Blockchain and proactive measures

- EUIPO Blockathon - Co-creating the next level of the EU anti-counterfeiting infrastructure using blockchain

- Looking into the future
OPPORTUNITIES AND CHALLENGES FOR IP (1)

Digital ledger/database, which is

- Automated
- Secure
- Incorruptible
- Immutable
- Immediate; direct

because of

- Algorithms
- Cryptography
- Distributed
- No deletion
- No intermediary
OPPORTUNITIES AND CHALLENGES FOR IP (2)

• Blockchain industry use of IP
• Non-blockchain industry use of the blockchain technology
• Registration and deposit systems concerning IP
• Blockchain used as a vehicle for crime
OPPORTUNITIES AND CHALLENGES FOR IP (3)

• Blockchain industry use of IP
  – New start-ups being formed at a rapid pace
  – Assess how to protect their innovations
  – Assure that they are not infringing IPR of third parties
• Non-blockchain industry use of the blockchain technology
  – Track and trace – supply chain protection
  – Digital IP rights management
OPPORTUNITIES AND CHALLENGES FOR IP (5)

- Registration and deposit systems concerning IP
  - Incorruptible and immutable nature of the technology benefits public services
  - Potential for IP register or deposit system
OPPORTUNITIES AND CHALLENGES FOR IP (6)

- Blockchain used as a vehicle for crime
  - Blockchain piracy bittorrent network
  - Smart contract marketplace for counterfeits
BLOCKCHAIN AND PROACTIVE MEASURES

• Immutable record of chain from manufacturer to point of online sale (supply chain protection)

• Potential cooperation with public sector authorities

• Verification of genuine products vs sharing of data
48 hours coding competition of the best teams in the world
Challenge:

Co-create the next level of the EU anti-counterfeiting infrastructure using blockchain
• Use-Case: Three-tracks
• Customs: Automated, Faster, Targeted, Interconnected
• Consumers: Reliable, Authentic, Connected
• Logistic operators: Shared, Certain, Trusted, Secure
All working together to solve a common problem

High support from private sector:

• endorsing the competition with logos,
• contributing to the programme with experts,
• supporting communication and promotion of the Blockathon.

The highest level of the EC support
THE WINNERS

- Cryptomice
- Fides
- The Pirate Busters
The follow-up of the Bockathon:

1. Set-up of the Anti-counterfeiting Blockathon Forum

2. Further definition of the Use Case and a pilot test
Mission of the Anti-Counterfeiting Forum (9)

Our Mission
Define, pilot and implement the next level of anti-counterfeiting infrastructure

Our Activities
Collaborate and exchange information with experts.
Define a use case for the future anti-counterfeiting infrastructure.
Create a pilot demonstrating the potential to realise the infrastructure.
See the pilot through to implementation.
Anti-Counterfeiting Use Case (10)

Individual good having an unique identification feature

Rights Holder or Manufacturer

Token: Digital Representation.

Digital handshake

Wallet x: Token added to wallet controlled by producer

Wallet x+1: Token added to wallet controlled by any operator who receives the good

Operators in the supply chain.

Digital handshake

Wallet x+2

Etc.

Transfer of token between wallets everytime the goods move from one operator who holds the good to another

ANTI-COUNTERFEITING BLOCKATHON FORUM
Anti-Counterfeiting Use Case (11)

Use Case Phases

Phase 1
Feb
- Register
  Register for forum membership

Phase 2
Mar-May
- Elaborate
  Elaborate the use case through review and feedback

Phase 3
June
- Agree
  Agree the use case and pilot(s) scope – 2 day workshop

Phase 4
July...
- Pilot
  Pilot(s) implementation
Anti-Counterfeiting Forum Invitation (12)

Contribute
Open to anyone with a vision that can help us achieve our mission

Join
Interested in working together to implement the next level of anti-counterfeiting infrastructure? Register to join the Forum!

www.blockathon.eu
LOOKING INTO THE FUTURE (1)

- Maturity
- Governance
- Standardization
- Interoperability
- Costs
- Scalable business models
LOOKING INTO THE FUTURE (2)

• Digital identity
• Blockchain new generation
• Interoperability
• IOT
• High level of automatization
www.euipo.europa.eu

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Thank you