

Advisory Committee on Enforcement

Fourteenth Session Geneva, September 2 to 4, 2019

ARRANGEMENTS TO ADDRESS ONLINE INTELLECTUAL PROPERTY INFRINGEMENTS

Contributions prepared by China, Greece, the Russian Federation and the United Kingdom

1. At the thirteenth session of the Advisory Committee on Enforcement (ACE), held from September 3 to 5, 2018, the Committee agreed to consider, at its fourteenth session, among other topics, the “exchange of information on national experiences relating to institutional arrangements concerning IP enforcement policies and regimes, including mechanism to resolve IP disputes in a balanced, holistic and effective manner”. Within this framework, this document introduces the contributions of four Member States (China, Greece, the Russian Federation and the United Kingdom (UK)) detailing their respective arrangements to address online IP infringements.

2. The contribution by China describes the country’s dual copyright enforcement system, including both judicial and administrative law enforcement mechanisms and specialized IP courts for the administration of justice in cases of IP infringements. It sheds light on additional measures undertaken to combat online infringements, including special action against online piracy, schemes for monitoring key websites that provide access to large volumes of creative content as well as efforts to promote the disclosure of information on IP infringement cases. The Russian contribution focuses on three mechanisms introduced to fight the online dissemination of copyright-infringing content: the introduction of a legal provision to allow the blocking of access to infringing websites; the introduction of a permanent blocking procedure in cases of repeated infringement; and the introduction of an extra-judicial mechanism targeting so-called mirror sites. Additional information and figures on the impact of these measures are also included.

3. Whereas the Chinese and Russian contributions provide an overview of different measures undertaken to strengthen the protection of IP online and to improve action against IP infringements, the Greek and UK contributions more closely examine the set-up and operation of dedicated bodies vested with IP enforcement powers. The Greek contribution discusses the establishment and operation of the Committee for the Notification of Copyright and Related Rights Infringement on the Internet, intended to oversee administrative procedures for online copyright and related rights infringements. The new extra-judicial mechanism aims to provide right holders with prompt and effective relief by removing or blocking access to infringing online content. The UK contribution considers the remit and work undertaken by the Police Intellectual Property Crime Unit (PIPCU), an operationally independent law enforcement unit established by the UK Government in 2013. One of the activities highlighted in the contribution is Operation Creative, a partnership between PIPCU and the advertising and creative industries to prevent and disrupt the flow of advertising revenue to copyright-infringing websites. Operation Ashiko, aimed at disrupting the online sale of counterfeit goods, and Operation Chargewell, set-up to assist victims of online counterfeit sales in obtaining refunds, are other measures handled by PIPCU.

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CHINA'S EXPERIENCE IN ONLINE COPYRIGHT PROTECTION

*Contribution prepared by Mr. Xin Kang, Deputy Consultant, Enforcement and Supervision Division, Copyright Department, National Copyright Administration of the People's Republic of China (NCAC), Beijing**

ABSTRACT

In recent years, China has been steadily improving its legal framework for copyright protection, strengthening the regulation of the copyright market, developing copyright-related industries and conducting increasing international exchanges on copyright protection. As a result, a law enforcement model for online copyright protection with distinctive Chinese characteristics has emerged.

I. CONTINUED IMPROVEMENT OF THE LEGAL SYSTEM

1. In 2001, China amended the Copyright Law to include basic provisions for online copyright protection. In 2006, the State Council enacted the Regulations on the Protection of the Right of Communication through Information Network. In addition, the Supreme People's Court and the Supreme People's Procuratorate successively issued judicial interpretations or guiding opinions addressing online copyright. In 2007, China acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. In 2012, China approved the Beijing Treaty on Audiovisual Performances. At present, China's legal protection for online copyright is basically consistent with international standards.

II. A COPYRIGHT PROTECTION SYSTEM WITH CHINESE CHARACTERISTICS

2. China adopts a dual-track copyright protection system, where judicial protection and administrative protection work in tandem with each other. In particular, judicial trials provide the most basic means of legal relief by handling copyright-related civil, criminal and administrative cases. At the provincial level, Higher People's Courts, which are present in each of China's 31 provinces, autonomous regions and municipalities, have established intellectual property (IP) tribunals. In addition to these tribunals, specialized IP courts have been established in Beijing, Shanghai and Guangdong, amongst other cities. These recently-established, specialized IP courts are independent and operate on the level of Intermediate People's Courts. In 2018, the People's Courts at various levels received 195,000 first-instance civil cases related to copyright, accounting for 68.9 per cent of all newly filed first-instance civil cases involving IP.

3. After the first Internet court opened in Hangzhou on August 18, 2017, more Internet courts have since been established in other Chinese cities, including Beijing and Guangzhou. Internet courts have centralized jurisdiction over specific Internet-related cases, which deal with issues such as: disputes over the ownership of copyright or neighboring rights of works published on the Internet for the first time, and disputes arising from copyright or neighboring rights infringements of works published or disseminated online. Beyond this focused jurisdiction, Internet courts also entail a "key-to-key" rather than a "face-to-face" mechanism for

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the litigation process. This means that prosecution, mediation, filing, proof of evidence, cross-examination, trial, pronouncement, delivery and execution can all be completed online. This is the world's first asynchronous mode of trial, allowing parties to participate in litigious procedures without leaving their homes. In the case of the Hangzhou Internet Court, for example, the time spent on Internet-related cases averages only 28 minutes, taking only 20 days on average from prosecution to conclusion of a case¹.

III. THE UNIQUE ROLE OF ADMINISTRATIVE LAW ENFORCEMENT

4. Compared with judicial adjudication, administrative law enforcement and supervision for copyright protection are carried out in a timely, fast and relatively convenient way. At present, China has formed an administrative management and law enforcement system for copyright protection, with enforcement agencies at the national, provincial, municipal and county levels as the mainstay, which directly investigate various types of copyright infringement and piracy cases. The initiation of administrative procedures usually results from complaints by right holders or reports from third parties, but copyright enforcement authorities can also file a case for investigation based on their own initiative and impose various administrative penalties. They can issue warning notices, impose fines, confiscate unlawful gains and infringing copies, confiscate equipment for installing or storing infringing copies and confiscate the material, tools and instruments mainly used to produce infringing copies. From 2005 to 2017, the administrative enforcement agencies for copyright protection handled a total of 97,100 cases with administrative punishments, transferred 5,046 cases to judicial organs, and confiscated more than 518 million pieces of IP-infringing and pirated products.

IV. REMARKABLE RESULTS OF SPECIAL ACTIONS

5. Since 2005, the National Copyright Administration of China (NCAC), together with the Ministry of Public Security, the Ministry of Industry and Information Technology and the National Internet Information Office, have launched the *Jian Wang (Cyber Sword) Action* against online infringement and piracy for 15 consecutive years, focusing on key areas such as online literature, music, videos, games, animation and software. Due to these targeted actions, a total of 6,573 cases were investigated and 609 criminal cases were transferred to judicial organs. Furthermore, 6,266 infringing or pirate websites were shut down and 2,560,000 infringing or pirate links were deleted. Such results have safeguarded the legitimate rights and interests of Chinese and foreign right holders and the public interest in general, creating a significantly more copyright-friendly cyber-environment.

V. STRONGER COPYRIGHT SUPERVISION OVER KEY WEBSITES

6. While countering the various forms of online infringement and piracy, the NCAC has also been strengthening its supervision over influential online businesses since 2009. In September 2010, the NCAC issued a notice on the supervision initiative to 15 major video websites, which marked the official start of the supervision of copyright on video websites. In September 2013, the NCAC issued the Implementation Opinions on Strengthening Proactive Supervision on the Copyright of Major Websites. The proactive supervision of video websites takes two main forms. The first is the supervision of hit movies and TV dramas, requiring video websites under the proactive supervision initiative to conduct quarterly self-examination and self-correction on their top 50 movies and TV dramas by click rate and to submit a list of these

¹ For an example of a typical case heard at such an Internet court, see: *A TV Culture Investment Co., Ltd. v. a Trade & Commerce Co., Ltd. in Yangzhou and an Internet Co., Ltd. in Zhejiang*.

movies and TV dramas, as well as their authorization documents, to the NCAC. The second type of proactive supervision takes the form of copyright protection warnings for major movies and TV dramas. The relevant right holders submit to the NCAC authorization information in relation to major films and TV dramas. The NCAC will then, after having reviewed this information, produce a list of works under copyright protection warning and publish this list together with the respective authorization information on its official website.

7. At present, 3,029 key websites have been placed under special supervision by copyright authorities across the country. In particular, the NCAC conducts direct supervision over 20 leading video websites, 20 leading music websites, eight file hosting websites and 10 influential literature websites. Such efforts have greatly improved copyright protection on video, literature and music websites, increased the use of copyrighted materials by a wide margin, and effectively promoted the healthy development of the online copyright industry. According to the statistics of relevant research institutions, the market size of China's online copyright industry in 2017 was CNY 636.5 billion, with CNY 318.4 billion coming from user subscription fees.

VI. FORMATION OF SOCIAL CO-GOVERNANCE

8. In 2007, the NCAC set up a fund to reward whistle blowers and investigators for fighting copyright infringement and piracy, established an anti-piracy reporting center and introduced a national hotline (12390) for reporting misconduct. So far, CNY 65 million has been awarded to whistle blowers and investigators. In addition to actively promoting the establishment of a cooperation mechanism to protect copyright between right holders and online trading platforms, the NCAC has also strengthened cooperation with overseas law enforcement agencies and right holders' organizations to build an information-sharing mechanism to combat transnational infringement and piracy.

9. The NCAC also encourages the self-governance of trade associations and societies. Copyright enforcement and supervision authorities at all levels have mobilized the full potential of relevant associations and societies, including the Copyright Society of China, the China Film Copyright Association, the China Written Works Copyright Society, the Anti-Piracy Alliance of 15 publishers based in Beijing and the International Publishers Copyright Protection Coalition in China (IPCC), to actively promote self-discipline in the industry. On April 26, 2019, for example, at the National Conference on Copyright Protection and Development in the Digital Environment, the China News Media Copyright Protection Alliance (CNMCPA) and the China Financial Media Copyright Protection Alliance jointly launched the Rights Protection Initiative of the Media Copyright Protection Alliances. The CNMCPA consists of 10 major central-level news organizations and new media websites including People's Daily, Xinhua News Agency, China Central Television and Chinaso.com. The National Copyright Exchange Center signed a strategic cooperation agreement on Internet copyright protection with the Audio Reading Committee of the China Alliance of Radio, Film and Television. In addition, 17 entities, including China Film Co. Ltd., Huaxia Film Distribution Co. Ltd. and Wanda Film Co. Ltd., jointly launched the Cinema Film Copyright Protection Alliance. The China Cultural Relics Exchange Center, the China Association for Toys and Baby Products, and other associations co-established the Copyright Protection and Collaboration Alliance for Cultural Creations.

VII. COMPREHENSIVE PUBLICITY OF COPYRIGHT PROTECTION

10. To promote information transparency, competent authorities nationwide are required to disclose information related to copyright cases subject to administrative punishments. The publication of typical infringement cases each year has generated an excellent social effect. All regions have made full use of traditional media such as newspapers, radio and television, and new media such as websites, Weibo and WeChat to publicize the progress and effectiveness of copyright protection and thus create a social environment that respects copyright and related rights.

[End of contribution]

THE GREEK COMMITTEE FOR THE NOTIFICATION OF COPYRIGHT AND RELATED RIGHTS INFRINGEMENT ON THE INTERNET

*Contribution prepared by Dr. Maria-Daphne Papadopoulou, Head, Legal Department, Hellenic Copyright Organization (HCO), Athens, Greece**

ABSTRACT

Greece and the Hellenic Copyright Organization (HCO), as the competent body at the national level in respect of copyright protection, target the problem of piracy, primarily digital piracy, through a number of initiatives. The most recent and innovative measure taken at the national level consists of the establishment and operation of the Committee for the Notification of Copyright and Related Rights Infringement on the Internet. This Committee oversees an administrative procedure, available to copyright and related right holders whose rights have been infringed, to promptly and effectively remove or block access to illegal creative content on the Internet. This document presents the active role of the HCO in copyright enforcement and awareness raising, thereafter describing the rationale behind the Committee's significant mandate and the objectives it is pursuing, as well as the conclusions reached after the first nine months of the functioning of the Committee.

I. THE ROLE OF THE HELLENIC COPYRIGHT ORGANIZATION IN COPYRIGHT PROTECTION

1. The Hellenic Copyright Organization¹ (HCO) is the competent body at the national level for the protection of the authors of copyrighted works and the holders of related rights. To pursue and implement this mandate, it has a number of competences, under which it undertakes initiatives on a continuous basis. Aiming at safeguarding and achieving a fair balance between the rights and interests of right holders and the public in general, while also being responsible for the interpretation and implementation of national and European law and relevant international treaties², the HCO plays an active and significant role with awareness-raising projects and the enforcement of copyright rules. The digital environment gives rise to profound challenges to copyright enforcement, given how the radical changes in information and communication technologies affect the creation, circulation and further use of works and other copyright-protected content. Considering the correlation between the accessibility of creative content on the Internet and the potential for infringement, a greater focus on digital protection issues is necessary.

2. Within its responsibilities, the HCO has been active in both protecting rights and preventing infringements. In respect of the preventive measures and actions undertaken to raise copyright awareness through pedagogical means, three initiatives are particularly noteworthy. First, the HCO periodically organizes training and educational seminars on various copyright and related rights issues, targeting a variety of stakeholders ranging from judges and

* 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.

¹ <https://opi.gr/en/opi/about-opi>.

² Read more about the responsibilities of the Hellenic Copyright Organization at: <https://opi.gr/en/opi/responsibilities>.

lawyers to administrative personnel, authors and holders of related rights, students of copyright and related rights issues and the general public. Second, the HCO is very proud of its Greek Copyright School project³, an ongoing educational program to build respect for copyright and IP rights in general. This program provides basic information about copyright law and is tailored to schoolchildren and young people, as well as schoolteachers. The HCO had the valuable opportunity to extend and enrich the activities under the project through funding received from the European Union Intellectual Property Office (EUIPO). Third, the HCO integrated efforts to reduce and gradually eliminate copyright piracy into its Observatory for Piracy project. The Observatory consists of a dynamic and constantly updated webpage⁴ where all actions undertaken by HCO are brought together and presented in detail, including information about the relevant national and European legal frameworks (legal *corpus* and case law), the competent authorities and collective management organizations, statistical data, action plans and studies, as well as a number of useful links for further information.

3. However, the most significant step towards promptly and effectively combating digital piracy has been the recent introduction into national law⁵ of an administrative procedure before the Committee for the Notification of Copyright and Related Rights Infringement on the Internet (Committee). This is the first time that an extra-judicial mechanism is made available to affected copyright and related right holders to address the problem of online piracy. They may lodge an application before the Committee in order to request that the infringing content on the Internet be removed or blocked. Following the adoption of a number of Ministerial Decisions⁶ under which the key issues concerning the implementation of the relevant provision were resolved, the Committee commenced its operation in September 2018 and has so far dealt with five cases of large-scale infringements of copyright and related rights on the Internet. This initiative has been regarded as the Greek version of the well-known notice-and-take-down system and highlights the HCO's efforts to provide copyright and related right holders with a high level of protection, as dictated by both national and European law.

³ <https://www.copyrightschool.gr/index.php/en/>. For more information, see Hellenic Copyright Organization (2016), *The Greek Copyright School – Raising Awareness About Copyright Protection in Primary and Secondary Education* (pages 19-21 of document WIPO/ACE/11/4), available at: https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=342676.

⁴ <https://opi.gr/en/general-information-on-copyright/observatory-for-piracy>.

⁵ Article 52 of Law No. 4481/2017 on Collective Management of Copyright and Related Rights, Multi-territorial Licensing in Musical Works for Online Use in the Internal Market and Other Issues Falling Within the Scope of the Ministry of Culture and Sports introduced a new Article 66E on Sanctions for Infringement of Copyright and Related Rights on the Internet into Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters. Both legal instruments are available in English at: <https://opi.gr/en/library/law-4481-2017> and <https://opi.gr/en/library/law-2121-1993>.

⁶ Pursuant to Article 66E of Law No. 2121/1993, the following Ministerial Decisions have been issued: Decision by the Ministry of Culture and Sports No. ΥΠΠΟΑ/ΓΔΔΥΗΔ/ΔΔΑΔ/ΤΔΥΕΦ//248407/17434/12866/490 of June 8, 2018, entitled Amending the Decision on the Composition and Establishment of the Committee for the Notification of Copyright and Related Rights Infringement on the Internet ... and Determination of the Remuneration of Its Members; Joint Decision by the Ministry of Finance and Ministry of Culture and Sports No. ΥΠΠΟΑ/ΓΔΔΥΗΔ/ΔΔΑΔ/ΤΔΥΕΦ/61840/5094/4171/240 of February 27, 2018, entitled Determination of the Procedure for the Imposition and Recovery of the Fine Imposed by the Committee for the Notification of Copyright and Related Rights Infringement on the Internet ... and of the Services Competent for Its Collection; Decision by the Ministry of Culture and Sports No. ΥΠΠΟΑ/ΓΔΔΥΗΔ/ΔΔΑΔ/ΤΥΕΦΤΠ/42270/3639/3477/197 of February 7, 2018 entitled Composition and Establishment of the Committee for the Notification of Copyright and Related Rights Infringement on the Internet ... and Determination of the Remuneration of Its Members. All Decisions are available, in Greek, on the HCO's official website at: <https://opi.gr/en/committee/legislation-committee>.

II. THE COMMITTEE FOR THE NOTIFICATION OF COPYRIGHT AND RELATED RIGHTS INFRINGEMENTS ON THE INTERNET

A. BACKGROUND AND OBJECTIVES

4. The Committee consists of three members: the President of the HCO, a representative of the Hellenic Telecommunications and Post Commission and a representative of the Hellenic Data Protection Authority. These members are assisted in fulfilling their mandate by a jurist member of the Legal Department of the HCO. In respect of the legal nature of the Committee, it is noteworthy that redress by an administrative structure such as the Committee is also foreseen in the copyright systems of France (*Haute Autorité pour la Diffusion des Œuvres et la Protection des Droits D'auteur sur Internet*), Italy (*Autorità per le Garanzie nelle Comunicazioni*), Spain and Portugal, while the Greek Administrative Trade Marks Committee⁷ has already been a rather successful example of administrative measures in the national intellectual property (IP) enforcement framework. The Greek legislator analyzed the working of these existing systems in order to formulate a distinct model that clearly focuses on the national approach and needs.

5. As provided for in the explanatory memorandum to Law No. 4481/2017⁸, the rationale behind this system was to introduce an institutionalized procedure to allow injured right holders to achieve the prompt removal or limitation of the unauthorized making available of their works or other protected content on the Internet, without suspending or affecting the exercise of their claims for the same dispute before the courts. In the age of digitization and the Internet, infringements of copyright and related rights have become easy and numerous, and the existing judicial mechanisms may not meet the speed required for effectively combating digital piracy as court litigation often proves both time-consuming and costly for the parties involved⁹. The delay in remedying an infringement may devalue the right being violated, thus undermining the effectiveness of the legal redress being sought. Thus, the national legislator established this tailor-made procedure in order to enable right holders to enforce their rights, while also relieving the already-overloaded courts of this litigation. Moreover, the explanatory memorandum to Law No. 4481/2017 considered this measure appropriate, being in compliance with the constitutional principle of proportionality¹⁰, taking into account the rights and interests of all parties concerned, and, most importantly, safeguarding the freedom of expression and the exceptions and limitations provided in copyright law.

B. THE PROCEDURE BEFORE THE COMMITTEE

6. The persons entitled to recourse under this administrative procedure before the Committee may be any copyright or related right holder whose rights have (allegedly) been infringed on the Internet, including authors, performers, publishers and/or collective management organizations in exercise of the powers delegated to them. Moreover, the aim of

⁷ Established by Law No. 4072/2012 on Trademarks. Similarly to the claims brought before the Administrative Trade Marks Committee, the decisions issued by the Committee may also be challenged by an action for reversal before the administrative courts.

⁸ Available, in Greek, at: https://opi.gr/images/library/nomothesia/ethniki/nomoi/aitiologiki_4481.pdf.

⁹ The submission of an application before the Committee does not affect the right of the parties concerned to seek redress (for the same dispute) through court litigation (Article 52(8) of Law No. 4481/2017). However, if an action has been brought by the same applicant with the same claim before the courts either before or during the examination of the case by the Committee, the case shall be closed (Article 52(5)(cc) of Law No. 4481/2017). In addition, the procedure before the Committee is without prejudice to the procedure established under the Regulation on the Management and Assignment of .gr Domain Names of the Hellenic Telecommunications and Post Commission (Article 52(1) of Law No. 4481/2017).

¹⁰ Article 25(1) of the Greek Constitution dictates that any restrictions of the rights of individuals, involving their social rights as well as the social rule of law, shall be provided for either directly by the Constitution or by statute, should a reservation in the latter's favor exist, and shall respect the principle of proportionality.

the national legislator to safeguard both the speed and effectiveness of this procedure has been achieved through the establishment of a short timeframe within which the procedure shall be concluded, so that the right holders may achieve the prompt removal or the blocking of access to the works infringed no later than sixty days following the submission of the relevant application, provided its admissibility¹¹. The claim submitted to the Committee may concern any case of infringement of copyright and/or related rights in the digital environment. However, the law provides a list of cases to which this procedure shall not apply, including, in particular, infringements committed by end users through downloading, streaming or peer-to-peer file sharing that allow for the direct exchange of digital files between end users, or infringements committed by means of data storage services using cloud computing.

7. Moreover, the law provides for a detailed overview of the steps that the Committee should take either to reject the application on the basis of specifically provided grounds¹² or to continue the case and conclude it within pre-established time limits. In the latter case, the Internet access providers in question and, where possible, the hosting service provider, the administrator(s) or/and the owner(s) of the websites hosting the illegal content are notified and provided with three alternatives: to voluntarily comply with the applicant's request; to acquire a license to use the works allegedly infringed or; to raise objections. The Committee shall then review the case. If an infringement is not eventually substantiated, the case is closed. If the infringement is substantiated, a decision dictating either the removal¹³ or the blocking of access to the illegal content¹⁴ is delivered. The addressees shall comply with the dictum of the decision within a time period not exceeding three working days from the date of service of the decision. If the recipients do not comply with the operative part of the decision, the Committee is further entitled to impose an administrative fine ranging from EUR 500 to 1000 for each day of non-compliance after taking into account a variety of criteria, such as the severity of the infringement and its potential for recurrence.

C. CONCLUSIONS REACHED THUS FAR AND FUTURE CONSIDERATIONS

8. Having thus far dealt with five copyright and/or related rights online infringements cases¹⁵, the conclusions reached in relation to this innovative national procedure are the following:

- In all cases, the applicant was a collective management or a collective protection organization that acted on behalf of its member.

¹¹ In this regard, the law provides for a number of pre-requisites that must be fulfilled in order for the application to be admissible; first, the fee required for the examination of the case by the Committee shall be paid in advance. The exact amount of this fee has been determined by means of a Ministerial Decision and ranges from EUR 372 to 1240. Moreover, the right holder shall submit the application using the pre-established application form posted on the HCO's website, while he/she shall attach any document required, as well as any further available information to support the relevant claim. In addition to the provisional payment of the fee, which varies depending on the number of domains concerned, a second pre-condition for the Committee to hear the case is that the right holder has already made use of the relevant (notice and take down) procedure, if such a procedure is provided by the Internet service provider in question (e.g., the YouTube copyright takedown notice) and that the procedure has failed to produce results, even if concluded within a reasonable timeframe.

¹² More precisely, it is provided for that the case shall be closed by an act of the Committee on the basis of at least one of the following reasons: a) non-use of the pre-established application form; b) lack of sufficient information; c) *lis pendens* between the same parties or delivery of the final judgment on the dispute at issue; d) lack of competence; e) lack of reasons and sufficient evidence (manifestly unfounded application); f) withdrawal of the application prior to its examination by the Committee; g) non-payment of the examination fee; and h) obtaining of a license for the use of the works.

¹³ In the event that the website hosting the infringing content is hosted on a server located within Greek territory.

¹⁴ In the event that such material is hosted on a website whose server is located outside Greek territory or in the case of large-scale infringements.

¹⁵ The fifth case is currently pending before the Committee.

- The creative content that was unlawfully made available on the Internet concerned musical works (phonograms), audiovisual works (films and TV series), software and literary works.
- In all cases, a copyright and/or related rights violation, and, mainly, a large-scale infringement was determined.
- The Committee ordered the blocking of access within 48 hours from the time that the parties concerned were notified of the decision.
- Blocking was ordered to last for three years.
- The fines imposed ranged from EUR 700 to 850 for each day of non-compliance.

9. The decisions of the Committee were widely publicized and received a mixed response. On the one hand, right holders were relieved to see a rapid institutionalized response to the massive and unauthorized exploitation of their works and/or other protected content on the Internet. On the other hand, some members of the public, with a rather misunderstood and paradoxical view of the principle of Internet freedom, claimed that their right to access to information had been circumvented. Notwithstanding the need to further raise awareness, it could be said that the overall functioning of this extra-judicial mechanism seems to be paying off, thereby accomplishing the aims pursued.

10. The HCO recognizes that neither piracy nor the risk of piracy has been eliminated. However, the Committee in Greece and similar initiatives elsewhere illustrate the unstoppable will to combat the unlawful use of works protected by copyright and related rights on the Internet and, at least, to alleviate the effects of such use. In this regard, the issues that have inevitably emerged in the nine months since the Committee commenced its operations and the obstacles standing in the way of fully fulfilling the objectives set out by the national legislator are currently being examined, and legislative preparatory work aiming to amend or complement the existing legal framework for the Committee's operation is ongoing. As a result, it could be said that new developments in this groundbreaking area are just around the corner.

[End of contribution]

IMPROVING THE MECHANISMS TO COUNTER THE ONLINE DISSEMINATION OF PIRATED CONTENT IN THE RUSSIAN FEDERATION

*Contribution prepared by Mr. Vadim Subbotin, Deputy Head, Federal Service for the Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), Moscow, Russian Federation**

ABSTRACT

This contribution details the Russian legal framework for the protection of copyright works online. It specifically focuses on three mechanisms introduced to fight the dissemination of copyright-infringing content online: the introduction of a legal provision to allow the restriction of access to infringing websites; the introduction of a permanent blocking procedure in cases of repeated infringement; and the introduction of an extra-judicial mechanism targeting so-called mirror sites. The contribution also provides information on the impact of these mechanisms, outlining a vision for future developments in this area.

I. RUSSIAN ANTI-PIRACY PROCEDURES

1. Article 15.2 of the Federal Law on Information, Information Technologies and Protection of Information¹ entered into force on August 1, 2013, and, in accordance with this Article, websites that contain copyright-infringing material may be blocked on the basis of a ruling by the Moscow City Court. Originally, the law only protected the interests of the film industry but it has been amended several times since its introduction. In May 2015, for instance, the scope of the law was extended to cover virtually all copyright-protected works, with the exception of photographs. In addition, Article 15.6 was introduced, which allows for the permanent blocking of websites containing flagrant violations, where the dissemination of pirated content has been reported repeatedly. In 2017, the mechanism for permanently restricting access to certain online locations was also extended to so-called mirror sites of permanently blocked websites, i.e., to sites confusingly similar to those to which access had previously been restricted². In the following, each of these three mechanisms will be considered in more detail.

A. RESTRICTION OF ACCESS TO COPYRIGHT-INFRINGEMENT CONTENT

2. As outlined above, the first mechanism available to right holders to protect their rights online is the restriction of access to infringing content on the basis of a court order for interim measures. The procedure for obtaining this measure is as follows: if infringing content is discovered on the Internet, the right holder concerned may submit an application to the Moscow City Court requesting the removal of the allegedly infringing content. The Court considers the

* 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.

¹ Federal Law No. 149-FZ of July 27, 2006, on Information, Information Technologies and Protection of Information (as amended up to Federal Law No. 327-FZ of November 25, 2017), available at: <https://wipolex.wipo.int/en/legislation/details/17761>. Article 15.2 was introduced into Federal Law No. 149-FZ by Federal Law No. 187-FZ of July 2, 2013, on Amendments to Certain Laws of the Russian Federation Concerning the Protection of Intellectual Rights in Information and Telecommunication Networks, available at: <https://wipolex.wipo.int/en/legislation/details/17108>.

² See Natalia Romashova (2018), *The Development of Mechanisms to Ensure Compliance with Copyright and Related Rights in the Russian Federation* (pages 50-53 of document WIPO/ACE/13/6), p. 53, available at: https://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_13/wipo_ace_13_6.pdf.

right holder's application and, in case of a favorable decision, forwards its ruling on interim measures to protect the right holder's exclusive rights to the Russian Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor). In turn, Roskomnadzor works with the website owner and the hosting provider towards the removal of the infringing content. In the event that it is not removed, Roskomnadzor requests the Internet access providers to block access to the website within Russia.

3. Since the procedure has been introduced, Roskomnadzor has received more than 6,000 orders from the Moscow City Court and, on the basis of these orders, protection measures have been taken with respect to more than 3,800 copyrighted materials. Audiovisual content (films and series) accounts for the bulk of these materials, 67 per cent, followed by literary works at 11 per cent and television and radio broadcasts, which account for nine per cent. Computer programs and musical works each account for six per cent, while the remaining categories of copyright-protected works (scientific works, artworks, and databases) make up one per cent.

4. It is noteworthy that the mechanism provided for under Article 15.2 of the Federal Law on Information, Information Technologies and Protection of Information allows right holders, on the basis of an order by the Moscow City Court, to send applications to Roskomnadzor to restrict access to websites that disseminate copyright-infringing content. Therefore, on the basis of a single court order in respect of specific copyright-protected material, it is possible to take measures against a broad range of websites that unlawfully disseminate this material.

5. Thanks to its simplicity, this mechanism is the most popular among right holders. To date, Roskomnadzor has received more than 16,000 applications to restrict access to more than 150,000 websites containing pirated material, which is 11 times more than the number of websites that were included in orders by the Moscow City Court.

B. INTRODUCTION OF A PERMANENT WEBSITE BLOCKING PROCEDURE

6. Approximately 85 per cent of the website owners actively cooperate with Roskomnadzor and remove pirated content before the blocking takes effect. Nevertheless, the remaining 15 per cent willfully continue to engage in unlawful activity.

7. It is precisely for this reason that Article 15.6 was added to the law in 2015³. It introduced a permanent blocking procedure for pirate sites that repeatedly violate copyright. For permanent blocking to be applicable, the respective right holder must have prevailed twice in legal proceedings against the infringing website owner. Within 24 hours of receiving a relevant court decision, Roskomnadzor sends an instruction to communications operators to block the website in question, and the access restriction may not be lifted.

8. To date, 936 websites have been blocked on the basis of 258 decisions by the Moscow City Court; these include well-known pirate websites such as rutracker, rapidgator, seasonvar, and kinogo, which have repeatedly featured in various foreign reports as leaders in the dissemination of infringing content⁴.

³ The provision was introduced by Federal Law No. 364-FZ of November 24, 2014, on Amendments to the Federal Law on Information, Information Technology and Information Protection and the Civil Procedure Code, available at: <https://wipolex.wipo.int/en/legislation/details/15580>.

⁴ See, for example, Office of the United States Trade Representative (January 2018), *2017 Out-of-Cycle Review of Notorious Markets*, available at: <https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.18.pdf>.

C. ADDRESSING MIRROR SITES

9. In light of significant losses of viewers in the Russian Federation, the owners of a number of websites have started to employ various methods to get around the blocking. One of the most popular, inexpensive and accessible methods is the creation of mirror sites and their promotion via search engines.

10. In response to this tactic, in October 2017, an extra-judicial mechanism was introduced that allows for the restriction of access to mirror sites of permanently blocked websites based on reasoned decisions by the Ministry of Digital Development, Communications and Mass Media. In addition, search engine operators are required to remove from search results information about Internet websites to which access has been permanently restricted.

11. On the basis of decisions by the Ministry of Digital Development, Communications and Mass Media, more than 5,500 mirror sites have been permanently blocked and over 27,500 requests have been sent to the operators of the most popular major search engines in Russia (Yandex, Google, Mail, Rambler, Sputnik).

II. THE IMPACT OF THE RUSSIAN ANTI-PIRACY PROCEDURES

12. The mechanisms outlined above are actively used by foreign right holders. Roskomnadzor has received over 250 orders by the Moscow City Court with regard to applications from world leaders in the film industry (including 59 orders by the Moscow City Court in response to applications from Warner Bros. Entertainment, Inc.; 118 orders on applications from various subdivisions of Sony; 69 on applications from Universal Music; and seven on applications from Disney Enterprises, Inc., among others). More than 620 foreign copyrighted materials have been protected. This figure is one-fifth of the number of Russian copyrighted works that have been protected (at around 3,200). Nevertheless, the number remains significant, and it is hoped that it will only grow in the future.

A. ONLINE VIDEO SERVICES

13. We can see that the systematic fight against piracy on the Internet is bearing fruit. According to market players, it is having a direct effect on the revenues of online movie theaters (over-the-top online video services) in the Russian Federation. In 2017, according to data from TMT Consulting, the market grew by 60 per cent to RUB 7.7 billion, and in 2018, it grew by another 45 per cent, reaching RUB 11.1 billion. For 2019, 38 per cent of growth has been forecast, which would bring the value of the online movie theatre market to RUB 15 billion. It is also noteworthy that users have become more willing to pay for legitimate online video content. At this point, the fee-based model for online video services is clearly leading the market: revenues earned from user fees in 2018 totaled RUB 7.6 billion, which is 70 per cent more than in 2017. The advertising model for monetization generated RUB 3.5 billion, which is 10 per cent more than in 2017⁵.

14. According to an estimate by J'son & Partners Consulting, the total earnings last year in the market for online video services were RUB 24.8 billion, and further growth is projected for 2019, with earnings forecast to reach RUB 32.4 billion⁶.

⁵ See <https://www.comnews.ru/content/119057/2019-04-12/onlayn-kinoteatry-demonstriruyut-rost>.

⁶ See https://www.dp.ru/a/2019/04/16/Gosudarstvu_luchshe_ne_vle.

15. According to data from Telecom Daily⁷, the earnings of legal online video services in the Russian Federation totaled RUB 16.49 billion 2018, which is 46 per cent higher than the numbers reported for the previous year. The largest online video services in the Russian market in 2018 were ivi, YouTube, and Okko, with shares of 23.9 per cent, 14.7 per cent, and 12.8 per cent, respectively. According to Telecom Daily's projections, the market will continue to develop with an annual growth of at least 30 per cent, and in 2019, earnings could exceed RUB 21.4 billion⁸.

B. BOX OFFICE RECEIPTS AT MOVIE THEATERS

16. Positive trends can also be seen in box-office receipts from movie screenings at theaters. Roskomnadzor is dedicating particular attention to the protection of major Russian motion pictures on the Internet. Several projects concerning the protection of Russian movies and television series have been completed successfully. In cooperation with copyright holders, Roskomnadzor searched for websites with illegal content and sent requests for the removal of such content to the hosting providers and website owners. In case of failure to remove copyright-violating content, access to the uniform resource locator and its corresponding Internet protocol address were blocked in the territory of the Russian Federation. The first project of this kind, which served as a pilot allowing some practical experience to be gained, was the protection of the film *Battalion*. Total receipts from this film reached RUB 447 million (putting it in third place among Russian motion pictures in 2015⁹).

17. Subsequently, similar protection measures were taken with respect to such popular Russian films as *Going Vertical* (RUB 3 billion¹⁰), *T-34* (RUB 2.2 billion), *Policeman from Rublevka: New Year's Mayhem* (RUB 1.8 billion), *The Last Warrior* (RUB 1.7 billion), *Flight Crew* (RUB 1.5 billion), *Viking* (RUB 1.5 billion), *Attraction* (RUB 1.1 billion) and many others. For the sake of comparison, the highest-grossing film in Russian Federation so far is *Avatar*, which earned RUB 3.6 billion. In 2018, the leading foreign film was *Avengers: Infinity War*, which earned RUB 2.2 billion.

18. Based on the results for 2018, Russian movie box-office receipts were more than RUB 13.8 billion, with a total audience number of 57.9 million, exceeding the figures for the previous year by 6.1 per cent and 5.8 per cent, respectively. It is worth noting that eight motion pictures brought in more than RUB 1 billion in the rental market, and two of them were Russian¹¹.

III. THE WAY AHEAD

19. Irrespective of the positive figures, improvements in anti-piracy laws continue to be made.

20. On November 1, 2018, with Roskomnadzor serving as the moderator, the major domestic right holders of audiovisual works, owners of video hosting services and search engine operators concluded a Memorandum of Cooperation on the Protection of Exclusive Rights, which provides for direct cooperation among the participating actors on the removal of links to infringing content from search results.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ According to information from the site kinopoisk.ru, available at: https://www.kinopoisk.ru/box/-best_rus/view_year/2015/.

¹⁰ See <http://www.kinometro.ru/kino/analitika>.

¹¹ See <http://www.fond-kino.ru/news/kinoprokat-rossii-itogi-2018-goda/>.

21. Pursuant to the provisions of the Memorandum, a Working Group was established to implement the voluntary mechanisms of the Memorandum into legislation. This can be seen as an attempt to avoid over-regulation and encourage industry to engage in robust cooperation.

22. It seems that in the future, self-regulation of the sector will be a cornerstone of the fight against pirated content. Only by engaging in ongoing constructive dialogue will it be possible to achieve maximum results in copyright protection.

[End of contribution]

THE UNITED KINGDOM POLICE INTELLECTUAL PROPERTY CRIME UNIT

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ABSTRACT

Online counterfeiting and piracy is an ever-increasing threat to businesses and consumers. To address this problem, in 2013, the United Kingdom (UK) Government created the Police Intellectual Property Crime Unit (PIPCU), dedicated to tackling serious and organized online piracy and counterfeiting (affecting digital and physical goods) and to protecting legitimate UK businesses. PIPCU is one element of the UK intellectual property (IP) enforcement landscape, which aims to ensure that businesses and individuals are able to protect and enforce their IP rights.

I. INTRODUCTION

1. In May 2016, the United Kingdom (UK) Government published its intellectual property (IP) enforcement strategy *Protecting Creativity, Supporting Innovation: IP Enforcement 2020*. This sets out how the Government will make effective, proportionate and accessible enforcement of IP rights a priority up to 2020. IP plays a key role in promoting innovation and economic development – research shows that UK investment in intangible assets protected by IP rights (IPRs) was GBP 70 billion in 2014¹. Moreover, the creative industries contributed over GBP 100 billion to the UK economy in 2017², and protecting IP is an increasingly important means of supporting this key role.

2. The UK Intellectual Property Office (IPO) is responsible for ensuring that the framework exists to enable businesses and individuals to protect and enforce their IPRs. To deliver the IP enforcement strategy, the IPO works with domestic and international partners from industry, law enforcement and government to address the multiple and growing challenges posed by IP infringement. The approach to tackling IP infringement in the UK is an integrated one, combining enforcement with public education while providing consumers with the information they need to access genuine goods and legitimate digital content. The IPO has in place a number of criminal, civil, administrative and voluntary initiatives which provide right holders and law enforcement with a package of measures to use to tackle IP infringement.

3. IP crime (counterfeiting and piracy) has long been a problem in the world of physical goods, but technological advances – which offer both great benefits and significant challenges to society at large – mean that online IP crime is an ever-increasing threat to businesses in the form of both piracy and counterfeiting.

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

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554480/Investment-in-Intangibles.pdf.

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759707/DCMS_Sectors_Economic_Estimates_2017__provisional__GVA.pdf.

4. Businesses, both legitimate and illegitimate, are now able to exploit the Internet to sell and deliver products to consumers in new ways. Online piracy and counterfeiting are increasing problems not only for the creative industries but also for businesses more generally, and for the safety and well-being of consumers. Government, law enforcement agencies and industry must collaborate more effectively to address these new challenges, protect against criminality, and deliver safe, sustainable growth for businesses and the economy. One initiative to help achieve this is the Police Intellectual Property Crime Unit (PIPCU).

II. THE POLICE INTELLECTUAL PROPERTY CRIME UNIT

5. In September 2013, the UK Government created a dedicated online IP crime unit, run by the City of London Police. Funded by the IPO, PIPCU is an operationally independent law enforcement unit, dedicated to tackling serious and organized IP crime affecting digital and physical goods (with the exception of pharmaceutical goods). It focuses on offences committed using online platforms.

6. PIPCU brings together industry, government, law enforcement agencies and a range of other public authorities, to coordinate resources to deal with serious online IP crime. The unit was established to act as the primary liaison body between law enforcement (national and international), the wider IP protection community of right holders, industry, government and public authorities. It ensures that collaborative prevention, intervention and investigation/prosecution responses are adopted against the most harmful threats affecting the UK in the area of online IP crime.

7. Governance arrangements include the PIPCU Steering Group. This consists of representatives from the IPO, the City of London Police, and various right holders and industry bodies. The Steering Group sets high-level strategic objectives and priorities, however, as PIPCU is an operationally independent unit, decisions regarding which cases it will take on or refer to other agencies and police forces are made by PIPCU itself.

8. PIPCU will not accept a case that has been investigated by another law enforcement agency unless the case is referred to it by that agency. Nor does PIPCU investigate cases involving counterfeit pharmaceuticals, foodstuffs or tobacco, as these fall under the responsibility of other authorities within the UK. When determining whether a case is accepted for investigation, a number of factors are taken into consideration³:

- Crime type – whether the case falls within PIPCU's remit.
- Organized crime – whether the offences are believed to be planned, coordinated and conducted by people working together on a continuing basis and the extent to which those involved have been identified.
- Harm and loss – whether the criminal activity has the potential to endanger public safety and the extent of any actual or anticipated financial loss or reputational harm to the right holder or referrer.
- Ongoing criminal activity – suspected criminality should be current. Cases where the criminal activity has ceased or is historical will only be investigated in exceptional circumstances.
- Asset recovery opportunities – whether there are realistic opportunities to recover the proceeds of IP crimes.

³ <https://www.cityoflondon.police.uk/advice-and-support/fraud-and-economic-crime/pipcu/Documents/pipcu-referral-guide.pdf>.

- Successful prosecution – there must be sufficient lines of enquiry available to identify the primary suspects. There must be a realistic prospect that the case will result in a successful prosecution.

9. PIPCU has two primary operations: one focusing on action to tackle copyright-infringing websites, and another aiming to reduce the sale of counterfeit goods online.

A. OPERATION CREATIVE

10. Operation Creative is a pioneering partnership between PIPCU and the advertising and creative industries to prevent and disrupt copyright-infringing websites. The appearance of adverts from established brands on illegal websites lends such websites a look of legitimacy. Therefore, a decrease in advertising from reputable brands will help consumers realize that these sites are neither official nor legal. It also deprives the criminals behind these websites of a lucrative source of funding.

11. Right holders in the creative industries identify and report copyright-infringing websites to PIPCU, providing a detailed package of evidence indicating how the site is involved in illegal copyright infringement. PIPCU evaluates and verifies whether the websites are infringing copyright. If confirmed, the site owner is contacted by PIPCU and offered the opportunity to engage with the police, to correct their behaviour, and to begin to operate legitimately.

12. If a website fails to comply, then a variety of other tactical options may be used, proportionate to the level of criminal activity reported. This includes contacting the domain registrar to inform them of the criminality and to seek suspension of the site; and disrupting advertising revenue using an Infringing Website List (IWL) available to those involved in the sale and trading of digital advertising. The IWL is an online portal providing the digital advertising sector with an up-to-date list of copyright-infringing websites, identified and evidenced by the creative industries and verified by PIPCU. The aim of the IWL is that advertisers, agencies and other intermediaries will use it as a brand safety tool and cease advert placement on these illegal websites. Disrupting advertising is a vital part of Operation Creative, as advertising is a key generator of criminal profits for websites providing access to infringing content. A Digital Citizens Alliance 2015 report found in a study that 589 infringing websites had generated an estimated USD 209 million in advertising revenues in 2014⁴, whilst an Incopro 2015 report found that advertising was the predominant revenue source for the top 250 unauthorized sites in the European Union (EU)⁵. Between 2013 and August 2015, there was a 73 per cent decrease in advertising from the UK's top advertisement-spending companies on copyright-infringing websites.

13. To reinforce the message, officers from PIPCU have also visited organizations (including brands, advertising agencies and networks) found to be advertising on websites involved in digital piracy. The organizations were made aware of their involvement and indicated their willingness to sign up to the IWL⁶.

⁴ Digital Citizens Alliance (May 2015), *Good Money Still Going Bad: Digital Thieves and the Hijacking of the Online Ad Business*, available at: <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/goodstillbad.pdf>.

⁵ Incopro (March 2015), *The Revenue Sources for Websites Making Available Copyright Content Without Consent in the EU*.

⁶ <https://www.fact-uk.org.uk/operation-creative-tackles-advertising-on-pirate-sites/>.

14. In October 2016, the Gambling Commission made placing digital adverts responsibly a licensing condition for all gambling operators targeting consumers in Great Britain⁷. This condition means that licensees must not place advertisements on illegal websites and must take all reasonable steps to ensure that third parties under contract with them take the same approach. Research has shown that there was an 87 per cent drop in advertisements for licensed gambling operators being displayed on illegal sites that infringe copyright in the first 12-month period of the condition being in place⁸.

B. OPERATION ASHIKO

15. Operation Ashiko is an initiative in partnership with a number of brands, brand protection organizations and Internet registries to disrupt websites selling counterfeit goods to unsuspecting customers. Criminals are now using professionally designed, realistic-looking websites whose sole purpose is to mislead consumers into believing they are purchasing legitimate goods. Payment is accepted for products, but frequently consumers will either not receive the items ordered or will receive items that are of either significantly inferior quality or unsafe. As well as protecting consumers, Operation Ashiko also protects the integrity of the uk domain.

16. Reports of counterfeit websites are submitted to PIPCU from a variety of sources, including national and international law enforcement agencies, such as Trading Standards and Europol, and from individual brands who request assistance in disrupting and preventing websites selling counterfeit products online.

17. PIPCU verifies the information provided and will refer any infringing websites to Nominet (the .uk domain registry), indicating that the domain is being used for criminal activity. Nominet will then request that the registrar investigate the relevant domain names for breach of the terms and conditions, and, if a breach is found, take steps to prevent the domain name from being used for a minimum of 12 months (or until the expiry of the domain name, if sooner). Should the registrar fail to take action within 48 hours of receipt of the request, PIPCU will ask Nominet to investigate the domain name.

18. Domain suspension is one of the remedies for breaching Nominet's terms and conditions of use, which include the agreement to not use the domain name for any unlawful purpose⁹. Where websites with .uk domains are selling counterfeit goods (and are committing offences under UK legislation, for example the Trade Marks Act 1994 or the Fraud Act 2006), this is a relatively simple way to disrupt and prevent counterfeit goods reaching UK consumers. Over 66,500 website selling counterfeit goods have been taken down through Operation Ashiko.

C. OTHER OPERATIONAL ACTIVITY

19. Aside from Operation Creative and Operation Ashiko, PIPCU has been involved with tackling IP crime across the UK and with international partners. This includes working with the motor industry to tackle the sale of counterfeit airbags on eBay; halting a worldwide TV streaming hub; and securing convictions of suppliers of illicit streaming devices.

⁷ Great Britain is composed of England, Scotland and Wales. There is a separate regulator for the gambling industry in Northern Ireland.

⁸ See http://news.cityoflondon.police.uk/r/842/operation_creative_prevents_millions_of_pounds_en.

⁹ See condition 6.1.5 of Nominet's Terms and Conditions of Domain Name Registration, available at: <https://media.nominet.uk/wp-content/uploads/2018/05/22141655/Ts-and-Cs-of-Domain-Name-Registration.pdf>.

20. Most recently, on World IP Day 2019 (April 26, 2019), PIPCU announced its latest operation. Operation Chargewell assists victims of counterfeit websites in obtaining refunds. Consumers who unwittingly buy counterfeit items and report it to their bank will be directed to PIPCU, who will assist with returning the money.

21. As a result of this activity, since its inception in 2013 PIPCU has:

- disrupted GBP 719 million worth of IP crime;
- taken down over 66,500 websites suspected of selling counterfeit goods; and
- added 1,646 websites to the IWL and suspended a further 1,861.

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