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GUIDELINES FOR CRIMINAL INVESTIGATIONS INTO INDUSTRIAL PROPERTY RIGHTS INFRINGEMENTS: AN ITALIAN EXAMPLE

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ABSTRACT

This contribution describes the results of a project led by the Italian Patent and Trademark Office and implemented by the United Nations Interregional Crime and Justice Research Institute. The main aim of the project was to provide practical tools for law enforcement officials investigating intellectual property crimes in Italy, including information on investigative techniques, strategies and tools that can be used to investigate criminal violations of industrial property rights. These tools have subsequently been translated into investigative guidelines that cover sales of IP infringing products offered online and offline. In relation to investigative phases, the guidelines cover several topics, such as investigating financial transactions - including those through cryptocurrency - delivery methods, sales through social media, websites and e-commerce platforms. The guidelines are fully customized for the Italian legal and procedural framework and include guidance on procedures and requirements that investigators need to follow when using certain investigative techniques or establishing cooperation with private sector actors for investigative purposes. The contribution goes on to outline how the project could be replicated in other countries.

* 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.

I. OVERVIEW

1. Over a period of 18 months from July 2024 to December 2025, the Italian Patent and Trademark Office, which is part of the Directorate General for Industrial Property of the Ministry of Enterprise and Made in Italy (MIMIT), led a project that aimed to promote the systematic application in Italy of good investigative practices related to intellectual property (IP) crimes, especially in cases where the technological component plays a key role both in infringement and enforcement.
2. The project drew inspiration from the Handbook on Infringements of Intellectual Property Rights created by the European Union Intellectual Property Office and drafted by UNICRI within the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT) in the 2022–2023 biennium.
3. To ensure a practical approach, project activities focused on providing tools for use by law enforcement officials in the form of various sets of investigative guidelines. The guidelines are intended to support investigators by highlighting how good investigative practices in the area of IP crime can be applied in practice, referencing available investigative strategies and techniques in the financial, digital and physical domains and presenting criminal procedures and legal requirements that must be respected when applying such techniques.
4. The guidelines, which focus on industrial property rights, were drafted with support from an expert group comprising representatives of law enforcement agencies operating in Italy and MIMIT. Each set of guidelines is specific to a particular criminal *modus operandi* and contains guidance on how to set up and conduct an investigation. In relation to the use and misuse of technology, each set of guidelines contains information that can readily be applied by law enforcers and the judiciary on the misuse of technology by criminals involved in IP crimes and on related investigative techniques, including those which are themselves based on the use of technology.
5. In total, five sets of investigative guidelines were created, three of them focusing on the misuse of the Internet for committing IP crimes (online infringement) and two of them dedicated to sales by wholesalers and retailers (offline infringement). The offline guidelines also contain an online component because the same actors could sell online. However, in these cases reference is made principally to the online guidelines, which law enforcers are invited to read. Each set of investigative guidelines exists in two versions: one for law enforcers and one for prosecutors. The guidelines are complemented by 10 in-depth information documents, providing additional information on specific topics for those who wish to obtain a more detailed understanding of specific investigative techniques.

II. CREATION AND LAUNCH OF THE GUIDELINES

6. One of the key elements for the success of the project was the creation of an expert group to facilitate the sharing of expertise. The expert group contributed significantly to the successful outcome of project activities by ensuring that the guidelines created by UNICRI reflect the difficulties that an investigator faces on a daily basis and by providing information on some key concepts, such as the applicability of certain investigative techniques in Italy, which investigative techniques require judicial authorization and how such authorization can be obtained.

7. In addition to MIMIT officials, the expert group included representatives of the following law enforcement agencies: the Italian Customs Agency; the Italian Carabinieri (a division of the military police force); the Italian Guardia di Finanza (a law enforcement agency operating under the Ministry of Economy and Finance); the Italian Postal and Cybersecurity Police; the Italian Criminal Analysis Service of the Ministry of the Interior; and the municipal police of Milan and Venice.

A. CONTENT OF THE GUIDELINES

8. The guidelines contain practical advice for law enforcement agencies on initiating and pursuing investigations in cases where counterfeit products are sold over the Internet or via wholesalers or retailers. In relation to Internet sales, three sets of guidelines are dedicated, respectively, to: sales conducted through social media; sales conducted through websites; and sales conducted through e-commerce platforms. They are cross-referenced to cover, for instance, cases where a counterfeit product is promoted through a social media group but the sale takes place through a different channel, such as a specific website, an e-commerce platform, a physical store or simply a meeting place.

9. Each set of guidelines suggests an investigative approach that takes into account the various starting points for an investigation: a complaint made by a rights holder, a complaint from a consumer, or inspection and monitoring by police or customs. The information available to investigators may be substantially different depending on the way in which an investigation is initiated, and the guidelines give maximum flexibility to investigators in terms of which sections to consult and in what order. As an example, an investigation might start with the control of a social media group and progressively branch out to establish connections with other groups or websites, identify group administrators and look into methods of sale, payment and delivery. Similarly, an investigation begun as the result of a complaint filed by a rights holder or consumer could provide information on payment instruments and the methods of delivering a product, which in this case would form the basis for the entire investigation, reaching as far as the website administrator who sold the product, an online shop operating on an e-commerce platform or the administrator of a social media group responsible for the offence.

10. There are various investigative paths that can be followed by law enforcement agencies. The guidelines are structured so as to direct users to those sections that are relevant to their investigation. A series of hyperlinks in the text refer readers to each specific section they need to consult. With a view to ensuring flexibility and ease of use, the various sections of the guidelines also contain references to other sections through additional hyperlinks, pointing investigators towards other phases of the investigation that may be relevant in deepening their understanding of a case. The aim is to inspire readers to conduct in-depth investigations, where possible, while ensuring that the guidelines remain user-friendly.

11. The guidelines for each investigative phase include step-by-step guidance on the various actions that law enforcement can take, the possible results that may be obtained from each action and their relevance to continuing the investigation and/or opening new lines of inquiry. In this regard, it should be noted that two key elements emerged during consultations with the expert group and were subsequently included in the guidelines by UNICRI. First, the experts drew a distinction between investigative activities and techniques that can be used independently by police, on the one hand, and those that require authorization from the judicial authorities, on the other. Second, the experts stressed the need to provide a brief description of the procedure to be followed to request such authorization. These elements were deemed essential to provide investigators with a reference document which is as complete as possible, including with regard to procedural compliance.

B. IN-DEPTH INFORMATION DOCUMENTS

12. The guidelines are complemented by a series of in-depth information documents, the use of which is not exclusive to specific sets of guidelines, as they have been drafted so as to present cross-cutting information on topics of broader relevance. These documents provide technical information on various concepts that investigators should be familiar with in order to better carry out the investigative phase; they are a prerequisite for effective use of the guidelines. They cover topics such as investigating usernames, Internet Protocol addresses, geolocations, WHOIS and hosting; conducting investigations via the Internet; investigative tools for social media; and cryptocurrency investigations.

13. Specific in-depth information documents were also drafted for the two sets of investigative guidelines dedicated to physical sales of counterfeit goods by wholesalers and retailers. In this case, the topics covered include the investigative initiative of the judicial police; techniques for gathering evidence and the role of evidentiary seizure in the field of IP crimes; and the acquisition of telephone/telematic records, wiretapping and video surveillance.

14. References to the content of these in-depth information documents are included in the guidelines, both at the beginning of each set of guidelines and in the body of the text, where relevant.

C. TESTING AND LAUNCH OF THE GUIDELINES

15. The three sets of investigative guidelines dedicated to the sale of counterfeit products through the Internet were tested for a period of three months by the Italian Postal and Cybersecurity Police. No modifications were required after the test phase.

16. MIMIT officially launched the guidelines on October 21, 2025, to coincide with Anti-Counterfeiting Week 2025, at an event dedicated to the Italian IP enforcement system and the potential role of the guidelines for improving criminal investigations into IP crimes.

III. CONCLUSION

17. The methodology for this project relied heavily on close cooperation with national law enforcement agencies, brought together within the expert group that supported the project throughout its duration and whose members were consulted by UNICRI on a regular basis. Each member of the expert group was designated by a competent law enforcement authority on the basis of their expertise in dealing with specific aspects of investigating IP crimes, allowing the expert group to cover a wide range of key investigative topics, ranging from financial transactions to digital forensics and the collection of evidence.

18. The expert group was also vital in providing information on the procedures and requirements for using various investigative techniques, such as requesting information from an Internet service provider or an intermediary operating within the postal system.

19. This methodology can be easily replicated in other countries, provided that the national law enforcement agencies concerned are committed and ready to cooperate by providing the required information and/or validating what the project implementers include in the guidelines. Any guidelines drafted for one Member State will necessarily be different from those drafted for another, since the format and key topics chosen by national authorities will differ, as will the legal and procedural frameworks involved. Experience gained from the MIMIT project will allow UNICRI to start from a solid knowledge base in creating investigative guidelines for other

countries, relying on a proven methodology and a series of well-developed concepts that can be adapted to a range of legislative and procedural frameworks.

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