

# RISKS AND DAMAGES POSED BY IPR INFRINGEMENT IN EUROPE

*Awareness campaign 2021*



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The COVID-19 pandemic and the resulting rise in online shopping and consumption of digital content, has shed new light on the risks and damages posed by intellectual property rights (IPR) infringement in Europe and put the dangers for consumers under a microscope.

Consumers find it difficult to distinguish between genuine and fake goods, especially online. Generally, 1 out of 3 people (though in some countries as many as 1 in 2) and on average nearly 1 in 10 Europeans (9 %) claimed that they were misled into buying counterfeits. They also find it difficult to separate legal sources of digital content from illegal ones <sup>(1)</sup>.

As online trade is booming - over 70 % of Europeans shopped online in 2020, according to Eurostat - uncertainty regarding counterfeit products has become a growing concern for consumer protection.

A joint European Union Intellectual Property Office (EUIPO) and Organisation for Economic Co-operation and Development (OECD) study estimated that counterfeit products represent **6.8 % of European Union (EU) imports** worth **EUR 121 billion** and impact every sector, from cosmetics and toys, wine and beverages, electronics and clothing to pesticides and pharmaceutical products.

Counterfeiters operate swiftly in the globalised economy, misusing modern logistical solutions and legitimate trade facilitation mechanisms, thriving in economies that lack solid standards of governance. Evidence shows that, while criminals continue to use all available modes of transport for illicit trade, seizures from maritime container shipping continue to dominate in terms of the volume and value of goods seized. Containerised maritime transport remains a major channel for the shipping of counterfeit goods coming largely from East Asia and notably China and Hong Kong, which account for 80 % of the total value of fakes seized from containers worldwide <sup>(2)</sup>.

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<sup>(1)</sup> [European Citizens and Intellectual Property, Oct, 2020, EUIPO](#)

<sup>(2)</sup> [Misuse of Containerised Maritime Shipping \(europa.eu, OECD-EUIPO, Feb. 2021\)](#)

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## Significant risks for citizens

Counterfeit products pose serious risks to the health and safety of citizens as they usually do not comply with quality and safety standards and can contain dangerous ingredients or components: a qualitative analysis by the EUIPO showed<sup>(3)</sup> that major risks are linked to exposure to **hazardous chemicals**.

Concern for human and environmental damage from the production, use and disposal of counterfeit pesticides and chemicals has led enforcers to coordinate periodic massive cross-border enforcement operations. Since their launch, the Silver Axe operations<sup>(4)</sup> have resulted in the seizure by authorities of 1 222 tons of illicit and counterfeit pesticides, herbicides and fertilisers.

The worldwide trade in counterfeit pharmaceutical products had been estimated<sup>(5)</sup> at **EUR 4 billion**. Mail and courier services are the main modes of transport for the counterfeit pharmaceuticals traded worldwide. Concern over counterfeit products has risen even more during the COVID-19 pandemic.

The proliferation of counterfeit medicines, including antibiotics and painkillers, and other medical products such as personal protective equipment and face masks, has drawn special attention to this phenomenon as infringers prey on citizens' uncertainty about emerging treatment and vaccines<sup>(6)</sup>.

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<sup>(3)</sup> [EUIPO DANGEROUS COUNTERFEIT STUDY.docx \(europa.eu, June 2019\)](#)

<sup>(4)</sup> Operation Silver Axe started in 2012 and now includes nearly 30 countries worldwide, [Operation Silver Axe strikes for the fourth time seizing over 550 tonnes of illegal pesticides | Europol \(europa.eu, Europol\)](#)

<sup>(5)</sup> [Trade in Counterfeit Pharmaceutical Products \(OECD-EUIPO, March 2020\)](#)

<sup>(6)</sup> [Europol predictions correct for fake COVID-19 vaccines | Europol \(europa.eu\)](#)

## Involvement of criminal organisations

Evidence has increasingly confirmed the involvement of organised crime groups in the infringement of IPR and the link between IP crime and other crimes, such as drug trafficking, forced labour, cybercrime, fraud, document fraud and money laundering<sup>(7)</sup>. IP crime is seen as a profitable activity with a high return on investment, low risk of detection, and relatively light punishments (shorter prison sentences, lower fines) compared to other illicit activities.

Digital piracy also represents a highly lucrative market for infringers. Just in the area of internet protocol television (IPTV), **EUR 1 billion of unlawful revenue** is generated every year by the supply and consumption of copyright-infringing digital content in the EU<sup>(8)</sup>. Harming creators and legitimate businesses, these illegal services were used by 13.7 million people in the EU in 2019 (i.e. 3.6 % of the EU population).

## IP infringement on social media

In addition to the health and safety risks, purchasing counterfeit goods and accessing pirated digital content often result in security breaches and financial losses for consumers who are active on web shops, platforms and online marketplaces but can also be reached via social media.

A recent analysis<sup>(9)</sup> highlighted the misuse of social media for the benefit of counterfeiting and piracy. In a review of millions of public discussions on Facebook, Twitter, Instagram, and Reddit, EUIPO research found that one third of conversations on digital content (35 %) could possibly relate to piracy, with film and music piracy being the areas most discussed especially on Reddit and Twitter. A notable increase in piracy-related discussions during the months at the start of the pandemic in Spring 2020 was also identified. The research also underlined that 11 % of conversations regarding physical products could also possibly relate to counterfeits.

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<sup>(7)</sup> [EUROPOL-EUIPO Polycriminality Report 2.docx \(europa.eu\)](#)

<sup>(8)</sup> [IPTV\\_Study \(europa.eu\), November 2019](#)

<sup>(9)</sup> [Monitoring and analysing social media in relation to IP infringement \(April 2021\)](#)

## IP infringement damages legitimate businesses and notably SMEs

IP infringement not only affects consumers, it also causes considerable damage to the EU economy. It has an impact on the legitimate interests of economic operators in the EU and skews the playing field in the internal market. In the legitimate economy, EUR 83 billion in sales are lost per year in 11 key sectors particularly vulnerable to counterfeiting, in addition to EUR 15 billion losses in taxes and social security contributions and it is estimated that 670 000 jobs are lost every year in the EU in those sectors due to counterfeiting.

IP infringement is particularly damaging to small and medium-sized enterprises (SME). According to the [IP SME scoreboard](#) published by the EUIPO, 1 out of 4 small businesses in Europe claims to have suffered from IP infringement. 33 % of companies who own IP rights such as trade marks or patents reported a general loss in turnover, while 27 % reported damage to their reputation and 15 % reported a loss of competitive their edge due to IP infringement.

During the pandemic, businesses made increasing use of the [IP Enforcement Portal](#) established by the EUIPO to facilitate the exchange between rights holders and enforcers (customs and police authorities), indicating that companies may have suffered an increased number of infringements of their IP rights.

Correspondingly, a positive association between IPR ownership and economic performance has also been confirmed and it is particularly strong for SMEs<sup>(10)</sup>. IPR owners perform better than non-owners. Overall, revenue per employee is approximately 55 % higher for IPR owners than for firms that do not own IPRs. This relationship is particularly pronounced for SMEs. SMEs that own IPRs (although they are fewer than 9 %) have 68 % higher revenue per employee than SMEs that do not own any IPRs (controlling for other relevant factors) and they also pay higher wages.

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<sup>(10)</sup> [Firm level IP-contribution study](#), EPO-EUIPO, Feb. 2021.

Looking to the future, IPR-intensive industries in general, and SMEs who are innovating with new technologies in particular, can expect to play a crucial role in pulling Europe's economy out of the post-pandemic crisis.

## Understanding infringing business models and involving intermediaries for better enforcement

A better understanding of the business models used by infringers to make money is helping to tailor and strengthen enforcement efforts while involving relevant partners in the fight against counterfeiting and piracy.

As IPR infringement gains visibility in the online environment, domain names play an important role in a number of IP-infringing online business models that have damaging effects on consumers, IP owners and the entire domain name ecosystem. With the number of domain names now exceeding 375 million globally, cybersquatting is a genuine problem for legitimate brands and consumers and could be a particularly serious issue for SMEs, who often lack the resources to actively monitor their web presence to detect cybersquatting and protect their brands' reputations.

Recent analysis from the EUIPO<sup>(11)</sup> covering 1 000 domain names (similar and variations) related to 20 participating brands showed that half are considered suspicious, that is, they point to websites selling counterfeits.

The EUIPO has analysed<sup>(12)</sup> good practices that are being implemented by registrars and registries to prevent the misuse of domain names for IP-infringing activities, such as the development of appropriate terms and conditions, limitations on the use of proxy services, the build-up of systems to verify the identity of the registrant and detect and act upon abusive domain registration.

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<sup>(11)</sup> [Focus on cybersquatting: monitoring and analysis \(May 2021\)](#)

<sup>(12)</sup> [2021 Discussion Paper on Domain Names FullR\\_en.pdf \(europa.eu, EUIPO, March 2021\)](#)

Some registries have also put notice and take down processes in place targeting domains with illegal content, in cooperation with public or law enforcement authorities. They are also cooperating with IP owners and enforcement authorities to share intelligence and to limit IP-infringing uses of domain names.

The EUIPO has also explored the use of social media in infringing IPRs, such as hosting, streaming or linking to IP-infringing content or the advertising of this type of content through social media, combining public and closed group communications to defeat IP enforcement measures.

Preventive and corrective good practices are identified to address IP infringement.

## Cooperation within intermediaries

In addition to traditional enforcement bodies (police, Customs) that are important for the enforcement of IPR, there are other players who are taking on an increasingly important role including, in particular, the intermediaries, whose legitimate services are misused by infringers and who are often the first port of call for rights holders trying to stop the infringement.

E-commerce marketplaces open up vast new possibilities for legitimate sellers to enter new markets and to access consumers. However, they can also be misused to sell counterfeits.

Many of the large e-commerce marketplaces already have programmes in place to support rights holders in notifying IP infringement on their platforms. Many rights holders may not be aware of existing programmes or are burdened by having to provide their information repeatedly in different platforms. Many platforms are not sure or cannot easily check whether they are dealing with the legitimate IP owner when they get information about IP infringements on their marketplaces. The EUIPO is therefore developing an integrated secure online service to facilitate this collaboration between IP rights holders and e-commerce marketplaces, identifying and removing listings that infringe IPRs through the IP Enforcement Portal.

With technological advances, the expansion of e-commerce and virtual marketplaces, and new business models rapidly reshaping the economic and social environment, many aspects surrounding the registration, exploitation and enforcement of IPRs need to be adapted.



## New technologies and IPR enforcement

Technology offers numerous solutions to protect ownership rights and defend legitimate supply chains. However, the market for anti-counterfeiting technologies is broad and complex. The technologies are evolving fast and information about them is not easily accessible.

To help companies to maximise their protection against fakes by taking advantage of the numerous technical solutions available, an Anti-Counterfeiting Technology Guide<sup>(13)</sup> has been released to guide businesses through the main types of anti-counterfeiting technology, including electronic identification or tracking devices, how to place markers on products or packaging, and other chemical, physical, mechanical, and digital tools. It shows the most cost-effective and practical ways of protecting IPR, and describes the implementation requirements and costs in clear terms. A specialised search tool that helps companies find anti-counterfeiting solutions best suited to their business is to be developed based on this guide.

In addition, the potential of blockchain technology to ensure that original (authenticated) products can be recognised as original at any point in the supply chain, by logistic companies or enforcers (such as Customs, in the event of imports) is being explored. The design and construction of an infrastructure that is open and inter-operable (i.e. able to connect to companies' existing track and trace solutions and enforcement's risk analysis systems) is envisaged and would also link to the [IP Enforcement Portal](#).

Besides the social, environmental and economic damages, IPR infringement can also lead to loss of reputation and can undermine innovation, creativity and R & D investments.

This challenging crisis has undeniably highlighted the need to provide sustainable solutions by identifying best practices and using new technologies in the fight against the criminal organisations who produce, distribute and sell counterfeit goods and pirated digital content. The diffusion of effective awareness campaigns is also crucial to combatting this threat.

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<sup>(13)</sup> [2021 Anti Counterfeiting Technology Guide en.pdf \(europa.eu, EUIPO, Feb. 2021\)](#)

The relevance of strengthening global collaboration between all stakeholders, both public and private, is crucial in this effort. IP crime should once again become a European priority as part of the fight against international crime.

Similarly, efforts at international level should also continue to improve the protection and enforcement of IP rights in third countries, notably in China, Latin America, Southeast Asia and Africa, as part of cooperation programmes for which the EUIPO is the implementing agency, thus addressing the issue of counterfeits at their potential source.

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