Regional Seminar on Enforcement of Intellectual Property Rights

Limassol (Cyprus), 4 - 6 April 2017
List of Participants:

**Representatives from public sector bodies**

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**Representatives from private sector**

- Dora Zachou: Nike and Converse
- Michail Kosmopoulos: Drakopoulos Law Firm
- Nicoletta Epaminonda: Legal representative of Lacoste
- Sozos-Christos Theodoulou: ECTA

**Representatives from EU bodies**

- Andras Vida: Europol

**Representatives from EUIPO**

- Valerio Papajorgji: Observatory
Opening of the Seminar and Welcome Speech

The seminar was inaugurated by a welcoming note delivered by the Assistant Chief of Operations of Cypriot Police, who outlined the importance of the seminar which aimed to update law enforcement authorities on the ongoing developments in the ever-changing field of IP. The seminar also intended to build new bridges of communication among the participating countries and strengthen existing cooperation in combatting IP crime, as well as all other types of crime.

The EUIPO welcomed the participants to the seminar, which was attended by a total of 54 participants, from 11 Member States (MS), and divided between Customs, law enforcement and other organisations. The seminar would consist of international, regional and national cooperation at different levels, including the private sector.

IPR Enforcement - IP Teaching Toolkit

The EUIPO outlined the purpose of the IP toolkit.

The objective of the kit was to:
- Give a practical overview of the IP rights (IPRs) and related EU law relevant concepts;
- support enforcement officers dealing with IPR infringements;
- be used for training purposes of enforcement officers only (not for public);
- be freely adapted by trainers in order to fit training purposes with an indication of the source;
- Give additional information to the trainer and was available in all 24 official languages of the EU.

An overview of the different types of IP was given. It was explained how trade marks protect signs used to identify the business source of products and services and could be protected forever. Designs protect the appearance and features, such as shape, configuration, texture or material of a product. The maximum term of protection was 25 years from the date of filing. Patents are granted for technical inventions. Applications for patents are examined by the patent office they are filed at, in order to determine whether they meet the stringent requirements in order for a patent to be granted. Patents generally last for a maximum of 20 years from the date of filing. Utility models offer simpler protection, for a shorter period of time, but are usually registered and published much faster, and at a lower cost, for applicants than patents.

Trade secrets protect information and could include a formula, pattern, compilation, programme, device, method, technique, or process, that derives independent economic value, actual or potential, from not being generally known to or readily ascertainable through appropriate means by other persons who might obtain economic value from its disclosure or use. The protection of trade secret depends on the efforts made by the secret holder to maintain their secrecy.

Copyright and related rights do not need to be registered. They automatically exist when a work is created. They protect any type of original, creative expression, including literature, art, drama, music, photographs, recordings and broadcasts. Semiconductor topography determines the exact location of each element with an electronic function within the
integrated circuit. An integrated circuit is a set of electronic circuits on one small plate (chip) of semiconductor material, normally silicon. Integrated circuits are used in virtually all electronic equipment today and have revolutionised the world of electronics.

An example of a patent was presented in the form of Michael Jackson’s ‘Anti-gravity illusion’. This illusion was created whereby the shoes had a specially designed heel slot which could be detachably engaged with the hitch member by simply sliding the shoe wearer’s foot forward, thereby engaging with the hitch member. This allowed the wearer to lean forward, giving the illusion of defying gravity.

The importance of IPRs on the economy was explained. Royalties, as an example, did not come from the sale of a song but from the reproduction of a song through radio or through transmission in a public arena. It was highlighted that legal downloads of music from the internet only represent an extremely small percentage of total downloads. It was estimated that 95% of music is downloaded illegally around the world. That percentage is as high as 98% in Spain.

It was explained that IPRs are property rights that belong to their owners. Therefore, only the owners of such rights or authorised people are entitled to use and exploit them. By contrast, any use of IPRs by non-authorised people constitutes an infringement of such rights. Different kinds of use are normally prohibited: strict reproduction of the IPR, in addition to imitating, manufacturing, distributing, advertising, and importing goods bearing the IPR without authorisation of the right holder. From a legal standpoint, counterfeiting and piracy must be clearly distinguished from sub-standard products. Smuggling is also legally different from counterfeiting.

The issue of parallel imports was addressed. Parallel import occurs when there is a price difference for the same products from the same company between two countries, and that it may be a financially beneficial operation to import goods from country A in order to resell them in country B. According to the classic IP principles, such importation would constitute a violation of trademark or patent law. However, this solution was challenged before the European Court of Justice in Luxembourg by way of preliminary rulings as being contrary to the principle of free movement of goods established by the Treaty of Rome.

Over the years, the European Court of Justice set that the rights conferred by IPR had to work with the superior principle of freedom of movement of goods within the European Union, and the European Free Trade Association (EFTA) countries. It ruled that once an IPR protected good is introduced into the EEA by the right holder, its IPR is exhausted and that good can freely be exported to any other EEA country where it holds the same IPR protection. It must be noted that the principle of exhaustion of IPRs only concerns genuine products, and the right owner must be the same, both in the exporting and importing

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1 EFTA is a free trade organisation between four European countries that operates in parallel with, and is linked to, the European Union. EFTA was established on 3 May 1960 as a trade bloc-alternative for European States who were either unable or unwilling to join the then European Economic Community (EEC), which has since become the EU. The Stockholm Convention, establishing EFTA, was signed on 4 January 1960 by seven countries. Today’s EFTA members are Iceland, Liechtenstein, Norway and Switzerland.
countries. It only concerns the EEA. Doing the same from outside of the EEA would still constitute an IPR violation.

According the French Gendarmerie, almost 80% of European crime is carried out for material gain\(^2\). Smuggling, counterfeiting and other criminal activities are governed by just one main rule: making as much profit as possible and taking as few judicial risks as possible. Some examples\(^3\) of the financial benefits from crime were outlined, whereby for every USD 1 000 that was invested, the return varied from USD 3 300 for forged money to USD 300 000 for fake pharmaceuticals. In 2008, international trade in counterfeited and pirated products represented up to 2% of world trade. In 2013, international trade in counterfeited and pirated products represented up to 2.5% of world trade.\(^4\)

During an investigation into the terrorist attack carried out in Madrid on 11 March 2004, it was discovered that the terrorists financed the preparation for the attack by selling pirated music CDs and movie DVDs. This is an example of what street counterfeiting could be used for. It re-enforces the fact that counterfeiting is not a victimless crime.

Behind the enforcement of IPRs, there are several legislative mechanisms that may be used by virtue of Directive 2004/48/EC. The directive stated that MS must implement the following enforcement measures in their legal systems: damages; seizure of counterfeit goods, bank accounts, infringement assets, and machinery; destruction of infringing goods and machinery; closure of factory and/or website; publishing of judgments. There were also criminal remedies available, and Article 61 of the TRIPS Agreement provides that ‘Members shall provide for criminal procedures and penalties to be applied, at least, in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale’. The remedies available shall provide for fines and/or imprisonment. In conjunction to that, a criminal court sentence may provide for a number of actions. When an IPR infringement is committed, it is of key importance for the enforcement officer to identify internally on which ground the violation should be tackled, whether the conditions for a criminal offence were met, and which approach would give the best result in court. Depending on the countries, the trade mark path, the money laundering approach or the tax fraud angle could be the most effective way to convict a criminal who has been engaged in the counterfeit business. There are also various EU legislations that apply to fake and/or dangerous products, such as Directive 2004/48 on IP enforcement, Regulation 608/2013 on Customs actions, and Directive 2005/60 on money laundering.

The EUIPO-CEPOL ‘Virtual Training Centre’

The EUIPO outlined the vision and objectives of the Virtual Training Centre (VTC). The vision was to become the main source of dissemination of IP knowledge dedicated to law enforcement officials (police, Customs officers, prosecutors, members of the judiciary, market inspectors with law enforcement powers, and any other public authority enforcing IPRs at national and local level) throughout the EU, considering that the project was EU-based.

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\(^2\) Source: Judges Seminar’s Executive Summary on the Confiscation of Proceeds of Crime in the IPR Field, 3 and 4 May 2016.

\(^3\) Source: EUROPOL 2014

\(^4\) In 2013, counterfeit and pirated products amounted to up to 5% of imports to the European Union, or as much as EUR 85 billion (USD 116 billion).
The objectives of the VTC were to disseminate and encourage best practices among institutional stakeholders by establishing a training centre which would be considered as the point of reference for knowledge building on IP protection and enforcement. It was added that this platform should also serve to raise awareness on IP among law enforcement managers about the economic impact of IP, including its violations, in order to convince them to consider it as a priority area in their strategic planning.

It was also added that the main value of the centre should be to provide EU enforcers (and their trainers) with a unique, user-friendly, one-stop platform where to find updated learning material covering all the needs they may have as far as IP enforcement is concerned.

The EUIPO outlined the project’s planned time scale and the various objectives to be carried out and completed within the time frame. The project brief was finalised in May 2016 with a proof of concept being carried out in November 2016. A feasibility study was finalised in November 2016. Software requirements specifications were finalised in March 2017. The definition of policies is currently pending approval, while the definition and organisation of content along with the development and deployment of technical solutions were still in progress.

The feasibility study analysed the potential for an interconnection between CEPOL LMS and EUIPO ALP. There were four options proposed: training content hosted at EUIPO ALP (separate login); training content hosted at EUIPO ALP (separate login and CEPOL user role); training content hosted at CEPOL LMS (manual upload to CEPOL LMS), and training content hosted at EUIPO (with automatic integration of two platforms).

A proof of concept study was carried out to verify that automatic integration of the content was in fact, the most feasible option. The proof of concept study covered the connection of the two systems, setting up content on the EUIPO ALP which could be accessed from CEPOL LMS, enrolment for the course, completion of the course, a quiz, and a satisfaction survey about the process.

The results from the proof of concept study revealed that automatic integration was considered desirable and was selected. The feasibility study was concluded and the implementation phase commenced. A software requirements specification study was carried out in order to establish both the functional and non-functional requirements of the system.

The attendees were asked if there might be anything further to add to the list of contents presented. It was suggested that the inclusion of a description of best practice regarding procedures which lead to large seizures at Customs, and major cases from law enforcement. It was also suggested to address further cooperation with the private sector in order to provide examples of where further elements of cooperation could be strengthened. The EUIPO explained that it was their intention to share best practice methods regarding the inclusion of the private sector, it was better not to display details of the right holder in a presentation, but through the EBD.

**Enforcement Database (EDB) and Anti-Counterfeiting Intelligence Support Tool (ACIST)**
The EUIPO explained that Regulation (EU) No 386/2012 is the legal mandate of the Observatory. The Observatory supports the enforcement of IPRs, as well as fostering exchanges between the private and public sectors. It was added that the Observatory's various databases are legal tools, noting that Article 2(1) promoted the creation of tools for the exchange of information.

The EUIPO underlined that the EDB is a secure platform that is free of charge, enabling real-time exchange of information between right holders and enforcement authorities. The right holders can upload information on the EDB, which can then be accessed securely by enforcement authorities. The EUIPO continued by explaining how to gain access, use the network and the global search function. The EBD allows for automatic access to official information on EU trade marks, international trade marks, EU registered community designs, national trade marks, and national designs.

The benefits of using the EDB were highlighted and included:
- The ability to obtain immediate confirmation of the validity of an IPR through a simple search.
- The information was available in national languages.
- The relevant contact details of the right holder were available.
- The possibility to highlight suspicious cases to right holders.
- Alerts could be sent to enforcers by right holders.

The Anti-Counterfeiting Intelligence Support Tool (ACIST) is another database developed by the Observatory, in agreement with DG TAXUD, in order to harmonise the information gathered on seizures of counterfeited products, whereby allowing MS to analyse the data and better act against counterfeiters. The information was gathered from EU Customs and police forces from 17 MS. The EUIPO then gave a demonstration on using ACIST, which gives the user a complete overview on detentions - both at the EU borders and in the internal market Customs and police - and provides trends analysis Customs could also serve as a national tool for collecting and managing data on detentions.

A question was asked if there was any indication as to how those tools would be affected by BREXIT, and the Observatory’s position in that respect. The EUIPO stated that it held no official position on that matter.

The EUIPO added that there would be a future development of their tools in order to help prevent infringements of copyright. Work is also ongoing to develop a unique enforcement IP platform that will integrate all the developed databases.

**Cyprus Legislation and Strategy against Counterfeit Medicines**

The Cypriot Ministry of Health gave a brief presentation regarding the relevant legislation and strategies devised to counter falsified medicines. The directive covering falsified medical products is 2011/62/EU; the definition does not include unintentional quality defects and is without prejudice to infringements of IPRs. According to the World Health Organization (WHO), up to 50% of medicines sold online are considered counterfeit. Falsified medicines could be entirely useless/extremely dangerous, contain the incorrect quantity/quality of an
active ingredient, or be composed of ingredients of a toxic nature. The Ministry of Health’s mission in that respect is to prevent the movement of counterfeit/ falsified medicines within the Cypriot market, as well as their transit through Cyprus to other countries. This strategy was carried out through the use of the four pillars of action: legislation, close collaboration with other relevant authorities, raising public awareness, and preparedness to react to such threats.

In 2001, the ‘Medicinal Products for Human Use’ law (N.70(I) 2001), was published in order to harmonise Cypriot law with Directive 2001/83/EU. In 2004, P.I. 716/2004 was published based on EudraLex-Volume 4, ‘Good Manufacturing Practice Guidelines’. Article 46b concerned the import and movement of pharmaceutical ingredients, whereby no importation of active pharmaceutical ingredients (APIs) from Third Countries was permitted by Customs unless there was a signature from a Pharmaceutical Services’ officer. A file with all written confirmation would be kept in the Pharmaceutical Services offices, with all non-compliance reports and copies from each invoice signed (with a serial number, date and signature) retained.

Article 52a concerns the manufacturing, importation and distribution of APIs. It stated that all API manufactures, importers and distributors in the Republic of Cyprus must be registered in the EudraGMDP database, and that they were regularly inspected. Article 85b concerned supply chains, whereby all brokers in the Republic of Cyprus are registered according to a formal standard operating procedure (SOP). Relevant documentation and information was checked during an initial inspection, and a publicly available register would be kept by the Pharmaceutical Services. It was explained that both article 54 and 54a were to be implemented in February 2019 following further discussion. Article 85c highlights the fact that there were no authorised Internet pharmacies in Cyprus, as national legislation did not allow for distance sale to the public - legislation explicitly indicates that all medicinal products must be provided to the public through a pharmacist. The Medicinal Products for Human Use Law (N.70 (I) 2001) stated that any person who produces, distributes, brokers, imports and/or exported falsified medicinal products, including the distance sale to the public of falsified medicines, would have committed an offence, and in the case of conviction, the person committing those acts could face a punishment of up to five years imprisonment and/or a penalty of EUR 85 000.

The Cypriot Ministry of Health referred to a formal agreement with the State General Laboratory for sampling and testing of pharmaceutical products for market surveillance and for investigations of suspected quality defects (including counterfeit products). It was explained that as Cypriot citizens could not be prevented from travelling to and from the northern region of the island, the Green Line regulation for pharmaceutical products was implemented. That regulation was an informal agreement between Customs and Pharmaceutical Services, taking into account Customs legislation, pharmaceutical legislation, as well as the Council Regulation (EC) No 866/2004 as amended by Council Resolution (EC) No 293/2005 for people passing through certain check points, from one site to the other carrying pharmaceutical products. It was added that in the Northern part of Cyprus, EU Law was not applied due to the Turkish occupation.

The authorities also work closely with the post office; once a week officers from Pharmaceutical Services visit the district post offices in every town and check parcels
containing pharmaceuticals. Narcotics, psychotropic, anabolic are confiscated and the police is subsequently informed. Products with unsatisfactory labelling or suspected of being counterfeit were confiscated. Other products were permitted, up to a limited quantity, for one month's use, provided that the citizen presented a practitioner's prescription and signed a declaration that it was for personal use only (not for sale), and that they were aware of the dangers created by falsified medicines.

The Importance of Operational Cases and Cooperation in Dismantling IPR Violation Networks

Cypriot Customs outlined an investigation into counterfeit goods where almost 20 000 items were recovered from a warehouse. The investigation was collaboration between Customs officers and law enforcement. During the process of investigation, two men were arrested and three vehicles were seized. It was discovered that fake Customs stamps (T2L Status) were used. Following the success of the investigation, a second operation was launched. That investigation involved the search of three warehouses. The result of the investigation was the arrest of a man, the seizure of a vehicle, along with laptops, mobile phones, 3 491 pieces of counterfeit shoes and bags, and 503 pieces of counterfeit clothing. In conclusion, there were significant gains made from the investigations, including EUR 13 500 in taxes and penalties being recovered.

Malta asked for clarification concerning the Cypriot legislation regarding domestic issues related to detaining counterfeit goods. Cypriot Customs confirmed that legislation allowed the Cypriot authorities to enter any premises in order to investigate the area for counterfeit goods.

Building Police Evidence to Bring a Counterfeit Case to Court

The Cypriot Police outlined the process of how evidence was gathered. The process of gathering evidence was similar regardless of the crime. It was explained that the goal of crime scene investigation (and preservation) was to recognise, document, and collect evidence at the scene of a crime. The Locards Exchange Principle stated that when a person came into contact with an object or another person, a cross-transfer of physical evidence could occur. There are two main types of evidence: direct evidence (first hand observation, confessions), and circumstantial evidence. It was added that the storage of evidence and maintaining the chain of custody were of utmost importance. However, unless a complaint is made from the right holder, an investigation could be jeopardised.

A question was raised regarding the preservation of evidence, such as laptops, computers and files, and whether mobile phones could be searched. It was explained that current legislation did not allow for the searching of mobile phones due to privacy of information laws, while computers and laptops could be searched, but only following strict protocol in order to prevent the contamination of evidence.

In answer to a question raised regarding the steps that would be taken if a right holder decided not to react to a seizure of a small quantity of counterfeit pharmaceuticals, it was explained a prosecution could take place without the right holder’s involvement, because the act constituted a crime against human health.
Panel Discussion and Closure of the 1st Day of the Seminar

The attendees briefly discussed the topics of the day. The Chair Person thanked the attendees for their attention and closed the first day of the seminar.

Day 2

Targeted Joint Projects in the Mediterranean and Western Balkans: The Italian Experience

The Italian Customs referenced the TACTA conference and how they promoted the ‘Venice Initiative’ the aim of which was the creation of a high level forum composed of Representative from the Customs Administrations of western Balkan countries such as Albania, Bosnia-Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey. This was carried out in order to strengthen the regional cooperation and further improve the capacity building programs of these Administrations.

Under the Venice Initiative, the participating Countries agreed upon the need to develop a shared approach and the implementation of criteria for risk analysis, developed above all for high-sensitivity areas from the non-fiscal point of view, and with the aim of increasing the effectiveness of the fight against counterfeit products, thus protecting intellectual property rights and the health and security of

The aim of the project is designed to combat – among other things - the threat of counterfeit medicines. Under the initiative it was decided that a coordinator and two technical experts should be assigned. The project was called the HERCULE II programme 2007-2013 and was implemented by the European Commission with the aim of promoting initiatives used for combating fraud that affects EU financial interests.

Italian Customs explained that the aim of the project was to gain an overall view of illegal trafficking in counterfeit medicines within the participating countries and also produce a strategic threat assessment which might be used in future joint Customs operations. This in turn could lead to identifying new indicators for risk analysis purposes and provide a clearer picture as to what the current situation in the region was.

The analysis was based on the information exchanged among the countries of the region participating in the project and questionnaires were circulated among the members of the project group in order to collect national data such as the types of smuggled products, routes, modus operandi, concealment methods etc. The analysis of the information aimed to enhance the cooperation between countries in the fight against counterfeit medicines and also aid in the exchange of information regarding best practices throughout the sector.

The risk indicators identified from that analysis included generic indicators such as frequent travellers, haulage, crew members and routes most often used such as China, India, Syria, Egypt and the Dominican Republic. The conclusion reached from the analysis of the data by the participating countries was that in many cases, the illicit trafficking was carried out mainly through air and road transport, while sea and postal transport were seeing an increase in large seizures. Recommendations included the strengthening of joint co-operation in order to identify areas of risk more accurately regarding counterfeit medicines and to identify those involved.
The Italian Customs presented a Joint Customs Operation (JCO) called ‘Bitter Pill’. The strategic objectives of operation Bitter Pill were;

- To help improve the practical co-operation between the Customs administrations of the participating countries,
- Identify possible new fraud patterns and new threats,
- Increase the enforcement capabilities of the participating Customs administrations through developing operational capacities,
- To prevent the trafficking of counterfeit medicines.

Participants involved in the operation included Customs agencies from Albania, Bosnia and Herzegovina, Croatia, FYROM, Greece, Kosovo, Malta, Montenegro, Serbia, Turkey and Italy. The exchange of information took place through the Dedicated IT Application (DITA). That system was provided by the System for Exchange of Excise Data (SEED) team.

The conclusion and observations of the JCO suggested that there was a large flow of goods moving throughout the region. It found that it was a good opportunity to test procedures and practices, finding that the system needed improvement. It was also found that there seemed to be a general lack of interest by the right-holders and a lack of specialized laboratories.

From the conclusions, it was recommended that cooperation and the exchanging of information throughout the region be revised with the aim of further strengthening it, improve cooperation with the right holders explore the possibility of involving other regulatory bodies and that similar operations should be organized involving selected neighbouring, or transit countries.

**IPR in the Port Of Rijeka**

The Croatian Customs explained that they had carried out a risk analysis (RA) via computerised RA systems and Operative RA systems, based on cargo documentation, with three levels of RA;

- Security and safety,
- National,
- Local.

The Croatian Customs explained that there was a central unit which operated from a department within the Directorate where officers monitoring the RA system, create profiles according to different criteria allowing a detailed data-base to be created. Officers then evaluate the risk, and elevate or lower the risk rating as they see fit. The databases used in the RA include national databases such as those used by the Ministry of Finance, Ministry for Interior, Ministry for the Economy and the Ministry for Sea, Transport and Infrastructure, along with EU databases such as the Compliance Risk Management System (CRMS) and the Automated Fingerprint Identification System (AFIS).

The Croatian Customs explained that smuggling techniques were becoming more complex and that risk analysis/targeting needed to improve as transport routes and techniques were constantly changing.
Case Study, Greece

The Greek Financial Police Division (FPD) gave a brief description about their role and explained that the mission of the FPD was to prevent, investigate and combat financial crimes against the private sector and the national economy.

The FPD presented an investigation to the attendees. This investigation involved a complaint from a luxury handbag designer, who reported that a supplier based in Athens, Greece, was selling counterfeit versions of their product. The design of the handbags in question was related to a robbery that had taken place at two factories in Italy where the genuine handbags were produced. The investigation found that the counterfeit handbags contained parts from the stolen genuine handbags.

As the investigation progressed, a known website in Hawaii, United States was found to be selling – luxury - counterfeit products and that the supplier of those products was based in Athens, Greece. The Hawaiian police in cooperation with the fashion designers seized the counterfeit handbags. Over the course of the investigation, it was found that the supplier in Athens had established a network that moved the counterfeit items through a courier service, and it was discovered that the organization were able to move multiple package consignments to various areas around the world including a large number of shipments from Italy.

As a result, the FPD requested the assistance of Italian authorities. It was discovered that the Italian authorities had investigated the robberies at the handbag manufacturing sites, and that the cases had been closed. Over the course of the investigation, it was discovered that the criminal network intended to end their commercial activity which necessitated the organization of an operation against the supplier. On the 20 June 2014, the FPD organized a police operation and after the search of a number of properties, it was discovered that the movements of the counterfeit goods spanned multiple countries around the world, and the financial movements between the members was shown to have taken place through both electronic methods, in person cash deliveries and off shore companies.

As a result of the investigation, a number of arrests were made along with the seizure of counterfeit products with multiple luxury brands. The resulting study of the investigation concluded that the cooperation between law enforcement agencies from multiple countries, and the private sector was of great importance and that such cooperation could improve any future investigations.

The EUIPO asked if the experience was shared with other law enforcement authorities, and if so, did that shared information include nominal data such as the names of those involved. The FPD informed the EUIPO that every year a report is compiled regarding such investigations, and is published online. Private or personal information is not published.

Case Study on Counterfeit Cigarettes from Malta

Maltese Customs started by highlighting the fact that the Mediterranean Sea is, and always has been, a major transport route for counterfeit and smuggled goods. The topic of the presentation was counterfeit and smuggled tobacco products. Malta presented various case studies regarding counterfeited cigarettes and how Customs are detecting, and investigating,
such products and added that Customs are obliged to share all information pertaining to the counterfeit product.

Operational Cases from the Spanish National Police

The Spanish National Police gave a brief presentation about ‘Operation Phase’ and how it centred on the transport of counterfeit products from China. The shipment of counterfeit products destined for the European market was eventually seized in Marbella, Spain. The investigation also revealed that there was a further 5,000 kg waiting to be transported, with the main destination being Madrid where they would be sold – mainly - by street sellers.

The Spanish National Police continued by giving a presentation on the Mouride Brotherhood and how it controls the street selling industry on the streets of Madrid. The brotherhood originated in Senegal, Africa in 1883. In order to become a member of the Mouride Brotherhood, a joining fee, plus a yearly fee must be paid and depending on the location of the member, prices vary and members can be found primarily around the Mediterranean.

It was concluded through observations that the brotherhood does have connections to Chinese counterfeiters, and that they were not a criminal organization, but did follow a similar modus operandi to organised crime gangs in that they were coordinated throughout Europe, controlling the street selling market in Spain for the most part.

Introduction to the Workshops

The participants were divided into four simultaneous working groups and discussed the following questions:

1. What is the level of cooperation between Customs and police in your country? Is there any exchange of information on ongoing cases?

2. Have you ever had any sort of cooperation with private sector representatives? Was this successful or unsuccessful? Whether successful or unsuccessful, can you describe why?

3. Do you regularly receive (if you are police or Customs) or provide (if you are a prosecutor) feedback on (your) cases when they are prosecuted? If not, can you explain why?

Question 1:

• There was a general agreement that cooperation and the exchange of information between Customs and police had been strengthened over time. At present, most of the participating MS indicated that Customs and the police collaborate closely and exchange intelligence. For instance, Cyprus indicated that at first, Customs and police competed rather than cooperated, but currently, they exchange information on a daily basis regarding past and ongoing cases. There are different specialised units which work together to fight IPR crimes, such as police operational units, Customs, and cyber forensic units.

• Procedures and systems are in place to facilitate the exchange of information. For instance, there is a standard procedure in Cyprus to jointly investigate cases. However,
it was suggested that the exchange of information is based on good personal contacts in many MS.

- In Spain, there is still a certain level of rivalry between Customs Surveillance, the police, and Guardia Civil. However, a designated organism located at the Ministry of Home Affairs coordinates the operations of the three bodies and decides whether investigations will be carried out jointly or independently, and which body would lead. In general terms, Customs cooperates with both the police and Guardia Civil, noting that in cases of controlled deliveries concerning drugs and precursors, Customs cooperates with Guardia Civil, while they cooperate with the police in cases concerning IPRs. Such cooperation has been successful and useful, and the exchange of information between these bodies is fluid.

- In Portugal, three police units carry out similar tasks, which leads to competition between these bodies. However, the police and Customs cooperate successfully in different cases. Police and Customs take part in a working group that meets bi-monthly, and carries out joint operations, which fortifies the alliances and partnership between the two enforcement bodies.

- Meanwhile in Italy, there are multiple enforcement authorities available across the regions; consequently a system/contact point was established to enable the exchange of information between Customs and police. However, in case of prosecution, a special authorisation from the prosecutor’s office is required in order for the police to share information with Customs.

- In Greece, joint police- Customs operations are organised, and information is exchanged regularly. Customs sends requests for investigation to the police, who are always willing to help. For instance, a recent case was initiated by Customs and was subsequently transferred to the police. In that regard, it was suggested that information exchange and cooperation are vital, considering that in some Member States, operations initiated by Customs must be finalised by the police, whereby the police act as the prosecutor in courts. For instance, Maltese Police shared a recent case of counterfeit cigarettes that were being sold in the internal market. They contacted Customs in order to seize the cigarettes, and the police initiated the prosecution.

- Croatian Customs’ cooperation with police is also successful; in cases concerning drugs, weapons, and cigarettes, the police are notified instantaneously. With respect to imports of IPR protected goods, cooperation is absent, and Customs is the sole actor in that regard. The internal market has been traditionally under the police’s jurisdiction; however, following the expansion of Customs’ competences to cover the internal market, the two bodies cooperate in that area.

- Cyprus also indicated that cooperation has been gradually built with the police with regard to IPR issues. Intelligence is shared between the two agencies, which is sometimes shared extra-officially. It was noted that geographic proximity facilitates the exchange of information between agencies. A memorandum of understanding was also signed between Customs and the police to support one another in investigation cases.
One of the challenges faced is that Cypriot law is based on Common Law that has not been modernised, which poses an obstacle when attempting to develop systems. Furthermore, there is a lack of a system/data bank to exchange information.

- Croatia introduced a system for interagency cooperation, which is structured in three levels. The first level is the strategic level that is composed of the National IPR Cooperation body, which includes Customs, police, state prosecution, and the IP Office. At that level, strategic cooperation is discussed, including operations and awareness building activities. The central level includes the Coordination Committee for IPR Inter-agency Cooperation, which includes 10 key agencies and supporting bodies, noting that the private sector can take part in the body that is concerned with cooperation with the private sector. The third level is related to operative cooperation, which includes national and regional operative groups composed of Customs, police and prosecution, which share information and plan activities and investigations. Through such cooperation, Customs share nominal data with the police, on the basis of national legislation, which facilitates the exchange of information.

- Bulgarian Police also indicated that the cooperation levels between the two authorities are relatively high, and is based on legal grounds. Intelligence that the police have regarding shipments is shared with Customs in order for the latter to carry out actions on the borders, noting that Bulgarian Customs and Bulgarian Border Police cooperate in investigations. Customs also shares information with the police regarding goods located in the internal market.

- Differences were noted in practices between Member States, whereby the Customs’ authority in some countries is limited to imports, while the internal market falls under the police’s authority. In other countries, Customs is able to check both the internal market and imports. For example, in Hungary, Customs can carry out house searches and could issue detention warrants.

- Mutual exchange of information was highlighted by some Member States, whereby information received by the police regarding shipments is shared with Customs, while Customs provides information to the police related to shipments stopped at borders and the relevant information provided in declarations. Data related to previous importations, list of companies involved, the place of production of counterfeits, brokers, intermediaries, and details regarding significant seizure cases (depending on the type, value, quantity and quality of goods and the level of danger posed) were considered key information that Customs could share with the police.

- It was noted that the exchange of information between Customs and police is important, because the information each side possesses completes the picture and facilitates targeting criminal networks. Indeed, chances of succeeding are multiplied when Customs and police cooperate in cases. However, administrative silos and bureaucracy in some Member States hinder cooperation and the exchange of information between the police and Customs, particularly in big countries. The fact that the police and Customs are generally not administered by the same ministry adds another layer of complexity in cooperation.
One of the suggestions raised to improve cooperation is to create a common database for the police, Customs, and IP offices. Another similar proposal is to link the databases and systems of the different authorities and give access to certain figures in each agency in order to access certain areas and exchange information when necessary. It is possible to place restrictions in access rights and impose limitations in order to respect confidentiality issues and to ensure that only the required data is accessible. It was also suggested to employ liaison officers in the premises agencies to foster cooperation, and to sign MoU’s.

Regional and international cooperation were also favoured, such as through Joint Customs Operations, and through sharing details of a case through the EDB and ACIST, as well as informally through contacts. The Central Spanish Police Unit for instance has the competence to share information with other bodies, including embassies and European and international agencies, as well as through bilateral agreements. Other countries, such as Hungary, use international conventions for information exchange, and use attaches to exchange information.

It was also proposed to collate all the relevant data regarding the modus operandi of criminal networks benefiting from the sale of counterfeit items in a more unified EU platform, in contrast with the current fragmentation of data in different databases.

Question 2:

With respect to cooperation with the private sector, the general observation was that cooperation was close and growing. For instance, in Malta, private companies organise seminars to update law enforcement authorities regarding market developments of their industries. Training is also provided to law enforcement authorities on how to recognise counterfeits. In broad terms, law enforcement bodies and the private sector cooperate in issues of interest. Greece on the other hand has signed a MoU with associations representing the private sector. In Croatia, cooperation with right holders has been a success, especially with regard to right holders that have a unit that is responsible for cooperation with enforcement authorities.

Spain enjoys close cooperation with right holders and coordinates operations with them. However it is important for the police to be independent when developing operations based on the information received, and based on the feedback of IPR experts at the police force. This guarantees that opinions provided are independent and unbiased.

It was indicated that the private sector also provides intelligence to law enforcement authorities, as well as forensic analysis. Expertise and testimonies are also provided by the private sector.

Italy also explained that they cooperate closely with the private sector. In one recent case that involved counterfeited champagne, law enforcement bodies cooperated with the private sector to verify that the products were counterfeits. Croatia also indicated that their cooperation with the private sector is very good, noting that the private sector
is including more detailed information in AFAs\(^5\) and is sending information to law enforcement bodies. The post office is also proceeding with the ‘small consignments procedure’, which is a commendable effort.

- In 2010 Portugal established the Anti-counterfeiting Group (GAC), which brings together Customs and police representatives as well as private sector representative in order to exchange information, strategies, modus operandi, and awareness building initiatives. Meanwhile, Cyprus’ cooperation with the private sector has been successful. Training is provided by the main right holders to Customs officers, in addition to tools to identify counterfeits.

- It was underlined that right holders’ cooperation was vital, especially during investigations on infringements in order to substantiate infringement accusations. However, a repeated comment was the fact that some representatives fail to respond, or provide delayed responses, which is detrimental to cases and leads to releasing counterfeits that were stopped by Customs. In that respect, Portugal explained that authorities could take infringers to court on the basis of fraud, which does not require the submission of a complaint by the right holders. Meanwhile, in Croatia and Cyprus, when the internal market is controlled, declarations of sellers regarding counterfeits could lead to the destruction of goods without the requirement of contacting brand holders. Nonetheless, brand holders must be contacted in case the seller refuses to provide a statement. On the other hand, Spain and Portugal follow administrative procedures when counterfeits are identified inside the internal market, whereby counterfeits are considered a crime.

- It was suggested that sometimes, persistence and constant reminders to right holders are necessary in order to achieve answers. Cypriot Customs for instance generally requests that right holders respond with 10 days in their communications with right holders.

- It was indicated that some companies have a zero tolerance approach regarding counterfeits, and cooperate closely with Customs and police in all instances. However, it was suggested that when quantities of IPR infringing goods are minimal, the private sector is less willing to cooperate. This might be attributed to budgetary considerations; consequently, it was advised to deal directly with right holders instead of legal representatives in order to decrease costs.

- Another comment raised was that small countries do not have the representative of all the brands, which renders communication with right holders difficult. Romania on the other hand referred to a challenge regarding the difficulty to identify the law firm that represents a brand. In that context, it was explained that the EDB includes information regarding right holders who wish to share their profile, which could facilitate their identification of legal representatives. It might be difficult for the police to get access to the EDB, which is run on the secure network that is managed by Customs’ Communication Network. Police forces need to find a national solution to manage users’

\(^5\) Applications for action
profile in order to access the EDB, noting that some Member States were successful in that regard. Saliently, it is also necessary to raise the private sector’s awareness regarding the EDB to facilitate communication with the enforcement authorities in the EU. Cypriot Customs explained that when they want to identify right holders they first visit COPIS and then TMview, and consequently contact the right holder or their representative.

- When counterfeits seized in the internal market are considered a crime (as is the case in some Member States), courts contact IPR experts in order to examine the counterfeit goods and verify whether they are indeed counterfeits, if right holders fail to provide information regarding the goods.

- It was suggested that the EUIPO develop a database regarding companies that refused to cooperate with law enforcement authorities.

- The engagement of right holders and their application of more AFAs through the EDB were also encouraged.

**Question 3:**

- With regard to the feedback received regarding cases, a general conclusion is that feedback is sent to law enforcement authorities in most cases with a few exceptions, including feedback when cases are dropped. Law enforcement agencies provide one another with the feedback they received. This comment is not shared by all participating MS. For instance, in Greece, if the case is initiated by Customs, feedback is received regarding the case, noting that court cases take several years. However, if the case is initiated by the police – including IPR cases – the police do not provide Customs with that information or feedback received from courts. In Portugal, the prosecution office is legally obliged to provide feedback to police authorities, noting that the court decisions are posted on an internal website that allows for discussions between colleagues. In Malta, all court decisions are available online, and could be accessed by police officers. Customs authorities in both countries are also updated with feedback on prosecutions.

- Meanwhile, in Italy, Bulgaria, and Greece, minimal feedback is received regarding cases filed, which hinders efforts to improve and build up best practices.

- In Cyprus, Customs can take cases to court through the attorney general, and generally receives feedback regarding the court’s decision. When the police are the body that files a case, they provide feedback to Customs about the court decisions. Consequently, the police unit concerned communicates the decision to the divisional headquarters, and provides explanations regarding the court’s decision to discard a case in order to improve future procedures. Convictions are also communicated to the divisional headquarters. It was also noted that lawyers place the final decision in a public webpage.

- In Spain, cases are sent to court jointly by the police and Customs, but courts do not voluntarily provide feedback, which is provided when the police/Customs request
information. If the police receive information regarding the case, Customs is contacted, and vice versa.

- A general remark was that feedback/justifications regarding why a case was discarded by prosecution were extremely useful in order to remedy shortcomings in the future. It was also noted that Customs officers must be familiarised with laws related to Customs in order to be prepared when cases are sent to court, and to avoid mistakes that might be exploited by defence attorneys.

- Croatia indicated however that is common that courts decide not to proceed with cases filed by Customs, based on the premises that the defendant was unaware that he was importing counterfeits.

- Italy indicated that in light of the complexity of these cases, there is a tendency to work with the same public prosecutors who are familiarised with such cases.

- One proposal raised was for the private sector to provide feedback to authorities regarding cases taken to court.

Closure of Day Two of the Seminar

The workshop groups returned from their workshops and outlined the conclusions that had been learned from their discussions. After a brief discussion, the content of the day was recapped, and the Chair Person proceeded to close day two of the seminar.

Day 3

Nike and Converse Product Identification and Cooperation with LEAs in the Region

Nike opened by giving a brief overview of Nike and their brand. It was highlighted that Nike does not produce jewellery or toys. They produce apparel, footwear, equipment and Nike+ products such as sport bands and GPS sport watches.

Nike explained the difference between counterfeit products and genuine products. Firstly, through Customs, the container box which carries the product would be clearly and uniformly labelled whereas counterfeit products do not have this type of labelling. Nike footwear always comes in a shoebox, and the label within the shoe and the label on the box would match exactly. The same is true for other apparel produced by Nike.

Nike highlighted the different 'hidden' marks that can be found on counterfeit items around Europe, along with examples of forged and fake documents that could be found with counterfeit goods.

Converse was spoken about in a similar fashion. It was highlighted that converse shoes do come in a box, sealed in a plastic bag along with silica gel, and the label would contain a QR code, which easily identifies the product.

Goods in Transit: A Practitioner's Perspective
The European Communities Trade Mark Association (ECTA) started by outlining the scope of the presentation, that it was a practitioner’s perspective to counterfeiting. ECTA explained that counterfeiters, by their nature, are progressive in their ways of circumventing Customs controls and thus provoke the need for legislation in order to combat them. Counterfeiters have developed sophisticated methods by using available assets such as the internet, politics and inactive member states.

ECTA outlined various pieces of legislation that had been developed since the TM Directive 89/104/EEC of 1988, and how they had evolved to help combat IP infringement. Various historical cases were presented to show the delicate nature of the area. An example of note was the case of Philips & Nokia [C-446/09 & C-495/09, 2011] where a shipment of phones purporting to be from Nokia, were found to be counterfeit, but declared not counterfeit.

ECTA spoke about the reform that was seen from more recent legislation, such as EU Regulation 2015/2424 [Art. 9(4)] – eff. 23/3/16 and EU Directive 2015/2436 [Art. 10(4)] which becomes effective on the 15/01/19.

ECTA concluded by adding that EU Trade Mark reform rules on Goods in Transit (GiT) were welcome and that practitioners supported the seizure, by EU Customs, of counterfeit GiT while in doing so, Customs should not violate the rules governing the freedom of legitimate commerce.

Maltese customs added that Customs could not make the decision on whether a product was counterfeit or not and suggested that when Customs had suspicions, they could contact the right holders, and based on the communication, proceed from there. ECTA responded by saying that Malta was an example of the application of putting EU legislation into practice, and agreed that Customs had the first assessment, and then the right holder should be contacted regarding any suspicions.

Product Identification Training Apple Inc. Beats Electronics, LLC

A brief presentation about the counterfeiting of Apple products, including the Beats by Dre brand was given. It outlined how Apple products were among the most counterfeited products in the world, and that large quantities of their counterfeits originated from the Guangdong province of China.

Genuine Apple shipments could be detected by the clean and detailed labelling on the shipping boxes, whereas counterfeit goods were regularly shipped with labelling that was substandard and lacked essential details about the supplier and added that it was more common to find large shipments of counterfeit Apple accessories, than large shipments of counterfeit iPhones and added that in respect to accessories, Apple did not sell replacement batteries for their products, and any such batteries could be hazardous to health.

Defending Lacoste’s IP Rights in Cyprus

The representative for Lacoste started by outlining the extent of counterfeiting that affects Lacoste worldwide, providing examples of counterfeit goods that can be found and explained the various ways in which fake Lacoste products can be detected. Lacoste also operated a
policy of authorised distribution, which would help Customs in identifying possible counterfeit shipments.

The representative for Lacoste spoke about litigation and that aside from Customs seizures; litigation was often commenced against local companies which were selling counterfeit Lacoste products and by working closely with local distributors and Lacoste, cases could be built against infringers and at times, cases could sometimes be settled due to overwhelming evidence, and on occasion, court decisions have awarded damages to Lacoste.

In conclusion it was explained that the aim was to establish a level playing field for competition, that Lacoste does not tolerate counterfeitters and that it was important to have a local presence and apply local pressure.

Europol’s Support to Operational Activities in the Fight against IP Crime

Europol outlined their objectives as an agency and gave a brief description of their cooperation with various agencies throughout Europe. Europol explained the role of IPC3, explaining the main objectives. Those objectives included operational and technical support, to facilitate and coordinate, monitor and report on emerging modus operandi, harmonisation and standardisation and to raise awareness through training.

Intellectual property crime (IPC) trends were evolving and now included dental equipment, auto parts, card sharing (illegal access to television broadcasts) and the use of social media for the sale of counterfeit goods. As a result, EU SOCTA laid out eight recommended priorities, divided into two distinct groups. Specific priority crime threats included cybercrime, drug production, trafficking and distribution, migrant smuggling, organised property crime and the trafficking of human beings. Cross-cutting priority crime threats included criminal finances and money laundering, document fraud and online trade in illicit goods and services.

Europol explained that IPC was a widespread phenomenon throughout the EU with large quantities at minimal costs resulting in large profits from a wide range of counterfeit goods and links to other areas of crime. EUROPOL also spoke about recurring operations, such as Operation Pangea and Operation OPSON, which have taken place over a number of years, involving multiple countries.

Bonus Presentation by Adidas

Adidas outlined its place as one of the most counterfeited brands in the world and proceeded to show, through slides, some of their most counterfeited goods and how to differentiate between a counterfeit product and a genuine product.

Conclusion of the Seminar

The Chair thanked the attendees for their participation throughout the seminar, adding that the information gained from the discussions that took place would prove invaluable going forward. The Chair proceeded to close the seminar.