

# TRANSPORT AND LOGISTICS

## DISCUSSION PAPER

Challenges and good practices for transport and logistics services to prevent the use of their services for IP-infringing activities

## EXECUTIVE SUMMARY



September 2022

## Executive Summary

The different transport and logistics (T&L) operators form a complex ecosystem, with a number of operators taking part in large supply chains, and customs plays a central role as the public authority supervising the traffic of goods across borders. T&L operators include rail and truck operators, air freight and maritime operators, parcel delivery operators such as express service operators and postal service operators, as well as cargo owners and logistics solutions providers that organise supply and logistics, receive, store and dispatch goods (e.g. freight forwarders, distribution centres and fulfilment centres).

All these operators support international trade. However, their services are also misused by IP infringers to transport their illicit goods, with criminal groups operating across multiple jurisdictions to avoid detection and exploit the differences of the applicable national laws. In the context of this discussion paper, experts identified **existing and emerging trends and tactics to move IPR-infringing goods undetected** through the supply chain, including:

- **the use of free trade zones (FTZ)** and the reduced oversight and transparency in these zones by counterfeiters to hide the origins of IPR-infringing goods and to minimise the risks of detection;
- **the use of new trade routes and infrastructure development initiatives** by counterfeiters to find new entry points into the European Union with less control capacity.
- **the growth of e-commerce** over the last decade and the resulting multiplication of small parcels, which are used to ship IPR-infringing goods to the end consumer while lowering the potential losses in case of detentions;
- **misclassification of IPR-infringing goods** to avoid detection, including mislabelling of goods to make it difficult for T&L operators to complete risk profiling of the goods they are transporting.

Experts also identified a number of **challenges to counteract the misuse of T&L services**, including the following.

- **Sharing of information** by T&L operators with customs as part of their activities. However, T&L operators would also benefit from receiving information from customs in terms of detentions and intelligence on the latest trends and trade routes to refine their own monitoring systems. Experts also pointed to the lack of solutions to identify high risk customers that have been terminated by other T&L operators and/or other relevant intermediaries. In this context, they pointed to the need for guidance on the type of information that could be shared in line with European Union (EU) data protection and competition laws.
- **Detection of IPR-infringing goods by customs** that require physical inspection, and cannot be performed through non-intrusive imaging machines. This raises challenges for customs services that have to deal with an ever-growing number of risks. In this context, experts highlighted the importance of putting in place risk analysis systems that rely on digitised data that cannot be falsified to ensure the most effective use of customs resources.
- **Storage and destruction of IPR-infringing goods** that can be complex, lengthy and costly, and leading to disruption in supply chains, with situations where some T&L operators have to keep shipments stored in their warehouses for extended periods of time with no possibility of removing them or delivering them to their customers.

To address some of the trends and challenges faced by T&L operators, experts pointed to some good practices that exist or are being developed, as well as new technologies. These include the following.

- **Monitoring and risk profiling systems** that in addition to terms and conditions and user verification, are used by some T&L operators to detect potentially bad parties and illicit goods. These systems utilise open and undisclosed sources of information, such as denied parties lists and internal lists, combined with certain trigger words. Some operators also check consignment data, routes, or parties, to perform extensive risk profiling analysis.

- **Cooperation between T&L operators, IP rights holders and law enforcement authorities**, with initiatives at national, regional and international levels. This includes industry working groups, memorandum of understandings, joint task forces and targeted operations, as well as the development of dedicated networks with representatives from various sectors and public authorities.
- **Experts highlighted new technical solutions** as possible avenues to further counteract misuses of T&L services such as sophisticated devices tracking containers or consignments. Private blockchain-based solutions are also being developed to track and authenticate products, with the EUIPO's anti-counterfeiting blockchain infrastructure aiming at interconnecting these private solutions with law enforcement authorities to support the authentication of genuine goods throughout the supply chain.

This discussion paper will hopefully contribute to a better understanding of the very complex and innovative T&L ecosystem and of the challenges to counteract the misuse of different T&L services for IP-infringing activities. The different good practices identified will also hopefully contribute to the discussions on ways to enhance cooperation and to develop technology for all the relevant operators to jointly meet these challenges.

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