

Research on Online Business Models Infringing Intellectual Property Rights - Phase 2

Executive Summary

Suspected trade mark infringing e-shops
utilising previously used domain names



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Foreword

To coincide with the launch of the Intellectual Property Crime Coordinated Coalition (IPC3) at Europol, the EUIPO published the Phase 1 report concerning online business models infringing intellectual property.

The report delivered an overview of the myriad of different ways intellectual property is infringed commercially online and presented a completely new way of identifying, dissecting, analysing and presenting such business models. It has been widely quoted in regard to online infringing business models.

The present study builds on the initial findings and looks further into information of the extensive use being made by suspected infringers of intellectual property of domain names that were once used by famous people, organisations, foreign embassies, commercial businesses and many others.

This phenomenon was first reported by a Danish cybercrime expert who found that a large number of previously used domain names under the Danish domain .dk were being systematically re-registered by suspected infringers of trade marks.

The idea was to take advantage of the popularity of such domain names to attract traffic to new e-shops marketing suspected trade mark infringing goods. Immediately after the domain names became available for re-registration, the suspected infringers acquired them and shortly afterwards activated an e-shop.

The EUIPO set out to discover if the practice identified in Denmark was also used in other European countries with mature e-commerce sectors. Sweden, Germany, the United Kingdom and Spain were selected for the research and this report is the result.



The findings are eye-opening and show that the practice identified in Denmark also exists in the four selected countries to an even higher degree than could have been expected.

Having analysed 40 case examples in detail, the research also seems to indicate that what on the surface seems like thousands of unrelated e-shops are likely to be one or a few businesses marketing suspected trade mark infringing goods to European consumers.

This new report provides further evidence of the scale of the problem of commercial online intellectual property infringements and reinforces the case for cooperation at the EU level to bring it under control.

A handwritten signature in black ink, reading "António Campinos". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

António CAMPINOS
EUIPO Executive Director

1. Executive Summary

In 2015, the European Union Intellectual Property Office (EUIPO), through the European Observatory on Infringements of Intellectual Property Rights, commissioned a research study on online business models used to infringe intellectual property rights (IPRs). The initiative was created as an independent data-driven study that would assess and analyse how online IPR infringements on a commercial scale worked, were financed, how they generated profits for their operators, what kind of content they disseminated and how large their user bases were.

The study should provide policymakers, civil society and private businesses with enhanced understanding about the situation. At the same time, it should help to identify and better understand the range of responses required to tackle the challenges of large-scale online IPR infringements.

It was envisaged that the study would be divided into two phases:

- Phase 1, a qualitative study aiming to provide an overview of the different business models used to infringe IPR online;
- Phase 2, a quantitative study, where one or more important specific business models and strategies would be researched in detail.

The Phase 1 report was published on 12 July 2016 and is available on the EUIPO website¹.

During the research in Phase 1, a recent study carried out in Denmark² focusing on a detected pattern of a specific use of the domain name system (DNS) taking place on the Danish country code top level domain (ccTLD) .dk was identified. The study arose from suggestions made in the media about e-shops suspected of infringing trade marks that were emerging online, but seen as individual and unaffiliated e-shops. The aim of the Danish study was to identify if there was a pattern or structure behind the setting up of these e-shops. By analysing re-registration of previously used domain names, it was possible to determine that e-shops suspected of marketing trade mark infringing goods were being set up using domain names that had previously been used to various online purposes. When the domain names were available for re-registration the entities operating the e-shops would systematically re-register the domain names and shortly after set up e-shops marketing goods that were suspected of infringing upon the trade marks of others. It was characteristic that the prior

¹ https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/resources/Research_on_Online_Business_Models_IBM/Research_on_Online_Business_Models_IBM_en.pdf.

² The research, which had been undertaken by the Danish cybercrime specialist Henrik Bjørner, is available here: <http://cybercrime.eu/analysis/analysing-registration-of-previously-used-danish-domain-names/>.

use of the domain names was completely unrelated to the goods being marketed on the suspected e-shops. There were examples of domain names previously used by politicians, foreign embassies, commercial businesses and many other domain name registrants.

For the period between October 2014 and October 2015, there were 566 .dk domains that were re-registered by suspected infringers of trade marks immediately after the domain names had been given up by their previous registrants and became available for re-registration.³

The research carried out covered only the Danish ccTLD .dk, but the activities identified indicated that it was likely that the same activity was also applied by suspected trade mark infringers in other European countries. Based on this the EUIPO decided to look further into this specific issue in Phase 2 of the research project, focusing on four European countries with large e-commerce sectors. Under these criteria, Sweden, which as a Scandinavian country would be assumed comparable with Denmark, Germany and the United Kingdom, which have very well-developed and large e-commerce sectors, and a country with a large e-commerce sector in southern Europe, Spain, were selected.

The overall goal of the e-shop analysis was to detect e-shops marketing suspected trade mark infringing goods. To achieve this, an automated process was developed, where each domain name passed through a set of analytical modules to classify the website as either suspected of trade mark infringing or not. These analytical modules served specific purposes to facilitate information gathering and content analysis.

At the time of the analysis, the situation in Sweden, Germany, the United Kingdom and Spain has shown the following.

The current research has clearly shown that the same phenomenon previously documented in Denmark, also occurs in Sweden, Germany, the United Kingdom and Spain.

³ Please note that this information has been extracted from the Danish study previously mentioned

ccTLD	Sweden .se	Germany .de	United Kingdom .uk	Spain .es	Total
Period of analysis	8-10 December 2016	23 November – 6 December 2016	26 January– 10 February 2017	10–11 January 2017	
Total number of detected active domain names under the ccTLD resolving to an active website	1 259 990	11 057 426	8 158 245	1 047 780	21 523 441
Total number of detected e-shops using a domain name under the ccTLD	33 212	208 939	224 154	49 147	515 452
Total number of detected e-shops suspected of infringing the trade marks of others using a domain name under the ccTLD	3 161 (9.5 % of total number of e shops)	6 066 (2.9 % of total number of e-shops)	14 182 (6.3 % of total number of e-shops)	4 461 (9.1 % of total number of e-shops)	27 870 (5.41 % of total number of e-shops)
Total number of detected e-shops suspected of infringing the trade marks of others using a domain name under the ccTLD where the domain name had been previously used by another registrant	2 444 (77.3 % of suspected e-shops)	4 864 (80.2 % of suspected e-shops)	10 081 (71.1 % of suspected e-shops)	3 612 (81.0 % of suspected e-shops)	21 001 (75.35 % of suspected e-shops)

The research detected 27 870 e-shops suspected of marketing trade mark infringing goods in Sweden, Germany, the United Kingdom and Spain. It was found that 21 001 of these e-shops (75.35 %) were detected using domain names that had previously been used to direct internet traffic to websites that have no relation to their prior use.

Based on the research, it must be considered likely that the same also occurs in other European countries with well-developed e-commerce sectors.

The analysis of the 27 870 e-shops suspected of marketing trade mark infringing goods in Sweden, Germany, the United Kingdom and Spain has identified a number of patterns in the set-up of the e-shops. These include:

- product category: shoes are the product category mainly affected in 67.5 % of the suspected e-shops and clothes are the product category mainly affected in 20.6 %⁴ ;
- main brand affected: the brand most harmed was detected as the brand mainly affected on 18 % of the suspected e-shops, while the second most harmed was detected as the brand mainly affected on 11.9 % of the suspected e-shops;
- software used: 94.6 % of the detected suspected e-shops used the same specific e-commerce software;
- registrars: 40.78 % of the detected suspected e-shops in Sweden and the United Kingdom were registered through the same registrar;
- name servers: 21.3 % of the detected suspected e-shops used the same name server;
- hosting country: 25.9 % of the suspected e-shops had the hosting provider located in Turkey, 19.3 % in the Netherlands, and 18.3 % in the United States.

⁴ It is noteworthy that the two main product categories match the main product categories identified by Eurostat in the general survey into online purchases: http://ec.europa.eu/eurostat/statistics-explained/index.php/E-commerce_statistics_for_individuals.

The activity of the previous websites run under the domain names used is very varied, but can be divided into:

1. public institutions, international organisations and interest groups
2. financial sector
3. news, media and information websites
4. other businesses
5. political debate and propaganda
6. voluntary work
7. cultural and religious websites
8. private associations
9. famous people and fan clubs
10. adult and dating websites.

During the research, 40 e-shops were analysed in depth. The case studies can be found in the Annex to the report.

Domain001

In the *Domain001*-se case study the prior use of the domain name was to direct internet traffic to a Swedish language website with information from the European Parliament to the Swedish public.

Domain007

In the *Domain007*-de case study the prior use of the domain name was to direct internet traffic to a German language website with information about a ballet school.

Domain010

In the *Domain010*-co.uk case study the prior use of the domain name was to direct internet traffic to an English language website with information about a local escort service.

Domain003

In the *Domain003*-es case study the prior use of the domain name was to direct internet traffic to a Spanish language website with information about cancer and related treatments

There was no correlation between the previous use of the domain name and the current sales of products found in any of the 40 case studies that were carried out. Even if the domain was previously used for the marketing of goods, the current e-shops were marketing a different type of product at the time of analysis.

The case studies indicate that the sole reason for re-registration of the domain names is to benefit from the popularity of the website that was previously identified by the domain name. The benefits would include search engine indexing, published reviews of services and/or products and links from other websites that have not yet taken the current use into consideration.

Initially, the e-shops seem unrelated individual businesses. However the analysis of the e-shops and the case studies have identified different commonalities regarding product categories and brands offered in the suspected e-shops in their website technology, as well as use of specific registrars and name servers, and in the countries of origin of the hosting provider.

Looking at the structure of the business practice and having analysed 40 case studies in detail, another result emerging from the research is that a high degree of affiliation between the e-shops is likely. The research seems to indicate that what on the surface seems like thousands of unrelated e-shops are likely to be one or a few businesses marketing trade mark infringing goods to European consumers.

The findings of the report are interesting for the law enforcement community and internet intermediaries as well as trade mark holders and consumers, to understand the scale and the traits of this business model applied in a number of EU Member States.

Avenida de Europa, 4,
E-03008 - Alicante
Spain

www.euipo.europa.eu



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