

INTELLECTUAL PROPERTY CRIME THREAT ASSESSMENT 2022



EXECUTIVE SUMMARY

The joint EUIPO-Europol Threat Assessment is a strategic report that updates policymakers, practitioners, businesses and the general public on the threat from intellectual property (IP) crime facing the European Union (EU).

Counterfeit and pirated goods in the EU have an estimated value of up to EUR 119 billion, representing up to 5.8 % of imports (1). The overall number of detections of counterfeit goods by customs authorities, at the EU's border and on the internal market, has decreased since 2019. Approximately 66 million items were detained in 2020, compared to 76 million in 2019. The COVID 19 crisis influenced the seizure results for 2020, with reduced trade in the first months of the pandemic, fewer goods crossing the borders, and the added difficulties faced by the enforcement authorities in applying the usual controls.

The COVID 19 pandemic has also provided a boost to the criminal economy. IP crime, such as the production and distribution of counterfeit goods, has increased sharply during this period.

Counterfeiters often use complex trade routes to transport their goods from the production country to the destination markets. Although counterfeits are widely shipped to the EU in bulk by freight transport, in recent years there has been a strong increase in the use of express transport services, particularly via small parcels. This notable increase is related to the growth in online marketplaces.

The criminal networks organising the importation of counterfeits in the EU are mainly based outside the EU, where most counterfeit production takes place. EU-based criminal networks are responsible for distributing these imported counterfeit goods and, in some cases, operating facilities that assemble semi-finished products.

The increasing importation of counterfeit packaging materials and semi-finished products into the EU clearly points to the presence of illegal manufacturing facilities in the EU. Production sites have been discovered in many Member States and include laboratories producing fake pharmaceutical products, factories labelling counterfeit clothing and luxury goods, production and repackaging facilities for illicit pesticides and cigarettes, factories refilling both authentic and fake empty bottles of alcoholic beverages and clandestine factories repackaging fake perfumes.

Like many other criminal activities, counterfeiting now relies heavily on the digital domain to source components and distribute products (both tangible and non-tangible) to consumers via online platforms, social media and instant messaging services.

Criminals rely on fraudulent documents to import and transport illegal goods. The abuse of legal business structures, such as retail channels to facilitate the movement of goods and to launder illegal profits, is an integral part of the trade in counterfeit goods.

Luxury items, as well as a wide range of everyday goods, are increasingly targeted by counterfeiters.

Clothes, accessories and luxury goods remain among the most popular product categories for counterfeiting. Such counterfeit items are still commonly sold in physical markets and stores.

Electronic/electrical devices, mobile phones and components are increasingly affected by IP infringements. Some of the most in-demand electronic products are at risk of being counterfeited and advertised on online marketplaces, even before the genuine items are available for sale. Counterfeiters may try to exploit the growing global shortage of semiconductor chips by introducing counterfeit semiconductors such as diodes onto the market.

Food and drink are popular with counterfeiters posing a serious threat to consumers. The production of illicit food products, especially drinks, is increasingly professional and sophisticated. Some counterfeiters operate an end-to-end business model covering the whole supply and distribution chain. Criminals counterfeit or manipulate all types of food products and mislead consumers by altering labels, manufacturing processes, fraudulently stating geographical origins and/or by replacing products.

Counterfeit perfumes and cosmetic products are detected in the EU, both as ready-to-use items and as product components that are used to create the final counterfeit products in illegal EU laboratories. Counterfeiters continue to produce everyday goods including shampoo, toothpaste, cosmetics and detergents. The increase in sales of counterfeit goods online is a continuing trend.

Pesticides eliminate harmful organisms in or on plants. The trade in illicit pesticides remains a low-risk, high-profit crime for the offenders sustained by a high demand for illicit products and a regime that only imposes low sanctions on offenders. This trade generates substantial profit returns on a low initial investment.

Counterfeit pharmaceutical products largely continue to originate from outside the EU, though they may also be produced in illegal laboratories within the EU. The distribution of counterfeit pharmaceutical goods has shifted almost entirely from physical to online markets, including dedicated platforms, such as online pharmacies, and widely-used social media platforms. Criminal groups counterfeit an increasingly wide range of medicines. Criminals continue to exploit the opportunities that are emerging due to the COVID 19 pandemic.

Piracy is now almost exclusively a digital crime. Consumers' media consumption preferences have shifted towards streaming services for accessing digital content via a variety of applications and platforms. The criminals involved are adept at using advanced technical countermeasures. In some cases, digital content piracy is linked to other cybercrime activities such as cryptojacking or the distribution of malware.

Tobacco products are among the most frequently reported counterfeit goods. Criminal networks have been able to maintain a criminal business model, establishing modern and professional production facilities closer to their destination markets. Though tobacco consumption in the EU has decreased over the last few years, the market share of consumed illicit tobacco products remains high.

Toys infringing IP rights are frequently detected and seized both in, and on entry to, the EU. They do not comply with health and safety rules and expose children to serious safety risks. Authorities typically note a spike in the number of seizures leading up to and during festive seasons.

Intellectual property crimes have considerable economic consequences, both for the public and private sectors. Furthermore, counterfeit goods can have a serious impact on the health and safety of consumers, as well as negative environmental consequences.

KEY DEVELOPMENTS

- IP crime continues to constitute a substantial threat to the health and safety of consumers. Furthermore, it negatively impacts the EU economy, with counterfeit and pirated goods worth EUR 119 billion imported into the EU in 2019, representing up to 5.8 % of EU imports. This is particularly concerning as the EU seeks to transition into post-pandemic economic recovery.
- While most counterfeit goods distributed in the EU are produced outside the EU, there are indications that production of counterfeit and substandard goods increasingly takes place within the EU. The frequent seizure of counterfeit packaging materials and semi-finished products on entry to the EU clearly points to the presence of manufacturing facilities in the EU – some for partial assembly and others running full production cycles.
- The COVID 19 pandemic has presented new business opportunities for the distribution of counterfeit and substandard goods. Criminal networks involved in IP crime have been highly adaptable in adjusting their business model by shifting product focus and marketing.
- Like many other criminal activities, counterfeiting now relies heavily on the digital domain to source components and distribute their products (both tangible and non-tangible) to consumers via online platforms, social media and instant messaging services. The COVID 19 pandemic has further entrenched this development.
- Although the financial dimension of the counterfeiting business operating in the EU largely remains an intelligence gap, there is evidence that counterfeiters launder their criminal proceeds by using both traditional and more sophisticated schemes that make use of technology, trade-based money laundering and offshore jurisdictions.

- The criminal networks organising the importation and distribution of counterfeit goods in the EU are believed to be based outside the EU, where most counterfeit goods production takes place. EU-based criminal networks distribute imported counterfeit goods and, in some cases, operate facilities that assemble semi-finished products.
- Clothes and clothing accessories are promoted via live-streaming sales, videos and sponsored advertising on social media, targeting customers with deceitful offers of discounts or low-price branded products.
- Counterfeiters are exploiting the global supply shortage in semiconductor chips. Mobile phones, their accessories and components are among the most affected commodities targeted by IP design and trade mark infringements.
- The production of illicit food products, especially drinks, is increasingly professional and sophisticated. Some counterfeiters operate an end-to-end business model, covering the whole supply and distribution chain. Violations of protected geographical indications cover a wide range of products and continue to be widely reported.
- IP right infringements related to perfumes and cosmetics relate to the production of everyday goods: mainly shampoo, toothpaste, cosmetics and detergents.
- The trade in illicit pesticides remains a low-risk, high-profit crime for the offenders sustained by high demand for illicit products and low sanctions for the offenders, generating substantial profit for a low initial investment.
- The production of illicit pharmaceutical products frequently takes place now in illegal laboratories within the EU. These are difficult to detect and supply multiple distributors. However, these products largely continue to originate from outside the EU.
- Websites illegally distributing audio-visual content are hosted on servers across Europe, Asia and the Middle East. The criminals involved are adept at using advanced technical countermeasures. In some cases, digital content piracy is linked to other cybercrime activities such as crypto-jacking or the distribution of malware. Pirates exploit new technologies to conceal digital traces and use proxy services to create resilient hosting networks. The online presence during the COVID 19 pandemic led to an increased offer of high-quality streaming devices and a variety of illicit content offers.
- Criminal networks involved in illicit production can maintain a criminal business model, establishing modern and professional production facilities closer to destination markets.

THE IMPACT OF INTELLECTUAL PROPERTY CRIME IN THE EU

Intellectual property crime negatively impacts the economy, the natural environment and the health and safety of EU citizens.

A recent study carried out by the EUIPO and the OECD has estimated that counterfeit and pirated goods worth EUR 119 billion were imported into the EU in 2019, representing up to 5.8 % of EU imports (2).

Most of the companies whose IP rights are infringed by counterfeiters are located in countries featuring highly innovative economies. Almost 39 % of customs seizures performed in 2017-2019 related to products that infringed the IP rights of US rights holders, immediately followed by EU rights holders from France (18 %), Germany (16 %) and Italy (9.8 %) (3).

In a series of sectorial studies, the EUIPO has estimated lost sales amounting to more than EUR83 billion per year, during the period 2013-2017, as a result of counterfeiting. This corresponds to estimated losses of EUR 15 billion in tax revenue (4) and of 671 000 jobs in total.

IP crime causes reputational damage to legal producers, while damaging fair production and distorting market competition. Furthermore, certain IP crimes, such as pharma crime, reduces the funds available for research and public innovation (5).

IP crimes are a substantial threat to the health and safety of consumers in the EU, especially those that involve counterfeit and fake medicines, food and beverages, cosmetics, electrical household goods and toys. These categories of products accounted for more than 15 % of the total amount of articles seized at the EU's external border (6).

Counterfeit medicines and sanitary products can seriously damage the health of consumers. They are often produced in unhygienic conditions, by unqualified personnel and can contain high levels of toxic ingredients, the wrong active ingredients, the wrong amounts, or no active ingredients at all. The COVID 19 pandemic has prompted a boost in the production of and trade in some illicit and fake medical and sanitary products (7) and further exacerbated the threat from IP crime.

The counterfeiting of food and drinks is also a significant concern. The counterfeit products are mostly of substandard quality and can contain dangerous or hazardous materials. Criminals counterfeit a wide range of both luxury and everyday food products, provided they are profitable (8).

Counterfeit and fake toys, electronic devices and vehicle parts also pose threats to human health and safety. Fake toys are not subject to the rigorous safety tests required by law and have no warnings or advice on the packaging. Illicit electronic products, such as set-top boxes, risk overheating and suffering electrical faults. Irregularities, such as poor socket connections, can cause fires.

Counterfeit and substandard pesticides pose a significant and growing threat to EU environmental security, as these products can heavily contaminate agricultural land, the foodstuff grown on it, air, and water for a long period. Additional risks are present in the improper storage and disposal of chemical products (9), such as illicit pesticides and pharmaceutical products. IP crime poses a high risk to the natural environment, to human health and safety and to the legal economy.

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