



European Communities Trade Mark Association

Dublin, 30 April 2013

**Jointly Building Resilient EU Responses to Counterfeiting
Conference organised by the EU Observatory
22 April 2013, Dublin**

*Reported by Marianne Decker, Secretary of the ECTA Anti-Counterfeiting Committee
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On 22 April 2013, the EU Observatory organized a conference together with the European Commission on Jointly Building Resilient EU Responses to Counterfeiting.

The Observatory had invited members of national authorities (mainly from customs administrations and intellectual property offices) as well as representatives from the private sector such as members of the industry and associations, among others ECTA, INTA, European Alliance for Access to Safe Medicines, European Federation of Pharmaceutical Industries and Associations and the Federation of the European Sporting Goods Industry.

Mrs Françoise CASTEX, Member of the European Parliament, held the first speech and concluded that ACTA pointed out the right problems but gave the wrong answers.

She stressed that alternative proposals are needed, that counterfeiting has a negative effect on jobs in the EU and that a better coordinated action of European, national and private sectors to fight counterfeiting are necessary.

She also welcomed the initiative of the private sector to extend the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet for two further years.

Mrs Kerstin JORNA, Director of Intellectual Property, European Commission, DG Markt, highlighted the fact that it is important to harness IP to fuel innovation and increase the wealth of the populations worldwide. An effective European IP infrastructure must be put in place by governments and used by citizens. This infrastructure must also be adapted to new technologies and an effective answer given to free-riders.

She concluded that the focus must lie on care and less on medicine, i.e. that counterfeiting must be avoided so one does not have to act once the damage is done.

Mr Chris VANSTEENKISTE, Europol, introduced the subject of the growing risk to public health and safety. He explained that counterfeiting has extended from luxury goods to daily consumer goods, which considerably increases the risk of health and safety issues. Some



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examples were fake airbags, counterfeit pharmaceuticals, as well as fake alcohol and cosmetics.

He indicated 3 ways to tackle the problem: raise public awareness, communication between authorities as well as coordination between such authorities.

In conclusion, he added that Europol is definitely willing to provide support to national authorities and already cooperates with other enforcement agencies such as OHIM, OLAF, Eurojust etc.

Mr Phil LEWIS, EU Observatory, explained that one of the measures to tackle counterfeiting is to build knowledge and competences in IP enforcement.

The Observatory is currently identifying the issues and problems with private and public sector experts, and will organize workshops to develop solutions and put in place action plans to disseminate information (see Europol platform for experts).

Together with Europol, the Observatory organized a major conference on illegal pesticides from 26 to 28 November 2012 to build knowledge and identify the problems. Working groups will be organized to elaborate solutions.

Mrs Doris SCHERNHAMMER, European Crop Protection Association, expressed that from the view of the industry, the pesticides conference was a real success.

The cooperation between the different stakeholders has increased and the awareness of law enforcement agencies has been raised significantly.

One major problem however remains unsolved. The transit and mixed consignments issues have not been addressed in the Customs Regulation.

Many participants insisted on the fact the transit issue needs to be solved. They welcomed the Trademark Regulation proposal which goes into the right direction.

Another point which was raised by the audience was the question of the carriers and intermediaries. They must be included in the discussions.

Mr Frank DASSLER, President of the Federation of the European Sporting Goods Industry and General Counsel of the ADIDAS Group, addressed the issue of the Memorandum of Understanding on the Sale of Counterfeit Goods via the Internet (MoU).

In his opinion, the MoU has established a dialogue between platforms and brands but the notice and take down actions (NTD's) have not decreased. The MoU needs to expand to other ISP's such as freight forwarders, search engines, payment operators and social media.

In this respect, a representative of Google indicated that his company is interested in the MoU.

Mr Stefan KRAWCZYK, Associate General Counsel and Head of Government Relations EMEA of eBay, agreed that today there are other ISP's which need to participate to the MoU. The focus should evolve with consumer demand and the new platforms and means to reach the consumer.



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The Commission report on the functioning of the MoU constitutes in his view a fair assessment. The report can be consulted via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0209:FIN:EN:PDF>

Mr Alex TOSOLINI, Senior Vice President Global e-Business, Procter & Gamble, stated that his obsession is consumer understanding since the brands are in his opinion in the hand of the consumers.

Technology moves so fast that the legislators cannot keep up. New ways to legislate are required. Self-regulation, such as the MoU, is at least one way forward.

Mr Gregor WOJCIK, Head Corporate Relations and former CEO of Allegro Group, agreed that consumer trust and satisfaction is a key element.

Cooperation between brands and consumers must be encouraged.

Followed a discussion with the audience, pointing out that the view, help and cooperation of consumer organizations miss in the whole debate.

The Commission will focus on this question and try to take them on board.

The view that the MoU on copyright should move forward was also expressed.

The role of domain name registrars and registries was also raised.

Mr John Hennessy-Niland, Chargé d'affaires at the US Embassy in Dublin, expressed the US view.

He identified 3 key points to tackle counterfeiting:

- Voluntary codes of practice are in his opinion the most effective and practical approach;
- Being responsive to illicit use/conduct is an ongoing, living process and must engage right holders and consumers; timeliness is also important because there is always a lag between the real Economy and government response;
- Thorough collaboration and development of best practices between law makers and industry as well inter-governmentally.

Mr Richard FOAN, Chairman of the Joint Industry Committee for Web Standards in the UK and Ireland, addressed the issue of digital ads on illicit websites.

He explained the advantages of content verification technology in this respect as well as the creation of black lists, enabling advertisers to exclude illegal websites from their online advertisement strategies.

Mr Paddy FLYNN, Director for Product Quality Operations for EMEA, Google, confirmed the company's interest in the MoU and its functioning and that they are willing to participate to the general discussion.



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Concerning Adwords, he explained that they check the components used by advertisers very carefully. In 2012, they suspended 800.000 advertisers, among which 82.000 were counterfeit explicit.

Dr Werner MULLER, Head of the Austrian Association of the film and music industry, insisted on the fact that many illegal websites, such as Pirate Bay, live from ads. He suggested to tackle these counterfeiters on that issue to cut their revenues. There are indeed also 'serious' ads on these websites and the right holders must be aware of that. The black lists mentioned by Mr Foan can in this respect be very helpful.

Mr Florian NEHM, Head of EU Affairs of the Axel Springer Publishing Group, stated that there are two ways of income for journalism, product placement and advertisement. He stressed their high motivation to collaborate in the fight against counterfeiting. The content they publish is frequently stolen by websites who, once they have traffic, can sell ads on the basis of the number of visits to their website. Mr Nehm hence confirmed that right holders often put ads on websites that are illegal and have themselves copied protected content.

To close the conference, the European Commission asserted that it is willing to facilitate other tools to tackle counterfeiting, such as MoU's and also concerning advertising standards.

The motive for both right holders and intermediaries is consumer trust and satisfaction.