



Promoting Intellectual
Property Rights in the
ASEAN Region

Session 6: Developing IPR Enforcement Capacities through Training and Technology

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This is a story from France and European Union...

A happy story for IPR owners, e-commerce platforms, consumers...

A success story based on Government initiatives

The emergence of fair business standards for building trust and protecting IP online

No copyright ! The solutions are royalty free, available to anyone, everywhere...

Have a try !





Paving the road for better global IPR enforcement online

It is crucial to **tackle** the problem **before** it is too **big**!

Detecting obvious and recurring IPR infringements / infringers is technologically possible

Trust is global, trust is a whole. Trust can only be built through win-win cooperation and well-balanced efforts between enforcement authorities, intermediaries and IPR holders

European Commission and French authorities are facilitating cooperation between internet intermediaries and companies / industry associations in order to **implement preventive filters and improve efficiency of notice and takedown procedures**

The ultimate objective is to build a better business environment and to reduce a harmful problem for the population / public safety

Not exactly a legal challenge but more a pragmatic approach to create economic and moral values (financial / commercial / attract investments and build good reputation), set up social responsibility



Testing European Best Practices in ASEAN

Encouraging (facilitating or supervising) result oriented dialogues between intermediaries and IPR holders

Building up e-commerce platforms duties : stricter implementation of “real name” policy, 24-hours standard for taking down counterfeit offers, adopt proactive measures “reasonable and appropriate” to prevent IPR infringements, legal responsibility to act where platform “knew or should have known” IPR infringements, report suspected IPR violations to enforcement authorities for further investigation...

Strengthening IPR enforcement authorities supervision of e-commerce and social media platforms

Increasing customs control

Adapting or enhancing administrative, civil and criminal enforcement measures for more effective and deterrent sanctions against IPR infringers/counterfeiters

Raising awareness of consumers of IP benefits and dangers of counterfeiting





PREVENTIVE MEASURES

1) ALLOCATE NECESSARY RESOURCES

Top level management leaders commitment

Adopt, publish and enforce IPR policies, which should be clearly indicated on their websites : clear insertion in *Terms of Service* of the prohibition to sell counterfeit and risk incurred, with the willingness to make sure that they are respected

Dedicate an adapted budget

Devote staff: engineers, sales and quality control departments, IPR complaints and brand protection cooperation teams :

- Regular exchanges of information between IPR holders and the dedicated teams
- Trainings to better know the brands/products, types of IPR infringements, adapt and enrich filters

Annual report on IPR



PREVENTIVE MEASURES

2) ALERT USERS

Raise awareness among vendors: raise awareness before clients, so that they are aware of the risks regarding the sell and/or the purchase of counterfeit goods

Raise awareness among buyers : during the finalization of the purchase

- A pop-up window recalling the platform policy, national regulation, and punishment

National awareness campaign like in France in 2014 :

“On the Internet, a fake product, is it a real deal ?”
By purchasing counterfeiting, you have it all wrong
Brand products at sacrificed prices ?
On the internet, pictures of real products hide well
Often copies, stay vigilant during online purchases

PREVENTIVE MEASURES

3) VERIFY AND CONTROL INFORMATION GIVEN BY THE VENDORS

Verify the vendor identity: ask, verify and keep receipts (identity, contact details, banking information, company registration / business licence...) during the registration of the account

- Suspend accounts if information is not complete or wrong
- Check if the vendor has not already been excluded before

Verify information about the product: on the description of the offer, carry out an analysis of the text in order to detect any mention related to counterfeit (filters with keywords)

Make visible the name and address of the vendor of the offer

Control suspect behaviors: e.g. active accounts selling large amounts of products of more than 5 various brands within 2 months

Take into account comments of buyers: to identify and monitor suspicious vendors

Gather accounts of a same vendor: cross-check information given by the same vendors (IP address, postal or bank contact details, email...)

- Using big data



PREVENTIVE MEASURES

4) FILTER THE OFFERS BEFOREHAND (BEFORE ONLINE PUBLICATION)

Establish a **filter of offers** on the basis of **key words** and/or general information :

Filter products: block at once the offers of obvious counterfeit goods (labels, bills or packaging...) or products in large quantities at a very low price (e.g. less than the third of the normal price)

Filter with key words: a list of forbidden words like imitation, counterfeit, fake, knock-off / name of brands / Replica / « same product than ... » / derivatives of well-known brand ("Chan*el")

Filter with other criteria: evolving filters should be provided, official image bank...

PREVENTIVE MEASURES

5) CUSTOMIZATION OF FILTERS

Adapt the filtering of offers (automatic or for analysis) by taking into account specificities of IPR holders

Filtering (automatic) **by category of products** (e.g. non manufactured products by a brand)

- A list of risky products shall be edited for an increased surveillance

Filtering (automatic) **by images recognition software** (blurry picture, logo or brand...)

- IPR holders communicate some pictures (advertising campaigns, official photo, catalog) which will be used by the platform to block offers reusing them

Filtering (for analysis) which combines **price / quantity** of products

Filtering (for analysis) by **key words and/or combination of words** (association such as « brand + style », « American / Russian + Champagne », “Brandy type Cognac”)





REACTIVE MEASURES

ESTABLISHMENT OF AN EFFICIENT NOTIFICATION SYSTEM

Adopt simple, clear and precise procedure

Frame the rules for the documents to be provided to support a complaint. The formalism should be reduced to the necessary minimum (POA, copies of IPR registrations)

Accept requests for all types of IPR (trademarks, designs, copyrights, geographical indications...)

Accept all forms of complaints for attempt to IPR, particularly in case the vendor doesn't have any stock

Enable a mass processing of demands, without having the need to notify individually, link after link

Offer an easy access to tools and process in English

- Dedicated platform page for IPR complaints



REACTIVE MEASURES

IMPLEMENTATION OF AN EFFICIENT NOTIFICATION SYSTEM

Non-burdensome, efficient and effective notice & takedown, ensuring that valid notifications lead to **swift removal** or disabling of notified offer, and provide feedback on result

Treat the complaints ideally in 24h, 48h maximum

Building trust with IPR holders to remove offers infringing their IPR without unnecessary verification

- IPR owners refrain from unjustified or abusive use of notification possibility

Enable all interested IPR holders to benefit from IPR system

However, an enhanced assistance shall be provided to IPR holders with a large volume of fake offers



FOLLOW-UP ACTIONS

1) IMPLEMENT DETERRENT REPEAT INFRINGER POLICY

including the **temporary or permanent suspension of sellers**, and to use **best efforts to prevent re-registration** of them

Establish clear process in the contradictory procedure

- The offer should be suspended during the delay of response

Sanction from the first publication (at least a temporary suspension minimum) of a fake offer, and establish an active surveillance. **Inform** the vendor that next time, it will be deleted

Delete the account at the first relapse, without waiting for a succession of offences

Adopt a sophisticated system of creations of control of new account to avoid the re-registration under a new identity (control identities, banking information...)



FOLLOW-UP ACTIONS

2) SANCTION FINANCIALLY THE VENDOR – COUNTERFEITER

Sequestration of the sale amount until the reception and validation of the product by the buyer and with no restitution of the product (and no payment of purchase price) in case of counterfeit products

3) EASE CIVIL, ADMINISTRATIVE AND CRIMINAL PROSECUTIONS

Initiate online to offline investigations

Cooperate and assist law enforcement authorities, where appropriate and in accordance with applicable law, in the investigations of the sale of counterfeit goods

Share information with IPR holders, enabling them when appropriate to join in, an investigation carried out by enforcement authorities or a legal action



FOLLOW-UP ACTIONS

4) COOPERATION WITH ALL IPR HOLDERS

Regular exchange of information to improve detection of fake offers, adapt to new trends, assess efficiency of system

Enable a personalized contact : appoint a specific contact person

Inform the notifying party of outcome of each of its complaints

Share feedback on measures taken and **disclose**, upon request, relevant information including the identity and contact details of alleged infringers (insofar as permitted by applicable data protection laws)

Establish pilot programs with a limited number of companies to test new tools or procedures (e.g. Purchase tests...)



Assessment of EU MoU on the sale of counterfeit goods via the internet

Performance indicators measured every 6 months :

- 1) **Percentage of detected counterfeits** per product category in the first 100 listings
- 2) **Number of listings removed** as result of pro-active and preventive measures and notice and takedown procedure
- 3) **Number of permanent and temporary sellers restrictions**

Latest report :

Results of the work under the MoU are **positive**

They show that the **MoU has effectively contributed to removing counterfeit products from online marketplaces** and that it is a **useful forum** which allows **trust** and **cooperation** between parties to be strengthened



Immediate and inspiring results, extending more widely

Since the **French Charter** (2009) and the **EU MoU** (2011), the **volume of online fake products significantly decreased** and so did the number of claims and litigation cases

A **solid and concrete dialogue** is established between **public authorities** and **private stakeholders**

Regular assessments highlight the **positive impact** of this mechanism

This **soft law** became a **standard in France and European Union**

These **solutions** are also being **implemented by major Chinese e-commerce platforms**

New challenges : **facilitating cooperation with other intermediaries** such as **internet sales platforms, payment service providers and shippers**





**All together – policy decision makers, law enforcement authorities, IPR holders,
internet intermediaries –**

we are stronger to fight IPR (online) infringements !





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