



Promoting Intellectual
Property Rights in the
ASEAN Region

Enforcement of IP Rights in the judicial environment

Valerio Papajorgji | VICO | 30 March 2021



Funded by the European Union



This Project is funded by the European Union and implemented by the European Union Intellectual Property Office (EUIPO)

- Contribution of Intellectual Property Rights to the economy
- The size of Counterfeiting and Piracy and their impact on the global economy
- Enforcement through civil, criminal and administrative measures
- Weaknesses and strengths of each measures

Contribution of Intellectual Property Rights (IPR) to the economy

Intellectual property rights intensive industries and economic performance in the EU (2019):

- IPR-intensive industries generated 29.2% (63 million) of all jobs in the EU during the period 2014-2016.
- 38.9% of all employment in the EU (83.3 million) can be attributed, directly or indirectly, to IPR-intensive industries
- 45% of the total economic activity (GDP) in the EU is attributable to IPR-intensive industries, worth EUR 6.6 trillion
- IPR-intensive industries pay significantly higher wages than other industries, with a wage premium of 47%
- IPR-intensive industries accounted for most of the EU's trade with the rest of the world and generated a trade surplus, thus helping to keep the EU's external trade broadly balanced

Contribution of IPR-intensive industries to GDP, 2014-2016 average

IPR-intensive industries	Value added / GDP (€ million)	Share of total EU GDP
Trade mark-intensive	5,447,857	37.3%
Design-intensive	2,371,282	16.2%
Patent-intensive	2,353,560	16.1%
Copyright-intensive	1,008,383	6.9%
GI-intensive	20,155	0.1%
PVR-intensive	181,570	1.2%
All IPR-intensive	6,551,768	44.8%
Total EU GDP	14,621,518	

Trends in Trade in Counterfeit and Pirated Goods

Published 18
March 2019



In 2016 trade in counterfeit and pirated products amounted to as much as **USD 509 billion**. This represents up to **3.3% of world trade**.

The share of fakes in world trade grew significantly. In 2013 up to 2.5 % of world trade was in fake goods (up to USD 461 billion).

This growth was reported during a period of a relative slowdown in overall world trade. The intensity of counterfeiting is on the rise – big risk for the knowledge-based, open and globalised economy!

Where do fakes come from?

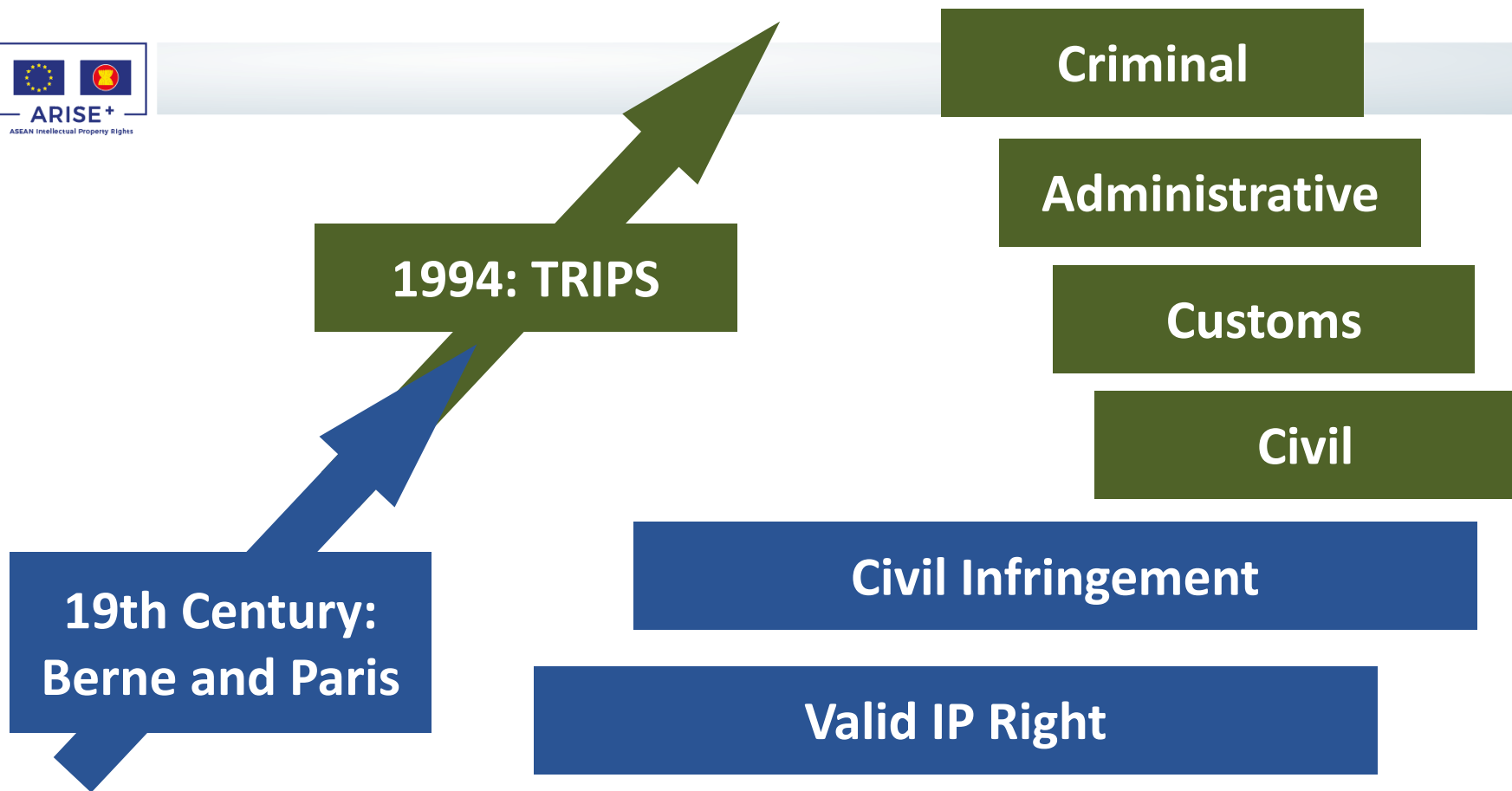
Most counterfeit and pirated goods come from Far East Asia.

Seizures of counterfeit and pirated goods

Top provenance economies (2014, 2015 and 2016)

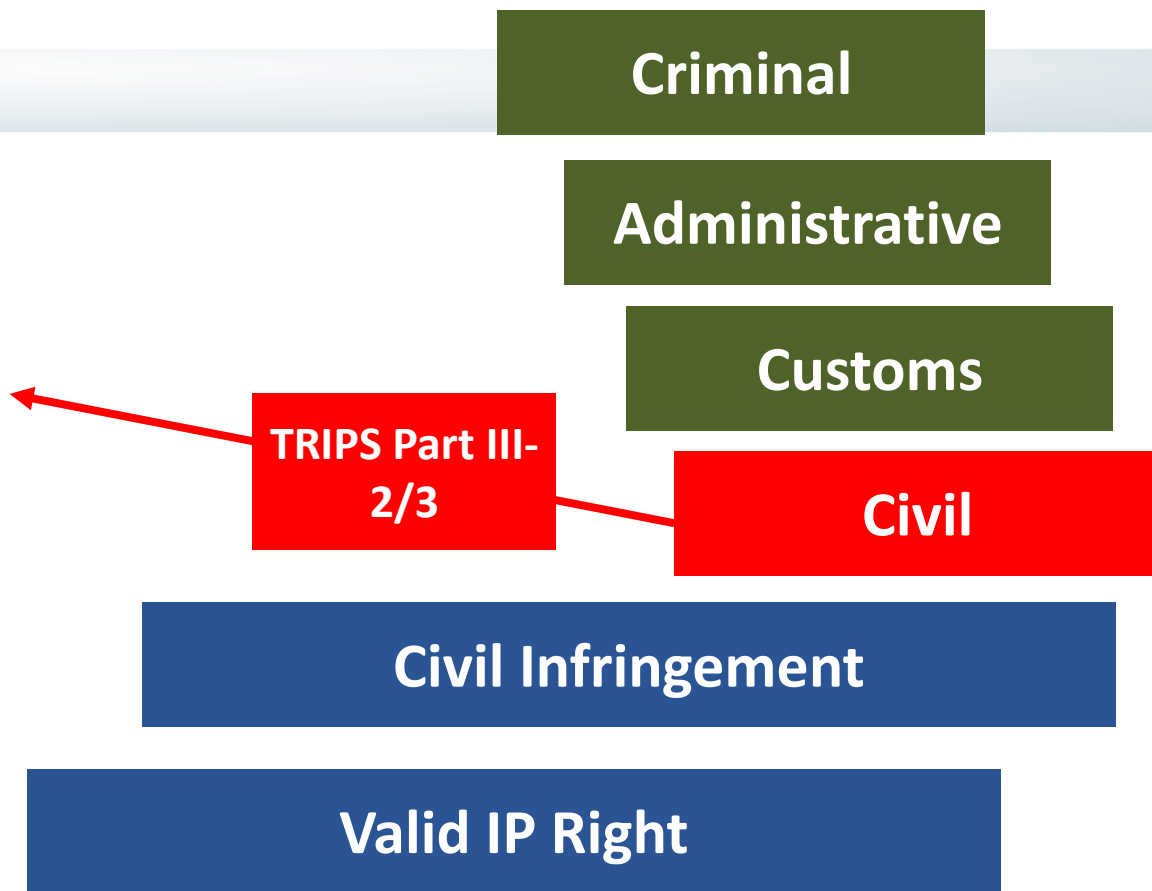


Civil vs. Criminal vs. Administrative



Directive 48/2004

- Injunctions (also targeting third parties)
- Preservation of evidence and right of information
- Damages, legal costs, corrective measures and publication of judicial decisions



Criminal

Administrative

**TRIPS
Part III-4**

Customs

Civil

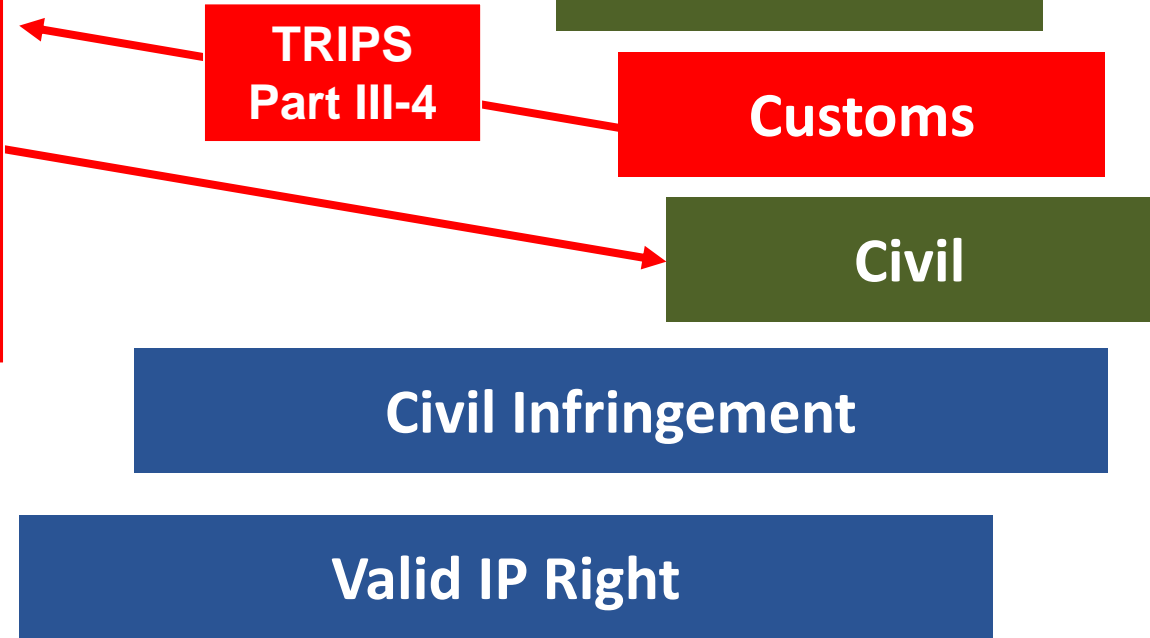
Regulation 3295/1994

Regulation 1383/2003

Regulation 608/2013

Civil Infringement

Valid IP Right



Criminal

Administrative

Customs

Civil

Civil Infringement

Valid IP Right

TRIPS art. 49 og art 50.8 :

“To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.”

Commission Proposal for a Criminal IPR Enforcement Directive, 2005

- Updated 2006
- Withdrawn 2009

ACTA, 2010, negotiated but
rejected by European
Parliament

Criminal

Administrative

Customs

Civil

Civil Infringement

Valid IP Right



TRIPS Article 61

- shall provide for criminal procedures and penalties
- at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale
- shall include imprisonment and/or monetary fines
- shall include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements

Criminal

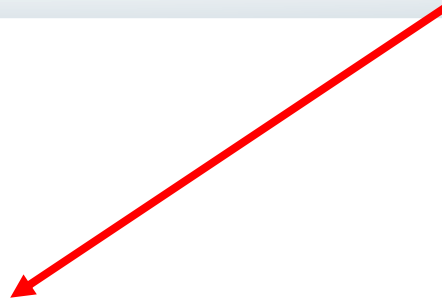
Administrative

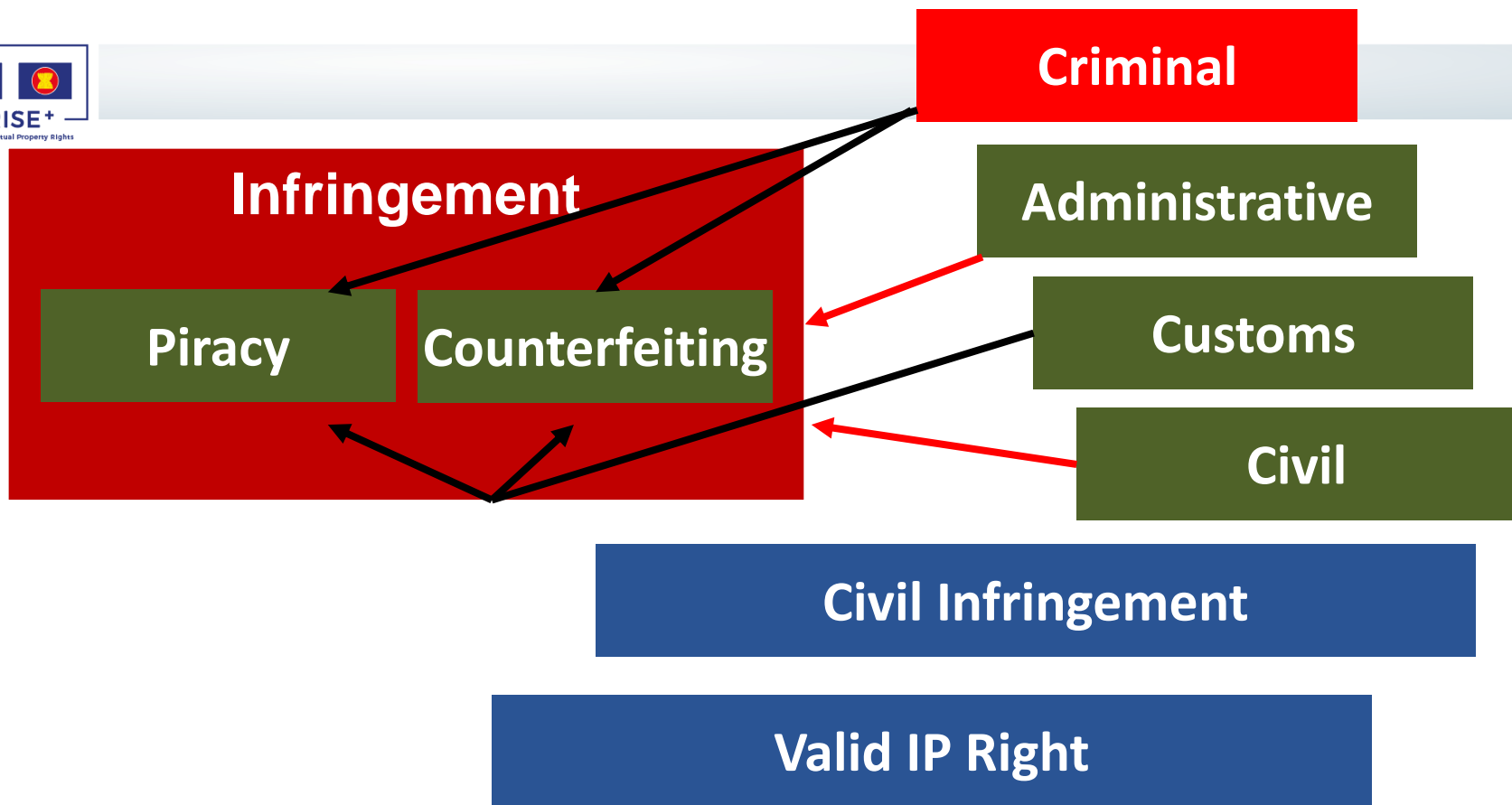
Customs

Civil

Civil Infringement

Valid IP Right





Strengths and weaknesses

Civil Law aspects

Strengths:

- Initiated by supposed victim
- Able to tackle individual, small and specific infringements
- Existing in every country (?)

Weaknesses:

- Low penalties
- Lack of additional restrictive measures
- More complicated to undertake an international action

Criminal Law aspects

Strengths:

- Higher penalties (in some countries)
- Initiated by law enforcement ex officio or under request
- Able to tackle larger production or distribution
- Possibility to link it to other crimes (trafficking, health violations, fraud, etc.)

Weaknesses:

- Lack of support from policy makers and law enforcement
- Needs more evidence to support the case
- Not existing in every country

Administrative Law aspects

Strengths:

- Possibility to solve the case in an amicable way
- Additional measures (where applicable)
- Possibility to link it to other administrative violations (health and/or safety violations, etc.)

Weaknesses:

- Low penalties
- Not existing in every country
- Lack of awareness related to the delegated authority of administrative bodies

Conclusions

- IP intensive industries greatly contribute to the growth of the global economy;
- Counterfeiting and Piracy have a huge negative impact on the economy and they should not be considered as “minor crimes”;
- IP Enforcement (especially Criminal and Administrative Law) is not harmonized at international level;
- Right holders should be aware of the different options in the country where the infringement is taking place;
- Law enforcement and the judiciary need to be properly trained in order to handle an IP infringement case.



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THANK YOU



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Presentation		
Status	DRAFT / APPROVED	
Approved by owner	-	
Authors	-	
	-	
	-	
Contributors	-	
	-	

Revision history			
Version	Date	Author	Description
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		