

Counterfeit as a global threat: impact of the phenomenon and the role of organised criminal groups

Massimo Antonelli
Seconded National Expert
European Observatory on infringements of intellectual property rights
EUIPO

CONTENTS

Introduction

- 1. An overview on the scope of counterfeit globally**
- 2. The role of criminal organised groups**

INTRODUCTION

Introducing myself: Senior Customs Officer in the Italian Customs and Monopoly Agency



2015: Seconded National Expert – IP enforcement, at the EUIPO's European Observatory on Infringements of Intellectual Property Rights (Alicante, Spain)



INTRODUCTION

EUIPO: Alicante, Spain since 1994 (OHIM)



INTRODUCTION

EXECUTIVE DIRECTOR

C. ARCHAMBEAU

DEPUTY EXECUTIVE DIRECTOR

-

CABINET

M. FICSOR - Head of Cabinet

CORPORATE GOVERNANCE SERVICE

M. GUSMAO - Head of Service

COMMUNICATION SERVICE

L. BERENGUER - Head of Service

INTERNAL AUDIT

R. TRETTER - Head of Service

DATA PROTECTION OFFICER

M. KOLEVA

BOARDS OF APPEAL

T. MARGELLOS
BoA President

A. RASSAT
Director

OPERATIONS

K. KUHL
Director

CUSTOMER

A. DI CARLO
Director

DIGITAL TRANSFORMATION

U. SCHILDT
Director

INFRASTRUCTURES AND BUILDINGS

M. A. VILLARROYA
Director

HUMAN RESOURCES

S. PÉREZ
Director

FINANCE

N-E. HACHIBY
Director

INTERNATIONAL COOPERATION AND LEGAL AFFAIRS

J. NEGRAO
Director

OBSERVATORY

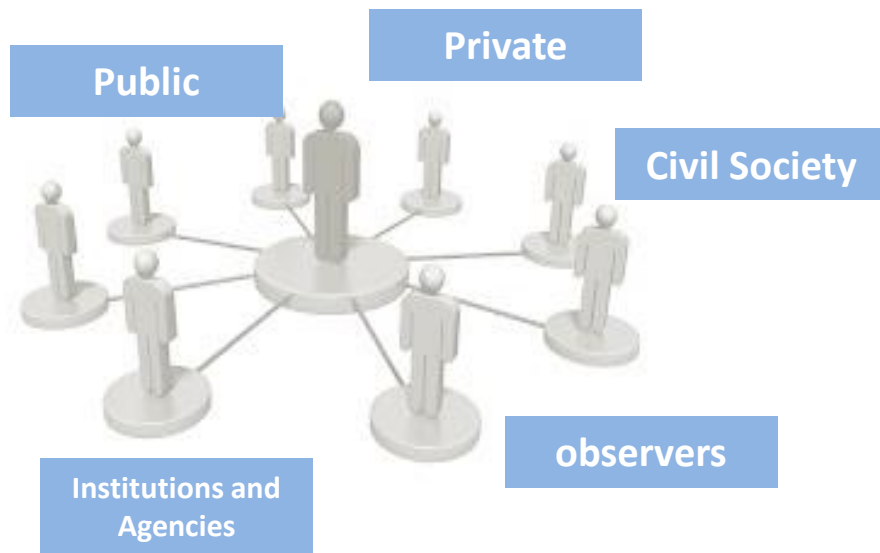
P. MAIER
Director

ACADEMY

**P. GARCÍA
ESCUDERO**
Director

INTRODUCTION

The Observatory is a network for the enforcement of IPR



- EU 28 Member States
- 67 European and international associations + private sector
- 8 consumers associations and civil society
- 12 members of EP
- European Commission
- **European Union and International organisations: EUROPOL, EUROJUST, INTERPOL, WCO, OECD – EPO, WIPO**

INTRODUCTION

- PROVIDING FACTS AND FIGURES

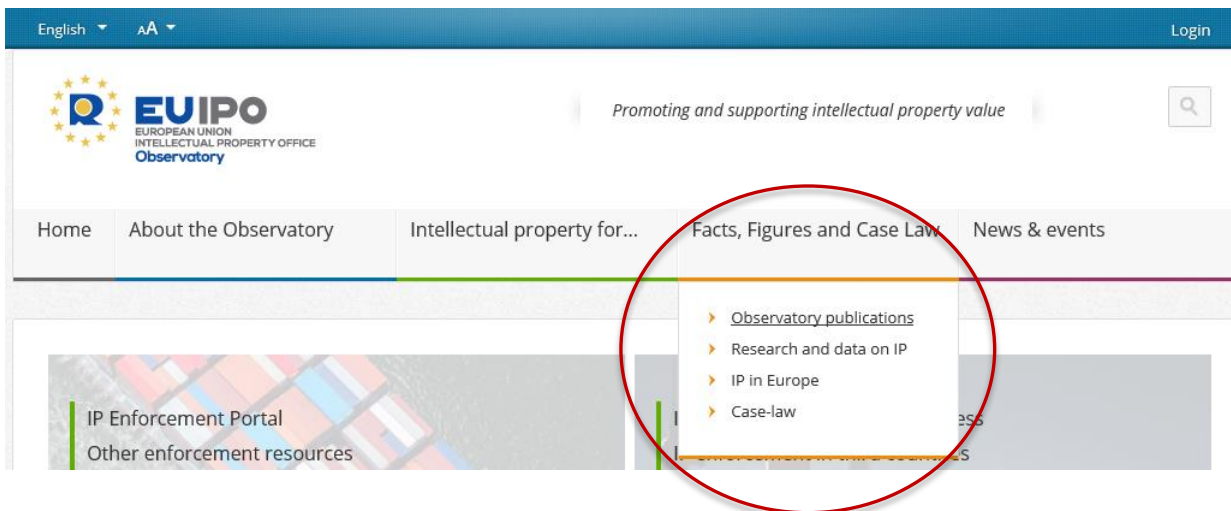


- Economic and statistics
 - **scope and impact of counterfeit (globally and per sectors)**
 - IP and counterfeit social perception
 - etc.
- Reports
 - **«Threat Assessment»**
 - **Mapping the routes of fakes**
 - ON-line infringers «Business Models» etc.

INTRODUCTION

All publications of the Observatory can be downloaded freely from the website

<https://euipo.europa.eu/ohimportal/en/web/observatory/home>



INTRODUCTION

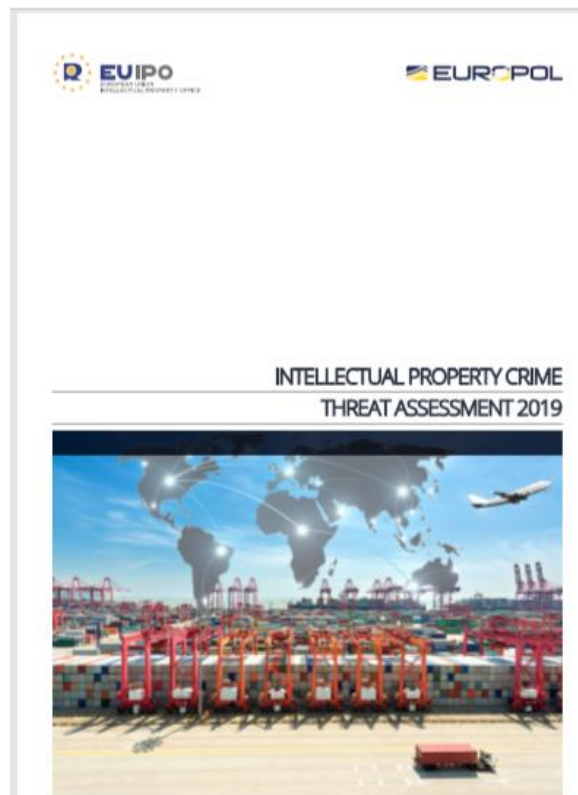
2 main sources have been used for
this of this presentation

**Trends in Trade in Counterfeit
and Pirated Goods
EUIPO/OECD 2019**



INTRODUCTION

Joint analysis and threat assessment on counterfeit EUIPO/EUROPOL 2017 and 2019



SCOPE AND IMPACT OF THE PHENOMENON

OECD and EUIPO carried out a quantitative analysis of the value, scope and magnitude of world trade in counterfeit and pirated products

□ Data used for the analysis:

- database of seizures of the World Customs Organisation
- database of the European Commission of IP seizures at the EU borders
- US Customs and Border protection Agency and the US Immigration and Customs Enforcement

VOLUME AND VALUE OF FAKE (data of 2016)

Globally

€460

billions

(\$ 509 bil)

equal to 3,3%
of global trade

2,5% in 2013

In the UE

€121

billions

(\$ 134 bil)

equal to 6,8%
of all importations in the UE

5% in 2013

VOLUME AND VALUE OF FAKE

In terms of industries, infringed products are found in numerous sectors:

- ☐ luxury items (e.g. fashion apparels or luxury watches)
- ☐ intermediary products (such as machines, spare parts or chemicals)
- ☐ consumer goods such as pharmaceuticals, food and drinks, medical equipment and toys



serious impact on human health and safety

THE EFFECTS

The effects of counterfeiting are damaging

☐ for consumers

- unknowingly purchased fakes lower consumers' satisfaction and trust in goods and market
- **wellbeing: fakes are low cost produced and of poor quality, safety standards hardly respected**

THE EFFECTS

Counterfeit and dangerous goods

□ The Observatory has studied the «alerts» released by the Authorities in the EU for **fakes and dangerous products** in the market in the years 2010-2017 (a qualitative study)

□ Classification based on categories of risk

Chemical	72	32.0%
Strangulation	39	17.3%
Injuries	36	16.0%
Choking	26	11.6%
Electric shock	15	6.7%
Damage to hearing	9	4.0%
Fire	9	4.0%
Burns	6	2.7%
Microbiological	5	2.2%
Drowning	5	2.2%
Health risk / other	2	0.9%
Suffocation	1	0.4%

THE EFFECTS

Counterfeit and dangerous goods

❑ Most dangerous fakes resulted:

1. Toys
2. Clothing
3. Textiles
4. Fashion items

THE EFFECTS

Counterfeit and dangerous goods - Chemical risk

Figure C.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing dolls found in UK.

➔ UK 2015 – plastic dolls from China seized in the market, found to contain **di-(2-ethylhexyl) phthalate (DEHP)** which is harmful to the health of children, causing possible damages to reproductive system



THE EFFECTS

Counterfeit and dangerous goods – Injury risk


Figure I.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing seat belts found in UK, France and Greece.



THE EFFECTS

Counterfeit and dangerous goods - Chocking risk

Figure Ch.1. RAPEX Counterfeit Alerts 2010 – 2017. IPR infringing toys found in Cyprus.

 CYPRUS 2017 – a batch of multifunctional, battery-operated games (fake comics)

Batteries could be easily extracted without any tools.

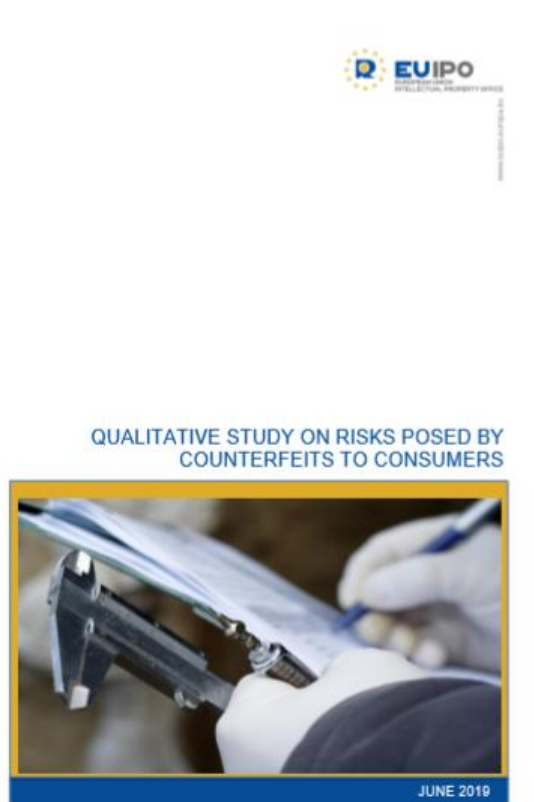
They could be swallowed by children causing gastrointestinal damages



THE EFFECTS

Counterfeit and dangerous goods

<https://euipo.europa.eu/ohimportal/en/web/observatory/observatory-publications>



THE EFFECTS

The effects of counterfeiting are damaging

☐ for business

- brands name is continuously eroded
- revenue losses

☐ for governments

- incomes and VAT losses
- distortion of labour market due to loss of jobs
- costs for health care

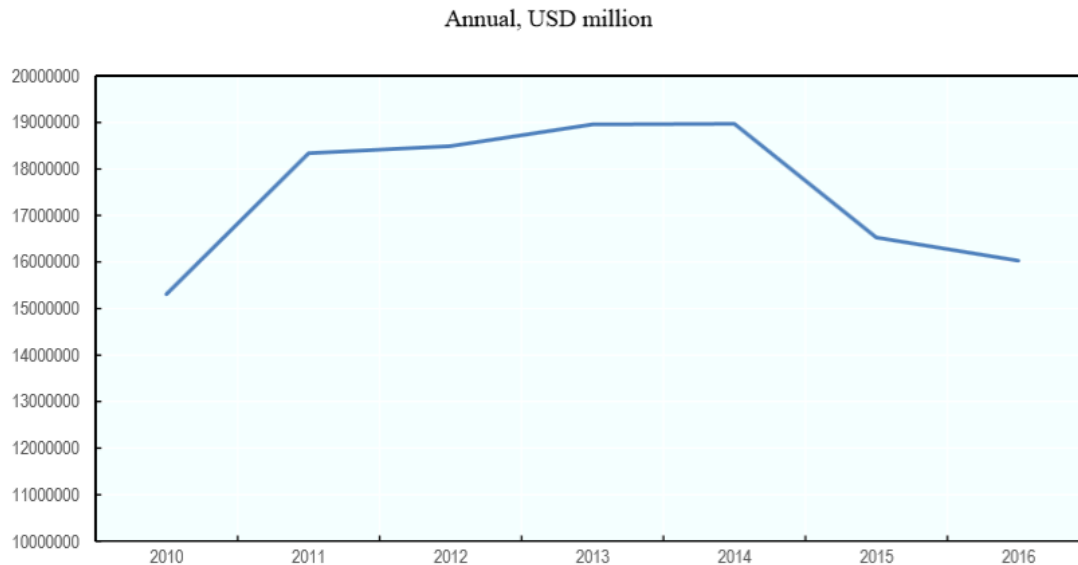
THE NEW LANDSCAPE

How counterfeit is changing in the changing economic environment

Following the 2008 crisis, economies were faced with a major change in trade patterns, causing a reduction in trade volumes

In the manufacturing sector, the categories where trade declined most in 2013-2016 are not particularly sensitive to counterfeiting

Figure 1.1. World trade flows, merchandise trade



Source: WTO (2019), *Statistics on Merchandise Trade*, www.wto.org/english/res_e/statistics_e/merch_trade_statistics_e.htm.

THE NEW LANDSCAPE

How counterfeit is changing in the changing economic environment

- ❑ The digital transformation allowed for strong reduction of costs and infrastructure, and immensely improved connection of people
 - trade moved from off-line to on-line
 - boom of **small parcels** with decrease of large containerised shipments
 - **role of the intermediaries** in on-line sales

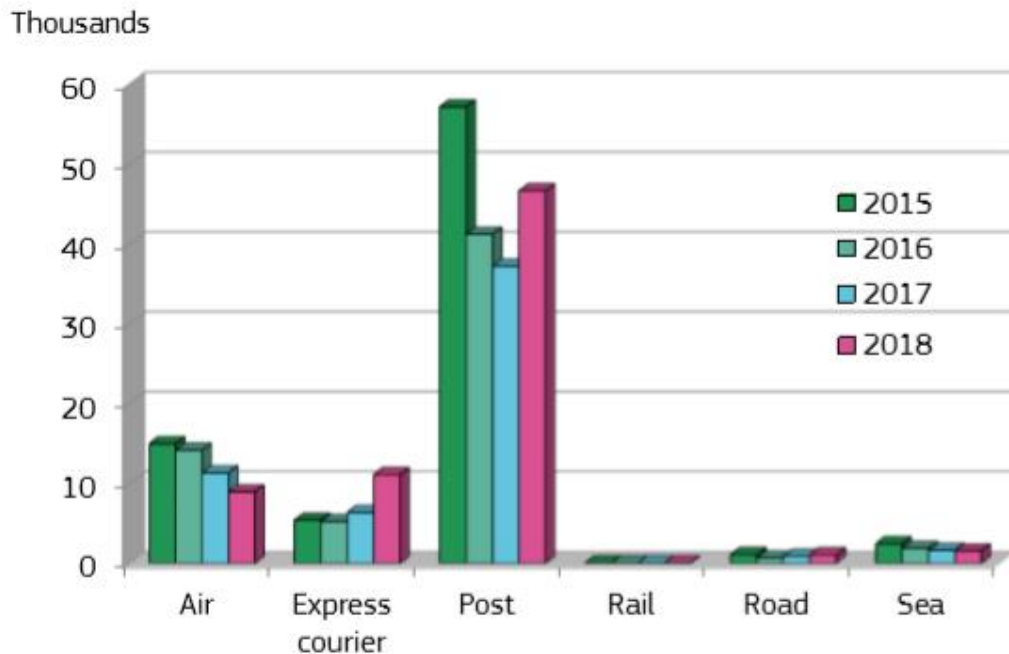
- ❑ New challenges for IPR enforcement

THE NEW LANDSCAPE

The small consignments



Rate of seizures of counterfeited products in **express couriers and postal services** in Europe in 2018



European Commission (DG TAXUD) Report on the EU customs enforcement of intellectual property rights: results at the EU border, 2018

THE NEW LANDSCAPE

The small consignments

- ❑ Virtually all industry sectors are affected by counterfeit in small parcels (situation in Europe 2016)

customs seizures of	% of parcels
footwear	84
optical (mainly sunglasses) photographic and medical equipment	77
ICT devices	66
watches, leather articles and handbags, and jewellery	63

THE NEW LANDSCAPE

How counterfeit is changing in the changing economic environment

□ As trade global dimension reinforces, counterfeit becomes a **transnational crime**



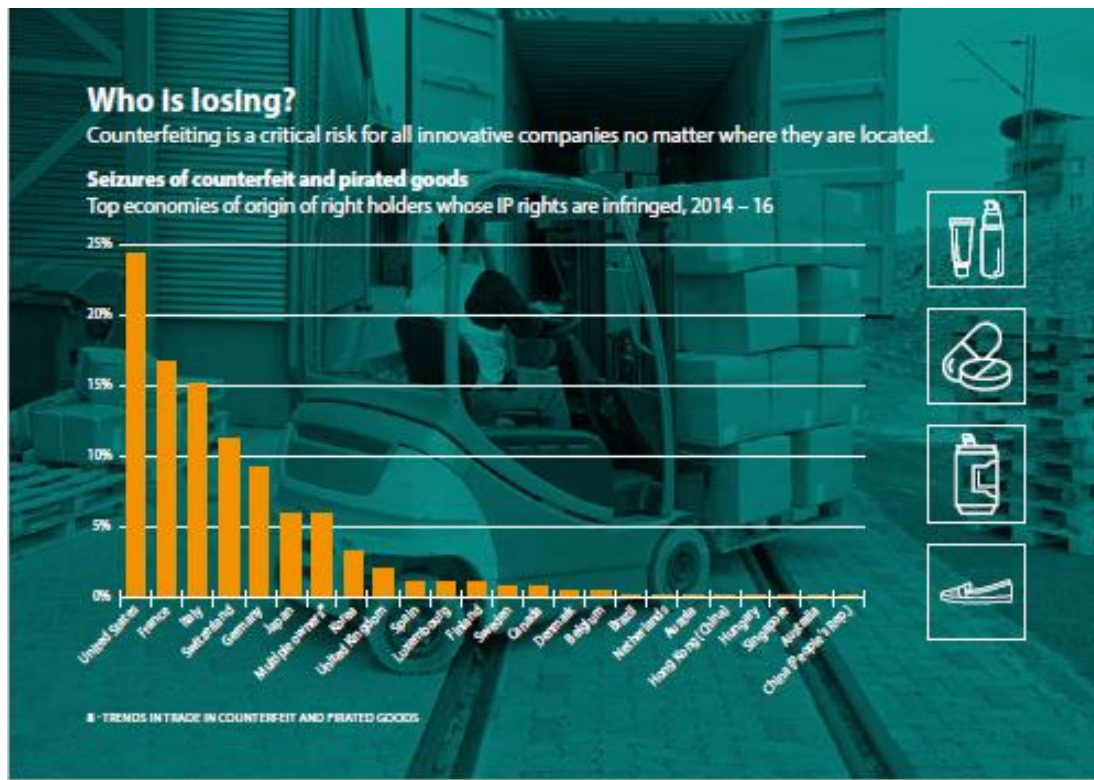
- increasing role of international organised criminal groups

RIGHT HOLDERS IMPACTED

Top 5 economies where the infringed business are located:

- United States (24%)
- France (16.6%)
- Italy (15.1%)
- Switzerland (11.2%)
- Germany (9.3%)

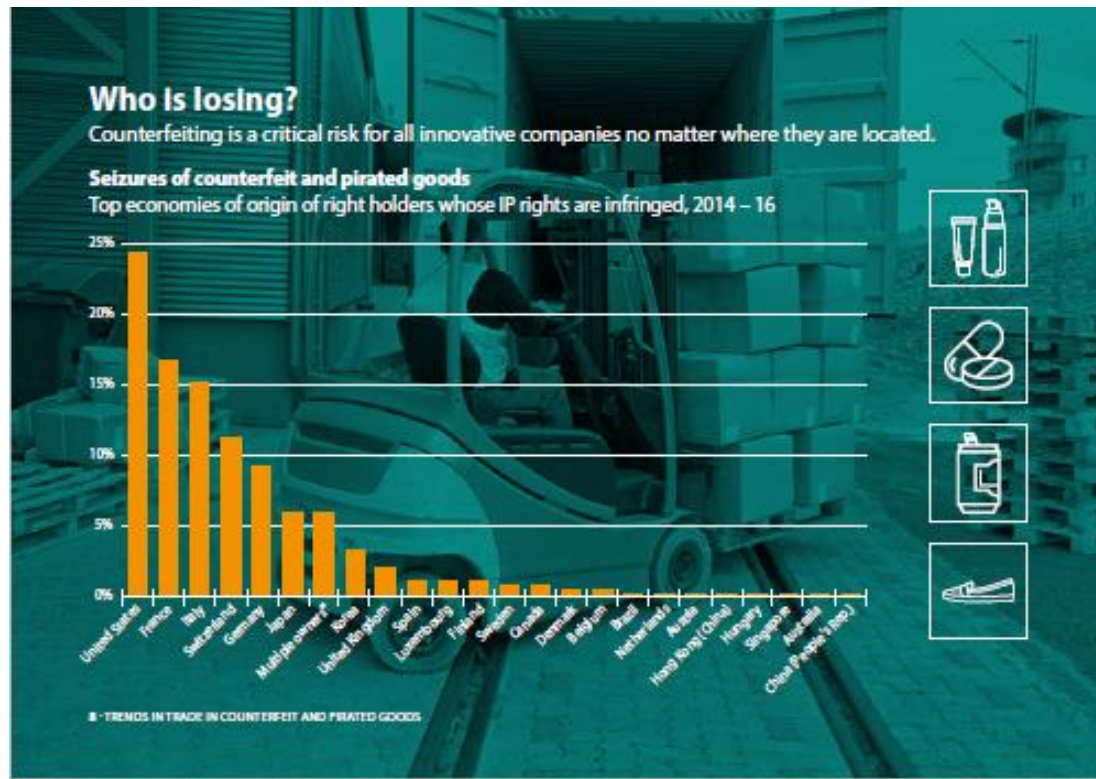
No significant change since 2011-2013 (first study of OECD-EUIPO)



RIGHT HOLDERS IMPACTED



- United States: +5% in years
- China ranks 23rd in 2016
- Hong Kong (China) ranks 19th in 2016
- Korea ranks 9th in 2016 and it was not appearing in the first statistics

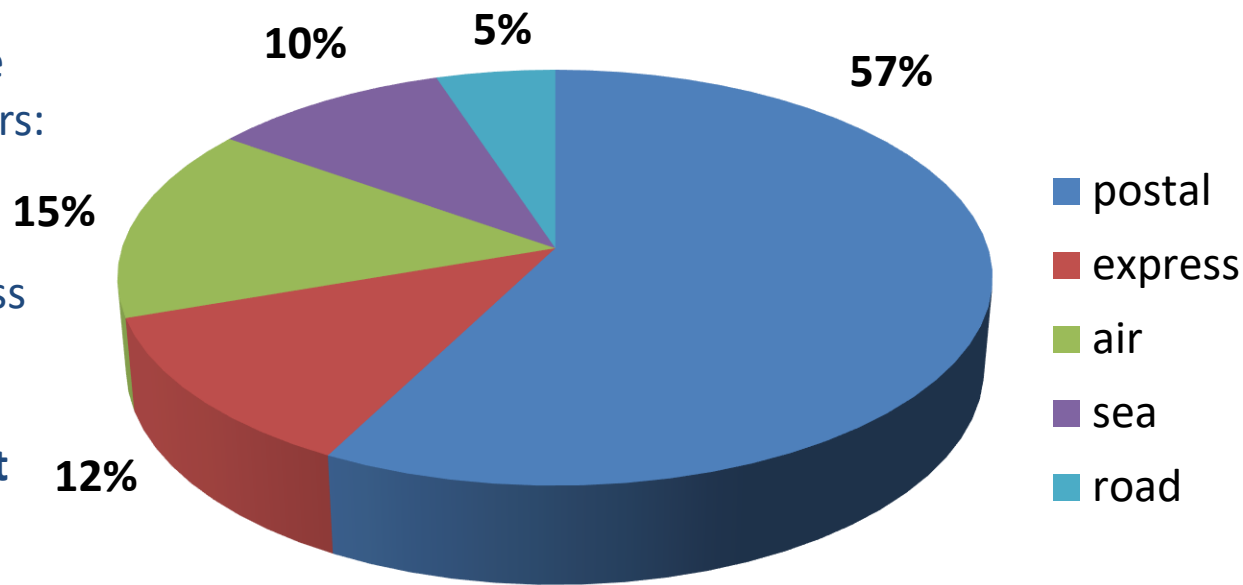


CONVEYANCE METHODS FOR COUNTERFEIT

Share of customs seizures by mode of conveyance worldwide (2014-2016)



- Small consignments are the most frequent in years: +6 %points since 2013
- 84% of seizures with less than 10 items each
- Only 1% in rail traffic at 2016

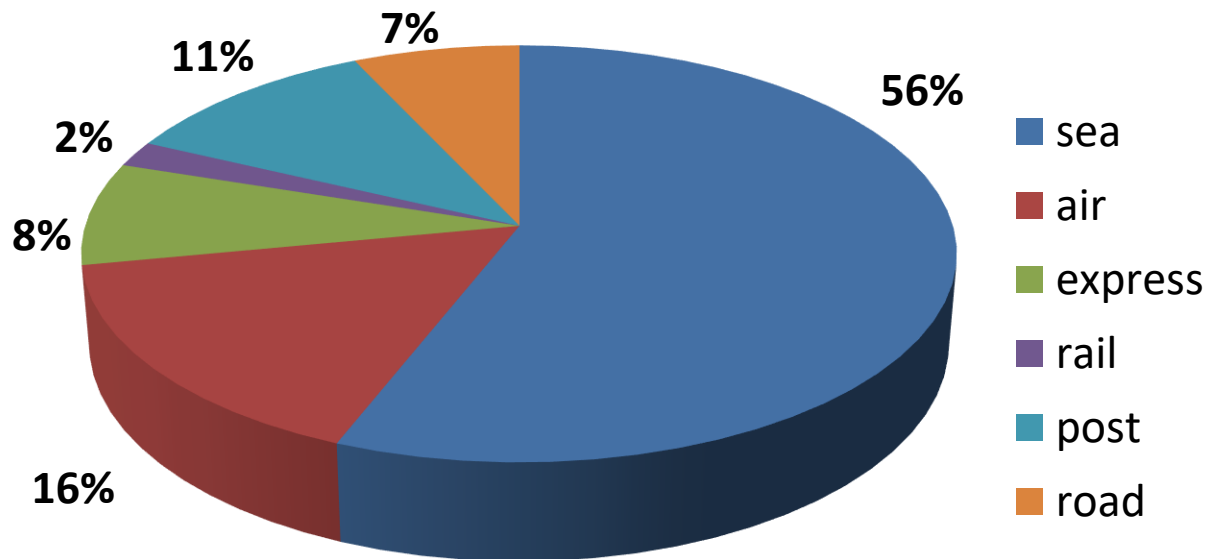


CONVEYANCE METHODS FOR COUNTERFEIT

Share of seized values by mode of conveyance worldwide (2014-2016)



- sea shipments for more valuable products



COUNTERFEIT IS A GLOBAL CRIME

- In years, counterfeiting and associated crimes have become a **global industry** also due to:
 - high contribution of IPR intensive industry and
 - low level of sanctions in general
- Impact goes beyond economy: health of citizens, with resources diverted from R&D and safety of consumers in key sectors like pharmaceuticals

COUNTERFEIT IS A GLOBAL CRIME

- Action at the **external borders** still considered more effective than detaining products in the **market** (despite drop in cases reported by customs worldwide)
- But criminals are organised and operating in the whole supply chain with connections from manufacture (export) to distribution (internal market)
 - ❑ inter-agency cooperation is key

THE CRIMINAL ORGANISATION

- Criminals involved in IPR can act as individuals but often they are part of an **Organised Criminal Group (OCG)**
 - this is due to the fact that production and distribution often take place in different geographical areas, so that criminality tends to structure in **network**

THE CRIMINAL ORGANISATION

- Actors in the network are engaged in different stages, from manufacture to sale

The situation in Europe:

- ☐ production is still predominantly located out of EU, **with EU based groups placing orders with producers and organising import and distribution**
- ☐ with limited number of OCG involved in domestic fake production but increasing, to eliminate customs controls, usually family based
- ☐ with the exception of Italy

THE CRIMINAL ORGANISATION

- The majority of groups are **hierarchically organised** and based on clear division of tasks:
 - finance:
 - management of costs, profits, (re)investments, **corruption of officials**
 - organisational:
 - shipments, importation, storage, distribution

THE CRIMINAL ORGANISATION

- Tasks and roles within the OCG
 - drivers, logistic support, warehouse keepers for goods storage, front men, couriers, distributors
 - **officials**
 - sometimes specialised role for the laundering of profits of the illegal trade
- Multi-nationality and mobility
- Frequently with ethnic ties: they facilitate networking across different geographical areas

THE CRIMINAL ORGANISATION

- The role of the leader of the OCG
 - management of the overall activities
 - orders and recruitment of new members
 - control of the profits and decision on (re)investments
 - primary access to the network of contacts
 - corruption of public officers

THE CRIMINAL ORGANISATION

- The dimension of the OCG
 - mostly large in size
 - typically more than 12 members
 - 5 to 6 core members on average
- The expertise
 - non specialists for offline trade and distribution
 - IT specialists for e-trade and communication
 - legal advisors on trade law and administrative procedures (customs), migration laws, etc.

THE CRIMINAL ORGANISATION

- OCGs tend to operate independently
- However, they may have contacts with other groups and «outsource» some of the activities to take advantages from:
 - the different expertise and resources of other groups (including contacts)
 - favourable geographical locations, e.g. at entry points in the EU (competitive advantage)

THE CRIMINAL ORGANISATION

- Like in licit trade, OCG infringing models strongly rely on the **use of technology and on-line business models**
 - business is fully anonymised (no contacts) through encrypted communication and anonymisation software: quick, cost effective and secure
 - covering all phases:
 - Europe-Asia cases of procurements, choice of models, negotiation, orders, trade deals by a mobile phone

THE CRIMINAL ORGANISATION

OPERATION «IN OUR SITES»: a recurrent global joint operation against illegal sales on-line conducted by **EUROPOL** (since 2014)

- **2018 «IOS IX»** involved EU and Third Countries:

Austria, Belgium, Bulgaria, Bosnia and Herzegovina, Colombia, Czech Republic, Denmark, France, Greece, Hungary, Hong Kong-China, Ireland, Italy, Netherlands, Peru, Republic of Korea (South Korea), Republic of Moldova, Republic of Serbia, Romania, Slovakia, Spain, Portugal, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America

THE CRIMINAL ORGANISATION

- 2018 IOS IX – products sold on the distrusted websites: counterfeit pharmaceuticals, pirated films, television shows, music, software, electronics and others
- Supported by the US National Coordination Centre and INTERPOL

MAIN FIGURES

Operation In Our Sites (IOS) IX

33.654 domain names seized

12 suspects arrested

accounts worth over **EUR 1 million** seized.

DURATION

01 January 2018 - 26 November 2018

THE CRIMINAL ORGANISATION

- OCGs infiltrate **the supply chain** at different levels by means of:
 - falsification of documents
 - corruption
 - re-use of packaging
 - Example: packaging of discarded pharmaceutical re-filled with fake products
- The risk is that legal operators at wholesale or retail level may unintentionally buy and distribute counterfeited products

COUNTERFEIT AS POLY-CRIMINALITY

- **IP crime is a poly-crime**
 - criminals involved in IPR crime are often involved also in other crimes, typically:
 - money laundering (it is necessary to clean the often huge resources received from counterfeit at international level)
 - drugs trafficking
 - smuggling and VAT fraud as goods are not sometimes declared to Customs)
 - excise duties frauds (for alcoholics in the EU)
 - corruption of public servants (customs, visas, etc.)
 - **document fraud**

COUNTERFEIT AS POLY-CRIMINALITY

- **IP crime is a poly-crime**
 - document fraud:
 - customs and shipping documents are falsified to accompany illegal goods: false invoices, transport documents in off-shore transshipment or in free trade zones, etc. to hide the real nature and origin of the shipment
 - at retail level, false documents to obtain license to open a warehouse or points of sales and then infiltrating the supply chain
 - use of false identity to establish companies and opening bank accounts



www.euipo.europa.eu



@EU_IPO



EUIPO

Thank you