



**CONFERENCE ON ONLINE IPR INFRINGEMENT AND  
RESPONSIBILITY OF INTERMEDIARY SERVICE PROVIDERS  
BANGKOK, THAILAND  
SEPTEMBER 2019**



# **MALAYSIA'S APPROACH AND EXPERIENCE ON THE LEGAL FRAMEWORK FOR SECONDARY LIABILITY IN RELATION TO IPR INFRINGEMENTS**

**MOHAMAD FUZI HADI BIN ABDUL LATIF  
HEAD OF INVESTIGATION UNIT  
MINISTRY OF DOMESTIC TRADE,  
AND CONSUMER AFFAIRS, MALAYSIA**

# CONTENTS

Introduction Of Enforcement Division MDTCA

Intellectual Property (IP) Enforcement in Malaysia

Best Practices, Secondary Liability & Success Stories

Challenges

Conclusion



# Introduction of Enforcement Division MDTCA

**Formed in 1972**

**2286 Officers**

**Enforced 11 Acts**

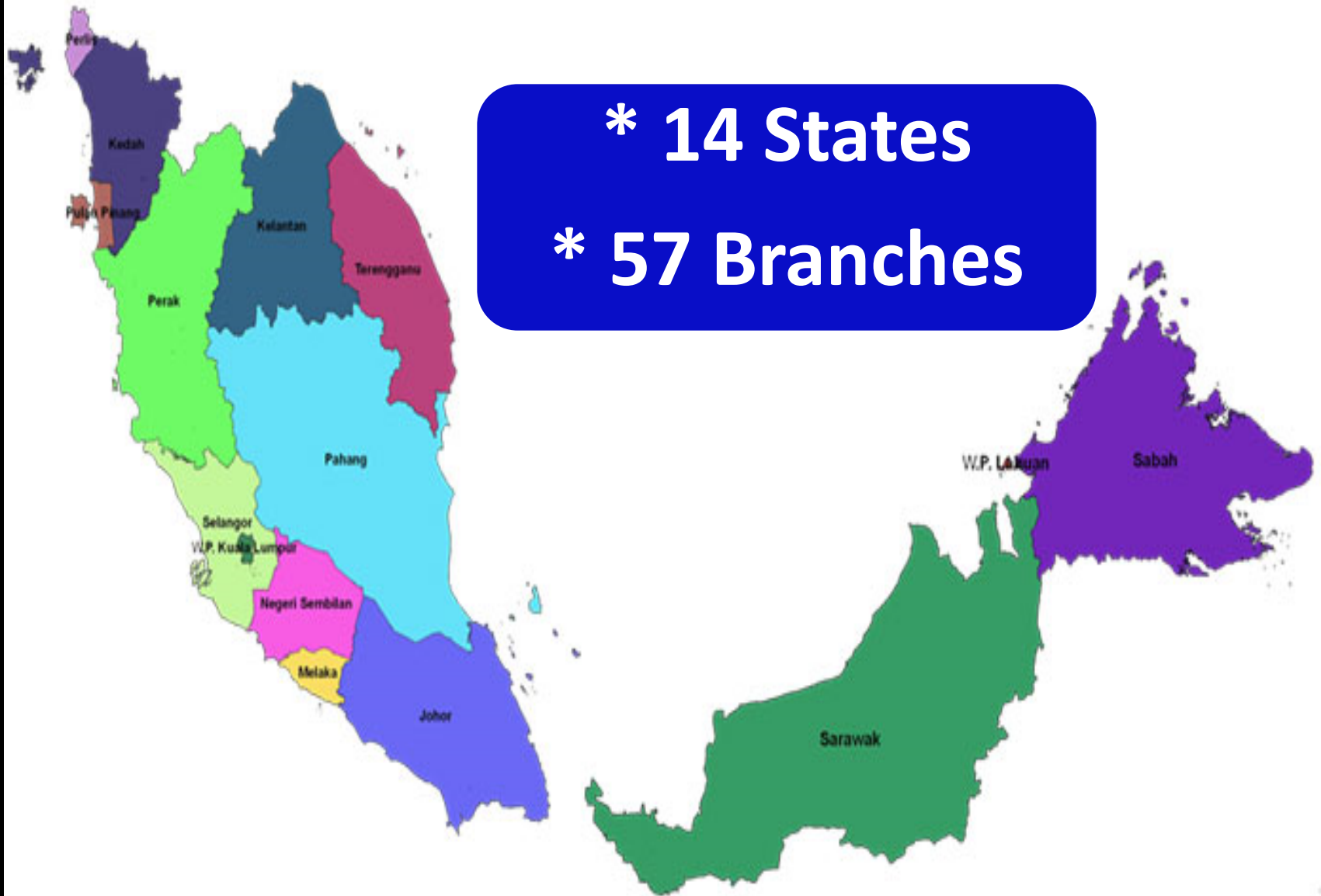


**Objective**

- To enforce domestic trade laws and protect consumers

**Mission**

- To combat all forms of malpractices, exploitation and profiteering that puts consumers at a disadvantage whilst promoting ethical trade practices for the benefit of consumers and traders



**\* 14 States**

**\* 57 Branches**



**IP ENFORCEMENT**

**IN MALAYSIA  
(LEGAL FRAMEWORK)**

# THE MALAYSIAN GOVERNMENT APPROACH TO COUNTERFEITING AND COPYRIGHT PIRACY

In combating counterfeiting and copyright piracy, the Malaysian government has adopted five main interconnected strategies, which are as follows :

- i. Effective leadership and strong political will
- ii. Appropriate legislative framework
- iii. Efficient legal system
- iv. Strong enforcement regime
- v. Regular education and public awareness programs

# MALAYSIAN GOVERNMENT AGENCIES WHICH ENFORCE IPR

- i. Ministry of Domestic Trade and Consumer Affairs (MDTCA)
- ii. Malaysian National Film Development Corporation (FINAS)
- iii. Royal Malaysian Police (RMP), and
- iv. Royal Malaysian Customs and Excise (RMCD)

*Refer:*

*Copyright Act 1987*

*Trade Description Act 2011*

*Optical Disc Act 2000*

*Price Control and Anti Profiteering Act 2011*

*Film Censorship Act 2002*

*Perbadanan Kemajuan Filem Nasional Malaysia Act 1981; and*

*Customs Act 1967*

Royal Malaysia  
Police



Royal Malaysia  
Custom



Malaysian  
Armed  
Forces



Ministry of  
Health



Malaysian  
Communications  
& Multimedia  
Commission



Malaysian  
Maritime  
Enforcement  
Agency



STRATEGIC

COOPERATION



The International  
Federation of  
Spirits Producers  
(IFSP)



British  
American  
Tobacco  
(BAT)



The European  
Anti-  
Counterfeiting  
Network



The Asian  
Coalition Against  
Counterfeiting  
And Piracy



Southeast  
Asia Toys  
Association



Global  
Trade Shield

# **CRIMINAL IPR LAWS IN MALAYSIA**

**Copyright  
Act (CRA)  
1987**

**Trade  
Descriptions  
Act (TDA)  
2011**

**Optical Disc  
Act (ODA)  
2000**

# **PROTECTION OF IP RIGHTS (OFFLINE COPYRIGHT PIRACY)**

## **UPSTREAM : FACTORY**

- **OPTICAL DISCS ACT 2000**

## **DOWNSTREAM : DISTRIBUTION**

- **COPYRIGHT ACT 1987**
- **TRADE DESCRIPTIONS (OPTICAL DISC LABEL)  
ORDER 2010**



# **COPYRIGHT ACT (CRA) 1987**

- **The Act gives exclusive rights to authors or creators of works eligible for copyright,**
- **It protects a person's work from being copied by unauthorized persons**
- **Copyright owners may lodge an official complaint supported by the necessary documents to the MDTCA or Police if they suspect infringement. The Division will conduct the necessary investigations and prosecution**

# **COPYRIGHT ACT (CRA) 1987**

## **OFFENCES :**

- **MAKES, SELLS, RENT, DISTRIBUTES, HAS IN HIS POSSESSION, IMPORTS, EXPOSES OR OFFER FOR SALE INFRINGING COPIES**

# OPTICAL DISCS ACT (ODA) 2000

## OBJECTIVES :

- TO LICENSE AND REGULATE THE MANUFACTURER OF OPTICAL DISCS

## LICENSEE OBLIGATIONS :

- ONLY COPYRIGHT OWNER/AUTHORISED PERSON CAN PRODUCE
- OPTICAL DISCS TO BE MARKED WITH MANUFACTURER'S CODE
- MAINTENANCE OF RECORDS

# **TRADE DESCRIPTIONS ACT (TDA) 2011**

- Prohibition of false description of goods supplied in the course of trade
- A trade descriptions includes method of manufacture, approval by any person, place of manufacture, person by whom manufactured
- Offences
  - ✓ Applying false trade description to any goods; or Supplying or offering to supply any goods to which false trade description is applied
- Trade Description Order (TDO) – useful and essential tool for IP owners
- Conclusive proof of trade descriptions
- Effective against almost all channel of trade including manufacturers, retail outlets and even premises in open areas
- Require co-operation from trade mark owners to prosecute cases
  - ✓ Verification of products seized
  - ✓ Attendance in court during trial

# TRADE DESCRIPTIONS (OPTICAL DISC LABEL) ORDER 2010

## OBJECTIVES :

- TO ERADICATE PIRACY IN MALAYSIA (TDA 1972)

## HOW ??

- PROACTIVE ACTION
- ANY PERSON WHO SUPPLIES OR OFFER TO SUPPLY ANY OPTICAL DISC WITH CONTENT WITHOUT ODL, COMMITS AN OFFENCE
- ONLY COPYRIGHT OWNER/AUTHORISED PERSON CAN APPLY FOR OPTICAL DISC LABEL (ODL)

# PENALTY :

## OPTICAL DISC ACT 2000 :

- FINE < RM 500,000.00

## COPYRIGHT ACT 1987

- RM 2,000.00 < FINE < RM 20,000.00 FOR EACH INFRINGING COPY

## TRADE DESCRIPTION (OPTICAL DISC LABEL) ORDER 2010

- FINE < RM 250,000.00

**BEST PRACTISE,  
SECONDARY LIABILITY &  
SUCCESS STORY**

# ENFORCEMENT MECHANISME



Strengthen  
Legislation



Awareness  
Campaign



Special task forces of  
intellectual property  
protection



Informer Reward  
Scheme



Joint Operation



Dedicated Trained  
Team  
(DIT/DOT/SIFU)



Border Measures



Hard Enforcement for  
syndicated IP crimes



# ENFORCEMENT METHODOLOGY

## PROACTIVE

- KPI - combating counterfeiting activities
- Schedule Inspection

1



## REACTIVE

- Intelligence reports,
- complaints by IPR owners & and public information

2



## PREVENTIVE

- Engagement with industry and public
- pre-emptive actions “ EREDICATE & EDUCATE ”

3



# STATISTIC OF COUNTERFEIT CASES

ITEMS	2015	2016	2017	2018	2019	TOTAL CASES
FOODS/ HEALTHNESS						
FOOD AND BEVERAGES	25	31	18	113	4	91
MEDICINES	0	1	0	1	0	2
COSMETICS	28	21	36	38	11	134
CIGARETTES	10	17	7	1	0	35
LIQOUR/ BEER	41	56	54	12	12	175
SAFETY						
PETROLEUM MATERIALS	2	8	13	19	12	54
ELECTRICAL EQUIPMENTS	1	4	0	3	0	8
COMMUNICATION TOOLS	104	57	38	44	15	258
COMPUTER DEVICES	10	6	6	5	2	29
AUTOMOTIVE SPARE PART	11	13	10	33	11	78
OTHERS						
APPARELS	201	194	151	147	106	799
WATCHES	18	31	25	59	17	150
STATIONERIES	0	1	1	1	0	3
SHOES	52	56	104	90	70	651
LEATHER GOODS	173	117	156	135	89	391
SPECTACLES	17	7	7	2	0	33
OTHERS	57	36	36	48	26	203
<b>TOTAL</b>	<b>750</b>	<b>656</b>	<b>662</b>	<b>651</b>	<b>375</b>	<b>3,094</b>

# STATISTIC OF COPYRIGHT PIRACY CASES

YEAR	TDA 2011	CRA 1987	ODA 2000	TOTAL CASES
2015	417	183	3	603
2016	328	149	1	478
2017	163	94	0	257
2018	123	81	0	204
2019	67	37	0	94
TOTAL	1,088	544	4	1,636

## VALUE OF SEIZURES

YEAR	COUNTERFEIT (MYR)	COPYRIGHT (MYR)
2015	20,134,786	12,055,467
2016	10,591,070	14,044,918
2017	12,326,736	2,357,670
2018	8,647,520	2,253,450
2019	11,620,829	623,063
TOTAL	63,320,941 (USD\$15,368,612)	31,334,567 (USD\$7,605,206)

# SECONDARY LIABILITY: MALAYSIA WAY

Where the accused is charged with one offence and the evidence shows that he has committed some other offence for which he could have been charged but is not so charged, he can be convicted of the latter offence even though he has not been charged with it.

Refer : Section 166, 167, 168, 169 of the Criminal Procedure Code;

*Gurdit Singh v PP* [1983] 1 MLJ 264;

*Sivalingam v PP* [1982] 2 MLJ 172;

*Periasamy & Anor v PP* [1993] 2 MLJ 551

## SECONDARY LIABILITY: MALAYSIA WAY

Who is charged would be very necessarily depend upon the facts of the case as made out by investigation. Most of the IPR statutes have specific provisions enabling a wider range of persons to be charged for committing an IPR offence. Such persons may include corporate personalities. An example is subsection 41(4) of the Copyright Act 1987 and Section 8 of the Trade Description Act 2011.

In the case of *PP v Nagappan a/l Nagapatham* and *PP v Thangamalar (M) Sdn Bhd* (Kuala Lumpur Sessions Court Summons Case); the individual, who was at the scene of offence at the time of offence, and the company were charged separately and subsequently the trial was held jointly leading to the conviction of both the individual and the company.

## SECONDARY LIABILITY: MALAYSIA WAY

The provision for a joint trial is found in section 170 of the Criminal Procedure Code. Where more than one accused are charged in respect of the same offence or of different offences committed in the same transaction or when one accused is charged of committing an offence and another abetment or attempt they may be charged and tried together.

Refer: *Tan Weng Chiang v PP* [1992] 1 AMR 333; [1992] 2 MLJ 625

# SECONDARY LIABILITY: MALAYSIA WAY

Suspects involve in counterfeiting and piracy activities to be charged under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFAPUA) 2001

Parameter:

- Syndicated of crime
- High profile and public interests cases
- Joint operation with other enforcement agency
- Seizures item valued more than MYR500,000



# SECONDARY LIABILITY: MALAYSIA WAY

## CASES UNDER AMLATFAPUA 2001 (Since 2016)

	SEIZURE OF MOVEABLE PROPERTY IN FINANCIAL INSTITUTION [S.50] (MYR)	FORFEITURE OF PROPERTY WHERE THERE IS NO PROSECUTION [S.56] (MYR)
<b>CRA 1987</b>	282,614	-
<b>ODA 2000</b>	-	61,235
<b>TDA 2011</b>	7,124,001	-
<b>TOTAL</b>	<b>7,406,615 (USD\$1,729,126)</b>	<b>61,235 (USD\$14,863)</b>

# SUCCESS STORY

LATEST / TERKINI | Hamas sokong Abbas tangguh perjanjian dengan Israel [ 4m ago ]

## KPDNHEP seizes counterfeit goods worth over RM27,000

Last update: 22/05/2019



KUALA LUMPUR, May 22 (Bernama) -- The Domestic Trade and Consumer Affairs Ministry (KPDNHEP) has confiscated 579 units of counterfeit goods worth RM27,570.

KPDNHEP Kuala Lumpur chief enforcement officer, Azeem Nazuri said the goods were seized during a raid on two premises at Bukit Bintang, around 2pm yesterday.

He said the wholesale price of the goods was about RM40 to RM50 each.

"The two premises which hired four foreign workers, sell a variety of imitation branded bags, including Louis Vuitton (LV), Gucci, Chanel, Levis, Nike, Adidas and Puma brands.

"The foreign workers are Bangladeshis aged between 20 and 30 years old," he told a press conference today, adding that a remand order has been issued against the four workers.

He added that according to 2019 statistics, as at May 21, KPDNHEP Kuala Lumpur has recorded 47 cases under the Trade Descriptions Act 2011 with the confiscated items worth over RM1.6 million.

--BERNAMA

# South Region NEWS

**Suspects involved in counterfeiting activities to be charged under AMLA - KPDNHEP**

Last Update: 26/04/2019



## Daily Express

Daily Express

"Follow the facts, Follow D

Home News Business Sports Features Property Auto Education Lifestyle

### RM800,000 counterfeit electronic goods seized

Published on: Thursday, June 27, 2019

By: Del Roester Rudim





# Factory at Klang, Selangor, November 2018

## Over 2500 counterfeit handbags, baggage, backpacks was seized

3 minute read

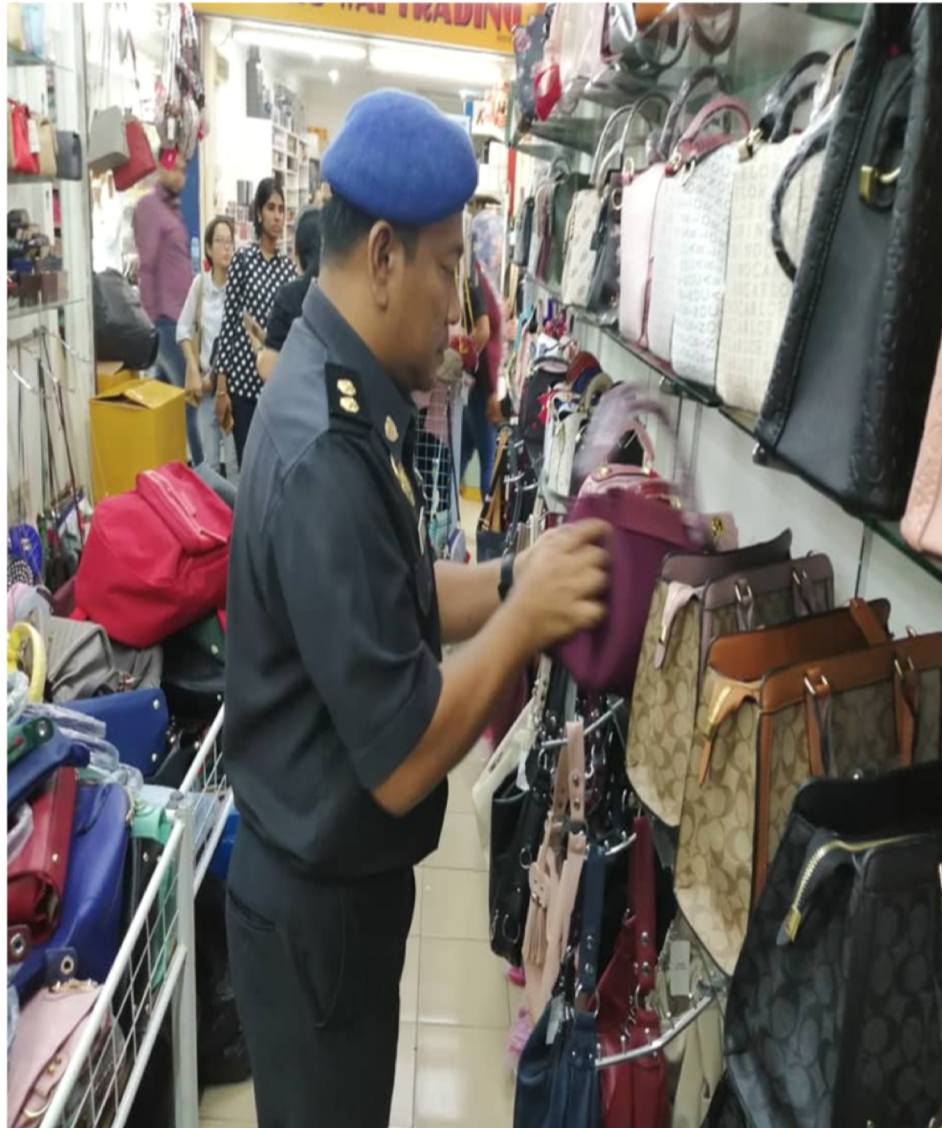
Subang factory producing counterfeit LV, Gucci busted





# PLAZA GM, LORONG HAJI TAIB, KUALA LUMPUR, July 2019

## 740 counterfeit handbag was seized bearing various trademark





# PREMISES AREA KUALA LUMPUR, Seized 739 counterfeit inkjet printers and cartridges









# STAR HILL, KUALA LUMPUR

## Seized 1,621 various counterfeit goods











## Engineering company fined RM4,000 for using pirated software

18 MAR 2019 / 20:52 H.



Picture for representational purpose only. — Sunpix

**KUALA LUMPUR:** An engineering consulting company was fined RM4,000 by the Sessions Court here today for using pirated software in its business operations.

Judge Manira Mohd Nor meted out the punishment to Lee Ghim Peng, 40, the director of Jaya Gemilang Konsult PLT, when he pleaded guilty after the charge was read out to him.

The company was accused of having in its possession a pirated copy of a literary work in a computer for personal and domestic use, of which the copyright belonged to Trimble Solutions Corporation.

The offence was allegedly committed at the company's premises at Jalan Radin Bagus 9, Bandar Baru Seri Petaling here at 11.30am on June 7, 2018.

The company was charged under Section 41 (1) (d) of the Copyright Act 1987 and punishable under Section 41 (1) (i) of the same Law which provides a maximum fine of RM20,000 or five years imprisonment or both upon conviction.

Earlier, Lee, who was unrepresented, appealed for leniency on the grounds that it was the first offence besides his company had also purchased a genuine software worth RM12,000. — *Bernama*

# ■ Honda's Case

- 2017 case - Honda's counterfeits accessories auto parts in Mudah.my

	New/used	Judgement	Sample photo	Product name	Model year 1	Model year 2	Model	Product	Price	Seller's name	Seller's name
1	new	Trade mark infringement		Honda Civic 1.8i 1800cc 1800cc 1800cc	18		Civic	1800cc	RM 1 300	A12 Bodykit Specialist ROC/SSM No. (001786029-w)	
2	new	Trade mark infringement		Honda Civic 1.8i 1800cc 1800cc 1800cc	2002		Civic	1800cc	RM 1 300	Ah Dee. GC MOTORSPORT SDN BHD, DAMANSARA UTAMA	
3	new	Trade mark infringement		Honda Civic 1.8i 1800cc 1800cc 1800cc	18		Civic	1800cc	RM 1 300	Ah Dee. GC MOTORSPORT SDN BHD, DAMANSARA UTAMA	
4	new	Trade mark infringement		Honda Civic 1.8i 1800cc 1800cc 1800cc	2002		Civic	1800cc	RM 1 400	Ah Dee. GC MOTORSPORT SDN BHD, DAMANSARA UTAMA	
5	new	Trade mark infringement		Honda Civic 1.8i 1800cc 1800cc 1800cc	18		Civic	1800cc	RM 1 250	BODYKIT ONLINE STORE	

## ■ 2017 Counterfeits COA

- Counterfeits Microsoft "Certificate of Authentication" (COA) sold in [www.lelong.com](https://www.lelong.com.my/catalog/nicholasla/list)

CONVERSE Official Store on Lelong.com

FREE SHIPPING 10% OFF UPON PURCHASE RM200

Search for a product, category or brand

ALL CATEGORIES: Phone & Tablet, Fashion, Home & Gardening, IT & Gadgets, Watches, Sport, Car Accessories, Shop International

Related Categories: Computer & Software (2), Condition (2), New (2), Item State (2), Name (2), Type (2), Buy New (2)

Price: Min - Max

Sort by: Price, Qty Sold, Latest, Watched, Free Shipping, No Fee

Nicholasla yields 33 products

Original Microsoft Office 2016 Home and Business FPP W COA Mediation  
Qty from: Nil  
Estimated arrival: 4-6 working days  
RM 680.00

OPTIONAL Windows/MAC Adobe Reader C16 Full Version Mediation  
Qty from: Nil  
Estimated arrival: 4-6 working days  
RM 1,080.00

Microsoft Windows Office 2013 Professional Plus Product Key  
Qty from: Nil  
Estimated arrival: 4-6 working days  
RM 40.00

# DESTRUCTION OF IPR EXHIBITS







# THE USE OF SOCIAL MEDIA

## APAKAH KESAN JIKA PENJUALAN BARANG TIRUAN DAN CETAK ROMPAK TIDAK DIBANTERAS?

### MALAYSIA BERPOTENSI TERSENARAI SEMULA DALAM SPECIAL 301 WATCH LIST



Laporan *Special 301* adalah laporan tahunan terhadap tindakan penguatkuasaan dan perlindungan hakcipta harta intelek (*Intellectual property rights* – IPR) di peringkat global oleh *Office of the United States Trade Representatives*. Ianya menyenaraikan negara-negara yang perlu diberi perhatian oleh pelabur-pelabur sekiranya mereka ingin melabur di negara berkenaan.

Penyenaraian ini memberi kesan kepada kemasukan pelaburan asing kerana pelabur tidak akan datang ke Malaysia sekiranya mereka merasakan produk dan harta intelek mereka tidak mendapat perlindungan sewajarnya di negara ini. Laporan yang dikeluarkan itu bukan sahaja digunakan oleh pelabur dari Amerika Syarikat, tetapi juga digunakan oleh pelabur oleh negara lain kerana maklumat yang dinyatakan dalam laporan berkenaan adalah bersifat terperinci.



Nforce team Kpdnhep

Like This Page · November 28, 2017 ·

## KESAN PENJUALAN BARANG TIRUAN DAN CETAK ROMPAK

Masyarakat umum mungkin menganggap barangan tiruan dan cetak rompak tidak memberi kesan besar dalam kehidupan harian mereka. Namun begitu, kegiatan berkaitan barangan tiruan dan cetak rompak sebenarnya mempunyai impak yang besar ke atas reputasi negara di kalangan pelabur antarabangsa. Malaysia berpotensi tersenarai semula dalam laporan Special 301... [See More](#)



4

Mohd. Fuzi Hadi

1 Share



Like



Comment



Share



Write a comment...



## Suggested Pages

[See All](#)



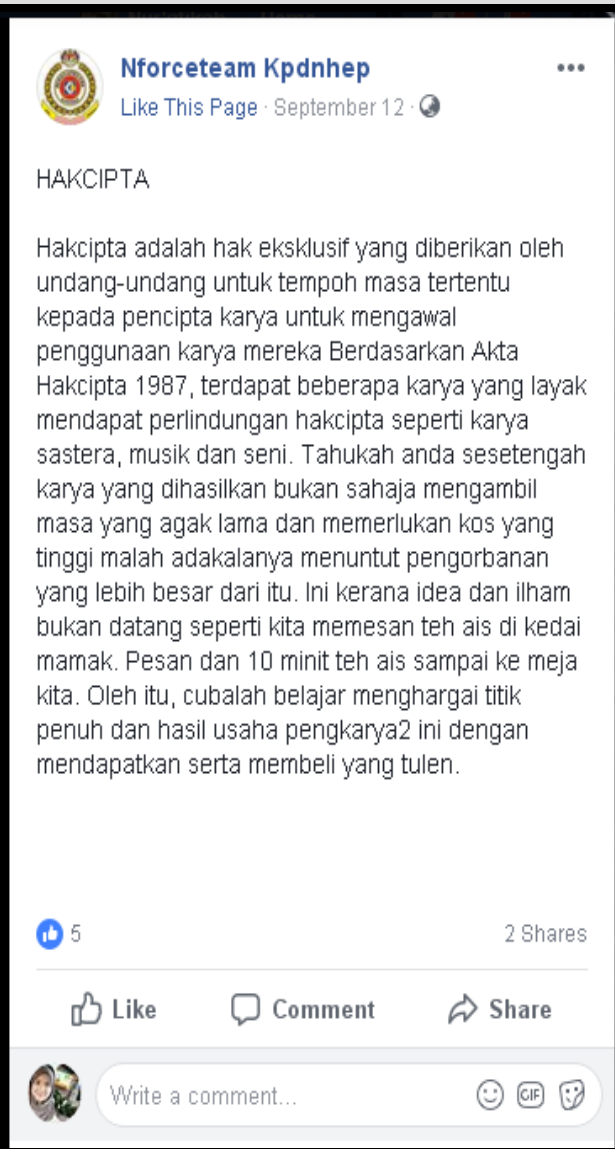
Pu3 Burger jb

78 people like this.

Like



# THE USE OF SOCIAL MEDIA





KEMENTERIAN PERDAGANGAN DALAM NEGERI  
DAN HAL EHRYAL PENGUNYA

**Anda ada sebarang  
maklumat untuk dikongsi?  
ADUAN?**



WhatsApp kepada  
KPDNHEP  
di talian

**019 279 4317**

Terima kasih kerana menghubungi KPDNHEP







**EMEL ADUAN :**  
[e-aduan@kpdnkk.gov.my](mailto:e-aduan@kpdnkk.gov.my)



**PORTAL KPDNKK :**  
[www.kpdnkk.gov.my](http://www.kpdnkk.gov.my)



**PORTAL 1PENGGUNA :**  
[www.1pengguna.com](http://www.1pengguna.com)  
(Untuk perbandingan harga)



**EMEL & LAMAN WEB**

#CoringWinstry



Friends Of KPDnKK



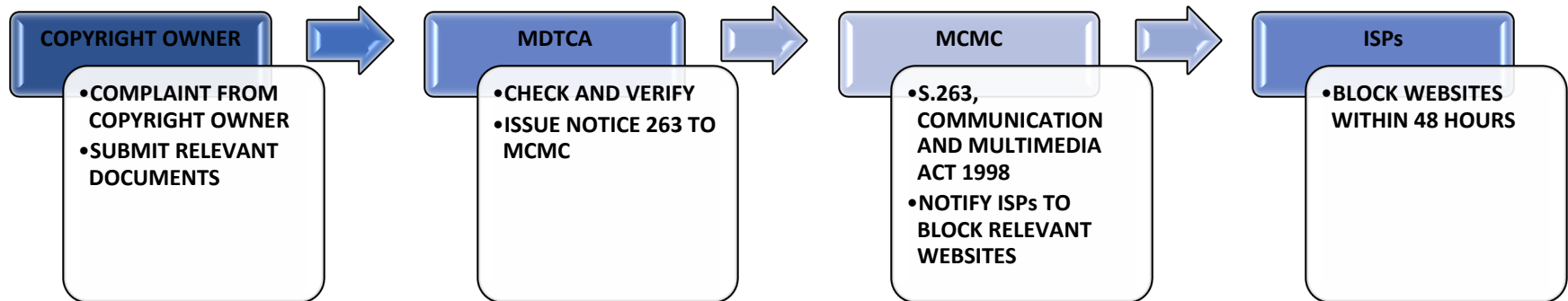
@FuaKPDnKK

# **PROTECTION OF IP RIGHTS (ONLINE COPYRIGHT PIRACY)**

## **INTERNET AND FORENSIC SECTION (SIF)**

- **ESTABLISHED IN 2006**
- **TO TACKLE ONLINE COPYRIGHT PIRACY AND OTHER ONLINE IPR ISSUES**
- **JV WITH MALAYSIA COMMUNICATION AND MULTIMEDIA COMMISSION (MCMC)**

# ACCESS BLOCKING PROCEDURES :



# STATISTICS :

YEAR	2015	2016	2017	2018	2019
BLOCKED WEBSITES	112	125	152	157	30

**TOTAL ACCESS  
BLOCK : 576**

# Challenging Areas of IP Protection

## Manpower

- 2,286 enforcement officers
- 6,692,809 registered business
- 31.7 million consumers
- 11 Acts

## Verification

- Legal constrain in verify counterfeit product – do not accept the digital verification as an evidence document

## Demand

- Indifferent attitude of consumers
- Preference for cheaper options

## Geo-Location

- Smuggling / influx of counterfeit goods from foreign countries. e.g goods from China

## Online

- Digital/online piracy and counterfeiting

# CONCLUSION

- ❑ In order to stay relevant in the changing economies, the government is committed that the IP laws to remain versatile and adaptive.
- ❑ But it is not a matter that can be tackled unilaterally but one that needs international cooperation and a sustained commitment to mutual cross border preventative action.
- ❑ There is a growing need among the nations to enhance cooperation, information sharing, knowledge sharing, intelligence gathering & sharing of responsibilities

*Thank*  
*You!*