

Economic Elements on the Criminal Enforcement of IP

知识产权刑事执法中的经济元素

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Content 目录

- 10 European IP Crime Cases 10起欧洲知识产权刑事案件
 - - Bajatetodo
 - - SKF | 斯凯孚
 - - Gomorrah | 格莫拉
 - - Vigorali
 - - Bittorrents.ro
 - - Cardinal Software | Cardinal软件
 - - Swefilmer
 - - Methanol | 甲醇
 - - Popcorntime.dk
 - - Facebook
- Horizontal Analysis 横向分析

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Court Cases Finally Decided
2014-2020

法庭最终裁决：2014-2020

- 5 Copyright Piracy
- 5起盗版案件

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Court Cases Finally Decided
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- 5 Copyright Piracy
- 5起盗版案件
- 5 Trade mark Counterfeiting
- 5起假冒商标案件

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10 European IP Crime Cases
10起欧洲知识产权刑事案件

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Bajatetodo Case | Bajatetodo案

- Various websites who made copyright-protected content available to the public illegally available mainly via hyperlinking;
- 多个网站，主要通过超链接非法向公众提供受著作权保护的内容；
- Profits of 11k+ derived from the sale of users' email addresses to advertising companies or redirection to porn sites;
- 通过向广告公司出售用户电子邮箱或者将用户重定向至色情网站，非法获利超过1.1万欧元；
- At least 80 000 users mainly in Spain during 2004-2007;
- 2004至2007年，至少有8万用户，主要在西班牙；
- 18-month prison sentence, 2014.
- 2014年，判处相关人员18个月有期徒刑。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

SKF Case | 斯凯孚案

- Counterfeit ball bearings marketed mainly in Sweden by Transmissions Teamet AB, 2008–2010;
- 2008至2010年，主要通过Transmissions Teamet AB公司在瑞典销售假冒轴承；
- Statements from expert witnesses and SKF;
- 来自专家证人和斯凯孚公司的证词；
- Criminal liability found based on the defendants many years of work in ball bearings business, correspondence etc;
- 依据被告在轴承行业多年从业经历、通信记录等，认定刑事责任；
- 8 months suspended prison, 2014.
- 2014年，判处8个月有期徒刑，缓期执行。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Gomorrah Case | 格莫拉案

- Substandard power tools not compliant with safety standard reworked in EU;
- 在欧盟重制不符合安全标准的劣质电动工具;
- Sales all over Europa in late 2006-2011;
- 2006年末至2011年，在全欧洲销售;
- Traditional organised crime originating from Naples;
- 源头位于意大利那不勒斯的传统有组织犯罪团伙;
- More than 60 person within criminal network and several companies;
- 涉及犯罪网络和多家企业，超过60名不法分子;
- Money laundering trough Australia and Iceland.
- 通过澳大利亚和冰岛洗钱。

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Gomorrah Case | 格莫拉案

- Involvement of 20 countries, Europol and Eurojust ;
- 参与方包括20个国家、欧洲刑警组织、欧洲司法合作组织;
- 67 arrests, 143 warehouses searched, seizure of more than 800 tonnes of counterfeits and confiscated assets of more than 16m EUR;
- 逮捕67人，搜查143个仓库，查获800余吨假冒商品，没收价值1600余万欧元资产;
- Six court procedures in different countries until 2015 with sentences of up to more than six years imprisonment.
- 在多个国家开展六次法庭程序，2015年最高判处超过六年有期徒刑。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Vigoralì Case | Vigoralì案

- Distribution of unregulated pharmaceuticals via 50+ websites allowing payment by credit card, 2013–2014;
- 2013至2014年间，通过50多个支持信用卡付款的网站，分销未批准药品；
- Distribution from UK drop shippers mainly to customers in Spain and Austria;
- 主要经由英国中间商，向西班牙和奥地利买家销售；
- Criminal organisation based in Austria;
- 犯罪组织位于奥地利；
- Investigation in several countries and involvement of Europol and Eurojust.
- 调查涉及多个国家，欧洲刑警组织、欧洲司法合作组织参与。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Vigoralì Case | Vigoralì案

- 12 arrests, 23 searches, 91 bank accounts frozen, seizure of 1m tablets and assets worth 8m EUR;
- 12次逮捕行动, 23次搜查行动, 冻结91个银行账户, 查获100万片药物、800万欧元资产;
- Investigations included wiretapping, advanced IT investigations and use of TrueScan device;
- 调查使用了窃听手段、先进信息技术、TrueScan扫描设备等;
- 6 main defendants, charges for fraud, medicine legislation, money laundering;
- 6名主要被告被控涉嫌欺诈、违反药品管理法、洗钱;
- Sentences up to 5 ½ years imprisonment, 2015.
- 2015年, 最高判处五年半有期徒刑。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Bittorrents.ro Case | Bittorrents.ro案

- Bittorrent website making 10k+ of copyright protected works publicly available, 2009-2014;
- 2009至2014年间，网站向公众提供1万多项受著作权保护作品；
- Servers first located in Romania, later outside;
- 服务器最初设于罗马尼亚，后移出；
- Various payment options available;
- 提供多种支付方式；
- 3 defendant used limited liability companies to obfuscate identities and money launder;
- 3名被告利用有限责任公司主体进行身份混淆、洗钱；
- Defendants received suspended prison sentences from 2–3 years, 2017.
- 2017年，判处二至三年有期徒刑，缓期执行。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Cardinal Software Case | Cardinal软件案

- Following a bankruptcy procedure, the defendant failed to include developed software in the bankruptcy estate inventory and pursued the sale of the same software in newly registered company 2008-2011;
- 被告在破产程序之后，未将已开发软件列入资产清算单，并在2008至2011年间，试图通过新注册企业销售上述软件；
- The court found based on expert statements that the partial use of open source code to create a derivative software does not imply, in itself, the free availability of the software to the public;
- 专家证词指出，软件部分基于开源代码衍生开发，并不必然使得该软件可向公众免费提供；法院据此认定责任；
- Convicted for debtor fraud and copyright infringement;
- 判决债务欺诈、盗版侵权；
- 1 year suspended prison, 2017.
- 2017年判处一年有期徒刑，缓期执行。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Swefilmer Case | Swefilmer案

- Two administrators of a website that in 2011-2015 illegally made thousands of movies available from popular Swedish website;
- 某网站两名管理员在2011至2015年间，将某知名瑞典网站的数千部电影非法向公众提供；
- Advertising revenue 1,5m+ EUR;
- 广告收入超过150万欧元；
- Effective gathering of evidence from internet, payment and advertising intermediaries;
- 通过互联网、支付信息和广告中介有效收集证据；
- Application of money laundering led to extradition and a 4 year unsuspended prison sentence for one defendant, 2018.
- 适用反洗钱法，一名被告被引渡并被判处四年有期徒刑。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Methanol Case | 甲醇案

- Production and distribution of counterfeit and toxic alcohol, mid 2012, black market as well as legitimate supply chain;
- 2012年中期，通过黑市与合法供应链生产和分销假冒和有毒酒精；
- More than 50 people died but the amount of poison could have killed 150k+ people;
- 最终造成50余人死亡，但涉案有毒物总量可致15万+人死亡。
- Sentences of up to life imprisonment mainly for general public endangerment crimes, 2018.
- 2018年，主要以危害公共安全罪，最高判处无期徒刑。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Popcorntime Case | Popcorntime案

- Popcorntime Bittorrent free streaming app from 2014;
- 2014年推出基于P2P协议的Popcorntime免费流媒体观影app;
- Popcorntime.dk until Aug 2015 with info on use of the app and avoidance of getting caught;
- 到2015年8月为止，使用popcorntime.dk，提供app使用说明和对抗P2P下载嗅探的方法；
- Advertising revenue 70k EUR;
- 广告收入达7万欧元；
- Defendant convicted 6 months suspended prison sentence for contributory copyright infringement, 2020.
- 2020年，被告因协助实施著作权侵权而被判处6个月有期徒刑，缓期执行。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Facebook Case | Facebook案

- Marketing of mainly counterfeit clothing via Facebook and Instagram and distribution from self-storage facility in Belgium in May 2015;
- 2015年5月，通过Facebook和Instagram销售比利时某自助仓库的假冒服装等商品。
- Cyberpatrol investigation also involving cooperation with internet intermediaries;
- 网络巡警在调查过程中与互联网服务提供商合作；
- Defendant convicted for sale of less than 100 Nike, Bjorn Borg and Philip Plein counterfeits;
- 被告因出售不足100件耐克、比约恩·博格和飞利浦·普莱因假冒产品而被定罪；
- 3 months suspended prison, 2020.
- 2020年，判处3个月有期徒刑，缓期执行。

Economic Elements on the Criminal Enforcement of IP

知识产权刑事执法中的经济元素

Horizontal Analysis

横向分析

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

General Considerations 一般考虑因素

- Establish *jurisdiction* (all cases) but can be more challenging in the online environment (e.g. Vigorali);
- 确定司法管辖权（适用所有案件），但对涉及网络犯罪的案件可能较为困难（例如，Vigorali案）；
- Build case on *solid intellectual property* (all cases) but sometimes *complex* intellectual property issues have to be explored (e.g. Cardinal Software).
- 基于可确权的知识产权立案（适用所有案件），但有时必须判断复杂的知识产权问题（例如，Cardinal软件案）。

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General Considerations 一般考虑因素

- Intellectual property crime cases have *many commonalities* with other criminal cases about *illicit trade* (e.g. Gomorrah, Vigorali, Methanol and Facebook) or other criminal cases about sharing of *illegal content online* (e.g. Bajatetodo, Bittorrent.ro and Swefilmer) but sometimes infringements happens through or in connection with the *legal supply chain* (e.g. SKF, Cardinal Software and Methanol).
- 知识产权刑事案件与其他非法贸易刑事案件（如格莫拉案、Vigorali案、甲醇案、Facebook案）或其他非法网络共享内容刑事案件（如Bajatetodo案、Bittorrent.ro案、Swefilmer案）有诸多相似点，但有时侵权行为会利用或涉及合法供应链（如斯凯孚案、Cardinal软件案、甲醇案）。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Investigation Strategies 调查策略

- Follow the *goods and services* 跟踪商品和服务流
 - top of the supply chain (e.g. Methanol and Cardinal Software);
- 供应链顶层 (例如, 甲醇案、Cardinal软件案) ;
 - importer/wholesaler layer of the supply chain (e.g. SKF and Vigorali);
- 供应链的进口商 / 批发商环节 (例如, 斯凯孚案、Vigorali案) ;
 - reworking (e.g. Gomorrah); 重制 (例如, 格莫拉案) ;
 - massive hyperlinking to protected content illegally available on the internet (e.g. Bajatetodo, Bittorrents.ro and Swefilmer);
- 通过大量超链接在互联网上非法提供受保护内容 (例如, Bajatetodo案、Bittorrents.ro案、Swefilmer案) ;
 - e-commerce (e.g. Vigorali and Facebook) 电商 (例如, Vigorali案、Facebook案) 。

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Investigation Strategies 调查策略

- Follow *the money*, incl. application of money laundering legislation (e.g. Bittorrents.ro and Swefilmer) and identification of unusual means of payment (e.g. Bajatetodo);
- 跟踪资金流，包括适用反洗钱法（例如，Bittorrents.ro案、Swefilmer案）、确定异常的支付手段（例如，Bajatetodo案）；
- Follow *the pixels*, incl. investigation of digital display advertising and malware (e.g. Swefilmer and Popcorntime.dk).
- 跟踪数据，包括对数字广告和恶意软件的调查（例如，Swefilmer案、Popcorntime.dk案）。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Investigation Strategies 调查策略

- Utilise *available investigative steps*, e.g. cyberpatrolling (e.g. Facebook), phone interception (e.g. Vigorali) and domain name seizure (e.g. Popcorntime.dk);
- 充分利用调查手段，包括网络巡警（例如，Facebook案）、电话窃听（例如，Vigorali案）和域名查获（例如，Popcorntime.dk案）；
- Obtain evidence from *internet intermediaries* (e.g. Swefilmer and Facebook);
- 从互联网服务提供商获取证据（例如，Swefilmer案、Facebook案）；
- Cooperation between *police and customs* (e.g. SKF and Gomorrah);
- 警方与海关合作（例如，斯凯孚案、格莫拉案）；
- Engage in *international judicial cooperation* (e.g. Gomorrah, Vigorali and Swefilmer).
- 国家间司法合作（例如，格莫拉案、Vigorali案、Swefilmer案）。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Investigation Strategies 调查策略

- Pay attention to use of *limited liability companies* in the modus operandi (e.g. SKF, Gomorrah, Bittorrents.ro and Cardinal Software);
- 关注使用有限责任公司的作案手法（例如，斯凯孚案、格莫拉案、Bittorrents.ro案、Cardinal软件案）；
- Focus on the connection between *offline and online world* (e.g. Vigorali and Facebook);
- 关注线上线下连接环节（例如，Vigorali案、Facebook案）；
- Be aware of evolvement of how criminals *cooperate and are organised* (e.g. Swefilmer and Popcorntime.dk).
- 注意犯罪分子勾结方式和组织方式的变化（例如，Swefilmer案、Popcorntime.dk案）。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Prosecutorial Issues 公诉问题

- Consider *alternative charges* (e.g. Cardinal Software and Methanol);
- 考虑非知识产权侵权类指控罪名 (例如, Cardinal软、甲醇案) ;
- Utilise provisions about *contributory liability* (e.g. Popcorntime.dk);
- 考虑适用协助犯罪的法律依据 (例如, Popcorntime.dk案) ;
- Use of the *civil jurisprudence* (e.g. Bajatetodo and Swefilmer);
- 利用民事诉讼 (例如, Bajatetodo案、Swefilmer案) ;
- Obtaining statements from *right holder witnesses* (e.g. SKF) and sometimes *expert witnesses* (e.g. Cardinal Software) are often helpful.
- 有效使用权利人证人 (例如, 斯凯孚案) 或者专家证人 (例如, Cardinal软件案) 的证词。

Economic Elements on the Criminal Enforcement of IP 知识产权刑事执法中的经济元素

Prosecutorial Issues 公诉问题

- Often necessary to present a combination of evidences to *establish criminal intent* (e.g. SKF and Popcorntime.dk);
- 常有必要递交组合证据，以认定犯罪意图（例如，斯凯孚案、Popcorntime.dk案）；
- Documentation of the *proceeds of crime* often has impact on determination of criminal intent and/or sentencing (e.g. Bittorrents.ro, Swefilmer and Popcorntime.dk);
- 违法所得证据常会影响犯罪意图的认定和 / 或量刑（例如，Bittorrents.ro案、Swefilmer案、Popcorntime.dk案）；
- Courts occasionally render *relatively strong sentencing decisions* (e.g. Bajatetodo, Swefilmer, Methanol, Popcorntime.dk and Facebook).
- 法院对部分案件从重处罚（例如，Bajatetodo案、Swefilmer案、甲醇案、Popcorntime.dk案、Facebook案）。



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Thank you

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