



Counterfeiting in Latin America

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Counterfeiting and Piracy Watch List: Definition and scope

- **Physical or online marketplaces located outside of the EU**
- **Whose operators are allegedly resident in third countries**
- **Which are reported to engage in or facilitate substantive IPR infringements**, in particular counterfeiting and piracy
- **~ 100 marketplaces**
- **Listing** these marketplaces and **describing** their main features
- Explaining also the **business model** they apply

Structure

- 1) Online suspected **copyright related** infringements
- 2) **E-commerce platforms** selling allegedly counterfeit goods
- 3) Suspected **illegal online pharmacies**
- 4) **Physical marketplaces**

E-commerce

- Joint OECD-EUIPO study on the misuse of small parcels for trade in counterfeit goods (63% of the seizures concerns small parcels)
- The trend shows the growing relevance of e-commerce platforms
- COVID-19 pandemic: more and more consumers turn to e-commerce platforms
- E-commerce platforms are often misused by rogue sellers for selling their counterfeit goods:
 - Threat for consumer
 - Damages the brand image
 - Underlines trust in the platforms

E-commerce platforms

- **Legitimate businesses** (B2C, B2B, C2C) offering goods to the consumers
- Liability limitation – **safe harbour**
- **Misused by ruthless sellers** as a platform to exploit online shoppers
- On notice they are **obliged to remove counterfeit offers** expeditiously
- They are expected to take **preventive and proactive measures** (MoU between right holders and sales platforms)
- **Commission's recommendations on tackling illegal content online** (i.e. due diligence checks of traders, automated risk management tools, cooperation with right holders, clear terms of services prohibiting the sales of fakes, fast track procedure for trusted flaggers, etc.)

Selection criteria

- based on stakeholders contributions
- the estimated amount of counterfeit goods offered on their platform
- the allegedly low effectiveness of the measures to detect and remove counterfeit offers
- the alleged insufficient level of cooperation with right holders and enforcement authorities
- lack of clarity of the platforms' terms of service
- absence of effective vetting of the sellers
- the nonuse of effective automated risk management tools to identify high-risk behaviors
- the efforts made to reduce the level of counterfeiting on the platforms



Objectives

- Urge the listed e-commerce platforms
 - to cooperated closer with brand owners and e-commerce authorities
 - to improve their toolbox to tackle IPR infringements on their platforms
 - **to sign an MoU with brand owners**
- Urge third countries to take steps to reduce counterfeiting on e-commerce platforms
- Alert consumers to be vigilant when purchasing online

Counterfeit medicines

- Joint study of the EUIPO and the OECD on Trade in counterfeit pharmaceutical products
 - international trade in counterfeit pharmaceuticals reached EUR 38.9 billion
 - revenue loss for EU governments linked to tax evasion: EUR 1.7 billion
 - The job losses are estimated at more than 80 000 jobs per year in the EU pharmaceutical sector and other related sectors
 - majority of counterfeit medicines originate from China, Hong Kong (China), Singapore and India
 - The COVID-19 pandemic: fake medicines and medical supply

COVID-19

- Many illicit online pharmacies claiming to sell prescription drugs marketed for COVID-19 treatment
- 90% of the COVID-19-related domain names identified were registered anonymously: difficult to investigate
- A high number of new domain names were registered for illicit purposes with terms such “corona”, “virus”, “covid”
- The traditional illicit online pharmacy networks adopted to the new demand (84% have been operational already before COVID-19)

Illicit online pharmacy networks

- 95% of the online pharmacies are rogue (around 30.000 sites)
- Certain domain name registrars knowingly sponsor illicit online pharmacy networks
- Registrar Accreditation Agreement between ICANN and domain name registrars (registrars are obliged to take measures against counterfeit medicines sold by their clients)
- Social media platforms do better
- Rogue registrars:
 - allegedly do not comply with the Registrar Accreditation Agreement
 - ignore abuse notifications submitted by right holders on the sales of fake medicines
 - do not suspend the domain names of illicit online pharmacies

The business model

- Use of domain privacy and proxy services that act as intermediaries for domain registrations
- The contact details of the proxy service appear in the WHOIS Database instead of the contact details of the actual registrant
- The use of subdomains to conceal infringing content
- The subdomains are advertised and communicated directly to the consumers through messaging services, emails and social media platforms
- Typical rogue network models: customer service call centres, back-end merchant accounts with acquiring banks and a medicine distribution system
- Criminal networks buying bulks of domain names (anchor, feeder sites)

Listed operators

- A section is dedicated to illicit online pharmacy networks and the rogue domain name registrars that serve them
- Cooperation with Europol and national enforcement authorities
- Urge the domain name registrars to step up efforts against illicit online pharmacies
- Awareness-raising

Physical marketplaces

- **Organised crime** groups
- IP crime is **linked to other types of crime**
- Surge in **new types of fakes**: Unproven treatments, test kits and medical equipment and supplies, e.g. masks, ventilators, or gloves, have flooded the market
- **Complex trading routes**, exploiting a set of intermediary transit points
- The role of **free trade zones**: An additional FTZ within an economy is associated with a 5.9% increase in the value of these problematic exports on average
- **Global Trade in Fakes: Worrying Threat (EUIPO-OECD report - 2021) China** is the top producer of counterfeit goods
- Hong Kong (China), Singapore, Turkey and the United Arab Emirates (UAE) are the top **transit countries** of counterfeits globally
- Central and South American countries **are affected in almost all product categories**: toys, games, jewellery, clothes, perfumery, cosmetics, leather articles, handbags, footwear, etc.



OECD Recommendation on Free Trade Zones

Free trade zones (FTZs)

- **Incentives for undertakings** (less customs duties to attract investments)
- **Low regulatory environment** and the proper enforcement is missing
- Free trade zones play an **essential role in counterfeiting** (OECD-EUIPO data)
- **criminal networks** establish trading hubs and transshipment points in FTZs
- **disguise the country of origin**: manufacturing, storing, assembling, exporting, re-exporting, relabelling and repackaging of fake goods



OECD Recommendation on Free Trade Zones

- **2 pillars:** (1) for governments (2) for FTZ operators
- **Increasing transparency standards** for FTZ operators
- **Urging governments' customs to focus more on FTZs**
- **Ensuring adequate levels of oversight and control of FTZ by customs**
- **Encouraging FTZ operators to comply with a Code of Conduct**
- Future **certification mechanism** (for the assessment of the performance of FTZ and their compliance with the Code of Conduct)

Online service providers offering or facilitating access to copyright-protected content

List of relevant players in the ecosystem of unauthorised distribution of copyright protected content online.

This includes:

- service providers that offer or facilitate, directly or indirectly, access to unauthorised content.
- service providers who, reportedly, do not take sufficient action to prevent their users from using their services to offer or facilitate access to unauthorised content.

Categories

Our classification in categories takes into account the business models and the type of services that the listed online service providers provide:

- cyberlockers (6),
- stream-ripping services (3),
- linking websites (5),
- peer-to-peer and BitTorrent indexing websites (4),
- unlicensed download sites (3),

Categories (II)

- websites for piracy apps (1),
- hosting providers (1),
- unlicensed IPTV services (3); and
- social media platforms (2).



Thank you very much!

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