



Criminal Remedies Against IP Infringements

Colloquium on Effective Legal Remedies for the Enforcement of IP Rights in South-East Asia
| Erling Vestergaard | VICO | 18 May 2021

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**Court Cases Finally
Decided 2014-2020**



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Court Cases Finally
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- 5 Copyright Piracy



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Court Cases Finally
Decided 2014-2020

- 5 Copyright Piracy
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- Horizontal Analysis



10 European IP Crime Cases



10 European IP Crime Cases

Bajatetodo Case

- Various websites who made copyright-protected content available to the public illegally available mainly via hyperlinking
- Profits of 11k+ derived from the sale of users' email addresses to advertising companies or redirection to porn sites
- At least 80 000 users mainly in Spain during 2004-2007
- Prosecutor relied on CJEU ruling in C-466/12, *Svensson*
18-month prison sentence, 2014

10 European IP Crime Cases

SKF Case

- Chinese produced counterfeit ball bearings marketed mainly in Sweden by Transmissions Teamet AB, 2008-2010
 - Statements from expert witnesses and SKF
 - Criminal liability found based on the defendants many years of work in ball bearings business, correspondence etc
- 8 months suspended prison, 2014

10 European IP Crime Cases

Gomorrah Case

- Counterfeit power tools not compliant with safety standards
- Reworking within EU
- Sales all over Europa in late 2006-2011
- Traditional organised crime originating from Naples
- More than 60 person within criminal network and several companies
- Money laundering trough Australia and Iceland

10 European IP Crime Cases

Gomorrah Case

- Involvement of 20 countries, Europol and Eurojust
- 67 arrests, 143 warehouses searched, seizure of more than 800 tonnes of counterfeits and confiscated assets of more than 16m EUR
- Six court procedures in different countries until 2015 with sentences of up to more than six years imprisonment



10 European IP Crime Cases

Vigorali Case

- Distribution of unregulated pharmaceuticals from India and China via 50+ websites allowing payment by credit card, 2013-2014
- Distribution from UK drop shippers mainly to customers in Spain and Austria
- Criminal organisation based in Austria
- Investigation in several countries and involvement of Europol and Eurojust
- 12 arrests, 23 searches, 91 bank accounts frozen, seizure of 1m tablets and assets worth 8m EUR

10 European IP Crime Cases

Vigoralì Case

- Investigations included wiretapping, advanced IT investigations and use of Truescan device
- 6 main defendants, charges for fraud, medicine legislation, money laundering etc
- Sentences up to 5 ½ years imprisonment, 2015



10 European IP Crime Cases

Vigorali Case

- Bittorrent website making 10k+ of copyright protected works publicly available, 2009-2014
- Servers first located in Romania, later outside
- Various payment options available
- 3 defendant used limited liability companies to obfuscate identities and money launder
- Defendants received suspended prison sentences from 2-3 years, 2017

10 European IP Crime Cases

Bittorrents.ro Case

- Bittorrent website making 10k+ of copyright protected works publicly available, 2009-2014
- Servers first located in Romania, later outside
- Various payment options available
- 3 defendant used limited liability companies to obfuscate identities and money launder
- Defendants received suspended prison sentences from 2-3 years, 2017



10 European IP Crime Cases

Cardinal Software Case

- 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
- 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
- Convicted for debtor fraud and copyright infringement
- 1 year suspended prison, 2017



10 European IP Crime Cases

Swefilmer Case

- Two administrators of a website that in 2011-2015 illegally made thousands of movies available from popular Swedish website
- Advertising revenue 1,5m+ EUR
- Effective gathering of evidence from internet, payment and advertising intermediaries
- Prosecutor relied on CJEU ruling in C-160/15, *GS Media*
- Application of money laundering led to extradition and a 4 year unsuspended prison sentence for one defendant, 2018

10 European IP Crime Cases

Methanol Case

- Production and distribution of counterfeit and toxic alcohol, mid 2012, black market as well as legitimate supply chain
- More than 50 people died but the amount of poison could have killed 150k+ people
- Sentences of up to life imprisonment mainly for general public endangerment crimes, 2018



10 European IP Crime Cases

Popcorntime Case

- Popcorntime Bittorrent free streaming app from 2014
- Popcorntime.dk until Aug 2015 with info on use of the app and avoidance of getting caught
- Advertising revenue 70k EUR
- Defendant convicted 6 months suspended prison sentence for contributory copyright infringement, 2020



10 European IP Crime Cases

Facebook Case

- Marketing of mainly counterfeit clothing via Facebook and Instagram and distribution from self-storage facility in Belgium in May 2015
- Cyberpatrol investigation also involving cooperation with internet intermediaries
- Defendant convicted for sale of less than 100 Nike, Bjorn Borg and Philip Plein counterfeits

3 months suspended prison, 2020



Horizontal Analysis



Horizontal Analysis



It's Not Rocket Science!



Horizontal Analysis

General Considerations

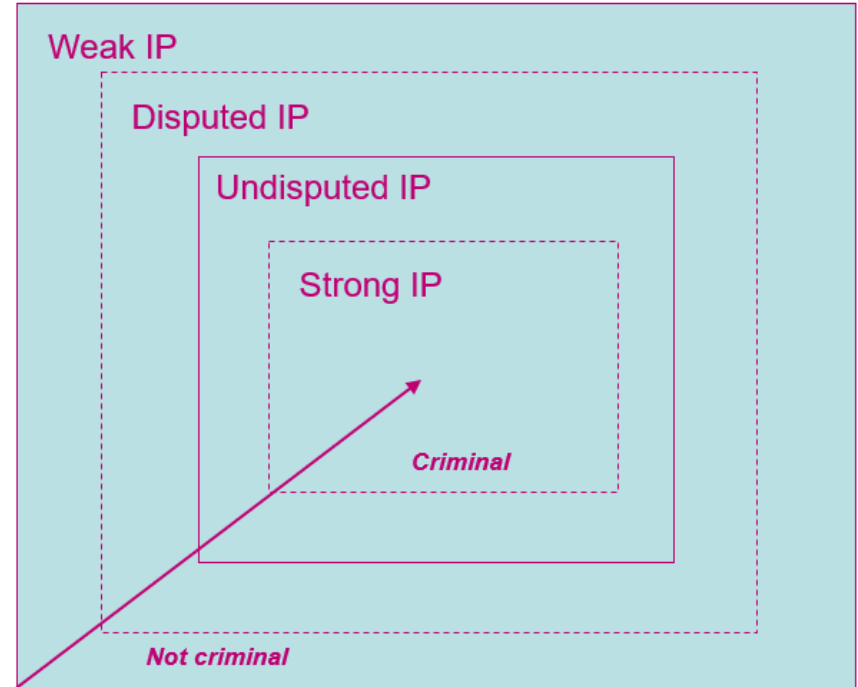
- Establish *jurisdiction* (all cases) but can be more challenging in the online environment (e.g. Vigorali)



Horizontal Analysis

General Considerations

- Build case on *solid intellectual property* (all cases) but sometimes *complex* intellectual property issues have to be explored (e.g. Cardinal Software)



The stronger the IP the stronger basis for criminal enforcement

Horizontal Analysis

General Considerations

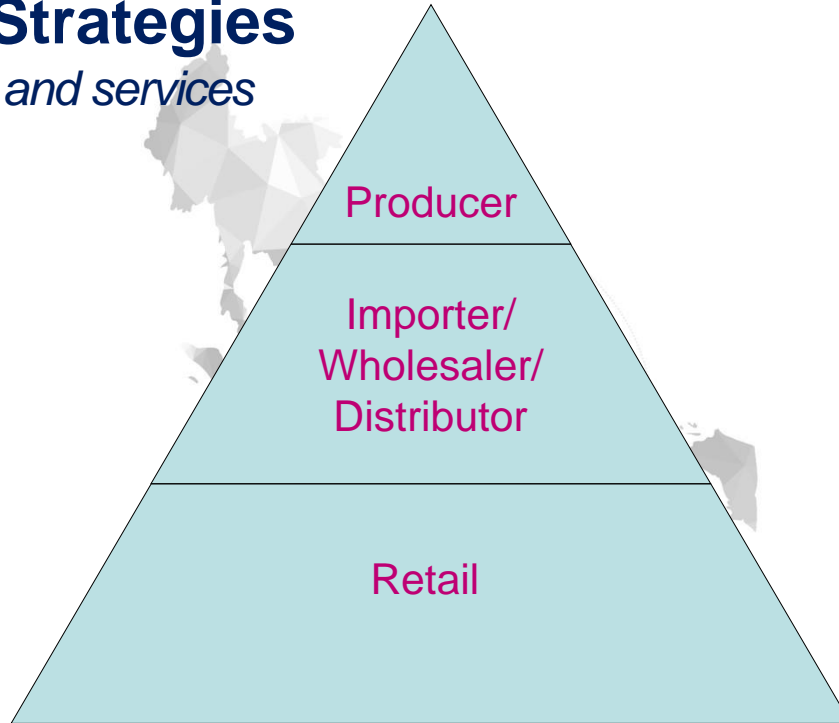
- Intellectual property crime cases have *many commonalities* with other criminal cases about *illicit trade* (e.g. Gomorrah, Vigorali, Methanol and Facebook) or other criminal cases about sharing of *illegal content online* (e.g. Bajatetodo, Bittorrent.ro and Swefilmer) but sometimes infringements happens through or in connection with the *legal supply chain* (e.g. SKF, Cardinal Software and Methanol)



Horizontal Analysis

Investigative Strategies

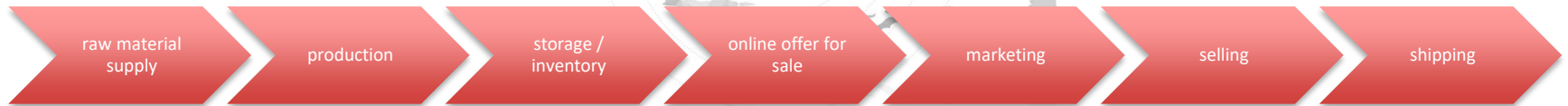
- Follow the *goods and services*



Horizontal Analysis

Investigative Strategies

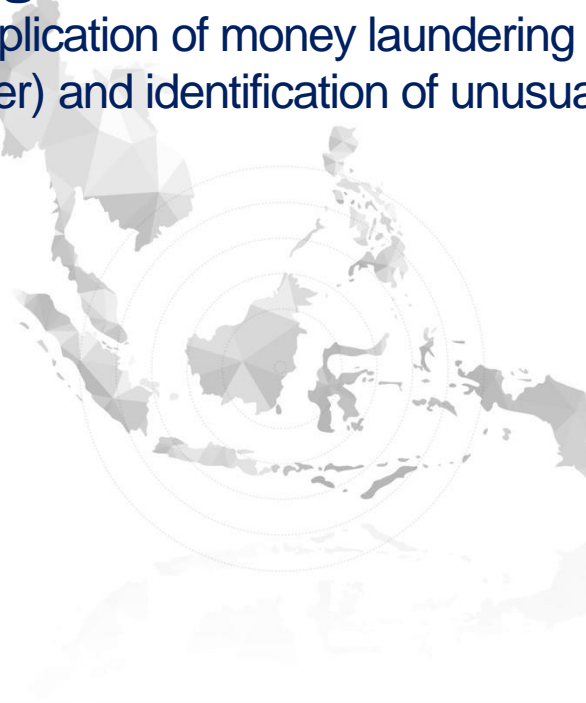
- Follow the *goods and services*
 - top of the supply chain (e.g. Methanol and Cardinal Software)
 - importer/wholesaler layer of the supply chain (e.g. SKF and Vigorali)
 - reworking (e.g. Gomorrah)
 - massive hyperlinking to protected content illegally available on the internet (e.g. Bajatetodo, Bittorrents.ro and Swefilmer)
 - e-commerce (e.g. Vigorali and Facebook)



Horizontal Analysis

Investigative Strategies

- 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)



Horizontal Analysis

Investigative Strategies

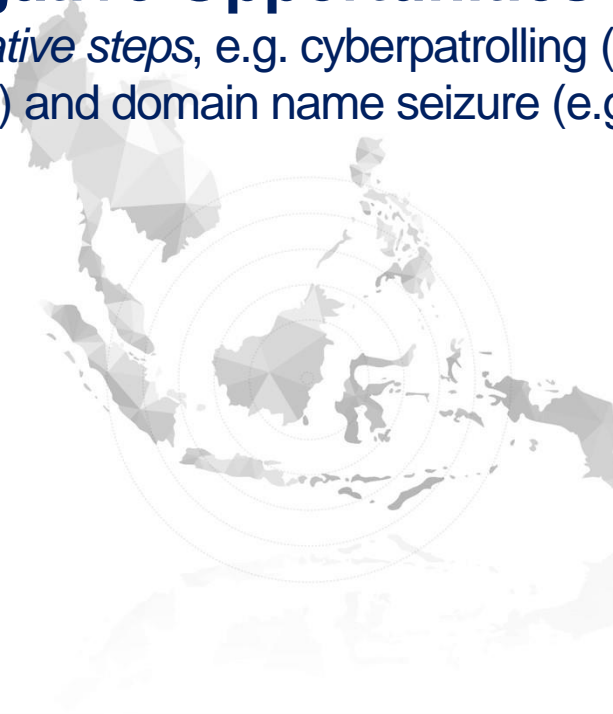
- Follow *the pixels*, incl. investigation of digital display advertising and malware (e.g. Swefilmer and Popcorntime.dk)



Horizontal Analysis

Additional Investigative Opportunities

- Utilise *available investigative steps*, e.g. cyberpatrolling (e.g. Facebook), phone interception (e.g. Vigorali) and domain name seizure (e.g. Popcorntime.dk)



Horizontal Analysis

Additional Investigative Opportunities

- Obtain evidence from *internet intermediaries* (e.g. Swefilmer and Facebook)

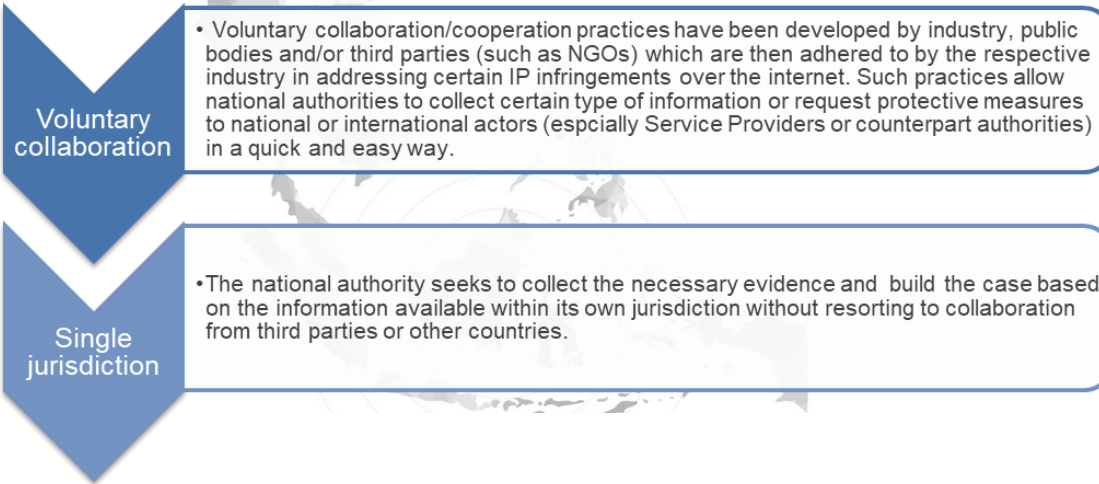
Voluntary
collaboration

• Voluntary collaboration/cooperation practices have been developed by industry, public bodies and/or third parties (such as NGOs) which are then adhered to by the respective industry in addressing certain IP infringements over the internet. Such practices allow national authorities to collect certain type of information or request protective measures to national or international actors (especially Service Providers or counterpart authorities) in a quick and easy way.

Horizontal Analysis

Additional Investigative Opportunities

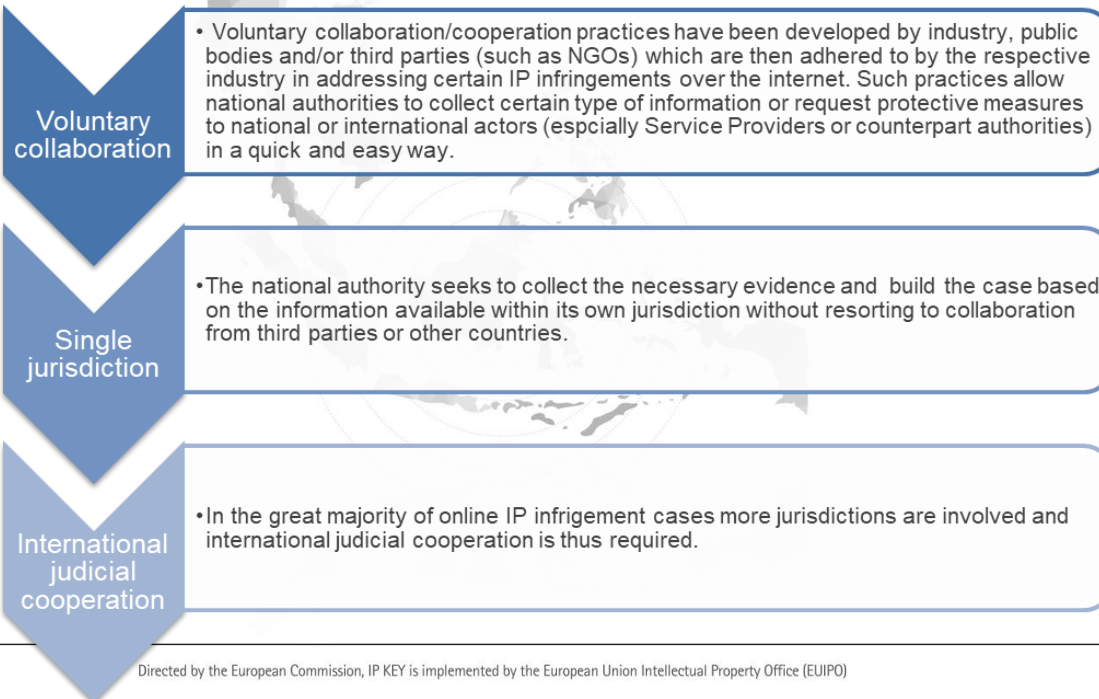
- Cooperation between *police and customs* (e.g. SKF and Gomorrah)



Horizontal Analysis

Additional Investigative Opportunities

- Engage in *international judicial cooperation* (e.g. Gomorrah, Vigorali and Swefilmer)



Horizontal Analysis

Additional Investigative Opportunities

- Pay attention to use of *limited liability companies* in the modus operandi (e.g. SKF, Gomorrah, Bittorrents.ro and Cardinal Software)



Horizontal Analysis

Additional Investigative Opportunities

- Focus on the connection between *offline and online world* (e.g. Vigorali and Facebook)



Horizontal Analysis

Additional Investigative Opportunities

- Be aware of evolvement of how criminals *cooperate and are organised* (e.g. Swefilmer and Popcorntime.dk)



Horizontal Analysis

Prosecutorial Issues

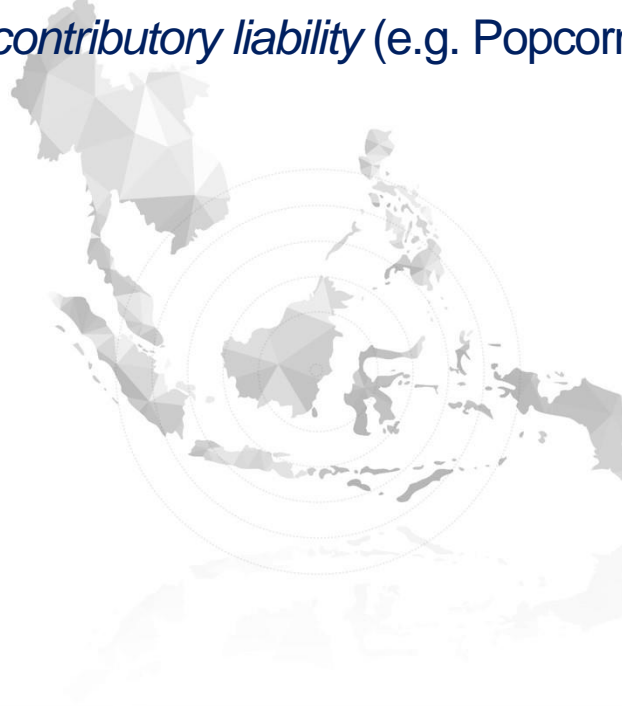
- Consider *alternative charges* (e.g. Cardinal Software and Methanol)



Horizontal Analysis

Prosecutorial Issues

- Utilise provisions about *contributory liability* (e.g. Popcorntime.dk)



Horizontal Analysis

Prosecutorial Issues

- Use of the *CJEU jurisprudence* (e.g. *Bajatetodo* and *Swefilmer*)



Horizontal Analysis

Prosecutorial Issues

- Obtaining statements from *right holder witnesses* (e.g. SKF) and sometimes *expert witnesses* (e.g. Cardinal Software) are often helpful



Horizontal Analysis

Prosecutorial Issues

- Often necessary to present a combination of evidences to *establish criminal intent* (e.g. SKF and Popcorntime.dk)



Horizontal Analysis

Prosecutorial Issues

- 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)



Horizontal Analysis

Prosecutorial Issues

- Courts occasionally render *relatively strong sentencing decisions* (e.g. Bajatetodo, Swefilmer, Methanol, Popcorntime.dk and Facebook)





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