

'Public-private action needed to fight counterfeiting and piracy'

Counterfeiting and piracy of industrial and consumer products are now global activities often linked to organised crime which not only have a significant negative commercial impact but can be a risk to public health and safety. A high level conference organised by the Commission in May brought together stakeholders and legislators to identify workable solutions to the modern day 'highway robbery'.

Stakeholders were present in force at the high level conference on counterfeiting and piracy on 13 May and many set up mini exhibitions to display the extensive range and type of products which are now being illegally copied and traded. The products range from toys to pharmaceuticals, to computer parts, to industrial safety devices.

Opening the conference, Commissioner for Internal Market and Services, Charlie McCreevy, stressed the importance of bringing all sides together to look for practical, pragmatic suggestions to reduce counterfeiting and piracy.

Need for industry-led solutions

"In hosting this event, I set out to bring together the stakeholders, the lawmakers and, of course, members of the European Parliament to exchange views, debate and discuss the main issues, and work towards finding solutions to this

modern day highway robbery which is taking place all around us," McCreevy said.

The Commissioner graphically spelt out the significance of the problem: "Counterfeiting is becoming a very serious threat to the health and safety of our families and to the economic future of the European Union. We have seen evidence of the carnage caused by false spare parts in the airline industry, for example, not to speak of the quantity of fake and often dangerous medicines and drugs on the market.

"And there is nothing heroic about Internet downloaders putting their hands in the pockets of Europe's creative writers, musicians and performers and stealing their copyright income."

Scale of the problem

The conference heard that just about everything is being copied, from exclusive perfumes to children's toys, drinks, pharmaceuticals and car and aeroplane parts.

The statistics indicate that the phenomenon is possibly spiralling out of control. In 2005, Euro-

pean customs seized about 75 million fake articles. By 2007 that number had almost doubled to 128 million. These figures, it was noted, only relate only to the goods actually seized, indicating that the real numbers must be staggering.

Europe's software, music and audiovisual sectors are estimated to lose some 4.5 billion euros annually from counterfeiting and piracy.

Action through trade agreements

The Commission, through bilateral and multilateral trade agreements, has been working on the international scene to improve the fight against counterfeiting and piracy in third countries.

Border controls have also been improved through the Customs Regulation. The 2004 Enforcement Directive set up a legal framework to address piracy and counterfeiting, giving more efficient tools to combat violations of intellectual property. However, for this to work effectively, it needs to be accompanied by various practical measures. Information gathering has to be improved – data is fragmented and incomplete.

Some 80% of fake goods intercepted en route to the EU are made in China. But as China begins to develop its own research, they realise that as today's vio-



Lawmakers, stakeholders and MEP's came together in Brussels to find solutions to the modern day highway robbery

lators could become tomorrow's victims. And, they no longer want to have the reputation of being the world's number one counterfeiting industry. The Chinese are beginning to see the potential damage this can do to their own development.

Raising awareness

The Commissioner, along with many other speakers, highlighted the importance of raising awareness of the dangers to health and safety, as well as the real cost of buying fakes and illegally downloading material from the Internet.

Commissioner McCreevy stressed the importance of developing an effective strategy to fight the thieves: "More regulation is not the answer," he stressed. "The solutions lie with public-private partnerships. Industry should be leading the battle against fakes. Internet service providers (ISPs) should be working to solve the problem of illegal downloads. The EU will do all it can, but the real initiative and power is in your hands," he told stakeholders at the conference.

For its part the Commission has initiated an expansion of its own anti-counterfeiting and anti-piracy efforts. At the beginning of 2008, a specialist unit was established in DG Internal Market and Services dedicated to fighting IP theft.

"I would like to see the resources of this unit expand over time," the Commissioner said, "to mobilise the fight against counterfeiting and to work with other services of the Commission, Member States and stakeholders in upping our game against this pernicious phenomena."

Arlene McCarthy MEP, chair of the European Parliament's Internal Market and Consumer Protection Committee stressed the importance of making consumers aware that there is a real cost to piracy and counterfeiting goods and that it is not a victimless crime.



McCreevy: "Nothing is safe, just about everything can be copied – from exclusive perfumes to children's toys, drinks, pharmaceuticals and car and aeroplane parts...The EU will do all it can, but the real initiative and power is in your hands," he told stakeholders at the conference.

"Consumers are generally unaware of the dangers involved with counterfeit goods," she said. "Piracy and counterfeiting also carry social and business costs and counterfeiting threatens to undermine legitimate business in the Single Market.

And the environment for piracy has never been better, she said. "The Internet with one click makes it easy to sell goods. And these can be perfect copies of music and film. An estimated 80 percent of Internet bandwidth is taken up by illegal downloading. This is an issue that the telecoms industry must address.

"We have to protect the health of our consumers from this illegal and sometimes lethal trade. Fake cigarettes sometimes contain cadmium, lead or arsenic, and can kill. Fake vodka and fake pharmaceuticals may damage your health."

Behind the counterfeiting industry, she warned, are drug dealers or serious criminals. "There is a direct link between

organised crime and piracy which must be tackled. Fighting them requires effective laws, strong enforcement, the



A selection of pirated movie DVDs - the conference exhibition amply demonstrated the extent of the counterfeiting and piracy

development of new technologies to enforce IPR online, and greater consumer awareness," she said.

Consumers are not allies of counterfeiters, but they are confused by the many branded products legally produced in

China, said Monique Goyens, director-general of the European Consumers' Organisation (BEUC). Price is not an absolute criterion for distinguishing a bogus from a genuine item, especially when the counterfeit is part of a branded product, she said.

MEP Malcolm Harbour, who authored the European Parliament's report on proposed changes to consumer protection provisions of EU telecommunications Directives, said he wants ISPs to be required to give potential subscribers pre-contractual information about copyright infringement online and update subscribers regularly. But Harbour said public authorities should be responsible for protecting IP rights because they are responsible for enforcing them, he said.

Industry perspective

The conference provided a platform for manufacturing industry to give its perspective.

Counterfeiting has seen alarming growth in recent years, said Marc-Antoine Jamet, president of l'Union des Fabricants, whose members include Pfizer, Lacoste and Microsoft. Counterfeiting is increasingly carried out by organised crime, he said. Industrialisation also means that tourists no longer have to travel to Thailand to buy fakes from China, but can find them anywhere, in-



Computer parts are often taken from old equipment and repackaged as new.

cluding online. The counterfeiting business is also becoming more diversified, moving into areas such as wine, car parts, clothing, and toys, he said.

Health and Safety Dangers Stressed

Larry Mallory of Johnson & Johnson pointed out that while counterfeit drugs have been a problem for some time, there is now a disturbing trend toward counterfeiting of medical equipment and that these devices are finding their way into hospitals which lack the skills to recognise they are fake before they are used. Repackaged or expired genuine products also an area of concern, he said.

Microelectronic components are also being removed from old televisions and computers, then reworked and installed in other products. No worldwide system exists for checking whether product components are legitimate, and all industries, in Europe and elsewhere, at times buy from the 'spot market' where the chance of purchasing counterfeit or refurbished components is greatest, it was pointed out.

Christophe Zimmermann, head of the World Customs Organisation counterfeiting and piracy unit, urged policy makers to treat counterfeiting like illegal drugs. Let the specialists fight it in the ports and waterways, he said, adding that customs agents and police should work with rights holders to counter the billions of packages and containers that pass through ports every year. He asked the Commission to use its financial clout to steer funds where they are needed.

ISP Liability

There was a lively debate on illegal downloading between representatives of copyright owners and the internet service providers (ISPs).

The music industry believes that the best way to fight piracy is for service providers to agree to notify subscribers of alleged infringements and, if necessary, to cut off their internet access, said John Kennedy, president of the International Federation for the Phonographic Industry (IFPI).

Simon Milner of the UK ISP, British Telecom (BT), defended his organisations's approach saying that BT is genuinely open-minded about rights owners' problem but oppose a one-size-fits-all approach. "The 'three-strikes' or 'graduated response' for illegal downloaders is disproportionate, he said.

Both sides are closely monitoring France's 'Olivennes' solution which has introduced an oversight body to warn internet users of illegal download activity and cut off those who persist. It is based on a memorandum of understanding between some French ISPs, the recording industry and the French government under which ISPs will hand over data on who is using file sharing networks to a new government agency.

Summing up the conference, Margot Fröhlinger, Director for the Knowledge-Based Economy, in DG Internal Market and Services, said that this is beginning of a process not the end of a process. While the conference has raised more questions than it has answered, it shows how we can work together both for the good of consumers and IP rights holders, she added.



Vital industrial components are being counterfeit and often find their way into critical industrial applications, with implications for health and safety.