

Immateriälsrättsintrång och piratkopiering

– En studie
av hur svenska
börsbolag drabbas

Om rapporten

Denna rapport är sammanställd av Karl Lallerstedt och Patrick Krassén, och baseras på en studie utförd av Karl Lallerstedt och Black Market Watch under 2014 på uppdrag av Svenskt Näringsliv.

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Black Market Watch är en tankesmedja baserad i Schweiz, som grundades 2013 med syfte att sprida kunskap om och uppmärksamma frågor rörande illegal handel. Global Initiative Against Transnational Organized Crime är en organisation som sammanför ledande myndighetsrepresentanter, forskare och utvecklingsgrupper med flera som arbetar med att utveckla metoder för att bekämpa och minska organiserad brottslighet internationellt. OECD:s arbetsgrupp Task Force on Charting Illicit Trade startades 2013 för att samla och koordinera internationell expertis inom studiet av illegal handel och svarta marknader.

Rapporten har upprättats i en engelsk version, och en version med vissa avsnitt på svenska.

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Svenskt Näringsliv är Sveriges främsta näringslivsorganisation och samlar 50 medlemsorganisationer och 60 000 företag med 1,7 miljoner anställda.

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Sammanfattning

Olaglig handel med piratkopierade varor utgör en av de absolut största svarta marknaderna, och är till och med större än handel med narkotika globalt. Trots detta är piratkopiering lågt prioriterat av lagstiftare, polisiära myndigheter och forskare.

En huvudorsak till den bristande politiska uppmärksamheten kring piratkopiering och illegal handel är avsaknaden av data och statistik. Uppgifter om tullbeslag är inte tillräckligt för att synliggöra problemets hela bredd och komplexitet.

Denna studie syftar till att fylla en del av kunskapsluckan, genom att ge insyn i hur Sveriges ledande företag drabbas av piratkopiering och andra typer av immaterialrättsintrång. Samtliga 29 företag som är listade på NASDAQ OMX Stockholm 30-indexet på börsen har kontaktats för denna studie. Bland de företag som deltog och vars verksamheter kan bli utsatta för intrång i immaterialrätter framkom följande:

<ul style="list-style-type: none"> – Alla bolag har utsatts för immaterialrättsintrång – 93 procent har utsatts för piratkopiering eller har förlorat patentintäkter på grund av piratkopiering – 80 procent har utsatts för patentintrång. 	Intrång i immaterialrätt ett enormt problem
<ul style="list-style-type: none"> – 75 procent av de företag som varit föremål för piratkopiering uppgav att förfälskning av deras produkter medförde risker för hälsa och säkerhet. – Företag uppgav att organiserad brottslighet och en terrorgrupp har genererat inkomster av att handla illegalt med piratkopior av företagets produkter. 	Hälsö- och säkerhetsrisker
<ul style="list-style-type: none"> – 73 procent uppgav att immaterialrättsintrång och piratkopiering har ökat de senaste fem åren. – 80 procent uppgav att förfälskning och piratkopiering bedöms öka under kommande femårsperiod. 	Ett växande problem
<ul style="list-style-type: none"> – Kina angavs av alla företag som det största ursprungslandet för piratkopierade produkter. 	Kina vanligaste ursprungslandet
<ul style="list-style-type: none"> – 80 procent av företagen ansåg att statens insatser för att motarbeta immaterialrättsintrång och piratkopiering är otillräckliga och att regeringen behöver göra mer. 	Ytterligare insatser från regeringen nödvändiga

Huvudsakliga rekommendationer:

- Immaterialrättsliga frågor bör ägnas större politisk uppmärksamhet, och lyftas till en högre prioriterad nivå i regeringen.
- Tullmyndigheter i Sverige och EU måste ha tillräcklig kompetens för att kunna stoppa piratkopiering och illegal handel på ett effektivt sätt. Även varor som fraktas genom EU till tredje land bör kunna omhändertas och inspekteras av tull när misstanke om piratkopiering eller varumärkesintrång föreligger.
- Sverige bör delta aktivt i arbetet mot piratkopiering inom ramen för den s.k. EU Policy Cycle for Organised and Serious International Crime.
- EU, USA och Japan bör ytterligare koordinera och samordna sina insatser i att stärka skyddet för immateriella rättigheter globalt.

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Introduction

Intellectual property rights (IPR) have become increasingly important for businesses during recent decades. Patents, trademarks, design rights and other types of IPR play an increasing role in business development and lay the foundation for innovation and growth in modern economies. IPR-intensive industries generated one in four jobs in the EU and almost 39 percent of total GDP during the period 2008–2010, and accounted for 90 percent of EU exports.

Sweden is the fourth most innovative economy in Europe, measured by patent applications per capita. It is recurrently ranked in top positions in international innovation comparisons (4th in Global Innovation Index 2014, 7th in the 2014–15 Global Competitiveness Index's innovation pillar), and IPR-intensive industries contribute heavily to the Swedish economy.

Given this, infringement of IPR, counterfeiting and illicit trade in consumer goods pose a serious threat to businesses, consumer trust and safety, the trademark system as a whole and, in the end, the future prosperity of Europe.

Furthermore, a large majority – 86 percent – of EU citizens agree that protecting IPR is important for guaranteeing and improving the quality of products and services. Similarly, between 75 and 84 percent of EU citizens deem it unacceptable to buy counterfeit products, according to an OHIM survey.

The OECD estimated that the value of internationally traded counterfeit goods was 250 billion US dollars in 2009. The International Chamber of Commerce (ICC) commissioned a study to estimate the total value of internationally traded counterfeit goods based on the OECD study, and projecting the value at 770–960 billion US dollars in 2015.

The World Customs Organisation concluded in its 2013 Illicit Trade report that IPR-related seizures increased, not only in terms of the total number of cases, but also the number of reporting countries, compared to the year before.

Although studies indicate that the international trade in counterfeit goods constitutes the biggest single black market, exceeding the global narcotics trade, it has received a comparatively low level of prioritisation. As an intellectual property intensive economy, generating almost half of its GDP through exports, Sweden has a significant national interest in the international observance of intellectual property rights. It is also noteworthy that a significant proportion of Swedish export goods are in categories particularly sensitive to intellectual property infringement. In 2013, pharmaceuticals and machinery and transport equipment constituted 50 percent of Swedish exports. Still, until the publication of this study, no public assessments of the strategic impact of counterfeiting for Swedish companies have been conducted. This fact could partially explain the apparent political underprioritisation of an issue of major and strategic concern for the maintenance of Swedish competitiveness and prosperity.

The intention of this study is therefore to shed light on an area that has so far been hampered by an acute lack of knowledge. Our aim is that the insights of the study will show the need for a more robust policy response to deal with the critical challenges posed to businesses, consumers and the economy at large by counterfeiting and illicit trade.

This study is based on interviews conducted by Karl Lallerstedt with representatives from companies listed on the NASDAQ OMX 30 Stockholm index during 2014, as part of a project commissioned by the Confederation of Swedish Enterprise to map the effects of illicit trade on Swedish businesses. The data obtained for this study is of a highly sensitive nature, and information in this field is seldom shared openly by companies. All interviews were thus conducted under the condition that data obtained would only be presented in aggregated and anonymised form. Furthermore, the study is supplemented with background interviews conducted with a wide range of experts from academia, government agencies, the private sector, civil society and the OECD.

The findings of this study are highly significant, and should not only serve as a wake-up call to the Swedish government, but also to other European states that are likely impacted in similar ways, as well as the EU. In a globalised world, looking at the negative impact of illicit trade solely within the national territory would be an archaic perspective. Swedish businesses are actors in the global economy, and as such the damage they suffer internationally has direct consequences at home.

Previous studies and reports

OECD 2009

OECD produced in 2009 what is probably the most frequently cited estimate of the value of internationally traded counterfeit goods: 250 billion USD yearly.

The OECD report is considered the seminal study on the global magnitude of counterfeiting, and has been used as a foundation for other studies seeking to measure the impact of counterfeiting. The study uses customs seizure data and world trade data to extrapolate the total value of counterfeit goods, how relative categories of goods are impacted, and their countries of origin. However, as with most studies trying to measure illicit activities, it has some shortcomings. Some of the weaknesses include:

- Questions surrounding the indicative value of seizure data. The effectiveness of customs around the world varies significantly, the prioritisation of customs influences their seizures, and certain business sectors are more active in commissioning investigators who share intelligence with customs generating seizures.
- Counterfeits goods are frequently sent on indirect routes, and documentation can be manipulated, meaning that the supposed country of origin of a shipment may be misleading. Further complicating this is that shipments that arrive in a country within a customs union can be intended for other destination markets where there are no, or limited, border controls.
- The value of goods seized. Estimating the value of seized counterfeit goods is a challenge in itself, and methods of calculating such values are not standardised amongst customs organisations globally.

Combined, these factors mean that identifying the true scale and proportion of the problem, not only in terms of total magnitude, but also in terms of comparative preponderance between sectors and countries, becomes very difficult.

Additionally, in terms of policy relevance of the data to individual states, the situation is further complicated by the fact that in a globalised economy, the IP owner of a good may be located in one jurisdiction, production in a second and the customer in a third. Hence it becomes impossible to determine who the “owners” are that suffer the business costs of these flows indicated in the OECD study.

This means that not only is the OECD’s 250 bn USD value estimate of counterfeiting limited value in indicating the magnitude of the counterfeiting, but the impact studies such as those commissioned by the International Chamber of Commerce’s BASCAP and the Swedish Trade Federation (see below) that extrapolate their finding from this data are also based on a potentially weak foundation.

International Chamber of Commerce 2011

Another much cited study was commissioned by the International Chamber of Commerce and conducted by Frontier Economics. This study used the aforementioned OECD study as a foundation, and extrapolated certain economic impacts based upon this,

projecting the expected scale of counterfeiting in 2015 (both in terms of international trade and including non-traded intra-national counterfeiting, the latter which was not covered by the OECD). The total turnover of counterfeiting and piracy was projected to reach 1.22–1.77 trillion USD by 2015, and the international trade in counterfeit goods at 770–960 billion USD.

Swedish Trade Federation (Svensk Handel) 2012

The study estimated the value of illicit trade in legal consumer goods in Sweden to amount to SEK 20 billion, of which 15 billion in the consumer stage. This equates to two percent of the total annual turnover of retail and wholesale businesses in Sweden, and over one percent of Sweden's total import value. Of the source countries for infringing ("pirated") goods, China accounted for 25 percent, Hong Kong (a Special Administrative Region of China) being the second largest with just under ten percent and Russia third with 6.5 percent. China thus dwarfed all other source countries. The aforementioned OECD study was used to develop the estimates for the Swedish Trade Federation study.

Some consequences of illicit trade identified by the survey are:

- Economic losses for legal trade actors.
- Dangers for end consumers.
- Losses of tax revenue for governments.
- Increased income and strengthening of organised crime.

Swedish National Board of Trade (Kommerskollegium) 2012

This study looks at IP related issues for companies operating in the BRICS countries, Japan and Indonesia. Findings of a number of international studies are reported, along with additional interviews with representatives of Swedish companies active in the countries in question. The companies interviewed stress the importance of the following factors in combating illicit trade:

- Long-term strategic thinking in market entry.
- Well developed IPR strategies.
- Subsidiaries in domestic markets.
- Clear contract provisions on IPR.
- Information to and education of civil servants in relevant authorities.
- Cooperation with Europol and similar bodies.
- Coordination of IPR related issues in Sweden, e.g. by a standing national IPR committee.

European Commission statistics 2014

The European Commission yearly publishes a report of customs detentions of articles suspected of infringing IPR. The latest statistics, published in July 2014, show a decrease in the number of shipments suspected of infringement compared to the year before. Almost 87.000 detention cases were registered in 2013, which is twice the number in 2007. 36 million articles were detained, to a value – calculated as the value of equivalent genuine products – estimated to be just over 768 million euro.

Top categories of specific articles detained by EU customs in 2013

- clothing (12 percent of the overall amount)
- other goods (such as insecticides, shoe polish, lamps, glue, batteries, air fresheners, and washing powder, 11 percent)
- medicines (10 percent)
- cigarettes (9 percent)
- packaging materials (9 percent)
- toys (8 percent)

Holders of IP rights may apply for action, requesting customs to take action upon suspicion that an IPR is infringed. (Customs authorities also have the power to act ex-officio if there is a suspicion of an IPR infringement, but this is rarely done.) The number of applications for action made in EU member states has increased over the last decade, from 10.260 in 2007 to 26.865 in 2013. 93 percent of articles detained, equalling 95 percent of the total value, were suspected of infringing a Community or national trademark, representing all product sectors.

Countries of provenance

China remains the main country of provenance from which goods suspected of infringing an IPR were sent to the EU, representing 66 percent of all products detained. Other countries are particularly prevalent in certain product categories – notably Egypt for foodstuffs, Turkey for perfumes and cosmetics, and Hong Kong for other body care items, mobile phones, memory cards and sticks, ink cartridges and electrical household appliances.

Health and safety concerns

Suspected infringement of products for daily use and products that would potentially pose a danger to the health and safety of consumers (i.e. food and beverages, body care articles, medicines, electrical household goods and toys) accounted for a total of 25.2 percent of the total amount of detained articles – a doubling of the share in 2012. The main reason for the increase is the rise in the number of detained counterfeit medicines.

Destruction of goods

In 92 percent of the cases of detentions by customs, the goods were destroyed, either upon agreement between the right-holder and the owner of the goods in question, or through a court proceeding. In 8 percent of the cases (equalling 18 percent of articles), detained goods were released either, because the right-holder did not react to the notification by customs, or the goods were shown to be non-infringing.

TOTAL DETENTIONS IN THE EU	2012	2013
Cases	90.473	86.854
Articles	39.917.445	35.940.294
Domestic retail value	896.891.786 €	768.227.929 €

European Commission staff working document 2014

The European Commission has detailed the economic impact of IP abuse in a recent staff working document:

“The OECD estimated international trade in counterfeit and pirated products up to USD 250 billion in 2007 (excluding domestic market and internet sales) — exceeding the GDPs of 150 national economies and affecting nearly all product sectors. Other sources even put this figure around USD 650 billion a year, against global narcotics trade of an estimated USD 322 billion.

– A European Parliament Report on the impact of counterfeiting on international trade (2008/2133(INI)) states that ‘The counterfeiting market is worth approximately EUR 500 billion, accounting for some 7–10% of world trade.’

– A report by Frontier Economics estimates the total value of counterfeit and pirated products at between USD 455 billion and USD 650 billion, and that 2.5 million jobs were lost due to counterfeiting and piracy in 2009 in G20 countries alone.

– The number of registered cases of IPR infringements by customs over the last 10 years has risen from 7.553 in 2001 to 90.473 in 2012, an increase of 1.200% over a decade, reflecting the growing practice of shipping such goods in small postal consignments.”¹

World Customs Organisation 2014

The World Customs Organization (WCO) released its 2013 edition of the Illicit Trade Report in June 2014. The report covers five sections: drugs, environment, IPR, health and safety, revenue and security. In all five areas, an increase of the reporting countries compared to the year before was noted.

In the IPR section, increases in both reporting countries and cases were observed (22.543 cases in 2012 and 24.092 cases in 2013). More than half of the reported interceptions in 2013 were illicit pharmaceutical products, followed by counterfeit electronic appliances and illicit foodstuffs. This is a notable change from 2012, when the majority of intercepted commodities were accessories, followed by clothing – pharmaceutical products came in third. Another trend observed during the last years is an increase of cases of domestic assembly: small parts and blank products are imported separately and assembled in the country of destination, most probably in order to circumvent customs controls.

¹ SWD(2014) 204 final, p. 10

The report also covers areas of illicit trade that are not subject to IPR protection, such as narcotics and illegal wildlife trade, as well as illegal trade in weapons, ammunition and explosives.

EU Observatory 2015

The European Observatory on Infringements of Intellectual Property (EU Observatory) is conducting a series of economic studies assessing the scope, scale and impact of IPR infringement. The first study was presented in March 2015, surveying the cosmetics and personal care sectors, showing that sales of counterfeit perfume, makeup and personal care items lead to losses of €4.7 bn of revenue among manufacturers, distributors and retailers yearly in the EU, equating nearly eight percent of total sales and translating into legitimate 50.000 jobs lost. Taking the knock-on effect on suppliers into account, the losses to legitimate businesses amount to €9.5 bn of sales revenue because of counterfeiting, meaning around 80.000 jobs being lost.

IP Commission 2013

In its 2013 report, the Commission on the theft of American Intellectual Property (IP Commission) identified the following regarding the impact of international IP theft on the American economy:

”Hundreds of billions of dollars per year. The annual losses are likely to be comparable to the current annual level of U.S. exports to Asia—over \$300 billion. The exact figure is unknowable, but private and governmental studies tend to understate the impacts due to inadequacies in data or scope. The members of the Commission agree with the assessment by the Commander of the United States Cyber Command and Director of the National Security Agency, General Keith Alexander, that the ongoing theft of IP is ‘the greatest transfer of wealth in history.’

Millions of jobs If IP were to receive the same protection overseas that it does here, the American economy would add millions of jobs.

A drag on U.S. GDP growth. Better protection of IP would encourage significantly more R&D investment and economic growth.

Innovation. The incentive to innovate drives productivity growth and the advancements that improve the quality of life. The threat of IP theft diminishes that incentive.”²

U.S. International Trade Commission 2011

In a report on the effects on the US economy of IP infringement in connection with China, the US International Trade Commission stated in 2011:

“U.S. firms that operate in China and had concerns about IPR infringement reported that an improvement in IPR protection and enforcement in China to levels comparable to the United States’ would likely increase employment in their U.S. operations by 2 to 5 percent. This increase translates into approximately 923.000 new jobs for U.S. IP-intensive firms, some of which may represent the hiring of employees from other firms. The unrealized employment effects were largest in the following three sectors: information and other services, consumer goods manufacturing, and high-tech and heavy manufacturing.”³

² IP Commission report 2013, p. 2

³ International Trade Commission 2011, p. xvii

Saana Consulting/WTO 2013

The Less Developed Countries (LDCs) are not major global sources of counterfeit products, but do have significant problems with counterfeit and other IP infringing goods. The 2013 report *Factual overview on technical & financial cooperation for LDCs related to the TRIPS Agreement: Identifying and responding to individual priority needs of LDCs*, commissioned by the Swedish International Development Cooperation Agency as a contribution to the WTO Global Trust Fund, reviewed the needs communicated by a number of LDCs. Virtually all of the states covered in the report point to a need for support in enhancing their capacity for protecting intellectual property rights.

Transcrime 2015

In March 2015, the organised crime research institute Transcrime released the report *From Illegal Markets to Legitimate Business: The Portfolio of Organised Crime in Europe*. The report estimates that counterfeit goods constitute the single biggest illicit market in the European Union, generating €42.7 billion in revenues, exceeding the market for narcotics. The report identifies East European, Russian, North African, Turkish, Italian, Japanese, Chinese, and other Asian organised crime groups as the most active in the counterfeiting market across Europe.

The Finnish Institute of International Affairs 2014

In this briefing paper, various aspects of illicit trade flows are documented, as well as some related aspects (such as illegal immigration flows and border security). The authors conclude that the issue of illicit trade is under-prioritised, and has been so for a long time, for three main reasons:

- Limited data available, due to the covert nature of the activities.
- Responsibility for counteraction is spread between a host of actors – no one assumes overall ownership of the issue.
- Different forms of illicit trade is dealt with as separate issues, despite frequent interconnectedness and synergies between the phenomena.

The paper suggests three initiatives: measuring and quantifying the business impact of illicit trade, compiling national illicit trade reports, and assessing evolving future illicit trade risks.

Japan Patent Office's Survey Report on Losses Caused by Counterfeiting

Since 1996, the Japan Patent Office conducts a yearly major survey assessing how leading Japanese companies are affected by counterfeiting. In the latest published survey, released in March 2014, results for financial year 2012 showed that 21.8 per cent of responding companies indicated that they suffered losses due to counterfeiting.

The negative impact of counterfeit goods

Although the sheer scale of counterfeiting estimated in the aforementioned studies is in itself shocking, the total impact goes far beyond the economic turnover. Related areas affected include the following.

Consumer safety and public health

Counterfeit medicines pose an enormous challenge, with a significant proportion in the developing world being falsified. Such medication fails to protect its users, but this extensive prevalence of substandard medicines also contributes to accelerated drug resistance. Counterfeit food products, or counterfeit components used in food production processes, expose consumers to health risks. Products, such as electrical appliances or automotive components, which do not comply with safety standards expose the user and their environment to health risks. Toxins in counterfeit goods, such as cosmetics or children's toys, expose users to health hazards.

Environmental damage

Counterfeit products are frequently not produced using the same high standards as legitimate goods, disregarding environmental protection standards and failing to ensure that sourcing is licit. A case in point is the chemical industry, which has documented cases where the use of counterfeit fertilizers caused serious damage to the environment.

Weakening rule of law

Corruption undermines governance, democracy and the rule of law. As illicit trade generates significant profits for the parties involved, yet exposes them to risk, efforts to buy "insurance" or "protection" from government officials, law enforcement and politicians will occur, perverting governance and democracy in the process.

Crime and terrorism financing

Contraband trade provides income for conflicting parties prolonging wars, and serves as important income streams for violent criminal and terrorist groups. A number of leading terrorist groups are known to have profited from the trade in counterfeits. Europol estimates that there are 3.600 organised crime groups active in the European Union. Over 1.000 of these are so called poly-crime groups, i.e. that generate revenue from multiple forms of criminal activities. This means that groups that generate revenue from counterfeits can use the profits to finance other forms of organised crime. The empowerment of non-state actors can also have transnational consequences. Profits generated from illicit trade in one part of the world may empower an organised crime group or terrorist organisation to act in another.

Undermining border security

A vibrant criminal market depends on the establishment of smuggle routes, the corruption of officials, and suppliers of falsified documents. This criminal infrastructure, which is established to service an extensive flow of counterfeits, can also be utilised by criminal actors with other purposes, and can be leveraged to transport illegal goods, weapons or terrorists into Europe.

Diversion of resources to combat criminal entities

The rise of criminal networks controlling illicit trade forces governments to divert focus and resources to law enforcement efforts, at the expense of development. In countries with armed parties profiteering on illicit trade this effect can become particularly extreme.

Tax revenue losses

When the illicit goods are displacing normally legal products, the government is deprived of tax revenue.

Undermining legitimate enterprise and entrepreneurship

The provision of illicit products at prices lower than would be possible for legitimate actors results in unfair competition, eliminating legitimate economic actors and negatively affecting investment in the economy. Crime also generates direct costs for business and contributes towards a less conducive business environment.

Labour conditions

Human rights are undermined in a multitude of ways by organised crime activity. The labour standards in place at enterprises producing illicit products are less likely to comply with legislation compared to legitimate business.

The aforementioned factors contribute to fostering an environment of reduced government functionality and rule of law, reduced revenues, and increased costs and health risks. At the same time, the economic environment becomes less conducive to economic growth and investments, undermining broader development. Impact is not limited only to the country or region affected by illicit trade – in an interconnected global system, the repercussions are felt beyond national borders.

Some international policy initiatives

European Commission

In December 2012, the EU Customs Action Plan was adopted by the Council of Ministers. Its aim is to combat intellectual property right infringements. The strategic objectives of this Action Plan for 2013–2017 are:

- Effectively implementing and monitoring the new EU legislation on customs enforcement of IPR;
- Tackling trade of IPR infringing goods throughout the international supply chain;
- Tackling major trends in trade of IPR infringing goods;
- Strengthening cooperation with the European Observatory on infringements of IPRs and law enforcement authorities.

In June 2013, a new regulation (608/2013) on IPR enforcement at customs was adopted. The regulation reinforced the powers of customs authorities to enforce intellectual property rights. Among other things, the regulation includes the introduction of a new EU-wide database, COPIS, where applications from rights holders are lodged.

The March 2014 European Council reaffirmed the importance of intellectual property (IP) as a key driver for growth and innovation and highlighted the need to fight against counterfeiting to enhance the EU's industrial competitiveness globally.

In July 2014, the European Commission released a communication identifying a number of key areas where policy responses to changes and challenges are needed, not just to ensure effective protection and enforcement of IPRs internationally, but also to raise public awareness of the economic and other impacts of IPR-infringing goods and their detriment to innovation and also on health and safety. Among the areas mentioned were enforcement, public debate, internet, development, emerging economies, research and innovation, access to medicines and environmental challenges.

The need for a revised IPR strategy for the EU vis-à-vis third countries was also put forth in the communication, mentioning in particular the need for increased stakeholder engagement, better data, enhanced cooperation within the EU, improved protection and enforcement of IPRs in third countries, and assistance to EU right holders in third countries.

Algirdas Šemeta, Commissioner for Taxation, Customs, Anti-fraud and Audit said in July 2014: "Innovation and creativity is where Europe creates value. Protecting Intellectual Property Rights is not only important for health and safety of European consumers but also supports growth and job creation in the EU."⁴

⁴ European Commission, press release IP/14/890

EU Observatory

The European Observatory on Infringements of Intellectual Property Rights (EU Observatory in short) was founded by the EU in 2009 and is since 2012 a part of the Office for the Harmonisation of the Internal Market (OHIM). The Observatory acts as a network of experts and stakeholders, dedicated to providing data and knowledge on IP infringement and developing initiatives and campaigns to protect and disseminate information about the value of IP.

The Observatory provides various resources on IP protection, of which two databases, co-hosted with the European Trade Mark and Design Network, an organisation for European IP authorities and associations, are of foremost importance: ACIST (The Anti-Counterfeiting Intelligence Support Tool), which is as of yet restricted, is intended to give users access to data on seizures of IP infringing goods; the Enforcement Database allows IP rights holders to upload data on IPRs, making it easier for authorities to identify counterfeits and to take proper action.

Similar databases and online information exchange solutions are managed by Interpol and the World Customs Organization as well.

OECD project on counterfeiting and piracy

In 2005 the OECD launched a project to assess the magnitude and impact of counterfeiting and piracy. The objective of the project was to improve understanding and awareness of the problem and the effects that infringements of IPR have for businesses, consumers and governments, in member countries as well as non-member economies.

The project also analysed concerns over health, safety and security threats that counterfeit and pirated products pose, in particular to consumers. Another task of the project was to review trends and developments and assess what measures were being taken where to combat the illicit practices.

The project was conducted in co-operation with other international organisations, including the World Trade Organization, the World Customs Organization, the World Intellectual Property Organization, Interpol and several NGOs. The Business and Industry Advisory Committee and the Trade Union Advisory Committee to the OECD were also involved.

The first phase of the project focused on tangible counterfeit and pirated products – physical products that infringe trademarks or copyrights, and (to a lesser extent) infringements of patents and design rights – and was summed up through the publishing of a final report in June 2008. An update on the magnitude of counterfeiting and piracy of tangible products was published in November 2009.

The second phase, which focused on piracy of digital content, was finished through a final report in July 2009.

A third phase was intended to address infringements of other IPRs, but has never been finalized.

The OECD is currently conducting an update to the 2009 counterfeiting study, with support from the EU Observatory.

OECD Task force on charting illicit trade (TF-CIT)

The OECD introduced the Task Force on Charting Illicit Trade (TF-CIT) in 2013, to co-ordinate international expertise in the quantification and mapping of illicit markets, and to enable understanding of connections between different forms of illicit trade. TF-CIT is organised in the context of the OECD High Level Risk Forum and aims to provide a platform for international public and private stakeholders to analyse how to incentivise compliance with laws and regulation to promote legitimate trading networks. The High Level Risk Forum and TF-CIT are also intended to help governments co-ordinate efforts to combat criminal and illicit networks.

In 2015, the activity of TF-CIT is stated to be focused on: “Mapping the economic activities of transnational criminal networks, by gathering data on volume and flow of illegal trades and agreeing to common methodological approaches; Examining the conditions and policies that encourage or inhibit different sectors of illegal trades, whether at the level of production, transit or consumption; Developing visualisation tools to help public and private sector decision makers better target prevention and mitigation efforts in strategic markets.”⁵

US IPR Center

The US National Intellectual Property Rights Coordination Center (IPR Center) is a joint operation of 23 partner agencies, consisting of 19 key federal agencies, Interpol, Europol and the governments of Canada and Mexico in a task-force setting. The IPR Center works against IP theft through investigations of counterfeit products, interdiction, outreach and training. It was founded in 2008, replacing a smaller government body created in 2000.

Japan IP Strategy Headquarters

Japan, a major exporter of intellectual property intense goods, is the only major economy to conduct a long running systematic survey of counterfeiting and its effect (see above). It is also a major supporter of the World Customs Organisation (WCO), the World Intellectual Property Organisation (WIPO), and has supported intellectual property enforcement capacity building in other countries. Japan’s prioritisation of intellectual property is further reflected in the fact that IP policy is coordinated through a dedicated office, the Intellectual Property Strategy Headquarters at the Prime Minister’s Office. The office is responsible for developing and implementing the intellectual property strategic programme, and coordinating policies amongst the concerned ministries. It is directed by the prime minister and includes all ministers, as well as experts.

⁵ OECD Task Force on Charting Illicit Trade website

The study - NASDAQ OMX 30 Stockholm Index companies on IP infringement

There are studies, such as the aforementioned OECD and ICC studies, which provide global estimates of the magnitude of counterfeiting. These figures do not however quantify the damage done to rights holders in its totality. Customs statistics neither accurately reflect the realised value of goods, nor take into account all costs incurred on companies in terms of trade mark damage and expenses for security, legal proceedings, etc., or the strategic impact on the competitive environment.

To further complicate matters, an IPR owner may be based in one jurisdiction, production in another, and consumption in a third, making seizure data and extrapolations based upon seizure data and trade figures of some use in determining the global scale of the counterfeiting, but less useful in determining the losses on national or industry level incurred by international trade in counterfeit goods. Shipments of counterfeit goods may also be indirect, and paperwork might be manipulated to disguise true origins. Additionally, customs prioritization, knowledge and capacity when it comes to intercepting IPR infringing goods varies widely from jurisdiction to jurisdiction, making seizure data of limited value in determining the relative extent of counterfeiting between different jurisdictions. Furthermore, intelligence from proactive industries shared with customs will boost seizures for certain categories of products, potentially creating a distorted perception of the true extent by which different industries are affected by counterfeiting.⁶

Assessing how leading companies themselves are impacted will thus be likely to provide findings of higher relevance to determining the national interest relating to counterfeiting and intellectual property theft. A further advantage of conducting in-depth interviews with companies is the possibility of gaining qualitative insights, which are impossible to obtain from seizure data and trade statistics alone.

Although the number of companies surveyed in this study is limited for reasons of practicality, they are some of Sweden's largest and account for substantial parts of Swedish GDP, private-sector employment and exports, implying that their accounts of IPR infringement are to some extent reflective of IPR intense export orientated companies more broadly.

The companies participating in the study

The NASDAQ OMX 30 Stockholm Index actually consists of 29 companies, as one company has two shares (A and B class shares) listed on the index. The market capitalisation of the shares on this index is close to half a trillion USD (and would be even higher if all class A shares not on the index were included), which by comparison exceeds the value of Sweden's GDP. The companies listed on the index during 2014 were active in the following sectors: energy, materials, industrials, consumer discretionary, consumer staples, health care, financials, information technology, and telecommunications services.

⁶ cf. SWD(2014) 204 final, p. 9

Ten of the companies on the index are not subject to any direct major threats from counterfeiting and intellectual property theft, due to the nature of their operations. However, two of these are conglomerate holding companies, indirectly exposed through their holdings, and the four that are banks are also indirectly (albeit to a lesser extent) exposed through shareholdings and pension and investment fund holdings in other companies on the index. Six companies were active in natural resource extraction, construction and services, and as such not directly exposed to counterfeiting of their products or major IPR infringement.

The remaining 17 companies are active in sectors where the core business activity could be affected by counterfeiting or intellectual property theft. Of these 17 companies, all were contacted, and 14 participated in the study. Additionally one company that left the index during the project period was also included in the findings, increasing the total number of participating companies to 15. Of the three non-participating companies, one confirmed that counterfeiting and IP theft was a major and growing concern to them, another is known from media reports to be affected, and the third one could reasonably be expected to be affected, although it is not known whether it is an issue of major concern to them.

The findings of the study

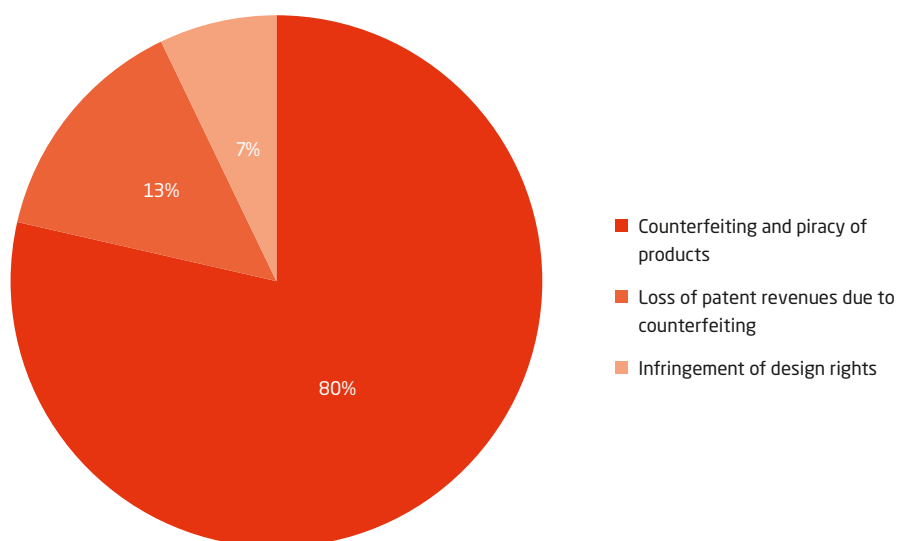
Impact on companies

All of the 15 interviewed companies were affected by some sort of intellectual property theft.

- 12 companies suffered from counterfeiting and piracy of their products, and two further lost patent licensing revenues due to counterfeiting.
- 12 suffered from patent infringements.
- 8 confirmed design infringement.
- 8 companies expressed concern that counterfeiting could damage their trade marks.
- 9 companies indicated strategic concern over IP theft and infringement.

All of the 15 interviewed companies were affected by some sort of intellectual property theft.

Companies affected by counterfeiting



Some views expressed in comments by company representatives:

“For some product categories it’s 20-30 percent counterfeits, for others less than 10 percent.”

“A study estimated 3-5 percent counterfeits in our sector, resulting in a total damage (adding trade mark damage to sales volume losses) as being equivalent to 10 percent of turnover. I believe that would be a reasonable estimate in our case.”

“The majority of products sold are unlicensed products”

“Counterfeits have been estimated at 2 percent of global output, I think it’s about the same for us.”

“We are losing billions of SEK every year on our patent rights due to infringement.”

“The majority of products sold are unlicensed products.”

“Counterfeiting is endemic in the spare parts market.”

“For us it’s more of an inconvenience, resulting in sales losses of a few million Euros a year.”

“The pirates offer more content at lower prices.”

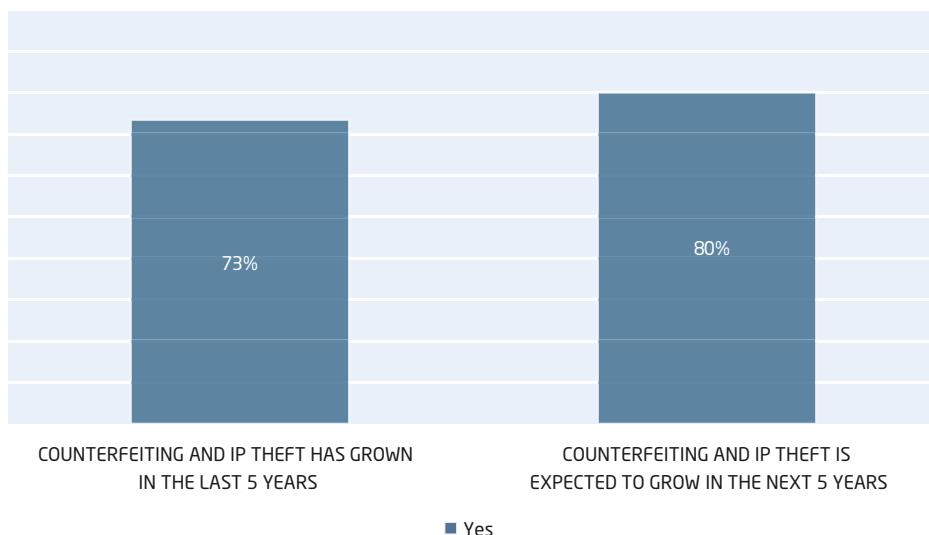
“It’s my personal opinion, but maybe counterfeiting is not bad for all brands.”

“It’s a catastrophe – in some countries over 50 percent of the after sales market is fake.”

Past and future trends

- 11 companies said counterfeiting and IP theft has grown in the last 5 years.
- 12 companies expect counterfeiting and IP theft to grow in the next 5 years.

A growing problem



Some views expressed in the comments:

“Growth driven by online fora.”

“Now it is more focused on spare parts.”

“We may see a revolution like the one in music industry, when content became digital. With 3D printing the consumer will also become the manufacturer in future, with digital blueprints becoming the critical commodity.”

“With 3D printing the consumer will also become the manufacturer in future, with digital blueprints becoming the critical commodity.”

“It will become a bigger issue as we expand in emerging markets.”

“The problem is already so bad it can not get worse.”

Geographical variations and highlights

Counterfeiting problems were reported globally, with China, South East Asia, India, Africa/Middle East, Latin America and Eastern Europe (particularly the former Soviet Union states) being identified as being of greater concern than the OECD states.

China

All companies affected by counterfeiting identified China as the main source of illicit products.

China was also the market with the highest prevalence of counterfeit products (for some companies the incidence was higher in other markets, such as the Middle East/Africa, but the market value is biggest in China).

China was identified as the key manufacturing location of products enabling copy-right violations.

A number of company representatives expressed their personal views that the Chinese government was pursuing a strategic plan to steal intellectual property in order to benefit Chinese industry. They also observed that a number of Chinese companies had helped build a foundation based on copying and disrespecting intellectual property rights. Some companies raised concerns about the fairness of Chinese institutions, and concerns that information required by Chinese authorities could be used for piracy activities.

On the other hand, a number of companies had positive experiences of cooperation with Chinese law enforcement. Some stated that China had modern IP rules and efficient courts, even though compensation levels were deemed too low.

Chinese websites were identified as enormous sales points for counterfeit goods. The companies' perception was mixed, but some had positive experiences of major Chinese websites rapidly blocking offending content upon request.

Russia

Two companies identified Russia as a market where they had particularly serious problems with counterfeit products, yet the Russian state displayed a strong unwillingness to address the issue, despite potential risks to human health. Both companies pointed to the involvement of Russian organised crime. Two other companies also identified Russian websites as particularly problematic in facilitating crime relating to intellectual property.

Nigeria

Africa and the Middle East were pointed out by some companies as having extreme levels of counterfeiting. But Nigeria stands out, with one company describing it as being like the Wild West with “cowboys and indians” shooting at each other. Another company described the counterfeiting situation, and the state’s inability to deal with it, as so bad that companies in the affected industry were reluctant to invest in the country, despite it being the largest economy in Africa.

Turkey

Turkey is unique as being the only OECD country that a number of companies identify as particularly problematic. One company identified it as both a manufacturing base and trade hub of counterfeits. Another company states that local manufacturing is a problem due to copying, and that Turkey appears to be following a “Chinese model” where it wants to develop its own technology base by copying and disrespecting intellectual property rights. A third company identified Turkey as a leading host of copy-right infringing websites.

Human safety and public health

9 of the 12 companies subjected to counterfeiting stated that the counterfeiting of their products could pose a risk to human health or life.

Negative consequences of counterfeiting included destruction of expensive equipment and costly disruption of production processes. Components for highly sensitive sectors, such as aerospace and nuclear power, have been affected by counterfeit components. Negative environmental effects resulting from counterfeit and intellectual property rights infringing products and software are another problem.

75

percent of companies subjected stated that counterfeiting of their products could pose a risk to human health or life.

More broadly, exports, legitimate jobs, tax revenues and the long term competitiveness of Swedish industry are impacted negatively. Lack of investment may result in areas where intellectual property infringement is particularly bad.

Organised crime

Four companies stated that there was organised crime involvement in the IP infringement of their products. One company pointed to the involvement of well organised crime groups in Europe, Russia, Asia, and China. Another company pointed to the Russian and Italian mafias, as well as Colombian, Mexican, and European organised crime gangs. Even a Middle Eastern terrorist group was named as profiting from the trade in counterfeits of one company’s products.

One company pointed out that international corporations usually refrain from trying to identify organised crime connections, as that is the duty of national law enforcement agencies. This would suggest that many companies may be unaware of organised crime involvement in the illicit exploitation of their intellectual property. In fact, it probably goes against the interest of the companies, or at least their individual employees, to delve into possible organised crime connections.

Many companies may be unaware of organised crime involvement in the illicit exploitation of their intellectual property.

Four companies explicitly stated that they did not believe there was any organised crime involvement in the IP crimes they were subjected to. This would of course depend on how one defines organised crime, but these companies perceived that the activities were rather driven by dishonest “businessmen”.

Three companies confirmed cases where perpetrators of IP crime were also shown to be involved in other serious crime. Two of these companies mentioned narcotics, and two illicit firearms.

Modus operandi

Several companies pointed out that it is extremely hard to actually get at the people behind counterfeiting or other production. This is the case when it comes to internet sales. Identifying the actors behind is very difficult, and even the producers are hard to pin down. The perpetrators make themselves invisible. Companies can be shut down, new ones started, names and addresses changed. If one is taken down, other new ones pop up shortly afterwards.

High level corruption, shielding perpetrators, was identified as a critical problem by a couple of the companies.

Several companies mention that searching the internet will generate enormous numbers of “hits” of IP infringing products. One company mentioned that scanning 50 websites for one month generated near 9 million “items” (product or search hits). Other companies mentioned getting thousands of hits searching on Alibaba only. Copyrighted material is also available through millions of online links.

Other concerns mentioned were industrial espionage – where employees, former employees, and suppliers all could play a role. Insiders selling information was seen as a particularly bad problem in China and Russia by one company.

Legitimate professionals and sellers are used by criminals to add legitimacy to selling fraudulent products. Unauthorised resellers are often unaware that the products they are selling are counterfeits.

“Brand hijacking” was reported as a particular concern by one company. Global trade marks were registered by other companies in China, under the country’s “first to file” rules. These Chinese producers’ products are not only being sold in China, but are also being sold in other global markets where these companies are not the trade mark owners.

Company responses

Nine companies indicated that they have a number of measures and routines in place to counter the threat of counterfeiting and IP infringement. One company had 200 people in the IP department alone. Another company spent 200 million SEK per year to protect its IP, but still deemed it to be a low cost, considering the significance of the threat. There was, however, significant variance in vigilance and how systematic the approaches appeared to be.

A key motivation for working to target IP infringers was to disincentivise others. Bringing legal cases against perpetrators was a key instrument in this area. Several measures are taken to make infringement practically more difficult as well. Approaches mentioned by a number of companies include product authentication solutions, supply chain security, protecting R&D, cooperation with and training of customs (particularly in China), training and raising awareness of staff. Some companies employ private companies to carry out test purchases and gather intelligence on suspected counterfeiters or patent infringers. Scanning online sites for infringing goods was another method used. A number of companies mentioned that critical components were not manufactured by suppliers or in certain countries, to prevent copying. Certain products were also not sold in particular markets, such as China, for fear of copying. One company even mentioned that its pricing strategy in China was influenced by concerns over counterfeiting.

A key motivation for working to target IP infringers was to disincentivise others. Bringing legal cases against perpetrators was a key instrument in this area.

Only three companies were able to provide (or willing to share) an indicative estimate of how significant the cost of counterfeiting was for their business. Certain companies have multiple trademarks and operate in a decentralised structure, making any overall corporate assessment difficult.

Two companies did not appear to work systematically with the matter at all, as they did not perceive the matter to be of serious concern. One company that did face serious challenges from counterfeiting nonetheless appeared to look relatively benignly at the phenomenon.

One company (referring to other companies) mentioned that most trade mark owners did not respond to seizures, due to the high legal costs involved.

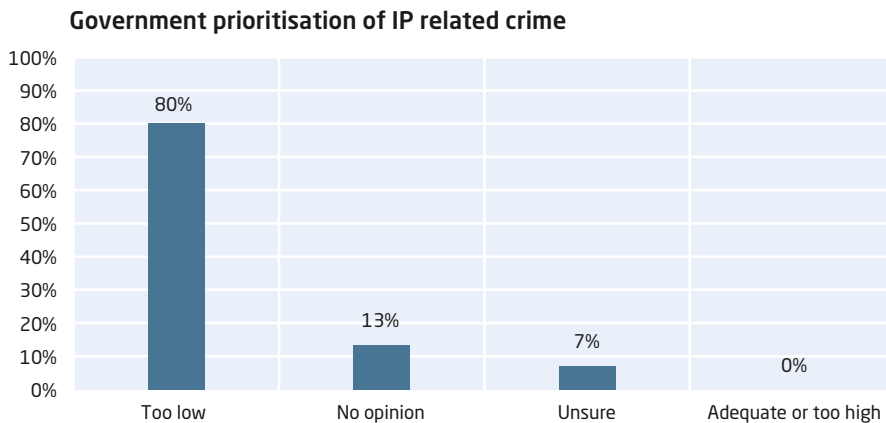
A couple of companies mentioned that they had assessed whether media information campaigns to raise awareness of counterfeiting might be useful, but had decided not to proceed due to concerns that it might be counterproductive.

Shareholder, stock analyst, and media interest

Two companies mentioned that shareholders had raised questions regarding IPR infringement. One company stated that this was in relation to high profile cases, and another that such questions raised at annual shareholder meetings were not serious.

Of all the companies interviewed, only one representative was aware of questions from financial analysts at investment banks or funds requesting information specifically concerning risks posed by counterfeiting or IPR infringement, and that concerned one single question.

Some companies reported media interest in relation to individual incidents. Only one company mentioned that they had been contacted by media (a leading international newspaper) doing a more analytical assessment of the threat posed by counterfeiting in their sector.



Government response

Of the 15 companies, 12 stated that the Swedish government prioritisation of intellectual property infringement was too low, and should be increased. One did not know, and two did not indicate a view. None stated that the level of prioritisation was adequate or too high.

The most common views, shared by several companies, were 1) that punishments for intellectual property infringements in most jurisdictions were far too low, and 2) that public awareness of the threat posed by counterfeiting must be increased.

Additionally, many companies felt that several governments were non-responsive when it came to infringement of intellectual property.

A view shared by several companies was that the European Union could do more to bring the issue onto the global agenda. There was a perception that the US has been much more effective in focusing on this critical challenge to future competitiveness than the EU.

The most common views were that punishments for intellectual property infringements in most jurisdictions were far too low, and that public awareness of the threat posed by counterfeiting must be increased.

International cooperation could be improved. More pressure could be applied on China to improve compensation levels for IP infringements. Greater international harmonisation of IP rules were raised as desirable by some. One company even stated that a global system independent of national legal systems would be desirable, where compensation could be claimed directly from states that did not adequately protect intellectual property rights.

Intervjuer

Per Holgersson, nationell specialist vid Tullverket

”Det finns två tydliga trender vad gäller beslag av piratkopierade varor som kommer in i Sverige. För det första har bredden på kategorierna av varor som kopieras ökat. Idag kopieras princip allt, från tandkräm, mat och tvättmedel till elektronik och bildelar. För det andra har vi noterat att kvalitén, det vill säga hur svårt det är att särskilja kopian från original, har ökat när det gäller vissa kopior.

Tullverket har endast befogenhet att göra kontroller när det gäller varor som kommer från länder utanför EU. Om en vara först skeppas in annat EU-land är det fritt fram för dessa produkter att transporteras in i Sverige. Finns det brister i gränskontrollen i andra delar av EU är det givetvis en svensk angelägenhet. Men det är också så att Sverige skulle kunna användas som transit land för transporter ämnade för andra EU länder.

Tullverket och Polisen deltar aktivt i EU:s ’European Policy Cycle’ satsning mot organiserad brottslighet. I detta arbete har EU identifierat 9 prioriterade områden. Sverige har valt att delta i samarbetet inom alla dessa områden, förutom just varumärkesförfalskning. Då Sverige har begränsade resurser har man valt bort detta område.

På Tullverket finns det ett antal personer som jobbar med immaterialrättsliga ärenden i olika utsträckning, sammanlagt motsvarar det ungefär 5-6 heltidstjänster.”



Foto: Privat

Om Tullverkets arbete på området

Den som är innehavare av en immateriell rättighet kan ansöka hos Tullverket om ingripande. Det innebär att Tullverket stoppar misstänkta intrångsvaror som importeras, exporteras eller transiteras genom landet. Ansökan kan vara nationellt begränsad eller avse hela EU (sk unionsansökan).

De statliga myndigheterna Patent- och registreringsverket, Bolagsverket, Konsumentverket/Konsument Europa, Läkemedelsverket, Polisen, Tullverket och Åklagarmyndigheten har gemensamt enats om att arbeta för att lyfta frågorna om piratkopiering, i ett samarbete som kallas Nätverket mot piratkopiering. Nätverket har ett till syfte att höja kompetensen hos de delaktiga myndigheterna. Varje myndighet svarar dock enbart för sitt eget uppdrag.

Om EU Policy Cycle

EU Policy Cycle är en process där EU:s medlemsländer arbetar gemensamt mot grov organiserad brottslighet. Medlemsländerna bidrar med information om vilka typer av organiserad brottslighet som de anser vara de största hoten. Informationen sammanställs till en gemensam hotbilsrapport för EU, Serious and Organised Crime Threat Assessment (SOCTA).

I nästa steg prioriterar och enas medlemsländerna om vilka brottsområden som är viktigast. Medlemsländernas prioriteringar sammanställs till en lista och en strategisk plan tas fram för arbetet mot brottsligheten. Kring varje brottsområde bildas sedan operativa arbetsgrupper som arbetar utifrån en årlig åtgärdsplan.

Vart fjärde år ska medlemsländerna skapa en ny gemensam lista över vilka brottsområden som ska prioriteras. Under perioden 2014-2017 finns det arbetsgrupper som har fokus på nio olika områden, däribland organiserade egendomsbrott och varumärkesförfalskning. Svenska Tullverket och Polisen deltar dock inte i den sistnämnda arbetsgruppen.

En centralt placerad statlig tjänsteman, som vill vara anonym

”Internationellt sett har den illegala handeln ökat och kommer att fortsätta öka. I och med internet är illegala varor bara ett klick borta.

Trots detta finns ingen helhetsbedömning av vad Sverige förlorar på illegal handel. Den politiska medvetenheten om problemet finns inte på samma sätt som i andra länder. Dessutom finns det en uppfattning att det ej är statens problem, utan att “kapitalet” får klara det.

Politiker är ej intresserade av att belysa problem, och om något är en politiskt het potatis bollar tjänstemännen runt frågan mellan myndigheter och departement. Här innebär den svenska regeringsformen med självständiga myndigheter en unik utmaning. Exempelvis finns det 17 myndigheter med olika ansvar på produktsäkerhetsområdet, vilket egentligen innebär att ingen äger frågan.

Illegal handel bör prioriteras högre. På hemmaplan kan svensk lagstiftning förbättras, man skulle kunna driva ett mer aktivt underrättelsearbete, och resurser skulle kunna tillföras. På den internationella arenan borde Sverige lägga mer krut på dessa frågor inom EU och gentemot de internationella organisationerna.

Att den organiserade brottsligheten är djupt involverad i piratkopiering på den internationella arenan är bekräftat, och det finns indikationer att även den grova organiserade brottsligheten i Sverige är involverad.

Näringslivet kan bidra genom att öka medvetenheten om detta problem.”

Jan Bertoft, Generalsekreterare Sveriges Konsumenter

“Det är viktigt med effektiv lagstiftning och tillsyn för att motverka piratkopierade varor. Framförallt för konsumenternas säkerhet, men även för att bidra till ett positivt innovationsklimat. Som konsument har man en ‘rätt till original’.

Dessutom har företagen ett ansvar för den allmänna säkerheten. Detta innebär att de borde gå ut och varna för skickliga plagiat som kan utgöra ett hot mot konsumenternas hälsa.”



Foto: Charlie Drevstam

Om Sveriges Konsumenter

Sveriges Konsumenter bildades 1992 och är en partipolitiskt obunden, ideell paraplyorganisation med omkring trettio medlemsorganisationer samt enskilda medlemmar. Sveriges Konsumenter ger ut Råd & Rön och nyhetsbrevet KonsumentMakt, samt driver Konsumentpanelen och KonsumentCentrum, som ger konsumentvägledning i Stockholmsområdet på uppdrag av olika stadsdelsnämnder och kommuner.

Professor Tom Berglund, chef för Centre for Corporate Governance vid den Svenska Handelshögskolan i Helsingfors och ordförande för Nordic Corporate Governance Network.

“Piratkopiering och IP-relaterad brottslighet är en stor utmaning för många företag. Men att ställa kravet att företag skall redovisa mer öppet om denna typ av problem är problematiskt. Det går emot företagets kommersiella intresse att öppet redovisa t.ex. för förekomsten av billigare plagiat som är svårt att skilja från originalet. Det kan därför vara mycket svårt att få fram pålitligt underlag för att bedöma problemets omfattning, kostnader och risker. Det är därför orimligt att förvänta sig att företagen ska bli bättre på att redovisa hur de påverkas av illegal handel. Detta utgör ett större samhällsansvar, där i slutändan stater måste ansvara för att de har underlag för att bedöma hur den nationella intresset påverkas av IP-brott.



Foto: Privat

På den positiva sidan kan företag, som kanske har färre problem än konkurrenterna, eller är bättre på att bemöta dem, medvetet fokusera på denna fråga och lyfta det som en relativ fördel och för att skapa goodwill. Genom detta kan de även tvinga konkurrenter att följa deras exempel.”

Om NCGN

Nordic Corporate Governance Network (NCGN) skapades 2010 och är ett nätverk av ledande forskare som studerar Corporate Governance i Norden.

Handelshögskolan i Helsingfors har en specialinriktning på Corporate Governance, och ett dedikerat Center for Corporate Governance som forskar och undervisar på området. Professor Tom Berglund är både ordförande för NCGN och chef för Handelshögskolan i Helsingfors Center för Corporate Governance.

Tomas Ries, senior lecturer Försvarshögskolan och tidigare chef för Utrikespolitiska Institutet

“I den gamla säkerhetsparadigmen låg försvaret av nationella gränser i fokus. I dagens globaliserade värld är internationella flöden minst lika avgörande för vår säkerhet och välbefinnande. Illegala flöden underminerar ekonomisk utveckling, korrumperar samhällen, genererar intäkter för kriminella icke-statliga aktörer och bidrar till miljöförstöring.

Den massivt ökade världshandeln innebär att det är lätt att dölja illegala produkter i de enorma strömmarna av legitim handel. Samtidigt är effektiva kontrollsystem för att upptäcka illegala varor kostsamma och reducerar flödeseffektiviteten i det internationella handelssystemet.



Foto: Rickard Klström

Ytterligare en utmaning är att våra institutioner i stor utsträckning har utvecklats för att möta gårdagens territoriella hot, snarare än globala fenomen som illegal handel. Dessutom innebär den ökade globaliseringen ett växande ömsesidigt beroende med handelspartners som saknar effektiv administrativ kapacitet och präglas av omfattande korruption.

Att upprätthålla effektiva och säkra handelsflöden är en förutsättning för vår civilisations fortsatta blomstrande och överlevnad. Den illegala handeln utgör ett långsiktigt hot mot detta. Ett tydligt exempel är synergien mellan organiserad brottslighet och transnationella revolutionära rörelser, som tillsammans bildar en hotkomplex som är större än summan av de enskilda delarna.

En förutsättning för att de politiska beslutsfattarna ska förstå allvaret av detta hot är att de får en inblick i den illegala handelns enorma kostnader, inte bara ekonomiskt, men även utifrån ett bredare säkerhetspolitiskt perspektiv.”

Om FHS

Försvarshögskolan i Stockholm bedriver undervisning och forskning inom en rad områden för att bidra till nationell och internationell säkerhet. Forskningen berör även säkerhetspolitiska frågor som är bredare än rent militära. Dr Tomas Ries är en av de ledande säkerhetspolitiska tänkarna i Sverige och har skrivit specifikt om flöden utifrån ett säkerhetsperspektiv.

Ann-Charlotte Söderlund, ordförande Swedish Anti-Counterfeit Group

”Piratkopieringen ökar. Dessutom blir den mer mångfacetterad och sofistikerad. För tjugo år sedan handlade det mest om lyxvaror där konsumenten visste att de köpte något som var ’för bra för att vara sant’. Nu finns det plagiat av allt och kvalitén på kopiorna är oftast högre, vilket innebär att konsumenterna idag ofta köper piratkopior omedvetet.

Internet innebär både att det är lättare för konsumenter att bli exponerade för piratkopior, samtidigt som det är lättare för brottslingarna bakom att dölja sig och vara anonyma.



Kopiorna säljs inte endast till de extremt låga priserna som var vanligt för många år sedan. Det faktum att priset ofta är ’rimligt’ kan hjälpa skapa en trovärdighet att varorna är äkta. Denna nu vanliga prissättningsstrategi innebär dessutom att de kriminella får bättre marginaler!

Vad gäller åtgärder mot piratkopiering i Sverige behöver vi bli bättre på att utbilda konsumenter och inköpare för att öka medvetenheten om piratkopior. Här kan näringslivet spela en viktig roll.

Myndigheterna som jobbar med dessa frågor har otillräckliga resurser i relation till fenomenets omfattning. En anledning till denna låga prioriteringen är att fokus ofta legat på ”immateriella rättigheter”. Egentligen behövs ett bredare helhetsperspektiv. Då skulle politikerna inse att vi måste lägga mer fokus på detta.

Då piratkopieringen växer och nu påverkar många produktkategorier där dålig produktion kan innebära fara för liv är det oundvikligt att vi i framtiden kommer att se högprofil incidenter där konsumenter dör eller skadas allvarligt. (Det kan mycket väl redan ha skett utan att vi känner till orsaken). Därför vore det klokt av myndigheter, politiker och näringslivet att agera proaktivt, snarare än att vänta på att bli tagna på sängen.”

Om SACG

Swedish Anti-Counterfeiting Group (SACG), eller Svenska Föreningen mot Piratkopiering, är en politiskt oberoende och ideell förening grundad 1997, som arbetar för att förhindra piratkopiering och handeln med piratkopierade produkter. Bland föreningens medlemmar finns företrädare för nationella och internationella bolag, intresse- och branschorganisationer, myndigheter, advokat- och konsultbyråer, svenska universitet och högskolor samt privatpersoner. SACG samarbetar även med andra organisationer och myndigheter på området och är ständigt involverade i det internationella arbetet mot piratkopiering.

Susanne Lindberg-Elmgren, Internationella Enheten, LO

”Det är rimligt att anta att producenter av illegala varor är mindre benägna att följa regelverk generellt, inklusive arbetsmarknadsregler.

Men det är förstås inte en garanti att en vara är tillverkad under schyssta förhållande, bara för att den produceras lagligt varumärkesmässigt. Men det stora varumärkesföretagen är måna om sitt rykte, vilket innebär en ökad press och högre förväntningar från arbetstagare, konsumenter och andra intressenter. Det är bra och nödvändigt!



Foto: LO

Att arbetarna i dessa illegala verksamheter utnyttjas är ett problem utifrån ett människorättsperspektiv. En ytterligare problematisk dimension av detta utnyttjande av arbetskraft är att det kan smitta av sig. De som inte följer reglerna konkurrerar på oschyssta villkor. Det blir svårare för andra företag, och ännu fler kan börja tumma på reglerna.

När det gäller piratkopiering av t.ex. läkemedel är det stora problemet att enskilda människor kan få fel eller verkningslösa mediciner. Utöver detta är det förstås problematiskt att svenska och andra företag inte får betalt för gjorda investeringar.”

Om LO:s internationella enhet

LO:s internationella enhet skapar LO:s policy inom internationell facklig politik, samordnar LO:s EU-arbete, ansvarar för LO:s samarbete med fackliga internationella organisationer och nationella organisationer med anknytning till internationella fackliga frågor, samt ansvarar för facklig-politisk samverkan internationellt.

Piotr Strykowski, Project Manager vid OECD

“It is essential to understand that virtually everything can be counterfeited; all areas and sectors are affected. In addition, long and complex production processes imply that in some cases intermediary products can be also counterfeited. This means that today even genuine products can in some cases contain counterfeit parts.



Foto: Privat

The negative social impact of counterfeiting is huge. Of course there are substantial losses from reduced sales, lost taxes, and the resultant reduced investment. But beyond this in a number of sectors there are severe social consequences that go far beyond these short term monetary losses. For example fake medicines or fake baby products can severely damage health. Counterfeit automotive parts and electrical appliances can also pose serious health and safety threats, and fake cosmetics can contain high levels of toxins. Falsified pesticides, herbicides and fungicides - which are a growing problem - pose environmental as well as foods security risks. Actually, health and safety risks can be observed in numerous categories of products, as counterfeiters do not care about norms and certifications. One example of this is that amongst the most toxic products detected in the EU were counterfeit bendable pencils!

The danger posed by counterfeits to consumers also constitutes a major risk for trademarks. Once awareness of a danger is raised consumers will become suspicious of purchasing an affected brand, contributing to erosion of brand equity.

Counterfeiting is an enormous problem, yet there is no unified policy to tackle this issue. Several agencies are dealing with separate aspects of the problem, and there are issues related to policy co-ordination.

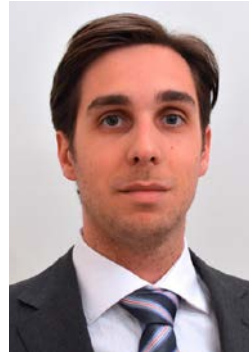
A further key challenge concerning counterfeiting is the lack of reliable data and statistics, making appropriate policy prioritisation difficult. Consequently, the study conducted by the Confederation of Swedish Enterprise, focusing on how companies listed on a particular stock market index is welcome. Hopefully it will shed new light on the problem that will help policy makers form appropriate responses.”

Om OECD

Organisation for Economic Co-operation and Development (OECD) är en internationell organisation som utgör ett forum för utvecklade länder att dela erfarenhet och söka lösningar till internationella utmaningar. OECD:s analysarbete ämnar att bidra till detta ändamål. 2005 började man att fokusera på piratkopiering, och 2008 släpptes en rapport som kvantifierade värdet av den globala handeln av piratkopierade varor. Denna uppdaterades 2009, och uppskattade omfattningen till 250 miljarder US dollar. OECD genomför för närvarande en ny studie som borde vara klar 2017, för att få fram uppdaterade uppskattningar om piratkopieringens omfattning.

Louis Bonnier, Policy Advisor International Chamber of Commerce

“Den internationella handelskammaren, International Chamber of Commerce (ICC), ser förfalskning av varor som ett mycket allvarligt och växande problem. Som en konsekvens av detta tog ICC initiativet till att lansera Business Action to Stop Counterfeiting and Piracy (BASCAP) 2004 som finansieras av ledande internationella företag.



Då piratkopiering har ökat kraftigt och nu påverkar alla tänkbara branscher finns ett tydligt behov av information om detta problem, något som tyvärr är en bristvara. BASCAP arbetar med att ta fram underlag om piratkopiering och dess konsekvenser, och även praktiska policyrekommendationer. BASCAP gör detta dels utifrån ett globalt perspektiv, men även med fokus på situationen i enskilda länder.

Situationen varierar i olika länder, men generellt kan man säga att de största behoven globalt är förbättrad lagstiftning som skyddar immaterialrättigheter, bättre implementering och uppföljning av existerande lagstiftning, och hårdare straff mot piratkopiering och förfalskning. För att detta skall vara framgångsrikt är det också nödvändigt att vi motarbetar korruption, en kritisk faktor som möjliggör denna kriminella aktivitet. Utöver detta behövs mycket arbete för att öka medvetenheten och kunskapen om riskerna med piratkopiering bland konsumenter för att på så sätt minska efterfrågan.

Förfalskningar och piratkopiering är ingen 'hobbyverksamhet'. Globalt uppskattar vi att denna verksamhet kan komma att omsätta upp till 1.8 biljoner (1.8 tusen miljarder) dollar detta år. Denna omfattande globala verksamhet kräver enorm logistik med ett stort antal mellanhänder. Det är en mycket avancerad verksamhet som många gånger finansiera annan organiserad brottslighet.

Det faktum att många aktörer inom den legala ekonomin utnyttjas av kriminella för att producera och förmedla förfalskade varor väcker viktiga frågor. Till exempel, vad kan underleverantörer göra för att öka kontrollen över leverantörskedjan för att på så sätt förhindra att förfalskningar sprids? Och vilket ansvar bör t.ex. transportföretag som skeppar piratkopior ha?

Det är positivt att EU fokuserar på piratkopiering, framförallt genom the European Observatory on Counterfeiting and Piracy och Office for the Harmonisation of the Internal Market (OHIM), men jämfört med USA som har the Office of the U.S. Intellectual Property Enforcement Coordinator inom Vita huset och Japan med sitt Intellectual Property Strategy Headquarters inom Statsministerns kontor saknar Europa en jämförbar politisk prioritering och koordination för att bekämpa piratkopiering.

Enligt EU:s patentkontor är ett av tre nya jobb inom EU skapat inom sektorer med ett högt beroende av immateriella rättigheter. Dessa sektorer utgör runt 40 procent av Europas BNP och 90 procent av dess export. Det är därför väsentligt att stärka immaterialrättigheter – inte bara inom EU, utan även globalt.”

Om BASCAP

Business Action to Stop Counterfeiting and Piracy (BASCAP) är en underorganisation inom den internationella handelskammaren (International Chamber of Commerce, ICC) som skapades 2006. BASCAP är exklusivt inriktade på piratkopiering, och organisationens medlemmar är ledande multinationella företag som påverkas av denna problematik. BASCAP är den ledande organisationen i den privata sektorn som aktivt engagerar och samarbetar med internationella organisationer gällande piratkopiering. BASCAP beställer rapporter för att kvantifiera piratkopieringen och dess konsekvenser, även med fokus på vissa stater.

Anna Egardt, utredare på Enheten för WTO med ansvar för immaterialrättsliga frågor på EU:s inre marknad, WTO samt EU:s bilaterala avtal, Kommerskollegium

“Kommerskollegium bidrar med underlag och analyser till Utrikesdepartementets immaterialrättsliga arbete inom EU och i EU:s bilaterala avtal och kontakter med tredje länder. Immaterialrätt är en del av den gemensamma handelspolitiken. Däremot har Sverige ibland bilaterala dialoger i form av bland kommissionsmöten med tredje länder som tar upp och försöker lösa handelshinder (bl.a. Immaterialrättsliga hinder). Det anses tillåtet. Innehållet i dessa dialoger är inte riktigt kopplad till vad som är harmoniserat eller inte inom EU.



Foto: Magnus Ullgren

Faktum att EU inte har fullständig harmonisering av lagstiftning rörande immateriella rättigheter utgör en begränsning EU:s förmåga att utnyttja bilaterala och regionala handelsförhandlingar för att ställa krav på motparter som går utöver TRIPS (Trade Related aspects of Intellectual Property Rights inom ramen av Världshandelsorganisationen). Exempelvis då det inte finns kriminell straffrättslig harmonisering i relation till immaterialrättsliga brott blir det svårare för EU att ställa krav på straffrättsliga förfaranden och sanktioner ('criminal sanctions') i relation till brott mot immateriella rättigheter i tredje länder. I EU:s bilaterala handelsavtal med Korea lyckades man dock integrera straffrättsliga förfaranden och sanktioner för brott mot vissa immateriella rättigheter i avtalet, men detta krävde godkännande av de nationella parlamenten inom unionen.

TTIP-förhandlingarna, kring skapandet av ett transatlantiskt partnerskap för handel och investeringar mellan EU och USA, kan potentiellt utgöra en möjlighet för skapandet av en 'gyllene standard' kring immateriella rättigheter. Om en sådan standard etableras skulle den sedan kunna förespråkas av både EU och USA i sina förhandlingar gentemot tredje länder.

EU har identifierat en prioriteringslista av länder som är aktuella att föra dialoger kring immateriella rättigheter med. Kina är det absolut viktigaste landet i detta sammanhang, och det enda som är klassat som kategori 1. De länder som tillhör nästa prioritet, i kategori 2, innefattar Indien, Indonesien, Filippinerna, och Turkiet.

Kommerskollegium är beroende av underlag från näringslivet för aspekter av sitt arbete. Dels i relation till Sveriges input rörande immateriella rättigheter inom ramen för EU samarbetet, men även inom ramen för EU:s bilaterala avtal och dialoger med tredje länder och för Sveriges bilaterala engagemang med tredje länder kring immateriella rättigheter.

För att hjälpa Europeiska företag verksamma i tredje länder rörande immateriella rättigheter har EU etablerat IP attachéer vid utländska besittningar och en China IPR SME help desk för mindre och mellanstora företag verksamma i Kina.

EU:s Observatory on Infringement of Intellectual Property Rights arbetar bland annat för att skapa en kunskapsbas att informera Europeiska beslutsfattare hur att bättre skydda immateriella rättigheter.”

Om Kommerskollegium

Kommerskollegium är Sveriges myndighet för utrikeshandel, EU:s inre marknad och handelspolitik. Den förser regeringen med analyser och annat underlag inför förhandlingar och diskussioner i EU och WTO. Kommerskollegium ska verka för frihandel, fri rörlighet på EU:s inre marknad samt utgå ifrån det samlade svenska ekonomiska intresset mot bakgrund av regeringens övergripande mål för tillväxt och sysselsättning. Myndigheten ska även beakta näringslivets och konsumenternas intressen. Därtill ska myndigheten beakta utvecklingsländernas perspektiv och integrering i handelssystemet.

Martina Elfgrén Lilja, näringspolitisk expert, Svensk Handel

”Möjligheterna att producera och sälja piratkopierade varor har ökat kraftigt med den ökade världshandeln och internet. Med allt fler rörelser över gränserna och ett oändligt antal hemsidor är piratkopieringens omfattning svår att överblicka och mäta.

Den illegala handeln med lagliga varor bedöms omsätta över 20 miljarder kronor årligen i Sverige. Omfattningen av piratkopierade produkter har breddats, från lyxklockor och designkläder till föremål som direkt påverkar människors hälsa och säkerhet såsom mat, läkemedel och reservdelar till fordonsindustrin. Förutom hälsorisker innebär piratkopiering och smuggling uteblivna inkomster för svenska företag och uteblivna skatteintäkter för staten, liksom en urholkning av det värde som byggs upp genom varumärkessystemet.

Företag med starka varumärken har i dag möjlighet att få globalt genomslag. Se bara på Apple, ett av världens starkaste varumärken. På Apples produkter står det ofta: 'Designed by Apple in California, assembled in China'. Det är genom att utveckla designen på produkterna och garantera kvalitet som Apple tjänar sina pengar – inte genom att bara tillverka produkten. Om detta vittnar också starka svenska varumärken inom detaljhandeln, som till exempel IKEA och H&M. Varumärken är en form av förtroendekapital, som snabbt kan raseras om det inte finns rättsliga skyddsmekanismer och ett institutionellt ramverk för att beivra intrång och piratkopiering.”



Foto: Mikael Lindgren

Om Svensk Handel

Svensk Handel arbetar med näringspolitik och arbetsgivarfrågor för 12 000 medlemsföretag inom handeln. Det är den svenska handelns arbetsgivarpart och Svenskt Näringslivs största medlemsorganisation. Svensk Handel samarbetar med ett hundratal lokala handelsföreningar runt om i Sverige, branschförbund och dotterbolag.

Conclusions and recommendations

The findings of the study are stark. The overwhelming majority of companies are affected by counterfeiting and IP infringement. The problem has grown over time, and is expected to continue growing. At the same time, emerging markets, where counterfeiting is much more prevalent, are expected to become increasingly important for Swedish enterprise.

The majority of companies subjected to counterfeiting also indicate that counterfeiting of their products could be associated with health risks. This is a critical point, as it is worth bearing in mind that even in a sector with a low incidence of counterfeiting, a small number of high profile incidents may be sufficient to kill or seriously harm a brand, and could have catastrophic consequences for a corporation. It is hard to think of many things that constitute more negative publicity for a product than the existence of fakes that could kill or harm their users.

The role of the European Union

The companies' views on the level of political prioritisation of this problem are clear: the Swedish government must do more. With Sweden's heavy dependence upon an IP intense export sector, one is perhaps surprised by the apparent lack of action. But it is not only the Swedish government that is not doing enough. The European Union must also do more concerning the enforcement of intellectual property rights.

If we compare how the three global intellectual property “superpowers” – the United States, Japan and the EU – deal with enforcement of intellectual property rights, it is clear that the EU is lagging behind. The President of the European Patent Office, Benoît Battistelli, has pointed out: “One in three jobs in the EU today is created in industrial sectors with an above average use of IP rights. These sectors account for almost 40% of the GDP and 90% of exports of the EU. They are a pillar of the competitiveness of the European economy at the global level. It is necessary, therefore, to improve and strengthen the use of IP rights not only in Europe, but also internationally.”⁷ Despite this centrality of IP to the prosperity of the European Union, the EU does not have a policy coordinating unit like the Intellectual Property Strategy Headquarters within the Japanese Prime Minister's Office or the Office of the U.S. Intellectual Property Enforcement Coordinator within the White House.

The EU constitutes an enormous market, and could as such use its “market power” to demand IPR protection requirements that go over and beyond TRIPS in any bilateral and regional trade negotiations. However, the relative lack of harmonisation in terms of criminal sanctions against IPR infringements in the EU make this a less straightforward matter than would otherwise be the case.

The Transatlantic Trade and Investment Partnership (TTIP) would, if it becomes reality, create a market even larger than the EU. The place for IPR issues within TTIP is presently being discussed, but it could offer an opportunity to establish a “golden standard” on IPR. If such a standard was established, for what would effectively be the world's most important market, other countries may be incentivised to adopt it too.

⁷ FIIA 2014, p. 3-4

A development issue

As counterfeiting is more prevalent in parts of the world that suffer from institutional weakness, it makes sense for the European Union and its member states to support intellectual property enforcement capacity building efforts in third countries. As such it is positive that the EU has focused on reviewing its “Strategy for the protection and enforcement of intellectual property rights in third countries”. As the EU and its member states are major players in the foreign development assistance arena, it would be very welcome if the ongoing review of the UN’s post 2015 development agenda would in the future facilitate for expenditure on capacity building to protect intellectual property rights to be classified as development assistance.

Developing countries have requested assistance in building competence and capacity within their law enforcement agencies regarding IPR related crime. It is evident that enhancing IPR enforcement in developing countries is not just a matter of the “rich world” protecting its own interests, but a genuine win-win opportunity with developing countries having a clear self interest in protecting their consumers and ensuring adequate revenue protection, whilst international IP owners also stand to benefit.

3D printing - a coming challenge

Concerns about the potential future role of 3D printing in counterfeiting was raised during the course of the interviews. This is significant, as 3D printing and other forms of additive technology is projected to assume major economic significance within the coming decade. The McKinsey Global Institute study *Disruptive technologies: Advances that will transform life, business, and the global economy* projects that by 2025 3D printing could have the following impact:

- The sale of consumer products that have the potential to be 3D printed will reach 4 trillion US dollars, with about 5–10 percent of these actually being printed by consumers.
- The value of complex, highly customisable parts, such as medical implants and engine components could be 770 billion US dollars, and 30–50 percent of these will be 3D printed.
- 360 billion US dollar market for injection moulded plastics, with 30–50 percent produced with 3D printed moulds.

That 3D printing will present major challenges in terms of intellectual property infringement has also been flagged by the IT research firm Gartner. In 2014, it predicted that 3D printing already by 2018 will result in annual intellectual property theft of at least 100 billion US dollars.

More data needed - more actors should get involved

The absolute majority of approached companies participated in this study. Yet very few of these companies were capable of sharing (or willing to share) detailed estimates of the volume sales losses and the monetary impact of IPR infringing goods. Considering that a number of these companies considered IP infringement to be an issue of strategic concern, this is quite paradoxical. As professor Tom Berglund points out in the interview section, one cannot expect the companies to deliver information on this point, as highlighting these problems may conflict with commercial interests. Consequently, governments likely need to fill this “data gap” by conducting or commissioning their own surveys – the annual survey conducted by the Japanese Ministry of Economy, Trade and Industry serves as an example to build upon. At the same time, companies that are relatively unaffected by counterfeiting, or are particularly effective at dealing with the threat, may have an interest in highlighting this as a comparative advantage.

A major shortcoming identified by the study is the apparent failure of the stock analyst community to demand information concerning counterfeiting and other forms of IP infringement. If financial analysts started to cover intellectual property theft in a more focused way, it could contribute towards the creation of a virtuous cycle, where the companies would experience an external pressure to focus more on dealing with the challenges posed by IP theft and infringement, and the companies dealing with this most effectively would be rewarded by the investor community. Rather than requiring new legislation, or more government resources, increased investor focus would create a self-maintaining feedback loop, incentivising the private sector to have better awareness of and to take more systemic efforts to counter IPR infringement and theft. It would simultaneously add to the stock of data in this area, making better informed policy and business decisions possible.

The response that needs to be taken against intellectual property rights enforcement needs to be global in nature. This means that more states need to realise the extent of the challenges faced, and their own national interest in addressing it. This constitutes an argument for further refining and repeating this study for other stock market indices.

The bigger picture

Intellectual property infringement and theft is a strategic challenge of critical importance to Sweden, the European Union, and the wider global community. It seriously undermines economic development, public health, and national security. Viewing such a multifaceted issue through the prism of intellectual property rights alone is insufficient. A broader holistic perspective is required. Sweden needs to develop a comprehensive national strategy to deal with this threat. Such a strategy needs to mainstream the combatting of intellectual property theft for a large number of actors, both public and private, and to ensure a coordinated approach in promoting solutions on the international arena.

Success in fostering a global environment more conducive to the protection of intellectual property rights can only hope to succeed through effective cooperation between the three IP “superpowers”; Japan, the United States and the European Union. The EU, being a political union of 28 member states, faces inherent structural challenges to overcome in this context. Consequently, individual member states, such as Sweden, need to play an active role within the EU promoting a more strategic and holistic approach to IPR enforcement.

Concluding recommendations

- Within the EU Policy Cycle for Organised and Serious International Crime, every four years member states must renew the list of prioritised crimes. During 2014-2017, there are working groups for nine different areas, counterfeit goods constituting one of these. Swedish authorities have however chosen not to participate in this individual working group, whereas they are participating in all other eight groups. The reason stated is lack of sufficient resources. The Swedish government should however in our view prioritise Swedish participation in the counterfeiting working group and ensure the government authorities in question have both the mandate and the resources to participate.
- IPR protection and counterfeiting prevention as a political issue should be elevated to the highest level of priority. Given Sweden's dependence on exports and IPR intensive industries, substantially more attention needs to be paid to the importance of IPR protection.
- Reform of the EU Community Trade Mark system is currently being negotiated. One issue of major importance is the strengthening of the possibility for IPR owners to take action against infringing goods that are "in transit" – i.e. are produced in a third country and has a third country destination market, but passes through EU countries. In this legislative process, the possibility to request action by customs against suspected infringing goods should be secured, also for goods in transit.
- The deterrent effect against counterfeiting and other types of IP theft needs to be strengthened. Customs authorities, both in Sweden and in other EU countries, need to have sufficient knowledge and competence to detect and combat illicit trade and IPR infringement. The EU also needs to invigorate its efforts to promote effective legislation, as well as support capacity building in relation to IPR enforcement in third countries.
- More coordination between different agencies of law enforcement, customs and the policy arena, and cooperation with business, needs to be fostered, to facilitate further exchange of knowledge and capacity building.

References

Print

Buckley, Gillian J. & Gostin, Lawrence O. (ed.), *Committee on Understanding the Global Public Health Implications of Substandard, Falsified, and Counterfeit Medical Products*, Board on Global Health, Institute of Medicine, 2013

BUSINESSEUROPE, *Intellectual Property is Key*, October 2014

“Combating counterfeit drugs”, *The Lancet*, Vol 371, May 2008

“Counterfeit drugs: a growing global threat”, *The Lancet*, Vol 379, February 2012

European Commission, *Protecting Intellectual Property Rights: Customs authorities detain nearly 36 million fake goods at EU borders in 2013*, press release IP/14/890, 31 July 2014

European Commission, *Report on EU customs enforcement of intellectual property rights. Results at the EU border 2013*, 2014

European Commission, *Trade, growth and intellectual property – Commission staff working document*, SWD(2014) 204 final

European Commission, *Trade, growth and intellectual property – Strategy for the protection and enforcement of intellectual property rights in third countries*, COM(2014) 389 final

European Patent Office/Office for Harmonization in the Internal Market, *Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union*, September 2013

European Union, *Regulation (EU) No. 608/2013 of the European Parliament and of the Council of June 12, 2013, concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003*

Europol, *EU Serious and Organised Crime Threat Assessment (SOCTA) 2013*, March 2013

Frontier Economics/BASCAP, *Estimating the global economic and social impacts of counterfeiting and piracy. A report commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP)*, February 2011

Hortlund, P., Svensson, A., Arnberg, J., *Illegal handel med ”lagliga” varor*, May 2012, Swedish Trade Federation/Svensk Handel

Lallerstedt, K. & Wigell, M., *Illicit trade flows. How to deal with the neglected economic and security threat*. FIIA briefing paper 151, Finnish Institute of International Affairs, March 2014

Manyika, James et al. *Disruptive technologies: Advances that will transform life, business, and the global economy*, McKinsey Global Institute, May 2013

National Bureau of Asian Research, *The Report of The Commission on the Theft of American Intellectual Property*, May 2013

National Trade Board/Kommerskollegium, *Piratkopiering i världshandeln – och andra immaterialrättsliga problem i BRIC, Indonesien och Japan ur ett handelspolitiskt perspektiv*, Report 2012:5, October 2012

OECD, *Better Policies for Development 2014. Policy Coherence and Illicit Financial Flows*, OECD Publishing, 2014

OHIM, *European citizens and intellectual property: Perception, awareness and behavior*, November 2013

OECD, *Magnitude of counterfeiting and piracy of tangible products: An update*, November 2009

OECD, *Report of the OECD seminar on risk reduction through prevention, detection and control of the illegal international trade in agricultural pesticides*, April 2011

OECD, *The economic impact of counterfeiting and piracy*, 2008

Saana Consulting, *Factual overview on technical & financial cooperation for LDCs related to the TRIPS Agreement: Identifying and responding to individual priority needs of LDCs*, May 2013

Savona Ernesto U. & Riccardi Michele (ed.), *From illegal markets to legitimate businesses: the portfolio of organised crime in Europe*, Transcrime, March 2015

Schwab, Klaus, *The Global Competitiveness Report 2014-15*, World Economic Forum, 2014

United States International Trade Commission, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, USITC Publication 4226, May 2011

Wajzman, Nathan & Arias Burgos, Carolina, *The economic cost of IPR infringement in the cosmetics and personal care sector: report of a pilot study*, Office for Harmonization in the Internal Market /EU Observatory on Infringements of Intellectual Property Rights, March 2015

WHO, *Counterfeit Drugs. Guidelines for the development of measures to combat counterfeit drugs*, 1999

Wilson, Jeremy M. & Fenoff, Roy, *The Health and Economic Effects of Counterfeit Pharmaceuticals in Africa*, A-CAPP Backgrounder, Michigan State University, March 2011

Wilson, Jeremy M. & Kinghorn, Rod, *The Global Risk of Product Counterfeiting: Facilitators of the Criminal Opportunity*, A-CAPP Backgrounder, Michigan State University, February 2015

World Customs Organization, *Illicit trade report 2013*, June 2014

Online

BUSINESSEUROPE, *About us/39 members in 33 countries*.
<http://www.buinesseurope.eu/content/default.asp?PageID=600>

BUSINESSEUROPE, *Intellectual property*.
<http://www.buinesseurope.eu/Content/Default.asp?PageID=667>

Caba, Justin, *Fake Perfumes Containing Urine Could Lead To Adverse Health Side Effects, How To Spot Counterfeit Fragrances*, Medical Daily.

<http://www.medicaldaily.com/fake-perfumes-containing-urine-could-lead-adverse-health-side-effects-how-spot-counterfeit-268902>

CropLife International, *Anti-Counterfeiting*.

<https://croplife.org/crop-protection/anti-counterfeiting/>

EU Observatory, *About us*.

<https://oami.europa.eu/ohimportal/en/web/observatory/about-us>

EU Observatory, *Tools, systems and resources*.

<https://oami.europa.eu/ohimportal/en/web/observatory/tools-systems-and-resources>

FBI, *Counterfeit Fragrances, Cosmetics. Hazardous to Your Health*.

<http://www.fbi.gov/news/stories/2014/january/counterfeit-cosmetics-fragrances-hazardous-to-your-health>

Gartner, *Gartner Says Uses of 3D Printing Will Ignite Major Debate on Ethics and Regulation*. <http://www.gartner.com/newsroom/id/2658315>

Global Innovation Index, *Country Ranking*.

<https://www.globalinnovationindex.org/content.aspx?page=data-analysis>

GSMA, *Buying a counterfeit mobile phone could be deadly*.

<http://www.gsma.com/publicpolicy/buying-a-counterfeit-mobile-phone-could-be-deadly>

ICC, *About BASCAP*. <http://www.iccwbo.org/advocacy-codes-and-rules/bascap/about/>

ICC, *Global Impacts Study*. <http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/>

Interpol, *Trafficking in illicit goods and counterfeiting*.

<http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Trafficking-in-illicit-goods-and-counterfeiting>

Ministry of Economy, Trade and Industry (Japan), *FY2013 Survey Report on Losses Caused by Counterfeiting was Compiled*.

http://www.meti.go.jp/english/press/2014/0317_02.html

National Intellectual Property Rights Coordination Center, *About the IPR Center*.

<http://www.iprcenter.gov/about-us>

National Trade Board/Kommerskollegium, *Om oss*.

<http://kommerskollegium.se/om-oss/>

OECD, *Charting Illicit Trade – Task Force Meeting*.

<http://www.oecd.org/gov/risk/charting-illicit-trade-second-task-force-meeting.htm>

OECD, *OECD project on counterfeiting and piracy*.

<http://www.oecd.org/sti/counterfeiting>

OECD, *OECD Task Force on Charting Illicit Trade (TF-CIT)*. <http://www.oecd.org/gov/risk/oecdtaskforceonchartingillicittrade.htm>

Puzzanghera, Jim, *Feds unveil center to combat intellectual property theft*, LA Times/Technology Blog.

<http://latimesblogs.latimes.com/technology/2008/07/feds-christen-n.html>

Statistics Sweden/SCB, *Exporten minskade 7 procent förra året*. http://www.scb.se/sv/_Hitta-statistik/Statistik-efter-amne/Handel-med-varor-och-tjanster/Utrikeshandel/Utrikeshandel-med-varor/7223/7230/Behallare-for-Press/370478/

Swedish Anti-Counterfeiting Group, *Om SACG*. <http://www.sacg.org/om-sacg/>

Swedish Consumersrg/om-sacg/on/Sveriges Konsumenter, *Om oss*.
<http://www.sverigeskonsumenter.se/OM-OSS/>

Swedish Customs/Tullverket, *Immaterialrätt*. <http://www.tullverket.se/innehallao/i/immaterialratt/immaterialratt.4.4ab1598c11632f3ba9280001086.html>

Swedish Customs/Tullverket, *Ny förordning om skydd mot piratkopierade produkter från 1 januari*.

<http://www.tullverket.se/nyheter/nyhetsarkiv/nyheter/pressmeddelandenyforordningomskyddmotpiratkopieradeprodukterfran1januari.5.e0158eb140f9d5442d21db.html>

Swedish Patent and Registration Office/PRV, *Sverige är Europas fjärde mest innovativa land – Ericsson och Scania söker flest patent*, press release, February 2015.
<http://www.prv.se/sv/om-oss/nyheter/ny-sida/>

Swedish Police/Polisen, *EU Policy Cycle*. <http://www.polisen.se/Om-polisen/Internationellt-samarbete/Samarbete-inom-EU/EU-Policy-Cycle/>

Swedish Trade Union Confederation/LO, *Kansli/Internationella enheten*.
http://www.lo.se/start/om_oss/kansli/internationella_enheten

Swedish Trade Federation/Svensk Handel, *Om Svensk Handel*.
<http://www.svenskhandel.se/Om-Svensk-Handel/>

Toren, Peter J., *The Serious Risks From Counterfeit Electronic Parts*, Forbes.com/CIO Central.
<http://www.forbes.com/sites/ciocentral/2012/07/11/the-serious-risks-from-counterfeit-electronic-parts/>

WHO, *Spurious/false-labelled/falsified/counterfeit (SFFC) medicines*.
<http://www.who.int/medicines/services/counterfeit/en/>

World Customs Organization, *CEN Software Suite*.
<http://www.wcoomd.org/en/topics/enforcement-and-compliance/instruments-and-tools/~media/WCO/Public/Global/PDF/Topics/Enforcement%20and%20Compliance/Tools%20and%20Instruments/CEN/CEN%20Brochure.ashx>

World Economic Forum, *App Launched to Help Consumers Fight Illicit Trade*, press release, November 2013.
<http://www.weforum.org/news/app-launched-help-consumers-fight-illicit-trade>

World Economic Forum, *Global Agenda Councils 2011-2012/Illicit trade*.
<http://reports.weforum.org/global-agenda-council-2012/councils/illicit-trade/>

World Economic Forum, *Global Agenda Council on Illicit Trade*, January 2012.
http://www3.weforum.org/docs/AM12/WEF_AM12_GAC_IllicitTrade.pdf

World Economic Forum, *Global Agenda Council on Illicit Trade & Organized Crime 2012-2014*. http://www3.weforum.org/docs/GAC/2013/Connect/WEF_GAC_Illicit_Trade_and_Organized_Crime_2012-2014_Connect.pdf

World Economic Forum, *Meta-Council on the Illicit Economy 2014-2016*.
<http://www.weforum.org/content/meta-council-illicit-economy-2014-2016-0>

World Economic Forum, *Out of the Shadows: Why Illicit Trade and Organized Crime matter to us all*, Global Agenda Council on Illicit Trade & Organized Crime 2012–2014, January 2014. http://www3.weforum.org/docs/GAC/2014/WEF_GAC_IllicitTradeOrganizedCrime_OutShadows_Overview_2014.pdf

Appendix 1: Companies contacted for the survey

ABB Ltd
Alfa Laval AB
Assa Abloy AB
AstraZeneca PLC
Atlas Copco AB
Boliden AB
Electrolux AB
Ericsson Telefonab L M
Getinge AB
Hennes & Mauritz AB H & M
Investor AB
Lundin Petroleum AB
Modern Times Group MTG AB
Nokia
Nordea Bank AB
Sandvik AB
Scania AB
Securitas AB
Skandinaviska Enskilda Banken
Skanska AB
SKF AB
Ssab AB
Swedbank AB
Swedish Match AB
Svenska Cellulosa AB
Svenska Handelsbanken
Tele2 AB
TeliaSonera AB
Volvo AB

Appendix 2: Questionnaire

Responses to the questions below will remain confidential, and will not be stored or transmitted digitally. Only Karl Lallerstedt of Black Market Watch (www.blackmarketwatch.org) and the Global Initiative Against Transnational Organized Crime (www.globalinitiative.net), and Patrick Krassén of the Confederation of Swedish Enterprise (www.svensktnaringsliv.se) will have access to this material.

The only information from this questionnaire that will be shared and made public is aggregated data from all companies on the Stockholm OMX 30 Index. This aggregated index data will be made available in such a way as to eliminate possibilities to identify individual constituent companies (unless explicit permission is given beforehand by the respondent).

Company details

Company

Contact person

Business sectors active in

Employees (in Sweden + abroad)

Turnover

EBITA

Export value (from Sweden, EU, and other significant export sources)

Total tax contribution to Swedish and EU governments, and other major beneficiaries

Counterfeiting and piracy

Specific questions

- i) Are your company's products affected by counterfeiting and/or piracy?
If so, what products made by your industry/industries are affected by infringements of:
 - a. Trademarks:
 - b. Copyrights:
 - c. Patents:
 - d. Design rights:
 - e. Other IP rights (please specify)
- ii) What products and services sold by your company are negatively affected by products that are exposed to infringements of:
 - a. Trademarks
 - b. Copyrights
 - c. Patents

- d. Design rights
- e. Other IP rights (please specify)

(Note: these infringements do not necessarily have to be of your own company products, but could be of competitor products that also have a negative effect on the competitive environment. But please specify whether your company products, and/or competing products are directly affected.)

- iii) What is the estimated economic impact (product by product, if possible) of these infringements in terms of:
 - Sales volume losses
 - Trademark damage
 - Security and other mitigation costs (e.g. a campaign to restore a product's reputation)
 - Long term competitiveness of your business
- iv) What do you estimate the proportion of counterfeit goods to be in your markets generally, and for your brands in particular?
 - Overall globally
 - Geographically broken down, by countries or regions (e.g. EU + EFTA, US + Canada, Former Soviet states, Latin America, Asia (Middle East & North Africa / Indian Subcontinent / East Asia), Africa)
- v) What parts of the world and/or countries have particularly high prevalence of illicit products in your sector, or high seizure rates?
- vi) During the past 5 years, has the extent of infringement:

(please indicate the estimated rate of increase/decrease in percentage terms)

 - Increased
 - Stayed the same
 - Decreased
- vii) What is your expectation for the future? Will the problem decrease, remain stable, or grow in scale? (please indicate estimated future rate of increase/decrease in percentage terms over the next 5 years)
- viii) What have been the principal effects of counterfeiting and piracy in your sector?

For each item below, please specify whether the impact has been ignorable, small, medium, or substantial:

- Overall business strategy
- Investment
- Product development
- Product costs and pricing
- Employment
- Other impacts (please specify)
- ix) What measures have your company taken, and what costs have been incurred to combat counterfeiting and piracy of its products:
 - Product authentication
 - Supply chain integrity
 - Physical security
 - In-house staff dedicated to detecting infringement
 - External contractors dedicated to detecting infringement
 - Legal fees
 - Cost of storage of counterfeit goods
 - Cost of destruction of counterfeit goods
 - Increase in related marketing costs
 - Any other measures and costs (please specify)

Estimated total costs:

Are these costs estimated to remain constant, decline, or increase over the next 5 years? Please indicate the estimated future cost increase/decrease over the next 5 years

- x) Regarding the perpetrators:
 - What has been their modi operandi?
 - Do you have indications of which types of organizations are involved?
 - Do you have any indication of these organizations having been involved in other forms of illicit trade and/or other forms of crime?
 - Have there been any recent high profile cases or convictions?
- xi) What effects of illicit trade have you seen on the public interest:
 - consumer and employee safety
 - jobs
 - exports
 - environment
 - income for organized crime
 - diminished tax revenues
 - other negative societal affects (please specify)
- xii) With whom do you collaborate to combat counterfeiting and piracy?
 - National law enforcement
 - Europol
 - Interpol
 - Media
 - Other companies in your sector
 - Others (please specify)

Inquiries regarding illicit trade

- i) Do shareholders ask questions about illicit trade at annual shareholder meetings? (If so could you comment on the frequency and line of questions)
- ii) Do financial analysts ask your Investor Relations department about illicit trade? (If so, could you comment on what proportion of analysts ask, and the nature of their questions?)
- iii) Has the government contacted the company to investigate how the business is affected by counterfeiting, piracy and IP theft? (regarding the phenomenon as a whole, not regarding individual incidents)
- iv) Have the media contacted the company to query how the business is affected by counterfeiting, piracy and IP theft? (regarding the phenomenon as a whole, not regarding individual incidents)

General questions

- i) How do you view the political prioritization of problem (in Sweden/EU/international organizations)? (Appropriate, too high, or too low)
- ii) How effective have government policies and programmes been in combating counterfeiting and piracy in your sector? (Highly effective, somewhat effective, not very effective, not effective at all)
 - In your domestic market
 - In your export markets

- iii) What are the main challenges/problems you face in preventing illicit trade?
- iv) Have you had any success stories in combating counterfeiting, piracy and IP theft, e.g. with a certain product?
- v) Comment on how counterfeiting and IP theft affects the competitive environment of your industry. What are the long term effect and implications for Swedish industry?
- vi) What could the Swedish government and the international community do to reduce the problem of counterfeiting and piracy?
- vii) Any additional points you would like to make concerning counterfeiting and piracy in your sector?

Other illicit activities

- Advanced IP theft and/or industrial espionage
- Trade secret disclosures
- Cyber crime
- Contraband trade
- Physical Theft – targeting offices, factories, warehouses, transports, etc.
- Kidnapping of staff
- Extortion by organised crime
- Terrorist attacks, or extortion by terrorist organisations
- Fraud
- Non-payment
- Other forms of crime not mentioned above

For the above, please provide as much information as possible, and if possible in line with the subsection questions for the counterfeiting section above.

Where appropriate for the questions above, a description of the techniques and sources of information you have used to estimate the magnitude and scope would be highly appreciated.

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