

The WIPO Disposal Study

Comparative Scope of the Problem and Methodologies used
for Destruction in the Asia Pacific Region

WIPO/UN ESCAP/UNEP Regional Workshop on the Environmentally Safe
Disposal of IP – Infringing Goods

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Disposal & Destruction

- ▶ It is a contemporary problem that is driven by the convergence of a number of discrete influences
- ▶ Conclusions of a study conducted with the assistance of ASEAN Members form the basis for this presentation
- ▶ Prepared against a background of increased pressure on storage facilities and associated costs relating both storage and destruction



Increased seizures

- ▶ Progressive implementation of the TRIPS provisions
- ▶ IPR enforcement is more visible within Customs strategic/operational priorities
- ▶ Impact of technical assistance
- ▶ Maturing relationship with private sector
- ▶ Continued private sector investment in investigation and enforcement activities
- ▶ Improved bi-lateral, multi-lateral information sharing

The range of infringing goods is increasing

- ▶ It affects almost all industry sectors
- ▶ Disposal procedures are becoming more technically complex, costly and onerous for both governments and rights holders
- ▶ Counterfeit products increasingly present a direct threat to consumers and the wider environment
- ▶ A number of public policy sectors have an interest in having effective/efficient destruction and disposal methods for counterfeit goods

Public policy interests

The following areas of public policy intersect:

- ▶ Enforcement of IP rights
- ▶ Fiscal
- ▶ Public Health
- ▶ **Environmental**
- ▶ Economic
- ▶ Judicial

Protecting the environment

- ▶ Growing consciousness of the need to manage the environmental impact of IP infringing goods
- ▶ Some counterfeit goods present a direct and toxic threat to the environment: insecticides, pesticides, ozone depleting substances
- ▶ Requirement to use careful, environmentally friendly destruction methods
- ▶ Maximize the use of recycling

How should the following goods be destroyed?

- ▶ Adhesives
- ▶ Television sets
- ▶ Electronic batteries, semi conductors
- ▶ Agro-chemicals
- ▶ Fire extinguishing equipment
- ▶ Refrigerants
- ▶ DVD's
- ▶ Footwear
- ▶ Welding rods

Consumer protection

The range of infringing goods that present a direct or indirect threat to consumers is increasing.

- ▶ They include: pharmaceuticals, household products, foodstuffs, personal care products, agro-chemicals, electrical wiring and components, fire extinguishing equipment, refrigerants, security products, alcohol, consumer electrical goods, cigarettes, veterinary drugs, adhesives, etc.
- ▶ Disposal procedures must be effective and 100% secure to ensure that the infringing goods are not re-introduced into the channels of commerce.

Potential scope of disposal problem

What is the physical volume of counterfeit and pirated goods in international trade?

Assessment of the physical volume of IPR infringing goods in world trade

- ▶ 2007 OECD report assessed the share of counterfeit and pirated goods in world trade as 1.95%.
- ▶ In 2007, the total global volume of maritime containerized cargo was the equivalent of 120.2 million TEU (a TEU is a full 20ft maritime container).
- ▶ Adjusted to include goods carried by air-cargo, the physical volume of infringing goods can be assumed to be the equivalent of 2.39 million TEU; or **6500 full 20ft containers passing through official controls each day.**

Existing methods of destruction

The principal methods of disposal used are:

- ▶ recycling
- ▶ open air burning
- ▶ shredding
- ▶ crushing
- ▶ burying in landfill
- ▶ donation for humanitarian relief

Some examples.....

- ▶ Ukraine seizure of 500 tons of pesticides
- ▶ New facilities in Serbia to process destruction of sports shoes
- ▶ Finland - 10 ton of counterfeit “Lego” bricks destroyed by incineration in a waste-to energy plant after granulation after first ensuring that they contained no toxic poly vinyl chloride or cadmium

The private sector perspective

- ▶ Responsibility and authority for the disposal of infringing goods should be clearly defined.
- ▶ Procedures should provide adequate accountability and verification where the goods are disposed of either by destruction; or donation to charities for use in humanitarian relief.
- ▶ Methodologies used in destruction processes are effective and that the goods are put beyond further use. Care needs to be exercised to ensure that de-trademarked goods cannot simply be re-labeled and then find their way back into the channels of commerce.

The private sector perspective

- ▶ To the extent possible, regional procedures should be harmonized and that at the national level, there should be common policies and procedures used by enforcement agencies.
- ▶ Procedures should recognize the need to mitigate storage, transport and destruction costs. This can be assisted by permitting infringing consignments to be moved from high cost storage facilities to lower cost storage.
- ▶ Cost containment can also be achieved by the use of “simplified procedures” which permit the swift destruction of goods where their detention is uncontested; and civil or criminal procedures are not contemplated.

Issues arising from Asia Pacific Study

- ▶ The cost of secure storage and demurrage can be high due to protracted litigation.
- ▶ There is a public interest consideration to ensure that storage requirements ensure infringing goods are held securely and do not migrate into channels of commerce, or create environmental/consumer risks or prejudice the fulfillment of other statutory requirements.
- ▶ Suitable storage facilities don't exist in remote frontier crossings.

Further issues arising from Study

- ▶ Litigation can extend beyond six years and motions from the rights holder for a destruction order are often contested by the importer of the infringing goods.
- ▶ There is a danger that a slow litigation process will dissuade rights holders from using the border procedure process or pursuing effective market control.
- ▶ Resources available to governments and rights holders are finite. In the first instance, civil, criminal and administrative remedies should provide complete relief for disposal/storage costs where the culpable party can be identified.
- ▶ Sometimes, in humanitarian relief situations, delays have occurred due to the affected rights holders uncertainty as to their corporate policy with respect to such matters.

Further issues arising from Asia Pacific Study

- ▶ Ceremonies witnessing the disposal of infringing goods are a public demonstration of the effectiveness of law enforcement efforts against counterfeiting and piracy. It is also an opportunity to accentuate the social, environmental and economic outcomes of the law enforcement actions.
- ▶ Because disposal is a cutting edge issue there is opportunity to develop regional initiatives that will encourage the sharing of knowledge and experiences. There is also the future potential to co-operate with respect to the use of expensive destruction technologies and recycling plants.
- ▶ Recycling of infringing products is a sensible way of putting infringing goods to good use while creating employment and mitigating costs.

Moving forward

Improving the speed of litigation

- ▶ Availability of specialized judiciary
- ▶ Admissibility of representative samples and photographic evidence
- ▶ Prescribed timeframe for IPR litigation
- ▶ Use of “simplified” administrative procedures
- ▶ The use of administrative remedies

Moving forward

Building new relationships

- ▶ Developing a working relationship with national agencies responsible for environmental protection
- ▶ Private sector contractors who possess the necessary plant and equipment to render infringing goods harmless to the environment
- ▶ Entering formal partnership with charitable institutions
- ▶ Operators of government or military storage facilities

Moving forward

Resources

- ▶ Proceeds of Crime legislation (where it exists) may provide a potential source of funding to meet contingent costs arising from the storage and disposal of infringing goods particularly where action is taken against willful counterfeiting or piracy on a commercial or criminal scale
- ▶ With respect to human resource development, it would assist the development of professional technical knowledge and skills if the issue of storage and disposal was included in IP enforcement programs
- ▶ The development of Standard Operating Procedures (SOP) at a national level would also provide consistency of approach and contribute to overall efficiency and effectiveness

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