



COUNTERFEITING
&
ORGANISED CRIME

Preamble

Still considered all too often as a minor infringement, industrial and commercial counterfeiting represents 5 to 7% of world trade.¹ The trafficking that it generates is becoming a serious threat for both the global economy and sustainable development, as employment legislation and environmental protection are the least of the counterfeiters' concerns.

While counterfeiting harms its corporate victims by ruining innovation and damaging employment, it also affects consumers, who put their health at risk by buying products that do not meet safety standards. Counterfeiting also reduces government tax revenues by creating a growth shortfall over time.

International organisations like the WIPO, Interpol and Europol are becoming genuinely concerned about this increasingly worrying phenomenon, though this concern is still insufficient. Despite this new awareness, this is still a real gap between the official perception of counterfeiting and the experience on the ground of rights holders, who see obvious links between counterfeiting and organised crime. This is why the *Union des Fabricants* has decided to contribute to this debate and help increase awareness of the issues by explaining how counterfeiting has developed into an activity of organised economic crime and how it is linked with much more sinister activities.

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1) OECD report on the economic effects of counterfeiting, 1998.

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Industrial and commercial counterfeiting: a threat to the global economy

The problem of counterfeiting was raised again recently at the World Economic Forum held in Davos from 23rd to 28th January 2003, which reiterated that for several years counterfeiting has been controlled by criminal organisations and even terrorist groups.² Summit participants also stressed the need to establish the extent to which counterfeiting finances terrorist and criminal activities and to strengthen penalties under the criminal law in certain countries where counterfeiting continues to go unpunished.

- The exceptional growth of the counterfeiting phenomenon:

According to European customs statistics, nearly 100 million products were seized in 2001, i.e. 39% more than in 2000.³ Globally, an OECD report published in 1998 estimated that counterfeiting was generating €250 billion in illegal earnings annually and represented 5 to 7% of world trade,⁴ while a press release issued by the World Customs Organisation on 27th January 2003 valued unlawful trade at €450 billion.⁵ To take just one example, sales of pirate CDs represented 28% of total sales in 2001, compared with 20% in 2000.⁶

Counterfeiting hits every sector, particularly information technology, the audiovisual sector, the toy industry, perfumery, pharmaceuticals and the motor industry.

- Counterfeiting victims:

The first victims of counterfeiting are businesses, which not only lose sales revenue, market share and investments but also suffer from the devaluation of their brand image and their investments in research and development. Counterfeiting also harms consumers, who put their health and safety at risk by purchasing poor quality products at excessive prices. This particularly applies to the counterfeiting of medicines, toys and spare parts for vehicles and aircraft.

Countries that are the victims of counterfeiting pay a high economic cost both in terms of employment (100,000 jobs are lost each year in the EU⁷) and lost tax revenues due to the reduction in declared sales. In China, the authorities estimate that they lose \$3 billion in tax revenues each year,⁸ while the UK authorities estimate VAT evasion at \$2.4 billion.⁹ All this has a cost in terms of public measures that cannot be implemented or taxes that must be recouped in other ways.

- Inadequate deterrents:

Although the authorities have become aware of the seriousness of the problem, they often still see counterfeiting as infringing the intangible property rights of financially sound corporate

2) Agence France Presse, economic news, 27th January 2003.

3) Report on customs authorities' activities, 2001.

4) OECD report on the economic effects of counterfeiting, 1998.

5) "World Customs Organisation tells World Economic Forum of concern at the scale of global counterfeiting", WCO press release, 27th January 2003.

6) Music Piracy Report 2002, IFPI.

7) Green paper on combating counterfeiting and piracy in the single market, European Commission, 1998.

8) "Une coalition internationale contre les faussaires", *Le Figaro*, 29th January 2003.

9) Ditto.

entities: businesses. In some cases, this under-estimation of the gravity of intellectual property offences is due to the priority that governments put on dealing with crime affecting the person or public health, such as drugs trafficking. Yet the counterfeiting industry directly breaches all kinds of legislation such as tax regulations, employment law and competition law: these are all offences too!

Similarly, some countries do not have appropriate legislation or practices. From the legislative viewpoint, the provisions of the Trade-Related Aspects of Intellectual Property Rights (Trips) agreement are unsatisfactory because of the great leeway given to member states over counterfeiting penalties. From the practical viewpoint, China, the world's leading counterfeit producer, suffers from inadequate legislation, as counterfeiters are liable for criminal prosecution only if the value of the products seized and/or sold exceeds 100,000 yuan (€11,000) for private individuals or 500,000 yuan (€55,000) for legal entities. Professional counterfeiters therefore take advantage of this criterion to spread the risk and avoid prosecution.

- A gradual, though still insufficient, realisation of the problem:

In 2000, the World Intellectual Property Organisation (WIPO) created a consultation committee that conducted an investigation into the sanctioning of intellectual property rights among its member states. The survey revealed that the member states wanted to create an inter-governmental structure guaranteeing appropriate and sustained action in terms of sanctioning rights.

In November 2001, Interpol held its first conference on combating counterfeiting, which attracted representatives from police authorities, customs departments and industry. During the conference, it was suggested that a task force should be created to improve the exchange of information and thereby simplify investigations: the Interpol Intellectual Property Crime Action Group (IIPCAG) was created a few months later.

In the EU, Europol's brief was extended to counterfeiting cases in 2001.

At the latest World Economic Forum held in Davos in January 2003, manufacturers, government representatives, police authorities and customs departments decided on closer cooperation to protect intellectual property rights and to commission an independent study to gauge the real extent of the phenomenon.

- Study methodology:

Logically, this study is limited to industrial and commercial counterfeiting and therefore excludes all matters involving the forgery of payment instruments and official documents. It is mainly based on information obtained from businesses and also on press articles. It is not intended to be exhaustive. The *Union des Fabricants* takes sole responsibility for the contents of the report.

I/ Counterfeiting: a form of organised crime

It is worth reiterating the definition of counterfeiting: the total or partial reproduction or use of a trade mark, design, patent or copyright without the permission of its holder, thereby violating a recognised intellectual property right.

- Statistical approach:

Counterfeiting, a constantly developing phenomenon, is an extremely worrying problem. Representing 5 to 7% of world trade, it is a significant threat to the global and European economies. Moreover, this form of illicit trade has reached unprecedented levels, with alarming figures: EU customs authorities seized 25 million products in 1999, 70 million in 2000 and nearly 100 million in 2001.

The explosion in the phenomenon is also highlighted by the diversity of countries exporting counterfeit products. Most of the counterfeit products sold in the EU come from Thailand, China, Turkey and Hong Kong¹⁰. Other exporting countries, particularly to France, include Djibouti, Morocco and Tunisia¹¹. It is also worth mentioning Southern Europe.

In France, one in two businesses say that they have been victims of counterfeiting. While 435 customs operations were initiated in 2000, this figure rose to 1,063 in 2001. In the same period, the number of items intercepted by the French customs increased by 44%¹². This unlawful trade therefore has a major economic impact on society.

- Legal approach:

Disregarding the stereotypes of Hollywood, organised crime is defined by official documents.

International definitions:

- In 1998, the EU Council defined a criminal organisation as a “structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable with a deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities”.¹³
- The Palermo Convention of 15th November 2000 defines a criminal organisation as “a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain a financial or other material benefit”.¹⁴

Certain countries like the UK and Austria have taken other approaches to the notion of organised crime that resemble to some extent these definitions established by international organisations (cf. Appendix 1).

Counterfeiting can be said to have become a form of organised crime on the basis of several criteria, including the scale of the industrial plant used by counterfeiters (see A), their organisation in networks (see B) and the financial flows generated by counterfeiting activities (see C).

10) Report on customs authorities' activities, 2001.

11) Figures supplied by the European Commission, Taxud.

12) Report on customs authorities' activities, 2001.

13) Joint action of 21st December 1998, adopted by the EU Council on making it a criminal offence to participate in a criminal organisation.

14) Palermo Convention corresponding to the United Nations Convention against transnational organised crime held in New York on 15th November 2000.

A/ SCALE OF COUNTERFEITERS' INDUSTRIAL PLANT

From being a small-scale activity conducted in illegal workshops in the 1990s, counterfeiting has become an industry using costly, modern facilities. Counterfeiters no longer work in isolation on an ad hoc basis; they have become “international entrepreneurs” with connections to highly organised networks. Counterfeiting has never been so highly structured.

Experience shows that counterfeiters are very quick to learn how to use technological advances. Equipped with sophisticated machines for making their goods, from textiles to spare parts for industry, counterfeiting networks can be seen as a mass production industry. It is becoming increasingly common to find that factories in developing regions (e.g. China, Thailand, Turkey and Morocco) and in the countries of the former USSR, naturally led by Russia, are using leading-edge technology to manufacture fake products. Although this equipment requires substantial finance (€50,000-€100,000 for certain moulds and €300,000-€600,000 for a plastics production line), it can often be afforded by entrepreneurs from emerging countries. For example, printing machinery for manufacturing products in the leather goods sector, goods packaging and labelling requires both a high investment and technological development. As Georges Fraga, Inter-regional Customs Director at Roissy, has said, “all this requires fairly effective technology and therefore the resources to implement it. (...) So we are dealing with organisations that have very substantial resources, which does not rule out a form of organised crime and money laundering”.¹⁵

B/ ORGANISATION OF COUNTERFEITING NETWORKS

Counterfeiters try to exploit legal loopholes and inaction on the part of the authorities wherever they operate. Economic globalisation and the development of international trade have facilitated the emergence of organised counterfeiting networks that operate across borders, making it more difficult to break them up. These networks use rapid transmission systems and modern transport facilities and logistics. They are the dark side of globalisation. Thus, counterfeit products are usually manufactured in a non-EU country and sold in an EU country or other non-EU countries. Sometimes products are partly manufactured in one country, assembled in another, transported through a third one and eventually sold in a fourth country. In other words, capital, production units, distribution channels and markets are usually compartmentalised.

However, the People's Republic of China is different in this respect. Many counterfeit production plants are financed by investors from Hong Kong and Taiwan, who can obtain a higher return on their money, particularly in the provinces of Guangdong (Canton) and Zhejiang (region south of Shanghai). Counterfeit products are primarily intended for export, thereby earning foreign currency, and increasingly for the Chinese domestic market, which is the largest in the world. Since the products are made and sold within the same country, the customs risk is non-existent. Meanwhile, the autonomy of the “special administrative region” of Hong Kong and its “border” with the rest of China continue to protect the principals, while the common culture fosters the creation of criminal networks across official frontiers.

Counterfeiters favour indirect routes when transporting their products in order to deceive the customs authorities. Transshipment is used to conceal the origin of the product by carrying it

15) “Contrefaçon: une économie parallèle aux mains d’une criminalité organisée”, *Le Journal de Saône et Loire*, 19th July 2002.

through several territories before sending it to its final destination. There are lots of examples of this tactic:

- On 9th July 2002, a consignment of 2.6 tonnes of counterfeit watches originating from Hong Kong and bound for Spain was seized at Roissy. Three days later, the same customs officials seized a batch of 1.1 tonnes of counterfeit sports clothes originating from Vietnam and bound for the Czech Republic.¹⁶
- In May 2001, a counterfeit sunglasses network was broken up. More than 95,000 pairs worth €113,575 were seized. The sunglasses, made in China, were bound for Senegal via Rouen.¹⁷
- Similarly, customs officials have found, for instance, that counterfeit goods produced in China and bound for Russia passed through Germany and Finland.

The task of detection is made even harder by constant changes in the routes used. Counterfeiters try to conceal product origins to avoid arousing the suspicions of customs officials, which is why each counterfeit product usually has its own route and distribution channel. There are no conventional or consistent networks; instead a series of transit countries is used, usually chosen because the checks are not very stringent. However, some places can be described as hubs of counterfeiting, such as the ports of Antwerp and Amsterdam and airports like Schipol and Roissy. Likewise, outside the EU, Dubai, Hong Kong and certain US ports are important transit points.

Counterfeiters use every form of transport available: by air, land and sea, and readily use the fastest means. As Jean Bièche, head of the customs targeting unit at Roissy, comments, “the configuration of Roissy airport, where goods transit times are becoming shorter and shorter (45 to 60 minutes), is a plus for counterfeiters”.¹⁸ Sometimes transporting counterfeit goods requires more complex, costly structures for transshipments or charters.

Counterfeiters use other tricks like mixing up genuine and counterfeit products, mainly for goods sold in hypermarkets and perfumery networks. Likewise, offenders indiscriminately peddle counterfeit products and stolen genuine goods. For instance, one young offender from Besançon was arrested in possession of some stolen genuine products. Although he was “hoping to make up his losses by buying some fakes at the Marseilles flea market”, he had actually acquired stolen genuine products mixed up with counterfeits.¹⁹ This case underlines the close ties between the counterfeit market and the theft of stocks of genuine products.

The importance of the counterfeiters’ sales force should also be emphasised. For instance, counterfeit products are frequently offered for sale via advertising and catalogues. The Internet is also opening up new distribution channels, with counterfeiters putting their products on line. Some of them wholesale counterfeits of several branded products on the same site and some hide behind on-line auctions.

16) Ditto.

17) “Saisie record de cigarettes et lunettes contrefaites”, *France Soir*, 31st May 2001.

18) “Cartier, Lacoste, Nike: des contrefaçons qui se comptent par tonne”, *Agence France Presse*, economic news, 18th July 2002.

19) “Vuitton: Besançon avant Paris”, *L'Alsace*, 11th December 2002.

Counterfeiters also use shell companies for their operations. For example, the Florence police conducted a meticulous investigation of two clothing and leather goods wholesaling companies operating in the city and managed by a Chinese couple, which established that these companies were actually being used to cover up the distribution and sale of a substantial quantity of counterfeit leather products originating directly from China, where they were made.²⁰

So counterfeiting involves extensive logistics and a complex, structured, flexible and reactive organisation from the manufacturing phase to sales. As is often the case, the advances, methods and channels of the lawful economy are misused for the purposes of the underground economy. Finally, counterfeiting represents a easy, profitable investment for the tremendous amounts of money that can be earned cheaply from various forms of trafficking (as “unlawful” money is obviously cheaper than “honest” money).

C/ Financial flows generated by counterfeiting activities

Counterfeiting is extremely profitable, for example (two of many):

- In a case already quoted,²¹ more than 95,000 pairs of fake sunglasses worth a total of €113,575 were seized by French customs in May 2001.
- The Grenoble appeal court recently heard a case involving an “enormous fraud committed by a highly organised gang” in which 1,832 items of counterfeit designer clothing were seized. In a ruling issued on 14th November 2002, the appeal court quantified the prejudice at €92,603.²²

Counterfeiters pay themselves handsomely. Counterfeit products are often sold at the price of the originals. As the risk for a counterfeiter of being sentenced to a severe penalty is relatively low, the organisers of such trafficking can easily afford the fine of a few thousand euros that they may be ordered to pay. The lack of deterrence of the penalties therefore explains the steadily increasing attraction of this illegal activity for criminals. The boldest criminals, receiving light sentences, quickly saw this unlawful activity as a source of substantial profits: the financial gains are substantial, while the judicial risks are low compared with the sentences issued for other forms of trafficking, particularly drugs.

According to Detective Superintendent Alain Defer, Head of the French anti-counterfeiting unit, “the profits are similar to drugs trafficking, about €10 per euro invested (...) The risk of prosecution is virtually non-existent; the network heads are very difficult to break up”.²³ Taking just France as an example, selling counterfeit products is punishable by a two-year prison term and a €150,000 fine, while selling drugs is punishable by a ten-year prison term and a €7,500,000 fine. According to Jorn Rise Andersen, chairman of the Danish customs and excise association, “counterfeiting brings in more money than drugs trafficking and it’s less risky”. He judges that a single truck of counterfeit cigarettes imported into Europe represents about €475,000 in profits.²⁴ Christophe Zimmerman, a French expert advising the European

20) Press release supplied by a member.

21) “Saisie record de cigarettes et lunettes contrefaites”, *France Soir*, 31st May 2001.

22) Grenoble appeal court, preliminary investigation division, ruling No. 2002/00700 of 4th October 2002.

23) “Explosion de la contrefaçon”, *Affiches Parisiennes et Départementales*, 4th-5th July 2002.

24) “Des douaniers partent en guerre contre les contrefaçons en Europe”, *Pays d’Entre Loire et Rhône*, 26th January 2001.

Commission, also says that “counterfeiters take fewer risks than drugs traffickers. Let me give you an example: one kilo of pirate CDs is worth more in the EU than a kilo of pot”.²⁵ Generally, customs officials consider that a kilo of CDs is worth €3,000 compared with €1,000 for a kilo of cannabis resin.²⁶ From the economic viewpoint, the calculation is relatively simple: a computer game reproduced thousands of times costs €0.20 per copy and sells at about €45. Cannabis costs €1.52 per gram on the market and sells at about €12.²⁷ It follows that it is eight times more profitable to traffic in digital products than drugs.

The high profitability of counterfeit trafficking encourages criminals to use this activity as a way of laundering money. Both the EU Council and Commission have referred to this development: first in the Action Plan to Combat Organised Crime adopted by the Council on 28th April 1997,²⁸ then in the European Commission’s green paper on “Combating counterfeiting and piracy in the single market”²⁹ and, finally, in the report on responses to the green paper.³⁰ One example will serve as a good illustration of this trend: while it was breaking up a major network manufacturing counterfeits of branded luxury goods in the region of Naples and Teramo in July 2002, the *Guardia di Finanza* discovered large transfers of money between London and Naples originating from profits generated by the counterfeiting trade. The presumed gang leader was imprisoned on 15th June 2002 and the counterfeiting case and a further investigation are currently pending before the courts of Naples and Teramo.³¹

In short, counterfeiting is a very attractive activity for criminal networks because it generates maximum profits with a minimum risk of imprisonment. It has become a form of organised crime with its own experts specialising in production in the industrial sectors concerned, its own financiers, logistics experts, importers, wholesalers and distributors, right up to the end consumer. It clearly has links with other forms of criminal activity and its networks cooperate or overlap with known criminal organisations.

II/ Counterfeiting and other forms of organised crime

Primarily, counterfeiting is obviously a breach of consumer affairs, health, trade and employment law. It is the negation of all the major legislation protecting individuals.

There is every sign that counterfeiters are becoming increasingly involved in other criminal activities or mafia type organisations looking for economies of scale, a “Taylorist” division of labour and additional resources.

25) Report broadcast on France 2, 1pm news, 26th June 2002, and TV, *Journal Mondial des Journaux*, 27th June 2002.

26) “Cartier, Lacoste, Nike: des contrefaçons qui se comptent par tonne”, *Agence France Presse*, economic news, 18th July 2002.

27) “La contrefaçon de CD plus rentable que le trafic de hasch”, *Marianne*, 10th-16th December 2001.

28) Action plan to combat organised crime (adopted by the Council on 28th April 1997), Official Journal No. C 251, 15/8/97, pp. 0001-0016.

29) “Green paper: Combating counterfeiting and piracy in the single market”, European Commission, 1998.

30) Final Report on responses to the European Commission green paper on counterfeiting and piracy, 7th June 1999, http://europa.eu.int/comm/internal_market/en/indprop/piracy/piracyen.pdf.

31) For another example, see the case judged by the Grenoble appeal court, preliminary investigation division, on 14th November 2002.

A/ Links with other criminal activities

In a report dating from 1998, Nato emphasised the involvement of organised criminal gangs in violating intellectual property rights.³² According to Iain Grant of the International Federation of the Phonographic Industry (IFPI), organised criminal gangs are involved in 65 to 70% of piracy cases.³³ Similarly, members of the Taiwanese and Malaysian governments have acknowledged the involvement of organised criminal gangs in counterfeiting.³⁴

In France, Ms Nicole Fontaine, Junior Minister for Industry, wrote in her plan in favour of industrial property presented on 28th November 2002, that “counterfeiting has become one of the main sources of support for serious criminal activities and one of the most significant threats to consumer safety”.³⁵ More specifically, the *Union des Fabricants* has identified increasingly obvious links between counterfeiting and criminal activities, such as terrorism, drugs trafficking, arms trafficking, illegal employment and illegal immigration. Our information shows that counterfeiters also engage in duress, blackmail and intimidation.

Terrorism

The most extreme form of organised crime currently affecting society is terrorism. The clandestine nature of the criminal organisations that engage in terrorism requires extensive logistical and therefore financial resources.

It is becoming increasingly obvious that there are criminal organisations, including terrorists, that use counterfeit goods to finance their activities. In an interview given to the WNBC radio station on 31st January 2003, Tim Trainer, Chairman of the IACC (International Anti-Counterfeiting Coalition), said that the US government suspected the existence of links between counterfeiting activities and terrorism since the first attack on the World Trade Center in 1993,³⁶ with the former partly financing the latter. In an interview published in the French daily *Le Monde* on 12th September 2002, Pierre de Bousquet de Florian, Head of the DST (*Direction de la Surveillance du Territoire*, French equivalent of the CIA), said that Afghan terrorist groups were able to survive “as a result of crime, hold-ups, credit card copying and even (...) counterfeiting designer clothes”.³⁷ In the following month, an AFP dispatch reported that three suspects had been arrested in Greater Paris in a case of clothing counterfeiting: seventy boxes of fake clothes were found.³⁸ The investigation revealed that the suspects had been identified in the past as belonging to the Salafist Group for Call and Combat (GSPC) and had been sentenced for acts of terrorism.

According to R.E. Kendal, former General Secretary of Interpol, the connections with organised crime are increasingly obvious. He has written that counterfeiting is a fully-fledged

32) “Organised transnational crime, an increasing threat to the world market”, Nato, Economic Committee, 1998.

33) Speech by Iain Grant, Head of Enforcement, IFPI, European Forum for the Prevention of Organised Crime, Brussels, 30th January 2003.

34) “Submission of the International Anti-Counterfeiting Coalition to the United States Trade representative”, IACC, 13th February 2003.

35) “La propriété industrielle: outil de valorisation des entreprises”, Nicole Fontaine, Junior Minister for Industry, 28th November 2002.

36) “Counterfeit cash?”, WNBC New York, 31st January 2003.

37) “Al Qaida peut frapper le moment voulu”, *Le Monde*, 12th September 2002.

38) “Trois islamistes présumés interpellés dans une affaire de contrefaçon de vêtements”, Agence France Presse, world news, 17th October 2002.

criminal activity that is not on the periphery of other criminal activities but, instead, at their very heart.³⁹ Similarly, Christophe Zimmerman, a French expert advising the European Commission, has quoted an unusual example: fake boxes of Vaseline, a product used to make certain explosives, were intercepted at the Danish border, having originated from Dubai; the head of the network was a known member of Al Qaeda (document 9). According to Chris Merchant from the International Federation of the Phonographic Industry, the IFPI “has proof of links between terrorism and counterfeiting and industrial piracy”. In Northern Ireland, nine arrested terrorists had financed their activities through industrial piracy. In Latin America, links have been established between Middle Eastern terrorist groups and industrial piracy networks. More recently, Islamic terrorist groups in Southeast Asia and the Philippines have used industrial piracy to finance their operations with Al Qaeda.⁴⁰ There is nothing new about this phenomenon. As far back as 1992, Muslim fundamentalist groups were suspected of being connected with trafficking in contraband goods and counterfeiting designer products, watches and perfume. In 1993, the police arrested the owner of an import-export company in Paris, whose offices were being used as a base by an Islamic association. A stock of fake designer shirts was also found there.⁴¹

The links between terrorism and counterfeiting have been investigated by many journalists:

- Roslyn A. Mazer, a lawyer and journalist who worked for the criminal division of the US Department of Justice and carried out a study of counterfeiting and its links with other crimes, has written that “recent developments suggest that many of the governments suspected of supporting Al Qaeda are also promoting, being corrupted by, or at the very least ignoring the highly lucrative trafficking in counterfeit and pirate products capable of generating huge money flows to terrorists”. She illustrated her comments with some very telling examples.⁴²
- Salima Tlemçani, author of an article entitled “Trafic d’armes en Europe / Les filières du GIA”, wrote that “in the south of Europe, after Marseilles, Spain is the main route of entry for drugs, counterfeit products and contraband, which Islamic groups generally use to finance their activities”. She also described a major case involving disguised cars, fake documents and putting exported vehicles on the road. According to Ms Tlemçani, this network, based in the Paris area, was “widely used by Algerian terrorists”.⁴³

Drugs trafficking

Certain examples suggest the existence of strong connections between counterfeiting and drugs trafficking and several of our members have had to deal with cases in which counterfeiters were also accused of drugs trafficking.⁴⁴ One investigation by the Paris fraud squad led to the discovery of counterfeit clothes at the home of the leader of a gang also accused of drugs trafficking, criminal conspiracy and money laundering.⁴⁵ Similarly, in

39) *International Criminal Police Review*, No. 479-477, Interpol, 1999.

40) “Cartier, Lacoste, Nike: des contrefaçons qui se comptent par tonne”, *Agence France Presse*, economic news, 18th July 2002.

41) “Le spectre des réseaux islamistes algériens”, *Dépêche Internationale des Drogues* No. 26, December 1993, www.ogd.org/fr/26EFRLDA.html.

42) “From T-Shirts to Terrorism”, *Washington Post*, 30th September 2001.

43) “Trafic d’armes en Europe: les filières du Gia », Salima Tlemçani, www.pourinfo.ouvaton.org/reseaux_islamiste/suisse/trafficedarmegiaeuro.htm, 11th January 2000.

44) Cf. Sarreguemines district court, victim notice, prosecutor No. 99003141, hearing on 23rd October 2000.

45) “Petits trafics en famille”, *Est Eclair*, 28th November 2002.

December 1998, the British customs raided a small factory that was producing and storing large quantities of counterfeit products such as sports clothes, luxury bags, perfumes and champagnes representing a total of 52 brand names. The factory owner was also involved in criminal activities and was arrested during a drugs delivery in August 2001.

Pascal Nègre, Chairman and Managing Director of Universal Music France, recently pointed out in the magazine *Le Point* that he was working to combat “mafia-type piracy using the same boats to bring in cocaine and U2 counterfeits”.⁴⁶ Christophe Zimmerman, the expert already quoted, has suggested that the techniques used to get through border crossings are identical: false bottoms, transshipments, vague air waybills, etc.

Further afield, the examples are even more suggestive:

- At Interpol’s first international conference on intellectual property, held in Lyons on 15th and 16th November 2001, Walter N. Clements, Deputy General Manager at P&G, reported that 22,000 counterfeit “Head & Shoulders” products had been seized in London at premises used for drugs trafficking.
- Wanted notices issued by Interpol also reveal that it is relatively common for the same people to be wanted for drugs trafficking and counterfeiting.⁴⁷
- In October 2001, four major raids were carried out in the Czech Republic. The first one, near the Austrian border, led to the discovery of 1,000 CDs. Near the German border, 5,000 CDs were seized, followed by 2,000 more in another operation. In the fourth raid, near the Polish border, 1,000 CD-Rs and 200 pirate CDs from Ukraine were seized. Special police forces also found large quantities of drugs during their investigations.⁴⁸
- For the Royal Canadian Mounted Police, there is no longer any doubt that drugs trafficking networks are involved in counterfeiting. According to a report by the Criminal Intelligence Service, a combined investigation in 1997 and 1998 of heroin imports and trafficking in Canada revealed the existence of large-scale criminal activity linked to an organised criminal gang of Asian origin operating internationally. In addition to importing and trafficking in heroin, the members linked with the main target were involved in many profit-making criminal activities such as counterfeiting.⁴⁹
- Moreover, a Nato report entitled “Transnational organised crime: an escalating threat to the global market”, highlighted the fact that “Nigerian criminal organisations are involved in a series of activities, such as exporting heroin to the United States, plus fraud, extortion and counterfeiting on a grand scale”.⁵⁰
- The IFPI has also reported that a major pirate CD network, broken up in October 2001 in Mexico, had clearly been investing its profits in drugs and prostitution.⁵¹

46) “Disque: la grande forme”, *Le Point*, 18th January 2002.

47) <http://www.interpol.int/public/Wanted>

48) IFPI report, “Global anti-piracy actions worldwide – 1”, 2001.

49) “Evaluation of commercial-scale copyright piracy and counterfeiting of brand names in Canada”, Royal Canadian Mounted Police Report – Criminal Intelligence Service, 2000.

50) “Organised transnational crime, an escalating threat to the world market”, Nato Parliamentary Assembly, Economic Committee, 1998.

51) “Précis of recent examples indicating ‘organised crime’ involvement in music piracy”, IFPI.

- Finally, the British investigation bureau Carratu International has found extensive connections between counterfeiting and drugs trafficking, arms trafficking and other crimes such as international terrorism. It reported that those in charge of counterfeit tee-shirt networks are using the profits to support terrorists, including the group that planted a bomb at the World Trade Center in 1993.⁵² According to Spencer Burgess, head of Carratu's intellectual property division, "buying counterfeit clothes on the Internet may help to support terrorist or criminal gangs. Most of the world's terrorist groups have some form of connection with counterfeiting. It's the most obvious way of making profits".⁵³

Arms trafficking

In August 2000, two people were arrested by the Greek police. During the ensuing search, ammunition and explosives were found next to pirate CDs and industrial piracy equipment. In September 1999, one of the largest pirate CD trafficking rings was discovered in Holland. Raids uncovered large amounts of cash and weapons.⁵⁴

According to Jay Berman, Chairman of the IFPI, there is no doubt that the criminal organisations involved in music piracy are also involved in other crimes such as drugs and arms trafficking, fake credit cards, money laundering and violence.⁵⁵ Similarly, according to Carlos Grande, Chairman of the AFYVE (Spanish association of phonographic publishers and producers), "the money earned from pirate records is injected back into drugs, prostitution and arms. Music piracy has become the ideal bankroll for gangs" (document 37). Wanted notices issued by Interpol also highlight the fact that counterfeiters are often wanted for arms trafficking too.

Undeclared employment and illegal immigration

Counterfeiters often use undeclared workers as cheap labour because they are docile and highly profitable. For instance, it is a well-known fact that the Florence region contains a large number of illegally workshops employing undeclared workers of Asian origin. In July 2002, further south in Naples, the Italian police seized 4,000 designer bags and searched an undeclared workshop, which was fitted out with very sophisticated machinery and employed seventeen undeclared workers.⁵⁶ On 8th July 2002, the Spanish police arrested 37 people and seized more than 28,000 pirate CDs during an operation to break up a major music counterfeiting organisation. Among those arrested, twelve came from Pakistan, fifteen were from Bangladesh, one was Chinese and seven minors came from Pakistan and Bangladesh.⁵⁷

A press article about music piracy in Spain, published in September 2002, reported comments by Sergeant Pastor, of the Spanish Civil Guard central operations unit, who said that "industrial piracy is conducted by well organised international gangs. (...) A network brings in illegal immigrants who have to work to pay off their debts to the people smuggler. Some of them sell in the street, others cut the records, make the jackets or deal with distribution". The journalist goes on to say that "the network leaders buy large quantities of engravers,

52) "Anti-counterfeiting Investigations", Carratu International Plc, www.carratu.com/Anti_counterfeiting.htm.

53) "Rise in counterfeit market linked to terrorist funding", Carratu International Plc, www.pressbox.co.uk/Detailed/6073.html.

54) "Précis of recent examples indicating 'organised crime' involvement in music piracy", IFPI.

55) "Recording industry for new anti-piracy partnership with government enforcement authorities", www.ifpi.org.

56) AFP, 4th July 2002.

57) "24 heures dans le monde", *Journal de Haute Marne*, 9th July 2002.

computers and blank CDs and rent apartments and cellars where dozens of exploited workers are crammed, in scarcely bearable health conditions, to copy records 24 hours a day. In early May, in the Lavapiés district, near the city centre, where lots of illegal immigrants live, the police discovered more than 7,000 CDs and 180,000 digitised jackets in the basement of an old building in the process of repair where three Ecuadorians were living”.⁵⁸

Fraudulent practices: duress, blackmail and intimidation

According to several companies that belong to the *Union des Fabricants*, counterfeiters are not afraid to threaten manufacturers, which is why, for instance, action taken in the Maghreb, in areas protected by Islamic fundamentalists, and in Macedonia was unsuccessful. On 24th November 2002, an attempt was made to murder Konstantin Zemenchov, head of the RAPO (Russian Anti-Piracy Organisation). Everything points to this attack being related to raids carried out a few days previously, which had led to the seizure of 117,000 pirate DVDs and 1,060,000 high-quality jackets. Shortly after the attack on Mr Zemenchov, a factory manufacturing optical disks was discovered near Moscow and 500,000 CDs were seized. No DVDs were discovered but officers seized a CD and DVD assembly line.⁵⁹ In Turkey, lawyers acting for a luxury goods company were attacked twice in 2002 during counterfeit seizures at markets in Istanbul and Kusadasi.

B/ Links with organised criminal groups

Experience shows that counterfeiting is controlled by organised criminal networks operating in places like Southern Italy, Japan and Hong Kong.

Italian Camorra

Manufacturing in the Naples area is controlled by the Camorra. According to an IFPI report and information supplied by the Naples public prosecutor, one hundred Camorra gangs are active in this field and are involved in drugs trafficking, arms trafficking, extortion and counterfeiting. An FBI report on organised crime confirms the Camorra's involvement in counterfeiting activities.⁶⁰ According to several interviews with the police, various “clans” are investing the proceeds of distributing drugs and contraband in counterfeiting CDs and their connections with gangs in Eastern Europe mean that they can import large quantities of fake CDs from countries such as Bulgaria and Ukraine.⁶¹

Albanian gangs

Albanian gang networks have developed in the port of Antwerp, Belgium, which has become a hub for counterfeit products imported from Asia, as reported by Belgian magistrates at a meeting held in Strasbourg in May 2000.

58) *Epok*, 29th September 2002.

59) “Russia, attack on RAPO head occurs same time frame as massive warehouse raid and action against optical disc plant”, internal document.

60) “Organized crime section”, FBI, www.fbi.gov/hq/cid/orgcrime/1cn/ioc.htm.

61) AFP, 19th July 2002 and “Italian organized crime”, www.fbi.gov/hq/cid/orgcrime/1cn/ioc.htm.

IRA

The Irish Republican Army (IRA) is involved in counterfeiting activities in Ireland. At Interpol's first international conference on intellectual property, held in Lyons on 15th and 16th November 2001, the Irish police said that terrorists in Northern Ireland were selling counterfeit and pirate products such as CDs, games consoles, video cassettes and designer clothes in order to finance weapons purchases. The Irish press has also reported that paramilitary groups readily "resort to fraud, extortion, contraband, drugs trafficking, armed robbery and counterfeiting to fill their coffers with hundreds of millions of pounds per year" and, more specifically, that they were involved in "forging banknotes and credit cards and counterfeiting CDs, electronic goods and designer clothes".⁶²

Asian gangs

According to the Canadian intelligence services, "gangs of Asian origin are extremely active in large-scale manufacturing and distribution of counterfeit credit cards, software and electronic entertainment media such as compact discs (CDs) and digital versatile discs (DVDs)". It has also been proved that "Asian gangs collaborate with organised crime in Eastern Europe, Eastern India and Nigeria in the card counterfeiting industry".⁶³ In Spain, a crackdown involving thirteen raids in the Madrid region led to the seizure of 230,000 blank and recorded CDs, 346 CD-R burners, 515,000 jewellery boxes, 210,000 marquetry items and €48,000 in cash. The operation led to the arrest of forty people, including the leaders of the organisation, who were Chinese.⁶⁴ The French newspaper *Le Monde* has also reported that street sellers of counterfeit products in major Japanese cities often have links with Israeli gangsters of Russian origin.⁶⁵ A study produced by one of our members reveals that the members of the Yakuza (a Japanese gang), previously known as counterfeit traffickers and wholesalers, are now selling counterfeit products directly in the street or in shops and have spread their operations to the whole of Japan. The document also emphasises the close ties between the Yakuza and Israeli gangs in the counterfeiting market, particularly in street peddling.⁶⁶

Turkish clans

According to an article published on 5th July 2002 in the Turkish newspaper *Cumhuriyet*,⁶⁷ the Bucak clan led by Sedat Bucak had rented forty shops in Kusadasi to sell tee-shirts, shirts, trousers and sweaters counterfeiting world-famous brands. The article also stated that the clan seemed to have a monopoly on sales of counterfeit products in Kusadasi. Sedat Bucak is an MP representing the True Path Party (DYP) and leads a Kurdish clan of one thousand "village guards", Kurdish militiamen paid to combat the Kurdistan Workers Party.

62) *La Presse*, 27th August 2001, http://www.cyberpresse.ca/reseau/monde/0108/mon_101080008566.html.

63) "Asian-Based Organised Crime", Royal Canadian Mounted Police, Criminal Intelligence Service, 2002.

64) European Forum for the Prevention of Organised Crime, Speech by Iain Grant, IFPI, Brussels, 30th January 2003.

65) "La contrefaçon prospère sur le marché du luxe au Japon", *Le Monde*, 9th October 2002.

66) "La contrefaçon prospère sur le marché du luxe au Japon", *Le Monde*, 9th October 2002.

67) *Cumhuriyet*, 5th July 2002.

III/ Inadequate deterrents

A/ The situation in France

In France, holders of intellectual property rights can protect themselves under the legislation on patents, trade marks, designs, copyright or new plant varieties. Violations of intellectual property rights may be prosecuted under either the civil or criminal law.

Counterfeiting is an offence punishable under the **criminal law** by a two-year prison term and a €150,000 fine (patents: Article L. 615-14 paragraph 1 of the Intellectual Property Code; trade marks: Article L. 716-9 of the Intellectual Property Code; copyright: Article L. 335-2 of the Intellectual Property Code; designs: Article L. 521-4 of the Intellectual Property Code) – cf. Appendix 2: Summary of rights.

The offence of counterfeiting is also punishable by removal of the right of election and ineligibility for commercial courts, chambers of commerce and industry, chambers of trade and industrial tribunals⁶⁸ and/or the closure of the facilities used to commit the offence, either totally or partially, permanently or temporarily.⁶⁹

Unfortunately, none of these provisions are widely applied. In a study commissioned by the Ministry of Justice in 1999 entitled “La jurisprudence relative à la contrefaçon pour les droits de propriété industrielle” (counterfeiting jurisprudence for intellectual property rights), the *Institut de Recherche en Propriété Intellectuelle* notes: “Criminal prosecution is still used very rarely: fewer than one hundred judgements by criminal courts were found, including first instance and appeal proceedings. However, while it is significant that the counterfeiting offence is generally recognised by criminal court judges, the compensation awards are not high: in 50% of cases, the amount of damages awarded is less than €5,300 in the case of first instance courts and €4,575 in the case of appeal courts. On the other hand, judges have been prepared to apply the range of criminal and customs penalties introduced by the “Longuet Act”, though without using them in full. Finally, although prison terms were handed down in about 50% of cases (more on appeal than in first instance proceedings), they were all suspended and were for an average period of six months in first instance proceedings and four months on appeal”.⁷⁰

In a speech made to an intellectual property symposium held on 28th November 2002, Ms Nicole Fontaine, Junior Minister for Industry, emphasised “the need to improve the effectiveness of the French court system”. She pointed out that “businesses, particularly SMEs, consider that the judicial protection of industrial property rights, patents and trade marks is complex and ineffective. This is mainly due to the length of the proceedings, the inconsistency of certain judgements and also the weakness of the sentences given to offenders”.⁷¹

68) Article L. 615-14-1 paragraph 2 of the Intellectual Property Code for patents, Article L. 716-12 paragraph 2 of the Intellectual Property Code for trade marks and Article L. 521-6 of the Intellectual Property Code for designs.

69) Article L. 716-11-1 of the Intellectual Property Code for trade marks, Article L. 521-4 of the Intellectual Property Code for designs and Article L. 335-5 for copyright.

70) “La Jurisprudence relative à la contrefaçon pour les droits de propriété intellectuelle”, IRPI study for the Ministry of Justice, 1999.

71) “La propriété industrielle: outil de valorisation des entreprises”, Nicole Fontaine, Junior Minister for Industry, 28th November 2002.

B/ A European example: Italy

Italy is one of the leading counterfeit producers in the world with an estimated market of €3bn-€5bn per year.⁷² The *Guardia di Finanza* has emphasised that criminal organisations play a fundamental role in counterfeiting both at the goods production and marketing stages.⁷³ Article 473 of the Criminal Code makes counterfeiting punishable by a prison term of up to three years and a maximum fine of four million lire. Moreover, criminal cases take two years on average before the court issues judgement.

Criminal conspiracy,⁷⁴ defined in Article 412 of the Criminal Code as “three or more people conspiring to commit a offence” is punishable under Article 416 of the Criminal Code, which states the following:

Where three or more people conspire to commit several offences, the promoters, creators or organisers of the conspiracy are punishable by a prison term of between three and seven years. Anyone merely participating in a conspiracy is liable to a prison term of between one and five years.

- If the conspirators carry weapons across the countryside or along the public highway, they are liable to a prison term of between five and fifteen years.
- The sentence is increased if there are more than ten conspirators.

Article 416a of the Criminal Code defines mafia-type conspiracy⁷⁵ as the “use of the ability to intimidate its members through their association and via the rules of subordination and the law of silence. In addition to criminal offences, this form of conspiracy covers improperly acquiring control of economic activities or public services and obstructing free exercise of the right to vote”. The same article states that anyone taking part in a mafia-type conspiracy is liable to a prison term of between three and six years, while the organisation leaders may be sentenced to between four and nine years in prison.

Note that although it may be easy to prove counterfeiting, the same does not apply to mafia-type conspiracy, a charge very rarely accepted by the courts.

C/ Proposal for stronger penalties

In France, the offence of counterfeiting appears to be punished less severely than petty larceny, for which the maximum sentence is a three-year prison term and a €45,000 fine. Also, although there is a scale of sentences for theft depending on the gravity of the offence, the same penalty applies to counterfeiting whether the offence involves peddling or massive imports, by individual sellers or organised networks.

The weakness of the current maximum penalty (two years) has at least three unfavourable consequences:

- First, it prevents a finding of criminal conspiracy, as Article 450-1 paragraph 1 of the Criminal Code states that for a criminal conspiracy to exist the group must have committed crimes or offences punished by a prison term of at least five years.

72) “Guardia di Finanza’s fight against counterfeiting and products piracy”, Guardia di Finanza General Headquarter II Department, Brussels, 30th January 2003.

73) Ditto.

74) *Associazione per delinquere*.

75) *Associazione per delinquere di tipo mafioso*.

- Second, since the maximum prison term is less than three years, the accused cannot be remanded in custody (Article 143-1 of the Criminal Procedure Code).
- Finally, this is a negative sign to lax countries and international organisations developing their law in this field.

So if legislators want to deter people from committing the offence counterfeiting, it is essential to review the penalties and, in particular, introduce a scale of sentences to differentiate between the sale of counterfeit items by individuals and the manufacture or import of counterfeit products by organised networks. Some people have therefore proposed that counterfeiting should be punished like petty larceny (three-year prison term). However, France rightly wants to lead Europe in the fight against counterfeiting and if it adopted this proposal it would merely be adopting the same penalty for this offence that applies in... Italy, a country that no one can say is leading the way in combating counterfeiting. Moreover, setting the maximum sentence at a three-year prison term would mean that industrial and commercial counterfeiting cannot be characterised as an organised criminal activity, as the European Council's Joint Action dated 21st December 1998 set the threshold of the sentence for the definition of this type of activity at four years.

In practice, the only value of this measure would be the possibility of remanding the accused in some specific cases. In any event, this maximum would not offer a sufficiently wide range of penalties to differentiate sentences according to the gravity of the offences committed.

Accordingly, the Union des Fabricants proposes the following:

- Petty offences (offering, selling, possession without a legitimate reason) would be punishable by a maximum sentence of three years, allowing the accused to be remanded.
- Committing an offence in an organised gang would constitute an aggravating circumstance increasing the maximum sentence to a five-year prison term.
- The most serious offences should be described as such and also be punishable by a five-year prison term. They should include:
 1. Producing counterfeits via reproduction, imitation, attaching or removing labels, repackaging, changing labels and packaging, etc.
 2. Commercial import under any customs régime into the national territory, notwithstanding the entry conditions of the disputed products into the territory of the European Union.
 3. Commercial export, re-export, transit or transshipment.
 4. Instructions or orders given for the commission of the acts defined above.

These specific charges should also make it possible to prosecute accomplices for these offences. Increasing the maximum penalty to five years would also make it possible to initiate criminal conspiracy prosecutions where appropriate.

Conclusion

Counterfeiting is a steadily growing phenomenon that is threatening the economic growth of countries all over the world. It has become a form of organised crime with proven ties to other forms of criminal activity.

The extent of the phenomenon is causing concern to international organisations such as Interpol, the WIPO and the European Commission. In fact, the Commission's Justice and Internal Affairs Directorate General held a crime prevention seminar focusing on "combating product counterfeiting and piracy" in January 2003. Counterfeiting was also one of the themes at the 2003 World Economic Forum on sustainable development.

In order to combat this scourge effectively, governments, particularly of EU states, must strengthen their legislation and take the essential measures to ensure that it is properly applied. Internationally, it is vital to develop inter-state cooperation to combat counterfeiting networks effectively. In Europe, the Commission presented a draft directive on enforcing intellectual property rights on 30th January 2003 designed to harmonise current national legislation and define a general framework for exchanging information between the competent authorities. The directive specifically refers to "major offenders" and "offences committed for commercial purposes or causing considerable losses to the rights holder". The directive backs up a draft regulation intended to facilitate customs seizures of counterfeit goods of non-EU origin.

In France, the National Anti-Counterfeiting Committee (CNAC), chaired by Mr François d'Aubert and reporting to Ms Nicole Fontaine, Junior Minister for Industry, has clearly expressed its intention of improving the French court system and developing an information and awareness policy. This stance has been consistently supported by the association at CNAC meetings.

The *Union des Fabricants*, the most important anti-counterfeiting organisation in France, hopes that the present study will contribute to a genuine realisation of both the extent of the problem and the urgency of addressing it.

Appendix 1

Definitions of organised crime

United Nations convention against organised crime held in New York on 15th November 2000, so-called “Palermo Convention”: “criminal organisation”:

“A structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences in order to obtain a financial or other material benefit.”

Joint action of 21st December 1998, adopted by the EU Council on making it a criminal offence to participate in a criminal organisation: “criminal organisation”:

“Structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable with a deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities”.

Austria

Austrian Criminal Code, Article 278 A: “Kriminelle Organisation”:

Association formed over a long period with the aim of committing serious offences, obtaining significant profits or exercising political or economic influence and attempting to avoid the resulting proceedings, particularly via corruption or intimidation.

Austrian Criminal Code, Article 277: “Komplott”:

Agreement between at least two persons to commit a specific serious offence.

United Kingdom

UK National Criminal Intelligence Service: “Organised crime”:

The British authorities have adopted various criteria for defining organised crime, divided into two categories: mandatory criteria and secondary criteria.

Mandatory criteria:

- Collaboration between at least three persons.
- Prolonged criminal activity.
- Commission of serious crimes.
- Crimes motivated by power or profit.

Secondary criteria:

- International, national or regional operations.
- Use of violence, intimidation or corruption.
- Use of commercial structures.
- Money laundering.
- Influencing politicians, public authorities, the media, judges, etc.

Appendix 2
Summary of rights

	Protectable form	Substantive conditions	Formal conditions	Protection period	Concurrent protection	Penalty for counterfeiting
Copyright	Intellectual creations	Originality	None	Author's lifetime + 70 years	<ul style="list-style-type: none"> • Designs • Trade marks 	Two-year prison term + €150,000 fine
Design	Plastic design shapes	Novelty + ornamental and apparent nature	Filing at the INPI	Five years from the filing date Renewable four times	<ul style="list-style-type: none"> • Copyright • Trade marks 	Two-year prison term + €150,000 fine
Trade mark	Symbols	Distinctiveness + availability	Filing at the INPI	Ten years from the filing date Renewable indefinitely for ten-year periods	<ul style="list-style-type: none"> • Designs • Copyright 	Two-year prison term + €150,000 fine
Patent	Functional creations	Novelty + inventiveness and capacity for industrial application	Filing at the INPI	Twenty years from the filing date	None (trade mark for the name of the patented product)	Two-year prison term + €150,000 fine
New plant variety	New variety	Difference from similar varieties + homogeneity + stability	Filing at the General Secretariat of the <i>Comité de la Protection des Obentions végétales</i> (new plant varieties protection committee)	Twenty years from the issue of the certificate		€3,750 fine