

Counterfeiting and Piracy

New European Observatory launched



At the second high level conference on counterfeiting and piracy held on 2 April, Internal Market and Services Commissioner Charlie McCreevy, together with Members of the European Parliament, launched a European Observatory on Counterfeiting and Piracy. By enhancing cooperation across the EU, the Observatory will be at the forefront in the fight against fake goods. Commissioner McCreevy said: "Last year we met to discuss measures needed for the fight against fake goods. This year we are delivering concrete solutions. I am confident that the Observatory, alongside other initiatives we have launched, will significantly help us to step up the fight against intellectual property theft."

The conference gathered a total of 400 stakeholders, representing business, public administrations, enforcement services and civil society. Grouped in 4 panels representing the future 4 'pillars' of the Observatory, participants gave their views on issues such as reliable data, successful counterfeiting strategies, cross-border enforcement responses and potentially successful anti-counterfeiting campaigns. All agreed that the establishment of a European Observatory was indispensable if the fight against counterfeiting and piracy is to be taken seriously.

Questions arose as to how the Observatory will be organised: The Observatory will be run by the Commission services, where each Member State and some of the key representatives of private sector businesses affected by counterfeiting and piracy will have a delegate. In this way, the structure of the Observatory will enhance effective cooperation between public and private sectors. In the next few weeks, a structure will be created for the functioning of the Observatory. The Observatory's first meeting is planned to take place under the Swedish presidency.

Counterfeiting and piracy; a growing threat to our health, our jobs, our economy

Counterfeiting and piracy, or the infringement of intellectual property rights such as copyright, trade marks, designs or patents, is becoming an alarming problem for our economy and society. Over the past ten years the global explosion in counterfeiting and piracy has become one of the most devastating problems facing world business. Twenty years ago, counterfeiting might have been regarded as a problem chiefly for the manufacturers of expensive handbags. But nowadays, counterfeiters have broadened their manufacture to include not only fake electrical appliances, car parts and toys or pirated software, but also medicines. Therefore, counterfeiting and piracy have devastating effects on the economy, including on job creation and the health and safety of citizens. International trade in counterfeit and pirated goods is estimated to have reached USD 200 billion in 2005. This figure does not include goods produced and consumed domestically or pirated digital products that are distributed via the internet. If these items were added, the total magnitude of counterfeiting and piracy worldwide could well be several hundred billion dollars more.

How counterfeiting feeds crime and eats into government budgets

Due to its growing size, combined with a high return on investment and relatively light penalties when operations are detected, piracy and counterfeiting have become an attractive investment for organised crime. Counterfeiting and piracy affect the public budgets of the Member States. Every year, millions in tax revenues are lost as a result of pirated and counterfeited goods smuggled through customs and sold on grey markets. Counterfeit products are often 'manufactured' by the hands of children who, instead of being at school or playing, spend their time in dirty, dark factories producing the fakes. Meanwhile, Member State governments often bear the costs associated with addressing the consequences of counterfeiting through higher expenditure on consumer health and safety as well as on law enforcement.

"You cannot download a Gucci bag yet, but one can download and upload films..."

Ted Shapiro

Views from conference participants

Single Market News interviewed representatives from industry on how counterfeiting affects their business. Do they think the Observatory will help them to address the problems they encounter?

John Jacobsen, Film Producer, Norway, President of AGICOA, Association for the international collective management of audiovisual works, Geneva

Your recent film Max Manus, which has been a great success, has been a 'victim' of piracy on the day of its release. Can you tell us how this happened and what consequences it had?

Someone ran the film at the cinema without an audience, filmed the image on the screen and then distributed the film on the internet to Pirate Bay in Stockholm. We estimate that we may have lost 100 000 tickets. What we lost in turnover would have been sufficient to make another film.

How do you see the project of the Commission to set up the European Counterfeiting and Piracy Observatory?

I think the observatory is a great idea. As an industry we have been concerned that there has not been a unified movement against these pirates. This is the first I have heard of an attempt to get a total grasp on this problem. There is a connection between fake medicine, fake mechanical parts and stealing contents of books, films, music etc.

But starting the observatory is one thing. It is important to get results and then to act. We need to get the politicians behind the problem to finally put in place effective legislation.



Ted Shapiro, Senior Vice-President, Motion Picture Association (A trade association that represents the major producers and distributors of films, DVDs, home entertainment and television programming.)



What are your views on the Commissioner's statement on launching the stakeholders' dialogue on piracy? Do you think the parties are ready for this dialogue, in particular the Internet Service Providers (ISPs)?

We think it is quite good. We hope that this dialogue will extend current cooperation with some platforms and create a level playing field. Some platforms are more cooperative than others, and why should those that are more cooperative suffer from unfair competition by others who turn a blind eye to illegal acts occurring on their sites?

At this stage, the Commission is starting to look at the sale of counterfeit physical goods over the internet. Obviously we would love to see the dialogue move on. You cannot download a Gucci bag yet, but one can download and upload films and we're particularly worried about release groups and others that are

putting "early window" films (films that are still in the theatre) on the internet. So we welcome a more constructive dialogue with ISPs on ways to educate consumers. We are already in dialogue with ISPs in a number of Member States, but it is great to see something organised at European level.

We think the Observatory is a great step. Obviously, getting a handle on the scale of the problem, sharing information between law enforcement authorities and perhaps establishing best practices will contribute to confronting the wide range of illegal activities taking place on the internet. The problems that right holders and others face on the internet of course are multi-territorial so we think any kind of observatory or forum that includes 27 Member States to facilitate cross-border dialogue would be quite constructive, and we view that positively.

**Rory Macmillan, Government and Public Affairs Director,
Nike Europe, Middle East, Africa**

Nike and other leading consumer brands are moving extensively into digital commerce and digital consumer communications. What needs to be improved or changed as all brands look to leverage the digital opportunities for the future?

Nike recognises the value of the internet and e-commerce as a growth sector and is extremely active in the digital world, either directly or through retail partners. However, Nike does not supply its products to retailers selling on the internet, if the latter are not qualified, just like it does not sell its products to unqualified brick and mortar retailers. Our current rules allow us to impose quality standards on online sales by our retailers to ensure that products are distributed in an appropriate, professional manner. In this way we guarantee the protection of consumers from counterfeit or illegal grey market products, which also means guaranteeing consumer safety and compliance with local regulations.

Nike and other sporting goods brands are at risk from the activities of illegal counterfeiters. Do you think the European Counterfeiting and Piracy Observatory could make a difference?

Nike continues to work in partnership with customs and authorities across the EU on counterfeit issues. We are aware of counterfeit products in the sporting goods market and work with local authorities towards eliminating this problem. We would advise consumers always to purchase products from authorised Nike retailers. We support the establishment of the new Observatory and believe that it will bring committed stakeholders together to agree on enhanced policies and new innovative approaches in the fight against counterfeiting.



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Steven Liew

**Mr. Steven Liew, Director, Government Relations for the Asia Pacific
Region, eBay**



eBay is currently in court proceedings with several companies. It has been stressed that the Observatory will require cooperation from all stakeholders; can you cooperate with them in light of the ongoing litigation?

Litigation is ongoing so I am not going to comment on it, but the Observatory will provide a neutral platform for all parties involved. Stakeholders can come together and have a frank discussion, exploring new ways to create synergies, to create ways to work with one another to fight a common enemy. The enemy is not one of us here. The enemy is out there. We should stand united and hopefully the Observatory will be that platform. There still is a

lot to do; there are a lot of unanswered questions as to what exactly the mission statement of the Observatory will be. What are the mandates? Those are areas that need to be covered over the next few months, but up until now I am feeling pretty positive about it.

Mrs. Christine Huber, Senior Director, anti-counterfeit projects, Sanofi Aventis

The pharmaceutical industry seems to be very interested and involved in setting up the Observatory. For some sectors, this question has been rather sensitive. Some don't want to scare consumers; others don't want to associate themselves at all with counterfeiting. Is the pharmaceutical sector ready to give data to the Commission and to the Observatory?

We welcome the principle of the Observatory. We need information, statistics and cooperation. What we are worried about is what resources will be given to the Observatory. How will the

information be handled, once collected? Will the statistics be reliable?

Another issue for us is what kind of results will be published. Some information concerning ongoing investigation is sensitive and confidential and should be handled as such. Nevertheless, we agree that statistics can be made public and we would be happy to share data with the Observatory in order to contribute to producing relevant statistics and information. This would certainly help the fight against counterfeiting.



Conclusions

The conference concluded that efforts of all those affected by counterfeiting and piracy must be joined. Until now, different enforcement agencies have argued over their mandates, Member States have tried to combat counterfeiting and piracy in 'solo actions' and businesses have been fighting among themselves. Meanwhile, the common enemy has got away and worse, successfully established a growing counterfeiting and piracy market.

The Observatory aims to put all parties concerned together in order to construct a powerful engine pulling an anti-counterfeiting and anti-piracy train. The Observatory's delegates take on an immense responsibility in their commitment to helping the EU step up its fight against illegal, dangerous and low quality competition from pirates and counterfeiters worldwide. However, the time for all stakeholders to put their heads together to ensure that all is done to prevent innovation and creativity from being compromised was long overdue.



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Charlie McCreevy

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