



Hamisítás Elleni
Nemzeti Testület

**NATIONAL BOARD
AGAINST COUNTERFEITING
ANNUAL REPORT 2009**

Contents

Introduction	2
Members of the National Board Against Counterfeiting in 2009	3
Mission of the National Board Against Counterfeiting	4
The National Strategy Against Counterfeiting	6
The activities of 2009 in the service of the implementation of the Strategy	7
The first pillar – statistics	10
The second pillar – awareness-raising	16
The third pillar – enforcement	26
Event calendar	28
Appearances in the media	29
Annexes	32
Annex No. 1: Action plan annexed to the National Strategy Against Counterfeiting for the period 2008–2010	32
Annex No. 2: Measuring the scale and the economic impact of counterfeiting and piracy	35
Annex No. 3: Criminal offences examined by the National Institute of Criminology	37
Annex No. 4: Summary of the Hungarian National Report under article 18 of Directive 2004/48/EC on the enforcement of intellectual property rights	38

Introduction

A competitive, innovative and knowledge-based economy is based on respecting creative work and on the effective protection of intellectual property evolving from the inputs of research and development, the cultural industry and marketing needed to maintain consumer confidence. Infringers of intellectual property rights are aware of the value of such properties, thus exploit others' work and financial investments in order to earn financial gain. And the "business of counterfeiting" seems to be a lucrative business since the practice of counterfeiting is spreading more and more and the range of counterfeit products is also widening. Apart from counterfeiting luxury goods, all kinds of products sought by consumers are counterfeited today – from articles of clothing and cosmetic products to electronic goods, automotive component parts and pharmaceuticals. The "pirates" of our modern world have even worked out business models for the illegal distribution of contents protected by copyright.

Even if counterfeiting and piracy causes significant and growing harm to economic operators and the state, and even if they have negative effects endangering consumers as well, counterfeiting and piracy are not accordingly rejected by the society.

Action taken against the infringement of IPR can be more effective, and the number of such infringements can be considerably decreased only if both the public bodies and the concerned industries take their part in a conscious, well-organised and persistent fight against it.

As the importance of this cooperation had been realised, the idea of establishing the National Board Against Counterfeiting (NBAC) was born, which also led to the preparation of the first National Strategy Against Counterfeiting (the Strategy) of Hungary. The Strategy determines the lines of actions and the measures to be taken for the period of 2008–2010 with the aim of improving efficiency in the fight against IPR infringements.

The Government adopted the Strategy and its annex constituting its Action Plan on 1st October 2008, thus this paper reports on the activities of the NBAC carried out in the 15 months following the adoption of the Strategy.

The necessity and the adequate direction of the efforts made and the initiatives taken in Hungary are also reinforced by the latest efforts of the European Union in this field, which are intended to strengthen the enforcement of IPR and the cooperation between the public and the private sector, as well as to develop strategies against counterfeiting and piracy – priorities which are practically the core pillars of the Hungarian Strategy (statistics, awareness-raising and enforcement of IPR).

Important conclusions can be drawn and lessons can be learnt from the initiatives and the results of the work carried out by the NBAC as regards the further implementation of the Strategy and the preparation of further strategies aimed at the strengthening of IPR enforcement. Because the fight against counterfeiting and piracy must go on. We would like to thank the people and the organisations that have taken part in the work of the NBAC so far, and we would like to encourage all the concerned public bodies and all the representatives of the concerned industries to continue their work in this direction.

Members of the National Board Against Counterfeiting in 2009

Chairman of the NBAC:

Dr. Dezső Avarkeszi *Secretary of State* _____ Ministry of Justice and Law Enforcement

Vice-Chairman of the NBAC:

Dr. Miklós Bendzsel *President* _____ Hungarian Patent Office

Zoltán Mester *Secretary of State* _____ Ministry for National Development and Economy

Dr. Márta Schneider *Secretary of State* _____ Ministry of Education and Culture

Dr. Miklós Süth *Secretary of State* _____ Ministry of Agriculture and Rural Development

Dr. Kálmán Gulyás *Secretary of State* _____ Ministry of Social Affairs and Labour

Mrs. Imréné Karácsony *Secretary of State* _____ Ministry of Finance

Dr. Mária Héjja *Head of Department* _____ Ministry of Health

Dr. István Geri *Deputy Director-General* _____ Hungarian Authority for Consumer Protection

Dr. Elek Mózs *Major General,
National Assistant Commissioner* _____ Hungarian Customs and Finance Guard

Dr. István Házi *Director General of Criminal Investigations* _____ Headquarters of the National Police

Dr. Gusztáv Bacher *Attorney* _____ American Chamber of Commerce in Hungary

Dr. András Kálmán *Director* _____ Foundation for the Copyright Protection of
Audiovisual Works (ASVA)

Sándor Simonkovics *President* _____ Business Software Alliance Hungary

Róbert Golubeff *Director* _____ Hungarian Association of IT Companies (IVSZ)

Krisztina Székely *President* _____ Association of Innovative Pharmaceutical Manufacturers

György Marosi *Executive President* _____ Hungarian Association for the Protection of Industrial
Property and Copyright

Dr. Katalin Szamosi *Vice-President* _____ Hungarian Trademark Association

István Wimmer *Secretary General* _____ Confederation of Hungarian Employers and Industrialists

Dr. Péter Horváth *Director* _____ ProArt Association for the Protection of Copyright

Tamás Gláser *Control Committee, Vice-President* _____ National Association of Entrepreneurs and Employers

Mission of the National Board Against Counterfeiting

The National Board Against Counterfeiting (NBAC) is a consultative and advisory body addressing issues concerning the fight against IPR infringements, and involved in the elaboration and the implementation of action plans against counterfeiting. The Board embraces competent public bodies working in the field of IP and its protection as well as market players and the representatives of social and economic interest organisations involved in the protection of intellectual property.

The government decided to establish the NBAC in order to combat the black economy and its inherent attribute, counterfeiting, in a resolute, effective and coordinated manner. The Body was established on 25 January 2008 by Government Decision 1002/2008. (I. 25.) amending the Government Decision 1074/2007. (X. 1.) on the appointment and the tasks of the Government

Commissioner responsible for the “New Order and Freedom” Programme. The first meeting of the NBAC was convened on 3 March 2008. As a result of the legislative amendments following the changes in the government in April 2009, the NBAC became **the consultative and advisory body of the Minister of Justice and Law Enforcement**, which was also recorded in the Rules of Procedure of the Ministry of Justice and Law Enforcement.

The mission of the NBAC is to promote effective cooperation between public bodies and social and economic interest organisations in the field of intellectual property protection, especially in the following areas (as defined in Government Decision 1002/2008. (I. 25.)):

- development of a national strategy and an annexed action plan against counterfeiting, and the coordination of their implementation;

- development and implementation of action plans against counterfeiting;

- undertaking and implementing public awareness and information campaigns and programmes;

- in-service training of the employees of law enforcement bodies and judicial organs involved in the fight against counterfeiting;

- submitting proposals to the competent minister for the legislative drafting process and the regulatory activities related to the enforcement of IP rights.

The establishment and the operation of the NBAC demonstrate that Hungary is committed to the protection of intellectual property and to the reduction of the infringements of IP rights.

THE MAIN IMPACTS AND DANGERS OF COUNTERFEITING

ON INTELLECTUAL PROPERTY OWNERS:

- The sales of legal products decrease, which may result in job losses;
- The confidence put into the quality of original products weakens, which may contribute to the further decrease in sales;
- It impairs the relationship of trust, which is at the very core of the operation of the trade in goods and services;
- It negatively affects R&D investment.

ON CONSUMERS:

- Consumers get to inferior, below the average products;
- Worse cost–benefit ratio than expected;
- Counterfeit products may jeopardize the safety of consumers;
- They may pose serious risks to health (especially foodstuffs, pharmaceuticals and cosmetic products).

ON THE SOCIETY AND THE ECONOMY:

- As counterfeiting is hidden, it causes loss of income in the budget;
- It has a negative impact on employment (loss of jobs in the sectors affected by counterfeiting, and shift in employment to less secure jobs);
- The action and the precautions taken against counterfeiting, and the awareness-raising campaigns entail considerable extra outlay for society.
- Counterfeiting interlocking with organised crime fosters crime and corruption, and increases the proportion of black economy activities;
- Counterfeiting adversely affects innovation, which may trigger a slowdown in economic growth.

EUROPEAN COOPERATION FOR THE MORE EFFECTIVE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The Commission of the European Communities tabled its Communication on enhancing the enforcement of **intellectual property rights** (13286/09) to the European Parliament, to the Council and to the European Economic and Social Committee on 11 September 2009, in which – in accordance with the Council Resolution of 25 September 2008 on a comprehensive European anti-counterfeiting and anti-piracy plan – the Commission proposed to make IPR enforcement work better by complementing legislation with a range of non-legislative measures. The Communication underlines the importance of consolidating public and private sector partnerships, and the Commission – as the Community level coordinator of the consolidation – established the **European Observatory on Counterfeiting and Piracy**. The Observatory, serving as a central resource, is planned to assume a key role in the following areas:

- gathering and analysing data and information related to the infringement of IPR, and the development of a benchmark methodology for the collection and analysis;
- carrying out detailed analyses and providing assessments of the economic and societal implications of counterfeiting and piracy, including the impact on innovation, competitiveness and employment in Europe, the involvement of organised crime and risks to the health and safety of European citizens;
- development of joint enforcement strategies;
- promoting and spreading best practice (in the field of public enforcement, in the strategies of the industries as well as in the awareness-raising initiatives);
- fostering public and private sector cooperation, in particular with respect to awareness-raising and the training of enforcement agencies.

On the basis of the abovementioned communication from the Commission, the Council of the European Union welcomed the creation of the European Observatory in its resolution adopted on 1 March

2010 (Council Resolution of 1 March 2010 on the enforcement of intellectual property rights in the internal market) with a view to strengthening the protection of IP, and it encouraged Member States to develop national anti-counterfeiting and anti-piracy strategies and to establish transparent coordination structures.

Hungary is represented in the European Observatory by the President of the Hungarian Patent Office and by the societal representatives of the NBAC. With the development of its National Strategy Against Counterfeiting for the period 2008–2010, and with the measures taken to implement it, as well as with the National Board Against Counterfeiting, a coordinative and consultative body established to promote cooperation between the representatives of the public sector and the concerned industries, Hungary has certainly proven its strong commitment to the more effective protection of intellectual property rights – an objective becoming more and more prioritised in the European Union, as well.

COUNTERFEITING — DEFINITIONS

In the work of the NBAC and for the purposes of the **National Strategy Against Counterfeiting**, “**counterfeiting**” means all forms of **infringement of IP rights**, regardless of what form of copyright or industrial property right protection is in question and regardless of whether a civil wrong or a criminal offence has occurred.

Intellectual property rights can be traditionally divided into two main categories: industrial property rights and copyright. **Industrial property rights** grant protection for technical intellectual creations and for signs distinguishing goods and services, thus they include patents, supplementary protection of certain goods, plant variety protection, utility model protection, design protection, protection of the topography of microelectronic semiconductor products, trademark protection and the protection of geographical indications. In general, counterfeiting can be defined as the infringement of industrial property rights.

Copyright protects literary, scientific and artistic works, and — by the so-called neighbouring or related rights — the works and performances using them (e.g. performers, sound recordings, broadcasts, films and databases). In general, piracy means the infringement of copyright.

In the case of infringement of intellectual property rights, the enforcement of rights may happen in three main ways: via civil proceedings, via criminal justice or through customs law enforcement.

The National Strategy Against Counterfeiting

To ensure concerted measures against counterfeiting, Government Decision 1002/2008. (I. 25.) stipulated the development of a national strategy and an action plan against counterfeiting together with the coordination of their implementation as one of the major responsibilities of the NBAC.

On the proposal from the Government Commissioner responsible for the “New Order and Freedom” Programme, the Minister of Justice and Law Enforcement, and the President of the Hungarian Patent Office, the Government, on its session held on 1st October 2008, debated and adopted the National Strategy Against Counterfeiting for the period 2008–2010 (hereinafter referred to as “the Strategy”) and its Action Plan supplemented with result indicators. The Action Plan was published in the Government Decision 2140/2008. (X. 15.) on the Action Plan Annexed to the National Strategy Against Counterfeiting for the period 2008–2010. (The Action Plan can be found in Annex 1 of this Annual Report.)

By the implementation of the Action Plan annexed to it, the objective of the Strategy is

- to reduce significantly the rate of IPR infringements in Hungary;
- to develop more effective measures against infringements by improved tools;
- to raise public awareness with respect to the significance of the protection of IPR and to the consequences of IPR infringement.

The Strategy gives an overview of the legal and institutional background of IPR enforcement in Hungary, presents the national characteristics and the impact

of IPR infringements, and outlines the international experience acquired in the fight against the infringement of IPR. The Strategy identifies the instruments needed to take action, and it determines the aspects of the monitoring and the effectiveness check of its implementation. For the period 2008–2010 it draws up an Action Plan identifying the measures to be taken, the persons responsible for their implementation as well as their resources.

In accordance with its objectives, the Strategy and the Action Plan annexed to it determine the main pillars and the lines of the action to be taken against the infringement of IPR. The lines of action and the measures are centred on **three main pillars in the Strategy**, which are the following:

- **Statistics** – systematising statistical data related to counterfeiting so that a real and accurate picture can be gained in a well-founded methodological way about the scale and characteristics of IPR infringements in Hungary.
- **Awareness-raising** – initiating and implementing awareness-raising and attitude-shaping measures to raise public awareness of the significance of the protection of intellectual property rights.
- **Enforcement** – reviewing the regulatory environment for enforcement as well as the questions of law enforcement and the measures and tools backing the right holders, and initiating necessary amendments, new tools and measures with a view to making the action against the infringement of IPR more effective.

Apart from these three pillars, the following **industries** are paid particular attention in the Strategy together with

the identification of the lines of action and measures – firstly because of the effects of counterfeiting on society and health in these areas, secondly due to the intensity of counterfeiting in these industries, and thirdly because of the interests of domestic industries:

- **food industry,**
- **the industry of pharmaceuticals and pesticides,**
- **creative and IT industry.**

The tasks of the NBAC include the coordination and the monitoring of the implementation of the Strategy and the coordination of the Strategy-related work between the representatives of the ministries, the central public administration bodies and the non-governmental members in the NBAC. During this work, the Body capitalises on the experience of the implementation and the impact of the Strategy and the difficulties encountered during its implementation on the basis of the results of the examinations and data collection initiated due to the infringement of IPR.

The financial resources of the implementation of the Strategy are the following: part of the budget of the Hungarian Patent Office earmarked for this purpose and indicated in the Action Plan; further instruments earmarked for this purpose in the budget of public institutions responsible for and cooperating in the implementation of the Strategy; instruments offered by social and economic interest organisations involved in the implementation of the Strategy; other offers.

The activities of 2009 in the service of the implementation of the Strategy

The implementation of the Strategy is accomplished through the implementation of the Action Plan annexed thereto, which determines the measures for each pillar and industry in each year for the period 2008–2010; it also names the persons responsible for them or, depending on the case, the persons involved on request, and it also indicates the necessary resources to finance the implementation.

In order to perform its coordinative tasks related to the implementation of the Strategy, the NBAC has a Management Board of six members that ensures effective and operative work, and several working groups have been set up to manage competently the prioritised expertise domains: Working Group on Statistical Data Collection, Working Group on Education, Working Group on the Legal Practice of Criminal Law and Administrative Criminal Offences, Working Group Against the Counterfeiting of Pharmaceuticals and Pesticides, and Working Group on Internet Based Services. The administrative tasks related to the work of the NBAC are carried out by the Hungarian Patent Office serving as the Secretariat of the NBAC. The HPO, as a government office, plays a central role in the protection of IPR and is committed to make IPR enforcement more effective, which is also proven by its central role played in the establishment and in the activities of the NBAC, as well as by the financial resources it dedicates for this purpose.

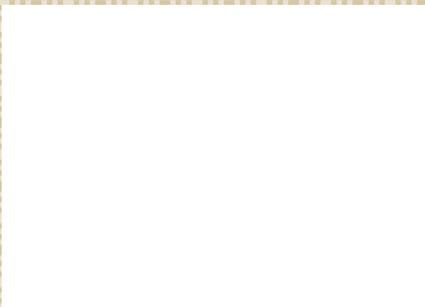
On the basis of the experience gained from the implementation of the Strategy in 2009, from among the public bodies involved in the activities of the NBAC, it was the investigating authorities, the Hungarian Customs and Finance Guard and the Hungarian Police that actively contributed to the work of the NBAC in the first place, making remarkable commitment in the field of training. **The Intellectual Property Rights** Division of the Central Hungarian Regional Directorate of the Hungarian Customs and Finance Guard has proven itself to be an especially active, proactive and cooperative partner in the awareness-raising activities of the NBAC. In the working groups of the Body, fruitful working relations have developed with the representatives of the prosecution services and courts. As regards the members of the NBAC from the non-governmental sector, the organisations representing the copyright industries (ProArt, ASVA, BSA – **Alliance for Copyright Protection**) and one interest organisation from the pharmaceutical industry (Association of Innovative Pharmaceutical Manufacturers) have primarily shown a remarkably active, proactive and supportive attitude.

In the following part of the Report the activities of the NBAC will be demonstrated according to the three pillars of the Strategy.



06

THE FIRST PILLAR – STATISTICS



The first pillar – statistics

To determine the lines of action in the fight against the IPR infringements, and to be able to take effective measures, reliable statistical data are required about the scale, the characteristics and the economic and social impacts of infringements, as well as about its composition in the different industries. In view of these considerations, and in line with the objectives of the Strategy, **the NBAC takes as priority the collection and the systematisation of statistical data on infringement related to counterfeiting and piracy**, as well as the development of a national methodology of statistical data collection and assessment. The issues concerning statistical data collection related to counterfeiting were addressed by the Working Group on Statistical Data Collection consisting of experts from the Hungarian Central Statistical Office, the Ministry of Justice and Law Enforcement, the National Council of Justice, the Prosecution Service of the Republic of Hungary, the Central Directorate of the Hungarian Customs and Finance Guard, the Headquarters of the National Police and the Hungarian Patent Office.

The statistical figures related to counterfeiting and piracy are gained from the official data sources of public authorities (these are the data of judicial statistics concerning IPR infringements) on the one part, and the estimates and model calculations are gained from public opinion and market research companies, economic research institutions and professional organisations, on the other part.

INFRINGEMENT OF IPR – IN VIEW OF THE JUDICIAL STATISTICS

From among the information on counterfeiting and piracy, *the data of judicial statistics regarding the infringement of IPR are highly reliable* since they come from the official statistical data sources

of public authorities and are not based on estimates. Having regard to the fact that criminal offences related to IPR are characterised by *a high degree of latency*, the official criminal statistical data do not show an adequate picture about the real frequency of these criminal offences but they represent only the “tip of the iceberg”. The official enforcement statistics, therefore, can only be of limited use to assess the scope of counterfeiting and piracy, to make conclusions about the total volume of IPR infringements, and to obtain estimates about it, although they give valuable supplementary information on how the trends develop as regards the revealed criminal offences of IPR infringements. When assessing criminal statistical data, it must also be borne in mind that these data do not reflect, or understate the real proportion of the new types of crimes of counterfeiting and piracy (for instance, copyright infringement committed by file sharing on the Internet).

On the basis of the National Statistical Data Collection Programme (OSAP), the Working Group on Statistical Data Collection of the NBAC carried out the selection and the systematisation of the judicial statistical data related to the infringement of IPR for the period 2004–2008, which are recorded by official data providers within the framework of the Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (ENYÜBS) and of the judicial statistical reporting system. The Body asked the researchers of the National Institute of Criminology (NIC) to complete the statistical data repository, to assess and analyse the data, and to submit proposals for the development of the judicial statistical data reporting system with respect to the infringement of IPR.

As a result of the cooperation between the NBAC and the NIC, a comprehensive statistical repository of criminal offences involving the infringement of IPR can be created for the first time, making it possible to access judicial statistical data related to counterfeiting of the period 2002–2009 in one single place. The NBAC intends to publish the statistical data repository in the first half of 2010 in the form of a publication, making it available for experts, policy-makers, researchers and consumers interested in the phenomenon of counterfeiting.

CRIMINAL OFFENCES INFRINGEMENT OF IPR COMMITTED BETWEEN 2002 AND 2009

The statistical analysis of disclosed criminal offences infringing IPR includes the examination of facts of six criminal offences laid down in the Criminal Code. These criminal offences are the following¹: False Marking of Goods – Criminal Code, Section 296; Infringement – Criminal Code, Section 329; Infringement of Copyright and Rights Related to Copyright – Criminal Code, Section 329/A.; Circumvention of Technological Measures for the Protection of Copyright and Rights Related to Copyright – Criminal Code, Section 329/B.; Falsifying Data Related to Copyright Management – Criminal Code, Section 329/C.; Infringement of Industrial Property Rights – Criminal Code, Section 329/D.

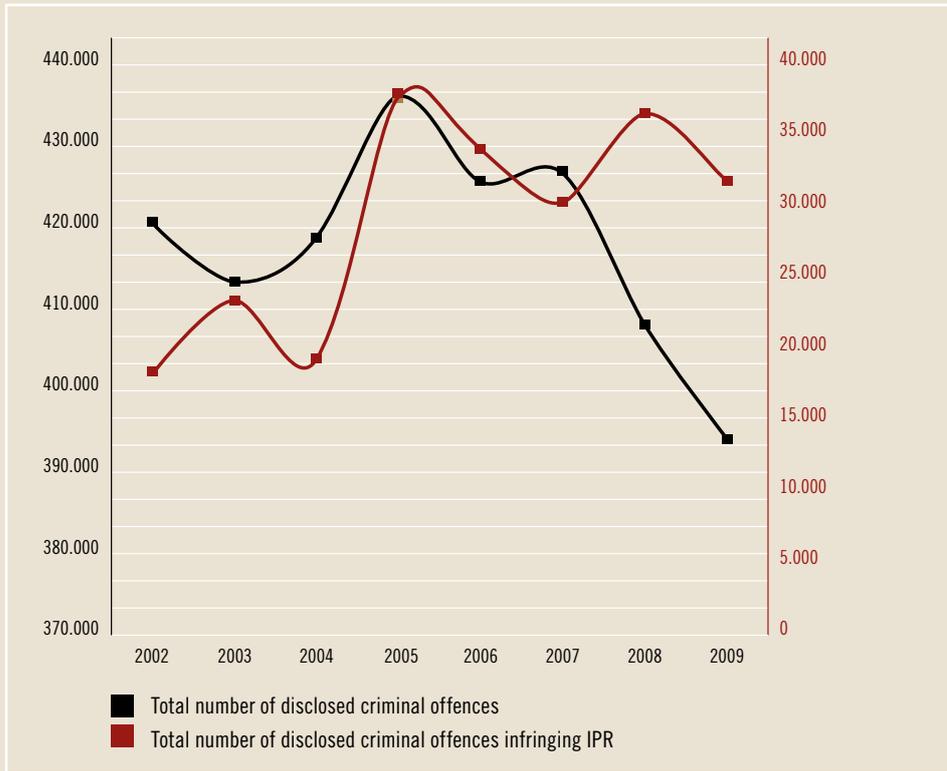
1. The criminal offences are defined in Annex 3 of this Annual Report.

1 The number of criminal offences involving IPR infringement significantly grew between 2002 and 2009, from 18 000 to 31 000, an increase of 73.5%, while – showing the contrary in tendency – the total number of disclosed criminal offences decreased from 420 000 to 394 000 (a decrease of 6%). In line with the rise in figures, the proportion of criminal offences involving IPR infringement also increased substantially in comparison with the total number of disclosed criminal offences: in 2002 out of the total number of criminal offences the proportion of those involving IPR infringement was 4%, while in 2009 it doubled and rose to 8%. Nevertheless, during the period under review, strong yearly fluctuation can be observed in the number of disclosed criminal offences involving the infringement of IPR: in some years substantial increase occurred, while in others considerable decrease was registered.

2 Out of the six criminal offences of IPR infringement laid down in the Criminal Code, the most frequently committed offence is the infringement of copyright or rights related to copyright (Criminal Code, Section 329/A): in 2009 more than 31 000 such offences were discovered, which is 97% of all investigated criminal offences involving IPR infringement. The number of discovered criminal offences from among the other examined criminal offence types was much smaller in 2009: it was 500 in the case of False Marking of Goods (Criminal Code, Section 296), 318 in the case of Circumvention of Technological Measures for the Protection of Copyright and Rights Related to Copyright (Criminal Code, Section 329/B), and 99 in the case of Infringement of Industrial Property Rights (Criminal Code, Section 329/D).

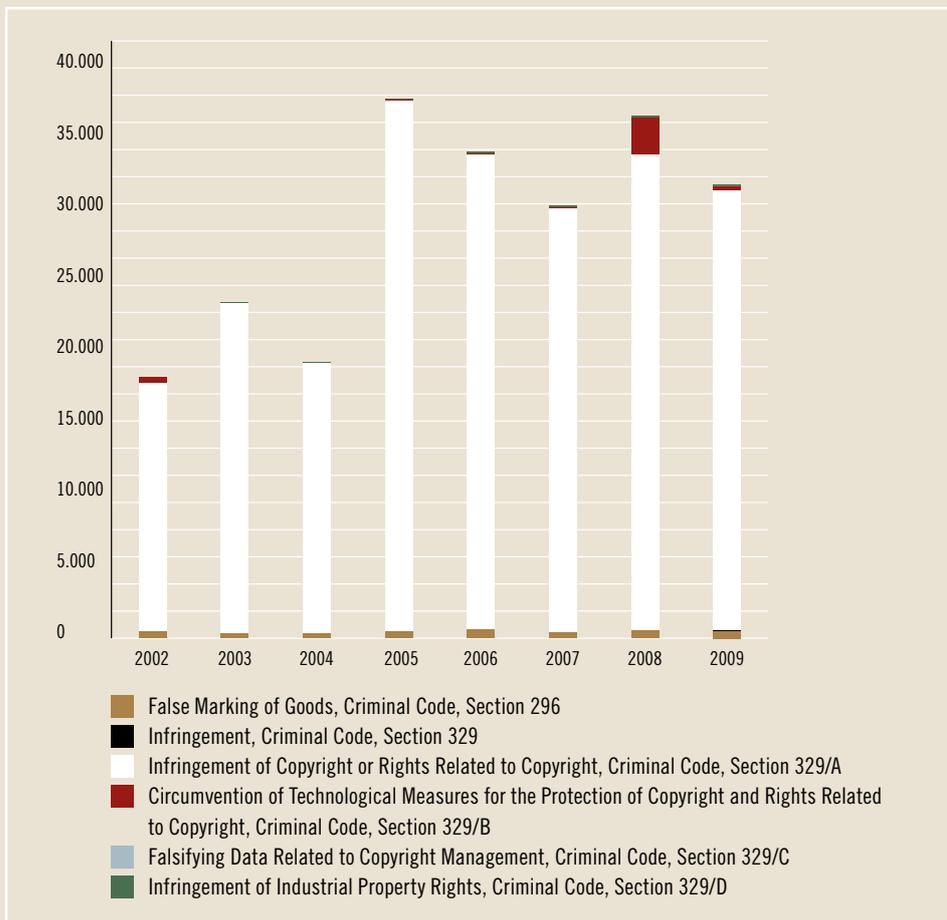
1 CHANGES IN THE TOTAL NUMBER OF CRIMINAL OFFENCES AND IN THE NUMBER OF CRIMINAL OFFENCES INVOLVING THE INFRINGEMENT OF IPR, 2002–2009

Source: Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Enyübs), National Institute of Criminology (OKRI)



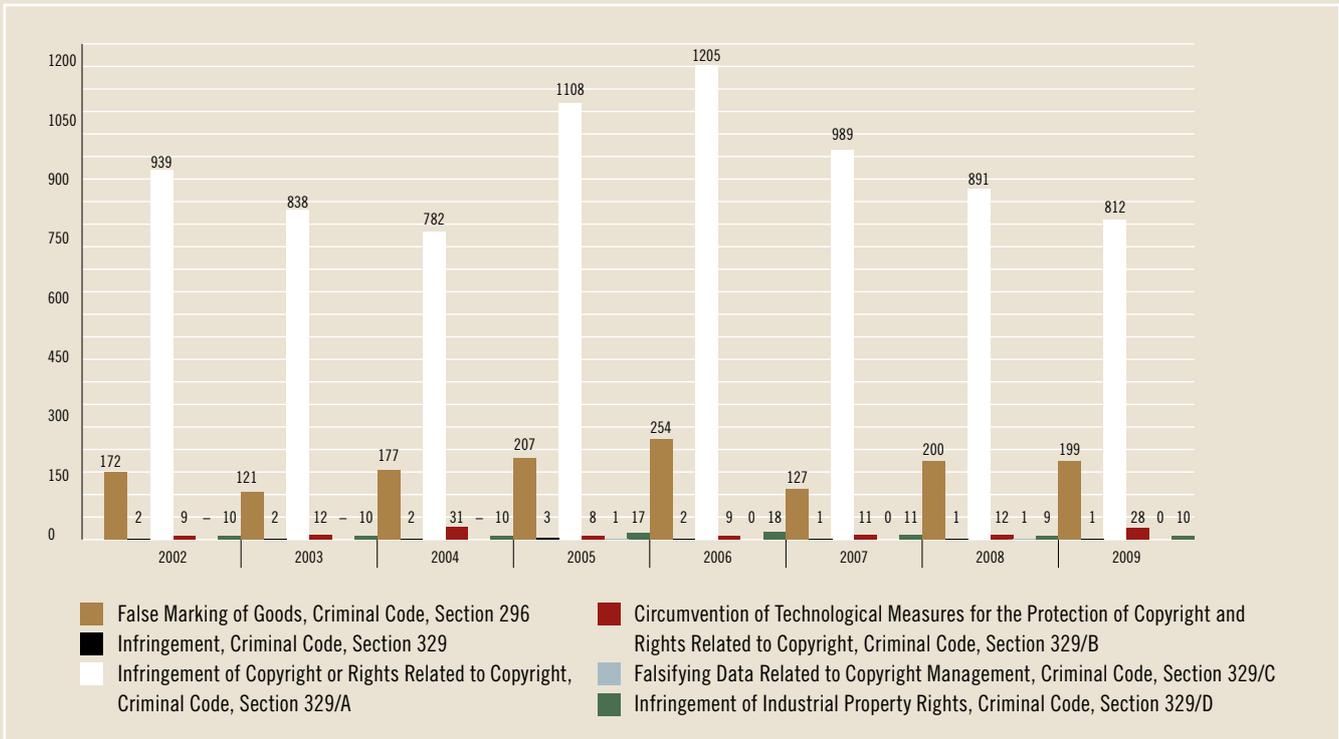
2 CHANGES IN THE NUMBER OF DISCOVERED CRIMINAL OFFENCES INFRINGING IPR BY TYPE OF CRIMINAL OFFENCE, 2002–2009

Source: Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Enyübs), National Institute of Criminology (OKRI)



3 NUMBER OF OFFENDERS BY CRIMINAL OFFENCES, 2002–2009

Source: Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Enyübs), National Institute of Criminology (OKRI)



As regards the regional distribution of the discovered criminal offences involving the infringement of IPR, such offences were dominant in the capital: in 2008 41% of such criminal offences were committed in Budapest. Apart from Budapest, locations with a high frequency of such offences include the counties of Hajdú-Bihar (6%), Csongrád (6%), Borsod, (5%), Szolnok (4,7%) and Pest (4,4%).

According to the object of the discovered criminal offences, the most frequent offences concerned software: the proportion of criminal offences related to software was 30% in 2008. As regards the tool of committing criminal offences, IT hardware tools (36%) and IT software tools (28%) predominated in 2009. Concerning the method of committing criminal offences, the discovered offences were primarily committed by copying (53%) and illegal placing on the market in 2008.

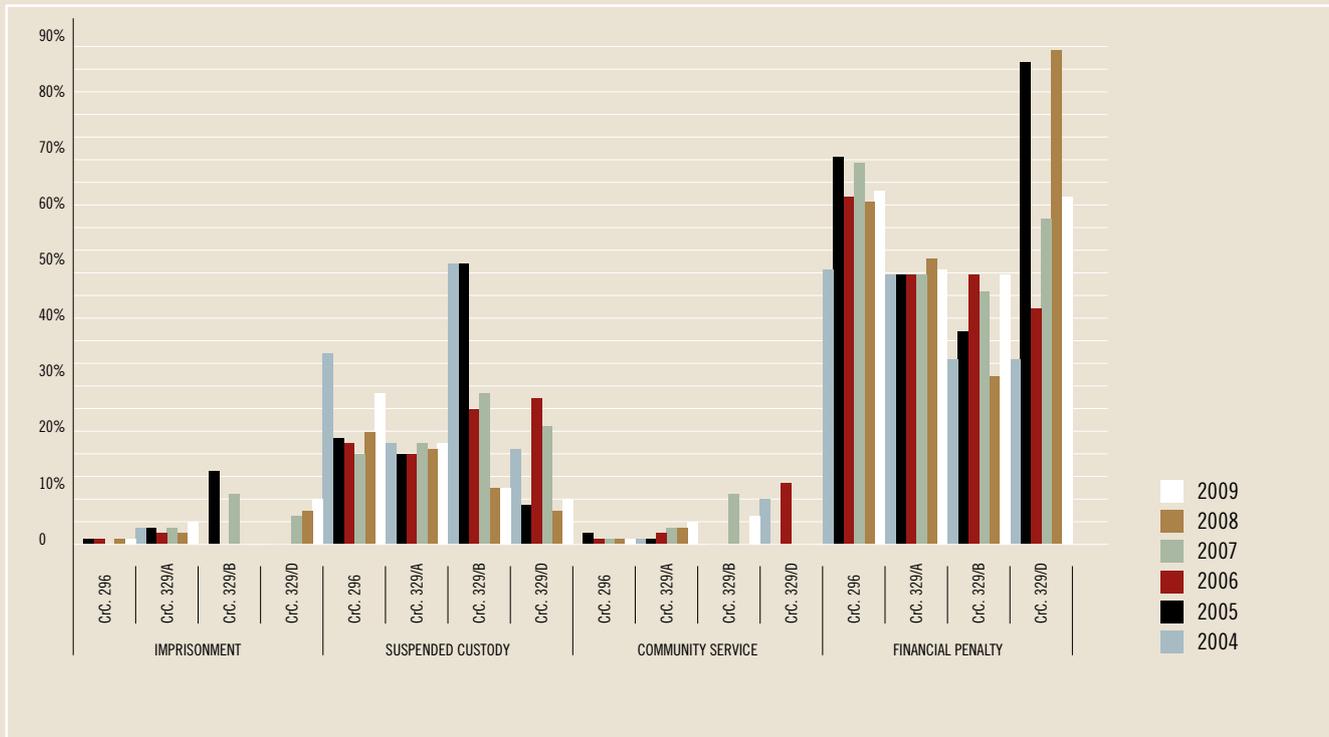
In respect of the method of committing criminal offences, copying significantly decreased between 2002 and 2008, while the proportion of illegal placing on the market increased four-fold. As a consequence of the Internet becoming widespread, a substantial part – nearly two-thirds – of the offences related to the infringement of IPR is committed at the place of residence of the offenders; one-third of the places where the examined criminal offences were committed are places of catering and commerce.

3 The criminal offences infringing IPR were committed by 1150 people on a yearly average between 2002 and 2009, which constitute approximately 1% of the total number of discovered offenders. Out of them, on average one thousand offenders committed acts infringing copyright or rights related to copyright. At the same time, during the period under review, strong yearly fluctuation can be observed in the number of discovered offenders infringing of IPR: in some years substantial increase occurred, while in others considerable decrease was recorded. Although the number of offenders in 2002 was 1132, in 2009 this figure decreased by 7% to 1050.

4 As regards the average of the period 2002–2008, it was the criminal divisions of the police that initiated the most proceedings (40%) in the case of criminal offences infringing IPR, however, victims as natural persons (12%), other natural persons (10%), other legal persons and the Hungarian Customs and Finance Guard also initiated proceedings. 80% of the cases ended with indictment, while 12% of them were terminated on average. The proceedings were typically ended due to the preparation of the indictment (or the charge). The public prosecutor supervising the investigation did not alter the classification of the criminal offence as determined by the investigating bodies in 92% of the cases, so the investigating bodies managed to establish the facts accurately. A substantial part of the offenders convicted of acts infringing IPR were sentenced to payment of a fine or to suspended custody.

4 DISTRIBUTION OF CONVICTED OFFENDERS BY TYPE OF CONVICTION, 2002–2009

Source: Unified System of Criminal Statistics of the Investigative Authorities and of Public Prosecution (Enyübs), National Institute of Criminology (OKRI)



DATA OF THE HUNGARIAN CUSTOMS AND FINANCE GUARD ON COUNTERFEITING

5 10–20% of all infringements discovered by the Hungarian Customs and Finance Guard in a year are committed on products under intellectual property protection. Within this rate, the number of infringements belonging to the category of criminal offences is increasing over the number of administrative criminal offences.

6 Value of goods in criminal offences is always determined in the case of false marking of goods on the basis of the value of the actually falsified goods.

5 A BREAKDOWN PER YEAR OF THE NUMBER OF INFRINGEMENTS, 2002-2009

No. of infringements	2002	2003	2004	2005	2006	2007	2008	2009
False Marking of Goods – criminal offences	1 839	565	338	1 266	735	401	582	1 129
False Marking of Goods – administrative criminal offences	NDA	NDA	NDA	NDA	2 965	2 328	1 849	1 753
Infringement of Copyright – criminal offences	214	503	164	276	245	457	450	2 140
Total	2 053	1 068	502	1 542	3 945	3 186	2 881	5 022

6 A BREAKDOWN PER YEAR OF THE VALUE OF GOODS IN CRIMINAL OFFENCES, 2002-2009

Value of goods in criminal offences (HUF)	2002	2003	2004	2005
False Marking of Goods – criminal offence	4 332 313 533	2 370 249 085	494 598 948	24 357 778 810
False Marking of Goods – administrative criminal offence	NDA	NDA	NDA	NDA
Infringement of Copyright – criminal offence	253 152 704	260 634 119	81 074 765	211 550 914
Total	4 585 466 237	2 630 883 204	575 673 713	24 569 329 724

Value of goods in criminal offences (HUF)	2006	2007	2008	2009
False Marking of Goods – criminal offence	5 124 990 809	2 637 343 737	2 850 460 154	3 090 429 376
False Marking of Goods – administrative criminal offence	54 588 560	34 827 598	22 208 392	40 264 536
Infringement of Copyright – criminal offence	283 705 881	1 008 476 082	4 912 585 951	743 927 405
Total	5 463 285 250	3 680 647 417	7 785 254 497	3 874 621 317

Products infringing IPR are typically articles of clothing from the Far East, and most of them (70–80%) are T-shirts and shoes. The scope of products affected by infringement is expanding, and besides the repeatedly falsified brand names, the counterfeits of new brand names also appear on the market, whose quality is getting better and better. It is typical that at the time of worldwide sporting events, the mascots of the events are forged in greater quantities appearing in different products.

Counterfeit products come to Hungary primarily from Turkey, Serbia, Slovakia or Slovenia, and the infringements are generally committed with respect to products from the Far East (mainly Chinese and Vietnamese products). One of the main routes of container transport is the entry into the port of Rijeka in Croatia, or to the port of Koper in Slovenia. For inland distribution, the other part of the goods are entered with customs clearance in Slovakia and brought to Hungary centralising them in the market of Budapest Józsefvárosi Piac and in the warehouses in its surroundings.

Considering the tendency for the detection of infringements, it can be said that the infringement of copyright or rights related to copyright as criminal offence was detected on several occasions during the checks carried out at marketplaces, which resulted in the seizure of CDs and DVDs containing illegally copied music recordings.

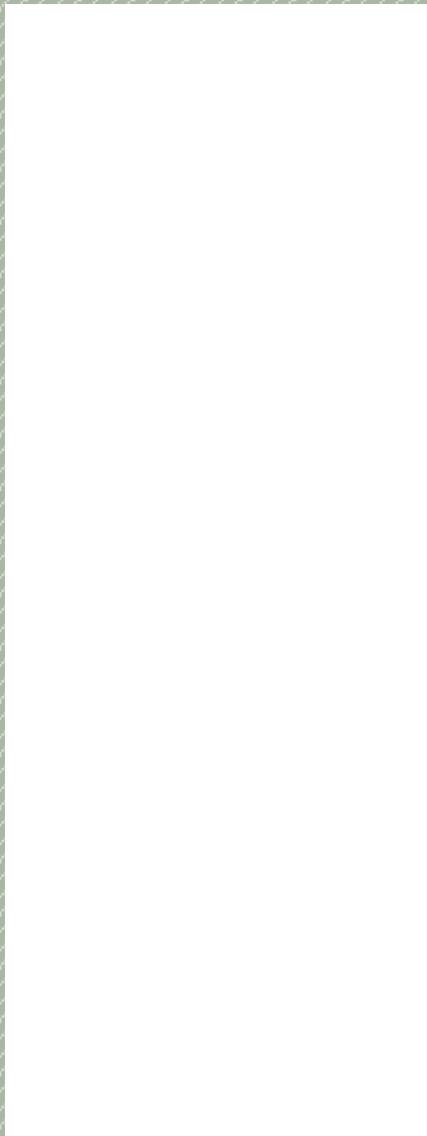
THE METHODOLOGY FOR MEASURING COUNTERFEITING

The NBAC, as the national catalyst of statistical methodological R&D activities related to counterfeiting, commissioned the KOPINT-TÁRKI Institute for Economic Research Ltd. in 2009 to draw up an *analytical study*. The research provided an overview of the economic statistics background and the measurement methods of counterfeiting through the examination of the experience acquired by the United Kingdom and France, countries having produced internationally recognised results in the fight against counterfeiting. Within the framework of the NBAC's work on measurement methodology, by January 2010 a methodological synthesis study was executed, which examined and analysed in terms of domestic adaptation the standard measurement procedures applied in the international practice (*the best practices*), and presented the international statistics and analyses on counterfeiting and piracy from a methodological point of view. (A summary of the study on the measurement methods of the scale and the economic impact of counterfeiting and piracy can be found in Annex 2 of this Annual Report.)

Using the general consideration as a starting point that the estimates of the industries profitably contribute to the understanding of the magnitude, characteristics and impacts of counterfeiting and piracy in Hungary, the NBAC, in October 2009, requested the professional interest organisations mostly affected by counterfeiting and piracy to share their experience acquired in the measurement of counterfeiting in Hungary. From among the domestic organisations of the concerned industries, the surveys of *Business Software Alliance* (BSA) into the software industry and the surveys of *ProArt* on copying practices can be mentioned as positive examples in the industries.

07

THE SECOND PILLAR – AWARENESS-RAISING



The second pillar – awareness-raising

The second pillar of the Strategy is **awareness-raising**. The main objectives of this field are the initiation and the implementation of awareness-raising and attitude-shaping measures concerning IP protection and enforcement. Awareness-raising is a two-way process:

- Firstly, the in-service training of the staff of public bodies involved in enforcement – especially law enforcement bodies and judicial organs – must be ensured;
- Secondly, informational and educational programmes and campaigns must be developed or continued for the different concerned social target groups, especially for SMEs, consumers and young people.

TRAINING OF THE STAFF OF LAW ENFORCEMENT BODIES

The key to the effective action of authorities on counterfeiting and piracy is a high degree of professionalism of public bodies and their commitment to the protection of intellectual property. Thus, the NBAC – in accordance with the objectives defined in the Strategy – draws particular attention to the in-service training of law enforcement bodies in the field of IPR enforcement.

The Working Group on Education of the NBAC established a diagnosis of the situation concerning the trainings in IP protection organised earlier at law enforcement bodies, the training structure of the different bodies and the possibilities of organising future trainings.

In order to promote the dialogue between law enforcement bodies according to their needs, the Working Group on Education of the NBAC organised a one-day **conference** (with the participation of 40 people) for senior judges, public prosecutors, customs and excise officials, and police officers at the Hungarian Judicial Academy on 22 April 2009. The title of the conference was “Cooperation of enforcement bodies in criminal proceedings related to copyright infringements”. After the presentations

on the significance of copyright industries in the national economy and on the classification of copyright infringements, the speakers of the conference from law enforcement bodies shared their experience in the proceedings related to the criminal offences of copyright infringement with the participants, and presented the problems they encountered in practice. The conference continues in 2010 as a result of the positive feedback from the participants.

7 On 26 August 2009, under the aegis of the NBAC, the **Police College**, the Hungarian Patent Office and the ProArt Association for the Protection of Copyright concluded a Cooperation Agreement, as a result of which the education of intellectual property protection was introduced at the Police College within the specialisation of economy protection from the autumn term of 2009. The subject of intellectual property protection is taught for one term (28 times 45 min.), in the first half of which the instructors of the ProArt Association for the Protection of Copyright teach knowledge on copyright (paying special attention to the online usage of copyright works and to online copyright infringements), while in the other half of the term the instructors of the Hungarian Patent Office teach industrial property knowledge for the students of the college.

As a result of the Cooperation Agreement concluded with **the Police**, from September until November 2009 the instructors of the ProArt Association for the Protection of Copyright provided **training sessions on copyright** for police officers from each county of Hungary on twenty-one occasions. Each police station sent participants for the training, which could be realised with the financing of the NBAC. The one-day training sessions focused on practical issues, and the police officers could learn about the principles of information technology, the online usage of copyright works and the most frequent types of copyright infringement.

With the support of the NBAC, the auxiliary material entitled “Legal

instruments to be applied in the case of copyright infringements” was sent to the law enforcement bodies.

Several employees of the Hungarian Customs and Finance Guard successfully completed the intermediate and advanced level industrial property training courses of the Hungarian Patent Office in 2009.

With the support of the NBAC, the Hungarian **Foundation for Trademark and Copyright Protection** held the **Brand Protection Forum** for the employees of the Hungarian Customs and Finance Guard on 24 September 2009, where the representatives of several cooperating proprietor companies gave practical advice on how to recognise counterfeits.

GENERAL AWARENESS-RAISING

To reduce the spread of counterfeiting and piracy, it is not sufficient to deal with the supply side of the issue; it must be complemented with measures aiming the reduction of the demand for counterfeit or pirated products. The aim of the information programmes and communication campaigns, which emphasize the importance of IP protection and draw attention to the consequences and dangers of counterfeiting and piracy, is to increase the awareness of consumers, who then, on the basis of the information they acquired, can make responsible decisions about their buying habits. The persistent and effective awareness-raising activities may lead to the decrease in the demand of counterfeit and pirated articles in the long term.

The Strategy and the Action Plan annexed to it envisage the organisation of national communication campaigns and a series of events against counterfeiting, as well as the development of informational and educational programmes focusing on the different target groups concerned (consumers, young people, SMEs) in order to increase awareness of IP protection and the social rejection of infringements.



7

26 August 2009

Cooperation Agreement with the Police College

EXAMINATION OF PUBLIC ATTITUDES IN HUNGARY

In order to obtain information on public attitudes towards counterfeiting, the NBAC initiated a pioneering **consumer survey** with the involvement of TÁRKI in spring, 2009. The representative nationwide survey of 1000 people conducted for the first time in Hungary tried to find answers for the following questions: What kind of counterfeit products do Hungarian consumers buy?; What do they think of counterfeits?; What motivate them to buy counterfeits?; How much do they know about the social impacts of counterfeiting?; What do they think about the punishments inflicted for counterfeiting?

8

WHAT KIND OF COUNTERFEIT PRODUCTS DO CONSUMERS BUY?

Product	Yes, any time	Perhaps	No	Don't know
Clothing products	29	38	32	1
Perfumery	15	25	59	1
CD/DVD	15	25	59	1
Software	12	21	64	3
Food	2	10	87	0
Medicines	1	6	92	0

THE RESULTS OF THE QUESTIONS ADDRESSED TO THE CONSUMERS

8 According to the results of the survey, the Hungarian consumers are the least concerned whether a product is genuine or fake in the case of clothing products: 3 consumers out of 10 would buy fake articles of clothing any time, while 38% of them would think about the offer. 15% of the people surveyed would buy fake perfumes and CD/DVD any time, while this rate is 12% in the case of computer programs. People are the most careful about products that are potentially dangerous to their health: only 2% would buy food of uncertain origin at any time, and only 1% would buy pharmaceuticals of uncertain origin at any time. The proportion of those who would *consider* buying food or pharmaceuticals of uncertain origin is somewhat higher: 10% would say yes for such food, while 6% would buy such pharmaceuticals.

9 WHAT DO PEOPLE THINK OF COUNTERFEIT PRODUCTS?

Statement	Agree	Perhaps	Disagree	Don't know
It is more profitable to buy original products in the long run	71%	19%	7%	3%
Counterfeits are as good in quality as the originals	17%	29%	51%	3%
If the original products were cheaper, there would be less demand for counterfeits	79%	15%	5%	1%
It is impossible to differentiate the majority of counterfeits from the originals	40%	32%	26%	3%

10 WHAT DO PEOPLE THINK OF THE ECONOMIC AND SOCIAL IMPACTS OF COUNTERFEITING?

Statement	Agree	Perhaps	Disagree	Don't know
Counterfeits are advantageous to people, they only cause damage to manufacturers	42%	30%	25%	3%
Counterfeiting causes serious losses to the public budget	65%	21%	7%	7%
Counterfeiting results in job losses	49%	28%	16%	8%
Counterfeit products can be dangerous to health	67%	23%	7%	2%
A person who sells counterfeits commits a criminal offence	65%	24%	10%	2%
Counterfeiters and the distributors of counterfeits should be punished harder	69%	24%	7%	1%

9 As it was expected, the answers revealed that Hungarian consumers are motivated to buy counterfeit products by the cheaper price and not by the quality. Only every sixth respondent believes that counterfeit products are as good in quality as the originals. Half of the respondents think that counterfeit products are of weaker quality, while 3 people out of 10 think it is not possible to state a clear view in this issue. Very few respondents (only 7% of the people surveyed) believe that counterfeits can compete with original products in the long run, while the majority of the people, that is 71% of them, think that it is more profitable to opt for the original product in the long run. The research substantiates the price sensitivity of Hungarian consumers since according to the survey 8 respondents out of 10 think that if original products could be bought cheaper, there would be less demand for counterfeits.

10 The respondents' opinion is contradictory as regards who counterfeiters cause damage to. 42% of the people surveyed think that counterfeits are advantageous to consumers, and that they only cause harm to manufacturers. At the same time, nearly two-thirds of the consumers are aware of the fact that counterfeiting causes serious losses to the public budget, and every second respondent also knows that counterfeiting may trigger job losses.

The research revealed that nearly two-thirds of the consumers regard the manufacturing and distribution of counterfeits as a criminal offence. The vast majority of the people think that more severe punishment should be imposed on counterfeiters and distributors of counterfeits than it is the case at present. This may partly result from the fact that two-thirds of the respondents believe that the purchase of counterfeit products increase the income of organised crime. According to 72% of the people surveyed, more frequent and more efficient official checks are needed to eliminate counterfeits.

The data indicating that people recognise the economic and social impact of counterfeiting and the need for more stringent measures against counterfeiters are in conflict with the answers given to the question surveying the willingness to buy counterfeits, that is: "What kind of counterfeit product would you buy?".

The results of the consumer survey confirm the necessity of the measures increasing public awareness, and they can help to determine the lines of action in the information campaign. The regular repetition and assessment of consumer surveys can usefully contribute to the action against counterfeiting in the future, as well.

CAMPAIGNS

Within the framework of the activities of the NBAC, the following awareness-raising campaigns were conducted:

■ The NBAC has been sending daily **newsletters** to the representatives of the media since December 2008. The newsletters include world news and national news, which are intended to inform the whole public about the consequences of counterfeiting and the anti-counterfeiting efforts and results through the media. The news reappears among the news of different publications. Sign up for the newsletter at: hent@hpo.hu.



December 2008

11 Leaflet campaign against illegal software usage and illegal film and music downloads



March 2009

12 Campaign against the counterfeiting of pharmaceuticals

11 Before the Christmas holidays in December 2008, distributed **leaflets** and **stickers** placed on products drew the attention of the buyers of electrical products – with the cooperation of electrical chain stores – to the protection of intellectual property, especially to the consequences of illegal software usage and illegal film and music downloads. The campaign continued in 2009 before Easter with the title “LeNyúl” [Hungarian wordplay, “Nyúl” meaning “Bunny”, while “lenyúl” being the slang for “steal”]. Cooperating NBAC members from the industries: Business Software Alliance, ProArt Association for the Protection of Copyright; cooperating electrical chain stores: Media Markt, Saturn, and PhotoHall. The campaign also continued before Christmas in 2009, in which two more chain stores wished to participate: Euronics and ComputerOutlet indicated their intention.

■ To answer the questions of the auditors of the Hungarian Tax and Financial Control Administration (APEH) related to software licences and their accounting, a telephone hotline service was set up so that illegal software usage can be reduced in the business life; for accountants and financial leaders, professional presentations were organized.

■ The alliance between the representatives of the Hungarian film industry in the fight against piracy was manifested in the “Declaration for the legal distribution of Hungarian films” issued by the prominent

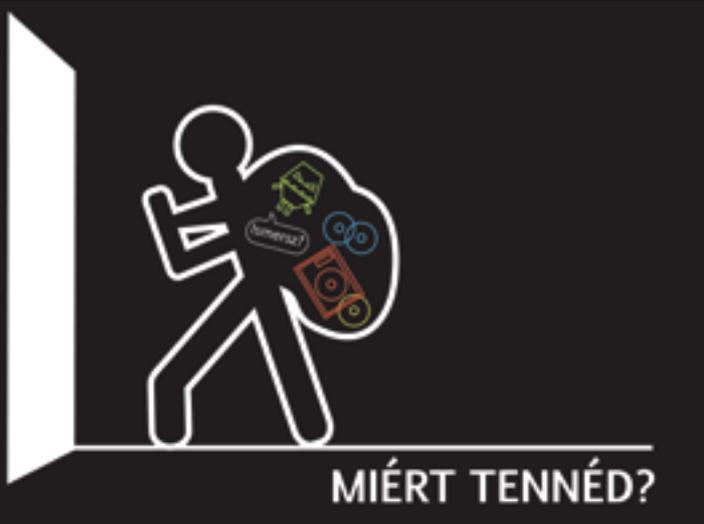
representatives of the Hungarian film industry in December 2008.

■ In February 2009, during the gala ceremony of the *Fonogram 2009 – Hungarian Music Awards*, Dr. Ferenc Kondorosi Government Commissioner presented the special award of the NBAC “for the most genuine sound recording of the year” to Dóra Szinetár and Zoltán Bereczki for the most often legally downloaded album in 2008.

12 In March 2009 the NBAC conducted a **successful campaign against the counterfeiting of pharmaceuticals** by means of leaflets placed in doctor’s surgeries, newspaper advertisements, and through the magazine called *Patika* (available free of charge in pharmacies), as well as by appearing on health portals (*vital.hu*, *házipatika.hu*, *webbeteg.hu*). An autonomous website against the counterfeiting of pharmaceuticals, *www.hamisgyogyszer.hu*, was set up in March 2009. In addition, a thirty-second advertising film production was also created against the counterfeiting of pharmaceuticals. The campaign was sponsored by the Association of Innovative Pharmaceutical Manufacturers as well as by the Pfizer Kft. The Hungarian Chamber of Pharmacists also cooperated in the campaign. In June 2009 the NBAC published a study entitled “Counterfeiting of pharmaceuticals and countermeasures” on the national and international situation of pharmaceutical counterfeiting.



Title: Why would you do that?
Author: Eszter Jankó



Author: László Orosz



Title: Down Loadic
Author: Norbert Vas-Imre



Title: You start it as a monkey business...
Author: Csilla Nagy

April 2009

13

"Counterfeiting as I see it – My work of art, my property"
fine arts competition

In April 2009 the NBAC held a **fine arts competition** for secondary school students entitled "*Counterfeiting as I see it – My work of art, my property*", in which the students could convey their thoughts on counterfeiting and piracy in the form of a work of art. The NBAC concluded a licensing agreement with the six winners of the competition to use their works of art. The companies of Microsoft, Symantec and Adobe offered software in recognition of the efforts made by the teachers assisting the award-winning student in their work.

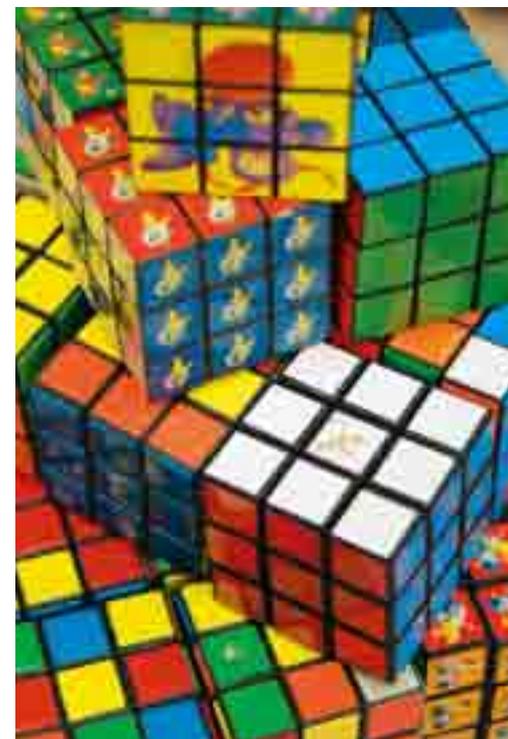
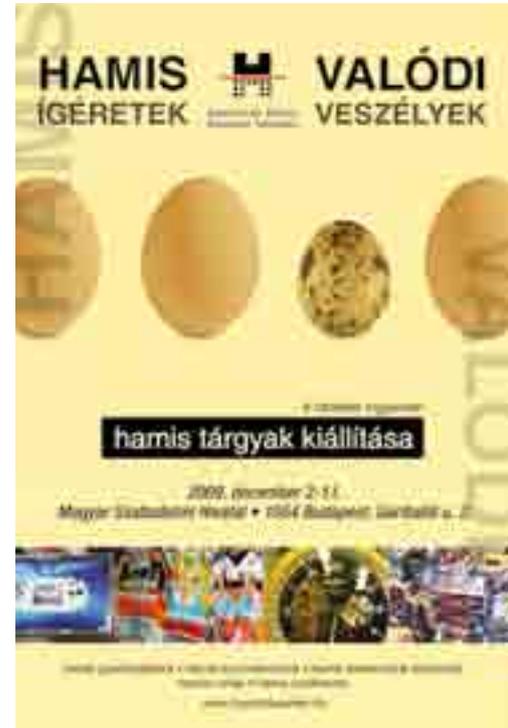


Title: Sure it's genuine?
Author: Csenge Szalkai



Title: Do you also take away others' daily bread?
Author: Zsuzsanna Bán

14 Exhibition entitled
“False promises, real dangers”



15 Website of the NBAC
www.hamisitasellen.hu

■ In the summer of 2009 (in July and August) the NBAC undertook an **online campaign** addressed at the young people, during which articles and questions related to copyright appeared on websites and quiz games popular among the young people (Honfoglaló, Kultúrpart, HotDog, MoziNet). The sponsors of the campaign from among the industry members of the NBAC were the ASVA, the BSA and the ProArt, who contributed to the campaign by writing articles and by offering prizes.

14 Between 2–11 December 2009, with the cooperation of the Hungarian Customs and Finance Guard, the NBAC organised an **exhibition** entitled “False promises, real dangers” in the conference room of the Hungarian Patent Office with the intention of drawing the consumers’ attention to the spread and dangers of counterfeiting. The majority of the counterfeits presented at the exhibition were false products confiscated by the Hungarian Customs and Finance Guard, though several right holders cooperated, as well, by providing objects for the exhibition. In addition to the exhibition of counterfeit products, the staff of the Hungarian Customs and Finance Guard held several informative presentations every day on their experience and action taken against counterfeiting, and they also shed light on the background and the serious consequences of counterfeiting. The exhibition attracted a large number of visitors (approx. 1000 visitors, and 24 student groups) and intense media interest (TV, radio, national daily newspapers). In 2010 the exhibition will be on view in the form of an anti-counterfeiting roadshow at several locations across the country.

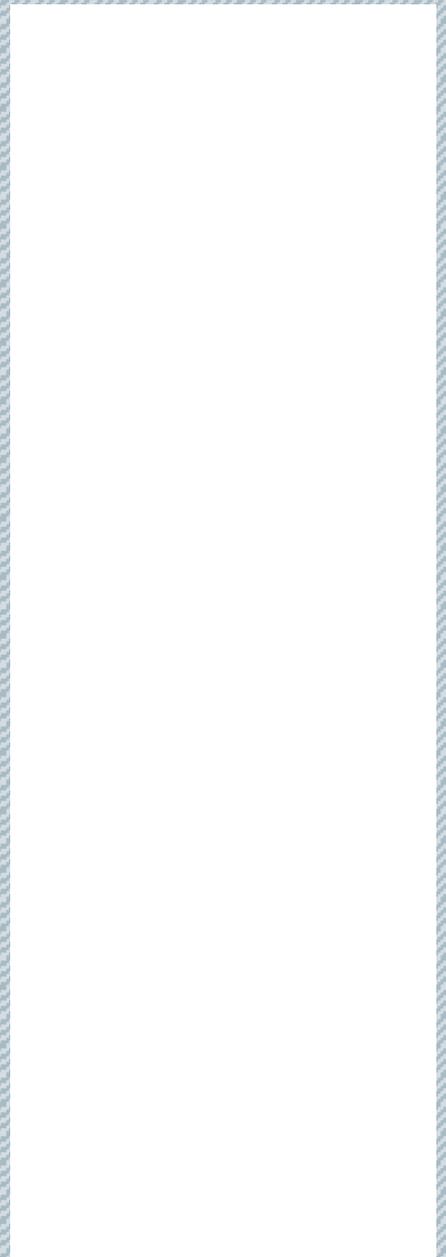
15 The NBAC has its own website at www.hamisitasellen.hu, which provides information – with a new look since autumn 2009 – on counterfeiting and piracy, as well as on the activities and campaigns of the Board. The website of the NBAC attracted considerable interest in 2009: it was visited on nearly 24 000 occasions by more than 15 000 (individually identifiable) visitors; the amount of data downloaded was 13 gigabyte.

A SELECTION FROM THE NEWSLETTERS OF THE NBAC

08.01.2009	Plaza of counterfeit products in China
14.01.2009	Alliance between authorities and car manufacturers in China
16.01.2009	Antifreeze in toothpaste
05.02.2009	China – Man dies by mobile
16.02.2009	Nine people arrested for counterfeiting DVDs in Great-Britain
18.02.2009	Use of digital watermarks against pirates
23.02.2009	Fake fitness equipment sold on eBay
26.02.2009	55 000 cartons of counterfeit cigarettes confiscated in Canada
02.03.2009	Counterfeit machines found in China
04.03.2009	Besides fake shoes, cannabis and weapons found at trader
09.03.2009	Counterfeit component parts on space shuttles
09.03.2009	Louis Vuitton sues in China
19.03.2009	Fake excise tax stamps on fake cigarette packets
27.03.2009	Nanocrystals against counterfeit pharmaceuticals
03.04.2009	Fake golf equipment confiscated in Beijing
08.04.2009	8% of pharmaceuticals are fake in Taiwanese pharmacies
29.04.2009	Counterfeiters would make money on swine flu as well
05.05.2009	Sale of pirate recordings in mobile buffets
15.05.2009	Connection disruption for illegal downloading in France
25.05.2009	Counterfeit pharmaceuticals cause the death of 700 thousand a year in developing countries
08.06.2009	British proposals against illegal downloaders
18.06.2009	Digital Britain provides for the reduction of piracy by 70%
19.06.2009	Fake BlackBerry put together in 10 minutes in Vietnam
23.06.2009	French record companies sue YouTube
30.07.2009	18 years in jail for British DVD counterfeiters
30.07.2009	Cigar counterfeiters arrested in US
07.08.2009	Even Swiss litter bags counterfeited
11.08.2009	Irish cigarette smugglers use the chain of IRA arms procurement
11.09.2009	Fake clothes hid in load at border village Nagylak
17.09.2009	French National Assembly votes for Act against piracy
01.10.2009	Fake sunglasses and frames to the value of 1,5 billion Hungarian forint confiscated in Milan
15.10.2009	Hazardous fake vodka in London
26.10.2009	Fake footballs confiscated by Romanian authorities
04.11.2009	Fake olive oil confiscated in Palestine
25.11.2009	Hundreds of fake styling products confiscated in Canada
05.01.2010	Mininova user sentenced to a three-year suspended prison term
06.01.2010	Indian agriculture loses billions due to fake plant protection products
18.01.2010	Counterfeit perfumes to the value of 850 million Hungarian forint in the hands of customs officials
17.03.2010	Fake clothing articles to the value of HUF 100 million found by Hungarian excise officials
22.03.2010	Thousands of counterfeit shoes confiscated at border village Rajka

08

THE THIRD PILLAR – ENFORCEMENT



The third pillar – enforcement

Within the third pillar of the Strategy, **enforcement**, the objectives include the review of the regulatory environment for enforcement, the law enforcement issues and the measures and tools helping right holders, as well as the initiation of amendments, and the introduction of new tools and measures, where necessary. In the course of the activities of the Working Group on the Legal Practice of Criminal Law and Administrative Criminal Offences, the Working Group Against the Counterfeiting of Pharmaceuticals and Pesticides and the Working Group on Internet Based Services of the NBAC, such proposals and initiatives facilitating the enforcement of IPR were introduced whose examination and, wherever possible, implementation is achieved with the coordination of the NBAC.

NATIONAL REPORT ON THE IMPLEMENTATION OF THE ENFORCEMENT DIRECTIVE

The **Directive 2004/48/EC** of the European Parliament and the Council on the enforcement of intellectual property rights adopted on 29 April 2004 served to combat the infringement of industrial property rights and copyright more effectively. The Directive provides for the harmonization of the national legislation of Member States in respect of legal measures, procedures and remedies of a civil or administrative law nature applicable in the case of IPR infringements. Hungary fulfilled its obligation to transpose the Directive by adopting Act CLXV of 2005 on the amendment of certain laws relating to the enforcement of industrial property rights and copyright. Under Article 18(1) of the Enforcement Directive, each Member State had to submit to the Commission a national report on the implementation of the Directive and its impact by 29 April 2009. With close cooperation between the Hungarian Patent Office and the Ministry of Justice and Law Enforcement, and on the basis of public consultation through questionnaires sent to the concerned bodies and stakeholders, the National Report was drawn up by the deadline set in the Enforcement Directive. The summary of the National Report can be found in Annex 4 of this Annual Report.

FIGHT AGAINST INTERNET PIRACY

In order to encourage action taken against Internet piracy, the Working Group on Internet Based Services performed examinations primarily on how identifiable IP addresses and domain names are, and on the transfer of a certain group of investigative actions to investigators having special knowledge and tools – thus obviating the need for the secondment of external expertise – to reduce the time and the costs of investigative work.

To enhance the effectiveness of the action taken to combat mass copyright infringements, the NBAC organised a **round table discussion** on 17 November 2009 with the participation of Internet Service Providers (ISPs), copyright owners and observers from the government. During the round table discussion, the Internet Service Providers described their view that their aim was to make legal contents accessible to Internet users, and that they welcome the emergence of new business models which make copyright protected works available. The organisations representing right holders expressed their intention to cooperate with Internet Service Providers, and stressed that besides the new business models developed or to be developed to replace illegal file sharing networks, it is vital to act against infringers and illegal file sharing users, as well as to penalise infringements since otherwise, as foreign examples show, they cannot offer attractive alternatives to illegal file sharing services providing free access to contents most of the time. So that cooperation between the two sides can be promoted, and that the basic issues concerning both parties can be addressed, the participants decided to continue the round table discussion in the future, whose organisation will remain the responsibility of the NBAC.

COPYRIGHT DATABASE

The members of the Working Group on Criminal Law of the NBAC representing the right holders of copyright initiated the establishment of a **copyright database** which would contain data on works protected by copyright (title, year of publication, value) and data on the author and the right holder so that the proceedings related to copyright infringement can be simplified, accelerated and more cost-

effective, and that the victims and the damages could be simply and accurately identified.

KRIMINALEXPO

At the exhibition of Kriminalexpo IT-SEC 2009 (held on 5–7 May 2009), the NBAC provided the opportunity for companies active in the production and distribution of product recognition and identification technologies facilitating the enforcement of IPR to introduce themselves.

FIGHT AGAINST COUNTERFEITING PHARMACEUTICALS

The Hungarian commercial chain of pharmaceuticals is considered to be a very strict, closed and controlled system even on the global scene. As a result, there is practically hardly any chance for counterfeit pharmaceuticals to appear at legal points of sale (pharmacies, chemists, authorised petrol stations, online pharmacies) and reach the patients. However, it is becoming easier and easier to have access to foreign online sources, the majority of which is not controlled and often sells counterfeit pharmaceuticals. The most applied method for the distribution of counterfeit pharmaceuticals is the sale via the Internet (often through spams).

The Hungarian Chamber of Pharmacists and the National Board Against Counterfeiting concluded a Cooperation Agreement on 19 March 2009, whose aim was to remove from the market counterfeit pharmaceuticals and medicinal products, which endanger both the health and the physical well-being of consumers. Moreover, it set as a target to achieve, by adequate awareness-raising measures and through appropriate trainings, that those involved in IPR enforcement and the broadest possible sections of society gain a sound knowledge of the dangers and the consequences of counterfeiting pharmaceuticals.

Having regard to the substantial health risks counterfeit pharmaceuticals incur, the Working Group Against the Counterfeiting of Pharmaceuticals suggested increasing the amount of the penalty that can be imposed for offences related to counterfeit medicinal products pursuant to Government Decree No. 218/1999. (XII. 28.) on certain offences,

and proposed the introduction of a new legislative criterion in the Criminal Code for the counterfeiting of pharmaceuticals. The examination of these proposals is currently underway. On the proposal of the Working Group, the Drug Database available on the website of the National Institute of Pharmacy was supplemented with photos of the pharmaceuticals, which may facilitate the work of investigative authorities and can contribute to consumer information. The Institute demonstrated the use of the supplemented database to the investigative authorities at its professional event organised on 5 March 2010.

COUNTERFEITING AND ILLEGAL TRADE OF PESTICIDES

Different forms of the illegal distribution of counterfeit products can be identified in the trade of pesticides. For instance, the “pocket import” (import benefiting from the lack of borders when the obligation of registration and authorization is not fulfilled), which constitutes nearly 5–7% of the products used. The system of parallel import that cannot be monitored properly also favours illegal trade, in which – by reference to a product authorized in Hungary – the importation of foreign products becomes possible without the requirement of identity and common origins. It is often suspected that the parameters of the imported pesticide do not comply with the permit issued. Counterfeited and illegally imported products of origin not complying with the permit can be found mainly among the generic drugs.

To prevent this type of counterfeiting, from 2008 onwards the authorities can impose measures set out in relevant legislation. By the adoption of the Act No. XLVI of 2008 on the Food Chain and its Official Supervision, **the legal instrument of mystery shopping was introduced**, which greatly facilitates the investigative work of the authorities. From 2008 the newly regulated sanctions system makes it possible to impose higher and more deterrent fines, even repeatedly. The Act mentioned above gives the authorities the right to adopt new official measures and to maintain records.

In order to decrease and to maintain at a low level the counterfeiting of pesticides, a new article, Article 25/A, is inserted under the subtitle “Handling of the documentation submitted for authorization” of the **Decree No. 89/2004. (V. 15.)** of the Ministry of Agriculture and Rural Development on

the authorization of placing on the market and use of, and on the packaging, labelling, storage and transport of plant protection products. Pursuant to this provision, in the case of authorized parallel importation, the importer of the pesticide is obliged to provide the authority with pictures showing the final sample of the product and the distinctive features of its packaging on digital media prior to the first placing on the market. The authority will make these available for the public. The draft of the Decree is currently in conciliation between public administration bodies, it is expected to be published in March 2010. In parallel with the preparation of the regulatory environment, the authority supervising the food chain **conducted intensified checks to reduce counterfeiting**, it analysed a number of special brands, it implemented common actions and increased cooperation with the forces of law, and it ensured an extensive flow of information for the people concerned.

FIGHT AGAINST COUNTERFEITING OF VETERINARY MEDICINAL PRODUCTS AND RESULTS

In order to decrease and maintain at a low level the counterfeiting of veterinary medicinal products, the Decree No. 128/2009. (X. 6.) of the Ministry of Agriculture and Rural Development on Veterinary Medicinal Products makes it **compulsory for the applicant to submit a final sample of packaging as well** to the Directorate of Veterinary Medicinal Products of the Central Agricultural Office in the course of authorization of the veterinary medicinal products for marketing. Thus, in the future not only does the authority have to publish on its website the instructions for use, the summary of features, the marketing authorisation and the public assessment report of the authorised product, but also its labelling and the final sample of it. With a view to increasing the effectiveness of inspections, apart from the regular Good Distribution Practice checks, targeted stock checks were also introduced in 2007. The checked units were chosen on the basis of risk assessments. In 2009 simultaneously with the inspections, within the framework of the targeted checks and with the involvement of the county directorates of the Central Agricultural Office, not only were the wholesalers checked but the retailers and the livestock farms were also inspected. Targeted checks focused on products intended for food-producing animal species. The laboratories of the Directorate of Veterinary Medicinal

Products of the Central Agricultural Office conduct regular control checks on veterinary medicinal products. The most common and the most serious irregularities were the following:

- illegal production;
- distribution of unauthorised products;
- the text of the package insert is different from the text recorded in the marketing authorization; no package insert is fixed to the openable unit of presentation;
- unlawful marketing activities.

ADULTERATION OF FOODSTUFFS, CHECKS AND RESULTS

In the course of the supervision of the entire food chain, the prime consideration is the protection of consumers, that is to ensure that consumers can purchase safe foodstuffs of composition guaranteed by the producer.

The notion of “adulteration of foodstuff” is not defined by legislation.

The notion of “adulteration of foodstuff” is generally defined by the officials of food control authorities as the production and distribution of foodstuff by means of unauthorised/unregistered practices, or as the unlawful distribution of authorised/registered products in the food chain, which is slightly different from the current legislative criteria, for instance:

- counterfeiting of products with a registered designation of origin (for example, “Prosciutto di Parma” – Parma ham, or feta cheese);
- production of a product which is called honey but is produced with unauthorised substances for honey production (sugar syrup, ascorbic acid, enzymes, etc.), etc.

The Central Agricultural Office – as a food safety authority – carries out the traceability inspection of products in respect of the manufacture and the distribution of foodstuffs during its checks conducted at a frequency determined on the basis of its official inspection plan of establishments and food business operators 2009. These inspections uncover illegal activities and foodstuffs of unknown origin, which are therefore considered unsafe. In the course of the nationwide seasonal priority actions of inspection (“Springtime 2”, “Dog Days 2”, and the Pentecost Actions concerning two counties) in 2009 more than 106 types of foodstuff were withdrawn from the market by the experts of the authority either because they originated from unauthorized establishments or because they were marketed at unauthorised points of distribution.

Event calendar

3 February 2009	Meeting of the Management Board of the NBAC
25 February 2009	Meeting of the Management Board of the NBAC
March 2009	Campaign of the NBAC against the counterfeiting of pharmaceuticals
19 March 2009	Cooperation Agreement with the Hungarian Chamber of Pharmacists for the cooperation in the campaign against the counterfeiting of pharmaceuticals
7 April 2009	Plenary session of the NBAC
22 April 2009	“Cooperation of enforcement bodies in criminal proceedings related to copyright infringements” Conference organised by the NBAC
5–7 May 2009	Kriminalexpó IT–SEC 2009 Exhibition
26 May 2009	“Imitation, counterfeiting, trade mark infringement conference – 2009” –organised by the Hungarian Patent Office and the Hungarian Trademark Association
28 May 2009	Meeting of the Management Board of the NBAC
15 June 2009	Award ceremony of the fine arts competition entitled “Counterfeiting as I see it – My work of art, my property”
July – August 2009	Online campaign on the websites “Honfoglaló”, “mozinet.hu” and “Hotdog”
26 August 2009	Signing of the Cooperation Agreement concluded between the Police College, the Hungarian Patent Office and the ProArt Association for the Protection of Copyright
10 September 2009	Meeting of the Management Board of the NBAC
From September to November, 2009	Training sessions on copyright for the Police (21 occasions)
24 September 2009	Brand Protection Forum (REACT, Hungarian Foundation for Trademark and Copyright Protection)
7 October 2009	Plenary session of the NBAC
17 November 2009	Round table discussion on Internet piracy between Internet Service Providers and the right holders
19 November 2009	“All that glitters...” – Conference on the counterfeiting of pharmaceuticals organised by Medical Tribune
1 December 2009	Opening of the exhibition entitled “False promises, real dangers”
2–11 December 2009	Exhibition entitled “False promises, real dangers”

Appearances in the media

In addition to sending its daily newsletters summarising world news and national news on counterfeiting and on the results of the fight against counterfeiting, the NBAC informs the media about all of its campaigns in a communication so that its messages can reach as many people as possible. In 2009 the campaigns receiving the broadest media coverage were the campaign against the counterfeiting of pharmaceuticals in March and the exhibition of counterfeit products in December. The campaign against the counterfeiting of pharmaceuticals resulted in more than 100 appearances in the media (digital media: 17, printed press: 16, online media: 70). Similarly, the exhibition attracted considerable interest (appearances in the digital media: 10, in the printed press: 5, in the online media: more than 50).

■ **Napi gazdaság (economic daily)**
03.01.2009

“Counterfeiting is not in crisis – the fight against counterfeiting is especially relevant in the season of Christmas sales, and the national strategy in support of it aims to improve the awareness of consumers.”

■ **HVG (economic weekly) 31.01.2009**

“We swallow everything – Today the sale of counterfeit pharmaceuticals in Hungary poses less criminal risks than health risks. There are hardly any dangers for counterfeiters being caught, while the buyers risk a lot.”

■ **MR 1 Kossuth Rádió (public radio)**
17.03.2009

“A new Internet site draws the attention to counterfeit pharmaceuticals: hamisgyogyszer.hu. On the website of the National Board Against Counterfeiting, all important information can be found about the counterfeiting of pharmaceuticals, and it helps in the identification of dangerous products.”

■ **MTV 1 (the news, public television channel) 19.03.2009**

“The proportion of counterfeit pharmaceuticals has sharply increased in the European Union and also in Hungary. In Hungary it reached 3–5% over the past eighteen months, that is approximately every twentieth medicine is a counterfeit. Counterfeit products are primarily sold in markets and on the Internet.”

■ **RTL Klub (evening news, commercial television channel) 19.03.2009**

“The President of the Hungarian Chamber of Pharmacists claims that it is unpredictable

what effects counterfeit pharmaceuticals have since nobody knows what additives are added to them”.

■ **www.piacspprofit.hu 02.04.2009**

“In the current economic crisis, when weakening economic performance and growing unemployment are placing an increasing burden on the budget of the country, the members of the Board believe that the fight against the infringement of IPR and the ongoing provision of information is crucial.”

■ **Napi gazdaság (economic daily)**
03.04.2009

“Within the framework of the “LeNyúl” campaign of the NBAC, more than 100 thousand informative leaflets are distributed in Budapest and in the busy shopping centres of larger cities between 27 March and 5 April, 2009. The leaflets warn people that they should pay attention and put only original software, films or music on the device they buy.”

■ **Metropol (free of charge daily newspaper) 07.05.2009**

“We buy counterfeit products but would punish counterfeiters more severely. The National Board Against Counterfeiting conducted a representative research involving 1000 people about what they think of the phenomenon of counterfeiting.”

■ **www.penzcentrum.hu 07.05.2009**

“Conflicting opinions of Hungarians: we buy counterfeit products but would impose punishment for them at the same time.”

■ **A Kontroll (consumer protection magazine) Vol. VI., No. 11, November 2009**

“According to two-thirds of the people surveyed, more frequent and more efficient official checks are required to eliminate counterfeit products, and 70% would punish more severely counterfeiters and the distributors of counterfeit products. The action against counterfeiting, however, cannot be regarded as the sole responsibility of public authorities and law enforcement bodies. Counterfeit products would not be produced without a potential market where they can be sold; effective demand for these products appears as a result of the wrong and collusive attitude of a certain part of the society. The disciplined approach and the awareness of citizens may limit counterfeiting, as well, so let us not yield to the temptation of phoney and momentary cheapness, it should not blind us

because it won't make us happy in the long run, we can even pay a lot for it.”

■ **Origo.hu, 28.11.2009**

“Counterfeiting poses risks for people and for the economy, as well, but consumers are not aware of these risks.”

■ **Origo.hu, 28.11.2009**

“Counterfeiting has clearly adverse effects on consumers' interests, and even on their health. Although counterfeit products are usually cheaper, their quality is weak or below the average most of the time, so there are no chances for the “gamble to pay off” in the long term.”

■ **MTV 1, Az Este (evening programme, public television channel) 04.12.2009**

“It is almost impossible to find a product on the market that is not counterfeited in some way or another. There are counterfeits which are evidently fake and there are ones which are more professional but one thing is sure: they all cause harm to somebody: either to the producer or to the buyer, or often both. And even to the person who knows he/she is buying a copy. In Budapest, in the Hungarian Patent Office, there are still a few days for the public to compare the counterfeit with the genuine.”

■ **Index.hu, 03.12.2009**

“The exhibitors intend, unequivocally, to inform and to deter people. I was completely convinced that I should not order medicines from the Internet, and I will never buy knives of uncertain origin because they crack and will hurt my eyes.”

■ **Elteonline.hu (university news portal)**
13.12.2009

“Not slightly didactic but at least that interesting exhibition was squeezed in the ground floor conference room of the headquarters of the Hungarian Patent Office (HPO) in the Garibaldi street last week and the week before. The exhibition, which was on view until 11 December and was entitled “*False promises, real dangers*”, had a clear message: think about what you buy so cheap because it can be not only crappy but also dangerous for life. The exhibition was organised by the National Body Against Counterfeiting (NBAC) with the assistance of the Hungarian Customs and Finance Guard. The NBAC – a body established in 2008 in order to combat the black economy and its inherent attribute, counterfeiting, effectively and decisively –, intended to make people aware of its activities besides its objectives mentioned above.”



218

418

418

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ANNEXES

Annex No. 1: Action Plan annexed to the National Strategy Against Counterfeiting for the period 2008–2010

(Annex to the Government Decision 2140/2008. (X. 15.) on the Action Plan annexed to the National Strategy Against Counterfeiting for the period 2008-2010)

STATISTICS

1. Accurate identification of the scope and types of data to be collected on infringements, especially data concerning infringers, the damages caused by infringement and the procedures of IPR enforcement; formulation of a proposal for a unified methodology for the primary data source institutions, on the basis of which the data on IPR enforcement can be gained from the National Statistical Data Collection Programme.

Person in charge: Minister of Justice and Law Enforcement (partly via the National Police Headquarters)

President of the Hungarian Central Statistical Office

President of the Hungarian Patent Office

Minister of Finance (via the Hungarian Customs and Finance Guard)

Collaborating on request: President of the National Council of Justice

Supreme Public Prosecutor

Funding: not needed

Deadline: 30 June, 2009

2. Establishing the formulation of a proposal for a national statistical methodology relating to the surveillance of activities infringing IPR.

Person in charge: Minister of Justice and Law Enforcement (partly via the National Police Headquarters)

President of the Hungarian Central Statistical Office

President of the Hungarian Patent Office

Minister of Finance (via the Hungarian Customs and Finance Guard)

Collaborating on request: President of the National Council of Justice

Supreme Public Prosecutor

Funding: HUF 10 million, HPO (autonomous financial envelope of the NBAC)

Deadline: 30 June, 2009

AWARENESS-RAISING

3. Organisation of national communication campaigns and a series of events against counterfeiting (preparation of information materials, publication of communications and paid advertisements in the digital and printed press, organisation of information events, etc.).

Person in charge: Government Commissioner responsible for the “New Order and Freedom” Programme

Funding: HUF 20 million, HPO (autonomous financial envelope of the NBAC)

Deadline: 31 December, 2008

ENFORCEMENT OF IPR

4. Review of the relevant criminal offences laid down in the Criminal Code and the administrative criminal offences, the legal practice of criminal law and administrative criminal offences, and their relation to civil proceedings, as well as the review of investigation practices having regard to the experience acquired by the law enforcement bodies.

Person in charge: Minister of Justice and Law Enforcement (partly via the National Police Headquarters)

Minister of Finance (via the Hungarian Customs and Finance Guard)

Collaborating on request: President of the National Council of Justice

Supreme Public Prosecutor

Funding: not needed

Deadline: 31 December, 2008

5. Founding the introduction of the “eMage” database service facilitating the detection of counterfeit products.

Person in charge: President of the Hungarian Patent Office

Minister of Finance (via the Hungarian Customs and Finance Guard)

Minister of Justice and Law Enforcement

(via the National Police Headquarters)

Funding: HUF 20 million, HPO (autonomous financial envelope of the NBAC)

Deadline: 31 May, 2009

PHARMACEUTICALS AND PESTICIDES INDUSTRY

6. Review of the regulatory environment and the legal practice in order to prevent the counterfeiting of pharmaceuticals, veterinary medicinal products and pesticides.

Person in charge: Minister for Health (partly via the National Institute of Pharmacy and the National Public Health and Medical Officer Service – ÁNTSZ)

Minister for Agriculture and Rural Development (partly via the Central Agricultural Office and the Directorate of Veterinary Medicinal Products)

Minister of Justice and Law Enforcement (via the National Police Headquarters)

Minister of Finance (via the Hungarian Customs and Finance Guard)

Minister of Social Affairs and Labour (via the Hungarian Authority for Consumer Protection)

Funding: not needed

Deadline: 31 December, 2008

CREATIVE AND IT INDUSTRY

7. Institutionalising the cooperation between the creative and IT industry and the investigative authorities, especially in the field of training and awareness raising, in order to combat copyright infringements effectively.

Person in charge: Minister of Finance (via the Hungarian Customs and Finance Guard)

Minister of Justice and Law Enforcement (via the National Police Headquarters)

Collaborating on request: Supreme Public Prosecutor

Funding: not needed

Deadline: 31 December, 2008

8. Launching a special training focusing on Internet piracy for law enforcement bodies (investigative authorities, prosecution services, courts) in order to improve the efficiency of these bodies.

Person in charge: Minister of Finance (via the Hungarian Customs and Finance Guard)
Minister of Justice and Law Enforcement (via the National Police Headquarters)
President of the Hungarian Patent Office
Collaborating on request: Supreme Public Prosecutor
Funding: HUF 5 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2008

9. Review of the regulatory system and the legal practice relating to Internet Service Providers and service provision through the Internet in order to promote anti-piracy action.

Person in charge: Minister of the Prime Minister's Office
Minister of Justice and Law Enforcement
Funding: not needed
Deadline: 31 March, 2009

STATISTICS

10. Formulation of a proposal for a statistical methodology with the involvement of research institutes with a view to determining the economic effect mechanisms and the scale of counterfeiting in Hungary, as well as the estimated (monetary) value of the damages caused (losses).

Person in charge: President of the Hungarian Central Statistical Office
President of the Hungarian Patent Office
Funding: HUF 5 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

AWARENESS-RAISING

11. Organisation of awareness-raising advertising and public communication campaigns of IP protection focusing on the youth (preparation of information materials, publication of communications and paid advertisements in the digital and printed press, involvement in events organised for the youth, etc.).

Person in charge: Government Commissioner responsible for the "New Order and Freedom" Programme
Funding: HUF 10 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

12. Development of institutionalised trainings and their experimental introduction to the staff of law enforcement bodies involved in the enforcement of IPR (investigative authorities, prosecution services, courts).

Person in charge: President of the Hungarian Patent Office
Minister of Justice and Law Enforcement (partly via the National Police Headquarters)
Minister of Finance (via the Hungarian Customs and Finance Guard)
Collaborating on request: President of the National Council of Justice
Supreme Public Prosecutor
Funding: HUF 4 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

13. Integration of IP protection knowledge into the general explanatory, educational and crime prevention programmes developed for students.

Person in charge: Minister of Justice and Law Enforcement (via the National Police Headquarters)
President of the Hungarian Patent Office
Resource: HUF 4 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

ENFORCEMENT OF IPR

14. Establishment of a legal practice database facilitating criminal law enforcement, and preparation of publications and newsletters, which can contribute to the development of a uniform legal practice.

Person in charge: Minister of Justice and Law Enforcement (partly via the National Police Headquarters)
Minister of Finance (via the Hungarian Customs and Finance Guard)
President of the Hungarian Patent Office
Collaborating on request: President of the National Council of Justice
Supreme Public Prosecutor
Funding: HUF 4 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

15. Assessment of the options for the introduction and the regulation of product recognition and identification technologies (RFID, ADNS) facilitating the enforcement of IPR; launching a pilot project with the application of these technologies.

Person in charge: Government Commissioner responsible for the "New Order and Freedom" Programme
Funding: HUF 4 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

16. Review of the legal provisions concerning markets and fairs in order to prevent the sale of counterfeit and pirated products in these places.

Person in charge: Minister for National Development and Economy
Minister of Justice and Law Enforcement
Funding: not needed
Deadline: 31 December, 2009

FOOD INDUSTRY

17. Establishment of an up-to-date, publicly accessible and continuously updated database from data on food counterfeiting in order to increase awareness among consumers; setting up a hotline.

Person in charge: Minister for Agriculture and Rural Development
Resource: HUF 20 million, Ministry of Agriculture and Rural Development
Deadline: 31 December, 2009

18. Review of the legislation on food counterfeiting on the basis of the practical experience of law enforcement bodies, including the practice of imposing and recovering fines, the improvement of the tools required for detection, and the review of the organisational system.

Person in charge: Minister for Agriculture and Rural Development
Minister of Social Affairs and Labour
Funding: not needed
Deadline: 31 December, 2009

PHARMACEUTICALS AND PESTICIDES INDUSTRY

19. Organisation of a communication campaign focusing on the aspects of consumer protection that concern the counterfeiting of pharmaceuticals, and on the adverse effects of counterfeiting veterinary medicinal products and pesticides.

Person in charge: Government Commissioner responsible for the “New Order and Freedom” Programme
Minister for Health
Minister for Agriculture and Rural Development
Funding: HUF 2 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

CREATIVE AND IT INDUSTRY

20. Launching an awareness-raising campaign and an educational programme for employers and their interest organisations in order to prevent copyright infringements at work.

Person in charge: Government Commissioner responsible for the “New Order and Freedom” Programme
Minister of Social Affairs and Labour
Minister for National Development and Economy

Government Commissioner responsible for information technology in public administration

Funding: HUF 2 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2009

STATISTICS

21. Preparation of a publicly available evaluation report and establishment of a publicly accessible database relating to infringements and IPR enforcement procedures.

Person in charge: Minister of Justice and Law Enforcement
President of the Hungarian Central Statistical Office
President of the Hungarian Patent Office
Funding: HUF 15 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

AWARENESS-RAISING

22. Organisation of national communication campaigns and a series of events against counterfeiting (preparation of information materials, publication of communications and paid advertisements in the digital and printed press, organisation of information events, etc.).

Person in charge: Government Commissioner responsible for the “New Order and Freedom” Programme
Funding: HUF 40 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

23. For the purpose of transferring basic knowledge of IP protection within the framework of basic legal studies included in the framework curricula of schools, preparation of teaching aids, educational and informational materials in order to teach and inform young generations, with particular reference to Internet piracy.

Person in charge: Minister of Justice and Law Enforcement
Minister of Education and Culture
President of the Hungarian Patent Office
Funding: HUF 5 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

ENFORCEMENT OF IPR

24. Consideration of the possibilities of expanding the range of services aiming to avoid and prevent IPR infringements and to pro-

mote the enforcement of IPR; examination of the viability of the legal expenses insurance covering the costs of enforcement.

Person in charge: Government Commissioner responsible for the “New Order and Freedom” Programme
President of the Hungarian Patent Office
Minister of Justice and Law Enforcement
Funding: HUF 5 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

FOOD INDUSTRY

25. Organisation of a communication campaign focusing on the aspects of consumer protection that concern the prevention of food counterfeiting; establishment of a legal assistance service; training and education of the officials of competent authorities.

Person in charge: Minister for Agriculture and Rural Development
Government Commissioner responsible for the “New Order and Freedom” Programme
Funding: HUF 5 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

PHARMACEUTICALS AND PESTICIDES INDUSTRY

26. Development and introduction of specialised trainings for the staff of law enforcement bodies so that they can recognise counterfeit products; establishment of a legal assistance service; training and education of the officials of competent authorities.

Person in charge: Minister for Health
Minister of Finance (via the Hungarian Customs and Finance Guard)
Minister of Justice and Law Enforcement (via the National Police Headquarters)
President of the Hungarian Patent Office
Funding: HUF 2 million, HPO (autonomous financial envelope of the NBAC)
Deadline: 31 December, 2010

CREATIVE AND IT INDUSTRY

27. Review of the regulations on the establishment and the control of the operation of facilities producing optical media in order to prevent the production of pirated samples.

Person in charge: Minister for National Development and Economy
Minister of Justice and Law Enforcement
Government Commissioner responsible for the “New Order and Freedom” Programme
Funding: not needed
Deadline: 31 December, 2010

Annex No. 2: Measuring the scale and the economic impact of counterfeiting and piracy

Within the framework of the activities of the National Board Against Counterfeiting¹, a synthesis study² was drawn up on the subject of the standard international measurement methodologies of counterfeiting and piracy, which reviewed the estimation procedures applied in foreign practices (the best practices), presented the main features of these measurement techniques as well as their elements applicable in domestic practice, and highlighted their advantages and disadvantages.

Since counterfeiting and piracy are concealed, illegal and even criminal activities, *there are no reliable and consistent data available on the scale and the economic and social impact of counterfeiting and piracy.* The scope of data from official statistical sources is limited, and *the recording of the infringing activities is not carried out primarily by the traditional statistical recording methods and tools.* Numerical information are gained mostly from public opinion and market research companies, research institutes and professional organisations, and not from statistical offices, thus the data can be regarded *only as estimated approximate figures.*

Notwithstanding the shortcomings of the statistical measurement procedures and the low reliability of the available data, the

recording of data related to counterfeiting and piracy must continue since the establishment of effective measures requires numerical information on the scale, the composition and the social and economic impact of counterfeiting and piracy.

In the international practice the efforts made to record counterfeiting seek to quantify the *magnitude* (the scale, the scope and the market share) of counterfeiting and piracy on the one hand, and to assess their *economic and social impact* on the other hand. Counterfeiting and piracy can be measured and estimated by means of three methods: 1) *on the basis of official statistical data on IPR enforcement*; 2) *on the basis of surveys and samples*; 3) *by economic model calculations.*

Statistical data on IPR enforcement: From among the data on counterfeiting and piracy, only *the data of criminal statistics* and *the data on customs confiscations* – falling within the scope of the so-called *enforcement information* – come from official statistical data sources of public institutions. These data are acquired by public bodies in charge of IPR enforcement (courts, prosecution services, the police, customs services, possibly trade surveillance bodies). The most important advantage of measuring by using statistical data on IPR enforcement comes from the very nature of the data source, that is the data derives from official sources, thus their degree of reliability is high. It is disadvantageous, however, that although official statistical information is gathered by judicial organs in every country, due to the differences between the judicial systems, data content and data structure are most of the time specific to each country. A further significant drawback is that the data on IPR enforcement do not provide enough information on the total volume of illegal activities, they only show the “tip of the iceberg”. The number of customs confiscations and lawsuits are also dependent on many other external factors. On the basis of the statistics on

IPR enforcement, extrapolation as a technique for estimating the total volume of counterfeiting is not recommended by the literature.

The data of justice and criminal statistics can be used to illustrate the activities of investigative authorities and the number, structure and changes in time of criminal proceedings relating to IPR infringements according to the different classes of criminal offences defined in the Criminal Code. In the international practice, for example, the British *IP Crime Group* regularly publishes such data on counterfeiting in its annual *IP Crime Report*. The most often used official statistical dataset to illustrate the magnitude of counterfeiting is *the statistics of customs confiscations*. The national customs authorities and the supranational customs organisations (e.g. the competent directorate of the European Union, World Customs Organisation) are constantly collecting and publishing (for instance, the EU, the USA) confiscation data about the counterfeit and pirated products confiscated at customs borders. Data collection is generally carried out in the same structure, it includes the recording of the value of confiscated items, the number and the volume of confiscations, the infringement type, the country of origin of the goods and the means of transportation. In the large scale research of the OECD on the economic impact of counterfeiting, it was the statistics on customs confiscations that served as the input data for the international economic model calculations.

Questionnaire surveys/Sample-based surveys: In the international practice, questionnaire surveys covering representative statistical sample populations and, in certain sectors, sample-based surveys are extensively used to describe the phenomena of counterfeiting and piracy.

The main advantages of the surveys based on the questioning of consumers, producers or distributors are that they make it possible to collect quantitative as well as qualitative information, and they

1. Section 10 of the Government Decision No. 2140/2008. (X.15.) on the Action Plan annexed to the *National Strategy Against Counterfeiting* for the period 2008–2010 provides that the President of the *Hungarian Central Statistical Office* and the President of the *Hungarian Patent Office* shall ensure that with the involvement of research institutes a proposal for a methodology is formulated with a view to determining the volume and the economic impact of counterfeiting in Hungary, as well as the estimated (monetary) value of the damages caused (losses).

2. Measurement methods of the volume and the economic impact of counterfeiting and piracy and their application in Hungary. Manuscript by Krisztina PENYIGEY. Hungarian Patent Office. Budapest. 18 January 2010. 58 pages and annex.

also provide original information on the latest trends. However, they are basically of static nature, though the analysis according to the control variables (e.g. gender, age, income, geographical region) is suitable for providing a differentiated picture. At the same time, the reliability of the results of the surveys is relatively low since, among others, the knowledge and the awareness of the people surveyed are different, and they often tend to replace reality with something better, and there is also an element of subjectivity in their answers. The use of this measurement technique is also explained by the fact that the missing input data series of economic model calculations are often substituted by survey results. Consumer/producer questionnaires were (also) used in almost all published macroeconomic model calculations to determine the proportion of counterfeiting as basic input data.

Consumer surveys generally cover thousands of consumers (1000–3000) and a wide range of representative samples with respect to the composition of the population, and are conducted by standard market research techniques. This measurement technique can be useful to gain information on consumers' attitudes, purchasing behaviours and the frequency of purchases in respect of counterfeit products. Moreover, it helps to reveal that *which illegal products, how often and in what quantities consumers buy/bought* most of the time, and it also helps to discover the *motives* lying behind such purchases, the risks threatening consumers, and that which are the most frequently used *supply chains and distribution channels*. The surveys conducted abroad (for example, Ernst & Young, IPTOC, CEBR) mean valuable *methodological contributions* for the people preparing the questionnaires for domestic consumers and producers in respect of *the size of the sample populations, the scope of the questions on counterfeiting, the precise manner of asking, and the integration of innovative approaches (e.g. social attitude)*. In the national practice it can be a useful methodological instrument that the answers gained by the quantitative questioning technique (questionnaire) are usually complemented and refined by qualitative information acquired through focus group discussions.

In the producer/distributor surveys, the producers and distributors of genuine products give estimates of the relevant market share and the economic impact of the counterfeit and pirated products

(e.g. estimates of decrease in turnover of producers of original brand items, income losses, decline of investment, increase in costs, fall in trade mark value, etc.). Producer/distributor surveys can also contribute to the elaboration of action plans and measures against counterfeiting. From among the international surveys, the surveys conducted by *PriceWaterhouseCoopers, Technopolis, BASCAP, the German Federal Ministry of Economics and Technology, the Swiss Federal Institute of Intellectual Property and the Japan Patent Office* are of outstanding quality.

A widely used and direct measurement technique for the assessment of the market share of counterfeit and pirated products is sampling, during which the authenticity of sample products bought by mystery consumers or by other means in shops/commercial points of sale are examined – with the involvement of experts where necessary –, and following the genuineness checks, the proportion of counterfeit products is determined. The main disadvantage of the measurement method of sampling is that it is the most costly and time-consuming estimation method of recording counterfeit and pirated products.

Economic modelling: The preparation of estimates on counterfeiting is often carried out indirectly, by setting up economic models and by model calculations, which can be performed by the examination of a given industry (product group) or the entire national economy.

The industry models determine the volume and the economic impact of counterfeit and pirated products in a given industry by a calculation method that takes into consideration the specific characteristics of that industry. The examination usually takes place periodically (every year, every two years, etc.). Three industries – the music, the film and the software industry – are remarkably active in the collection of industry information on counterfeiting and piracy and in the preparation of estimates including model calculations. In this regard, the outstanding estimation procedures of the *Business Software Alliance (BSA)*, the *International Federation of the Phonographic Industries (IFPI)* and the *Motion Picture Association (MPA)* must be noted, and the examinations of *IPSOS* carried out on the film industry also deserve mentioning.

Although the literature raises several concerns with respect to the impact assessment of the model calculations of the professional organisations of the different industries and the international industry associations (e.g. lobby interest, overestimation, lack of transparency, data source, simplifying assumptions, calculation algorithm), the model calculations of the industries significantly contribute to the impact assessment of counterfeiting and piracy in the case of certain specific product groups or larger aggregates.

In specialist circles and in the media the most often mentioned global indicators concerning the proportions of counterfeiting and piracy in the world economy and their international economic impact are almost always based on macro-economic modelling. Several pioneering econometric model calculations can be attributed to the *Centre for Economic and Business Research (CEBR)* in London (for instance, calculations concerning the United Kingdom and the European Union). In the course of their research, the CEBR quantified, among others, the income and profit reducing effects of counterfeiting, as well as its impact on the GDB and employment. From among the international organisations, it was the *OECD* that developed a *trade approach* modelling method for the assessment of the economic impact of counterfeiting, and further impact assessment model calculations were carried out with respect to certain national economies (for example, Australia, United Arab Emirates, United Kingdom).

The international practice shows that *a widely recognised and applied standard methodology and indicator system have not yet been developed* for the measurement of counterfeiting and piracy by statistical methods (such as the methodology recommended by the World Intellectual Property Organization in the case of copyright industries). Recording is currently carried out by *different measurement methods and estimation techniques*. The establishment of the *European Counterfeiting and Piracy Observatory* could represent a step forward in the measurement of counterfeiting, since the objectives of the Observatory include the development of a common methodology for data collection, data analysis and reporting in the field of IPR infringements, as well as the preparation of impact assessments and the collection of best practices.

Annex No. 3: Criminal offences examined by the National Institute of Criminology

False Marking of Goods

Criminal Code, Section 296

Any person who produces a product with distinctive appearance, packaging, sign or name, from which a competitor or his product having distinctive features can be recognised, and who does so without the consent of such competitor, or who acquires such product for the purpose of placing it on the market, or who places such product on the market, is guilty of a felony and is liable to imprisonment for up to three years.

Infringement

Criminal Code, Section 329

(1) Any person who

a) connotes as his own the intellectual property of another person and thereby causes financial injury to the right holder, *b)* misusing his position, office or membership at an economic organisation makes the exploitation of an intellectual property of another person or the enforcement of IPR conditional upon being given a share from the royalties, or from the profit or proceeds generated by such property, or upon being designated as a right holder, is guilty of a felony and is liable to imprisonment for up to three years.

(2) For the purposes of this Section, „intellectual property” means literary, scientific and artistic works, inventions, plant varieties, utility models, designs and the topography of microelectronic semiconductor products.

Infringement of Copyright and Rights Related to Copyright

Criminal Code, Section 329/A

(1) Any person who infringes copyright or related rights conferred by the Copyright Act for the purpose of financial gain or causing financial injury, is guilty of a misdemeanour and is liable to imprisonment for up to two years, or community service or a fine.

(2) Any person who fails to pay the blank optical media fee or reprography fee for the author or for the holder of a right related to copyright for private-purpose copying under the Copyright Act, shall be punishable as laid down in paragraph (1).

(3) The punishment shall be imprisonment for up to three years in case of a criminal offence, if the infringement of copyright or rights related to copyright

a) causes substantial financial injury, or *b)* is committed in a pattern of criminal profiteering.

(4) The punishment shall be

a) imprisonment for up to five years, if the infringement of copyright or rights related to copyright results in a particularly considerable financial injury,

b) imprisonment for two to eight years, if the infringement of copyright or rights related to copyright results in a particularly substantial financial injury.

Circumvention of Technological Measures for the Protection of Copyright and Rights Related to Copyright

Criminal Code, Section 329/B

(1) Any person who, for financial gain, circumvents any effective technological measure as defined in the Act on Copyright, or to this end

a) produces, manufactures, *b)* hands over, distributes or trades in any instrument, product, equipment or device, is guilty of a misdemeanour and is liable to imprisonment for up to two years, or community service or a fine.

(2) Any person who makes economic, technical or organisational knowledge available to another person for the purpose of circumventing effective technological measures as defined in the Act on Copyright shall be punished according to Subsection (1) above.

(3) The punishment shall be imprisonment for up to three years in the case of a criminal offence if the circumvention of the effective technological measure as defined in the Act on Copyright is committed with the purpose of making profit.

(4) A person implicated in the offence described in Paragraph *a)* of Subsection (1) above shall not be punished if he voluntarily confesses to the authorities his involvement in the production or manufacture of any instrument, product, equipment or device intended for the circumvention of technological measures as defined in the Act on Copyright prior to the authorities gaining knowledge about

it, and if he surrenders the produced or manufactured objects to the authorities, and if he provides information on any other individual involved in their production or manufacture.

Falsifying Rights Management Information

Criminal Code, Section 329/C

Any person who, for financial gain, removes or alters, without authority, rights management information – as defined in the Act on Copyright – published in connection with the use of a work or performance of another person that is protected by copyright or rights related to copyright, is guilty of a misdemeanour and is liable to imprisonment for up to two years, or community service or a fine.

Infringement of Industrial Property Rights

Criminal Code, Section 329/D

(1) Any person who infringes a right holder's rights – conferred by patent protection, plant variety protection, supplementary protection certificate, trade mark protection, geographical indication protection, design protection, utility model protection and topography protection granted by virtue of national legislation, a published international agreement or a European Community regulation –, by copying or using their property under protection, and thereby causes financial injury to them, is guilty of a misdemeanour and is liable to imprisonment for up to two years, or community service or a fine.

(2) The punishment shall be imprisonment for up to three years in the case of a criminal offence, if the infringement of industrial property rights

a) causes substantial financial injury, or *b)* is committed for financial gain.

(3) The punishment shall be

a) imprisonment for up to five years, if the infringement of industrial property rights results in a particularly considerable financial injury,

b) imprisonment for two to eight years, if the infringement of industrial property rights results in a particularly substantial financial injury.

Annex No. 4: Summary of the Hungarian National Report under article 18 of Directive 2004/48/EC on the enforcement of intellectual property rights¹

Implementation of the Directive

The European Parliament and the Council adopted the *Directive 2004/48/EC on the enforcement of intellectual property rights* on 29 April 2004 (hereinafter referred to as “the Directive”), which has the aim of harmonising the national legislation of Member States in respect of the legal measures, procedures and remedies of a civil or administrative law nature applicable in the case of industrial property right or copyright infringements.

The deadline for transposing the Directive into national law was 29 April 2006. Hungary fulfilled this obligation by the adoption of *Act CLXV of 2005 on the amendment of certain laws relating to the enforcement of industrial property rights and copyright*, which affected four national acts: Act LIII of 1994 on Judicial Execution (“Judicial Execution Act”), Act XXXIII of 1995 on the Protection of Inventions by Patents (“Patent Act”), Act XI of 1997 on the Protection of Trade Marks and Geographical Indications (“Trade Mark Act”) and Act LXXVI of 1999 on Copyright (“Copyright Act”).

The new provisions brought such law institutions in line with Community requirements, whose majority had already been present and applied in the Hungarian industrial property and copyright law prior to the adoption of the Directive (for instance, in respect of IPR infringements, the civil procedure rules on preliminary evidence and provisional measures were modified, and the provisions for precautionary measures were amended). Extending the scope of the right of information, however, was one of the major novelties appearing in the legal acts concerned. The *optional provisions* for sampling [Article 6(1) of the Directive] and for alternative measures (Article 12 of the Directive) were not transposed into Hungarian law.

Methodology applied in the preparation of the National Report

In order to gather reliable and comparable information from the Member States, the Commission prepared two sets of questions:

the first was prepared for the public authorities of Member States involved in IP enforcement, while the second was aimed at other concerned stakeholders. Thus, the national authorities responsible for the preparation of the National Report under Article 18 of the Directive had to collect the relevant answers, and had to make a summary, which sheds light on the experience gained from the application of the new or modified enforcement measures, underpinned, if possible, by quantitative data. By comparing the answers provided by the public authorities and other interested parties, not only do the differences in their approach become clear but also the identification of the truly effective measures becomes possible.

The National Report was prepared by the Hungarian Patent Office (HPO) and the Ministry of Justice and Law Enforcement (MJLE) acting in close cooperation. According to the working method applied, the questionnaires of the Commission served as a basis for only those questionnaires that the HPO and the MJLE annually sent to the concerned authorities and other interested parties (in 2007, 2008 and 2009) for the purpose of public consultation. The aim of the *additional questions* was firstly to obtain a more detailed and specified explanation for the questions of the Commission in the context of national legislation, and secondly to identify more accurately the situation of IP enforcement in Hungary, while gaining information on the activities of expert bodies in the field (Council of Copyright Experts and Body of Experts on Industrial Property) as well as on criminal law enforcement.

Overview and analysis of the answers given to the questionnaires

a) The evaluation of the impact of the Directive on national enforcement practices is somewhat premature. Although some patterns are becoming more and more apparent, the number of closed cases initiated after the transposition of the Directive is not high enough to be able to draw far-reaching conclusions.

b) The Directive and the amendments to the national laws meant a positive development for IP right holders and they introduced measures that strengthen the right holders’ position but the rules on enforcement may need some fine-tuning due to the specific features of the different forms of IP protection. The decrease in the number of court cases do not show that the new measures “tore down the dam” that had prevented the right holders from pursuing litigation; court proceedings have always been accessible in Hungary (no prohibitive costs, possibility of self-representation for natural persons), and the number of cases cannot be said to be unusually low compared to the registered rights and the size of the market.

c) The criticism about the effectiveness of the enforcement measures do not concern in the first place the Directive and the new measures brought about by the Enforcement Act but rather the inherent – and horizontal – deficiencies of civil court proceedings (delays, low amounts of damages, execution issues, etc.). The principles underlying the new provisions enjoy general support.

d) The two legal instruments mostly welcomed are the enhancement of the provisional measure and the right to information. However, there are concerns about the level of “certainty” required to order provisional measures and about the speed of making decisions on requests, and the issues of the right to information concerning intermediaries (in order to identify the infringer) is still to be explored.

e) On the basis of the answers given to the questionnaires, it seems for the moment that there is no need to amend the Directive. There is one modification, however, which may be worth considering: when the defendant prevails, it should be made possible that the court (upon the defendant’s request) order the publication of its decision (at least when it was the applicant who requested the publication in the lawsuit).

1. The full National Report is available in Hungarian and in English on the website of the Hungarian Patent Office at: <http://www.mszh.hu/jogervenyesites/>

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