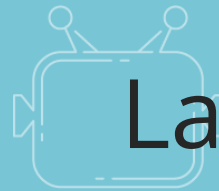


# Intermediary Liability & Future Challenges To Effective Brand Protection



# Ineffective Brand Protection

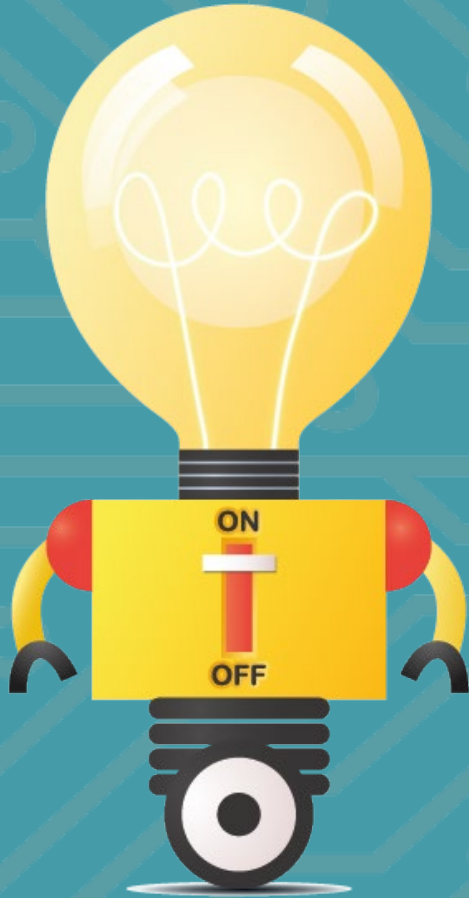


Large networks of illicit activity are often missed in the constant stream of issues which are 'resolved' in a never-ending whack-a-mole merry-go-round.

-Digital Brand Protection: Investigating Brand Piracy & Intellectual Property Abuse (2019), Steven Ustel



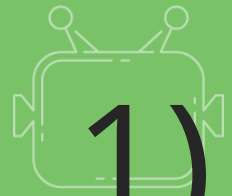
# Effective Brand Protection



In the digital environment, in particular, the services of intermediaries may increasingly be used by third parties for infringing activities. In many cases such intermediaries are best placed to bring such infringing activities to an end. Therefore, without prejudice to any other sanctions and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary who carries a third party's infringement of a protected work or other subject-matter in a network.

–recital (59) Information Society Directive


# Future Challenges



- 1) Policy
- 2) Technical
- 3) Criminality



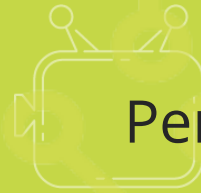
# Future Challenges

 The market for counterfeit goods remains highly profitable, providing criminals with opportunities to generate huge profits while running few risks. Most criminal activity involving counterfeiting is undoubtedly performed by organised crime groups and there appears to be an overall professionalisation of these groups.

-Intellectual Property Crime Threat Assessment (2019), EUIPO & EUROPOL



# KYC I: Organised Crime Groups



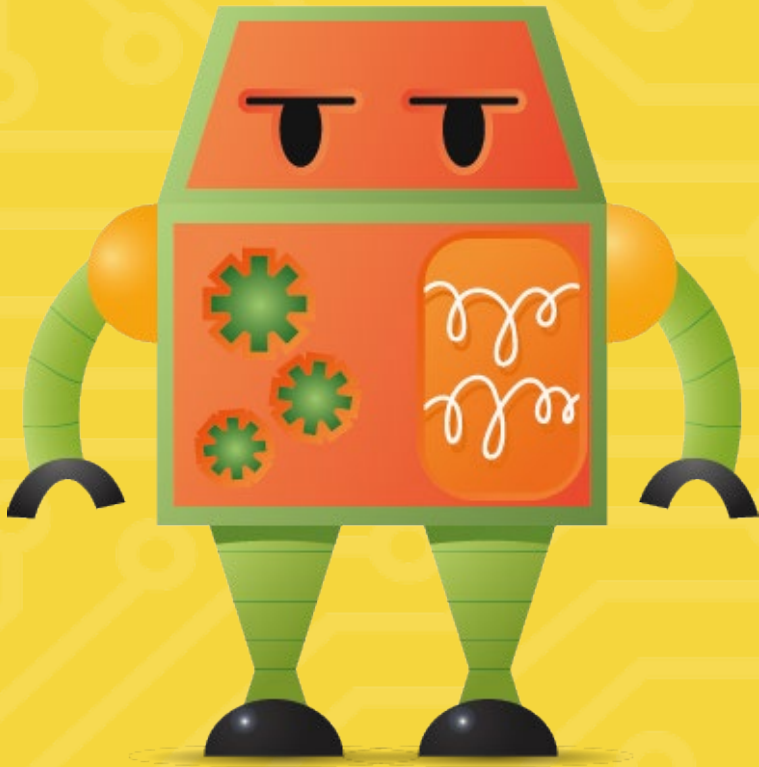
Perhaps the term 'organised crime' is worth considering. It suggests that criminal networks exist in a state of controlled efficiency. Like all networks, we understand that these may take many forms.

The experience we're developing suggests that 'organised' may also mean 'structural'. The complex set of actions and arrangements needed to find a market for counterfeit goods, then a distribution network, then a supplier, possibly in the far East, and transport network capable of spanning the globe, was not created in a 'top down' way.

–IP Crime And Enforcement Report (2019), IP Crime Group



# KYC II: Connections With Terrorism

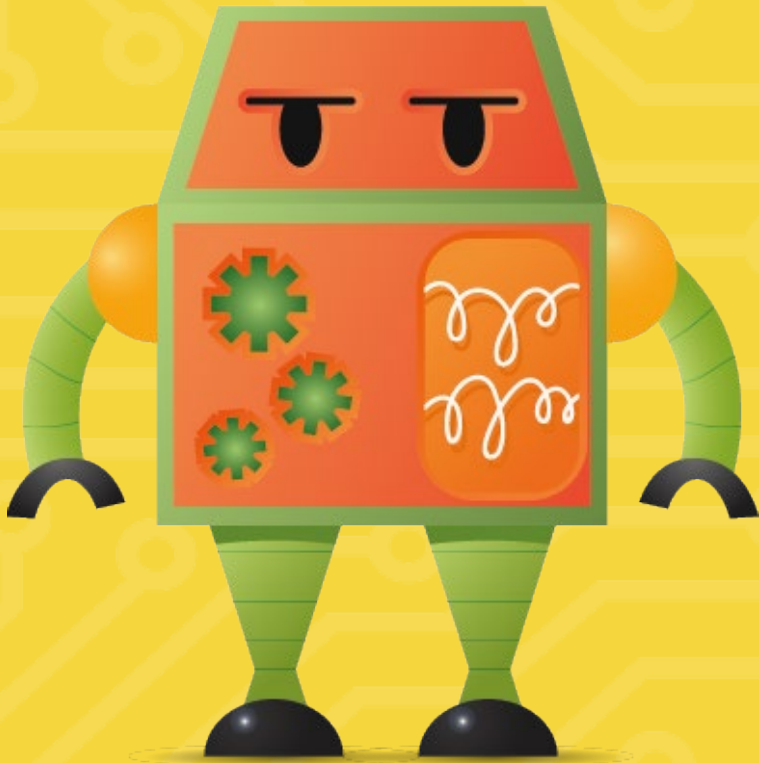


Many of these organised crime groups are also involved in other criminal activities, including in a limited number of cases, terrorism.

A particularly worrisome development is that some of the jihadist terrorist attacks in the EU in recent years were partially financed by selling counterfeit clothing and shoes, although the most prominent example of this already stems from 2015. The Kouachi brothers, responsible for the terrorist attack on the Charlie Hebdo office, had been involved in selling counterfeit sports shoes. They had paid for the shoes via international payment services and imported them via parcel service from China.

-Intellectual Property Crime Threat Assessment (2019), EUIPO & EUROPOL

# KYC II: Connections With Terrorism

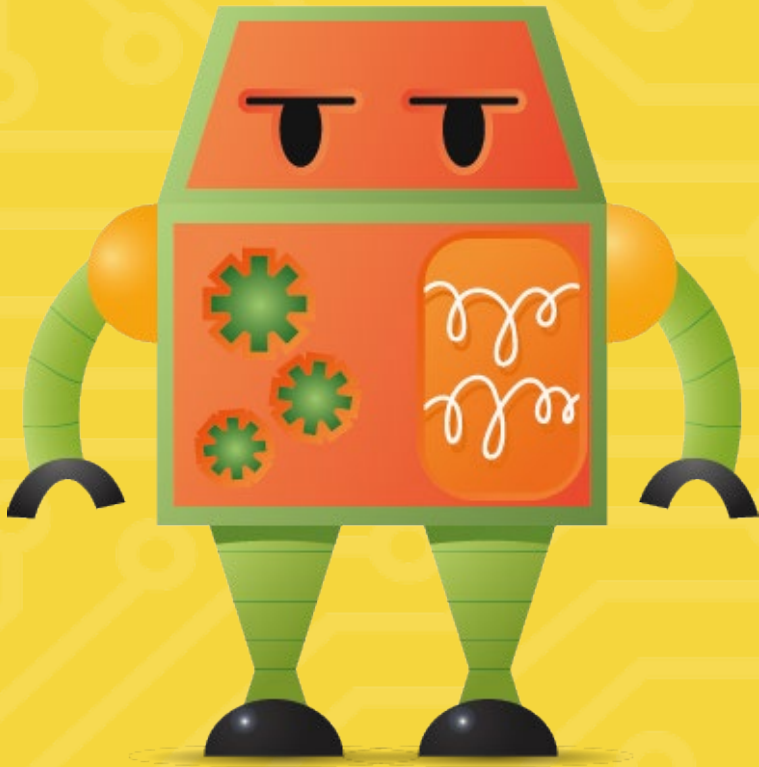


...."According to police officers, he was leaving the terrorist world to focus on petty crime. No signs of danger were detected. So in June 2014, monitoring of the Kouachi brothers was stopped permanently, with the police concentrating on other suspects. Just seven months later, the Kouachi brothers burst into the Newsroom of Charlie Hebdo"...

-Counterfeiting & Terrorism (2016), UNIFAB



# KYC II: Connections With Terrorism



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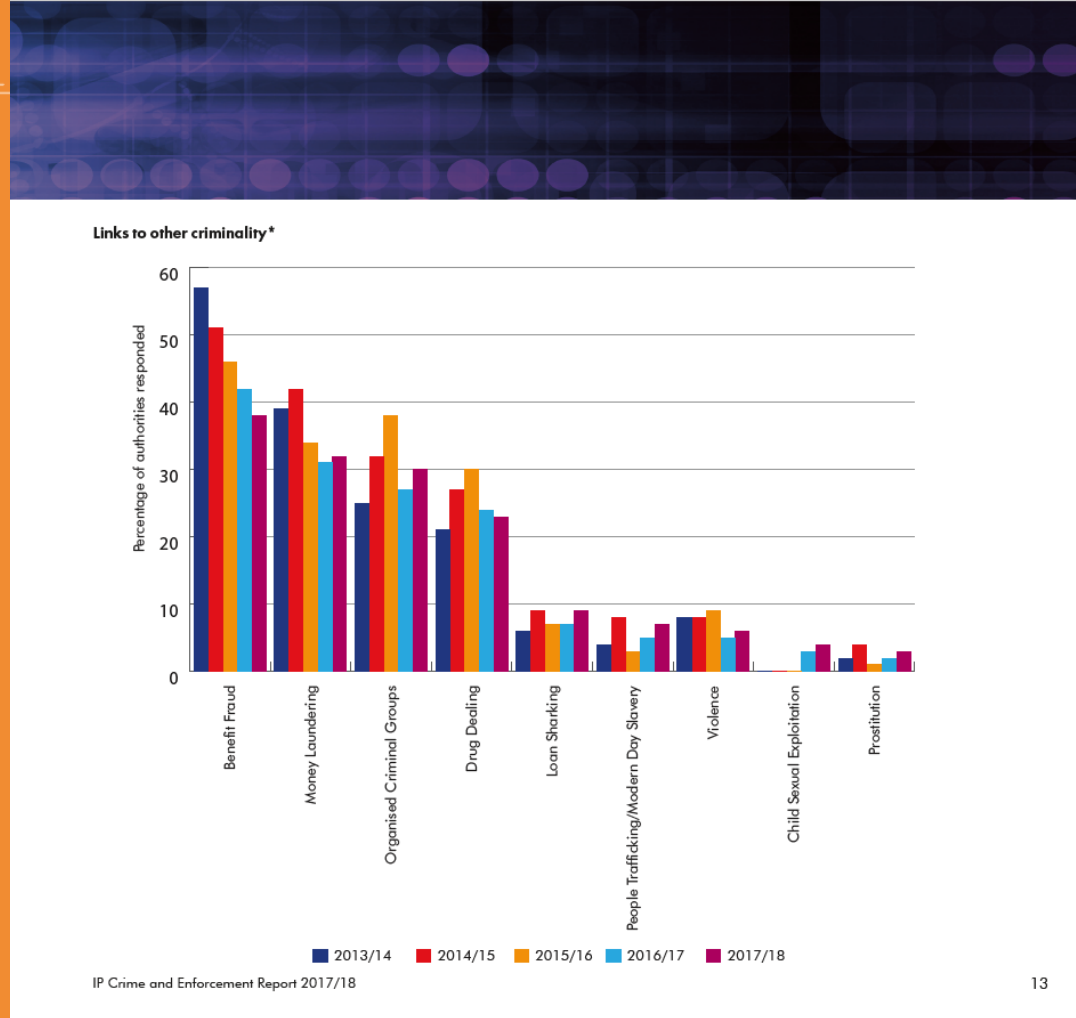
# Brand Protection Criminology



Which type of criminality was most commonly linked with IP crime in the UK?



# Brand Protection Criminology



# Brand Protection Criminology



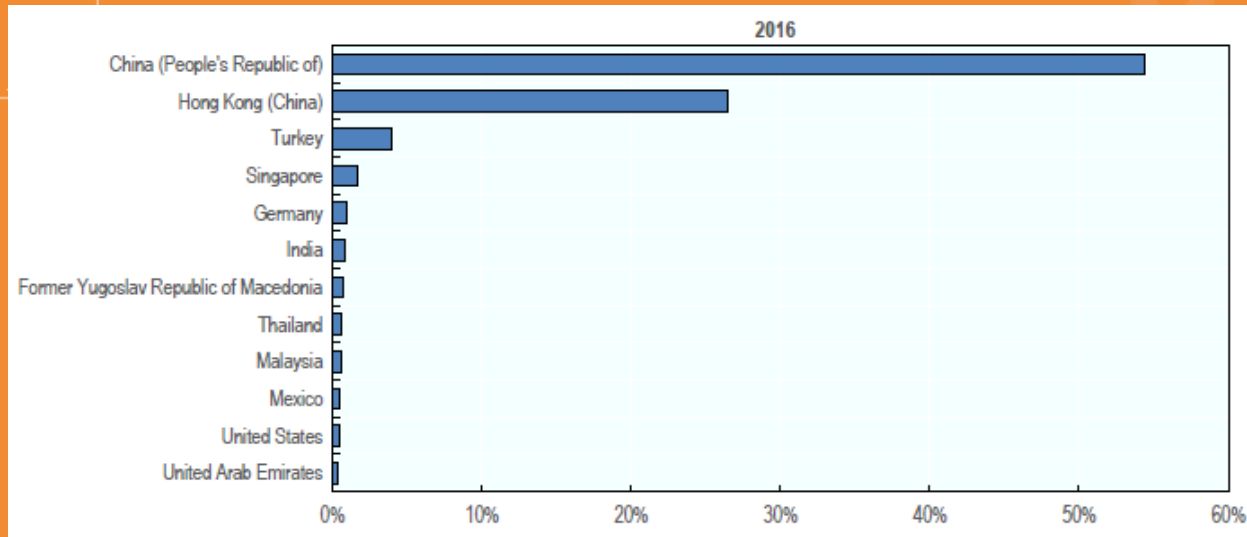
Regarding the question of why some economies emerge as important hubs for trade in counterfeits, there are five main drivers that determine an economy's propensity to become an active actor in the trade in fake goods:

- Governance
- Free Trade Zones
- Production facilities
- Logistics capabilities and facilities
- Trade facilitation policies (specifically re transparency)

-Illicit Trade: Trends in Trade in Counterfeit and Pirated Goods  
(2019), OECD & EUIPO



# Brand Protection Criminology



-Illicit Trade: Trends in Trade in Counterfeit and Pirated Goods (2019),  
OECD & EUIPO



# Brand Protection Criminology

**Table 4.1. Top 25 provenance economies in terms of their propensity to export counterfeit products**

GTRIC-e, average 2014-16

| Provenance economy           | Grand total |
|------------------------------|-------------|
| Hong Kong (China)            | 1.000       |
| China (People's Republic of) | 1.000       |
| United Arab Emirates         | 0.995       |
| Morocco                      | 0.989       |
| Pakistan                     | 0.955       |
| Turkey                       | 0.946       |
| Panama                       | 0.901       |
| Uruguay                      | 0.859       |
| Bangladesh                   | 0.821       |
| Mauritania                   | 0.753       |
| Djibouti                     | 0.742       |
| India                        | 0.718       |
| Lebanon                      | 0.709       |
| Egypt                        | 0.675       |
| Cambodia                     | 0.567       |
| Syrian Arab Republic         | 0.561       |
| Bahrain                      | 0.553       |
| Dominican Republic           | 0.529       |
| Honduras                     | 0.450       |
| Qatar                        | 0.441       |
| Benin                        | 0.424       |
| Jordan                       | 0.413       |
| Sri Lanka                    | 0.410       |
| Malaysia                     | 0.402       |
| Singapore                    | 0.393       |

*Note:* High GTRIC-e is a weighted value of two sub-components: the value of exports of counterfeit and pirated products from that economy in absolute terms and the share of trade in counterfeit and pirated products from that economy.





# Brand Protection Criminology



Also, important to note is that many of the factors presented above can actually be extremely beneficial for trade in general.

Together, small parcels carried either by postal or express services account for 69% of customs seizures of IP-infringing products for the 2014-2016 period.

58.5% of counterfeit and pirated products traded worldwide in 2016 were sold to consumers who actually knew they were buying fake products.

-Illicit Trade: Trends in Trade in Counterfeit and Pirated Goods (2019), OECD & EUIPO



# How To Reduce Structural IP Crime?



We must understand three factors:

- 1) Where are counterfeits manufactured?
- 2) Why is there demand for counterfeits?
- 3) How is supply meeting demand?

# Digital Brand Protection

>Investigating Brand Piracy & Intellectual Property Abuse



*"This book is a go-to manual in the world of digital brand protection."*

Presented by:  
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# Ustels