

**THE DEVELOPMENT OF INTELLECTUAL  
PROPERTY RIGHTS AND THEIR PROTECTION BY  
THE RUSSIAN CUSTOMS AUTHORITIES<sup>1</sup>**

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**ABSTRACT**

The research is about the development of the intellectual property rights and their protection by the Russian customs authorities. Modern demands of the economy and society really raised the issue of the development of the intellectual property in the Russian Federation, and the Eurasian Economic Union (EAEU) at the level of national security issues. The research also represents the situation of the IPR, which includes studies from the statistical data customs authorities. Finding out the problems of the IPR in Russia also correlates to the EAEU guidelines who provided some recommendations on how to solve them.

**KEY WORDS:** intellectual property rights, customs, Russian customs authorities, counterfeit, e-Commerce, problems, recommendations

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<sup>1</sup> Original scientific article

## INTRODUCTION

Customs must strive to build an environment that is “fair and sustainable.” The importation of illegal goods, such as goods that infringe intellectual property rights (IPR) can do immense harm to a country’s economy. It is not only a question of financial losses for both legitimate traders and governments, such activities can also affect governance, the economy, development and human security across the globe. In accordance with the Strategy of Russian Customs Service development until 2020 (the Strategy), one of the strategic goals of the Customs is the protection of intellectual property in the process of customs regulation. Because of this strategic goal, the following tasks have been set for the Russian customs authorities until 2020:

1. Prevention and suppression international trade of counterfeit products by expanding the list of intellectual property objects to be protected by customs authorities.
2. Expansion of the customs authorities power to suppress offenses against intellectual property, including using of the latest achievements of science and technology.
3. Improving interagency and international cooperation to combat offenses within the competence of customs authorities concerning illegal import and export of intellectual property objects across the customs border of the Eurasian Economic Union and across the state border of the Russian Federation.

The existing possibilities allow the customs authorities to solve these tasks, however, the development of world trade, information technologies and the existence of new political and economic threats require researching and application of innovative approaches to improve the customs declaration and customs control of goods containing intellectual property objects across the border.

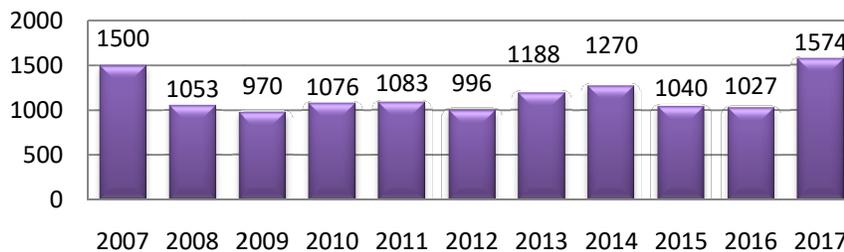
### IPR nowadays in Russia

An important factor to stimulate the economic growth of Russia is the existence of effective law enforcement practices for intellectual property protection, ensuring the prevention and suppression of violations. Last time there was a tendency to increase the types of counterfeiting products. Even now these violations can be found from luxury goods, sports clothing, watches, and jewelry

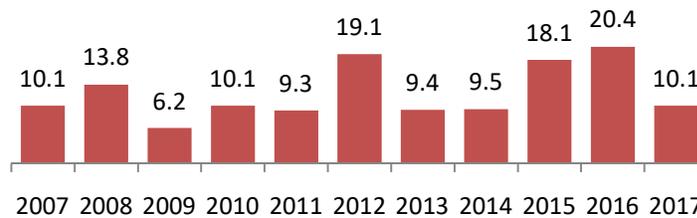
to ordinary items that have a direct impact on the life and health of the population: medicines, food, alcohol, household chemicals and children's toys. Counterfeit products have penetrated into high-tech industries such as cars, aviation, and even space. The largest sources of counterfeit and pirated products on the territory of Russia are the countries of Southeast Asia and Turkey. The production of counterfeit is often located directly on the territory of the EAEU States.

The primary motivation for committing IPR violations is a huge profit. Counterfeiting is highly profitable and it is likely to become even more lucrative with the shift to the higher priced primary market. Offenders also perceive these crimes to be low risk as they believe both the likelihood of apprehension and possible penalties if prosecuted are relatively low for these crimes compared to other “more serious” offenses, such as violent crimes and drug trafficking. Other motivations include a desire to steal information from right-holders and earn money spreading it.

The number of IPR offences (part 1 of article 7.12, article 14.10) is shown in the picture 1. They were initiated by customs officers in Russia.



Picture 1. The number of cases initiated on the IPR offences



Picture 2. The number of counterfeit goods detected by customs officers in Russia (million units)

Russian customs authorities prevented damage of the right-holders about 64,125 million euro (in 2016 – 59,652 million euro) in 2017.

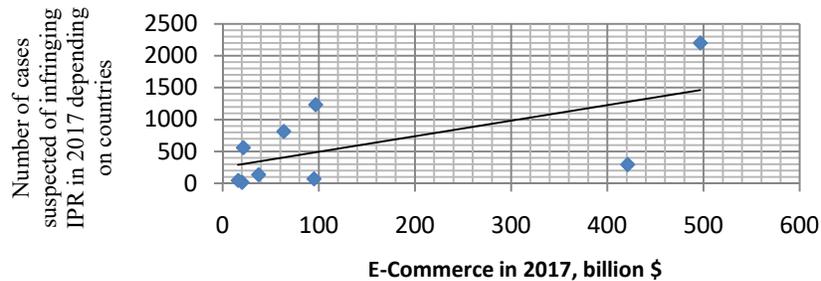
In 2017 Russian customs authorities prevented the import of more than 234 thousand units of counterfeit products containing FIFA trademarks (in 2016 - 61 thousand units). Such numbers were announced at the meeting with the International Federation of football associations (FIFA) for the protection of its trademarks. The meeting was attended by representatives of FIFA, the owner of the brand FIFA (LLC "Agency of intellectual property").

#### E-commerce, IPR and customs authorities

E-Commerce is one of the hot topics when it comes to digitalization and disruptive changes to traditional industries. This development resulted in an ever-increasing online market with new types of purchasing processes appearing all over the world. At the same time, more and more different product categories and product ranges find their way into an online trade. In 2017, the global eCommerce market was worth US\$1.5 trillion. China was the biggest eCommerce market worldwide, generating revenues of US\$497 billion. Based on the high annual growth rate of 14%, the market is expected to exceed revenues of US\$959 billion by 2022. The second biggest eCommerce market is the U.S. with revenues of US\$421 billion in 2017, followed by Europe with US\$330 billion. In both markets, growth rates are expected to be significantly lower than in China, with 8-9% annually.

Because of this statistical data, Russian customs authorities started the suppression of the shipments of counterfeit goods in international mails (post). At the same time, the determination of goods sent to the post services (counterfeit or not) is entrusted to the right-holders of intellectual property objects. Due to Customs Code of the EAEU if customs officers find counterfeit goods and the right-holder approves this information, the goods must be sent out from Russia.

A correlation analysis was carried out between the turnover of e-Commerce and the cases of suspension of goods (IPR) by customs authorities depending on the country to detect the connection between these two factors.



Picture 3. The connection between the turnover of e-Commerce and the suspected of infringing an IPR in 2017 by Russian customs authorities

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
	Country	Ni	E-Commerce 2017, billion \$, X	Cases suspected of infringing an IPR, in 2017 Y	xy	avg (x* y)	avg x	avg y	avg x*avg y	(xi-avg x)^2	(yi-avg y)^2	ox	oy	ox*oy	R
2	China	1	496,8	2199	1092463,2	156654,9	140,9	595,56	83631,98	126664,81	2577451,9	173,33	687,36	119139,9	0,61
3	The USA	2	421,1	292	122961,2					78512,04	90935,753				
4	Great Brit	3	95,1	68	6466,8					2097,64	276208,64				
5	Japan	4	96,7	1229	118844,3					1953,64	403789,64				
6	Germany	5	63,4	810	51354					6006,25	46848,198				
7	France	6	37,3	133	4960,9					10732,96	212111,42				
8	South Kor	7	21,4	558	11941,2					14280,25	1264,1975				
9	Canada	8	20,2	12	242,4					14568,49	338206,86				
10	Russia	9	16,1	41	660,1					15575,04	305317,64				
11	Summary	9	1268,1	5342	1409894,1					270391,12	4252134,2				

Picture 4. A correlation analysis

The correlation coefficient is 0.64, which indicates the presence of connection.

Table 1. Analyzing data represented by Statistical Digital Market Outlook 2017 and Russian customs authorities

№	Country	E-Commerce 2017, billion \$, X	Cases suspected of infringing IPR in 2017, Y
1	China	496,8	2199
2	The USA	421,1	292
3	Great Britain	95,1	68
4	Japan	96,7	1229
5	Germany	63,4	810
6	France	37,3	133
7	South Korea	21,4	558
8	Canada	20,2	12
9	Russia	16,1	41

The Spearman rank correlation coefficient was calculated by the formula.

$$p = 1 - 6 \frac{\sum d^2}{n^3 - n} \quad (1)$$

$$p = 1 - 6 \frac{34}{9^3 - 9} = 0.72$$

It also proves that the connection between feature Y and factor X is strong and direct.

Thus, due to the growth of e-Commerce in certain countries, the number of Cases suspected of infringing IPR will increase regardless of the measures taken to reduce the production of counterfeit products. Moreover, due to the increasing number of suspensions, customs control of such goods will become more complicated and take more time, instead of being simplified. To sum up the statistic analysis, there are two solutions:

- 1) The customs control of the international post will be more comprehensive and it makes possible to reduce the number of counterfeit products on the markets.
- 2) The customs control will not change and the number of counterfeit goods will increase (not decrease as planned) because e-Commerce increases annually. The question is that it is necessary to choose either the development and expansion

of e-Commerce or the reduction of counterfeiting and the protection of IPR. Due to the fact that e-Commerce brings a huge income (including with the violation of IP rights) to a lot of online stores in the world, it makes no sense to stop their illegal activities when they can pay a penalty or have minimal losses because of the detention, destruction or send out (as it happens in Russia) of a unit of goods, which revealed the customs authorities. These stores have more than 1,000,000 of such goods and selective customs control will have no effect on their activities at all.

#### Problems and recommendations for development of intellectual property rights and their protection by the Russian customs authorities

Despite the efforts to coordinate and improve the efficiency of customs and other types of control in the Russian Federation, it is necessary to admit the lack of opportunities at the moment to stop the illegal turnover of counterfeit goods in the EAEU member States. The researching of customs declaration and customs control of goods containing IP objects shows us the following systemic problems the same for all the EAEU member States:

- 1) The illegal production of counterfeit products in the EAEU countries.
- 2) Import of counterfeit products across the border of China.
- 3) Production and using of false or fake accompanying documents (veterinary etc.), transport documents, declarations of conformity, certificates of conformity, packing lists, invoices.
- 4) The lack of competence of customs officers to seize counterfeit goods and destroy them.
- 5) The low level of income of common the EAEU Members people and, as a consequence, the low level of their purchasing power and desire to purchase and consume counterfeit products, instead of the expensive original goods of the right-holders.

The current foreign policy and economic situation in 2014 – 2015 years, which decreased the level of income of the population and aggravated the situation in the sphere of illegal trafficking of counterfeit goods. This negative situation oriented the consumer's demand of the large part of the population (especially poor people) in favor of the purchasing of counterfeit products.

It should be noted that the technological capabilities of unscrupulous manufacturers and suppliers are constantly being improved. Counterfeit goods are becoming more difficult to distinguish from the original product and counterfeit goods have covered all price segments (low and medium (mass) as well as high segments).

All mentioned above shows that problem of IPR must be solved. One of the tasks for creating favorable conditions for the development of IPR in the EAEU is the implementation of measures aimed at prevention of violations in the field of IP, the fight against counterfeit products and protection of rights to objects of IP. All these problems affect the national economy, slow down its development, as well as reduce the number of customs, tax and other payments to the federal budget, and if they directly affect the country's budget, they have a very negative impact on the population of Russia – on the quality and standard of living of its native citizens.

To solve these problems the authors recommend:

- 1) Developing cooperation between control and supervision, law enforcement and other government authorities of the EAEU member States in the sphere of combating illegal trafficking in counterfeit products, including international operations and coordinated joint operations aimed at preventing, identifying and suppressing the facts of illegal trafficking of counterfeit products;
- 2) Developing cooperation with international organizations, including an exchange of experience with foreign countries.
- 3) Creation and carrying out of information campaign about a fight against counterfeit products.
- 4) Promotion and support of state quality marking systems of the EAEU and the protection of the marks.
- 5) Development of electronic services for citizens, allowing checking the legality of products and responding by filing a complaint against unscrupulous market participants.
- 6) The establishment of proportionate penalties for violations taking into accounts the possible negative consequences of trafficking and the public danger.
- 7) Development of the laws of the EAEU and the Russian Federation in the field of Internet-trade in part of establishing the necessary and sufficient powers of regulatory authorities over the activity of online stores.

Such solutions will contribute to the creation of conditions for the unity of the information space and efficiency of the interstate exchange of information, information support for the harmonization of the legislation of the EAEU member States, the creation of generally available and clear information about IPR, joint research, etc.

In conclusion, it should be noted that the topic of intellectual property is very relevant nowadays and these problems need to be solved jointly by all countries of the world. Counterfeiting and piracy kill fair competition in the market. Intellectual work must be protected, especially in the era of E-Commerce. Counterfeit affects not only the budgets of countries but also the health and safety of people around the world. Methods of effective protection IPR are studied at various scientific conferences and exhibitions both in business communities and in the government agencies of the Russian Federation which include customs authorities. Customs officers, in addition, prevent the import of goods which violates IPR at the stage of their crossing the border of the customs territory of the Eurasian Economic Union, or export from the customs territory of the EAEU to other countries.

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