

**Team for Counteracting Infringements of  
Copyright and Related Rights**

**REPORT**

**concerning the protection and enforcement  
of copyright and related rights, as well as other intellectual property  
rights in Poland  
for 2009**

**SUPPLEMENT**

**TO THE SPECIAL REPORT**

*Warsaw, 2010*

## TABLE OF CONTENTS

I. Introduction.....	4
II. Activities undertaken in 2009 by the government administration – members of the Team for Counteracting Infringements of Copyright and Related Rights – counteracting piracy and counterfeiting .....	5
1. The Ministry of the Interior and Administration – the Police and the Border Guard of the Republic of Poland.....	5
1.1. The Police .....	5
1.2. Polish Border Guard.....	7
2. The Ministry of Finance – Customs Service of the Republic of Poland .....	14
3. The Ministry of Justice – National Public Prosecutor’s Office.....	28
III. Summary and perspectives for future actions .....	32

## I. Introduction

“The Report concerning the protection and enforcement of copyright and related rights, as well as other intellectual property rights in Poland” for 2009 (hereinafter referred to as the “Report”) was developed pursuant to Article 3 of the Regulation of the President of the Council of Ministers of 9 November 2000 creating the Team for Counteracting Infringements of Copyright and Related Rights (hereinafter referred to as the “Team”).

The Document was developed on the basis of materials provided by the government administration. The current version is the ninth edition of the Report.

The Report focuses on the assessment of enforcement procedures referring to copyright and related rights, as well as other intellectual property rights in 2009.

Additionally, it constitutes a supplement to the SPECIAL REPORT entitled *“Protection of copyright and related rights, as well as other intellectual property rights in Poland in the years 2006 – 2008 with a report on task completion for the first half of 2009 included in a government document “Programme for the protection of copyright and related rights 2008 – 2010”*”, which was published in November 2009.

Due to the fact that since November the section concerning general issues, as well as final conclusions showing the improvement of the level of protection of intellectual property rights are still up-to-date, they have been omitted in the following report which focuses on facts concerning last year.

## II. Activities undertaken in 2009 by the government administration – members of the Team for Counteracting Infringements of Copyright and Related Rights – counteracting piracy and counterfeiting .

### **1. The Ministry of the Interior and Administration – the Police and the Border Guard of the Republic of Poland**

#### **1.1. The Police**

In 2009, within the framework of the governmental “*Programme for the protection of copyright and related rights in Poland for the years 2008 – 2010*”, the Police undertook activities aimed at reducing, disclosing and combating infringements of copyright and related rights, as well as industrial property rights.

Special emphasis was put on the analysis of incidents which occurred in big trading centres near the Polish western border. The research covered areas which are under the scope of activities undertaken by Departments for Fighting Economic Crime of Regional Police Headquarters in: Szczecin, Gorzów Wielkopolski and Wrocław.

**The estimated supply and demand for optical CD and DVD discs with illegally copied phonograms and videograms, as well as for fake goods (it also covers goods purchased by German citizens) on market places and bazaars near the western border is relatively** small in comparison with supply and demand observed in previous years.

However, it should be stated that in the same period, the supply and demand for clothes with fake trademarks on bazaars located near the Polish western border remains significant. Despite this fact, we can still observe a decreasing tendency, in comparison with 2008.

Orientation towards German citizens, as far as the sale of pirate and fake goods is concerned, is greater on the north of the western border than on the south of this border. Also, in the case of this variable, the indicator is lower than it was in 2008.

In comparison with 2008, in 2009, we could also observe the decrease in the number of persons selling pirate and fake goods. This tendency is also directly connected with the decrease in the number of stands on bazaars and market places.

The number of offered pirate and fake goods has also decreased, which is due to the fact that there is a greater number of musical works circulating on the Internet. In this environment we can also observe an increase in the number of transactions offering fake goods.

Local Police units conduct systematic preventive activities on bazaars which are under their control. In most cases such preventive activities take place several times a month.

Additionally, together with the representatives of aggrieved persons, activities aimed at counteracting infringements of intellectual property rights are being conducted.

In 2008, on market places and bazaars located near the border of lubuskie voivodship, 38 operations were conducted, while in 2009, there were 44 such operations.

On the territory of dolnośląskie voivodship there were 97 and 68 such operations respectively.

On the territory of zachodniopomorskie voivodship there were 46 and 49 organized operations on market places and bazaars.

It should be added that the decrease in the number of undertaken activities (dolnośląski station) was due to smaller risk on that territory.

The number of preparatory proceedings instituted in 2008 and in 2009 on big bazaars and market places located in the vicinity of borders controlled by local police units can be illustrated as follows:

- a) **lubuskie voivodship** – 37 preparatory proceeding were instituted in 2008, while in 2009 there were 46 of them; at that time over 39 000 fake goods were secured;
- b) **dolnośląskie voivodship** – in 2008, 81 preparatory proceedings were instituted, police officers secured 9 604 pirate and fake goods, there were 79 proceedings and 11 599 secured products were questioned;
- c) **zachodniopomorskie voivodship** – in 2009, 193 preparatory proceedings were instituted, police officers confiscated 6 451 CDs, 3 722 items of clothes with fake trademarks and 3 052 fake cigarettes of different brands.

There are two Police departments which play a significant role in terms of counteracting crime against intellectual property rights on bazaars and market places located in the vicinity of Polish western borders: criminal and prevention department.

Prevention officers accomplish through patrols tasks connected with criminal prevention and tasks that police community support officers are in charge of. Police community support officers react to manifestations of infringements of intellectual property rights which occur on the territory under their control.

Through activities conducted most often with potential aggrieved persons, in justified cases criminal departments institute preparatory proceedings. Additionally, police officers from local police stations closely cooperate with administrators of market places and bazaars in terms of counteracting infringements of intellectual property rights. Police officers from the department of economic crime regularly conduct operational reconnaissance actions aimed at disclosing such crimes. Permanent cooperation with officers from units of Polish Border Guard, Customs Service, as well as municipal and communal police constitute a significant element as far as combating such types of crime on borderlands is concerned.

To sum up, we should emphasize that the dynamic development of the Internet has led to a significant decrease in demand for pirate and fake goods on bazaars and market places, including those located near the western border.

Such a situation also influences the number of instituted preparatory proceedings.

Activities undertaken by Police local units correspond with risks which occur on these areas. Moreover, extensive cooperation of all interested parties, i.e. Police, Polish Border Guard, Customs Office and aggrieved persons, allows for further reduction of such type of crimes.

## **1.2. Polish Border Guard**

In 2009, the Polish Border Guard continued activities (intensified in previous years) referring to the protection of intellectual property rights.

These activities were undertaken on the whole territory of Poland, the focus, however, was on western borderlands, as well as on market places and bazaars located in these areas. They mainly referred to arrested persons and confiscated goods, as well as

identification of places where goods subject to provisions of specified regulations are produced and smuggled.

Pursuant to the provisions of competence act, the Polish Border Guard is a body which identifies and combats border crimes (cross-border crimes). Therefore, its activity in terms of protecting intellectual property *sensu largo* (copyright and related rights, industrial property) is confined to smuggling and to any activity connected therewith (e.g. distribution on bazaars), it is also connected with working out criminal organized groups.

Steps taken by the Polish Border Guard usually constitute a derivative of its priority tasks undertaken in terms of illegal migration.

Results of activities undertaken by the Polish Border Guard in 2008, in terms of the protection of intellectual property, showed the necessity to continue, in the analyzed period, any possible undertakings resulting in effective combating of crimes against intellectual property rights. Undertaken activities, as well as close cooperation with law enforcement authorities and with the owners of rights, gave measurable results in 2009, as far as combating such types of crimes is concerned.

As a result of undertaken activities, last year, officers secured objects which were the proceeds of the crime, worth over **PLN 6.6 million**.

Products which last year were the most common proceeds of the crime include:

- 1) CDs and DVDs with films, music and computer games – approximately 10 000 pieces;
- 2) clothes and clothing accessories – approximately 45 000 pieces;
- 3) cosmetics and perfumes – approximately 1 000 pieces;
- 4) electric tools (chainsaws, saws, drillers, etc.) – approximately 700 pieces;
- 5) electronic devices (computers, DVD players, etc.) – over 370 items;
- 6) household chemicals (washing powders) – approximately 120 boxes.

Statistical data collected in 2009 shows that such type of crime has a downwards tendency and in some areas of Poland only occasional incidents concerning the infringements of intellectual property rights were observed.

In the era of Internet and continuously developing technologies used for transferring, generating and copying different types of files, *modus operandi* of perpetrators is changing.

It is symptomatic that the risk of smuggling, e.g. optical discs, with the current intensified guard of eastern border is too big, which undoubtedly influences the conduct of perpetrators. Additionally, it has impact on the limited possibility of disclosing infringements of copyright and related rights, as well as other intellectual property rights by the Polish Border Guard. It is confirmed not only by the number of disclosed CDs and DVDs but also by the results of undertaken control and prevention activities.

Situation is different in the case of trade in fake branded products which, as can be observed, are imported to European markets (including a Polish market) from Asian countries, usually by sea or through the territories of Lithuania, Belarus and Ukraine.

As the analysis of such data shows, the majority of fake branded products and products subject to protection in terms of copyright and related rights were introduced on the Polish market in areas which belong to the territorial scope of activity of:

- 1) the Maritime Regional Unit of the Border Guard (**estimated value – PLN 2.5 million**);
- 2) Nadodrzański Unit of Border Guard (**estimated value – PLN 2 million**);
- 3) Karpacki Unit of Border Guard (**estimated value – PLN 1.1 million**);
- 4) Śląski Unit of Border Guard (**estimated value – approximately PLN 0.5 million**).

On the areas where officers from the remaining organizational units of the Polish Border Guard perform acts which are in their official capacity, crimes against intellectual property rights remain at the level similar to the level which could be observed in previous years and in some areas the increase is not observed or is observed only occasionally.

It should also be emphasized that illegal trade in fake products is intensified during summer months, in seaside resorts and other health resorts in Poland. It is related to intensified tourism, both with regard to Polish tourists and to foreigners visiting Poland.

Illegal trade in pirate and fake products can most often be observed in big cities, since the demand for branded products in small towns and villages is significantly smaller. Additionally, products are sold on large areas designed as market places (bazaars).

A characteristic element of such an activity is scattering a small number of goods over a great number of stands, which often makes it difficult to disclose illegal products and requires engaging a significant number of officers.



As in previous years, a large number of products with fake trademarks of such companies as *Adidas*, *Puma*, *Nike* and *Chanel*, *Versace*, *Hugo Boss*, *Calvin Klein* were identified. In 2009, a “novelty” in terms of revealed fake goods were products of *Husqvarna* and *Honda*.

Exact places of production of illegal goods have not been identified, however, as it has already been mentioned, Asian countries, mainly China and Thailand, are the main regions of origin of such products. It is confirmed by symbols visible on confiscated goods. Such products are imported to Poland by sea or through the eastern border, so far, however, no attempt of smuggling through the so called “green border” has been observed.

As a result of undertaken detecting activities, officers of the Polish Border Guard conducted 41 preparatory proceedings, the majority of these cases were passed on to other bodies, according to their competencies.

**With the current intensification of activities undertaken by competent bodies and institutions which are aimed at reducing such types of crimes, the Polish Border Guard observed a significant decrease in the number of incidents covered by the scope of analysis.**

However, continuous demand for fake and pirate products, especially due to their price, does not allow for complete elimination of this phenomenon. Additionally, as the experience to date has shown, such a type of crime is usually organized, more difficult to detect and oriented mainly towards significant financial profits. One of the examples can be the activity of an organized criminal group, engaged in smuggling, copying and distributing optical discs with music and films on the international scale, which was broken up by the Sudecki Unit of Border Guard. Information within this scope has been provided in the annual report for 2008.

Important areas contributing to the efficiency of actions undertaken by the Polish Border Guard in terms of counteracting and combating piracy and counterfeiting include broadening knowledge and improving skills by periodic training courses (including training in terms of the EU legislation), both at a central and at a local level.

Object identification and the specific way in which perpetrators act constitute basic topics of workshops conducted in cooperation with the Police and the Customs Service, as

well as with entities dealing with issues concerning the protection of intellectual property rights in Poland. Raising the awareness of Border Guard officers within the framework of courses and training, also during basic formation in a given unit at every level of vocational training, should constitute a priority.

Meetings, consultations and local training courses which allow for creating coordination planes and for intensifying cooperation in a given region play a very important role in this respect.

In December 2009, Border Guard officers participated in a conference which was organized by the Ministry of the Interior and Administration and devoted to problems concerning the protection of copyright and related rights.

The main aim of the above-mentioned undertaking was to develop a model of cooperation between all participants of preparatory proceedings in cases concerning crimes against infringements of intellectual property rights and to show threats and mechanisms of criminal actions on the basis of conducted proceedings.

Another important element is the exchange of information which constitutes one of the main factors of cooperation between services and institutions which deal with combating crimes against intellectual property rights. This cooperation is accomplished within the framework of working contacts between representatives of competent bodies, as well as by on-duty services of organizational units. Information collected within the framework of cooperation and within the framework of fulfilling one's own official activities, particularly information concerning illegal storehouses, warehouses, as well as producers and smugglers determined own activities or the fact of passing on the case to another body, in accordance with material features.

Considering a coordinating factor, it is justifiable to intensify the exchange of information, thus creating the possibility to combat this kind of crime more effectively. It refers not only to law enforcement authorities, but also to collective management organizations and thus institutions competent in terms of formal protection of copyright and related rights, as well as exercising rights arising from proper acts.

Continuing cooperation with Police and Customs Service units, as well as with administrators of bazaars and market places, which began in 2007, constitutes an important part of undertakings which are carried out by various entities.

The exchange of experience and joint operations result in measurable profits in combating this type of crime, while preventive measures and controls become a priority. It particularly refers to limiting possibilities of smuggling fake phonograms and videograms and distributing them on the territory of Poland.

In order to achieve it, police launch raids on bazaars, market places and commodity exchanges (electronic and car ones). They constitute one of the prevention elements within the framework of combating this type of crime, simultaneously generating the decrease in the number of infringements of copyright and related rights, as well as intellectual property rights. Such steps are usually taken in cooperation with Police or Customs Service units. A close cooperation with administrators of bazaars and market places is crucial in this respect. Within the framework of this cooperation officers often gain information concerning trade in fake and pirate goods, as well as information about persons who conduct this type of activity.

Disclosing goods of illegal origin is often a derivative of priority activities undertaken by the Polish Border Guard in terms of illegal migration, i.e. controlling the legality of residence, which is also accomplished in places such as bazaars and market places.

In the last period, officers identified also other places where goods of illegal origin are sold, such as commodity exchanges, car parks in front of shopping centres and places in the close vicinity thereof.

Offered products (mainly with illegally placed trademarks) introduced on smaller local markets come mainly from bazaars located in big cities.

It should be emphasized that activities undertaken by the Polish Border Guard do not completely eliminate this phenomenon, as it is a gainful activity, both on a smaller and on a larger scale.

Additionally, such a type of crime is widely accepted by the society.

**Analyzing statistical data for 2009, it should be indicated that the Polish Border Guard participated in approximately 500 control activities on bazaars and market places.**

In most cases these were actions undertaken in cooperation with the Police and the Customs Service. Market places where infringements of intellectual property rights are observed are controlled mainly in connection with received information or within the framework of activities undertaken in specific cases.

As far as the second case is concerned, it mainly refers to goods which infringe provisions of the penal fiscal code or industrial property rights (trademarks). A large number of these controls were oriented towards a different type of crimes, however, within the framework of undertaken activities, goods covered by copyright protection were also disclosed.

In most cases, disclosed objects and cases are passed on to other authorities, in accordance with subject matter jurisdiction.

It should also be stressed that prevention procedures were accomplished on traffic routes, due to statutory liability of the Polish Border Guard, responsible for protecting routes of special international importance against crime.

Such activities were undertaken in cooperation with the Police and with the Railroad Security Guard. However, no infringements within this scope were detected.

## **2. The Ministry of Finance – Customs Service of the Republic of Poland**

In 2009, within the framework of the governmental “*Programme for the protection of copyright and related rights 2008 – 2010*”, the Customs Service undertook various initiatives and employed different measures in terms of counteracting and combating infringements of intellectual property rights.

Strategic objective No. 1 of the “*Programme*” – “*Improving efficiency, effectiveness and continuous coordination of activities undertaken by state services within the framework of combating piracy*” has been achieved by accomplishing an intermediary objective which assumes improving the effectiveness of activities undertaken by state services.

One of important elements of this objective was creating a forum for the exchange of information and for discussions.

On 20 – 21 May 2009, customs administration in cooperation with the Jagiellonian University in Kraków organized an international conference entitled “*The role of the Customs Service in combating infringements of intellectual property rights*”.

Conference participants included the representatives of authorities of the European Union, World Customs Organization (WCO), Polish government administration, scientific environments, organizations uniting holders of intellectual property rights (Anti-Piracy Coalition, Patpol, ProMarka, Polish Chamber of Patent Attorneys (PIRP), Polish Crop Protection Association (PSOR), American Chamber of Commerce), lawyer’s offices and rights holders.

The conference created a forum for the exchange of information and discussions on topics concerning the most important aspects of combating infringements of intellectual property rights.

Within the framework of discussion panels the following topics were raised:

- the role of customs administration in combating infringements of intellectual property rights – previous experiences and the best solutions for the future;
- EU strategy within the framework of combating infringements of intellectual property rights;

- combating intellectual property rights within the framework of international, EU and national law;
- cooperation of customs administration of the EU Member States exemplified by implemented programmes;
- cooperation between the Polish customs administration and ministries implementing policy aimed at the protection of intellectual property rights;
- cooperation in terms of combating infringements of intellectual property rights – exchange of information, joint activities.

During the discussion the following conclusions were drawn:

- Polish Customs Service is seen on the EU forums as one of the most effective customs services operating in the EU Member States, as far as activities aimed at the protection of intellectual property rights are concerned;
- cooperation with scientific environments aimed at developing proposals of legislative changes should be continued;
- expert cooperation at different levels, i.e. organizing conferences, exchange traineeships, working visits and *benchmarking* projects (analytic and comparative) should be continued;
- the importance and significance of joint activities which are and should be undertaken by ministries, including the Customs Service, was emphasized;
- we should aim at standardizing the way customs authorities proceed, as far as the observance of legal regulations is concerned and continue a successful cooperation between the Polish Customs Service and owners of intellectual property rights.

Additionally, we should note that the implementation of the *EU Customs Action Plan to Combat IPR Infringements 2009 – 2012 – Action Plan*, presented by one of the representatives of the European Commission, **will correspond with some of the tasks specified in the “Programme”**.

Some of the assumptions of the **Action Plan** include:

- enhancing cooperation with the owners of rights;

- intensifying operational cooperation between customs authorities in the EU and in third countries;
- developing international cooperation, as far as the enforcement of intellectual property rights is concerned;
- improving access to information and enhancing civic awareness;
- solving the problem of the Internet sales.

In order to complete tasks specified in this document, the Customs Service started in the second half of 2009 the implementation of a benchmarking programme whose leader is the Hungarian customs administration. The programme aims at developing effective methods for combating infringements of intellectual property rights in postal trading and in courier mails, as well as in passenger traffic (small quantities of goods). Authorities which participate in the programme include customs administrations from Czech Republic, Hungary, Italy and Poland.

### **Legislative and organizational activities**

In 2009, the Customs Service continued activities undertaken within the framework of infringements of intellectual property rights and the analysis of confiscated pirate and fake goods, in order to specify the tendencies and new risk areas for the customs control. Works within the framework of the Project Group for the legislative regulations aiming at the Protection of Intellectual Property, created by the European Commission and composed of customs experts from 9 Member States, including Poland, continued to be performed. These works resulted in publishing a Polish version of a document entitled *“Intellectual Property Rights. Guidelines for filing motions for undertaking an action by customs services”*. The guidelines aim at providing the owners of intellectual property rights with a tool supporting a better understanding of the procedure of filing applications for customs protection. Additionally, these guidelines guarantee more uniform rules governing the procedure of filling in EU application forms for customs protection, as well as equal treatment of all the owners of these rights on the territory of the European Union. Starting from January 1, 2009, a new statistical form referring to the seizure of pirate and fake goods, developed by the EU Project Group for the legislative regulations aiming at the Protection of Intellectual Property, has been in force in every Member State.

One of the most significant changes is the obligation to specify market value of seized goods. It allows for more efficient usage of data from this form to prepare reports on the EU risk analysis.

At the same time, works on draft amendments to EU regulations specified in the Council Regulation (EC) No. 1383/2003, aimed at strengthening and enhancing customs control methods in terms of intellectual property rights protection and at introducing simplifications for the owners of these rights were still conducted.

From 6 to 8 October 2009, the Customs Service played the role of a host during the last meeting of the working group, within the framework of which its participants summarized previous works and adopted a project of amendments to the Regulation, whose main assumptions included:

- simplifying and modernizing procedures in order to reduce costs for the administration and for the owners of the rights;
- strengthening the role of central authorities in terms of law enforcement procedures;
- ensuring better protection, as far as economic interests of business entities, as well as health and security of consumers are concerned;
- ensuring conformity with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in terms of border control.

Additionally, in 2009, a representative of the Customs Service, within the framework of the Committee for the Protection of Rights to the Minister of Sport and Tourism, continued works on fulfilling commitments made by Poland in connection with the organization of the European Football Championship – *EURO 2012*.

We began legislative works on the draft of the act on important sports events which (in the part referring to the Customs Service) aims at preventing uncontrolled import of pirate and fake goods to the European Union.

A draft of the act was handed over to the Minister of Sport and Tourism on 24 December 2009.

The most important solutions presented in the draft of the act include granting, for the duration of Championships, special rights to state services, including the Customs Service enabling them to combat infringements of intellectual property rights. Additionally, a representative of the Customs Service suggested organizing working meetings of



representatives of customs services from Poland and Ukraine. These meeting would aim at developing a common programme of activities undertaken within the framework of information exchange and training courses. Due to the fact that already in 2009 we received first signals concerning infringements of intellectual property rights with reference to rights held by *UEFA* and *EURO 2012 enterprise*, we decided it was necessary to undertake Polish and Ukrainian activities as fast as possible, in order to ensure effective protection of this sports event.

Further intensification of activities undertaken by the Customs Service in terms of combating infringements of patents (pharmaceuticals, plant protection products) was also observed.

In 2009, one of the representatives of the Customs Service participated in the works of the Team for Counterfeit Medicines, created by the Ministry of Health, which aims at developing effective methods for counteracting illegal trade, including counterfeit pharmaceuticals.

Due to the fact that in 2008, we observed an upward tendency as far as importing parcels containing pharmaceuticals on the territory of the European Union's customs area is concerned, in 2009, the emphasis was put on activities aimed at improving the detectability of infringements falling into a new category of intellectual property rights, i.e. patents.

In 2009, approximately **57 200** counterfeit medicines were confiscated (infringements of a trademark and of the provisions specified in the Pharmaceutical Law Act). Medicines originated mainly from India and China. Officers confiscated medicines which infringed rights arising from trademark registration of producers such as: *Pfizer* and *Eli Lilly*. Goods were confiscated at airports and in post offices.

### **Operational activities**

Within the framework of activities aimed at combating trade with fake products threatening human health and life, the Polish Customs Service participated, from June 3 – 5, 2009, in an operational action organized by the World Customs Organization (WCO) concerning the control of courier and postal mail to check whether they contain pharmaceuticals, if the trade with these pharmaceuticals infringes intellectual property rights and other provisions concerning health protection.

Courier and postal mails are mails of small sizes, whose weight does not exceed 2 kilos. Due to the lack of legal possibilities and IT systems controlling mails before customs declaration, customs control is conducted after goods have been declared for customs clearance.

An analysis conducted by customs officers in Poland consists mainly in checking documents after customs declaration, manual inspection of consignments or using available X-ray equipment to scan them.

An operation which was conducted in selected Customs Service's organizational units (post offices, airports, a harbour) resulted in identifying and checking approx. 300 consignments containing pharmaceuticals. Fourteen consignments were confiscated as they infringed intellectual property law regulations and other regulations referring to life protection. The majority of counterfeit pharmaceuticals originate from countries such as: India, China, the United Arab Emirates, Egypt and the USA. Identified counterfeit and fake pharmaceuticals found in courier and post mails were declared as "documents" (docs), "gifts", "samples", "dietary supplements", etc.

"*Viagra*" is the most commonly counterfeited pharmaceutical.

Pharmaceuticals are very often purchased on the Internet and sent at the ordering party's address in quantities allowed by the Polish pharmaceutical law.

Additionally, in 2009, numerous actions were conducted at a regional level, i.e. at the level of Customs Chambers. These actions included:

- **Activities** undertaken in August 2009 **within the framework of an action** under the code name "**DIABOLO 2**" were organized on the basis of recommendations provided by the Customs Working Group **ASEM** and the European Commission. They were coordinated by the *European Anti – Fraud Office OLAF*. Harbours of European and Asian countries participated in the action. Controls were conducted within the framework of combating goods infringing the protection of intellectual property rights and they were oriented towards disclosing goods subject to excise duty. Undertaken activities resulted in **confiscating 11 747 pieces of toys worth over PLN 724 000**.
- **International activities under the code name "MATEUSZ 2"**, which were conducted in November 2009. Control activities covered access roads to Szczecin

and were oriented towards combating illegal tobacco products.

### **Improving knowledge and skills within the framework of a training programme**

We continued accomplishing a strategic objective in terms of improving knowledge and skills of customs officers by organizing training courses concerning practical aspects of applying Community and national law.

However, due to a significant reduction of financial means, in 2009, only two central training courses were conducted.

We should emphasize the fact that these training courses were organized exclusively from the own sources of the Ministry of Finance, in comparison to the year 2007, when training courses were organized also from the EU funds.

As a result, activities undertaken within the framework of this strategic objective were significantly reduced.

As requested by the representatives of the owners of rights and at their expense, one central training course was organized, its participants included 30 customs officers from southern and central regions of Poland. The Customs Service organized 4 additional training courses within the framework of functionality and development of the system for the protection of intellectual property rights "*Leonardo da Vinci*" (VINCI).

At the same time, it should be emphasized that in all customs chambers, the process of cascade training, including profile training courses, which were organized and conducted by regional coordinators for intellectual property, was still continued. There were 67 training courses organized within this formula. The majority of these courses fell into the category of cascade training courses. In several cases, training courses were conducted by the owners of intellectual property rights.

### **The analysis of infringements of intellectual property rights**

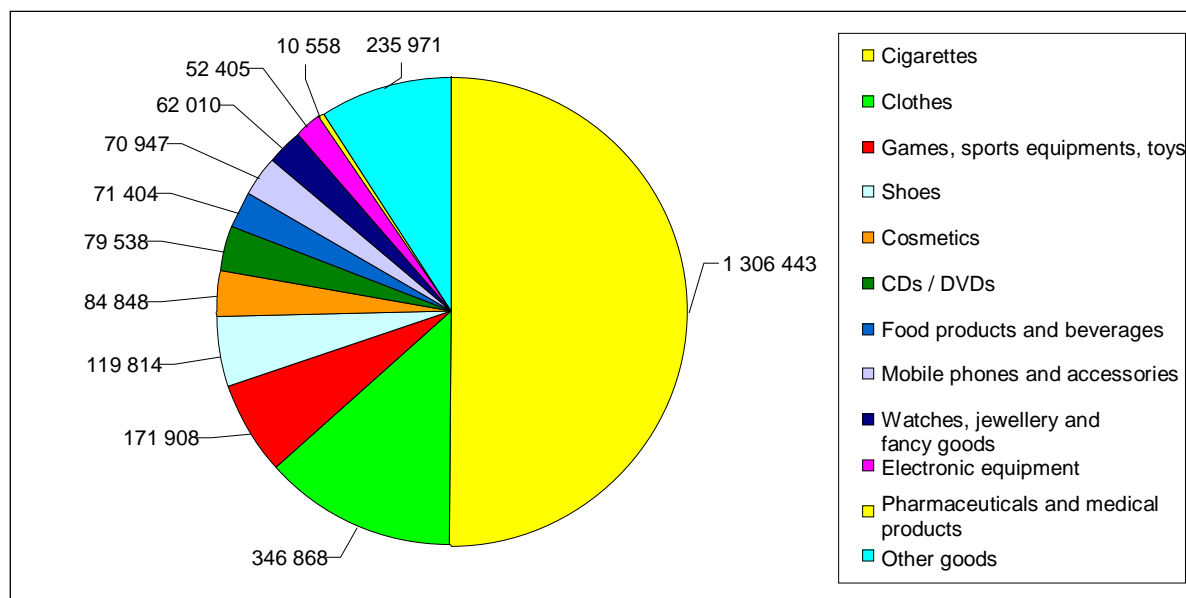
In 2009, as a result of control activities aimed at enforcing intellectual property rights, the Customs Service confiscated over **2.6 million pieces** of fake and pirate goods worth over **EUR 38 million**.

Charts and diagrams presented below illustrate the number of confiscated goods, classified according to different commodity products.

**Chart 1. The number of confiscated goods, according to different product groups in 2009**

Name of a product	Quantity (items)
Cigarettes	1 306 443
Clothes	346 868
Games, sports equipment, toys	171 908
Shoes	119 814
Cosmetics	84 848
CDs, DVDs	79 538
Food products and drinks	71 404
Mobile phones and accessories	70 947
Watches, jewellery and fancy goods	62 010
Electronic equipment	52 405
Pharmaceuticals and medical products	10 558
Other goods	235 971
<b>Total:</b>	<b>2 612 717</b>

**Diagram 1. The quantity of goods infringing intellectual property rights confiscated by the Customs Service in 2009, according to different product categories (2 612 717 items in total)**

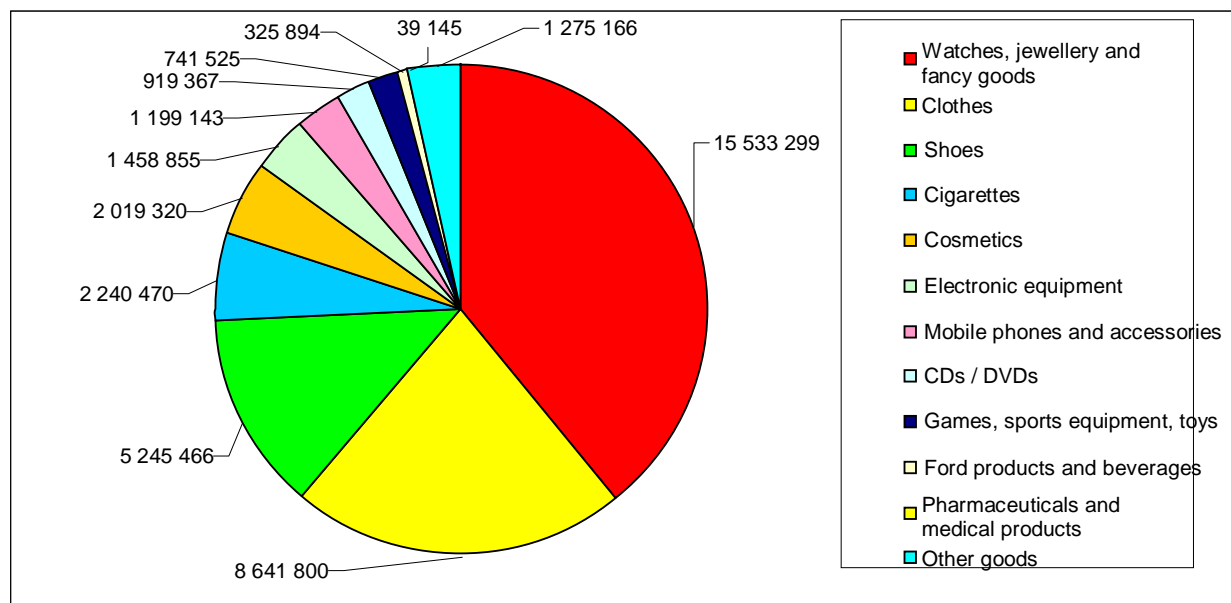


**Note:** The quantity of pharmaceuticals and medical products include goods confiscated due to the infringement of rights to trademarks (it does not include products suspected to infringe the pharmaceutical law).

**Chart 2. The value of confiscated goods according to different product groups in 2009**

Name of a product	Value (EUR)
Watches, jewellery and fancy goods	15 533 299
Clothes	8 641 800
Shoes	5 245 466
Cigarettes	5 245 466
Cosmetics	2 019 320
Electronic equipment	1 458 855
Mobile phones and accessories	1 199 143
CDs, DVDs	919 367
Games, sports equipment, toys	741 525
Food products and drinks	325 894
Pharmaceuticals and medical products	39 145
Other goods	1 275 166
<b>Total:</b>	<b>38.440.307</b>

**Chart 2. The value of confiscated goods according to different product groups in 2009 (EUR 38.4 million in total).**



**Note:** The value of pharmaceuticals and medicinal products include goods confiscated due to the infringement of rights to trademarks (it does not include the value of products suspected to infringe the pharmaceutical law).

In 2009, there were **3 272 cases of confiscating pirate and fake goods** in total.

It should also be emphasized that in 2009, the Customs Chamber in Warsaw, as a central body of the Customs Service responsible for issuing decisions concerning applications for customs protection, examined a record number of **605 applications** filed by the representatives of intellectual property rights owners.

Spectacular seizures of goods infringing intellectual property rights in 2009 included:

**within the framework of pirate products:**

- confiscating by officers of the Customs Chamber in Szczecin 123 970 statuettes of heroes of the film SHREK (the owner of rights *Dream Works Animation LLC USA*); products were smuggled in a container on a merchant ship from China;
- confiscating by officers of the Customs Chamber in Szczecin **over 15 300 hairpin with images of Disney cartoon heroes** (sea transport, container, country of origin – China);
- confiscating by officers of the Customs Chamber in Rzepin **4 752 children’s shoes bearing the image of SPIDERMAN and 3 780 shoes with clasps bearing the image of the TWEETY bird**;
- confiscating by the officers of the Mobile Group of the Customs Chamber in Kraków, as a result of a joint action conducted in cooperation with the Police, **over 6 100 pirate optical discs worth over PLN 301 000**;

**within the framework of fake products:**

- confiscating by officers of the Customs Chamber in Wrocław **over 18 500 flip-flops which infringed the rights of “CROCS” utility model**;
- confiscating by officers of the Customs Chamber in Kraków **22 000 mobile phone casings, due to the infringement of the rights of “NOKIA” industrial design**;
- confiscating by officers of the Customs Chamber in Szczecin **2 300 “REISHI” pharmaceutical products** in the luggage of one of the travellers from the USA;

- confiscating by officers of the Customs Chamber in Katowice **3 000 „VIAGRA” tablets**, which were hidden in two metal tins and in a cigarette packet;
- identifying by officers of the Customs Chamber in Toruń, during a car control, **276 000 REGAL cigarettes whose market value amounted to PLN 116 114;**
- confiscating, as a result of control activities conducted by officers of the Customs Chamber in Warsaw, **879 petrol chainsaws and several hundred elements to used to mark products with HUSQVARNA trademark, worth PLN 2 million,**
- confiscating by officers of the Customs Chamber in Łódź **960 imitations of weapons made of plastic, bearing words and graphics of Smith&Weesson Corp. Springfield US,**
- identifying by customs officers of the Customs Chamber in Białystok illegal consignments containing gloves and socks bearing trademarks of well-known brands. **Products secured for a case born the following trademarks: PUMA – 6 120 pairs of socks and 36 104 pairs of gloves, NIKE – 9 720 pairs of socks and 21 982 pairs of gloves, ADIDAS – 12 600 pairs of socks and 22 752 pairs of gloves, REEBOK – 108 pairs of gloves – 109 386 items in total.**

The accomplishment of tasks aimed at improving effectiveness, efficacy and permanent coordination of activities undertaken by state services is a continuous process and the tasks are fulfilled by the Customs Service at many levels.

At the management level, effective methods of counteracting this phenomenon are developed, *inter alia*, within the framework of works undertaken by governmental working teams created in 2008, i.e. Governmental Team for Counterfeit Medicines, created by the Ministry of Health and the Committee for the Protection of Rights to the Minister of Sport and Tourism.

We should state that the cooperation within the framework of these working groups has great impact on improving effectiveness, efficacy and continuous coordination of activities undertaken by the Customs Service and ministries responsible for the protection of intellectual property rights.

In most cases, official activities oriented towards reducing the number of smuggled goods infringing intellectual property rights were conducted in cooperation with Police officers and sometimes with Customs Service officers.

Operations were conducted locally. They showed further tightening of current cooperation with law enforcement authorities and Customs Service at the local level, mainly within the framework of jointly conducted operational activities, oriented towards reducing trade in pirate and fake goods.

**In total, 2 817 such activities were conducted.**

### **Developing IT systems**

In the first half of 2009, the Polish Customs Service, due to its experience gained during the process of developing and using the IT System for the Protection of Intellectual Property Rights "*Leonardo da Vinci*" (*VINCI*), at the request of the EC Customs Code Committee, began works within the framework of the team for developing the **EU IT system for the protection of intellectual property rights** *COPIS* which was created by the European Committee. The system is supposed to collect and process data from Community and national applications for customs protection and confiscations.

Within the framework of developing the *VINCI* system, we continued works undertaken in cooperation with the Patent Office of the Republic of Poland in terms of implementing a component which will allow for gaining direct access from the *VINCI* system to the database kept by the Patent Office of the Republic of Poland (UPRP). The aim is to gain, through the System for Providing Access to Data (*SUD*), information about registered industrial property rights (trademarks, patents, industrial designs) and about persons who registered these rights. We expect that access to the UPRP database via *SUD* will shorten the time spent on searching information necessary to identify an owner of protective rights and goods in terms of the protection of intellectual property rights. Simultaneously, within the framework of activities aimed at the development of this system, introductory works on providing the owners of intellectual property rights with direct access to the system were continued. It will allow for submitting applications for customs protection via the Internet and for exchanging information, which according to the owners of rights, will contribute to minimizing the time needed for administrative procedures.



As of 31 December 2009, the *VINCI* system had 1 410 registered users, 1 049 applications for customs protection, 1 513 photos attached to these applications and 3 586 enclosed documents. There were 6 007 registered infringements of intellectual property rights with 5 231 attached photos and 245 enclosed documents. The system generated and sent 3 400 reports.

The number of hits a month amounted to over 14 000.

### **Reducing piracy on market places and bazaars**

In 2009, the Customs Service continued activities aimed at the reduction of piracy on market places and bazaars, both within the framework of its own activities and within the framework of activities conducted in cooperation with the Police and with the Polish Border Guard, as well as with other services.

It should be noted that in 2009, trade with pirate and fake goods near the 10<sup>th</sup> Anniversary Stadium in Warsaw did not disappear and thus, it was still necessary to conduct control activities in this area.

The Department for Combating Crimes in the Customs Chamber in Warsaw, conducted **743 controls** on market places, including **203 controls conducted in cooperation with Police and Border Guard officers**. As a result of these controls, **over 59 000 pirate and fake products worth over PLN 10 million were confiscated**.

Some of the most spectacular results of undertaken activities include identifying, in the vicinity of the 10<sup>th</sup> Anniversary Stadium in Warsaw, **over 29 000 items of fake shoes and clothes worth approximately PLN 926 000, bearing trademarks of such companies as NIKE, PUMA, ADIDAS**. Control activities were conducted by the officers from the Department for Combating Crimes in the Customs Chamber in Warsaw, in cooperation with officers from the Police Department for Economic Crime.

Additionally, the Customs Service conducted intensified control activities on market places situated near the western border. Results of activities undertaken in 2009 by different Customs Chambers can be presented as follows:

**– Customs Chamber in Wrocław**

There were 31 completed control operations, which resulted in confiscating 208 000 pirate and fake products worth over PLN 2.4 million. Three operations were conducted in cooperation with Police and Border Guard officers.

**– Customs Chamber in Rzepin**

There were 12 control operations, which resulted in confiscating approximately 40 000 pirate and fake products worth over EUR 1.5 million, mainly clothes, perfumes and cigarettes.

**– Customs Chamber in Szczecin**

Officers from this Chamber identified 429 pirate and fake products in total. As a result of operations conducted on market places over 104 000 products worth over PLN 1.4 million were confiscated.

**Conducting educational activities aimed at enhancing civic awareness**

In 2009, the Customs Service continued activities aimed at enhancing civic and legal awareness concerning criminal character of the infringements of intellectual property rights, both at the central and at the regional level.

Participants of a conference which was held in Kraków, at the Jagiellonian University, from 20 to 21 May 2009, could also admire works presented at as special **exhibition**.

Presented works came from artistic contests entitled:

**“Wybierz oryginal” (Choose the original)** and **“Oryginalne jest piękne” (Original is beautiful)**, which promoted the protection of intellectual property rights. Contests were organized by the Ministry of Finance and by the Academy of Fine Arts in Warsaw, under the patronage of the Ministry of Culture and National Heritage and the French Chamber of Industry and Commerce, as well as the American Chamber of Commerce in Poland.

At the regional level, 49 educational activities were organized in different Customs Chambers, including exhibitions, lectures in schools, special events, etc. The largest number of educational meetings were organized by the Customs Chamber in Szczecin. Six special educational events organized by the Customs Chamber in Wrocław, which

aimed at presenting achievements of customs officers in terms of combating trade in pirate and fake products constitute another example of such type of activities.

### **3. The Ministry of Justice – National Public Prosecutor’s Office**

In terms of accomplishing the strategic objective No. 2 of the “*Programme*”, i.e. “*Improving the efficiency and efficacy of criminal law procedures conducted by justice authorities and concerning crimes against copyright and related rights, as well as other intellectual property rights, with particular regard to the efficiency of prosecuting new forms of activities covered by a criminal law sanction*”, in jurisdictions of all appellate prosecutor’s offices, as in previous years, preparatory proceedings conducted in 2009 and concerning infringements of intellectual property rights were analyzed.

Analyses were conducted twice and covered proceedings conducted in the 1<sup>st</sup> and in the 2<sup>nd</sup> half of 2009, respectively.

The survey covered files of **1 159** criminal law procedure, concerning crimes specified in:

- 1) from the Copyright and Related Rights Act (Article 115, Article 116, Article 117, Article 118, Article 119);
- 2) from the Industrial Property Law Act (Article 303, Article 304, Article 305);
- 3) from the Act on the protection of some services provided by electronic means based on or consisting in conditional access (Article 6, Article 7);
- 4) from the Act on Fighting Unfair Competition (Article 23, Article 24, Article 24a);
- 5) from the Criminal Code Act:
  - Article 278 paragraph 2 (also Article 294 paragraph 1) – illegal acquisition of a computer programme aimed at obtaining financial gain,
  - Article 291 paragraph 1, Article 291 paragraph 2 – intentional receiving of a stolen computer programme,
  - Article 292 paragraph 1, Article 292 paragraph 2 – unintentional receiving of a stolen computer programme.

The analysis covered cases in which the public prosecutor issued:

- legally binding decision to discontinue preparatory proceedings, due to insignificant social noxiousness of an act;
- legally binding decision to discontinue preparatory proceedings, due to the lack of a motion to prosecute from a person so entitled;
- submitted a motion for conditional discontinuance of criminal law procedure to the court ;

the court:

- handed the case back to the public prosecutor, in order to supplement preparatory proceedings or
- acquitted the accused.

A fundamental aim of analysing files referring to cases which concern the infringements of intellectual and industrial property rights is to identify the most common irregularities which occur during criminal law procedure, which results in undertaking immediate steps aimed at eliminating these irregularities and in improving the level of conducted preparatory proceedings.

**The results of the analysis covering the acts falling into the category in question show that, in comparison to the year 2008, factual and legal problems occurring during these proceedings have not changed significantly.**

Public prosecutors usually indicated the following doubts and problems:

- in terms of specifying the amount of damage resulting from the crime and the efficacy of motions for compensating for such damage, submitted pursuant to Article 46 of the Code of Criminal Procedure (a given damage does not satisfy criteria for crime against intellectual property rights);
- awaiting an expert's opinion for a long time, particularly in terms of IT and legality of computer programmes, on the basis of which it is possible to identify aggrieved persons;
- problems with identifying persons entitled to submit a motion for criminal prosecution, hearing the representatives or proxies of aggrieved parties and receiving from them, without delay, motions for prosecution;
- problems in terms of determining the type and scope of rights to which authors of a

given musical work, owners of related rights and licensees are entitled;

- problems with identifying, at the initial stage of proceedings concerning crimes committed with the use of ICT media, a unit of public prosecutor's office competent to hear a given case;
- refusals to submit motions or their withdrawal in cases where the value of damage is low, where there are slight chances to find a perpetrator or where a civil law compromise has been reached.

In the course of the analysis, public prosecutors who analyzed the files of different cases noted the examples of:

- faulty acts, which do not satisfy the qualification criteria, constituting the subject of conducted preparatory proceedings;
- failure to identify all aggrieved persons or entities entitled to represent such persons;
- premature presentation of charges referring to the act of committing a crime prosecuted upon a motion, before aggrieved parties have expressed their will to prosecute the crime;
- accepting motions for prosecution from entities who are not entitled to represent aggrieved parties or who are not duly authorized;
- adopting the lack of answer in terms of submitting a motion for prosecution on a specified date as the basis for dismissing the proceedings, pursuant to Article 17 paragraph 1, point 10 of the Code of Criminal Procedure;
- accepting motions for prosecution or a position to withdraw from submitting such a motion in an informal way, without reference to the requirements arising from Article 143 paragraph 1, point 1 of the Code of Criminal Procedure; (such practices are the reason why courts hand the files back, in order to supplement preparatory proceedings);
- deficiencies in terms of evidence, which hinders the right legal and criminal assessment of an act or even makes this assessment impossible;
- insufficient activity of public prosecutors, visible in the formal control of the level of procedural acts by Police officers, without providing detailed guidelines;
- lack of decisions in terms of material evidence or delays in terms of taking steps aimed at obtaining a court's ruling in this area;

- too brief justifications of motions for conditional discontinuance of preparatory proceedings, not illustrating circumstances specified in Article 66 paragraph 1 – 3 of the Code of Criminal Procedure, which supports such a decision.

Control teams, aiming at eliminating mistakes made by public prosecutors, have undertaken activities consisting in:

- giving orders to assume and continue prematurely finished preparatory proceedings, as well as to submit a motion for abolishing legally binding provisions to the Public Prosecutor General;
- providing managers of the units of public prosecutor's office with reports from the file analysis, in order to eliminate any observed irregularities and to use any comments specified in the reports in current work ;
- binding district public prosecutors to discuss the results of surveys during internal training courses.

Summarizing the results of surveys conducted in 2009 which concerned files referring to preparatory proceedings conducted in terms of crimes against intellectual property rights, we should emphasize that public prosecutors who analyzed the files stated that in the majority of cases, the level of conducted proceedings was satisfactory.

In comparison with 2008, we could observe a downward trend, as far as the number of identified infringements and their recurrence are concerned, which shows that the work of public prosecutors is heading in the right direction.

### III. Summary and perspectives for future actions

Results of works completed in 2008 show that many tasks should be continued in the following years, in accordance with the *“Programme for the protection of copyright and related rights in Poland for the years 2008 – 2010”*.

We still need to undertake activities supporting more effective enforcement of copyright and related rights, as well as other intellectual property rights.

It mainly refers to:

- the protection of these rights on the Internet;
- the intensification of controls at Polish borders;
- the intensification of controls on bazaars and market places throughout the country, with particular reference to bazaars and market place located along the Polish border with Germany;
- financial support for the Police, for IT equipment and training courses;
- elimination of possible delays in terms of conducting investigations and passing cases to courts;
- the advancement of court proceedings conducted against perpetrators infringing copyright and related rights, as well as other intellectual property rights;
- differentiating the level of criminal repressive measures, depending on the type of infringements and particularly sanctioning piracy and counterfeiting on the commercial scale;
- the necessity to undertake activities aimed at depriving perpetrators of crimes of profits arising from these crimes (forfeiture of property, securities on property, fines);
- conducting campaigns aimed at enhancing civic awareness, as far as the need to observe copyright and related rights, as well as other intellectual property rights is concerned;

- further, active cooperation of government administration with organizations dealing with collective management of copyright and related rights, as well as with other social partners who deal with the protection of copyright and related rights.

Due to rapid technological progress, we should also deal with the following issues:

- the analysis of digital environment and different platforms for content distribution;
- the improvement of digitization in view of new forms of distributing musical works on the Internet
- the development of Internet TV and mobile TV and threats to copyright resulting thereof;
- new forms of Internet piracy, including the use of equipment which has not been allowed for use by a content distributor and the assessment of repellent character of existing criminal sanctions;
- consolidation of efforts made by organizations for collective management of copyrights and by the audio, visual, book, TV and mobile telephony markets, as well as Internet operators in order to meet the expectations of a new generation of receivers in a digital environment;
- prevention in terms of making new pre premiere works available on the Internet.

Continuous improvement of standards in terms of the protection of copyright and related rights, as well as other intellectual property rights is necessary.

We should remember that a continuous progress in terms of combating piracy will be possible thanks to an active international cooperation.

It should be emphasized that in 2009, Poland began works within the framework of the EU Observatory on Counterfeiting and Piracy.

In the light of a preliminary review of this Observatory, Poland has separate structures for combating counterfeiting and piracy (which do not operate in such a clear way in other Member States of the European Union) and the electronic system for the protection of intellectual property rights “Vinci”, which is given as an exemplar to customs administrations operating in other countries.



Infringements of intellectual property rights cannot be considered as a problem of a one given country which should try to find solutions itself. Broadly conceived intellectual property is not restricted by borders of exclusively one country and constitutes heritage which should be subject to special protection.

Accepted

Minister of Culture  
and National Heritage

*Bogdan Zdrojewski*