



# Raport Național

privind respectarea drepturilor de proprietate intelectuală  
în Republica Moldova



# National Report

on the Enforcement of Intellectual Property Rights in  
the Republic of Moldova

# 2013

# INTRODUCTION

Counterfeiting and piracy are not new phenomena. For centuries artists and inventors have seen their creations copied, and with the intensification of the trend of market globalization, integration and growth of digital information flow (the Internet), the number of violations of intellectual property rights (IPR) has become alarming.

Open access to computers, Internet and other technological performances facilitates copying of labels, logos, packages with an enviable speed and accuracy.

There are many conflicting views on the extent and impact of counterfeiting and piracy phenomena.

Some argue that counterfeiting and piracy victims may face considerable economic losses, risks to health and safety in business: producers lose income, consumers are threatened by low quality of counterfeit products, state loses tax revenue, etc.

Others argue that, paradoxically, but the effects of counterfeiting and piracy are positive: the availability of counterfeit luxury goods on poorer markets prepare those markets for a possible entry of genuine products; workshops and enterprises that counterfeit goods act as nurseries for developing economies, and pirated music and movies serve as a marketing tool for manufacturers.

However, even advocates of the second theory argue that the effects of counterfeiting and piracy can be positive only for products that do not present a threat to the health and safety of the consumer and does not cover such products as spare parts, medicines, foodstuffs, etc.

Whatever the approach, the fact is that the subject is of interest and worth studying.

In the case of the Republic of Moldova, the analysis of the situation in the field of enforcement of intellectual property rights is as important as, following the initialling of the Association Agreement with the European Union on November 29, 2013, our country committed itself to create a functional legal framework similar to the Community one.

Thus, over the years several studies have been conducted on the state of affairs in this area. The Observatory on Enforcement of Intellectual Property Rights<sup>1</sup> created within the State Agency on Intellectual Property (AGEPI), for the first time published an analytic report on the activity in the field of enforcement of IPR in the Republic of Moldova, wherein were presented the most important data on actions undertaken during 2012, to raise awareness among consumers of the risks involved by counterfeiting and piracy, and a series of statistical data reflecting the activity of law-enforcement bodies in combating IPR infringement-related offenses.

To ensure continuity in the collection and systematization of data on IPR enforcement, but also to give the society a clearer picture on the situation in the field, we come with this National Report on the Enforcement of Intellectual Property Rights in the Republic of Moldova for 2013.

The report consists of three chapters. The first chapter provides general information on the analyzed subject; the second chapter systematizes statistical data on the activity of various public authorities on enforcement of rights and chapter three presents the most important actions carried out during 2013 to prevent counterfeiting and piracy phenomena and raise consumer awareness of the consequences of these phenomena.

---

<sup>1</sup> In accordance with the Action Plan for implementing the Recommendations of the European Commission for the establishment of the Deep and Comprehensive Free Trade Area between the Republic of Moldova and the European Union, on September 5, 2011 was established the Observatory on Enforcement of Intellectual Property Rights, the primary purpose of which is to secure data exchanges between the competent authorities and prepare analytical and statistical reports, studies in the field.



# 1. General Information on Counterfeiting and Piracy



## 1.1 General Notions

*"It is not important to convince your interlocutor,  
important is to make him think".  
Bernard WERBER.*

### What is Counterfeiting?

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) defines the notion of counterfeit trademark goods as any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation.

This definition restricts the concept of counterfeiting to the infringement of an intellectual property right, namely that of trademark. Even if trademarks are the rights most often suffering from counterfeiting, this offense is not limited only to their falsification. A counterfeit product also can, equally, infringe other intellectual property rights, namely: industrial designs, geographical indications or inventions.

In this sense, the definition of counterfeiting, given in 1998 by the Organisation for Economic Cooperation and Development (OECD), is much broader and covers any production that imitates the appearance of a product so much, that may mislead the consumer. Therefore, counterfeiting, according to the OECD definition, can refer to any infringement of any intellectual property right embodied in a product.

In accordance with Article 301 of the Customs Code of the Republic of Moldova which, in principle, reproduces the meaning given by the TRIPS Agreement, counterfeit goods (products) are:

- a)** goods (products), including their package, marked with a trademark identical to the legally registered ones for similar goods (products) or those which major components cannot be distinguished from a legally registered or protected trademark (notorious mark, etc.), thus violating the right of the original trademark holder;
- b)** any material bearing signs (emblems, labels, usage instructions, guarantee certificates) of counterfeit goods (products) presented separately or together;
- c)** packages bearing trademarks of counterfeit goods (products).

## What is Piracy?

According to international standards, namely the TRIPS Agreement, the phrase *pirated copyright goods* designates all copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

According to Art. 301 of the Customs Code of the Republic of Moldova: pirate works are the works that represent or include copies made without the consent of the holder of the copyright or related rights or of a holder of the design, regardless whether the latter is or not legally registered in accordance with the current law, or without the consent of the person authorized by the holder in the country of production, in the event distribution (trading or renting) of such copies constitutes an infringement of these rights.

Although conceptually different, both counterfeiting and piracy are in fact illegal activities of infringement of intellectual property rights. Thus, production, distribution, storage and sale by unauthorized persons of products involving intellectual property rights are a violation of these rights.

## What are Intellectual Property Rights?

Intellectual property rights are rights that protect the results of intellectual efforts of a person or group of persons.

Intellectual property rights are enshrined in Art. 27(2) of the Universal Declaration of Human Rights proclaimed on 10 December 1948, as follows:

*“Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author”.*

Intellectual property rights allow the creators, businessmen, investors to protect their tangible and intangible products from unauthorized use.

Intellectual property rights are not an abstract legal notion, they play an important role both economically and socially.

From an economic perspective, IPRs allow right holders to obtain a competitive advantage by being able to prevent third parties (for a certain period) from unauthorized use thereof.

A company that has protected its product can get direct or indirect revenues from the exploitation of the rights thereon. Sometimes, indirect exploitation of intellectual property rights through licensing to third parties, can even exceed revenues from direct exploitation, particularly in the case of small and medium-sized enterprises or universities.

Social benefits of intellectual property rights deal with general public access to current technical information and facilitation of technology transfer.

From the standpoint of a consumer, intellectual property rights provide him a whole set of information on the product purchased, guiding him into the multitude of products and often guaranteeing their quality.

Thus, an adequate protection of intellectual property plays an important role in the process of innovation and creativity, being also considered as a crucial tool in building a knowledge-based economy.

The following table briefly presents the essence of intellectual property rights:

Intellectual Property Right	Inventions	Trademarks	Industrial Designs	Geographical Indications	Copyrights	Related Rights
<b>Object of protection</b>	A new process or product	A distinctive sign	Appearance of a product or part thereof	Geographical name designating a product whose specific quality, reputation or other characteristics can be attributed to geographical origin	Literary, artistic and scientific works	Performances, phonograms, videograms, broadcasts of broadcasting organizations
<b>Term of protection</b>	20 years <sup>2</sup>	10 years with unlimited possibility of renewal	Maximum 25 years from the filing date	Unlimited provided that the special characteristics are preserved	Throughout the lifetime of the author and for 70 years after his death	50 years as from the date of the performance, printing or broadcasting
<b>How to obtain protection</b>	By registration	By registration	By registration <sup>3</sup>	By registration	Appears automatically with the creation of the work	Appears automatically with the creation of objects
<b>Who can get protection</b>	Any natural or legal person	Any natural or legal person	Author and/or his successor in title	A group acting in the delimited area, regardless of the legal form of organization	Author and/or right holder	Performers, phonogram producers, videogram producers and broadcasting organizations
<b>The rights conferred</b>	Exclusive right	Exclusive right	Exclusive right	Right of use	Exclusive moral <sup>4</sup> and economic rights	Exclusive moral and economic rights

<sup>2</sup> The term of a short-term patent for invention is 6 years with the possibility of extension for a period not exceeding 4 years.

<sup>3</sup> An unregistered industrial design is protected for a period of three years from the date on which it was made available to the public for the first time in the Republic of Moldova.

<sup>4</sup> Moral rights are imprescriptible even if the author assigns his economic rights.



## 1.2 Legal Framework

In the Republic of Moldova, intellectual property rights are governed by the Constitution of the Republic of Moldova, the Civil Code, the Code on Science and Innovation, the Customs Code, the international treaties to which Moldova is a party and other normative acts, and liability for infringement of intellectual property rights and protection mechanisms thereof are governed by the Contravention Code, the Criminal Code and the Criminal Procedure Code.

In accordance with the legal provisions, enforcement of rights on intellectual property objects in the Republic of Moldova can be achieved:

### **A) by the holder of intellectual property right by:**

**a)** civil law means (action for infringement of rights on intellectual property; action for prohibition of the use of a protected appellation of origin or geographical indication, etc.)

**b)** criminal law means (contravention case instituted against a person who committed the offense of infringement of right on intellectual property objects, according to Art. 185<sup>1</sup>, 185<sup>2</sup>, 246<sup>1</sup>, 246<sup>2</sup> of the Criminal Code of the Republic of Moldova No. 985-XV of 18.04.2002);

**c)** administrative law means (contravention case instituted against a person who committed a contravention related to the infringement of right on intellectual property objects, according to Art. 96, 97, 97<sup>1</sup>, 97<sup>2</sup>, 98, 99, 100, 101, 102, 103 of the Contravention Code of the Republic of Moldova No. 218-XVI of 24.10.2008);

**d)** enforcement of intellectual property rights at the border. The current mechanism of enforcement of border protection measures in respect of intellectual property rights provides the opportunity of their initiation by the filing of an application for action by the right holder (Chapter XII of the Customs Code of the Republic of Moldova No. 1149-XIV of 20 July 2000)

### **B) ex officio by the prosecuting body or by the investigating officer.**

Where the prosecuting body or the investigating officer directly detects or is notified of the commitment or preparation for commitment of intellectual property right infringement offences, it shall notify the right holder or authority empowered under the law on the protection of geographical indications, appellations of origin and traditional specialties guaranteed about them.

Thus:

**a)** In the case of enforcement of intellectual property rights at the border, the customs authority may suspend the release of and/or detain the goods for a period of 3 working days, if it has sufficient grounds for suspecting that the goods infringe on intellectual property right. The customs authority shall notify the right holder and the declarant/consignee of the goods, if the latter are known, of the measure applied, according to a model established by the Customs Service. The 3-day period begins to run from the date of receipt of the notification by the right holder. If within the established time limit the right holder does not submit an application for action, customs authority shall lift the measure of detaining the goods and/or shall proceed to customs clearing of goods, provided that other legal requirements are met (Article 302 of the Customs Code of the Republic of Moldova).

**b)** In the case of enforcement of intellectual property rights on the internal market, the prosecuting bodies or investigating officer (Ministry of Internal Affairs, Prosecutor General's Office, Consumer Protection Agency in the case of geographical indications) shall examine the contravention case and shall apply appropriate sanctions or shall start the criminal proceeding, provided that the right holder, within 15 working days from the date of receipt of a notification of the detection of goods suspected of infringing his intellectual property right, files a complaint in this regard. Otherwise, the prosecuting body will not start the proceeding.

In choosing the means for enforcement of rights on intellectual property objects account shall be taken of the gravity of infringement and the extent of damage caused, thus, for damage exceeding **50 000 lei**, will be instituted a criminal proceeding.

**Also, depending on the gravity of the action, liability (contravention, criminal) for the infringement of rights on intellectual property objects can be in the form of:**

- fine for natural and legal persons in the amount of 80 c.u. (160 lei) to 10 000 u.c. (200 000 lei);
- community service for 180 to 240 hours;
- deprivation of the right to practice certain activities for 1 to 5 years;
- imprisonment for to 5 years.

Detailed information on legal provisions on enforcement of rights can be found at: <http://agepi.gov.md/md/legislation/national.php>.

## 1.3 Reasons for Occurrence and Impact of Counterfeiting and Piracy

### 1.3.1 Reasons for Occurrence of Counterfeiting and Piracy Phenomena

**The offer of counterfeit and pirated products is influenced by the following macroeconomic factors:**

- Development of information technologies;
- Globalization of trade, increase of the importance of international brands;
- Small penalties for violation of intellectual property rights;
- Development of counterfeiting networks and their intercalation with other criminal networks.

**The demand for counterfeit products is also influenced by the following macroeconomic factors:**

- Social acceptance to purchase goods that infringe intellectual property rights;
- Reduced availability of authentic goods;
- High prices for genuine products;
- Quality improvement of counterfeit products.

### 1.3.2 Impact of Counterfeiting and Piracy

#### Impact of Counterfeiting

As noted, experts' opinions of the effects of counterfeiting are separated. Many specialists believe that the phenomenon of counterfeiting cannot be assessed equally for all goods, mostly agreeing with the division of the analysis of counterfeiting phenomenon according to the nature of products:

- products that present real risk to the health and safety of consumers (medicines, spare parts, foodstuffs, cigarettes, alcoholic drinks);
- luxury goods, whose counterfeiting, as a rule, usually does not affect the health and safety of consumers.

If in respect of the first category of counterfeit products there is no doubt that they pose a real risk and their counterfeiting must be prevented at all costs, in the case of the second category views are divided.

According to the opinion expressed by professors in criminology David Wall and Joanna Large in a study conducted in 2010, counterfeit luxury goods does not pose a threat to public health, although it is clear that they are not up to the same quality standards as the original. However, it is noteworthy that the production of these goods takes place, as a rule, in working conditions in which employers do not comply with the labour safety standards and workers are exposed to different risks of professional injury and disease (associated with chemical, physical, mechanical, electrical, ergonomic, etc., risk factors).

Counterfeit products in both categories involve other risks to consumers, particularly the risk of paying large sums for poor quality products or not working as expected.

Counterfeit products may also have a negative impact on innovation, although the extent of this impact remains unclear.

For example, an estimate by the Centre for Economics and Business Research (CEBR) suggests that counterfeiting can lead to a diminution of investment in innova-

tion, which in turn could have a negative effect of **€8 billion** annually on community GDP (CEBR, 2002).

The possible effects of counterfeiting on employment also deserve to be taken into account.

For example, in the cited study, CEBR estimates that the impact of counterfeiting on EU employment translates into a loss of **17 000 jobs** in just four sectors: clothing and footwear, perfumes and toiletries, toys and sports goods, and pharmaceuticals. However, the impact on employment may not be evenly distributed globally. In less developed countries, wherein labor is cheaper, production and distribution of counterfeit and pirated products can even generate jobs and income, although working conditions may be unstable and/or unsafe.

Production, distribution and sale of counterfeit products also have a direct, significant and complex impact on finances of governments. The most important include lost revenues from taxes and additional costs incurred by law-enforcement and justice bodies in carrying on anti-counterfeiting operations.

Typically, counterfeit goods are smuggled into the country, thus generating losses in the customs duty chapter as well. Thus, according to a study conducted by OECD in 2008, counterfeiting and piracy could cost economies of the G20 states over **\$120 billion** per year. Of these, **\$77.5 billion** are losses of tax revenue, **25 billion** are spendings to combat counterfeiting and piracy, **18.1 billion** are the economic costs of deaths caused by counterfeiting, and **125 million** are additional costs for medical services, which the use of counterfeit products involves. Studies were also conducted on a smaller area. For example, according to a study conducted by the Thompson Company in **2004**, in New York City alone the annual losses from counterfeiting amounted to **\$2.3 billion**.

Finally, governments incur a series of additional costs associated with efforts to control counterfeiting, namely for lawsuits, rights enforcement actions, campaigns to increase public awareness and seizure both illicit goods and means of production, etc.

According to the same study by OECD, in G20 countries economic and social costs caused by the trade in counterfeit and pirated goods would go over **€20 billion** for each percentage point in the growth of crime rate.

### Impact of Piracy

Unlike counterfeiting, piracy is not seen as a crime that would cause hazards to health or safety of consumers, and in the case of online piracy the matter can rarely be about hazards to employees of those who pirate. In the case of piracy, the main concern are financial losses which right holders incur as unrealized gains. For example, revenues gained by the music industry have fallen sharply in the last decade, many analysts attributing this fact to intensification of illegal downloading of music files from the Internet (R. Rob and J. Waldfogel, 2006).

In the software industry, a study by Business Software Alliance (BSA) found a global software piracy rate estimated at **42%** (commercial value of pirated software worldwide reached **\$63.4 billion**) for **2011**, calculated by the ratio of installed pirated software units and the total installed software. This represents a significant increase in the rate of software piracy, compared to **35%** - global piracy rate recorded in **2005** by OECD. According to the same study, in **2011** software piracy rate

in Moldova amounted to **90 percent** (as in **2010**). In exchange, the commercial value of pirated software in our country has increased from **\$36** million to **\$45** million.

However, due to the progress registered, Republic of Moldova was excluded during the last years from the Special Report 301, prepared by the International Intellectual Property Alliance.

In the film industry, a study by LEK Consulting (Motion Picture Association of America, **2006**) found that, in **2005**, members of the Motion Picture Association lost **\$6.1** billion due to piracy.

Finally, in the music industry area, the International Federation of the Phonographic Industry reported in **2006** a global piracy rate of around **38%**.

At the level of EU-27, a study conducted in **2010** by the company Tera Consulting estimated losses realized in the audiovisual sector to **€5.3 billion** and losses in the software industry – to **€5 billion**.

According to several studies, in addition to financial losses, piracy also causes losses of jobs, losses of tax revenue to the budget, additional costs to counter and discourage piracy, etc.

The study "*The True Cost of Motion Picture Piracy to the U.S. Economy*", conducted by Dr. Stephen Siwek in the U.S. film industry, showed that only in this industry piracy causes the loss of more than **120 000 jobs**.

Even if piracy more rarely poses risks to consumer health and safety, in the case of illegal downloading of software often occur virus contact problems, accompanied by data loss and, worse, irreversible damage to the computer. Thus, savings obtained by the use of a pirated software can cost, in monetary terms and in terms of time, sometimes even more than the purchase of a licensed software. If such an incident occurs within an organization, file and data loss can cost significantly more and may harm the company's reputation.

### Summing up the foregoing

Counterfeiting and piracy have multiple direct and indirect negative effects on all economic actors.

**On producers** – the negative impact of counterfeiting and piracy is direct; due to counterfeit products producers lose revenue.

**On consumers** – effects are also direct – consumer buys a product unlikely that it will meet the expectations as the original product, and in some cases the product may do him harm.

**For the state** – counterfeiting and piracy manifests itself in losses in tax revenue, by increasing unemployment rate (producers of fakes as a rule do not pay taxes, and producers of original products, due to loss of income, may resort to the decrease in the production volume and, respectively, the dismissal of staff).

**Counterfeiting and piracy** are not beneficial to overall society as well, because in addition to the foregoing, have a negative impact on investment in research and development – a producer who loses income because of fakes is deterred from investing in developing new products, respectively, market degrades.

# 1.4 Information Useful to Consumers on Counterfeiting and Piracy

1.4.1 Ways of distributing counterfeit and pirated products are most diverse – from direct sales (personal) to marketing in large stores. Particularly popular is the online marketing of counterfeit and pirated goods, because it is precisely the Internet that offered counterfeiters and pirates an effective way to sell their products. The online environment is attractive to counterfeiters and pirates for several reasons:

- anonymity – the ease with which counterfeiters and pirates can hide their true identity, which limits the possibility of detecting them;
- flexibility – a counterfeiter or pirate can create quickly and anywhere in the world websites through which to sell products online. These websites can easily be closed or ported in jurisdictions where the legislation on the enforcement of IPR is more lenient or even non-existent;
- market size – the number of e-Commerce sites and the volume of listings are huge, only one site, eBay recorded **596 million** new listings in the second quarter of 2006 (eBay, 2006);
- accessibility – Internet offers sellers the opportunity to reach a global audience non-stop and at minimal costs;
- ease of cheating – the consumer can not touch the product. Counterfeiters and pirates, by various ways, can create the impression of security (add comments and favorable reviews, place counterfeit products with the authentic ones, etc.).

It is important to note: if 30-40 years ago counterfeiting and piracy were isolated phenomena and, as a rule, related to luxury products, today counterfeiting and piracy are global phenomena that touch virtually all sectors of the economy – from luxury articles to drugs and foodstuffs.

## 1.4.2 The most commonly counterfeit/pirated products

Most commonly counterfeit products	Most commonly pirated products
<ul style="list-style-type: none"> <li>• clothing and footwear, particularly for sports;</li> <li>• handbags, purses;</li> <li>• watches, accessories;</li> <li>• digital equipment, electrical appliances;</li> <li>• cosmetics, perfumes, detergents;</li> <li>• toys;</li> <li>• auto parts;</li> <li>• foodstuffs and beverages, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• films;</li> <li>• music;</li> <li>• computer programs;</li> <li>• audio books.</li> </ul>

### 1.4.3 Useful Advice

To avoid counterfeit/pirated products, consumers should:

- be informed about the products they wish to purchase (the vast majority of producers have official websites on which publish both information about the product and information on places where they can be purchased);
- avoid dubious trading places (stalls, markets, etc.);
- check the packaging – it must be intact, must not contain spelling errors, and the information on the package must match the content;
- assess the price – if the price of a product is too small for it to be an original, then it probably is not;
- require compliance documents if the product purchased is causing doubts.

Particularly cautious should be consumers who resort to online shopping. Even if in the Republic of Moldova this mode of buying is not as popular as in countries with a developed economy (**according to a study conducted by the Magenta Consulting company, only 17%** of consumers in the Republic of Moldova use the services of on-line stores), but, given the positive development of this type of business, it is important that potential online consumers should choose tested sites and verify the possibility of reimbursement of products.

Whatever the reader's position to the phenomena of counterfeiting and piracy, we believe that it is very important for civil society in the Republic of Moldova to know the situation in the given field. It is precisely this thing that we'll try to achieve in the next chapter.

## 2. Enforcement of Intellectual Property Rights in the Republic of Moldova





## 2.1 Protection of Intellectual Property Rights in the Republic of Moldova

To ensure the enforcement of intellectual property rights, it is necessary that these rights be recognized. Thus, an intellectual property right shall be protected as such.

In accordance with the legislation in force, the State Agency on Intellectual Property is empowered to develop policies and manage the national system of protection of intellectual property in the Republic of Moldova



According to data presented by AGEPI, in **2013**, **6617** applications were submitted for the protection of industrial property objects (IPO) or by **9%** more than in **2012**. Most requested IPO remain to be trademarks – **5870** applications, followed, at a great distance, by inventions and industrial designs. It is actually a natural thing and results from the functions and nature of trademarks, as well as the specific character of the national economy.

Compared to the previous year, the number of applications for the renewal of IPO registration increased significantly (by **27%**) and amounted to **3431** applications. Concomitantly, the share of titles of protection for which renewal was sought increased by **25** percentage points compared to **2012**, constituting **69%** of the number of IPO which validity was supposed to expire in **2013**.

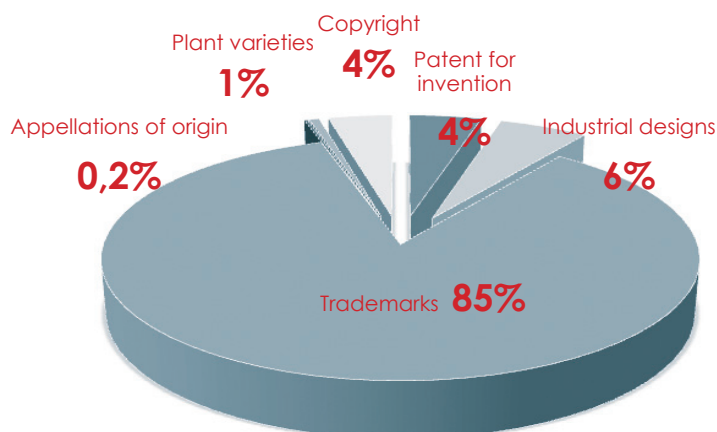
The filing of applications for the protection and renewal of registration of industrial property objects in the last six years is reflected in the table below:

### Filing of applications for the protection of industrial property objects

FILED APPLICATIONS	2008	2009	2010	2011	2012	2013
For patents for invention, total:	337	339	344	290	290	309
- patents	292	141	143	108	115	96
- short-term patents	45	198	201	182	175	213
For utility models, total:	25	6	3	4	4	6
- filings	23	-	-	-	-	-
- renewals	2	6	3	4	4	6
For industrial designs, total:	931	721	742	682	789	859
- registrations	384	276	289	280	300	381
- renewals	547	445	453	402	489	473
For trademarks, total:	9251	7628	7921	8325	7653	8822
- registrations	6808	5277	5454	5794	5449	5870
- renewals	2443	2351	2467	2531	2204	2952
For appellations of origin	3	4	6	8	7	14
For geographical indications	-	-	-	1	4	0
For plant varieties	32	10	18	18	34	43
<b>APPLICATIONS, TOTAL:</b>	<b>10579</b>	<b>8708</b>	<b>9034</b>	<b>9328</b>	<b>8781</b>	<b>10053</b>
- FILINGS	<b>7587</b>	<b>5906</b>	<b>6111</b>	<b>6391</b>	<b>6084</b>	<b>6617</b>
- RENEWALS	<b>2992</b>	<b>2802</b>	<b>2923</b>	<b>2937</b>	<b>2697</b>	<b>3431</b>

Simultaneously, during **2013**, **275** applications for the registration of copyright were filed.

### Applications for the grant of protection filed in 2013

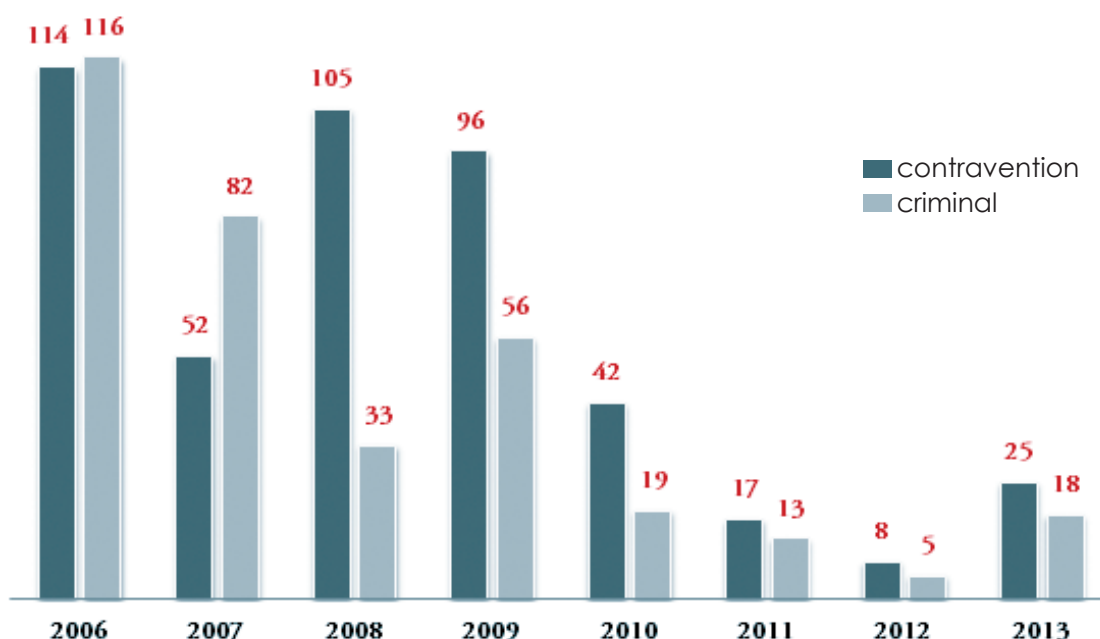


In addition to registration of intellectual creation results, an extremely important activity of AGEPI is drawing up of scientific-technical expertise / finding reports.

Thus, during **2013**, the Agency received from the Ministry of Internal Affairs (MIA) **44** claims for performing scientific-technical findings on examination of allegedly counterfeit physical media, **3.7** times more than in **2012**, when were submitted **12** claims. For examination were submitted **4583** allegedly counterfeit copies of works and phonograms, on various media, including **4380** compact discs (CD, MP3, and DVD) and **203** hard disks (HDD).

At the request of the control bodies, AGEPI specialists have drawn up **43** scientific-technical expertise / finding reports on seized copies of works and phonograms, of which **25** – in the framework of contravention cases and **18** – of criminal ones (in **2012** – **8** and, respectively, **5** reports).

**Dynamics of expertise reports**



Not all applications filed for registration with the AGEPI meet the requirements of protection, in respect of some being issued decisions of rejection. Thus, many of the applicants resort to extra-judicial remedy offered by the system, appealing the decisions issued by the Agency to the Appeals Board.

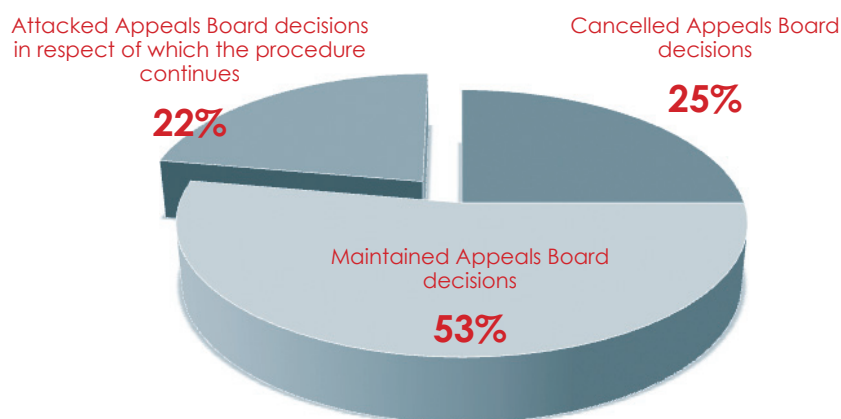
### Appeals Board activity in figures:

IP objects	Appeals Filed						
	1999	2000	2001-2010	2011	2012	2013	Total
Inventions	2	1	30		1	1	35
Utility models		2	10				12
Trademarks	61	41	1012	135	170	169	1588
Appellations of origin	1		2				3
Industrial designs		4	74			10	88
Plant varieties			2				2
<b>Total</b>	<b>64</b>	<b>48</b>	<b>1130</b>	<b>135</b>	<b>171</b>	<b>180</b>	<b>1728</b>

From the figures presented we should note that most often are appealed decisions relating to trademarks, but the share of those appealed to the Appeals Board is only **2.8%** of the total number of decisions issued on trademarks.

Thus, in **2011-2013**, of those **420** decisions/conclusions (with the right of appeal to the court) adopted on the whole by the Appeals Board, **36 (8.57%)** were attacked, of which **9** decisions have been cancelled, **19** – maintained in force, and in respect of **8** decisions – examination procedure continues in the court.

### Results of Appeals Board decisions appealed in the court



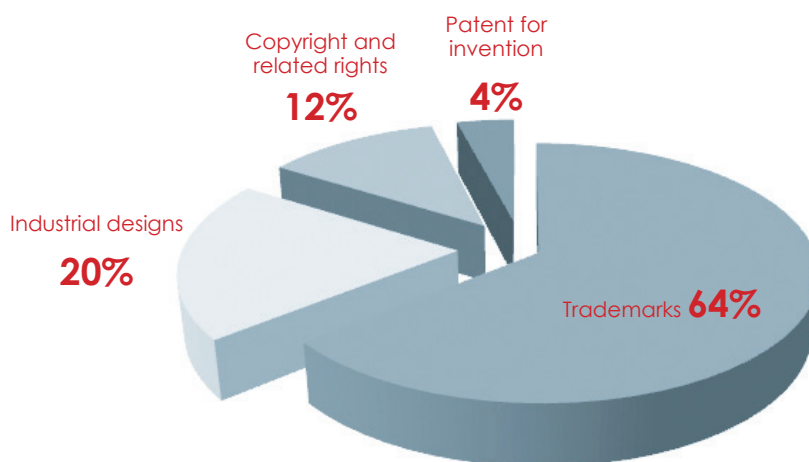
Overview: Of the total of **19,491** decisions related to IPO issued by AGEPI during **2011-2013**, only **7 (0.03%)** were irrevocably changed by court decision (**2** cases are still in the examination procedure with the Supreme Court of Justice). This shows a high degree of professionalism of the members of the Appeals Board.

Also, the State Agency on Intellectual Property acts as a consultant or arbitrator in cases of infringement of intellectual property rights.

Thus, during 2013 AGEPI participated as intervener in the examination of **25**

cases on defense of intellectual property rights, which is by **31%** more than in **2012**. Of these **25** cases, **16** were related to the infringement of rights on trademarks, **5** – on industrial designs, **3** – on copyright and related rights and **1** – on patent for invention.

### Cases on defense of rights in which AGEPI participated as intervener



We should note that AGEPI only participates in the examination of a portion of the cases relating to the defense of intellectual property rights, more cases being examined with the participation of parties.

We should also take into account the fact that the functions delegated to the Agency are limited.

Thus, AGEPI has no powers in actions on enforcement of intellectual property rights, these functions being delegated to the following institutions:

Customs Service – enforcement of intellectual property rights at the border;

Competition Council – limitation and suppression of anticompetitive activity of the economic agents, including in terms of infringement of intellectual property rights;

Ministry of Internal Affairs – enforcement of intellectual property rights on the internal market;

Prosecutor General's Office – investigation of criminal cases on infringement of intellectual property rights (both those initiated at the request of the injured party and criminal cases transmitted by the Ministry of Internal Affairs).

In the next part we'll give a general review of the main activities and actions conducted during **2013** by the said authorities.

## 2.2 Enforcement of Intellectual Property Rights at the Border

In the Republic of Moldova, the enforcement of intellectual property rights at the border is performed by the Customs Service (CS).

According to the delegated powers, customs authority ensures the effective application of legal border protection measures in order to prevent and combat importation of counterfeit and pirated goods on the internal market.

For this purpose, customs authority applies intellectual property protection measures at the border in respect of goods infringing an intellectual property right which:

- a)** are brought into or withdrawn from the customs territory of the Republic of Moldova;
- b)** are declared to customs authorities to be placed under a definitive or suspensive customs procedure;
- c)** are under customs supervision in any other situations;
- d)** are found during customs checks on goods entering or leaving the country not having been declared;
- e)** are entered into state ownership by confiscation or abandonment to the State's advantage

Measures provided for in the customs legislation does not apply to goods which are object of protected intellectual property right and have been manufactured with the consent of the right holder, but are found without his consent in one of the situations referred to, and in respect of goods intended for personnel use, taken across the customs border of the Republic of Moldova by natural persons.

The current mechanism to apply border protection measures in respect of intellectual property objects consist of the following steps:

» Initiation of the proceeding – filing by the right holder of an application for customs action and its examination with the CS (*according to Art. 302<sup>1</sup> of the Customs Code of the Republic of Moldova*);

» Acceptance of the application for customs action and specification of the customs action period (*according to Art. 303 of the Customs Code of the Republic of Moldova*).

**On the basis of accepted application for customs action, CS issues a Disposition** concerning customs action with a view to protection of intellectual property, entering it into the Register of Intellectual Property Objects, which it administers. The Register of Intellectual Property Objects to which border protection is applied can be found on the website of the customs authority [www.customs.gov.md](http://www.customs.gov.md);

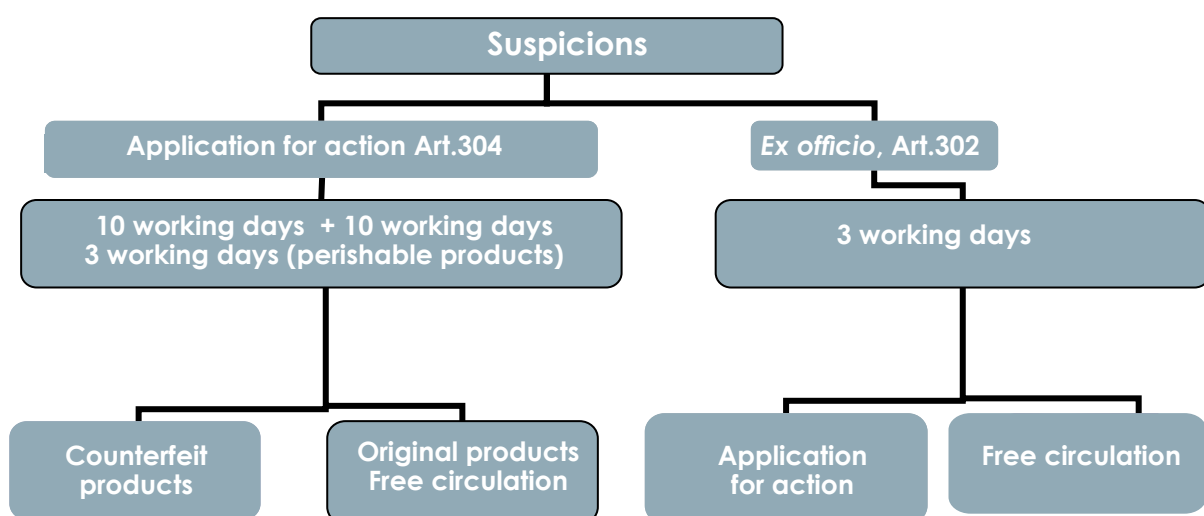
» Application of measures prior to the filing of an application for customs action (*ex-officio* procedure – 3 working days) by detention of goods suspected of infringing intellectual property rights and/or suspension of customs clearance operation, with the notification of the right holder and the declarant/consignee of the goods with a view to determining the counterfeit nature of the goods. These measures can be applied at the initiative of the customs authority, if there are sufficient grounds to believe that the goods infringe intellectual property rights. If the right holder fails to file an application for action within the established period, the customs authority shall grant the release and/or end the detention of goods, provided that the other statutory provisions are met (*according to Art. 302 of the Customs Code of the Republic of Moldova*);

» Application of protection measures (procedure based on the application for action – 10 working days) by detention of goods suspected of infringing intellectual property rights and/or suspension of customs clearance, with the notification of the right holder and the declarant/consignee of the goods with a view to determining the counterfeit nature of the goods. These measures can be applied at the initiative of the customs authority, if there are sufficient grounds to believe that the goods infringe intellectual property rights. If the right holder fails to sue within the established period, the customs authority shall grant the release and/or end the detention of goods, provided that the other statutory provisions are met (*according to Art. 304 of the Customs Code of the Republic of Moldova*);

» Application of measures on goods found to infringe an intellectual property right (*according to Art. 305 of the Customs Code of the Republic of Moldova*):

- destruction;
- free delivery to public institutions, including from the system of social protection, to public associations or humanitarian foundations, sports associations or clubs, state educational institutions, natural persons who have suffered from natural disasters, if there is the written consent of the holder of intellectual property right and if there are goods capable of consumption or use by natural persons, provided they are not marketed.

**The mechanism for action by customs authorities:**



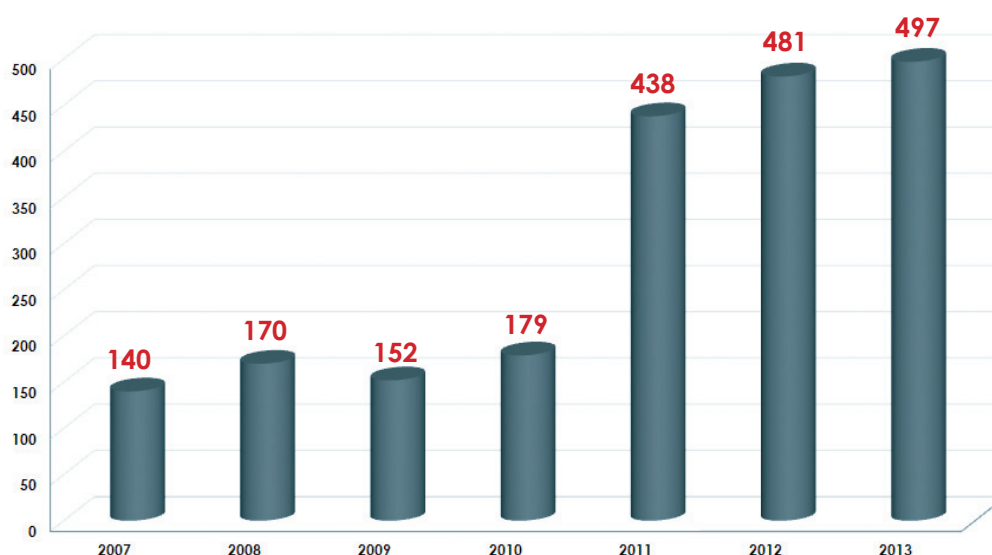


According to data provided by CS, during the year **2013** was recorded an increase in the number of applications for customs action submitted by right holders and, respectively, an increase in the number of intellectual property objects protected at the border.

Thus, in the reference period, Customs Service received **95** applications for customs action, including **44** – from natural persons and **51** – from legal entities. At the same time, of the total of applications for customs action, **35** were filed by national holders and **60** – by foreign holders.

But as in an application for action may be required protection of more intellectual property objects, on **31** December **2013** in the Register of Intellectual Property Objects which are granted border protection were entered **497** objects, representing an increase by **3%** compared to the number of IPO protected at the border in **2012**.

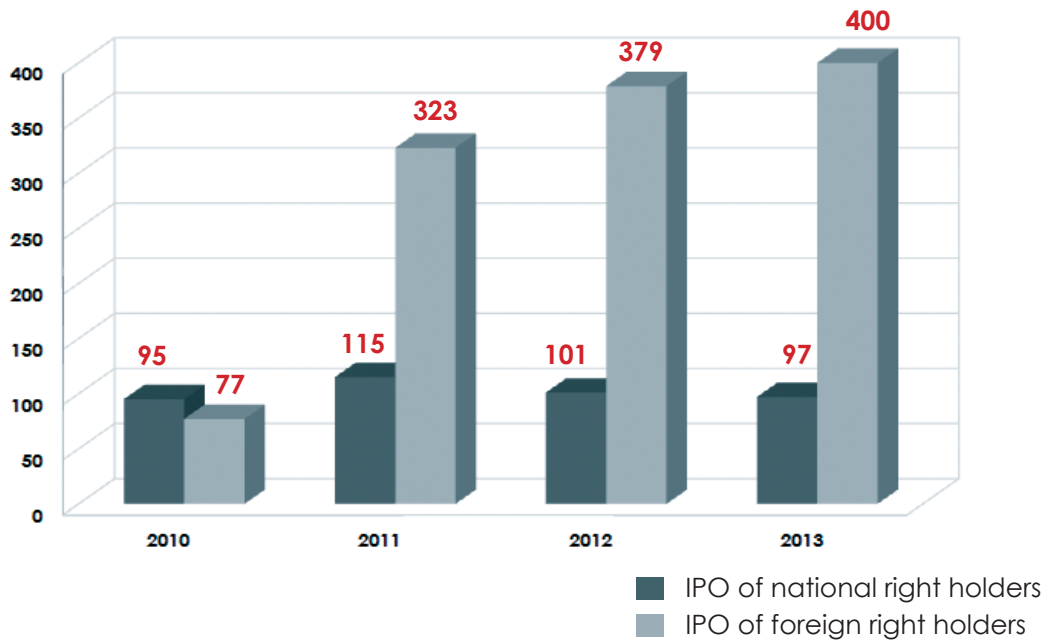
### The number of intellectual property objects having benefited from border protection



In the year under review, as in 2012, applications for action filed by foreign right holders prevail and, respectively, the number of applications from national right holders is smaller.

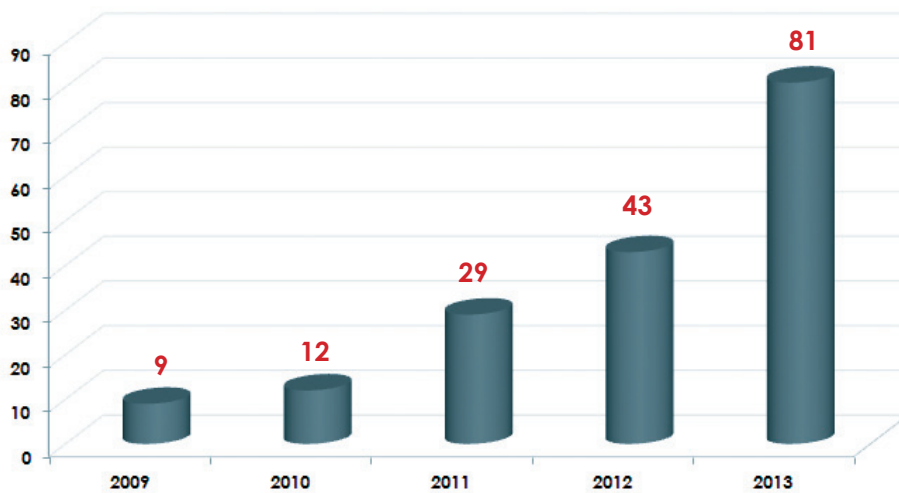
In an analysis of applications for customs action by the object, which is supposed to be granted protection, are certainly highlighted the trademarks that constitute over **99%** of the intellectual property objects protected at the border, less than **1%** going to industrial design.

### IPO protected at the border, distributed by right holders



Starting from the fundamental tasks of the customs authority, we should note that during **2013** there were registered **81** detentions of goods suspected of being counterfeit, a double number compared to the previous year.

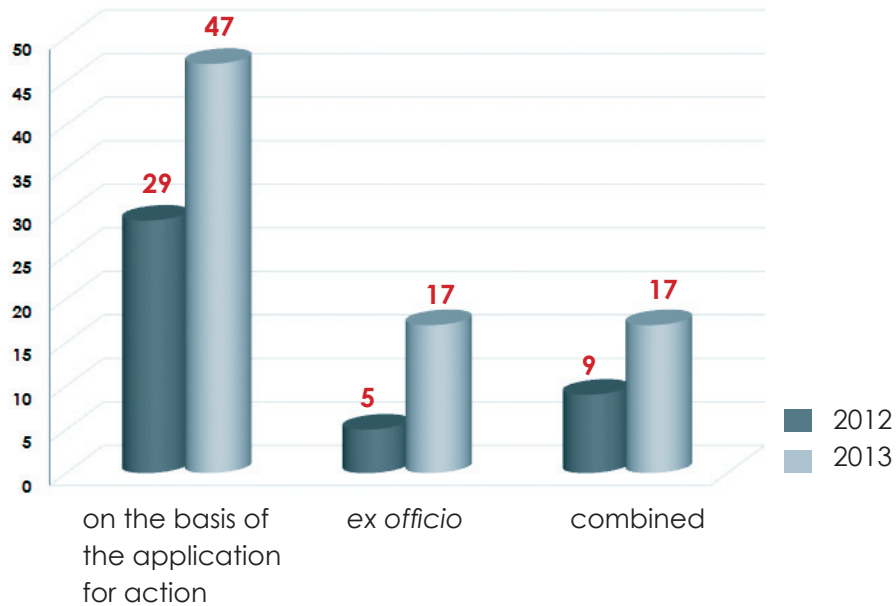
### The number of detentions carried out by the Customs Service



If we talk about intellectual property object whose rights have been infringed, then as in previous years trademarks rank first.

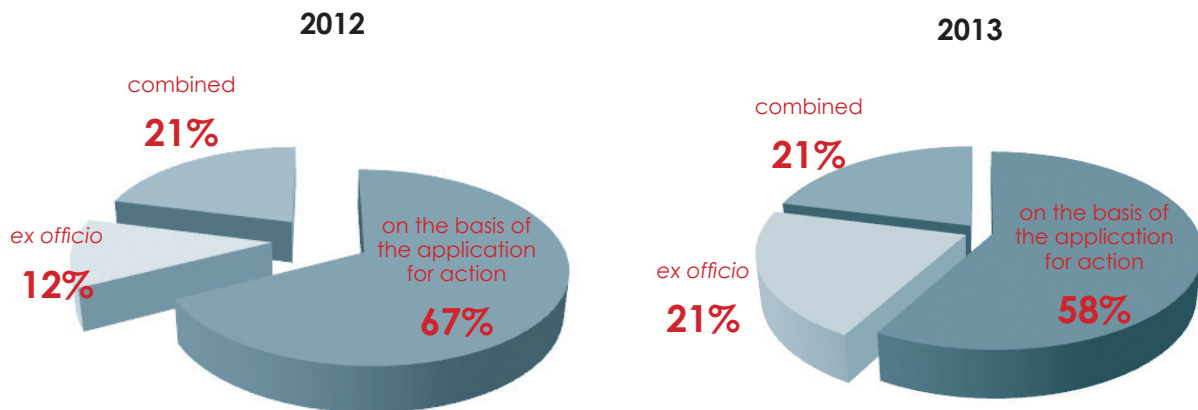
Of the total of **81** detentions, **47** were carried out on the basis of an application for action, **17** – *ex officio* actions, and in other **17** cases it was resorted to combined actions.

### Distribution of detentions according to the proceeding



Compared with **2012**, it is attested an increase by **9%** in the share of cases of detentions carried out *ex officio*, which certifies the high level of information of the customs officers.

### Share of detentions according to the proceeding



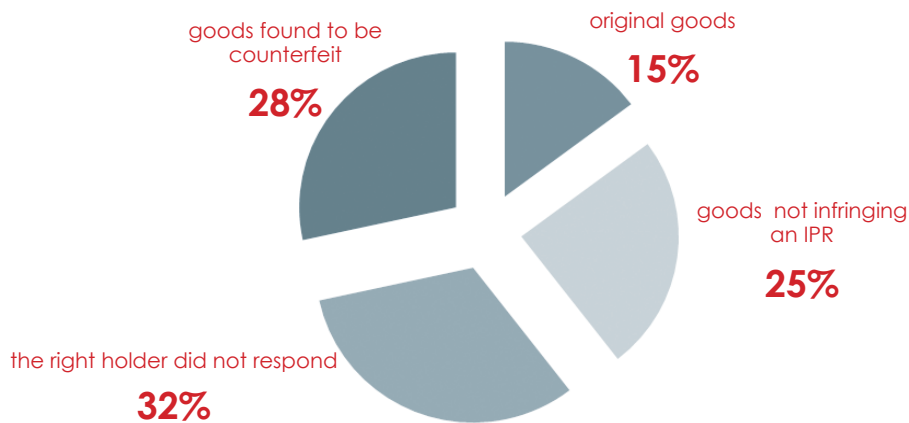
The increasing number of detentions of goods suspected of being counterfeit carried out by the Customs Service officers in the reference period, highlights the following:

- Training of CS officers in the field of intellectual property, carried out over the last years, has positive effects;
- Approach by the control bodies of the situations related to counterfeit products becomes professional.

At the same time, of the 81 detentions, the vast majority was carried out by the Chisinau Customs Office (Cricova, Industrial, Airport), and this denoted the need for continuous training of personnel in the territory.

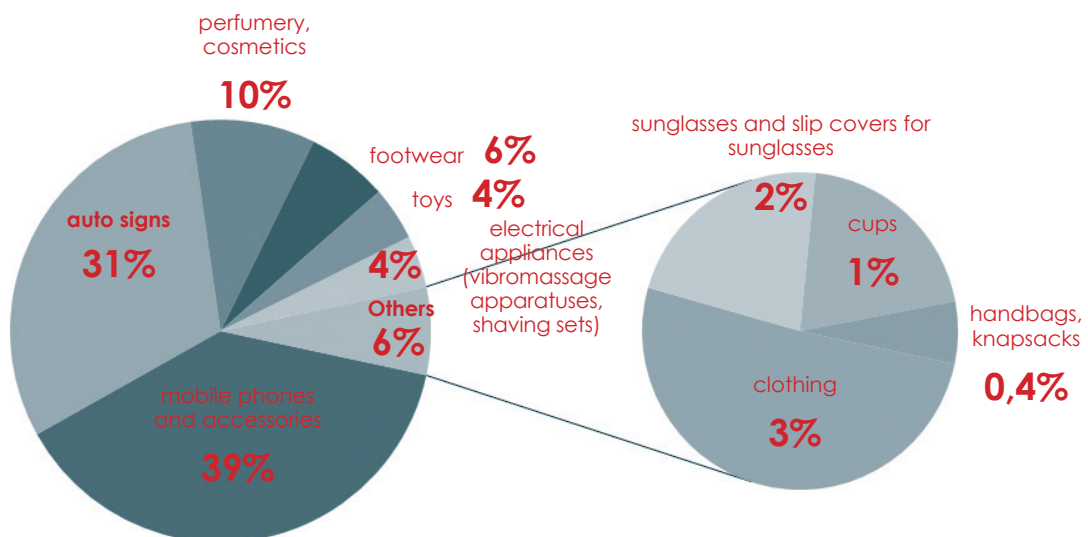
In **23** of the total of cases in which the goods were stopped in customs, they were found to be counterfeit, in the other **58** cases the goods either were found to be original, or were released for free circulation due to inactivity of the owner. It is alarming that in **26** cases of detention, the owner did not respond to any notification of the Customs Service, and in other **20** cases he declared that the goods do not infringe his intellectual property right.

### The situation of detentions of goods suspected of being counterfeit, year 2013



The distribution by categories of products of the detained counterfeit goods is shown in the diagram below:

### Share of detained products by categories



Thus, according to data furnished by the Customs Service, the top of the most frequently counterfeit goods detained at the border, is as follows:

Category of product	Amount (pieces)	Number of detentions	Country of dispatch
Mobile phones and accessories	1348	5	UA, CN
Auto signs	1081	2	TR, CN
Perfumery, cosmetics	334	4	PL, UA
Footwear	219	4	TR, UA
Toys	144	1	CN
Electrical appliances (vibromassage apparatuses, shaving sets)	140	2	UA
Clothing	120	5	UA, TR
Sunglasses and slip covers for sunglasses	52	1	CN
Cups	48	1	EAU
Handbags, knapsacks	15	3	TR, UA
<b>Total</b>	<b>3501</b>	<b>28</b>	

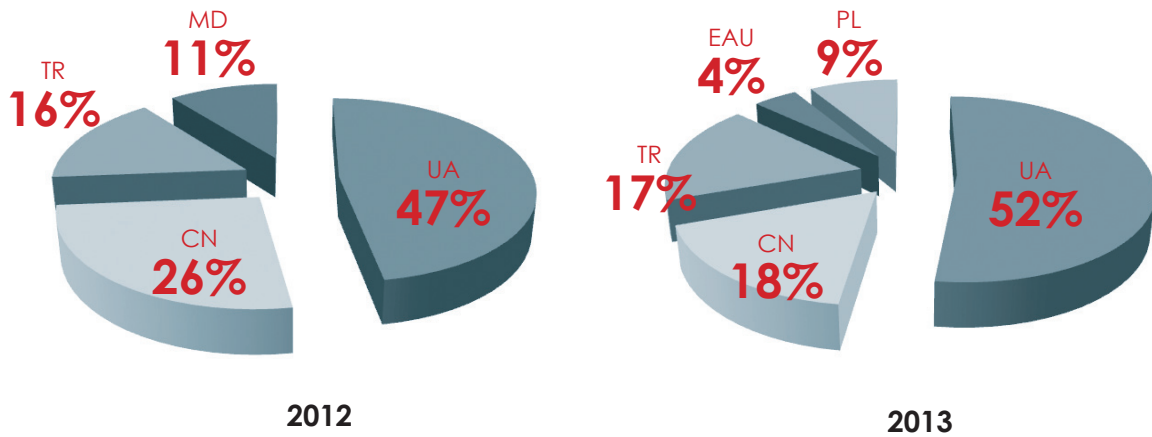
From the data presented in the table above there is a mismatch between the number of detentions, this is explained by the fact that sometimes in the same action may be detained more categories of products.

In **3** of the **23** cases when goods were found to be counterfeit, goods were destroyed. Goods detained in the other cases will be destroyed or donated during the year **2014**.

We should note that all counterfeit goods detained in **2013** have crossed the border by land.

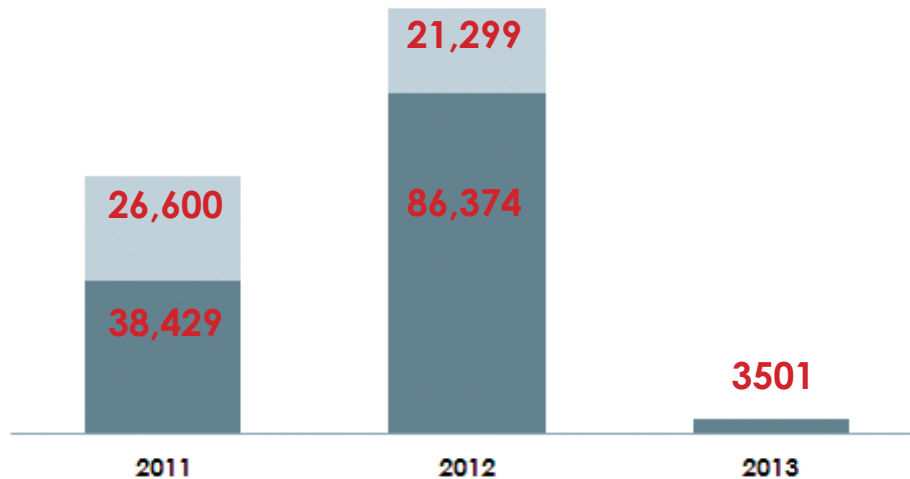
If we analyze the situation of detentions of counterfeit goods by the criterion of the country of dispatch, which is not always the same as the country of origin, we see that first ranks Ukraine, located in the immediate vicinity, followed by China and Turkey.

### Distribution of detentions by the country of dispatch



Compared to the last year, we should note that the states from which counterfeit products are imported have remained virtually the same, just that they have been joined by two new countries – United Arab Emirates and Poland.

Even if the number of detentions of counterfeit products increased, compared to the previous year – 23 detentions to 19, quantitatively we can talk about a massive decline of confirmed counterfeit product units. Thus, in 2013 were found to be counterfeit only 3501 product units, which is less than 4% of the amount of confirmed detained counterfeit products in 2012.



- Amount of detained products found to be counterfeit (kg)
- Amount of detained products found to be counterfeit (pieces)

During 2013, officers of the Intellectual Property Protection Division of the Customs Service also conducted other activities for the enforcement of intellectual property rights at the border and also institutional capacity building in the field.

Thus, in the period 11-22 March 2013, employees of the Intellectual Property Protection Division participated in the regional operation "TROJAN HORSE III", organized under the auspices of Interpol and Europol in order to prevent and combat crimes related to intellectual property. As a result, was carried out a detention of goods suspected of being counterfeit (clothing – 404 units). The second catch, carried out on 12.03.2013, amounted to about 16,103 pieces of diapers for children suspected of being counterfeit.

Another priority of the Customs Service, in addition to control activity, is the continuous training of customs officers. Thus, during the period under review, there were organized training courses both nationally and internationally. In common with AGEPI and EUBAM, in the national courses have been trained 215 customs officers, and other 9 – in international courses.

Among the actions carried out in 2013 by the Customs Service in this regard we should mention the following:

- In March, a customs officer participated in the *Second Meeting of the Working Group on the Protection of Intellectual Property, under the aegis of EUBAM*;
- In April, two customs officers participated in the *Seventh Global Congress on Combating Counterfeiting and Piracy "Evolving Challenges – Innovative Responses"*;
- In June, 5 persons from the CS have benefited from specialized training in Odessa, Ukraine, and another employee attended the seminar *Measures Applied in Combating Illicit Trafficking in Counterfeit Goods*, organized by the World Customs Organization (WCO) in Armenia;
- In July, a customs officer participated in a *Study Visit on Geographical Indications*, organized by the Interprofessional Committee of the Wines of Champagne, Epernay, France;
- In October, a representative of CS participated in the *Third Meeting of the Working Group on the Protection of Intellectual Property*, under the aegis of EUBAM.

A great achievement of the CS in 2013 is also the inauguration, on January 24, of the **Museum of Counterfeit Goods Detained by the Customs Authorities**, organized within the premises of the Training Center of the Customs Service, to the address of 49/6, Dacia Bd., Chisinau.

The Museum of Counterfeit Goods aims at capacity building in the field of protection of intellectual property rights at the border, warning about counterfeiting phenomenon, raising public awareness of the hazards related to the consumption of counterfeit goods, establishing closer cooperation with right holders, and using samples in customs officers training activities for improving the results of the actions on detection of counterfeit goods, by applying the most advanced international practices in the field.

Another prerogative of the CS during 2013 was the amendment and adjustment of the legislation in the field to EU legislation. In this respect, amendments to the Customs Code of the RM were proposed and were introduced operating terms which are recovered in the new Regulation (EU) No. 608/2013 of the European Parliament and of the Council of 12.06.2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003.

During the reporting period, aiming to streamline the activity of protection of IP rights, Customs Service of the RM worked on the draft *Regulation on Customs Action against Goods Suspected of Infringing Intellectual Property Rights and the Measures to Be Taken Against Goods Infringing Certain Intellectual Property Rights*.

**Analyzing the Customs Service activity in 2013, we can conclude that in order to ensure its positive development the following actions are to be undertaken:**

- Adjustment of customs legislation to Community standards;
- Organization of trainings for customs employees;
- Training of right holders on ways of enforcement of their rights and establishment of a more efficient cooperation with them;
- Institutional capacity building by establishing a constructive dialogue with other authorities responsible for the enforcement of intellectual property rights, both in the country and from abroad.



## 2.3 Enforcement of Intellectual Property Rights on the Internal Market

### 2.3.1 Activity of the Ministry of Internal Affairs

Ministry of Internal Affairs (MIA) is the primary law-enforcement body empowered with skills on preventing and combating intellectual property-related offences on the internal market.



Based on the recommendations of foreign experts from the support of which Republic of Moldova benefited for the space of the last years, but also to face the challenges, within the National Inspectorate of Investigations of the MIA General Police Inspectorate (GPI NII) was established a specialized subdivision on combating offences in the sphere of intellectual property, namely – Intellectual Property Offense Combating Division of the Economic Fraud Investigation Directorate №3 (EFID) with branches in all police inspectorates. As a result of this reform, within each police inspectorate was designated a person responsible for the coordination of actions related to combating infringements of intellectual property rights.

IP Offense Combating Division focuses on organizing and conducting necessary actions to prevent, detect and document offenses related to the infringement of intellectual property rights. Division's activity aims at protecting natural persons and legal entities against economic activities that infringe IPR and would generate increased risks for the potential consumers of counterfeit products.

In order to ensure a fair and legal business environment, during **2013**, through the specialized subdivision, GPI registered and processed **143** complaints on infringement of intellectual property rights, which is a triple number compared to the total complaints filed in the previous year.

We should also note that, in the reference year, it is not only maintained, but also emphasized the difference between the number of complaints filed by foreign holders and those filed by national holders, respectively, the number of exercised controls also increased.

### Distribution of complaints by the holders



According to legal provisions, MIA employees can undertake control actions:

- on the basis of a complaint;
- *ex officio*.

Thus, according to data furnished by EFID, during **2013, 143** controls were exercised, of which **12** – on the basis of *ex officio* procedure (by further submission of a complaint by the right holder), and **131** – on the basis of complaints filed by the right holders.

### Distribution of controls according to the procedure



According to data provided by GPI, most controls were exercised by employees of the Economic Fraud Investigation Directorate, namely 55 controls, which once again confirms the effectiveness of the reform carried out within the GPI by the creation of a division specialized in combating intellectual property-related offenses.

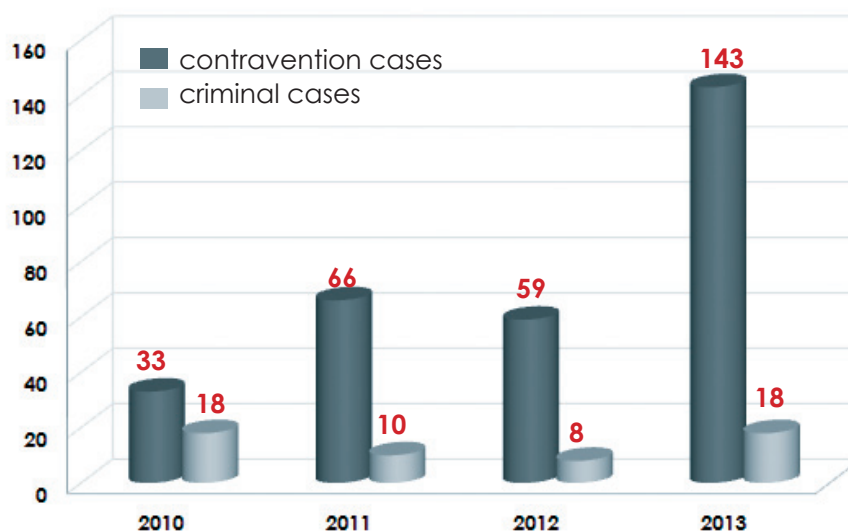
Controls exercised by the Territorial Police Inspectorates:							
Anenii Noi	5	Basarabasca	0	Briceni	1	Cahul	3
Cantemir	1	Calarasi	2	Causeni	3	Ceadir-Lunga	0
Cimislia	5	Comrat	2	Criuleni	0	Donduseni	1
Drochia	0	Dubasari	0	Edinet	1	Falesti	4
Floresti	1	Glodeni	0	Hincesti	2	Ialoveni	1
Leova	2	Nisporeni	0	Ocnita	1	Orhei	2
Rezina	0	Riscani	2	Singerei	0	Soroca	4
Straseni	2	Soldanesti	0	Stefan-Voda	1	Taraclia	0
Telenesti	0	Ungheni	1	Vulcanesti	4	Balti	4
Botanica Distr.	7	Buiucani Distr.	6	Center Distr.		Ciocana Distr.	9
Riscani Distr.	8	Office N°3 South	6	Office N°3 North	1	EFID of GPI NII	55
<b>Total</b>	<b>143</b>						

From the table above one can see that if some territorial inspectorates were very active in combating IPR infringement related offenses, there are districts which during **2013** did not exercised any control. This indicates the need for continuous training of the GPI employees directly involved in combating IPR infringement related offences, and also the need for undertaking well-contoured actions on civil society awareness of the importance of IP.

Following the controls exercised, there were drawn up **143** finding reports, of which **135** – to the name of natural persons, **8** – to the name of legal entities, which have resulted in **142** seizure reports on counterfeit/pirated goods with a total value of **3,675,935 lei**.

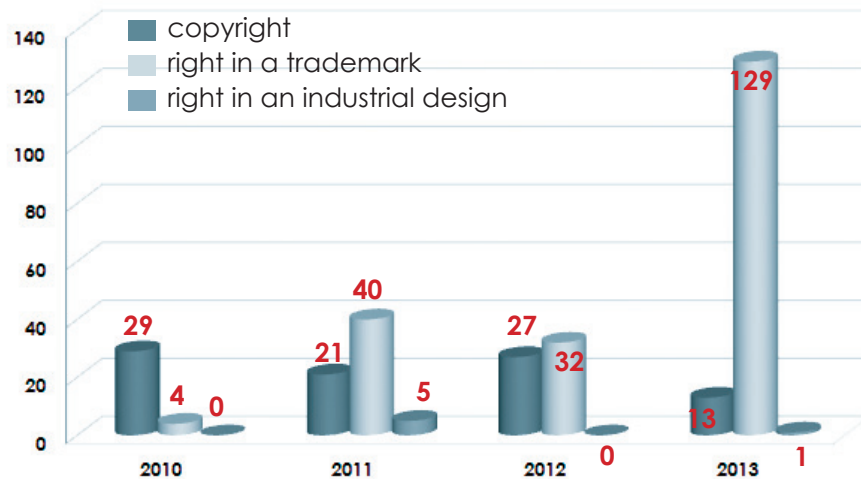
As a result of controls and depending on the gravity of offenses, contravention or criminal cases were instituted, as appropriate.

**Cases instituted by MIA distributed by years**

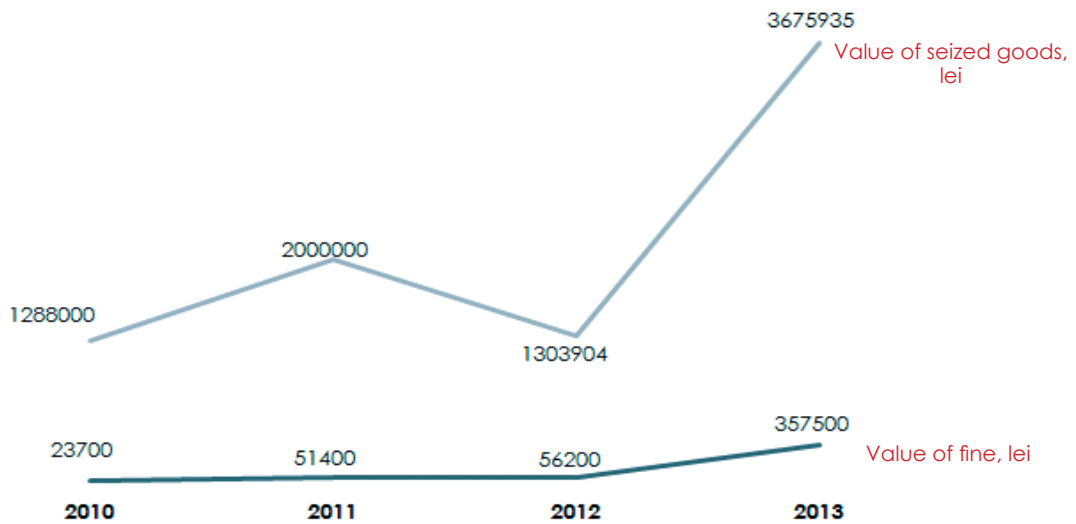


Examining contravention cases by the infringed intellectual property object, we arrive at the conclusion that since 2011 cases where the rights in trademarks have been infringed increased, but, analyzing the market conditions, it is absolutely imperative to emphasize that the large number of instituted cases is mainly due to right holders who began more actively to defend their rights on the market of the Republic of Moldova.

### Instituted contravention cases distributed by the infringed IPO



On the basis of instituted contravention cases were applied fines amounting to **357,500 lei**.



Thus, in the reference year, both the value of seized counterfeit/pirated goods and the value of fines increased significantly compared to the previous years.

Years	Value of fine, lei	Value of seized goods, lei	Value of applied fines compared to the value of seized goods %
2010	23700	1288000	2
2011	51400	2000000	3
2012	56200	1303904	4
2013	357500	3675935	10

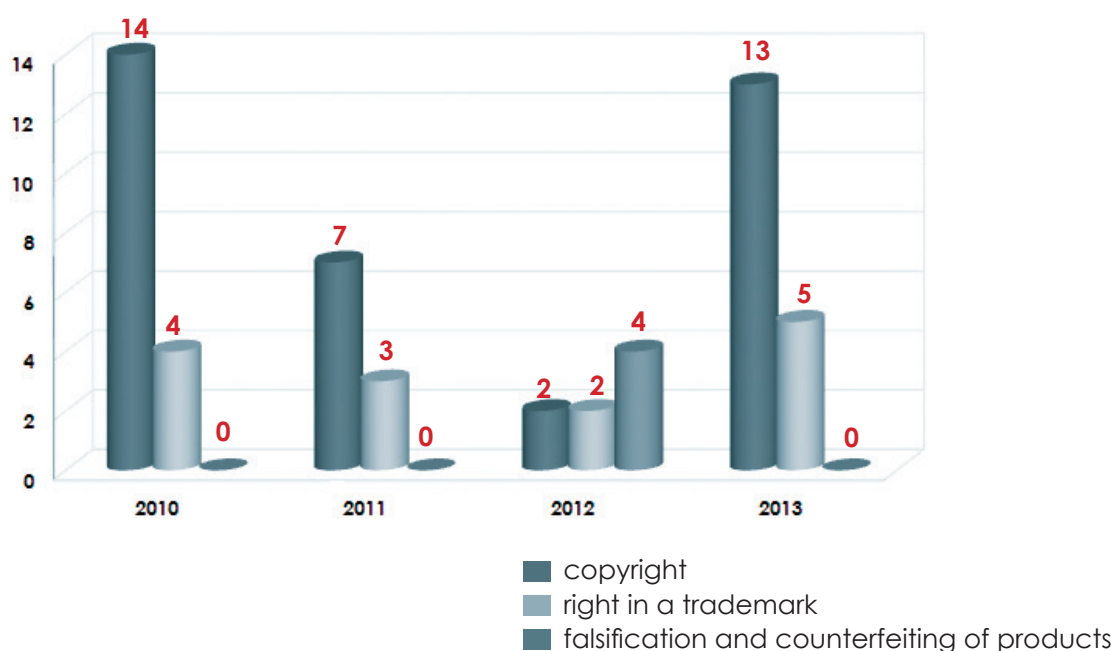
From the table presented, the value of fines is significantly lower than the value of damage caused to the right holder, but considering the fact that most of those made liable are natural persons, for the Republic of Moldova this may be an effective tool in the fight against counterfeiting and piracy.

In addition, as shown in the table above, in **2013**, we have witnessed a significant increase in the value of applied fines compared to the value of the seized counterfeit/pirated goods.

Most criminal cases were instituted under Art. **185<sup>1</sup>** of the Criminal Code, violation of copyright.

Thus, in **2013** were initiated **13** criminal cases under Art. **185<sup>1</sup>** of the Criminal Code with a damage caused to right holders of about **5 million lei** and **5** criminal cases under Art. **185<sup>2</sup>** of the Criminal Code (infringement of the right in trademark) with a total damage of about **1 million lei**.

**Instituted criminal cases distributed by the infringed IPO**



As a result of actions undertaken by GPI officers, in **16** cases counterfeit products were destroyed by burning, burying, and pouring out. Thus, there were subjected to destruction procedures counterfeit watches, sunglasses, mobile phone accessories, clothing, footwear, handbags and alcoholic drinks in a total value of **1.2 million lei**.

Unfortunately, imperfection of the legal framework transforms the procedure for destruction of counterfeit/pirated products into a difficult and even contradictory one, and this situation is supposed to be rectified in the coming years.

In addition to core activities, in 2013, GPI employees were involved in a series of training activities in the field of intellectual property.

**Thus:**

- in the period 15-17 April, EFID representatives participated in Lyon, France in the preparatory seminar for the second phase of the operation "Black Poseidon", organized by the General Secretariat of the International Criminal Police Organization Interpol. Therefore, in accordance with the Order No. 34/33-4 of 14.05.2013 on the conduct of the Operation "Black Poseidon 2013", in the period 15.05.2013-15.06.2013 in Moldova have been documented more criminal persons and groups involved in the commitment of intellectual property offenses by marketing in the RM of products with contents and names identical to international/autochthonous trademarks protected by law;

- under the Order No. 18/633 of 17.04.2013, the Directorate employees attended the training course "Intellectual Property Rights", organized by the International Law Enforcement Academy (ILEA) in Budapest, Hungary, where they familiarized themselves with some aspects of research and prosecution of criminal offenses related to IPR in the USA, Bulgaria, Serbia and some aspects of international practice in the area of cyber-crime infringement investigations;

- in the period 18-19 April, Directorate employees attended the training seminar on intellectual property rights protection and anti-counterfeiting issues, organized by the State Agency on Intellectual Property of the Republic of Moldova in collaboration with the Anti-Counterfeiting Association REACT International and Lawyers Civil Society TURCU & TURCU;

- during the reporting year, in the advanced training/specialization courses 84 employees of MIA benefited from training in the field of intellectual property

At the same time, MIA Academy "Stefan cel Mare" is participating in the project of the World Intellectual Property Organization (WIPO), through which was launched an information product in the shape of a web portal dedicated to professors of intellectual property law "IP Teaching Web Portal". This project will allow a close international collaboration, by the creation of a communication platform, to address the most pressing problems faced by specialized professors.

**Analyzing MIA activity in 2013, we can conclude that in order to make more effective the actions to combat counterfeiting and piracy are required:**

- review and adjustment of national legislation particularly on the assessment of damages and destruction of counterfeit goods;
- staff training and upgrading in the field;
- activation of the dialogue with right holders in order to increase their activity

### 2.3.2 Activity of the Competition Council

Particularly important in the field of enforcement of intellectual property rights is the activity of the **Competition Council (CC)**, which aims at promoting state policy in the field of protection of competition, limitation and suppression of anti-competitive activity of the economic agents, public administration authorities, and exercise of the control of execution of legislation on the protection of competition.

CC also performs the expertise of draft legislative acts through the prism of the impact they may have on competitive environment, and eliminates the provisions that may create barriers to entry/penetration into certain markets, may lead to the creation of conditions more favorable for certain economic agents, discrimination against others etc.

According to data furnished by the Competition Council, in **2013**, there were initiated **5** cases, the object of investigation being the field of intellectual property.

Of these, **4** cases were instituted for unauthorized use, in whole or in part, of the **trademark**, and one case – for copying of the **shape, package and appearance of the goods** (industrial design). All **5** cases are still pending.

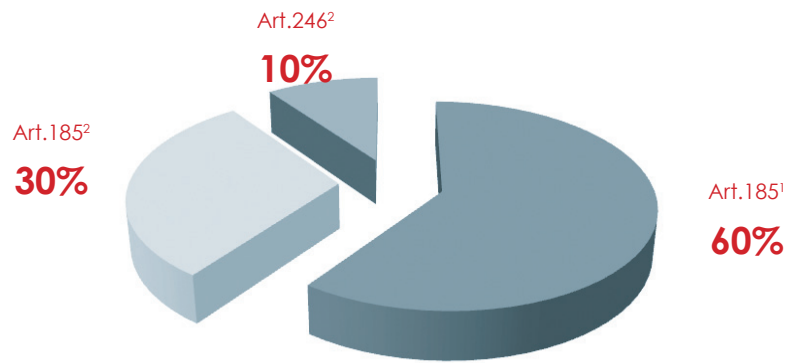
We should remind that in the period **2007-2012**, the Administrative Council of the National Agency for the Protection of Competition (now CC), instituted a total of **32** cases on signs of violation of the legislation on the protection of competition, in particular those relating to unfair competition involving an intellectual property right, of which **18** cases instituted between 2010-2012.

### 2.3.3 Activity of the Prosecutor General's Office

Prosecutor General's Office is an authority which plays a special role in the application of criminal law on the enforcement of IP rights in the Republic of Moldova. Given the importance of this area and in accordance with Parliament Decision No. 77 of 04.05.2010 on the approval of the Prosecutor General's Office structure, within it was created the Computer Crime Investigation and Information Technology Division, as an independent structural subdivision directly subordinated to the Prosecutor-General.

According to data furnished, in **2013**, prosecutors carried out the criminal prosecution in **10** cases in the category of those related to violation of intellectual property rights, of which: under Art. **185<sup>1</sup>** (violation of copyright) – **6** criminal cases; Art. **185<sup>2</sup>** (violation of industrial property rights) – **3** cases; Art . **246<sup>2</sup>** (falsification and counterfeiting of products) – **1** case (which was colligated to a criminal case from those indicated under Art. **185<sup>2</sup>** of the Criminal Code).

## Distribution of cases instituted in accordance with the nature of the offence



In **2** criminal cases (Article **185<sup>1</sup>** of the Criminal Code) was ordered the classification of the case under Art. **275(3)** of the Criminal Procedure Code No. 122-XV of **14.03.2003**, and in another case (Art. **185<sup>1</sup>** of the Criminal Code) – termination of proceeding, with institution of contravention proceedings against perpetrator.

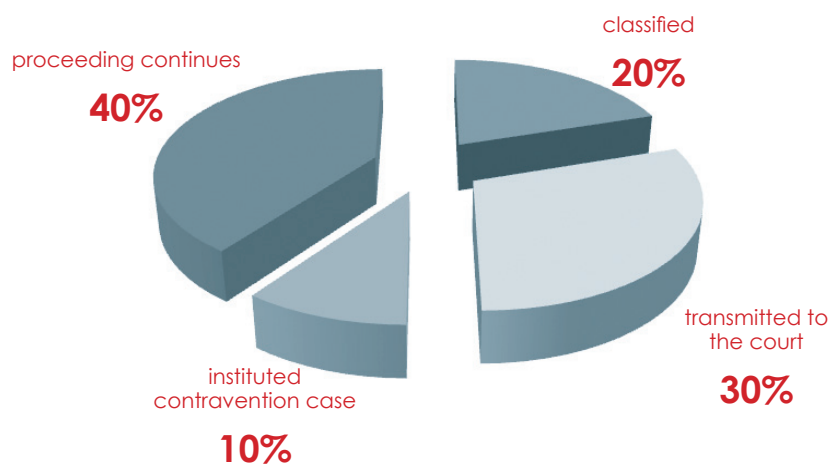
In **3** cases (Art. **185<sup>1</sup>** of the Criminal Code) the criminal proceeding was completed, and these were transmitted for examination to the court, within jurisdiction.

In other **4** cases the criminal proceeding continues.

We should note that in **3** cases, (Art. **185<sup>1</sup>** of the Criminal Code) in which criminal proceeding was completed, and cases were transmitted for examination to the court, the damage caused to right holders was **50,241,340 lei**.

In the same period, prosecutors have issued **3** orders of refusal on commencement of criminal proceeding in cases wherein was alleged the commitment of crimes provided by Art. **185<sup>1</sup>** and **185<sup>2</sup>** of the Criminal Code, all on the ground that the imputable acts did not contain the elements of a crime, according to Art. **275(3)** of the Criminal Procedure Code. In another case was found the commitment of two offenses specified in Art. **96(1) a)** of the Contravention Code, being commenced two contravention proceedings, transmitted for examination to GPI NII, within jurisdiction.

## Completion of cases examined during 2013





**Analyzing the information provided by the Prosecutor General's Office and given the situation in the field, we should draw attention to the need for:**

- training of right holders to provide them with all the information on the procedure for institution and examination of cases;
- establishment of objective, uniform and fair procedures for assessment of damages caused;
- organization of seminars, trainings in intellectual property for prosecutors.







### 3.1 EUBAM Activity on Enforcement of Intellectual Property Rights, in accordance with the Legal Framework

The Republic of Moldova is a young state in which the system of enforcement of intellectual property rights is in the process of establishment. Therefore, a priority direction in the activity of all authorities involved in the enforcement of IP rights is cooperation with the institutions of other states, with the view of taking over the best practices. Particularly important in this respect is cooperation with international organizations, whose activity is interfering with the field of intellectual property.

In this context, we should mention the cooperation established with the European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) which, during the reference year, has taken several steps to increase the level of enforcement of intellectual property rights in the Republic of Moldova.

In 2013, EUBAM actively supported the Customs Service of the Republic of Moldova in the development of new laws and regulations aimed at strengthening the effectiveness of the fight against infringements.

On 11 June 2013, the European Parliament and the Council approved the new Regulation No. 608/2013 concerning customs enforcement of intellectual property rights. This regulation became effective as of 1 January 2014 and underpins the crucial role of customs officials in preventing and combating counterfeiting and extends the customs powers to ensure legal protection to both the right holder and the consumer.

The changes introduced by the new EU Regulation No. 608/2013 are primarily intended to strengthen the enforcement of the regulations and broaden the scope of the intellectual property rights they cover. The customs authorities are entitled to enforce intellectual property rights with regard to the goods, which, in accordance with European Union customs legislation, are liable to customs supervision or customs control, and to carry out adequate controls on such goods with a view to preventing operations in breach of intellectual property rights.

In a framework of the Joint Moldovan–Ukrainian Working Group on supporting partners in protection of IPR, EUBAM delivered a range of expertise and advice to the Customs Service of the Republic of Moldova, particularly aimed at:

- extension of the customs intervention to other types of infringements, i.e. trade names in so far as they are protected as exclusive property rights under national law, topographies of integrated circuits, utility models and devices which are primarily designed, produced or adapted for the purpose of enabling or facilitating the circumvention of technological measures;
- reduction of the administrative burden and costs to a minimum, by introducing a specific procedure for small consignments of counterfeit and pirated goods, which would allow destroying such goods without the explicit agreement of the applicant in each case;
- introduction of provisions enabling customs authorities to undertake proper measures in case IPR holder fails to fulfil his/her obligations.

As a result of the fruitful cooperation between EUBAM and the Customs Service of the Republic of Moldova, on 23 December 2013, under Law No. 324 of 23.12.2013 on Amending and Supplementing Certain Legislative Acts, the relevant amendments were introduced in the Moldovan Customs Code. Among others, they modified the timeframe for *ex-officio* actions and simplified the procedure, enabled the right-holder to extend the 1-year-period for protection after paying every due payments and finally, shifted the burden of expenses for storing, handling and depositing of goods under customs supervision as well as the destruction expenses and other similar expenses to the responsibility of the intellectual property right holders.

In 2014 EUBAM keeps supporting the Customs Service of the Republic of Moldova in developing further amendments to the Moldovan Customs Code and elaborating secondary IPR legislation. The joint efforts will hopefully have a positive impact on strengthening IPR enforcement in the Republic of Moldova.

## 3.2 Activity of the Observatory on Enforcement of Intellectual Property Rights

Considering the fact that Republic of Moldova is in the situation wherein:

- state institutions involved in the enforcement of intellectual property rights have not established sufficient cooperation relationships among themselves, nor with right holders;
- society is less informed about the importance intellectual property has in economic development of a country and, as a result, is not willing to pay much attention to problems related to counterfeiting and piracy;
- official data on infringement of intellectual property rights are insufficient or totally lacking;

and having regard to the provisions of the Action Plan on implementation of Recommendations of the European Commission for the establishment of a Deep and Comprehensive Free Trade Area between the Republic of Moldova and the European Union, in which was stipulated the creation of an information point within AGEPI, in 2011 was created the Observatory on Enforcement of Intellectual Property Rights.

The primordial aim of the Observatory is ensuring data exchange between authorities responsible for the enforcement of intellectual property rights and development of reports, analytical and statistical studies in the field.

The first National Report on the Enforcement of Intellectual Property Rights in the Republic of Moldova was published in 2012.

Meanwhile, it has proved necessary the materialization of main duties and regulation of organizational aspects of Observatory's activity. Thus, in June 2013 was approved the new Regulation of the Observatory, which corrects some inaccuracies and interpretations.

Thus, under the new regulation, the Observatory's activities were focused on four priority trends:

- 1.** Monitoring the enforcement of intellectual property rights, namely:
  - a) collection, storage, examination, systematization and processing of data;
  - b) development of statistical studies, reports and analyses;
  - c) development of recommendations on improving the normative framework.
- 2.** Promoting the enforcement of intellectual property rights:
  - a) organization of society awareness campaigns;
  - b) ongoing collaboration with mass media;
  - c) initiation of trainings for representatives of law-enforcement institutions and civil society.
- 3.** Cooperation with public authorities and right holders:
  - a) carrying out the continuous exchange of data;
  - b) involvement of right holders in the rights enforcement process;
  - c) cooperation with similar structures from abroad.

4. Information of the World Trade Organization (WTO) on the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS):

- a) notification of WTO of the amendments to the national legal framework;
- b) providing relevant information and documents to the WTO members, economic agents from the Republic of Moldova or WTO Member States;
- c) management of database on the national legal framework.

The document in the new version establishes the nominal composition of the Observatory. It is important to note that the delegates of the Ministry of Internal Affairs, Prosecutor General's Office and Customs Service also benefit from the same status as the AGEPI members. The regulation also stipulates that the public meetings of the Observatory may be attended by representatives of the private environment, with the right of consultative vote.

Another major objective of the Observatory is monitoring the enforcement of intellectual property rights by collecting, storing, examining, systematizing and processing data related to the activity of low-enforcement bodies.

To this end, authorities responsible for the enforcement of intellectual property rights in the Republic of Moldova presented, half-yearly, to the Observatory statistical data reflecting their activity (detailed information was presented in the previous chapter).

Another way to monitor the enforcement of IP rights was carrying out of surveys that enabled to assess the state of mind of the society and also assess the level of awareness by consumers of the concepts of counterfeiting and piracy, and their attitude towards the said phenomena.

Thus, in early 2012, to AGEPI order, was conducted the study "*Knowledge, Skills and Practices of the RM Population on Intellectual Property*". The study was conducted by the Centre for Sociological Investigations and Marketing "CBS-AXA", on a sample of 710 persons aged 15 and over, with a margin of error of  $\pm 3.7\%$ . Its results were published in the National Report on the Enforcement of Intellectual Property Rights in the Republic of Moldova for 2012 and can be found online at <http://stoppirateria.md/pdf/studies/RAPORT-Studiu-CBS-AXA.pdf>.

Concomitantly, during 2012, was conducted the campaign "**Stop Piracy and Counterfeiting!**", and to see how consumers perception evolved following it, in the first months of 2013 was conducted an online questionnaire in which consumers were invited to answer 10 questions relating to the two phenomena: piracy and counterfeiting.

Unfortunately, only **52** persons have provided a complete response to the questionnaire, however, compared to the previous year when the notion of piracy and counterfeiting was known by only **25%** and, respectively **42%** of the population, in the questionnaire conducted in the reference year this rate increased significantly, accounting for **83%** for piracy and **98%** for counterfeiting.

Certainly, this is mainly due to the fact that to the online questionnaire responded persons who are familiarized with the given concepts, but we consider that the Campaign conducted during 2012 had also certain effects.

What is Piracy?			What is Counterfeiting?		
The phenomenon of ships plundering by pirates	5	10%	Falsification of products	51	98%
Illegal downloading or exploitation from the Internet or other sources of films, music and computer programs	43	83%	Production of poor products	1	2%
Action of transformation, adaptation or other modification of the work	4	8%			

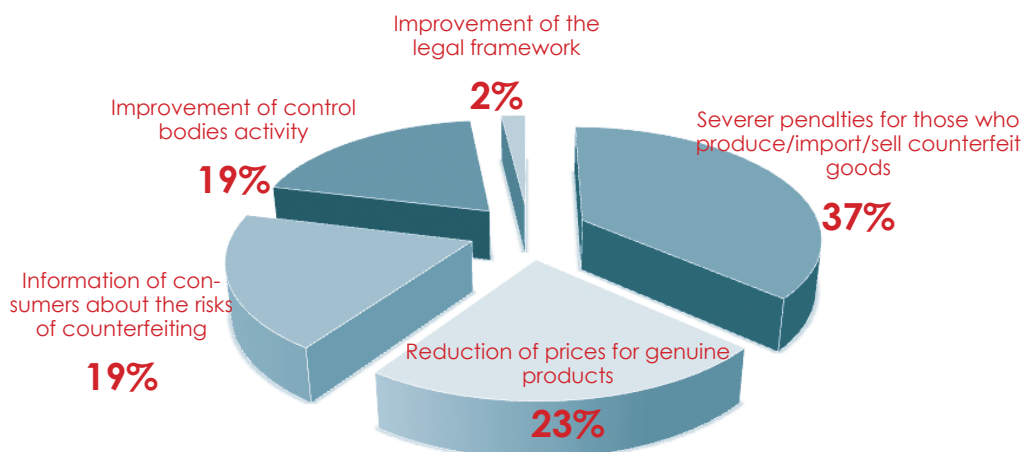
Another interesting aspect, revealed by the questionnaire conducted in **2013**, is that **63%** of the respondents were willing to pay for products which at the moment are pirated, provided that they are sold at reasonable prices. In **2012** to the same question only **20%** of respondents gave a positive response.

In terms of counterfeiting, three out of four respondents (**73%**) purchased at least once counterfeit products. It is surprising that **71%** of interviewees have taken no steps to signal this injustice, citizens are maximum resorting to the return of the counterfeit product (**25%**). Only **2** respondents (less than **4%**) confirmed that they had notified the control bodies in the case of detection of counterfeit products.

Also, of interest is the difference of consumer perception of the phenomenon of piracy and counterfeiting, if we follow the methods proposed by them to combat these scourges.

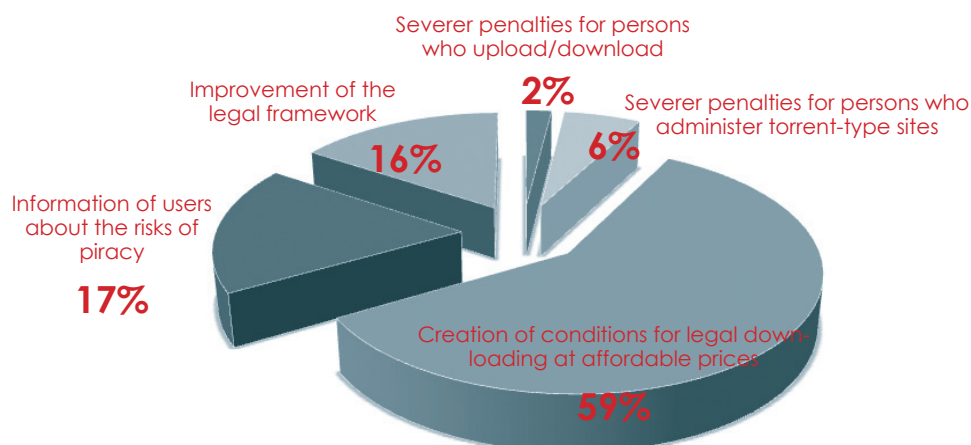
Thus, when talking about counterfeiting, consumers see a solution in punitive sanctions (**37%**), while in the case of piracy, the majority believe that it should be created legal alternative solutions (**59%**).

### What are the methods to combat counterfeiting?





## What are the methods to combat piracy?



Another vector of Observatory's activity is consumer awareness and education of the whole society in order to increase the degree of knowledge of the impact the counterfeiting and piracy phenomena have on the health and safety of the population, and also on the economy as a whole. The emphasis in this regard is placed on the younger generation.

To this end, the State Agency on Intellectual Property (AGEPI) in partnership with the Ministry of Education and the Union of Plastic Artists of the Republic of Moldova, organized, in the period September 1 – November 1, 2013, the Drawing Contest for pupils entitled "Stop Piracy and Counterfeiting".

The main objective of the contest was to raise awareness and educate the younger generation on the role of intellectual property in economic, social and cultural development of the country, and the negative impact of the phenomena of piracy and counterfeiting on the society.

To this competition event were invited to take part the fifth-grade – twelfth-grade pupils from schools, lyceums and colleges of the country. Thus, at the contest 29 pupils from nine educational institutions have exhibited their works, including from a Youth Creative Center in Chisinau, of different age groups: up to 12 years old; 13-15 years old and 16-19 years old.

The works presented were supposed to meet the following criteria:

- to represent a personal and original work of the author (group of authors);;
- to comply with the contest theme;
- to be performed on paper or canvas, A4 format, in simple pencil, colored pencils, aquarelle, marker;
- a number/code/ identification name be mentioned on the reverse;
- not to be framed.

Pupils drawings were evaluated by a Panel of Experts convened by the Organizing Committee of the contest, part of which were AGEPI representatives, Ministry of Education representative, and director of the National Museum of Arts of Moldova, the renowned plastic artist Tudor Zbarnea. Contest winners were awarded diplomas of excellence, accompanied by monetary prizes.

Works of the winners and participants in the contest were exhibited in the framework of the International Specialized Exhibition "INFOINVENT-2013", section "Creation of Youth", which was held at the IEC "Moldexpo" JSC in the period 19-22 November 2013.



**In addition to regular activities, part of Observatory's duty is also the implementation of projects of major interest, namely:**

- Organization of the young generation awareness campaign on the phenomena of counterfeiting and piracy. The action is a continuation of the events started in the first campaign in 2012, only that the target group is limited to ninth-grade and twelfth-grade pupils from the educational institutions. The first step directed towards schools and lyceums from Chisinau will be followed by the further national stage. The main objective of the campaign is to inform the younger generation on the risks and consequences counterfeiting or piracy involve, and campaign message to be heard in as many educational institutions of the country as possible;
- Definitization of the development of a unique information system – starting from the desideratum of establishing the Observatory on Enforcement of Intellectual Property Rights, namely the establishment of cooperation relationships between public and private institutions in order to counteract counterfeiting and piracy phenomena, was important to persevere in developing the information platform. This technical solution is supposed to bring efficiency in the activity of institutions responsible for the enforcement of rights, to perform a rapid and advantageous communication with right holders and to be the main provider of information for the whole society;
- Improvement of cooperation relationships with right holders to increase their activity on the Moldovan market. Achieving this goal will have the effect of both making more profitable the activity of law-enforcement bodies and providing a higher level of enforcement of intellectual property rights.

Also, during 2013, it was organized a series of events which can be found on the following pages and which, to facilitate reading, are presented in chronological order.

# Contents

<b>Introduction</b> .....	69
<b>1. General Information on Counterfeiting and Piracy</b> .....	71
1.1 General Notions.....	73
1.2 Legal Framework.....	76
1.3 Reasons for Occurrence and Impact of Counterfeiting and Piracy.....	78
1.4 Information Useful to Consumers on Counterfeiting and Piracy.....	81
<b>2. Enforcement of Intellectual Property Rights in the Republic of Moldova</b> .....	83
2.1 Protection of Intellectual Property Rights in the Republic of Moldova.....	85
2.2 Enforcement of Intellectual Property Rights at the Border.....	90
2.3 Enforcement of Intellectual Property Rights on the Internal Market.....	100
<b>3. Prevention of Counterfeiting and Piracy Phenomena</b> .....	109
3.1 EUBAM Activity on Enforcement of Intellectual Property Rights, in accordance with the legal framework.....	111
3.2 Activity of the Observatory on Enforcement of Intellectual Property Rights.....	113
<b>Calendar of Events in 2013</b> .....	53