

Intellectual Property Rights (IPR)

Express Delivery Services and the Protection of Intellectual Property Rights

A Position Paper by the Global Express Association (GEA)¹ (28 February 2022)

The three express delivery companies represented by the Global Express Association (GEA) process over 30 million shipments every day world-wide and are committed to comply with all existing applicable laws and regulations and cooperate with Customs, other law enforcement agencies and Rights Holders to address IPR offences as trustworthy partners.

Effective enforcement of IPR infringement requires a risk-based and threat managed approach starting at origin as well as cooperation and information sharing between rights holders, Customs, other law enforcement agencies, express delivery companies as well as those parties directly involved in the commercial sale of the goods.

Rights holders are the experts in identifying counterfeit items. Customs and other law enforcement agencies are the competent authority to enforce IPR laws at origin and destination, conduct risk assessments, and make seizures of illegal items.

Express delivery companies are trusted partners and assist Customs and other law enforcement agencies as follows:

In addition to the number of seizure cases, the European Union is also measuring the number of articles seized. While the number of cases in express is higher than for example in the sea mode, only 4.8% of all 27 million articles seized by EU Customs authorities in 2020 were related to express shipments, compared to 49.6% in sea shipments, 31.5% in road shipments, 3% in postal shipments and 7.3% in air shipments. (Source: Report on EU Customs Enforcement on IPR, 2020; European Commission)

- **Advance pre-arrival electronic shipment information:** Express delivery companies transmit electronic information in advance of arrival of shipments so that Customs can perform risk assessment and target shipments for further examination.
- **Track and Trace** systems allow packages identified by Customs as suspicious to be removed from traffic flows and provided to Customs officers for further examination.
- **Facilities:** Express delivery companies provide Customs office space within express delivery hubs with adequate facilities and equipment for them to be housed on-site to identify and examine shipments efficiently.

- **Information on shippers and consignees:** Express delivery companies provide Customs administrations with available relevant information that may legally be disclosed on shippers and consignees of shipments identified as containing suspected offending goods.
- **Close accounts** of customers publicly identified by Customs as repeat offenders to take appropriate actions.

Practical limits to what express delivery companies can do

- Express delivery companies are not originators of information about shipments. There are clearly limits on the quality and quantity of information that can be obtained from customers.
- Express delivery companies have no expertise to identify counterfeit or pirated goods. Determining whether a good is counterfeit is Customs' and rights holders' responsibility, and they frequently turn to specialised experts for that.
- Express delivery companies are not law enforcement agencies. They are subject to national data protection and commercial information confidentiality rules.

¹ The Global Express Association is the trade association of the global express carriers: DHL Express, FedEx Express and UPS.



Express delivery companies ask Governments, Customs and other law enforcement agencies:

- To account for the efforts made by the express delivery companies as detailed above when determining and assigning liability for seized IPR infringing or illicit goods.
- To apply greater focus on the “front end” of the supply chain, developing bi-lateral mechanisms to have governments deal with the issue at source as there is currently too much focus on the “back end”, confiscating goods and establishing liabilities at destination.
- Lastly, to establish legal or regulatory mechanisms that enable governments and stakeholders to share information about bad actors in order to have a coordinated approach. However, all modes of transport need to have the same processes in place otherwise bad actors will just choose the path of least resistance.