

# Introduction

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## Flood of fakes hinders business efforts to grow economy and pinches government budgets

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Author

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We live in a technology and information-based global society, where economic growth increasingly depends on innovation, invention and creativity. In order to continue to grow, to compete and to deliver products and services to the marketplace, companies are increasingly investing in 'intellectual capital'. However, intellectual capital and intellectual property are unique in that they are less tangible than physical capital and, therefore, more vulnerable to theft.

Over the last decade IP theft – through the global proliferation of counterfeit and pirate products – has drained the global economy and put downward pressure on innovation, international trade and economic investment, in addition to causing widespread loss of employment opportunities.

Counterfeiting and piracy now affect virtually every product category. The days when only luxury goods were counterfeited, or when unauthorized music CDs and film DVDs were sold only on street corners, are long gone. Today counterfeiters produce fake foods and beverages, pharmaceuticals, electronics and electrical supplies, auto parts and household products. In addition, copyright pirates have created huge networks to produce, transport and sell unauthorized copies of music, videos and software.

Millions of fake products are produced and shipped around the world to developing and developed markets at increasingly alarming rates. Millions of consumers are now at risk from unsafe and ineffective products, and governments, businesses and society are being robbed of hundreds of billions in tax revenues, business income and jobs. The drain on the global economy is

significant and the longer-term implications of the continuing growth in this illicit trade are dramatic.

Realizing that no single business, business sector or country can fight this battle alone, the International Chamber of Commerce has launched Business Action to Stop Counterfeiting and Piracy (BASCAP) to raise awareness of counterfeiting and piracy activities and the associated economic and social harm, and to compel government action and the allocation of resources towards improved IP rights enforcement.

Government efforts to stabilize the economy and stimulate economic growth, trade and employment must embrace the critical and pervasive role that IP protection plays in driving innovation, development and jobs.

In order to improve understanding of the significance of the problem, BASCAP has commissioned expert work to explore the impact on government and consumers in the economy. A new report indicates that the economic losses associated with counterfeiting and piracy extend well beyond the lost sales to legitimate businesses; they cost the G20 economies more than €100 billion and put 2.5 million legitimate jobs at risk each year. The report shows that in an interconnected economy, consumers and governments suffer alongside legitimate businesses from the trade in fakes. Governments see lower tax revenues and higher spending on welfare, health services and crime prevention. Consumers waste their money on poorer-quality products that are unregulated and unsafe. The long-term impact results in decreased investment, loss of jobs and damage to economic growth.

In this regard, government efforts to strengthen IP enforcement regimes should be considered not as costs, but rather as

investments that pay tangible dividends to economic development and society. For example, the report showed that the €4.1 billion in lost tax revenue and increased welfare spending is more than one and a half times what the United Kingdom currently spends in total on customs activity. It also represents just under half the United Kingdom's overseas aid commitment in 2010. In short, better enforcement pays for itself and generates available revenues for additional public services. Now is the time to increase, not decrease, the resources committed to stopping the illegal trade in counterfeits and piracy.

### **Reforming the global legal framework**

Overall, vast improvements in the international legal regime for enforcing IP rights protection are needed. For this reason, BASCAP has diligently petitioned G8 leaders and Anti-counterfeiting Trade Agreement (ACTA) negotiators to take a leadership role in the global reform process. The G8 is critical to establishing priorities among governments, especially because governments around the world look to the leadership and precedents established by the G8. During the last four G8 summits (in the United Kingdom, Russia, Germany and Japan) BASCAP provided ministers with recommendations for better IP rights protection. More recently, BASCAP called on the nations negotiating ACTA to create a new standard for IP rights enforcement. The business community has widely and openly welcomed the initiative and has sought to contribute support and expertise to the process, as it considers ACTA to have great potential in establishing stronger international guidelines and standards and providing individual governments with clear directives for action against the rapidly growing problem of IP theft. ACTA presents

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an extraordinary opportunity to raise the bar, fight counterfeiting and piracy and tackle issues that have undermined effective IP enforcement in the past.

BASCAP believes that it is incumbent on governments around the world to take concrete action to curb this illegal activity. Among the recommendations critical to reforming the global legal framework, BASCAP has petitioned government leaders worldwide to act swiftly to:

- abolish all known counterfeiting and pirate markets (both physical and online);
- designate a chief IP enforcement officer with high-level authority to raise the profile of the issue, oversee the coordination of relevant government officials and agencies and allocate necessary financial and personnel resources;
- ensure that criminal penalties for IP theft reflect the magnitude of the crime and match existing legal penalties for the theft of physical merchandise, and that these penalties are applied to both online and offline IP transactions;
- disrupt the flow of counterfeit goods through free trade zones and other transshipment sites by extending greater authority and effective powers to local customs and enforcement authorities;
- expand the powers of national customs authorities to allow them to interdict and stop shipments entering or exiting their jurisdictions;
- develop global minimum standards in the area of adjudication of counterfeiting and piracy cases presented to authorities; and
- treat counterfeiting and piracy across national borders as a transnational crime, recognizing that organized criminals are behind commercial-level counterfeiting trade.

### **Reducing demand: consumer awareness**

Efforts by governments, enforcement agents and IP rights holders to stop counterfeiting and piracy have largely focused on strengthening IP enforcement regimes to deter the production and trade of fake products more effectively. However, in the face of escalating global growth in counterfeiting and piracy, it has become clear that the focus on the supply side of the equation is inadequate and must be complemented by an equally aggressive attempt to control the demand side of this nebulous market.

According to recent surveys, 25% of consumers have purchased counterfeit goods. We need to do a better job of educating consumers and reducing the demand for fake goods, but getting a handle on what drives a consumer to choose a fake, illegal product is a complex undertaking. Motives vary widely, from price and easy access to social acceptability and a perception that a counterfeit purchase is a game which falls outside the law and of which there are no consequences. Further, consumers include weak government commitments to fighting and prosecuting counterfeiting among their motives – or excuses – to look the other way.

Only when consumers appreciate the full repercussions of their counterfeit purchase can they be expected to stop the practice. And only when governments fully understand the factors that drive citizens towards illegal activity can they institute programmes to educate and protect consumers – and society – from the dangers of counterfeiting and piracy.

In order to tackle this problem, BASCAP has conducted an 18-month study to improve understanding of consumer attitudes and behaviour towards counterfeiting and piracy. The objective was

to find communications methods that can help to change those attitudes and behaviours in ways that will help consumers to understand more fully the repercussions of buying fake products – and ultimately deter these illegal and unsafe purchases.

The research was conducted in three phases. When analyzed in total, a number of interesting and consistent hypotheses and findings emerged. The desk research findings are based on a review of approximately 176 consumer perception surveys conducted across 42 countries since 2000. This research also included a review of 202 awareness campaigns utilizing a broad array of media outlets targeting consumers across 40 countries, and interviews with 15 experts from anti-counterfeiting organisations. Armed with insights from these global activities, researchers worked on the ground with consumers in Mexico, Russia, the United Kingdom, India and South Korea, first in focus groups and then in broader quantitative surveys, to test hypotheses and insights gathered from the desk research and focus groups. The qualitative (focus group) findings are based on the results of four consumer focus groups in each of the five countries, representing a cross-section of consumers from high and low incomes in both developed and developing markets. The quantitative (survey) findings are based on surveys of approximately 1,000 consumers in each of the five countries.

The key findings, which both categorize the results of the research and prove essential for efforts to develop an anti-counterfeiting or anti-piracy campaign, are as follows:

- There is no typical counterfeit or pirate product purchaser. However, the kind of counterfeit or pirate product purchased varies according to nationality, income level and age. Almost everyone can be a

- counterfeit buyer or a digital pirate.
- There are many words for counterfeit or pirate products: copies, copycat, fakes, pirate goods. All these notions cover subtle differences; Chinese products (cheap and expendable) and grey-market goods (off the truck, custom seizure, hard discount products) all contribute to blurring the picture.
- Consumers identify real differences among counterfeit or pirate products; some of them talk about 'class A' or 'first-class' counterfeit or pirate products as the ultimate fakes that every smart consumer seeks. Generally speaking, they report a rise in the quality of counterfeit or pirate products.
- A large majority of consumers recognize that buying counterfeits or engaging in piracy is unethical, but feel it is essentially a victimless crime, so seldom feel guilty about it.
- Consumers perceive the counterfeit and pirate business to be harmless in the absence of obvious penalties against purchasers and sometimes sellers (the threat of prosecution is perceived to be more credible for the piracy of digital content than for the purchase of counterfeit goods).
- In emerging markets, more than half of counterfeit and pirate purchases take place in normal stores. Consumers often feel it is impossible to protect themselves from counterfeit or pirate goods. The online purchase of counterfeit and pirate products was reported only by respondents in Korea and the United Kingdom.
- The purchase of counterfeit or pirate products is an impulse; consumers need the products fast, they use them fast and then throw them out fast. They give no thought to the product origin or distribution system.
- Consumers refuse to call themselves victims of counterfeiting or piracy, even when they have a bad experience with such a product. They believe that they control the situation and, in some cases, even feel empowered by their purchase.
- The main reasons for counterfeit or pirate purchases are well known and confirmed: lower prices and availability. However, more sophisticated motives also exist: a rejection of the established order and distribution system (Mexico), a teenage spirit (the United Kingdom) or even a paradoxical soft rebellion against a consumption society.
- Not all consumers have a clear vision and understanding of the benefits of 'going genuine'. Quality and customer service often fail to convince consumers that paying more for the genuine product is worthwhile.
- Risk to health, risk to personal possessions and risk of prosecution (when credible) are the three most powerful deterrents against the purchase of counterfeit or pirate products.
- Consumers from all countries act along proximity rules: they care first for themselves and their families, then for their communities, then for their countries.
- Consumers no longer listen to traditional authority figures (eg, judges, government officials, the police), but expect them to lead the fight against counterfeiting and piracy. Consumers admit that they need boundaries to act ethically.
- The most credible spokespeople would be victims (first, people whose health has suffered; then economic victims). These victims must be very local in order to generate empathy. This is a challenge for the movement to combat piracy, which has few if any consequences for health.
- Consumers admit they do not consider the implications of their counterfeit or pirate purchases. They do not understand why counterfeiting and piracy is a plague beyond the mere ethical principle and want evidence that counterfeiting and piracy is harming them, their community or their society as whole, and not just large companies. They also want to see 'what's in it for them' if they stop buying counterfeits or downloading illegally. [WTR](#)

## Biographies

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Jeff Hardy has been the coordinator of the International Chamber of Commerce initiative Business Action to Stop Counterfeiting and Piracy (BASCAP) since its creation in mid-2005. BASCAP unites the global business community across all product sectors in an effort to stop the counterfeiting of goods and piracy of intellectual property. It focuses on setting standards for global performance by governments and companies; framing decisions for policymakers; advocating the allocation of resources at the highest levels in national governments; and building global awareness.

Mr Hardy joined the International Chamber of Commerce in 1999 as a policy adviser for intellectual property, competition, biotechnology, environment, energy and transportation. Previously, Mr Hardy held various positions with the US government from 1985 to 1998.