

WORLD COMMERCE REVIEW

ISSN 1751-0023

VOLUME 3 ■ ISSUE 1

©2009 Phoenix Multimedia

Preview of the Fifth Global Congress on Combating Counterfeiting & Piracy

Cancun, Mexico 2-4 June 2009

Bridging Boundaries For Shared Solutions



Ronald K Noble, Secretary General of INTERPOL, addressing the 4th Global Congress on Combating Counterfeiting and Piracy in Dubai

THE GLOBAL TRADE PLATFORM

We Make Life Authentic

Instant Authentication On-line



THE ONLY WAY TO COMBAT COUNTERFEITING IS TO UNDERMINE ITS ECONOMICS

HOW? – By refusing to buy fake produce.

HOW? – By being able to tell an original from a fake.

HOW? – By using the DINTAG System offering
instant naked-eye authentication to anyone
who cares: brand owner, end-consumer,
law enforcer.

USE DINTAG – SAY NO TO FAKES!



DINTAG[®]
Global Brand Security Service

www.dintag.com

Bridging Boundaries For Shared Solutions



Joseph Clark is the Executive Director of the Global Congress Secretariat

The Global Congress on Combating Counterfeiting and Piracy is a unique public-private partnership based on a mutual commitment and a recognition that the public sector and private sector must work together to find solutions to this growing global problem.

The Fifth Global Congress on combating Counterfeiting and Piracy will be held in Cancun, Mexico 2-4 June 2009.

Background on the Congress

The Global Congress on Combating Counterfeiting and Piracy represents a unique, international public private sector partnership that is united in its efforts to identify solutions and facilitate their implementation against the growing menace of the illegal trade in counterfeiting and piracy.

In 2003, the need to address the rapidly growing global problem of counterfeiting and piracy had emerged as a key priority for national governments and intergovernmental organizations concerned about the myriad adverse costs to social welfare and economic development that were resulting from the rampant theft of intellectual property. Notably, trade in counterfeit goods was rising dramatically worldwide and had spread to almost every conceivable type of product. Billions of dollars in revenues were being lost to the black economy. Counterfeit drugs were putting lives at risk. And there was growing evidence that transnational organized crime networks were using profits from trade in counterfeit and pirated goods to fund their activities.

It was clear that better strategies – based on more effective cooperation between stakeholders at national and international level – were needed to combat the multiple threats posed by this damaging trade. To this end, the first Congress was convened by the World Customs Organization (WCO) and INTERPOL with the support of the World Intellectual Property Organisation (WIPO).

A Global Congress Steering Group was formed after the First Global Congress hosted by the World Customs Organization (WCO) at its headquarters in Brussels in May 2004. The Steering Group is chaired, on a rotating basis, by INTERPOL, the World Customs Organization and the World Intellectual Property Organization. The private sector is represented on the Steering Group by the International Chamber of Commerce (ICC) through its BASCAP initiative, the International Trademark Association (INTA) and the International Security Management Association (ISMA).

INTERPOL, the WCO and WIPO are the key international inter-governmental organizations involved in the fight against counterfeiting and piracy, and their views and voice on the issue with their member states and world governments is critical to finding and implementing solutions. The ICC, INTA, and ISMA are global business organizations actively engaged in the fight against counterfeiting and piracy. All three embody the principle that business and governments must work together to achieve more effective protection of intellectual property.

The key focus areas of the Steering Group are as follows:

1. Raise awareness on the problems associated with counterfeiting and piracy
2. Promote better legislation and enforcement
3. Enhance cooperation and coordination
4. Build capacity
5. Promote solutions, particularly in the key focus area of health and safety risks related to counterfeit products

To date, the Steering Group has convened four Global Congresses and four Regional Congresses that have brought together global political and business leaders and experts from law enforcement, the judiciary, academia and the private sector to share strategies, program concepts and identify priorities for action. An "outcomes statement", capturing the recommendations and suggestions, has been produced following each of the eight Congresses.

The Global Congress has become the premier international forum for shaping practical strategies to combat counterfeiting and piracy as evidenced by the prestigious speakers and growing numbers of delegates attending each successive Congress. Both the Third Global Congress (Geneva, January 2007), and the Fourth Global Congress (February 2008) were attended by over 1,000 people representing about 100 countries from around the world.

A look forward – The Fifth Global Congress on Combating Counterfeiting and Piracy

The Fifth Global Congress will be held in Cancun, Mexico on 2-4 June 2009, the first time a Global Congress will be staged in the Americas. It is being hosted by INTERPOL and the Mexican Government agency Instituto Mexicano de la Propiedad Industrial (IMPI).

The Fifth Global Congress will build on the successes of the first four Global Congresses. It will be focussed on developing tangible solutions to the current challenges in fighting counterfeiting and piracy globally, and will include special sessions devoted to the increasing problems in Mexico, Central and South America.

A look back – The Fourth Global Congress on Combating Counterfeiting and Piracy

The Fourth Global Congress was held in Dubai, UAE 3-5 February 2008. Hosted by Dubai Customs, the Congress was convened by the WCO, INTERPOL and the World WIPO in partnership with the International Chamber of Commerce (ICC), the International Trademark Association (INTA), and the International Security Management Association (ISMA).

Underscoring the importance of counterfeiting and piracy, both globally and across the Gulf region, the Congress was held under the patronage of His Highness Sheikh Mohammed bin Rashid Al Maktoum, Vice President and Prime Minister of the United Arab Emirates and Ruler of Dubai.

The Congress attracted over 1,200 delegates representing 90 countries from around the world. Notably, roughly one-third of the participants represented companies and organizations from Dubai and the GCC region.

Heads of international organizations and government leaders, senior representatives of customs and police, business executives and experts from around the world shared their experiences and identified concrete actions and solutions to more effectively combat counterfeiting and piracy.

The Fourth Global Congress was organized around five themes that consistently have emerged as the key focus areas for concrete actions to combat counterfeiting and piracy. In addition, the Fourth Global Congress also featured special sessions on the challenges facing free trade zones and transshipment countries, and counterfeiting and piracy over the internet.

In the course of the presentations and discussions, a number of dynamic suggestions and proposals were made on how the various stakeholders might more effectively combat counterfeiting and piracy. These suggestions and proposals were prioritized and incorporated into the following Recommendations for Action.

Fourth Global Congress Recommendations for Action

I. Cooperation and coordination

Not surprisingly, Congress participants once again reaffirmed that the global problems of counterfeiting and piracy are too great to be solved by individual governments, enforcement authorities, business sectors or companies. While some progress has been made, and there are an increasing number of achievements, the consensus was that more can, and should be done to improve cooperation and coordination among and between government authorities and the private sector.

Key recommendations:

1. Customs and police authorities, and where appropriate, the private sector, should participate more fully in developing and using existing tools to collect and share information including:

WCO Customs Enforcement Network (CEN)
INTERPOL Database on International Intellectual Property (DIIP) Crime

2. Companies are encouraged to adopt INTERPOL's Minimum Global Standard for the Collection of Information on Counterfeiting and Piracy in order that the information can be readily assimilated into INTERPOL's database and thus improve its operational capabilities against organized criminal networks.

3. The private sector should make better use of cross-industry anti-counterfeiting-related associations to improve cooperation among all stakeholders and with service provider organizations.

4. WCO, WIPO, INTERPOL and private sector stakeholders should convene a forum to identify a process for accelerating the integration of multi-disciplinary IP crime-related training to reduce redundancies, improve efficient use of resources and more fully leverage the collective strength of the organizations represented on the Global Congress Steering Group partnership or which are involved in training activities.

5. Led by members of the Global Congress Steering Group, all organizations involved in the fight against counterfeiting and piracy need to significantly enhance the timely exchange of information. It was noted that more information is needed on the business practices of counterfeiters and pirates and how to exploit their weaknesses.

6. National and international enforcement organizations should take the lead in identifying effective ways for the private sector to create support and determination from policy makers to take the needed actions to stop counterfeit products including, in particular, those that threaten the health and safety of consumers.

7. Dubai Customs is encouraged to follow-through on its offer of support to other Customs administrations in the GCC Countries and Arab world to share experience and knowledge.

II. Legislation and enforcement

Speakers and delegates called on governments to further improve legislation dealing with the enforcement of IP rights, streamline procedures and implement already existing international obligations. They also recommended that a new set of standards be developed at the national and regional levels with the aim of making available more effective civil and criminal remedies and border measures. There was broad acknowledgment that even if good laws are in place, they are often poorly enforced. In order to update national and regional IP protection regimes and to make the enforcement of intellectual property rights more efficient, decision-makers in the public and private sectors need to be made aware of the requirement to allocate additional human and financial resources.

Key recommendations:

1. All participants should use their influence and resources to encourage national governments to regularly update civil, criminal and border measures legislation taking into account new international and regional standards or to implement recent decisions by the national authorities on more effective intellectual property protection and enforcement.

2. Members of the Global Congress Steering Group partnership should work within their organizations, with each other and with other interested parties to encourage international governmental organizations and national governments to develop a holistic strategy on the negotiation and revision of international conventions and treaties related to counterfeiting and piracy. This will help to ensure that agreements at the international level such as the Palermo Convention (fighting organized crime), and the WHO IMPACT Initiative (preventing the distribution of counterfeit medical products) are complementary. The strategy must also take into account the project work of the G8 and initiatives aiming at higher standards in the field of IP enforcement such

as the WCO SECURE Initiative, and preparations for the conclusion of an Anti-Counterfeiting Trade Agreement (ACTA).

3. WIPO, ICC/BASCAP, INTA, national brand protection groups and IPR organizations should continue and increase their efforts to educate government leaders and the public on the value of intellectual property in economic development and the attendant need to introduce and maintain control measures to reduce counterfeiting and piracy. This balance is a crucial pre-condition for controlling the expected sharp rise in counterfeit and pirated goods.

4. Members of the Steering Group and other committed organizations and companies should work with WHO to identify the best ways to encourage implementation of the "Principles for National Legislation against Counterfeit Medical Products," adopted by the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) in December 2007, including the recommended responsibilities of governments, manufacturers, operators

in the distribution chain, retailers and other relevant parties. The suggested criminal sanctions should also be implemented.

III. Capacity building

The Congress recognized that a country's effectiveness in protecting IP rights is partially dependent upon its capacity to enforce them. Therefore, in addition to prescriptions for better legislation, stronger enforcement and penalties, speakers also suggested methods for improving knowledge, enhancing training and developing skill capacities.

Key recommendations:

1. ICC/BASCAP, INTA and other business organizations should identify ways to share private sector experiences and knowledge in risk management techniques related to counterfeiting and piracy, particularly with most at risk countries.

2. The Global Congress Steering Group should look for opportunities to engage the newly-formed associations of companies involved in the development and use of detection, verification and technology systems to foster an exchange of information on appropriate technologies and systems that are proven to work in the detection and deterrence of counterfeiting and piracy.

3. Through INTERPOL, the WCO and WIPO as well as other organizations directly involved in enforcement, identify opportunities for better coordination of donor efforts and support for training and capacity building for law enforcement officials, focused on building real capabilities region by region and sector by sector.

4. Extend the efforts to combat counterfeiting and piracy to other regions around the world including, in particular, to Africa by organizing an event, under the auspices of the Global Congress Steering Group, in one of the African countries in which counterfeit goods are an emerging problem.

IV. Awareness raising

Many speakers and delegates addressed the need to increase public and political awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm. They also agreed that as a matter of priority, young consumers should be educated about the dangers and consequences of the counterfeiting and piracy trade. Greater steps in raising awareness can lead to informed consumers that better understand the harm associated with purchasing and consuming counterfeit and pirated goods; likewise, well-informed policymakers are in a better position to make appropriate decisions, implement policies and allocate resources.

Key recommendations:

1. The business community must continue to take the lead in raising awareness and educating the public and decision makers on the harms and costs of counterfeiting and piracy, including increased investments to reach broader audiences with more frequent delivery of targeted messaging.

2. The business community should work with IGOs and national governments to collect and exchange communications materials

"...the global problems of counterfeiting and piracy are too great to be solved by individual governments, enforcement authorities, business sectors or companies"

aimed at increasing awareness and education. ICC/BASCAP and WIPO have each initiated a process to collect current programs and research and are working together to share this information with each other and other relevant organizations.

3. National governments must do more to warn consumers about the harm of counterfeit products, building on successful government and government/business sponsored public education campaigns such as those on seat belt safety as well as prevention of AIDS, drug abuse, and other broad social dangers.

4. The business community should seek to inspire a sense of global collective responsibility and action in order for all economic actors to fight against counterfeiting and piracy. The ICC has agreed to invest in developing messages which move consumers to action, and to develop a globally recognized symbol and other elements that could be used by all interested parties to create a common, global awareness and education effort. INTA is developing a web site specifically for educating youth about the value of IP and its protection.

V. Health and safety risks

The Congress widely recognized that counterfeiting and piracy harm society in many ways that are not immediately obvious. This is particularly true for counterfeit medicines and over-the-counter drug products and consumer goods that are not tested to the same safety standards as genuine products. These fake products can seriously injure or even kill consumers, and at a minimum, do not deliver the expected and promised health benefits of the real products. In addition to health hazards presented by foods, beauty and health care products, agricultural products, fake auto parts and electrical goods, speakers addressed the growing problem of counterfeit pharmaceuticals and drew particular attention to the fact that persons in need of medication often acted in good faith and were not aware of, and therefore not in a position to assess, the risk.

Key recommendations:

1. Develop national working groups, comprised of law enforcement, health ministries and the private sector, to develop strategies and programs to combat counterfeit drug, food and beverage and other consumer products such as auto parts, toys and electrical components containing dangerous or sub-standard, unsafe components. This effort should include national public awareness programs to educate and warn consumers about the potential dangers of counterfeits, including the risks of purchasing medicines and food from unapproved sources. As appropriate, this initiative should be promoted and supported by the members of the Global Congress Steering Group, working with the WHO, consumer groups, standards organizations and others involved in consumer safety.

2. Have the Global Congress Steering Group seek opportunities to engage the WHO in the Global Congress process to build synergies with the new IMPACT initiatives and other WHO programs related to counterfeit drugs.

3. Use the Global Congress events to share information on advances in the development and use of covert and overt markers and other detection and verification technologies, and other techniques and standards being created to protect the health care products supply chain against the introduction of counterfeit goods.

4. Encourage the private sector to register trademarks with Customs, and provide the appropriate follow-up training, education and support of Customs officials to enable them to fight the trade in counterfeit goods including, in particular, those which may cause health and safety risks.

5. Build more effective partnerships between law enforcement agencies and the private sector with a particular focus on intelligence sharing, awareness and product identification training and sample sharing.

VI. Free trade zones and transshipment countries

The Congress recognized the legitimacy and benefits of free trade zones and the use of countries for transshipment purposes, but noted there is abuse by counterfeiters and organized criminal networks facilitating the movement of counterfeit and pirated goods into third countries. Speakers and delegates encouraged countries to develop and/or apply required legislation, appropriately enforce the legislation, develop risk assessment procedures and criminally punish traffickers of counterfeit and pirated goods.

Key recommendations:

1. Encourage national governments to enact new, or more effectively apply, legislation prohibiting transshipment and transit of counterfeit and pirated goods at least in cases in which intellectual property rights are infringed in the country of importation and/or the country of final destination.

2. Permit and encourage customs administrations to control shipments into and out of free trade zones and transshipment countries.

3. Assure that customs officials and local law enforcement conduct regular and targeted risk assessment operations to profile and cause disruption to movement of counterfeit and pirated goods.

4. Encourage national governments to punish trafficking of counterfeit and pirated goods through free trade zones with effective deterrent sanctions including fines and incarceration.

VII. Sale of counterfeit and pirated products over the internet

Participants overwhelmingly recognized the importance and urgency of finding concrete and practical solutions to this challenge. Congress speakers emphasized that the internet is not “the Wild West” and there is an urgent need to implement concrete practical solutions to eliminate or at least significantly disrupt counterfeiting and piracy transacted over the internet. This was considered a collective responsibility, requiring action by intermediaries and government authorities to enforce IP rights.

Key recommendations:

1. Intermediaries (eg, registrars, internet access providers, web hosts, search engines and online advertising providers, trade boards, auction sites, online payment providers and credit card companies, courier and shipping companies) should undertake immediate actions to prevent and deter counterfeiters and pirates from accessing their services for the purposes of illicit trade and distribution. These measures should include, in particular: reasonable pre-contractual due diligence (eg. client's identity verification, legitimacy of business conducted); providing a mechanism for receipt of notices from rights owners and prompt responses thereto, filtering of illegal digital content by internet Service Providers (ISPs), refusing to host sites with counterfeit and pirated content, removing such sites from search results, supporting efforts for increased transparency of data.

2. Governments should: (a) partner with IP owners, ISPs and control authorities to develop methodologies and measures/sanctions to prevent and disrupt illegal activities; (b) strengthen legal frameworks to protect IPRs in an online environment; (c) increase the resources to law enforcement agencies that are engaged in the battle against internet piracy and counterfeiting; (d) establish efficient mechanisms for international cooperation between law enforcement agencies in response to widespread multi-territories fraud schemes.

3. Following the recent government initiatives in France (Olivennes report), the UK and South Korea, cooperation and coordination at the international, regional and national levels should be strengthened in order to explore possibilities of controlling access to, and the availability of, counterfeited or pirated material, and techniques for filtering illegal content.

4. Support the further development of INTERPOL's IPR program ‘Dedicated Internet Anti-Piracy Capability’ by encouraging meaningful partnerships with governments, piracy affected industries and all other stakeholders to maximize opportunities to intervene in the internet piracy related activities of transnational organized criminals.

5. Encourage and support the Universal Postal Union's (UPU) efforts to implement measures to prevent shipments of counterfeit and pirated products through postal traffic, such as including counterfeit products in the List of UPU Prohibited Articles; developing electronic information to carry out risk-assessment of counterfeit products; raising awareness of postal employees about counterfeit products; and informing postal users about the consequences of sending counterfeit products through the mail. It was noted that these efforts would require external expert help of right holders and appropriate legislation in some cases. ■

Information on the Fifth Global Congress in Cancun and on previous Global and Regional Congresses can be found on the Congress website – www.ccapcongress.net



INTERPOL

John Newton is IPR Programme Manager, Intellectual Property Rights Programme at the International Criminal Police Organization – INTERPOL

The relevance of counterfeiting and piracy to INTERPOL

The International Criminal Police Organization – INTERPOL has been focused on combating intellectual property (IP) crime¹ since 2002 and a significant amount of resources are committed to the cause. The reason IP crime is given priority by INTERPOL is the clear involvement of transnational organized criminals who manufacture and distribute counterfeit and pirate products on an industrial scale on a regional and increasingly global basis. It seems that no industry is exempt from the attentions of these persistent and unrelenting international criminals who derive significant illicit profits from their activities.

This is evidenced by the wide breadth of industries who work in partnership with INTERPOL and other stakeholders in an effort to take on and disrupt the activities of the counterfeiters. Industries currently working with the INTERPOL IPR Programme include: agrochemicals; baby milk; battery; beverages; business software; certification (product health and safety); chemicals; condoms; electrical; games software; food; household goods; image consumables; luxury goods; recording; medical product; motion picture; motor vehicle manufacturers; plastic; pharmaceutical; shoe polish; skin care; spirits; telephone; tobacco; toys; and, watch manufacturers. Many more are indirectly involved through their membership of national organizations such as the US Chamber of Commerce.

Of central concern to these industries are the almost infinite trademark and copyright infringements that adversely affect their commercial interests. However, INTERPOL does not expend much energy focusing on definitions or discussions about the relative importance of trademarks over copyright and vice versa. On the contrary, emphasis is placed on doing something about it. The reason for this approach is that modern day organized criminals are effectively commodity brokers who do not distinguish between counterfeiting and piracy, but concentrate on manipulating any illegitimate commodity to generate massive profits. Consequently INTERPOL efforts centre on the common denominator in all types of counterfeiting and piracy, and increasingly illicit trading - the transnational organized criminals themselves.

Against this background INTERPOL consistently delivers three main international functions. The first is raising government policy maker and chief police officer awareness about the links between IP crime and transnational organized criminals. Customs agencies, by the very nature of their work at national borders, have always been involved in the interception of incoming shipments of counterfeit and pirate products. Typically national police forces have not been involved to any degree and INTERPOL is at the forefront of efforts to encourage chief officers to dedicate more resources to fighting transnational IP crime.

The second core function is collecting intelligence about international criminals at the core of organized counterfeiting and piracy. The INTERPOL Database on International Intellectual Property (DIIP) crime is designed to identify criminal organizations that attack more than one industry sector or a group of industries. When links are discovered INTERPOL leads proactive regional cross-industry law enforcement interventions to disrupt these criminal conspiracies.

Facilitating and coordinating these international enforcement operations is the third activity. INTERPOL is an international organization and does not have the power to make these interventions within the territorial jurisdictions of its member countries. The actual enforcement work is done by national police and customs officers in target countries. INTERPOL's role is to identify an 'intervention point' for collective efforts and then bring together the enforcement agencies, IP crime affected industries, cross-industry associations and other stakeholders to make meaningful interventions happen.

Importance of the Global Congress process

INTERPOL was a founder member of the Global Congress Steering Group together with the other two international organizations, the World Customs Organization (WCO) and World Intellectual Property Organization (WIPO). By the three international organizations standing together to tackle counterfeiting and piracy in partnership with the private sector organizations represented on the Steering Group, it sends a



strong message of intent and provides the foundation for the deployment of a whole range of collective activities to make a difference.

Given that INTERPOL is a police organization, it is natural that its role within the partnership is to champion the cause of IP crime at a national, regional and global level. Ronald K Noble, the Secretary General of INTERPOL, highlighted this function at the Second Global Congress on Combating Counterfeiting and Piracy hosted by INTERPOL in November 2005. He also confirmed that the defining characteristic of IP crime for INTERPOL is the involvement of transnational organized criminals.

All four Global Congresses held to date have provided the Steering Group member organizations with an opportunity to review progress and determine strategic priorities for the Steering Group cycle leading up to the next Global Congress. The INTERPOL IPR Programme has steadily evolved over the last five years while at the same time the Global Congress on Combating Counterfeiting and Piracy has developed into the predominant event of its kind in the world. The Fifth Global Congress co-hosted by INTERPOL and the Instituto Mexicano de la Propiedad Industrial (IMPI) in partnership with the Global Congress Steering Group to be held in Cancun, Mexico on 2-4 June 2009 will be a significant milestone as it coincides with the INTERPOL IPR Programme becoming truly global in its outreach.

Evolution of the IPR Programme

In 2002 one police officer was committed to IP crime. In 2009 there are five full-time officials comprising of police officers and other officials who drive the programme forward. Their efforts are enhanced by an ability to generate support from national police agencies in INTERPOL's 187 member countries using the I-24/7 Global Police Communications System. As of February 2009, 89 member countries (48 per cent) from every INTERPOL region have provided intelligence on counterfeiting and piracy and are actively working with the IPR Programme to combat transnational IP crime.

Raising awareness about the nature and extent of transnational organized IP crime among policy makers and chief police officers in member countries has contributed to the increased momentum. However, the real driver for the growth has been leadership and the proactive stance taken by the IPR Programme. This has manifested itself in the four important interconnected outputs. These are the collection of information for action; bespoke IP crime training; coordinating and facilitating regional cross-industry law enforcement interventions into transnational organized IP crime; and, bridging the gap between police and the public health

sector to combat counterfeit medicines in the context of the World Health Organization (WHO) International Medical Products Anti-counterfeiting Task Force (IMPACT).

Database on International Intellectual Property (DIIP) crime

The INTERPOL Database on International Intellectual Property (DIIP) crime was established in 2007 with the active support of the United States Chamber of Commerce. The database has become a unique central point of reference for private industry worldwide to provide information on IP crime. One of its functions is to maintain reliable data on the scale of counterfeiting and piracy to determine more clearly the nature of crimes against brand integrity. The IP Crime Unit analyses the data to identify possible links between IP crimes across different industry sectors to ensure that scarce collective resources can be directed where they will be most effective. The database is now used systematically to support all INTERPOL IPR Programme operational deployments on a regional and global basis.

Apart from making investigations more efficient the database is becoming a valuable tool for informing the strategic development of the IPR Programme. For example, analysis of information has confirmed transnational organized criminals in Southeast Asia are responsible for the flow of counterfeit anti-malarial medicines into parts of Africa. While this was suspected for some time the analysis has enabled police forces in both regions to coordinate their efforts on the same criminal organizations. It is expected these advances will lead to proactive investigations and operational successes in 2009 and beyond.

IP crime training

Raising police awareness about the nature and extent of transnational organized IP crime has led to a tremendous increase in demand for training from INTERPOL member countries. This is especially so in countries where the IPR Programme acts as a catalyst for collective law enforcement interventions in the activities of these criminals. The IP Crime Training Programme initially started in South America to prepare police officers to participate in anti-counterfeiting operations in the Tri-border Area at the junction of Argentina, Brazil and Paraguay.

While these sessions were useful in themselves it was recognized that a more systematic approach was needed. It was decided to aim INTERPOL training efforts at the needs of police middle managers with responsibility for investigating IP crimes. Beginning in 2008, the INTERPOL and Italian Guardia di Finanza co-hosted one-week courses have been attended by over 100 middle managers from 63 member countries. Another 138 customs, drug regulatory body and police middle managers from 26 Eastern and Southern Africa countries received the same training at the INTERPOL and Kenya Police co-hosted IP Crime Training and Operational Workshops held in Kenya in November 2008. Over 120 other drug regulatory body and police managers in Africa and Southeast Asia received similar training on counterfeit medical products to prepare them for operational interventions that took place as part of the IMPACT Programme.



INTERPOL briefing Ugandan Police officers during Operation Mamba, the first combined INTERPOL-IMPACT operation in Africa

Providing 358 operational middle managers with quality training on all aspects of transnational organized IP crime in one year is a considerable achievement and it is hoped to emulate this in 2009. However, a characteristic of policing is that there is often a rapid turnover of staff as officers are either promoted or assigned to other duties. In an effort to counter this loss of expertise and provide consistent learning opportunities, INTERPOL is working with private sector organizations represented on its advisory body, the INTERPOL Intellectual Property Crime Action Group (IIPACG), to develop an interactive modular IP crime training course which will be accessed through the internet.

It is expected that a working model will be on-line by September 2009. Once the course has been quality-assured the intention is to identify a police IP crime training coordinator in each INTERPOL member country to ensure the training materials on the Internet are made widely available and are an integral part of national police training. It is expected that this will lead to a better level of awareness about transnational organized IP crime and an increased willingness by police officers to target this criminality.

Coordinating and facilitating regional cross-industry law enforcement interventions

IP crime intelligence and training are only valuable if they are used to support proactive operations. This is an area which has seen steady growth since the First Global Congress in 2004. The first INTERPOL and WCO-led Operation Jupiter – South America pilot deployment in the Tri-border area achieved modest results in the three participating countries with seizures of counterfeit and pirate goods valued at circa US \$10 million. Argentina, Brazil and Paraguay were joined by Chile and Uruguay in the second Jupiter deployment which resulted in seizures of US \$35 million. The experience and lessons learnt in the formative years combined with better coordination led to seizures in excess of US \$121 million and 185 arrests in Operation Jupiter III in early 2008. Jupiter IV, with the operating area extended to include Bolivia and Peru, was concluded in late 2008 and the results exceeded those achieved in Jupiter III.

The working partnership developed between INTERPOL, WCO, the customs, police and IP crime affected industries in South America has been very productive and enabled the Operation Jupiter model to be refined. It has now been successfully applied in all four INTERPOL regions – Africa, the Americas, Europe and Asia – targeting transnational organized criminals involved in manufacturing and distributing a diverse range of counterfeit and pirate products. For example, in Operation Storm in 2008, police across Southeast Asia made a series of arrests and seized fake drugs worth over six million dollars in an operation supported by INTERPOL, the World Health Organization (WHO) IMPACT Programme and the World Customs Organization (WCO).

The operation targeted individuals and groups involved in the manufacture and distribution of four classes of counterfeit medical products identified as posing a significant public health risk – anti-malarials, anti-tuberculosis medicines, anti-HIV medicines and antibiotics, specifically those for pneumonia and child-related illnesses.

Operation Storm confirmed the unique ability of INTERPOL to coordinate such operations. This was recognized by the world renowned PLoS medical journal which commented, “...it is universally accepted that the involvement of INTERPOL was crucial, acting as a bridge between the health sector (including the World Health Organization and the physicians and scientists) and national police agencies to act as a catalyst for action.”

International Medical Products Anti-counterfeiting Task Force (IMPACT)

Since its inception, the IPR Programme has been broad-church in the sense that every effort is made to work with all industries affected by IP crime. However, the last two years has seen more emphasis placed on counterfeit products which have the potential to adversely affect the health and safety of consumers. Some 25 per cent of available resources are dedicated to these activities. The most obvious example of this is the full-time secondment of an IPR Programme crime intelligence officer to the WHO IMPACT Programme.

IMPACT is a global coalition of stakeholders, created in 2006, that aims to develop international collaboration between WHO member states, international organizations, NGOs, law enforcement agencies and health professional groups. The aim is to raise awareness of the dangers of

counterfeit medical products and curb their manufacture and distribution.

The purpose of the secondment is to assist the health sector to offset the damage caused to patients by fake medicines which often contain no active ingredients. Public health authorities and drug regulatory bodies frequently encounter fake medicines for life threatening diseases such as malaria, tuberculosis and HIV aids. However, they do not have the investigative capacity or knowledge to identify sources or intervene in the distribution networks for fake medicines. This is especially so in cases involving transnational organized criminals.

The INTERPOL role is to collate available information and encourage national police forces to intervene. For example, Operation Mamba, the first combined INTERPOL-IMPACT operation in Africa targeted over 230 outlets suspected of selling counterfeit pharmaceutical products throughout Tanzania and Uganda in September 2008. The operation resulted in the seizure of some 100 types of unregistered and suspected counterfeit products. Among the confiscated drugs were anti-malarial, anti-fungal, multivitamin, cardiac, hormonal, multivitamin, skin and veterinary medicines. 2009 will see INTERPOL-led enforcement operations systematically deployed throughout Eastern and Southern Africa.

Private sector and other stakeholder dimension

INTERPOL is proud of its achievements in combating transnational organized IP crime. However, there is one other common denominator which the IPR Programme does not take for granted. That is the constant

support it receives from all IP crime affected industries and other stakeholders working together in partnership with the three international organizations to make a difference. All involved recognize they cannot hope to operate successfully in a vacuum.

There has always been a collective determination to share knowledge and expertise for the common good. This is evident in the commitment shown to the Global Congress Steering Group process by the International Chamber of Commerce (BASCAP), International Trademark Association (INTA) and International Security Management Association (ISMA).

Nevertheless, with the current economic downturn there is an even greater need for all stakeholders to have a common purpose and work towards agreed objectives if the momentum gained since the First Global Congress hosted by WCO in 2004 is to be maintained and enhanced. This will be uppermost in the minds of the Global Congress Steering Group as we work with delegates at the Fifth Global Congress "Bridging Boundaries for Shared Solutions." ■

International Criminal Police Organization – INTERPOL

200, quai Charles de Gaulle

69006 Lyon

France

<http://www.interpol.int/>

1. Intellectual property (IP) Crime is a generic term used by INTERPOL to describe all types of counterfeiting and piracy
2. Source: PLoS Medicine - www.plosmedicine.org - February 2008/ Volume 5/ Issue 2/ e32/ pp.0001-000111



WORLD CUSTOMS ORGANIZATION

World Customs Organization... Combating Fakes Through Stronger Enforcement and Focused Capacity Building

No country can escape the scourge of counterfeiting and piracy, which can have severe financial, economic, health and safety consequences for all. More so in developing and less developed countries whose economies are more vulnerable and poverty more pronounced. And in the current global financial crisis which has caused revenue security fears to surface in many of these countries as they feel the effects of the economic downturn, the counterfeiting and piracy trade adds to their woes. These illegal goods are now being produced on an industrial scale and evidence suggests the active involvement of trans-national organized crime syndicates in this trade. Anything that can be bought and sold is now being counterfeited which means that the health and safety of consumers is now being compromised on a daily basis. Governments therefore expect customs, as a frontline border agency, to protect the community from all forms of dangerous trade by ensuring that they comply with all regulatory requirements.

To ensure that customs is in a position to service its mandate and to enhance the effectiveness of customs anti-counterfeiting and piracy initiatives at the national and regional level, the WCO and its 174 members have focused their attention on strengthening customs border enforcement through innovative capacity building programmes. These programmes include targeted operations or training seminars followed by practical groundwork. As an example, in June 2008 the WCO launched 'Operation Vice-Grips' which rallied the forces of six customs administrations in North and West Africa to conduct simultaneous inspections of imported consignments that could potentially contain counterfeit and pirated goods. The operation involved principal ports in Africa known to be used by counterfeiters and pirates as destinations for their illicit goods, whether destined for the African market or in transit to other parts of the world. Forty-seven maritime containers were inspected by customs officials after they had received specific training in risk analysis and targeting by WCO IPR specialists. Several tons of goods representing globally trusted brand names and consisting of 1.4 million items were intercepted, including fake car accessories, clothing, mobile phone batteries, soft drinks, ink cartridges, gas filters, skin care products, electronic appliances, and even baby hygiene products! This operation revealed a veritable "supermarket" of goods with no product or brand escaping unscathed.

The operational capacity of customs is significantly enhanced through the use of the WCO's secure communication structure – known as CENCOMM – which enables customs and others participating in operations, including anti-IPR operations, to share information and intelligence in a secure environment within the WCO Central Enforcement Network (CEN). In addition, a fully equipped facility located within the premises of the WCO Secretariat called the 'Operation Coordination Unit' (OCU) is available as a central point for the overall steering and coordination of individual operations. This broad range of tailor-made applications and the flexibility of CENCOMM convinced the G8 Heads of Government to select this system for an on-going pilot project among its members which focuses on the exchange of information on seizures of IPR infringing goods among G8 countries.

At the international level, the WCO has continued to enhance its cooperation with intergovernmental organizations and the global business community, whom it recognizes as valuable partners in the fight to combat counterfeiting and piracy. Spurred on to work with others, the WCO joined forces with the European Commission, under the framework of their EU Customs 2013 Programme, to host an international conference in May 2008 on combating the fake goods trade. Solutions proposed for concrete action included: the need for real acceptance at the highest political level of the dangers posed by counterfeiting especially to consumers; the need for improved and adaptable legislative and operational measures; the need for customs to have practical tools that would enable them to distinguish between genuine and fake goods; the need to concentrate resources and intensify efforts at the operational level; the critical need to improve exchanges of information between the public and private sectors; the need to improve customs-to-customs intelligence flows; and the need to find practical solutions to counter fake goods being traded via the internet.

In recognizing that more still needs to be done to stop the deluge of counterfeit goods reaching world markets, the WCO's anti-counterfeiting and piracy efforts will be invigorated during 2009 by enhancing its partnership approach, by ensuring that more use is made of new technology, by promoting innovative approaches to IPR border

enforcement, and by encouraging even more national and regional participation. But this is not all, the WCO's current action plan includes implementing initiatives to assist customs in meeting their obligations under the WTO TRIPS Agreement, creating extra tools to enhance customs operations, making sure relevant information and intelligence is at the disposal of WCO members, promoting more exchange of information and customs best practice, ensuring that the WCO becomes a forum for discussing IPR issues in a transparent manner; and introducing a dynamic and responsive IPR capacity building programme which is consistent with the policy objectives of WCO members and which will truly enhance the skills and competencies of customs officials on the frontline.

Customs operational activities will be stepped up and will include those targeting major international sporting events such as the 2010 FIFA World Cup in South Africa as experience has shown that these sporting

events are a major 'business opportunity' for counterfeiters across the globe. Also, the WCO will begin discussions on the challenges posed by internet sales of counterfeit products which have grown enormously over the last few years. Our commitment to finding a solution to internet sales of counterfeit goods, especially fake pharmaceuticals and foodstuffs, is unflinching. There is no doubt that tackling this issue is going to be difficult and will require Herculean efforts and creative action on the part of the WCO, its members, and its international stakeholders.

The WCO's plans for this year are already in motion and the organization is ready to actively work with its Global Congress partners to challenge counterfeiters head on and deal a mighty blow to this dark trade! ■

www.wcoomd.org
communication@wcoomd.org

Enforcement Takes Centre Stage on the International Agenda

Michael Keplinger is a Deputy Director General of the World Intellectual Property Organization



**WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION**

**ORGANISATION
MONDIALE
DE LA PROPRIÉTÉ
INTELLECTUELLE**

While counterfeiting and piracy are age-old concerns, the recent escalation and alarming growth in the scale and scope of these illegal activities and their corrosive impact on economic development and social well-being is obliging policy-makers across the globe to find creative, durable, and effective solutions and strategies to tackle this challenge. In spite of the difficulties encountered in accurately measuring the extent of this illicit and clandestine trade, empirical data suggests that the trade in fake goods affects all economic sectors and is prevalent in all economies. It is no longer the unique concern of the major luxury goods manufacturers – trade in fakes is increasingly troubling for businesses, consumers and policy-makers operating in all sectors in all countries. All economic sectors that are driven by creativity and innovation – from consumer and household goods-based industries to the creative industries (eg. film, music) – are under threat from this illicit trade. The risks to the health and safety of the general public resulting from the sale of fake pharmaceuticals and sub-standard mechanical and electrical appliances are perhaps of greatest concern.

Counterfeiting and piracy, the industrial scale of which points to the involvement of organized crime rings, stifle local industry, threaten employment, tax revenues and the services they support, discourage international trade and foreign direct investment, present significant health and safety risks, cultivate a negative international image for countries hosting these operations, place a heavy burden on law enforcement authorities, and can potentially foster corrupt practices within government. The effects are many, and are felt at all levels of the society.

The startling growth and increasing sophistication of counterfeiting and piracy have been fuelled by a number of factors: at core, this illicit trade is driven by the prospect of high and quick profits and a low risk of sanctions. On top of this, the widespread availability of copying technologies has enabled the production of clones. Increased global market integration, the creation of free trade zones and the proliferation of the internet have also spawned new and improved distribution channels. These factors have all contributed to the emergence of a complex global challenge which threatens the future economic growth and prosperity of all countries and for which global solutions and the active engagement of all stakeholders is essential.

Central to the challenge of effectively combating counterfeiting and piracy is a strong political commitment to supporting the development of effective and appropriate solutions. This requires a better understanding of the dimensions of the challenge, the problems and difficulties encountered by different countries around the world, as well as closer cooperation between the various stakeholders (government agencies, the private sector and consumers).

While we all have – whether as right holders or as consumers – a role in supporting respect for IP rights and their enforcement, in most

circumstances we do not need to develop new laws. Governments can achieve a great deal in the battle against IP crime by updating, where needed, and effectively implementing the legislative frameworks that are already in place, and by giving real meaning and adequate support to the enforcement mechanisms currently at their disposal. Little can be achieved, however, without raising general awareness, particularly among members of the judiciary, as well as the general public, of the destructive consequences of IP crimes, and the need to mete out effective penalties under national law.

The Geneva-based World Intellectual Property Organization (WIPO) – a specialized agency of the United Nations – is the global body charged with promoting the protection of intellectual property (IP) for economic, social and cultural development. As such, the Organization is well placed to play a leading role in coordinating IP enforcement activities at the international level. Through its Advisory Committee on Enforcement (ACE) and in line with requests from its member states, WIPO is actively engaged in the process of identifying stumbling blocks to effective enforcement and working with global partners to reach workable solutions. Together with a diverse group of stakeholders, WIPO's Enforcement and Special Projects Division is supporting efforts to develop effective government and industry anti-counterfeiting and piracy strategies. Such strategies focus on legislative assistance, improved coordination, capacity building, and awareness-raising. Many efforts are being undertaken to coordinate activities at the international level and to strengthen cooperation between intergovernmental (IGO) and non-governmental organizations (NGO) in combating counterfeiting and piracy.

The ACE also provides a forum for international review and discussion of IP enforcement issues with a view to identifying opportunities for improved coordination and cooperation among stakeholders. At its November 2007 session, the ACE focused on cooperation and coordination at different levels for effective enforcement of IP rights under criminal law and considered issues such as the scope and definition of IP crimes, investigation and initiation of criminal proceedings, jurisdiction, means of streamlining proceedings, evidentiary issues, sentencing options and level of penalties. This body takes a balanced approach to IP enforcement, including in the context of broader societal interests and development-oriented concerns. The ACE is a further indication of the clear commitment of WIPO and its member states to join forces, with public and private sector stakeholders, in developing effective strategies to counter the insidious problems of counterfeiting and piracy.

The Organization also provides countries, at their request, with legal advice on the protection and enforcement of IP rights. In this respect, countries are placing a much greater emphasis on enforcement than before. Effective enforcement requires active involvement of attorneys, judges, customs, police, prosecutors, and administrative authorities. WIPO supports the efforts of all countries to combat counterfeiting and piracy through, for example, the organization of training programs for

judges and other actors in this field. In promoting better coordination and cooperation with organizations actively engaged in combating IP-theft, the Organization is committed to facilitating an informed and balanced global debate on adequate responses to the challenges to IP enforcement caused by counterfeiting and piracy and the economic consequences of inefficient IP protection and enforcement.

WIPO is also a key member of a unique public-private sector coalition known as the Global Congress on Combating Counterfeiting and Piracy, which is united in its efforts to identify solutions to effectively combat counterfeiting and piracy and to facilitate their implementation.

The Fourth Global Congress on Combating Counterfeiting and Piracy, which was held in Dubai in 2008, called on national and international political leaders to engage in the battle against counterfeiting and piracy. More than 50 speakers from 25 countries delivered proposals for more effectively combating counterfeiting and the so-called Dubai Declaration¹, which emanated from the Fourth Congress, outlines concrete recommendations and offers a visible expression of the international community's united efforts to tackle the scourge of counterfeiting and piracy.

The Global Congress was previously hosted by WIPO in January 2007 in Geneva; by INTERPOL in 2005 in Lyon, France; and by WCO in 2004 in Brussels. These international gatherings provide a valuable forum for representatives from both the public and private sectors to pool their experience, raise awareness, enhance cooperation and identify strategies to deal more effectively with the global problem of counterfeiting and piracy.

In the five years since the first Congress was convened, significant progress has been made in terms of galvanizing global awareness, particularly among top policy-makers and leaders as well as members of the public, about the gravity of the multiple challenges presented by the trade in counterfeit goods along with the need to join forces in implementing effective and practical countermeasures. This is further evident from recent developments in various frameworks, such as the G8 Declaration on the World Economy, and multi-country discussions on a draft Anti-Counterfeiting Trade Agreement (ACTA).

On the day-to-day operational level, WIPO provides a number of IP services that are designed to help businesses around the world obtain international protection for their trademarks, patents and designs, and to better guard themselves against infringement. Whereas all IP rights are territorial, and extend only to the border of the country in which they are recognized, WIPO's international filing and registration systems offer a timely and cost-effective means of obtaining IP protection in multiple countries. WIPO's Arbitration and Mediation Center provides a range of alternative dispute resolution services which offer considerable advantages in certain IP disputes by offering a single, rapid, cost-effective and neutral procedure. The Center is also one of the main architects of the Uniform Domain Names Dispute Resolution Policy (UDRP) which is a cost-effective and rapid way to resolve disputes relating to the abusive registration of trademarks as domain names, a phenomenon known as cybersquatting.

WIPO is committed to ensuring that all of its 184 member states are aware – and make full use – of the enormous potential of the IP as a tool to create value and enhance economic growth. Companies and governments around the world are increasingly recognizing the strategic importance of IP in promoting national and commercial interests. The establishment of an IP culture in which there is broad-based understanding of the role and potential of the IP system, – one of WIPO's principle objectives – is a key ingredient in promoting greater respect for IP rights. Well functioning enforcement mechanisms are an excellent means to deter IP-related violations and to ensure that right holders and society as a whole can fully reap the benefits from the IP system.

While the challenges associated with the battle against the global trade in counterfeiting and piracy are formidable, there are important signs of broader awareness, and a greater and more widespread political will and readiness to cooperate and to take concerted action. It is heartening to see a growing, deep-rooted concern to uphold and respect IP rights. Enforcement has clearly moved up the global political agenda. This is witnessed by a growing willingness to take concerted action and bolster national and regional efforts to ensure effective enforcement. Just as in today's knowledge-based economy, the possibility of achieving sustainable economic growth depends on effective use of the IP system, so too, the credibility of the IP system depends on the enforceability of IP rights and the effectiveness of those who carry out this important task. ■

1. see <http://www.ccapcongress.net/archives/Dubai/Files/Final%20Dubai%20Outcomes%20Declaration.pdf>

An ICC initiative

BASCAP
Business Action to Stop
Counterfeiting and Piracy

Mobilizing Business in the Fight Against Counterfeiting and Piracy

Jeffrey Hardy is the BASCAP Coordinator at the International Chamber of Commerce

Business Action to Stop Counterfeiting and Piracy – BASCAP – was launched by the International Chamber of Commerce to:

- Connect and mobilize businesses across industries, sectors and national borders in the fight against counterfeiting and piracy.
- Pool resources and expertise – creating greater critical mass than any single company or sector could do alone.
- Amplify the voice and views of business to governments, public and media – increasing both awareness and understanding of counterfeiting and piracy activities and the associated economic and social harm.
- Compel government action and the allocation of resources towards strengthened intellectual property rights enforcement.
- Create a culture change to ensure intellectual property is respected and protected.

The challenge

Counterfeiting and piracy impact virtually every product category. The days when only luxury goods were counterfeited, or when unauthorized music CDs and movies DVDs were sold only on street corners are long past.

Today, counterfeiters are producing fake foods and beverages, pharmaceuticals, electronics and electrical supplies, auto parts and everyday household products. And, copyright pirates have created multi-million networks to produce, transport and sell their unauthorized copies of music, video and software. Millions of fake products are being produced and shipped around the world to developing and developed markets at increasingly increasing 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 enormous. The OECD has reported that “*international trade in counterfeit and pirated products could be up to US\$ 200 billion*”. Taken together with the value of domestically produced and consumed counterfeits, the significant volume of digital and fake products being distributed via the Internet, and the loss of economic development, harm to health and safety, reduced technology transfer, and innovation, the total magnitude of counterfeiting and piracy worldwide is well over US\$ 600 billion.



BASCAP Global Leadership Group, New York March 2008

The enormous impact of counterfeiting and piracy

- Loss of business – perhaps most obvious to business is lost sales, diminished reputations and loss of good will suffered by legitimate right holders. For example, about a quarter of small to medium sized businesses in Europe report lost sales resulting from customers purchasing counterfeit items. According to the toy industry, counterfeiting was responsible for lost sales of almost 11% in Spanish companies, rising to just below 50% amongst a group of very small companies.
- Loss of employment – the loss of legitimate jobs among trademark owners and their supply chain partners is real and significant. In 2004 French Finance Minister Nicolas Sarkozy (now President) said that counterfeit goods were costing France some 30,000 jobs a year through lost sales suffered by affected companies. The US Chamber of Commerce estimates that counterfeiting and piracy costs the US 750,000 jobs annually. The motion picture industry reports 141,030 jobs are lost to piracy annually. The US auto industry estimates 10,000 jobs per year lost to counterfeit auto part markets. It is estimated that a 10% reduction in computer piracy in the US would lead to an additional 105,511 jobs.
- Damage to reputation and image – the presence of fake products in the marketplace confuses consumers and eventually destroys consumer trust in branded products. This becomes an even more significant problem for pharmaceutical, over-the-counter drugs and other products that have serious health and safety implications. Counterfeits eventually can damage the reputation of an entire company.
- Risks to health and safety – an increasingly alarming aspect of the counterfeit problem is the increase in fake drugs and other goods that present public health and safety risks. Substandard counterfeit products already have caused injuries and deaths in developing and developed markets and there is evidence these problems are escalating. The World Health Organization (WHO) estimates that counterfeit drugs account for 10% of all pharmaceuticals. That number can rise to as high as 60% in developing countries. And, it is not just fake drugs that are of concern. Among the other reported cases involving serious health and safety ramifications: fake vodka with lethal doses of methanol in the UK; counterfeit airplane parts in Russia; counterfeit toys found to cause suffocation and strangulation; 3,000 doses of counterfeit blood pressure drugs administered to patients in Siberia; 10% of pharmacies in Taiwan found selling counterfeit sleeping pills containing harmful substances; and the European toy sector reporting products that do not comply with basic safety standards and contain toxic substances or be made from hazardous materials; and counterfeit fake brake pads, brake shoes and steering linkages in the auto parts segment.
- Loss of tax revenues – significant tax revenues may be lost to the country or region in which the abuse occurs. Tax losses include unreported and unpaid corporate profits taxes, value-added taxes uncollected when items are purchased, and payroll taxes from undocumented workers. These losses deprive governments of revenues needed for other social priorities. The associated Chambers of Commerce and Industry of India found that counterfeiting and piracy has robbed the Indian government of \$31.25 billion in lost tax revenue.
- Stifling innovation, entrepreneurship and business initiatives – Innovation and creativity suffer in markets where counterfeiting and piracy are present. Companies become cautious about investing in R&D or decide to locate a manufacturing plant or research facility somewhere else. A European survey of small and medium sized companies found that 25% of decisions to invest in R&D or production were adversely influenced by considerations of IPR abuses.
- Links to organized crime – attracted by high profits, low risk of detection and minimal penalties for IP crimes, organized criminals

increasingly are moving into the manufacture and distribution of counterfeits. The US Federal Bureau of Investigation (FBI) and Interpol have both reported that organized criminal groups have moved into IP crime and that they are using the profits generated from these crimes to facilitate other illegal activities.

A brief history of BASCAP

BASCAP was launched in early 2005, with a strategy of engaging CEOs and other top executives from multiple sectors and industries directly in the fight against counterfeiting and piracy. A Global Leadership Group (GLG) made up of CEOs and senior executives was formed to provide strategic direction, set priorities and act as the voice of BASCAP with senior government officials and the media.

Membership at the CEO level has grown and the GLG now includes 25 core members. Each company is also represented by a senior executive who serves on a Steering Committee that directs the day-to-day activities and priorities of BASCAP. The Steering Committee shapes the BASCAP message and program direction, formulates products and missions and establishes implementation priorities.

Overall, BASCAP has included participation by some 150 companies and trade associations that have championed the initiative through various degrees of participation, contributions of expertise and/or financial support. BASCAP is supported by a dedicated and experienced group of experts at the ICC charged with implementing the strategies, direction and priorities identified by the GLG and Steering Committee.

BASCAP programs and activities

- Public policy and advocacy – BASCAP's long term goal is to press governments to take concrete action to reduce and ultimately eliminate counterfeiting and piracy. Shorter term, BASCAP's priority is to push for significantly higher benchmarks for government performance at the national, regional, multi-lateral and international level.
- Communications and education – greater public awareness and education are essential in the fight against counterfeiting and piracy. BASCAP communications capitalize on ICC's strong and broad media "assets" including materials production staff, editorial writers, global mailing lists, email alerts, website featuring 300,000 page views per month, and a worldwide network of media contacts. Hundreds of BASCAP news reports have appeared on television and radio and in wire services, newspapers, magazines, and e-publications. Major international media have covered BASCAP meetings, events and press releases. National television, radio and press reports have appeared in over 30 countries throughout the world. Our messages have repeatedly reached at 350 million households worldwide. Additionally, a cornerstone of BASCAP activities is the creation of educational content aimed to help governments better understand the value of investing in stronger IP enforcement.

The initial focus of BASCAP was the development of a set of core information products and a wider portfolio of tools and intelligence that would provide the base upon which to build a full and forceful engagement in the fight against counterfeits and pirates. BASCAP subsequently moved forward with direct interventions to deliver the positions of the business community to governmental bodies such as the G8 and EU, and intergovernmental organizations, including WIPO, WCO and Interpol. BASCAP also has spoken out through news conferences and news releases to the international media on important developments in the battle against counterfeits and piracy, and initiated a public education and media campaign to reach consumers and government leaders.

BASCAP's key priorities moving forward include setting standards for global performance by governments and companies; framing decisions for policymakers; pushing for the allocation of resources at the highest levels in national governments; and, improving awareness on a global basis.

BASCAP – through its member companies and their CEOs and other senior executives and its dedicated support staff – will continue to look for new and creative ways to deliver the strongest and most compelling case for priority action by governments and enforcement officials. BASCAP's mission is to change the policy and legal climate on counterfeiting and piracy by – calling local, national and international enforcement officials to action, petitioning for the reallocation of resources, and pressing for results. ■

For further information contact jhd@iccwbo.org

Protecting and Promoting the Rights of Trademark Owners



International Trademark Association

The International Trademark Association (INTA) is a not-for-profit membership association of more than 5,800 trademark owners and professionals, from more than 190 countries, dedicated to the support and advancement of trademarks and related intellectual property as elements of fair and effective national and international commerce.

The Association was founded in 1878 by 17 merchants and manufacturers who saw a need for an organization "to protect and promote the rights of trademark owners, to secure useful legislation and to give aid and encouragement to all efforts for the advancement and observance of trademark rights." After 130 years, INTA continues its mission to represent the trademark community, shape public policy and advance professional knowledge and development through education and training, information and publishing as well as policy development and advocacy.

With worldwide expertise on trademark issues, INTA regularly engages with public policymakers who value the Association's insights into trademark issues and trends. The Association, often in cooperation with national, regional and international intellectual property organizations, encourages adoption of and adherence to trade agreements and multinational treaties, acknowledging that trademark protection encompasses broad trade concerns. INTA promotes these efforts and carries out its public policy mission through a number of vehicles, including, but not limited to, amicus briefs, advocacy, reports, and model laws and examination guidelines.

Anti-counterfeiting a top issue for INTA

Counterfeiting is one of the most important issues INTA and its members face. As an international leader in discussions and efforts to enhance public and private sector efforts that combat counterfeiting, INTA believes strongly that nations must work together and exchange information and ideas that will eliminate the threat posed by cheap, fake goods that have potential to harm consumers and play on the good name of legitimate marks. ■

INTA approach to anti-counterfeiting

Global Partnerships	International Policy Advocacy
<p>Global Congress on Counterfeiting and Piracy</p> <p>As part of the Global Congress Steering Group, INTA supports and lends industry expertise to the development of a high-level strategic forum design to create and strengthen public-private sector partnership in enhancing cooperation, capacity and public awareness on anti-counterfeiting and anti-piracy.</p> <p>ACTA Business Response Group</p> <p>In partnership with the International Chamber of Commerce (ICC) Business Action to Stop Counterfeiting and Piracy (BASCAP), INTA created an informal business response group to monitor and provide industry-wide perspectives on the Anti-Counterfeiting Trade Agreement – a trade agreement that INTA hopes will truly raise the standards of IP protection globally.</p>	<p>Through INTA's Anti-Counterfeiting and Enforcement Committee (ACEC), INTA works with members to outreach to national governments around the world to strengthen anti-counterfeiting laws and regulations, enforcement practices, and industry partnerships. The seven Subcommittees in the ACEC evaluate treaties, laws regulations, procedures and other enforcement measures; develops and advocates policies to advance protection against counterfeiting and infringement; and provides anti-counterfeiting and enforcement education.</p>

For more information, please contact:

International Trademark Association
Candice Li
External Relations Manager - Anti-Counterfeiting
cli@inta.org, www.inta.org

INTA - Representing Trademark Owners Since 1878



INTERNATIONAL SECURITY MANAGEMENT ASSOCIATION

The Worldwide Organization of Chief Security Officers

Enhancing Professional and Business Standards Worldwide

The International Security Management Association (ISMA), founded in 1983, is a premier international security association of senior security executives from major business organizations located worldwide. ISMA's mission is to provide and support an international forum of selected security executives whose combined expertise will be utilized in a synergistic manner in developing, organizing, assimilating, and sharing knowledge within security disciplines for the ultimate purpose of enhancing professional and business standards.

ISMA provides opportunities to network with other senior security executives and to establish a leadership forum to provide personal and professional growth opportunities. Members benefit from semi-annual workshops held in major cities around the world. Workshops focus on security, business, and leadership issues to include a members' forum which generates open discussion on a variety of security, management and other relevant topics. One of the greatest benefits of ISMA membership is

the opportunity to develop professional and personal relationships with other leaders in the international security community. These relationships benefit the company as well as the member. ■

For more information contact:

International Security Management Association
Susan W Pohlman, Consulting Business Manager
Post Office Box 623
Buffalo IA 52728
USA

Tel: +1 563 381 4008
Fax: +1 563 381 4283
E-mail: ISMA3@aol.com
Website: www.ismanet.com

Instituto Mexicano de la Propiedad Industrial



The Mexican Institute of Industrial Property (IMPI) is the administrative authority in charge of industrial property matters in Mexico. It was created by presidential decree on December 10, 1993 and is a decentralized body with legal authority and with its own assets, including its own budget.

The general objectives of IMPI are: to protect industrial property rights through patents, utility models, industrial designs, trademarks, trade names, advertisement slogans, appellations of origin and trade secrets; to prevent acts that infringe intellectual property rights or that constitute unfair competition; and, to establish the corresponding sanctions and penalties to such acts. Another objective is to promote and encourage inventive activity that has industrial applications and technical improvements, as well as disseminating technological knowledge within productive sectors.

Since its creation, IMPI has faced significant changes regarding the volume of IP issues provided. They are highlighted as follows:

- With regard to inventions, in 1994 the institute received 11,627 applications and in 2008 it received 20,198 applications. From 1994 to December 2008, it had received a total of 220,089 invention applications.
- With regard to marks, in 1994 the institute received 34,253 applications and in 2008 it received 77,574 applications. From 1994 to December 2008, it had received a total of 799,416 mark applications.

IMPI human resources increased from 250 employees in 1994 to 895 employees this year with the aim of providing and solving the growth in demand of application services.

This has resulted in the allocation of IMPI's officers in two central buildings located in Mexico City as well as five regional offices strategically located within the country of Mexico.

IMPI is more than an institution only in charge of protection procedures and/or inventions and marks registrations. In 1997, IMPI was granted the faculty to punish copyright infringements on trade related commerce foreseen in Article 232 of the Federal Copyright Law. This responsibility was given to IMPI as a result of the acquired experience by officers in charge of sanctions to infringements on industrial property matters. This was possible because of IMPI's advantage of having an enforcement infrastructure.

In this respect, concerning enforcement, IMPI is an institution where the protection of intellectual property rights is managed in a *sui generis* way. This is because IMPI is the only industrial property office that deals, in a direct way, with all intellectual property infringement matters. It is a kind of specialized mini-court on IP matters. This ensures that the force of the law provisions work rapidly and promptly in favour of those acquired rights. Since 1994 to December 2008, the institute has received 30,068¹ administrative declaration applications; performing 41,822 inspection visits and seizing 67,484,916 products that presumed to infringe intellectual property rights, with a monetary value of approximately USD\$12,000,000².

Likewise, Mexico has consistently tried to strengthen intellectual property rights (IPR) protection and it has revised its laws to comply with global standards. Furthermore, IMPI will continue to promote its anti-counterfeiting and anti-piracy policies, especially regarding legislation, education and public awareness.

Besides Mexico's national legal framework, in order to align its legal framework with international IP regulations Mexico is currently a member

of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO), complies with 17 treaties and conventions administered by the World Intellectual Property Organization (WIPO), including UPOV and those two WIPO treaties dealing with internet and digital era, and has signed 12 Free Trade Agreements (FTAs) that include chapters or provisions regarding IPR.

Mexico is aware of the problem concerning the illegal economy, specifically piracy and counterfeiting, which needs to be attacked through the participation of the public sector, industry, federal authorities, consumers, since it is a problem that affects everybody and there is a need of joint collaboration among these stakeholders.

It is important to stress that on June 15, 2006, the National Agreement Against Piracy was signed by Mexican federal authorities, including Mr Vicente Fox, President of Mexico, as an honour witness.

The general objective of this Agreement is to develop sustainable and permanent strategies, performed by the public and private sectors, to defend intellectual property rights against illegal actions and with the aim of recovering the loss of market because of these crimes.

Within this framework, an inter-institutional Committee for the Attention and Protection of Copyright and Industrial Property works with the aim of fighting against the illegal market in order to retrieve the national and international market, as strategic keys. They constitute compelling factors for the enhancement of the national public heritage since, as a result of actions, more and more economic recovery will be realized, the reactivation of productive plants will arise and the fostering of legal establishments will make a financial contribution to the state wealth.

Furthermore, IMPI is signing State Agreements Against Piracy with three action lines: i) recovery of internal market, ii) fight against illegal actions, iii) public awareness and education.

Currently, Mexico is carrying out actions to fight piracy and counterfeiting, divided into these main categories: i) measurement; ii) international cooperation, iii) public awareness.

The best way to know the impact of public awareness and knowledge among the public and consumers is that of measurement in order to establish next steps for future actions about consumers' perception concerning counterfeiting and piracy.

Regarding international cooperation, IMPI is actively participating in different regional, multilateral and international forums for combating counterfeiting and piracy among all authorities in charge of the protection of IPR.

A very important element in combating piracy and counterfeiting is public awareness with the aim of providing the general public continuous campaigns emphasizing IPR, the importance of these rights and helping people realize the negative effects of this particular form of economic crime. It is important to stress that IMPI has been involved in raising the awareness of IP among the judiciary.

IMPI has been active in strengthening and fostering of IPR, with regard to promotion and training events (training courses, tradeshow, among others), as well as carrying out several campaigns addressed to the general public and to specific stakeholder groups. The campaigns are jointly organized by IMPI, the private sector, non-governmental organizations and government agencies such as the Attorneys General Office (PGR), the National Institute of Copyright (INDAUTOR), the Ministry of Finance (SHCP) through customs and the judiciary, among others. ■

1. 26,457 solved procedures
2. \$172,018,642 pesos



Anti-Counterfeiting In Challenging Times



Stuart Adams and Jeremy Newman are Directors of Rouse, a global intellectual property consultancy

So, here we are. In a recession. Again.

You would need to have been working in the early 90s to have experienced a serious downturn in the global economy. But even that, by all accounts, was pretty gentle compared to what we are facing now and which many commentators are comparing to the Depression of the late 20s/early 30s. This is uncharted territory in the world of anti-counterfeiting.

How do, and will, these tough economic times impact upon counterfeiting and rights holders' ability to do something about it?

We are already seeing some very obvious effects as rights holders look to cut costs in order to maintain profit or keep losses to a minimum. Production lines are closing. Head offices are instituting head count freezes and imposing dramatic budget cuts. Non-essential travel is being cut. Marketing/advertising spend is being cut. And in many companies we have already seen cuts to the budgets of legal/intellectual property (IP) teams.

More counterfeiting?

Such cuts are coming at a time when the temptation to counterfeit, and even knowingly purchase counterfeits, has rarely been higher. Far from cutting anti-counterfeiting budgets, most rights holders would be well advised to increase them or risk losing whatever hard won advances they may have made against counterfeiters in recent years. Here are just some of the factors leading to this conclusion.

- Cutting production of genuine goods in response to reduced demand inevitably leaves factories sub-contracted by brand owners with empty order books...but also with all the expertise and tooling required to continue production. Those factories may have been producing finished goods, or branded components/spare parts.
- Take the simple example of a factory in China which for some years has been producing genuine goods under contract to a major multinational. Now the major multinational is suffering massively reduced sales and has terminated the contract with the Chinese factory. Hundreds or even thousands of jobs will be lost at the Chinese factory. What an enormous temptation for the factory owner to turn to the production of counterfeits.

As an aside, this is also a very good example of the need for carefully drafted contracts with such suppliers in the first instance which should, ideally, provide for the return of tooling upon termination and a right to conduct audits post termination.

- Just as worrying is the sub contractor whose order books are less full but has not been terminated completely. Such manufacturers are perfectly placed to engage in 'back door supply' whereby production in excess of that which the rights holder is now ordering is sold to anyone who will come and buy it.

Again this shows the importance of carefully drafted supply contracts with, for example, provisions allowing for regular unannounced factory visits and audits. But whilst these days such provisions are common, one has to ask how often rights owners exercise their rights. And when rights owners are cutting costs and cutting staff, how many will even be able to exercise such rights? At the very time when extra vigilance is required there must be every prospect of rights owners actually becoming less vigilant.

- In a similar vein, those providing services to customers using branded goods are now under extreme pressure to supply counterfeits.

A good example of this would be a car service/repair business. It could be anywhere in the world. That business now has fewer customers as drivers make the inevitable decision to extend service intervals. To try to eek as much profit as possible out of dwindling customers, the temptation to fit counterfeit parts and use counterfeit oil and other such materials must be huge. Even the customer themselves may well be tempted to ask for 'non-genuine' parts and lubricants, choosing to

turn a blind eye to the risks and convince themselves that these will be 'good enough' given the cost saving.

- In addition distributors, whether to end users or customers such as the service/repair business mentioned above, may be tempted, and are ideally placed, to trade in counterfeits to try to increase margins on decreased sales and thus maintain a level of profitability.

To take a simple example, think of the supplier of office stationery. How tempted that trader must now be to supply counterfeit consumables such as toner to his customers. Alternatively, rather than knowingly buying and selling counterfeits they might instead go to the grey market for stock, turning a blind eye to the risks and inevitably purchasing a proportion of counterfeits.

- At an individual level, unemployment around the world is starting to rise at a very worrying rate. Of course this is disastrous for all concerned. But inevitably, one of the means which some will turn to in order to maintain a level of income is by trading in counterfeit goods. The internet has made this a pretty simple exercise. We have, for example, seen a recent significant increase in offensive auctions on popular Chinese trading sites. Following up on these has led to the conclusion that many of these are not typical 'traders' but simply the work of individuals trying to supplement declining/disappearing incomes.

- Following on from this, some consumers are now, of course, far more likely to be willing to purchase counterfeits. We have already alluded to this above, but envisage the problem becoming most acute in respect of those goods where consumers do not believe there is any harm in the counterfeits. Clothing, footwear and luxury items such as handbags and watches are obvious examples. Rights holders, governments and other agencies have tried very hard to persuade consumers against counterfeiting but would appear to have had only a modicum of success. If our arguments don't work when consumers feel relatively affluent what chance have we got as recession bites?

And so on. We can all think of countless similar examples of how and why counterfeiting is likely to get worse during this recession. Worse still, surely, if affected rights holders spend less tackling the problem.

More difficult to enforce rights?

All this is happening at a time when tackling counterfeiting is likely to get more difficult. For example:-

- Traders will be more desperate today than they were a few months ago to avoid/evade detection and punishment. They will quite simply be more difficult to find.
- And if you are able to find them they are likely to be much smarter about how they do business, making it more difficult to obtain evidence of sufficient weight to convince rights holders, and then the requisite authorities, that action is warranted. For example, traders will be even more likely to keep production runs and stocks to an absolute minimum. Such stock as there is will be more likely to be kept in multiple unmarked warehouses held in the names of multiple individuals. Seeing the big picture will be more difficult than ever.
- If you are able to find a target and obtain good evidence, enforcement will be more difficult. The very people you most look to for assistance (administrative enforcement bodies, the police and the courts) are all acutely aware of the increased social impact at this time of striking out at someone's ability to earn a living and employ fellow citizens. This fear was brought starkly to light in a news report which appeared recently in Hong Kong's South China Morning Post revealing that law enforcement officials in Guangdong Province (China's 'factory', and the Chinese province most affected by the recession so far) were being urged by the Ministry of Public Security to turn a blind eye to minor offences committed by key business people and technical personnel. There is no guidance on what might constitute 'minor offences' but the risk to anti-counterfeiting efforts is clear.

Similarly, the Supreme Court in China has issued guidance to lower courts advising them to be extra cautious when considering applications for property preservation orders. Such orders have become a vital tool for Plaintiffs in China since enforcement of awards of damages is so difficult. Anything which limits the availability of asset preservation orders will be a huge setback for civil litigation.

- Furthermore government spending on anti-counterfeiting enforcement is surely going to be squeezed leading inevitably to prioritisation. Combined with the difficulty of persuading the enforcement officials to help you, it is likely to become increasingly difficult to get sufficient evidence to persuade administrative authorities to take action, or to persuade civil courts to impose sufficient awards of damages to act as a deterrent. Also, of course, it is going to be more difficult to persuade criminal courts to impose sufficient penalties when faced with a defendant arguing that his 'victimless crime' was committed only in an attempt to feed his family.

- Budget reductions/reduced activity could easily reduce the opportunity for collaboration. This is a huge shame. We have seen considerable movement over the years from a mentality where collaborating with competitors was unthinkable in many/most industries to recognition that acting in concert is likely to lead to enforcement which is both more effective and more cost effective. Now if one or more members of a loose coalition simply don't have the budget to participate any more (or, worse still, have gone out of business completely), enforcement for the remaining members will become more expensive and less effective.

More funding?

All of which surely indicates that now is most definitely not the time to be cutting anti-counterfeiting budgets. To do so would significantly risk losing any hard won gains over previous years, making it still more difficult to get on top of the problem when the recession ends.

Prioritisation

Whether or not the argument within rights holding companies for an increase in anti-counterfeiting budget is won, it will be more important than ever to prioritise resources where they are most likely to have the most significant impact.

This, as ever, will require rights owners to look carefully at where they can spend precious resources to have the most impact. This will vary from industry to industry, company to company. Inevitably China will figure

large in most rights holders' budgets as will crucial choke points such as busy transit ports and free trade zones.

One area in particular, however, stands out in the opinion of the authors as requiring dedicated attention even in times of restricted budget – customs. Customs continues to be the area where most impact has been made over recent years and which still has so much to offer. Vast amounts of the counterfeit goods produced travel the globe. We have opportunities to not only seize them, but in doing so obtain vital information about production and supply chains as they pass through borders (and, we should add, whilst passing through transit ports and free trade zones).

But we need to be smarter about how we work with customs. We need to spot trends and react to them. To take one example, statistics released by the European Commission last year showed an increase in the number of individual customs detentions in the EU (from 37,334 to 43,671 cases) but paradoxically a drop in the total quantity of items seized (from 128 million to 79 million). Whilst it's difficult to spot long term trends as annual figures can be skewed by a few very large cases, these numbers reinforce our experience that counterfeiters are now less keen to send goods in large shipments and are increasingly turning to smaller consignments and postal traffic. Customs and rights holders need to adapt systems that worked well in the days of forty containers arriving at Rotterdam port, to deal with the multitude of smaller consignments now being utilised.

Working with customs, lobbying for better rules/regulations where required and lobbying for additional manpower (a tough ask at present!) has never been more necessary. And at a time when the World Customs Organisation has never been more committed to the fight, this could be the ideal time to seek to further engage with customs.

Author details

Stuart Adams is a Director at Rouse and Global Head of the firm's enforcement practice spanning 15 offices in 11 countries. He has managed enforcement programmes in over 50 countries for many of the world's leading brand owners. sadams@iprights.com

Jeremy Newman is a Director at Rouse and specializes in international intellectual property rights enforcement for clients in a wide range of sectors. He has particular expertise in Customs border control measures worldwide. jnewman@iprights.com

For more information about global intellectual property consultancy Rouse, please visit www.iprights.com

The 5th Global Congress is hosted by INTERPOL



with support from 2009 country host the Instituto Mexicano de la Propiedad Industrial (IMPI)

**Instituto
Mexicano
de la Propiedad
Industrial**



Consumer-Oriented Brand Protection: No Charity – Just a Well-Calculated Business Strategy

Inga Daugeliene is the CEO of Dintag Corp. Oy

In spite of the huge efforts being undertaken by national and international anti-counterfeiting organizations, law enforcement agencies and regulatory authorities the seizures of counterfeit goods still count in thousands, while their worldwide sales count in millions of items and billions of dollars. Production of fakes has become a form of organized crime with its own experts specializing in production in the industrial sectors concerned, its own financiers, logistics experts, importers, wholesalers and distributors, right up to the end consumer.

This business is so profitable that the only effective way to stop it is to make it not economically worthwhile.

How? By enabling the end consumer to choose whether to buy, or not to buy.

Given a chance to tell an original from a fake, the consumer can finally refuse buying counterfeits – especially those raising health and even life hazards, like fake medicines, alcohol, tobacco, foods, perfumeries, car parts or toys.

Thus it is the billions of end-consumers who are the final decision-makers: by refusing to buy fakes they are in a position to undermine the whole idea of counterfeiting. The elaborate schemes and networks set up by organized criminal groups become useless: no demand, no supply.

Measures are being taken. Are they worth the investment?

Manufacturers are investing millions in investigations and raids on counterfeiters, building and prosecuting cases, devising systems and putting in place teams to increase their chances of at least controlling the growth of counterfeiting of their brands. They also turn for help to law enforcement – customs, police – and regulatory authorities.

Detection and detention of counterfeit goods has joined the list of customs functions in the last ten years, when counterfeiting got into gear and began to be taken seriously both by the IP right holders and authorities. Customs officers who still have to deal with 'good old' smuggling, drug, human and arms trafficking, etc, must now check thousands of items daily and try to recognize fakes within the huge cross-border flow of goods.

The manufacturers' anti-counterfeiting strategies are focused mainly on tracking and tracing the supply chain. They use costly and time-intensive tools based on sophisticated techniques – latent taggants, markers, machine-readable inks, DNA-based marks, micro-threads, etc., that can be 'seen' only with the help of special devices, like readers, scanners, microscopes. They also supply customs with lists of distinctive features that are meant to help tell a genuine product from a counterfeit. The question is: can a customs officer carry around a backpack of various devices and at each check of suspicious (or not suspicious) goods effectively use descriptions of products that cross the border in thousands of containers?

Moreover, the vulnerability of most existing brand protection systems is that all the information necessary to authenticate the product is contained within the protection means itself – which makes it easier for an evil-thinker to replicate these protection means. Thus, the wealthy and well-organized counterfeiter does not take long in catching up with the most advanced techniques and manages rather sooner than later to clone any sophisticated gadget.

The brand owner is unable to stop unfair competition from illegal trade sources – even well-protected 'civilized' supply chains are penetrated by counterfeiters. Besides, 'intra-corporate' measures do not protect from those fakes that enter the market from beyond the legal supply chain – through the Internet, so-called 'suitcase imports', street markets, abusive retailers and pharmacies, etc. Meanwhile, the unprotected end-consumer goes on buying fakes and ensuring profits not for the IP-right holder, but for the IP-right offender. The customs/police officer still does not have a reliable instrument to detect counterfeits. The procedure of obtaining legal evidence on counterfeit goods through specialized laboratories is

time-taking and costly – at the taxpayers' expense.

Core strategy: a reliable and simple brand protection technology

The market did not take long in responding to this gap between the needs of counterfeit-affected industries and their consumers. The solution was found – and it is to *divide* the protection means in two, and to place a part of the information necessary for authentication *not* on the product itself, but *separately*. Such systems are known as the "call-in-the-numeric-token", or CNT systems. The 'numeric token' – or an identification number – is located on the protection means, while the information related to this ID number is located in a database. This system enables any interested party to authenticate the product. This interested party can be the end-consumer (patient or doctor), the manufacturer, the wholesaler, the customs officer, or any other representative of a regulatory authority.

The ID number on the product is read with a naked eye and forwarded via a telephone or the internet to the database, which responds with the information necessary for the product authentication. The CNT approach allows the creation of a system that is counterfeit-proof – to fake a distributed system is actually impossible. The system should allow the *authenticator* himself to make a conclusion on the product authenticity – by comparing the information given out by the system to the information on the product being authenticated. If this information coincides, the product is authentic, and if not, the product is counterfeit. Along with being counterfeit-proof, in order to maintain fair competition, an effective technology should be inexpensive and easy to implement. It should allow minimal changes to manufacture process by using standard equipment and incurring minimal personnel training and minimal implementation time.

It is vital that an effective system be also cross-industry – that is, applicable on all kinds of products. The more unified the system, the less confusion for the users, the easier consumer education, the less time and expense on advertising.

Protected products gain marketing advantages over their competitors by enabling the consumer to make sure he is

buying the genuine product. And last but not least, through the use of such an online system the brand owner and/or law enforcer are able to receive reliable feedback from the consumers. The archived data on the checks executed through the system can be also used as evidence in court.

A unified authentication system would offer the same authentication procedure for all kinds of products, making it easily applicable by all stakeholders:

- End-consumers,
- Branded goods manufacturers,
- Manufacturers of parts & components,
- Manufacturers of materials & substances,
- Wholesale and retail distributors,
- Customs officers, other law enforcers,
- Regulatory authorities.

A unified brand protection system offering reliable authentication with the naked eye is the major 'missing link' in the struggle against counterfeiting. It is a mighty weapon – a Kalashnikov that can help join the effort and eventually put an end to counterfeits.

Equipping the stakeholders with an authentication instrument: a well-calculated business strategy

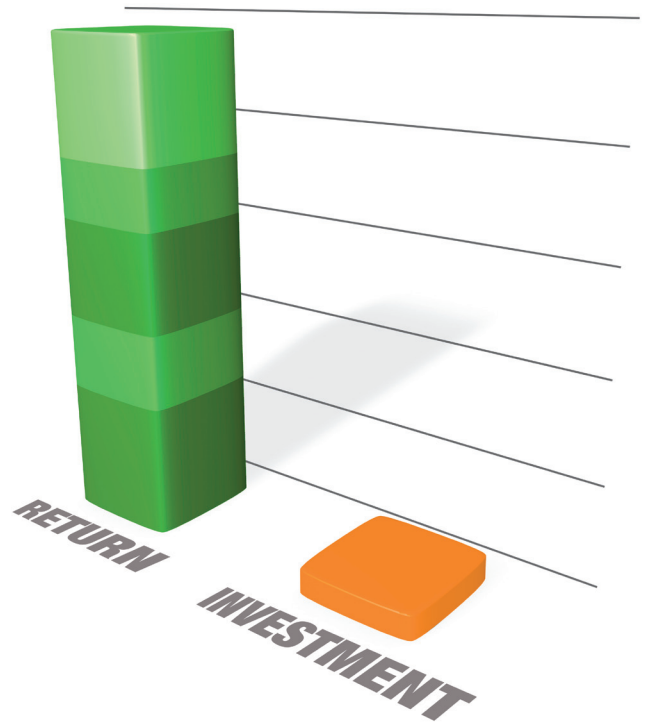
The main factors that can be used to calculate cost-effectiveness of implementing a consumer-oriented authentication system are given in the graph below.

As can be seen from the graph, the benefits for a branded goods manufacturer from implementing such a system would be as follows:

Royalty growth due to effective control of licensed production. By supplying protection marks (tags, labels) to the licensee, the brand owner ensures

WHERE IS THE MONEY?

- Royalty growth due to effective control of licensed production
- Increased company value due to the value of protected brands
- Elimination of the counterfeits' dumping price pressure
- Sales growth due to increased consumer trust
- Market share growth due to squeezing counterfeiters out
- Investment into consumer-oriented brand protection technology



that the licensee produces strictly the quantity of products as envisaged by the license agreement. Thus the brand owner ensures that his royalties are paid in full and that no “third shift” products will appear on the market.

Elimination of the dumping price pressure posed by counterfeit goods. The competitiveness of fakes is more often than not based on their low prices. Appearance of cheap fakes or lookalikes on the market causes brand owners to lower the prices for authentic products. Squeezing counterfeits out of the market will help carry out more flexible pricing strategies, free from outer pressures.

Sales growth due to increased consumer trust. Today the counterfeit goods (mostly substandard, low quality) deteriorate the brand by disrupting its image, its ‘promise of quality’. Once the consumer gets an instrument to tell an original from a fake, the producer or seller of fakes will be no longer able to deceive the buyer and cast a shade on the brand – be it newly born or well established.

Increased company value due to the value of protected brands. Brand is a complex of the consumer’s concepts and expectations concerning the branded product. The better consumer’s expectations are met, the higher the brand value and its contribution to the overall company value.

Due to all the above, there will be a growth in market share of protected branded goods.

Anti-counterfeiting strategy = anti-crisis strategy

The global financial crisis has hit most industries in most regions of the world. Production volumes are shrinking, people are losing jobs, and consumer spending is slowing down. Globalization leaves no stone unturned...

Meanwhile, another product of globalization, ‘the plague of the 21st century’ – counterfeiting – is coming to the forefront. Organized criminal groups producing counterfeits are not concerned with the banking crisis – as they do not keep their capital in the banks. Organized criminal groups producing counterfeits are getting an unprecedented chance to infiltrate the legal supply chain: while legal production is shrinking, distributors, wholesalers and retailers are looking for ways to maintain their profits. As a result, they are more willing than ever before to allow counterfeits, which are much cheaper than genuine goods, into their supply chains.

And this is where an anti-counterfeiting technology can help. Protection of branded goods through a technology that can be used by anyone, without any special skills or devices, with the naked eye, through widely-

available communications like the internet or mobile phone, is a mighty barrier to the penetration of counterfeits into the crisis-weakened market. A unified and widely available anti-counterfeiting technology can be a very effective tool against counterfeits.

In the current economic climate global companies seeking to cut costs are more motivated than ever before to transfer their production premises to third-world countries. And it is common knowledge that the main problem with remote plants – be they proprietary or licensed – is output volume control. The notorious ‘third shift’ has long been a headache for many brand owners manufacturing their products abroad.

And again, a technology based on marking each and every item with a protection means based on the CNT principle described above can help establish precise control over the production volume on licensed manufacturing facilities. A reliable instrument of production volume control allows safe production transfer to cheaper regions. This measure is effective in stable economic conditions (see the graph) – but currently it can become a crucial one.

Reliable instrument of production volume control allows safe production transfer to cheaper regions.

Conclusion

During all economic conditions the implementation of an effective brand protection strategy can mean an extremely satisfactory return on investment. Taking care of the consumer may be rewarded – especially when the consumer is turned into the main agent of getting back the markets lost to counterfeiters.

There are 6.5 billion consumers. Among them, there are millions prepared to check authenticity – especially of those products that raise health issues. There is little chance that even a counterfeiter would knowingly give his kids fake medicines or install a fake brake pad on his car.

There are also law enforcers who are in charge of detecting and seizing counterfeits – and their work efficiency would increase many times if they are given a simple instrument to check. There are lots of counterfeit-related cases in courts where the origin of products is so hard to prove.

Given an instrument to tell an original from a fake, we can all join the effort against counterfeits that have flooded our life. Given an instrument to tell an original from a fake, we can refuse buying those fakes, thus blowing up the very economics of counterfeit production. No demand – no supply. ■

Deploying Technology to Fight Counterfeiting

Adrian P Burden is the President, Europe at Bilcare Technologies (formally Singular ID)

Introduction

Counterfeiting and piracy have become high technology industries in themselves. The sophistication used to copy products often means that fakes are ostensibly identical to the originals. This presents a huge problem for all of the stakeholders; from the brand owner, through the supply chain to the end consumer.

More importantly the problem cuts across every sector causing specific issues in specific markets. Copied luxury handbags may not present a health risk to the end consumer, but the revenue generated from sales often promotes illegal child labour in third world countries¹. Fake apparel and sportswear may last just as long as the real thing, but almost certainly finances terrorist activity somewhere in the world². Then there are products that really do cause health and safety issues – from bogus car parts that can contribute to road accidents, fake wines and spirits that contain harmful ingredients, to counterfeit medicines that either provide no medication at all or give the wrong medication³.

When it comes to piracy; the copying of music, software, and other copyrighted media, the problem is compounded by the ethereal nature of the digital product⁴. Media can be replicated with various levels of quality, but in many cases up to the level of the original with relative ease. This presents its own technological challenges to overcome, as digital media can be supplied without packaging and without importation through a customs agency.

Despite the fact that public awareness of the problem is growing, few consumers or indeed employees of brands are fully conversant with the extent of the problem⁵. There are several contributory factors to this; the reluctance of many brands to discuss the problem for fear of losing trust and reputation within their consumer base, the difficulty in measuring the extent of counterfeits as they travel alongside legitimate products within the supply chain, and the fact that consumers are barraged daily with news and advertisements, and so any message about counterfeits barely peaks above the background noise. This lack of awareness can also make the effective implementation of a brand security technology more difficult, because some form of education or marketing is usually required to ensure that the technology is recognized and used properly.

A diverse problem

There are numerous published statistics about the extent of counterfeiting, and there are many organizations around the world attempting to combat the crime⁶. But it is always instructive to look at these facts and reflect on how technology might be deployed to have an effective impact on the problem.

Firstly, headline figures quoted by reputable sources such as Interpol, the World Customs Organization (WCO) and the International Chamber of Commerce (ICC) put the annual value of counterfeit goods as being equivalent to about 5-7% of world trade or (US\$500 to US\$650 billion)^{7,8}. This is a sizeable figure (more than the annual revenue of world's largest retailer Wal-Mart, which for the financial year ending January 2008 had sales revenues of just under US\$375 billion)⁹. As such, it would seem reasonable to make investments in sophisticated technology to reduce the problem. The difficulty many brand owners face is quantifying the losses so that they can gauge the likely return on such an investment.

Counterfeiting is also a rapidly growing industry, and has increased unabated for many years^{10,11}. The recent credit crunch and economic downturn may have adversely affected legitimate manufacturers, but there is evidence that this has fuelled trade in fake products. Partly because low cost fakes are more appealing to the cash-strapped consumer¹² and also because in this industry cash flow is governed more by criminal activity than lines of credit from high street banks¹³.

In the fashion industry, the impact of the problem is difficult to gauge because the argument goes that people who buy fakes would not usually buy the much-more-expensive genuine products. There is bound to be some element of truth to this, but ultimately, the lower cost fakes are being sold in lieu of mainstream products from lower-end brands, and so revenue is still being made illegitimately whilst taxes and duties are almost certainly being evaded¹⁴. Fashion and luxury is also a very broad market sector, with products including clothing, suits, shoes, sportswear, handbags, watches, perfumes, cosmetics and jewellery for example. The manufacturing and distribution practices for these different product

lines are also diverse and so universally protecting a brand, either with improved business practices or through the use of technology, can be a major challenge.

Looking at another very different sector by way of example, the Motoring Equipment Manufacturers Association (MEMA) in the US estimates that counterfeiting costs the global automotive parts industry US\$12 billion per annum with US manufacturers losing about US\$3bn in annual sales¹⁵. The problem has lurked in this industry for years and has not yet been satisfactorily addressed¹⁶. Much of the problem stems from the fact that cars require replacement parts during their life and the fitting of these is often trusted to workshops and mechanics, sourcing goods from a complex international supply chain. Moreover, parts range in shape, size and operating requirements which can present challenges when deploying a technological brand protection solution; particularly if it is to protect a part directly rather than the packaging.

Perhaps the most alarming market sector in which counterfeit goods are rampant is that of pharmaceutical and medical products¹⁷; to the extent that respected academic journals have also reported the problem^{18,19}. The World Health Organization (WHO) International Medical Products Anti-Counterfeiting Taskforce (IMPACT) is cautious in stating the size of the problem²⁰, although in the past the WHO has reported estimates of as much as US\$35 billion of counterfeit medicines being sold globally per year. The medical supply chain is complicated; local legislation in different territories requires repackaging and relabeling, and in recent years the sale of medicines over the internet has rapidly increased. All of these problems present serious difficulties in preventing fake products entering a market, and unfortunately it is the developing countries with malaria, AIDS, and relatively poor healthcare in general that suffer the most from the scourge.

More information, resources and news about counterfeiting in these and other sectors is available at the BASCAP website (www.bascap.com) and at the No to Fakes website (www.notofakes.com).

Deploying technology

Brand owners and manufacturers have often resorted to technology involving marking their product packaging to try to thwart the menace of counterfeiting. Probably the most common and most overt technique is the use of a hologram, once a high-technology solution that was deemed difficult to replicate. Today, holograms and similar optical-effect labels can be reproduced passably and with relative ease, and counterfeit products have even sported holograms where the original does not!

This fact provides an insight into a major issue relating to counterfeit prevention. The consumer is difficult to educate, and highly unlikely to tell a genuine hologram from a crude imitation. Not only that, but to a consumer, holograms are synonymous with security so counterfeiters can leverage this understanding to sell more product.

Engineering components and spare parts have often relied on serialization to provide some level of counterfeit protection. This is particularly so in the aviation industry; the argument here being that individually numbered items will have a paper-trail of traceability demonstrating the pedigree of the part. However, copying and altering numbers is a relatively straightforward task, even when they have been shot-peened or laser marked using capital-intensive equipment. This results in confusion, as the original and fake with the same serial number cannot easily be distinguished and depending on which one gets checked first, a fake may pass into use ahead of the genuine one.

Radio-frequency identification (RFID) is the latest way to serialize items; making use of a silicon chip to store the unique number and in some cases additional information. However, RFID is not without its problems; it is still relatively expensive compared to simple numbers and barcodes, it comes in a variety of formats with very different levels of security, clones can be made to broadcast the same number, and in some instances the metallic or liquid environment makes RFID unreliable. However, RFID is here to stay as a logistics tool, and certainly helps raise the hurdle of counterfeiting. Used alongside other security technologies, it can be a very powerful tool.

When a brand owner considers a technology for brand protection, many questions need to be addressed, as illustrated in Exhibit 1. The strategy needs to be considered throughout the supply chain and the product

lifecycle. A risk analysis needs to be conducted on how and when products should be authenticated, but it also needs to address the necessary action if an authentication fails. At the end of a product's life, there must be no danger that the security feature can be unscrupulously reused on an illegitimate product.

In addition, the brand owner needs to know if a solution should be used in isolation or as part of a layered security system. Money and passports, for example, have long been issued with multiple layers of security; because if one layer is compromised, there is a strong likelihood that others will remain intact. There are also different solutions for different types of authentication: the look and feel of the banknote is often enough for a consumer to be confident that the money is genuine; the shopkeeper may resort to ultraviolet light to verify a watermark; whereas a bank will use other machine readable technology to provide yet higher levels of confidence in the process. The same approach should be used to protect products.

The next step is to consider the means of authentication at each level; particularly if human observation is to be relied upon (usually less expensive in terms of equipment out in the field being unnecessary, but certainly less secure as consumers and officials alike are easily duped). Where a reader is to be deployed, whether it is a simple "filter" to change the appearance of a genuine label or a more sophisticated scanner to read a tag, consideration needs to be given to the cost and the location. Verification at the actual point of sale is usually the most powerful approach, but the vendor needs to be incentivized and the consumer needs to expect it as part of the service. Exhibit 2 highlights some of the considerations and drivers that exist along a supply chain.

As such, one of the principal hidden costs in the use of any technology deployed to thwart counterfeiting is in educating the consumer to know what to expect and how to discern genuine products from fake. Brand owners often overlook this fact, and sophisticated technology may provide a disappointing return on investment if an education plan has not been rolled-out in parallel.

The specific requirements of different sectors also challenge how a technology might be successfully deployed. For example, fashion items are often limited editions or bespoke products made using high-quality materials in novel and distinctive designs. The product range is often diverse and delivered in a high mix of low volume. The anti-counterfeiting technology must not impact on the aesthetic design of the item, whilst still providing a means of security that can ideally be authenticated by the consumer. Genuine fashion items often become collectables, and although the brand owner may not wish to promote resale, an authentication technology that can last the lifetime of an item brings value to the end-user and ultimately respect for the brand. Analyzing these different drivers helps to establish where value is likely to be perceived in a deployed system. Ideally, value needs to be derived at each point in the supply chain, as highlighted in Exhibit 3.

Spare parts are usually carefully engineered to work in aggressive environments. For example, replaceable items like gaskets, plugs, filters and pumps might need to operate at elevated temperatures, in high humidity or in oily conditions. This is not just the case for cars, but also for public transport, aircraft, industrial applications such as power stations, in refrigerators, etc. Brand owners often make most of their revenue on after-sales servicing, and so there is a need to protect the supply chain to safeguard business as well as the reputation of the brand. As such, brand owners will realize that a suitable technology often needs customization to work favourably with the nuances of a particular product.

For pharmaceuticals, the primary packaging (such as the blister pack) is the most useful part to protect, because outer cartons are often replaced

in different markets to cater for differences in language and label legislation. Some technologies even exist to directly mark the tablet, but there are limitations as to the ease of verifying such markings in the supply chain. However, another consideration is the sheer volumes of products that are produced each year. A suitable anti-counterfeiting technology needs to be cost-effective for very low-cost but high-volume items. Protecting the high-end medicines is not enough, because even low-cost generic painkillers such as Aspirin are found to be lucrative products for counterfeiters.

Materials solutions and an integrated approach

A powerful approach to brand protection is through the use of materials and chemicals to provide the equivalent of a "fingerprint" or "DNA" for a product. A number of techniques have been researched and developed to achieve this, including the use of the unique fibre arrangements in paper²¹ and packaging²² and the use of composite materials²³. As a result, these technologies can be deployed in the form of a label, tag or by embedding the identifier in the product itself. Often these technologies work synergistically with serial numbers, barcodes and RFID chips, because the ease of reading a number helps make the authentication step quicker. This is analogous to checking a passport photograph in a database by first using the passport number as an index to find the correct entry quickly.

The power of this approach is that each product then has its own unique identifier, often constructed from very small and complex features, such that they are prohibitively difficult to reproduce. Ideally, the arrangement of the features is left entirely to nature and not directed by a predefined pattern, mask or design. If the features being measured are invisible (rather than being optical features), then the standard tools for photocopying or lithographically reproducing the "fingerprint" do not apply, and this raises the bar to duplication yet further. As the size scale drops in to the micrometer and nanometer regime, so the security rises yet further.

Solutions such as these are often fully integrated with a remote database so that the original "fingerprint" can be verified against one read later in the supply chain. This has become possible because telecommunications links are now widely available in the form of the internet, wireless connectivity and mobile phone systems. This means a remote database can be contacted quickly and inexpensively so that not only the authenticity of a product can be checked, but additional information such as expiry date can also be disseminated. This brings value beyond anti-counterfeiting, because if embraced by the supply chain, it also provides track and trace information that can improve efficiency and lower costs in other areas.

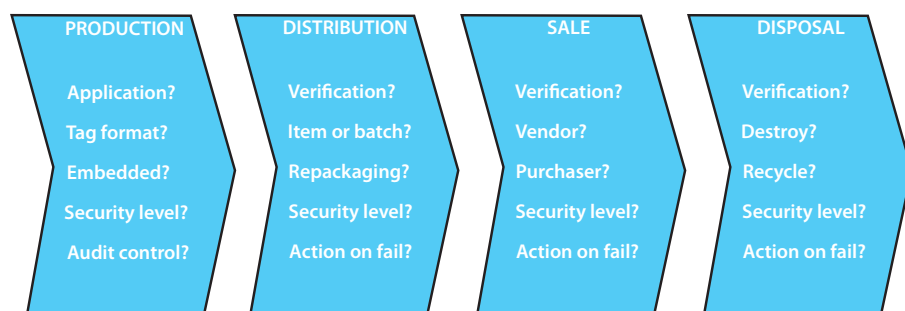
Exhibit 4 illustrates the concept, showing the components of this kind of high-end brand security technology. The product is protected with a tag, a scanner authenticates the tag and takes away any subjectivity of the authentication process, and a database not only provides authentication information, but also a fully updated audit trail capable of disseminating information in real time.

Outlook and conclusions

Deploying ever more sophisticated anti-counterfeiting technology is likely to be the only near-term solution to reducing the prevalence of fake products. Moreover, these solutions will need to be fully integrated to enhance security as well as bring value to each stakeholder in the supply chain. Because counterfeiting affects virtually all product sectors, and different products have specific forms, modes of use and customer expectations, the technology to provide the brand security is likely to require some level of customization to be effective.

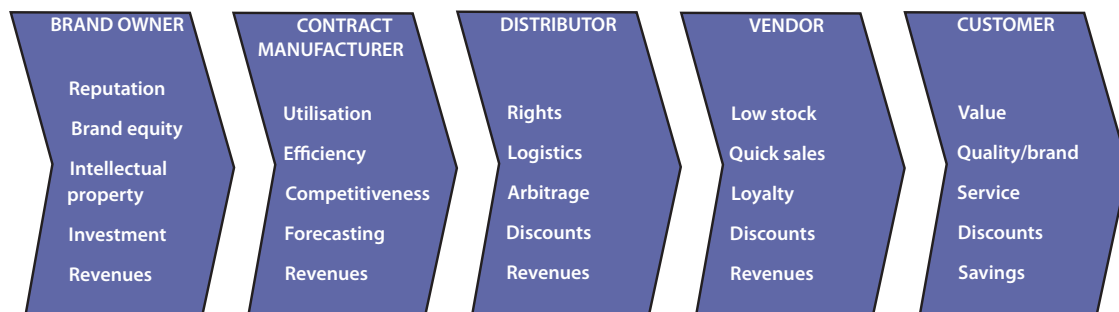
The author (adrian.burden@singular-id.com) acknowledges his colleagues at Bilcare Technologies for input and discussion during the writing of this article; particularly Peter Moran, Praful Naik, Raman Nanda, and Jessica Williams. For more information please visit www.singular-id.com

EXHIBIT 1



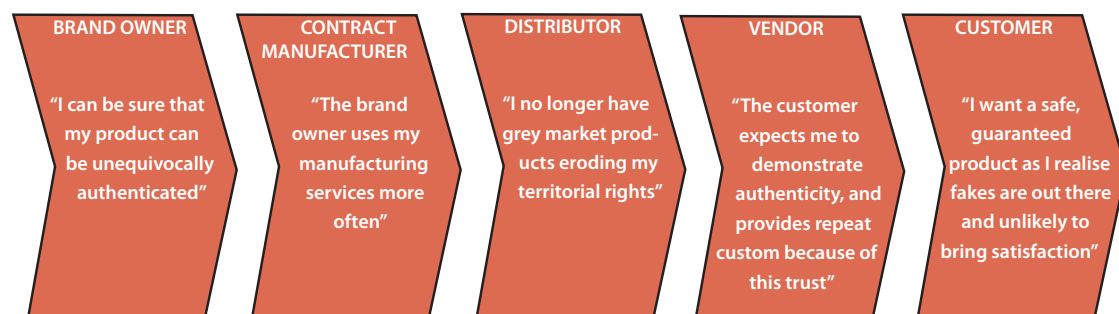
Some of the questions relating to how a deployed brand security technology should be used and moderated throughout the product lifecycle.

EXHIBIT 2



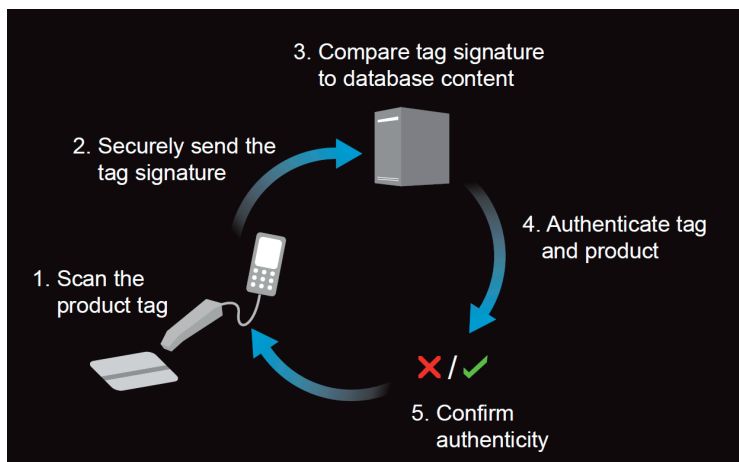
Some of the drivers and considerations of the parties across the supply chain. Unfortunately, many are in conflict with the notion of full-priced genuine products being preferential to lower cost fakes, and few encourage an authentication step.

EXHIBIT 3



Identifying the value an anti-counterfeiting solution brings to each stakeholder is paramount. Often there is a need to offer more value than simply 'anti-counterfeiting', such as supply chain management, warranty management or preventing product diversion.

EXHIBIT 4



Making use of a scanner and remote database to authenticate a materials-based "fingerprint" and prevent the counterfeiting of products.

- "The Fake Trade: wanted for stealing childhoods" by D Thomas, published in Harper's Bazaar, Singapore, Mar 2007 (pp 210-213), and Harper's Bazaar on-going "Fakes are Never in Fashion" campaign at www.fakesareneverinfashion.com.
- "The Fake Football Shirt Sting", BBC News, 3 Mar 2006, <http://news.bbc.co.uk/1/hi/business/4768454.stm>.
- "Knockoff: The Deadly Trade in Counterfeit Goods", by T Phillips, published by Kogan Page Ltd, 2005 (ISBN 07494 4379 0).
- "The Keys to Ending Music Piracy", by J Black, Business Week, 27 Jan 2003.
- "Counterfeiting Culture", New Statesman, 22 May 2006.
- "Fakes", Business Week, 7 Feb 2005.
- International Chamber of Commerce (www.iccwbo.org), through their initiative called Business Action to Stop Counterfeiting and Piracy (BASCAP) 2009.
- "The Economic Impact of Counterfeiting and Piracy", published by the Organisation for Economic Co-operation and Development (OECD), Jun 2008 (ISBN 9789 2640 4551 4).
- "Corporate Fact Sheet", Wal-Mart. Available at <http://walmartstores.com/FactsNews/>
- "Counterfeit-Product Trade, A Growth Industry", by GM Grossman and C Shapiro, Centre for Economic Policy Research (CEPR), Discussion Paper No. 103, Apr 1986.
- "Report on Community Customs Activities on Counterfeit and Piracy", European Union, Taxation and Customs Union, 2007.
- "Counterfeit Bags Popular in Down Economy", Eyewitness News, Feb 2009 (<http://tinyurl.com/cushsy>).
- "National Intellectual Property (IP) Enforcement Report", The Patent Office, United Kingdom, 2005.
- "The High Price of Counterfeit Goods", by A Fox, Gotham Gazette, Mar 2008. Available at: <http://www.gothamgazette.com/article/crime/20080331/4/2476>.
- "Intellectual Property: Protecting Valuable Assets in a Global Market", Special Report from MEMA Brand Protection Council, Jan 2008. Available at: <http://www.mema.org/enews/pdf/brand.pdf>.
- "What's at Stake when it's Fake", by L Toussant, Aftermarket Insider, Aug-Sep 2003, pp12-15.
- "Dangerous Doses – A true story of cops, counterfeiters, and the contamination of America's drug supply", by K Eban, published by Harcourt Books, United States, 2005, ISBN 0 15 603085 3.
- "Murder by fake drugs", P Newton et al. British Medical Journal vol 324, pp 800-801, 2002.
- "Bitter Pills", A Jack, British Medical Journal, vol 335, pp 1120-1121, 2007.
- "Counterfeit Drugs Kill!", WHO IMPACT brochure, May 2008, available at <http://www.who.int/impact/FinalBrochureWHA2008a.pdf>.
- "Authenticity determination system, authenticity determination method, and program", S Tadashi, K Tetsuya, I Kensuke, O Kenji, Patent Application JP2007279812 (A), Oct 2007.
- "Authenticity verification of articles using a databases", R Cowburn, Patent Application MX2007001857 (A), April 2007.
- "A method of identifying an object and a tag carrying identification information", PM Moran, AP Burden, Patent Application US2005/0017082, Jan 2005.