

Dear Sirs,

Attached is our response to the recent request for information regarding intellectual property infringement. We hope this information will be of value. Please contact us if you wish to discuss this in more detail.

Alan Zimmerman
Professor, Director International Business Program
CUNY--College of Staten Island
718-982-2925

Response to the Office of Management and Budget request for information regarding intellectual property infringement.

Professors Alan Zimmerman and Peggy Chaudhry

([REDACTED])

We are authors of a recently published book, [The Economics of Counterfeit Trade](#) and we have been studying and writing about this problem for many years. We are pleased to have an opportunity to submit some ideas in response to the request.

In Chapter 12 of our book [see pp. 173-175] we provided a list of topics that we felt needed to be investigated further in future research. We suggest the following topics based on that summary as key elements in the understanding of the worldwide counterfeit market.

1. ***The true size and growth of the market.*** Measurement of the size and growth of counterfeit trade has proven to be extremely difficult. The first question which must be dealt with is defining what is to be measured. Is it sales lost based on current retail prices? Or should one add an estimate for damage to brand equity? The institutions making estimates of this trade readily admit that their methodologies are flawed. Many believe the global value of counterfeit products is in the range of \$200 billion annually while others have made much higher estimates. Since the seizures of counterfeit product represent far less than 1% of

total imports the true size of this global market is not really known. The effect on the United States is equally difficult to pinpoint. The US customs service estimated that the US economy was losing between \$200 and \$250 billion per year and a total of 750,000 American jobs because of product counterfeiting but it is not clear what methodology they have used to develop this estimate. We are aware that the General Accountability Office has been working on methodologies for determining the size of the counterfeit market.

2. ***Products most affected and common source countries.*** It is known that a wide variety of products are counterfeited and some of these fakes are rarely interdicted. One most important product area is pharmaceuticals where the consequences of pirated product can be quite severe. The products most frequently seized by customs are footwear, wearing apparel, handbags, computer hardware, consumer electronics, and media. Software and motion picture firms are quite concerned about counterfeiting. The most important source countries of counterfeit product appear to remain the same from year to year. Certainly China accounts for far more than half of all counterfeit products. In 2006 China was the source of 79% of counterfeit goods seized by the EU and 81% of those taken by the US Customs and Border Protection Service. For specific kinds of products other countries such as Russia, Brazil and India as well as several countries in Latin America are important sources.
3. ***Re-examination of the US Trade Representative's methodology for reviewing intellectual-property environments in specific countries.*** It may be that the designations (Priority Watch List, Watch List, and Priority Foreign Country) used by the USTR are counterproductive within countries where cooperation from the government is desired. According to our research the USTR relies on a small number of temporary employees who in turn rely heavily on submissions from firms and trade associations. This approach adds a number of countries where problems are minimal to the Watch lists and may take attention away from those few markets providing the vast majority of counterfeit product.
4. ***The driving forces of the IPR environment.*** Many of our publications offer very little insight regarding pirates. There is very little information on how „organized’ these crime syndicates are in supporting the counterfeit trade. One French documentary on the fake trade, *Brand Name Counterfeiting*, that highlighted bogus BIC pens and razors in the African markets, suggests that substantial amount of monies are required to invest in the production of fakes, such as plastic molding equipment for the pens/razors. Other colleagues that work in this area have suggested that the only way to stop the pirates is to curb their money trail – how does this illicit trade channel move their funds from one country to the other – so we need to address the problem of money laundering associated with counterfeit trade. Nearly universal in various countries are Anti Money Laundering laws. Since all profits from these illegal businesses are proceeds of crime there should be increased emphasis on this type of anti-counterfeiting tactic.

- 5. *Investigate collaborative public/private enforcement issues between brand owners and law authorities.*** Counterfeit trade is an illegal, global business and is therefore, by definition organized criminal activity. Like all organized crime the motivation is money. Our colleagues in enforcement therefore support a philosophy of going after the pirates and their money, not just taking fakes off the retail shelf. However, law enforcement is not global and therefore affected brand owners have a responsibility to contribute to the fight beyond retail level enforcement. Most companies do not have a coordinated strategy that includes all the necessary elements for a proper program. Unfortunately, too many firms rely on authorities in jurisdictions where law enforcement is weak, corrupt, inconsistent or all three - that is why the pirates operate there in the first place. There needs to be a true public/private sector partnership to combat the counterfeit product problem. In general, law enforcement and government authorities are wary of this kind of partnership because they mistrust business and so much of the problem is outside of their particular jurisdiction. However, our colleagues in enforcement strongly assert that if the brand holders would just persevere, and spend a little more money, they would achieve their objectives of taking counterfeit product out of the market place; but also achieve the government objective of taking out organized crime. Even without this type of final result the cost of taking action is minimal compared to the cost of taking no action. Unfortunately, for several brand holders, the most difficult dollar to find is that which is to be spent on security as, philosophically, security is a cost, not a profit center.
- 6. *Market segmentation of complicit consumers.*** The majority of academic studies on consumers who are willing players in counterfeit trade do not provide any statistically significant profiles of these consumers by traditional demographics [age, income, education]. We are currently working on this problem with our BRIC + USA research that looks at demographics and consumer behavior (e.g., personal values that shape whether they obtain counterfeits) to look at complicity across countries. Even the LEK study conducted for the MPAA could only profile complicit consumers as young, male and living in urban areas – this is too broad a demographic for any type of market segmentation.
- 7. *The plausibility of social marketing [or demarketing] campaigns to change complicity consumer behavior.*** The RIAA, the MPAA, the BSA, the SIIA, and the like have all started using a form of “demarketing” to modify consumer perceptions of complicity. For example, the Motion Picture Association of America used the advertisement below:

**YOU CAN CLICK
BUT YOU
CAN'T HIDE**

I ILLEGAL DOWNLOADING
Inappropriate for All Ages



This website has been closed on behalf of the Motion Picture Association (MPA), the German Federation Against Copyright Theft (GVU) and its member



We are currently working on whether this type of advertisement is seen as effective and will actually change a consumers' behavior towards complicity. Unfortunately, the bottom-up media is replete with rebuttals to these types of advertisements below:



8. **Changing consumer complicity via 'fear' or 'education' to decrease demand.** One of us has been able to discuss various anti-counterfeiting tactics targeted at consumers with several hundred university students for almost 20 years. A common finding is that students really do not fear any type of prosecution for their acts of piracy (mainly digital piracy). How can we shape future U.S. cybercitizens to respect IPR? Some industries are using education targeted at younger U.S. consumers [ages 5-12] – for example, look at the BSA initiatives at this website: www.cybertreehouse.com. We also highlighted the MPAA campaign using “Lucky and Flo” [see pages 115-117 of the book] in the weekly

reader at U.S. schools to shape their perceptions of fake movies. The effectiveness of this kind of approach has not been measured.

9. ***An assessment of the effectiveness of multilateral and national agencies and the recent legislation designed to combat counterfeit trade.*** One of us recently gave a presentation on internet piracy at the World Marketing Congress in Oslo, Norway. At this conference, we debated whether recent U.S. legislation designed to curb internet piracy, such as the NET Act and the Digital Millennium Copyright Act had actually worked to deter organized pirates, such as the Warez group? [For a definition of Warez – see our book, pp. 142-143]. Over the years we have seen more layers of agencies that govern intellectual property rights, such as the TRIPS in the World Trade Organization or the STOP FAKES! Program launched by the U.S. government a few years ago [see the U.S. Department of Commerce website and/or pp. 95-96 of the book]. However, we have not seen any studies that have critically assessed whether all of these new layers of legislation or government agencies designed to curb counterfeit trade have significantly decreased the incentives to pirate goods in either the physical or virtual marketplaces. In Chapter 7 of the book, we question whether all of these layers of IPR enforcement have either decreased consumer demand or deterred the pirates – this is a key area for future research.