

The Crime of the 21st Century

The globalisation of industry, trade and finance has led to organised crime on a global scale, as successful criminals tend to follow legitimate business models.

Intellectual property crime is a prime example. When manufacturing industry moved to the Far East, so did the fakers. And the vast markets opening up in cyberspace are being tapped to feed the trade in fakes, a new and sinister threat.

Controlled by organised criminal networks, this is a sophisticated fraud on creators, industries, retailers, consumers and national economies. Its perpetrators also cynically exploit the people they use in the production and distribution of fakes, and it has grown exponentially, in the last ten years, into a worldwide problem.

This is a double-edged crime, as it also poses a threat to consumer health and safety - fakes do not go through any form of safety testing or quality control.

'**Intellectual property**' refers to the legal rights owned by individuals and organisations in inventions, designs, goods and other creations, produced by intellectual activity in the industrial, scientific and artistic fields.

The fundamental aim of these rights is to protect the creators and makers of such products, and to ensure that they will benefit fairly from their originality, effort and investment. Without this protection, there would be no great brands, great products or great achievements, and no investment in the future.

Just like physical property, intellectual property (IP) can be stolen. **IP crime** is committed when products are copied and marketed for profit, as if made by the genuine rights owner, without their consent.

Sounds harmless, perhaps? Well, read on.

IP crime itself is classified as a '**serious organised crime**': "Those involved on a continuing basis, normally working with others, in committing crimes for substantial profit or gain... for which a person aged 21 or over on first conviction could expect to be imprisoned for three or more years."

Source: Serious Organised Crime Agency (SOCA)

Like any serious organised crime, it poses a significant threat to the legitimate economy, consumer safety, national values and social stability.

There are two categories of IP crime: **counterfeiting** of branded goods (protected by **trade marks**) such as clothing, footwear, watches and pharmaceuticals, and **copyright theft** which relates to other kinds of products such as music CDs, film DVDs, computer games and software (which are protected by **copyright**).



The two can often overlap, with both trade marks and copyrights involved in a given product e.g. software.

We will focus here on **counterfeiting**, as our industry members manufacture trade marked goods in practically every sector you can think of from chocolate to car parts, pharmaceutical to mobile phones.

There are two ways in which counterfeiting links to other crimes; first, in the criminal methods used by the fakers to make and distribute their products and to hire and control people in their networks, which include murder.



THE TOP FIVE CRIMES ASSOCIATED WITH COUNTERFEITING:

- Drugs
- Illegal immigration
- Theft
- Weapons offences
- Murders/deaths

Secondly, what happens to the profits made from counterfeiting?

For some years it was hard for industry to establish these suspected links to the required standard of proof. But after a long and determined industry campaign, and with stronger evidence available, the intelligence services now recognise that organised criminals control both IP crime itself and the proceeds from it.

The vast profits made from IP crime are then used to fund other serious organised crime on a global basis.

The profits are used to fund other serious organised crimes such as drugs and arms smuggling, people trafficking, identity theft, money-laundering and child pornography.



As reported by Interpol, there is even evidence of counterfeiting profits funding terrorist activity.

IP crime is very attractive to global criminal gangs, being high-profit and low-risk, with inadequate penalties if caught, often just a fine and/or a short suspended sentence, when a maximum sentence of 10 years is available.

The judiciary are yet to be convinced of the need for deterrent sentencing. As a result, many prosecutions are brought against counterfeiters for other related offences - such as **conspiracy to defraud** - which tend to attract higher penalties.

Even prison does not deter effectively, however, as criminal assets often remain hidden and intact, ready to fund renewed illegal activities on release. In the long term, the most effective strategy is to remove the profit element from the cycle of criminality, and eventually make counterfeiting pointless. In turn, this will reduce all the other serious organised crime which is funded by counterfeiting, too.

We are hopeful that this will be achieved by increasing the scope and use of the **Proceeds of Crime Act**. This provides that confiscation orders can be made against convicted criminals, removing all assets which they cannot prove are from a legitimate source.

ACG campaigns for more financial investigation training and more resources for law enforcement, and the government is currently consulting all stakeholders about how to increase the impact of this excellent, and rightly draconian, legislation.

To give some idea of the scale of the profits at stake, a recent independent survey has revealed that, in the UK clothing and footwear sector alone, some **£3billion each year** goes into the pockets of the fakers. The market stallholder is just the tip of a very nasty iceberg. After the distributors further up the supply chain take their cut, the main profits go to the Mr Bigs who are controlling various criminal operations.



Indeed, some of the earliest examples of these sinister links appeared here in the UK when the **IRA** was active, and guns which they shipped to the UK mainland were bought with profits made from fake sportswear, cigarettes, music CDs, and spirits manufactured in illegal stills across the border.

IP crime is still a popular method for raising money to finance other serious organised crime in both Northern Ireland and the Republic. Over £3million-worth of fake products were seized there by the Organised Crime Task Force during April-December 2006.

The former leader of the Vietnamese 'Born to Kill' gang, serving life for murder, claimed to have made **US\$13 million** from the sale of **fake watches** in New York's Chinatown in the late 1990s.



2003 - Beirut Interpol were alerted after containers from China via Turkey were found to have fake documentation. They contained fake brake pads and shock absorbers bearing the logo of a well-known German brand, with an estimated retail value, if genuine, of around €1 million. Lebanese law enforcement confirmed that the suspects were known to them and had links to Hezbollah.



One of those suspected in the Madrid bombings was a known counterfeiter. It's even thought that fake mobile phones and sim cards were used as the detonators.
 (statement live on Spanish TV by Interior Minister Angel Acebes, March '04)

It was reported in **2004** that **US intelligence** had tracked profits from counterfeiting and drug trafficking, controlled by the same criminal network, all the way from Paraguay, laundered through shell companies and charities, to **Hamas** and **Hezbollah** cells in the Middle East (before Hamas won its first election).

The Triads control much of the global trade in fakes; an estimated 70% of all fakes in circulation worldwide are from the Far East, particularly China.

LINKS BETWEEN COUNTERFEITING AND OTHER SERIOUS ORGANISED CRIME

People are smuggled into the West by the Chinese Snake-head gangs, and huge crackdowns haven't yet stemmed the flow of illegal immigrants and fake products to the US and Europe.

The deaths in 2004 of the illegal Chinese immigrants picking cockles in Morecambe Bay tragically highlighted the problem; two of those involved were found to have links with IP crime operations (fake DVDs).

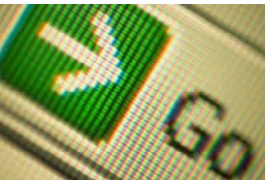
And exploitation of children by the makers and sellers of fakes - as workers in illegal factories and as runners and lookouts in local markets - expose them to criminality at an early age. So what more can be done?



The **UK IP Office** is leading a multi-stakeholder project - the **IP Crime Group** - to create a national strategy for IP rights enforcement. There is similar commitment at European level, while some of the new Member States still struggle to create effective IP protection, and the **EU borders** move eastwards, making it easier for fake goods to enter and then move freely around an ever-expanding zone.



The US Government is equally committed and is partnering the EU Commission in various international initiatives, some of which are tackling the production source of many fake products - **China**. Intelligence-sharing via secure websites, building international databases, creating public-private partnerships, training and multi-agency collaboration will all help to co-ordinate the effort. In the end, it always comes down to resources, with industry, law enforcement and governments trying to juggle their many commitments. The biggest single challenge now is the Internet, which offers untold opportunities to major criminals who, for example, recruit sellers on eBay to provide the outlets for millions of fake products



funding their other crimes. Individual consumers can order practically everything they want on the Internet. It's risky enough to buy 'designer' goods via auction sites (as they are likely to be fake) but it's madness to order pharmaceutical products from

Counterfeiters love the Internet, for its speed, its reach and its anonymity.

unaccredited sources on-line. Yet many people do, and it's an extremely profitable new method for supplying fakes in huge quantities, with little chance of detection.



Pursuing someone who has sold you a fake is even more difficult on-line than it is in the traditional marketplace. Finding and prosecuting them is equally difficult for law enforcement. New technologies can help with many Internet investigations, and ACG has several of the top forensic specialists among its members.



Trading standards services in the UK (in each local authority, responsible for enforcing IP crime laws) are updating their methods and co-ordinating their operations, for example bringing successful prosecutions against eBay sellers who are operating within their localities.

Terrestrial border controls, as they currently operate, can do nothing to intercept fakes which are flying round the world in cyberspace.

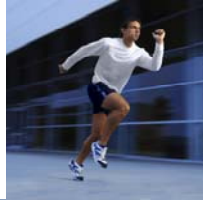
But this needs to be a global enforcement effort; many websites are located in other jurisdictions, and the goods ordered are often then shipped from yet another country.

We've come a long way since 1980, when ACG was founded, and there wasn't even a modern Trade Marks Act. Everyone is beginning to realise the scale of the problem - for example, fake pharmaceuticals have started appearing at the retail end of the supply chain in the UK, and are freely available on the Internet - so governments are making more plans for collaborative action, both with industry and with their counterparts in other countries.

LINKS BETWEEN COUNTERFEITING AND OTHER SERIOUS ORGANISED CRIME

Unfortunately, not all countries take the problem as seriously as they should - third countries still tend to be the producers and Western countries the consumers, which means that inevitably they tend to have very different attitudes to counterfeiting.

And the fakers are extremely intelligent, resourceful, well-advised and efficient everywhere they operate. They have plenty of funding for what they want to do, and they are ahead of the game.



Different ways of planning and allocating resources are needed, which will put many of the big criminal players where they belong. This would also help to address other major criminality, where the same players are involved.

Traditional investigative methods, starting at the 'head of the snake' and moving up the supply chain to reach the power behind the operation, can no longer be employed in isolation.

Instead, we need to use the very same elements of counterfeiting which make the crime easy to commit, in order to beat the fakers at their own game.

Technology, communication, global collaboration - all the things which counterfeiters build into their business plan - can be turned against them.

This 'crime of the 21st century' threatens all of us, whether we buy fakes or not. Consumers don't mean to be funding organised crime - but they are, and it must stop.

With adequate resources, the very same things which make counterfeiting easy can be turned against the fakers.



For further information visit: www.a-cg.org

GET REAL... Don't Buy Fakes!

- Counterfeits are Dangerous
- Fakes Fund Crime
- Counterfeits Cost Jobs
- Counterfeits are Rip-Offs
- Counterfeiting Kills
- Counterfeits are Everywhere

