

Industry experts explore the realities and ramifications behind the world's black markets and intellectual property rights.

So what's the harm in downloading music or images from the Internet, buying a counterfeit purse or other luxury item, or allowing generic drugs to hit the market before their time? After all, it's only rich artists, multi-national brand-holding companies and pharmaceutical giants who suffer, right? But when you take a closer look at the "black markets" that exist in our modern world, you will find some surprising and even disturbing realities.

Dig just a little bit and you soon discover that the widespread commerce involving illegal intellectual property (IP) and counterfeits hurts not only the creators of these products, it also costs legitimate businesses billions of dollars every year. That, literally, translates into skewed economies and job losses.

A darker element lurks beneath the public's radar – organized crime plays a major role in intellectual property theft and counterfeit goods, says Alan Drewsen, executive director of the International Trademark Association.

"It's a threat that has only increased as criminals use the Internet to open new channels of distribution," Drewsen says.

It's enough of an issue that the U.S. Department of State views the enforcement of intellectual property rights as "critical to the functioning of a healthy world economy," states Megan Mattson, a State Department spokeswoman.

The notion of intellectual property consists of three elements whose interaction strikes a balance that is becoming increasingly fragile. The first element relates to the author or creator (a writer, photographer, sculptor, designer, architect or an inventor) and his or her creation (a book or computer program, a work of art, apparel and accessories, a building or an invention).

The second component is society's connection – people like you and me who enjoy these creations.

The final element consists of the legal framework set up to achieve the balance that enables the public to gain access to the work of authors, who, in return, receive fair

compensation for the use of their intellectual creations. These rules, known as intellectual property rights, lay down the conditions under which we are able to read *The Catcher in the Rye* by J.D. Salinger, to listen to "Penny Lane" by The Beatles, to see the Fallingwater house by Frank Lloyd Wright, to buy the two-wheel vehicle created by Dean Camen for Segway or to write this article on our PC.

It is important to stress that, although each country has its own intellectual property rules, it is also true that they follow, in one way or another, the same principles. A work by The Beatles, for instance, is protected in a similar way in the United States as it is in France, Argentina or Japan.

According to the Global Intellectual Property Center, an affiliate of the U.S. Chamber of Commerce, intellectual property in the United States alone is worth \$5.5 trillion, which is more than the gross domestic product of any other country according to "The Economic Value of Intellectual Property," published by USA for Innovation.

Intellectual property-intensive industries employ 18 million Americans. Movies, music and books created and copyrighted by American artists and writers are seen, heard and read every day in every country and are responsible for nearly 5.4 million U.S. jobs.

The U.S. Motion Picture industry alone employed 357,300 in 2007, according to the Bureau of Labor Statistics. However, those employment numbers would be much higher without Hollywood pirates. According to the Institute for Policy Innovation's Center for Technology, without the presence of intellectual property theft, more than 141,000 could have been hired in the motion picture industry, including nearly 46,600 jobs connected to the industry. According to the Motion Picture Association of America, in 2005, the worldwide motion picture industry, including foreign and domestic producers, distributors, theaters, video stores and pay-per-view providers lost \$18.2 billion to piracy.

Illegal commerce in intellectual property and the sale of counterfeit products puts a serious crimp on business and government finances, adding insult to injury in this turbulent world economy.

The FBI estimates the counterfeiters and property pirates cost U.S. businesses up to \$250 billion every year. And international copyright infringement cost U.S. companies up to \$9 billion in trade losses, according to the Intellectual Property Alliance. Those losses continue to grow.

In fiscal year 2008, the U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement



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seized more than \$272.7 million in pirated and counterfeit goods, a 38 percent increase from 2007.

In California, software vendors lost more than \$1.3 billion in 2007, more losses than 98 other countries and any other U.S. state. Expand the losses to software distributors and service providers and you can erase another \$4 billion, enough to employ 16,000 tech workers, according to Neil MacBride, author of, *Software Piracy: A Lawless, Digital Version of the Wild West*.

These losses are often a huge benefit for organized crime networks, which view the practice as a low-risk, high-revenue producing activity. But agencies are fighting back.

The office of the United Nations Interregional Crime and Justice Research Institute (UNICRI) works globally to raise the awareness of the consequences of counterfeiting and to enhance cooperation between international businesses and governments.

"We are convinced of the need to raise the general public awareness," says Sandro Calvani, UNICRI's director. "The public should understand better the consequences of

counterfeiting and its links with organized crime, and thus reduce the demand for 'fakes.'"

Since 2004, the State Department has distributed up to \$3 million annually through its IPR Enforcement Training Program to assist foreign governments in areas of customs, police and the courts. International governments have received more than \$14.5 million for 68 programs in targeted countries.

The State Department also actively participates in the global Strategy Targeting Organized Piracy (STOP!) initiative, a comprehensive approach to fight global piracy. The agency works with U.S. counterparts to systematically dismantle piracy networks, block counterfeits at the nation's borders and help American businesses secure and enforce their rights around the world.

So, what contributes to this fragility in an increasingly modernized and globalized world? Simply put, two major revolutions.

The first radical change occurred in the late 1990s, when digital technologies, new media (mainly the Internet)

and novel systems of information exchange began to grow and spread, which led to inventions such as peer-to-peer or Usenet. These systems stimulate and facilitate the need for access to information that we all have today.

Prior to the digital revolution, one was required to resort to conventional means to obtain copyright, patent or trademark use for art, science and designs. That necessitated contact with the owner of the intellectual property to obtain print or reprint rights, the formula or engineering specifications, or the means to reproduce designs.

In today's world, the public is a couple of clicks away from obtaining almost every popular image on the Internet, along with easy access to patent and design information. New printing and engineering technology allows one to reproduce just about anything by sending this information to an overseas producer via the Internet.

Obviously, this breaches intellectual property law, but it has also spawned the second metamorphosis revealed in the changing attitudes of consumers in relation to the goods (creations) protected by intellectual property.

In Spring 2009, the Central University of London conducted a study on consumer online behavior (www.ucl.ac.uk/infostudies/research/ciber/SABIP-executive.pdf) and found that the huge increase in the scale of illegal downloading was due to shifting perspectives toward intellectual property and widespread confusion about copyright law.

Digital consumers live and act in an age of one-click searches, downloading and sharing billions of pounds of copyrighted material, which they believe to be free. The scale of illegal downloading is vast and growing, and it has never been so easy to break the law, according to the study.

Consumers are confused about what is legal or illegal. There are fewer considerations guiding ethical behavior in the online world and there is a strong belief that there is "no victim and no crime," the study found.

Some European countries are exhibiting troubling signs of change where political parties are emerging with the sole purpose of radically modifying existing intellectual property laws.

These parties have the common denominator of being called "pirates parties," a reference to "pirating" or stealing intellectual property rights. These groups began

to emerge after Sweden's Circuit Court of Stockholm imposed severe sanctions on the owners of The Pirate Bay. There has been a growth spurt ever since and these parties are now found in Sweden, Austria, Finland, France, Spain and Argentina, and they have become sources of pressure with increasing influence.

The market and political situation in Latin America is even worse. Over half the CDs sold in Peru are counterfeit and the traffic in pirated software is even greater.

Indeed, the preponderance of software used in government agencies, in many countries in the region, is "bootleg." In Venezuela, as part of the "Bolivarian Revolution," the current government has embraced the so-called "open-source" movement for software and other forms of technology and artistic creations. These ideals are being exported to countries with similar politics.

In South Africa, the Philippines and much of the developing world, governments are subjecting "essential" medications to fixed pricing ceilings or allowing the introduction of "reverse-engineered" generics. The governments are attempting to control free-market forces and push responsibility to the private sector, rather than stepping up to help their people through subsidized health care.

So again, what's the harm in all this?

Put yourself in the shoes of the creator, business owner or investor. Product creators flee markets that don't protect their works. Business owners and investors abandon markets or cease to develop new technologies or merchandise if they can't recover research and development costs. Jobs are lost, tax revenue diminishes and organized crime takes an even larger role to fill the void. Bottom line? People suffer – and not just the creators of intellectual property.

But the harm can extend much deeper, too. Consider the production of a counterfeit "Italian" designer purse. The merchandise was likely made in Italy, in a sweatshop staffed by Asian immigrants smuggled in by organized crime. These people work, sleep and eat in the same building. Some are hooked on drugs, others are lured into prostitution or other criminal enterprises – but they are the lucky ones.

Some die in the shipping containers on their way to the Naples docks, unable to tolerate the inhumane conditions of being crammed into a box designed to ship goods overseas, for the long seaward voyage in their quest for a "better" life.

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