

# Counterfeiting perspectives

## The same problem but different priorities

**Trademark owners, governments and law enforcement agencies all claim to want to eradicate IP crime. The problem is they find it difficult to work together to achieve their aims.**

It seems simple enough: counterfeiting and related crimes cost companies millions – even billions – of dollars in lost revenue, deprive people of jobs and exchequers of tax income; they can be lethal; and are often perpetrated by very dangerous people. If ever there was a case for high-level cooperation between businesses, governments and law enforcement agencies, surely tackling IP crime is it. All too often, however, the reality is that this is easier said than done.

Clearly there are areas where partnership has been extremely successful, not least thanks to the lobbying work of organizations such as the International Trademark Association and the International Anti-Counterfeiting Coalition. Both of these organizations, and others as well, have spent much time and money in working with governments to improve IP laws, and with enforcement authorities to help them put these laws into practice. On the government and law enforcement side, too, there have been a number of initiatives. Bodies such as Interpol and the World Customs Organization have been prominently involved in highlighting the dangers of IP theft, while in Europe through national governments and at the European Commission level there have been wide-ranging attempts to tackle the issue – most recently the IP Enforcement Directive, now being implemented in EU member states. Probably most successful of all has been the US government and its use of the Special 301 provisions to persuade countries across the world to take the protection of IP rights more seriously. So, without doubt, levels of awareness about counterfeiting are higher now than they have ever been before.

And yet, the problem keeps growing. What seems to cause everyone difficulties is looking at the issues in the round. Trademark owners, for example, have rightly put a great deal of pressure on both governments and law enforcement agencies

to take the theft of their rights seriously. But talk to some observers and they will tell you that there are many cases where companies themselves turn a blind eye to counterfeiting, labelling it an unavoidable expense as it can cost more to bring criminals to justice than it does just to write-off their activities. A pragmatic business decision perhaps, but one that does nothing to convince criminals that trademark theft is nothing but an easy and lucrative activity. The fact is that working with the police or customs to fight counterfeiters and pirates is an expensive operation; to stand any chance of success companies have to be in it for the long term. It often means having to look outside marketing or legal departments for expertise by appointing specialist security officers – people whose skills cost and do not immediately bring benefits to the bottom line. The same thing can be said for installing much of the anti-counterfeiting technology that is available on the market.

In the same way, governments around the world now pay homage to the importance of IP rights. Yet how much IP policy is fully thought-through? It becomes much harder to be taken seriously as a force for good in the fight against IP crime when budget restrictions mean that customs and other enforcement agencies find they have to make cuts as the challenges they face mount. In the same way, how much of a deterrent to IP criminals is existing legislation? Then there is the whole issue of internal communication – does one government department know what the other is doing when it comes to intellectual property, for instance? And let's not forget tax. In the end, does raising the tax on certain products create more benefits than the problems it will lead to in terms of counterfeiting and piracy? How often are such issues even considered?

Finally, there are the enforcement agencies – the customs departments, the police forces, the intelligence services. Despite the efforts of senior personnel, how many of the agents on the ground are willing to take IP crime as seriously as, say, house theft or violent crime? While it is clearly vital to track down the

manufacturers and distributors of counterfeit medicines, is the same urgency applied to those who choose to produce and sell fake perfume or clothes? Yet we know that the people doing such things are frequently just as much of a menace to society as the average criminal – often far more so. Is lack of resources always an adequate explanation for lack of action, or is it sometimes more likely to be down to lack of interest?

The challenge, therefore, is for all three sectors to see the wider picture: to understand not only their own priorities and methods of working but how these can affect – in a positive or negative way – the work being done elsewhere. Inevitably, this means more resources, a lot more education, and levels of dialogue and trust that in many cases have yet to be properly established. The good news, however, is that none of it is brain surgery – it can happen as long as there is goodwill on all sides.

But in the end, whatever initiatives are undertaken, it is a safe bet that counterfeits and pirate products will still be available to those who are willing to buy them. How many honest citizens, appalled by what they perceive as rising levels of violent crime, know of people who have bought counterfeit or pirate goods some time in the last year? The odds are that it is a good few at least. And until such law abiding citizens are able to understand the connection between this activity and the violent world they see about them, the task of trademark owners, law enforcement agencies and government bodies in tackling IP crime is going to be a thankless one.

Over the next few issues, these are the kind of themes I will be examining, by paying close attention to all those with a stake in the struggle against IP crime. There is a war to be fought out there. The question is: are we capable of devising a strategy to win it? [WTR](#)

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