

REPORT REVIEW

# OECD Report: The Economic Impact of Counterfeiting and Piracy.

On February 26 the Organisation for Economic Co-operation and Development (OECD) will officially launch its Report on The Economic Impact of Counterfeiting with a half day conference in Madrid, Spain, even though the final report has been available from the Organisation's website since summer 2008. The 30-country OECD created this report with the assistance of WCO (World Customs Organization), WIPO (World Intellectual Property Organization), WTO (World Trade Organization) and Interpol. The WCO, which groups some 170 customs administrations who collectively administer 98% of international trade, had a major impact on the report by providing statistics on seizures related to cross border trade.

## Key Elements of Report

Some of the elements of the Report are as follow:

- Analyses the structure of the markets for counterfeit and pirated products; the analysis highlights the importance of distinguishing those consumers who knowingly purchase counterfeit or pirated products, from those who are deceived;
- Assesses the scope of products being counterfeited and pirated;
- Estimates the potential magnitude of counterfeited and pirated goods in international trade, based on a new econometric model;
- Establishes and applies a 17-point framework for assessing the effects of counterfeiting and piracy economy-wide, as well as on rights holders, consumers and governments;
- Examines in detail the situation in the audio-visual, automotive, electrical components, food and drink, pharmaceutical and tobacco sectors;
- Outlines ways that information and analysis on counterfeiting and piracy could be strengthened; and;
- Suggests areas where policies and practices to combat counterfeiting and piracy could be strengthened.

The OECD's full assessment is to be completed in three phases, of which this is the first. In this phase, infringements of trademarks, copyrights, patents and design rights are examined, to the extent that they involve physical (ie. non-digital) products. This means that intangible products such as digital files exchanged over the internet or by other electronic means are not covered in this report.

### Phase 1 Assessment

The Phase I assessment was structured to include:

- 1) An analysis of trends and develop-

ments, and an assessment of the effects of counterfeiting and piracy on rights holders, consumers and society at large (including governments);

- 2) Exploration of techniques that can be used to improve measurement of the volume and scope of counterfeiting and piracy worldwide;
- 3) A description and assessment of the polices and measures being used to combat counterfeiting and piracy in OECD and non-OECD economies, at both the national and multilateral levels; and
- 4) A series of industry sectoral assessments that illustrate the various forms that counterfeiting and piracy can take, and the different types of effects that counterfeit and pirated products can have on affected parties.

The Report is in essence an overview of the menace that counterfeiting poses to industry world-wide. The report states that counterfeiting and piracy is a global problem affecting a wide range of industries, and that it may have a devastating impact on society as a whole. The Report discusses the means of protection against counterfeiting and presents policy initiatives. It also notes that: 'counterfeiting is a severe problem and the common perception is that it is increasing, however, it is virtually impossible to find accurate statistics to substantiate these perceptions, not least because of the clandestine nature of the activity.'

### Begging the Question

This begs the question – how big is counterfeiting piracy and, if the OECD

Driving Factor	Condition favouring Counterfeiting & Piracy	Category
<b>Market Characteristics</b>		
Unit profitability	High unit profitability	} Market potential
Market size	Large potential market(s)	
Genuine brand power	High level of brand recognition or popularity	
<b>Production, distribution &amp; technology</b>		
Production investments	Simple, low cost equipment	} Market exploitation
Technology requirements	Not sophisticated, easy to acquire	
Logistics	Simple & cheap logistics	
Marketing & sale of products	Easy to establish /infiltrate distribution channels	
Ability to conceal operation	Easy to hide illicit operations	
Ability to deceive	Easy to deceive consumers	
<b>Institutional Characteristics</b>		
Risk of discovery	Low risk of detection	} Market risks
Legal & regulatory framework	Weak laws	
Enforcement	Weak enforcement	
Penalties	Weak sanctions	

Factors driving supply of infringements

say it is virtually impossible to find accurate statistics, where do the numbers come from?

Previously the OECD has written, 'The overall costs of counterfeiting in the world today are normally estimated to be 5-7% of world trade. There is no substantial aggregated data to support the high percentages, but the figures are now accepted and used to illustrate the extent of the counterfeiting problem...'

The origin of this cited number range, 5-7% , as stated by Peter Lowe of the Counterfeiting Intelligence Bureau, part of the International Chamber of Commerce, in a previous article, 'is lost in the mists of time, but most people have become comfortable with it'. Unfortunately, there is little empirical data to back this up, apart from customs seizure statistics.

The OECD Report points out that government efforts to combat counterfeiting and piracy are 'hampered by a lack of information on the magnitude and scope of the problem worldwide' and goes on to say 'The clandestine nature of infringing activities and consequent difficulties in developing statistical information have been key factors in this regard.'

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**OECD Report.. cont'd**

(Which some might regard as stating the obvious...!)

The OECD endeavoured to overcome this situation. Research was carried out in co-operation with individuals, firms, organizations and governmental agencies that have expertise and experience in IP areas. Information was collected from various sources, including surveys distributed to governments. 20 responses were received out of the 36 general country/economy surveys sent to OECD member countries and six non-member economies. The customs survey was sent to all 169 WCO members with 70 replies received, and 80 responses to the industry surveys, which were made generally available and were widely distributed by industry associations. Furthermore, two expert meetings were organized to explore ways to improve measurement techniques.

**Executive Summary**

The analysis carried out in the report indicated that *international trade* in counterfeit and pirated products could have been up to \$200 billion in 2005. The Report states that ‘...this total does not include domestically-produced and consumed counterfeit and pirated products and the significant volume of pirated digital products being distributed via the Internet. If these items were added, the total magnitude of counterfeiting and piracy worldwide could well be several hundred billion dollars more.’

It states that ‘To date, no rigorous quantitative analysis has been carried out to measure the overall magnitude of counterfeiting and piracy. This report notes the difficulties that would need to be addressed before such an estimate could be made, and then presents a methodology for estimating the role of counterfeiting and piracy in international trade, which is only a part, albeit an important one, of the total picture.’

Elsewhere it says ‘It should be noted that the customs data, while detailed, have important limitations. The most notable is that the data only reflect information on infringing items that have been detected in international trade; also, as noted above, for some economies, such as the United States, the data only capture violations of copyrights and trademarks. The actual overall scope is without doubt more broad.’

**Increasing Threat**

The scope is broad, and worse yet, it

Driving Factor	Condition favouring Counterfeiting & Piracy	Category
<b>Market Characteristics</b>		
Price	Low price; big difference in price to genuine item	Product
Quality & nature of product	High quality; small difference in quality to genuine item	
Ability to conceal status	Easy to conceal infringing nature of the product	
<b>Consumer Characteristics</b>		
Health concerns	No or low health impact	Consumer
Safety concerns	No or low safety impact	
Personal income	High budget concerns by consumers	
Personal values	Low regard for IPR and related laws	
<b>Institutional Characteristics</b>		
Risk of discovery	Low risk of discovery	Institutions
Risk of prosecution	Low risk of prosecution	
Penalties	Weak sanctions	
Availability and ease of acquisition	Easy access and availability of products	
Socio-economic factors	Lack of concern for IPR etc	

*Drivers of demand for non-deceptive infringements*

appears to be expanding. Many respondents to the economy and customs officials survey noted that counterfeiters/pirates had broadened their activities from a focus on luxury goods to common consumer goods. Over 50 % of respondents believe the scope of infringing products being traded expanded during the past five years, with 26% indicating that expansion has been rapid.

**Market Feedback**

The Report has been broadly welcomed, with remarks from the likes of Jeff Hardy, BASCAP Coordinator of the International Chamber of Commerce, that ‘it contributes to our understanding in that it provides further evidence, brings together more data, and contributes to the process of education.’

He went on to say, ‘It was recognized that top econometricians were employed, using innovative analytical models to try and fill-in the significant holes in the data to come up with a scientific conclusion. No fewer than nine categories of indirect costs were identified, if not quantified, such as loss of taxes, social impact and technical transfer, which is welcome.’

John Anderson, of the Global Anti-Counterfeiting Group (GACG) said, ‘any examination is a good thing, and the OECD is to be commended for performing this important work. It is recognized that it is a professional and honest work, well written and in great detail.’

Both noted, however, that there are areas that ‘could have been done better.’ It was felt that the originator of the Report, the OECD, is seen by many as a ‘rich-man’s club’, co-founded by the developed world and by multinational companies. The Report, paid for by those entities, names important and significant sources of counterfeiting and piracy, that are non-G8 countries. This, in itself, will ‘dampen’ the enthusiasm of those countries to take part in the fight. The thought that the effort should be on a more ‘neutral and global level, perhaps

through a UN agency, was put forward.

A significant drawback of the effort was that no new money was granted so that new empirical research could be performed. It is a ‘snapshot’ of enforcement customs seizures, but it is impossible to directly

correlate these seizure statistics to economic impact. Further, the international data was said to be flawed due to the fact that not all countries reported, and that the data the multinationals provided was not all ‘apples and apples’, that different data and methodologies were employed.

**Downplaying Impact**

Most crucially, the Report was said to almost ‘down-play’ what they found, that the impact on world trade is ‘up to \$200 billion...’ while ignoring data on the manufacture, distribution and sale of counterfeit and pirated products within country borders.

This under-reporting, which was acknowledged by the OECD, is estimated at a further \$400 billion or more by organizations such as BASCAP. This is broken down into:

- Internet - \$150 billion
- Domestic counterfeiting and piracy - \$180 billion
- Tax loss, social impact etc - \$100 billion

The unfortunate result of a low ‘media headline’ value of \$200 billion, rather than \$700 billion, as independently stated by leading organizations in anti-counterfeiting such as the GACG and BASCAP, is to reduce the impact and therefore the impetus for change.

**Conclusion**

There can be no doubt that the valuable work performed by the OECD is a crucial step towards quantifying the problem, putting the mechanisms in place to control it, and to educate everyone on the implications of what the Economic Impact of Counterfeiting and Piracy really means. There is also no doubt that the problem is bigger than reported, and that hopefully, the understatement will not remove the impetus for action.

[www.oecd.org/sti/counterfeiting](http://www.oecd.org/sti/counterfeiting)