

WONGPARTNERSHIP

Addressing Counterfeiting and Piracy:  
A Development Perspective

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Use of Intellectual Property for Enhancing Economic  
Competitiveness and Development*

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Outline

- Why Tackle Counterfeiting and Piracy?
- Definitions
- Impacts to business
- Sources of the threats
- Summary

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Treaty Sources

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Part III
  - domestic procedures and remedies for the enforcement of intellectual property rights.
  - general principles applicable to all IPR enforcement procedures
  - provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures
  - remedies that must be available so that right holders can effectively enforce their rights.
- No obligation to place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general

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### Treaty Sources

- WIPO Development Agenda
  - To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”, in accordance with Article 7 of the TRIPS Agreement.

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### Intellectual Property Paradigms

- “Creations of the mind”
  - “Intangible property”
  - Can be incorporated an unlimited number of times in tangible property
- Engine of the knowledge economy
- Multiple users, borderless world
- New technologies
  - Cheap and perfect copies
  - Rapid dissemination

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### The Digital Dilemma

*“The Web is an information resource of extraordinary size and depth, yet it is also an information reproduction and dissemination facility of great reach and capability; it is at once one of the world's largest libraries and surely the world's largest copying machine.”*

- The Digital Dilemma  
Committee on Intellectual Property Rights in the Emerging Information  
Infrastructure, National Research Council

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### Why Tackle Counterfeiting and Piracy?

- Role of IP Rights
  - Incentive to innovate
  - Recognises a concept of ownership
  - Creates a market for exploiting innovation
  - Creates jobs, drives economic growth
- Piracy undermines these economic objectives
- New technologies imposing greater urgency for addressing piracy

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### National Impacts

- Government
  - Lost tax revenue due to illegal sales of counterfeit and pirated goods
  - Cost of IP enforcement
  - Risks of counterfeits entering supply chains with national security or civilian safety implications
- Economy as a whole
  - Lower economic growth as a result of reduced incentives to innovate
  - Lost revenue from declining trade in countries with weak IP rights regimes

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### "Counterfeiting"

- "Copy-cat" products imitating the original product
- Often involves trade mark infringements
- Customer deception
- Cf TRIPS Art 51, note 14(a)
  - "... any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation"

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"Piracy"

- Copies made without the right holder's consent
- Often involves copyright infringements
- Customer is not deceived and is often aware the goods are pirated
- TRIPS Art 51, note 14(b)
  - "... any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation"

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Impacts to Businesses

- Revenue loss
- Impacts job creation and further research & development
- Impacts innovation & competitiveness
- Reputational risk
  - Product quality
  - Product safety
  - Injury claims

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Sources of the Threat

- Production/Manufacturing
  - "inside jobs"
  - theft of IP/physical goods
  - leakage & overruns
- Markets
  - itinerant traders
  - retail outlets
  - Internet
- End consumers
  - illegal file sharing/copying

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### Dealing with Counterfeiting & Piracy

- Security measures
  - Physical controls and restrictions
  - IT policy discipline
  - Anti-counterfeiting features on products
    - Physical
    - Digital
- Consumer education
- Market surveillance
- Secure and enforce IP rights
  - Establish IP management policies
  - Border control measures
  - Criminal proceedings
  - Civil proceedings

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### Why Respond to the Piracy Threat

- Deceptive trademark infringements
- Health and safety risks
- Reputational risks
- Tarnishment of brands – local and international
- Revenue losses
- Organized crime syndicates
- Weakens incentives to innovate and create
- May stifle domestic growth of knowledge industries

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### Thank You!

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