

Chapter 3

CURRENT CONDITIONS IN COUNTERFEITING AND PIRACY

3.1. Summary

This chapter presents information on what is currently known about counterfeiting and piracy in different economies and in different product areas. The information has been drawn together from a variety of sources, including analysis that was carried out by governments, industry and research organisations, and information developed through two government surveys and an industry survey that were conducted by the OECD. Issues covered include the:

1. Scope and magnitude of counterfeiting and piracy activities.
2. Areas where the counterfeiting and piracy are taking place.
3. Distribution channels for counterfeit and pirated products.
4. Consuming areas.
5. Economies where counterfeit and pirated products are being sold.
6. Role of criminal networks and organised crime.

With respect to scope and magnitude, available information provides only a crude indication of how widespread counterfeiting and piracy might be. What is not known overwhelms what is known. This became readily apparent when reviewing the information provided in the responses to the OECD country/economy, industry and customs-specific questionnaires¹⁴. For the most part, neither governments nor industry were in a position to provide solid assessments of their respective situations. One of the key problems is that data have not been systematically collected and evaluated by either of the stakeholders. In many instances, the assessments that parties have made rely excessively on fragmentary and anecdotal information; where data are lacking, unsubstantiated opinions are often treated as facts.

One exception concerns copyright-based sectors. The software, music and film industries have invested considerable time and effort in developing frameworks for evaluating the magnitude, scope and effects of piracy, using surveys, investigative work and inferential analyses as bases. Greater transparency and debate on their methodologies

14. The general country/economy survey was sent to the 30 OECD member countries and to six non-member economies. The customs survey was sent to all 169 WCO members. The industry surveys were made generally available and were widely distributed by associations. Nineteen responses were received to the general country/economy survey, 70 responses to the customs-specific survey and approximately 80 responses to the industry survey.

could help to develop more robust models that would advance work on measurement techniques, both overall and in their respective sectors.

Principal conclusions are as follows:

- *Scope and magnitude.* The *scope* of products being counterfeited and pirated is broad and expanding; a notable shift is occurring from luxury to common products; the health and safety risks associated with substandard counterfeit products is a growing concern. Little is known about the overall *magnitude* of the problem as activities are clandestine and fake/pirated products are increasingly difficult to detect.
- *Areas where counterfeiting and piracy are taking place.* While counterfeiting and piracy are taking place in virtually all economies, activities are strongest in Asia, with China emerging as the economy where activities appear to be most widespread.
- *Distribution channels for counterfeit and pirated products.* Counterfeit and pirated products, previously distributed largely through informal markets, are increasingly infiltrating legitimate supply chains, with products now appearing in the shelves of established retail shops. The Internet has provided counterfeiters/pirates with a new and powerful means to sell their products via auction sites, stand-alone e-commerce sites and email solicitations.
- *With respect to trans-border transactions.* Counterfeiters/pirates are constantly altering their tactics to avoid detection; this, combined with the volume of trade passing through ports, poses significant challenges to customs authorities. Free-ports have emerged as an important lieu for processing counterfeit/pirated products.
- *Economies where counterfeit and pirated products are being sold.* Counterfeit and pirated products are being consumed in virtually all economies, but consumption patterns vary for different products. Analyses of specific sectors indicate, for example, that the Middle East represents an important market for automotive parts, while Africa is a major destination for counterfeit pharmaceuticals. Counterfeit cigarettes, on the other hand, are appearing in a broader range of markets.
- *Role of criminal networks and organised crime.* There is clear evidence that criminal networks are playing a significant role in counterfeiting and piracy, and that organised crime figures prominently in this regard. The high profitability of many counterfeiting and piracy operations and low risk of detection and prosecution have provided an attractive environment for the illegal activities. The networks sometimes resort to extortion and bribery of public officials to facilitate their operations, thereby weakening the effectiveness of public institutions at the expense of society at large.

As shown in Table 3.1, the views of governments tend to support these conclusions.

Table 3.1. Views on trends and developments in counterfeiting and piracy, by economy

Economy	Expansion from luxury to common consumer goods	Increase in volumes of infringing goods	Increase in goods that represent a threat to public health and security	Growth of illegal activity on the Internet	Organised crime is a factor
Australia	•	•	•	•	
Canada	•	•	•	•	•
France	•	•	•	•	•
Germany	•	•	•		
Hungary	•	•		•	•
Israel*					
Japan		•		•	
Korea		•			
Mexico*					
Netherlands		•	•		
New Zealand	•	•		•	
Poland*	•			•	•
Portugal	•	•			○
Russia	•	•	•		•
Spain	•	•			
Sweden	•	•	•		
Switzerland		•		•	
Chinese Taipei	•			•	
European Union	•	•	•		•

Notes:

○ Suspected.

* Israel and Mexico provided a general response but not for this section.

Source: OECD (2005b).

3.2. Scope

The scope of infringement concerns the range of products that have been subject to trademark, copyright, patent and design infringement. Concrete evidence of what has been infringed in these areas is available from a variety of sources, including customs and other enforcement activities, investigations carried out by industry and research organisations and legal proceedings. In the case of trademark and copyright infringement, the volume of information available is relatively large from each of the sources mentioned.

In the case of patent and design rights, however, infringement information is less readily available. Not all customs agencies, for example, record data on patent infringements at the border, as these products are not generally seized -- they are simply denied entry. Moreover, industry and research organisations do not appear to have carried out studies of patent infringement from a sectoral aspect. This leaves legal proceedings as virtually the only source for developing sector-specific information; collecting information from such proceedings would, however, be a daunting and resource-intensive undertaking.

The OECD survey of industry provides indications of the types of infringements that are of greatest concern to different industry sectors. Trademark violations were highlighted in most industry sectors, except for books, motion pictures, sound recordings and textiles, where design and copyright infringements were mentioned more frequently (see Annex Table 3.A1). Patents were mentioned as a concern in a number of sectors, but usually not as frequently as other infringements.

In terms of the range of products being infringed, information developed during the course of the study indicates that the scope of products being counterfeited and pirated is broad. Table 3.2 summarises some of this information. It should be kept in mind that the items mentioned in the table are only illustrative in nature; it is far from exhaustive.

Table 3.2. Examples of products subject to IP infringement

Industry sector	Examples of products subject to IP infringement
Apparel, footwear and designer clothing	T-shirts, hats, jerseys, trousers, athletic footwear, caps, socks, boots
Audio-visual, literary and related copyrighted work	Music, motion pictures, TV programmes, (CDs DVDs), software, books, computer/video games
Automotive	Sco-oters, engines, engine parts, body panels, air bags, windscreens, tires, bearings, shock absorbers, suspension and steering components, automatic belt tensioners, spark plugs, disc brake pads, clutch plates, oil, filters, oil pumps, water pumps, chassis parts, engine components, lighting products, belts, hoses, wiper blades, grilles, gasket materials, rings, interior trim, brake fluid, sealing products, wheels, hubs, anti-freeze, windshield wiper fluid
Chemicals/pesticides	Insecticides, herbicides, fungicides, non-stick coatings, pioneer hi-breed corn seeds
Consumer electronics	Computer components (monitors, casing, hard drives), computer equipment, webcams, remote control devices, mobile phones, TVs, CD and DVD players, loudspeakers, cameras, headsets, USB adaptors, shavers, hair dryers, irons, mixers, blenders, pressure co-okers, kettles, deep fryers, lighting appliances, smoke detectors, clocks
Electrical components	Components used in power distribution and transformers, switchgears, motors and generators, gas, and hydraulic turbines and turbine generator sets, relays, contacts, timers, circuit breakers, fuses, switchgears, distribution boards and wiring accessories, batteries
Food and drink	Fruit (kiwis), conserved vegetables, milk powder, butter, ghee, baby food, instant coffee, alcohol, drinks, candy/sweets
Personal accessories	Watches, jewellery, glasses, luggage, handbags, leather articles
Pharmaceuticals	Medicines used for treating cancer, HIV, malaria, osteoporosis, diabetes, hypertension, cholesterol, cardiovascular disease, obesity, infectious diseases, Alzheimer, prostate disease, erectile dysfunction, asthma and fungal infections; antibiotics, anti-psychotic products, steroids, anti-inflammatory tablets, pain killers, cough medicines, hormones, and vitamins; treatments for hair and weight loss.
Tobacco	Cigarettes, cigars, and snuff
Toiletry and other household products	Home and personal care products, including shampoos, detergents, fine fragrances, perfumes, feminine protection pads, skin care products, deodorants, toothpaste, dental care products, shaving systems, razor blades; shoe polish, non-prescription medicine
Other	Toys, games, furniture, sporting goods (such as basket balls and golf clubs), stickers, dyed and printed exotic fabrics, belt buckles, decals, flags, lighters, tabletops, flowers, plant cuttings, qualification certificates, abrasive tools, sanitary products (bath tubs, wash basins, toilets), tableware (plates, bowls, cups)

Sources: OECD (2005a, 2005b) and related research.

Further information on scope emerged from the customs survey, in which officials reported on seizures/interceptions of infringing items. The value of the customs information rests in its detail. Thirteen respondents¹⁵ were able to report information on the basis of Harmonised System nomenclature, on a six-digit basis.¹⁶ Altogether, the economies identified 744 separate commodity items where infringement occurred, which represents 14% of the more than 5 200 HS items.¹⁷

The infringements covered 19 of the 21 product groupings that together define the full range of products that are commercially traded (Table 3.3).

Table 3.3. IP-infringing products seized by customs authorities in recent years

General HS commodity groupings	Items infringed (6-digit HS)
1 Live animals; animal products (incl. meat, fish and dairy products)	1
2 Vegetable products (incl. fruit, live plants, cut flowers, coffee, tea, grain)	1
3 Animal or vegetable fats and oils, prepared edible fats and waxes	0
4 Prepared foodstuffs; beverages, spirits and vinegar; tobacco and tobacco substitutes	15
5 Mineral products	0
6 Chemicals and related industries (incl. perfume and pharmaceutical products)	32
7 Plastic and rubber, and related articles	23
8 Raw hides, skins, leather and furs; travel goods; related articles	27
9 Wood & wood products; straw articles; basketware and wickerwork	6
10 Pulp and paper products (incl. books, newspapers, etc.)	39
11 Textiles and textile articles (incl. apparel and clothing)	224
12 Footwear, headgear, umbrellas, walking sticks, riding crops; artificial flowers	37
13 Stone, plaster, cement, ceramic and glass products	13
14 Natural or cultured pearls; precious or semi-precious stones; imitation jewellery; coins	10
15 Metals and metal products (including hand tools and cutlery)	42
16 Machinery and electrical equipment (incl. TVs, electronic equipment, software, CDs and DVDs)	128
17 Transportation equipment (incl. parts)	11
18 Optical and photo equipment; precision instruments; clocks and watches; musical instruments	57
19 Arms and ammunition	5
20 Misc. manufactured articles (incl. furniture, toys, games and sports equipment)	71
21 Works of art, collector's pieces and antiques	2
Total	744

Source: OECD (2006).

15. The respondents were Andorra, Canada, Chile, Fiji, Gabon, Mauritius, Moldova, Panama, Romania, Spain, Chinese Taipei, Thailand and the United States.
16. The economies reported data using the Harmonized Commodity Description and Coding System (HS). The system is a multipurpose international product nomenclature developed by the World Customs Organization. It comprises over 5 200 commodity items, each identified by a six-digit code. The system is used by more than 190 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade is classified in terms of the HS.
17. The most comprehensive list was submitted by the United States, which identified more than 600 items; in other economies, the number was less than 100.

The largest number of product groups seized/intercepted were textiles (30% of the total), followed by machinery and electrical equipment (17%). However, what is striking in a closer examination of the data is the number of products being counterfeited and pirated that could pose health and safety risks to unwitting consumers.

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 broader.

Not only is the scope broad, it appears to be expanding. As indicated above, many respondents to the economy survey noted that counterfeiters/pirates had broadened their activities from a focus on luxury goods to common consumer goods.

The survey of customs officials provides further support for this. As shown in Table 3.4, more than half of respondents believe the scope of infringing products being traded expanded during the past five years, with 26% indicating that expansion has been rapid. Those seeing a rapid expansion include the United States, which already has documented a large scope. Only four economies report that the scope narrowed.

Table 3.4. Scope of products subject to IPR border infringement during the past five years

The range of counterfeit and pirated products seized during the past five years has been:			
Expanding rapidly (13)	Expanding steadily (16)	Unchanged (17)	More limited (4)
Cyprus ¹⁸	Argentina	Andorra	Angola
EC	Canada	Australia	Panama
Ghana	Croatia	Bermuda	Slovak Republic
Hungary	Fiji	Bulgaria	Zimbabwe
Japan	Gabon	Chile	
Korea	Germany	China	
Kuwait	Israel	Estonia	
Latvia	Mali	Hong Kong, China	
Luxembourg	Norway	Indonesia	
Malta	Poland	Moldova	
Romania	Russia	Mongolia	
Thailand	Senegal	Namibia	
United States	Serbia	Portugal	
	Slovenia	Spain	
	South Africa	Sudan	
	Switzerland	Chinese Taipei	
		Turkey	

Source: OECD (2006).

18. Footnote by Turkey:

The information in this document with reference to “Cyprus” relates to the southern part of the island. There is no single authority representing both Turkish and Greek Cypriot people on the island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Footnote by all the European Union Member States of the OECD and the European Commission:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Additional information on scope tends to be anecdotal in nature. The ICC's Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative has been active on this front in collecting information on incidents, on a systematic basis (see www.bascap.com/news/index.html).

3.3. Magnitude

The overall degree to which products are being counterfeited and pirated is unknown and there do not appear to be any methodologies that could be employed to develop an acceptable overall estimate. However, insights can be gained through an examination of various types of information, including data on enforcement and information developed through surveys. This information has significant limitations, however, and falls far short of what is needed to develop a robust overall estimate. Work carried out on individual sectors has yielded a clearer picture for the sectors concerned; refinement of the measurement techniques used and expansion of efforts into other product areas could eventually help to develop a more complete picture of the overall situation. How these ideas could be taken forward is addressed further in Chapter 6.

3.3.1. Overall magnitude

Only one assessment appears to have been made on the overall magnitude of counterfeiting and piracy worldwide. In 1997, the Counterfeiting Intelligence Bureau of the International Chamber of Commerce published a document that indicated that the overall cost of counterfeiting in the world was about 5% to 7% of world trade. This represented an increase from an estimated 2% to 4% at the end of the 1980s (International Chamber of Commerce, 1997).

The metrics underlying the ICC estimates are not clear. Some have interpreted the figure to mean that counterfeit products traded internationally account for 5% to 7% of total traded goods; others have indicated that the figure relates total counterfeit production (which would include production for domestic consumption as well as export) to world trade. Nor is it clear what types of IPR infringements are included in the estimate. In its narrowest sense, counterfeiting refers strictly to trademark violations. If piracy is included, this would include patent, copyright and other forms of IP infringement. Finally, the ICC report indicates that the estimates reflect judgments that are not supported by clear data.

Insights into magnitude can, however, be gained through an examination of various types of information, including data on enforcement and information developed through surveys.

3.3.2. OECD surveys

The OECD survey of governments, while yielding no specific information on overall magnitudes, reflected a common view that the scope of counterfeit and piracy products is broadening (Table 3.4 above). Information provided by customs officials provides further insights, but the information has limitations as it only pertains to counterfeit and pirated items that enter into international trade.

The customs data show that the value of interceptions/seizures from 35 economies totalled USD 769 million in 2005, which represented 0.01% of total imports for the economies concerned (see Table 3.5 below and Annex Table 3.A2).¹⁹ Anecdotal evidence alone suggests that the actual level of counterfeiting and piracy in international trade is far higher than this figure. The low rate of detection reflects the relative ease with which the character of counterfeit/pirate trade can be disguised, and, as discussed later in this chapter, given with the limited ability of customs officials to physically screen the high volume of freight moving through ports.

Table 3.5. Value of seizures by economy (in USD), 1999-2006

Reporting economy	2006	2005	2004	2003	2002	2001	2000	1999
Andorra		295	1,283	1,457	12,882	1,215		32,924
Argentina		45,000						
Bulgaria		3,775,208						
Canada		17,260,470						
Chile		111,060	580,615	104,112				
China		12,364,000	10,169,748	8,212,229	11,552,030	9,892,715	6,848,774	11,114,194
Croatia		405,478	94,638					
Cyprus (a)		545,253	413,704	198,470	207,496	163,360	322,297	175,333
Czech Republic		13,873,564			12,120,833	2,696,409	1,394,711	
Fiji		20,632	2,736			205,465		
Germany		249,671,792	236,561,793	298,753,773	64,986,923	157,111,060	181,931,253	43,417,239
Ghana		399	126	300				
Hong Kong, China		57,007,498	74,437,655	62,844,180	69,909,195	60,333,608	43,333,703	67,832,811
Hungary		15,796,394	1,540,449					
Korea		135,164,773	151,805,641	380,525,541	156,069,558	174,834,463	103,000,670	
Kuwait		5,024,869						
Latvia		8,673,050	291,222	112,407	5,420,714	150,702	199,126	
Lebanon		1,787,528	10,105,771	6,264,790				
Mali		774,586	54,819	80,868	43,550	40,306	204,269	61,566
Malta		42,681,438	24,026,488	154,856	3,068,665	966,933		
Mauritius		366,744						
Mongolia		7,645						
Norway		812,404	1,572,844	1,122,752	287,121	166,453		
Panama		4,817,941	3,680,855					
Peru		5,456,000						
Portugal		8,498,626	4,175,111	2,251,550	3,606,309			
Senegal		44,343						
Serbia		1,022,626	344,565					
Slovak Republic		31,151	786,850	267,158	40,468			
Slovenia		7,500,735						
South Africa		65,755,613	41,740,654	51,718,817				
Switzerland		7,812,556	3,846,364	2,996,194	2,550,380	2,611,475	10,869,625	4,736,382
Thailand		1,288,743	2,925,621	195,403				
Chinese Taipei		6,986,761	11,306,959					
United States	150,000,000	93,234,510	138,767,885	94,019,227	98,990,341	57,438,680	45,327,526	
Total value		768,619,684						
<i>Number of reporters</i>	<i>1</i>	<i>35</i>	<i>25</i>	<i>19</i>	<i>15</i>	<i>14</i>	<i>10</i>	<i>7</i>

(a) See footnote 18, Table 3.4.

Note: See Annex Table 3.A2 for valuation principles.

Source: OECD (2006).

19. The response rate to the Customs questionnaire was not high from larger economies, which limited the usefulness of the results. As for the data itself, sizeable fluctuations from year to year in many economies made it difficult to observe any trends or patterns; moreover, in many cases the level of interceptions/seizures reported, when compared to other economies, raised questions about the consistency and comparability of the information. With regard to comparability, it should be noted that the basis for reporting interception values varied among respondents. Some reported on the basis of declared customs value while others reported market value or legitimate item value.

3.3.3. Other surveys

Other insights into overall magnitude are available through consumer surveys that have been carried out by governments, industry and other interested parties. Such surveys can help to develop information on conditions in the secondary market (where consumers knowingly purchase counterfeit and pirated products), but they would be far less useful with respect to the primary market (where consumers are deceived into purchasing a fake product, and may never realise that they had been deceived).

Caution must, of course, be exercised in interpreting the results of surveys, as participants may not necessarily report fully or truthfully on their activities, particularly if these activities involve unlawful deeds. While these limitations need to be kept in mind, the value of surveys in suggesting patterns and changes over time should not be underestimated.

Highlights from several consumer surveys, which tend to be economy based, follow. The surveys show similar patterns with respect to counterfeit or pirated products that consumers most commonly buy knowingly on secondary markets. With respect to the degree of reported counterfeit/pirated purchases, Hong Kong, China and UK respondents were roughly similar (34% to 40%); US respondents, which were asked a narrower question, reported a lower number of counterfeit/pirate consumers (13%) and Brazilian respondents reported a relatively high number (60%).

3.3.3.1. Hong Kong, China

Hong Kong, China has been using consumer surveys extensively to examine counterfeit/pirate buying practices since 1999. The annual surveys reveal a marked shift in reported frequency of buying pirated and counterfeit products over time, with more than half of respondents in the most recent survey reporting that they do not buy counterfeit or pirated goods, suggesting that the problem may be diminishing in magnitude (see Table 3.6). The surveys indicate that music and videos are by far the most common counterfeit/pirated product purchased, followed by software and clothing and accessories far behind (see Table 3.7).

Table 3.6. Hong Kong, China: Survey on frequency of buying pirated or counterfeit goods

(% of respondents)

	1999	2000	2001	2002	2003	2004	2005
Often	3.3	2.7	1.7	1.2	2.8	0.9	0.7
Sometimes	21.4	23.3	19.0	17.0	17.5	16.6	14.3
Seldom	34.6	35.9	32.8	30.9	30.2	27.3	25.5
Never	36.8	36.5	46.1	49.1	47.8	55.2	58.4
Other	3.9	1.6	0.5	1.8	1.7	-	1.1
Sample size	1 004	1 004	1 018	1 006	1 231	1 214	1 206

Source: Hong Kong Intellectual Property Department (2005).

Table 3.7. Hong Kong, China: Counterfeit or pirated products purchased most often

(% of respondents who reported purchases of counterfeit or pirated products)

Sector	2004	2005
Music or movie	63.0	63.8
Computer software	15.2	14.1
Clothing and accessories	7.7	12.3
Games	8.1	6.7
Books	1.9	2.1
Watches	1.2	0.5
Stationery	1.4	0.2
Accessories	-	0.2
Cigarettes	0.8	-
Packaged food	0.4	-
Toys	0.3	-
Sample size	488	544

Source: Hong Kong Intellectual Property Department (2005).

3.3.3.2. United States

Surveys carried out in the United States by the Gallup Organization indicate that 13% to 14% of survey respondents personally purchased, copied or downloaded products in 2004 and 2005 that they knew, or suspected, were not genuine (Gallup, 2005 and 2006). As is the case with Hong Kong, China the most common infringing articles purchased were music, movies and software, followed by clothing (Table 3.6 above). The types of products infrequently purchased also mirrored Hong Kong, China's experience (see Table 3.7 above).

In addition to the types of products purchased, the Gallup survey also provides information on the intensity and frequency of purchases in the various product areas (see Table 3.8 below); these variables are important inputs for any analysis to be carried out on magnitude. The data show, for example, that the intensity and frequency of infringing activities is highest in music where many units were acquired and where the number of times that purchases were made during the past 12 months was also relatively high. Caution needs to be exercised, however, as the sample size in most product areas is relatively small (*i.e.* involving less than 20 of the 1 012 persons surveyed).

Table 3.8. United States: Types, intensity and frequency of counterfeit or pirated products purchased by consumers, 2006

Sector	% buying infringing product	Respondents who reported purchases of counterfeit or pirated products during the past 12 months				
		% buying infringing product	Number of units purchased on most recent occasion		Number of occasions (in last 12 months)	
			Mean	Median	Mean	Median
Songs, music CDs or audiocassettes	6.5	47	20.7	2	14.7	4
Movies, such as VHS, VCDs or DVDs	5.1	37	6.6	1	10.5	2
Computer operating systems or applications	4.1	30	3.6	1	2.0	1.5
Brand name clothing, designer bags and footwear	3.3	24	4.4	2	2.1	1
Perfume or cosmetics	2.2	16	1.7	1	1.5	1
Toys	1.7	12	2.9	2	2.8	2
Jewellery	1.5	11	2.2	1	2.0	1
Food	1.3	9	9.0	2	1.7	2
Video games	1.2	9	3.6	1	5.8	3.5
Alcoholic beverages, soft drinks or mineral water	1.2	9	3.9	2.5	15.1	5
Pharmaceutical or medicines, not generics	1.0	7	3.4	2	4.0	2
Tobacco	0.9	7	4.5	2	10.7	2
Tools or auto parts	0.8	6	2.6	1	1.7	1.5
Brand name watches	0.6	4	1.2	1	2.0	1

Source: Gallup (2006).

3.3.3.3. *England and Northern Ireland*

In England and Northern Ireland, a joint project between government, academia and industry surveyed more than 2 000 people in 2005 to obtain knowledge about end-users' attitudes towards, motivations for, and consumption of counterfeit and pirated goods (Bryce and Rutter, 2005). The survey indicated that 34% of UK respondents had knowingly purchased counterfeit or pirated products at one time or another while 56% had never knowingly purchased an infringing product and indicated that they would not do so in the future. Some 7% indicated that while they had never knowingly purchased an infringing product, they might do so in the future; 3% of respondents were unsure about purchases. The totals were somewhat smaller for Northern Ireland, where 25% of respondents indicated that they had purchased infringing items.

As was the case with surveys in other countries, music, films and clothing were the most common articles purchased (see Table 3.9).

Table 3.9. United Kingdom: Types of counterfeit or pirated products purchased by survey respondents during the last 12 months

Sector	% of total respondents	Percent of those who purchased counterfeit or pirated products
United Kingdom		
DVDs	16	47
Music CDs	16	47
Fashion items	16	47
Digital games	7	21
Northern Ireland		
Music CDs	12	48
Fashion items	11	44
DVDs	10	40
Alcohol and cigarettes	5	20
Computer games	4	16
Business software	2	8
Toys	1	4

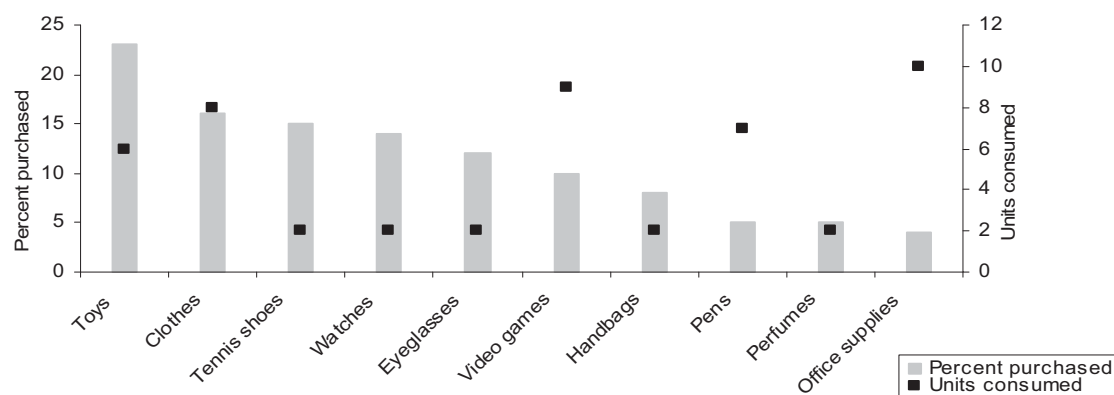
Source: Bryce and Rutter (2005).

3.3.3.4. Brazil

In connection with a study measuring demand for fakes, copies and unlicensed goods among Brazilian consumers (Machado, 2005), the Instituto Brasileiro de Opinião Pública e Estatística (IBOPE) surveyed 602 inhabitants of the city of São Paulo. Products covered included clothing, footwear, watches, handbags, eyeglasses, perfume, and video games. This indicated that 60% of the respondents had acquired a counterfeit or pirated product at one time or another.

Some 25% of the respondents reported having bought counterfeit toys within the last year, while less than 10% reported having bought handbags, pens, perfumes and office supplies (Figure 3.1). With respect to acquired quantities, or consumption intensity, the average number of purchased items was highest for office supplies (10); in contrast, purchases of tennis shoes, watches, eyeglasses, handbags and perfume averaged two items.

In a separate national survey, IBOPE found that some 29% of respondents indicated that they had purchased counterfeit clothing within a specified 12-month period, while some 16% indicated they had purchased counterfeit footwear.

Figure 3.1. Consumption frequency and intensity of counterfeit goods

Note: “Percent purchased” refers to the percentage of respondents who purchased the indicated goods, while “units consumed” refers to the average number of articles that was purchased.

Source: Based on Machado (2005).

3.3.4. Sectoral assessments

A number of industry sectors have developed methodologies and carried out research and analysis aimed at estimating the magnitude of piracy, both on a global basis, and in individual economies. The sectors concerned are those that have been heavily impacted by copyright infringement (Table 3.10).

Table 3.10. Industry estimates of piracy, by sector

Sector	Source	Year	Global piracy estimate
Movies	Motion Pictures Association	2005	57% (1)
Music	International Federation of Phonographic Industry	2005	37% (2)
Software	Business Software Alliance/IDC	2005	35% (3)

1. Purchase or receipt of a pirated movie on a VHS, DVD or VCD, as a share of total market (*i.e.* industry plus pirate); figures for MPA members only (*i.e.* Buena Vista International, Inc., Paramount Pictures Corporation, Sony Pictures Releasing International Corporation, Twentieth Century Fox International Corporation, Universal International Films, Inc., and Warner Bros. Pictures International).

2. Sales of pirated music CDs as a share of total sales (*i.e.* industry plus pirate).

3. Number of pirated software units as a share of the total number of software units installed.

Sources: Motion Pictures Association 2006, International Federation of Phonographic Industry, 2006 and Business Software Alliance, 2006.

The assessments are based on a number of different approaches that have been developed to take the specific characteristics of the sectors concerned into account. Movie piracy, for example, largely occurs on the secondary market, where consumers buy a product, knowing that it is pirated. Industry efforts have therefore focused on developing information on the extent to which this occurs in different economies, using consumer surveys, focus groups and the like as principal inputs.

Music industry efforts are more variegated; they are based on: 1) estimates received from national groups of sound recording producers; 2) estimates received from external consultants employed by the International Federation of Phonographic Industry (IFPI); and 3) seizure information extrapolated from IFPI's enforcement teams and data from the national groups.

The software industry's approach is far different. Total annual demand for software is estimated in different economies, based on: 1) surveys and related research into software use; and 2) the number of PCs in use. Legitimate software shipments are then estimated and subtracted from total demand to arrive at an estimate of pirated units. The entertainment software industry, estimates for which are not available on a global basis, uses a similar approach.

Assessing the methodologies employed, which would require far more information on the techniques used, is beyond the scope of this report. A general observation would be that information available on the methodologies is not sufficient to make any statements about the robustness of the results. More transparency would help to address this concern, and could provide an important basis for advancing work on measurement, both overall and in the sectors concerned.

3.4. Areas where counterfeiting and piracy are taking place

Information developed during the study suggests that counterfeiting and piracy are taking place in virtually all economies. This proposition is supported by an analysis of data provided to the OECD by customs officials. Reporting economies identified some 149 sources of counterfeit and pirated products, including 27 of the OECD's 30 member countries of which only Iceland, Ireland and Sweden were not mentioned. The sources mentioned include those economies where the counterfeiting or piracy actually took place, as well as economies that served as intermediate shipping points for infringing products.

While there are many sources, data from respondents to the customs survey²⁰ indicate that the five-largest sources generally accounted for more than 80% of total interceptions. Asia was the leading origin of the intercepted products, with China figuring prominently, appearing on 19 out of 20 of the lists (claiming the number one or two spot in 17 of the 20 listings) (Table 3.11). Hong Kong (China) and Thailand were on half as many lists.

A similar pattern emerges when looked at from the perspective of industry sectors. Information provided by industry in 12 sectors mentions China as a source in each. Russia (8), India, Thailand (7), Chinese Taipei, Turkey, Ukraine (6), Poland, (5), and Italy, Mexico, Pakistan (4) are also highlighted in four or more industry segments.

20. Data on seizures are based on the experience of the following economies: Andorra, Angola, Australia, Cyprus (see footnote 18), Estonia, Fiji, Gabon, Germany, Ghana, Korea, Latvia, Mauritius, Netherlands, Portugal, Romania, Spain, Thailand, United States and the European Union.

Table 3.11. Source of seizures of counterfeit and pirated products in recent years, by economy

Economy reporting seizures	Origin of seized items and share of total seizures (of known sources)
Andorra	Malaysia (57%), Korea (25)%, Mauritius (11)%, Morocco (4)%, China (2)%
Angola (a)	Morocco (43)%, UAE* (14)%, Thailand (14)%, China (14)%, South Africa (7)%, Congo (7)%
Australia (a)	China (26)%, Malaysia (20)%, Thailand (15)%, Indonesia (14)%, Hong Kong, China (8)%
Cyprus (b)	China (49)%, Philippines (13)%, Hong Kong, China (11)%, UAE ¹ (6)%, Korea (5)%
Estonia (a)	China (41)%, Russian Federation (29)%, Bulgaria (8)%, UAE ¹ (6)%, Turkey (6)%
Fiji (a)	India (96)%, China (4)%
Gabon (a)	China (100)%
Germany	China (46)%, Hong Kong, China (5)%, Vietnam (4)%, Chinese Taipei (13)%, Thailand (4)%
Ghana	Nigeria (100)%
Korea	China (94)%, Hong Kong, China (2)%, Belgium (1)%, Chinese Taipei (1)%, Vietnam (1)%
Latvia	China (56)%, Korea (26)%, Chinese Taipei (10)%, Thailand (7)%, Latvia (<1)%
Mauritius	China (92)%, Thailand (4)%, Indonesia (2)%, India (2)%
Netherlands (c)	China (48)%, Hong Kong, China (10)%, Turkey (3)%, Nigeria (3)%, Chinese Taipei (28)%
New Zealand (a)	China (52)%, Thailand (19)%, Korea (5)%, Hong Kong, China (4)%, Indonesia (3)%
Portugal	China (68)%, Korea (11)%, Malaysia (7)%, Portugal (4)%, Brazil (3)%
Romania	China (38)%, Iran (24)%, Moldova (16)%, Turkey (12)%, UAE ¹ (7)%
Spain	China (58)%, Thailand (9)%, United States (8)%, UAE (5)%, Hong Kong, China (4)%
Thailand	China (100)%
United States	China (69)%, Hong Kong, China (6)%, UAE ¹ (2)%, India (2)%, Pakistan (2)%
European Union (d,e)	China (38)%, Thailand (10)%, Hong Kong, China (8)%, Turkey (7)%, Malaysia (4)%, United States (4)%

(a) Based on number of seizures.

(b) See footnote 18.

(c) Based on top 10 sources.

(d) A number of EU member states provided data; this is reported separately, above.

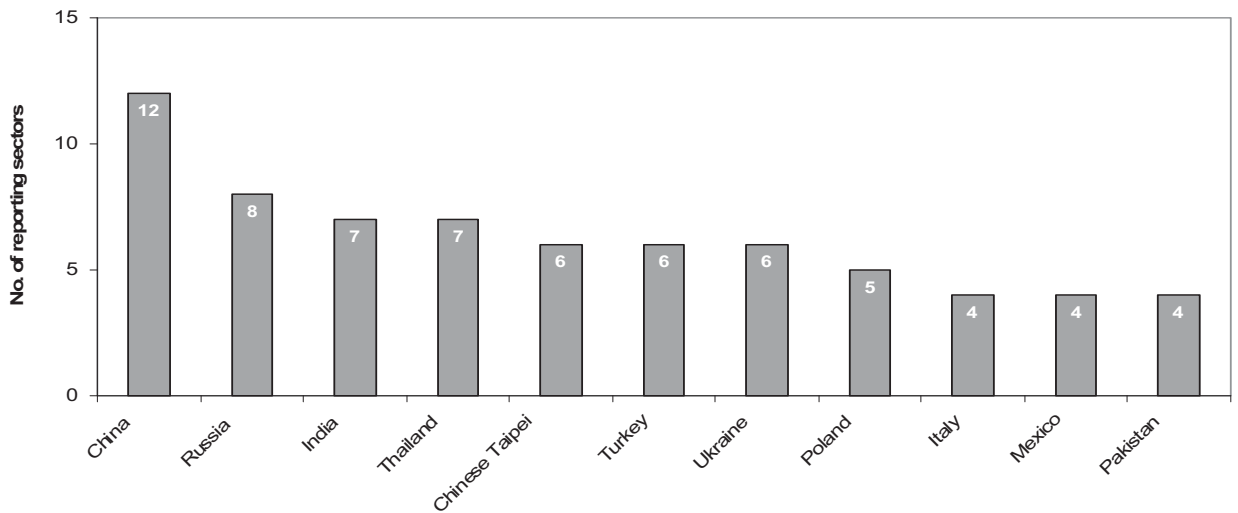
(e) Calculations based on total seizures, including those from unknown sources.

* United Arab Emirates.

Note: Except as noted, percentages represent the share of total seizures where sources are known; some respondents reported a significant level of seizures where the source was unknown. The data are based on reported values, except as noted.

Source: European Commission, 2006b; OECD, 2005b; OECD, 2006; and United States Department of Homeland Security, 2006.

**Figure 3.2. Economies listed as sources of counterfeit and pirated products:
Number of times listed by industry sectors**



Source: OECD, 2005(a).

As discussed in a number of the industry sector write-ups in this report, identifying the locations where infringement is taking place is often not straightforward. The automotive parts sector analysis, for example, indicates that unbranded parts have been made and exported without infringing an IPR from China to the Middle East, where they were repackaged and labelled in ways that infringed trademarks. In another case involving tobacco products, law enforcement officials uncovered an operation in which unbranded cigars produced in the Caribbean area were legitimately exported to the United States, where they were falsely packaged and resold as premium, branded products; the scale of the operation was significant as cigar bands, boxes, cellophane and other materials capable of packaging 30 to 50 million counterfeit cigars were found (El Buen Habano, 2006). Similar, localised counterfeiting has also occurred in the case of apparel, where infringing labels have been affixed to imported garments that have been acquired legitimately (with no infringement apparent) from garment producers and distributors.

Similarly, it is not known to what extent producers are aware that their product lines are being infiltrated, nor is it easy to pinpoint exactly where trademark infringement takes place. Indications are, however, that larger companies are more aware of infringements than small and medium-sized business enterprises. The US Chamber of Commerce recently attempted to identify small local manufacturers that had noticed an increasing tendency for their products to be counterfeited. In some cases, companies had carried out market surveys that showed that their market share had increased but that their sales had not gone up. This suggested that a third party (probably a counterfeiter) had benefited. The Chamber also conducted informal surveys of many of its small and medium-sized focus groups; it showed that the vast majority of SMEs in the US did not know whether their products had been counterfeited or pirated²¹.

21. According to discussions with the US Chamber of Commerce.

3.5. Consuming areas

It is apparent that counterfeit and pirated products are being sold in virtually all economies. As mentioned earlier, the levels appear to be higher (relatively speaking) in economies where informal, open-air markets predominate (*i.e.* in developing economies).

But there are also significant differences among products. The sector analyses contained in this report, for example, indicate that the Middle East is a principal market for counterfeit *automotive parts*, but that significant volumes of counterfeits are also consumed in Europe, North America and elsewhere. Consumption of counterfeit *tobacco* products seems more widespread, with developing economies in Latin America, Africa and Asia seeming to have relatively high levels. Effective controls on the distribution of *pharmaceutical* products have sharply limited the distribution of counterfeit products in many economies, but there are exceptions, with particularly serious problems reported in Africa, where substandard counterfeit medicines are contributing to health problems. Counterfeit *electrical components*, *food and beverages* and *toiletries and household products* are similarly appearing in markets worldwide, with Africa, Asia and Latin America frequently mentioned as key regional markets. Piracy of *music*, *movies* and *software* appears to be significant in all economies, with particularly high levels estimated for most developing economies.

3.6. Distribution channels

3.6.1. Commercial outlets

Counterfeit and pirated products are distributed through various channels, including 1) established retail shops; 2) informal markets and trade fairs; and, increasingly, 3) through Internet-driven virtual markets. The difficulty in penetrating these markets differs significantly. As discussed in Chapter 2, it is far more difficult to penetrate closely controlled supply chains that link manufacturers to retailers than it is to introduce infringing products into informal markets.

3.6.2. Established retail shops

Established shops tend to be the most difficult as the retailers concerned would, by willingly stocking infringing articles, risk declines in clientele and increased chances of legal action if their illicit behaviour were revealed. However, while more difficult to penetrate, research suggests that the sale of counterfeit and pirated products in established shops is rising. This is noted, for example, in the country review of Canada. There is also indication that this is the case in the United States. The Gallup Poll of consumers conducted in 2006 revealed that legitimate shops or retailers were a principal or an important source for a number of counterfeit and pirated products, including:

- Fashion clothing, designer bags and footwear.
- Toys.
- Pharmaceuticals.
- Beverages.
- Tobacco.

- Jewellery.
- Perfume.

3.6.3. *Informal markets and trade fairs*

The informal markets, that tend to be more common in developing economies, on the other hand, are far easier to penetrate as distribution is likely to be more decentralised and less regulated, providing greater, lower-risk opportunities for marketing infringing products. Such markets include mobile vendors, bars, clubs and car boot sales, as well as open, street markets. The products sold in the different types of informal markets vary. CDs/DVDs and clothing and personal accessories, for example, are commonly sold on street markets, whereas other more sophisticated products are sold at fairs.

The counterfeit/pirated products sold on informal markets are often difficult to trace back to their sources. One respondent to the industry questionnaire described how CDs and DVDS were sold by persons who were recruited and employed on an *ad hoc* basis, while the parties behind the operation remained out of sight. In some instances, minors were reportedly recruited in order to avoid prosecution if caught (OECD, 2005a).

Trade Fairs, where many international business transactions occur, are also relatively easy to penetrate. Trade fair organisers, exhibitors and attendees do not always have the required IPR knowledge that enables them to make informed decisions to avoid infringements. In the case of exhibitors, they might not be adequately aware of their rights and responsibilities at a trade fair, or, if they discover their products are being counterfeit, may not have the resources to seek legal or administrative redress at short notice or in a foreign jurisdiction. Counterfeiters take advantage of the brief duration of many trade shows and the concentration of an industry sector's participants.

Infringements at trade fairs have been reported, for example, in the electronic components sector where counterfeit of electrical components is carried out by registered companies that exhibit "their" products in fairs. It has been reported that these parts were often produced in Guangzhou and were found to be sold at the Guangzhou export commodities fair (also known as the Canton Fair).

3.6.4. *Internet*

The situation with respect to virtual markets is nuanced. On the one hand, the Internet provides a powerful platform for counterfeiters and pirates to engage large numbers of potential consumers in a highly cost-effective manner. On the other hand, the transparency of most virtual markets provides opportunities for stakeholders to identify and, ultimately, take action against infringements; as discussed below, while this has occurred in a number of instances, it is a difficult process.

The Internet has become an increasingly important vehicle for selling merchandise, with some predicting that the volume of sales will grow from 20% to 30% per year over the next several years (eMarketer, 2006 and IDC, 2005). In addition to rising volume, the range of products being sold is also increasing, and now includes major appliances, branded clothing and jewellery. Consumers and manufacturers have clearly benefited from e-commerce, as have counterfeiters and pirates. For the latter, this can be used cleverly to deceive unsuspecting consumers into buying fake merchandise, while providing a highly effective vehicle for counterfeiters/pirates to expand sales on secondary markets (where consumers knowingly seek out and buy counterfeit/pirated products at reduced prices).

The online environment is attractive to counterfeiters/pirates for a number of reasons:

- *Anonymity.* The ease with which counterfeiters and pirates can conceal their true identity sharply limits the risk of detection.
- *Flexibility.* It is possible for a counterfeiter/pirate located anywhere in the world to establish online merchant sites quickly. Such sites can also be taken down easily or, if necessary, moved to jurisdictions where IPR legislations and/or enforcement are weak.
- *Size of market.* The number of ecommerce sites and volume of listings are huge, making it difficult for rights holders and enforcement agencies to identify and move against infringing counterfeiters/pirates. With respect to auction sites alone, the firm eBay recorded 596 million new listings in the second quarter of 2006 (eBay, 2006). The possibility of marketing a small number of infringing products multiple times can further undermine enforcement efforts.
- *Market reach.* The Internet provides sellers with a means to reach a global audience at low cost, around the clock. For counterfeiters and pirates, who have traditionally thrived in small scale informal markets, this represents a major opportunity to expand sales.
- *Deception.* Utilising readily available software and images on the Internet, counterfeiters/pirates can easily create sophisticated and professional looking websites that are highly effective in deceiving buyers. Misleading or contrived ratings of consumer experiences with Internet vendors can further complicate matters by creating a false sense of security among purchasers. Finally, the infringing products may be sold alongside legitimate articles, which can facilitate deception.

There are basically three ways that the Internet is being used to facilitate counterfeiting/piracy: 1) auction sites; 2) more traditional business sites which offer products from a single seller at set prices that show up as a sponsored link in search sites; and 3) unsolicited commercial email known as spam.

Auction sites, which in many respects resemble informal, open markets, have proven to be a popular venue for counterfeiters/pirates. The firm eBay acknowledges that there has been tremendous growth in the amount of infringing articles available on its site, but that the overall level of confirmed cases was a relatively low 0.01% of total listings. They have moved to curb sale of infringing items through the development of a programme called Verified Rights Owner (VeRO). Under this initiative, brand name owners can have deceptive listings removed the auction site by filing a notice of infringement.

A number of rights holders, however, remain concerned. Despite moving aggressively to remove infringing products, the firm Tiffany found that fake products continued to be offered regularly for sale. Of 186 items it purchased on an auction site in 2004, only 5% turned out to be genuine (Bobelian, 2004). Louis Vuitton and Christian Dior have similarly claimed that the vast majority of items sold on one auction site were counterfeit.

E-commerce sites that are organised along the lines of traditional stores provide another venue for counterfeit/pirated goods. These sites include those operated by businesses that also maintain storefronts, as well as those operated by manufacturers of branded/copy-righted products and those operated by parties whose sole business is based on selling a variety of products via the Internet. The latter have attracted a high level of interest as they often offer branded products at discounted prices; their weak point is that often little is known about their operations, which introduces a higher risk that consumer expectation

will not be fulfilled. It is these latter sites that are being used most extensively by parties selling counterfeit/pirated items.

Finally, the sale of counterfeit/pirated products is also being promoted by e-mail solicitations. Such solicitations can be used effectively to generate awareness of the availability of counterfeit/pirated products to audiences that may be interested in knowingly purchasing infringing items. They can also be used to lure unsuspecting consumers to sites designed to deceive purchasers into buying infringing products.

Perhaps most alarming is the apparent success that vendors of counterfeit pharmaceutical products have had in selling their fake products over the Internet. As the write-up on the pharmaceutical sector in this report indicates, the success appears to be particularly high in the case of life-style drugs, like Viagra, where consumers are either terribly naïve or are willing to take risks that could potentially endanger their health in order to acquire low-cost products through Internet pharmacies, about whom they have no knowledge.

3.6.5. *Logistics*

Another aspect of distribution is the logistics required to move items from production centres to customers; such movement incurs risks of detection and prosecution. In this regard, trans-border movements seem to provide the risks for counterfeiters and pirates, given the surveillance by customs authorities. The stakes can be high. Customs officials in Hamburg made what is believed to be a record seizure in 2006, when 117 containers containing counterfeit merchandise with a genuine brand equivalent value of over USD 490 million was intercepted (World Trademark Law report, 2006).

That said, the overall risk is relatively low, due in large part to the sheer volume of freight that passes through ports. The number of containers arriving in the 20 busiest world ports in 2005 ranged from an average of 10 000+ per day in the case of Laem Chabang (Thailand), to over 63 000 per day in the case of Singapore (UNCTAD, 2006). Even selective x-raying of suspicious cargoes is a time-consuming exercise that would enable only a small fraction of such a large number of containers to be screened,²² and there is no guarantee that the x-raying would detect infringing products.

Moreover, counterfeiters/pirates further reduce risk of detection through evasive actions. One involves describing infringing items on customs forms in sufficiently vague ways that do not arouse suspicion. Another is to smuggle infringing articles into an economy, either by avoiding customs controls, or by not properly declaring infringing items. With respect to the latter, for example, smugglers of counterfeit cigarettes produced in the Far East tried to deceive customs officials in the United Kingdom by concealing the cigarettes in a container of rice noodles and by hiding the cigarettes in consignments of pottery and ceramic items (HM Revenue and Customs, 2006). Other techniques being used include: 1) breaking shipments into smaller lots, some of which are then shipped by express air carriers (which seem to be viewed as entailing less risk); 2) exporting unfinished goods that are then labelled and packaged elsewhere; and 3) “origin-laundering”, which involves moving goods through a number of ports (possibly altering documentation in the process) to obscure their origin. Free-trade areas are often used as part of origin-laundering activities.

22. Assuming an x-ray process takes 10 minutes, around the clock examination would allow only 144 containers to be screened per machine, per day.

Research on sectors provides further insights into the logistical aspects of distributing counterfeit/pirated products. In the case of toiletry and household products, one firm estimated that about 90% of counterfeited goods over the past year were produced in China. Orders for the fake products were reportedly placed by representatives of Chinese import and export companies, which had contacts with distributors around the world. Similar patterns were observed in the automotive sector and the apparel and footwear sector, except that in the latter there was a growing trend towards direct sales of items to distributors and through the Internet.

In the electrical components sector, the majority of counterfeit products are also said to be manufactured in China and are typically either shipped or transported by air directly to importers in different economies and which then sell the products through local distributors. Intermediary transit points are used to enable counterfeiters to conceal distribution channels by changing delivery companies or splitting shipments into smaller parts, which are then shipped to different economies using different delivery services and modes of transportation.

In the pharmaceutical sector, brokers or middle men are often used to connect buyers and sellers through a series of transactions in order to develop mutual trust. These transactions start out small, with samples exchanged; once a working relationship is established, large orders follow. Counterfeit pharmaceuticals often feed into retail supply chains via e-commerce.

In the audiovisual sector, small-scale commercial production carried out by relatively small units is often made to order and destined for local markets, such as street markets. Large-scale commercial production involves mass production factories run by well-funded and organised groups with extensive distribution networks.

In the case of the tobacco industry, counterfeit items produced in China are reportedly manufactured to order, with orders placed by traders who finance and control the distribution and sale of product in targeted markets.

3.6.5.1. Free-trade areas

Free-trade zones and free ports are areas that governments designate as lying outside the customs jurisdiction of the economies concerned. They were developed as a means to stimulate economic activity by providing international traders with a location where they could store and manipulate goods in transit, without being subject to customs duties and most other customs procedures that would otherwise apply to imported merchandise. The areas range in size from single warehouses to massive complexes comprising hundreds of businesses, as well as whole harbours. Permitted activities include the storing, assembling, packaging and manufacturing of goods, principally for export. Disclosure requirements are generally minimal (Daudpota, 2006).

The lack of controls has made the free-trade areas attractive locations for parties engaging in trade of counterfeit/pirated products. The traders use the areas in three different ways:

- Parties import counterfeit goods into the areas and store them in warehouses, from which the items are subsequently re-exported. Passing the merchandise through the areas allows the parties concerned to “sanitise” shipments and documents in ways that disguise their original point of manufacture or departure; they also allow the

parties to essentially establish distribution centres for counterfeit goods, with little or no risk of IPR-related enforcement actions being taken.

- Parties import unfinished goods and further process them in the free trade areas, often adding counterfeit trademarks and/or repackaging or re-labelling goods, prior to the items being exported as finished counterfeit goods to other countries.
- Finally, free trade areas have been used to manufacture counterfeit goods.

Traders are constantly altering shipping routes to avoid detection. Many counterfeit goods originating in China pass through Hong Kong, China, which is an important transshipment point for goods destined for Southeast Asia and points beyond. Also, often the counterfeit goods are then shipped to Dubai (UAE) where they are stored in large warehouses for transshipment in smaller orders to points in the Middle East, North Africa and Europe.

Reports on the situation indicate that the use of free-trade areas as transshipment points for counterfeit/pirated merchandise is widespread, with a high concentration in Asian, Middle Eastern and South American economies. The sector assessment on automotive parts describes the important role that Dubai is playing in facilitating trade in counterfeit parts. In the case of footwear, customs officials in Malta recently seized 134 000 pairs of counterfeit footwear that originated in the Far East and were to be transhipped to other countries (MaltaMedia News, 2006). Other counterfeit items recently seized (in Malta) include 13.7 million cigarettes that originated in the Far East and were destined for North Africa. Within Europe, Ukraine, Lithuania, Estonia and Latvia are cited as transshipment points for CDs, DVDs and software originating from Dubai; the products are reportedly shipped into other European countries via sea links with Finland and other Scandinavian countries (United States Trade Representative, 2005 and Euromoney, 2001).

Transshipment of counterfeit items through Hong Kong, China, which maintains the world's largest free-trade zone, remains a serious problem. The economy has one of the largest container ports in the world, and handles high volumes of traded items. While imports and exports of counterfeit goods are prohibited, goods in transit are specifically excluded from the prohibition, which means that they cannot be intercepted.

Panama's Colon Free Zone is another key transshipment conduit for counterfeit products. While laws empower customs officials to intercept counterfeit products, the volume of containers passing through the country (1.9 million per year, 80% of which represent transshipments), complicate enforcement efforts.

However, increasing attention is being paid by authorities to the problems occurring in free-trade areas. For example, the Gulf Co-operation Council, whose members include Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates have agreed to exclude IPR infringing products from free zones and duty-free shops. While customs authorities have been proactive on this front, the high volume of trade entering into the zones reportedly makes policing difficult. In the case of the United Arab Emirates, counterfeiters/pirates have responded by breaking down shipments so that products come in one consignment and label/packaging materials in another (Daudpota, 2006).

The World Customs Organization has also been active on this front, developing guidelines on controlling free zones, goods in transit/transshipment and obligations of service providers in relation to intellectual property rights infringements. The guidelines call on governments to implement national legislation that clearly specifies that products

infringing customs IP cannot be stored or imported into free zones (World Customs Organization, 2005).

3.7. Criminal networks and organised crime²³

As indicated earlier in this chapter, over a third of the respondents to the OECD economy survey indicate a link, or a suspected link, between counterfeiting/piracy activities and organised crime. A review of industry surveys indicates a similar view; almost all respondents either provided examples of organised crime involvement, or cited suspicions. Counterfeiting and piracy activities are attractive areas for criminal networks for a number of reasons. Profitability can be high, while the risk of prosecution and incarceration is low in most economies, as is the level of any fines that might be applied. The risks are sometimes even further diminished through the bribery and corruption of the authorities responsible for enforcing laws and regulations. Large amounts of money are apparently being made in counterfeiting/piracy, with some of the proceeds being used to fund more sophisticated counterfeiting/piracy operations (EC, 2006a).

The scope of organised crime activities in counterfeiting/piracy is reportedly broad, covering a range of sectors. The groups involved are based in many areas of the world and include Asian “triads” (which are involved in heroin trafficking, prostitution, gambling, extortion, money laundering, and alien smuggling) as well as mafias based in Europe and the Americas (OECD, 2005a and Bolz, 1992). One of the favourite targets of the crime groups has been pirated CDs and DVDs, where, as the audio-visual sector assessment in this report indicates, profit margins are large. Table 3.12 provides information on some of the documented instances of organised crime involvement.

Table 3.12. Examples of links of organised crime to counterfeiting and piracy

Group	Activity
Asian triads	Sale of pirated DVDs in London
Irish groups	Children's toys, batteries, power tools and veterinary drugs in Northern Ireland
Israeli group with Russian origins	Sale of counterfeit products in Japan
Italian and Eastern European gangs	Importation of pirated CDs into Italy
Russian mafia	Sales of pirated CDs in London

Sources: OECD 2005a, OCTF 2006, SOCA, UNIFAB.

Information on the overall extent of organised crime involvement is, however, difficult to document. Still, insights can be gained through government and industry assessments and initiatives. Many countries such as Canada, the United Kingdom and the United States have investigated intellectual property crime in their countries.

23. Organised crime has been defined internationally as a group of three or more persons who work together over a period of time to commit one or more serious crimes in order to obtain a financial or other material benefit (United Nations, 2006). Serious crimes are further defined to include those resulting in incarceration of at least four years, or a more serious penalty. Thus, while counterfeiting and piracy are illegal activities, they would not in most instances be considered serious crimes.

The Royal Canadian Mounted Police, through the Project SHAM, found that operations were becoming more sophisticated with criminal and terrorist organisations participating in IP crime. The RCMP has since devoted increased resources to tackle the problem and launched a national awareness campaign highlighting the dangers and economic costs associated with counterfeit products as well as its connection to organised crime.

The United Kingdom recognised that IP crime was increasingly well-organised and unveiled the country's first IP crime strategy. The UK Serious Organised Crime Agency (SOCA) recently developed a specific programme to tackle IP crime and the Organised Crime Task Force (OCTF) in Northern Ireland made intellectual property crime one of their key priorities.

The US Commissioner of Customs indicated in 1999, for example, that their investigations had showed that organised crime groups were heavily involved in trademark counterfeiting and copyright piracy, with the proceeds often used subsequently to finance more violent crimes (International Anti Counterfeiting Coalition, 2005). In 2004 the White House introduced the Strategy Targeting Organized Piracy (STOP!), a comprehensive initiative aimed at breaking up the criminal networks that traffic in fakes and stop trade in pirated and counterfeit goods at borders.

Further insights are also available in the economy and sector assessments included in this report. The Brazil assessment, for example, indicates a strong presence of organised crime in Latin America, as does the China assessment. In the food and drinks sector, the high profits associated with producing and selling untaxed alcohol have attracted organised crime, which is actively involved in producing and smuggling products. In the tobacco sector, the transport and distribution networks for major smuggling operations are highly organised, secure and difficult to detect, often because of the participation of organised crime in the movement and sale (but rarely in the production) of the counterfeit products.

In the audiovisual sector, organised crime has been linked to human trafficking, where Chinese pirates force the people they smuggle into Europe to work as distributors of pirate products to pay off their transport costs (OECD, 2005a). This is supported in a recent report by the UK Serious Organised Crime Agency (SOCA), where it is said that mainland Chinese organised crime groups are heavily involved in the distribution of counterfeit DVDs and exploit illegal immigrants or asylum seekers to sell them on the streets in the UK (SOCA, 2006).

Further assessments have been undertaken by anti-counterfeiting industry associations, such as the French Union des Fabricants (UNIFAB), which reports regularly on the interrelation between counterfeiting and organised crime, notably in the audiovisual and apparel and footwear sectors, and the International Anti Counterfeiting Coalition (IACC), which produced a White Paper reporting links between counterfeiting and piracy with organised criminal syndicates and terrorist organisations.

Furthermore, according to discussions with government officials, there is also a link between criminal networks involved in piracy and counterfeiting and corruption of government officials. Through bribery, extortion and even drawing officials into the criminal network, organised crime groups can reduce disruption of their distribution channels and the risk of punishment for their unlawful activities.

In addition to the established link between counterfeiting and piracy and organised crime, Interpol has highlighted a disturbing relationship of counterfeiting and piracy with terrorist financing, with IP crime said to be becoming the preferred method of financing for a number of terrorist groups (Interpol, 2003). The links take two basic forms:

- *Direct involvement*, where the terrorist group is implicated in the production or sale of counterfeit goods and remits a significant portion of those funds for the activities of the group. Terrorist organisations with direct involvement include groups that resemble or behave like organised crime.
- *Indirect involvement*, where sympathisers involved in IP crime provide financial support to terrorist groups via third parties.

The Interpol report cites a number of examples. In Northern Ireland, paramilitary groups are involved in IP crime, including the trafficking of counterfeit cigarettes. Their involvement takes the form of control of the markets where counterfeit products are sold. In Kosovo, there is reportedly a long-standing relationship between criminal organisations and local ethnic-Albanian extremist groups that are involved in the sale of a range of counterfeit consumer products, including CDs, DVDs, clothes, shoes, cigarettes and computer software. In South America, counterfeit goods produced in Europe are reportedly sent to a free-trade zone by a group of Lebanese criminals sympathetic to Hizbollah. The goods are then smuggled into a third country, to avoid import taxes, where they are then sold. Alleged connections to Al-Qaeda have been made in the case of a shipment of counterfeit shampoos, creams, cologne and perfume from Dubai to Copenhagen, Denmark.

Interpol launched in January 2007, in partnership with the US Chamber of Commerce, an initiative to help law enforcement agencies fight IP crime by creating a global database of criminal counterfeiting and piracy intelligence, and co-ordinating investigations in multiple regions of the world based on trend analyses derived from the database. It has also established an Intellectual Property Crime Action Group (IIPCAG) with representatives from the police, customs, inter-governmental organisations and private sector associations. The group aims to facilitate international law enforcement action against IP crime, to raise awareness and to improve co-ordination amongst police, customs and the private sector.

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Annex 3.A1

TABLES AND FIGURES

Table 3.A1. Sector concerns with IP infringement, by type of infringement, 2005

Sector	Number of responses ¹	% of responses mentioning specific IPR infringement concerns			
		Trademark	Patent	Copyright	Design
Automotive	7	100	14	0	43
Books	1	0	0	100	0
Chemicals/pesticides	2	100	50	50	50
Computer software	2	100	0	100	50
Electronic devices and equipment	9	89	22	22	56
Food and drink	7	86	0	14	14
Luxury goods, perfumes, fashion clothes	3	100	0	0	33
Motion pictures and other video content	4	25	25	100	0
Music	5	0	0	100	0
Pharmaceuticals	7	86	57	0	0
PC and video games	1	100	0	100	0
Sportswear and articles	3	100	0	0	0
Textile items	3	33	0	0	67
Tobacco	3	100	33	33	33
Toiletry and household products	5	100	0	0	0
Tools	1	100	0	0	100
Toys	2	100	50	50	100
Writing implements	1	100	100	0	100

1. Responses include individual companies as well as associations as follows:

Automotive: 2 associations, 5 companies
 Books: 1 publisher
 Chemicals/pesticides: 1 association, 1 company
 Computer software: 1 association, 1 company
 Electronic devices and equipment: 3 associations, 6 companies
 Food and drink: 1 association, 6 companies
 Luxury goods: 1 association, 2 companies
 Motion pictures: 2 associations, 2 companies
 Music: 5 associations

Pharmaceuticals: 2 associations, 5 companies
 PC and video games: 1 association
 Sportswear and articles: 2 associations, 1 company
 Textile items: 2 associations, 1 company
 Tobacco: 3 companies
 Toiletry and household products: 5 companies
 Tools: 1 company
 Toys: 2 associations
 Writing implements: 1 company

Source: OECD (2005a).

Table 3.A2. Seizure valuation principles, by economy

Reporting economy	Valuation principle
Andorra	Declared (customs)
Argentina	Legitimate item value
Bulgaria	Legitimate item value given by rights holders
Canada	Fair market*
Chile	Fair market
China	Declared (value of counterfeit/pirate good)
Croatia	Legitimate item value
Cyprus ^(a)	Declared (customs)
Czech Republic	Invoice value
Fiji	Value (customs)
Germany	Market value of counterfeit/pirated goods
Ghana	Legitimate item value
Hong Kong, China	Legitimate item value, <i>i.e.</i> declared (customs)
Hungary	Market value of items
Korea	Official expert and right holder knowledge
Kuwait	Legitimate item value
Latvia	Legitimate item value
Lebanon	Legitimate item value (2005), declared value (2004)
Mali	Market value of counterfeit/pirated goods
Malta	Market value of counterfeit/pirated goods (67%) otherwise legitimate item value
Mauritius	Market value
Mongolia	Declared value at import
Norway	Market value
Panama	Legitimate item value
Peru	Legitimate item value
Portugal	The value was found in the database of Customs (SIVEP: referential values of similar goods)
Senegal	Legitimate item value or owner of the good
Serbia	Market value of counterfeited goods
Slovak Republic	Real or estimated tax-free value of product
Slovenia	Real or estimated tax-free value of the product
South Africa	Legitimate item value or owner of the good
Switzerland	Legitimate item value
Thailand	Market value of counterfeit and pirated items
Chinese Taipei	Declared
United States	Cost of the counterfeit merchandise plus the cost of shipping and importing them into the United States

(a) See footnote 18 in Chapter 3.

*Canada also reports declared values. In 2005, these amounted to USD 1 410 893.

Source: OECD (2006).

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