

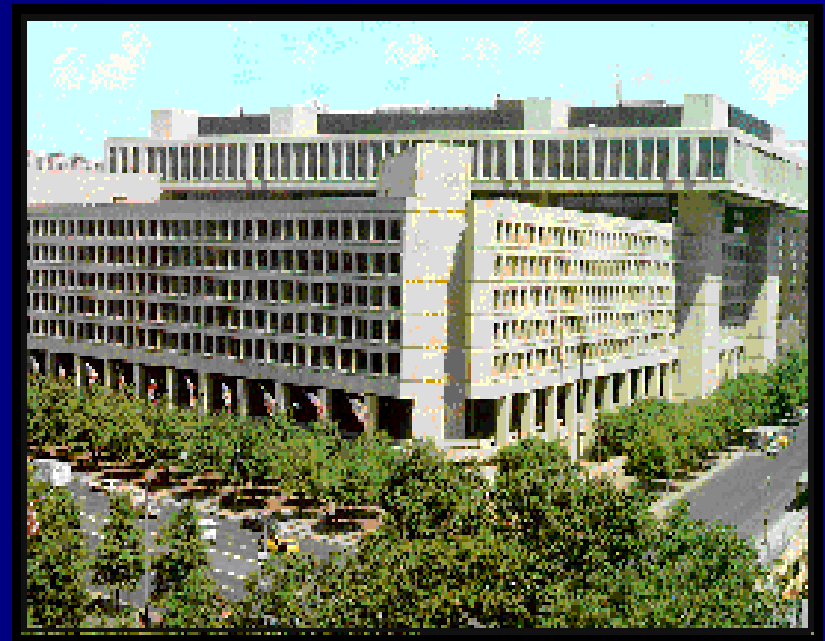


IP Enforcement

SA Kenya A. Merritt
Federal Bureau of Investigation
Cyber Division, Intellectual Property Unit

FBI Domestic Cyber Resources

- 56 Field Offices
- 67 FBI-led Task Forces
- 35 Working Groups
- 617 Federal/State/Local Agencies
- 424 FBI personnel
- 51 IPR specific investigators
- 1504 Non-FBI personnel



FBI Headquarters

FBI Legal Attaché Offices

NORTH AMERICA

Ottawa,
Mexico City

WESTERN EUROPE

Berlin, London,
Paris, Bern,
Madrid, Rome,
Brussels, Vienna,
Copenhagen

EASTERN EUROPE

Athens, Tallinn,
Bucharest,
Sofia, Warsaw,
Moscow, Sarajevo,
Kyiv, Tbilisi

EAST ASIA

Tokyo, Seoul,
Hong Kong,
Bangkok, Manila,
Singapore,
Beijing, Jakarta,
Phnom Penh,
Kuala Lumpur

MIDDLE / WEST ASIA

Amman,
Ankara, Tel Aviv,
Riyadh, Islamabad,
New Delhi,
Kabul,
Baghdad

AFRICA

Cairo, Lagos,
Nairobi,
Pretoria,
Freetown,
Dakar, Rabat

CENTRAL / SOUTH AMERICA

Panama City, Caracas, Santo Domingo,
Bridgetown,
Bogota, Brasilia, Santiago,
Buenos Aires, San Salvador

AUSTRALIA

Canberra

FBI IPR Criminal Violations

- Health and Safety Violations
 - Counterfeit Goods – Aircraft Parts, Electrical Components, Automotive Parts, Health Care Products
- Intellectual Property
 - Theft Trade Secrets, Copyright and Trademark infringement, Internet Fraud, Identity theft via internet

What is Counterfeiting?

- “The practice of producing goods, often of inferior quality, and selling them under a brand name without the brand owners authorization.”
- Counterfeit Materials are generally:
 - Identical and/or substantially indistinguishable from the original.
 - Similar in construction and appearance to deceive the customer – includes both the item itself and often the packaging.

Counterfeiting Statute

- **Title 18 U.S.C. Section 2319**
 - **Valid copyright exists**
 - Certificate of registration
 - **Infringed by the defendant**
 - Infringed one of five enumerated copyright rights: reproduction, distribution, display, performance or modification of work
 - **Willfully**
 - Infringer must know his legal duty and voluntarily and intentionally violate it
- **FELONY**: 10 or more copies of 1 or more copyrighted works in any 180 period, with total retail value of \$2,500

Trademark Statute

- **Title 18 U.S.C. Section 2320**
 - **Trafficking In Goods & Services**
 - “Transport, transfer or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer or dispose of.”
 - **Intentionally**
 - Defendant must have acted deliberately
 - Does not need to have known about the statute
 - **Using a “counterfeit mark”**
 - That is registered with PTO and is in use
 - Identical or substantially indistinguishable from genuine trademark
 - **Knowing the mark was counterfeit**
 - Must show the defendant knew that the mark used on or in connection with trafficked goods or services was counterfeit
 - Willful blindness is sufficient


Other Counterfeiting Statutes

- Trafficking in Counterfeit Labels (2318)
 - Knowingly moves counterfeit labels through commerce
 - Movies, music, hard goods, software
 - Fine and imprisonment up to 3 years
- Trafficking in Recordings of Live Musical Performances (2319A)
 - Knowingly profits from music without the consent of the original owner.
 - Fine and imprisonment up to 10 years.

Growing Problem

- Profitable
 - low risk, high return
- Inadequate law enforcement response
 - Especially in developing countries
- Availability of relatively cheap high-tech equipment which facilitates copying
- Multi-jurisdictional
 - Discourages state & local enforcement from working IP crime
- Warezes and Online Piracy
 - According to the Institute for Policy Innovation, piracy of movies, music, business and entertainment software costs the US economy \$58 Billion each year
- Organized Crime:
 - Funds illegal activity

Estimated Illicit Revenue Worldwide



IPR Theft
\$512bn

Narcotics
\$322bn

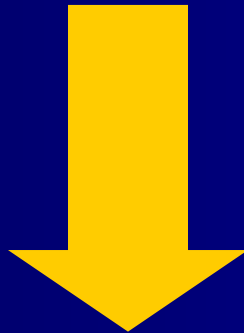
**Includes all forms of counterfeit goods and pirated products*

*Source: Interpol, US Department of Commerce,
UNODC World Drug Report*

Pirating Operations: Low Risk / High Profit

- Minimal Start-up Costs
- Precursors not illegal
- Ease/Quality of Production
- Lack of Deterrent Sentencing
- Purchase and use not Illegal
- Fast Economic Benefits

IPR Theft
(if prosecuted at all)
<1 year



Narcotics
Life Imprisonment/
Death Sentence



Financial Effects of Counterfeiting

➤ Costs

- Counterfeit drugs account for an estimated 10% of all pharmaceuticals.
- Counterfeit cigarettes occupy an estimated 3% of global cigarette trade
- European cosmetic, software and clothing market loses an estimated \$14 Billion USD

First Global Congress on Combating Counterfeiting May 2004



Health & Safety at Risk with Counterfeiting

- Counterfeit parts usage statistics
 - An estimated 2% of the 26 million airplane parts installed each year around the world are counterfeit.

Fox News May 25, 2004

Health & Safety at Risk with Counterfeiting

- Direct result of an accident caused by the usage of counterfeit aircraft parts.
 - **Partnair Flight 394 (1989)**
 - Counterfeit Bolts Securing APU
 - Catastrophic Structural Failure
 - All 55 Crew/Passengers Killed

Targeted Recipients of Counterfeit Goods

- Military
- Federal Government
- Local Government
- Schools & Universities
- Financial Institutions
- Telecommunications
- Other
 - Non-profit organizations or government contractors

International Coordination

- Communication
- Informal Sharing of Information
 - Investigator to Investigator
- Build in sufficient time for coordination
 - Process will likely take several months
 - Language translations of documents
- Formal Processes for FBI
 - MLATs, Letters Rogatory
- Training
 - Public, Law Enforcement, Prosecutors, Judges
 - Embassy, ILEA, USPTO, Private Industry

International Cooperation Benefits

- Jurisdictional limitations
 - extraterritorial conduct
 - poor extradition prospects
- Resource limitations
- Maximum Deterrence!!!
- USG Law Enforcement and Trade Policies
 - Encourage capacity building and burden-sharing worldwide
 - TRIPS and WTO agreements
 - Interpol

International Treaties

- United States is obligated by treaties to enforce IP laws.
- **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**
- TRIPS requires “a national-treatment commitment” under which WTO members must give “treatment no less favorable” than accorded their own citizens and companies with regards to IP protection.
 - Most comprehensive multilateral agreement on intellectual property
 - TRIPS Covers:
 - Copyright and related rights
 - Trademarks
 - Trade Secrets
 - Patents
 - Geographical indications of origin
 - Industrial designs
 - Layout-designs of integrated circuits



Private Industry Assistance

- Industry contacts
 - Devoted to combat worldwide piracy
 - Training to identify counterfeit goods
 - Expert analysis of counterfeit items collected during the investigation
 - Onsite assistance to exclude legitimate goods
 - Expert testimony to support Indictments
 - Expert testimony to support prosecution

Successful International IPR Investigations

Historical Highlights

OPERATION FASTLINK

- 3 Undercover Operations
- Top Release Groups Targeted
- 11 countries involved - simultaneous takedown
- Over 120 Search Warrants executed
- Over 200 computers seized

Operation Higher Education

- Part of the Fast Link coordinated takedown
- Source provided inside access to top-level game release group and its affiliates
- FBI had root access to 15-20 top level FTP servers
- FBI had access to private IRC chat rooms
- Identification of over 100 top-level targets in twenty countries

Higher Education Results

- Subjects plead guilty to the charges brought against them
 - 50th felony conviction
 - Subject faced up to 5 years in prison, \$250,000 fine and 3 years supervised release
- Domestic
 - 24 searches, 5 multi-terabyte warez servers seized
- International
 - 11 countries, 50+ searches, 15+ multiple-terabyte warez servers seized, prosecutions pending, one conviction and sentence (Singapore)

OPERATION SITE DOWN

- 3 Undercover Operations
- International Warez Takedown
- Coordinated Through FBIHQ
- 10 Countries Participated
- 96 Search Warrants
- Over 18,000 Media Items Seized
 - *Computers, Hard Drives, DVDs, CDs and Games*
- Liaison with International Law Enforcement was Imperative for the Success

Contact Information

- kenya.merritt@ic.fbi.gov
- Intellectual Property Prosecution Manual
(available for free at www.cybercrime.gov)



WWW.CYBERCRIME.GOV

Computer Crime and Intellectual Property Section (CCIPS)
of the Criminal Division of the U.S. Department of Justice

Internet Crime Complaint Center (IC3)

www.ic3.gov



INTERNET CRIME COMPLAINT CENTER



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