

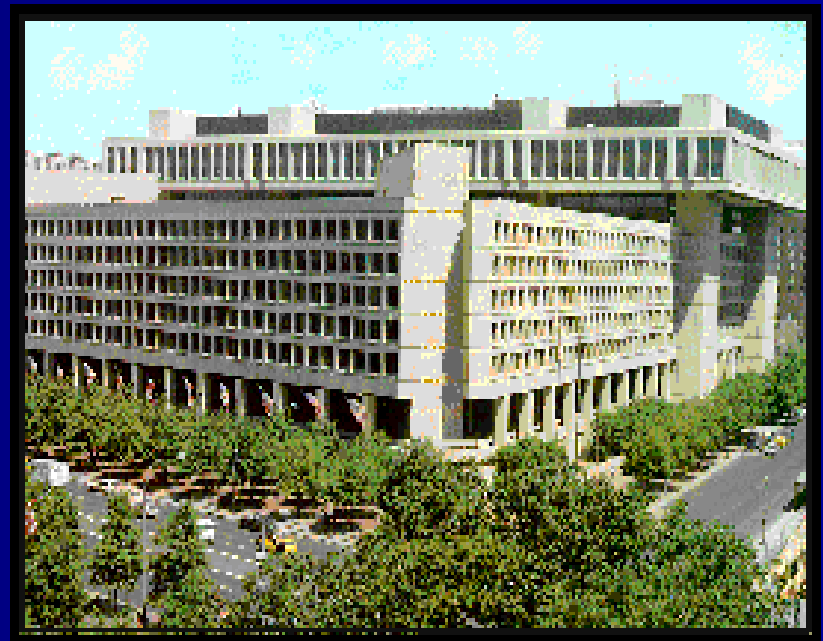


# IP Enforcement

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

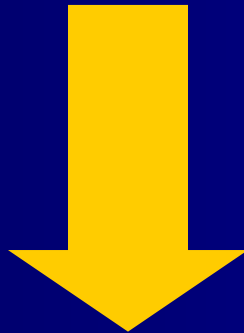
*\*Includes all forms of counterfeit goods and pirated products*

*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
  - 50<sup>th</sup> 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](mailto:kenya.merritt@ic.fbi.gov)
- Intellectual Property Prosecution Manual  
(available for free at [www.cybercrime.gov](http://www.cybercrime.gov))



**[WWW.CYBERCRIME.GOV](http://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](http://www.ic3.gov)



INTERNET CRIME COMPLAINT CENTER



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