

## PIRACY 101

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### ABSTRACT

This essay explores the proliferation of counterfeit medicines in the context of the overall global threat of piracy. The manufacture, marketing, and distribution of pirated goods, in violation of intellectual property rights, affects not only the world of pharmaceuticals, but also the music recording, film, book publishing, and software industries. Piracy is a threat to public health and safety, with dangerous drugs, aviation parts, and automobile parts on the market. There is increasing evidence that organized crime and terrorist groups, including Hezbollah, are engaging in this highly lucrative business of piracy, given its economic gains and low penalties or chances of prosecution.<sup>1</sup> Hundreds of billions of dollars are at stake, making piracy all the more pressing an issue for governments to address. Better coordination among U.S. government agencies, better coordination with other governments and national law enforcement agencies, and better use of existing mechanisms in trade treaties will all help to better enforce intellectual property laws and protect U.S. interests at home and abroad.

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1. INT'L ANTI-COUNTERFEITING COAL., FACTS ON FAKES 5-6, *available at* <http://www.iacc.org/factsupdated.pdf> (last visited Aug. 18, 2005) [hereinafter FACTS ON FAKES] (citing Sebastian Junger, *Terrorism's New Geography*, VANITY FAIR, Dec. 2002).

## INTRODUCTION

In this symposium, we have learned about the legal and health-related issues surrounding drug importation. We have focused on counterfeit medicines and the risk they pose to public health and safety. Piracy of pharmaceuticals is indeed a fast growing menace. And it is one that needs to be addressed for the damage it does to legitimate businesses, incentives for innovation, and government revenues. Across the globe, people are poisoned by counterfeit medicines, billions of dollars are diverted from economies, and criminal gangs and terrorists are enriched due to lackluster criminal enforcement of intellectual property (IP) rights.

According to the World Health Organization (WHO),<sup>2</sup> in 2004 counterfeit medicines reached an estimated \$30 billion in sales.<sup>3</sup> The types of counterfeit drugs encompass almost every category and disease type, including AIDS therapies, over-the-counter pain medications, antibiotics, insulin, cholesterol drugs, hormone replacement therapy, Viagra, over-the-counter flu medications, cancer drugs, anti-arthritis drugs, cardiac drugs, anti-malarial drugs, and antihistamines. A vast majority of these fake medicines have no or low amounts of active ingredient, or even worse, have the wrong ingredients.<sup>4</sup>

“[WHO] estimates that counterfeit drugs account for ten percent of all pharmaceuticals. The number can rise as high as 60% in developing countries.”<sup>5</sup> According to WHO, of the 771 cases of counterfeit drugs reported from 1982 to 1999, 325 cases concerned the quality of the active ingredients. Of these, 17% contained incorrect amounts of proper ingredients while 60% had no active ingredients whatsoever.<sup>6</sup>

Across the globe, counterfeit medicines are a major threat to public health and safety. Let us go on a little trip around the globe and get a sense of two countries: Nigeria and China. Nigeria is home to abun-

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2. WORLD HEALTH ORG. [WHO], SUBSTANDARD AND COUNTERFEIT MEDICINES, FACT SHEET No. 275 (Nov. 2003), available at <http://www.who.int/mediacentre/factsheets/fs275/en/index.html>.

3. “The true extent of the problem is not really known since no global study has been carried out.” WHO, ESSENTIAL DRUGS AND MEDICINES POLICY: COUNTERFEIT MEDICINES: OVERVIEW, <http://www.who.int/medicines/organization/qsm/activities/qualityassurance/cft/CounterfeitOverview.htm> (last visited Aug. 18, 2005).

4. See Bryan A. Liang, *More Profitable Than Cocaine: The Menace of Counterfeit Drugs*, PROVIDENCE J., Sept. 21, 2004, at B10.

5. FACTS ON FAKES, *supra* note 1, at 10-11 (citing Helen Knight, *Fighting the Fakers*, THE ENGINEER, Apr. 26, 2002, at 16).

6. WHO, COUNTERFEIT AND SUBSTANDARD DRUGS IN MYANMAR AND VIET NAM 6 (1999), available at <http://www.who.int/medicines/library/qsm/who-edm-qsm-99-3/who-edm-qsm-99-3.shtml>.

dant counterfeit medicines. “A survey conducted by the Nigerian Institute of Pharmaceutical Research revealed that 80 percent of drugs in the major pharmacy stores in Lagos, the capital, were fake or counterfeit.”<sup>7</sup> In China too, counterfeit medicines are rampant. “According to the Shenzhen Evening News (a government owned newspaper), approximately 192,000 people died in China in 2001 because of fake drugs.”<sup>8</sup> Additionally, “[d]iet pills imported in Japan from China were blamed for at least four deaths, and 160 cases of illness. Dozens of people were suffering from liver disorders.”<sup>9</sup>

#### MORE PROBLEMS: TRADE

But it gets more dangerous. Now there is free trade through WHO and its various agreements, the North American Free Trade Agreement (NAFTA),<sup>10</sup> the Central American Free Trade Agreement,<sup>11</sup> and bilateral free trade agreements with Singapore,<sup>12</sup> Chile,<sup>13</sup> Australia,<sup>14</sup> and others being negotiated all the time. There is much more trade between countries, as the international sale of goods and services has increased manifold. With the Internet and the increase in Web-based marketing and international post and courier services, citizens of the developed world can be victims to dangers that come with taking fake medicines as well. At least 40% of counterfeit drugs are reported from industrialized countries.<sup>15</sup>

The two other parties of NAFTA, Canada and Mexico, are the source of some of these counterfeit medicines. The free trade between the countries means that U.S. citizens may be at risk of ingesting these dangerous products.<sup>16</sup> In 2001, WHO estimated that as much as 25%

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7. FACTS ON FAKES, *supra* note 2, at 9 (citing *Nigeria Reaffirms Efforts to Eliminate Fake Drugs*, XINHUA GEN. NEWS SERVICE, Feb. 13, 2003).

8. *Id.* (citing *China's Killer Headache: Fake Pharmaceuticals*, WASH. POST, Aug. 20, 2002, at A01).

9. *Id.* (citing *Chinese Diet Pill Casualties Mount*, CNN.COM (2002), <http://www.cnn.com/2002/WORLD/asiapcf/east/07/21/japan.pills/index.html>).

10. North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289.

11. Central American Free Trade Agreement, U.S.-El Sal.-Guat.-Hond., Aug. 2, 2005, 43 I.L.M. 514 [hereinafter CAFTA].

12. U.S.-Singapore Free Trade Agreement, U.S.-Sing., May 6, 2003, 42 I.L.M. 1026.

13. See generally R. Craig Woods, *The United States-Chile Free Trade Agreement: Will It Stop Intellectual Property Piracy or Will American Producers be Forced to Walk the Plank?*, 10 LAW & BUS. REV. AM. 425 (2004).

14. U.S.-Australia Free Trade Agreement, U.S.-Austl., May 18, 2004, 43 I.L.M. 1248.

15. WHO, *supra* note 2.

16. JOHN TERRY ET AL., CROSS-BORDER NAFTA: THE FIRST TRADE TREATY TO PROTECT

of the pharmaceuticals sold in Mexico were counterfeit, and as late as 2001, Mexican law allowed pharmacists to work with no formal training requirements or credentials.<sup>17</sup>

Even Canada, one of the G-8 advanced industrial countries and ranked fourth in the United Nations Development Programme's Human Development Index,<sup>18</sup> has been inculcated in drug importation and its attendant problems of the manufacture and distribution of counterfeit medicines.<sup>19</sup> While Canada may not be the source of the manufacture of counterfeit medicines, Web-based pharmacies claiming to be Canadian are the sources for U.S. citizens to obtain less expensive prescription drugs.<sup>20</sup> Moreover, because of lower prescription drug prices,<sup>21</sup> there is increasing activity along the United States-Canada border where U.S. citizens are traveling to Canada or ordering prescription drugs from Canadian pharmacies. Internet sites are even claiming to be working with Canadian pharmacies to supply medicines. Many of these pharmacies are not even located in Canada. According to a recent study of 11,000 Internet sites designed to look like Canadian pharmacies, only 1009 sold prescription medicines. Of these, only 214 had data showing they were registered in Canada, while eighty-seven were registered in Barbados.<sup>22</sup> Of even greater concern is that the safety of the drugs purchased online from Canadian pharmacies will not be guaranteed by Health Canada, Canada's ministry of health that has similar responsibilities to the Food and Drug Administration (FDA). This means that U.S. customers may be purchasing drugs that are counterfeit or not approved by either the FDA or Health Canada.<sup>23</sup>

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IP RIGHTS 3-4 (2005), available at <http://www.torys.com/publications/pdf/AR2005-1NT.pdf>.

17. Timothy W. Maier, *Counterfeit Goods Pose Real Threat*, INSIGHT ON THE NEWS, Oct. 30, 2003, available at <http://www.insightmag.com/media/paper441/news/2003/11/11/World/Counterfeit.Goods.Pose.Real.Threat-539999.shtml>.

18. U.N. Development Programme [UNDP], *Human Development Report 2004: Cultural Liberty in Today's Diverse World* 139 (2004), available at [http://hdr.undp.org/reports/global/2004/pdf/hdr04\\_complete.pdf](http://hdr.undp.org/reports/global/2004/pdf/hdr04_complete.pdf).

19. Doug Struck, *Canada Plans to End Role as America's Low-Cost Pharmacy*, SAN DIEGO UNION TRIB., June 30, 2005, at A1.

20. Tim Jones, *Seniors Find Canada is Refuge from Drug Prices: U.S. Costs Leave No Choice They Say*, CHI. TRIB., Sept. 21, 2003, at 1.

21. Jennifer L. Halser, *Canadian Pharmacies: A Prescription for a Public Health Disaster*, 54 DEPAUL L. REV. 543, 549 (2005). "Since 1998, drug prices have increased at a rate that is more than double the rate of inflation." *Id.* at 543 (citing Daniel Deaver & Kristi E. Swartz, *Hard to Swallow Ad Costs Help Put Drug Prices Out of Reach for Some*, WINSTON-SALEM J., Apr. 27, 2003, at A1).

22. Robyn Lamb, *Study Finds Many Online Discount Pharmacies are Misrepresenting Themselves*, DAILY REC., June 14, 2005, available at 2005 WLNR 9578107.

23. Mary Shepherd, *What if Canada Says 'No' to U.S. on Drug Imports?*, USA TODAY,

## MARKETS AND U.S. HARM

With some two to three billion prescriptions being written in the United States annually,<sup>24</sup> and the development of online marketing and a global market, there is a huge market for counterfeiters and pirates in the United States.<sup>25</sup> The proliferation of counterfeit medicines has only recently become a priority to governments of industrialized states. Traditionally, the United States and other governments have been more focused on the trafficking of heroin and cocaine, but with recent deaths associated with counterfeit medicines, prosecutors have initiated more investigations into counterfeit medicines.<sup>26</sup>

Prosecutorial interest was sparked when “[s]eventeen people in the United States died between May 1999 and January 2000 after taking a powerful, but counterfeit antibiotic.”<sup>27</sup> In 2000, a counterfeit version of the AIDS drug circulated in the United States; the drug was not effective and caused skin irritations.<sup>28</sup> “In 2002, a New York County district attorney charged seven people and five companies in the [United States], China and India with selling counterfeit Viagra over the Internet. Undercover officers purchased over 25,000 pills. Some pills were smuggled into the [United States] in stereo speakers and stuffed toys.”<sup>29</sup> In May 2003, the FDA issued an alert to consumers that nearly 200,000 bottles of counterfeit Lipitor had come onto the market.<sup>30</sup> There are also reported cases wherein a phony injection of a counterfeit version of Epogen to treat anemia was injected into a sixteen year-old liver transplant recipient, seriously injuring the boy.<sup>31</sup>

The FDA has increased its investigations into counterfeit drugs in the United States to more than twenty per annum since 2000, after av-

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Dec. 29, 2004, at A13, available at 2004 WLNR 15335181.

24. Don Oldenburg, *Raising the Alarm on Rise in Counterfeit Drugs*, WASH. POST, Apr. 5, 2005, at C9.

25. Sarah Skidmore, *S.D. Judge Sentences Couple in Internet Pharmacy Case*, SAN DIEGO UNION TRIB., May 18, 2005, at B1.

26. See Kerry Cappell, *What's in That Pill? In Latin America, Fake Drugs are as Lucrative as Cocaine*, BUS. WK., June 18, 2001, available at [http://businessweek.com/magazine/content/01\\_25/b3737153.htm](http://businessweek.com/magazine/content/01_25/b3737153.htm).

27. FACTS ON FAKES, *supra* note 1, at 10 (citing Knight, *supra* note 5).

28. Michelle Meadows, *Imported Drugs Raise Safety Concerns*, FDA CONSUMER, Sept.-Oct. 2002, available at [http://www.fda.gov/fdac/features/2002/502\\_import.html](http://www.fda.gov/fdac/features/2002/502_import.html).

29. FACTS ON FAKES, *supra* note 1, at 10 (citation omitted).

30. FDA, FDA ALERTS CONSUMERS AND HEALTH PROFESSIONALS TO RECALL OF COUNTERFEIT LIPITOR (2003), available at <http://www.fda.gov/bbs/topics/ANSWERS/2003/ANS01224.html>.

31. FACTS ON FAKES, *supra* note 1, at 10 (citation omitted).

eraging five investigations annually in the late 1990s.<sup>32</sup> The numbers today are even worse. In 2004, the FDA's Office of Criminal Investigations (OCI) investigated fifty-eight counterfeit drug cases.<sup>33</sup> However, this increase in investigations barely makes a dent in the manufacture, import, and sale of counterfeit medicines. There is an urgent need to do something as fake medicines proliferate with the advent of Web-based marketing and distribution.<sup>34</sup>

The numbers are staggering, but piracy needs to be viewed in the overall battle against global piracy of other products. This essay will explore the menace that counterfeiting has become and the challenges counterfeiting poses to law enforcement and public safety.

### BEYOND COUNTERFEIT MEDICINES: THE SCOURGE OF PIRACY

It is not just pharmaceuticals that are being counterfeited. With the advent of digital technologies, music, film, and software are all subject to piracy. According to the International Federation of Phonographic Industry (IFPI), the value of the pirate market for music reached \$4.5 billion in 2004, up from \$4.3 billion the previous year.<sup>35</sup> IFPI estimated that this represents nearly 15% of the global record music market. Additionally, according to the global trade body (funded by the recording industries and major media conglomerates), more than one out of every three music compact discs bought by consumers in 2003 was pirated.

Beyond music, there is an equally alarming amount of piracy involving the motion picture industry. The rise of DVDs as a medium for entertainment has created a whole new range of counterfeiting opportunities for pirates. According to the Motion Picture Association of America (MPAA), global piracy costs the major movie studios over \$3 billion annually.<sup>36</sup> Optical Disc Piracy is a major concern since the

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32. FDA, COMBATING COUNTERFEIT DRUGS 1 (2004), available at [http://www.fda.gov/oc/initiatives/counterfeit/report02\\_04.html](http://www.fda.gov/oc/initiatives/counterfeit/report02_04.html).

33. FDA, COMBATING COUNTERFEIT DRUGS, A REPORT OF THE FOOD AND DRUG ADMINISTRATION ANNUAL UPDATE (2005), available at <http://www.fda.gov/oc/initiatives/counterfeit/update2005.html>.

34. Terry Frieden, *Feds Target Firm Importing Canadian Drugs*, CNN.COM, Sept. 11, 2003, <http://cnn.com/2003/LAW/09/11/rx.depot/index.html>.

35. Bernhard Warner, *Study: Global CD Piracy Trade Tops \$4.5 Billion*, REUTERS, [http://news.yahoo.com/news?tmpl=story&cid=769&u=/nm/20040722/music\\_nm/media\\_music\\_piracy\\_dc&printer=1](http://news.yahoo.com/news?tmpl=story&cid=769&u=/nm/20040722/music_nm/media_music_piracy_dc&printer=1) (last visited July 27, 2005); see also Daniel Flynn, *Global Music Piracy Worth \$4.6 Bln - Study*, REUTERS, June 23, 2005 (reporting that global music piracy costs legitimate businesses \$4.6 billion annually and that one in three CDs sold worldwide is pirated).

36. MOTION PICTURE ASS'N OF AM., ANTI-PIRACY, <http://www.mpa.org/anti-piracy/>

discs, including Laser Discs (LD), Video Compact Discs (VCD), and Digital Versatile Discs (DVD), are inexpensive to make and easy to distribute. In 2000, more than twenty million pirated optical discs were seized.<sup>37</sup>

Pirated DVD copies of the recent Star Wars movie were sold in swap meets and on the streets of major North American cities even before it opened in theatres. These events have completely changed the distribution policies and operations of major Hollywood studios and New York based publishers with respect to their “blockbusters.”

The book publishing industry, too, has been victim to piracy. In Mexico City, the first novel in a decade by Nobel Prize-winning author Gabriel García Márquez was launched across the Spanish-speaking world earlier than originally planned because counterfeiters were already selling copies of *A Memory of My Melancholy Whores*.<sup>38</sup> Most recently, *Harry Potter and the Half-Blood Prince*, the sixth book in the series, fell prey to Internet piracy, with illicit copies made available for sale within hours of its official release.<sup>39</sup> A special publication strategy for the new installment of the series failed as copies of the books, complete with missing paragraphs, hit the streets of Beijing months in advance of the official release date.<sup>40</sup> In fact, the Harry Potter series is so popular that wholly new books, one called *Harry Potter and Leopard-Walk-Up-To-Dragon*, have been published and sold in China without permission or license from the author.<sup>41</sup>

The biggest victim to the rise of international piracy is the software industry. In 2001, the Business Software Alliance (BSA) estimated the global losses to software piracy to be \$10.9 billion, 40% of the global market.<sup>42</sup> Last year, those losses were estimated at \$29 billion. That value amounted to nearly 60% of all legal global desktop

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(last visited Aug. 18, 2005).

37. *Id.*

38. Reed Johnson, *'Memoria' Rewrite Foils Bootleggers*, L.A. TIMES, Oct. 26, 2004, at E1.

39. Adam Pasick, *Online Pirates Pounce on New Harry Potter Book*, YAHOO NEWS, July 20, 2005, [http://news.yahoo.com/news?tmpl=story&cid=582&e=4&u=/nm/20050720/wr\\_nm/media\\_potter\\_piracy\\_dc](http://news.yahoo.com/news?tmpl=story&cid=582&e=4&u=/nm/20050720/wr_nm/media_potter_piracy_dc).

40. *Harry Potter Faces Pirates of the East*, SUN. TIMES, July 15, 2005, available at <http://www.suntimes.co.za/zones/sundaytimesNEW/entertainmentst/entertainmentst1121409891.aspx>

41. *Fake Harry Potter Book Released in China*, USA TODAY, July 5, 2002, available at <http://www.usatoday.com/news/world/2002/07/05/harry-potter-china.htm>.

42. BUS. SOFTWARE ALLIANCE, SEVENTH ANNUAL BSA GLOBAL SOFTWARE PIRACY STUDY 2 (2002), available at <http://www.bsa.org/resources/upload/2001-Global-Software-Piracy-Study.pdf>.

software sales, totaling \$51 billion.<sup>43</sup> In dollars terms, the losses were greatest in western Europe, where an estimated \$9.6 billion of pirated software was installed on machines, followed by Asia and North America.<sup>44</sup> Vietnam and China were singled out as the piracy capitals, accounting for 92% of all computer software installed. Ukraine, Indonesia, and Russia also ranked in the top ten. In fact, according to a new study released by the BSA, some 35% of all PC software is pirated.<sup>45</sup>

### THE CONSEQUENCES OF PIRACY

In 1998, the Organisation for Economic Co-operation and Development (OECD) published a report called *The Economic Impact of Counterfeiting*.<sup>46</sup> The report estimated that the global trade in counterfeit goods was \$450 billion, representing between 5% and 7% of the value of global trade.<sup>47</sup> Among the most obvious results of counterfeiting and piracy are the lost sales and profits, diminished reputations, and loss of goodwill suffered by legitimate rights holders. Their investment in the work, creativity, innovation, and risk go unrewarded. If rights are not protected and incentives for innovation are not available, there is a chilling effect on innovation, research and development, and original work.

In addition, the sale, manufacture, and distribution of counterfeit products robs economies of precious tax revenues, impedes economic growth, and ultimately results in lost jobs and decreased investment levels. By implication, tax revenues are also severely reduced. New York City reported that in 2003, IP theft cost the city \$1.03 billion in lost tax revenue.<sup>48</sup> In the world of music and film, there is a chilling effect on local production and a loss of cultural creation.

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43. *Id.*

44. *Id.*

45. *Id.*

46. ORG. FOR ECON. CO-OPERATION & DEV., *THE ECONOMIC IMPACT OF COUNTERFEITING* (1998), available at <http://www.oecd.org/dataoecd/11/11/2090589.pdf>.

47. INTERPOL, *INTELLECTUAL PROPERTY (IP) CRIME*, <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp> (last visited Aug. 18, 2005).

48. INT'L ANTI-COUNTERFEITING COAL., *WHITE PAPER: THE NEGATIVE CONSEQUENCES OF INTERNATIONAL INTELLECTUAL PROPERTY THEFT: ECONOMIC HARM, THREATS TO THE PUBLIC HEALTH AND SAFETY, AND LINKS TO ORGANIZED CRIME AND TERRORIST ORGANIZATIONS* 5 (2005), available at [www.iacc.org/WhitePaper.pdf](http://www.iacc.org/WhitePaper.pdf) (citing Press Release, N.Y. City Office of the Comptroller, *Counterfeiting Costs NYC More than \$1 Billion Annually* (Nov. 22, 2004), available at [http://www.comptroller.nyc.gov/press/2004\\_releases/pr04-11-065.shtm](http://www.comptroller.nyc.gov/press/2004_releases/pr04-11-065.shtm)).



## TERRORISM

There is a growing connection between IP piracy and terrorism.<sup>49</sup> Mounting evidence confirms that the sale of counterfeit goods has become terrorists' most important income-generating activity.<sup>50</sup> Whether it is the Hezbollah base in Charlotte, North Carolina that the Federal Bureau of Investigation shut down a few years ago,<sup>51</sup> or the manufacture and retailing of counterfeit DVDs and CDs around the world, terror groups are increasingly turning to the lucrative trade in counterfeit goods to finance their operations.<sup>52</sup> These operations are alleged to have helped fund the purchase of sophisticated dual use technologies that are converted into military use.<sup>53</sup>

Counterfeiting is a business that spans the globe. Canada identified \$70 million, in Canadian dollars, in suspected terror financing transactions in 2003, more than three times the amount estimated for 2002. The Financial Transactions and Reports Analysis Centre, set up by the Canadian government in the aftermath of 9/11 to uncover terror financing and money laundering, had a larger pool of transactions to

49. *Officials: Counterfeit Goods Fund Terrorism*, FOXNEWS.COM, July 16, 2003, <http://www.foxnews.com/story/0,2933,92094,00.html>.

Many terrorist groups engage in a variety of organized crimes to fund their activities. As terrorist groups tend to act in similar ways to transnational organized crime groups, it is important to carefully monitor how their activities evolve. There is general agreement that IP crime is a high-profit, low-risk crime, which inevitably motivates criminals to engage in this type of activity. In light of this, Interpol remains concerned about the possibility that some terrorist groups would seize the opportunity to finance their activities through IP crime.

Ronald K. Noble, Sec'y Gen. of Interpol, *The Links Between Intellectual Property Crime and Terrorist Financing*, Address Before the United States House Committee on International Relations (July 16, 2003), available at <http://www.interpol.int/Public/ICPO/speeches/SG20030716.asp>; see also James Cooper, *Not Exactly Robin Hoods: Pirated CDs May Fund Terror Networks*, PROVIDENCE J., Aug. 17, 2004.

50. Blanca Madani, *Hezbollah's Global Finance Network: The Triple Frontier*, MIDDLE E. INTELLIGENCE BULL., Jan. 2002, available at [http://www.meib.org/articles/0201\\_12.htm](http://www.meib.org/articles/0201_12.htm).

51. See TOM DIAZ & BARBARA NEWMAN, LIGHTNING OUT OF LEBANON: HEZBOLLAH TERRORISTS ON AMERICAN SOIL (2005). "Mohammed Makki, born in Lebanon but a naturalized U.S. citizen since 1987, was not only the leaser of Hezbollah's New York cell, with strong ties directly to Hezbollah's leadership in Lebanon, but he and his business were also up to their ears in insurance fraud and trademark counterfeiting." *Id.* at 156.

52. See U.S. DEP'T OF STATE, LATIN AMERICA OVERVIEW: PATTERNS OF GLOBAL TERRORISM (2000), available at <http://www.state.gov/s/ct/rls/pgtrpt/2000/2437.htm>. "Paraguayan authorities in February arrested Ali Khalil Mehri, a Lebanese businessman having financial links to Hizballah, for violating intellectual property rights laws and aiding a criminal enterprise involved in distributing CDs espousing Hizballah's extremist ideals. He fled the country in June after faulty judicial procedures allowed his release." *Id.*

53. Hezbollah sent an unmanned reconnaissance plane over Israeli airspace in late 2004. *Hezbollah Flies Unmanned Plane Over Israel*, CNN.COM, Nov. 7, 2004, <http://edition.cnn.com/2004/WORLD/meast/11/07/hezbollah/>.

sift through, 9.5 million in the latest fiscal year versus 2.2 million the year before.<sup>54</sup>

Hezbollah has been the focus of much international attention, having been named a terrorist organization by the U.S. Department of State for its connection to the Islamic regime in Iran, its brutal bombings throughout its native Lebanon, Saudi Arabia, and Argentina.<sup>55</sup> Hezbollah is believed to be behind a number of terrorist attacks all over the world, including the truck bombings that destroyed the Israeli embassy in Argentina in 1992 and the attack against the Jewish Community Center in Buenos Aires in 1994.<sup>56</sup> The 1996 attack in Saudi Arabia against the Khobar Towers housing U.S. Marines and, most recently, the assassination of former Lebanese Prime Minister Rafik Hariri on February 14, 2005, in Beirut, are also believed to be the work of Hezbollah.

The funding for these and other attacks is believed to emanate from the Lebanese community situated in the duty-free port of Ciudad del Este, a mecca for terror and crime organizations. The city is a major contraband center and the hub of a smuggling business that generates over \$12 billion per year.<sup>57</sup> Situated in Paraguay, where the country intersects Argentina and Brazil, this area is also known as the Triple Frontier or Triple Border area. With a population of only 100,000 people, the area still has about 200 murders committed there each year. It is a haven for money laundering, drug trafficking, and the fencing of stolen vehicles. Officials estimate that more than half of the automobiles near the border in Paraguay were stolen in Brazil and shipped via Ciudad del Este. The town is also a haven for the international piracy of music, software, DVDs, and fashion apparel.<sup>58</sup>

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54. *Canada Says Suspected Terror Financing Triples*, REUTERS, Nov. 4, 2004.

55. Hezbollah is on the list of terrorist groups in the United States and Canada, although strangely not in the European Union, where they are still receiving the benefits of "charity status." Hezbollah has also become a formidable force on the Lebanese political landscape. Conspiring with corrupt United Nations peacekeepers, Hezbollah organized kidnappings of Israeli soldiers, as the terrorist group waged a guerrilla war against the Israeli military, forcing former Israeli Prime Minister Ehud Barak to withdraw to its southern borders despite repeated rocket attacks against Israeli citizens on Israeli territory. In 2004, Hezbollah showed its muscle politically as the group captured five of seven municipalities in local elections. *U.N. Urges Hezbollah to Join Lebanese Army*, REUTERS, July 18, 2005, <http://www.alertnet.org/thenews/newsdesk/L18663145.htm>; see also *Hezbollah Shells Fired; Israeli Killed*, WASH. POST., June 30, 2005, *republished in* SAN DIEGO UNION TRIB., June 30, 2005, at A15.

56. LORETTA NAPOLEONI, MODERN JIHAD: TRACING THE DOLLARS BEHIND THE TERROR NETWORKS 173 (2003) (citing Jack Sweeney, *DEA Boosts its Role in Paraguay*, WASH. TIMES, Aug. 21, 2001).

57. *Id.* at 172 (citing Junger, *supra* note 1).

58. DIAZ & NEWMAN, *supra* note 51.

According to the International Intellectual Property Alliance, in 2000, Brazil lost \$300 million in CD sales due to Ciudad del Este's booming contraband in pirated CDs. By 2002, this illicit business became a cash cow for Islamic terrorist groups working with Hong Kong mafia, with few risks and lucrative results.<sup>59</sup>

Police raids on Hezbollah safe houses in Ciudad del Este found thousands of pirated CDs and CD copying machines that could copy up to twenty thousand CDs daily.<sup>60</sup> Over seven years, as much as \$50 million was sent from Ciudad del Este to Hezbollah accounts around the world, including those in Lebanon.<sup>61</sup> In February 2004, Canada's national newspaper, *The Globe and Mail*, reported that Hezbollah was plotting to bomb a synagogue in Ottawa, Canada's capital city.<sup>62</sup> Additionally, Hezbollah was reported to be working with Al Qaeda in running a terrorist training camp in the border area between Brazil and Paraguay.<sup>63</sup>

In late May 2005, the *Los Angeles Times* ran a front-page story about the connection to Hezbollah, the Iranian backed Lebanese terrorist group.<sup>64</sup> Interpol has long reported that intellectual property piracy activities are conducted by organized criminal organizations, including Chinese triads, Russian mafia, and Lebanese terrorists.<sup>65</sup> Intellectual property piracy reportedly financed the attempted bombing of the World Trade Center in 1993.<sup>66</sup>

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Hezbollah members had a large organized operation stealing jeans or slapping Levi labels on cheap imitations in large quantities and shipping them to the Tri-Border. They were then moved on to Europe and the Middle East and sold at huge profits. At that time, Levis jeans were a hot commodity in the Middle East and Eastern Europe. Local people offered to buy them directly from visiting Westerners. In the Middle East, the trademark duds were considered the height of fashion. Money-laundering and credit card fraud was also involved.

*Id.* at 159.

59. REX HUDSON, TERRORIST AND ORGANIZED CRIME GROUPS IN THE TRI-BORDER AREA (TBA) OF SOUTH AMERICA 29 (2003).

60. *Id.* at 30.

61. NAPOLEONI, *supra* note 56 (citing Junger, *supra* note 1).

62. Rod Mickelburgh, *Terrorist Attack on Ottawa Averted*, U.S. SAYS, GLOBE & MAIL, Feb. 9, 2004, at A1.

63. HUDSON, *supra* note 59, at 17.

64. Josh Meyer, *Knockoff Dealers Could Have Designs on Terror*, L.A. TIMES, May 26, 2005, at A1.

65. Interpol member countries have recognized that organized criminal enterprises are involved in Intellectual Property crime. In 2000, a resolution on IP crime was adopted at the 69th General Assembly of Interpol in Rhodes, Greece. See Interpol, *Intellectual Property Rights*, ICPOGA Doc. AGN/69/RES/6 (Nov. 4, 2000), available at <http://www.interpol.int/Public/ICPO/GeneralAssembly/AGN69/Resolutions/AGN69RES6.asp>.

66. INT'L ANTI-COUNTERFEITING COAL., *supra* note 48, at 21.

Piracy must be stopped for a number of reasons. The fact that it is a source of terrorist financing makes it all the more pressing a matter for attention. Piracy's lucrative rewards and low risk of prosecution make this illicit industry very tempting for terrorists to exploit. There are a number of other threats, however, that counterfeiting poses to citizen security.

#### COUNTERFEITING AND THE THREAT TO PUBLIC SAFETY

There is indeed a rising occurrence of substandard and dangerous counterfeit products, which present public health and safety risks.<sup>67</sup> The ingestion of dangerous materials that counterfeit medicines may contain is most obvious.

But pirated goods pose an equal danger to the public through fake consumer and industrial products. From phony automobile<sup>68</sup> to fake Rolls Royce engine parts for airplanes, commercial transportation and aviation are not the end of this scourge. "In August 2002, Bell Helicopter sued two aircraft maintenance and repair companies for trademark counterfeiting."<sup>69</sup> "Counterfeit parts have been discovered in helicopters sold to NATO in jet engines, bridge joints, and fasteners in areas of nuclear facilities responsible for preventing the meltdown of the reactor itself."<sup>70</sup> There have been cases of fake baby formula and fake shampoo with unsafe levels of bacteria on sale in North America,<sup>71</sup> and faulty wiring that could lead to fires has been discovered in phony electric goods from China. Piracy is everywhere and affects everything we do.

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67. Criminals and terrorists have used counterfeit law enforcement identification. On May 10, 2005, CNN and other news agencies reported that federal agents had arrested a man, charging him with possessing and selling more than 1300 counterfeit badges representing thirty-five law enforcement agencies. *1,300 Fake Law Badges Seized*, CNN.COM, May 10, 2005, [http://www.cnn.com/2005/US/05/10/fake.badges/?section=cnn\\_topstories](http://www.cnn.com/2005/US/05/10/fake.badges/?section=cnn_topstories). The phony badges mimic real badges from agencies such as the FBI, U.S. Marshals, Customs, Drug Enforcement Agency, Treasury, and New York Police Department. *Id.* Some even had a signature from the company that makes the real badges. "The counterfeits are 'very, very good,' said Special Agent in Charge Martin Ficke, who added that nine out of 10 would 'pass scrutiny.'" *Id.*

68. *Counterfeit Goods Finance Terrorism*, TORONTO SUN, May 26, 2004, at 44.

69. FACTS ON FAKES, *supra* note 1, at 10 (citing *Bell Helicopter is Suing Two Companies Specializing in Aircraft Maintenance and Repair*, 91 BUS. & COMM. AVIATION 33 (2002)).

70. *Id.* at 11 (citing H.R. REP. NO. 104-556 (1996)).

71. *Id.* (citing Henry Gilgoff, *Counterfeit: Rip-Offs of Popular Products Victimize Both Consumers and Manufacturers*, NEWSDAY, Aug. 27, 1995).

## PIRACY: LARGELY A UNITED STATES PROBLEM

While the manufacturing base of the United States gets outsourced to Asia, American innovation still leads the world. Indeed, “progress in knowledge and innovations was the primary factor behind the growth of America’s economic productivity.”<sup>72</sup> With the transition to a knowledge-based economy, the financial future of the United States, and California in particular, very much depends on the protection of IP abroad, be it royalties for telecom technology, software from Silicon Valley, music from Los Angeles, movies from Hollywood, or biotechnology in San Diego.

According to *Business Week*, from 2002 through 2004, American companies owned eight of the top ten brands in the world.<sup>73</sup> The United States is home to multinational companies that lead in most branding and industries, including pharmaceuticals,<sup>74</sup> software,<sup>75</sup> heavy industry,<sup>76</sup> media, telecommunications,<sup>77</sup> and biotechnology.<sup>78</sup> It is clearly in the United States’ best interest to pursue the enforcement and protection of intellectual property rights. It is one of the remaining comparative advantages still enjoyed by the United States.

It is not surprising, then, that the incredible proliferation of pirated goods on the global market and the threat to U.S. interests has sparked some action as well. In 2004, the White House announced a special

72. PAT CHOATE, *HOT PROPERTY: THE STEALING OF IDEAS IN AN AGE OF GLOBALIZATION* 45 (2005).

73. INT’L ANTICOUNTERFEITING COAL., *supra* note 48, at 6 (citing *The 100 Top Brands*, BUS. WK., Aug. 5, 2002, at 95, available at <http://www.businessweek.com/pdfs/2002/0231-brands.pdf>).

74. Merck’s laboratory distribution business, Pennsylvania-based VWR International, is one of the world’s leading distributors of laboratory products. Courdert Brothers L.L.P., *Multi-Office Couderd Team Advising Merck KGaA in US\$1.68 Billion Sale of VWR International to Clayton, Dubilier & Rice, Inc.*, Feb. 19, 2004, <http://www.coudert.com/news/default.asp?action=displaynews&id=198>.

75. Armonk, New York-based IBM remains the leader of the \$12 billion corporate server market. *IBM Aims to Maintain Server Dominance*, N.Y. TIMES, July 26, 2005, available at <http://www.nytimes.com/aponline/technology/AP-IBM-Mainframe.html>.

76. Illinois-based heavy industry company Caterpillar was listed as a Fortune 500 company in 2003. *The 2003 Fortune 500 List*, FORTUNE, available at <http://www.cylist.com/List/400300533/> (last visited Aug. 18, 2005).

77. Motorola Inc. is second in the world for manufacturers of mobile phones. Dave Carpenter, *Motorola Beats Views With \$933M Profit*, WASH. POST, July 19, 2005, available at <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/19/AR2005071901146.html?sub=AR>.

78. Jerry Stanton, Comment, *Lesson for the United States from Foreign Price Controls on Pharmaceuticals*, 16 CONN. J. INT’L L. 149, 153 (2000) (explaining that “the vast majority of biotech today is located within the United States” and that “[t]he American pharmaceutical industry is the undisputed world leader in developing new and effective treatments”).

program to curb the growing piracy problem. The so-called “Strategy Targeting Organized Piracy,” or STOP, is an inter-agency initiative. This is a good public relations campaign, but there needs to be real action on the ground and inter-agency cooperation to begin to make a difference. As an example, between October 1, 2003 and September 30, 2004, the U.S. Department of Homeland Security, Bureau of Customs and Border Protection, seized counterfeit goods estimated at \$138.7 million dollars.<sup>79</sup>

Some legislation has worked its way through Congress, and a new coordinating office has been created. The Fiscal Year 2005 Omnibus Appropriations bill (H.R. 4818) passed by Congress in December 2004 included the creation of an “Intellectual Property Czar” to strengthen America’s intellectual property rights throughout the world. This was undertaken on July 22, 2005.<sup>80</sup>

H.R. 4818 creates the new lead post as a coordinator of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC)—an arm of the U.S. Patent & Trademark Office—and dedicates specific funding to stem the scourge of global piracy. The bill creates the Office of International Intellectual Property Enforcement in the State Department and provides for a U.S. Trade Representative official to negotiate for high standards of intellectual property rights protection within trade agreements.

The “Special 301” provision of the Trade Act of 1974, as amended, requires the U.S. Trade Representative to identify countries that deny adequate and effective protection of IP rights, or fair and equitable market access for U.S. persons who rely on intellectual property protection. Special 301 was amended in the Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective IP protection even if it is in compliance with its treaty obligations under the TRIPS Agreement.<sup>81</sup>

## SOLUTIONS

Despite the new IP Czar office, Special 301, and the annual naming and shaming that comes with a country being put on the Special 301 watchlist, IP piracy continues to thrive globally. It is time for the

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79. Press Release, Int’l AntiCounterfeiting Coal., IACC Newsroom: Late Breaking News, <http://www.iacc.org/Newsroom.html> (last visited Aug. 18, 2005).

80. *Id.*

81. Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, Dec. 15, 1993, 33 I.L.M. 81 (1994) [hereinafter TRIPS Agreement].

U.S. government and its allies to take a more integrated, intersectoral, and multiple stakeholder approach to the problem of piracy. There must also be more international cooperation like that in July 2005, when police in eleven countries conducted Operation "Site Down," a series of raids against a global operation of illegal distributors of movies, games, and software, netting copyrighted material worth \$50 million and leading to seven arrests.<sup>82</sup>

The U.S. government and others in the industrialized world<sup>83</sup> must also work to make the *TRIPS Agreement* work well.<sup>84</sup> The industrialized world and those aspiring to be part of the global economy must better enforce local IP laws, and make sure the harmonization process promised by the WTO negotiations comes to fruition.

Defeating terrorism will require more information sharing among law enforcement agencies, including financial transactions.<sup>85</sup> There must be increased public information campaigns about the value of IP and its importance to the rule of law and economic growth. The general public must understand why it is not okay to buy pirated goods.

The legal cultures of countries and legal systems must be addressed. It is more than a Robin Hood story for entertainment products. There needs to be independent judiciaries, a proactive police force, and more advanced investigatory techniques to stem financing, planning, and operations by and for terrorists. Piracy needs to be seen as a crime, not a nuisance for rich media companies and greedy musical artists. It is a global problem, for it is rampant in the countries of South America, as well as in Russia, China, Thailand, and Saudi Arabia. And piracy is in the United States, on our city streets, in stores, and at swap meets.

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82. *Global Raids Target Piracy Gangs*, BBC NEWS, July 1, 2005, available at <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/technology/4640439.stm>.

83. Counterfeit medicines and other forms of piracy are also major problems for the United Kingdom government. Nigel Hawkes & Sam Lister, *NHS Prime Market for Global Drugs Trade*, TIMES (Britain), Nov. 13, 2004, <http://www.timesonline.co.uk/article/0,,2-1356306,00.html>. Australia too is affected, having had the 16th largest loss globally due to software piracy in 2003, recording a loss of \$341 million. AUSTL. INST. OF CRIMINOLOGY, AUSTL. GOV'T, CYBERCRIME: GLOBAL SOFTWARE PIRACY AND AUSTRALIA (2003), at <http://www.aic.gov.au/topics/cybercrime/stats/piracy.html>.

84. See generally Rishi Gupta, *TRIPS Compliance: Dealing with the Consequences of Drug Patents in India*, 26 HOUS. J. INT'L L. 599 (2004).

85. Eric Lichtblau, *U.S. Seeks Access to Bank Records to Deter Terror*, N.Y. TIMES, Apr. 10, 2004, at A1. It has been authoritatively reported that "[t]he Bush Administration should formalize its efforts to centralize the coordination of U.S. measures to combat terrorist financing." MAURICE R. GREENBERG ET AL., UPDATE ON THE GLOBAL CAMPAIGN AGAINST TERRORIST FINANCING 31 (2004).

## CONCLUSION

With the rise of Internet-based pharmacies, the globalization of the international trade in pharmaceuticals has meant better access to necessary medications and the eradication of disease. But the opposite side of this coin is the epidemic of counterfeiting. Indeed, like the music, motion picture, book publishing, and software industries, piracy has become a major challenge to governments, multinational corporations in the pharmaceutical industry, and the healthcare profession. The International Chamber of Commerce estimated that in 1998, five percent to seven percent of world trade is counterfeit goods, a market worth \$350 billion.<sup>86</sup> This is a huge increase from only a decade and a half prior. In 1982, the International Trade Commission estimated losses to U.S. companies from counterfeiting and piracy at \$5.5 billion.<sup>87</sup> In 1988, those losses were estimated at \$60 billion.<sup>88</sup> In 1996, damage to the U.S. economy was estimated at \$200 billion.<sup>89</sup>

The amount of pirated goods around the world is now in the hundreds of billions of dollars annually. Secretary of Commerce Carlos Gutierrez stated in an interview with Reuters that “[i]ntellectual-property theft is a major problem around the world. We believe that it is costing U.S. businesses about \$250 billion in lost sales” annually.<sup>90</sup> The manufacture and sale of counterfeit products is one of the most pressing global issues. Only through innovative solutions can we protect innovation itself,<sup>91</sup> and in the process, protect lives potentially harmed by those who seek to gain illicitly from those afflicted with sickness and disease.

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86. INT’L ANTICOUNTERFEITING COAL., *supra* note 48, at 5 (citing CTR. FOR ECON. & BUS. RESEARCH, COUNTERING COUNTERFEITS: DEFINING A METHOD TO COLLECT, ANALYZE, AND COMPARE DATA ON COUNTERFEITING AND PIRACY IN THE SINGLE MARKET 18 (2002)).

87. *Id.* at 3 (citing S. REP. NO. 104-177 (1995)).

88. *Id.* (citing U.S. INT’L TRADE COMM’N, INVESTIGATION NO. 332-245, FOREIGN PROTECTION OF INTELLECTUAL PROPERTY RIGHTS AND THE EFFECT ON U.S. INDUSTRY AND TRADE (1988)).

89. *Id.* at 4 (citing S. REP. NO. 104-177 (1995)).

90. *Bush Creates New Post to Fight Global Piracy*, REUTERS, July 22, 2005, [http://news.yahoo.com/news?tmpl=story&cid=582&e=1&u=/nm/20050722/wr\\_nm/trade\\_piracy\\_usa\\_dc](http://news.yahoo.com/news?tmpl=story&cid=582&e=1&u=/nm/20050722/wr_nm/trade_piracy_usa_dc).

91. There has been a lot of talk but little action in the new initiatives. Neil King, Jr., *U.S. Prepares to Crack Down on Intellectual Property Piracy*, WALL ST. J., Oct. 4, 2004, at A2.