

Eating The Counterfeit Elephant



While the Internet has definitely made the industry more prolific, counterfeiting has a history that predates the Internet by centuries. There weren't designer handbags or electronics hundreds of years ago to counterfeit, so people worked with what they had — literature, for one, is a good example.

In the late 18th century and well into the 19th century, American publishers made a habit out of re-publishing British works without giving proper credit (or royalties). Charles Dickens was a notable victim of copyright infringement and a crusader for the intellectual property cause. Numerous theatrical "adaptations" of *A Christmas Carol*, as well as cheap American reprints of several of his novels, led Dickens to (unsuccessfully) lobby the American Congress to recognize the copyright of British authors.

Prior to the establishment of international copyrights in 1891, the justification for the copyright infringements was the undercapitalized nature of the American publishing industry, which was still in its infancy. Printing books required risky capital investments. The American "penny publishers" who were skirting copyrights to cut costs were doing so in order to cater to the demands of working-class consumers who couldn't necessarily afford to pay full-price for books.

Blaming China

Most statistics, while hard to come by in a shadow industry that pays no taxes, reflect that around 80 percent of counterfeit goods are being manufactured in

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China. This makes it easy to blame China entirely for the flow of counterfeit goods into the U.S. — because the majority of the goods, are, in fact, coming from China. But the basic tenants of supply and demand raise an interesting question: Since the U.S., Canada, Australia and the U.K. make up over 50 percent of the world's consumers of counterfeit products, if these nations stopped buying counterfeit goods, wouldn't China stop making them?

Rob Holmes, founder and CEO of IPCybercrime.com, an investigative agency that deals in the unauthorized use of trademarks, copyrights and patents, both online and on the street, says yes, to a degree.

“The bulk of China's GDP comes from labor. As such, a major concern for China is keeping its people employed. Chinese factories will make what consumers want,” points out Holmes. “I'm not saying this is right or wrong — this is just economics.”

It is fair to expect that China, as a developing nation, will go through the same growing pains that any other developing nation went through, including the United States. As the world's largest vendors and exporters, China's economy depends on the labor of its workers, and in order to keep its workers employed, the country will supply whatever its consumers demand.

Holmes points to Japan as a prime example. There is no counterfeiting coming out of Japan, largely because intellectual property is a major part of their GDP. The value of protecting intellectual property rights is high in Japan, because their economy depends on it.

The U.S. Chamber of Commerce estimates that U.S. intellectual property is worth between \$5 and \$5.5 trillion. In addition, America's IP-intensive industries employ nearly 18 million workers and account for more than 50 percent of all U.S. exports (U.S. Department of Commerce).

“Once China has more white-collar jobs — which rely on intellectual property — essentially, when the country's economy starts relying on IP for its income, then we will see a large dip in counterfeit manufacture coming out of China,” predicts Holmes.

Fighting Counterfeiting

Supply and demand, however, can also launch an entirely different argument about counterfeiting. This argument has less to do with the undeniable economic impact and more to do with a theoretical discussion of crime itself.

“Wherever you go, you'll find cheaters — people who look for the easy way to make money. If someone spends half their lives coming up with a great product, someone else will find a way to knock it off,” says Holmes.

Taking on the entire counterfeit industry would be a massive, unfeasible undertaking for law enforcement in any country. Instead, Holmes suggests that the manufacturing industry can fight back one piece at a time, even if that means

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targeting the “little guys” in the counterfeit supply chain.

“It’s like eating an elephant — have to do it bite by bite. The more small guys you punish, the more small people you turn toward other, legal businesses. I believe there is an 80/20 rule in which 80 percent of the people selling fakes would do something else if they were convinced to do so. The other 20 percent will always do something illegal. We should be working on that 80 percent,” says Holmes.

Chasing it upstream is the ultimate goal — ideally law enforcement gets to the main supplier, but the middle distribution is a big part of the problem. Success for a company, such as IP Cybercrime and other companies like it, does not involve the elimination of all counterfeiting at the source. The more realistic goal is to drive counterfeit products underground far enough where they aren’t as easy to find and aren’t as visible to the everyday consumer. By forcing people to go to great lengths to find counterfeit goods — instead of serving them up in their inboxes — the growth of the thriving counterfeit industry will be slowed.

The Victims of Victimless Crimes

The purchase of counterfeit goods is often justified by consumers using the rationale that it “doesn’t hurt anyone.” Because a large portion of the companies affected are multi-billion dollar companies, it is assumed that buying a few fake handbags, for example, won’t really affect their businesses. Many of these overseas fashion designers, however, have corporate offices, retail stores, distribution centers and even some manufacturing operations in the U.S. All of these facilities employ American workers.

While it is difficult to quantify, the U.S. Chamber of Commerce estimates that counterfeiting costs the U.S. economy between \$200 to 250 billion per year and is responsible for the loss of 750,000 American jobs.

Holmes agrees with these statistics. “Another word for ‘rich company’ is ‘employer.’ People don’t see rich companies as employers, they see them as people they want to steal from — but they are stealing from people who give people jobs.”

Charles Dickens had argued that the U.S. publishing industry’s refusal to protect international copyrights would negatively affect American authors, since U.S. publishing companies had little motivation to publish American novels, when they could steal British novels for free. In much the same way, infringements on intellectual property rights are negatively affecting U.S. businesses and the overall economy. While part of the solution lies in the hands of judges, lawyer and law enforcement, all consumers play a role in reducing the demand for counterfeit goods.

Trade Secrets: Intellectual Piracy and the Origins of American Industrial Power by Doron S. Ben-Atar, New Haven, CT, Yale University Press

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