

# United States Senate

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Subcommittee on Security and International Trade and Finance

Hearing on

“Pirating the American Dream: Intellectual Property Theft’s Impact on America’s Place  
in the Global Economy and Strategies for Improving Enforcement.”

Thursday, April 12, 2007

Written Statement of

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*Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy*

Mr. Chairman, distinguished members of the Committee,

My name is Moises Naim and I am the Editor in Chief of Foreign Policy magazine. I am also the author of a recent book entitled *Illicit: How Smugglers, Traffickers and Copycats are Hijacking the Global Economy*. In this book, I summarize the findings of more than a decade of research into the inner workings and the consequences of illicit trafficking. I have studied the smuggling of everything from people and weapons to narcotics and human organs; and from endangered species to laundered money. I have also researched the trade in pirated products of all kinds, including medicines, automobiles, industrial parts, luxury goods, and a host of other commodities.

It is on this last illicit trade in counterfeits that our discussion focuses today, and on which I shall concentrate my remarks, Mr. Chairman.

Before I begin, I want to thank you, Chairman Bayh, and your colleagues on the Subcommittee on Security and International Trade and Finance for giving me the opportunity to come before you today. The trade in illicit goods is one of the most pressing issues of our time and I am pleased to come before the Subcommittee. I also want to recognize your leadership, Mr. Chairman, in tackling the problems created by the booming global trade in counterfeits, as well as your sincere interest in seeking innovative solutions to contain this growing threat.

Today I want to make five points concerning the international trade in stolen intellectual property—and offer one proposal for your consideration:

**Firstly**, the international trade in counterfeited goods is just one of many illicit trades that have boomed in the last decade and a half. The revolutionary changes in technology and politics that began in the early 1990s made the movement of people, goods, information, and money easier than ever before. These changes made it cheaper for businesses, non-governmental organizations, churches, terrorists, and countless other groups and bodies to operate globally, and with more ease than at any time in history.

Smugglers, always internationally-minded and always quick to detect and exploit price differences among neighboring nations, were among the first to take advantage of the opportunities created by globalization. Before the most recent wave of globalization, traffickers were primarily limited to illegally moving goods across borders between adjacent countries. But beginning in the 1990s, they could exploit price and cost differences globally, moving their merchandise across continents in large volumes. Their profits, technological and managerial sophistication, and their political influence increased accordingly.

Today, smuggling on a global scale has become one of the most potent forces reshaping the world's political and economic landscape. Yet, in contrast to the globalization of legitimate business, the media, or even terrorist organizations, the globalization of smuggling and its consequences has received little attention.

When we actually look at the illegal, international trade in people, narcotics, timber, industrial waste, human organs, weapons of mass destruction, and other goods, we see interesting similarities among them. While smuggling luxury products from Asia to Europe may look very different than smuggling cocaine from the Andes to Florida, and while trafficking Central American workers to California may look different than trafficking human kidneys from China to Canada, in fact many of the economic forces, organizational arrangements, business models, and behavior of the players are quite similar. They are not the same people or criminal networks. But the forces that drive them and the way they are organized bear much in common.

Governments' responses have also been quite similar—and, in all cases, unfortunately their success has proven very elusive. There is hardly any country that can claim major progress in containing the growth of any of these illicit trades. Therefore, a major implication of this first point is that much that can be learned from past and current efforts aimed at curbing illicit trafficking in other markets, and these lessons can be fruitfully applied to new initiatives aimed at limiting the trade in stolen intellectual property.

**Secondly**, a common factor in all of the illicit trades I have studied is how easy it is to overestimate governmental capabilities. One of the most common mistakes I have found in legislation aimed at controlling illicit trades is that, too often, it assumed that governments are more capable and effective than has proven to be true.

There are many reasons for this, but the most important is that while traffickers are global, governments are national. Governments have a hard time working outside their national jurisdictions. The natural habitat of government is inside a nation's borders. The natural habitat of traffickers is in-between national borders—in the cracks and shadows of globalization. While traffickers are perfectly at home when operating in these interstices, governments are slowed down, indeed often paralyzed, when working within them.

In this respect, globalization has had very asymmetrical consequences for traffickers and for the public servants charged with chasing them. New technologies, political changes, and policy reforms around the globe have had the effect of empowering criminals more than governments. In some instances, they have even demonstrably weakened governments.

This means that governments must exercise great caution when assigning new tasks and responsibilities to agencies and departments, and their bureaucrats. Government is indispensable in the fight to curb smuggling in general and counterfeits in particular. But in order to be effective, government needs to be selective in what it tries to achieve. It is unrealistic to expect government to combat every aspect of counterfeiting. History proves that it cannot. This approach will further burden already over-stretched governments and greatly reduce their effectiveness. Priorities are important in any policy discussion related to the fight against global counterfeiting. But, as you all know well, the hardest part of

setting priorities is not deciding what to do, but rather deciding which goals, though admirable, must be cast aside. Nowhere is this more true than in the fight against smugglers, traffickers, and copycats.

The **third** point is that another frequent characteristic of anti-trafficking campaigns worldwide is that they all tend to concentrate more on constraining the supply of the smuggled goods, than on limiting their demand. This fact is well known in the case of the United States' War on Drugs where, resources spent on interdiction and eradication outstrip those aimed at curbing homegrown demand. It is also true of efforts against illegal migration which—at least until recently—were overwhelmingly devoted to stopping the illegal entry of foreigners while largely ignoring their American employers.

These strategies failed, and the same risk of failure is possible in the fight against counterfeiters. It is important to remember that the boom in pirated goods owes as much to a growing demand as it does to a growing supply. We are talking about literally billions of consumers around the world who are willing—indeed eager—to buy bogus facsimiles of products at a fraction of the price of the original, lawful goods. This market of consumers is served by millions of some of the most innovative, ruthless, and managerially and technologically sophisticated entrepreneurs at work today in the global economy.

This is a powerful market—and it is driven more by high profits than by low morals.

Approaching this fight purely from a law-enforcement or legalistic perspective will miss the fact that we are in the presence of a gigantic market with millions of buyers and sellers and immense volumes of merchandise and money changing hands.

The implication of my third point is this: it's necessary to think about incentives, profits, value-chains, and business models when thinking about how to align this market with the needs of society. It is important to recognize that, more often than not, it is futile for governments to work against global markets that are this massive and powerful. It is far better to use these market forces to help achieve your achieve goals. It is in this spirit that I will offer a proposal for your consideration in just a moment.

Before I do so, let me make a **fourth** point, which is simple and brief. No country can successfully tackle this problem acting alone. A global problem cannot be solved with unilateral, national efforts. Curbing the growth of the global counterfeiting market inevitably requires the effective coordination of several nations acting in concert. This is a slow, frustrating, and often ineffective process. But no other options exist. Anyone that argues in favor of a unilateral solution is mistaken. Such an approach will retard the adoption of more effective efforts, even as it creates the illusion that something is being done to deal with the problem.

**Lastly**, counterfeits are undermining a critical foundation of global capitalism: the intellectual property rights regime. It has now become apparent that patents, copyrights, and other legal instruments are not affording inventors, artists and, generally speaking,

the owners of intellectual property adequate protection against the unlawful appropriation of their property. Brands, designs, formulas, software, and content that has value is being routinely stolen, copied, and sold worldwide at a fraction of the price charged by the original owners. Entire industries have been devastated by piracy.

It is equally apparent that the ability of governments to enforce the legal rights of owners of intellectual property is rapidly declining. Moreover, it is not at evident that this decline in the effectiveness of legal instruments to protect intellectual property can be stopped, reversed, or, in a great many cases, even slowed down. In some instances, it is not even clear that the countries in which major counterfeiting operations exist have governments with the political will or the institutional wherewithal to clamp down on counterfeiters. The massive scale of their operations, the employment they generate, the profits they yield, and the widespread accomplices that counterfeiters have in government, politics, law enforcement, the military, the media, and the judiciary make them a formidable political and economic force. (Too often they are also a formidable armed force.)

The implication of this point is not that governments have to abandon the fight to ensure that intellectual property rights are protected and enforced at home and abroad. Rather the implication is that governments need to be supported in their efforts by the most intensive use possible of anti-copying technologies. In many industries in the near future, technology and science are going to be far more effective at protecting intellectual property rights than legal instruments and governments. In some industries that is already, and increasingly, the case.

I believe that the effectiveness of anti-piracy legislation significantly depends on its ability to use markets and incentives to achieve its goals. By this I mean its ability to deal not only with the supply side of illicit markets, but also and with equal attention to the demand for the counterfeited goods and products. And naturally, on how well it incorporates the fact that this is a transnational problem whose alleviation will prove elusive to actions taken by governments acting alone.

One area that I do not believe has been sufficiently considered is the reality that there is much that technology can do (and is already doing) to safeguard some products from illegal copying. I therefore believe that a very promising, market-based solution is to include in any legislation mechanisms that will stimulate and accelerate the development and adoption of new technologies. Specifically, technologies that will make counterfeiting products far more difficult than what it is now. I am convinced that in the foreseeable future technology—not patents, sanctions, or other traditional means for fighting intellectual property theft—will become critical in protecting the intellectual property of innovators, creators, and artists.

Thank you, again, Mr. Chairman and members of the Subcommittee for affording me this opportunity to testify before you. I look forward to your questions and comments.

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