

Fair Copy? A Look at the Anti-Counterfeiting Lobby

STUART MACDONALD

Management School

University of Sheffield

TIM TURPIN

Centre for Industry and Innovation Studies

University of Western Sydney

**World Conference on Intellectual Capital for
Communities, Paris, 22-23 May 2008**

A Thought

- “We might at least entertain the notion that piracy is in fact a reaction, one that implies that all is not well with the prevailing practices of genuine article manufacturers and it is these, and the role of legislation, as much as the activities of pirates that need to be re-examined.”

McDonald, G. and Roberts, C. (1994) 'Product piracy. The problem that will not go away', *Journal of Product and Brand Management*, 3, 4, pp.55-65 (p.64)

The logic of the lobby

“Appropriate intellectual property rights protection will encourage the transfer of technology to, and technological advancements in, the developing world, leading to increased rates of economic development, increased exports, and other economic benefits.”

MacLaughlin, J., Richards, T. and Kenny, L., 1988, ‘The economic significance of piracy’ in Gadbaw, R. and Richards, T. (eds) *Intellectual Property Rights. Global Consensus, Global Conflict?*, Westview, Boulder, pp.89-108 (p.98)

The logic of the lobby

“ ... the developing countries will appreciate the great value a good local IP law can have on further investment in the country: both local and foreign investors will be more encouraged to fund local developments if their investments are protected, in effect are insured against local piracy.”

Jackson, M. (1996) 'IPR and the pharmaceutical industry: Hopes based on hopes' in Webster, A. and Packer, K.(eds), *Innovation and the Intellectual Property System*, Kluwer, London, pp.65-75 (p.72)

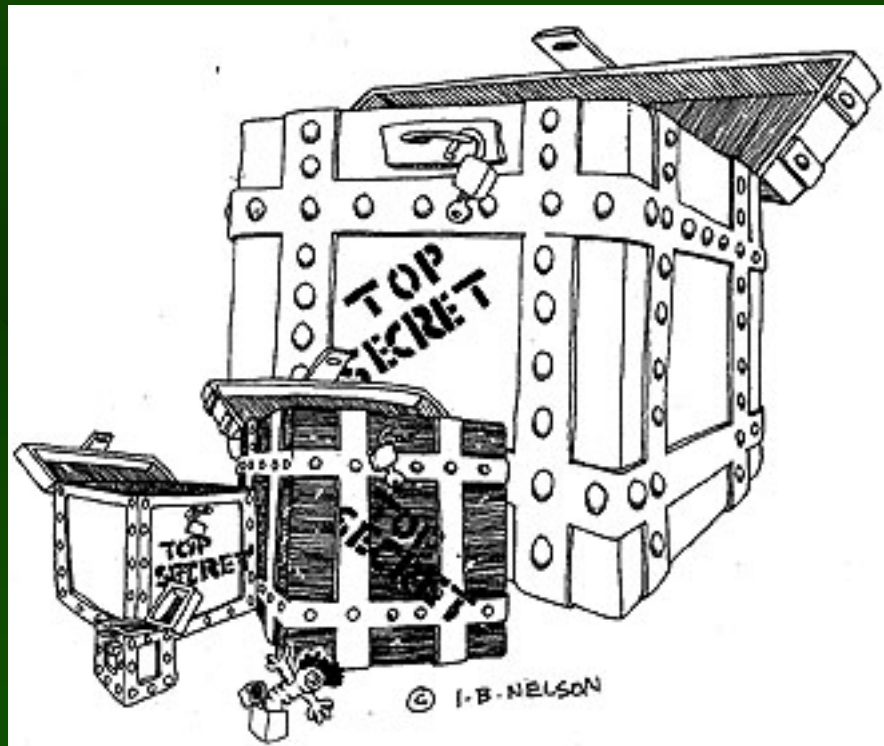
1980s

- Declining competitiveness of US
- Resort to information-intensive economy
- Retain information
- Thatcher and Reagan
- Middle-class market-driven economy
- Increase in scale and scope of IPR

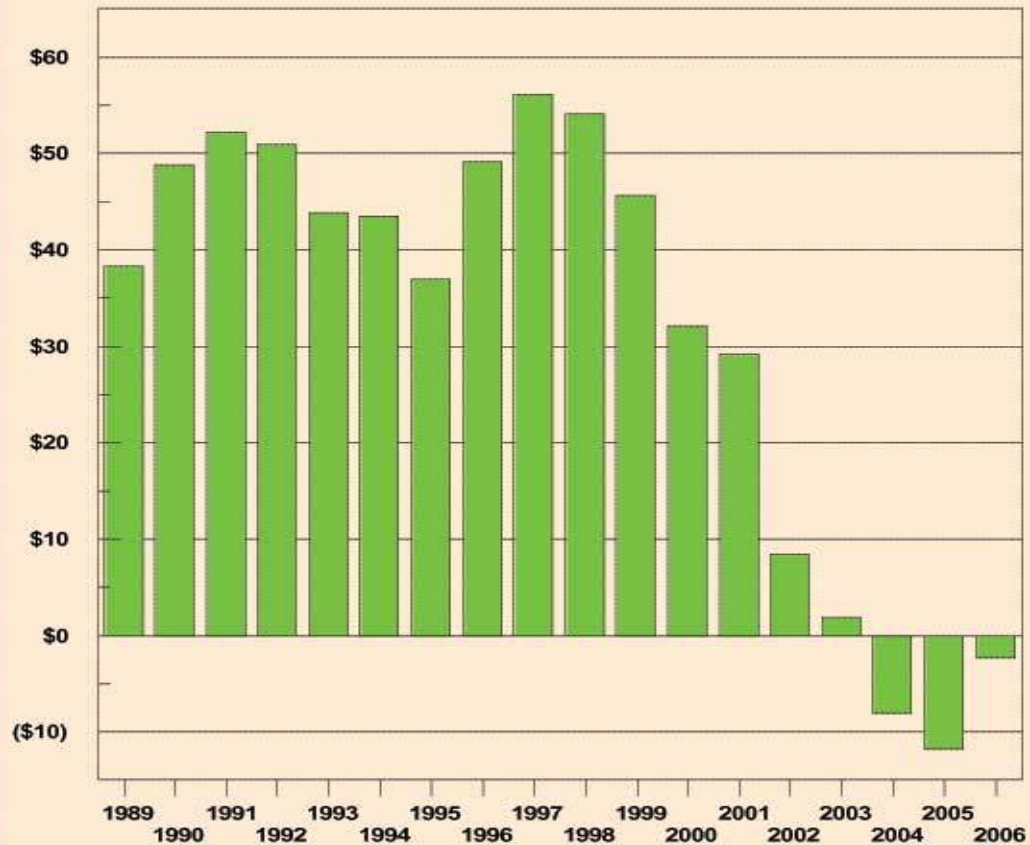
- WIPO influence fades
- WTO influence grows
- TRIPS to be insinuated into the global economy by 2006

Major change

- 1) Information regarded as property
- 2) Innovation no longer seen as including diffusion
- 3) Rise of the presentation economy



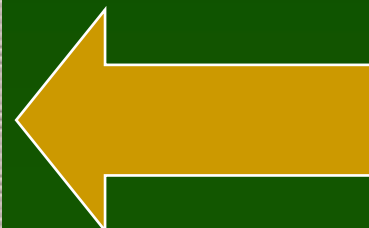
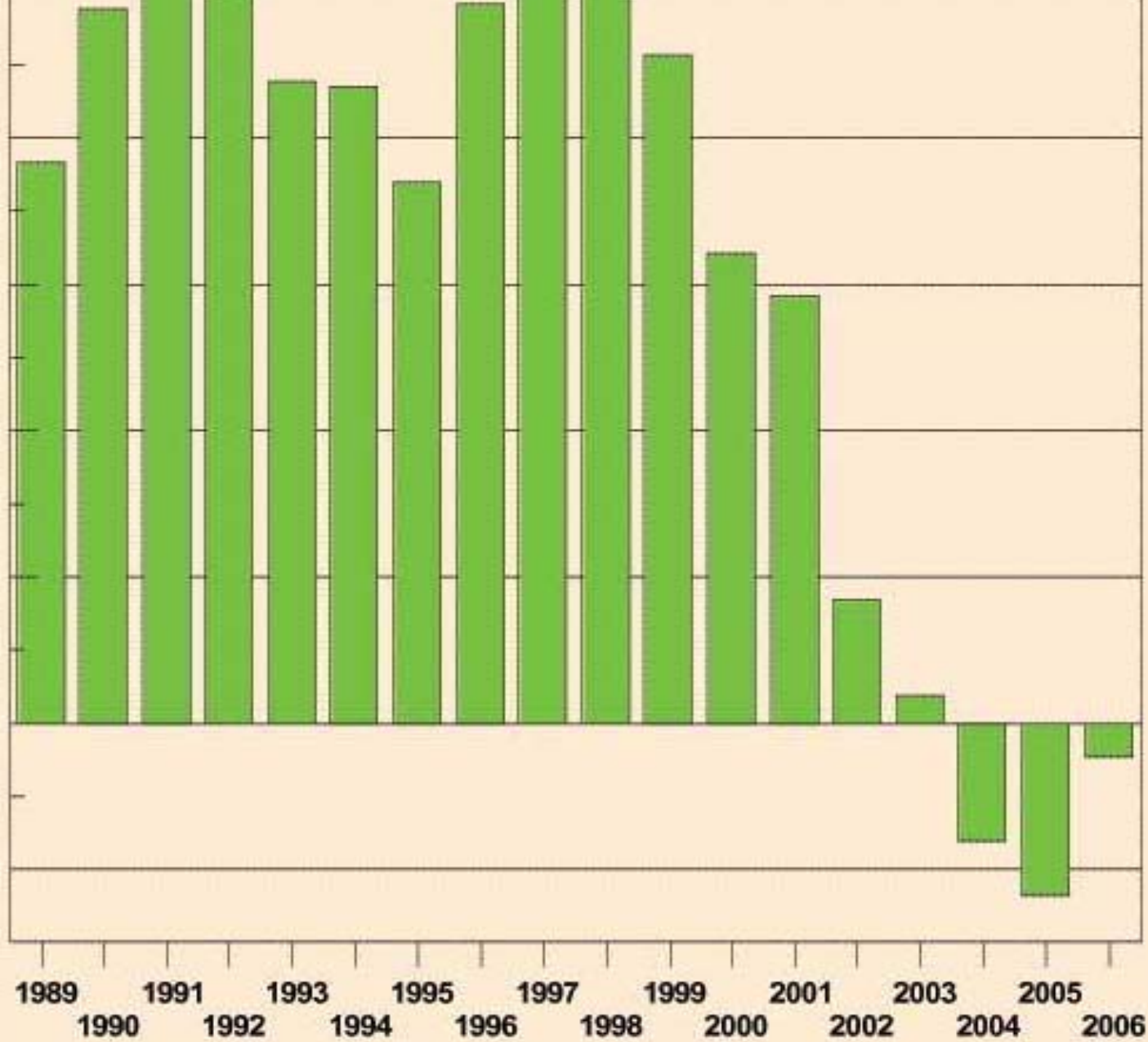
US Trade in Advanced Tech/Intellectual Property First Ever Deficits in All Tech Goods, Royalties and Fees



US Bureau of the Census and MBG Information Services

© MBG Information Services

- The above graph is particularly frightening. This graph represents patents, innovation, inventions, R&D in high tech as trade.
- <http://blog.noslaves.com/trading-away-the-united-states-of-america/> (accessed May 2008)



Charles McMillion



MBG Information Services is a business information, analysis and forecasting firm based in Washington, DC. The firm provides timely, individualized services on retainer primarily to a small group of well known private businesses and state government agencies.

MBG Information Services was established in 1988 from among faculty, international fellows and graduate students of the Johns Hopkins University Policy Institute. Dr. Charles W. McMillion, then associate director of the Institute and a former contributing editor of the Harvard Business Review, is president and chief economist of the firm.

Our website is provided primarily for client use. We also hope that the general information we make available may assist others to make more rational choices and thereby promote a more peaceful and prosperous future for all.

Inquiries may be sent to
["Admin@MBGInfoSvc.com"](mailto:Admin@MBGInfoSvc.com)

Please note that I used raw materials from:

Charles W. McMillion, Ph.D.

President & Chief Economist

MBG Information Services

McMillion is a highly regarded economist and these graphs are copyrighted. These graphs were used with explicit permission.

<http://blog.noslaves.com/trading-away-the-united-states-of-america/> (accessed May 2008)

Lobby rides high

“What I have described to you is absolutely unprecedented in GATT. Industry has identified a major problem in international trade. It crafted a solution, reduced it to a concrete proposal and sold it to our own and other governments.”

Enyart, J. (1990) 'A GATT intellectual property code', *les Nouvelles*, 25, pp.53-6 (p.56)

Lobby rides high

“By putting an improved system into place, we will legitimize internationally the objectives which the United States has had to fight for bilaterally and multilaterally.”

Mossinghoff, G. (1991) ‘For better international protection’, *les Nouvelles*, 26, pp.75-9 (p.77)

Gerald Mossinghoff



Commissioner of US Patents and Trademarks Office in 1984

President of the Pharmaceutical Manufacturers Association by 1985

argued that brand-name drugs are “alternatives to more expensive and painful surgeries and hospitalizations”

and that IPR was critical in the innovation that made America great in the nineteenth century

- The most active and effective lobbyists are the big and powerful
- What suits the big and powerful does not necessarily suit everyone else

“Profitability of an R&D project is directly related to the degree of intellectual property protection ... the probability that a firm will produce any innovation is directly related to the resources that the firm allocates to R&D.”

Rozek, R. (1990) ‘Protection of intellectual property rights. Research and development decisions and economic growth’ in Rushing, F. and Brown, C. (eds) *Intellectual Property Rights in Science, Technology, and Economic Performance. International Comparisons*, Westview, Boulder CO, pp.31-46 (pp.36-7).

“To encourage innovators to continue bearing the risks and making investments in pharmaceutical and biomedical R&D, public policy in the USA must continue to preserve the intellectual property system. It is this system that allows an innovator to actively manage a pharmaceutical product’s life cycle, which is integral to preserving the incentives for the innovator to invest in R&D.”

Radel, E., Lowe, M. and Rozek, R. (2007) ‘Patent wars and authorized generics in the USA: Assessing the issues’ in Pugatch, M. and Jensen, A. (eds), *Healthy IPRs. A Forward Look at Pharmaceutical Intellectual Property*, Stockholm Network, London, pp. 130-40 (p.137)

Richard Rozek



Senior Vice President NERA Economic Consulting

Previously employed by Pharmaceutical Manufacturers Association

Bedfellows

- Deliberate strategy of the lobby to involve presentable industries
- Creative industries serve nicely
- But creative industries also big business
- Admire the lobbying skill of pharmaceutical and tobacco industries

Wonder Girls



Wonder Girls and Wonder Boss



Rhetoric Level 1: Morally wrong

“The argument actually has been put forth in certain circles that protecting IP is a bad deal for the poor and developing nations. It’s hard to figure the economic logic behind such assertions. Do the proponents actually believe that the best way to build an economy and lift people out of poverty is through an economy allowing theft, rather than one that establishes strong, clear property rights?”

Keating, R. (2006) *Importance of Intellectual Property in the International Marketplace*, Small Business and Entrepreneurship Council, Washington, June, p.3

Raymond J. Keating

Chief Economist

**Small Business & Entrepreneurship
Council**

1920 L Street • Suite 200 • Washington,
D.C. 20036

Familiar address

Property Rights Alliance

Scott A. LaGanga, Executive Director

1920 L Street, NW Suite 200

Washington DC 20036

Rhetoric Level 1: Morally wrong

“This new anti-intellectual property movement goes by several names: the free culture movement, public knowledge, access to knowledge, the free software movement. But whatever you call it, this movement is nothing more than communism for intellectual property. They believe that ownership of intellectual property is harmful to the public. They make exactly the same arguments and have the very same philosophy that the communists had about tangible property.”

Giovanetti, T. (2006) *The New Anti-IP Bolsheviks*, Institute for Policy Innovation, Lewisville, Texas



Tom Giovanetti
President
Institute for
Policy
Innovation

Rhetoric Level 2: Costs

“The BSA’s [Business Software Alliance] research, conducted independently by the International Data Corporation (IDC), claims that cutting the current global piracy rate of 35 percent by 10 percentage points over four years could globally create 2.4 million new jobs, \$400 billion in economic growth and \$67 billion in new tax revenues.”

Mark, R. (2005) ‘Software industry shifts piracy strategy’, InternetNews Realtime IT News, <http://www.internetnews.com/business/article.php/3569561> (accessed March 2008)

Counterfeiting and Piracy Losses

Source: Philip Morris International, 2003

	\$US billion
1982	5.5
1996	250
1997	350
2003	450

“The multipliers also permit me to assess the costs of piracy in terms of lost output, jobs and employee earnings. In this way, I estimate the ‘true’ economy-wide costs of copyright piracy.”

Stephen Siwek, Interview with
Copyright Alliance, 10 March 2007.

Copyright Industries in the U.S. Economy: The 2006 Report updates and supplements ten previous reports produced by Economists Incorporated for the International Intellectual Property Alliance

- **Siwek** and Furchgott-Roth, *Copyright Industries in the U.S. Economy* (released in November 1990)
- **Siwek** and Furchgott-Roth, *Copyright Industries in the U.S. Economy: 1977-1990* (released in September 1992)
- **Siwek** and Furchgott-Roth, *Copyright Industries in the U.S. Economy: 1993 Perspective* (released in October 1993)
- **Siwek** and Furchgott-Roth, *Copyright Industries in the U.S. Economy: 1977-1993* (released in January 1995)
- **Siwek** and Mosteller, *Copyright Industries in the U.S. Economy: The 1996 Report* (released in October 1996)
- **Siwek** and Mosteller, *Copyright Industries in the U.S. Economy: The 1998 Report* (released in May 1998)
- **Siwek**, *Copyright Industries in the U.S. Economy: The 1999 Report* (released in December 1999)
- **Siwek**, *Copyright Industries in the U.S. Economy: The 2000 Report* (released in December 2000)
- **Siwek**, *Copyright Industries in the U.S. Economy: The 2002 Report* (released in April 2002)
- **Siwek**, *Copyright Industries in the U.S. Economy: The 2004 Report* (released in October 2004)

Rhetoric Level 3: Consequences of Copying

“Counterfeit automobile parts, such as brake pads, cost the auto industry over \$12 billion in lost sales. If these losses were eliminated the industry could employ an additional 200,000 workers.”

IACC (2005) 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, International AntiCounterfeiting Coalition, Washington DC, p.5

Rhetoric Level 3: Consequences of Copying

“To dissuade these consumers, a campaign should emphasize the pernicious consequences of counterfeiting, such as the loss of American jobs, damage to the American economy, or contributions to organized crime”

Nill, A, and Shultz, C. (1996) ‘The scourge of global counterfeiting’, *Business Horizons*, November-December, pp.37-42 (p.40)



The fake goods market is linked to money laundering

Clark, E, (2001) 'Fighting fakes on the high street', *BBC News Online*, 4 October

*Convicted sex offender receives 15
month jail sentence for film piracy*

Federation Against Copyright Theft, case
study, press release, 14 November 2006

Power of the Lobby

- *Global Survey on Counterfeiting and Piracy* by Business Action to Stop Counterfeiting and Piracy
- Report says firms much troubled by counterfeiting
- Report fronted by academics
- Survey actually of BASCAP members

Power of the Lobby

- 29 January 2007 BASCAP report released
- by 7 February 2007
 - 100 news reports in 23 countries
 - 13 world tv networks
 - 10 national tv networks
 - 3 documentaries
 - In flight on 7 airlines
- Reached 350 million households

Power of the Lobby

“Provided ABC’s Good Morning America with content for the piece it aired in October on the consumer threats of counterfeiting and piracy ... Secured a seat on the Russian State Duma IPR Working Committee to enable input from the business sector to IP legislative developments ... Our education efforts continue with a campaign in Brazil to target college students”

US Chamber of Commerce (2006) ‘Global anti-counterfeiting and piracy initiative. Policy accomplishments for 2006’,
<http://www.uschamber.com/issues/accomplishments/counterfeiting.htm> (accessed March 2008)

Rhetoric Level 3: Consequences of Copying

“Bank robberies, by contrast, generally involve less than \$70 million a year, but seem to garner more public attention and law enforcement resources.”

IACC (2005) 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, International AntiCounterfeiting Coalition, Washington DC, p.4

Rhetoric Level 3: Consequences of Copying

“... much of that money is ending up directly in the hands of terrorists like al-Qaeda, Hezbollah, and Hamas. ... The first attack on the World Trade Center in 1993 was financed by proceeds from the sale of counterfeit goods, as reported by *U.S. News and World Report*. And recently captured Al-Qaeda training manuals recommend operatives sell fake goods in order to raise money.”

US Chamber of Commerce (2006) ‘Anti-counterfeiting and piracy update’ May,
<http://www.uschamber.com/NR/> (accessed March 2008)



The 1993 bomb attack on the WTC was financed by fake t-shirts

Clark, E, (2001) 'Fighting fakes on the high street', *BBC News Online*, 4 October

Rhetoric Level 3: Consequences of Copying

- “.... the September 11 attacks cost only \$500,000 – a little more than \$26,000 per terrorist – certainly not a large or unattainable amount of money. Based on the aforementioned figures, one successful large scale intellectual property crime could potentially fund multiple terrorists attacks.”

IACC (2005) 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, International AntiCounterfeiting Coalition, Washington DC, p.25

Stories replicating PR material (% of total)

Lewis, J. et al.(2008)*The Quality and Independence of British Journalism*, Cardiff Business School, Cardiff

	press	broadcast
All or mainly from PR	19	17
Probably PR, but not found	13	6
Mix of PR and other information	22	35
Looks like PR but not found	13	6
No evidence	46	42

Checking the facts

When factual claims are made, are they corroborated?

- Yes, thoroughly 12%
- Yes, briefly 18%
- No 70%

Lewis, J. *et al.* (2008) *The Quality and Independence of British Journalism*, Cardiff Business School, Cardiff

Vodka galore

- Elias, R. (2007) 'Deadly fake alcohol doing the rounds' *Scotsman on Sunday*, 22 April
- To UPI
- To US Chamber of Commerce
- To everywhere

Vodka galore

BBC (2003) 'Illegal vodka claims woman's life', <http://news.bbc.co.uk/1/hi/Scotland/2873039.stm> (accessed March 2008)

“We suspect there may be several more bottles unaccounted for” (policeman in charge of the investigation, BBC, 2003).

Police Seizures in Northern Ireland, 2003

	Number seized	Estimated value
Videos/DVDs/VCDs	40,000	£2,000,000
Music CD/MP3/cassettes	80,500	£1,800,000
Power tools	1,000	£300,000
Perfume/sunglasses	500	£50,000

UK Patent Office, *Annual Enforcement Report 2004*, DTI, London, p.51

Police Seizures in Northern Ireland, 2003

	Number seized	Estimated value	Individual value
Videos/DVDs/VCDs	40,000	£2,000,000	£50
Music CD/MP3/cassettes	80,500	£1,800,000	£22
Power tools	1,000	£300,000	£300
Perfume/sunglasses	500	£50,000	£100

from UK Patent Office, *Annual Enforcement Report 2004*, DTI, London, p.51

Fallibility of the Lobby

“44 percent of MPA company losses in the US are attributable to college students.”

MPA/LEK (2005) *The Cost of Movie Piracy*, Washington DC, p.12

“The 2005 study had incorrectly concluded that 44 percent of the motion picture industry’s domestic losses were attributable to piracy by college students. The 2007 study will report that number to be approximately 15 percent ... We take this error very seriously and have taken strong and immediate action ...”

MPAA (2008) *MPAA Statement on Motion Picture Industry Losses Due to Piracy Among College Students*, Washington DC, 22 January.

Silliness of the Lobby

- “A kilo of cannabis leaf will fetch 2000 euros in Europe, while a kilo of counterfeit or pirated CDs will fetch 3000 euros.”

Pulford, J. and Zimmerman, C. (2000), ‘Customs’ battle against counterfeit and piracy to protect intellectual property’, paper presented to European Commission Symposium, *The Challenge of Globalisation: the European Union’s Market Access Strategy*, 28 November, Brussels, p.6

Silliness of the Lobby

“... counterfeiting is more profitable than drugs trafficking, one kilo of pirated discs is worth more than one kilo of cannabis resin.”

Industry Trust for IP Awareness (2004) ‘UK’s largest ever DVD anti piracy campaign’, <http://www.bva.org.uk/contentprint.asp?id=13420> (accessed April 2008)

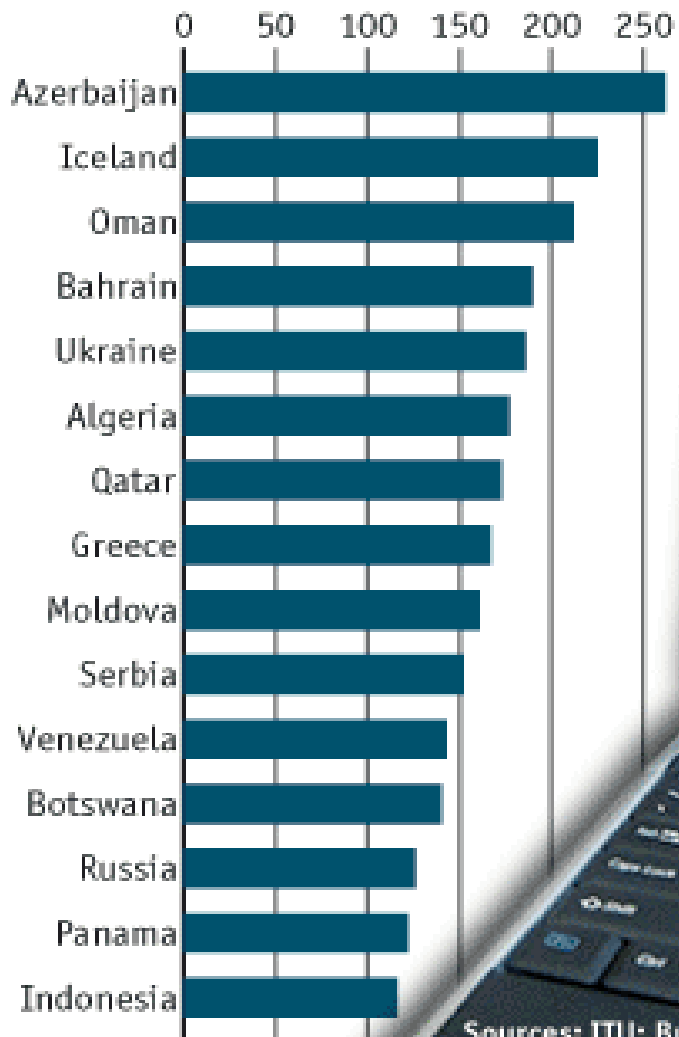
Silliness of the Lobby

- “Yet another example of the targeting of perishables is the discovery of over one and a half million teabag labels. We need no more proof that counterfeiting is all around us.”

Pulford, J. and Zimmerman, C. (2000), ‘Customs’ battle against counterfeit and piracy to protect intellectual property’, paper presented to European Commission Symposium, *The Challenge of Globalisation: the European Union’s Market Access Strategy*, 28 November, Brussels, p.8

Pirated software per computer

2006, \$



Sources: ITU; Business Software Alliance

“Because we all know that Azerbaijan is the biggest threat to corporations the world has ever seen ...”

pjbrown88 blog 11 October 2007

Counterfeiting Intelligence Bureau 2008

“Counterfeiting accounts for between 5 - 7% of world trade, worth an estimated \$600 billion a year.”

The OECD Figure

- 1997 OECD wants report on economic impact of counterfeiting
- Hans-Peter Gassman hires consultant, Hema Vithlani
- Vithlani works for Counterfeiting Intelligence Bureau

The OECD Figure

- “One estimate that has become very well known is that published by the Counterfeiting Intelligence Bureau of the International Chamber of Commerce in 1997 that indicated that the overall cost of counterfeiting in the world was about 5-7 per cent of world trade. This found its way into the 1998 OECD report and ever since we have been, unfortunately, faced with this so-called ‘OECD’ figure.”

Dryden, J. (2007) ‘Counting the cost: the economic impacts of counterfeiting and piracy’, paper presented to the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, January, p.5

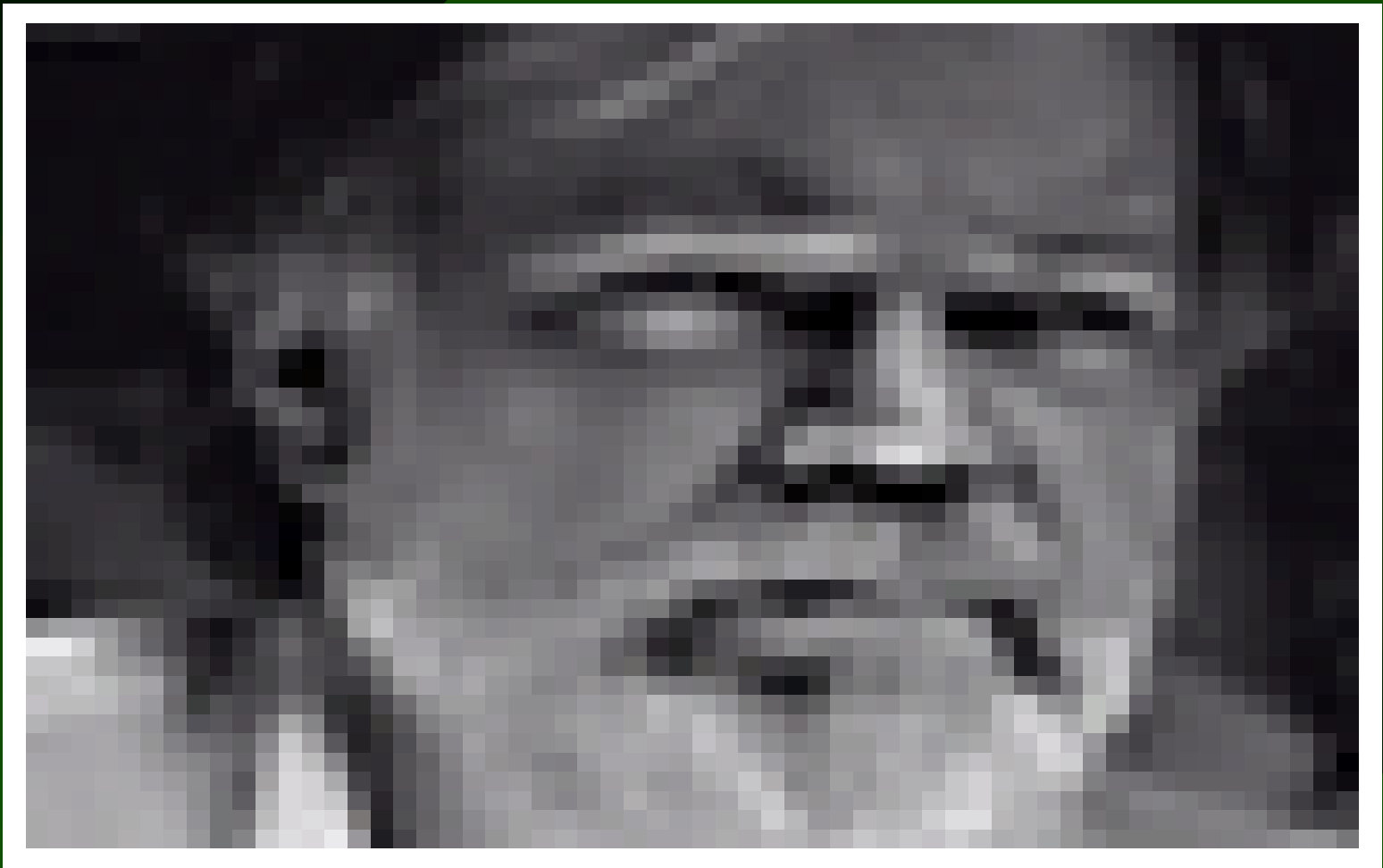
OECD figure

- Counterfeiting Intelligence Bureau tells European Commission that the OECD figure is 5%-7%
- EC uses the figure, then sends draft to CIB for comment
- CIB recommends increase to 8%-10%

Rhetoric Level 3: Consequences of Copying

“According to the private investigator conducting the research, a raid of a souvenir shop in mid-town Manhattan led to the seizure of a suitcase full of counterfeit watchers and the discovery of flight manuals for Boeing 767s, some containing handwritten notes in Arabic.”

IACC (2005) 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, International AntiCounterfeiting Coalition, Washington DC, p.27



Dempster Leech

Meet Dempster Leech, one of New York's most sought-after private investigators in the field of corporate counterfeiting, in this award-winning action-based reality short. We're not talking white-collar crime here; Leech has been bitten, bombed, beaten, and knifed in his fight along with U.S. Customs, the FBI, and the Secret Service to track down and convict leaders of some of this country's most significant corporate counterfeiting rings. Hear about the time a contract was put out on his life when he was investigating David Thai, the leader of a dangerous and violent Vietnamese gang. The film also captures Leech in action on a Canal Street raid.

Dempster Leech

Canal Street

<http://video.aol.com/video-detail/canal-street/4066958091>

Dempster Leech



Dempster Leech

“Testifying before congress in October 1995, Dempster Leech, a detective who has investigated counterfeiters, implicated terrorists. According to a summary of the hearings, Leech discussed counterfeiting in general. The summary reads, in part: ‘Money generated from counterfeiting supports organised crime, [Leech] said, adding that recently, several high-level players indicted in a counterfeiting organization were financially tied to terrorist groups such as the one that bombed the World Trade Center.’”

‘Software meets the mob’, *PC World*, 27 October 1998.

Dempster Leech

- Testimony, Trademark Counterfeiting: Hearing before the Committee on the Judiciary, US Senate, 10 Oct 1995, pp.8-12
- Lane, D. 'The Anticounterfeiting Consumer Protection Act of 1995', *Boston University Journal of Science and Technology Law*, 14, April 8, 1997
- Stipp, D. (1996) 'Farewell, my logo a detective story counterfeiting name brands is shaping up as the crime of the 21st century. It costs U.S. companies \$200 billion a year', *Fortune*, 13 May.
- Fifield, A. (2002) 'The knockoff squad', *New York Times*, 23 June

Dempster Leech

“His latest effort, ‘Farewell, My Logo’, is both a serious business story And a fun detective story, reported and written in a style somewhat reminiscent of Raymond Chandler.”

Huey, J. (*Fortune* Managing Editor) (1996)
‘Fortune’s invisible man’, *Fortune*, 27 May

Dempster Leech

“Working together a few years ago, Holmes and Leech prefaced a raid by broadcasting ‘Ride of the Valkyries’ on the spotters’ walkie-talkie frequency. ‘The jamming didn’t do us a lot of good’, says Leech, ‘but it was fun to hear Wagner all along Canal Street’.... Rumour has it that the murderous David Thai took out a contract on Leech before his arrest. Says Holmes: ‘I never drive a car that won’t do 130. If I’m on the turnpike and see certain faces in my mirror, I want to be able to say, ‘Bye-bye’.”

Stipp, D. (1996) ‘Farewell, my logo a detective story counterfeiting name brands is shaping up as the crime of the 21st century. It costs U.S. companies \$200 billion a year’, *Fortune*, 13 May

Dempster Leech, *PI Snaps*, Monica Sharf

<http://www.inversionfilms.com/~pisnaps.html>

Dempster Leech

- I need to find out where I vote. My address is 1024 Sixth Avenue, New York, NY 10018.
- Posted by: Dempster Leech at November 1, 2004 3:05 PM

The confusion of the lobby

- Can customers tell the difference?
- Who are the counterfeiters?
- What are the data?
- What is the relationship with global strategy?
- What to do when the creativity runs dry?

