



International Chamber of Commerce

The world business organization

An ICC initiative

BASCAP

Business Action to Stop
Counterfeiting and Piracy

Chancellor Angela Merkel
Bundeskanzleramt
Willy-Brandt-Straße 1
10557 Berlin
Germany

22 May 2007

Dear Chancellor,

ICC welcomes the fact that product counterfeiting and copyright piracy have become regular topics on the agenda of the annual G8 Summit meetings. We believe this attention at the highest level of government correctly reflects the gravity of the threat this phenomenon poses to the economic and social order across the world.

ICC is deeply disturbed by the rapidly spreading scope and magnitude of counterfeiting and piracy, given that the protection of intellectual property is a vital element in encouraging research and innovation, international trade and investment, and sound economic growth and development.

Counterfeiting and piracy discourage innovation and creativity, which underpin the knowledge-driven economy and society we live in today. They deprive governments of tax revenue, undermine laws designed to protect the interests of employees and they compete unjustly with legitimate economic activities. They also weaken consumer confidence in the quality assurance of branded products and pose serious health and safety risks in areas such as food, medicines, car parts and toys. Further, the relatively easy profits to be made from counterfeiting and piracy attract organized crime networks interested in funding other criminal activities and lead to a misuse of the international financial system for money laundering purposes.

The last four G8 summits have acknowledged the growing need for stronger measures to fight counterfeiting and piracy. However, there is a continued need for concrete action and we in the business community urge the leaders meeting in Heiligendamm to commit their governments to take effective measures to ensure that laws against such activity are enforced with vigour, determination and effectiveness.

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For these reasons, we put forward the associated paper including the following recommendations for your consideration in Heiligendamm:

- Abolish all known counterfeiting and pirate markets (physical and online/internet) within the borders of G8 countries.
- Prohibit transshipment of counterfeits through free trade zones.
- Endorse WCO framework standards and take a leadership role in being the first to adopt, implement and promote these standards.
- Assess law enforcement, border control, and adjudication capabilities of G8 member countries, and allocate funding to improve national capabilities in these areas to effectively protect intellectual property and stop counterfeiting and piracy.
- Fortify and implement proactive enforcement of laws against counterfeiting and piracy and implement strong criminal sanctions and associated criminal penalties that provide real deterrents to IP crimes.

ICC has already launched its own initiative known as BASCAP – Business Action to Stop Counterfeiting and Piracy. Through BASCAP, world business has organized itself to contribute, on its own and in collaboration with governments, to the creation and implementation of effective programmes. The CEOs that have joined the initiative do so with the objective to emphasize that the protection of intellectual property rights is a social and economic imperative. We are committed to the belief that the erosion of these protections, through the illegal practices of counterfeiting and piracy, are harmful to all companies that invest in intellectual capital and the wider economy. We are equally concerned with the impacts that intellectual property theft presents to our social order – both present and future.

Notably, in recognition that the private sector has responsibilities to institute effective measures against counterfeiting and piracy, ICC, together with the global business community, has developed a set of model IP compliance guidelines that provide detailed information to help businesses implement practical internal policies, practices and procedures to increase compliance with intellectual property laws, and to reduce the business risks associated with counterfeiting and piracy. With your endorsement, ICC will gladly take on the responsibility to work with companies worldwide to secure their endorsement and promotion of the guidelines, thereby complementing the tangible government programmes we are hopeful you will agree to in Heiligendamm.

Sincerely,

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BASCAP Co-Chair
Chairman of the Supervisory Board
Vivendi, France

Bob Wright
BASCAP Co-Chair
Vice Chairman and Executive Officer
General Electric, United States



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On behalf of Bernard Arnault
Président directeur Général
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Business Action to Stop
Counterfeiting and Piracy

Statement on protecting intellectual property

Presented to the 2007 G8 Summit, Heiligendamm

*Counterfeiting and
piracy continue to be
a global threat*

Previous G8 summits in 2005 in Gleneagles and in 2006 in St. Petersburg have taken significant steps towards recognizing the social and economic perils of counterfeiting and piracy and outlining commitments for implementing stronger measures to fight this growing problem.

The business community welcomes these steps – not only as a clear political sign of the determination of G8 governments, but because many non-member governments look to the leadership and precedents established by the G8. It is incumbent upon governments around the world to take concrete actions to curb this illegal activity.

It is no longer acceptable to ignore the myriad adverse costs to social welfare and economic development associated with the growth of counterfeiting and piracy. These losses hinder governments' ongoing efforts to improve social welfare and stimulate economic development. This illicit activity has broad impacts on employment, consumer health and safety, technology transfer, tax revenues and public finance, law enforcement and organized criminal activities.

The global business community is hopeful that joint actions against counterfeiting and piracy agreed by the G8 countries will be effective in stopping the flow of unsafe, unhealthy and poor quality products and curbing the drain on the creative community's reward for effort and innovation and the deterioration of diverse products and content. Today's economic growth is increasingly based on investment in intangible, knowledge-based assets. Where such assets are at risk of being stolen, companies are less likely to invest in research and development, thereby diminishing foreign direct investment, slowing dissemination of innovative products, and cutting back on the transmission of knowledge, through transfer of technology.

Despite G8 governments' past pledges of attention to counterfeiting and piracy, we in the business community see a continued need for concrete action. While certainly there are competing priorities on the public agendas of G8 member countries, present and future competitiveness in the "knowledge economy" demands immediate attention to the problem of intellectual property theft. We therefore urge the leaders meeting at Heiligendamm to consider the following activities:

Abolish known counterfeiting markets The Gleneagles statement declares that G8 governments will “*strengthen effective intellectual property enforcement, where appropriate, in areas such as the seizure and retention of suspected counterfeit or pirated goods.*” There are many actions that must be taken to improve enforcement, and as a first tangible step we suggest that G8 governments take immediate measures – all of which are within existing capabilities – to abolish all known counterfeiting and pirate markets (physical and online/internet) within the borders of G8 countries. These markets operate in flagrant violation of the law, operate with little fear of penalty and openly target consumers and tourists who can easily be duped into buying counterfeit and pirated goods. Such unfettered conduct of criminal activity sends a strong signal to consumers and pirates alike that lawlessness of a certain kind is tolerated, including the documented links to organized crime syndicates. We urge G8 leadership to establish legal precedents, including civil and criminal liability for landlords of these markets. There is also a need for enforcement techniques for abolishing retail counterfeiting markets selling illicit goods, which would serve as a valuable model for all countries endeavouring to end open air markets selling counterfeit and pirate goods.

Prohibit transshipment of counterfeits through free trade zones While free trade zones are recognized as important and valuable for reducing barriers to global free trade, transshipment and transit of goods through these areas now contribute significantly to the trafficking of counterfeit goods around the world. G8 countries, in conjunction with competent international organizations, most notably the WCO, are urged to improve the legal framework governing free trade zones so as to eliminate illegal pirate activity in these areas. To this end, a strengthening of the provisions of the Kyoto Convention governing customs controls in free trade zones as well as adoption of WCO model legislation should be considered.

Suggested steps include: (i) prohibit the admission to, processing in, and export from free trade zones of counterfeit and pirated goods, irrespective of country of origin of such goods, country from which such goods arrived, or country of destination of such goods; (ii) provide customs administrations with the authority over free zones and goods in transit; (iii) empower customs authorities to proactively exercise this authority before the entry and after the exit of goods into a free trade zone, and to inspect goods in a free trade zone or a free port to ensure that no offense as to trafficking in counterfeit goods is being committed; and (iv) ensure the applicability and enforcement of anti-counterfeiting criminal and civil laws to check the activities of trafficking in counterfeit goods in free trade zones and free ports.

Endorse WCO framework standards The St. Petersburg statement declares that G8 governments will “*enhance cooperation among the G8 and competent international organizations, notably the World Customs Organization (WCO),*” and “*better target the trade of counterfeit goods and combat intellectual property crime at the borders, including by examining effective strategies already being implemented within the G8 Customs Administrations as models for broader cooperation.*” ICC endorses the WCO’s recent draft of a new border control framework of standards. These standards are currently being promoted by the WCO to establish minimum performance levels

and improve the harmonization of customs activities, deterring pirates from transiting counterfeit goods through countries with lower risks of detection.

Given that all G8 members are also members of the WCO, we urge the G8 to take a leadership role in being the first to adopt, implement and promote the WCO's framework of standards, including the provision of budgetary assistance to support their implementation.

Moreover, ICC also recommends that G8 leaders work together to expand the powers of customs authorities to be able to interdict and stop shipments exiting their jurisdictions based on legally accepted and recognized terms of probable cause and acting on reliable sources of information. Any strong border control regime requires governments to significantly increase inspections of exports to find shipments of counterfeit or pirated goods and refer those cases to appropriate authorities for investigation and prosecution.

Extend standards to other key areas, such as adjudication process

The new standards established by WCO provide for "a minima" measures that harmonize policies and practices to protect IPR in the area of border control and customs. These new standards serve as a model for G8 governments to encourage and resource actions by appropriate intergovernmental bodies to develop and promote similar "standards" for other key aspects of an effective IPR enforcement regime. The Gleneagles statement declares that G8 governments will "*strengthen effective intellectual property enforcement, where appropriate, in areas such the use of clear, transparent and predictable judicial proceedings.*" We suggest that G8 governments begin this process of developing global "minimum standards" in the area of adjudication of infringement cases presented to authorities.

Looking forward, the ICC would support the evolution of various sets of such standards into an international instrument to further tackle threats to IP rights. To this end, and in light of various proposals, we urge G8 governments to empower the G8 IPR Working Group to initiate a serious global dialogue about what instruments or new standards or other form of international agreements can be put in place.

Again, any new instruments must be accompanied by a commitment of resources, including funding and manpower allocations and complementary measures of technical assistance and capacity-building in order to support developing countries in creating and/or enhancing their IPR frameworks and procedures.

<i>Assess capabilities and allocate indicated resources</i>	<p>The St. Petersburg statement declares that G8 governments “<i>give priority to promoting and upholding... procedures to strengthen intellectual property enforcement...</i>” ICC suggests that G8 governments charge the IPR Working Group with responsibility for assessing law enforcement, border control, and adjudication capabilities of G8 member countries, as well as key developing countries. As a first step, the Working Group should consider convening a meeting with WCO, Interpol and WIPO (individually or collectively) to determine how these organizations can participate and assist in this assessment, including sharing current knowledge on capabilities in their member states. Findings from this assessment will be valuable to G8 governments seeking to identify areas that deserve greater attention, manpower and funding within national IP protection programs. These findings constitute valuable technical assistance that will also help developing countries evaluate policy options and set priorities.</p>
<i>Full accounting of social and economic costs...</i>	<p>The Gleneagles statement urges G8 governments to “<i>take concrete steps to strengthen and highlight analysis of the underlying trends, issues and domestic and international enforcement actions.</i>” It is imperative for the G8 to generate an accounting of the full range and extent of the social and economic costs associated with counterfeiting and piracy. This information is essential to G8 member governments (and world governments) confronting decisions on how investments in IP protection (through legislation and regulatory enforcement) are related to and can improve other social and development priorities, such as economic development, employment, tax base, consumer health and safety, technology transfer, law enforcement and fighting organized crime.</p>
<i>...to encourage priority allocation of government resources</i>	<p>Research done in this area must be properly funded, backed by governments and fully comprehensive, so as to avoid limitations experienced by the OECD’s recent effort to estimate economic impacts. For example, the OECD report concentrated on economic losses associated with counterfeit and pirate goods crossing international borders, with no accounting of the full scope of economic and social losses, such as: (1) internet sales; (2) fake goods produced and sold within a country's border; and (3) losses to society (direct and indirect) in terms of employment, economic growth, and law enforcement costs.</p>
<i>Fortify criminal sanctions</i>	<p>The WTO TRIPs Agreement Article 61, obliges members “<i>to provide for criminal procedures and penalties to be applied at least in cases of willful trade mark counterfeiting or copyright piracy on a commercial scale.</i>” G8 governments are encouraged to take a leadership approach in demonstrating proactive enforcement of laws against counterfeiting and piracy and implementing strong criminal sanctions and associated criminal penalties that provide real deterrents to IP crimes. As a first step, we urge that G8 governments ensure that penalties for IP theft – at a minimum – match existing legal penalties for theft of physical merchandise and that these penalties be applied to both online and off-line transactions. At the same time, enforcement agencies within the G8 must be correspondingly empowered to enforce these more stringent penalties. Clear decisions and actions from the G8 to establish and enforce criminal sanctions can also usefully establish a precedent for a more uniformly dissuasive system of punishment for IP infringement cases worldwide.</p>

Business commits to support governments efforts to combat IP piracy

With respect to the Gleneagles statement that G8 governments “*improve co-ordination of anti-counterfeiting and anti-piracy crime strategies, and ensure closer co-operation [...] between governments and the private sector,*” ICC reiterates its commitment to support G8 governments as they seek to translate Summit outcome statements into action and achievements. ICC through its own initiative known as BASCAP – Business Action to Stop Counterfeiting and Piracy – is committed to continue to assist governments in the elaboration and implementation of effective programmes. ICC is also committed to employing its national committees, located in 90 countries worldwide, and its global membership to petition for action and support of G8 proclamations by local and national legislatures. In order to facilitate this contribution, future meetings of the G8 IPR Working Group would benefit from the more frequent inclusion of representatives from the private sector so as to create a durable and transparent structure where business and government can work together.

Model IP policies for business

In recognition that the private sector has responsibilities to institute effective measures against counterfeiting and piracy, ICC, in concert with the global business community, has developed a set of model IP compliance guidelines that provide detailed information to businesses on what practical steps they can take to improve their compliance with IP laws. The guidelines provide specificity on good IP practice, addressing internal IP use, supply chain practices, relations with intermediaries, and the handling of third-party IP. The guidelines are therefore useful for dealing with counterfeiting and piracy in all its forms within companies, from IP development to component sourcing, manufacturing, wholesaling, retailing and internal corporate use. Over the course of the year, ICC commits to working with companies worldwide to secure their endorsement and promotion of the guidelines.

Country gateways

With respect to the St. Petersburg statement “*to create in each G8 country a website providing [greater] information on mechanisms available and procedures necessary to secure and enforce intellectual property rights,*” the ICC notes the existence of the web-based BASCAP country gateways and submits these gateways as a framework for G8 governments to augment with additional content¹.

¹ <http://www.iccwbo.org/bascap/id6169/index.html>