



International Chamber of Commerce

The world business organization

Intellectual Property:

Source of innovation,
creativity, growth and
progress

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Preface

By Guy Sebban, Secretary General of ICC

Since the early days of trade and economic activity, companies have invested a large portion of their resources in research and development. These investments have allowed them to create new products, to differentiate themselves, and to become leaders in their sectors. The success of such expenditures is due in large part to the protection of each company's intellectual property rights. Over the years, companies have come to expect that spending on research and development will continue to be rewarded with intellectual property protection.

In today's economy, the trend is toward increasing investment in intangible assets. When a company has money to spend, it is more often directed toward research and development than toward new plants and equipment. By its very nature, however, intellectual property is less tangible than physical capital and, therefore, it is more vulnerable to theft.

Counterfeiting and piracy of intellectual property is growing rapidly and, collectively, the wider economic, social and developmental costs are much more damaging than may be currently understood. A disorder of this magnitude not only discourages innovation and introduces health and safety risks, but creates a significant drain on the global economy – undermining economic development, a sound market economy system and open international trade and investment.

Despite the efforts of companies and trade associations to stop counterfeiting and piracy, the problem is swelling at a more dangerous rate than ever. As a result, ICC's member companies have asked us to tackle this issue in order to make more significant progress, quickly.

To accomplish this work, ICC has formed *Business Action to Stop Counterfeiting and Piracy* (BASCAP) to emphasize the scope of the problem – pointing out the full economic, social and developmental costs of counterfeiting and piracy and making the argument that these societal costs warrant elevated priority action by governments and enforcement officials. ICC is working with governments to put in place the appropriate education, training and enforcement programmes that enable intellectual property to deliver economic, cultural and social progress. The intent is to employ ICC's reputation and global business network to leverage individual company efforts and deliver value to all sectors so as to:

- increase public and political awareness of the economic and social harm associated with counterfeiting and piracy activities;
- encourage government action and the allocation of resources toward improved IPR enforcement;
- create an environment in which intellectual property is respected and protected.

This document is one in a series of BASCAP products that are being developed to provide value to stakeholders across sectors and across borders, by connecting ongoing business activities, business strategies and messages. It was produced with the considerable time and expertise of the BASCAP projects working group, which merits our deepest appreciation.

Executive summary

The importance of intellectual property

Almost everyone in society is a user and potential creator of intellectual property. Its protection, through a system of national and international rules called intellectual property rights, is necessary to provide incentives and financing for innovation and creation, which in turn lead to economic, cultural and social progress. Protection for intellectual property also encourages the production and dissemination of knowledge and a wide range of quality goods and services. Intellectual property rights add value for consumers and can provide a guarantee of source and quality.

Intellectual property protection contributes to economic growth in both developed and developing countries by stimulating innovation, cultural diversity and technical development as part of a larger policy framework. Properly used, intellectual property rights can also be key tools for the alleviation of poverty through trade.

The immense adverse economic and social impact of intellectual property theft requires that combating counterfeiting and piracy become a priority for society, and not just right holders. Unless governments, businesses and citizens make a coordinated effort to uphold the intellectual property system, society will not reap its benefits.

Call to action

To derive the full potential of the intellectual property system as a tool for growth and progress, governments must take positive action. Suggested measures include:

- providing for clear and enforceable intellectual property rights ownership, without discrimination as to nationality;
- improving the accessibility of national and international intellectual property protection systems in terms of costs and ease of use;
- ensuring that intellectual property institutions are efficient and sufficiently funded;
- supporting intellectual property policies with sound economic management, good infrastructure and other appropriate policies in areas such as education, science and technology, culture, taxes, investment regulations, production and technical incentives, trade, and competition;
- establishing an active and coherent intellectual property policy coordinated throughout government bodies;
- educating local communities, businesses and the public on the potential benefits of the intellectual property system; providing assistance to innovators/producers/creators on how to use intellectual property protection to their commercial advantage; and supporting efforts of stakeholder organizations in this area;
- bridging the gap between academic and research institutions, and businesses and financing sources; and
- making it a priority to strengthen and/or create a legal framework to ensure implementation and effective enforcement measures against intellectual property theft. There is also a need for clearly designated and sufficiently resourced enforcement institutions, supported by training, international cooperation and public education.

What is intellectual property?

Intellectual property is unique, as it is the fruit of personal creation and inventiveness. It might be a poem that you write, the name your hairdresser thinks up to sell his or her services, or a mother's invention for a non-spill cup for babies. It can also be a Picasso painting, an Akira Kurosawa film, a Naguib Mahfouz novel, a new method of irrigation for farmers in arid regions, the invention of the light bulb, a computer chip or a jet turbine engine. In the future, intellectual property creators aim to deliver more abundant food resources, clean energy and cures for illnesses from cancer to the common cold.

In the future, intellectual property creators aim to deliver more abundant food resources, clean energy and cures for diseases from cancer to the common cold.

In virtually every instance, intellectual property stimulates progress, transforming society and adding value to our lives.

Why does intellectual property need protection?

Society provides legal rights over intellectual property to encourage the production of inventions and creative works that benefit society, and to help innovators and creators make a living from their work. These rights, which can belong to individuals or organizations, are recognized by governments and courts. The system is designed to benefit society as a whole, in both developed and developing countries, striking a delicate balance to ensure that the needs of both the creator and the user are satisfied. This balance is maintained through checks within the intellectual property system itself and in the larger regulatory framework, to ensure that the system is sustainable and beneficial to all stakeholders.

Intellectual property stimulates progress, transforming society and adding value to our lives.

How is intellectual property protected?

Different types of intellectual property – literary and artistic creations, inventions, brand names, and designs, to name a few – are protected in different ways:

- creations in the fields of literature and the arts, such as books, paintings, music, films as well as software, are generally protected through *copyright* or so-called neighbouring rights;
- technological inventions are typically protected by *patents*;
- distinctive features – such as words, symbols, smells, sounds, colours and shapes – that distinguish one product or service from another, can be protected by *trademark* rights;
- the specific external appearance given to objects, such as furniture, car body parts, tableware, clothing or jewellery, may enjoy *design protection*;
- *geographical indications* (e.g. Parma ham) and *trade secrets* are also considered to be types of intellectual property and most countries provide some form of legal protection for them;
- legal protection for *safety and efficacy studies data* for certain regulated products (e.g. plant science products and pharmaceuticals) is increasingly provided in many parts of the world.

Through the HINARI² project, international scientific and medical publishers have voluntarily made their copyrighted biomedical journals freely accessible on-line to developing country healthcare and academic institutions.

This wide array of tools can be used by people and businesses at all levels. Almost all businesses in all countries – the vast majority of which are small enterprises – use trademarks for marketing their goods and services. Copyrights are even more easily available. The moment someone writes a text, composes some music or draws an image, he or she will have copyright to the result.

Intellectual property law limits what can be protected and for how long. Intellectual property rights do not protect ideas. They protect only expressions of ideas, in the case of copyrights, and inventions fulfilling certain strict and well-established criteria in the case of patents. These limitations and conditions are built-in mechanisms to balance the rights of intellectual property owners with the interests of society.

Intellectual property rights allow innovators and creators to choose the terms on which they distribute their work. They can choose, for example, to license and sell their works or inventions, to make them available for free, or to allow their use subject to certain conditions.¹

In the patent area, patented technologies are shared on certain terms as common technical standards to improve the interoperability of different systems, thus simplifying the lives of consumers.

Looking forward, as economies develop, the use and value of intellectual capital will gradually replace the value of raw materials as a percentage of capital input toward economic growth. As such, intellectual property is an increasingly important asset that must be continually nurtured, protected and stimulated to grow.

The World Economic Forum Global Competitiveness Report indicates a correlation between the protection of intellectual property rights and national competitiveness. In 2004, the 20 countries that were perceived as having the most stringent intellectual property protection were classed among the top 27 in the WEF's growth competitiveness index. Conversely, the 20 countries perceived as having the weakest intellectual property regimes were ranked among the bottom 36 for growth and competitiveness.³

1 Contrary to certain misconceptions, initiatives such as the Creative Commons or Scientific Commons, for example, are all based on copyright and work within, not as alternatives to, the intellectual property system.

2 Health InterNetwork Access to Research Initiative

3 World Economic Forum, *Global Competitiveness Report 2004-5*

How do intellectual property rights encourage innovation and creativity?

One purpose of the intellectual property rights system is to provide incentives to innovators to produce new inventions and creations. This in turn provides society with a steady stream of innovations that fuel economic, cultural and social progress, help to alleviate poverty and disease, and enrich our cultural heritage.

Intellectual property rights enable people to benefit from their innovations and creative work, and to prevent others from copying or unfairly gaining from the inventor's creativity and investment. By according these rights, society provides an incentive for people and organizations to invest time, resources and original thinking to develop innovative products and technologies and expand knowledge and culture. This encourages the production of a wide range of quality goods and services, and helps maintain fair competition.

New creations and inventions benefit everyone

Technologies and creations that have touched and changed millions of lives would probably not exist today without the incentives provided by intellectual property rights. Patent protection has spurred the development of key technologies (e.g. the transistor, telephone communication and electricity), lifesaving drugs (e.g. beta-blockers for heart disease, the anti-cancer drug taxol), plant science products (e.g. glyphosate – *see box*) and other inventions that have helped improve lives in different parts of the world. Copyright has stimulated the development of vibrant local cultures, and encouraged their dissemination worldwide. Witness, for example, the international popularity of reggae, salsa, and different forms of World Music, whose growth, distribution and commercial success have been encouraged by the copyright system.

Patented inventions of potentially great benefit to rural communities

- **Non-toxic pesticides such as glyphosate, which kill weeds effectively but are inactivated by the soil and reduce land erosion.**
- **Ashok Gadgil's simple water disinfection device using UV light, which is delivering safe drinking water to rural communities in India, Mexico and the Philippines for US \$1.50 per person per year.**

Financing innovation and creation through the market

Innovation and creation have to be financed; like everyone else, the people innovating and creating have to make a living. Large amounts of time and money can be spent on researching and developing new technologies and products without any guarantee that these will be rewarded, as there is always a risk that a product will not be successful. Intellectual property rights are a mechanism that

Films, Songs and Books from Around the World

Titanic

United States

Duerme Negrito

Argentina

Volare

Italy

Chachimurenga

Zimbabwe

Hang Time

Nigeria

Ling Shan

China

Rasa Sayang

Malaysia

Cien Años de Soledad

Colombia

Dahil Sa'yo

Philippines

À bout de souffle

France

Yojimbo

Japan

The English Patient

Canada

Geetanjali

India

A Garota de Ipanema

Brazil

On average, it takes between 10-15 years and an estimated US \$800 million to develop a new medicine.⁴

allows innovators, creators and producers to finance their work through the market place. Other models of financing exist, such as government funding or private patronage, but intellectual property rights (IPRs) remain the basis most frequently used by individuals and organizations to fund and disseminate their work. Intellectual property rights allow creative freedom and encourage innovators and creators to be responsive to consumer needs.

Creating a virtuous cycle of innovation

The dissemination of ideas, knowledge and information necessary to stimulate creation and innovation is encouraged by intellectual property rights, especially patents and copyrights. As patent applicants are obliged to publish the details of their inventions in exchange for patent protection, published patents and patent applications are a rich resource in technical and scientific information accessible to all via patent office databases. This knowledge pool, which would not exist without the patent system, stimulates further research and development, thereby creating a virtuous cycle of innovation. By encouraging the publication of inventions, patents also help avoid duplication of research. Copyright encourages the dissemination of new works and creative expressions as authors are more likely to make their works public if they know they can retain some control over them.

Start-up ventures in late 19th century and early 20th century Japan became industrial giants and pillars of the Japanese economy – Toyota, Matsushita, Sony and Honda – thanks to the patented inventions of their founders.⁵

Intellectual property benefits society, and in particular consumers, by adding value and providing a guarantee of quality. Trademarks and geographical indications allow consumers to differentiate between goods and services from different producers and to select products by manufacturers whose reputations they trust. They also represent a lasting link between the producer and its product and encourage producers to maintain responsibility for the safety, efficacy and quality of the product even after it has been sold.

The intellectual property system was an important catalyst for the development of indigenous technology by Korean companies, several of which have become global market leaders. Korea's spectacular transformation from a poor farming economy in the 1960s with a per capita income of less than US \$100 to a highly industrialized country with a per capita income of US \$12,000 today, resulted from a systematic economic and trade development policy that included incentives for technological innovation and the development of domestic intellectual property assets.⁶

⁴ International Federation of Pharmaceutical Manufacturers

⁵ Hiramitsu Arai, *Intellectual Property Policies for the Twentieth Century: the Japanese Experience in Wealth Creation*, 1999

⁶ Chulsu Kim, *Integrating Intellectual Property into the National Development Policy: the Korean Experience*, keynote address at WIPO/KIPO Ministerial Conference on Intellectual Property for Least Developed Countries

How does intellectual property protection lead to economic progress?

Innovation, creativity, cultural diversity and technological development all contribute to economic growth. This is all the more true as knowledge-based industries increase in importance to the economy, particularly as creators of employment.

Innovation – key to competitiveness

Innovation has become one of the most important vectors of sustainable growth for businesses, and of economic prosperity for society as a whole. Businesses must constantly improve or renew their products and services if they wish to keep or capture market shares and remain competitive. Businesses often invest large amounts of money in research and development and in the advertising and marketing of their products. These investments will not be undertaken unless businesses are in a position to recoup their expenditures. Appropriate and effective protection of intellectual property gives innovative businesses a powerful incentive to invest, and contributes to economic progress.

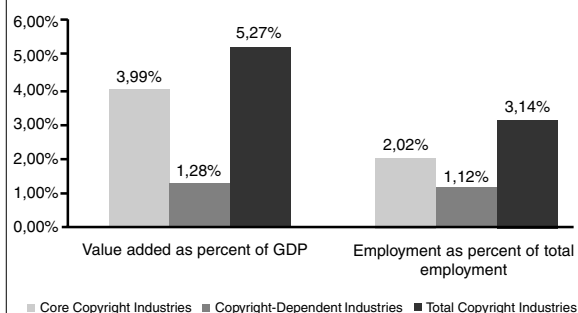
Innovations build upon each other, and every inventor and creator is indebted to those who came before. Intellectual property protection fosters this virtuous cycle of innovation and creation. It ensures that rewards flow to those who improve upon previous works and inventions, and that these new ideas, in turn, can be used by still others. This process lies at the heart of long-term economic growth.⁷

India's IT industry continues to chart double digit growth with expected revenues of US \$28 billion in 2004-2005.¹⁰

Innovation fuels growth

The correlation between innovation performance and economic development has strengthened over the past 15 years. Technological progress is now responsible for up to one half of the growth of the US economy⁸ and, in 2000, intangible assets represented 70 percent of corporate assets in the United States. Creative industries, such as publishing, music, film, software and arts, are a powerful generator of economic growth and employment in both the developed and developing world. These industries – heavily reliant on copyright – contributed more than 1.2 trillion euros to the EU's economy, produced added value of 450 billion euros, equalling 5.3% of the EU's GDP, and employed 5.2 million persons in 2000.⁹

Gross Value Added and Employment Provided by EU Copyright Industries as Percentages of Total GDP and Employment, 2000



Source: Turku School of Economics and Business Administration, prepared for European Commission, Directorate General, Internal Market, *The Contribution of Copyright and Related Rights to the European Economy*, 20 October 2003.

7 *Promoting Innovation and Economic Growth: The Special Problem of Digital Intellectual Property*, Committee For Economic Development, March 2004

8 Wendy H. Schacht, The National Council for Science and the Environment, *Industrial Competitiveness and Technological Advancement: Debate over Government Policy*, Brief for US Congress, September 2000.

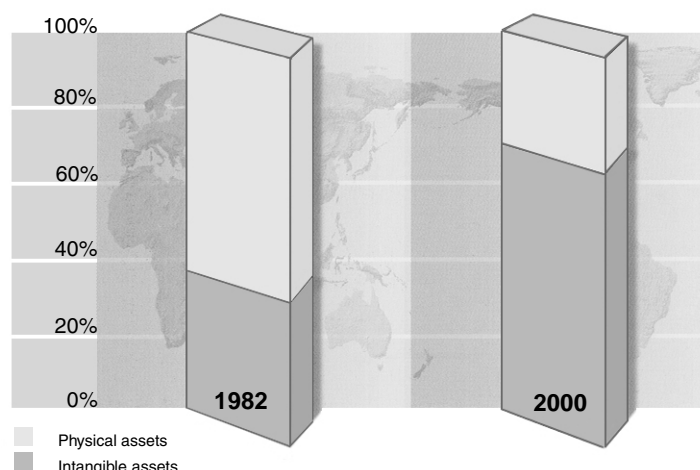
9 Turku School of Economics and Business Administration, prepared for European Commission, Directorate General, Internal Market, *The Contribution of Copyright and Related Rights to the European Economy*, 20 October 2003.

10 National Association of Software and Service Companies (NASSCOM)

“In recent decades, the fraction of the total output of [the US] economy that is essentially conceptual rather than physical has been rising. The trend has, of necessity, shifted the emphasis in asset valuation from physical property to intellectual property and to the legal rights inherent in intellectual property.”

*US Federal Reserve
Chairman
Alan Greenspan,
27 February 2004*

US Companies' Intangible Assets as a Percentage of Total Assets



Source: Intellectual Property: A Power Tool for Economic Growth, Kamil Idris

“The key is to develop China’s science and technology, to provide momentum for economic growth and social progress” and “of utmost importance is the establishment and improvement of scientific ethics, respect and protection of intellectual property rights, and guiding scientific and technological research to benefit people all over the world.”

*President Jiang Zemin
of China.¹¹*

Statistics support the positive relationship between economic growth, R&D and intellectual property. The contribution of knowledge-intensive industries to gross national product is increasing (from 21% to 27% in the US from 1982-1995) and there is a noticeable upward trend in patent applications and grants worldwide, including in developing countries.¹² The increasing use of the intellectual property system by local businesses in dynamic economies such as China (87.1% of approved invention, utility model, design patents by end 2004 were from local applicants¹³) and Brazil (40% of all Brazilian applications originate in Brazil), coupled with the 70.6% rise in international patent applications under the Patent Cooperation Treaty filed by developing countries in 2001,¹⁴ attests to this.

U.S. Biotech Industry Statistics: 2001–2003*

Year	2003	2002	2001
Sales	28.4	24.3	21.4
Revenues	39.2	29.6	29.6
R&D Expense	17.9	20.5	15.7
Net Loss	5.4	9.4	4.6
No. Of Public Companies	314	318	342
No. Of Companies	1,473	1,466	1,457
Employees	198,300	194,600	191,000

*Amounts are US dollars in billions.

*Source: Ernst & Young LLP, annual biotechnology industry reports, 1993–2004.
Financial data based primarily on fiscal-year financial statements of publicly traded companies.*

¹¹ “The Jiang Zemin Theory”, Singapore Straits Times, 30 October 2000

¹² Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*

¹³ “White Paper on intellectual property developments in China”, Information Office of the State Council, April 2005

¹⁴ Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*

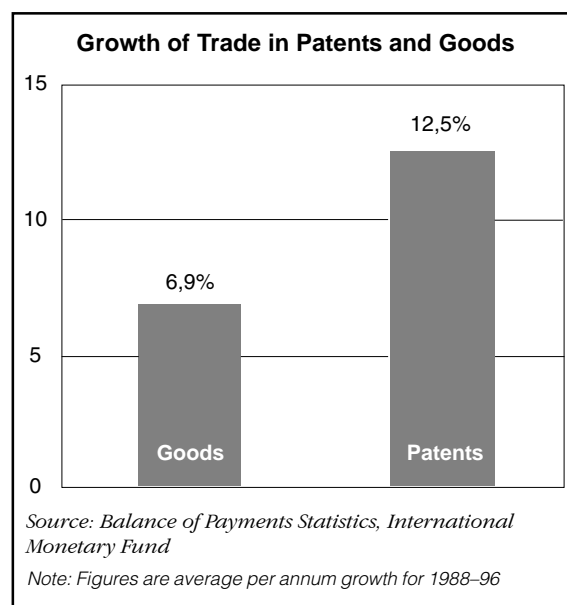
High growth industries that are contributing to both developed and developing economies, such as the biotech and information technology sectors, are heavily dependent on the intellectual property system. The information technology industry alone employs more than 9 million people, raises more than US \$700 billion in taxes per year, and grew by 26% between 1996-2000, creating 2.6 million new jobs and contributing US \$6 trillion to economies worldwide.¹⁵ Revenues from the US biotechnology industry increased from \$8 billion in 1992 to \$39.2 billion in 2003, and the industry employed 198,300 people as of 31 December 2003.¹⁶ Cuba's highly advanced biotechnology industry, with international patents on 66 pharmaceuticals, is one of the country's largest export earners with annual sales as high as US \$290 million, and employs a total of 34,000 people.¹⁷

Total worldwide revenues for patent licensing increased from US \$15 billion to US \$110 billion between 1990-2000.¹⁹

Trading in IPRs

In an increasingly interlinked world, the economic health of countries is also heavily dependent on international trade. There is general agreement that there exists a positive two-way relationship between intellectual property and international trade.¹⁸ International Monetary Fund data shows that trade in patents grew almost twice as fast as trade in goods between 1988 and 1996. The intellectual property system also spurs economic development by providing the basis for business transactions such as licensing.

The patent system facilitates technology transfer and foreign direct investment, as it provides reassurance to companies considering investing in a country. Patent databases provide a deep pool of technical information that countries can use to build up their technological capacity.



Realizing the potential of IPRs

Intellectual property protection is one essential element of the toolkit necessary for economic growth. To realize its full potential, however, the intellectual property system has to be supported by sound economic management, good infrastructure and the right type of flanking policies. Active national intellectual property policies and efficient institutions, as well as public awareness and support, are key elements of this toolkit.

Some developing countries with a significant scientific production have the potential to derive significant benefits from the patent system. For example, the scientific production in Latin America almost tripled in little more than a decade, the publication of articles in specialized magazines having increased from 5 600 in 1988 to 16 300

Goods that rely extensively on IPRs protection tend to be among the fastest-growing items in international trade and also are distinctive in terms of international comparative advantage.²⁰

¹⁵ Business Software Alliance

¹⁶ Biotechnology Industry Organization

¹⁷ Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*

¹⁸ Keith Maskus, *Intellectual Property Rights and Economic Development*, 2000

¹⁹ Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*

²⁰ Keith Maskus, *Intellectual Property Rights in the Global Economy*, 2000

in 2001.²¹ This scientific knowledge could be better exploited by raising awareness of intellectual property and bridging the gap between academic and research institutions, businesses and financing sources. For example, the success of the biotechnology industry in Cuba is a result of substantial governmental investment in biotechnology facilities, research and education.²² Singapore is also actively using intellectual property as part of its strategy to develop its knowledge-based industries.

Small and medium sized enterprises are among the greatest beneficiaries

Trademarks by Right-holder	Number of Right-holders	
1–2 marks	104,900	80,00%
3–10 marks	21,408	16,33%
11–100 marks	4,555	3,47%
101–500 marks	245	0,19%
> 500 marks	18	0,01%
All	131,126	100,00%

Source: WIPO, 2003

Many small and medium sized enterprises (SMEs), in both developed and developing countries, rely heavily on intellectual property rights. Design rights, copyrights, patents and trademarks are essential for numerous industries composed mainly of SMEs such as the textile, toy, publishing, biotechnology, and retail industries, to name just a few. In developing countries, intellectual property rights have spurred the development of huge industries (e.g. the software and film industry in India) as well as allowed small businesses to develop innovative business models (e.g. the franchising of fast food stands). In 2003, 80% of international applications for trademarks came from applicants with two or fewer trademarks, indicating a high use of the system by smaller companies.²³

Almost all of the more than 500 SMEs and independent inventors who replied to a 2005 survey by the Confederation of Swedish Enterprises said that intellectual property rights were important for SMEs. Their responses pointed out that large companies have other competitive advantages (such as size, market position or financial strength), while a patent can be the only advantage of a small company.

Local communities particularly in developing countries can, and have, used the intellectual property system to exploit the commercial potential of local or traditional products or resources. Properly supported by coherent policies and assistance as to their management and commercial application, intellectual property rights can be a key tool in helping to alleviate poverty.



*Trademark registered by the
National Federation of
Coffeegrowers of Colombia*

The National Federation of Coffee Growers (FNC), owned entirely by Colombia's thousands of coffee growers, created the Colombian Coffee trademark, which features Juan Valdez ®, his mule and the Colombian mountains. This mark is now well-known internationally as representing high quality coffee and allows Colombian coffee growers to command premium prices for what was before a commodity product. This strategy of utilizing intellectual property has improved the income and economic security of Colombian coffee growers.²⁴

²¹ National Science Foundation, www.nsf.gov

²² Kamil Idris, *Intellectual Property: A Power Tool for Economic Growth*

²³ World Intellectual Property Organization

²⁴ LightyearsIP

Whom does intellectual property theft harm?

The theft and illegal use of intellectual property result in economic, social and developmental costs that are broader than profit losses to a single company or sector and are more damaging to economic growth than may be currently understood.

The economic drain affects everyone

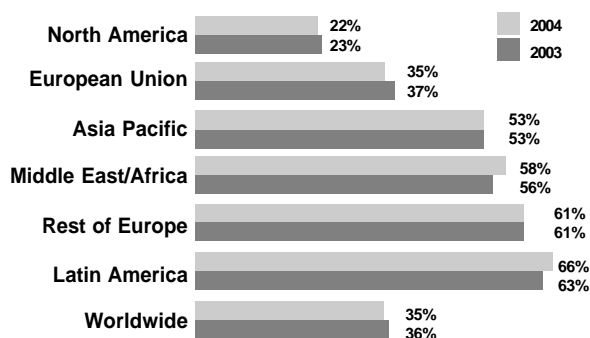
Every industry sector is affected, including airplane and car parts, food, batteries, medicines, film, music, publishing and toys. Collectively, the wider economic, social and developmental costs create a massive drain on national economies, especially those struggling to develop.

Piracy and counterfeiting are responsible for a widespread loss of lawful employment opportunities and a massive loss of tax revenues for governments. They rob innovators and creators of reward for effort and innovation, undermine local culture by reducing the incentive to invest, and ultimately limit the diversity and availability of high-quality goods and services.

Consumers are increasingly being harmed by unsafe counterfeit products that can present significant health and safety risks. In addition, there is evidence of increasing links between piracy and counterfeiting operations and organized crime.²⁵

The immense social impact of counterfeiting and piracy means that combating this illegal activity has become a priority for society, not just for intellectual property right holders.

Piracy Rate by Region



Source: BSA-IDC Global Software Piracy Study

Impact on the economy

Intellectual property theft has a huge economic cost in both developed and developing countries. Local and imported products alike suffer considerably from counterfeiting and piracy. Intellectual property theft stifles innovation and deters honest local entrepreneurs from investing in product and market development. This particularly affects knowledge-based industries, the keystone of the economic strategies of many countries. Countries that aim to increase the value of their exports by using their intellectual capital are also hampered in their efforts by counterfeiting and piracy.

In India, fast-moving consumer goods lose approximately 15% of market share to counterfeits and 38% of autoparts are fake. Approximately 22% of Japanese corporate executives state that counterfeits are their biggest concern in trade negotiations with China. The US and other developed countries are not immune. The California economy loses some US \$34.5 billion per year to counterfeiting and piracy, while UK industry reports it lost nearly £10 billion in 2002.²⁶

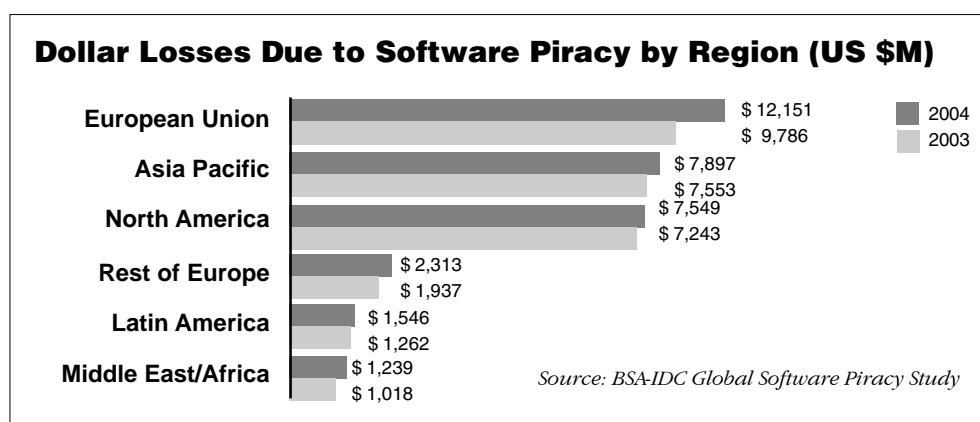
²⁵ ICC, Business Action to Stop Counterfeiting and Piracy, *Executive Summary*, 2005

²⁶ ICC, Business Action to Stop Counterfeiting and Piracy, *Fact Sheet*

Tax and excise losses caused by counterfeiting and piracy are considerable.

An estimated six out of every 10 CDs sold in Mexico are believed to be bootlegs, pummelling Mexico's long-established local music industry. Sales in 2003 plunged to US \$347 million, down 25% from 2002, recording industry employment has fallen by nearly half since 2000, and the government is losing more than US \$100 million annually in tax revenue.²⁷

Counterfeiting and piracy are also detrimental to the proper functioning of competition. Legitimate industries cannot "compete" with pirates and counterfeiters on the price of products, since illegal operators are saved the research, development and marketing costs of the legitimate sector. Pirates and counterfeiters simply take a free-ride on all the effort, creative work and investment of others. This illegal activity leads to serious distortions in the marketplace.



In Pakistan, piracy levels in cable television, music and software are over 90%, draining more than US \$1 billion in tax revenues.

Impact on investment and technology transfer

Businesses are less likely to transfer advanced technology, or invest in production or R&D facilities in countries where they are likely to have their products copied or technology stolen. This is particularly true of industries where intellectual property plays a key role, such as the IT, biotechnology and pharmaceutical sectors, which many countries aspire to develop.

Costs to governments and society

Tax and excise losses caused by counterfeiting and piracy are considerable. A recent study estimated the average loss of tax revenue in the EU to be 7 581 million euros in the clothing and footwear sector, 3 017 million euros in the perfumes and cosmetics sector, 3 731 million euros in the toys and sports articles sector, and 1 554 million euros in the pharmaceuticals sector.²⁸ In Pakistan, piracy levels in cable television, music and software are over 90%, draining more than US \$1 billion in tax revenues. This deprives governments of revenues needed for the country's infrastructure and other priorities, and translates into higher taxes on taxpayers.

²⁷ Los Angeles Times

²⁸ Blakeney, *Guidebook on Enforcement of Intellectual Property Rights*

As intellectual property theft is a profitable criminal activity, it attracts organized crime and its associated violence. Counterfeiting and piracy therefore become part of a wider criminal network and sometime finances other criminal activity.

In 1991, David Thai, the former leader of the Vietnamese crime gang Born to Kill, stated that he had earned over US \$13 million from the sale of counterfeit watches in New York's Chinatown.²⁹

"Intellectual property fraud threatens to be the major economic crime of the 21st century."

*European Commission
Director General on
Taxation and Customs
Union.*

The piracy and counterfeiting industry forms a large underground sector whose work force does not benefit from labour protection laws and does not pay taxes. This underground sector also drains legal jobs from legitimate industries, which cannot compete with the lower costs of piracy and counterfeiting operations, depriving countries of possible employment opportunities.

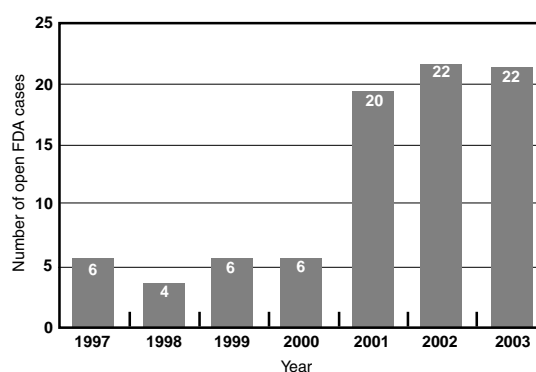
Costs to consumers include health and safety risks

Counterfeiting and piracy likewise have damaging consequences for consumers. They generally involve:

- potentially serious risks to health and safety when products such as toys, foodstuffs, beverages, airplane and car parts, or medicines are counterfeited without the safety features of the originals;
- low and inconsistent quality of the counterfeit product;
- the absence of aftersales service or any effective recourse in the event of damage or injury; and
- loss of consumer choice since legitimate industries will have less revenues to reinvest in bringing a wide diversity of new products to the market.

When buying counterfeit and pirated goods, consumers are often deliberately misled into thinking that they are obtaining the quality expected of branded products. Counterfeit or pirated products are produced without the quality and safety checks imposed by public standards authorities and by the brand proprietor.

Counterfeit Drug Cases are Increasing



Source: US Food and Drug Administration

- **The World Health Organization (WHO) estimates that counterfeit drugs account for 10% of all pharmaceuticals, and up to 60% of drugs in developing countries. According to WHO, 16% of counterfeit drugs contain the wrong ingredients, 17% contain incorrect amounts of the proper ingredients and 60% have no active ingredients whatsoever.³⁰**
- **In 1990, 109 children died in Nigeria after taking a lethal pharmaceutical preparation containing paracetamol and an industrial solvent.³¹**

²⁹ ICC Counterfeiting Intelligence Bureau, www.icc-cs.org

³⁰ *Knockoffs on the Pharmacy Shelf, Counterfeit Drugs are Coming to America*, US News & World Report, 11 June 2001

³¹ ICC Counterfeiting Intelligence Bureau, www.icc-cs.org

“What I find absolutely amazing is that this is a multi-billion dollar problem that affects the safety of people, the security of governments, that is connected to organized crime, drug trafficking and terrorism . . . and nobody pressures me to say what I’m doing about this problem. There is no pressure to produce results.”

Ron Noble, Secretary General, Interpol

- **In December 2004, four wholesale auto parts dealers located in New York City were arrested and charged with selling fake auto parts of inferior quality worth \$700,000 including brake pads, tail lights, idler arms, ignition coils, sway bar links, tie rods, stabilizer arms and water pumps.³²**
- **In 1989, a Norwegian Convair 580 aircraft crashed while enroute from Norway to Germany, resulting in 55 deaths. The crash was later found to have been caused by a fake bolt in the tailplane assembly.³³**
- **A fake Chinese insecticide totally ruined 200 hectares of wheat in Huaiyin, Liangshui and Chuzhou counties in Jiangsu province, China in May 2005, destroying harvests for over 100 farmer households.³⁴**

Costs to business

Businesses whose products are pirated and counterfeited suffer from:³⁵

- loss of sales;
- competitive disadvantage to those enterprises that free-ride on the research and development and marketing expenses of legitimate enterprises;
- the possibility of product liability from defective imitation products;
- loss of goodwill and prestige by a brand, where counterfeits are freely available; and
- the expense of monitoring the market and instituting legal proceedings against infringers.

These costs for individual businesses, both local and foreign, translate into economic and social costs for the economy and society as a whole.

In an ICC/Ifo study in 2005, 83% of the more than 1,100 corporate and academic economists polled in 90 countries agreed or strongly agreed that counterfeit products and the theft of intellectual property are among the more pressing problems facing business today. The greatest concerns were expressed by businesses in low income countries in Africa, the CIS, Latin America and the majority of Eastern European and Asian countries.

32 ICC Counterfeiting Intelligence Bureau, www.icc-cs.org

33 ICC Counterfeiting Intelligence Bureau, www.icc-cs.org

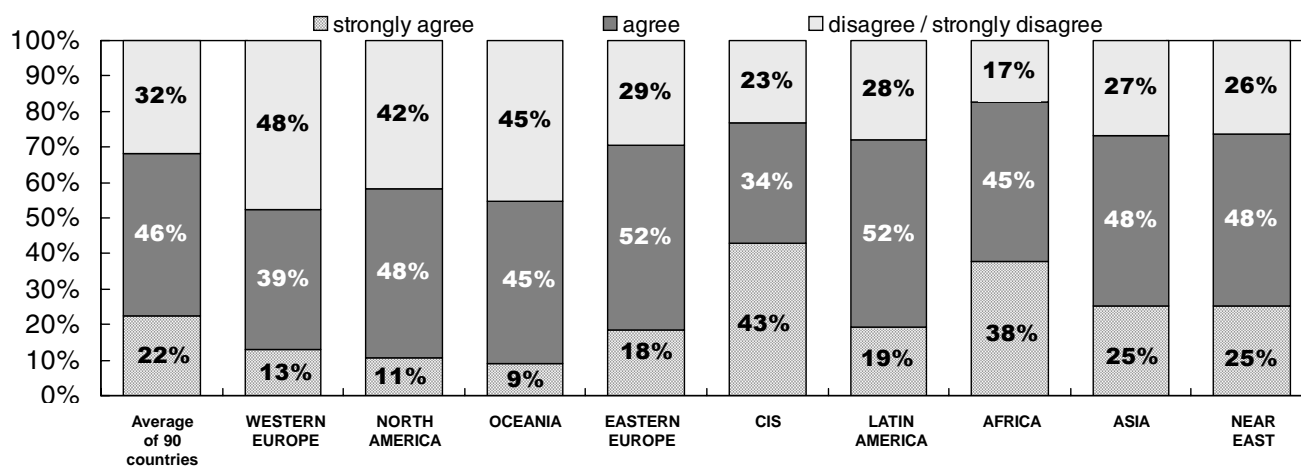
34 China Association of Pesticide Industry, www.cnnh.net, 11 May 2005

35 Blakeney, *Guidebook on Enforcement of Intellectual Property Rights*, 2005.

INTELLECTUAL PROPERTY RIGHTS

Counterfeit products and the theft of intellectual property are among the most pressing problems facing my country's business today

Distribution within regions in percent



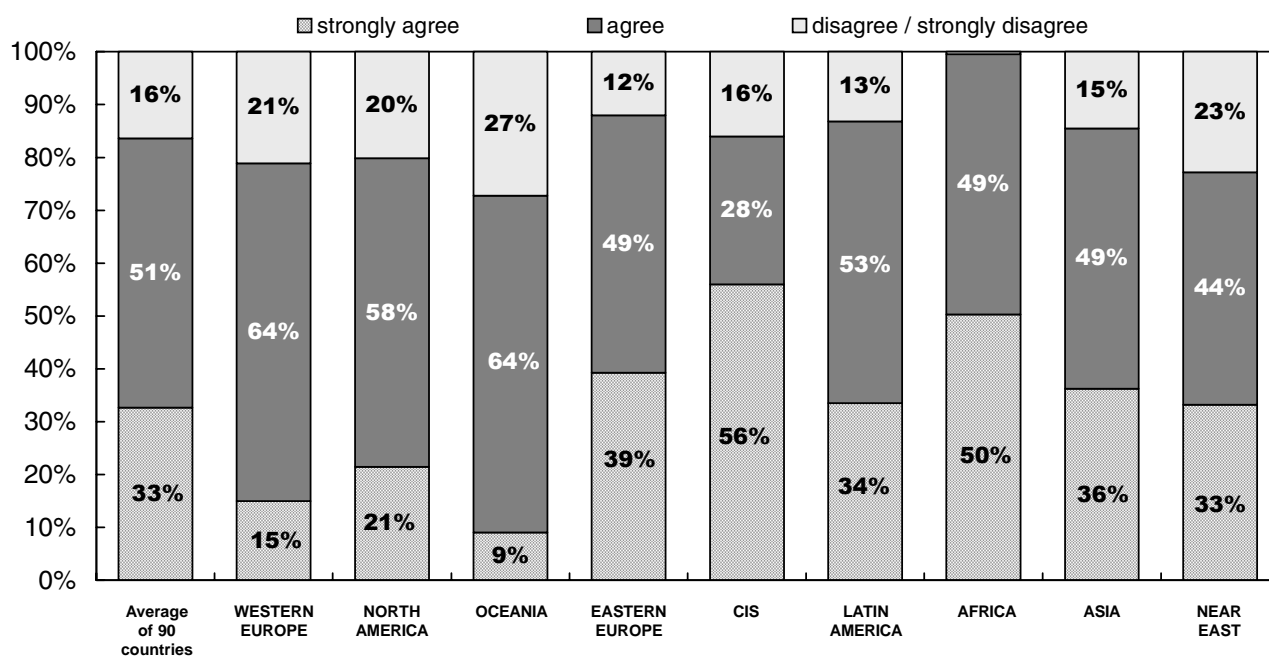
Source: ICC/Ifo World Economic Survey (WES), Q1/2005.

An overwhelming 94% of experts from all regions considered that their governments should make greater efforts to prosecute theft of intellectual property.

INTELLECTUAL PROPERTY RIGHTS

My country's government should undertake more efforts to enforce current legislation intended to protect intellectual property and prosecute intellectual property theft

Distribution within regions in percent



Source: ICC/Ifo World Economic Survey (WES), Q1/2005.

How can the intellectual property system work for society?

Intellectual property, properly managed, can be a powerful tool for growth and progress. To fulfil its potential, intellectual property protection has to be supported by appropriate policies and a deep commitment by governments to establish an effective infrastructure to process and make use of intellectual property rights.

Call to action

To make the intellectual property system work for their countries and communities, governments must take positive action. Suggested measures include:

- providing for clear and enforceable intellectual property rights ownership, without discrimination as to nationality;
- improving the accessibility of national and international intellectual property systems by
 - keeping the costs of obtaining, maintaining and enforcing intellectual property rights low;
 - ensuring that procedures for obtaining, maintaining and enforcing intellectual property rights are simple and user-friendly;
 - harmonizing intellectual property systems and cooperating internationally to simplify and reduce costs for obtaining rights in several countries thereby helping inventors and creators disseminate their innovations and creative products globally.
- ensuring that intellectual property institutions are efficient and sufficiently funded;
- supporting intellectual property policies with sound economic management, good infrastructure and other appropriate policies in areas such as education, science and technology, culture, taxes, investment regulations, production and technical incentives, trade, and competition;
- establishing an active and coherent intellectual property policy coordinated throughout government bodies;
- educating local communities, businesses and the public on the potential benefits of the intellectual property system; providing assistance to innovators/producers/creators on how to use intellectual property protection to their commercial advantage and supporting efforts of stakeholder organizations in this area;
- bridging the gap between academic and research institutions, and businesses and financing sources; and
- taking action against counterfeiting and piracy by
 - making it a priority to strengthen and/or create a legal framework to ensure implementation and effective enforcement measures against intellectual property theft;

- pursuing proactive measures to strengthen enforcement of existing laws to ensure that, at the very minimum, existing sanctions are effectively applied and international treaty obligations met;
- clearly designating the bodies responsible for intellectual property enforcement and allocating sufficient financial and human resources to allow them to be effective;
- training enforcement officials such as police, customs as well as the judiciary on a national and cross-border basis with the support of right holders and international organizations;
- working with industry and multilateral institutions to improve the collection of data and supplement past studies by multilateral institutions, such as WIPO, WCO, Interpol and the OECD, on the extent and impact of piracy and counterfeiting on societies and economies worldwide;
- seeking to improve the voluntary exchange of information and best practices with industry sectors and associations in order to accelerate the implementation of anti-piracy and anti-counterfeiting policies and measures; and
- raising awareness of the benefits of IP protection and the tremendous damage caused by piracy and counterfeiting.