



# **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**

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## **EXECUTIVE SUMMARY**

### **International AntiCounterfeiting Coalition**

The International AntiCounterfeiting Coalition, Inc. (IACC) is a Washington, D.C.-based non-profit organization devoted solely to combating product counterfeiting and piracy. Formed in 1978, today the IACC is comprised of a cross section of business and industry - from autos, apparel, luxury goods, and pharmaceuticals, to food, software and entertainment. The IACC's members' combined annual revenues exceed \$650 billion. The touchstone of the IACC's mission is to combat counterfeiting and piracy by promoting laws, regulations and directives designed to render the theft of intellectual property undesirable and unprofitable.

### **Economic Harm and Threats to the Public Health and Safety**

Critical to the IACC's purpose is its belief that acts of counterfeiting and piracy are linked to organized crime, cause economic harm, defraud consumers, constitute unfair competition to legitimate business, and can pose a danger to public health and safety. Acts of counterfeiting and piracy erode the market for genuine goods and services, and harm every individual and company that works to produce high quality legitimate products. Counterfeiters illegally profit at the expense of creators, manufacturers, distributors, and retailers, as well as governments who are deprived of taxes and other revenue generated and paid by legitimate businesses, but not paid by counterfeiters and pirates. The attached White Paper helps to detail the genuine threat that counterfeiting and piracy pose to both the public health and safety as well as to America's national economic security.

### **Traditional Organized Crime and Intellectual Property Theft**

Low risk of prosecution and enormous profit potential have made criminal counterfeiting an attractive enterprise for organized crime groups. Congress itself recognized organized crime's increasing role in the theft of intellectual property when it made trademark counterfeiting and copyright piracy predicate acts under the federal Racketeer Influenced and Corrupt Organizations Act (RICO) statutes (see 18 U.S.C. § 1961). The federal money laundering statutes (18 U.S.C. §§ 1956-57) similarly include trademark counterfeiting and copyright piracy as crimes that constitute the type of "specified unlawful activity" necessary for conviction under these statutes. It is no secret that highly sophisticated and organized criminal syndicates exert significant influence and control over the manufacturing, distribution and sale of counterfeit and pirate goods. The attached White Paper documents some of the more glaring examples of organized intellectual property theft.

### **Terrorism and Intellectual Property Theft**

Recently, there have also been reported links between counterfeiting and piracy and terrorist organizations that use the sale of fake and unauthorized goods to raise funds and launder money. The IACC believes there is ample evidence to support and confirm the litany of suspicions, allegations and anecdotal accounts that terrorist organizations are currently exploiting America's valuable intellectual property and profiting from the manufacture and sale of

counterfeit and pirate products. This paper helps to identify the extent of the connections between intellectual property theft and terrorist groups as well as the potential devastating impact to both the American citizenry and economy. The paper provides specific examples of the links and further details how terrorists could use intellectual property crimes not only as a source of funding, but also as a means of attack.

This Paper was first released in June 2003 and was entitled *International/Global Intellectual Property Theft: Links to Terrorism and Terrorist Organizations*. The Paper was updated and released again, in its present form, in January 2005. The purpose of updating and reissuing this Paper is to underscore the continuing global problems arising from intellectual property theft.

# **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**

### **The International AntiCounterfeiting Coalition**

The International AntiCounterfeiting Coalition, Inc. (IACC) is a Washington, D.C.-based non-profit organization devoted solely to combating product counterfeiting and piracy. Formed in 1978, today the IACC membership is comprised of a cross section of business and industry - from autos, apparel, luxury goods, and pharmaceuticals, to food, software and entertainment – whose combined annual revenues exceed \$650 billion. The touchstone of the IACC's mission is to combat counterfeiting and piracy by promoting laws, regulations and directives designed to render the theft of intellectual property undesirable and unprofitable.

Critical to the IACC's purpose is its belief that acts of counterfeiting create severe public health and safety hazards, as well as significant economic harm in the form of lost profits, lost jobs and decreased tax revenue. The IACC supports government actions that will ultimately result in increased enforcement, lead to the prosecution of intellectual property infringers, and create a strong deterrent to counterfeiters and pirates. In pursuing its mission, the IACC provides law enforcement officials with information and training to discover and identify counterfeit and pirate products and in the methods of product security used to prevent the infringement of intellectual property rights. In an effort to create conditions under which its members' intellectual property rights are safe from illegal copying, infringement and other forms of theft, the IACC engages in substantive dialogue with governments and intergovernmental organizations worldwide (e.g., United Nations Economic Commission for Europe, WIPO, APEC and INTERPOL).

In February 2003, the IACC formed an internal industry-based Task Force of intellectual property owners with the objective of addressing industry concerns arising from the reorganization of the U.S. Customs Service into the new Department of Homeland Security and maintaining intellectual property enforcement as a priority for border enforcement officials and agencies.<sup>1</sup> One initial goal of the Task Force was to research and draft a White Paper that detailed and analyzed the vast scope of intellectual property theft, and the harm caused by intellectual property theft in terms of economic damage, threats to the public health and safety

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<sup>1</sup> Many intellectual property owners rely on the resources and expertise of the U.S. border enforcement personnel to detect and seize counterfeit and pirate products at the numerous points of entry into the United States. From 1999-2003, U.S. border enforcement seized 22,814 shipments valued at over \$394 million. See [http://www.cbp.gov/xp/cgov/import/commercial\\_enforcement/ipr/seizure/seizure\\_stats.xml](http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure/seizure_stats.xml). In the first half of FY2004, U.S. border enforcement seized 3,693 shipments valued at over \$64 million. See [http://www.cbp.gov/linkhandler/cgov/import/commercial\\_enforcement/ipr/seizure/fy04\\_midyear\\_stats.ctt/fy04\\_ipr\\_midyear.xls](http://www.cbp.gov/linkhandler/cgov/import/commercial_enforcement/ipr/seizure/fy04_midyear_stats.ctt/fy04_ipr_midyear.xls).

and links to criminal/terrorist organizations. The results of our research and efforts are presented in the following pages.

## **A. SCOPE OF INTELLECTUAL PROPERTY THEFT**

Laws prohibiting counterfeiting existed as far back as the Middle Ages when bakers, artisans, craftsmen and guild members used distinctive marks to distinguish their products and work from would-be counterfeiters. Some early anticounterfeiting laws provided for the payment of small monetary fines, while other more drastic laws called for the removal of the infringer's hand or even hanging.<sup>2</sup> The general problems associated with modern day counterfeiters and pirates are certainly nothing new and, as is evidenced by these ancient statutes, have long been recognized. Today's modern and high tech economy, however, permits the size and scope of counterfeiting and piracy operations to move from being merely annoying to potentially devastating (in terms of both the economic impact and the potential public health and safety risks).

Over the course of the past two decades, intellectual property owners have witnessed an explosion in the levels of counterfeiting and piracy, in both the domestic and international arenas.<sup>3</sup> Due to today's sophisticated global economy -- with its easy and widespread access to technological advances such as computers, copiers and scanners -- there are virtually no product lines, corporations, or consumers that escape the reach of counterfeiters and/or pirates. Never before has it been so easy to duplicate labels, packaging, documentation, authentication devices and/or symbols/marks/logos with such speed, accuracy and relative anonymity. This increase in intellectual property theft is reflected in a similar increase in reporting on intellectual property theft by various media outlets. Beginning in October 2003, the IACC began monitoring international news databases on a daily basis for media reports on seizures of counterfeit/pirate merchandise. This very informal and unscientific survey has, to date, resulted in the collection and collation of media reports of intellectual enforcement activity from approximately 850 different news articles from countries all over the world. These media reports span the product spectrum from music to health-threatening consumable goods.

Most people, when confronted with the problem of counterfeit and pirated products, generally conjure up images of products typically peddled by sidewalk vendors -- music CDs, sunglasses, t-shirts, hats, cosmetics, cell phone covers, handbags and watches -- bearing easily recognizable and well known names, marks and logos. Modern day counterfeiting operations, however, are no longer limited to luxury goods and apparel related products. On a more sophisticated and organized level, counterfeiters and pirates are also trading on names and logos often associated with products like razor blades, shampoos, pharmaceuticals, foods, hand tools, auto parts, airline parts, light bulbs, film, skin lotions, laundry detergent, band-aids, insecticides,

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<sup>2</sup> See Thomas D. Drescher, *Article and Report: The Transformation and Evolution of Trademarks – From Signals to Symbols to Myth*, 82 T.M.R. 301, 309 – 320 (1992); Sidney A. Diamond, *The Historical Development of Trademarks*, 73 T.M.R. 222, 234-237 (1983).

<sup>3</sup> See Kate Betts, *The Purse-Party Blues*, Time (August 2, 2004) (“Worldwide production of counterfeit goods – everything from DVDs to pharmaceuticals – has jumped 1700% since 1993, according to the Italian anti-counterfeiting coalition Indicam.”).

batteries, cigarettes and practically anything else that bears a name that consumers recognize. As infringers become more brazen and as technology provides them with the ability to produce greater varieties and numbers of fake goods, very few industries, if any, will remain beyond the reach of skilled and determined counterfeiters.

## **B. THE IMPACT OF INTELLECTUAL PROPERTY THEFT**

Among the most obvious results of counterfeiting and piracy are the lost sales/profits, the diminished reputations and the loss of good will suffered by legitimate right holders. Unfortunately, these types of harm, while certainly not insignificant, are not the only ill effects associated with modern day counterfeiting and piracy operations. For instance, the sale, manufacture, and distribution of counterfeit goods robs economies of precious tax revenues, discourages innovation, impedes economic growth and ultimately results in lost jobs and decreased investment levels. Another frightening trend relates to the rising occurrence of substandard and dangerous counterfeit goods that present public health and safety risks. Finally, and most alarmingly, there is strong evidence suggesting, if not proving, that organized criminal groups and terrorist organizations are increasingly turning to intellectual property theft as a means to raise funds. Low risk of prosecution and enormous profit potential continue to make criminal counterfeiting and piracy attractive enterprises for individuals who care little about the potential devastating consequences of their illicit actions, or, indeed, even intend such devastating consequences. This paper will examine four specific issues as they relate to intellectual property theft: (1) the economic impact of counterfeiting and piracy; (2) the public health and safety risks; (3) links to organized crime; and (4) links to terrorism and terrorist organizations.

### **1. Economic Impact -- Threat to America's National Economic Security**

In addition to decreasing the revenues of individual right holders and making it harder for legitimate retailers to compete in the marketplace, the sale of counterfeit and pirate goods also adversely impacts national/regional economies at the macro level. As referenced earlier, the size, sophistication and scope of product counterfeiting and copyright piracy have skyrocketed in recent years. As a direct result of this rapid increase in the manufacture, distribution and sale of counterfeit/pirate goods, the United States economy is losing tens of millions of dollars in tax revenue and tens of thousands of jobs. This decrease in revenue results in fewer government services, including, but not limited to, schools, hospitals, police, maintenance of roads, public services, etc. In short, present day counterfeiting and piracy levels threaten to undermine the national economic security of the United States and other nations whose intellectual property and product brands also contribute to the American economy. The currently available statistics and data detailing the total economic impact of intellectual property theft are staggering.

In 1982, the International Trade Commission estimated losses from counterfeiting and piracy at \$5.5 billion.<sup>4</sup> In 1988, losses were estimated at \$60 billion.<sup>5</sup> In 1996, damage to the

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<sup>4</sup> See S. Rep. No. 104-177, 104<sup>th</sup> Cong., 1st Sess. 1-2 (1995). See also *The Effects of Foreign Product Counterfeiting on U.S. Industry*, Final Report on Investigation No. 332-158 Under Section 332(b) of the Tariff Act of 1930 (USITC Publication 1479) at xiv & 24(January 1984)(Copy on file with IACC).

United States economy was estimated at \$200 billion.<sup>6</sup> Bank robberies, by contrast, generally involve less than \$70 million per year, but seem to garner more public attention and law enforcement resources.<sup>7</sup>

In 2002, American copyright based industries sustained more than \$9 billion in losses in 56 countries.<sup>8</sup> In 2002, seizures of pirated Microsoft products alone exceeded \$1.7 billion.<sup>9</sup> According to the Motion Picture Association of America (MPAA), global piracy costs the major movie studios over \$3 billion per year.<sup>10</sup> In 2002, the MPAA seized over 7 million pirate DVDs, a form of piracy that did not exist until 1999.<sup>11</sup> In 2001, the Business Software Alliance (BSA) estimated the global losses to software piracy to be \$10.9 billion.<sup>12</sup> In 1998, software piracy was

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<sup>5</sup> See *Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade*, Report to the United States Trade Representative, Investigation No. 332-245, Under Section 332(g) of the Tariff Act of 1930 (USITC Publication 2065) at App. H (February 1988)(copy on file with the IACC).

<sup>6</sup> See S. Rep. No. 104-177, 104<sup>th</sup> Cong., 1st Sess. 1-2 (1995).

<sup>7</sup> According to FBI statistics, there were 7,390 commercial bank robberies in the United States in 2001. The average monetary loss per incident was \$4,587. See Rosemary J. Erickson & Kristi M. Balzer, *Summary and Interpretation of Bank Crime Statistics, 2001 Federal Bureau of Investigation* (2003), available at <http://www.athenaresearch.com/research.shtml> (last visited Apr. 4, 2004). Banks lose approximately \$70 million annually to robberies. See David Montgomery, *Cash and Carried Away*, Washington Post at C1 (August 17, 2004). In making the argument that victims of trademark counterfeiting absolutely need the help of governments and law enforcement to track down counterfeiters and build cases against them, one commentator offered the following pertinent comment:

[N]o one supposes that merely because most banking institutions are prosperous, bank robbery and bank embezzlement should not be crimes, and that deterring such problems should be left to those bankers able to bring lawsuits against the culprits. On the contrary, it is universally recognized that there is a strong social interest in the public prosecution of such misconduct and that without governmental intervention, the social cost of such misconduct would soon become unsupportable.

Jed S. Rakoff & Ira B. Wolff, *Commercial Counterfeiting and the Proposed Trademark Counterfeiting Act*, 40 Am. Crim. L. Rev. 145, 164 & n.144 (1982).

<sup>8</sup> Statement of Chairman Lamar Smith before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>9</sup> See *id.* See also Statement of Richard C. LaMagna (Microsoft Corporation) before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>10</sup> See Paul Sweeting, *Newer Piracy Methods Scramble Legal Picture*, Daily Variety at A4 (March 3, 2003); *Hollywood Alters Movies to Foil Camcorder Pirates*, CNN.com, April 19, 2003 available at <http://www.cnn.com/2003/TECH/biztech/04/19/camcorder.piracy.ap/index.html>.

<sup>11</sup> See Statement of Jack Valenti (President & CEO, MPAA) before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>12</sup> See Jennifer L. Schenker, *Busting Software Pirates*, Time at 54 (November 18, 2002). A global software piracy study released by the BSA in 2004 revealed that the worldwide piracy rate in 2003 was 36% representing



estimated to cost the U.S. economy over 109,000 jobs, \$4.5 billion in lost wages and almost \$1 billion in tax revenue.<sup>13</sup> In the state of Michigan alone, a piracy rate of 14% translates into \$64.7 million in retail losses and \$34.9 million in lost tax revenue.<sup>14</sup> 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.<sup>15</sup> The International Federation of the Phonographic Industry (IFPI) recently noted that two out of every five physical recordings are illegal and that, in 2003, the value of the pirate market for music reached a new high of \$4.6 billion.<sup>16</sup> Finally, the city of New York reported that in 2003 intellectual property theft cost the city \$1.03 billion in lost tax revenue.<sup>17</sup>

The situation is no better outside America's borders. According to a study conducted by the Centre for Economic and Business Research, the trade in counterfeit goods in just four select industries "reduces EU gross domestic product by €8 billion per annum and costs 17,000 jobs."<sup>18</sup> On the global level, the International Chamber of Commerce estimated in 1998 that five to seven percent of world trade is counterfeit goods, a market worth \$350 billion.<sup>19</sup>

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losses of over \$28 billion. See *First Annual BSA and IDC Global Software Piracy Study* (July 2004), available at <http://www.bsa.org/globalstudy/>.

<sup>13</sup> See Business Software Alliance Press Release, *BSA Applauds Latest NET Act Prosecution* (December 22, 1999)(citing 1998 Global Software Piracy Report conducted by the International Planning and Research Corporation) available at <http://www.bsa.org/usa/press/newsreleases/1999-12-22.164.phtml>.

<sup>14</sup> See *BSA Seeks to Sink Software Pirates*, Grand Rapids Business Journal, vol. 20, No. 18, pg. 3 (May 6, 2002). See also Business Software Alliance, *U.S. Software State Piracy Study*, (October 2002), available at [http://www.bsa.org/piracystudy/press/State\\_Piracy\\_Study\\_2001.pdf](http://www.bsa.org/piracystudy/press/State_Piracy_Study_2001.pdf) (providing slightly different figures); *2002 U.S. Software State Piracy Study*, Business Software Alliance, available at <http://www.bsa.org/statestudy/> (providing updated figures on a state-by-state basis).

<sup>15</sup> See George W. Abbott, Jr. and Lee S. Sporn, *Trademark Counterfeiting* § 1.03[A][2] (2002); Richard C. Noble, *From Brakes to Plugs to Engines, Counterfeiters Produce, Push Parts*, Flint J., September 3, 1995; H.R. Rep. No. 104-556 (1996), reprinted in 1996 U.S.C.C.A.N. 1074, 1075.

<sup>16</sup> See *Music Piracy Fighters Gather in Dublin for Global Enforcement Conference*, IFPI Press Release (July 1, 2004), available at <http://www.ifpi.org/site-content/press/20040701.html>; *The Recording Industry 2004 Commercial Piracy Report* (July 22, 2004), available at <http://www.ifpi.org/site-content/antipiracy/piracy-report-current.html>.

<sup>17</sup> See *Thompson: Counterfeiting Costs NYC More Than \$1 Billion Annually*, The New York City Office of the Comptroller Press Release (November 22, 2004), available at [http://www.comptroller.nyc.gov/press/2004\\_releases/print/pr04-11-065.shtm](http://www.comptroller.nyc.gov/press/2004_releases/print/pr04-11-065.shtm); *Bootleg Billions: The Impact of the Counterfeit Goods Trade on New York City*, The New York City Office of the Comptroller (November 2004)(stating the figure as \$1.6 billion), available at <http://www.comptroller.nyc.gov/bureaus/bud/04reports/Bootleg-Billions.pdf>.

<sup>18</sup> See *Countering Counterfeits: Defining a Method to Collect, Analyse and Compare Data on Counterfeiting and Piracy in the Single Market* (Final Report for the European Commission), at 17 (July 15, 2002)(citing *The Economic Impact of Counterfeiting in Selected Industries of the EU Economy*, CEBR, 2000, and *The Economic Impact of Counterfeiting in Selected Industries of the UK Economy*, CEBR, 1999), available at [http://europa.eu.int/comm/internal\\_market/en/indprop/piracy/final-report-cebr\\_en.pdf](http://europa.eu.int/comm/internal_market/en/indprop/piracy/final-report-cebr_en.pdf). The four selected industries in the study were clothing and footwear, perfume and toiletries, toys and sports goods, and pharmaceuticals.

<sup>19</sup> See *Countering Counterfeits: Defining a Method to Collect, Analyse and Compare Data on Counterfeiting and Piracy in the Single Market* (Final Report for the European Commission), at 18 (July 15, 2002)(citing OECD,

America's intellectual property helps drive America's economy. Exports of American copyrighted products alone total over \$100 billion annually.<sup>20</sup> In 2002, the United States earned more than \$44 billion in royalties and license fees overseas, higher than any other country in the world.<sup>21</sup> In today's information and high tech economy, "the value of companies has been shifting from tangible assets – the bricks and mortar – to intangible assets, such as patents," trademarks and copyrights.<sup>22</sup> From 2002 through 2004, eight of the top ten brands in the world were owned by American companies.<sup>23</sup> More than ever, American intellectual property and innovation help encourage economic growth, create jobs, spur large scale investment, increase corporate profits and generally lead to a better overall quality of life. Unfortunately, America's creative might, world famous brands and cultural icons also serve as inviting targets for criminals seeking to exploit and undermine these symbols of economic strength and vitality.

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International Chamber of Commerce (1998) *The Economic Impact of Counterfeiting*) available at [http://europa.eu.int/comm/internal\\_market/en/indprop/piracy/final-report-cebr\\_en.pdf](http://europa.eu.int/comm/internal_market/en/indprop/piracy/final-report-cebr_en.pdf).

<sup>20</sup> See Statement of Chairman Lamar Smith before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>21</sup> See *Intellectual Property, U.S. Efforts have Contributed to Strengthened Laws Overseas, but Challenges Remain*, GAO Report (GAO-04-912) at 1 and n.1 (September 2004)(noting that royalties and license fees in this case are from the authorized overseas use of intangible proprietary rights such as patents, copyrights and trademarks).

<sup>22</sup> See Neil Gross, *Commentary: Valuing "Intangibles" Is a Tough Job, but It Has to be Done*, Business Week Online, August 6, 2001, available at [http://www.businessweek.com/magazine/content/01\\_32/b3744008.htm](http://www.businessweek.com/magazine/content/01_32/b3744008.htm). See also Remarks by Alan Greenspan (Chairman of the Board of Governors of the Federal Reserve System), *Stanford Institute for Economic Policy Research Economic Summit* (February 27, 2004)("In recent decades, for example, the fraction of the total output of our economy that is essentially conceptual rather than physical has been rising. This 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."), available at <http://www.federalreserve.gov/boarddocs/speeches/2004/200402272/default.htm>; Remarks by Alan Greenspan (Chairman of the Board of Governors of the Federal Reserve System), *Financial Markets Conference of the Federal Reserve Bank of Atlanta* (April 4, 2003)("Over the past half century, the increase in the value of raw materials has accounted for only a fraction of the overall growth of U.S. gross domestic product. The rest of that growth reflects the embodiment of ideas in products and services that consumers value. This shift of emphasis from physical materials to ideas as the core of value creation appears to have accelerated in recent decades."), available at <http://www.federalreserve.gov/boarddocs/speeches/2003/20030404/default.htm>.

<sup>23</sup> See Special Report, *The 100 Top Brands*, Business Week, August 5, 2002, at 95 available at <http://www.businessweek.com/pdfs/2002/0231-brands.pdf>; Special Report, *The Best Global Brands*, BusinessWeek Online, August 5, 2002, available at [http://www.businessweek.com/magazine/content/02\\_31/b3794032.htm](http://www.businessweek.com/magazine/content/02_31/b3794032.htm); *The Top 100 Brands*, Business Week at 72 (August 4, 2003); *The Top 100 Brands*, Business Week at 68 (August 2, 2004).

## **2. Public Health & Safety Dangers/Concerns**

*"Perhaps most troubling is the widespread threat counterfeiting poses to public health and safety. Few Americans truly appreciate the significance, scope or consequences for this crime."*

*Senator Orrin G. Hatch (R-UT)  
Chairman, Senate Judiciary Committee  
Press Conference, August 9, 1995*

One area that has always been of particular concern to the IACC and its members is the increasing availability of substandard counterfeit products that have already caused injuries and deaths and continue to present a grave threat to the public health and safety. The IACC's concerns with respect to the health and safety problem have only increased. The following anecdotal accounts help illustrate the extent of the health and safety risks presented by the sale of counterfeit goods.

### **a. Pharmaceuticals**

- In May of 2003, the Food and Drug Administration (FDA) issued an alert to consumers that nearly 200,000 bottles of counterfeit Lipitor (a drug used to control high cholesterol levels) had made their way onto the market.<sup>24</sup>
- The World Health Organization (WHO) estimates that counterfeit drugs account for ten percent of all pharmaceuticals. That number can rise to as high as 60% in developing countries.<sup>25</sup> According to the WHO, 16% of counterfeit drugs contain the wrong ingredients, 17% contain incorrect amounts of the proper ingredients and 60% have no active ingredients whatsoever.<sup>26</sup>
- In New York, a 16 year-old liver transplant recipient received eight weeks worth of injections of a counterfeit drug (Epogen) to treat his anemia and raise the child's red blood cell count. The treatments, instead of improving the boy's condition, caused excruciating aches and spasms. The vials used for the injections were supposed to contain 40,000 units of the drug, instead the

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<sup>24</sup> See Peter Jaret, *Fake Drugs, Real Threat*, Los Angeles Times at F1 (February 4, 2004); *FDA Alerts Consumers and Health Professionals to Recall of Counterfeit Lipitor*, FDA Talk Paper (May 23, 2003), available at <http://www.fda.gov/bbs/topics/ANSWERS/2003/ANS01224.html>; Susan Todd, *Lax Rules, Cunning Scheme Put Fake Lipitor Onto Market*, New House News Service (December 23, 2003)(describing details behind the counterfeit Lipitor case and an arrest of a man thought to be the mastermind behind the criminal plan); Mary Pat Flaherty & Gilbert M. Gaul, *Miami Man Charged with Selling Counterfeit Lipitor*, Washington Post at E1 (December 6, 2003).

<sup>25</sup> See The Engineer, *Fighting the Fakers*, at 16 (April 26, 2002); Phillippe Broussard, *Dangerous Fakes*, World Press Review, v44, n1, p36 (1) (January 1999).

<sup>26</sup> See Douglas Pasternak, *Knockoffs on the Pharmacy Shelf, Counterfeit Drugs are Coming to America*, U.S. News & World Report at 26 (June 11, 2001).

counterfeit version contained only 2,000 units. Other counterfeit lots of Epogen were also found in Texas.<sup>27</sup>

- In 2002, a New York County district attorney charged seven people and five companies in the US, China and India with selling counterfeit Viagra over the Internet. Undercover officers purchased over 25,000 pills. Some pills were smuggled into the U.S. in stereo speakers and stuffed toys. One supplier told the agents that he could supply 2.5 million tablets a month.<sup>28</sup>
- On June 7, 2001, the chief of security for a major drug company (Novartis International AG) testified before a House Subcommittee that one counterfeit ring they uncovered produced “millions of yellow tablets that were virtually indistinguishable from the genuine product.” The fake tablets were “made of boric acid, floor wax and lead-based yellow paint used for road markings.”<sup>29</sup>
- In February 2001, authorities in Los Angeles arrested three people for taking part in an extremely sophisticated counterfeit Viagra ring. A Pfizer analysis of the product ranked counterfeit versions of the drug a nine on a scale of ten. According to a pharmacist from the Los Angeles County Department of Health Services, the counterfeiters copied everything from the packaging, the package inserts and the lot numbers.<sup>30</sup>
- According to the Shenzhen Evening News (a Chinese government owned newspaper), approximately 192,000 people died in China in 2001 because of fake drugs. Since 2001, Johnson & Johnson has established 38 criminal cases against factories that copied its products in China. China is widely regarded as the world leader in terms of the manufacture and export of counterfeit products.<sup>31</sup>

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<sup>27</sup> See Ridgely Ochs, *Sounding Alarm on Counterfeit Drugs, FDA Investigating Recent of Fake Drug Cases*, New York Newsday at 6 (June 12, 2002).

<sup>28</sup> See *U.S. Officials Arrest Viagra Counterfeiters*, Scrip, May 22, 2002; Ridgely Ochs, *Sounding Alarm on Counterfeit Drugs; FDA Investigating Recent of Fake Drug Cases*, New York Newsday, at 6 (June 12, 2002).

<sup>29</sup> See Wisconsin State Journal, *Thompson Should Block Surge in Knockoff Drugs* (June 22, 2001).

<sup>30</sup> See Douglas Pasternak, *Knockoffs on the Pharmacy Shelf, Counterfeit Drugs are Coming to America*, U.S. News & World Report at 26 (June 11, 2001).

<sup>31</sup> See *China's Killer Headache: Fake Pharmaceuticals*, Washington Post (August 30, 2002). According to U.S. Customs intellectual property seizure statistics, China has topped the list of source countries for infringing goods six of the past seven years. From 1996 – 2002, China accounted for approximately 32.5% of the total value of shipments seized based on intellectual property violations. See 2003 Submission of the International AntiCounterfeiting Coalition, Inc. to the United States Trade Representative, Special 301 Recommendations (February 13, 2003) at 8, available at [http://www.iacc.org/teampublish/109\\_467\\_4106.cfm](http://www.iacc.org/teampublish/109_467_4106.cfm). In FY2003, China accounted for 66% of shipments seized for intellectual property violations (valued at over \$62 million). See [http://www.cbp.gov/xp/cgov/import/commercial\\_enforcement/ipr/seizure/trading/](http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure/trading/).

**b. Auto/Aviation Parts**

- 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. The fake parts bore counterfeit trademarks owned by Ford and Daimler-Chrysler. Police began their investigation in May 2004 when NYPD detectives obtained information regarding the potential sale of counterfeit auto parts. NYPD detectives and inspectors from the New York City Taxi and Limousine Commission visited several Manhattan repair garages that service taxi cabs and New York City government vehicles. Police discovered that counterfeit auto parts were being used in repairs on some vehicles. Police then traced the supply invoices to six auto part outlets (four in Queens and two in Manhattan). Search warrants executed as part of the investigation resulted in the seizure of approximately \$700,000 worth of counterfeit auto parts including brake pads, tail lights, idler arms, ignition coils, sway bar links, tie rods, stabilizer arms and water pumps. The seized auto parts contained counterfeit packaging, printing and labeling along with bogus serial numbers.<sup>32</sup>
- In the summer of 2004, Ralph Michael Cooper plead guilty in federal court to selling bogus Black Hawk and Sea Hawk helicopter parts to the United States military. Pursuant to the terms of the his company's contract from the Department of Defense, Cooper was required to purchase over 1500 plain encased seals from a specific Chicago based supplier. The supplier had been approved by the Pentagon and the aircraft manufacturer (Sikorsky Aircraft). Cooper, however, purchased the seals from a Taiwanese based company for a little more than one dollar a piece. Cooper next mislabeled the parts as coming from the approved Chicago based company and sold them to the military for \$54,000. The bogus seals Cooper attempted to pass off were made from a substandard rubber that may have failed under the intense stress and heat experienced by helicopters. According to a statement issued by the U.S. Attorney's Office handling the case, Cooper admitted that the bogus parts were "sufficiently critical and substandard so as to present a conscious or reckless risk of death or serious bodily injury."<sup>33</sup>

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<sup>32</sup> See *Four Auto Parts Dealers Charged in Seizure of Counterfeit Auto Parts Valued at \$700,000*, Queens County District Attorney Press Release (December 1, 2004), available at <http://www.queensda.org/Press%20Releases/2004%20Press%20Releases/12-December/12-1-2004.htm>; Scott Shifrel, *4 Dealers Busted in Bogus Car Parts Scam*, Daily News, December 2, 2004; Bryan Joiner, *Richmond Hill Man Implicated in Counterfeit Auto Parts Ring*, Queens Chronicle, December 9, 2004, available at [http://www.zwire.com/site/news.cfm?newsid=13524635&BRD=1860&PAG=461&dept\\_id=109522&rft=8](http://www.zwire.com/site/news.cfm?newsid=13524635&BRD=1860&PAG=461&dept_id=109522&rft=8).

<sup>33</sup> See Jaime Hernandez, *Hollywood Man Sold Fake Parts to Military; Guilty Plea Brings Two Year Sentence*, Sun-Sentinel (Fort Lauderdale, FL), August 25, 2004, at 1B; *Defense Contractor Receives Two and One-Half Year Prison Sentence*, U.S. Department of Justice United States Attorney for the Southern District of Florida Press Release (August 24, 2004), available at <http://www.usdoj.gov/usao/fls/Cooper2.html>.

- In August 1997, then Inspector General of the Department of Transportation, Mary Schiavo, admitted that bogus parts had been found on Air Force One (the plane used by the President of the United States).<sup>34</sup>
- The FAA estimates that 2% of the 26 million airline parts installed each year are counterfeit (that equals 520,000 parts).<sup>35</sup>
- The operational life of counterfeit bearing seal spacers removed from a United Airlines plane was found to be 600 hours - - the genuine parts had an operational life of 20,000 hours - - the fake parts came complete with fake boxes, labels and paperwork and were discovered only because of a vigilant airline mechanic. A failure of a bearing seal spacer in flight could result in total engine failure. In another case, Delta Airlines discovered that an engine mount cone-bolt, (a device which actually fastens the engine to the plane on Boeing 727s and 737s), on one of its planes was counterfeit. The same fake bolts were subsequently discovered and removed from other planes flying for several major airlines<sup>36</sup>
- A Norwegian plane crash in 1989 that killed 55 people resulted, in part, from substandard shear bolts and sleeves of an unknown origin that caused the plane's tail assembly to fall off 22,000 feet above the North Sea.<sup>37</sup>
- In 1987, seven children died when the bus they were riding in flipped over. The brakes that were just installed on the bus bore a well-known trademark. Further examination, however, showed they were made of sawdust.<sup>38</sup>

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<sup>34</sup> See Tom Schultz, *Quality of Airplane Parts Questioned*, Plain Dealer, August 16, 1997, at 2B (Schiavo also noted that during one of the investigations she conducted as Inspector General they discovered one part made out of automotive parts and bedsprings).

<sup>35</sup> See Billy Stern, *Warning! Bogus Parts Have Turned Up in Commercial Jets. Where's the FAA?*, Business Week, June 10, 1996, at 90.

<sup>36</sup> See *id.*

<sup>37</sup> See *55 Killed in Crash of Norwegian Plane, None Aboard Survive as Craft Plunges into Sea Near Denmark*, L.A. Times, September 9, 1989, at 4 (cited and discussed in Robert W. Luedeman, *Flying Underground: The Trade in Bootleg Aircraft Parts*, 62 J. Air L. & Comm. 93, 96-100 (August/September 1996)); *Imitating Property is Theft*, The Economist (May 17, 2003)(attributing the same crash to substandard counterfeit bolts that caused the plane's tail assembly to fall off); Jim Mele, *Counterfeit Parts: Buyer Beware*, Fleet Owner, March 1, 2004, at 3 (citing to the same reason for the crash of the Norwegian crash and also citing to a helicopter crash, caused by counterfeit parts, over the Hudson River that killed a traffic reporter the flight crew); *Junk Parts Behind Air Mishaps*, The Irish Times, October 7, 2000, at 11; Billy Stern, *Warning! Bogus Parts Have Turned Up in Commercial Jets. Where's the FAA?*, Business Week, June 10, 1996, at 90 (identifying the plane as a Convair 580 belonging to Norway's Partnair charter airline and reporting that the plane disintegrated 22,000 feet above the North Sea).

<sup>38</sup> See George W. Abbott, Jr. and Lee S. Sporn, *Trademark Counterfeiting* § 1.03[C][3] (2002)(citing *A System Approach to the Counterfeit Problem, Genuine or Bogus: How Can You Tell?*, ASTM Standardization News, April 1990, at 38).



- In a federal case in California, the court determined the defendant sold counterfeit helicopter parts that caused several helicopters to crash resulting in injuries and death.<sup>39</sup>
- Counterfeit helicopter parts, (including transmission components and landing gear assemblies), have been sold to NATO allies for use in their respective military fleets. Counterfeit parts have also been discovered among parts intended for use in military jet engines and missile systems.<sup>40</sup>
- In 1976, counterfeit transistors were found among parts destined for use on tests of a NASA space shuttle.<sup>41</sup>

c. **Consumer Goods/Miscellaneous**

- In July 2004, a federal jury in Houston, Texas convicted Zheng Xiao Yi, a Chinese national, of six counts of trafficking in counterfeit merchandise. The counterfeit merchandise was imported from China and contained counterfeit versions of trademarks registered to companies such as The Gillette Company, Underwriters Laboratories (UL), Marvel Enterprises and Nike. The counterfeit goods imported from China by Zheng included Spider man toys, Nike Slippers, Duracell batteries and electrical extension and power cords that bore counterfeit UL certification marks. The most alarming part of the seizure was that none of

<sup>39</sup> See S. Rep. No. 98-526 at 4 (1984), reprinted in 1984 U.S.C.C.A.N. 3627, 3630-31 (citing to a slip opinion of the case *Textron v. Aviation Sales*, Civ. 77-1317 (C.D. Cal. 1980)); Jed S. Rakoff & Ira B. Wolff, *Commercial Counterfeiting and the Proposed Trademark Counterfeiting Act*, 40 Am. Crim. L. Rev. 145, 165 & nn. 148-50 (1982)(citing the same case and noting that the plaintiff was “eventually awarded \$42, 247, 632 . . . but was “able to recover little of this amount because the defendant corporations were bankrupt and the principal behind the scheme had fled to Europe”)(citing J. Fuquay, *Bogus Parts Judgment Favors Bell*, Ft. Worth Star Telegram, October 2, 1980, at B1). See also Bill Richards, *Copter Crash Probers Hunt Source of Bogus Parts*, Wash. Post, May 7, 1977, at A12 (citing three helicopter crashes that involved a failure of bogus parts).

<sup>40</sup> See H. Rep. No. 104-556 at 3 (1996)(also noting that counterfeit parts have been discovered in bridge joints and fasteners in areas of the nuclear facilities responsible for preventing the meltdown of the reactor itself); Thomas C. O'Donnell, *The Counterfeit Trade*, Business Week, December 16, 1985, at 64 (referencing counterfeit parts in 600 helicopters sold to NATO by an American aerospace company); Jed S. Rakoff & Ira B. Wolff, *Commercial Counterfeiting and the Proposed Trademark Counterfeiting Act*, 40 Am. Crim. L. Rev. 145, 153 & nn. 63-64 (1982)(citing *Bogus Helicopter Parts Scheme Alleged*, Wash. Post, February 12, 1977, at A1; *Helicopter Sues Over “Bogus Parts”*, Wash. Post, April 13, 1977, at A6; and Mosier, *Issue 39-Count Indictment in Counterfeit Parts Case*, Electronics News, December 4, 1978, at 1)(identifying some of the countries receiving the parts as the United Kingdom, West Germany, France, and Belgium and also noting the presence of counterfeit parts in other important defense projects such as fighter planes and missile systems). Some of the helicopter parts were allegedly installed “on the personal helicopters of Queen Elizabeth II . . . Egyptian President Anwar Sadat and on a military helicopter used by the Shah of Iran.” See *Bogus Helicopter Parts Scheme Alleged*, Wash. Post., February 12, 1977, at A1. See also Bill Richards, *Copter Crash Probers Hunt Source of Bogus Parts*, Wash. Post, May 7, 1977, at A12 (reporting that bogus parts may have been installed on as many as 200 helicopters flown by the British Army).

<sup>41</sup> Jed S. Rakoff & Ira B. Wolff, *Commercial Counterfeiting and the Proposed Trademark Counterfeiting Act*, 40 Am. Crim. L. Rev. 145, 153 & n.62 (1982)(citing J. Fenby, *Boom in Brand Name Fakes*, Reader's Digest (English ed.) at 135 (1981)).

the electrical cords seized from Zheng passed the Underwriters Laboratories tests required to earn the UL certification mark. The counterfeit cords actually burst into flames when tested under normal household conditions.<sup>42</sup>

- In April 2004, William C. Murphy was sentenced to 41 months in prison and ordered to pay \$43,305 in restitution for selling counterfeit and misbranded pesticides to municipalities in Alabama and Georgia for mosquito and West Nile virus control.<sup>43</sup>
- In June 2004, the U.S. Consumer Product Safety Commission issued a recall alert warning consumers to immediately stop using counterfeit LG-branded TM-510 cell phone batteries that were being used in connection with Verizon Wireless cellular phones. The counterfeit batteries were susceptible to overcharging because they lacked a safety device in the circuitry that prevented overcharging. The recall notice warned that the fake batteries could overheat and pose a fire or burn hazard to users. Verizon Wireless received 18 reports of incidents involving the counterfeit batteries, including injuries to users.<sup>44</sup> In a similar scenario, a Nebraska woman reported removing “cell-phone shrapnel from her granddaughter’s car seat after her Kyocera phone” exploded in October 2003.<sup>45</sup>
- In February 2004, the FDA warned the public about internet sites based overseas that were selling counterfeit contraceptive patches that contained no active ingredients and provided no protection whatsoever against pregnancy.<sup>46</sup> In the

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<sup>42</sup> See *Harwin Drive Importer Convicted of Trafficking in Counterfeit Merchandise*, U.S. Department of Justice U.S. Attorney’s Office Southern District of Texas News Release (July 20, 2004); Jennifer C. Kerr, *Feds Warn About Counterfeit Holiday Goods*, Associated Press (December 11, 2003).

<sup>43</sup> See *Glencoe Man Sentenced for Selling Counterfeit & Misbranded Pesticides to Cities*, Department of Justice Press Release (April 21, 2004), available at <http://www.cybercrime.gov/murphySent.htm>.

<sup>44</sup> See *CPSC, Verizon Wireless Announce Recall of Counterfeit Cell Phone Batteries*, U.S. Consumer Product Safety Commission Recall Alert (June 24, 2004), available at <http://www.cpsc.gov/CPSC/PUB/PREREL/prhtml04/04559.html>.

<sup>45</sup> See David Futrelle, *Phone Go Boom, Money at 26* (January 2004). See also *Supliment Corporation and Three Individuals Charged with Trafficking in Counterfeit Goods*, U.S. Department of Justice United States Attorney for the Southern District of Florida Press Release (October 22, 2004), available at <http://www.usdoj.gov/usao/fls/Lozano.html> (announcing an indictment of a corporation and three individual defendants that alleges the defendants conspired to traffic in cellular phone parts and accessories bearing the counterfeit marks of Nokia, Motorola and Sony Ericsson; a search of the defendant’s warehouse resulted in the seizure of 85,000 counterfeit items and thousands of counterfeit trademark stickers); Elizabeth Wolfe, *Exploding Cell Phone Batteries, Though Rare, Spark Recalls*, Pittsburgh Tribune Review, November 24, 2004 (providing more examples and noting that during the past two years “federal safety officials have received eighty-three reports of cell phones exploding or catching fire”).

<sup>46</sup> See *FDA Takes Action Against Foreign Websites Selling Counterfeit Contraceptive Patches*, FDA News (February 12, 2004), available at <http://www.fda.gov/bbs/topics/NEWS/2004/NEW01023.html>; *FDA and Johnson & Johnson Warn Public About Counterfeit Contraceptive Patches sold through Foreign Internet Site*, FDA News (February 4, 2004), available at <http://www.fda.gov/bbs/topics/NEWS/2004/NEW01017.html>.



1980s, one million counterfeit birth control pills caused internal bleeding in women.<sup>47</sup>

- Dozens of infant deaths in eastern China were reported to have been caused by the ingestion of shoddy counterfeit infant milk formula. Some infants who were fed the formula actually weighed less than when they were born. Other babies' heads grew abnormally large while their bodies withered away.<sup>48</sup>
- In December 2003, the Food and Drug Administration (FDA) issued an alert to healthcare professionals about a counterfeit polypropylene mesh product used for hernia repair and other surgery. Preliminary testing of the counterfeit product by the FDA revealed that some samples were not sterile.<sup>49</sup>
- According to a federal indictment made public in 2002, U.S. Customs officials seized 59,000 bottles of counterfeit vodka in a Massachusetts warehouse. It had been imported from a former Soviet republic.<sup>50</sup>
- In 2002, Mohamad Mostafa was convicted for being part of a conspiracy to sell counterfeit infant formula. Mohamad Mostafa was also in the country illegally and upon indictment in 1995 fled to Canada where he was finally arrested in 2001.<sup>51</sup>
- In 1995, counterfeit versions of infant formula were found on the shelves of grocery stores in 16 different states.<sup>52</sup> More recently, in 1999, the Food and Drug Administration (FDA) issued a warning regarding counterfeit cans of infant formula for infants allergic to milk protein. The warning came after some of the illicit product had already been purchased. The FDA warning stated that infants

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<sup>47</sup> See S. Rep. No. 98-526 at 4 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3627; Thomas C. O'Donnell, *The Counterfeit Trade*, Business Week, December 16, 1985, at 64 (noting that the pills were distributed without authorization and contained insufficient levels of estrogen). See also Naomi Aoki, *Biotechnology Counterfeiters Hit Serono*, Boston Globe at C4 (January 31, 2001)(discussing a case from the late 1980s where the ringleaders were sentenced 24 year prison terms); Peter Lowe, *The Scope of the Counterfeiting Problem*, International Criminal Police Review No. 476-477 (1999) at 94-95, available at <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/Default.asp>; *Prescription Drug Diversion and Counterfeiting*, House Report of the Committee on Energy, Subcommittee on Oversight and Investigation at 23 (July 10, 1985).

<sup>48</sup> See Christopher Bodeen, *China Blames Fake Milk in Infant Deaths*, Associated Press Online (April 20, 2004).

<sup>49</sup> See *FDA Issues Alert on Counterfeit Polypropylene Mesh used in Hernia Repair*, FDA Talk Paper (December 19, 2003), available at <http://www.fda.gov/bbs/topics/ANSWERS/2003/ANS01274.html>.

<sup>50</sup> See Thanassis Cambanis, *Fancy Labels, Cheap Vodka Don't Mix*, The Boston Globe, May 2, 2002, at B1.

<sup>51</sup> See *Fugitive Who Sold Counterfeit Baby Formula Convicted of Federal Criminal Charges*, Department of Justice (Press Release)(August 9, 2002), available at <http://www.cybercrime.gov/mostafaConvict.htm>.

<sup>52</sup> See Marian Burros, *F.D.A. Target: Baby Formula*, N.Y. Times, September 6, 1995; 142 Cong. Rec. 5776 (House).

who ingested the counterfeit formula could experience fevers, skin rashes or severe allergic reactions.<sup>53</sup>

- In the mid-1990s, many fires in Egypt spread due the failure of counterfeit fire hydrants. The government was forced to pass a law specifying tougher standards for fire hydrants. Many recent fires in Egypt have been attributed to counterfeit electrical circuit breakers.<sup>54</sup>
- In the mid-1990s, a well known shampoo producer was forced to place newspaper ads in over 25 papers to warn consumers about the presence of fake versions of its shampoo that contained unsafe levels of bacteria.<sup>55</sup> Fake toothpaste has also found its way into drug stores.<sup>56</sup>
- Counterfeit circuit breakers forced the Palo Verde Nuclear [Power] Generating Station in California to shut down for two days.<sup>57</sup>

### **3. Links With Traditional and Online Organized Criminal Syndicates**

Low risk of prosecution and enormous profit potential have made criminal counterfeiting and piracy an attractive enterprise for organized crime groups. In today's global and technologically advanced marketplace, counterfeiters can no longer be dismissed as simple con artists or isolated street peddlers trying to earn a few extra dollars. The reality is that counterfeiters and pirates steal from the corporations, steal from the community, steal from the government, steal from the consumers they deceive and pose real dangers to the public health and safety. It is no secret that highly sophisticated and organized criminal syndicates exert significant influence and control over the manufacture, distribution and sale of counterfeit and pirate goods.

The United States Congress itself recognized organized crime's increasing role in the theft of intellectual property when it made both trademark counterfeiting and copyright piracy violations predicate acts under the federal RICO statute.<sup>58</sup> The federal money laundering

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<sup>53</sup> See *FDA Warns About Infant Formula Fraudulently Labeled as Nutramigen in Southern California*, HHS NEWS (U.S. Department of Health and Human Services), P99-23, October 8, 1999.

<sup>54</sup> See Nermien Al-Ali, *Faking It*, Business Today (July 14, 2004).

<sup>55</sup> See Henry Gilgoff, *Counterfeit: Rip-offs of Popular Products Victimize Both Consumers and Manufacturers*, Newsday, August 27, 1995.

<sup>56</sup> See *Colgate Warns People Against Fake Toothpaste*, Austin American Statesman, August 12, 1996.

<sup>57</sup> See *United States v. Trevino*, 1992 U.S. App. LEXIS 4014 (9<sup>th</sup> Cir. 1992)(upholding a restitution award of \$1, 233, 830 for the cost of replacement power the nuclear plant purchased after it was forced to shut down).

<sup>58</sup> See 18 U.S.C. § 1961; Michael Coblenz, *Intellectual Property Crimes*, 9 Alb. L.J. Sci. & Tech. 235, 298-306 (1999)(discussing the RICO statute and its relations to cases involving patterns of intellectual property theft).

statutes<sup>59</sup> similarly include trademark counterfeiting and copyright piracy violations as crimes that constitute the type of “specified unlawful activity” necessary for convictions under these statutes. In addition to Congress, several American law enforcement agencies have also brought attention to the links between counterfeiting/piracy and organized crime. At a 1999 congressional subcommittee hearing, then U.S. Customs Commissioner Raymond Kelly stated:

Our investigations have shown that organized criminal groups are heavily involved in trademark counterfeiting and copyright piracy. They often use proceeds obtained from these illicit activities to finance other, more violent crimes. These groups have operated with relative impunity. They have little fear of being caught – for good reason. If apprehended, they face minimal punishment. We must make them pay a heavier price.<sup>60</sup>

The website for the Federal Bureau of Investigation (FBI) contains the following pertinent passage:

There is also strong evidence that organized criminal groups have moved into IP crime and that they are using the profits generated from these crimes to facilitate other illegal activities. There are a number of reasons for the dramatic increase in IP crime in recent years. First, many forms of IP can be produced with minimal start up costs making IP crimes accessible to larger numbers of people; second, international enforcement of IP laws is virtually nonexistent; and finally, domestic enforcement of IP laws has been inadequate and consequently the level of deterrence has been inadequate.<sup>61</sup>

Finally, in testimony before the House Subcommittee on Courts, the Internet and Intellectual Property, then Deputy Assistant Attorney General John G. Malcolm stated that “[o]rganized criminal activity, in many forms, is clearly a factor in global piracy today.” The Deputy Attorney General went on to state that “these syndicates control international distribution channels which allow them to move massive quantities of pirated goods . . . throughout the world.”<sup>62</sup>

On the international level, in 2003, the Secretary of State for Northern Ireland announced the creation of the Serious and Organised Crime Threat Assessment and Strategy. The Secretary of State included counterfeit goods and intellectual property crime as an immediate priority

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<sup>59</sup> See 18 U.S.C. §§ 1956-57.

<sup>60</sup> See Statement of U.S. Customs Commissioner Raymond Kelly before the International Economic Policy and Trade Subcommittee of the House International Relations Committee (October 13, 1999), *available in* LEXIS, News and Business Library, News Group File (Federal News Service providing copy of testimony).

<sup>61</sup> See [http://www.fbi.gov/hq/cid/fc/fifu/about/about\\_ipc.htm](http://www.fbi.gov/hq/cid/fc/fifu/about/about_ipc.htm).

<sup>62</sup> See Statement of Deputy Attorney General John G. Malcolm before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003)(Adding that “these groups do not hesitate to threaten or injure those who attempt to interfere with their illegal operations. . . These criminal syndicates represent a formidable foe, but one that must be dealt with to truly attack the problem of intellectual property theft”).

crime, right along side armed robbery, drug dealing and tobacco and fuel smuggling.<sup>63</sup> Additionally, in 2002, INTERPOL established the Intellectual Property Crime Action Group and recognized the link to organized crime.<sup>64</sup>

Consider these disturbing facts about large scale and sophisticated counterfeiting and piracy operations and the presence of organized crime in the counterfeiting and piracy markets:

- In a case showing the wide range of criminal activity increasingly associated with sophisticated and highly organized international counterfeiting operations, federal officials from the offices of the United States Attorney for the Southern District of New York announced the unsealing of indictments against members of two Chinese organized crime groups operating in New York City. The three indictments unsealed in November 2004 charged **fifty-one** defendants with a wide range of various crimes, including trafficking in counterfeit goods. Other crimes detailed in the indictment included racketeering (RICO) offenses, numerous conspiracies, attempted murder, extortion, extortionate debt collection, alien smuggling, money laundering and the operation of large scale illegal gambling businesses. The indictments allege that certain defendants used violent means in furtherance of the groups' criminal objectives. One victim was shot in the head and only survived because the bullet miraculously shattered against his skull. Another victim suspected of cooperating with the police was beaten with pipes until his bones snapped. A female victim who failed to pay her debt on time was beaten and severely injured in one eye. Federal investigators also seized \$150,000 and \$4 million worth of counterfeit merchandise falsely carrying the names of Chanel, Gucci and Coach from warehouses in New York City. Other assets confiscated included a \$900,000 home belonging to one of the defendants, four vehicles and a restaurant in Florida.<sup>65</sup>
- On June 3, 2004, agents from the Department of Homeland Security's Bureau of Immigration and Customs Enforcement arrested at least 12 people and seized six shipping containers as part of an undercover operation that targeted an organization involved in large scale smuggling of counterfeit merchandise into the

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<sup>63</sup> See Statement of Jack Valenti (President & CEO, MPAA) before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>64</sup> See <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/IIPCAG.pdf> and <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>.

<sup>65</sup> See *U.S. Indicts 51 Chinese Organized Crime Figures and Associates in Massive Coordinated Sweep*, United States Attorney Office for the Southern District of New York Press Release (November 12, 2004), available at <http://www.usdoj.gov/usao/nys/Press%20Releases/NOVEMBER04/Chinese%20OC%20Indictment.pdf>; *New York City Police Commissioner Raymond W. Kelly, et al. Announce 28 Arrests in the Takedown of an Organized Crime Operation*, New York City Police Department Press Release (November 12, 2004), available at <http://www.nyc.gov/html/nypd/html/dcpi/pr-2004-121.html>; Julia Preston, *U.S. Charges 51 with Chinatown Smuggling*, New York Times, November 13, 2004, at B2; Larry Neumeister, *Dozens of Alleged Members of Violent Chinese Gangs Face Federal Charges*, The Associated Press, November 12, 2004 (available in LEXIS, News and Business Library, News Group File).

United States from China. The six seized containers were valued at about \$24 million. The organization is believed to have smuggled at least \$400 million in counterfeit goods into the United States in one year. Of the six containers seized, five held counterfeit handbags, luggage and wallets and the sixth contained counterfeit cigarettes. Agents also seized \$174,000 in cash and 11 bank accounts (two in Los Angeles and nine in New York). Officials said the suspects probably imported about two containers per week with each container having a profit margin of \$2 million to \$4 million.<sup>66</sup>

- On June 3, 2004, the United States Postal Inspection Service announced the unsealing of a criminal complaint and the arrests of ten members of a network of persons from five different cities across the United States who allegedly engaged in a multi-million dollar conspiracy to launder the proceeds of sales of counterfeit goods and remit millions of dollars to foreign countries without the proper licensing requirements to effect the wire transfers. The entities that received the wired funds were located in China, Hong Kong, Vietnam, the United Arab Emirates, India, Thailand and Belgium. The arrests were the result of a two year investigation. Postal inspectors working the case also obtained evidence that some of the targets allegedly produced and transferred fraudulent identification documents for illegal immigrants.<sup>67</sup>
- In January 2004, authorities from the Department of Homeland Security's Bureau of Immigration and Customs Enforcement arrested 10 people and broke up a counterfeit cigarette smuggling ring in El Paso, Texas, that they believe imported over 100 million counterfeit cigarettes by mislabeling shipping documents and indicating that the illicit cigarettes were either toys or plastic parts. Authorities said the counterfeit cigarettes were manufactured for as little as two dollars a carton in China and Taiwan and sold in New York and California for as much as \$70 a carton.<sup>68</sup>
- On January 16, 2003, William Haskell Farmer entered a guilty plea to trafficking in a massive counterfeit clothing operation. (The guilty plea was conditional upon an appeal to the United States Court of Appeals for the Fourth Circuit.

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<sup>66</sup> See *NY ICE Breaks \$400M IPR Smuggling Group*, Inside ICE (Volume 1, Issue 4); *ICE Breaks \$400 Million Intellectual Property Crime Smuggling Case*, The Cornerstone Report (July 2004); Madison J. Gray, *Feds Bust Fake-Handbags Operation, Arrest 14*, The Associated Press State & Local Wire (June 3, 2004); *Statement of the Honorable Michael J. Garcia, Asst. Secretary for U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security*, Testimony Before the Subcommittee on Trade of the House Committee on Ways and Means (June 15, 2004).

<sup>67</sup> See *U.S. Dismantles Multimillion-Dollar Money Laundering and Unlicensed Money Transfer Organization*, United States Attorney's Office for the Southern District of New York Press Release (June 3, 2004), available at <http://www.usdoj.gov/usao/nys/Press%20Releases/JUNE04/Jah%20complaint%20PR.pdf>; Vicki M. Young, *Homeland Security Uncovers Counterfeiting Ring*, WWD at 13 (June 7, 2004).

<sup>68</sup> See Michelle Mittlestadt, *Tobacco-Smuggling Ring Busted*, The Dallas Morning News at 3A (January 29, 2004).

Farmer ultimately lost his appeal).<sup>69</sup> According to the United States prosecutor, the scheme involved approximately \$7 million in knock off T-shirts and sweat shirts. Farmer sold the shirts to 191 stores throughout the country. United States Customs agents seized over 300,000 fake items from Farmer's home and warehouse (the house was a two-story home with a swimming pool and two car garage). Farmer agreed to forfeit over \$500,000 in cash and cashier's checks, eight vehicles, (including two Mercedes Benzs and a 1998 Corvette), and two cargo trailers. The cash had been seized in 1998 when Farmer's home was searched. The majority of the money was in \$50 and \$100 bills. There was \$6,000 worth of change in the garage.<sup>70</sup> Farmer was sentenced to seven years in prison and ordered to pay over \$3 million in restitution to the victims.<sup>71</sup>

- A 52 year old woman was one of four people arrested in November 2001 after being suspected of operating a piracy ring that imported close to \$100 million in fake software and computer products from Taiwan. The woman was sentenced to nine years in prison and ordered to pay \$11 million in restitution to two software companies.<sup>72</sup>
- In July 2002, three individuals were arrested when police stumbled upon 5,000 fake Rolex watches and Mont Blanc pens and \$1 million in cash during a raid of a Flushing (Queens), New York home in connection with a drug operation. Prosecutors stated that the defendants used the sale of counterfeit items to launder drug money.<sup>73</sup>
- Police in the Chinatown section of New York City uncovered a stash of fake watches, handbags, sunglasses and wallets worth over \$125 million. The merchandise was hidden in a building that contained secret tunnels, trapdoors and vaults. Ten people were arrested.<sup>74</sup>
- In February 2002, John Sankus Jr., 28, of Philadelphia, was sentenced to 46 months in prison for leading an international piracy ring responsible for copying

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<sup>69</sup> See *United States v. Farmer*, 370 F.3d 435 (4<sup>th</sup> Cir. 2004).

<sup>70</sup> See Clif LeBlanc, *Huge Fake Clothing Ring Cracked, Upstate Man Pleads Guilty to Running \$7 Million Scam*, The State (South Carolina), January 18, 2003, at A1; *South Carolina Man Pleads Guilty to Trafficking Clothing with Counterfeit Trademarks*, Department of Justice Press Release, January 16, 2003, available at <http://www.cybercrime.gov/farmerPlea.htm>.

<sup>71</sup> See *National Intellectual Property Law Enforcement Coordination Council 2003 Annual Report* at 27 (December 2003), available at <http://www.uspto.gov/web/offices/dcom/olia/niplecc2003/niplecc2003.pdf>.

<sup>72</sup> See *Woman Must Pay \$11m in Software*, available at <http://www.cnn.com/2002/TECH/biztech/11/25/counterfeit.software.ap/index.html> (November 25, 2002).

<sup>73</sup> See Scott Shifrel, *3 Charged in Money Laundering*, Daily News (New York), July 11, 2002, at 4.

<sup>74</sup> See Erika Martinez & Marsha Krane, *Knockoffs Knocked Out*, New York Post (May 10, 2002).



and distributing software, games and movies. Sankus headed an international software piracy group called DrinkorDie, which was comprised of about sixty members from numerous countries including the United States, Australia, Norway, Finland and the UK. The group's biggest claim to fame was distributing copies of Windows 95 two weeks before the official release of the operating system. Federal agents conducted raids at Duke University and MIT in connection with DrinkorDie's activities. Some of the computers seized in the operation contained more than one terabyte of hacked software (a terabyte of data is equal to approximately 700,000 floppy disks).<sup>75</sup>

- In November 2001, US federal authorities made their largest seizure ever of counterfeit computer software. The seizure of nearly 31,000 copies of phony software was valued at approximately \$100 million (US). The software originated in Taiwan and was encased in counterfeit packaging (including holographs and registration codes) and also came with manuals. Federal authorities were alerted to the shipment when a member of a criminal syndicate operating between Taiwan and Los Angeles allegedly attempted to bribe an undercover agent who was posing as a U.S. Customs official. Seized in connection with the arrests were a forty foot shipping container filled with counterfeit computer software and packaging material, two forty foot containers filled with 85,000 cartons of counterfeit cigarettes (i.e., 17 million cigarettes). A second search warrant executed in connection with the investigation resulted in the seizure of 21 cartons of counterfeit end user license agreements, manuals, bar codes, adhesive labels and registration cards.<sup>76</sup>
- In November 2001, a Cocoa, Florida businessman was convicted of conspiracy to distribute and possession of cocaine and crack cocaine, trafficking in counterfeit merchandise and carjacking. When he was arrested police seized \$150,000 in cash and truckloads of counterfeit clothing.<sup>77</sup>

The links between organized criminal activity and intellectual property is particularly troubling especially if one accepts the premise that terrorism is nothing more than organized

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<sup>75</sup> See Josh White, *Pa. Man Admits Internet Conspiracy*, Washington Post, at B2, (February 28, 2002); See Statement of Deputy Attorney General John G. Malcolm before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003)(discussing international online piracy groups, also known as "Warez" groups, and DOJ efforts to prosecute members of these groups).

<sup>76</sup> See *Taiwan Fears US Blacklist After Fake Software Haul*, The Strait Times (Singapore), November 19, 2001, at A3; *U. S Customs Seizes \$100 Million in Pirated Computer Software, Biggest Case in U.S. History*, Department of Justice Press Release, November 16, 2001, available at <http://www.cybercrime.gov/operationwhitehorse.htm>.; Statement of Richard C. LaMagna (Microsoft Corporation) before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003)(noting that Taiwanese authorities later confirmed that the operation was financed by criminal groups based in Asia).

<sup>77</sup> See John Tuohy, *Testimony from Felons Help Convict Cocoa Man*, Florida Today, (November 27, 2001).

crime in the most extreme and dangerous sense of that term. If organized criminals are profiting from intellectual property theft, it is certainly not unreasonable to assume that terrorist organizations have also entered the fray.<sup>78</sup>

#### 4. Links to Terrorism and Terrorist Organizations

The IACC has been active in tracking the increasing influx of terrorist organizations into the lucrative underworld of criminal counterfeiting and piracy and is convinced that genuine and credible links exist. As is further detailed below, there is ample evidence to support the notion that terrorist organizations are currently exploiting America's valuable intellectual property and profiting from the manufacture and sale of counterfeit and pirate products.<sup>79</sup> In addition to the IACC, the law enforcement community has also recognized and investigated this connection and the threat it poses to America's citizens and its economy.

According to media reports, the FBI had compiled strong evidence that the terrorists who bombed the World Trade Center in 1993 financed their activities with counterfeit textile sales from a store located on Broadway in New York City.<sup>80</sup> Similarly in 1996, the FBI

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<sup>78</sup> See Global Options, Inc. & Reconnaissance International Report, *An Analysis of Terrorist Threats to America's Medicine Supply* at 160 & n. 335 (2003)(quoting Deputy Attorney General Michael Chertoff who concluded that, as a result of growing partnerships and alliances between terrorists and organized crime, "it no longer makes sense to differentiate between terrorism and organized crime and drug dealing"; the report referred to the counterfeit pharmaceutical market as an example of such alliances)(citing "Drugs and Terrorist Groups Go Together." October 22, 2001. <http://www.inq7.net>).

<sup>79</sup> The IACC does not know with absolute certainty whether proceeds from the sale of counterfeit or pirate goods have actually funded specific acts or incidents of terrorism. The IACC does, however, believe that ample evidence exists to confirm the litany of suspicions, allegations and anecdotal accounts that terrorist organizations are indeed involved with and profiting from the selling of counterfeit/pirate goods. As Larry Johnson stated in testimony before the House International Relations Committee:

I do not know if the proceeds from counterfeited goods have funded terrorism but I do have firsthand knowledge that individuals and families with direct ties to terrorist groups have been involved with product counterfeiting and have profited from selling counterfeit goods.

Testimony of Larry C. Johnson before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003)(Larry Johnson formerly worked with the CIA and the U.S. State Department's Office of Counter Terrorism and now runs an international consulting firm).

<sup>80</sup> See James Nurton, *Why Counterfeiting is Not So Harmless*, Managing Intellectual Property, September 2002, at 43; *Feds Track Counterfeit Goods Sales*, at [http://abcnews.go.com/wire/US/ap20021024\\_151.html](http://abcnews.go.com/wire/US/ap20021024_151.html) (October 24, 2002)(noting that testimony before a Senate Judiciary Committee in 1995 confirmed this fact); Roslyn A. Mazer, *From T-Shirts to Terrorism*, Washington Post at B2 (September 30, 2001)(citing same testimony); Kathleen Millar, *Financing Terror, Profits from Counterfeit Goods Pay for Attacks*, U.S. Customs Today, November 2002, available at <http://www.customs.gov/xp/CustomsToday/2002/November/interpol.xml>. In 1996, *Business Week* reported that the FBI had investigated the link between counterfeit merchandise sales in New York and the terrorists who bombed the World Trade Center in 1993. See Willy Stern, *Why Counterfeit Goods May Kill*, *Business Week*, September 2, 1996, at 6. See also Jane Borden, *Spies Like Us*, *Time Out New York* at 13-14 (August 12-19, 2004). See also Patrick Fleenor, *Cigarette Taxes, Black Markets, and Crime*, Policy Analysis at 13 (February 6, 2003), available at <http://www.cato-institute.org/pubs/pas/pa468.pdf> (noting that "counterfeit cigarette



confiscated 100,000 counterfeit T-shirts bearing fake and unauthorized Nike “swoosh” and/or Olympic logos that were intended to be sold at the 1996 summer Olympic games. The operation generated millions of dollars and was run by the followers of Sheik Omar Abdel Rahman – a blind cleric who was later sentenced to 240 years in prison for plotting to bomb New York City landmarks.<sup>81</sup>

In addition to the FBI, the former U.S. Customs Service also brought attention to the link between the sale of fake goods and terrorism and has noted that the events of September 11, 2001 “changed the way American law enforcement looks at intellectual property crimes.”<sup>82</sup> “Operation Green Quest” -- a now defunct multi-agency task force established by the Treasury Department and tasked with identifying and dismantling the terrorist financial infrastructure -- specifically recognized counterfeit merchandise schemes as a source of terrorist funding.<sup>83</sup>

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tax stamps were found in an apartment used by members of the Egyptian Islamic Jihad cell that carried out the 1993 bombing of the World Trade Center.”).

<sup>81</sup> See John Mintz & Douglas Farah, *Small Scams Probed for Terror Ties*, Washington Post, August 12, 2002, at A1.

<sup>82</sup> See Kathleen Millar, *Financing Terror, Profits from Counterfeit Goods Pay for Attacks*, U.S. Customs Today, November 2002, available at <http://www.customs.gov/xp/CustomsToday/2002/November/interpol.xml> (noting that illegal scams like counterfeiting help benefit groups like Al Qaeda, Hamas, Hezbollah and the Irish Republican Army (IRA)). See also *Moving Up on the Outside, it's IPR Seizures*, U.S. Customs Today, May 2002, available at <http://www.customs.gov/xp/CustomsToday/2002/May/ost.xml> (noting that “investigative agencies have discovered strong links between IPR infringements and the financing of terrorism.”). See also Statement of Under Secretary Asa Hutchinson before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003) (“Customs Attaches have seen, in two specific areas, indications and circumstances that led Customs to suspect that intellectual property crimes and terrorism are linked. These cases arose in the Tri-Border Region of South America . . . and in the Philippines[.]”).

Interestingly, the Department of Justice has, at least publicly, yet to confirm the link between intellectual property theft and terrorism. At a March 13, 2003 House Subcommittee hearing, then Deputy Assistant Attorney General John G. Malcolm provided the following cryptic remarks regarding links between piracy and terrorism:

I want to close by briefly discussing terrorism. Earlier I noted that organized crime syndicates are frequently engaged in many types of illicit enterprises, including supporting terrorist activities. On this point, I want to be crystal clear. Stopping terrorism is the single highest priority of the Department of Justice. We are constantly examining possible links between traditional crimes and terrorism, and we will continue to do so. All components of the Justice Department, including CCIPS, the Counterterrorism Section, and the Organized Crime and Racketeering Section, will do everything within their power to make sure that intellectual property piracy does not become a vehicle for financing or supporting acts of terror.

See Statement of Deputy Attorney General John G. Malcolm before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003).

<sup>83</sup> See *Green Quest, Finding the Missing Piece of the Terrorist Puzzle*, available at [http://www.customs.ustras.gov/xp/cgov/enforcement/investigative\\_priorities/greenquest.xml](http://www.customs.ustras.gov/xp/cgov/enforcement/investigative_priorities/greenquest.xml); Dean Boyd, *Operation Green Quest Targets Terrorist Finances*, U.S. Customs Today, November 2001, available at [http://www.customs.ustras.gov/xp/CustomsToday/2001/November/custoday\\_quest.xml](http://www.customs.ustras.gov/xp/CustomsToday/2001/November/custoday_quest.xml). To view a government brochure explaining Operation Green Quest see [http://www.ustras.gov/rewards/pdfs/Green\\_Quest\\_Brochure.pdf](http://www.ustras.gov/rewards/pdfs/Green_Quest_Brochure.pdf).

“Operation Green Quest” no longer exists, at least not by that name. On March 1, 2003, the U.S. Customs Service left the Department of the Treasury and joined the Department of Homeland Security (“DHS”). As a result of this government restructuring, Customs now reports to the Directorate of Border and Transportation Security (“BTS”) within the DHS. Within the BTS, there are two new bureaus – the Bureau of Customs and Border Protection (“CBP”) and the Bureau of Immigration and Customs Enforcement (“ICE”). The two bureaus contain the majority of “legacy” Customs officials and agents. ICE is now the second largest federal investigative agency.

In July 2003, partly in an effort to replace “Operation Green Quest,” ICE launched a new initiative called “Operation Cornerstone.”<sup>84</sup> The goal of ICE and its actions under Operation Cornerstone is not, generally, to investigate/prove individual terrorist connections (which was the primary role of Operation Green Quest).<sup>85</sup> Instead, ICE’s mandate under Operation Cornerstone is broader in focus and is aimed at developing a “comprehensive program to safeguard and strengthen [the nation’s] economic and financial systems”<sup>86</sup> and identifying and shutting down vulnerabilities through which criminal individuals and networks can potentially

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Documentation relating to Operation Green Quest details some of the most common criminal enterprises from which terrorist organizations benefit. Included among that list were: (1) Drug manufacturing, smuggling, and distribution; (2) identity theft for profit; (3) credit-card, insurance, welfare, and food-stamp fraud; (4) theft, adulteration, and resale of infant formula; (5) counterfeit merchandise schemes involving a host of consumer items such as designer clothing, jewelry, fashion accessories, and household products; (6) interstate cigarette smuggling; and (7) alternative remittance systems and unlicensed currency remitters.

Operation Green Quest included representatives from the U.S. Customs Service; Internal Revenue Service; Secret Service; Bureau of Alcohol, Tobacco and Firearms; Office of Foreign Assets Control; Financial Crimes Enforcement Network; Federal Bureau of Investigation; Postal Inspection Service; Naval Criminal Investigative Service; and the Department of Justice.

<sup>84</sup> See *Secretary Ridge Announces New Financial Investigations Initiative*, U.S. Department of Homeland Security Press Release (July 8, 2003), available at <http://www.dhs.gov/dhspublic/display?content=1064>.

<sup>85</sup> See *Testimony of Michael T. Dougherty (Director of Operations, U.S. Immigration and Customs Enforcement) Before the Senate Caucus on International Narcotics Control* (March 4, 2004), available at [http://www.ice.gov/graphics/news/testimonies/controltest\\_030404.pdf](http://www.ice.gov/graphics/news/testimonies/controltest_030404.pdf) (noting that “terrorist financing cases are relatively rare and difficult to prove”). To help bolster his position that terrorist financing cases are relatively rare, Mr. Dougherty offered the following testimony:

In the realm of terrorist financing, it has proven difficult to link the profits from the sale of narcotics, counterfeit merchandise or contraband cigarettes directly to a terrorist organization, or that an unlicensed money broker was sending millions of dollars directly to a terrorist organization. In certain instances, the investigation and prosecution of these underlying criminal activities as separate, stand-alone violations, is the most effective method to disrupt these organizations and cut off terrorist’s access to funds. By taking this line of attack, and working closely with the private sector to help detect typologies that are clearly being exploited or are potential targets, our goal is to shut down these avenues of both terrorist and criminal financing.

*Id.*

<sup>86</sup> See *The Business Community and ICE’s “Cornerstone” Program*, TRIPWIRE at Vol. 1, No. 2 (April 2004), available at <http://www.ice.gov/graphics/cornerstone/cornerstonereport0404.pdf>.

launder their illicit proceeds. In testimony before the Senate Caucus on International Narcotics Control, an ICE official listed intellectual property crimes among the various economic crime investigations to be coordinated under Operation Cornerstone:

The mission of Cornerstone is to coordinate ICE's various economic investigations – whether it's money laundering, the illegal export of controlled technology and arms, commercial fraud, smuggling operations, or intellectual property rights and trade violations – into an integrated program to combat systemic vulnerabilities that threaten U.S. economic security and ultimately the safety of our Homeland.<sup>87</sup>

In response to the attacks of September 11, 2001, the FBI also formed a multi-agency task force to combat terrorist financing. That task force is known as the Terrorist Financing Operations Section (TFOS) and its primary mission is to detect, investigate, disrupt and dismantle terrorist related financing and fundraising activities. In 2003, some concerns were raised that Operation Green Quest and the FBI's TFOS activities were unnecessarily duplicative and created jurisdictional issues. Accordingly, a Memorandum of Agreement was signed between the Department of Justice and the DHS in May 2003 that designated the FBI as the lead agency in terrorist financing investigations.<sup>88</sup>

**a. Counterfeiting and Piracy as Suspected Sources of Terrorist Funding**

In order to survive, a terrorist organization must first develop and maintain reliable and low key sources of funding. Behind the suicide bombers, hijackers and gunmen stand “criminal entrepreneurs and financiers in suits who understand the best way to bank roll Armageddon is through the capitalist system.”<sup>89</sup> Terrorist organizations are attracted to counterfeiting and piracy

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<sup>87</sup> See Testimony of Michael T. Dougherty (Director of Operations, U.S. Immigration and Customs Enforcement) Before the Senate Caucus on International Narcotics Control (March 4, 2004), available at [http://www.ice.gov/graphics/news/testimonies/controltest\\_030404.pdf](http://www.ice.gov/graphics/news/testimonies/controltest_030404.pdf).

<sup>88</sup> See Testimony of Michael F.A. Morehart (Section Chief, Terrorist Financing Operations Section) Before the Congressional Committee of Government Reform Subcommittee on Criminal Justice, Drug Policy, and Human Resources, *Terrorist Financing and Money Laundering Investigations: Who Investigates and How Effective are They* (May 11, 2004). Morehart's testimony contained the following relevant statement:

The MOA, signed by Attorney General Ashcroft and DHS Secretary Ridge on May 13, 2003, designated the FBI as the lead agency in terrorist financing investigations and operations; thereby enabling DHS to focus its law enforcement activities on other criminal schemes that threaten the integrity of United States financial systems. DHS has implemented “Operation Cornerstone”, led by ICE, to investigate criminals who launder illicit proceeds, to bring them to justice and to help try to eliminate financial infrastructure vulnerabilities. Former US Customs Service “Operation Green Quest” criminal cases having no nexus to terrorism were converted to “Operation Cornerstone,” while those cases having a nexus to terrorism were transitioned to the appropriate JTTF where participating ICE Task Force members continue to play significant roles. In accordance with the MOA, ongoing and future “Operation Cornerstone” investigations that develop links to terrorism will be referred to the FBI through TFOS.

<sup>89</sup> See Kathleen Millar, *Financing Terror, Profits from Counterfeit Goods Pay for Attacks*, U.S. Customs Today, November 2002, available at <http://www.customs.gov/xp/CustomsToday/2002/November/interpol.xml>.

because it is a lucrative business, but also because it allows terrorists to remain relatively anonymous. Counterfeiting and piracy rings often operate as cash enterprises, they lease manufacturing equipment from third parties and generally do not maintain reliable paperwork or business records. Upon suspicion of detection, terrorist counterfeiters can move merchandise, hide assets and equipment, switch manufacturing locations, destroy evidence, or simply disappear without leaving a paper trail. And, most importantly, any profits made in this type of underground market are obviously difficult to trace.

The amount of money that can be raised from counterfeiting and piracy is staggering.<sup>90</sup> An article in Time magazine analyzed the issue of software piracy and offered the following scenario:

It's not hard to see what attracts criminals to the software racket. A drug dealer pays about \$47,000 for a kilo of cocaine, and can sell it on the street for about \$94,000, a 100% profit. But for the same outlay of \$47,000 – and a lot less risk – an enterprising crook can buy 1500 pirated copies of Office 2000 professional and resell them for a profit of 900%.<sup>91</sup>

In February 2003, federal prosecutors in Brooklyn, NY, charged six men with importing up to 35 million counterfeit cigarettes from China into the United States. The men were accused of importing the fake cigarettes, then selling them through a tax free business located at an upstate New York Indian reservation and also through the website <http://www.smokecheap.com>. The cigarettes were allegedly imported into the United States in five separate shipments through New Jersey ports over a two year period. The charging documents stated that the counterfeiters hid the cigarettes in shipping containers behind kitchen pots. According to the prosecutors, the men were under investigation in Europe for cigarette smuggling. Two of the defendants were also charged with importing counterfeit batteries from China via Lithuania.<sup>92</sup> The profits from a criminal operation of this scope and nature, if successful, could easily have stretched into the millions of dollars.

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<sup>90</sup> See Kate Betts, *The Purse-Party Blues*, Time (August 2, 2004) (“For those brave enough to risk it, it’s a spectacular investment, with as much as a 1,000% return – better than drug trafficking. A 40-ft. container filled with fake [purses] can turn a profit of \$2 million to \$4 million. And counterfeiters save the roughly 50% of that revenue that luxury houses would invest in innovation and marketing.”). See also Vicki M. Young, *More Defendants Named in Counterfeit Watch Case*, WWD at 2 (September 15, 2003) (noting that in one particular federal court civil action for trademark infringement the counterfeiters were selling fake watches for \$115 that cost them only a \$1.34 to produce – a mark up of more than 8,000%); Jane Borden, *Spies Like Us*, Time Out New York at 12 (August 12-19, 2004) (same); William George Shuster, *FakeBusters! How Cartier Broke a Major U.S. Watch-Counterfeiting Ring*, JCK-Jewelers Circular Keystone at 130 (July 1, 2003) (discussing facts regarding same case); *Cartier Int’l B.V. et al. v. Liu*, 2003 U.S. Dist. LEXIS 6381 (S.D.N.Y. 2003); *supra* notes 65-77 and accompanying text (providing examples of the large profit margins).

<sup>91</sup> See Jennifer L. Schenker, *Busting Software Pirates*, Time at 54 (November 18, 2002).

<sup>92</sup> See William Glaberson, *6 Are Charged With Selling Millions of Counterfeit Marlboros*, The New York Times, February 21, 2003, at B3; John Marzulli, *Fake Marlboro Men Busted in Smuggling Ring*, Daily News (New York), February 21, 2003, at 37.

In the 1990s, police in Northern Ireland seized thousands of counterfeit videos and audio cassettes produced by terrorists. According to Derek Waites, the Chief Superintendent with the Royal Ulster Constabulary, the operation netted over \$2 million for Northern Ireland's terrorists.<sup>93</sup>

The pharmaceutical market provides similar opportunities to make significant money through the sale of bogus, and potentially lethal drugs and medications. A 2001 investigation in the state of Florida revealed that a criminal ring had counterfeited the drug Procrit, a drug used to improve the immune systems of cancer and HIV patients. The ring members relabeled about 110,000 bottles of the drug Epogen to give the appearance they contained dosages of Procrit, a drug twenty times stronger than Epogen. The counterfeiters then moved the fake drugs into the market through four separate wholesalers. Investigators discovered some of the drugs in Texas and North Carolina, but ultimately recovered only ten percent (10%) of the 110,000 counterfeit bottles. The Florida Bureau of Statewide Pharmaceutical Services estimated the counterfeiters profit to be \$46 million.<sup>94</sup> Terrorist organizations have already profited from such operations. According to a 2003 report, the Irish Republican Army has "already produced counterfeit . . . [Ivomec, a livestock anti-parasite drug,] to generate funds to purchase" weapons.<sup>95</sup> The laboratory used to produce the counterfeit drug was located in Florida and the fake labels for the drug were produced on a farm in Northern Ireland.<sup>96</sup>

These numbers become even more alarming when one considers the fact that 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.<sup>97</sup> Based on the aforementioned figures, one successful large scale intellectual property crime could potentially fund multiple terrorist attacks.

Before delving into specific examples of links, it is worth noting that the United States General Accounting Office (GAO) recently stated that U.S. law enforcement is aware of "illicit sales of a variety of counterfeit goods" by terrorists. The revelation was included in a November

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<sup>93</sup> See Global Options, Inc. & Reconnaissance International Report, *An Analysis of Terrorist Threats to America's Medicine Supply* at 46 & n.87 (2003)(citing "Catching Up With The Counterfeiters." *Managing Intellectual Property*. March 1996).

<sup>94</sup> See Justification Review of the Office Program Policy Analysis and Government Accountability Office of the Florida Legislature, *Counterfeit and Diverted Drugs Threaten Public Health and Waste State Dollars*, Report No. 03-18 (February 2003) at 3. See also *In the Supreme Court of the State of Florida*, Case No: SC02-2645, First Interim Report of Seventeenth Statewide Grand Jury, at 7-9 (discussing the problems associated with the structure of America's wholesale drug market and how these problems provide opportunities for counterfeit drugs to enter the distribution system).

<sup>95</sup> See Global Options, Inc. & Reconnaissance International Report, *An Analysis of Terrorist Threats to America's Medicine Supply* at 66-67 & nn. 138-39 (2003).

<sup>96</sup> *Id.*

<sup>97</sup> See Katherine Macklem, *The Terror Crisis has Lit a Fire under Ottawa's Lagging Anti-laundering Effort*, MacLean's, October 22, 2001 at 62.

2003 report prepared by the GAO on the subject of terrorist financing.<sup>98</sup> In the report, the GAO noted that specific examples were not included in the “report because, according to the FBI, the cases are still open and discussion may jeopardize investigations and prosecutions.”<sup>99</sup> The federal government also recognized a link between counterfeiting and terrorism as part of its “Rewards for Justice Program.” The “Rewards for Justice Program” is a campaign by both the Departments of Treasury and State to combat terrorism financing by offering rewards for information leading to the dismantling of systems used to finance terrorist organizations and the arrest/conviction of those who aid acts of terrorism against U.S. persons or property. In an informational brochure publicizing the program, the government explicitly lists “counterfeit merchandise schemes involving a host of consumer items such as designer clothing, jewelry, fashion accessories and household products” as one of the more common illicit sources of funding for terrorist organizations.<sup>100</sup>

**b. Documented Links**

Unfortunately, a growing body of evidence indicates that terrorist organizations are already involved in and profiting from large scale counterfeiting and piracy. Consider the following examples, compiled from public source news articles, testimonial statements and government reports, regarding the existence of genuine connections between counterfeiting/piracy and terrorism:

- The Secretary General of INTERPOL provided the following testimony in 2003 for a hearing before the House International Relations Committee concerning a pirate CD manufacturing plant in Russia:

INTERPOL is aware of a case in 2000 in Russia, where Chechen organized crime groups and terrorist organizations were benefiting from counterfeit good manufacturing and trafficking. Specifically, in 2000, a joint operation between Russian law-enforcement agencies and private industry resulted in the break-up of a CD manufacturing plant. According to the police officials involved, this counterfeit CD plant was a source of financing for Chechen separatists. The CD plant was run by Chechen organized crime which then remitted funds to Chechen rebels. The FSB (Russian Federal Security Service) estimated that the average monthly earnings of the criminal organization are estimated to have been US\$500,000 - 700,000. A number of explosives and arms were also confiscated by the police during raids on the residences of the suspects.<sup>101</sup>

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<sup>98</sup> See *Terrorist Financing: U.S. Agencies Should Systematically Assess Terrorists' Use of Alternative Financing Mechanisms*, United State General Accounting Office Report to Congressional Requesters (GAO-04-163) at 10 & n.10 (November 2003).

<sup>99</sup> *Id.*

<sup>100</sup> See <http://www.treas.gov/rewards/pdfs/stopthemoneyback.pdf>.

<sup>101</sup> See Testimony of Ronald K. Noble (Secretary General of INTERPOL) before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003). See also Statement of Iain Grant before the House International Relations Committee,



- There have been media accounts reporting a link between the terrorist organization Al Qaeda and the trafficking of counterfeit goods. An investigation, involving several countries, into a shipment of fake goods from Dubai to Copenhagen, Denmark, suggest that Al Qaeda may be funding itself by trafficking in counterfeit goods. Danish customs, using sophisticated risk analysis software, examined one of the shipping containers and discovered that it contained over one thousand crates full of counterfeit shampoos, creams, cologne and perfume. The goods were ultimately bound for the United Kingdom. The United Kingdom later revealed that the sender of the counterfeit goods was a member of Al Qaeda. This connection was later confirmed by the European Commission's Customs Coordination Office. The intelligence services of three countries -- Denmark, the United Kingdom and the United States -- were involved in investigating the matter.<sup>102</sup>
- According to the private investigator conducting the search, a raid of a souvenir shop in mid-town Manhattan led to the seizure of a suitcase full of counterfeit watches and the discovery of flight manuals for Boeing 767s, some containing handwritten notes in Arabic. A similar raid on a counterfeit handbag shop in New York uncovered faxes relating to the purchase of bridge inspection equipment. Two weeks after the raid on the handbag shop, police in New Jersey were investigating an assault on a Lebanese member of an organized crime syndicate. During a search of the man's apartment, authorities found fake drivers' licenses and lists of suspected Al Qaeda terrorists -- including the names of some workers from the handbag shop that had been raided.<sup>103</sup>
- It has been reported that dissident paramilitary groups in Northern Ireland fund their terrorist activities through the sale of pirate products, including the sale of the Disney movie *The Lion King*.<sup>104</sup> In one specific case, police raided a building

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*Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003)(providing additional details).

<sup>102</sup> See *Al-Qa'idah Trading in Fake Branded Goods*, BBC Monitoring Reports (September 11, 2002); Lenore Taylor, *Big Business Targets Terrorist Pirates*, Australian Financial Review, January 29, 2003, at 9; Testimony of Ronald K. Noble (Secretary General of INTERPOL) before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003)(referring to same).

<sup>103</sup> See James Nurton, *Why Counterfeiting is Not So Harmless*, Managing Intellectual Property, September 2002, at 43.

<sup>104</sup> See Kathleen Millar, *Financing Terror*, U.S. Customs Service Monthly Newsletter, November 2002, available at <http://www.customs.gov/xp/CustomsToday/2002/November/interpol.xml>. Nick Somerlad, *Two Arrested After Police Find Explosives*, Press Association, December 20, 2000. See also Statement of Jack Valenti (President & CEO, MPAA) before the House Subcommittee on Courts, the Internet, and Intellectual Property, *Oversight Hearing on International Copyright Piracy: Links to Organized Crime and Terrorism*, (March 13, 2003) at 10 (referring to threats made by paramilitary groups in Northern Ireland against officers from the Police Service of Northern Ireland's (PSNI) Anti-Counterfeiting and Racketeering Unit who were involved in anti-piracy raids).

and discovered three CD burner racks, each capable of copying 24 CDs simultaneously. Police found thousands of pirate videos and CDs.<sup>105</sup>

- Although not strictly a counterfeiting offense per se, it is also worth noting the conviction of Mohamad Hammoud. In February 2003, Hammoud was sentenced to 155 years in prison for helping to lead a multi-million dollar cigarette smuggling operation out of North Carolina that funneled money to Hezbollah.<sup>106</sup> The Hezbollah cell operated out of Charlotte, North Carolina, and over the course of 18 months sold close to \$8 million worth of smuggled cigarettes in the state of Michigan.<sup>107</sup> The scheme only began to unravel after a police detective moonlighting as a security guard noticed members of the smuggling ring purchasing hundreds of cartons of cigarettes.<sup>108</sup> Ten members of the smuggling ring were arrested. Eight members pled guilty. In June 2002, Hammoud was convicted of providing aid to a terrorist organization.<sup>109</sup> The indictment papers surrounding the case stated that Hezbollah officials in Lebanon asked cell members to purchase equipment such as “computers, night vision equipment, mine-detection devices, global-positioning devices, and advanced aircraft-analysis

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<sup>105</sup> See *Border Raid on Fake CD Plant*, BBC News, available at [http://news.bbc.co.uk/1/hi/northern\\_ireland/1074672.stm](http://news.bbc.co.uk/1/hi/northern_ireland/1074672.stm); Testimony of Ronald K. Noble (Secretary General of INTERPOL) before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003)(noting that it is known that paramilitary groups in Northern Ireland are involved in cigarette smuggling and that it is “possible to state with certainty that paramilitary groups in Northern Ireland have financially benefited from [intellectual property crime].”); Statement of Iain Grant before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003)(noting that at a seminar hosted by the Police Service of Northern Ireland a “senior police officer” stated “that 93% of persons involved with intellectual property crimes, including music piracy offenses, were linked to para-military groups.”).

<sup>106</sup> See Sari Horwitz, *Cigarette Smuggling Linked to Terrorism*, Washington Post, June 8, 2004, at A1.

<sup>107</sup> See Jeffrey Goldberg, *In the Party of God; Hezbollah Sets Up Operations in South America and the United States*, The New Yorker, October 28, 2002; Manuel Roig-Franzia, *N.C. Man Convicted of Aiding Hezbollah; Cigarette Smuggling Said to Fund Terror*, Washington Post, June 22, 2002. Hammoud was taking advantage of the fact the 70 cents per pack tax rate differential between North Carolina and Michigan. At the time of the crime, the rate in North Carolina was five cents per pack whereas the Michigan rate was 75 cents per pack. The Michigan rate has since increased to \$1.25 per pack. See Patrick Fleenor, *Cigarette Taxes, Black Markets, and Crime*, Policy Analysis at 13 (February 6, 2003), available at <http://www.cato-institute.org/pubs/pas/pa468.pdf>.

<sup>108</sup> See Patrick Fleenor, *Cigarette Taxes, Black Markets, and Crime*, Policy Analysis at 13 (February 6, 2003), available at <http://www.cato-institute.org/pubs/pas/pa468.pdf>.

<sup>109</sup> See *id.*



software.”<sup>110</sup> According to trial testimony, Hammoud was caught on telephone wiretaps speaking with Hezbollah’s military commander in Lebanon.<sup>111</sup>

- CD-R’s containing pirate music compilations recovered by investigators in Paraguay contained inlay cards depicting images of the exploding Twin Towers of the World Trade Center along with representations of Osama Bin Laden.<sup>112</sup>
- During an enforcement raid in Durban (South Africa) in September 2001, counterfeit CD’s were seized that belonged to a group of Pakistani nationals. The search also turned up documentation indicating allegiance to Al Qaeda and Osama Bin Laden. The investigators passed the information onto the appropriate authorities in South Africa.<sup>113</sup>
- A report prepared by INTERPOL for the House International Relations Committee noted that an industry trade organization has evidence that a pair of illegal CD manufacturing plants were being financially backed by Dawood Ibrahim.<sup>114</sup> In October 2003, the U.S. Treasury Department named Ibrahim a “specially designated global terrorist” pursuant to Executive Order 13224.<sup>115</sup> Ibrahim is currently wanted by the Indian government for the March 12, 1993 Bombay Exchange bombings.<sup>116</sup>

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<sup>110</sup> See *id.* In addition to their other crimes, some terror groups are also quite successful at counterfeiting United States currency. See Paul Kaihla, *Forging Terror, How Rapid Advances in Scanning, Printing, and Other Technologies Have Made Counterfeiting a Potent New Weapon of Holy War*, Business 2.0 (www.business2.com), December 2, 2002, available at <http://www.business2.com/articles/mag/print/0,1634,45486,FF.html>.

<sup>111</sup> See Sari Horwitz, *Cigarette Smuggling Linked to Terrorism*, Washington Post at A1 (June 8, 2004). The same article, citing federal law enforcement sources, notes that “[s]everal major cases of illicit cigarette trafficking with terrorist links have involved the purchase of cigarettes in Virginia and are currently under investigation” and that there are several other cigarette smuggling cases with links to Hamas, Hezbollah and al Qaeda. *Id.*

<sup>112</sup> See Statement of Iain Grant before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003) (images from pirate CD-R’s were included in a photographic appendix to the testimony). A full transcript of the testimony provided at the hearing is available at [http://www.house.gov/international\\_relations/108/88392.pdf](http://www.house.gov/international_relations/108/88392.pdf) (images referenced in this footnote can be found at pages 48-49 of the transcript).

<sup>113</sup> See Statement of Iain Grant before the House International Relations Committee, *Hearing on Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism* (July 16, 2003).

<sup>114</sup> See Brooks Boliek, *Interpol IDs Piracy Link to Funding Terrorism*, The Hollywood Reporter (June 10, 2004).

<sup>115</sup> See Chidanand Rajghatta, *Dawood a Global Terrorist: US*, The Economic Times (October 18, 2003); U.S. Designates Dawood Ibrahim as Terrorist Supporter, FDCH Federal Department and Agency Documents, Regulatory Intelligence Data (October 16, 2003); Executive Order 13224, as published in 66 Fed. Reg. 49079 (September 23, 2001). See also [http://www.ustreas.gov/press/releases/reports/fact\\_sheet.pdf](http://www.ustreas.gov/press/releases/reports/fact_sheet.pdf) (fact sheet on Dawood Ibrahim).

<sup>116</sup> See Chidanand Rajghatta, *Dawood a Global Terrorist: US*, The Economic Times (October 18, 2003); U.S. Designates Dawood Ibrahim as Terrorist Supporter, FDCH Federal Department and Agency Documents, Regulatory Intelligence Data (October 16, 2003); Executive Order 13224, as published in 66 Fed. Reg. 49079

### c. The Triple Frontier/Tri-border Region

One specific example detailing the link between counterfeiting and terrorism deserves a greater degree of attention. The example concerns the infamous tri-border region in South America where the countries of Brazil, Argentina and Paraguay meet in an area referred to as the Triple Frontier.<sup>117</sup> For nearly three decades, the Triple Frontier has served as a friendly operations center for international “smugglers, counterfeiters and tax dodgers” and has earned a reputation for being one of the most lawless places on the planet.<sup>118</sup> Inhabitants of and visitors to the region move with relative ease among the three countries as they attempt to evade what little official authority exists in the region. Despite repeated and persistent industry complaints, counterfeit and pirate products literally saturate the region, especially in the Paraguayan border town of Ciudad del Este.<sup>119</sup> For years, the United States Trade Representative (USTR) has routinely subjected Paraguay to Section 306 Monitoring in its annual “Special 301” reports and cited the Paraguayan government for unacceptably high levels of intellectual property theft.<sup>120</sup>

Add to these problems, the fact that American intelligence officials now believe the region is also a hotbed for Middle Eastern terrorist groups like Al Qaeda, Islamic Jihad, Hezbollah and Hamas.<sup>121</sup> One intelligence official reported that some of the estimated 30,000

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(September 23, 2001). See also [http://www.ustreas.gov/press/releases/reports/fact\\_sheet.pdf](http://www.ustreas.gov/press/releases/reports/fact_sheet.pdf) (fact sheet on Dawood Ibrahim).

<sup>117</sup> See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress, at 6-8 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf).

<sup>118</sup> See Jeffrey Goldberg, *In the Party of God; Hezbollah Sets Up Operations in South America and the United States*, The New Yorker, October 28, 2002, at 75; Larry Rother, *South America Region Under Watch for Signs of Terrorists*, The New York Times, December 15, 2002, at 32. See generally Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress, (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf).

<sup>119</sup> See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress at 3, 30-33, 57-60 & Appendix (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf).

<sup>120</sup> See Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 USC § 2242 (“Special 301”). Pursuant to this statute, the USTR is required to issue an annual report that identifies and categorizes those countries that deny adequate and effective protection and enforcement of intellectual property (IP) rights. Copies of the USTR Special 301 reports from 2003 and 2004 are available at [http://www.ustr.gov/Trade\\_Sectors/Intellectual\\_Property/Section\\_Index.html](http://www.ustr.gov/Trade_Sectors/Intellectual_Property/Section_Index.html).

<sup>121</sup> See Jeffrey Goldberg, *In the Party of God; Hezbollah Sets Up Operations in South America and the United States*, The New Yorker, October 28, 2002, at 75 (reporting that the Ciudad del Este “underworld is dominated by Asian and Middle Eastern mobsters” and noting that Hezbollah officials would shake down shop owners in the region for donations or percentages of their income; if shop owners refused to cooperate they were beaten or rumors were spread that their family members in the Middle East were Israeli spies); Sebastian Junger, *Terrorism’s New Geography*, Vanity Fair, December 2002, at 194 (also placing terrorist groups like the IRA, Colombian rebels, Basque separatists and members of Aryan Nation groups); Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress at 1 & 12-37 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf). But see *Patterns of Global Terrorism 2003*, U.S. Department of State (June 22, 2004)(Western Hemisphere Overview), available at

Muslims in the region held celebrations on September 11, 2001, as well as on the one year anniversary date.<sup>122</sup> In Miami, the Paraguayan consul was recently arrested for selling three hundred passports to individuals – including some terrorist suspects from the Middle East – in an effort to facilitate entry into the Ciudad del Este region. Connections with counterfeiting and piracy operations have already emerged. One article reporting on this link states:

Federal authorities have several investigations under way examining evidence suggesting that Hezbollah, Hamas and other terror networks might be selling counterfeit products to pay for their worldwide activities. . . . FBI, Customs Service and other agencies are investigating the sale of stolen or counterfeit computer software, T-shirts and handbags that are suspected of benefiting terrorist networks. Officials said the schemes span the globe from Paraguay to Pakistan . . . . U.S. officials said there is particular concern that a region in South America famous for counterfeit products may have ties to terrorism. The region near the borders of Paraguay, Brazil and Argentina has a large Arab population. Law enforcement officials said they are investigating multimillion-dollar counterfeit software operations based in Ciudad Del Este, in eastern Paraguay, that are believed to have diverted money to Middle Eastern groups with ties to terrorism. Some of the suspects are of Lebanese origin and were arrested by Paraguayan authorities based on information from the U.S. government, the officials said.<sup>123</sup>

The U.S. State Department, in its 2001 Patterns of Global Terrorism Report, had this to say about the tri-border area:

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<http://www.state.gov/s/ct/rls/pgtrpt/2003/c12153.htm> (stating that reports of an “al-Qaida presence in the TBA” are “uncorroborated by intelligence and law-enforcement officials.”).

Hezbollah, Hamas and Al Qaeda are all on the current State Department list of Foreign Terrorist Organizations. See *Patterns of Global Terrorism 2001*, U.S. Department of State, at App. B (May 21, 2002), available at <http://www.state.gov/s/ct/rls/pgtrpt/2001/pdf/>. The Office of the Coordinator for Counterterrorism releases a Patterns of Global Terrorism report on an annual basis. The report is submitted in compliance with 22 U.S.C. § 2656f(a) which calls upon the Department of State to provide a report to Congress regarding terrorist organizations and activity throughout the world. All three groups are also identified as Foreign Terrorist Organizations in the State Department’s 2001 Report on Foreign Terrorist Organizations, a report prepared every two years by the Office of the Coordinator for Counterterrorism. The Secretary of State designates Foreign Terrorist Organizations (“FTO”), in consultation with the Attorney General and the Secretary of the Treasury. The Secretary of State makes decisions concerning the designation and redesignation of FTO’s following an exhaustive interagency review process in which all evidence of a group’s activity, from both classified and open sources, is scrutinized. The State Department, working closely with the Justice and Treasury Departments and the intelligence community, prepares a detailed “administrative record” which documents the terrorist activity of the designated FTO. Seven days before publishing an FTO designation in the Federal Register, the Department of State provides classified notification to Congress. See *2001 Report on Foreign Terrorist Organizations*, U.S. Department of State, (October 5, 2001), available at <http://www.state.gov/s/ct/rls/rpt/fto/2001/5258.htm>.

<sup>122</sup> See Jeffrey Goldberg, *In the Party of God; Hezbollah Sets Up Operations in South America and the United States*, The New Yorker, October 28, 2002, at 75.

<sup>123</sup> *Feds Track Counterfeit Goods Sales*, available at: [http://abcnews.go.com/wire/US/ap20021024\\_151.html](http://abcnews.go.com/wire/US/ap20021024_151.html) (October 24, 2002).

South America's triborder area (TBA) -- where the borders of Argentina, Brazil, and Paraguay converge and which hosts a large Arab population -- took on a new prominence in the wake of the September 11 attacks in the United States. Although arms and drug trafficking, contraband smuggling, document and currency fraud, money laundering, and pirated goods have long been associated with this region, it also has been characterized as a hub for Hizballah and HAMAS activities, particularly for logistic and financial purposes.<sup>124</sup>

The 2003 Patterns of Global Terrorism Report also contains a reference to the manufacture and movement of pirate goods in the tri-border area and states that the region has "long been characterized as a regional hub for Hizballah and HAMAS fundraising activities."<sup>125</sup>

One important fund raising figure for Hezbollah, who once inhabited the Triple Frontier region, a man by the name of Ali Khalil Mehri, is presently a fugitive. Paraguayan authorities and American industry representatives considered Mehri to be one of the leading distributors of pirate CDs.<sup>126</sup> In its 2000 Patterns of Global Terrorism Report, the U.S. Department of State noted that Paraguayan authorities arrested Mehri for violating intellectual property laws and for aiding an enterprise that was distributing copies of CDs that espoused Hezbollah's extremist ideals. A Paraguayan terrorist task force raided Mehri's apartment and found guns, pirate discs, film footage of terrorist attacks and interviews with suicide bombers and documents showing money transfers worth over \$700,000.<sup>127</sup> Mehri was arrested by Paraguayan authorities in his Ciudad del Este Apartment on February 25, 2000.<sup>128</sup> Faulty judicial procedures, however, allowed for his release and he soon fled back to Lebanon.<sup>129</sup> He has eluded INTERPOL's

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<sup>124</sup> See *Patterns of Global Terrorism 2001*, U.S. Department of State, May 21, 2002 (Latin America section), available at <http://www.state.gov/s/ct/rls/pgtrpt/2001/html/10246.htm>.

<sup>125</sup> See *Patterns of Global Terrorism 2003*, U.S. Department of State (June 22, 2004)(Western Hemisphere Overview), available at <http://www.state.gov/s/ct/rls/pgtrpt/2003/c12153.htm>.

<sup>126</sup> See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress at 74-75 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf) ("Paraguayan authorities charged Mehri with piracy of computer programs and CDs and with selling millions of dollars of counterfeit software and funneling the proceeds to Hizballah.").

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*

<sup>129</sup> See Jeffrey Goldberg, *In the Party of God; Hezbollah Sets Up Operations in South America and the United States*, The New Yorker, October 28, 2002, at 75. See also *Patterns of Global Terrorism 2000*, U.S. Department of State, April 30, 2001, available at <http://www.state.gov/s/ct/rls/pgtrpt/2000/2437.htm>. (full text of the 2000 report is available at <http://www.state.gov/s/ct/rls/pgtrpt/2000/>); Global Options, Inc. & Reconnaissance International Report, *An Analysis of Terrorist Threats to America's Medicine Supply* at 50-51 & nn. 101-04 (2003)(reporting that "Larry Johnson, former Deputy Director of the Office of Counterterrorism for the U.S State Department testified on Capitol Hill that he was involved in an investigation that uncovered product counterfeiting by radical Palestinian groups in Ciudad del Este, near the tri-border area")(citing "Global Reach of Al Qaeda." U.S. Senate Foreign Relations Committee., *Federal Document Clearing House Congressional Testimony*. December 18, 2001); See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress at 74-75 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf)

attempts to capture him.<sup>130</sup> In a raid on a clandestine lab that took place on October 31, 2002, in Ciudad del Este, authorities discovered 46,000 falsified CDs and 80 duplicating machines capable of copying up to 20,000 CDs per day. The lab was located in the same building where Paraguayan law enforcement arrested Mehri in February 2000.<sup>131</sup>

According to news reports, another suspected Hezbollah fundraiser in the tri-border area, Assad Ahmad Mohammad Bakarar, is also believed to have carried out significant piracy operations.<sup>132</sup> A seizure by Paraguayan agents that took place in 2001 led to confiscation of 5,000 units of counterfeit entertainment software and revealed multiple routes used by Bakarar to smuggle the illicit material.<sup>133</sup> In September 2001, a Paraguayan SWAT team raided a shop owned by Bakarar in a shopping center in Ciudad del Este (Bakarar was not present and escaped arrest).<sup>134</sup> Materials seized by police during this raid included: videotapes showing military marches and attacks with explosives in various parts of the world, descriptions of thirty attacks in Israel and Israeli-occupied territories, a letter from a Hezbollah commander congratulating Bakarar for his fundraising activities, and \$250,000 worth of monthly monetary transfers to the Middle East.<sup>135</sup> Additionally, police in Argentina claimed that Bakarar was involved in distributing \$60 million in counterfeit U.S. currency printed in Colombia.<sup>136</sup>

After the attacks of September 11, 2001, an international arrest warrant was issued for Bakarar and he fled the tri-border area.<sup>137</sup> Bakarar was arrested by Brazilian authorities in Foz do Iguacu on June 22, 2002. He was extradited to Paraguay in November 2003 to face charges

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(stating that Mehri escaped from prison in 2000 and fled to Syria and, that at the time of his disappearance, authorities in Argentina were interested in questioning Mehri “in connection with the two unsolved bombings of Israeli targets in the early 1990’s.”).

<sup>130</sup> See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Division, Library of Congress at 74-75 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf).

<sup>131</sup> See *id.* at 30; *Documents Seized in Ciudad del Este from Alleged Hezbollah Financier Offices*, Agence France Presse (July 4, 2003) (“reporting that a statement from Paraguay’s national police said that tax agents seized boxes of counterfeit merchandise from offices belonging to Bakarar and others”).

<sup>132</sup> See Rex Hudson, *Terrorist and Organized Crime Groups in the Tri-Border Area (TBA) of South America*, Federal Research Divisions, Library of Congress at 28-30 (July 2003), available at [http://wwwc.house.gov/international\\_relations/108/88392.pdf](http://wwwc.house.gov/international_relations/108/88392.pdf).

<sup>133</sup> See *id.* at 30.

<sup>134</sup> See *id.* at 28.

<sup>135</sup> See *id.*

<sup>136</sup> See *id.* at 29.

<sup>137</sup> See *id.* at 71.



of tax evasion.<sup>138</sup> Bakarar admitted sympathizing with Hezbollah, but denied any links to the group.<sup>139</sup>

**d. Intellectual Property Crimes - - Potential Means for a Terrorist Attack**

In addition to using intellectual property crimes as a means to raise funds, the frightening potential exists that terrorists could use the commission of the crime itself as a means of attack. Thus creating the sickening scenario where terrorists would actually profit from the deaths of their innocent victims. To gain an appreciation for the potential harm factor, one need only consider the possible use of counterfeit pharmaceuticals that, in place of the proper ingredients actually contain deadly chemicals, poisons or biological toxins.<sup>140</sup> As noted earlier,<sup>141</sup> it would certainly not be difficult for a determined terrorist to slip such deadly products into the stream of commerce. This is especially true in a time where an increasing number of pharmaceuticals are coming from sources that are often beyond the reach of U.S. regulators at both the federal and state levels. The internet and the relatively small, but largely unchecked secondary wholesale distribution markets<sup>142</sup> are two examples of essentially unregulated distribution channels where a pharmaceutical attack of this nature could be rather easily targeted. In the event of such an attack, it could take days or perhaps weeks for the problems to come to light. Any efforts at containment would be severely complicated if the tainted drugs were distributed and sold over a wide geographic area. The Tylenol deaths from the early 1980s would pale in comparison to the utter devastation that could be wrought with today's deadliest poisons and toxins.<sup>143</sup> As it stands now, counterfeit drugs have already been responsible for numerous deaths and injuries.<sup>144</sup>

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<sup>138</sup> See *id.* at 71; Alan Clendenning, *Brazil Sends Terror Suspect to Paraguay*, Washington Post (November 18, 2003)(story published at washingtonpost.com).

<sup>139</sup> See Alan Clendenning, *Brazil Sends Terror Suspect to Paraguay*, Washington Post (November 18, 2003)(story published at washingtonpost.com).

<sup>140</sup> Although not directly related to potential terrorist concerns, it is worth noting that the Food and Drug Administration (FDA), in July 2003, formed an internal Counterfeit Drug Task Force for purposes of preventing the introduction of counterfeit drugs and biologics into the domestic distribution chain. See *Combating Counterfeit Drugs: A Report of the Food and Drug Administration* (February 18, 2004), available at <http://www.fda.gov/oc/initiatives/counterfeit/>. See also Washington Post (October 18-24)(multiple article series describing the vulnerabilities of the domestic drug distribution system and the dangers posed by internet purchases of prescription drugs).

<sup>141</sup> See *supra* nn. 24-31 & 94-96 and accompanying text.

<sup>142</sup> See *In the Supreme Court of the State of Florida*, Case No: SC02-2645, First Interim Report of Seventeenth Statewide Grand Jury, at 7-9 (discussing the problems associated with the structure of America's wholesale drug market and how these problems provide opportunities for counterfeit drugs to enter the distribution system); Melody Petersen, *3 Fake Drugs Are Found in Pharmacies*, The New York Times, June 5, 2001, at C1 (discussing the case of a wholesaler in Brooklyn, New York who operated a business out of his home where he repackaged drugs from overseas with counterfeit labels; some of the drugs tested by prosecutors contained bacteria and endotoxins).

<sup>143</sup> See *U.S. Food and Drug Supply Vulnerable to Terrorist – Are Politicians to Blame?*, PR Newswire, October 16, 2001.

<sup>144</sup> See *supra* nn. 24-31 and accompanying text; Sarah Lunday, *When Purchasing Medicine in Mexico, Buyer Beware*, The New York Times, April 17, 2001, at F5 (reporting on the death of a 35 year old woman who consumed

Even without deadly substances at their disposal and even without the expertise necessary to work with such poisons, terrorists could still pose a deadly threat. They could intentionally mislabel bottles with virtually indistinguishable counterfeit labels that contain erroneous information about the dosage or even type of drug contained therein. The use of false bar codes or lot numbers would make the suspect medicine difficult to track and its origins or source nearly impossible to trace. A terrorist group could also sell fake pharmaceuticals that contain no active ingredient whatsoever and thus deprive takers of the expected benefits. Indeed, the terrorists wouldn't even need to enter the United States to carry out the attack. They could ship large quantities of tainted medicines into the country and slip them past border officials or deliver them over the internet via the U.S. mail or package delivery companies. Or they could unload the dangerous drugs into Tijuana, Mexico, which has 1,500 pharmacies and is a place a large number of Americans visit to purchase severely discounted medications.<sup>145</sup> In 2001, the WHO estimated that as much as 25% of the pharmaceuticals sold in Mexico are counterfeit<sup>146</sup> and as late as 2001, Mexican law allowed pharmacists to work with no formal training requirements or credentials.<sup>147</sup> Some may say these scenarios are nothing more than hypothetical speculation or conjecture – perhaps the product of nothing more than an overactive imagination. But perhaps these individuals would be singing a different tune altogether had the SARS outbreak of 2003 started in America, as opposed to Asia? In that situation too, there would surely be a lot of speculation and conjecture, but of a wholly different type and nature with human lives at risk.

Of course, this analysis only covers the pharmaceutical industry. Automobile parts, airplane parts, cosmetics, shampoos, and food items present other vulnerable targets and all new sets of issues and questions. As with many other aspects of the post 9/11 world, the harm that could be inflicted via intellectual property related crimes simply cannot be ignored or dismissed.

### C. CONCLUSION

The IACC believes that maintaining a strong level of intellectual property enforcement inside our borders, at our borders and, (to the extent jurisdictionally possible), internationally, will aid in the battle against criminal organizations and terrorism and also enhance the national economic security of the United States. As noted throughout this paper, the extent of the evidence pointing to links between intellectual property theft and organized criminal and terrorist

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a diet medicine she had purchased in Mexico, suffered multiple organ failure and eventually died); Douglas Pasternak, *Knockoffs on the Pharmacy Shelf, Counterfeit Drugs are Coming to America*, U.S. News & World Report at 26 (June 11, 2001)(noting the FDA has attributed several dozen deaths to suspected counterfeit versions of the antibiotic gentamicin sulfate).

<sup>145</sup> See Sarah Lunday, *When Purchasing Medicine in Mexico, Buyer Beware*, The New York Times, April 17, 2001, at F5.

<sup>146</sup> See Jim Erickson, *A Game of Remedy Roulette: Cipro Sales*, Rocky Mountain News, October 23, 2001, at 5A.

<sup>147</sup> See Sarah Lunday, *When Purchasing Medicine in Mexico, Buyer Beware*, The New York Times, April 17, 2001, at F5.

organizations is hard to ignore. In this sense, intellectual property investigations could lead to seizures and arrests that target the funding for criminal organizations.

The IACC believes that the best deterrent to counterfeiting and piracy is criminal penalties that result in actual imprisonment. Based on this policy, the IACC helped lead industry efforts that resulted in the passage of the 1984 Trademark Act that established federal criminal sanctions for trademark counterfeiting,<sup>148</sup> the Anticounterfeiting Consumer Protection Act of 1996, that increased civil penalties and provided U.S. Customs with the authority to assess administrative fines against those that import counterfeit products,<sup>149</sup> and the establishment of specific criminal provisions for trademark counterfeiting in approximately 36 states and the District of Columbia. By working to provide federal and state law enforcement officials with the jurisdiction to prosecute counterfeiters, and U.S. border enforcement with the discretion to penalize known importers of counterfeit merchandise, the IACC has sought to promote a comprehensive enforcement system to stop illegal goods at the borders, punish manufacturers and distributors of counterfeit products in interstate commerce, and address counterfeiting at the retail level within the states, counties and cities where it is most prevalent.

Recent world events have caused federal and state government officials to correctly reevaluate the mission priorities of law enforcement personnel to address national security issues. The IACC actively supports efforts to secure our borders from terrorist attacks. As pointed out above however, the IACC is concerned that the low risk, high-profit nature of counterfeiting and piracy has and will continue to attract the attention of organized criminal and terrorist groups looking to fund their operations. The IACC believes that maintaining a stronger level of intellectual property enforcement will aid in the battle against terrorism and also increase our national economic security. The IACC and its members look forward to working with Congress, law enforcement, the new Department of Homeland Security and international organizations to identify and eliminate links between counterfeiting and the funding of criminal groups that may arise in the course of protecting U.S. and foreign economic interests and intellectual property rights.

It is simply not possible for industry and private sector organizations to counter the ill effects of intellectual property theft without significant government resources and help. The presence of organized criminal and terrorist groups only complicates enforcement efforts that are already difficult and dangerous. The IACC continues to urge the United States Government and other nations to more aggressively investigate cases of intellectual property theft.

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<sup>148</sup> See 18 U.S.C. § 2320.

<sup>149</sup> See 19 U.S.C. § 1526(f).