

A man in a dark suit and tie is shown from the side, wearing boxing gloves and striking a large, red, leather punching bag. The bag is suspended by ropes from the top of the frame. The background is a solid, vibrant green color. The overall image has a halftone or dithered texture.

UP THE STEPPING FIGHT

ACCORDING TO BASCAP, COUNTERFEITING AND PIRACY ARE SPIRALLING OUT OF CONTROL, DRAINING BUSINESS RESOURCES, SAPPING THE GLOBAL ECONOMY, THREATENING CONSUMER HEALTH AND ROBBING THE CREATIVE COMMUNITY OF REWARD FOR INNOVATION. IT'S TIME TO TAKE ACTION, SAYS SECRETARY GENERAL OF THE ICC, **GUY SEBBAN**

Businesses must unite to fight counterfeiting. That's the message from Business Action to Stop Counterfeiting and Piracy (BASCAP) and its mother organisation, the International Chamber of Commerce (ICC).

'Counterfeiting and piracy are among the biggest challenges facing business today,' explains ICC secretary general Guy Sebban. 'Yet, from our discussions with governments and businesses, we found that there was no cross-industry or cross-border approach to target IP piracy. If it existed at all, it only worked on a national or industry basis.'

'Part of the role of the ICC is to help companies of all sizes operate in an international market economy based on open trade and investment and sound market rules,' he adds. 'That also means that we need to help those companies tackle threats to their business, such as those posed by mass piracy and counterfeiting. The formation of BASCAP in 2004 allowed us to unite all of these efforts via ICC's global network of member companies.'

Championing anti-piracy

ICC's national committees operate in 90 countries, providing powerful on-the-ground resources for reaching and influencing national and local policymakers. That's why BASCAP's first priority was to work with governments and intergovernmental organisations, such as WIPO, to improve and consolidate legislative frameworks.

'We decided to tackle IP Rights infringement not just on trademarks or copyright, but on all forms of IP,' explains Guy. 'At the beginning our work concentrated on creating a set of tangible products that greatly improve the transparency of information and connect actors in the global fight against counterfeiting – pulling together



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widely scattered and often hard-to-find information, generating new sources of reliable data and facilitating the exchange of information among industry players, government, policymakers and enforcement officials. We also initiated a public education and media campaign, notably putting forward BASCAP positions to governments, including the G8 and EU, and intergovernmental organisations, including WIPO, WCO and Interpol.'

Now that such measures are in place, BASCAP is also working at improving IP Rights enforcement in those territories. 'It's not just that counterfeiting affects a business's profit, market share or turnover,' says Guy. 'It also destroys

incentives for innovation and creation. If businesses are not rewarded for the results of expensive research and development (R&D) programmes, then where's the value of investing in that R&D in the first place?

'National economies are equally affected. Governments don't just lose taxes or forms of legal employment, but counterfeiting also risks destroying the economic growth engendered by innovation – and that's true for both developed and developing countries.'

However, as BASCAP's 'Global Survey on Counterfeiting and Piracy' recently revealed (see page 24), it's not just a matter of educating governments and industry. Guy also sees public education as an increasingly important method for combating counterfeiting and piracy.

Organised against crime

'It is important that we generate a culture in which IP is respected and protected,' he explains. 'On the whole, the public is not aware of the negative aspects of counterfeiting and piracy. Customers often just think of it in terms of the money they are saving. But they're not actually getting a good deal; if products aren't made by a reputed manufacturer to industry standards, it can be harmful.' Guy cites the health and safety risks of purchasing fake sunglasses, pharmaceuticals and car parts as examples of this. He's also clear on the link between counterfeiting and organised crime. 'The relationship between the two is becoming more and more obvious to government and industry,' he explains. 'But we also need to make it more obvious to the public at large. They need to know that counterfeit goods contribute to more dangerous crimes.'

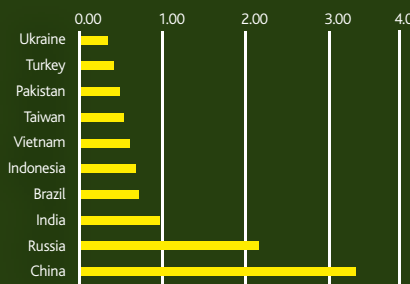
Although this shift in public perception can't happen overnight, Guy believes that strong co-operation

THE STATE OF THE INDUSTRY

BASCAP's recent 'Global Survey on Counterfeiting and Piracy' revealed the experiences of 48 companies in key jurisdictions around the world. Major findings include:

- Respondents estimated that 50% of countries in which they operated lagged behind in providing legislation that properly enables criminal prosecution of IP infringement; about 63% of the countries did not adequately resource law enforcement agencies engaged in combating counterfeiting and piracy; and in about 42% of the countries in which responding firms operated the public had an unfavourable view of IP protection.
- Of the 53 countries listed by respondents as having the least favourable IP environment, China and Russia are perceived to be the most serious offenders (see below).

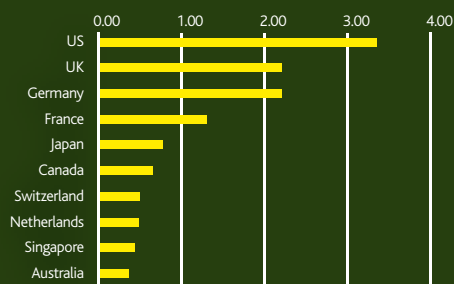
The bottom 10 countries (unfavourable IP environment)



Weighted scores indicating the extent of unfavourable perception

- Of the 29 countries listed as having the most favourable IP environments, the US, the UK, Germany and France are perceived to be the leaders when it comes to combating theft of IP.

The top 10 countries (favourable IP environment)



Weighted scores indicating the extent of favourable perception

- Allocation of more resources to enforcement is seen as by far the most effective way of using the government's allocated resources. Firms also view public education as an increasingly important method for combating counterfeiting and piracy.
- Decisions to locate product development activities are closely linked to clear government policies that target counterfeiting and piracy in the host country.



between players is key. 'The IP challenge facing industry is influenced by specific and diverse product and technological characteristics; however, that shouldn't stop them collaborating at a higher level,' says Guy. 'At BASCAP, brand leaders unite on a variety of projects, such as the Global Leadership Group that numbers CEOs of major global companies, such as Pfizer, Microsoft and Nestlé. Meanwhile our Steering Committee looks at specific sectors, such as copyright (with representatives from Universal Music and NBC Universal), and organises working groups that assess the threat by issues.

'BASCAP members are currently working on a global leadership approach for business, setting standards for global performance by governments and companies; framing decisions for policymakers; pushing for the allocation of resources at the highest


levels in government; and, improving awareness on a global basis. BASCAP will continue to concentrate on targeted advocacy efforts with key government and intergovernmental audiences and to track efforts of key intergovernmental organisations as a conduit to effecting actions at the national level.'

To help business leaders and industry actors strengthen and focus on this message, BASCAP is also creating a database-driven collection of case studies and anecdotes to support arguments made to policymakers, the media and the public. 'BASCAP stakeholders identified a need to offer tangible examples people can relate to,' says Guy. 'So we engaged the Counterfeiting Intelligence Bureau of ICC's Commercial Crime Services division to store reports on key topics, such as loss of lawful employment opportunities or risks to health and safety.' Businesses can



'ON THE WHOLE, THE PUBLIC IS NOT AWARE OF THE NEGATIVE ASPECTS OF COUNTERFEITING AND PIRACY. CUSTOMERS OFTEN JUST THINK OF IT IN TERMS OF THE MONEY THEY ARE SAVING.'

access and add to the database by visiting www.iccwbo.org/bascap.

Ultimately, it is ICC's influence that will enable BASCAP to put counterfeiting and piracy on the agenda. 'We're the first organisation to elevate IP enforcement to the G8 Summit agenda,' says Guy. 'We're working to encourage all G8 countries to implement their leader's commitments on increased IP protection, and we're offering BASCAP's information resources to expedite the process.' 

STAR STRUCK

MEDIA-SAVVY CELEBRITIES KNOW THAT LEGAL PROTECTION OF THEIR 'BRAND' CAN ALLOW THEM TO CASH IN ON THEIR FAME BY LICENSING ITS COMMERCIAL USE. BUT, AS **JEREMY DICKERSON** ASKS, HOW CAN THAT BE RECONCILED WITH THEIR CORRESPONDING RIGHT TO PRIVACY?

Perhaps unsurprisingly, New York State was the first jurisdiction to acknowledge an image or publicity right. Following its lead, more than 30 US states now offer legal protection in varying forms: from protection of name, image and likeness, to mannerisms, gestures and even signatures. In some states, such as California, image rights have been equated to copyright: the right lasts for 70 years from death and passes to the deceased's estate, and specialist agencies now represent or even buy a share in the estate, creating a lucrative industry in itself.

In most of Europe these rights are constitutional, with no defined protection for personality rights *per se*. The UK is the European exception. Here, stars must rely on the laws of trademark, copyright, passing off and defamation when their image is misused, but each aspect presents its own intrinsic difficulties. Celebrities must prove goodwill or distinctiveness in their names for trading purposes and not just on the basis of their fame. To rely on defamation, the celebrity must prove damage to their reputation, and this is likely to be difficult to prove where product endorsement is concerned.

Celebrity endorsement arrangements are not just of benefit to consumer brands. Celebrities are able to select endorsement opportunities which will maximise their personal value. Nicole Kidman was paid £2 million for her recent casting as 'the most famous woman in the world' in a glittering advertisement for the exclusive Chanel N°5, an arrangement which surely enhanced the Kidman brand as much as Chanel's.

However, there is a more salacious side to image rights, and celebrities often need to rely heavily on disparate privacy laws to shield their private lives.

In Europe, Article 8 of the European Convention on Human Rights enshrines the right to respect for one's private and family life, home and correspondence. When applied to celebrities, this must be balanced by the freedom of expression of others. The European balance currently seems to rest in favour of privacy, and was recently followed by the English Court of Appeal, which has moved towards common law privacy where an individual has been exploited for another's benefit.

Whether English law develops one step further to protect 'privacy that is being turned to commercial ends' (in the words of the Court of Appeal when considering the case surrounding the wedding photographs of Catherine Zeta-Jones and Michael Douglas) remains to be seen.

