

A Private Sector Perspective for Building Public-Private Partnerships When Investigating Counterfeit Products

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Public-private partnerships are an important tool for combating product counterfeiting. This Backgrounder provides insight on developing successful partnerships based on a career of developing and managing them for a multi-national corporation.

In the past decade, there has been considerable discussion on building public-private partnerships ready to respond to threats against the U.S. critical infrastructure. These discussions have focused on collecting intelligence and identifying ways to share information between the public and private sectors. This backgrounder extends that concept to building public-private partnerships for investigating product counterfeiting. The partnership would generally include public law enforcement and private business entities that are victims of product counterfeiting. A strong commitment to cooperate is absolutely essential when building such a partnership. This is most critical when the brand or product owners have more than one remedy for identifying and correcting violations and can dissolve the partnership and pursue civil remedies. Without victim cooperation, it would be difficult for law enforcement to pursue the case. This backgrounder identifies from the private sector perspective some of the most significant points to consider when entering into these partnerships if the remedy of choice is to pursue criminal prosecution.

Elements of a Successful Partnership

To begin, both parties must understand and agree that criminal prosecution is the objective if supported by the evidence developed during

the investigation. One process that helps the partners achieve this understanding is to create a “Contract of Expectations” before any investigation begins. This contract can be formal or informal but is necessary if there is to be a reasonable chance for a successful partnership. It may help to think of this as a process for detailed discussions focused on understanding the problem, identifying risks and rewards for both partners, and determining if the problem can be solved through the use of the public-private partnership. Developing such a contract not only increases the chances for success but also helps build relationships needed in all successful partnerships.

The major components for building this partnership are not unlike those in most successful personal or business relationships. Using these components to help structure discussions will enhance the development of the “Contract of Expectations” and increase opportunity for a successful partnership. Five major points for consideration are:

- Commit to building trust
- Identify and agree to the vision
- Understand the risks and rewards for each partner
- Understand commitments of the key players
- Communicate expectations

Five Elements of a Successful Partnership



Trust

Building trust must begin before the investigation is initiated. Ideally, the partnership is the result of previous networking between the parties in which the relationship has been nurtured and some degree of trust already exists. Nevertheless, if the opportunity to form the partnership is also the beginning of the relationship, using a process to clearly identify the expectations of the partners can help begin to establish trust. Unfortunately, some partnerships for investigating product counterfeiting are attempted only when one of the partners has identified a problem and needs the resources and skills of the other. Frequently, the meeting to propose the partnership is the first time the partners have met.

Successfully using a public-private partnership to investigate a product counterfeiting case depends on trust between the partners. The “Contract of Expectations” discussion is more important when the parties have not worked together or have just been introduced. During these give-and-take discussions on how the partnership will function and the development of terms and conditions, each partner will

decide if the partnership will be successful based on the trust built during these discussions. If either party is not fully committed to the partnership, this is a good time to decide not to go forward until all issues can be resolved to the satisfaction of each partner.

Sometimes it is best to start slowly or to run a “pilot” investigation that has defined guidelines that clearly limit scope and time commitments by each partner. Attempting to conduct a long-term, complex investigation as the first action of the partnership is not likely to succeed unless trust has been established and strong commitment by both parties already exists. Cooperating on smaller successful projects can help build trust. Smaller projects can also help each partner define the partnership and work through issues without significant financial or human resource risk.

Vision

The vision of the partnership must be clearly articulated and agreeable to both parties before initiating any investigation. For example, if the law-enforcement partner wishes to use the product-counterfeiting investigation to collect information that identifies national security issues, then it must share and have the private-sector partner agree with this vision. While most private-sector partners would be willing to work with law enforcement to help achieve such an objective, the immediate need to address the threat to their economic well being may temper this cooperation, making future partnerships more difficult to establish.

When developing the framework for the vision, it is crucial that each partner understands the ultimate goals and believes them to be realistic. One topic of consideration is how likely is it that gathering evidence and other activities to combat product-counterfeiting fits within the operating vision and the resources of the public sector partner? Is the evidence within the jurisdiction of the public partner and can the public partner justify using its limited

resources to investigate and prosecute the counterfeiter?

The public-sector partner may not always understand how the private-sector partner has been victimized and under what circumstances there are criminal statutes to address. The private-sector partner should expect to educate the public-sector partner on the health, safety, or economic damages being created by the counterfeiter, and on the need to use public resources to combat them. Other issues to consider include can the public partner support an investigation that relies on the private sector to provide the direction and guidance for establishing investigative leads and to identify why a product is counterfeit? Will the public-sector partner be limited by organizational or geographical boundaries? Is the private-sector partner committed to providing the information, technical support and testimony required to conduct the investigation and pursue prosecution? These and similar questions must be answered before the shared vision can be finalized. This is often a good time to define roles and responsibilities of each partner. Agreements on roles and responsibilities should be documented and agreeable to the key players or leadership of both partners. This can particularly help in a lengthy investigation should personnel and leadership of each partner change.

Risks and Rewards

In any relationship, each party looks to negotiate a position of acceptable risk based on perceived rewards they expect to receive from the partnership. In the public-private partnership a creative alliance is formed to achieve a common purpose while taking reasonable risk with available resources. Understanding the risks and rewards of both parties in developing the contract of expectations is necessary for both parties to understand what financial, technical, intellectual, and human resources will be committed to support the partnership. A partnership can provide for more efficient use

of limited resources to achieve mutual rewards. The public partner may be able to take action that protects the “common good” by taking dangerous, misleading or defective consumer products out of commerce. The private sector partner can achieve relief from the violation of its intellectual-property rights by those that seek economic gain at its expense.

Understanding Key Players

Another opportunity for building trust occurs when the “key players” of each sector agree to share the responsibility for achieving goals and objectives. Conflicts between the partners can be minimized by agreement on the process for identifying the scope of the partnership. Commitment by the leaders to remain flexible and change the scope as needed is critical for a successful partnership. Again the objective is to create a partnership meeting the expectations of both partners. While the overall objective is to successfully investigate product counterfeiting, the resources needed to achieve it may exceed those the private-sector partner can offer. Changing legal, political and economic circumstances can also adversely affect the outcome of the partnership. Each partner should understand these limitations on the other and be ready to modify expectations accordingly.

Communication

Communication may be the most difficult element to successfully implement in a public-private partnership. Generally, both parties agree this is an important and necessary element of the partnership; practicing it in a way that helps the partnership succeed without sacrificing the individual identity of the partners can become challenging and complex. While the partnership was created for the mutual gain of each partner, both the public and private sector partner are operating under different policies, regulations and objectives. Frequently this results in the partners needing to follow direction from their organization that conflicts with the vision of

the partnership. This becomes more sensitive when either partner is reluctant to share information developed during the investigation. Such possible conflict needs to be explicitly explored in developing the “Contract of Expectations.” Both parties need a complete understanding of what information can be shared and when. Such commitments made are more likely to be fulfilled when key players approve of them.

Summary

The recent growth of public-private partnerships for the mutual good has helped achieve goals from building bridges and roads to protecting critical infrastructure. This

backgrounder provides a high-level overview of the concepts necessary for similar successful collaborations to investigate counterfeit product. The process for developing such a partnership is not unlike many other processes used to develop successful business and personal relationships. The term “Contract of Expectations” is used not to identify a document or a form but to establish a concept to guide the development of the relationship. In some cases it may be helpful for academic facilitators to participate or provide forums for initial discussions. Providing these forums as an opportunity for developing trust between the public and private partners can yield benefits to both the partners and the community.



The Michigan State University Anti-Counterfeiting and Product Protection Program (A-CAPPP) is the first and preeminent academic body focusing on the complex global issues of anti-counterfeiting and protection of all products, across all industries, and in all markets, and on strategies to effectively detect, deter, and respond to the crime. Linking industry, government, academic, and other stakeholders through interdisciplinary and translational research, education, and outreach, A-CAPPP serves as an international hub for evidence-based anti-counterfeit strategy. For questions and comments about this Backgrounder, please contact Mr. Rod Kinghorn at MRRODK@aol.com. For more information about A-CAPPP and for opportunities to partner, please contact Dr. Jeremy Wilson, Director of A-CAPPP at (517) 353-9474 or at JWILSON@msu.edu. Additional information can also be found at <http://www.acappp.msu.edu>.