

**MICHIGAN STATE**  
**UNIVERSITY**

Center for Anti-Counterfeiting  
and Product Protection

# A-CAPP Paper Series

The 2016 A-CAPP Center Brand Protection Strategy Summit:  
Emerging Challenges, and Progress

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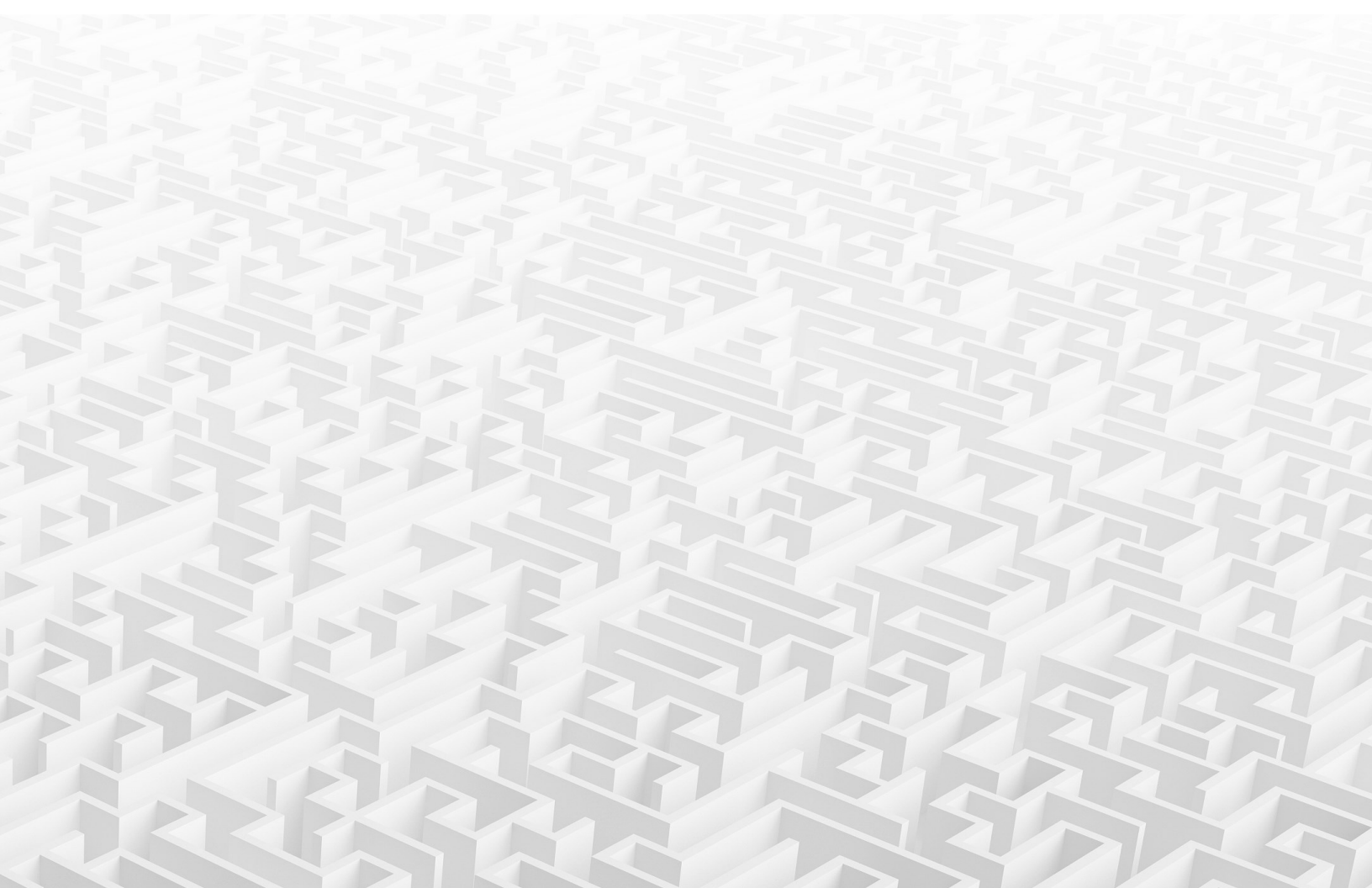
## About the A-CAPP Center

The Michigan State University Center for Anti-Counterfeiting and Product Protection (A-CAPP) is the first and only academic body focusing on the complex global issues of anti-counterfeiting and protection of all products and brands, across all industries, and in all markets. Linking industry, government, academic, and other stakeholders through interdisciplinary and translational research, education, and outreach, the A-CAPP Center serves as an international hub for the development and dissemination of evidence-based anti-counterfeit and brand protection strategy. For more information and opportunities to partner, contact Dr. Jeremy Wilson, Director of the A-CAPP Center, at (517)432-2204 or [jwilson@msu.edu](mailto:jwilson@msu.edu). Additional information about the Center and all of its products, resources, and training and education opportunities can be found at <http://www.a-capp.msu.edu>.

## Preface

Since its launch as the first academic body focusing on the complexities of anti-counterfeiting and product protection, the [Center for Anti-Counterfeiting and Product Protection](#) (A-CAPP) at Michigan State University has sought closer partnerships with brand owners. The 2016 Brand Protection Strategy Summit, the second such summit hosted by the A-CAPP Center, once again allowed academic and industry partners to discuss what they have learned from each other, particularly what challenges remain, and progress they have achieved, in their work. This A-CAPP Center Paper highlights many of the discussions that took place during this October 4-5 event.

The 2016 Brand Protection Strategy Summit was hosted by the Center for Anti-Counterfeiting and Product Protection at Michigan State University in partnership with Underwriters Laboratories, L Brands, Johnson & Johnson, Western Union, and Abercrombie & Fitch. The ideas expressed herein are those of the authors and do not necessarily represent the opinions of Summit partners.



## Improving the Power of Anti-Counterfeiting Efforts

For anti-counterfeiting efforts “to be powerful,” an academic leader told the 2016 Anti-Counterfeiting and Product Protection (A-CAPP) Center Brand Protection Strategy Summit, “we need to take a risk in laying out the issues.” For two days in October, approximately 100 representatives of industry, academia, government, and law enforcement sought to lay out the issues currently confronting the field of brand protection—both the challenges that remain in the field, and the progress that has been realized.

Among the goals, a brand protection leader told the summit, was to identify, “How do we get best practices? How do we learn from what’s transpired in the past? What’s the future look like? How do we recognize counterfeiters?” To that end, the summit, the second held by the A-CAPP Center at Michigan State University (MSU), covered a broad array of topics, ranging from evolving U.S. government initiatives to those of foreign governments to measuring the problem to developing partnerships to combat it to efforts firms have made on their own behalf. (Interested readers may wish to review the [summary report](#) of the first summit in 2015.)

## Evolving Public Initiatives

### Federal Government

Much of the federal government response to intellectual property issues is based on the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act of 2008. Among other things, this law established the Office of U.S. Property Intellectual Property Enforcement Coordinator (IPEC). It also requires the office to periodically send to the President and Congress a joint strategic plan on Intellectual Property enforcement. The most recent [joint strategic plan](#) was published in December 2016 (for more on the IPEC and the joint strategic plan, see the interview of the IPEC Director about these in [The Brand Protection Professional](#)).

“Too often,” an IPEC representative said, “we fail to talk and share with one another and to increase understanding of the . . . complicated schemes and tactics that counterfeiters use . . . Through the joint strategic plan, we want to tell more of that story. We want to increase the understanding around the threats that we are all facing in our day-to-day jobs . . . These are emerging threats we need to understand. This is where the A-CAPP Center can play a leading role in refining our understanding of what public health and safety actually means given the multiplicity of counterfeit goods in the marketplace.”

The story of counterfeit goods and their implications, the IPEC representative told the summit, is multifaceted. It covers public health and safety concerns posed by counterfeit products, the labor conditions associated with their manufacture, the environmental challenges their use and disposal can pose, and the risks they can present to national security (for more information on the risks of counterfeits in the U.S. Department of Defense supply chain, see this [A-CAPP Center Backgrounder](#)).

Accordingly, the joint strategic plan provides the context of product counterfeiting, efforts to address it in digital and tangible markets, and policies the government may pursue. Government officials, the IPEC representative said, “will prioritize public health, safety, and security. They have to, [given] limited resources [and] a lot of competing priorities.” Nevertheless, the federal government has also taken “a more flexible approach,” particularly where efforts could help “build up cases where [officials] might see a convergence affecting multiple different industries that no one company might be in a good position to go after.”



## State Government

U.S. state governments continue to vary in their approaches. “Every state has its own legal framework for dealing with counterfeiting,” an MSU professor told the summit. “Some of it is in trademarks, some of it is in the forgery statutes, and for a couple of them it is in the criminal statutes. But the amount to which [state law] has been applied” to counterfeiting cases “is limited” (for an analysis of state intellectual property legislation, see the Center’s forthcoming study in the *Journal of Criminal Law and Criminology*).

Ongoing research, the professor noted, suggests that prosecutors may not be “very familiar with the statutes, or they don’t know how to apply them. Or the penalties aren’t large enough for them to want to pursue a case.” At the same time, counterfeiters may also be involved in other associated crimes such as “money laundering or wire fraud or tax avoidance. And it’s a lot easier to prove those and not even have to worry about the trademark issue.”

The continuing MSU research is examining the types of cases that are brought to trial as well as key persons involved in passing and applying legislation. Ultimately, this research seeks to identify weaknesses in current legislation and to help guide training for prosecutors and police officers on the tools they have for fighting counterfeiting.

## Foreign Governments

### Foreign Partnerships

“Not many countries have a whole-of-government approach” similar to that of the United States, an IPEC representative told the summit. Nevertheless, there are several signs of progress in addressing the problem elsewhere. One was [Europol’s Intellectual Property Crime Coordinated Coalition \(IPC3\)](#), with other “law-enforcement colleagues and training partners develop[ing] similar capabilities to be more nimble to face rapidly evolving threats.” The [U.S. National Intellectual Property Rights Coordination Center](#) also continues to work with Europol, Interpol, and Canadian and Mexican authorities in operations against product counterfeiting.

### Canada

Several countries are also reorganizing or revamping how they approach intellectual property rights issues. Recent reforms in Canada, a consul general told the summit, regarding intellectual property have included comprehensive economic and trade agreements, patent protection for inventions, and copyright modernization.

Among the changes in Canada’s Combating Counterfeit Products Act (CCPA) are those to border enforcement, criminal offenses, and civil tools. Specific changes include new authorities for border officers, who can now temporarily detain suspected counterfeit and pirated goods as they contact rights holders regarding suspicious goods. Previously, there had been no prohibition on counterfeit goods at the border. Overall, the CCPA seeks to reduce costs of counterfeiting and piracy on the Canadian



economy (for more on the CCPA, see the September 2016 issue of [The Brand Protection Professional](#)). Canada's Product Chargeback can also serve to support and protect brands by increasing refunds and reducing losses incurred by consumers purchasing counterfeit products and thereby reducing overall profits of counterfeit sales realized by organized crime.

## China

China remains a concern for brand protection professionals, but several summit participants noted progress on intellectual property protection (for additional information on brand protection in China, see the [December 2016](#) article on the Third Amendment to the China Trademark Law and the [September 2016](#) article on the influences of economic structure and culture in *The Brand Protection Professional*). As one U.S. official noted, "the enforcement issues are still very prevalent, particularly as [China] start[s] moving away from the manufacturing type of base economy that we've seen . . . to more of what they call an innovation-driven economy . . . You see more of the enforcement because China is developing its own brands . . . There's a lot of these companies that are very much in the forefront for different types of technology."

An MSU professor added, "brand protection is not only easier for international brands, but also for Chinese brands . . . Chinese brand owners still face the challenge of how to protect their brands and their trademark [but] in China, more and more people [realize] brand protection is a big issue [and that] Brand consumer education is a big issue."

Chinese brand owners have made some efforts to protect their rights, though summit panelists suggested they might do more. One said, "We're seeing more Chinese companies, licensees, trying to build their own brand protection groups. Some of them are very effective." Still, this brand protection professional said, "it's a little difficult for them to share information," while adding "more cross-pollination [of ideas] with American companies" is starting to develop. Other panelists noted the efforts of the [Quality Brands Protection Committee](#) in both protecting the rights of brand owners in China and working to ensure fair administrative, judicial, and policy processes on brand protection issues.

While panelists suggested a need for continuing education on brand protection issues among Chinese consumers, some suggested growing consumer sophistication on brands. Indeed, one panelist told the summit, use by Chinese consumers of a foreign firm's website for product information helped that firm win legal recognition of its brand rights in China.



## External Firm Initiatives

Firms increasingly undertake their own external initiatives to improve protection of their brand. Among those summit participants discussed are partnerships for educating brand protection professionals and their own initiatives for educating consumers.

### Educating Other Professionals

One summit participant noted the importance of “partnerships with anyone, to any other organization, to meet [brand owners’] strategic goals of protecting their brands.” For this professional’s firm, this has included efforts to educate “law enforcement on intellectual property crime around the world,” given the varying levels of knowledge of such crime by region.

Such efforts, this participant said, may help firms overcome their reluctance to share information: “Usually brands are just so shy to share any information [that] you create these silos . . . This is a huge problem and we need to educate everyone about it.”

Metrics for on-line courses for other professionals include numbers completing them as well as feedback surveys on content and delivery. Often courses developed for one audience, such as law enforcement professionals, can be used to educate others, such as consumers.

### Educating Consumers

Firms may also undertake their own efforts to educate consumers. One brand protection professional for “a brand with a very big following and a dedicated consumer base” noted the “easy” decision of the firm “to talk to the consumer . . . because we were getting so many questions that we felt we needed to be transparent” in disclosure of information. As a result, this firm added to its website a page on counterfeit education. The content of the page has changed over time, but has always given basic information on what counterfeiting is.

To help consumers identify counterfeit websites, the web page for this firm featured a “look-up box that allowed consumers” to check whether a retailer was authorized to sell the firm’s product. It also used web-tracking metrics to track “sales conversion.” As this brand protection professional noted, “When people would come to this page, or they would come from a website that we had seized, we would be able to track whether they’ve been to or purchased goods off our website or our retailer’s website. And we learned people were actually looking for genuine product and buying genuine product.” Tracking website users looking for counterfeit information also helped this professional’s firm determine where their consumers sought information.

Social media had presented challenges to firms looking to combat counterfeit sales in virtual marketplaces. Nevertheless, after some initial reluctance, these platforms are “putting processes in place for brand owners,” this brand protection professional said. In addition, “There are some good laws out there that [brand owners] can push back on [social-media platform owners] and say, ‘you really need to pay attention.’”





Other participants noted similar, albeit less sophisticated, efforts to provide online information to consumers. One noted providing information on the firm's website on how to identify genuine and counterfeit products, as well as lists of authorized distributors. Another discussed how consumers themselves may monitor secondary marketplaces for genuine and counterfeit goods (see this [A-CAPP Center Backgrounder](#) for a summary of recent Center research on the use of virtual communities as guardians against product counterfeiting).

## Internal Firm Initiatives

Brand owners may undertake a variety of marketing and technological initiatives to increase protection of their intellectual property. These may include use of primary and secondary trademarks, engineering innovations, and working with supply-chain partners.



### Trademarks

For some products, firms may need to rely on multiple trademarks. As one summit participant noted, "Especially in the fashion world, you realize your primary products don't have your trademark." As a result, firms may seek secondary trademarks, such as a color on a particular component of the product. Firms may also seek to trademark their logos with and without words, and wordless logos with different colors.

Another summit participant also noted the increasing use of secondary trademarks, such as registration of color, in foreign markets. Both primary and secondary trademarks require protection in all a firm's markets. As one summit participant noted, "There's a lot of pirates out there that would go in and file and wait for the brands to come and negotiate with them . . . . It's important to work with your trademark counsel, your marketing people, to figure out where you're going to be selling."



### Engineering Innovations

Several recent innovations in engineering might, if adapted from other fields, help improve product protection. Some in "use limitation," for example, an MSU professor told the summit, might restrict "ability to open [a shipping] container [to] authorized people, whether you grant that with a fingerprint, facial recognition, some combination with a swipe card, and so forth." Infill material modified to look like plastic wrapping could help detect exposure to oxygen and certain temperatures, and therefore help detect product tampering. "Lab-on-a-chip" technologies could enable brand protection professionals using mobile phones to detect minute properties of a genuine product, such as particular fibers or fabric weave for clothing.



Another evolving technology would attach minuscule strands of deoxyribonucleic acid (DNA) to a product. As an MSU researcher explained, a company using a 50 base-pairs sequence, coated with a



special material so that it may be seen with a light-emitting diode (LED), could provide a brand owner with identifying information about a product's manufacturer, place and transit of materials used to make it, and even the time of its final assembly. In other words, use of a 50 base-pairs sequence could provide, in a microscopic particle, more than one nonillion bits of information about it.

Such identifying particles can also be mass-produced for less than a penny per item. They might, for example, be placed in a 50-nanometer bit of thread on a clothing label allowing verification of genuine product at point of retail sale by use of an LED or similar technology.

### Working with Supply Chain Partners

While packaging can help a brand owner identify its genuine products, managing it also provides its own challenges. As one example, a brand protection professional noted a printer asked to produce 1,000 rolls of packaging cannot just produce 1,000 rolls but must "produce 1,100 rolls because of overage. Well, did they produce another hundred, or did they produce another thousand that was going to go to somebody else unbeknownst to us? [Firms may not] do a good enough job of informing [printers of contractual requirements] and the measures they are supposed to take." Another brand protection practitioner added, "You ask them to print 1,000, it'll take them 1,500 to figure it out. So there's another 500 lying around somewhere." This professional also noted similar problems may happen "at the back end," when firms may not closely track disposal of unneeded packaging materials. A third noted some firms may fail to track disposal of plates used to produce labels despite contractual provisions for doing so.

Yet another brand protection professional noted potential problems in contract manufacturing, saying, "More and more of [a firm's] intermediates [may be] through contract manufacturing[, and brand owners may not] do a good job of watching their value chain from where they buy their raw[ product]s through the end product. [They may] give them raw material and . . . a specified amount of product, [and] a specified amount of [final] product" would be given to the brand owner. But firms may not every time "get the same amount back . . . [and fail] to investigat[e] what happened."

Contract provisions can present another challenge, particularly when adapted to a local market. A brand protection professional noted that a decentralized company will seek to use a local source for raw materials: "And the procurement person is going to use a standard template that the legal team created . . . But the local general manager is going to say, 'we need to modify the template based on the local conditions of the market.' So you've got conflict there between the local leads of the market, the procurement person who's got tasked with providing the best value for the best amount of money, and, of course, you've got the legal folks who've already created a template they think is the greatest thing [and] that's going to protect [all but] is eventually going to get watered down . . . [so the local] procurement person is often stuck between the push of the business[s] legal requirements and the pull of the local market" requirements.

Another brand protection professional noted that even ideal contracts can be problematic if not properly audited, saying, "that's the inherent struggle in a lot of organizations: sending somebody out who can go out and ask those questions and come back with answers. Because internal audit goes out, and . . . even if they're going to contractors, or co-manufacturers, [they may be] all accountants. They're going to make sure



is the reporting correct, is the business relationship good. [Even if product-]quality folks [go out, they may not] get back in the warehouse and ask some other questions, [so] it becomes very limited. So unless someone's got an organization that's got brand protection with that model to audit, you're really relying on other people in the organization with another set of expertise to try and identify" brand protection problems. (For more on supply chain issues, see the [A-CAPP Center Backgrounder](#) on supply chain risk mitigation and the Center's [study](#) on guardians in product counterfeiting).

## Identifying Future Needs

An A-CAPP Center [analysis](#) of future brand protection needs found information sharing, research, education and awareness, technology, and partnerships among those the field should address in the next several years. Brand protection professionals, law enforcement, and academia can all play a role in addressing those needs, but, for many reasons, have not always worked together. The A-CAPP Center was formed to foster cooperative work among all three of those sectors, seeking to have the right people at the table and the right conversations around the table.

The 2016 summit showed progress toward these goals, as documented by cooperation between governments and brand owners in protecting intellectual property rights, initiatives firms have taken with academia and each other in educating professionals and consumers, and innovations firms may adapt from academic researchers in identifying and protecting products. Future efforts by the A-CAPP Center will continue to foster efforts of brand protection professionals, law enforcement, and academia to teach and learn for one another for the benefit of brand owners and their consumers.





## PAPER SERIES

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