MICHIGAN STATE
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Center for Anti-Counterfeiting
and Product Protection

# A-CAPP
# Paper Series

## The 2017 A-CAPP Center Brand Protection Strategy Summit: Issues and Best Practices in Partnerships, Return on Investment, and E-Commerce




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February 2018

## About the A-CAPP Center

The MSU A-CAPP Center 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. 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 Center) at Michigan State University (MSU) has sought closer partnerships with brand owners. The 2017 Brand Protection Strategy Summit, the third 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 Paper highlights many of the discussions that took place during the October 3-4 event. Summaries of the 2016 and 2015 summits are also available.

The 2017 Brand Protection Strategy Summit was hosted by the MSU A-CAPP Center in partnership with Underwriters Laboratories, Johnson & Johnson, L Brands, Merck, Western Union, Avaya, and Amazon. Participant registration gifts were also provided by Kellogg's, L Brands, and Under Armour. The ideas expressed herein are those of the authors and do not necessarily represent the opinions of summit partners.



# Partnerships, Return on Investment, and E-commerce: Persisting and Evolving Issues

Throughout its ten-year history, and particularly in its three brand protection strategy summits to date, the Michigan State University (MSU) Center for Anti-Counterfeiting and Product Protection (A-CAPP Center) has sought to learn from, and offer lessons to, its partners. Brand protection partnerships evolve as the issues that lead to them change. As issues in brand protection evolve, brand protection professionals must monitor the returns on investment in their program to ensure they are being effective. And one of the most profound changes confronting brand protection in the past decade has been the rapid growth of e-commerce, requiring both new partnerships and measures of effectiveness.

More than 100 participants—the best attendance to date at the summit—sought to identify and share lessons and best practices on partnerships, return on investment (ROI), and e-commerce. They heard an introduction to each theme; participated in panel discussions with experts in industry, government, and academia; and contributed to strategy sessions on identifying best practices. This report summarizes summit findings.

*"The summit is one of the ways we get the most value from our partners, learning about what their issues are and how we can help address them, and also giving back to our partners by creating a venue to let them learn about the cutting-edge research going on at the university and to learn from their peers."* -Jeremy Wilson, A-CAPP Center Director

## Partnerships

New and evolving issues in brand protection demand that firms work with others to protect brand integrity. Such partnerships can encounter challenges in initial formation, problem identification and strategy development, and managing relationship dynamics. Once partnerships are established, partners must learn how to implement common strategy as well as how to manage the phases of the partnership lifecycle.

### The Three Legs of Partnerships: Industry, Government, and Academia

Partnerships in brand protection, a food-industry representative said, are "a three-legged stool" featuring industry, government and law enforcement, and academia. "Each one of those three have to work together. Otherwise, that three-legged stool only has two legs and falls over."

Partnerships can provide a means for firms to improve their efforts. Another food-industry representative noted, "we need a little more horsepower in our teams. We have an idea of what we would like fleshed out. We have to take it to an academic setting and get a broader look, better benchmark on what the true issues are and then bring that back to our teams . . . It gives us focus, an opportunity to carry forward, and then to hand off . . . to law enforcement."

An apparel industry representative claimed partnerships can help in formulating and answering questions such as those regarding latest trends, future directions and challenges, and the best way to meet them. "Sometimes today's answer generates tomorrow's question," this representative said. "That's what we're looking for: how can we get better."

An electronics brand protection professional noted, as did several others, the importance of developing partnerships before acute need arises. Commenting on law enforcement partnerships, this professional said, "we can do a lot better by, rather than turning stuff over to the [police], to get them involved" upfront. Such partnerships can also help better leverage law-enforcement resources for brand protection needs.

Most brand owners attending the summit, not surprisingly, reported in a survey of participants already using academic resources such as those the A-CAPP Center offers. Most also often take legal action to enforce their rights. More than three in four (17 of 22, 77 percent) responding to the survey said they had been involved in court action to enforce intellectual property rights in the past year. Yet police action often lags. Among survey respondents, nearly three in four (15 of 21, 71 percent) said "few" or "none" of their brand protection actions or investigations were initiated by law enforcement (including customs agencies), though most (12 of 21, 57 percent) said their brand protection incidents were ultimately referred to law enforcement.

## Partnerships as Inter-organizational Teams

Building effective brand protection teams within one's own organization can be challenging, but building them outside one's organization can be more challenging still. It can require working not only with others in the private sector (including, sometimes, competitors), but also different types of partners.

Echoing calls for early involvement with law enforcement partners, a representative from a certification firm said, "one of the first things that we do when we go into a specific region of the world is touch base with the governmental authorities," including Customs and law enforcement, there. Such efforts can take time to develop, this representative added. "It's pretty hard to explain what we do when somebody has a bag and they're walking past" to gather token items at an exhibition. "We need a little bit more time than that."

Establishing early relationships with law enforcement authorities can lead to real benefits, and avoid equally real challenges. One of the "biggest challenges" for customs officials is "getting brand owners to know us," a Customs attorney said. "What happens practically in the field" is Customs officers "come across something they think could be violative" but when "they look in their "internal database[,] they see nothing" regarding the rights owner. Early partnerships including sharing of information on legitimate and illegitimate goods can save Customs officials time and make enforcement more efficient.

A prosecutor also said gathering, retaining, and sharing information as appropriate can boost anti-counterfeiting efforts. "The biggest challenge that I have right now is getting other investigative agencies" to pursue these crimes, this prosecutor said. "A lot of these investigations that go into counterfeit products end up with a money laundering charge or some other financial crime" that is of concern to more agencies.

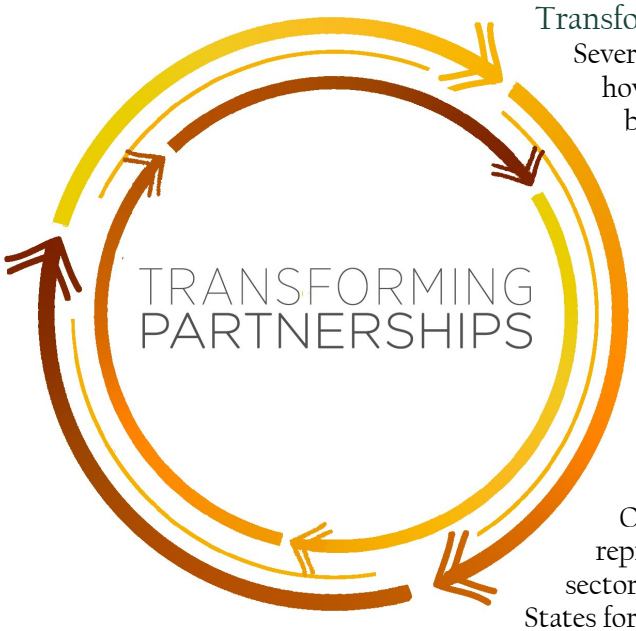
Partnerships depend on candid assessment of issues and interests upfront, a trade association representative said. Such sharing can help partners ensure their interests align and that they develop joint efforts in areas where they best align.

Once partnerships are established, participants need to "continue to be innovative" and "engage" one another, the certification-firm representative said. Brainstorming on specific priorities can help identify new partners for anti-counterfeiting efforts.

Partners continually need to be responsive. The Customs attorney noted that colleagues try to "make sure every email is responded to in a timely fashion." At the same time, they need "reciprocation of that responsiveness," particularly when examining possible counterfeit products. The prosecutor added that some cases develop because those not normally involved in investigating counterfeiting become aware of it through conferences.

The trade-association representative also noted the need for multiple and evolving partnerships, saying no one "can do it alone. And I think in building a team you need to recognize each person has their strengths that they bring to the table. [We] might have … global reach [but] we recognize that some national anti-counterfeiting associations have the local expertise and the local contacts. So they tell us what to do there."






## Transforming Partnerships Over Time

Several longstanding public and private partnerships provide examples of how such efforts can transform over time. Such efforts have originated both in response to product counterfeiting and as existing organizations take on the problem. Both types of efforts have thrived as they involve new partners, including those who otherwise might not work together.

A government task force that originated in response to intellectual property rights issues has worked because its efforts stretch beyond law enforcement. Its representative said, "we have a lot of entities there that people don't normally equate to IP enforcement," including energy, military, and regulatory agencies. "There's enough IP crime that we don't have to fight over cases."

One of the regulatory agencies that is part of the task force, this representative noted, has only 25 agents nationwide for an entire energy sector. Much of the equipment that had been manufactured in the United States for plants in this industry is now manufactured in other countries. As a result, industry firms, and regulators, now need to consider supply-chain issues, including possible entry of counterfeits, they had not considered before. Indeed, among brand representatives responding to a survey of summit participants, fewer than one in four (5 of 21, 24 percent) reported "always" working with suppliers on brand protection issues.

Public efforts can also help foster private initiatives. Recalling problems in one industry, the task force representative said, "we literally could not get the major companies to come sit together in our conference room at the same time. So we were having an individual meeting with each company. What we quickly realized is, look, you all have the same problem. Counterfeiters are not fans of one brand or another. They're knocking off all of you . . . So we worked it [and] ultimately got them in a meeting with all of the major brands sitting down together . . . they now meet quarterly amongst themselves. We don't have to be referee . . . they protect their proprietary stuff [but] they share common information [and] common problems that they're each having."

Another trade group representative noted while private-sector partnerships can foster their own interests, they also need to work with public bodies. Private-sector partnerships were essential for passage of the Prioritizing Resources and Organization for Intellectual Property Act (PRO-IP Act) of 2008, this representative claimed. "No brand protection program is strongest without a Washington, D.C., strategy," this representative said, while adding private parties may work with their own or other national associations to leverage their interests.



Such partnerships can also help address evolving issues. The problem of small parcels possibly carrying counterfeit goods is "really one of the biggest pain points" for anti-counterfeiting efforts, the trade-group representative said, requiring "a multi-pronged approach." This theme of shifting venues for counterfeit trade was also evident in survey responses of brand representatives attending the summit. As one said, "driving counterfeiters from one marketplace merely directs them to another and discourages some of the fringe actors. As any law enforcement officer might tell you, enforcement does not eliminate crime. It merely curtails it and keeps it from over running."

Often private firms need to make specific efforts to engage public and private partnerships. Asked about the most important partners, an electronics firm representative noted both Customs agencies around the globe and international trade groups that provide "an avenue to get [the anti-counterfeiting] message out there at a low cost and with global reach." In addition, this representative noted the importance of personally meeting with public and private partners, and consulting with counsel on legal rights by market. "A lot of it is, what's our strategy?" this representative said. "Once we set our strategy, then we can find what external partners we can use to help us get to an end-goal."

Successes can also lead to new targets. Citing a successful public-private effort to reduce the number of counterfeit components being imported into the United States, the electronics firm representative noted such a shift may only indicate a shift in how counterfeit components are prepared. Such a shift requires communication on new efforts. Such communication will be easier if partners have learned to trust and collaborate with each other.

## Best Practices for Future Strategy

Participants identified several promising practices for partnerships on data collection, enforcement, pro-active brand protection programs, industry associations, and work between the public and private sectors.

Brand owners need a structure for data collection that provides an independent view of product counterfeiting without being too generic for specific industry insights. Public records, if gathered systematically, can offer such insights, though these provide more information in some industries (e.g., health) than others. Some firms can offer more detailed data, but would need a partner in academia to assess data objectively. Academic or other third-party partners can also guide the development of relevant metrics.

Partnerships offer several opportunities for enforcement beyond the traditional ones. Financial services firms have obligations to report suspicious activity and self-police their actions. Local law enforcement can supplement federal enforcement actions, particularly on smaller cases. In many communities, local police crime prevention officers, if educated on the problem, can aid enforcement—and even reduce detection costs for firms.



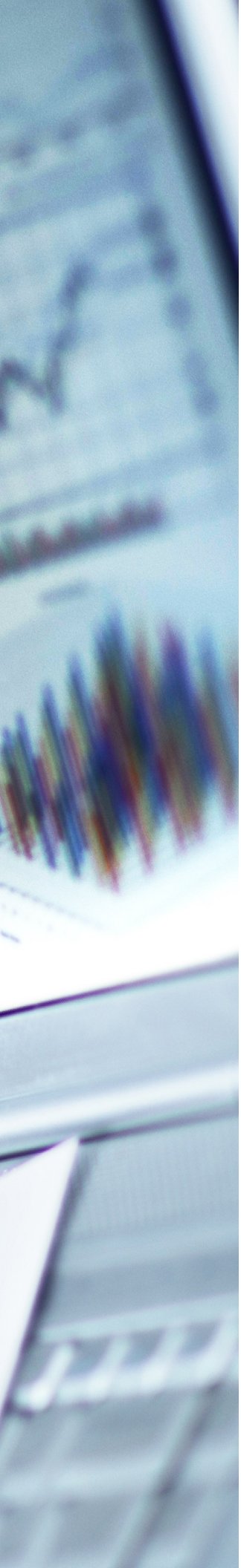
Education is also key for pro-active brand protection programs. "Educating law enforcement around the world is a force multiplier for us," a representative of a multi-billion-dollar apparel company with a small brand protection team claimed, resulting in "many more hands, many more eyes to go out and look at what you're doing." Some firms have also gained control of websites selling illicit goods and turned them into consumer education on educational presentations. Rivals in the same industry have also found ways to cooperate, recognizing counterfeiters are not brand loyal—and that multiple firms raising identical concerns are more likely to get attention.

Industry associations can offer several best practices—and may benefit from implementing some of their own. Niche industry associations in particular may wish to combine efforts where possible to better address common issues. Industry associations can also share information among members on organizing for brand protection as well as when and how to use outside resources (e.g., vendors). Industry associations may help in identifying seemingly firm-specific problems that are actually more widespread—and developing a standardized approach to such problems.

Public-private partnerships work best when both parties commit to quick response time. Such partnerships can also take time to develop and function most efficiently. Education in particular can take time to have effects, but its effects are real. One effective partnership has been between a leading consumer goods firm and a large urban police department; another has involved firms working with a foreign government to address counterfeit manufacturing concerns.

## *SELECT* A-CAPP CENTER RESOURCES ON PARTNERSHIPS

- Crime Prevention and Brand Protection: A Formula for Success (E+E=E$^{NTH}$)
- Industry Brand Protection Groups: A Look into the Counterfeit Furniture World
- Make It a Local Concern for Local Action
- Partnerships and the Battle Against Product Counterfeits
- Join the Fight Against Counterfeiting—Support the Unreal Campaign!
- Are You Getting Your Money's Worth? Interaction with Federal Law Enforcement
- Moving IP Crime Out of the Shadows
- Brand Protection 2020: Perspectives on the Issues Shaping the Global Risk and Response to Product Counterfeiting
- A Supply Chain Management Perspective on Mitigating the Risks of Counterfeit Products
- A Private Sector Perspective for Building Public-Private Partnerships When Investigating Counterfeit Products
- Chinese Anti-Counterfeit Efforts in China
- The A-CAPPP Product Counterfeiting Incident Database: A Resource for Advancing Research and Policy



## Return on Investment

Brand protection professionals must monitor the returns on investment in their programs to ensure they are being effective and to convince executives of their value. This is reportedly a widespread need: among brand representatives responding to a survey of summit participants, most (13 of 22, 59 percent) have metrics to assess their proactive brand protection efforts, and most (6 of 11, 55 percent) with metrics must share them with senior leadership at least monthly.

Ongoing A-CAPP Center research is examining brand-owner approaches to measuring their ROI in brand protection, as well as how to determine the cost of quality. Particular needs include more information on outcomes, the cost to achieve those outcomes, and identifying tradeoffs in investments to prevent and respond to counterfeiting incidents.

### The Value of Brand Protection

"At the end of the day, you better be doing something that brings some value back to your business," a brand protection executive for a health-care firm told the summit. "Otherwise, you're going to be looking for a job." What, however, is the best way to measure value in brand protection? ROI may not always be it. Indeed, this leader said, "ROI is probably the wrong way to measure what you do."

The value of brand protection can vary by firm, or even by component within firms. Executives may not always understand these values and differences. As the health-care brand protection executive said, "It's our job in brand protection to make sure senior leaders understand the risks" of failure to protect their brands.

"Best practices," this leader added, "focus on measures that matter most to your business." For one industry, counterfeits may be the largest problem. For another, diversion of goods in the supply chain may be a more pressing matter. Whether consumer safety or revenue recovery is most important will depend on needs and characteristics of goods or services within an industry.

Even where all agree on metrics and goals, firms will have a need for consistency in measuring them. The health-care executive noted that revenue recovery calculation might be interpreted differently in different regions, increasing the importance of consistency throughout: "It's data that feeds metrics, that feeds your strategy, that gives you a broader database from which you can start to measure your outcomes."

### Metrics and Brand Protection Valuation

The variation in how different industries may measure and value brand protection becomes more evident in examining the specific metrics they use. Indeed, ongoing A-CAPP Center research has shown industries differ by both the number and type of metrics they use.

"Measuring ROI is a lot like trying to measure counterfeit prevalence," a MSU professor said. "Any initial look is not going to provide that silver bullet metric or explanation. But with each project and activity we do get a little bit closer."

Researching ROI raises a number of questions. Among them, the professor noted, are "what is ROI? How do we define it for our own use? What's the goal here? . . . How do we measure performance? . . . How do we think about metrics?"

Traditionally, the professor noted, there has been "a big focus on recoveries, which are considered hard dollars, and seizures, which are considered soft dollars" and are prone to measurement error. More importantly, such metrics miss "the notion of prevention. We see what's taken off the street, but we don't know what else" remains. Counterfeiting can also degrade brand value, but there are few, if any, reliable methods for estimating such effects.

To better address these issues, MSU researchers interviewed representatives of ten major firms about their experiences with ROI, how they measure it, how they think about it, and how they communicate it. The firms spanned three broad industry categories: microelectronics and computers; food, agricultural, and pharmacy; and apparel, consumer, and luxury. Their total number of employees ranged from a little less than 2,000 to 120,000; their annual revenues from a little less than $2 billion to $70 billion; their number of brands from 1 to 1,000; and their number of brand protection team members from 2 to 50.

Though most of the firms, the MSU professor noted, claimed that demonstrating ROI is "very important," few had formal ways to measure it. Altogether, the interviews indicated 53 different metrics in use among these firms. Yet far more of these focused on outputs, i.e., activities conducted with investment, such as numbers of raids or seizures, than focused on outcomes, i.e., effects of activities, such as that on sales, market share, and counterfeit prevalence. Only a handful focused on valuation, that is, monetizing and comparing inputs and outcomes. The number of metrics was also higher for food, agricultural, and pharmaceutical firms, where two-thirds of metrics were for outputs. (See Table 1.) Brand representatives responding to a survey of summit participants similarly reported focusing on such items as number of raids and customs seizures, though a few also reported measuring items such as revenue recovery.

| | | Total Metrics Used by Firms in . . . | | |
|---|---|---|---|---|
| Type of Metric | Number | Microelectronics and Computer (3 firms) | Food, Agricultural, and Pharmaceutical (4 firms) | Apparel, Luxury, and Consumer (3 firms) |
| Output | 34 | 19 | 30 | 16 |
| Outcome | 11 | 10 | 8 | 4 |
| Valuation | 8 | 4 | 7 | 5 |
| TOTAL | 53 | 33 | 45 | 25 |

Table 1. Number of Metrics Reported by Type by Industry in Ongoing MSU Research

The research has confirmed, the MSU professor said, that firms may interpret and use the same metric in different ways. One firm the researchers interviewed, for example, saw increasing numbers of complaints as an indication of trouble, because they indicated more counterfeits were available. Another, however, welcomed increasing numbers of complaints, reasoning that they provided intelligence on the problem the firm lacked.

The results indicate two options for future efforts. "One is, if we're really interested in a technical ROI," the MSU professor said, "then . . . we've got to improve the measurement and data system . . . to move beyond the outputs and move toward the outcome and valuation . . . The other option is . . . thinking about brand protection broadly, and the overall value it brings to the company. So maybe there's not enough a specific number that can be generated but we can think about a basket of areas or metrics that suggests that the company is moving in the right direction."

Another possibility, a MSU marketing professor suggested, would be "separating the brand protection metrics from performance outcomes." This stems from a perspective that "we have brand protection problems, activities, that lead to immediate outcomes that we are measuring," with these metrics leading "to some brand protection performance outcomes including internal investment." Researchers, the marketing professor said, might "tease . . . out, conceptually and empirically" these concepts so that they "can assess the effects of brand protection metrics on the performance outcomes that managers really care about, like internal investment [and] time value." Such an approach might lead to "more sophisticated models . . . to further understand the complexity of this issue."

A technology firm representative suggested the valuation of brand protection may change over the life cycle of a product. Early in the life cycle of a product a firm may focus on revenue recovery from counterfeit products, while later it might focus more on prevention of counterfeits. The changing focus has implications for investments as well. In the early stages of a product's life cycle, this representative said, the firm might work with a third party to aid in recovery. Later in the life cycle, as the firm's efforts shifted to technology solutions to prevent counterfeiting, such expenses might decrease with expectations of recovery. As a result, the technology firm representative said, "our investment cost [goes] down, which would help us in showing the value, the ROI, over the life cycle of that product."

An agricultural brand protection professional claimed there are "three different shades of ROI." The first is "measuring the impact on, including the marketability of, your product." Such measurements, this professional claimed, will require strong upfront investment and development of "a mature brand protection team." A second is for firms "at the start" that "are looking at how [they] can make [firm leadership] aware of the issue." Such efforts are more internally focused, including on resources that would be needed for more sophisticated efforts. A third, this representative said, is the approach each industry must take: Different industries will have different solutions and different ways of handling this issue, and different ways of defining and measuring ROI.

## Resource Allocation and the Cost of Quality

Accounting research can offer further insight into how firms might invest in brand protection. In particular, a cost-of-quality framework can provide insights on how firms may decide to balance investments to prevent and respond to counterfeiting incidents.

Investments to prevent counterfeiting, or anti-counterfeiting costs, an accounting professor said, include prevention costs and appraisal costs. Investments to respond to counterfeiting, or counterfeiting costs, include internal failure costs and external failure costs. Figure 1 summarizes these and examples of each.

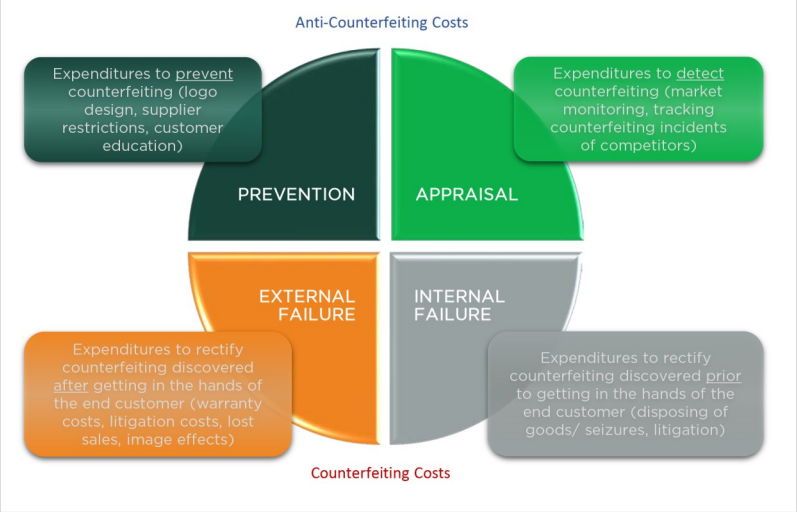



Figure 1. Costs of Preventing and Responding to Counterfeiting

Just as the use of metrics varies by type of firm, so do the emphases of brand protection spending. Among the ten firms interviewed for ongoing A-CAPP Center research, those providing microelectronics and computer products spent 76 percent of their budget on anti-counterfeiting costs, with 49 percent on prevention. Those providing food, agricultural, and pharmaceutical products also spent 76 percent on anti-counterfeiting costs, but with 43 percent on appraisal. Those in apparel, luxury, and consumer products, by contrast, spent 80 percent of their budget on counterfeiting costs, with 43 percent on external failure.

Anti-counterfeiting expenditures to prevent counterfeiting and counterfeiting expenditures to respond to its incidence are related—and this relationship can change over time (Figure 2). At any given point in time, the accounting professor said, brand owners will seek to minimize total costs spent preventing and responding to counterfeiting. This is shown where the curve for counterfeiting costs meets that for anti-counterfeiting costs.

This, in turn, implies there is an "optimal level of counterfeited products"—which, the accounting professor admitted, is "discouraging." There are, however, actions firms can take that will reduce their brand protection costs—and the resulting "optimal level" of counterfeit products. Over time, as firms learn more about preventing counterfeiting, they can reduce their anti-counterfeiting costs (as shown by the downward arrow in Figure 2). Furthermore, counterfeiting costs, i.e., costs to respond to incidence of counterfeiting, may diminish throughout the life cycle of a product (as shown by the horizontal arrow in Figure 2). As a result, total costs—and the level of counterfeit products a firm may accept to minimize total costs—will diminish over time.

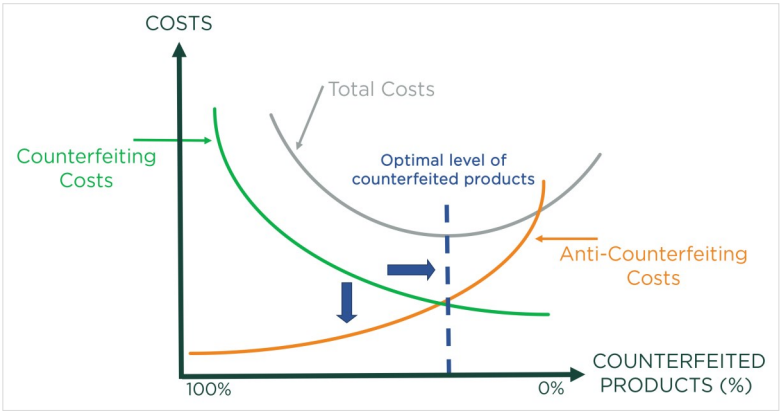



Figure 2. Anti-Counterfeiting, Counterfeiting, and Total Costs for Different Products on Different Learning Curves

The position of such curves will vary by industry. Yet all firms, the accounting professor said, should realize "it's risky, and potentially harmful, to try to impose a single-period notion like ROI on a multi-period problem. Because it's very much a dynamic problem in trying to understand where we should be investing in terms of these different types of activities, how that might change through time, and how that might vary across different industries."

The balance of counterfeiting and anti-counterfeiting costs may change as a team matures. "Are you a brand-new protection team and you're spending more money to try to understand the problem? Or are you a veteran team that's not spending the money? Or are you just trying to develop more [understanding] of what the risks are?" an automotive brand protection investigator asked. "Because if your team is only one or two people, you're going to spend your funds in a different way than a team that's got 25 people."

Counterfeiting in physical or virtual marketplaces may also have different emphases in budgeted expenses. "Online enforcements have a much heavier spin on evaluation and enforcement," an apparel brand protection executive said, noting Internet monitoring firms may generate "huge amounts of information that we go through."

## Best Practices for Future Strategy

Participants identified several promising practices for strategies to improve ROI, including suggestions for metrics, industry benchmarks, data systems, communications, and law enforcement statistics.

Metrics should include all aspects of brand protection, such as those related to both counterfeiting and product diversion. A base model should also be adaptable to the type of organization and its value. Brand protection teams, particularly as they are beginning their work, may wish to do "a complete logistics consultation," as a consumer goods brand protection professional called it, "visiting every production facility, every facility" and making sure all is "buttoned up internally" and that appropriate metrics for future monitoring are established.

Industry benchmarks should account for size of the company, industry scope, size of teams, and budgets, among other characteristics. Such benchmarks must ensure that industry analyses are comparable in determining what brand protection activities matter and in valuing certain activities such as seizures. Benchmarks must also account for regional differences. Ensuring appropriate industry benchmarks and data protection can help generate support for industry association surveys designed to strengthen metric collection and analysis.

Data systems must recognize data is a "moving target," as a technology firm brand protection professional said. Many "data efforts are trying to catch up with the market," while proactive measures are needed for determining where to place product security measures. Proactive measures are particularly needed where illicit traders gain insights before product distribution, as may happen in some nations through government leakage of information regarding pharmaceuticals. Data collection will remain an evolving process, as firms identify and manage the volume of data they need.

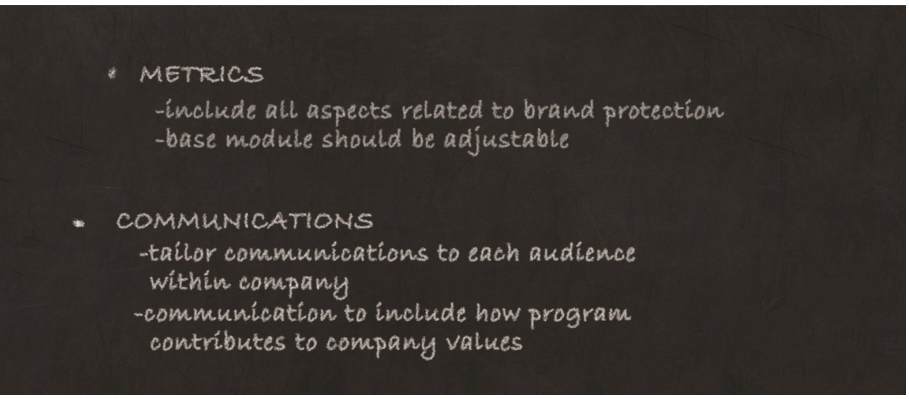


Communications of metrics and for demonstrating ROI requires knowledge of the audience for them. Marketing personnel, for example, will have a different perspective on ROI than finance officers. Hence, communication requires knowing business functions. Communication of metrics and ROI also requires knowing company values and risk tolerance. Finally, brand protection professionals need to communicate what is needed to maintain a program. Brand protection can be asset protection, and hence require communication on how it impacts cash flow and where the company has its greatest value.

Law enforcement statistics can offer many insights for metrics and ROI, though their value and availability may vary. Data with personally identifiable information, for example, cannot be shared. Resources also limit the amount of data that may be prepared for sharing. Differing agencies will have different focus areas, and hence provide different statistics related to brand protection. Statistical categories also may not cleanly match categories of interest to brand protection professionals. Criminal charges, when filed, may vary by state, even for seemingly the same crime. Understanding these issues can help brand protection professionals identify insights they may glean from data that have already been collected.

## SELECT A-CAPP CENTER RESOURCES ON METRICS AND ROI

- Applying Cost of Quality Concepts to Brand Protection
- Return on Investments Panel Takeaways
- Towards a More Proactive Approach to Brand Protection: Development of the Organizational Risk Assessment for Product Counterfeiting (ORAPC)
- Organizing for Brand Protection and Responding to Counterfeit Product Risk: An Analysis of Global Firms
- Measuring the "Unmeasurable": Approaches to Assessing the Nature and Extent of Product Counterfeiting
- How to Talk to Your CFO/COO
- Measuring Product Counterfeiting: Insights from Current Research and Practice
- Anti-Counterfeit Strategy for Brand Owners
- Product Counterfeiting: Developing a Risk Assessment Model (in *Crime and Terrorism Risk*)



## E-Commerce

E-commerce represents a profound shift in how firms interact with customers, from face-to-face interactions in fixed times and locations to new and unexpected ones in any time or location. Given the increasing complexity of the e-commerce landscape, it remains difficult not only for consumers to identify and avoid counterfeits but for platforms to consistently remove them. This results in frustration for brand owners whose products are found in listings and advertisements for counterfeit products as well as for consumers trying to purchase legitimate products. As one brand representative claimed in response to a survey of summit participants, online retailers "don't care about counterfeits on their platform and view their hosting of counterfeit listings as the brand owner's problem, not their problem. It isn't our website and the counterfeits aren't our products. It is frustrating that the online retailers don't face more liability." Another noted the problem of "getting sites to understand the urgency at times to take offerings off that are potentially harmful to the public." Such concerns have led to evolving IPR enforcement procedures undertaken by e-commerce sites, as well as increased effort by brand owners to monitor and address IPR violations.

### The Good, The Bad, and The Opportunity of E-Commerce

As e-commerce grows, its venues change. While brand owners and consumers are familiar with leading e-commerce platforms (e.g., Amazon, e-Bay, Alibaba), purveyors of illicit goods, and their customers, are increasingly turning toward less visible virtual marketplaces.

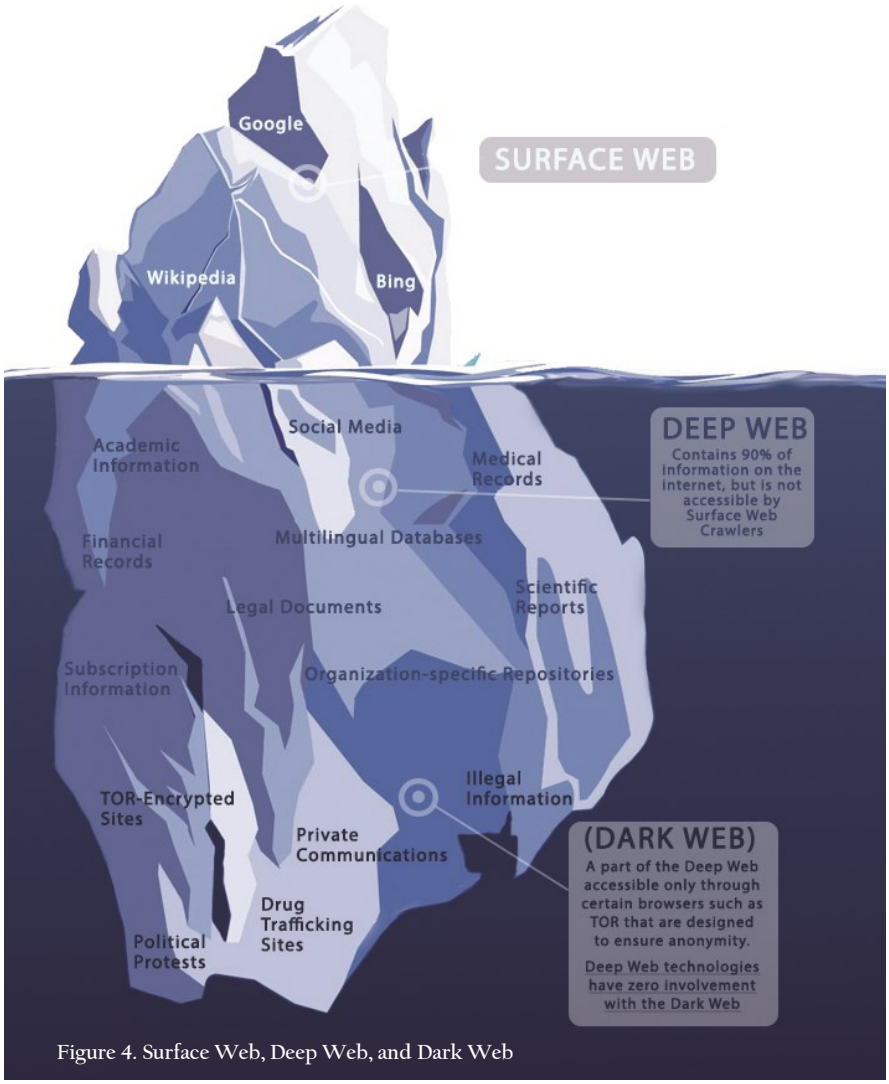


Figure 4. Surface Web, Deep Web, and Dark Web

"One of the big things I've seen," a protection specialist for a trade association told the summit, is "the younger generation is kind of moving away from open source social media tools [and] starting to use more closed social media" that leaves no trace of communication. Activity that remains on open social media is increasingly in closed groups that offer illicit or knockoff products. Still other platforms offer peer-to-peer interactions in completely decentralized marketplaces.

Furthermore, much illicit commercial activity is being conducted on the "dark web." The portion of the Internet that is indexed by regular search engines, the specialist said, is only about 10 percent (Figure 4). The remaining 90 percent is in the "deep web." The large majority of the deep web is licit information and activity (e.g., legal documents, organization-specific repositories), but a subset of it, the "dark web," is not. This portion of the internet, accessible only by certain browsers designed to ensure anonymity, is home to illicit activity, including trade in counterfeit products.

To counter illicit activities targeting them on the Internet, and to take advantage of the opportunities for goods in e-commerce, the prevention specialist recommended pursuing three opportunities: "building relationships, going the extra mile, and thinking like a criminal." Relationships may include those with other brand owners, trade associations, and e-commerce platforms.

"Going the extra mile," the specialist said, includes not approaching law enforcement "in a confrontational manner." It can also involve doing additional research on a suspected seller of counterfeit goods because, the specialist said, brand owners may often "find that one seller is connected to a larger network of sellers. And then when you go to talk with e-commerce platforms or with law enforcement, that's going to be a much more compelling argument and reason for them to continue to work with you."

To "think like a criminal," the prevention specialist suggested following what criminals like to do: "They like to share. They like to collaborate. And they're constantly evolving . . . to avoid detection. So some of the things we can do [are to] share data, share best practices, share what didn't work."

## Weeding Out Counterfeit Ads and Listings

One result of product counterfeiters evolving is their sophistication in advertising their wares. "It's getting harder and harder to be able to determine . . . what is legitimate and what's not" among listings, an A-CAPP Center professor said. "Can consumers tell the difference? Often times they can't. Sometimes even brand owners can't tell the difference." The difficulties become even more pronounced for listings on non-traditional platforms, such as those on social media sites.

Large manufacturers, a brand protection professional for an automotive firm said, face three primary challenges. The first "is the sheer number of products that our companies have," which can number in the tens of thousands, particularly for supporting products made over decades. For these, brand protection professionals often must work with product engineers to determine if an actual product is real or fake.

The second challenge, the automotive brand protection professional said, is that "the majority of sites that consumers are purchasing from are, in fact, legitimate, well-known, reputable companies. So they may interpret that . . . everything on [such] website[s] must be 100 percent authentic. And that's . . . just not the case, because there are bad actors that operate on these e-commerce sites to deceive and fool consumers."

The third challenge, the brand protection professional said, "is getting into the . . . dark web, and, importantly . . . what's the future going to be like to closed, e-commerce, peer-to-peer networks? That may be the wave of the future . . . how do we penetrate that, to try to enforce sales on those channels?"

An MSU advertising professor who researches social media stressed the need to consider how users "experience social media . . . while looking at our phone, we don't generally think about the content. There's an algorithm that determines what really goes into our news feed . . . So that creates a big opportunity for automatic behaviors." Anti-counterfeiting efforts may also need to consider "the cues that are present on social media that make information credible."

Nearly one in five complaints about Internet crimes mention social media, a federal investigator said. Of those, about three-fourths mention a brand. Whether for counterfeit or genuine parts, federal investigators are "seeing so many complaints online where [consumers have] clicked on those ads, clicked on that information, hurting the brand itself, because they think it's real."

One way brand owners may be able to counter problems with online ads, another MSU advertising professor said, is to "make it easier for consumers to file complaints . . . Legitimate brand alliances can [also] set up a website to make it easier to file complaints." Brand owners may help themselves with their own legitimate advertising, the social media researcher said, citing research showing that "genuine products and their advertising got higher ratings in terms of their attitudes toward the ad and attitudes toward the brand, willingness to share this information on-line, and also purchase intentions."

## Organizational Adaptation and the Changing Nature of E-Commerce

Counterfeiters adapt their operations as necessary to make their wares appear more legitimate. One recent trend, for example, a MSU criminal justice professor noted, among counterfeiters on Chinese e-commerce sites is to establish a physical presence in the United States to appear more legitimate to Chinese consumers. This raises questions on how e-commerce platforms may adapt to prevent counterfeiting.

E-commerce platforms must rely on multiple methods to detect and thwart counterfeiting: "It can't just be the brand owner reporting," a representative told the summit. "So we invest heavily on preventive actions, and things we can do to look at signals that we receive from customers as well as how we can use machine learning." Customer reviews of products also provide information, though they must be interpreted in context, such as reviews for a "fake Christmas tree." At the same time, as platforms adapt, counterfeiters further adapt. The representative said, "we've seen folks who have spoofed everything from their IP address to look like they're coming in from Canada [to] changing their banking information. And so we have to keep looking and digging and ensuring [we] stay ahead of that." Online platforms also encounter many of the same problems, such as return fraud, that physical marketplaces do.

Financial services firms present another front in the fight against counterfeit products. A representative of one indicated while such services do not want "to make it impossible" to use their services for the transfer of money, they do take actions such as "vetting individual sellers in China and designating them and making it very easy for customers to directly send money to them" once the firm has determined such parties are not trading in illicit goods. Financial service firms do have mechanisms for working with law enforcement on policing transactions, while also needing law enforcement as a partner in working with brand owners to best leverage information in fighting transactions for counterfeit products. "There's a lot of latitude for [law enforcement agencies] to selectively share information" relevant to product counterfeiting cases, the representative said, "but that's only going to happen if they trust you. And that trust is built over time through repeated interactions."

Law enforcement faces a problem of scale in regulating e-commerce. "This problem of scale, this problem of growth, is best addressed through technology," a federal law enforcement officer said, "through analytic tools, through machine learning. Organically, that fits best on some of the platforms. But each of the individual platforms are seeing some of the data but not seeing the whole picture. So figuring out ways to get those platforms to share information" is necessary for a coordinated response.

Platforms are moving more toward partnerships with each other and with brands, a representative said. Information from one brand on how its legitimate product also featured characteristics of a class of product not sold online persuaded the platform, as the brand requested, to drop all listings for it, which had the effect of dropping counterfeit listings as well. Platforms have also been cooperating with law enforcement in criminal cases against counterfeit sellers.



Brand owners can assist prosecution by providing timely and candid information, a prosecutor noted. Such information, particularly on financial damages, can assist prosecution—and lead to restitution being paid to rights holders who are victimized by counterfeiting. Information on health and safety issues posed by counterfeit products and adulterants can be particularly helpful in prosecution.

## Best Practices for Future Strategy

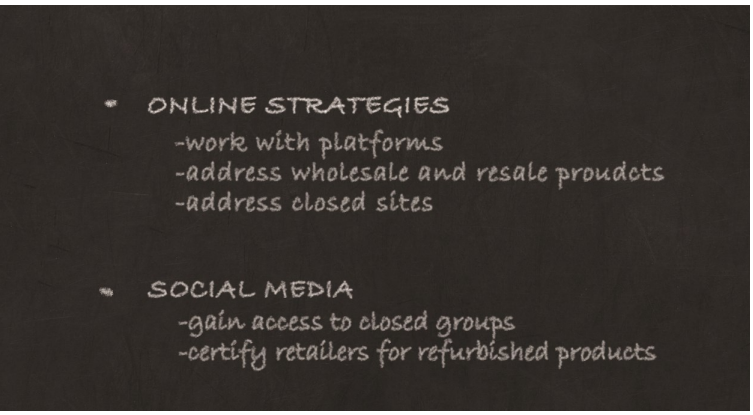
Participants identified several promising practices for addressing counterfeits in e-commerce. These included increasing consumer awareness, addressing online ads for counterfeit products, adapting as counterfeiters adapt, online strategies, and addressing social media.

Several education campaigns seek to increase consumer awareness of online counterfeits. One trade association has created a tool for consumers to identify online counterfeits, including specific examples of counterfeit goods. An apparel rights holder focuses its educational campaigns on what officially licensed products look like rather than on counterfeits. One industry professional starts with an illicit product and works its way back to the source, while another does the same for counterfeit serial numbers. Several brands show counterfeit examples on their websites and indicators of how consumers can tell a product is counterfeit. For some difficult-to-identify products, however, law enforcement may be the most appropriate outreach for consumers.

There are limited data and resources for addressing online counterfeit advertising. Nevertheless, brand owners might consider three actions to counter counterfeiting. They should target youth in their messaging, because it is most effective to shape behavior of young consumers. Brand ambassadorship may also help boost legitimate products at the expense of illicit ones. Finally, brands may use trademarks and trade dress laws for marketing design and to provide a stronger avenue for legal response.

Given the volume of online transactions, platforms and brands must rely on analyses of large data sets to identify changes in e-commerce and the adaptation of counterfeiters. Such analyses are usually done through algorithms identifying a set of key variables. Brand owners may wish to work through trade associations or law enforcement in identifying which variables are the most accurate predictors over time, and whether such predictors change. Some brand owners have found international law enforcement agencies to be particularly aggressive in shutting down counterfeit websites, with practices that may offer lessons for U.S. agencies. Platforms are acquiring more lessons as their wares rapidly expand. Platforms may work with brand owners to prioritize products for which to adapt anti-counterfeiting measures. Platforms may also work with brand owners to seize counterfeiter assets.

Online anti-counterfeiting strategies may work best if groups of rights holders work with platforms. Such efforts should address both wholesale and resale products. They must also consider the priority and resources to products that do not pose health and safety issues. Online anti-counterfeiting efforts must also increasingly take on closed sites, which can be a particular problem given that most takedowns only work for open sites.



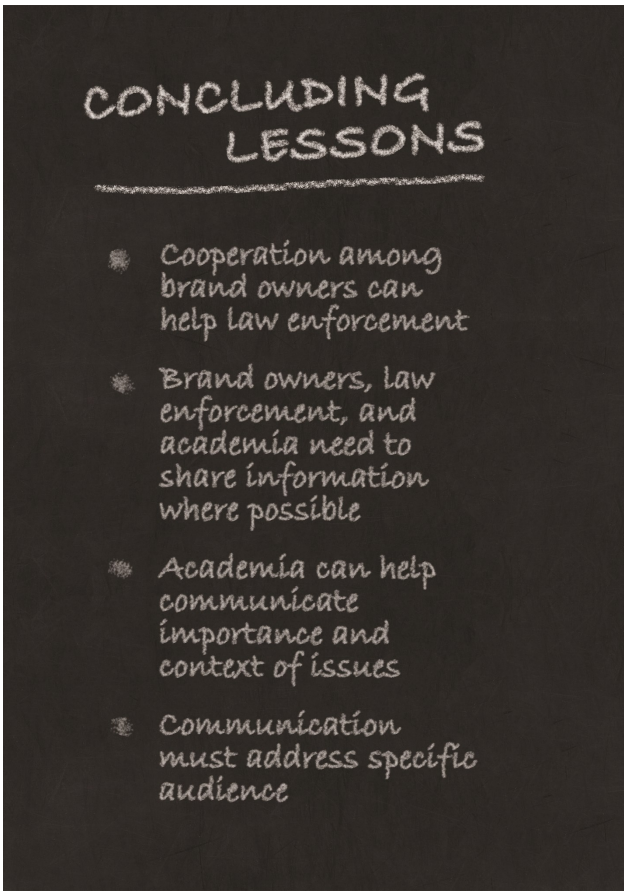
Some solutions for addressing illegitimate sites include working directly with law enforcement to find the source, disrupting supply chains (particularly for delivery at borders), seeking trademark-violation prosecutions, and using traditional methods such as surveillance and investigations.

Social media poses problems by being a common venue for sale of both legitimate and illegitimate products. Brands need to describe counterfeit activity with sufficient specificity to combat it. Brands may not always be aware of the specifics of counterfeit activity; e.g., counterfeits may be sold through posts limited to small, select audiences. Brands should work to find ways to gain access to closed groups. They should also work to ensure customers use certified retailers for refurbished products. Policymakers may also need to consider the implications of extending consumer protections to the Internet.

## SELECT A-CAPP CENTER RESOURCES ON E-COMMERCE

- Clicking Into Harm's Way: The Decision to Purchase Regulated Goods Online
- Fighting Intellectual Property Crime in a Cyber Era
- A Test of ICANN's Public Safety and Unfair Competition Mechanism as a Remedy in Consumer Protection Disputes with Registry Operators: .Feedback
- Bringing Online Consumers Closer to a Traditional Relationship
- Virtual Communities as Guardians Against Product Counterfeiting in the Athletic Footwear Industry
- Distinguishing Counterfeit from Authorized Retailers in the Virtual Marketplace
- Product Counterfeits in the Online Environment: An Empirical Assessment of Victimization and Reporting

## Conclusion




Several overarching lessons emerged from the summit for brand owners, law enforcement, and academia.

Cooperation among brand owners within industry can help when bringing cases to law enforcement. To the extent brands are able to share information when putting cases together and presenting them to law enforcement in a united front they are more likely to gain attention of their problems. Even before going to law enforcement, brand owners who make the effort to get to know law enforcement can find such efforts later pay dividends. Brand owners who understand the priorities of law enforcement and make the case for their business will find a more receptive audience when problems arise and they turn to law enforcement.

Academia can help provide the context for brand owners and to communicate the importance of these issues. As one brand protection professional noted, academic research provides unbiased perspectives of these issues in ways that both practitioners and law enforcement may use to identify and advance common interests.

Brand owners, law enforcement and academia need to share more information where possible. There is some understandable apprehension in sharing information among businesses or with law enforcement, and academia. Nevertheless, if all involved can demonstrate the best intentions, provide the best protections, and ensure no compromise of information, partnerships are more likely to develop and be effective. Trust-building relationships can help all parties. Information-sharing may not always be reciprocal, particularly with law enforcement. But parties are more likely to share information if they have a relationship of trust.

Communication of these issues, including ROI and e-commerce, must also address specific audiences. The issues that will concern senior executives for a brand owner are not the same that will concern the accounting department of a supplier. Tailoring messages to specific audiences will help gain brand protection the attention it deserves from all.

Finally, brand protection must work to understand the intents and perceptions of consumers. Not all consumers may be willing to learn or change their behavior regarding counterfeit products. For such consumers, research to influence decision making is going to be important. Others are more willing to support anti-counterfeiting efforts, but may need help in doing so. Such consumers may benefit from understanding what a counterfeit product is, and how to file a complaint if they inadvertently purchase one. Increasing access to information to help such consumers decide what is a counterfeit or legitimate product can also help.

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