

# When theft is no crime

IP abuse is widely accepted and dangerously viral. Slowing it will require increased awareness of the benefits of IP rights, as well as the dangers of so-called ‘innocent’ pilfering

By Bruce Berman

Consumers and businesses have an unusual bond: they both believe that infringing IP rights does not constitute a crime – it is merely a white lie.

Information speed and access have made copying second nature to anyone who owns a smartphone or PC. Devices make it so easy to share content and ideas that it no longer seems like theft – unless, of course, you are the victim. The constant expansion of the limits of acceptable IP behaviour is easy to ignore, but dangerous to accept. Buying fake goods, copying contents and refusing to license inventions is not a victimless crime. It has a dramatic economic impact which is frequently overlooked.

The Department of Commerce’s 2016 update, “Intellectual Property and the US Economy”,

reports that IP-intensive industries supported 45.5 million jobs and contributed \$6.6 trillion in value added, equivalent to 38.2% of US gross domestic product. This is up by over 5 million jobs and \$1.5 trillion over four years. Counterfeiting and piracy cost up to £71 billion and 790,000 jobs every year across the European Union, according to a study conducted by the EU IP Office (EUIPO).

Aside from counterfeiting, which costs the US economy alone \$250 billion in economic losses per year (the estimate is \$600 billion globally), rampant online piracy of US-produced digital content – including music, film and books adds an additional \$60 billion. In 2013 the Commission on the Theft of American Intellectual Property found “the scale of international theft of American IP to be unprecedented”, causing at least \$320 billion in annual economic losses and job losses “running into the millions”.

Ironically, the greatest threat to US intellectual property is not from overseas, but from domestic businesses and individuals, which routinely abuse IP rights out of ignorance, anger or greed.

## All shapes and sizes

Free riding comes in many shapes and sizes:

- Individuals stream music and movies, and buy fake goods;
- Businesses refuse to license inventions and force patent owners to engage in costly litigation; and
- Law makers and courts make infringement increasingly difficult to prevent or stop, with laws that are too difficult to enforce.

Counterfeits are everywhere, from handbags to aircraft parts and prescription drugs. Those responsible are said to include organised crime, foreign governments and terrorist organisations. Musicians and other content providers are grossly underpaid by streaming sites – when they are paid at all – and invention rights are routinely

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infringed, some serially, by many of the richest companies in the world, because they know that it is highly unlikely that they will be caught, stopped or prosecuted.

When it comes to IP rights, businesses and individuals alike believe it is acceptable to steal, provided that it is not too obvious. When individuals routinely abuse intellectual property, they are inspired to do it again and again. They believe that they are permitted to act in this manner (“Everyone is doing it”) and that they are not really harming anyone.

Lack of awareness plays a role in ignoring IP rights, but there may be something deeper and more insidious going on: distrust of authority and frustration with government and legal authorities. Some of this fear has been orchestrated by anti-patent lobbyists. However, I believe that routine acceptance of IP theft also reflects the growing antipathy towards so-called ‘elites’, which led to Brexit and the election of Donald Trump. Patent licensors, recording artists and luxury goods manufacturers are all viewed as greedy ‘haves’, who can well afford to share more than they do. Blame it on those mysterious, government-sanctioned, lawyer-configured rights.

The average person will never own a trademark, copyright or patent, and believes that benefiting from them is for the privileged. Lacking is a context for understanding how individuals and the economy benefit from the IP rights of others, along with any awareness of the impact that intellectual property has on jobs, tax revenue and foreign competition. Overlooked, too, is the power of strong IP rights to level the playing field for start-up businesses, investors and creatives.

## Ignorance, anger or greed

The effect of weak rights and rampant infringement, while dramatic in numbers, is abstract in nature. Until the impact of ignoring IP rights is more apparent and pressure is put on businesses to act in the interests of the broader community, respect for IP rights will remain elusive and performance unpredictable. Given that at least 87% of the S&P 500 comprises intangibles, mostly IP rights, both individuals and businesses need to step up.

In the Wild West, there was no law – or at least none that could be readily enforced. Today, on the innovation frontier, IP laws are similarly ignored. Non-practising entities or patent trolls – which function merely as bounty hunters – generate far more attention than they deserve, a symptom of a much more dangerous disease. The Obama presidency saw the passage of the American Invents Act and broad acceptance of anti-patent attitudes. Let us hope that President Trump, a proponent of brand licensing and content protection, will have better regard for patent ownership.

Legislating good IP behaviour has not worked. Individuals and executives need to believe that their IP actions matter and be willing to accept the same codes of conduct for IP theft that they do for real estate. Good IP behaviours are not that complex – they can be taught by example, as well as in schools, and reinforced broadly by those who care to understand their purpose. **iam**