
IPR Transatlantic Collaboration

Sneak peak – impressions on challenges for policy makers in the area of counterfeiting and piracy

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The study in brief (I)

- **Aim:** To provide a **comprehensive overview** on the issue of counterfeiting and piracy for policy makers in government and businesses
 - **Special emphasis**
 - ***Transatlantic dimension:*** Ways to improve collaboration between the EU and the US in order to combat counterfeiting/piracy
 - ***Communications policy:*** Ways to improve communications strategies directed from policy/businesses towards key target groups (general public, customers)
 - Otherwise **broad coverage** of the topic
 - *Assessment of economic damages*
 - *Discussion of dangers of counterfeited/fake goods*
 - *Analysis of distribution networks*
 - *Analysis of effectiveness of actions taken (by businesses, policy) to combat counterfeiting*
 - *Definition of recommendations with regard to businesses, public policy makers, and with respect to communications policy*
 - Funded by European Commission, Directorate General for External Relations (DG RELEX)
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The study in brief (II)

- **Methodology**
 - Literature research
 - Open expert interviews
 - 1 Workshop/Round Table with industry representatives
 - 12 detailed company case studies
- **Timeline**
 - Study still in the making
 - Finished by June 2009
- **Topics covered in conference panels reflect major themes of the study**
- **Conference to be used as additional input for the study**

Counterfeiting and piracy – definitions (I)

- **Clear definitions and terminology needed**
 - Different forms of IPR lead to different types of infringements
 - Impact on IPR strategies/policies

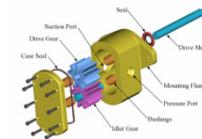
- **The four most important types of IPR**

- *Patent*

- Protects (technical) invention

- *Trademark*

- Distinctive sign to identify products of a particular organization



- *Copyright*

- applies to any expressible form of an idea or information



- *Industrial design*

- protects the visual design of objects



Counterfeiting and piracy – definitions (II)

- **Legal definitions**
 - **Counterfeiting** refers to **trademark infringements**.
 - **Piracy** refers to **copyright infringements**.
 - Violations of patents, design rights or other forms of IPR are – strictly speaking – not a form of counterfeiting/piracy, but „infringements“.
- In practice, the distinction is not that clear.
- **Wider definition for the purpose of the study**
 - **Counterfeiting:** attempts to make an object look identical or similar to the original
 - Applies to trademarks, designs
 - Appearance as main focus (not content)
 - **Piracy:** attempts to copy/integrate content as a form of non-voluntary knowledge transfer
 - Applies to patents, copyrights
 - Direct know-how/content targeted, not appearance

Economic damages – Methodological remarks

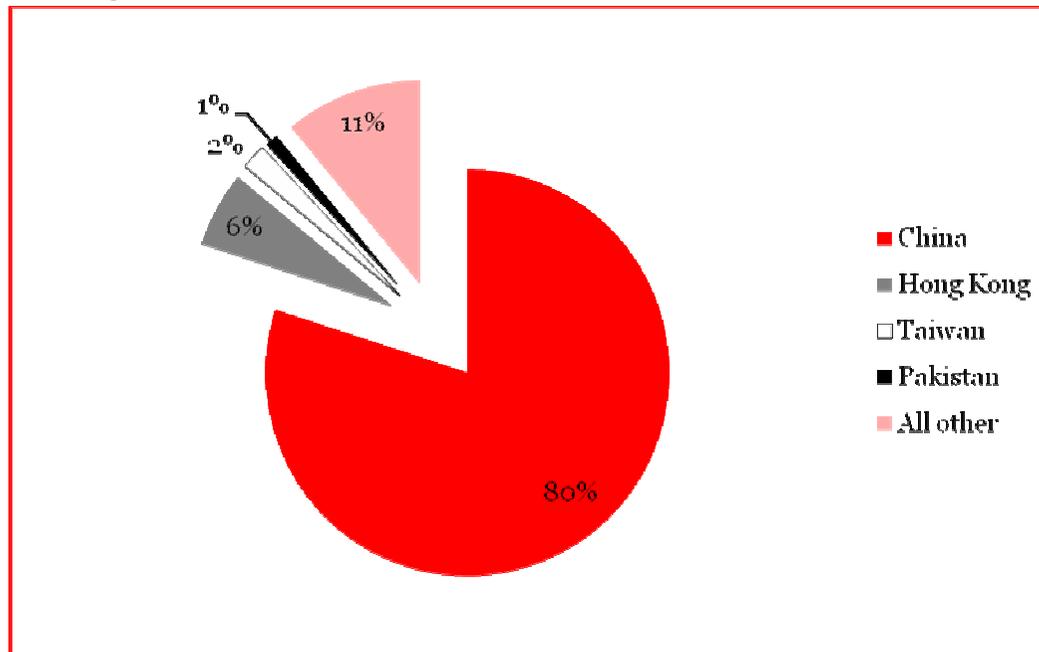
- **Possibilities to measure counterfeiting activities**
 - By **absolute number of counterfeited goods** (and inferring to the total market size)
 - By **calculating the value of counterfeited goods** (and inferring to the total market size)
 - By **estimating other variables** (such as the number of people employed in counterfeiting/piracy)
 - By **estimating complementary variables** (e.g. comparison between actually sold and needed products, for example software packages needed for hardware compared to hardware sales)
 - **Data sources:** mainly customs seizures and surveys with consumers, industry
 - **Methodological problems are manifold**
 - A lot of refinements are needed.
 - Best option at the moment: Integrated approach, combining different methods and datasources, and sector-specific
 - However, many studies **do not reveal** the methodological approach.
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Trends and figures (I)

- **General trends**
 - **Scope** of counterfeiting/piracy activities **has increased**
 - Not limited any more to luxury goods.
 - **Higher professionalism** of counterfeiters/pirating parties observable
 - More **sophisticated distribution networks** (e.g., internet)
 - Frequently links to **organized crime** (in some cases also terrorism)
- **OECD report:** internationally traded counterfeited/pirated goods may be worth \$200 bio. (2005 figures) (OECD 2007)
 - Excludes domestic figures and non-tangible goods
- **VDMA-report:** 68% of firms in German machinery industry were in 2008 victim of counterfeiting and piracy activities (2003: 50%)

Trends and figures (II)

FY 2007 Top Trading Partners for IPR Seizures

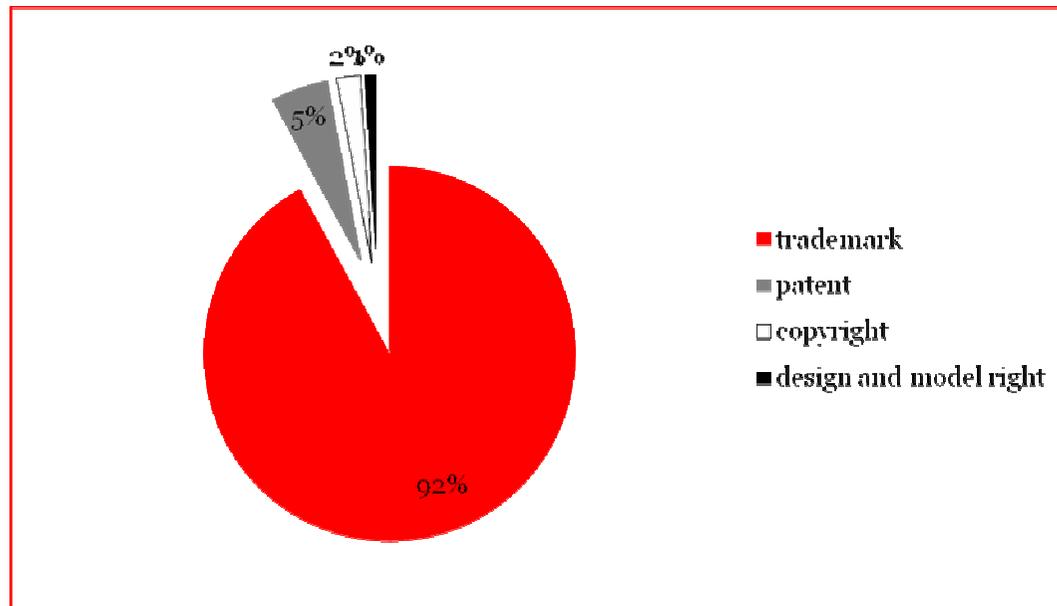


Source: U.S. Customs and Border Protection - Office of International Trade

→ However, evidence from the case studies suggests that domestic IP enforcement and/or counterfeiting/piracy activities endorsed by national competitors may be an underestimated problem (see also later)

Trends and figures (III)

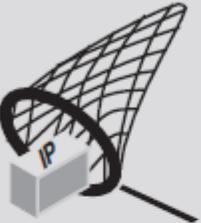
Type of IPR infringement for articles seized by EU customs, 2007



Source: European Commission (2007): Report on Community activities on counterfeit and piracy.

On public policy structures in the U.S. for tackling counterfeiting and piracy

Federal IP enforcement functions, the 5 key Agencies that execute them, and the agencies' structures

	Seizing	Investigating			Prosecuting
Function					
Agency ^a	CBP	ICE	FBI	FDA	DOJ
Structure	Office of International Trade and Office of Field Operations (325 ports of entry)	Office of Investigations (26 investigative field offices)	Cyber Crime Division (56 investigative field offices)	Office of Criminal Investigations (6 investigative field offices)	Criminal Division and U.S. Attorney's Office (94 field offices)

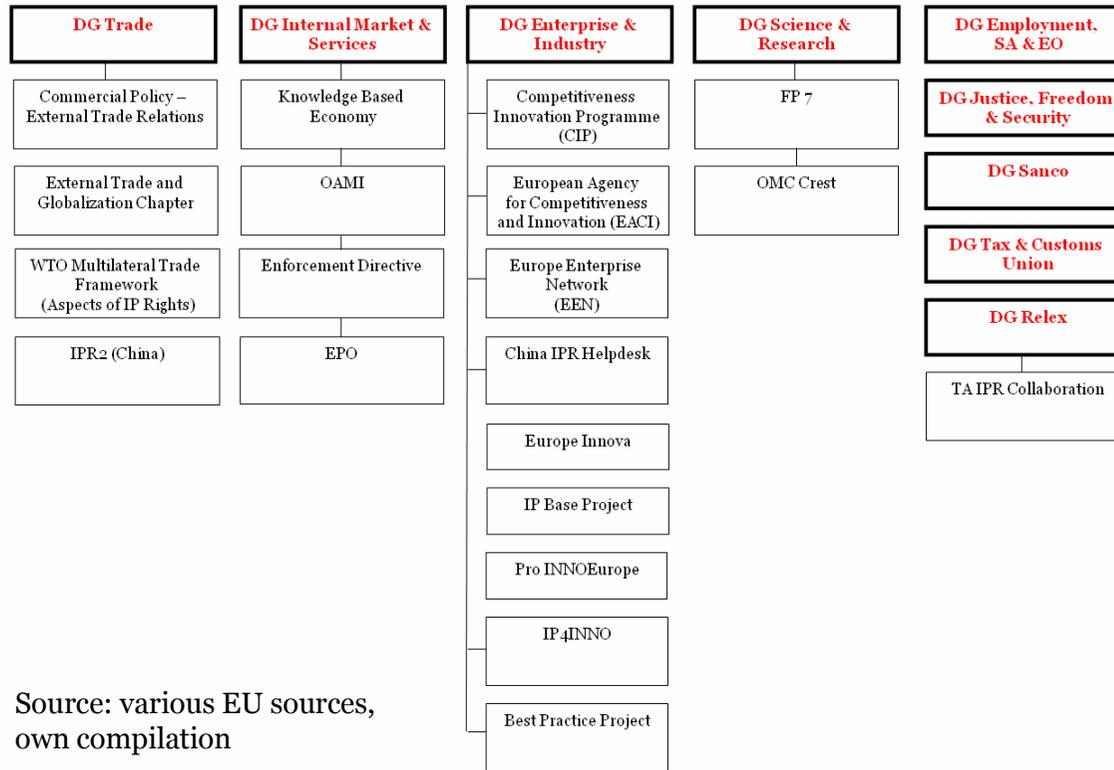
Sources: GAO analysis of agency data; Art Explosion (images).

Source: GAO-08-157

On public policy structures in the E.U. for tackling counterfeiting and piracy

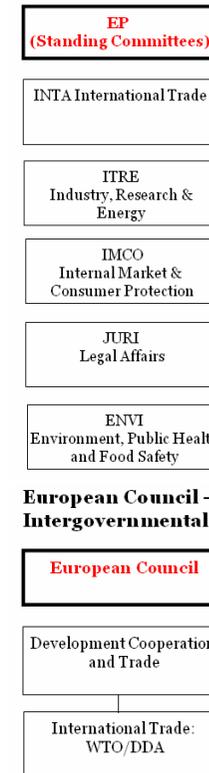
Primary EU Authorities Supporting IP Protection and Implementing Programs and Activities

European Commission – Supranational IP Policy & Implementation



Source: various EU sources, own compilation

European Parliament – Supranational/Intergovernmental IP Policy



Examples of the EU and the U.S. interfacing with each other in the field of counterfeiting/piracy/IP enforcement

- **Bilateral level**
 - **EU-U.S. Action Strategy** for the Enforcement of Intellectual Property Rights
 - Contacts of U.S. with individual EU member states
- **Pluri-lateral level**
 - Anti Counterfeiting Trade Agreement (**ACTA**)
- **Multilateral level**
 - World Trade Organization (**WTO**)
 - Agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**)
 - World Intellectual Property Office (**WIPO**) committee on enforcement

Impressions gathered on some key challenges in fighting counterfeiting and piracy (I)

- **Transatlantic Collaboration in public policy:** Although it seems that the EU and the US are on the same side, is **EU-US collaboration** in the field of counterfeiting and piracy **really that effective?**
- **Issues to be discussed**
 - **Time** to get things moving
 - **Divided responsibilities** among agencies in the US AND in the EU (in the EU furthermore to be considered: split responsibilities between member states and EU bodies)
 - **Standard operating procedures** for (collaborative) work in the field and for information feedback to Brussels and D.C.
 - Question of whether (and under what circumstances) joint, complementary and EU or US-individual activities are most effective
 - Needs for **joint training and exchange** in order to foster mutual understanding and finding common denominators
 - Collaboration intensity for **different types of IP infringements** (patents vs. trademarks)

Impressions gathered on some key challenges in fighting counterfeiting and piracy (II)

- **Communications policy and industry involvement:** Are the public relations activities (**campaigns**) pursued by business and industry associations to inform the general public on counterfeiting and piracy to a greater extent **seriously flawed**?
- **Issues to be discussed**
 - **Lack of cooperation** between different firms, business associations and industries
 - Re-invention of the wheel through too many different PR campaigns
 - Attitude of „as long as it does not concern me, I do not care“
 - Attitude of „as long as it hits my competitor, it´s a cool thing“
 - **Lack of long-term view and approaches**
 - Measurability of effectiveness of campaign as key point
 - **Is pro-actively approaching public service** providers through individual firms improvable?

Impressions gathered on some key challenges in fighting counterfeiting and piracy (III)

- **Transparency:** Does the fight against counterfeiting and piracy suffer from a lack of transparency regarding the ways IP policies are developed and pursued (which would lead to skepticism and lack of understanding on the side of the general public)?
- **Issues to be discussed**
 - Role of **trust** and **image** in the general public
 - Public **discussion on ACTA** negotiations as a current example
 - Sufficiency of **publicly available information**
 - In **pursuing PR activities** and campaigns
 - **Correctness** of stated facts
 - **Discrepancies** between stated possible consequences when pursuing counterfeiting/piracy activities and real consequences (blends also into discussion on degree of criminal sanctions)
 - Possibilities to **involve parties** with **conflicting views** in the formulation of IP enforcement policies and actions (including also caveats)

Impressions gathered on some key challenges in fighting counterfeiting and piracy (IV)

- ***The homework question:*** Is the fight against counterfeiting and piracy really one that has to be fought abroad alone, or are there considerable issues to be solved within the EU and the U.S. (respectively)?
- **Issues to be discussed**
 - Role of third countries in producing counterfeited goods
 - To be contrasted against case study findings that counterfeiting activities often seem to stem from (or are supported by) domestic firms in the U.S. and the E.U. (who may have their products produced in China and import them)
 - Attitude of firms “*we can get away with this*”
 - Consumer behavior
 - More effective enforcement in court (length of procedures, costs)
 - Challenges for creating laws (especially in the digital economy)
 - Role of internet service providers and internet distribution networks (used /mis-used for reaching customers)

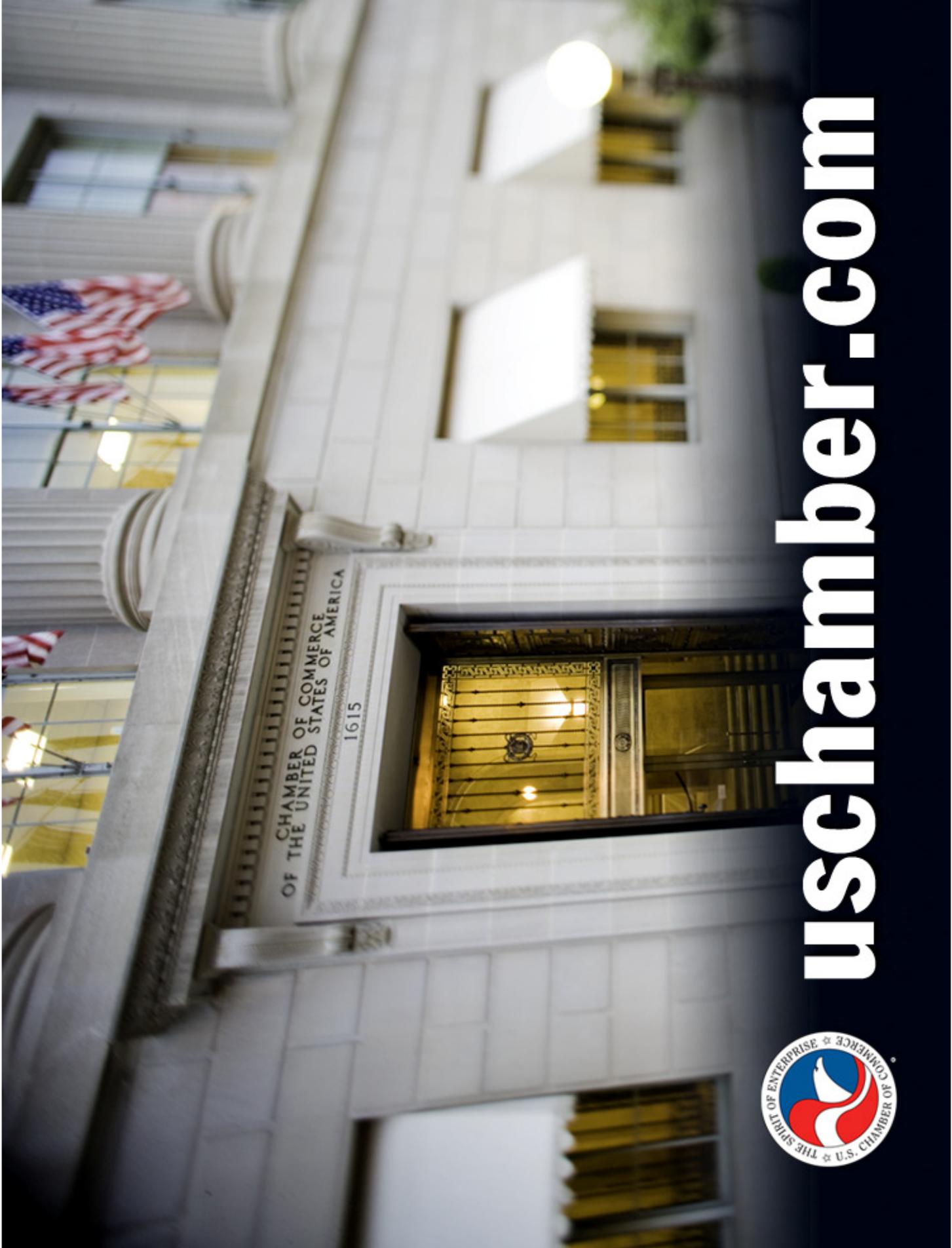
The problem is big and it is here to stay for quite some time...

- **Intangible assets** have become one of the **main drivers of company value**, and **IPR plays an integral role** in this (and the definition of new business models)
 - **Expenditures on IPR in Germany** amount to € 154 bio. (around US\$ 119 bio.) or 7% of GDP (2004 value) (Source: Blind, Cuntz, Köhler & Radauer (2008))
 - For 60% of questioned companies, **intangible assets are of more value than tangible assets.** (Source: Cap Gemini (2005))
 - 85% of questioned firms state that intangibles are present in their company in the form of trade marks (ranking trade marks 1st within the various forms of intellectual assets) (Source: KPMG (2008))
 - Intangible assets accounted in 2006 for 80% of **market capitalization** for the companies of the S&P500 (17% in 1975)) (Source: Cradoza et al. (2008))
 - ...so being able to **effectively enforce such IPR rights is vital for the functioning of the economy!**
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Thank you

For further information on the presentation, please refer to
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