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**A Perspective on the Effect and
Impact of the Phenomenon of
Counterfeiting on the South
African Economy**

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Introduction

- The South African Constitution provides that every citizen has the right to choose his trade, occupation or profession freely
- The practice of such trade, occupation or profession may be regulated by law

[Section 22 of Act 108 of 1996]

The threat posed by counterfeit products to the business world caused the South African government to promulgate a number of statutes to protect legitimate business and the intellectual property rights of owners of trademarks, copyrights and patents.

Examples are:

The Copyright Act

The Counterfeit Goods Act

The Customs Act

The Films and Publications Act

(Introduction Continued)

The existence of laws is not enough.

Commitment and capacity to enforce them are required.

The harsh reality is that organised crime syndicates and unscrupulous businessmen involved in counterfeiting trade as aggressively, if not more so, than before.

(Introduction Continued)

The extent of the problem

This is a cancer that has spread over the business world in general but which is particularly vicious in the following industries:

- Clothing
- Shoes
- Sunglasses
- High tech products (television sets, DVD players, high fidelity systems)
- Food
- Automotive spare parts
- Computer software
- DVD discs and films
- Books
- Music

For the purposes of this presentation the focus will be on the size of the criminal economy of counterfeiting specifically and the measurement thereof in relation to:

- Computer software
- Films and DVDs
- Publications

(The extent of the problem Continued)

Computer Software

Software piracy in South Africa currently regarded by BSA as standing at 37%.

This figure was arrived at as a result of the research BSA mandated the IDC to do. More information can be obtained from the BSA website at www.bsa.org.

This translates into loss of US\$ 196million for 2004 in respect of South Africa.

It has been estimated that a 10% reduction in software piracy would add R12.8 million to the economy, enable the creation of 3200 high wage jobs and would add R748m in tax revenue.

Films & DVDs

The South African Federation Against Copyright Theft (SAFACT) estimates that the film industry alone loses ± R400m per year as a result of counterfeiting. The problem is on the increase.

- In the first 5 months of 2005, SAFACT was involved in the seizure of 186 418 pirated DVDs
- During April, May and June alone Customs seized 687 912 DVDs

Seizures took place at:

- Businesses
- Fleamarket stalls
- Roadside vendors
- Private residences
- Warehouses
- Airports
- Harbours

(Films & DVDs Continued)

Joint operations between the various role players such as.....

- The Department of Trade and Industry
- South African Police Services
- South African Revenue Services
- SAFACT

...proved to be very effective. A large number of cases were disposed of in the criminal courts with offenders receiving monetary fines and/or suspended prison sentences.

Measurement of the Prejudice

No scientific method of quantification.

Currently two types of calculation.

1. Comparing the legitimate sales of DVDs and films in South Africa to the sale of these items in similar countries. The difference is attributed to counterfeiting.

In order to identify similar countries regard is had to the size of the market, the demand and buying power of the communities.

Australia and the United Kingdom have been benchmarked against South Africa for these purposes.

2. Multiplying the number of the confiscated DVDs and films with the market price of the items.

Not accurate, market research is thus currently being done with a view to developing a proper measurement procedure.

Obvious flaw - it does not cater for items which are never seized but which do find their way into the country and the market.

(Measurement of the Prejudice Continued)

Book Publishing Industry

Educational Books

Typical emerging economy experiences 80% of counterfeiting in respect of Educational books.

Department of Education does not have sufficient funds to provide books to all pupils - leads to photocopies being made.

Measurement of the extent of the problem:

1. The amount a well funded and equipped school with x-number of pupils spends on books is compared to that which a less well equipped school with the same number of pupils spends.

Difference is attributed to piracy.

Not the only reasonable inference.

Could also be that the school purchases less books and that books are shared or that some just do not have access thereto.

2. The quantity of photocopying paper schools purchase or request parents to buy is determined.

A certain percentage of photocopies is regarded as reasonable.

The rest is regarded as copyright infringement.

It is clearly a pure guesstimate

Question was raised "How else can it be determined?"

Consumer Market for Books

- Counterfeiting here takes place by the importation of books from Malaysia, India and Pakistan e.g.

Harry Potter
Da Vinci Code

- Once again currently not possible to calculate the total loss of revenue
- Not known how many books imported and actually sold

Academic Books Market

So-called copy shops are established close to universities.

A list of prescribed books are obtained from universities.

Good market as these books are very expensive.

Hundreds of copies are made and sold to students.

Market for these books thus undermined by professional pirates.

Already numerous raids on such shops in virtually all the university centres.

Measurement

Obtain numbers of students following specific course for which certain books prescribed and compare to number actually sold.

Difference attributed to piracy

Once again not only reasonable inference

Students can use libraries, other articles, internet etc.

The role of Government

The Department of Trade and Industry administers the legislation dealing with counterfeiting.

Government must:

Amend same expeditiously to close identified loopholes.

Foster close working relationship with the various industries (e.g. SAFACT).

Over and above legislation government has also created specialist bodies to combat piracy/counterfeiting

- Directorate of Special Operations (which focuses on organised crime syndicates)
- The Specialised Commercial Crimes Court (which has identified this crime as a strategic focus area)

Government must also:

- Commit resources
- Co-operate internationally
- Conduct awareness building programmes

(The role of Government Continued)

The role of Business

The Business Community must:

- Lobby government to ratify/adopt treaties.
- Ensure ongoing development of Anti-Intellectual Property Theft systems.
- Ensure that illegal internet sites are identified and dealt with.

Business is already showing substantial commitment to the fight against commercial crime by way of providing:

- Funding
- Equipment
- Training

Challenges

Need for all role players to provide training to:

- Police
- Prosecutors
- Neighbouring law enforcement authorities

Awareness Building Programmes:

- Create awareness regarding economic and social harm amongst public to deter would be sellers and buyers

Developing an accurate and realistic measurement tool for determining the true extent of the problem

Contact detail



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