

This issue of BrandSecure News provides a commentary on the recently introduced rogue sites bill to combat online piracy and counterfeiting. We also summarize OpSec's market study on smartphone product launches. Plus we include an interview with Microsoft Germany, and the launch of OpSec's Get Real! consumer education Facebook page.

## Finding Common Ground for the Rogue Sites Bill

On September 20th, [Senator Patrick Leahy](#) and a group of bipartisan Senators introduced the Combating Online Infringement and Counterfeits Act (COICA). Senate bill [S. 3804](#) is legislation proposed to address the growing problem of online piracy and counterfeiting. The bill combats intellectual property infringements of copyrighted goods, such as pirated movies and music, and trademarked products, such as counterfeit pharmaceuticals and consumer electronics.

The reaction to the legislation has been divided into [two main camps](#). [Proponents of the bill](#) include supporters of intellectual property rights, including the Motion Picture Association of America, U.S. Chamber of Commerce, the International AntiCounterfeiting Coalition, and the International Trademark Association. [Opponents of the bill](#) include fair use and privacy groups, such as the Electronic Frontier Foundation, Demand Progress, Center for Democracy & Technology, and Distributed Computing Industry Association.

While there are honest differences, three building blocks provide common ground for productive dialogue.

### Protection of Consumer Safety

The Internet is exploited by illegitimate entities looking to sell counterfeit and pirated goods. Rogue websites are setup to peddle illegal, substandard, and unau-

thorized products, and entice consumers with low prices, easy access, and a show of legitimacy. We have heard enough horror stories of tainted toothpaste, exploding batteries, lethal drugs, etc. to understand the risks to public health and safety. S. 3804 is a call to protect consumer safety, and it behooves us to support its passage.



### Safeguarding Innovation

The protection of intellectual property is necessary for safeguarding innovation and creativity. We all benefit and derive pleasure from new medicines, latest gadgets, trendy fashions, and hottest music. Counterfeiting and piracy represent the theft of someone else's innovation and creativity, and costs the U.S. economy over [\\$100 billion](#) annually. The COICA bill protects all forms of copyright and trademark intellectual property.

## In This Issue

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### Constructing a Clear Legal Remedy

For all who support the protection of intellectual property rights, we also need to support a framework for legal action against counterfeiters and pirates. The growth of the Internet has outpaced the jurisprudence of Internet law. The rogue sites bill is proposed in recognition of the need to fill in the gaps for policing counterfeit and pirate activity on the Internet. The legislation gives the Department of Justice an important tool to take action on infringing sites.

The introduction of S. 3804 is a strong signal of the importance of protecting intellectual property rights. The devil is in the details, and we need open discussion to work out specific concerns raised from different perspectives. However, if we agree on the underlying motivation for the legislation – to protect consumer safety, to safeguard innovation, to construct a clear legal remedy – we can stand on common ground. The threat of counterfeiting and piracy is too great to be sidetracked by partisan interests.

## OpSec Study Exposes Counterfeiting and Grey Market Diversion in Recent Smartphone Product Launches

OpSec conducted a market study to identify occurrences of counterfeiting and grey market diversion in the online marketplace for recent highly-anticipated smartphone product launches. By monitoring auction sites, trade boards, blogs, and web forums immediately before and after the launches, significant intelligence was garnered on when counterfeit postings appear, where product diversion occurs, and how social media is used to buy, sell, and circumvent manufacturer restrictions.



### Findings on Counterfeiting, Grey Market Diversion & Social Media Interaction

The study focused on the market launch of four smartphones introduced this summer between June 24th to August 24th, and distributed in the U.S. and other regions around the world on a planned release schedule.

The new smartphones were amongst the popular models launched by the big six manufacturers, namely Nokia, RIM, Apple, HTC, Samsung, and Motorola. The study revealed salient examples of product counterfeiting, grey market operations, and use of social media to drive market interaction.

### Top 10 Key Findings:

- 1) Weeks and days before official launch dates, suspicious listings of each of the four new smartphones were available for purchase on B2B trade boards.
- 2) For one smartphone, 10 days prior to launch, a sampling of 33 trade board listings were found from sellers located almost all from China.
- 3) Suspect offers of new smartphone models were listed on trade boards at deeply discounted prices and large quantities, including one seller offering 1,000 units per week at 65% below list price.
- 4) Dubious new smartphones were found for sale on trade boards and auctions with features announced, but not yet released by the manufacturer, such as new colors and unlocked features.
- 5) For a new smartphone which was initially released only in 5 countries, and was soon stocked-out by the manufacturer, over 5,000 eBay listings were posted in the first 2 weeks at markups ranging from 30-100% above list price.
- 6) One eBay seller of a stocked-out smartphone listed 90 available units, had sold 47, and offered to ship worldwide to circumvent manufacturer restrictions.
- 7) New smartphones, available from eBay sellers located in 24 countries where the model had not yet been introduced, raised questions about product diversion.
- 8) New smartphones were listed for sale by users on social media platforms, including Craigslist, Facebook, and Twitter, as alternative distribution channels.
- 9) Consumers generated online discussions on ways to obtain a new smartphone in regions where they were not yet released by the manufacturer.
- 10) Consumers used social media sites to follow and anxiously await the release of jailbreaking software to unlock a new smartphone model.

### Recommendation to Monitor Online Market Dynamics in Product Launches

The launch of highly-anticipated products is significantly impacted by the marketplace dynamics of e-commerce platforms and social media sites. Fueled by widely available mechanisms to buy and sell products, and networks for users to share consumer insights, product launches are found to be accompanied by the rapid emergence of counterfeiting and product diversion.

Suggested strategies to respond to emerging threats of counterfeit and grey market goods in the global supply chain include:

- Monitor trade boards and auctions to analyze the availability and sources of counterfeit and grey market products
- Investigate online mechanisms deployed to exploit consumer demand for new products via unauthorized distribution of grey market and counterfeit goods
- Survey social media to identify online consumer buzz and address issues concerning product availability, new features, release schedules, etc.

Source: OpSec Security



# Microsoft Fights Piracy with a Three-Prong Strategy

**Explain the impact of piracy on Microsoft. How much damage does it cause?**

**J. Rosenögger:** As most software producers, Microsoft has to combat software piracy. The damage to Microsoft Germany from illegal piracy amounts to a seven figure sum. To give you an idea of the size of the problem globally, if one could reduce the level of worldwide software piracy, which is currently at 28 percent in Germany, by ten percent, around 500,000 new jobs could be created in the IT sector. In addition, the countries affected would earn an extra \$32 billion in taxes per year.

**What measures have you taken to prevent piracy both on and offline?**

**J. Rosenögger:** In order to effectively combat piracy, we have developed a three-prong approach. This strategy includes education, engineering, and enforcement. All three areas of activity are interconnected and contribute to reducing piracy.

In the area of education, our goal is to inform consumers. For instance, on our website, we make consumers aware of the characteristics to identify genuine Microsoft products. In addition, people can report cases of piracy directly on our website.

The area of engineering covers technical protection measures we employ to make illegal copying more difficult.

The third prong, enforcement, includes legal measures we employ to pursue both producers of fake software as well as dealers of pirated copies.

**There are currently several members of a piracy ring on trial at the Regional Court of Görlitz. What are they accused of and how were they discovered?**

**J. Rosenögger:** The defendants of this case are primarily accused of copyright piracy. There are other criminal charges involved including fraud and document forgery.

The impetus for the investigation into this ring, an investigation which began over eighteen months ago, was a suspiciously high number of fake copies of Windows XP recovery discs which customers sent to our product identification service. As a result, OpSec undertook numerous test purchases on our behalf. This enabled the trademark protection experts to gather valuable background information on a number of sellers from all over Germany. Using the information and evidence obtained, we decided to bring charges.

In a large-scale search of fourteen properties in Germany and abroad, police



Counterfeit software  
**Source: Microsoft**

## Biography

Joachim Rosenögger has been a member of the Microsoft Deutschland GmbH legal department since January 2007. In this position, he has led the investigative activities in Germany into product piracy and Internet crime. He is also a member of the ACFE and Transparency International.

officers from the Görlitz criminal investigation department (CID), as well as the Berlin, Saxony and Brandenburg State Offices of Criminal Investigation, were able to secure several thousand pirated copies as further evidence of wrongdoing. Several people were then taken into custody and now have to face justice. According to investigations by the Görlitz CID, the perpetrators had been using fronts, forged passports, and fake addresses for years, to repeatedly offer counterfeit copies of Microsoft's Windows XP operating system for sale on Internet platforms.

**What successes have you achieved through your work with OpSec?**

**J. Rosenögger:** OpSec has been supporting our work for a long time now – not only in uncovering whole networks of pirates, like in the case above, but also in the detection of numerous individual criminals who create and distribute counterfeit Microsoft products.

**Interview with Joachim Rosenögger, Anti-Piracy Investigator, Microsoft Deutschland GmbH.**

# OpSec Launches the Get Real! Consumer Education Facebook Page



OpSec has launched *Get Real!*, a Facebook page dedicated to educating the public on the issues and impact of counterfeiting and piracy. The *Get Real!* page serves as an online forum for consumers to garner informative facts and figures on the impact of counterfeiting, contribute personal experiences and opinions, gain insights and perspectives from industry leaders, and learn helpful tips on how to spot fakes.

It also provides the latest news in the industry, updates on anti-counterfeiting and intellectual property legislation, and resources to government initiatives and industry organizations focusing on the global issue.

The goal of the *Get Real!* page is to increase public awareness on the impact and dangers of counterfeiting. As consumers learn that counterfeits may be found in many of the products that they buy and use every day, from luxury and apparel goods to consumer electronics to drugs and personal care items, they can make an informed choice in their purchasing decisions. They can also discover how illegal fakes and substandard knock-offs pose public health and safety risks, impact our economy, and fund organized crime.

*Get Real!* engages consumers to participate in the discussion, and join with government, organizations, and brands to make progress on anti-counterfeiting measures.

To join the conversation, visit the [Get Real!](#) Facebook fan page.

### Find OpSec on these other social media platforms:

**BrandSecure® Forum** – OpSec’s blog on topics related to anti-counterfeiting and brand protection. The forum provides the latest news and commentary within the community of professionals who are working to safeguard product integrity, secure the supply chain, and protect brand image.

**@BrandSecure** – OpSec’s Twitter account with the latest tweets of timely information on what is happening in anti-counterfeiting and brand protection.

**BrandSecure® Network** – OpSec’s LinkedIn group for intellectual property and brand protection professionals to connect, network, and share insights on the latest news in anti-counterfeiting, grey market diversion, brand security, and piracy.

## Events

### Frankfurt Book Fair

*October 6-10, 2010 Frankfurt, Germany*  
[www.buchmesse.de](http://www.buchmesse.de)

### Expopharm

*October 7-10, 2010 Munich, Germany*  
[www.expopharm.de](http://www.expopharm.de)

### Partnership for Safe Medicines Interchange 2010

*October 8, 2010 Washington D.C.*  
<http://interchange.safemedicines.org>

### ACG Autumn 2010 Conference

*October 13-14, 2010 London, UK*  
[www.a-cg.org](http://www.a-cg.org)

### XXIVth International Security Printers’ Conference and Exhibition

*October 13-15, 2010 Barcelona, Spain*  
[www.intergraf.eu](http://www.intergraf.eu)

### IACC Annual Fall Conference

*October 13-15, 2010 Scottsdale, AR*  
[www.iacc.org](http://www.iacc.org)

### Brand Protection and Anti-Counterfeiting Conference

*November 17-19, 2010 Amsterdam, The Netherlands*  
[www.brandprotectionevent.com](http://www.brandprotectionevent.com)

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