



The Future of Intellectual Property Rights: Copyrights, Patents, and Trademarks

A Briefing and Panel Discussion

February 26, 2015

Speaker Biographies

Opinion Pieces and Articles by Citizens Against Government Waste

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in the federal government.

CAGW was founded in 1984 by J. Peter Grace and nationally-syndicated columnist Jack Anderson to build public support for implementation of the Grace Commission recommendations and other waste-cutting proposals. Since its inception, CAGW has been at the forefront of the fight for efficiency, economy, and accountability in government.

CAGW has more than one million members and supporters nationwide. Since 1986, CAGW and its members have helped save taxpayers more than \$1.4 trillion. CAGW publishes special reports, its official newspaper *Government WasteWatch*, and the monthly newsletter *WasteWatcher* to scrutinize government waste and educate citizens on what they can do to stop it. CAGW's publications and experts are featured regularly in television, radio, print, and Internet media.

CAGW is classified as a Section 501(c)(3) organization under the Internal Revenue Code of 1954 and is recognized as a publicly-supported organization as described in Sections 509(a)(1) and 170(b)(A)(vi) of the code. Individuals, corporations, associations, and foundations are eligible to support the work of CAGW through tax-deductible gifts.

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The Honorable Bob Goodlatte (R-Va.) Chairman, House Judiciary Committee

Bob Goodlatte represents the Sixth Congressional District of Virginia in the United States House of Representatives.

Bob's service to the people of the Sixth District began in 1977 when he became District Director for former Congressman Caldwell Butler. He served in this position for two years until 1979, and was responsible for helping folks across the District seeking assistance with or encountering problems from various federal agencies. In 1979, he founded his own private law practice in Roanoke. He was a partner in the law firm of Bird, Kinder and Huffman, working there from 1981 until taking office.



In the 114th Congress, Bob was elected to serve his second term as Chairman of the House Judiciary Committee. He has been an active Member of this Committee since arriving in Congress, serving in a variety of leadership positions including Chairman of the Subcommittee on Intellectual Property, Competition, and the Internet in the 112th Congress, Vice Ranking Member of the Judiciary Committee and Ranking Member of the Task Force on Judicial Impeachment in the 111th Congress, Ranking Member of the Antitrust Task Force in the 110th Congress, and Vice Chairman of the Subcommittee on the Courts, the Internet, and Intellectual Property in the 109th Congress. Additionally, Bob has served on the Subcommittee on Crime, Terrorism and Homeland Security.

The House Judiciary Committee is at the forefront of some of the most significant issues facing our country, including protecting Constitutional freedoms and civil liberties, oversight of the U.S. Departments of Justice and Homeland Security, legal and regulatory reform, innovation, competition and anti-trust laws, terrorism and crime, and immigration reform. It is likely that many of these issues will be the deciding factors in determining the future direction of our nation.

The jurisdiction of the Judiciary Committee is well-suited to many of Bob's legislative priorities such as protecting Constitutional rights, including private property and Second Amendment rights, securing our borders through immigration reform, strengthening our criminal laws, decreasing health care costs through medical malpractice reform, and oversight of the Judicial branch and Administration. One of Bob's top legislative initiatives is his Constitutional amendment to require a balanced federal budget so that Congress will be forced to control spending. The Judiciary Committee has jurisdiction over all proposed amendments to the Constitution.

In addition to serving on the House Judiciary Committee, Bob serves on the House Agriculture Committee. Bob has served the Agriculture Committee in a variety of leadership roles including Chairman of the Agriculture Committee (2003-2007) and Ranking Member of the Agriculture Committee (2007-2008).

During his time in Congress, Bob has made a name for himself as a leader on Internet and high-tech issues. He is Co-Chair of the Congressional Internet Caucus and Chairman of the House Republican High Technology Working Group. Bob's work to foster innovation in the technology sector will lead to job creation and contribute to our nation's economic recovery.

Kasie Gorosh
Director of U.S. Intellectual Property Policy
U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC)



Kasie Gorosh is the Director of U.S. Intellectual Property Policy at the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC). As Director of U.S. IP Policy, Kasie advocates for the protection of IP rights both online and in physical markets with a special focus on designing public policy solutions to combat counterfeit goods.

Prior to joining the Global Intellectual Property Center, Kasie served as an advisor to private sector clients fighting illegal online pharmacies. She also served as law clerk to The Honorable C. Ray Mullins, Chief Judge for the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division.

Kasie is a graduate of both Michigan State University and the Indiana University Maurer School of Law. During law school, Kasie served as President of the Student Bar Association, on the Executive Board of the Sherman Minton Moot Court, Law Alumni Board, Admissions Committee, and 2012 Class Campaign for Excellence. Involved in various student and volunteer organizations, upon graduation, Kasie received the honor of Outstanding Contribution to Student Life. She also worked as a research assistant on issues of globalization with a specialization on the global impact of counterfeit luxury goods.

Kasie has a wide-range of expertise in multiple disciplines. She worked for a national advertising agency, and in a variety of federal government positions including work on Capitol Hill, at the United States Supreme Court, and at the Federal Judicial Center.

Kasie received her B.A. in Communication and Business *magna cum laude* from Michigan State University in 2008. While an undergraduate, Kasie was selected as Most Outstanding Senior by MSU faculty.

Kasie is a young leader on the Indiana University Maurer School of Law's Washington D.C. Alumni Chapter and participates as a member of the Junior League of Washington.

Liz Khodak
Founder, Liz Fields LLC

At 31 years old, Liz Khodak has spent most of her life around the New York Garment Center and its special occasion manufacturers. Liz attended The George Washington University before working as an Asst. Costume Designer alongside award-winner costume designer Marit Allen and Michael O'Conner. She then traveled the world before moving to Los Angeles and pursuing a degree in Fashion Design at FIDM. Liz wanted to create her own line of wedding dresses and bridesmaid dresses that are elegant, luxurious and affordable. Watching the industry change over the last 25 years and then owning her own small business has definitely opened her eyes to the problems manufacturers and mom-and-pop shops face every day. Recently her fight to keep her business alive ended with a licensing deal to a much larger company.



Stephen Ezell
Director, Global Innovation Economy
The Information Technology & Innovation Foundation



Stephen Ezell is Director, Global Innovation Economy with the Information Technology and Innovation Foundation (ITIF), a Washington-DC based technology and economic policy think tank, where he focuses on science, technology, and innovation policy as well as international competitiveness, trade, and manufacturing policy issues. He is the co-author with Dr. Robert Atkinson of *Innovation Economics: The Race for Global Advantage* (Yale, September 2012). Mr. Ezell came to ITIF from Peer Insight, an innovation research and consulting firm he co-founded in 2003. He previously worked in the new product development group at NASDAQ. Mr. Ezell holds a B.S. from the School of Foreign Service at Georgetown University, with an Honors Certificate from Georgetown's Landegger International Business Diplomacy program.

Joanna McIntosh
Executive Vice President of Global Policy and External Affairs
Motion Picture Association of America, Inc.



July 21, 2014 WASHINGTON – Senator Chris Dodd, Chairman and CEO of the Motion Picture Association of America, Inc. (MPAA) announced today that Joanna McIntosh has joined the association as Executive Vice President for Global Policy and External Affairs.

“Joanna’s invaluable leadership talent and government relations expertise will be a major asset for the MPAA and the studios we represent,” Dodd said. “With her extensive experience in working with the private sector and government agencies and strong legal background, she has demonstrated the kinds of skills that we believe are needed to help guide the MPAA both here in the United States and around the world. As movie and television content is increasingly enjoyed over the Internet through an exponentially broadening range of services, her experience with supporting communications technologies and platforms will complement the deep pool of talent at the MPAA.”

“I look forward to working with so many talented colleagues at the MPAA and the motion picture studios that the association represents,” McIntosh said. “It is a tremendous opportunity to be part of an organization that is at the cutting edge of so many important developments involving the growth of creative content and technological innovation.”

McIntosh previously served as Vice President of Federal Government Relations at Verizon in the Washington, DC office. She joined Verizon in 2005 after serving as the General Counsel for the 2004 G8 Summit that President Bush hosted in Sea Island, Georgia.

Prior to her work with Verizon, McIntosh was a Director at the Markle Foundation, where she was responsible for developing and implementing the Foundation’s program on information technology law and policy. Previously, McIntosh was Vice President of International Relations for AT&T, where she worked with the executive branch, foreign governments and multilateral organizations to promote U.S. investment abroad and reduce foreign regulatory burdens on U.S. companies overseas.

Earlier in her career, McIntosh served as Associate General Counsel at the Office of the U.S. Trade Representative and as Chairman of the USTR’s Section 301 Committee. She began her career as an international trade attorney at the law firm of Collier, Shannon and Scott, which is today Kelley, Drye, Collier, Shannon. McIntosh earned her J.D. degree from George Washington University and a B.A. from Rhodes College.

Thomas A. Schatz

President, Citizens Against Government Waste

Thomas A. Schatz is a nationally-recognized spokesperson on government waste and has been interviewed on every major television news program, hundreds of radio talk shows, local news broadcasts, and digital media outlets. Mr. Schatz frequently testifies before committees of the U.S. Senate and House of Representatives, as well as before state and local legislative and regulatory bodies.

During his 29 years with CAGW, Mr. Schatz has helped make CAGW a “leading government watchdog on fiscally conservative issues, like taxes and earmarks,” according to *National Journal*. CAGW was cited by *The Hill* for its leading role in successfully pushing for the congressional earmark moratorium, which was identified as one of the “top 10 lobbying victories in 2010.” *The Hill* named Mr. Schatz as a “top lobbyist” for five consecutive years, from 2010-2014.

His previous books include “End the Income Tax,” co-authored with Jack Anderson in 1997; and “Telecom Unplugged: Ushering in a New Digital Era,” co-authored with Deborah Collier in 2014. In November 2014, CAGW released a second book he co-authored with Ms. Collier entitled “Intellectual Property: Making It Personal.”

Prior to joining CAGW in 1986, Mr. Schatz spent six years as legislative director for Congressman Hamilton Fish, Jr. and two years practicing law and lobbying.

Mr. Schatz holds a law degree from George Washington University and graduated With Honors from the State University of New York at Binghamton with a bachelor's degree in political science. He is married to Leslee Behar and has two daughters, Samantha and Alexandra.





A License to Steal

By Thomas Schatz and Deborah Collier
February 5, 2015

Life sometimes imitates fiction. James Bond had a “license to kill.” There are some individuals and nations that believe they have a “license to steal” intellectual property (IP), which can kill innovation.

While patent litigation reform and the June 19 Supreme Court decision regarding business methods and abstract ideas have dominated IP news in 2014, the most serious challenges to patents lie overseas. Several countries, particularly China, have been departing from international IP norms by undermining patents to the extent that they are essentially taking them from their owners in order to pursue domestic economic goals. Therefore, strong protection of patents both in the U.S. and globally is now more critical than ever. And in order to clearly convey this message, legislators must not move any bills during the 114th Congress that would undermine the nation’s robust patent system.

One of the reasons for the aggressive attacks on U.S. patents is that these countries know that IP is essential to economic success. According to the Global Intellectual Property Center, in 2012 IP was responsible for more than 55 million jobs in the U.S. A report released by Economists Incorporated on November 12, 2014 found that patents and other intellectual property constitute approximately 55 percent of U.S. GDP, and intangible assets including corporate IP and brand recognition account for 80 percent of the value of U.S. public companies. The report also cited innovative methods of patent licensing that could add up to \$200 billion in new growth to the U.S. economy, since 95 percent of patents currently do not generate any licensing revenue.

On November 17, 2014, Citizens Against Government Waste released *Intellectual Property: Making it Personal*, which includes several examples of how IP theft adversely impacts innovators. Beyond the individual stories, the book also highlights how China is using its six year-old anti-monopoly law to curtail IP rights and promote industrial policy, which adversely impacts entire companies, not just individual innovators.

In particular, CAGW’s book noted two Federal Trade Commission (FTC) decisions cited by Commissioner Maureen Ohlhausen, who expressed her concern that they could convey to other nations that the U.S. does not highly value IP rights. The commissioner has heard Chinese officials citing the two FTC cases as settled U.S. law and, therefore, supportive of their nation’s restrictive policies. In fact, the cases are exceptions to U.S. IP rights protection.

FTC Commissioner Joshua Wright expressed similar concerns about the FTC as well as the Department of Justice (DOJ) in his remarks to the New York City Bar Association on March 11, 2014. He said that antitrust laws could be used to limit IP rights in developing antitrust systems, particularly China. In its September 2014 report on the implementation of China’s anti-monopoly law (AML), the U.S. Chamber of Commerce reiterated that the AML is being used to both support China’s industrial policy and systematically restrict IP rights.

Commissioner Wright also stated that the FTC and DOJ must enforce antitrust laws equally for both IP and real property. Otherwise, special rules for IP would degrade the value of such property rights and create an ad hoc approach to enforcement that would make it more difficult to protect IP rights both in the U.S and around the world.

George Mason University School of Law Professor Richard Epstein, in his December 1 preview of his policy brief on China's AML, also noted that the FTC and DOJ actions encourage the Chinese to discriminate against foreign patents and allow them to be incorporated into state-run operations. He warned that these treacherous practices could be adopted by other countries.

The federal government generally does a good job promoting and protecting IP rights both in the U.S and around the world. The FTC and DOJ should therefore stop working at cross purposes with these objectives. Any deviation from such policies is an invitation to other countries to degrade and purloin IP from U.S. innovators for their own domestic purposes.

This license to steal must be revoked.



IP Theft and Cybersecurity Get Short Shrift in Sony Hack

By Tom Schatz, January 29, 2015

On the fourth day following the Nov. 24 cyberattack on Sony, four unreleased films and one movie that was already in theaters showed up on file-sharing websites. "Fury," starring Brad Pitt, has already been illegally downloaded more than 1 million times. "Annie," "Mr. Turner," "Still Alice" and "To Write Love On Her Arms," none of which were in theaters at that time, have each been downloaded hundreds of thousands of times.

The theft and illegal distribution of the films was one of the first steps taken by the Guardians of Peace in the release of information stolen from Sony's computers. However, there was limited coverage of this action by the news media, and those stories were soon overtaken and overwhelmed by "The Interview" and salacious emails. Of course, the major ongoing story is, appropriately, the extraordinarily invasive nature of the cyberattack and its source.

On Dec. 14, the hackers released an early version of the script for the new James Bond film, "Spectre." They also likely have various versions of up to 20 other unreleased Sony films as well as the unreleased pilot of a new show by Vince Gilligan, the creator of "Breaking Bad."

While stealing such a large amount copyrighted material from one source is unprecedented, such theft occurs relentlessly and is very costly.

On Dec. 28, 2014, *Variety* listed the top 20 most-pirated movies of 2014 as compiled by Expicio, a piracy-tracking firm. The 20 films were downloaded a total of 433.3 million times, topped by "The Wolf of Wall Street" with 30 million downloads. The next three movies on the list, "Frozen," "RoboCop" and "Gravity," were all downloaded more than 29 million times.

Music is the second-most downloaded copyrighted material. In 2013, 64.5 million tracks of music were illegally downloaded; 70 percent were full album downloads and 30 percent were individual songs. Bruno Mars was at the top of the list with 5.8 million songs illegally downloaded.

Television shows are third. Torrent Freak reported that the top 10 programs in 2014 were downloaded 36.8 million times, led by 8.1 million downloads of "Game of Thrones."

The cost to the U.S. economy of piracy for just the movie and music industries is estimated to exceed \$20 billion annually, along with the loss of tens of thousands of jobs and hundreds of millions of dollars in tax revenue.

While there is no doubt that the theft of intellectual property (IP) is a crime, there are far too many individuals and website operators who agree with Hana Beshera. When she got out of prison after 16 months for violating copyright laws and illegally sharing content on a website that she co-founded, Beshera insisted that the movie industry is so large that taking a little off of the top is not a big deal.

Beshera's sentiments are both ill-advised and wrong. The movie and television industries employ millions of individuals and have a dramatic effect on the economy. In fiscal year 2014, 158 feature films and television productions were shot in Georgia (the No. 5 location for such activity in the world), generating an economic impact of \$5.1 billion, including \$696 million paid to local businesses.

The debate over protecting copyrighted material has reached the highest courts in some countries, such as France, where the French Supreme Court ruled in 2012 that Google must filter links to sites that offer pirated content which are generated by its automated system. The company claimed it was already doing so voluntarily, but concerns about illegal file-sharing sites appearing at the top of its search results continue to persist.

During the first half of 2014, 4 billion television shows and movies were illegally downloaded on peer-to-peer file sharing sites. In January 2014, the recording industry issued its 100 millionth takedown notice to Google to remove infringing content. In addition to these and other efforts to stop illegal downloads, federal, state and local law enforcement sources, including state attorneys general, are also working to protect IP. The movie industry has created a website, WhereToWatch.com, which lists hundreds of legitimate websites to purchase and download movies and videos, and the music industry has set up WhyMusicMatters.com, which includes more than 70 legal websites to buy and download music.

Salacious emails may create entertaining headlines. But they are a small part of the picture of the Sony hack. The real story is the need for both increased protection of IP and improvements in cybersecurity to prevent the continued theft of valuable assets and information.

Innovation = Jobs

By Tom Schatz, SwineLine.org, November 17th, 2014

That is the central premise of Jay Walker's keynote address, "Making Innovation Work for America and Americans," at the first meeting of the IP Dealmakers Forum on November 6, 2014. The forum linked investors together with intellectual property (IP) information and opportunities.

Walker's speech is particularly timely given the release on November 17, 2014, of a new book from Citizens Against Government Waste (CAGW), "Intellectual Property: Making it Personal;" the November 18, 2014 Global IP Summit hosted by the U.S. Chamber of Commerce's Global Intellectual Property Center; and the November 12, 2014 report by Economists Incorporated, "Unlocking Patents: Costs of Failure, Benefits of Success."

As the holder of more than 700 issued and pending U.S. and international patents and ranking as the world's 11th most patented inventor, Walker has almost unparalleled credibility on the subject of intellectual property (IP). On top of his impressive array of patents, he is the Executive Chairman of Patent Properties, chairman and curator of TEDMED, and the founder of three companies that each serve more than 50 million customers, including Priceline.

Walker began his speech by asking how a job is created in the U.S. or any other country. After discussing and rebuffing the idea that companies or (especially) governments create jobs, Walker said that jobs are

created when customers purchase a service or product. In order to get more customers, it is essential to have inventors, who “improve products and services in a way that has market value.” As Walker said, “you create customers by delivering something that a customer wants more than the money they have.”

Walker noted that America’s “competitive advantage is primarily our ability to innovate,” and that most other countries do not reward success. Nonetheless, the use of IP, particularly patents, could be an even larger part of economic growth if unlicensed patents were made more widely available.

As CAGW noted in its report and Walker stated in his remarks, there are several companies that have created a voluntary and affordable process that would provide greater access to unlicensed patents by bundling them together and selling them at a reasonable price. This system would both provide income to the patent holders that they would not otherwise receive and help patent users solve problems, create improved products, increase sales, and open up new markets.

The Economists Incorporated report estimated that intellectual capital derived from patents and other IP constitutes approximately 55 percent of GDP. Increasing the number of licensed patents by 20 to 40 percent could add as much as \$200 billion annually in new growth to the U.S. economy as well as help improve the global economy.

Since the first three patents were approved in 1790, more than 5.1 million patents have been approved by the U.S. government, including a record 302,948 patents in 2013. About 2.3 million patents are “active,” but 95 percent of those patents do not provide any licensing revenue.

It is obvious that very few patents have the same value as the telegraph, phonograph, light bulb, television, transistor, cellphone, and microprocessor. However, with the potential to add \$200 billion annually to the U.S. economy, every effort should be made to unlock the value of every patent.

Garage Bands at Risk

By Deb Collier, Swineline.org, September 8th, 2014

In a September 4, 2014 interview in Esquire Magazine, the legendary Gene Simmons of KISS spoke about the demise of rock, and the inability of new musicians to garner success in today’s music world.

When he talked about the difficulty for a 15 year-old’s garage band to achieve success in the music industry because their music is recorded and shared by either a neighbor, friend, or even a fellow band member, I immediately thought of my own son playing his bass guitar with his friends in the basement, and dreaming of a possible future that Simmons says just doesn’t exist anymore. Simmons explains what the problem is:

The masses do not recognize file-sharing and downloading as stealing because there’s a copy left behind for you – it’s not *that* copy that’s the problem, it’s the *other* one that someone *received* but didn’t pay for. The problem is that nobody will pay you for the 10,000 hours you put in to create what you created. I can only imagine the frustration of all that work, and having no one value it enough to pay you for it.

It’s very sad for new bands. My heart goes out to them. They just don’t have a chance. If you play guitar, it’s almost impossible. You’re better off not even learning how to play guitar or write songs, and just singing in the shower and auditioning for *The X Factor*. And I’m not slamming *The X Factor*, or even pop singers. But where’s Bob Dylan? Where’s the next Beatles? Where are the songwriters? Where are the creators? Many of them now have to work behind the scenes to prop up pop acts and write their stuff for them.

A March 2013 University of Lund study reviewed one of the global file sharing sites, Pirate Bay, to determine who was involved in pirating various types of media, including music, movies, TV shows, sports material, games and software, e-books, and pornography. The study found that 93.8 percent of the 75,616 file sharers who responded were male, with almost half of the respondents between the ages of 18-24. The study also found that music files were the most prevalent with 46,554 files shared, despite the availability of “free” legal streaming solutions. As to why more males than females share files, an August 5, 2014, editorial in *TechCentral* surmised that women are more risk-averse than men when it comes to pirating files, even though music pirating is a low-risk activity with little chance that those sharing files will be prosecuted.

In December 1999, the Recording Industry Association of America (RIAA) found that some Napster users had figured out how to illegally share music files, and sued the company for copyright infringement. On July 27, 2000, a federal judge in San Francisco shut Napster’s website down, noting that the company had acknowledged that they encouraged “wholesale infringement” against music copyrights. On September 8, 2003, RIAA filed its first suit against individual users of the file sharing systems who were illegally downloading music files. Napster got the message and now operates as a music subscription service, paying copyright fees to artists, creators, and owners.

The music industry continues to make efforts to combat illegal file sharing of music by monitoring file sharing sites like LimeWire, BitTorrent and Ares and issuing take-down notices to ISPs when they detect any illegal file sharing activity. In addition, on April 26, 2012, U.S. Immigration and Customs Enforcement announced that it had seized more than 70,000 pirated copies of music and movies valued at nearly \$1 million. In commenting on the seizure, Homeland Security Investigations (HSI) Special Agent Clark Settles stated, “Commercial piracy and product counterfeiting undermine the U.S. economy, rob Americans of jobs, stifle American innovation and promote other types of crime. Intellectual property theft amounts to economic sabotage, which is why HSI will continue to aggressively pursue product counterfeiters and those who sell counterfeit products.”

Authors of original creative work, including musical recordings, eligible for copyright are not required to register their work with the U.S. Copyright Office (USCO). Their work is copyright protected from the moment the work is created. However, the USCO recommends registering the works in order to have documentation of the facts of a copyright on public record, have a certificate of registration, and provide some eligibility for statutory damages and attorney fees in the event litigation over the work occurs

Regardless of whether a song is created by a large recording label, independently distributed by a budding young artist, or surreptitiously recorded and posted on a file-sharing site; the sharing of copyrighted music without adequate compensation to the owner of the copyright is illegal, and steals the intellectual property of the creators. And, if Gene Simmons is correct, the theft and illegal distribution of music through file-sharing sites is putting the success of new innovative garage bands at risk.

The Secret’s Out about Plain Packaging

By Alexandra Booze and Deb Collier, *WasteWatcher*, September 2014

Award-winning author Madeleine L'Engle wrote in her 1968 novel, "The Young Unicorns," that “[t]o take away a man's freedom of choice, even his freedom to make the wrong choice, is to manipulate him as though he were a puppet and not a person.”

Her comment aptly describes big-government policies that are intended to protect people from themselves by limiting their freedom of choice. One of the latest examples of such patent paternalism is plain packaging.

The global economy has created the opportunity for many brand name and trademarked products to become well-known across international boundaries, including automobiles, clothing, household cleaners, fast food chains, liquor, shoes, and tobacco. Companies spend hundreds of millions of dollars building up their image and marketing their products; their copyrights, trademarks, and patents help protect their intellectual property (IP) from being stolen or misused.

When products become widely successful and well-recognized, consumers begin to trust the products and seek out them out because they look familiar. The products span language barriers and lifestyles. While plain packaging is not precisely theft of IP, it clearly impinges upon the ability of the product's owner to obtain the full economic benefit of the value of their brand because it has a diminished presence on the label.

The value of individual branding can be seen in the reverse side of the equation, when protestors in other countries attack symbols and facilities of U.S.-based companies to object to certain policies or practices. In such cases, the company more or less is the country.

In other words, branded products that are sold around the world have substantial value because they can be recognized by the name on the packaging or storefront. That is one of the many reasons why efforts to require plain packaging for the products of a single industry are so pernicious.

Some governments have decided that certain legal products should be covered with a plain wrapper and not bear a brand name, resulting in fewer of these items being purchased by consumers. For example, it is not sufficient that tobacco products already bear warning labels about the risk of cancer and other diseases; Australia now requires that all such products have a label that contains sickening photos of rotted body parts riddled with cancer and prepped for surgery, accompanied by the bold phrases such as "Smoking Causes Cancer," or "Smoking Causes Blindness." The package colors are the same for all brands and therefore become difficult to distinguish. For example, Marlboro Red, which normally has a distinctive red and white label with the Phillip Morris logo, is sold in Australia in a solid green package with large pictures of body parts and just the words "Marlboro Red."

A study conducted by the Australian Institute of Health and Welfare (AIHW) from 2010 to 2013 claimed that as a result of plain packaging, the smoking rate in Australia declined by more than two percent. Yet, during those years, the Australian government increased tax on cigarettes by 12.5 percent, raising questions about the study's data. During a July 17, 2014 interview, AIHW Senior Executive Geoff Neideck said it would be a stretch to claim the use of plain packaging played "a key factor" in cutting the smoking rate.

Other countries have also begun imposing plain packaging rules on various products. The New Zealand parliament has hinted that it plans to institute plain packaging with graphic warnings on alcoholic beverages sometime this year, while India, France, South Africa, and the United Kingdom are considering tougher packaging laws for tobacco products by 2015.

One wonders which legitimate industry will be next. For example, Indonesia's former Director General for International Trade Co-operation Gita Wirjawan sent a letter to New Zealand's Ministry of Health, stating, "If the cigarettes we export there [New Zealand] are not allowed to have brands, then the wine they sell here [in Indonesia] shouldn't also."

Not only does plain packaging create a disadvantage to consumers wishing to purchase specific brands based on familiarity, quality, or brand loyalty, it also increases the risk of counterfeit or fake products entering the marketplace by allowing bootleggers to easily copy plain packaging in an effort to sell the same products for a cheaper price.

This threat of counterfeit or fake goods entering the marketplace places consumers at increased risk. For example, bootlegged cigarettes can contain caustic or toxic chemicals, including high levels arsenic, due to fewer controls over manufacturing.

Following the implementation of plain packaging rules in Australia, counterfeiting and smuggling of illicit cigarettes increased by 40 percent, and seizures of illicit cigarettes increased by 143 percent, from 82 million in 2012 to 200 million in 2013.

Imagine the concept of plain packaging spilling out into every product that a bureaucrat finds objectionable: trucks and SUVs; fatty or salty foods; beer, wine, and liquor; and even certain types of clothing. The government is already far too involved in everyone's life; such additional overprotection is completely unnecessary.

Some industries are fighting back. In 2012, Mars, Inc., the American global confectionery and food manufacturer and the third largest privately held company in the U.S., wrote to the British government voicing its concern over the imposition of plain packaging on the tobacco industry and what it could mean for the future of the food and beverage industries. The legal watchdogs at Mars have good reason to be concerned about government bureaucrats increasingly trying to impose restrictions on products or services they deem harmful by their own standards to others.

Efforts to limit freedom of choice extend beyond plain packaging. For example, on May 31, 2012, the New York City Health Department, at the urging of Mayor Michael Bloomberg, proposed a ban on the sale of large-sized carbonated beverages, sports drinks, sweetened tea or coffee, and other sugary beverages as an antidote to the rising obesity problem. On June 26, 2014, the New York State Court of Appeals ruled that the Health Department had "exceeded the scope of its regulatory authority."

According to the Center for Consumer Freedom, state legislatures in California, Colorado, the District of Columbia, Maine, Ohio, and Washington State have implemented or considered taxes on certain foods and beverages. Maine imposed a 5.5 percent snack tax on chips, soft drinks, cookies, and ice cream from 1991 until 2000. In 2008, Maine citizens voted to permanently ban a 42 percent tax on soft drinks, and in 2010, Washington State's snack tax was also repealed by voter initiative.

Numerous studies from research institutions across the country have all reached similar conclusions regarding efforts to limit freedom of choice through plain packaging and snack taxes: they are ineffective. Studies conducted in 2010 from both the Robert Wood Johnson Foundation and the Cato Institute, found that snack taxes were unlikely to change either the nation's obesity rate or the amount of consumption of the taxed products. Blaming a nation's health woes on one type of product is both overly simplistic and discriminatory.

Plain packaging acts as a thief in the night, slowly picking and choosing its targets before wreaking havoc. Once inside, it steals identities, creates a false sense of security, and increasingly diminishes its victim's identities. Under the guise of looking out for its citizenry, the 'nanny state' dictates and babysits the choices of people that are believed to be incapable of making the "right" decisions by choosing for themselves; that is the scariest secret of all.

The Brave New World of Intellectual Piracy

By Deborah Collier, *Wastewatcher*, September 2013

By any standard, the Pirates of the Caribbean have nothing on the antics of the pirates of India. An April 2013 Indian Supreme Court decision has handed over the keys to the castle, and declared open season on pirating intellectual property (IP). The booty in that case was for a drug to treat cancer that was developed by Novartis,

a Swiss drug manufacturer. The decision opens the door for future denials of drug patents and IP infringement for other industries.

At first glance, one might ask why this is such a big deal. The decision only affects one drug patent in India for a potentially life-saving drug. But the denial of the patent to Novartis followed the rejection of previous efforts by other drug companies to protect their pharmaceuticals from patent infringement. In November 2012, the Delhi High Courts ruled in favor of Cipla, a generic drug with the same active ingredients as a patented Roche cancer drug. In October 2012 Pfizer's cancer drug Sutent had its patent revoked by the Indian patent board, even though Sutent has a valid patent in 90 other countries. On August 17, 2013, Roche announced it would drop plans to patent a breast cancer fighting drug called Herceptin in India after a health ministry committee urged the government to issue a "compulsory license" obligating the company to license an Indian generic drug manufacturing company to make a cheaper version of the drug.

On April 30, 2010, the Office of the U.S. Trade Representative issued its 2010 Special 301 Report, which listed India on its Priority Watch List. The report called for India to improve its intellectual property rights regime by providing stronger protection for patents, and raised a particular concern about the country's prohibition on patents on certain chemical forms absent a showing of increased efficacy, which limits the patentability of potentially beneficial innovations, such as temperature-stable forms of a drug or new means of drug delivery. As attested by the results of the Indian Supreme Court ruling on Novartis, these concerns have come to fruition.

The pharmaceutical industry is not alone in facing attacks on intellectual property. An August 2007 report by the Institute for Policy Innovation estimated that millions of illegally downloaded songs have cost the U.S. economy \$12.5 billion, 70,000 lost jobs and \$2 billion in lost wages, as well as \$422 million in tax revenue (\$291 million in personal income tax, and \$131 million in lost corporate income and production taxes).

The Motion Picture Association of America's website states that 90 percent of newly released movies are pirated by thieves who use a digital recording device in a movie theater to literally steal the image and/or sound off of the screen. To combat this type of theft, major motion picture studios have employed technology such as watermarking films in order to discern the source of a stolen film through forensic analysis and trace it back to the theater in which it was recorded. In 2011, the software industry reported a 63 percent rate of PC software piracy with a commercial value of more than \$2.9 billion.

In addition to the adverse financial consequences caused by counterfeit goods, they can also cause physical harm. On July 13, 2010, CNBC reported that the World Health Organization found that a counterfeit drug used to fight diabetes contained six times the normal amount of its active ingredient, resulting in nine hospitalizations and two deaths in China. On May 13, 2013, a Chicago ABC News story on a raid on a Los Angeles store selling counterfeit goods included an interview with Underwriters Laboratories (UL) in Northbrook, Illinois. UL experts demonstrated the hazards of counterfeit extension cords that caught fire when in use, and suggested that counterfeit products that are be used in everything from toasters to even the wall outlets in homes also have the potential to also cause damage or injury.

Protecting personal and intellectual property rights, both domestically and internationally, is critical to the nation's economic future, millions of jobs, and the health and well-being of consumers all over the world. Therefore, the federal government must to continue to work with its trading partners, and India in particular, to ensure that intellectual property is respected and protected.