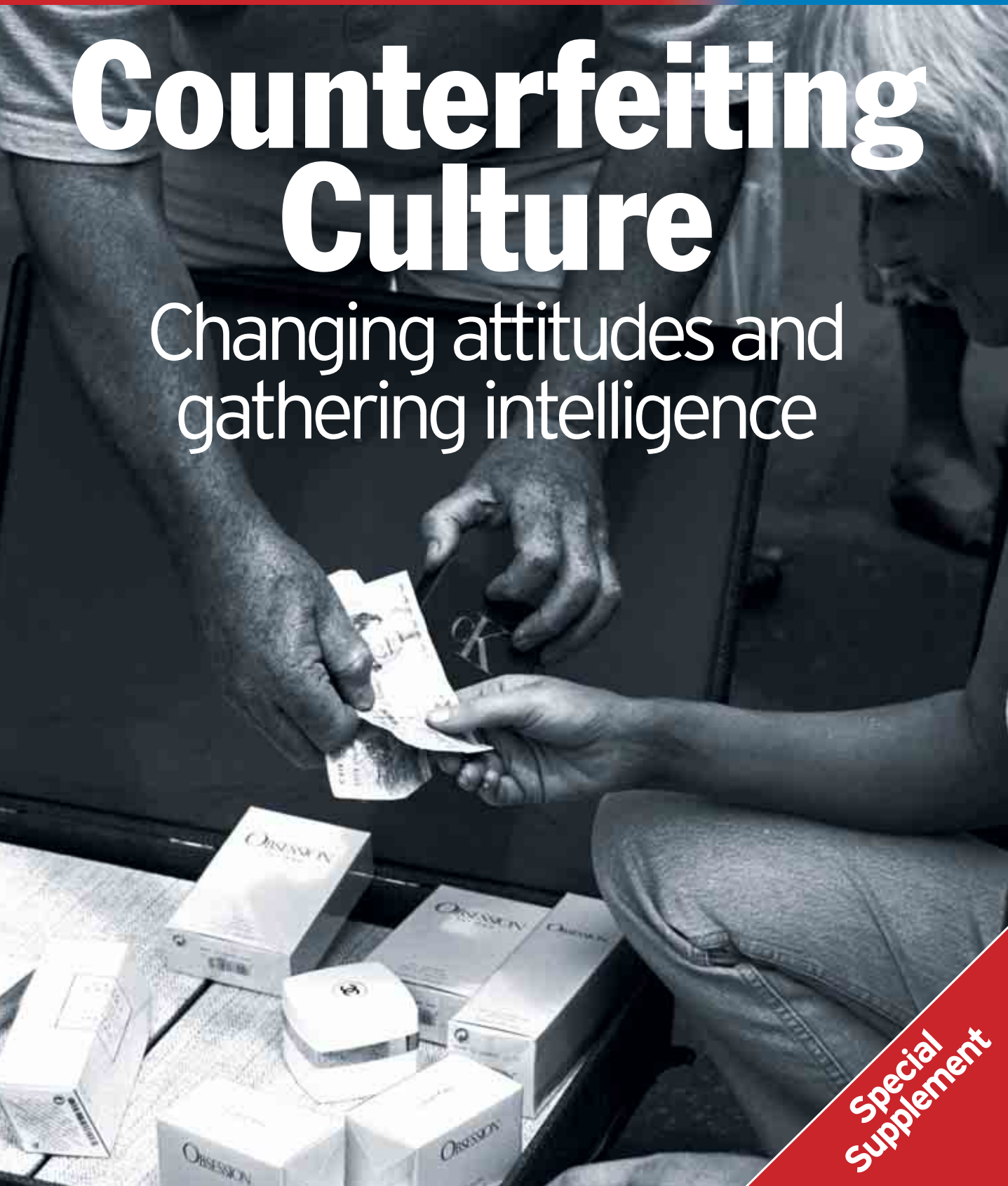


**new statesman**



# Counterfeiting Culture

Changing attitudes and  
gathering intelligence



**Special  
Supplement**



## Introduction

This *New Statesman* round table discussion, in association with Pfizer, examined counterfeiting and theft of intellectual property. Counterfeiting and piracy has increased dramatically over the last 30 years. Consumers have built sophisticated arguments to justify their actions but few realise the real impact they can have on organised crime and terrorism. More frightening, perhaps, is the World Health Organisation's estimate that 10 per cent of the medicines available to people worldwide are counterfeits; this trade is worth £30bn. Participants discussed the effect this crime has on society and the sort of global intelligence needed to deal with it.

## Participants

**JO BRYCE**

Department of Psychology, University of Central Lancashire; co-author of *Fake Nation*

**MICHELLE CHILD**

Freelance consultant, formerly head of policy research, Consumers Association

**DR JULYAN ELBRO**

Deputy director, Patent Office

**COLETTE GOLDRICK**

Corporate affairs director, Pfizer

**ROZ GROOME**

Vice-chair, Alliance Against IP Theft; general counsel for the BPI

**DR JONATHAN HARPER**

Author, *Council of Europe Report on Counterfeit Medicines*

**JILL JOHNSTONE**

Director of policy, National Consumer Council

**BRYAN LEWIN**

Lead officer, intellectual property, Trading Standards Institute; head of trading standards, Northamptonshire County Council

**LISA LOVELL**

Founder and managing director, Brand Enforcement UK

**CHRIS PARKER**

Director of law and corporate affairs, Microsoft

**IAN PEARSON MP**

Then Minister for Trade; Now Minister for Climate Change and the Environment

**JEFF RANDALL (CHAIR)**

Editor-at-large, *The Daily Telegraph*

**DR JASON RUTTER**

Research fellow, Economic & Social Research Council; co-author of *Fake Nation*

**MIKE SMITH**

Managing director, Columbia Label Group, Sony

**PROFESSOR SANDY THOMAS**

Director, Nuffield Council on Bioethics

For this and other reports in the series:  
[www.policyforum.co.uk](http://www.policyforum.co.uk)

Editor: Caroline Stagg Design and cover: Leon Parks Publisher: Spencer Neal

newstatesman subscriber services: Stephen Brasher Freephone: 0800 731 8496 E-mail: [sbrasher@newstatesman.co.uk](mailto:sbrasher@newstatesman.co.uk)

Published by New Statesman Limited. A supplement to the newstatesman issue 22 May 2006. © All rights reserved.

Registered as a newspaper in the UK and USA. Address: 52 Grosvenor Gardens, London SW1W 0AU

# Counterfeiting culture

## Changing attitudes and gathering intelligence



**Jeff Randall (chair)** Welcome to this round table discussion. We will start with Bryan. He has been in this game a long time, and he is one of the most experienced people in the room on this matter. Bryan, what has changed over the years and where are we today?

**Bryan Lewin** I was saying to someone earlier that, in the 1970s, I came across some counterfeit clothing and contacted the owner of the brand that the counterfeit clothes were carrying. Their representative said that they were not interested in pursuing a prosecution because they did not want their brand to be damaged by the publicity. For most industries, that issue has now ceased to be a concern.

We should talk about intellectual property [IP] theft as meaning counterfeiting and piracy. The range of goods that we are picking up now is beyond belief: washing powder, electric drills, toys, cigarettes, and so on.

These days, serious criminals have money, production facilities, expertise and distribution channels.

Increasingly, we are finding counterfeit products that have a health and safety issue to them.

**Jeff Randall** I have started thinking about the difference between counterfeit, a fake and a 'knock-off'.

**Bryan Lewin** I am sure other people are going to speak about what consumers' attitudes are to fakes, provided of course that consumers realise they are fakes.

The whole point about counterfeit and pirated products is to make them appear to be the genuine item when they are not. They do not go through the same quality control, there do not carry the same guarantees, and they are not checked as thoroughly.

The counterfeiter or the pirate merely wants their product to appear like the genuine item, without any regard to what its composition is. Counterfeiters are only really interested in making one or two sales to a particular consumer; they are not really after repeat purchasers. ►



that, a lot of the time, they do not know what they are getting anyway. We are much less concerned about those from the consumer detriment point of view.

Going back to enforcement, where resources should go to and what the priorities in enforcement should be, I would want to see scarce resources concentrated on consumer detriment.

Counterfeit medicines, and evaluating medicines, would be two of the main areas of concern. We are less concerned about areas where consumers can do some evaluation themselves.

**Jeff Randall** But, apart from safety, when do consumers start to say: "No, this can't be right, I have been cheated," as against: "Look, what a clever boy I am, I paid £2.99 and I have this T-shirt that is just about as good as an Yves St Laurent that is £39.99." What do you think?

► **Jeff Randall** Yes, the consumer is the ultimate victim. And in an industry such as pharmaceuticals, that can have serious implications.

But first, let me bring in Jill to talk about the fake scarves and T-shirts that are on sale in the High Street. If you walk down Oxford Street and you see an Yves St Laurent T-shirt for £2.99, first, you have to be pretty stupid to believe it is an Yves St Laurent shirt and, second, for £2.99, you really do not care. Where, in the mind of the consumer, does the game change? Somewhere along the line, consumers start to say: "Hey, you have cheated me?" Where does that happen and why?

**Jill Johnstone** To frame this whole discussion about counterfeiting, one needs to go back and think about what sort of IP framework we want to have and therefore what kind of enforcement we need. The second question is how the enforcement authorities that we have should use or prioritise their scarce resources.

The big concern is where counterfeit products are dangerous, for example, with drugs and with replacement parts for vehicles. One wants to make sure that action is taken quickly to get these off the market.

The concern about potential detriment to the consumer is reduced when we are talking about a poor quality T-shirt that only cost a couple of pounds. In that example, the detriment to the consumer is much less and market research suggests

**Lisa Lovell** When the quality falls below a certain level, that is when consumers get a little upset. When consumers buy a T-shirt with a trademark on, if it goes through the wash 50 times, then they think they have had their money's worth. If they think they have value for money, then Trading Standards does not get to hear about it. If they bought the original, then they would have about 500 washes out of it. But if they think it is value for money, they are quite willing to go with the £2.99 option again and buy another counterfeit.

What we need to do is to bring about a change of attitude within the UK, and I am not just talking about consumers, but the judiciary. When a case comes to court, for example, the judiciary needs to realise the importance of existing legislation and, if there is a possible maximum sentence of 10 years, then it really should not err on the side of the least punishment possible. The judiciary should be educated in the crime itself, then we can stand together to try to stamp this out.

**Jeff Randall** Let me bring you in, Roz. Thinking of those £2.99 market-stall T-shirts, people do not regard them as theft. They regard the real price as theft; that Gucci and Yves St Laurent at £39.99 are ripping them off. How do you change that mindset?

**Roz Groome** What has been highlighted are the different strains of harm that are going on. Physical harm, financial

harm and social harm – the connection between counterfeiting, piracy, organised crime and other antisocial behaviour. Then also, there is economic harm for the industries and to the Treasury, because no tax flows back on counterfeit goods.

People need to realise that they are not just lining the pockets of the rich and famous. For every musical hit there are ten failures and most musicians do not earn what Robbie Williams earns. In terms of creativity, and in terms of ensuring that consumers pay for the product, it is important to ensure that the money flows back to the people who are responsible for creating it and many of those people will not be rich and famous.

There does need to be more attention to the fact that you are not just buying the product of Yves St Laurent, that there are designers, struggling artists, loads of people in the chain who are affected by people not paying for the products that they are buying. It is not just the big name that suffers.



**Jeff Randall** Let us hear from the Minister of State for Trade and Industry, who is also the Minister of State for the Foreign and Commonwealth Office.

**Ian Pearson** To set the context, innovation and creativity are key to Britain's future prosperity and therefore it is in our interests to have a strong system of IP protection. Fundamentally, the system is about getting the right balance between the rights of holders of IP and others – consumers, competitors and users of information. It is also about creating the right incentives to encourage innovation and creativity.

In general, we think the balance is about right with our UK IP regime. I spend a lot of time in south and east Asia, China in particular, talking to countries where we have serious issues of intellectual property rights [IPR] enforcement. One of the objectives that we have as a government is to do all we can to strengthen the IPR regime internationally.

Regarding counterfeiting, from my experiences in Northern Ireland as Security Minister, I was involved in an organised crime taskforce. We had an IP working group and did a lot of research that showed the strong links between counterfeiting and organised crime. It is important to stress that this is not a victimless crime. In many cases, we are putting money into the hands of terrorist organisations.

Organised crime adopts a whole range of elaborate procedures to get its goods into the European marketplace. Some of

the research that has been done elsewhere confirms the scale of the problem. It is big business for organised crime. That is why, in 2004, we set up the national IP crime strategy, modelled on work that was done in Northern Ireland. It brings together all the enforcement agencies and industry sectors affected, so we can begin to tackle this as an issue.

We have had some successes at a relatively low level. At Wembley Market last December, for instance, £1.5m of counterfeit goods were seized.

---

## This is not a victimless crime. In many cases we are putting money into the hands of terrorists

---

The situation is the same internationally. You need to develop police contacts internationally and, just as I am putting out messages when I go to China and to other countries about their IP enforcement regimes, we also need to talk about police co-operation when it comes to counterfeit goods and services. There is a big agenda for action internationally.

**Bryan Lewin** I was staggered a few years ago to be asked by what was then the National Crime Squad to visit a factory ►



going on counterfeit medicines that have inadvertently entered the legitimate supply chain and are being distributed in pharmacies to patients who have had a doctor's prescription and have every confidence that they are getting the real medicine.

Viagra is one medicine for which there is a black market. People buy it in clubs and can pay £2.25 for a blue diamond shaped tablet. That is unusual. However, there are counterfeit cancer medicines, counterfeit anti-malaria medicines, counterfeit anti-Aids medications. The World Health Organisation estimates these result in the deaths of up to one million people annually.

**Jeff Randall** How do these get into the system?

**Colette Goldrick** To talk about Europe specifically, there is free movement of goods under the Treaty of Rome, the bedrock of the European Union. Prices have to be agreed with individual governments in each country and so prices vary

for the same medicine from country to country.

In Greece, the regulation might be 28 pills in a pack and in other countries the regulation might be 30 in a pack. So, if you are planning to ship from Greece to the UK you might have to change the packaging, which is completely legitimate. However, as a result, legitimate medicines can change hands up to 20 or 30 times between leaving the factory in one country and ending up on a pharmacist's shelf in another country.

A thousand importing licences were granted in the year 2000 and 5,000 were granted in the year 2005. Not all of these are legitimate and we are working with law enforcement bodies to stop it.

**Jeff Randall** Where are the great manufacturing centres for bogus medicines?

**Colette Goldrick** As Bryan pointed out, we should not assume that all of these things get imported. We have had seizures in the UK. We are not talking about a bloke with some blue talcum powder, mixing things up in his garage and sticking out a few packs of them. Where facilities have been seized, both in this country and abroad, they have been sophisticated tablet-pressing facilities, capable of churning out a million tablets a day.

Our drug Lipitor, used to control cholesterol and therefore reduce the risk of a heart attack and stroke, is the medicine we

► in some remote farm buildings in Northamptonshire. The police had been carrying out surveillance on the place for some time and thought it was a simple drug-making unit. It turned out to be a fake steroid production unit. When the police raided the place, the foreman in the unit took great delight in grabbing a handful of the white powder and putting it in his mouth and saying it was quite harmless. He was right – it was.

There is an awful lot of counterfeiting and piracy going on in this country. Some of the stuff that we have found is not small scale. When you look at the proceeds of crime applications, the courts are saying: "You're going to pay back a million pounds," and that is just the assets that they can find. That demonstrates the scale of the operations we are talking about.

Increasingly, consumers and others are telling us about counterfeiters because of unfair trading. They simply object when they hear someone boasting that they are making £200 a week selling music CDs in a factory.

**Jeff Randall** Clearly, it is one thing to have a fake T-shirt but it is something completely different with fake drugs.

**Colette Goldrick** The World Health Organisation estimates that 10 per cent of medicines made available to patients worldwide are counterfeits and that this trade is worth \$30bn annually. Here in the UK, estimates vary. The most conservative estimate at the moment is that £200m of NHS expenditure is

are most concerned about, regarding counterfeits. It is the most widely prescribed medicine in the world. Most consumers would not have heard of it, yet it is a big target.

**Julyan Elbro** The issue with medicines is one area where there is a need for an approach that brings together a lot of different agencies, many different players, together with industry. There is no question of consumer choice there, as there is with a T-shirt.

Our approach on tackling all forms of counterfeiting through the national IP crime strategy is to bring together all the different agencies to work on it. Whether it is Her Majesty's Revenue and Customs [HMRC], in terms of catching things as they come in or Trading Standards, in terms of being able to seize goods, the key to a lot of this is intelligence; knowing where goods have been imported, and are entering the supply chain and where the manufacturing plant may be.

The focus of the IP crime group is on developing an intelligence database. Then we can get information coming in from industry, Trading Standards, customers or wherever, and can pull this together in a way that can be analysed effectively by people such as Trading Standards analysts. This allows us to spot when something may be going wrong, to make a connection and to trace it back to see what else we can get hold of. In terms of that approach,



## We need intelligence from a range of sources, including industry itself

what is going to be absolutely key is not just tackling individual instances but also dealing with the organised gangs that are behind this in most cases.

**Ian Pearson** There is a reasonable level of intelligence in that we would know if there was major illegal activity going on within the NHS. What is clear, though, as Julyan says, is that it is a big issue overall and we do need an intelligence-led approach.

We need intelligence from a range of sources, including from industry itself. That is a way of identifying this. Then you need to make a thorough assessment. That is where the new Serious Organised Crime Agency really does fit in and will be a useful asset in tackling IP crime. As Colette says, this is serious and, indeed, potentially dangerous and can cause lives to be lost.

**Colette Goldrick** We do need an intelligence-led approach and co-operation, but there are some simple measures that would make drug counterfeiting a lot harder. One would be to change legislation so that it is not okay to take medicines out of their original packs. If that were the case, you could not stick a label on a box containing a number of tablets cut up with a pair of scissors and sell it. Then a patient has a greater chance of recognising something that does not look like the medicine they are used to receiving.

**Michelle Childs** Could I raise a slight concern about terminology here. It is interesting that, when we are talking about counterfeit, which is fake goods, we immediately start talking about parallel trade, which is the importation of real goods but at a lower price. One of the issues regarding parallel trading is that it provides the benefit of competition, a benefit for the ►

newstatesman



one to know that I have bought something?

Jo has done some interesting research about the motivation of consumers to purchase counterfeit goods. It raises some interesting competition questions. When you are talking about motivation to buy fake DVDs, 56 per cent of respondents bought them because they wanted to see a film as quickly as possible. So perhaps consumers are giving market signals. Perhaps they are saying that some of the old ways of doing things, such as having windows for releasing DVDs in different markets or only releasing music in certain formats, are not what they want and are not going to work.

The answer might be to fill that market gap, rather than to get tough with criminal sanctions. I just thought it might be helpful to raise the broader issues and questions at each stage. How do you target enforcement to maximise the benefit to competition, innovation and consumer protection?

**Jeff Randall** There is an issue here about parallel trade, legitimate goods sold to the consumer at prices below the usual price. In several recent cases, supermarkets got hold of things such as branded sports goods and the brand manufacturer said: "We don't want you selling them at £9.99, we want them sold at £49.99. If you start selling them at £9.99, our brand has gone kaput." It is hard to feel sorry for the brand owner; the consumer feels in favour of the supermarket.

**Ian Pearson** Parallel trade is complex. We have to distinguish between the European Union and free movement of goods and what IP lawyers call exhaustion of IP rights. Once you have put a product on the market in the European Union, your ability to control what happens to that trademarked product is exhausted; it is in free circulation. If your product is first put on the market outside the European Union, then it is different. Then the owners of the trademark do have the power contractually through the distribution chain to decide what happens to the product and where it goes.

It is an interesting and controversial issue. Every so often it comes up for review in the European Union for legislative change proposals. There tends to be a split between those governments that think that there should be worldwide free movement of goods (the Nordic countries and, to some extent, the UK tend to fall into that category) and other governments

► health services in the UK, in importing drugs at a lower price. These are legitimate drugs. The issue that the government needs to look at in its policies is that there is a kind of trade-off between access and price. There are potential incentives to counterfeiting when you are seeing high prices for access to needed drugs, particularly in developing countries.

The fact that drugs do not have a single price across Europe raises real issues for governments and consumers about whether this is about brand protection or whether we are legitimately targeting counterfeiting. All consumers are concerned about counterfeiting, particularly drugs that can kill you. There has to be a real analysis of what the solution is. Some of the solutions that are being proposed may well be beneficial but we also have to think about the potential negative effect.

For example, if we are trying to deal with the potential threat of counterfeiting, what will be the effect of putting some sort of restrictions on parallel trade? Will it work? What will be the negative effects of it? If we put more regulatory requirements on packaging and tracing, will that increase the patients' safety and what are the costs that this passes on to competitors? There are costs associated with every regulatory burden.

There are also issues for consumers around ideas such as putting radio frequency identification tags on to drugs so that you can trace them. If I were a consumer, would I want every-

that take a firm view that the owners of the trademark rights (typically on luxury consumer goods) have a business model that requires them to be able to compartmentalise the world into different markets because spending power and purchasing power differs from place to place. So governments falling into this second category have always taken a clear line that outside the European Union it is appropriate to compartmentalise.

Whether the law is right or wrong is something that is debated from time to time but the law is clear: if a pair of jeans was first put on the market by Levi's outside the European Union, then Levi's can stop its distributors from selling those jeans on to Tesco for sale in the UK.

**Jeff Randall** Jo, tell us about how consumers see these issues.

**Jo Bryce** Based on the focus group data that we generated, you find that there is little sympathy among consumers for brand owners. There is a perception that, as was alluded to earlier, the theft is taking place in the purchase of legitimate goods, as opposed to the copied or pirated version.

Regarding the issue of value for money and being aware of the status of the product that they are purchasing, consumers know there is a trade-off, and they are quite willing to take a trade-off between price, quality, and those sorts of issues. However, that operates differently according to the types of product that you are talking about.

In the focus groups, we allowed a free choice in the way that products were discussed, and did not ask people to focus on particular products. We did specifically ask about things such as pharmaceuticals and, for most consumers, it was not an issue that they ever realised was important in this country. It is interesting that some of the case studies that have been pointed out today are issues that consumers generally are not aware of.

They know there are pharmaceuticals that are counterfeited and that there are particular problems for developing countries where cost, income, and healthcare are different. Consumers seem to see that differently.

Consumers made a clear distinction between goods, perfumes, toys and products that you put on yourself, where there might be health and safety issues if they were not adequately tested, and everything else. But general consumer goods, such as DVDs, were generally viewed by people as fair game. If anything, they seemed to believe that the rip-off that was taking place was in the price charged for legitimate goods, rather than the counterfeit ones.



**Jeff Randall** There is an built in contradiction here in the psychology of the consumer. The whole essence of exclusivity in terms of product and the brand is that it has to have restricted access. The moment that there is perceived to be universal access, the brand collapses and it is not special any more.

**Jo Bryce** The example of a fashion label came up a lot in the focus groups, particularly when you asked teenagers and younger women about fashion. They said they would not accept a gift of a fashion item with this particular label because there is no way it would be real and, even if it were real, there would be no point buying it because it is seen so widely now. There were certain class and social status judgments that came into that as well.

That was a really clear example of how the flooding of the market with a luxury brand does damage the market.

**Jeff Randall** By and large, criminals follow the money. A cynical man would say that it is only because the profitability in the pharmaceutical industry is so high that there is an opportunity for criminals to come in.

**Sandy Thomas** If you have a highly priced product, whatever it is, there is going to be an incentive for people to undercut ►



economies that genuinely cannot meet those Western costs has been welcome.

**Jeff Randall** Minister, where does the government sit on this? There are two important issues here: one is protecting the IP rights of legitimate companies and the other is making sure ordinary people have access to drugs at prices they can afford.

**Ian Pearson** If we are going to encourage drug research and development in the future, then pharmaceutical companies have to be able to make a return on their investment.

We also want to encourage drugs that are badly needed to be available at the right price in developing countries. That is why, through the World Trade Organisation [WTO] and through trade, where governments have talked to industry and come up with an acceptable compromise, we are able to help millions of people who would otherwise die or be seriously ill in developing countries. The WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement is a good example of this.

▶ that and either produce fakes or produce genuine copies that perhaps work but are not the brand make.

Non-government organisations and the pharmaceutical industry argue about how much it really costs to make a drug. There is a lot of attrition in drug pipelines. There is also argument about how much of the costs that are put down to research and development actually go on marketing.

If one distils all of that, it is generally accepted that it is expensive to produce drugs. The pharmaceutical industry has come in for a lot of criticism in relation to providing drugs in developing countries and that has clearly fuelled the pirating or copying of drugs that do work, particularly in countries such as Brazil, China, and India. However, with new global rules, it is going to be difficult for those countries to do that for new drugs in the future.

**Jo Bryce** In India, chemical engineers have been clever at reverse engineering and they have produced a lot of drugs cheaply for people who cannot afford even cheap healthcare. If you think about the ethical question, it is difficult not to defend the model for differential pricing. The progress that has been made by the pharmaceutical industry over the last five to eight years in response to pressure to bring down prices in

**Colette Goldrick** There is no pharmaceutical company that views sub-Saharan Africa as a jolly good place to make money. The debate raging at the moment is whether to make the medicines available at extremely low cost or no cost.

There is unscrupulous exporting of medicines, where well-meaning pharmaceutical companies have shipped large quantities of free Aids medications, for example, to developing countries and they never even left the airport. They have gone from one plane into the country on to another plane out of the country and never get to the people who need them most.

It is a myth to assume that the growing generics industries in countries such as India are necessarily going to help. Generic drug manufacturers in India are business people too and they are interested in making a profit, not in philanthropy. It is also fallacious to think that it is only extremely new medicines with a high Western price that are going to make the difference to some of the massive health problems faced in developing countries. Ninety-six per cent of the World Health Organisation's essential medicines lists include medicines that are available generically and could be made available cheaply.

**Ian Pearson** The developed world ought to pay for the costs of developing drugs for developing countries. These should

either be at no cost or just at production cost, with all the other costs stripped away.

**Jonathan Harper** I am the author of the Council of Europe Report on Counterfeit Medicines. I would like to summarise the council's viewpoint on this, and my own.

First, if you look at what parallel trade brings to health consumption, the evidence does not demonstrate many benefits. What it does is to complicate the distribution chain, and there are considerable problems in regulating a complicated distribution system.

Coming on to the issue of organised crime, there is evidence that organised crime is involved in the counterfeit of medicines and in business. If consumers knew who was producing this stuff, they might think twice about buying cheap copies.

Consumer awareness of fake medicines does not exist in this country, so think what awareness is like in the rest of Europe. I was glad to see a report a couple of days ago about seizures made by the Medicines Health and Regulatory Authority [MHRA] concerning an organisation selling counterfeit drugs through an internet pharmacy.

Although the UK does have a problem with fake drugs, in many ways the UK is tackling the problem much more than other countries in Europe. But what we know is only the tip of the iceberg.

What we need to have in this country, and also in Europe, is an effective risk management strategy all the way through, with intelligence.

The other danger is to go so far in the opposite direction that you risk scaremongering. Then every day there will be headlines in newspapers about not being able to trust pharmacists or people will start to be afraid of going to the doctor. That kind of thing undermines the whole health system. It is tricky. The solution is to try to get an effective risk-management strategy in place, based on the best intelligence that you can get.

**Jeff Randall** We have some representatives from other industries. We hear from the music industry about piracy all the time. It is hard to feel the same kind of concern about piracy in music as we feel for pharmaceuticals; clearly nobody dies. There is a generation out there that thinks it is pretty cool to download music. Perhaps they think they are too smart to go and pay for it.

**Mike Smith** I was exactly the same when I was 17, except I was taping my friend's records and I was taping music from



the radio and swapping tapes in the playground.

The difference now is that when the CD was introduced, the record industry brought into the market something

---

## I was the same when I was 17, except I was taping my friend's records and music off the radio

---

that could be downloaded on to a computer and could be reproduced in the form of a copy that remained close to the original. It was this feature that has made it easy to trade across the internet.

There is a massive problem that we still face with piracy and the volume of organised crime. Probably about 35 per cent of all the CDs sold around the world are illegal or pirated. In Eastern Europe and the Far East there are massive counterfeit issues.

Again, that is a centre being run by organised crime. There are obvious procedures to deal with that, but it is a massive problem that we still face within this industry and we will continue to develop strategies to tackle the issue. ►

newstatesman



► **Jeff Randall** At the top end, is the quality of the pirated music as good as the original?

**Mike Smith** With the CD, it is fairly close. It is close enough for the average music consumer. Let's face it, anyone who is buying something that clearly looks like it is a counterfeit is not going to be particularly bothered about the fidelity.

It is easy to reproduce a CD, much easier than reproducing, say, pharmaceuticals. The issue of greater interest is file sharing on the internet. The counterfeit manufacturing and duplicating of CDs and DVDs and selling them through markets is highly visible. But on the internet, your children, 17 or 18 year olds, are swapping files and it is not so freely visible.

These young people are music enthusiasts, so it is ironic that, by swapping and downloading these music files, they are hacking into the profits of the record companies and taking money that should, by rights, be paid to the songwriters and artists.

This illegal trade is actually creating a vibrant music scene.

The scene in the UK and across the world is in better health than it has been for a long time. Ticket sales are up, people are buying more musical equipment; they want to make music and there is an enormous appetite for music out there.

The problem is that a lot of this interest is being fuelled by people who are accessing music for free. The music industry, and the record industry in particular, needs to work at ensuring that the music it is creating is being paid for.

**Jeff Randall** Is there an economic message here that, if you lower your prices almost to zero, you will generate a huge amount of demand and therefore a bigger cake, which all those suppliers can then share?

**Mike Smith** There is an argument that the future may perhaps not consist of record sales, except in a more niche, particularly high-fidelity market. Essentially music may be seen as a commodity, as a utility, as something that you get streamed to your mobile phone and that you can access constantly, wherever you go.

Maybe you will pay a monthly subscription and get your music constantly coming into your life, so that it almost seems like a free commodity. What the record companies need to work out is how the people that are still manufacturing and marketing most

of that music also manage to get paid for it – how our artists get paid and the people writing the songs get paid.

That is the biggest challenge because what has held the record industry back is partly a reluctance to change its business model and also its conceptual idea. It didn't say: "That is not a bad thing to do, but how do we make sure everybody gets paid along the way?" The technology has not quite caught up with that.

**Jeff Randall** Is your problem that technology is running ahead of you?

**Mike Smith** Yes, technology has given the customers what they want and we need to remind customers that they are taking something that doesn't belong to them. They need to be told that they are getting hold of something illegally and that the people who wrote this music, the people who created this music are not being paid for it and it is not right. They need to appreciate that, by doing what they are

doing, they are potentially cutting off the livelihood of those individuals.

I can understand that, particularly because often these people are only about 17 years old, when they look at huge corporations they don't see why they should care that, for example, Sony BMG is suffering.

But when you bring it down to an artist playing in a local venue, they would never dream of walking up to the artist after the show and just taking their CDs and walking out without paying for them. However, it would not bother them in the slightest to go on to the internet and file share.

**Jeff Randall** Because it does not feel the same.

**Mike Smith** No. So there is a degree of education to be done. There is also, to a degree, an acknowledgement that we are trying to turn back the tide and we cannot; it's too late. We need to acknowledge that this is possibly the future and we need to adapt our business practices to reflect that.

**Jeff Randall** Jason, the co-author of *Fake Nation*?

**Jason Rutter** Co-author with Jo, yes. I have brought a photocopied version with me.

I am a little bit worried about this notion of consumer education. We say that consumers do not understand and that consumers are stupid but consumers are wise in what they are doing. When we talk to them we find they have built a sophisticated argument about why it was all right to buy a particular counterfeit.

Here we are talking about predominantly leisure items, where there is a choice to buy. We can argue that there are consequences with counterfeit vodka if you drink enough; there are arguments about T-shirts or access to materials, but they do not compare with the risks that are associated with pharmaceuticals.

We are looking at a consumer at low risk. Consumers are aware of potential links to organised crime but this fact feels distant to them. I am worried that, when we tell people that they should not do this because it is wrong, people say: "For whom?"

The music industry is not the only one that consumers feel strongly about. What came over strongly in the research we did was that consumers feel that these industries have shafted them. They are perceived as having stripped back the quality



of the product, both the physical product and the variety of products available. Whether they are right or wrong, that is what consumers believe has happened. So they say: "The industry has not invested in us, why should we give back to them?"

When we look at where the counterfeiting happens, which artists suffer from counterfeiting, we find that consumers tend not to be counterfeiting the bands that you go to see in the local pub; they are counterfeiting Madonna and Prince – the stars.

## Consumers say: "The industry has not invested in us, why should we give back to them?"

If you spend time looking at peer-to-peer file sharing, you are not going to find John Peel sessions on there. You are going to find the big sellers in the American market. There is a strong parallel link between real markets and counterfeit markets, which is why we have to be careful about criminalising our consumers and saying: "You should be prosecuted for doing this." The decision to prosecute would be a policy decision. As a business decision, it would be a bad thing to do. ►



► **Jeff Randall** I walk through Walthamstow market and see a £2.99 CD, I am pretty sure it is going to be counterfeit in some way. However, if I pay full price in the music shop, how do I know whether or not that is counterfeit? Is there a problem

---

## They are making available thousands of files to millions of people, constantly

---

with counterfeit CDs and music being sold legitimately in the same way that there are drugs being sold through pharmacies?

**Roz Groome** You do find counterfeits in legitimate outlets, some quite high-quality outlets. Mike would probably agree. I would like to pick up on your comments about not criminalising consumers. Do not forget that by consumers, we

mean people who pay for things. These people who do not pay for music are not consumers.

**Jason Rutter** Purchasers are the people who pay for things. Consumption is a different process. We were really talking about value for things. The value is when you take that music home and play it and share it; that is part of the consumption.

**Jeff Randall** I do not think 17 year olds are so steeped in decency that they will say, even with education: "Yep, you're absolutely right, I am sorry about this, I'm off to get the £29.99 version. I'm not going to download it for free." They just will not think like that.

**Roz Groome** They will not, but I tell you who is concerned: their parents. We have conducted a massive litigation campaign against egregious uploaders. These are not people downloading, they are uploading. They are behaving like mini free retailers. They are making available thousands of files to millions of people, constantly. Everything is available on file-sharing software; everything is out there.

I have spoken to the parents and they are horrified. They have copied their CD collections on to their computers to enjoy them, to put them on their iPods or whatever. Then their children have come home

from school and downloaded some file-sharing software on to the family computer system, which has then made available to the world their entire CD collection. Incidentally, it is not just their CDs but anything that happens to be in their shared drive. This can include the family photographs, the Expedia receipts; I have seen bank account details, it is all there. That is where consumer education needs to come in. The people doing this need to see the harm it is causing.

**Jeff Randall** I know journalists are famous for being cynical but I have to say I do not think there are going to be many people out there lying awake at night thinking: "Oh, my goodness, we have to protect these big brands." People just do not think like that.

I understand the issue with pharmaceuticals, that is something completely different, because it is about safety and it is about morality, but music is different.

**Roz Groome** But people do think it is important that people

get paid for their creative endeavour.

**Jeff Randall** Once you can access music for free, people assume it is free. They do not think it through and they do not really care. That would be my view. It is a terribly cynical view, but the music industry, clearly, is facing that problem because that is what people are doing.

**Mike Smith** The music industry has to adapt in order to survive. What we are trying to do with BPI is legitimate protection of our copyrights. We have to do that, but the world is changing dramatically, and the way that a record company gets its revenues is not going to be reliant solely upon sales of records. We are going to have to become music companies, not record companies, and we may come to look upon records as being a loss leader.

**Roz Groome** That is why we see a huge number or range of online products now. There are subscription services and all sorts of other things that the record companies are doing to make music available online. They are rising to that challenge using technology.

**Mike Smith** All this could be a positive force. The internet could be the best thing that ever happened to the music industry.

**Jeff Randall** I am sorry to cut many people short. Everyone who has had something to say has said something. I will turn to the minister to have the last word. Can you give us some final thoughts on where the government is taking us on counterfeiting and protection against it?

**Ian Pearson** To stress the government's commitment in wanting to ensure there are effective IPR protection systems worldwide, let me focus on some of them in summary. One of the things we pushed for at Gleneagles during the G8 Summit was a statement on reducing IPR piracy and counterfeiting through more effective enforcement. We believe there is a major issue here we need to tackle. It is evident when it comes to medicines – and there are real public health concerns. It is also an issue when you look at a range of other products.



It is an area where, although there may not be direct harm to a consumer, the links to international terrorism and organised crime are strong. We need to be making some of our consumers more aware than they are at the moment about the fact that they might be funding Al-Qaeda, Islamic Jihad and others groups if they are buying fake CDs and DVDs.

It is important that we continue to take a risk-based approach where there is most danger to the public, whether it is through public health or through making clear the links to organised crime and terrorism. We need to take effective action nationally and internationally. One of the things that is going on internationally is what is called the G8 Roma-Lyon Anti-Crime and Terrorism Group. It shows the level of interest that there is internationally in trying to tackle what is a serious issue globally.

**Jeff Randall** On behalf of the *New Statesman* and Pfizer, I would like to thank everyone for taking part.

**newstatesman**

3rd Floor  
52 Grosvenor Gardens  
London SW1W 0AU  
Tel: 020 7730 3444  
Fax: 020 7259 0181  
[www.newstatesman.com](http://www.newstatesman.com)



Pfizer UK Corporate Affairs  
Walton Oaks  
Dorking Road  
Tadworth  
Surrey KT20 7NS  
Tel: 01737 332 332