

ILLICIT MARKETS- A THREAT TO OUR NATIONAL INTERESTS

A REPORT ON THE MOTION PICTURE INDUSTRY IN INDIA



About this report:

This report has been prepared by Thought Arbitrage Research Institute (TARI) for FICCI Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE).

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- Corporate Governance
- Whistleblowing / Vigil Mechanism
- CSR & Sustainability
- Economics & Public Policy

TARI was founded by Kaushik Dutta and Kshama V Kaushik.

Research Team - Thought Arbitrage Research Institute

Research Conceptualisation and Industry Interface:

Kaushik Dutta

Principal Authors:

Kshama V Kaushik

Rosanna M. Vetticad

Principal Researchers:

Rosanna M. Vetticad

Research Support:

Saumya Sah

Vitul Gupta

Report Editors:

Souvik Sanyal

E-mail: contactus@tari.co.in, gayathri.venkatraman@tari.co.in

Address:

Thought Arbitrage Research Institute
C-16, Qutab Institutional Area, New Delhi - 110016, India
Tel: 011 41022447 / 41022448
Website: www.tari.co.in

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A REPORT ON THE MOTION PICTURE INDUSTRY IN INDIA



Foreword

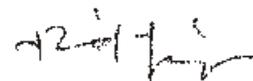


India's creative industries, which include the motion pictures sector, contribute significantly to the nation's economy. Undoubtedly, the motion pictures sector in India has the potential to be one of the world's leading markets for creative industries - both foreign and domestic. However, piracy in the form of content theft negatively impacts profitability, resulting in less investment capital, leading to fewer films that can be financed, thereby impeding the significant employment generation potential of the sector. Concerted efforts and better co-ordination among Governments, industry and enforcement agencies is imperative to curb this menace through stricter enforcement of legislations and widespread awareness generation on the subject.

FICCI has been at the forefront of advocating policy framework on various aspects affecting the industry. In 2012, FICCI CASCADE had released a study titled "Socio-Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Indian Industry Sectors" which was the first ever compilation of facts and figures on counterfeiting, smuggling and tax evasion in seven key industry sectors in India. After the earlier comprehensive study, which not only estimated the size of the grey market in the select industry sectors, but also highlighted the losses to the industry in sales and Government in revenue, we have now gone a step further and developed 10 sector specific reports on 'Illicit Markets - A Threat to Our National interests'. This report is specific to the motion pictures industry and aims at estimating the illicit market in this sector and projecting the resultant losses to the industry.

I would like to thank and congratulate all the committee members and stakeholders who have contributed towards this project, particularly Thought Arbitrage Research Institute (TARI). It is hoped that this study would provoke further debate on the extent of this problem and ways and means to mitigate the challenge.

I wish FICCI-CASCADE success in its future initiatives.



Dr. A. Didar Singh
Secretary General
FICCI

Chair's Message



I am pleased to present the report on 'Illicit Market: A Threat to Our National Interest' which is specific to the motion pictures industry.

The motion pictures sector, forming a large part of the media and entertainment industry, is one of the fastest growing industries in the country. Film piracy is, however, turning out to be a major impediment for the growth of the industry. The economic and social impact of intellectual property theft is enormous and will have even greater, long-term implications if measures to protect content are not addressed adequately.

In the creative industries, instances of Infringement are rapidly growing through online piracy, unauthorized audio and video cam-cording in theatres as well as by way of counterfeited movie DVDs. Moreover, the motion pictures industry in India is being subject to varied tax structures across states, limiting the growth of the industry and indirectly encouraging illicit markets.

Given the thrust on "Make in India"; technology, invention, and innovation will play a key role in India's current economic development. However, infringement of intellectual property rights, counterfeits and fakes will threaten the growth of the industry seriously endangering the revenue prospects from this sector and robbing the country's exchequer.

This report has estimated the size of the illicit market and its associated losses. I am certain that the findings from this report would increase consumer awareness, drive support from policy makers to strengthen legislative framework and expedite enforcement operations, which in turn will promote R&D, technology transfer and creativity.

I hope that this research will be useful for all stakeholders including consumers, industry, policy makers and researchers on the issues in the motion pictures industry, and the challenges ahead if concerted efforts are not taken to curb this menace.



Anil Rajput
Chairman
FICCI CASCADE



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Executive Summary



As demonstrated by the 2012 FICCI CASCADE study titled "Socio-Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Indian Industry Sectors" (FICCI CASCADE Study) the growth of the illicit markets is evident in India as in the rest of the world. This study estimated the size of the grey market and related loss to the industries covered in the study. FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE) has commissioned the present study to update the estimates of the size of grey market/counterfeit products for selected industry sectors in India, to project the resultant economic loss to industry and to assess the impact of grey markets/counterfeit products on investments, innovation and tax arbitrage. This report is specifically for the Indian motion picture industry. However, due to limited reliable government published data, this report is restricted to estimating the size of the grey market and the resultant industry loss.

Size of the Illicit Market

Of the various revenue streams of the motion picture industry and with the available data this report has made an estimate of the grey markets in two of the sub-categories of the motion picture industry, viz, domestic box office and home video. These two categories are also representative of the industry, constituting 78% of the total industry as per the 2012 actuals provided in a 2014 FICCI-KPMG study. **Accordingly**, the grey market percentage for domestic box office and home video segments of the motion picture industry for 2012 has been ascertained to be **12% and 55% respectively, resulting in losses to the tune of ₹ 1,100 crores and ₹ 210 crores respectively to each of these segments**. Applying these grey market percentages the loss to the industry for 2014 is expected to be ₹ 1,226 crores and ₹ 66 crores respectively, i.e. **a total loss of ₹ 1,300 crores approximately**.



As per the International Intellectual Property Alliance (IIPA) 2012 Special 301 Report on Copyright Protection and Enforcement, India has the potential to be one of the world's leading markets for the creative industries – both foreign and domestic. The country produces the greatest number of films in the world (over 1,000 full-length feature films per year), boasts a creative and diverse music market, a prolific publishing industry (19,000 publishers producing 90,000 titles per year), and a vibrant software market.

Illicit Markets, Terror Organisations and Criminal Networks

While statistical data is available for the number of terrorist attacks that have taken place in India, it is difficult to directly correlate it to the grey market data in the absence of sufficient information and research, which are lacking at present, especially in the Indian context.

Furthermore, despite the existence of requisite laws in India and arrests of suspected criminals by the police, the scale of illicit markets is huge and the criminal networks and illicit markets organisations continue to thrive. Clearly, the existing laws and police operations are not resulting in the desired outcome and do not act as a deterrent. This could be due to the low conviction rates in India.

The lack of adequate data based on search and seizure in India makes it difficult to link the increase in illicit markets to terror funding. Establishment and determination of the extent of such a link calls for strategic intelligence gathering and preparation of robust databases, which are clearly missing at present. Given the security implications, if not outright financial considerations, there is little to argue against carrying out such exercises. This would be the first step to contain counterfeiting and its corollary, terror and ensure that genuine business interests do not suffer.

Conclusion & Way Forward

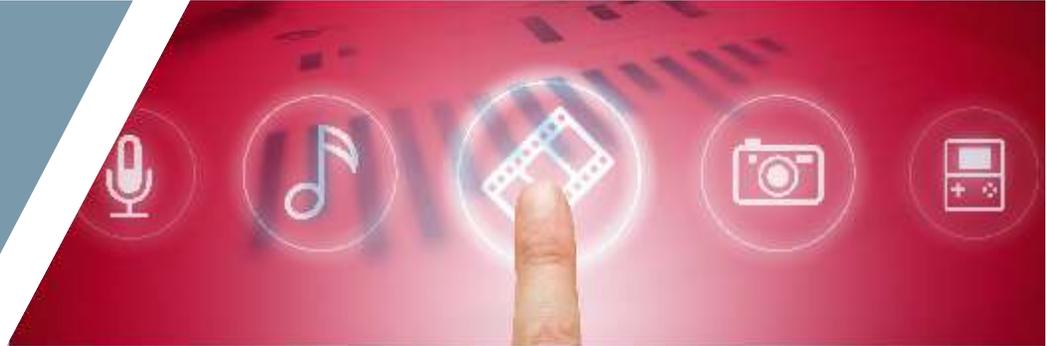
Naturally with improvements in technology, internet and mobile penetration, the growing Indian middle class population, and economic prosperity coupled with increasing disposable incomes, the menace of counterfeiting and piracy is only likely to increase, unless stern measures are taken to protect the industry, consumer and government. Some of the important measures include:

- Systematic data collection on the demand and supply side of the motion picture industry, to enhance data analysis and resultant estimation of grey markets.
- Improving screen penetration - with the advent of the multiplex revolution and with the government's move to allow 100% FDI on the automatic approval route, the multiplex penetration is expected to improve further and will go a long way in curbing the problem of piracy.

- Constant vigilance and raids on retail outlets selling pirated DVDs, VCDs, Blu-ray disks etc.
- Cooperation between government and the ISPs to design protective measures that prevent access to websites that clearly and blatantly infringe copyright.
- Streamlining of entertainment tax structures across states.
- Inter-government intelligence sharing so as to block sources of funding for organised crime and terrorism.
- Strict enforcement and severe punishment are necessary if laws are to act as deterrent.



Objective of the Study



As demonstrated by the 2012 FICCI CASCADE study titled "Socio-Economic Impact of Counterfeiting, Smuggling and Tax Evasion in Seven Key Indian Industry Sectors" (FICCI CASCADE Study) the growth of the illicit markets is evident in India as in the rest of the world. This study estimated the size of the grey market and related loss to the industries covered in the study. FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy (CASCADE) has commissioned the present study to update the estimates of the size of grey market/counterfeit products for selected industry sectors in India, to project the resultant economic loss to industry and to assess the impact of grey markets/counterfeit products on investments, innovation and tax arbitrage. This report is specifically for the Indian motion picture industry, while other industries are covered in separate industry specific reports similar to this one. However, due to limited reliable government published data, this report is restricted to estimating the size of the grey market and the resultant industry loss.

Grey market percentages are currently ascertainable for 2012, as reliable government data from the Ministry of Statistics and Planning Implementation (MoSPI) of the Government of India is available for 2012. This data includes the Annual Survey of Industries for 2012 which provides data on factory production across the country and National Sample Survey Organisation's National Sample Survey 68th round, which provides household consumption data across the country for the year 2012.

However as the present study shows, there is limited information available from these sources for determining the size of the grey market in the motion picture industry, for which therefore credible alternative sources have been used.

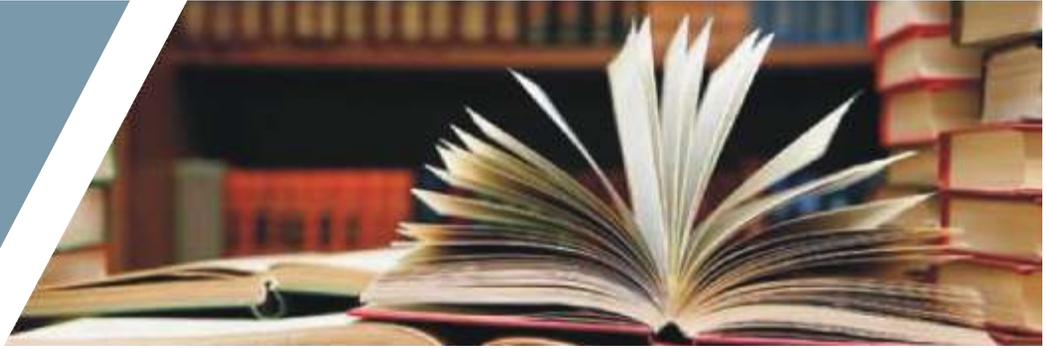
As indicated in several studies including the 2012 FICCI CASCADE study, by their very nature, since counterfeiters operate outside the law, estimating the extent of counterfeiting and piracy

and the harm these activities cause is extremely challenging. Illegal businesses do not report information on their activities to any government agency therefore measuring their size must be done using indirect methods.¹

These series of studies is perhaps the first quantitative study in India on the impact of illicit markets on the various economic aspects listed above. Depending on the quality and credibility of data available, the study has quantified different types of impacts on various sectors. Given the limited data available (as mentioned earlier) for this sector, some of these aspects could not be measured for this industry. The study uses latest Government of India data on consumption and production, namely NSSO and ASI, which is available for 2012 (released in 2014).



Literature Review



We have reviewed past studies and published research on the subject of grey markets including counterfeiting, smuggling and tax evaded goods and their impact on innovation, investment, tax arbitrage and funding terrorist activity.

This review included global studies commissioned by public institutions and agencies of repute, industry associations working on anti-counterfeiting endeavours, academia and major corporates. Such works were reviewed to analyse the scope of research, methodology adopted, analysis techniques and results.

Extracts from some of the significant reports are reproduced in Annexure I to give a broad understanding of global thinking on the subject.

Introduction



India celebrated a century of its motion picture industry in 2013 commemorating the first ever full length Indian feature film produced in 1913. This silent film titled Raja Harishchandra was produced by Dadasaheb Phalke. The first 'talkie' titled Alam Ara was produced in 1931. Thereafter the Indian motion picture industry has grown by leaps and bounds and is now the largest producer of films in the world, its unique feature being the multiple languages in which it produces films. According to the Film Federation of India, the Central Board of Film Certification (the apex film certification body in India), certified almost 2000 films during the period April 2013 to March 2014 in almost 40 languages, 58% of the industry being dominated by 4 languages namely, Telugu, Tamil, Hindi and Malayalam.

Industry Profile



As per the International Intellectual Property Alliance (IIPA) 2012 Special 301 Report on Copyright Protection and Enforcement, India has the potential to be one of the world's leading markets for the creative industries - both foreign and domestic. The country produces the greatest number of films in the world (over 1,000 full-length feature films per year), boasts a creative and diverse music market, a prolific publishing industry (19,000 publishers producing 90,000 titles per year), and a vibrant software market.

According to a FICCI-KPMG report on the Indian media and entertainment industry (M&E), films fall under this broad umbrella generating about 14% of the total revenue of the ₹ 918 billion industry. It grew from ₹ 112.4 billion in 2012 by approximately 12% to ₹ 122.4 billion in 2013. From the period 2013 to 2017, the industry is expected to grow at a CAGR of 12% to reach ₹ 200 billion.³

India has an average of 12 screens per million as compared to the global average of 54. This means there is a lot of ground to be covered, as rising urbanisation and growing disposable incomes create an opportunity for establishing more multiplexes and cinemas. Film piracy is however turning out to be a major impediment for the growth of the industry.

Revenues for the motion picture industry are not limited to ticket sales at the box office (domestic and overseas). It also includes various other segments such as home videos (sale and renting of CDs and/or DVDs) and revenue from ancillary segments such as broadcast syndication rights, licensing, merchandising, mobile VAS and other film related sales through new media. The ancillary revenue streams are witnessing an increase from 29.3% from INR 5.4 billion in 2012 to INR 7 billion in 2013 (FICCI -KPMG Report 2014).⁴

The revenue mix of the film industry as per the 2014 FICCI-KPMG report on the M&E industry is presented in the chart below.

Revenue (INR Billion)	2009	2010	2011	2012	2013	2014p	2015p	2016p	2017p	2018p	2012-13 (YoY Growth)	CAGR 2013-18
Domestic Theatrical	68.5	62	68.8	85.1	93.4	102.2	116.9	133.3	146.3	160.2	9.8%	11.4%
Overseas Theatrical	6.8	6.6	6.9	7.6	8.3	9.4	10.3	11.4	12	12.7	9.4%	8.9%
Home Videos	4.3	2.3	2	1.7	1.4	1.2	1	0.9	0.8	0.7	-18.0%	-13.0%
Cable & Satellite Rights	6.3	8.3	10.5	12.6	15.1	16.1	18.4	20.9	23	25.2	20.2%	10.7%
Ancillary Revenue Streams	3.5	4.1	4.7	5.4	7	9.1	11.7	14.7	17.8	21	29.3%	24.7%
Total	89.4	83.3	92.9	112.4	125.2	138	158.3	181.2	199.9	219.8	11.5%	11.9%

Source: KPMG in India analysis, (p=provisional)

A significant portion of the revenue, i.e. almost 74%, as per 2014 estimates comes from box office collections (domestic theatricals). Revenue from cable & satellite rights and home videos is estimated at 13% of total revenue collectively and is expected to fall marginally to approximately 12% by 2018. The year on year growth in domestic theatrical revenues can be attributed to the growth in number of screens via growth of multiplexes, coupled with increased ticket prices and delivery of robust content that appealed to both, the multiplex and single screen audiences. Ancillary revenue streams include in-cinema advertising, licensing and merchandising and gaming, content syndication and pay per view. While this segment represents a significantly small proportion of the total revenue, increasing from 5.6% in 2012 to an estimated 9.6% by 2018, it is expected to grow significantly in absolute terms.

Scope of Illicit Markets in the Motion Picture Industry



Illegal motion picture and television piracy is a thriving international enterprise. The Motion Picture Association (MPA) estimates that its member companies lose globally approximately US\$6.1 billion to piracy. The worldwide motion picture industry, including foreign and domestic producers, distributors, theatres, video stores and pay-per-view operators, lost \$18.2 billion in 2005 as a result of piracy (based on 2005 estimates by MPA-LEK⁵).

Content theft negatively impacts profitability, thereby resulting in less investment capital. Lesser capital pegs down the number of films that can be financed, thereby creating fewer jobs.

Discussions with industry bodies have indicated that content theft /piracy in the film industry originates from 'cam-cording' in cinema halls.

Torrent websites are used for peer to peer file sharing. 'Kickass.to' is the 24th most visited torrent website in India and among the top 100 sites in the world.⁶ ExtraTorrent.com, which is based in Ukraine, professes to be "The World's Largest Bit Torrent System." This site is the 76th most visited site in India, and among the top 200 sites in six other countries (including the United Kingdom and Australia).⁷ Clearly a significant portion of piracy in India is therefore through peer-to-peer file sharing.

According to the IIPA Special 301 recommendation,⁸ key economic studies (including by international organizations like UNCTAD and the Motion Picture Distributors Association) indicate that growth of the creative industries (motion pictures, music and publishing) will continue. However, physical, online, and mobile piracy (through both mobile uploading/downloading, as well as mobile applications being used to infringe), circumvention of technological protection measures (TPMs), e.g., through the use of mod chips and game copiers, illegal cam-cording of movies from cinema screens, print and photocopy piracy, pay TV theft, and unlicensed use of business software, stifle the market and keep India's creative industries from reaching their potential.⁹

According to a RAND Corporation¹⁰ report on film piracy, organised crime and terrorism, DVD piracy has a higher profit margin than narcotics and minimal risks of enforcement. As a result it is attractive around the world as an element of criminal portfolios that also include drugs, money laundering, extortion and human smuggling. The 14 case studies in this report provide evidence of a broad, geographically dispersed, and continuing connection between film piracy and organised crime. Three cases provide evidence that terrorist groups have used the proceeds of film piracy to finance their activities.

The motion picture industry like other industries relies on its profits to invest in future products. Movie piracy results in fewer movies being financed by the organised sector, resulting in job losses since cinema tickets are not purchased. The barriers to film piracy are probably lower than for counterfeiting other products as virtually anyone can start an optical-disc counterfeiting operation.

Types of Piracy

According to the Motion Picture Distributors Association (India) Pvt Ltd, the following are the common modes of film piracy.¹¹

Internet piracy: Internet piracy is the downloading or distribution of unauthorized copies of intellectual property such as movies, television, music, games and software programs via the Internet. Illegal downloads occur in many forms including file sharing networks, pirate servers, websites and hacked computers. Each file posted on the Internet can result in millions of downloads. Hard goods pirates also use the Internet to sell illegally duplicated DVDs through auctions and websites.

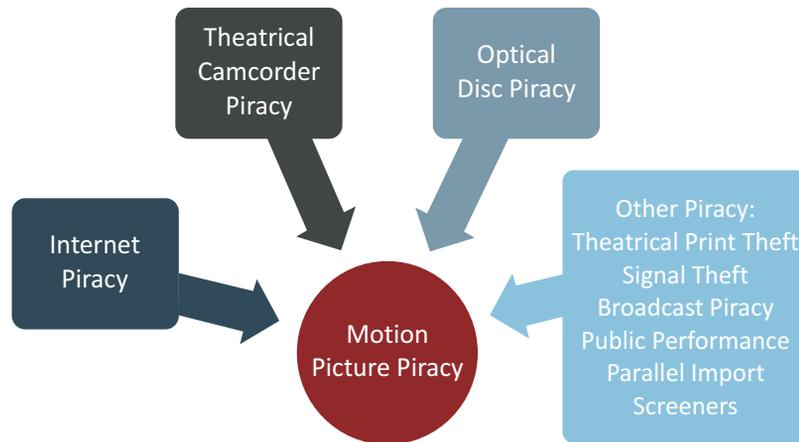
As per MPAA movie piracy in India is dominated by piracy of optical discs - DVDs and VCDs. Tens of millions of pirated optical discs are identified every year, but many, many more slip through the net and are distributed throughout the India.

The biggest threat to the movie industry today though is not from illegal DVD factories, but from peer-to-peer file sharing, which allows copyrighted content to be distributed around the globe instantaneously without any compensation to the artists and producers of such content.

Theatrical Camcorder Piracy: Cam-corded or infringing copies of new release titles that originate from cinema halls appear online within few hours of a film release. This affects the performance of the film, the distribution cycle and jobs.

'Cam-cording' is when someone enters the theatre with any type of recording device - camcorder, voice recorder etc. and intentionally records or photographs any portion of the video or audio track of the movie. Pirates sell these camcording copies to illicit "source labs" where they are illegally duplicated, packaged and prepared for sale on the black market, then distributed to bootleg "dealers" across the country and overseas.





Optical Disc Piracy: Optical disc piracy is the illegal manufacturing, sale, distribution or trading of copies of motion pictures in digital disc formats including DVD, DVD-R, CD, CD-R and VCD. Blu-ray discs have emerged as the latest format for illegal manufacture and distribution of motion pictures. These illegal hard goods are sold on websites, online auction sites, via e-mail solicitation and by street vendors and flea markets around the world. Much like downloadable media, the pirated motion pictures in hard goods format are typically poor quality video camera recordings.

While the majority of pirated optical disc products seized by law enforcement worldwide are made on advanced commercial replication lines, the low cost of disc burning hardware and blank discs has led to the proliferation of DVD-R and CD-R burner labs.

Theatrical print theft: Theft of an actual film print (35 or 16 mm) from a theater, film depot, courier service or other industry-related facility for the purpose of making illegal copies is one of the most serious forms of piracy. This type of theft allows the pirate to make a relatively high quality videotape from the theatrical print, which then serves as the master for the duplication of unauthorized videocassettes. Fortunately, this type of theft is extremely rare due to the difficulty in obtaining the prints illegally and also in transferring the print to another format, such as videocassettes. Another rare but prevalent means of theatrical theft is recording from the projection room of a theatre.

Signal theft: Signal theft refers to the act of illegally tapping into cable TV systems as well as receiving satellite signals without authorisation. In addition, pirates have supplied consumers with illegal cable decoders or satellite descramblers. Internationally, the problem becomes more acute when programs not licensed to a particular country are pirated from satellites and then re-transmitted in that country either by cable or broadcast TV.

Broadcast Piracy: Like signal theft, broadcast piracy is piracy involving over-the-air broadcasts. However, instead of stealing signals, the illegal act may be the on-air broadcasting of films or television programs without permission from the copyright holder.

Public Performance: Unauthorised public performances include situations where an institution or commercial establishment shows a tape or film to its members or customers without receiving permission from the copyright owner. This includes "public performances" where an admission fee is charged as well as those that are simply offered as an additional service of the establishment.

Parallel Import: Parallel imports refer to the importation of goods authorised for manufacture or distribution in the exporting country but imported without authority of the copyright or trademark owner. (Parallel importation may or may not be lawful under local laws).

Screeners: Illegal copies are sometimes made from legitimate advance copies used for screening and marketing purposes.

Estimating the Illicit Market for 2012 & Industry Loss for 2014



Measuring motion picture piracy is a daunting task since data collection is difficult and survey results are mostly skewed in nature. In addition, the movie industry is a complex system, and estimating revenue is problematic due to large variability of success factors of any movie. Technological improvements have also made piracy an easier activity for the illicit markets.

As stated in other sections of this report, reliable supply and consumption data are usually available from government sources. However these sources do not capture data for all industries and from all revenue / expenditure streams.

Supply Side Estimation

On the supply side, data for other sectors has been extracted from the Annual Survey of Industries 2012 survey for domestic factory production and the Directorate General of Commercial Intelligence for imports

Through a scrutiny of ASI codes the following were identified as possibly relating to the motion picture industry:

Table: ASI Data Points Analysed

ASICC Code*	Code Description	Possible Industry Classification
97601	VIDEO PHOTOGRAPHY	Motion Pictures
97602	STILL PHOTOGRAPHY	Motion Pictures
97603	FILM EDITING SERVICES	Motion Pictures
97604	FILM DEVELOPMENT /PROCESSING SERVICES	Motion Pictures
97605	SET DESIGN /BUILDING SERVICES	Motion Pictures
97608	SOUND RECORDING SERVICES	Motion Pictures
97689	FILM/VIDEO ETC SERVICES, N.E.C	Motion Pictures

*ASI 2010

These codes however do not comprehensively represent the value of movies or pictures made in a particular year as is apparent from their description.

Furthermore, DGCIS does not have data on 'imports' of motion pictures.

Keeping this in mind, we have tried to ascertain supply side data from a reliable alternative source. We have extracted data from the 2014 FICCI-KPMG study that has been discussed earlier. The actual numbers for 2012 as reported in this study have been used as consumption data from NSSO is available currently for the year 2012.

As per FICCI-KPMG 2014 Report

Revenue Streams	2012
Domestic Box Office	8,510
Overseas Box Office	760
Cable & Satellite (C&S)	1,260
Home Video	170
Ancillary Revenue Streams *	540
	11,240

* Ancillary revenue streams includes in-cinema advertisement, sales of music rights and licencing and merchandises

Consumption Side Estimation

Similarly, on the demand side, all codes available in NSS data were scrutinised to identify those possibly related to consumption under the motion picture industry. Under the broad umbrella of 'entertainment' consumption expenditure is provided against two codes that could possibly be relevant, i.e. code 430-cinema, theatre, and code 436- VCD/ DVD hire (incl. instrument). NSS also has a code 564-CD, DVD, etc.

Consumption must however also include the value of paid internet downloads apart from cost of tickets at the cinema. These are not available in NSS data.

Adjustments:

Code 430-Cinema, theatre: The following adjustments have been made:

- Reduced by 10% to adjust for expenses incurred on theatre (i.e. plays and other live theatre performances)
- Reduced by 20% to adjust for cinema tickets purchased in the black market; this would not fall under accepted definition of 'piracy' but rather be in the nature of theft by middlemen which benefits neither the consumer nor the supplier.

Code 436-VCD/DVD hire (incl. instrument): We have assumed that the cost of VCD/DVD hire will be 30% of the total expenditure considering that the cost of hiring instruments (i.e. a VCD/DVD player) would be considerably higher.



Code 564-CD, DVD, etc.: We have assumed that the cost of CD, DVDs purchased and containing movies will be about 30% of the total cost (assuming the remaining cost to be attributable to purchase of CDs for data, music, inspirational videos, blank CDs, etc.)

Code 430 has been compared with domestic box office on the supply side. Codes 436 and 564 have been compared with home video on the supply side

Estimating the Grey Market Size

With the available data that has been presented above, we make an estimate of the grey markets in two of the sub-categories of the motion picture industry, as described by the FICCI-KPMG study which are:

- Domestic Box Office
- Home Video

These two categories are also representative of the industry, constituting 78% of the total industry as per the 2012 actuals provided in the 2014 FICCI-KPMG study. The Home video industry has been shrinking perhaps due to increasing piracy and the growing popularity of digital platforms. Home Video has lost share to Video on Demand (VOD) through DTH operators and OTT platforms.

	Supply derived for 2012 *	Consumption as per NSS 68th round*	Sales loss to industry*	GAP %
Domestic Box Office	8,510	9,649	1,139	12%
Home Video	170	380	210	55%

*Rupees in crores

Thus, the grey market percentage for domestic box office and home video segments of the motion picture industry has been ascertained to be 12% and 55% respectively, resulting in losses to the tune of ₹ 1,100 crores and ₹ 210 crores respectively to each of these segments. As stated earlier, consumption value of counterfeiting/ piracy resulting from illegal internet downloads has not been ascertained due to paucity of data.

Using the grey market percentages so estimated and assuming that they remain constant over the years 2013 and 2014, we can estimate the loss to the industry by applying this percentage to the industry size projected for 2014.

According to the FICCI-KPMG report, the domestic box office is projected to grow to ₹ 10,220 crores in 2014 and the home video segment is project to generate ₹ 120 crores worth of revenue.

Applying the grey market percentage of 12% and 55% to these estimates, the loss to the industry is expected to be ₹ 1,226 crores and ₹ 66 crores respectively, i.e. a total loss of ₹ 1,300 crores approximately.

Industry Perspectives on the Menace of Counterfeiting and its Impact on the Industry



Discussions with industry bodies have indicated that content theft /piracy in the film industry originates from 'cam-cording' in cinema halls.

'Cam-cording' is when someone enters the theatre with any type of recording device - camcorder, voice recorder etc. and intentionally records or photographs any portion of the video or audio track of the movie. These infringing copies appear online within a few hours of a film release. This affects the performance of the film, the distribution cycle and jobs. These infringing copies of the film are further distributed through pirated DVDs - which are manufactured in 'burner labs' and stocked in warehouses for further distribution in India's piracy hotbeds/ markets. A study conducted by MPDA (India) in 2009 revealed that cam-corded versions of Hindi titles hit the pirate market on an average of 2.15 days after the first legitimate theatrical showing in India. These numbers may have doubled with the increase in internet penetration signifying the need for cooperation from the Government and the Internet Service Providers (ISPs) to design protective measures that prevent access to websites that clearly and blatantly infringe copyright.

Impact of cam-cording: Content theft through cam-cording in cinemas has been significantly increasing over the past few years. Forensic matches, a process by which MPA analyses pirated copies in order to figure out where they came from, have increased by 33% year/year to a total of 126 in 2012 in the Asia Pacific, with India having the most forensic matches i.e. 67 in 2012, or 53% of the total for the entire Asia-Pacific region.

Illegal or "rogue websites" contribute to, facilitate, and/or induce the illegal distribution of copyrighted works, such as movies and television programming. The actions of these rogue sites undermine national economies and tax revenues, threaten high-wage jobs and cause consumer confusion. The traditional means of cracking down against these rogue sites -



enforcement under domestic copyright or broadcasting law is typically not effective, given that the content is made accessible from illegal sites overseas. Administrative or judicial relief is therefore an important tool to combat rogue sites as it offers a simple and effective method for preventing internet users from accessing illegal content hosted on foreign websites violating domestic copyright law.

Findings of an online landscape study on movie piracy conducted by RNA-Rouse on 128 rogue websites offering purely Indian content, foreign content and a mix of both revealed:

- 92 rogue websites rely on advertising for their revenues
- Most rogue websites use more than one advertiser - iLivid and Infolinks are the largest advertisers
- Advertising and subscription sales are the primary revenue sources as most of the sites host content files on free-to-use file servers
- 7 rogue websites use content delivery networks to enhance speeds and or/conceal geo-locations
- Most of the rogue websites popularize themselves on popular social media networks such as Google + and Facebook.
- Rogue sites were found to be dependent on one parent website to provide content or payment processing

Online content theft in India is fluid, as sites subject to enforcement or court orders merely migrate to avoid enforcement or further detection in addition to inadequate support from ISPs and law enforcement for taking down illegitimate sites. So far actions against rogue sites/ release groups engaged in the unauthorised cam-cording of movies in cinemas, and court orders disabling access to dedicated piracy websites in India have, had a temporary ameliorative effect.

Challenges: In the next 2 years, India will become the second largest internet market in the world with an estimated 330-370 million users and the world's leading English language market.¹² The growth in mobile penetration and more users having access to 3G internet speeds, signal the growing need for adequate legal protection and enforcement measures to combat piracy through cyberlocker, Bit Torrent, web based file hosting, wireless access control (WAP), blogs and online radio sites/ services which stunt India's creative industries.¹³ The Copyright Act was amended in 2012 with some positive features, however the amendments fell short in terms of inadequate protection for access control technological protection measures

Illicit Markets, Organised Crime, Terror Organisations and Criminal Networks



Terrorism in India

Terrorism, in all its forms, constitutes a grave threat to peace and security of a nation. Those indulging in it use disruption and violence as the weapons of intimidation against the civilian population, the government to influence public policies or even effect a regime change. By its very nature, terrorism is against the established order of the day. There is, however, no universally accepted definition of the word. Different countries fighting the menace define it differently. In India, the Unlawful Activities (Prevention) Act of 1967, amended in 2004 to fight terrorism, uses the word "unlawful activity" instead of terrorism and defines it as "any action...intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; and which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India."¹⁴

Terrorist Attacks and its Financing: Need for Funding & Costs Incurred

Running a terrorist organisation requires substantial financial resources which are transferred to the groups through clandestine and often illegal channels. Terror expert Jean-Charles Brisard argues that 90 per cent of terror financing goes toward general maintenance of cells and equipment. Less than 10 per cent actually finances the execution of operations.¹⁵ Costs incurred by terrorist organisations include materials such as bombs, vehicles, weapons and communication equipment and those related to planning and execution of attacks and expenses for running terrorist outfits.

While it is relatively easy to provide historical data citing an observational link between counterfeiting and terrorism, it is much less so to analyse the aggregate effects of the illicit

markets industry on terror crimes in general. **Moreover, lack of reliable data on terrorist financing leads to an enormous mismatch between the costs of a single attack and the supposed costs of running and maintaining a terror organisation.** At the same time, estimates of actual financial flows among the parties involved in terrorist activities appear rather preliminary. However this information is essential in order to develop a sound cost-benefit analysis of anti-terrorist measures associated with terror funding.

The scenario in other jurisdictions is not very different, although, credible data on seizures may be more easily available. The UK government in their Report of October 2014, has estimated that they lose about 1.3 % of their total tax collection due to criminal networks, mainly from smuggling.

A number of international studies have been conducted in the past which highlight the involvement of counterfeiting and piracy in financing of terrorist activities, for example, Al Qaeda¹⁶ has been linked to the counterfeit industry through the sales of fake perfumes and shampoos. Also, Al Qaeda training modules recovered in 2002 reveal recommendation of sale of fake goods as a means to raise funds for cells.

RAND Corporation¹⁷ in its report found three cases in which the trail of film piracy leads to terrorism as terrorist groups either engaged in piracy to fund their terror, or received support from their sympathisers who engaged in crime. (See box for cases).

Tri-Border Area (TBA) (Latin America)

The Barakat network was found to be operating in the TBA of Brazil, Argentina, and Paraguay. The network is said to have sent millions of dollars to Hezbollah from funds raised from the proceeds of pirated goods and drug trafficking. The link between piracy and terrorism in this case was established based on evidences court proceedings, reports by international experts on the TBA and local media articles which are supported by intelligence dossiers and interviews with trusted local prosecutors. According to intelligence agencies Barakat provided and still provides a large part of the \$20 million sent annually from the TBA to finance Hezbollah.¹⁸

Northern Ireland

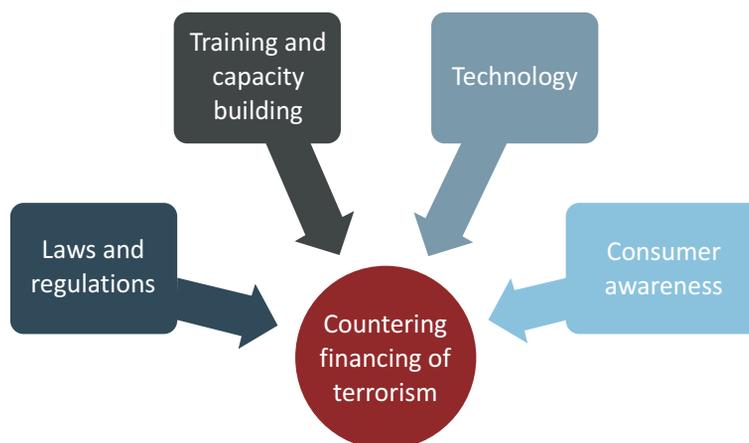
In this case paramilitary groups used criminal networks of smuggling and racketeering to build a highly profitable counterfeiting industry. Paramilitary groups appear to have been active in piracy since the home video market took off in the early 1990s. By the end of the decade the ease and quality of digital duplication helped film and software piracy to skyrocket. By 2004, paramilitary groups estimated to control 80% of all film and software piracy in the territory. This case was built on extensive interviews with OCTF, a report by the British House of Commons Northern Ireland Affairs Select Committee which provides a case for the paramilitary activity in organised crime highlighting the money to be made from piracy.

South Asia

The case of Dawood Ibrahim or his D-Company demonstrates how an organised crime group that turned into a terrorist group leveraged rackets in the film industry to vertically expand into piracy. No estimates are available of the proceeds of D-Company from film piracy. However the size and sophistication of Ibrahim's counterfeit DVD operation bespeak a highly profitable enterprise. Indian authorities have been aware of the D-Company's film piracy operations in Pakistan since the 1990s but were practically powerless to intervene. Only after 2005 when US Customs seized a large shipment of SADAF-brand counterfeit discs in Virginia did Pakistan under threat of sanctions begin raiding D-Company's duplicating facilities in Karachi.

The illicit markets have grown exponentially across the world, not only costing the industry and governments dear but also promoting criminal enterprises and generating funds for terror activities. Inadequate laws, poor governance and information gaps have aggravated the problem. It is, therefore, crucial to tackle the menace on a global footing in which all countries share information and join forces in creating a legal and regulatory framework, backed by effective enforcement.

So far as India is concerned, lack of adequate data based on search and seizure makes it difficult to link or correlate the increase in illicit markets to terror funding. Establishment and determination of the extent of such a link calls for strategic intelligence gathering and preparation of robust databases, which are clearly missing at present. Given the security implications, if not outright financial considerations, there is little to argue against carrying out such exercises. This would be the first step to contain counterfeiting and its corollary, terror and ensure that genuine business interests do not suffer. It is therefore imperative to build a framework for prevention of terrorist financing which not only tracks down their financing hubs but also acts as a deterrent for them to ultimately bring down the threat of terrorism. The framework must deal with financing of terrorism from the following perspectives:



Conclusion

As we have established in the earlier sections, piracy is a bane to the motion picture industry. Improvements in technology, internet and mobile penetration, the growing Indian middle class population, and economic prosperity coupled with increasing disposable incomes are only likely to increase the problem unless stern measures are taken to protect the industry, consumer and government.

One important exercise going forward would be for the government to systematically collect data on the demand and supply side of the motion picture industry, to enhance data analysis and resultant estimation of grey markets. Such estimates would also assist government and industry bodies to devise methods of curbing the danger of piracy.

Piracy has been a perennial problem for the motion picture industry for the longest time. According to a 2011 industry body¹ report piracy in the form of physical CD sale and online download is estimated to be around 40% to 50% of the film trade. Pirated DVDs are often made available long before the actual film release, thus affecting ticket sales.

Low screen penetration could be one of the issues in India. The number of screens per million viewers in India is abysmally below the global average. According to a study on cinema in India referred to in this same report, there is a requirement of more than 20,000 screens as against the current figure of about 12,000. With the advent of the multiplex revolution and with the government's move to allow 100% FDI on the automatic approval route, the multiplex penetration is expected to improve further. This will go a long way in curbing the problem of piracy.

According to a 2014 MPA-Deloitte study² the reduction in theatre-to-television window of films has reduced the scope for pirated DVD sales. However, piracy still continues to pose a threat to home video and web-based revenues. The Hindi film home video market has been declining over the past several years largely due to the easy availability of pirated DVDs and VCDs at unorganised retail outlets.

In addition, as stated earlier the growth of internet penetration is a contributing factor for growth of piracy in this industry. This increasing penetration emphasises the need for cooperation from the government and the ISPs to design protective measures that prevent access to websites that clearly and blatantly infringe copyright.

¹ Media & Entertainment in India - Digital Road Ahead"- September 2011

² Economic Contribution of the Indian Motion Picture and Television Industry" - March 2014

Coupled with these factors high entertainment tax also acts as a significant hurdle to the growth of the industry and the flourishing illicit market. Entertainment tax is the primary tax levied on movie exhibition. It is a state levy and ranges from 6% to 100% (i.e. apart from a few states where entertainment tax is nil). Such high rates of tax on box office admissions seem irrational considering that films are available on other platforms like television and internet for free or very little cost. Therefore, entertainment tax structures need to also be rationalised across states

On the subject of funding terror organisations, owing to the extensive research carried out globally on terrorism and its links to proceeds from illicit markets, it is possible to state with certainty that illicit markets are instrumental in providing the much required funding to such organisations. In addition to the FBI, the former US Customs Service also brought attention to the link between the sale of fake goods and terrorism and has noted that the events of September 11, 2001 “changed the way American law enforcement looks at intellectual property crimes.”¹⁹

As the RAND report says the 3 cases pointed out in their study are hardly definitive conclusions. They do however illustrate several forms of convergence between organised crime, piracy and terrorism and in all of them, terrorists' links to piracy was sustained for many years.²⁰

Terrorist groups need financial resources to train and support members, maintain and sustain logistics, and meet operational costs. Therefore, if the threat of terrorism is to be nipped, the access to funding has to be choked. The truth is that many countries do not possess the legal and operational wherewithal and technical expertise needed to zero in on terrorist financing sources and initiate prosecution.

It is imperative therefore to build a framework for prevention of terrorist financing which not only tracks down their financing hubs but also acts as a deterrent for them to ultimately bring down the threat of terrorism. The framework will include training and capacity building among enforcement agencies, use of technology to detect and track sources of finance and increasing consumer awareness to empower consumers to take more informed decisions.

Industry and government collaboration is very important for the creation and implementation of mechanisms to check piracy. Spreading awareness on the subject and the consequences of piracy could also help. While initiatives have been taken by industry alliances to spread awareness on the problem, government intervention is important to step up anti-piracy measures and effective enforcement.

Annexures

Annexure I: Academic Literature Review

- ❖ **OECD** estimates international trade in counterfeit and pirated products could have been up to USD 200 billion in 2005 excluding domestically produced and consumed counterfeit and pirated products and the pirated digital products being distributed via the internet. The magnitude and effect of counterfeiting are of extreme significance and warrants strong, sustained and coordinated action from government, industry and consumers. Counterfeit and pirated products are infiltrating legitimate supply chains other than informal markets. The Internet has provided counterfeiters/pirates with a new and powerful means to sell their products via auction sites, stand-alone e-commerce sites and email solicitations.²¹
- ❖ **OECD** further states that the effects of counterfeiting and piracy on government come in the form of (i) lower tax revenues, (ii) the cost of anti-counterfeiting activities, including responding to public health and safety consequences and (iii) corruption. Tax revenues. Tax collection is presumed to be far more effective from rights holders and their licensees than from counterfeiters and pirates. Potential losses include corporate income taxes, sales or value added taxes, excise taxes, import tariffs and social insurance charges. The revenue losses are particularly high in sectors such as tobacco and alcohol, where excise taxes are high and smuggling of counterfeit products to avoid those taxes is widespread.²²
- ❖ **BASCAP** estimates that the total value of pirated and counterfeited products impacting G20 economies for 2008 is \$455 to \$650 billion and has been projected between \$1,220 to \$1,770 billion for 2015 including international trade, domestically produced goods and pirated digital products distributed via internet. The impact of counterfeiting and piracy on government tax revenues, legitimate employment, increased costs of crime, economic costs on consumer health and safety and downward pressures on FDI flows has been estimated at \$125 billion per annum for G20 countries. Employment loss has been estimated at 2.5 million jobs for G20 countries excluding secondary impact on employment in the supply chain.²³
- ❖ **International Anti-Counterfeiting Coalition, Inc. (IACC)** professes that low risk of prosecution and enormous profit potential has made criminal counterfeiting an attractive enterprise for organized crime groups. There are connections between intellectual property theft and terrorist groups and terrorists can use intellectual property crimes not only as a source of funding but also as a means of attack.²⁴

- ❖ **GAO** states that it is difficult to quantify the economy wide impacts of counterfeiting because of varying assumptions on substitution of legitimate products with the pirated goods across industries. Hence each method of costs estimation has limitations on account of data availability and underlying assumptions and no single method can be used across industry sectors.²⁵
- ❖ **UNODC** says, "The ramifications of counterfeiting affect everyone, with Governments, businesses and society being robbed of tax revenue, business income and jobs. The flood of counterfeit and pirated products creates an enormous drain on the global economy by creating an underground trade that deprives Governments of revenue for vital public services and imposes greater burdens on taxpayers. It also leads to more public resources being spent on fraud-detection methods by public sector authorities and larger intelligence and policing budgets being needed to counter sophisticated schemes and networks. Counterfeit goods also undermine employment, as products are copied and produced illegally, thereby displacing sales of original merchandise and reducing the turnover of legitimate companies. Fraudulent medicines also have a direct impact on increased medical costs due to prolonged treatment periods and medical complications in the spread of treatment-intensive diseases. The prices of products also go up because companies increase security systems to counter organised criminal activities and have to invest more in research and development."²⁶
- ❖ **A WIPO** study talks about the how intellectual property rights or their protection plays a role in the innovation process, emphasising that technological innovation is a principal determinant of successful firm performance. The study also indicates that small and medium sized enterprises (SMEs) prefer to use trade secrets rather than patents as a form of protecting their inventions to stay competitive. The main reasons given by SMEs for shying away from patenting their inventions include high costs and complexity of the patent system.²⁷
- ❖ **Nam D. Pham** lays emphasis on the impact of innovation and the role of IP rights in his study. The study brings to the fore, the critical importance of allocating resources to innovation in sustaining long-run economic growth in both developed and developing countries. The author argues that countries with the highest technological capacity are better able to enhance the efficiency of their production methods and exploit new market opportunities. The study states that the protection and enforcement of IP rights are imperative for creating strong incentives for innovation and safeguarding it from counterfeiting, piracy, and other forms of IP theft. It concludes that with the growing importance of knowledge as a driving force for innovation and economic expansion worldwide, the protection of property rights has attracted greater attention and concern. The counterfeiting and piracy of products are rising exponentially and are costing the global economy hundreds of billions of dollars a year

in lost revenues and thousands of jobs. The challenge for policymakers is therefore to continue encouraging investment in R&D and human capital in order to promote innovation while at the same time developing the policy instruments and frameworks to better protect intellectual property rights.²⁸

- ❖ **A Harvard University study** delves into the relationship between counterfeit sales and financing of activities of terrorist organisations using a number of economic controls to analyse the effect of two proxies of annual counterfeit sales on two measures of international terrorism namely RAND database and DOS database. It states that while the societal and economic costs of counterfeit products are largely incontrovertible, one final effect of this crime industry is less definite: its support of international terrorism. Anti-counterfeiting organizations and luxury goods manufacturers are quick to suggest that counterfeit product revenues are directly funding terrorism. There is, however, only a small amount of hard data in support of this claim. The study conducts an inquiry into the purported causal link between measure of counterfeiting and terrorist incidents in a given year through a regression model but suggests that the empirical analysis fails to provide a conclusive relationship between the two.
- ❖ **A University of Wellington study** on cross border tax arbitrage states that in most cases, cross-border tax arbitrage increases the tax payable in one jurisdiction and decreases the tax payable in the other jurisdiction. 13 The decrease must be larger than the increase for the arbitrage to be worthwhile for the taxpayer. Tax arbitrage, therefore, redistributes resources not only from government treasuries to taxpayers, but often from one government treasury to another. The study says the direct consequence of cross-border tax arbitrage is to distort individuals' and corporations' investment decisions, and to reduce the revenue raised by governments. Although cross-border tax arbitrage may augment the coffers of one government's treasury, this augmentation is likely to be more than offset by a reduction in the revenue raised by the other government's treasury (otherwise the arbitrage is unlikely to be advantageous from a tax perspective).²⁹
- ❖ **A RAND Corporation study** says the exposure of the critical link between piracy and organised crime, along with an early-warning tag on terrorism, raises critical questions for policymakers and law enforcement about whether opportunities exist for pursuing piracy up the criminal food chain to uncover and perhaps prevent more-serious criminal acts. For example, in one case documented in this report, a simple arrest at a United Parcel Service (UPS) store for shipping illegal DVDs led to the exposure of a large-scale human-tra?cking ring. There is a clear need for additional global intelligence gathering and sharing to further illuminate the scope and nature of the connections between piracy and organised crime. And the mandate is clear for policymakers and law enforcement around the world to revisit the common but erroneous assumption that counterfeiting is a victimless crime.³⁰

A significant anti-counterfeiting measure undertaken in recent times is the Anti-Counterfeiting Trade Agreement (ACTA). It builds on the Trade-Related Aspects of Intellectual Property Rights (TRIPS), but has been negotiated outside WTO (World Trade Organization) framework. The draft ACTA calls for increased use of criminal and civil penalties against people using copyright circumvention technologies and those accused of copyright infringements, and also for ISPs to have more responsibilities with regards to removing infringing material. **ACTA has been rejected by the European Union in July 2012.**

ACTA binds negotiating states and creates a new international standard which is likely to be imposed on third countries in future trade agreements. The current draft threatens fundamental rights in countries such as the right to freedom of expression and information, right to protection of personal data and fair trial/due process issues related to other fundamental rights. It was negotiated in unwarranted secrecy, without adequate input from civil society or parliamentarians, but in close cooperation with major IP right holders. It has resulted in disproportionate protection to big business.³¹

Abbreviations

ASI	Annual Survey of Industries
ACTA	Anti-Counterfeiting Trade Agreement
CASCADE	FICCI's Committee Against Smuggling and Counterfeiting Activities Destroying the Economy
CSO	Central Statistical Organisation
DGCIS	Directorate General of Commercial Intelligence and Statistics
FICCI	Federation of Indian Chambers of Commerce & Industry
IPR	Intellectual Property Rights
MPAA	Motion Picture Association of America
MoSPI	Ministry of Statistics and Planning Implementation
NSS	National Sample Survey
NSSO	National Sample Survey Organisation
OCTF	The Organized Crime Task Force of the Police Service of Northern Ireland
OECD	Organisation for Economic Co-operation and Development
R&D Expenditure	Research and Development expenditure
TARI	Thought Arbitrage Research Institute
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UNODC	United Nations Office on Drugs and Crime
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

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Contact:

FICCI CASCADE

Federation House, Tansen Marg, New Delhi 110001

email: cascade@ficci.com



About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies. FICCI has contributed to this historical process by encouraging debate, articulating the private sector's views and influencing policy.

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About FICCI CASCADE

In the recent past India's economic growth story has attracted world's attention bringing new challenges for the domestic economy. One of the challenges currently faced is the growing illicit trade in counterfeits, pass offs and smuggled goods. These activities are also threatening brands not only in every region of the country but across the globe.

Contraband and counterfeit products hurt the integrity of the brand, further diluting the brand owner's reputation. This not only results in erosion of sales of the legitimate product but further [CASCADE]s onto affect the consumers in the form of health and safety hazards.

With the above insight the Federation of Indian Chambers of Commerce and Industry (FICCI) took the initiative to dedicate a forum by establishing the Committee Against Smuggling and Counterfeiting Activities Destroying the Economy - CASCADE on 18th January, 2011 at FICCI Federation House, New Delhi.

FICCI Committee Against Smuggling and Counterfeiting Activities Destroying Economy (CASCADE)

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