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Strengthening Consumer Protection
Measures to adapt the UN Guidelines for Consumer
Protection to guard against counterfeiting and piracy

Contribution by
Business Action to Stop Counterfeiting and Piracy
and
International Chamber of Commerce

Strengthening Consumer Protection

Measures to adapt the *UN Guidelines for Consumer Protection* to guard against counterfeiting and piracy

Introduction

In December 2015, the United Nations (UN) adopted the Resolution on Consumer Protection (Resolution) along with the annexed Guidelines for Consumer Protection (Guidelines).

The Resolution acknowledges that significant progress with respect to the protection of consumers has been achieved since the adoption of the original guidelines in 1985, but that progress has not been consistently translated into more effective and better-coordinated protection efforts in all countries—particularly in developing countries—and across all areas of commerce.

Accordingly, the Resolution puts forward the Guidelines as:

> *"…a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems, and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations…"*

BASCAP supports steps, such as these, taken by the UN and its Member States to strengthen consumer protection, particularly in an era where consumers are significantly and increasingly exposed to fake, fraudulent and harmful counterfeit and pirated products, including those that are widely available on e-commerce shopping platforms.

In this regard, BASCAP wishes to amplify the Resolution's recognition of:

- The importance of combating substandard, falsely labelled, and counterfeit products that pose threats to the health and safety of consumers and to the environment, and also decrease consumer confidence in the marketplace; and

- The need to devote special attention to the development of effective consumer protection in electronic commerce, which should be understood to include online shopping platforms, mobile commerce and social networks.

While these issues are treated only marginally in the Guidelines, they present significant health and safety risks for consumers and dictate that national governments and businesses reinvigorate their efforts and put in place focused programs and policies to protect consumers, both in the physical and online world.

We welcome an expanded role by governments and consumer protection agencies to address these problems, in collaboration with business and other government agencies responsible for consumer welfare to drive policy, legislative and regulatory solutions. ***BASCAP therefore calls special attention to consumer threats posed by counterfeits and the increasing risks presented by consumer engagement in e-commerce—and highlights key provisions from the Guidelines which can be adapted into national consumer protection programs to better safeguard consumers from these risks.***

Addressing new challenges to consumer health and safety

The significant risks associated with the proliferation of potentially hazardous counterfeit products and their ever-increasing availability on e-commerce shopping platforms present new challenges and additional responsibilities to governments and businesses to appropriately and adequately adapt measures to protect consumers from these product hazards.

Both of these risks are highlighted in the 2015 UN Resolution and Guidelines for Consumer Protection and are addressed below.

Counterfeit and pirated products

The rapidly growing prevalence of counterfeited and pirated products is an emerging risk to consumers, and presents a compelling challenge to governments and businesses to strengthen consumer protections. The OECD has estimated that the *international* trade in counterfeit and pirated goods was valued at approximately USD 461 billion per year in 2013 and represented up to 2.5% of world trade;[i] taken together with fakes manufactured and consumed domestically and digital piracy the total impact of this category of goods is now estimated at USD 1.7 trillion.[ii] This massive economic impact is indicative of the scale of the problem, but equally alarming is the scope – practically every product (retail and commercial) is now being counterfeited. Too often fake items from virtually every product category are found throughout the legitimate marketplace, and this puts at risk the health and safety of individuals and families.

Consequently, counterfeiting presents a fundamentally new challenge to consumer protection. When a product is manufactured and distributed outside the legitimate commercial supply chain that provides safeguards to protect product integrity and to consumer safety, new methods of quality control and consumer awareness are needed.

E-commerce

The rapid and widespread growth of "online shopping" has dramatically increased the volume of products moving across the world, created supply chain vulnerabilities and connects consumers directly to virtual marketplaces with limited quality and safety controls.

Approximately 3.2 billion people—almost half of the world's population—use the Internet today, and almost half of those access e-commerce platforms to shop online.[iii] Global business-to-consumer (B2C) sales over the Internet doubled to USD 1.9 trillion between 2011 and 2014, and was estimated to reach USD 2.3 trillion in 2015.[iv] By 2019, worldwide online sales are expected to reach USD 3.57 trillion, or 12.8% of total retail spending.[v] The fast-growing Asia-Pacific market is estimated at a 25% year-over-year increase in global e-commerce in 2015.[vi]

While e-commerce is delivering unprecedented product choice, convenience and price transparency, it also presents consumers with a number of new risks, such as identity theft and theft of credit card information. Fraudulent offers and transactions also are increasing at alarming rates. In addition, e-commerce platforms are increasingly

vulnerable to a growing illicit industry distributing harmful, unsafe, substandard or faulty products – including counterfeit and pirated products.
For example:

- As much as 50% of drugs sold through online pharmacies are counterfeits containing the wrong ingredients; random mixtures of noxious chemicals; insufficient, too much or no active ingredients; or fake packaging;[vii] and

- During "Cyber Monday" 2015 in the U.S., 37,479 websites were ordered to close for selling fake products to unsuspecting shoppers.[viii] Products included consumer electronics, headphones, cell phones, name-brand apparel, handbags, cosmetics, sports apparel and consumer favorites.

These widespread online activities to target and deceive consumers present significant challenges for national governments and businesses to investigate and stop the flow of fake and unsafe goods. Consequently, existing consumer safety mechanisms must be adapted to safeguard consumers who are directly and instantaneously finding, purchasing and arranging delivery of physical items right into their homes.

BASCAP recommendations

Business Action to Stop Counterfeiting and Piracy (BASCAP) is an initiative of the International Chamber of Commerce (ICC) with a mission to increase awareness of the economic, social and consumer harms of counterfeit and pirated products and to *inter alia* protect consumers from these risks.

Consequently, BASCAP endorses the UN's effort to ensure consumers have access to legitimate and non-hazardous goods; and views the Guidelines as a fundamental driver for Member States to build robust national legal and regulatory frameworks to better safeguard consumers against counterfeits and pirated products, including and especially those proliferating on e-commerce shopping platforms.

In the following section, key provisions from the UN Guidelines are grouped into three categories for special attention by UN Member States and consumer protection agencies to systematically protect consumers from the dangers related to counterfeit and pirated products.[ix] For each of the provisions of the UN Guidelines hereunder, BASCAP:

- Explains the related risks to consumer health and safety associated with counterfeit and pirated products; and

- Provides policy recommendations and suggested best practices for consideration by national governments to facilitate practical implementation of the Guidelines and/or for inclusion in their consumer protection strategies.

1. Access to information – increasing transparency

Guideline 14 (b) calls for improved mechanisms to ensure a sufficient and improved level of transparency between sellers and buyers. Greater transparency allows for more effective management of risks by identifying and monitoring agents in the supply chain, and enables more effective notification when unusual activities and trends are suspected.

> *14. Member States should establish consumer protection policies that encourage:*
> *(b) Clear and timely information to enable consumers to contact businesses easily, and to enable regulatory and law enforcement authorities to identify and locate them. This may include information such as the identity of the business, its legal name and the name under*

> *which it trades, its principal geographic address, website and e-mail address or other means of contact, its telephone number and its government registration or license numbers.*

Appropriate disclosure of information is crucial in helping consumers and regulatory authorities identify illicit traders and differentiate them from those conducting legitimate business operations. Implementation of this Guideline can also provide consumers with a valuable tool for reporting incidences of counterfeit products or to ascertain whether products are genuine. Pursuant to Guideline 14(b), BASCAP encourages governments to:

- Implement regulations mandating the display of consumer care numbers or email addresses on products, websites and/or any on other medium which allows consumers to register complaints, or to verify whether products are genuine;

- Implement regulations mandating the display of the legal name of the producer on consumer goods and the legal name of the seller on websites, if sold online. Failure to display should be penalised by regulatory and law enforcement authorities.

- Require e-commerce platforms and Internet hosting/service providers to gather basic, real-name information on those commercial operators using their services;

- Promote adoption of Know Your Supplier (KYS) and Know Your Customer (KYC) programs by all companies in the supply chain to ensure adequate information is available to allow regulatory authorities to pursue counterfeiters;

- Promote the use of technologies to complement monitoring and compliance efforts and to support effective product recalls; and

- Implement effective monitoring and sanctions to either remedy or remove from commercial trading those who fail to provide effective consumer protection measures.

2. Consumer education and awareness programs

Guideline 5(c) calls for "*the protection of consumers from hazards to their health and safety.*" Guidelines 11(d), 42 and 44 encourage the private and public sector to assist consumers in understanding the variety of risks that they may be exposed to. These Guidelines cover important aspects for guarding against product hazards and areas including e-commerce where consumers are increasingly vulnerable to such risks.

> *11 (d). Education and awareness raising: Businesses should, as appropriate, develop programmes and mechanisms to assist consumers to develop the knowledge and skills necessary to understand risks, including financial risks, to take informed decisions and to access competent and professional advice and assistance, preferably from an independent third party, when needed.*
> *42. Member States should develop or encourage the development of general consumer education and information programmes, including information on the environmental impacts of consumer choices and behaviour and the possible implications, including benefits and costs, of*

> *changes in consumption, bearing in mind the cultural traditions of the people concerned.*
> *44. Consumer education and information programmes should cover such important aspects of consumer protection as the following:*
> *(b) Product hazards; and*
> *(g) Electronic commerce.*

Education is an effective tool to discourage consumers from purchasing counterfeit and pirated goods. This is supported by research indicating that while most consumers are unaware of the risks related to counterfeit and pirated goods, when they have sufficient knowledge they refrain from purchasing counterfeits that potentially threaten their health and safety.[x]

In an effort to improve this awareness, BASCAP has developed the "*I buy real: Fakes cost more*" consumer safety and awareness campaign to educate consumers on the health, safety and economic risks of counterfeiting and piracy.[xi] This campaign has been tailored for use in nearly 30 countries, and is available at no cost to all UN Member States to strengthen consumer awareness.

While many governments and businesses have undertaken to educate consumers on the harms of counterfeiting, the Guidelines amplify this mandate. BASCAP recommends that all UN Member States:

- Educate the general public on the harms related to purchasing counterfeits and where appropriate make consumer education an integral part of the basic curriculum of the educational system. These programmes should include product hazards and risks of counterfeit and pirated products available on e-commerce platforms;

- Conduct awareness campaigns on a national and regional level to help consumers understand that counterfeit products are a real threat to health and safety, jobs and the economy; and

- Engage with industry associations and private sector, including e-businesses, in delivering these important messages to the consumers.

3. Increasing consumer protection in e-commerce

Guidelines 63 and 64 reference the increasing use of e-commerce shopping platforms by consumers and urge Member States to revise existing consumer protection policies and regulations to ensure that consumers are afforded the same level of protection in the online world as in the physical world.

> *63. Member States should work towards enhancing consumer confidence in electronic commerce by the continued development of transparent and effective consumer protection policies, ensuring a level of protection that is not less than that afforded in other forms of commerce.*
> *64. Member States should, where appropriate, review existing consumer protection policies, to accommodate the special features of electronic commerce, and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.*

Guidelines 63 and 64 are timely additions by the UN in recognition of the rapid consumer migration to e-commerce shopping. As e-commerce delivers remote consumers and small- and medium-sized companies with new market access, measures

must be taken to ensure that these benefits are not compromised by counterfeiters and other illicit traders.

Alongside the billions of legitimate online transactions, e-commerce platforms have become vulnerable to misuse and the infiltration of fake and potentially unsafe products. As in the physical world, criminal actors have seized opportunities to gain further profits from distributing counterfeit and pirated goods in the online supply chain. In blurring the distinction between genuine products and fakes, they succeed in selling staggering quantities of infringing items. These criminal networks have flooded the internet with advertisement for websites selling fakes or sites that take consumers to other websites that steal personal information or damage computer systems. There is an urgent need to address the prevalence of counterfeits available to online consumers and to put in place protections to safeguard them from a variety of new online risks.

BASCAP encourages all UN Member States—as well as the e-commerce industry and other intermediary businesses which promote and sell products online[xii] —to use the mandate of the UN Guidelines to implement measures to ensure sufficient protection to consumers engaging in e-commerce. BASCAP calls on UN Member States to:

- Encourage online shopping platforms to adopt and adhere to comprehensive, robust and recognisable due-diligence systems across all platforms and services including:

  - Due diligence checks by platform owners to ensure a basic understanding of who is trading on their platform, such as 'Know Your Supplier' and 'Know Your Consumer' protocols;

  - Automated tools to prevent high risk offers being presented to consumers, including, filtering systems and machine-learning technologies;

  - Terms and conditions to make it clear that swift and strong sanctions will be imposed on those trading in counterfeit and pirated products, including measures to ensure rapid notice and takedown of fakes already available to online shoppers;

  - Secure payment systems;

- Adapt regulations to ensure that e-commerce sites that host the sale of intrinsically dangerous products, including counterfeits, verify that their customers have the rights and authority to trade in such products;

- Develop programmes and mechanisms, with cooperation from the private sector, to assist consumers to develop the knowledge and skills necessary to understand the risks of using e-commerce platforms for their daily needs and to take informed decisions; and

- Encourage e-commerce platforms to take appropriate steps to address advertisements that lead consumers to sites that sell illicit goods;

Conclusions

The UN Guidelines provide a common set of principles that can assist Member States in strengthening consumer protection legislation, standard setting and enforcement and redress systems.

Counterfeiting has proliferated worldwide and e-commerce platforms are contributing to this problem by increasingly connecting shoppers directly to unscrupulous suppliers, often without the product controls and redress systems that consumers are afforded in the physical world.

While these issues are treated only marginally in the Guidelines, they present significant health and safety risks for consumers and dictate that national governments and businesses reinvigorate their efforts and put in place focused programs and policies to protect consumers, both in the physical and online world.

BASCAP endorses the UN Secretary General in this mission, and:

- Upholds the UN's call for Member States to establish regulatory frameworks that encourage sufficient and improved levels of transparency between sellers and buyers to allow for greater management of risks in the supply chain and to enable consumers to make informed choices regarding their purchases.

- Affirms the UN's recognition of the threats related to counterfeiting and calls on Member States to better educate the general public on product hazards including the harms related to purchasing and consuming counterfeits and pirated goods—both in physical and online marketplaces—and to include anti-counterfeiting and piracy strategies in their national consumer protection efforts.

- Echoes the UN's concern that more needs to be done to protect consumers in e-commerce; and calls on governments to ensure a level of protection in e-commerce that is not less than that afforded in other forms of commerce.

- Offers assistance to the United Nations Conference on Trade and Development (UNCTAD) by facilitating collaboration with the private sector and by promoting principles for good business practices reflecting BASCAP's mandate.

- Cautions Member States against an overly broad and loose interpretation of the Guidelines that may risk creating an unfavourable competitive or restrictive environment for domestic and international business.

Notes

[i] OECD, '*Trade in Counterfeit and Pirated Goods: Mapping the Economic Impact*' (April 2016).

[ii] BASCAP, 'Estimating the global economic and social impacts of counterfeiting and piracy' (February 2011) *available at* http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/BASCAP-Research/Economic-impact/Global-Impacts-Study/.

[iii] International Telecommunication Union, 'Statistics confirm ICT revolution of the past 15 years' (May 2015), *available at* http://www.itu.int/net/pressoffice/press_releases/2015/17.aspx#.V9KcWph963B (last visited on 9 September 2016).

[iv] Ecommerce Europe, '*Global B2C E-commerce Report 2015*' (September 2015), *available at* http://www.ecommerce-europe.eu/news/2015/global-e-commerce-turnover-grew-by-24.0-to-reach-1943bn-in-2014 (last visited on 14 July 2016).

[v] eMarketer, '*Worldwide Retail Ecommerce Sales: EMarketer's Updated Estimates and Forecast Through 2019*' (2015) *available at* http://www.emarketer.com/public_media/docs/eMarketer_eTailWest2016_Worldwide_ECommerce_Report.pdf (last visited on 14 July 2016).

[vi] Internet Retailer, '*Global e-commerce sales set to grow 25% in 2015*' (July 2015), *available at* https://www.internetretailer.com/2015/07/29/global-e-commerce-set-grow-25-2015 (last visited on 14 July 2016).

[vii] World Health Organisation, '*Growing threat from counterfeit medicines*' (2010), *available at* http://www.who.int/bulletin/volumes/88/4/10-020410/en/; "World Health Organisation, '*Medicines: spurious/falsely-labelled/ falsified/counterfeit (SFFC) medicines – Fact Sheet*', *available at* http://www.who.int/mediacentre/factsheets/fs275/en/ (last visited on 01 December 2015).

[viii] International Business Times, '*Nearly 40,0000 Fake Cyber Monday Sites, Selling Headphones To Handbags, Taken Down In International Police Effort*' (December 2015), *available at* http://www.ibtimes.com/nearly-400000-fake-cyber-monday-sites-selling-headphones-handbags-taken-down-2205829 (last visited on 15 July 2016).

[ix] Please note that only relevant portions of Guidelines outlined in the 2015 Draft Resolution of the United Nations on Consumer Protection have been extracted for the purpose of this discussion.

[x] BASCAP, '*Consumer Attitudes and Perceptions on Counterfeiting and Piracy*' (December 2009), *available at* http://www.iccwbo.org/advocacy-codes-and-rules/bascap/consumer-awareness/consumer-perceptions/.

[xi] For more information about the '*Fakes cost more: I buy real*' campaign visit: http://ibuyreal.org/.

[xii] For more information on measures to prevent fakes in the online supply chain, *see 'Best Practices for removing Fakes from Online Platforms*' (May 2016) *available at* http://www.iccwbo.org/Advocacy-Codes-and-Rules/BASCAP/International-engagement-and-Advocacy/Online-platforms/.

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