

COUNTERFEITING, PIRACY AND ECONOMIC SUSTAINABILITY: MODELS IN CONFLICT?¹²

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That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. *Inventions then cannot, in nature, be a subject of property.*

Thomas Jefferson, to Isaac McPherson 13 Aug. 1813 Writings 13:333—35

Pirates are competitors: this is the most important lesson to learn.

S.Engels,(2010, p.329)

Abstract

Who owns what develops in your mind? Counterfeiting and piracy have a lengthy history, yet are a youthful field when it comes to research. While generally accepted that 'sustainable' means 'to endure', sustainability as a concept is still open to interpretation (Holling, 2000) with at least 255 ways to visualize this concept. (Mann 2011) The question then becomes can you piece together two models which appear to be at odds with one another? On one hand, sustainability asks the question of how to leave a rich(er) future while piracy and counterfeiting are wrapped in terms such as freedom and redistribution. Are these concepts at odds? In the area of sustainable economics, it is generally accepted that there must be a management of three types of capital (economic, social, and natural) and that their consumption may be seen to be under stress (Dyllick and Hockerts, 2002). But how does this concept relate to the consumption of illegally produced goods and those 'intangibles' which flow through a cyberspace universe?

Producers of counterfeit goods often are complex organizations who carry out some form of 'strategic planning' and who may have well-defined strategies. Staake, Thiesse, and Fleisch (2009) note that little research exists for understanding the mechanisms of such supply side activities. Of concern today is that such activities appear to be becoming institutionalized into our economic fabric. Evidence indicates that the informal economy is both significant in its marketplace impact and that the problem is likely more severe than first imagined. While figures vary, counterfeiting alone was estimated to represent 5-7% of world trade over a decade ago (OECD, 1998). Little is really known relating either to the true size of the problem or to the strategic posture of the actors involved. Therefore, a new question exists which requires examination, namely what are the strategic roles of economic pirates in a global marketplace and how does this relate to economic sustainability? Are those who operate in the shadows actually entrepreneurial drivers of innovation and a positive force in times of economic downturn? If so, should they be regulated as models of sustainability generally suggest.

KEY WORDS: Economic Sustainability, Informal Economy, Counterfeiting and Piracy, Legislative Efforts, Model Building, Complex Organizations, Supply Side Economics, Innovation, Global Marketplace.

SAHTECİLİK, KORSANLIK VE EKONOMİK SÜRDÜRÜLEBİLİRLİK: ÇATIŞAN MODELLER

Özet

Aklınızda gelişen şeyin sahibi kimdir? Sahtecilik ve korsanlık araştırma için yeni bir alan olsa da uzun bir geçmişe sahiptir. "Sürdürülebilir" genellikle "dayanılabilir" anlamına gelse de bir kavram olarak sürdürülebilirliği yorumlayabilmek adına en az 255 yol vardır. Buradaki soru birbirlerinden farklı gibi görünen bu 2 modelin bir araya getirilip

¹ Portions of this paper were presented at the CEE conference, Vienna, December 2010

² Portions of this paper were presented at the 4th Annual research conference, Bratislava, April 2012

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getirilemeyeceğidir. Diğer taraftan, özgürlük ve yeniden dağıtım gibi sahtecilik ve korsanlık birbirine bağlı kavramlar haline gelmişken sürdürülebilirlik nasıl zengin bir gelecek yaşanacağı sorusunu sorar. Bu kavramlar oranlanabilir mi? Sürdürülebilir ekonomi alanında genellikle sermayenin 3 tip yönetimi (ekonomik, sosyal ve doğa) ve bunların tüketiminin baskı altında olduğu kabul edilmektedir. Peki bu kavramın yasadışı üretilen malların tüketimi ve "soyut varlıkların" siber evrende akışıyla nasıl bir ilgisi vardır?

Sahte mal üreticileri genellikle bir çeşit "stratejik planlama" yürüten ve iyi tanımlanmış stratejileri olabilen karmaşık örgütlerdir. Staake, Thiess ve Fleisch (2009) söz konusu arz yönlü faaliyetlerin mekanizmalarını anlamak adına az araştırma olduğunu ileri sürmüşlerdir. Günümüzdeki endişe bu tip faaliyetlerin ekonomik yapı içerisine kurumsallaşarak girmesidir. Bulgular göstermektedir ki; kayıtdışı ekonominin piyasa ekonomisi üzerindeki etkisi anlamlıdır ve problem düşünüldüğünden daha ciddi boyuttadır. Rakamlar farklılık arz etse de sahtecilik 10 yıl önceki dünya ticaretinin %5-7'si olarak tahmin edilmiştir. (OECD, 98) Küçük şeyler gerçekten bilinen sorunun gerçek boyutuyla ya da ilgili oyuncuların stratejik duruşuyla ilgilidir. Dolayısıyla sorulacak olan yeni soru şudur; ekonomik korsanların küresel pazarda stratejik rolleri nelerdir ve bunun ekonomik sürdürülebilirlik ile nasıl bir ilişkisi vardır? Bu soru yeni incelemeleri de beraberinde getirmektedir. Peki bu gölge faaliyetleri olanlar aslında inovasyonun girişimci sürücüleri ve ekonomik kriz dönemlerindeki pozitif güçler midir? Eğer öyleyse sürdürülebilirlik modelleri önerildiği gibi düzenlenmelidir.

Anahtar Kelimeler: Ekonomik Sürdürülebilirlik, Kayıtdışı Ekonomi, Sahtecilik ve Korsanlık, Yasal Çalışmalar, Model Geliştirme, Kompleks Örgütler, Arz Yanlı Ekonomi, Inovasyon, Küresel Pazar.

1. Introduction

2.The Question

Who owns what develops in your mind? While counterfeiting and piracy have a lengthy history, they are a youthful research field. Producers of counterfeit goods often are complex organizations who carry out some form of 'strategic planning' and who may have well-defined strategies. Staake, Thiess, and Fleisch (2009) note that little research exists for understanding the mechanisms of such supply side activities.

On the other hand,sustainable economics calls for proper management of three types of capital (economic, social, and natural) and consumption of each is considered by some to be under 'stress' (Dyllick and Hockerts, 2002). While arguments may serve tangible goods well, how are we to consider the "digital consumption" of intangibles such as electrons flowing through cyberspace? We must note that sustainability as a concept is still open to interpretation (Holling,2000).According to Mann (2011),there are at least 255 ways to visualize this concept.

The question then becomes can you piece together two models which appear to be at odds with one another? On one hand, sustainability asks the question of how to leave a rich(er) future while piracy and counterfeiting are wrapped in terms such as 'freedom' and 'redistribution'. This paper seeks to advance a discussion on the linkages between these concepts.

3.Sustainability

The Brundtland Report (World Commission on Environment and Development, 1987, p.43) defined sustainable development as..." development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

*the concept of **needs** ,in particular the essential needs of the world's poor, to which overriding priority should be given; and the idea of **limitations** imposed by the state of technology and social organization on the environment's ability to meet present and future needs."*

There appears to be no conflict between this statement and a generalized concept of freedom. The UK Commission on Intellectual Property Rights (<http://www.iprcommission.org/home.html>) expressed a similar view in that there are "no circumstances in which the most fundamental human rights should be subordinated to the requirements of IP protection". The commission report makes the distinction that IP rights are granted by states for limited times (at least in the case of patents and copyrights) whereas human rights are "inalienable and universal".

However, Ron Noble of Interpol argues that a question of "respect" (or lack thereof) demands some limits on freedom (*author's interpretation*) for intellectual property. Respect for basic laws as established by the

civil authorities would appear to lead to less counterfeiting and piracy on a global basis. (*Piracy has recently gained a new name - "sharing with others"*, Polish Patent Office,2012)

So, who does own what develops in your mind? Is one free to redistribute an idea (or the fruit of an idea) if it benefits others?

Counterfeiting (hard goods) and piracy (soft goods) are global and ancient. Philips (2005) described French wine stoppers dating to 27BC that bore a counterfeit seal (to pass the wine off as a more expensive import.). Today our concern is more focused towards the reality that such activities appear to be on their way to being institutionalized into our economic fabric.

While there is no generally accepted demarcation between piracy and counterfeiting (either of a deceptive or non-deceptive form; i.e. a purchase where consumers recognize the product as a copy), illegal (*shadow, irregular, underground, illicit, black*) markets continue to flourish. For example, in the area of IP, the Intellectual Property Office for the United Kingdom (<http://www.ipo.gov.uk/types.htm>) defines four main types of IP rights;

Patents protect what makes things work

Trademarks which are signs (like words and logos)

Designs which protect the appearance of a product/logo, and

Copyright(s) which is an automatic right which applies when the work is fixed, that is written or recorded in some way.

There is controversy as to the function of an IP system. In a recent post by the Internet Society it was suggested :

Although intellectual property rights constitute essentially a government grant of a costly private monopoly over ideas, this monopoly is not meant to encourage restrictive structures. Standing alone, intellectual property rights may be able to exclude others, but they should not be used to forestall the introduction of innovative ideas or new business models. (Internet Society , 2013)

Models and methods that create both lasting competitive advantage and economic value are always being sought. A question is whether 'piracy' as Sweeny commented (in Mason, 2008: 59) represents such a model. Therefore, as noted earlier, while illicit activities are not new, there is a new question, namely what is the strategic role of the (economic) pirate/counterfeiter in a global marketplace? Are those who operate in the shadows ('pirates' or similar nomenclature) actually entrepreneurial? If so, would this indicate that they should be embraced by those advocating economic sustainability? While they may create periods of anarchy and confusion, they may also be driving (or spreading) those innovations that may threaten a firm's (perceived) competitive advantage. In addition, does existing legislation (e.g. Intellectual Property: IP) represent an orthodoxy in need of change? (Mason, 2008) (See also 'creative destruction' Sombart (1913), Schumpeter (1942).)

Bacache, Bourreau, and Moreau (2012) found that a certain level of 'tolerance' exists for pirates operating within the music industry. While their study is limited to the French market, they found variation in the type of economic model through which artists receive 'rent' for their talents. Artists who derive the majority of their revenue from live performances were found to be more tolerant of piracy than those artists who self-release. This places the 'live performance' model at odds with established record industry norms.

4. Market Entry Modes and "Illegal" Activities

It is widely accepted in international business studies that risk, timing, and knowledge of which market to enter are all significant variables for any decision maker. The choice of a new market can be a complex and difficult process and can be made even more so by those activities which deflect profits (and thus reduce value created) away from a firm. Hennart (2009) provides an excellent review of the MNE-centric nature of research. The models (Uppsala, OLI, Internationalization) are considered to be focused on the 'bundling' of two sets of assets, namely firm-specific advantages (FSA's) and country-specific advantages (CSA's; e.g. low-cost labor). In this case the "relative strength of these CSA's determines whether firms will serve foreign markets through exports... or through local production" (p.2). He notes that CSA's have owners and that entry into a market must recognize the need to 'maximize the welfare' of said owners as well as enhancing the MNE. (This concept of not ignoring the local 'owners' may hold promise for research in the shadow/informal/black market as the literature has focused on legitimate firms and their modes of operations. Little however is known about how these firms

may represent existing theory). In Hennert's view, knowledge interactions between agents can occur in any of three market scenarios:

- Licensing* a foreign manufacturer (selling on the market for asset services).
- Exporting, or producing* close to the market (accessing market for assets).
- Selling* itself (wholly or partially) to another (accessing a market for firms).

It is his conclusion that how one chooses to enter a market is a function of the 'residual rights' which accrue to a party with the party whose behavior is most difficult to constrain enjoying the highest rents. A question remains as to the value of the knowledge required to operate in a different (non-MNE; non-legal) market model. In all fairness, the MNE's considered in Hennert's (and others) research may be very different from what exists within the fog of illicit markets. (It should be noted that the literature has focused on 'legitimate' business and has left much to be discovered as to how, when, and why illicit players carry out their strategic moves.)

Zhang, Zhang, and Liu (2007) indicate three main research streams exist for understanding foreign entry modes.

Theoretical Interpretations of firm behavior: This area includes transaction cost theory (see Anderson and Gatignon, 1986; internationalization theory (Buckley and Casson, 1976); eclectic theories (for example, Dunning, 2000), contingency theories (Ekeledo and Sivakumar, 1998), socioeconomic theory (Sun, 1999), organizational learning theory (Madhok, 1997).

Determinants of entry mode choice: Factors here include cultural distance (Kogut and Singh, 1988), investing firm's home country and political risks (Delios and Henisz, 2003a, b), level of economic development of host country (Luo, 2001).

Diversified patterns of entry: This includes joint ventures, acquisitions, and greenfield investments (Guillen, 2003 for example)

According to Zhang, et.al, (p751) these studies are all limited in three areas, namely:
They are static and partial in the decision-making process whereby current decisions are considered independent of previous entry attempts
The studies examine only 'important factors' such as cultural distance.
The studies are mostly aimed towards mature markets with few examining emerging markets.

For emerging economies, it is generally considered that they are composed of unclear property rights, government 'interference', high entry barriers, and policy uncertainty (Luo, 2002). These factors would suggest some form of localization in terms of partners via a joint venture.

Zhao and Decker (2004) concluded that five basic approaches exist for understanding the choice of market entry mode. These are:

- SD - Stage of Development (Johanson and Wiedersheim, 1975)
- TCA-Transaction Cost Analysis (Anderson and Gatignon, 1986)
- OLI- Ownership, Location, and Internationalization (Dunning, 2000)
- OC- Organizational Capacity (Madhok, 1998) and
- DMP-Decision Making Process (Root, 1994)

Typically, whichever model is utilized, the factors tend to be grouped into one of four areas:

- Country specific (exchange rates, etc.)
- Industry specific (market size, etc.)
- Firm specific (firm size) and
- Product specific (product type, etc.)

These models have limits. In the TCA model, a distinct weakness exists in measurement. How does one actually measure the cost of a transaction? Madhok (1998) noted that TCA fails to address the larger strategic context of a firm's operations. The DMP, OLI, and OC models all ignore the decision maker in some context and the OLI model goes as far as to ignore competition itself.

The authors have concluded that a more generalized business strategy model should be used in order to analyze market entry mode and to explain decisions. Such as model according to Zhao and Decker should include micro factors (the individuals and the firm) as well as more macro factors (institutional or societal factors). Also, time becomes an important factor in capturing the true essence of what occurred. They also call for more research on emerging markets as these are characterized by a series of changes (such as political structure and market size).

Brouthers, Brouthers, and Werner (2007) did move the TCA research by taking into account real options as part of the decision making process. The authors conclude by adding the concept of value creation (instead of focusing on costs alone) that superior decision based outcomes appear to occur. When demand uncertainty was high, firms tended to prefer modes of market entry that reduced downside risks. In this situation, firms tended to prefer joint ventures. If firms possessed strategic flexibility, they gravitated to a series of options as their concerns over downside risk were less prevalent.

5.Supporting Material: Nature and Scope of Problem

The United Nations' (The Globalization of Crime, 2010) threat assessment on transnational organized crime warned that the situation regarding global crime is changing - and not necessarily for the better. There appears to exist 'the enhanced movement of everything' - movement which may be impossible to police (e.g. as of December 1991 the internet was comprised on only 10 websites, as of mid-2009 there were close to 240 million (*Web Server Survey*, Netcraft.) More recently, the UK Intellectual Property Office (quoting an OECD report) stated that counterfeiting and piracy of intellectual property rights costs more than \$250 billion a year. In Europe alone, the losses were estimated at more than €8 billion annually through counterfeit goods entering the market. (UK Intellectual Property office: <http://www.ipo.gov.uk/home.htm>)

There is clear evidence that the informal economy is significant in its marketplace impact and that the problem is likely more severe and rampant than we imagine. While figures vary, counterfeiting alone was estimated to represent 5-7% of world trade in merchandised goods over a decade ago (OECD, 1998). Still, a dearth of research exists which analyzes the producer's value chain (supply-side). Therefore, little is really known relating either to the true size of the problem or to the strategic posture of the actors involved.

While most research is conducted with Asian or American consumers, the issue of shadow activity is a real one for Central and Eastern Europe (CEE). In the early 1990's as these economies transitioned, the CEE informal marketplace was already estimated to represent between 7%-28% as a percentage of GDP (Schneider and Enste, in Fleming, et.al, 2000). More recently, the Business Software Alliance (Business Software Alliance, 2010) has indicated that while software piracy rates are still high (85%) in the CEE despite having exhibited a downward trend since 1994 [see Shadlen, et.al.2005 who note that central and eastern Europe are not separated in some calculations).

Table 1/Tablo 1: An Assessment of Existing Models and Theories on Market Entry Mode Choice/ *Mevcut Modellerin Değerlendirilmesi ve Pazara Giriş Teorileri*

Table 1: An assessment of existing models and theories on market entry mode choice

| <i>Basic models</i> | <i>References</i> | <i>Theory applied</i> | <i>Main arguments</i> | <i>Limitations</i> |
|--------------------------|--|--|--|--|
| SD model | Johanson and Paul (1975); Brooke (1986); Young et al. (1989) | Firm theory | Internationalization of SMEs is a long, slow and incremental process of cultural and geographical expansion and commitment. | Can not explain why some newly established firms start operation in foreign markets with high equity entry mode, such as foreign direct investment. |
| TCA model and extensions | Anderson and Gatignon (1986); Hill et al. (1990); Klein et al. (1990); Erramilli and Rao (1993) | Transaction cost theory, institution theory, and some others | Efficiency maximizing firms adopt entry modes which minimize transaction costs. | Measurement proves to be difficult, and there is no connection with corporate governance. |
| OLI model | Dunning (1977, 1980, 1988, 1995, 1998, and 2000) | International production theory, organization theory, internalization theory, location theory, and some others | The choice of market entry mode is determined by three sets of advantages: ownership, location and internalization advantage. The more advantages a firm possesses the more likely it adopts a high equity entry mode. | The static model ignores the impact of the firm objective, the decision maker, and the situational contingency surrounding the decision maker when the entry mode choice decision is made. |
| OC model | Aulakh and Kotabe (1997); Madhok (1998) | Organization theory | Entry mode decision depends on the deployment and the development of firm capacity. | Firm capacity is not limited to ownership boundaries and it is not justifiable to ignore both the decision maker and the social and political environment. |
| DMP model | Root (1994); Young et al. (1989); Kumar and Subramaniam (1997) | Behavior theory, contingency theory, and some others | Entry mode choice is regarded as a multi-stage decision making process taking into consideration some important factors. | Ignores the impact of the organization efficiency and the decision maker. |

Source: Zhao and Decker (2004)

Countries have shown a wide variety in their concepts and stances towards IP and potential violations: e.g. France tends towards a neutral position while Taiwan, the United Kingdom, the United States and South Korea lean towards fighting P2P networks. (Bacache, et.al, p.2)

More recently, a legislative alphabet soup with acronyms such as ACTA, SOPA, PIPA, and TPP as well as well-publicized cases such as Megaupload, SABAM v. Netlog, and the closing of The Pirate Bay have only stirred the pot in terms of IP rights and freedoms in general. (ACTA legislation suffered a blow as the European Parliament overwhelmingly rejected the pact in July of 2012.)

The landscape is being muddied further as our digital base continues to outpace our legislative base. Recently, in the case of Capitol Records, LLC v. ReDigi, the court ordered that ReDigi violated copyright law and had no right to resell digital media without permission from the copyright holder permission. The ramifications of this case are still unknown.

In an Economist (April 2, 2013) commentary dealing on this subject, it was noted that:

Technology and media consumption have outpaced copyright law...and this is another area politicians and lawyers will have to grapple with soon. Technically it is illegal to sell a physical CD without wiping the files off your computer. But what consumer knows that? Who actually does that? Consumers have hundreds of billions of dollars of digital media on their computers. Most think they have bought it permanently, and are not simply "licensing" the right to use it. Should they not have the right to sell it on? "

It is estimated that some 2 billion items per year flow from East Asia into Europe and the trend is rising (UN, p.175). Almost 200 million counterfeits were seized by European border controls in 2008 with most (57%) being clothing (or accessories) with nearly two-thirds of these being products from China. In the European Union, the number of counterfeit items seized at borders rose more than 1,000%, rising to over 103 million in 2004, up from 10 million in 1998. (Guiterez, Verheugen, Mandelson, and Schwab, 2006). Recently, EU Commissioner Michal Barnier warned that counterfeiters alone will cost Europe in excess of \$300 million and 1 million jobs by 2015. (Counterfeiters to Cost Europe 'L200bn', June 25, 2010, The Independent). Havocscope currently places counterfeit goods to be in excess of \$500 billion with total shadow or illegal activity standing in excess of \$ 1.5 trillion (Havocscope, 2010). These counterfeited products threaten the health and safety of EU consumers, their jobs, community competitiveness, trade, and investment in research and innovation. (Note: The UN considers counterfeiting of products to be fraud as the product is not what it states to be. This is not the same as copyright violations as they deal with the unauthorized transfer of licensed materials ;however, the UN states that "the sale of pirated CDs and DVDs is considered counterfeiting, because the goods are packaged in such a way that the buyer may believe they are purchasing authorized material.", UN, The Globalization of Crime, page 173).

The OECD reported in 2008 that (based on landed customs value) up to USD 200 billion of internationally traded products could have been counterfeit or pirated in 2005. This amount is larger than the national GDPs of about 150 economies. The OECD also estimates that the share of counterfeit and pirated goods in world trade had increased from 1.85% in 2000 to 1.95% in 2007 (OECD, 2009). These estimates tend to exclude domestically produced and consumed products, as well as non-tangible pirated digital products. Once again, true activity is most likely underestimated non-tangible pirated digital products being distributed via the Internet are excluded from the data (e.g. music, where "domestic" counterfeiting and piracy appear to predominate). The Customs and IPR Report from the World Customs Organization (2008) found product counterfeiting is widespread with products designated for 140 countries being detected in 2008.

The vast majority of counterfeited products arriving into the EU were from China (toys and games), Thailand (clothing and accessories), and Hong Kong (computer equipment). Turkey and the United Arab Emirates (perfumes and cosmetics) were also common sources. European countries like Poland, Ukraine, and Russia are also involved in the production of counterfeit goods.

At first glance, while there are primarily two drivers of a shadow economy- a definitional approach (unrecorded economic activity) and a behavioral approach (economic activity therein; Fleming, Roman, and Farrell, 2000), it should be evident why so much effort is spent in legislating the activities of informal economies. On one hand, it may be economic-e.g. to gain a better picture of lost tax revenues. While this may be an important reason (especially in times of a global recession), a shadow economy affects public policy. Legislative and enforcement efforts are expended in order to affect those activities deemed to fall in 'unacceptable' categories. Loayza (1997) states that an active shadow economy can also signal inefficient public policy. This leads to obvious headaches for those in authority. (See Table 2 for a summary of the potential effects.)

In terms of 'hard goods' (i.e. "counterfeits"), Fleisch (2006) indicated that we purchase fakes primarily because:

- Original is too expensive (50.9%)
- Good cost/performance ratio (42.1%)
- For 'fun' (22.8%)
- They were a 'spontaneous' bargain (17.5%)

We tend not to purchase fakes due more to poor workmanship (36.4%) or lack of opportunity (31.8%). Note that economic considerations, not ethical ones, tend to dominate. There appears to be little in the area of refusing to support an illegal activity.

Research continues to show knowledge gaps in areas such as the impact of counterfeits on brands and firms, the impact on emerging markets (most research has focused on Asian and American activities), the need to integrate pricing with customer choice, and the need to understand the supply side of the equation. Better knowledge in all of the aforementioned areas can only assist in developing anti-counterfeit policies. As Staake, et al. (2009) warned that to view counterfeiters in a simplistic way (e.g. making quick profits) undermines the complexity of the situation and does little for controlling the market from an enforcement viewpoint.

As Table 2 indicates, numerous factors exist for participating in shadow activities. Table 3, shows the potential effects of counterfeiting and piracy.

Table 2/Tablo 2: Drivers for Counterfeit and Pirate Activities /*Sahte ve Korsan Faaliyetler için Etmenler*

| Counterfeit or pirate supply Driving factors | Knowing demand for counterfeit or pirated products Driving factors |
|---|---|
| Market characteristics | Product characteristics |
| High unit profitability | Low prices |
| Large potential market size | Acceptable perceived quality |
| Genuine brand power | Ability to conceal status |
| Production, distribution and technology | Consumer characteristics |
| Moderate need for investments | No health concerns |
| Moderate technology requirements | No safety concerns |
| Unproblematic distribution and sales | Personal budget constraint |
| High ability to conceal operation | Low regard for IPR |
| Easy to deceive consumers | |
| Institutional characteristics | Institutional characteristics |
| Low risk of discovery | Low risk of discovery and prosecution |
| Legal and regulatory framework | Weak or no penalties |
| Weak enforcement | Availability and ease of acquisition |
| Penalties | Socio-economic factors |

Source: OECD 2008

| Impact area | Principal potential effects |
|--|--|
| General socio-economic effects | |
| Innovation and growth | <ul style="list-style-type: none"> – Reduction in incentives to innovate – Possible negative effects on medium and long term growth rates |
| Criminal activities | – Increase in flow of financial resources to criminal networks, thereby increasing their influence in economies |
| Environment | <ul style="list-style-type: none"> – Substandard infringing products can have negative environmental effects – Disposal of counterfeit and pirated products has environmental consequences |
| Employment | – Shift of employment from rights holders to infringing firms, where working conditions are often poorer |
| Foreign direct investment | – Small, negative effects on levels of foreign direct investment flows; possible effect on structure of foreign direct investment |
| Trade | – Negative effects on trade in products where health and safety concerns are high |
| Effects on right holders | |
| Sales volume and prices | <ul style="list-style-type: none"> – Reduction of rights holders' sales volumes – Downward pressures on prices |
| Brand value and firm reputation | – Erosion of brand and firm value |
| Royalties | – Diminished flow of royalties due to rights holders. |
| Firm-level investment | <ul style="list-style-type: none"> – Adverse implications for R&D and other creative activities – Reduced firm-level investment |
| Costs of combating counterfeiting and piracy | – Costs are incurred for; (1) investigatory work; (2) public awareness initiatives; (3) technical assistance to governments; (4) litigation to fight infringements; and (5) modifications to product packaging to deter counterfeiting and piracy |
| Scope of operations | <ul style="list-style-type: none"> – Downsizing of rights holders operations – Increased risk of going out of business |
| Effects on consumers | |
| Health and safety risk | – Substandard products carry health and safety risks ranging from mild inconveniences to life-threatening situations |
| Consumer utility | <ul style="list-style-type: none"> – Consumers who unknowingly buy counterfeit/pirated products are generally worse off – Consumers who knowingly purchase counterfeit/pirated goods are generally not in a position to properly evaluate the quality of the product; there is substantial risk that utility will fall short of expectations |
| Effects on government | |
| Tax revenues | <ul style="list-style-type: none"> – Lower tax and related payments (such as social charges) by rights holders – Weak collection of taxes and related charges from counterfeiters/pirates |
| Costs of anti-counterfeiting activities | – Costs are incurred for enforcement and public awareness initiatives, and for development and maintenance of legal frameworks |
| Corruption | – Bribery and extortion of government officials to facilitate counterfeiting and piracy operations weaken the effectiveness of public institutions charged with law enforcement and related government activities. |

Table 3/Tablo 3: Principal Potential Effects of Counterfeiting and Piracy/*Sahtecilik ve Korsan Faaliyetlerin Başlıca Potansiyel Etkileri*
Source: OECD 2008

In addition, a difficult question exists here - are the ones we color as 'pirates' indeed thieves deserving punishment? On the other hand, are they 'market liberators' who push boundaries forward? Numerous international agencies (e.g. INTERPOL, WIPO, WTO, and the UN) indicate 'piracy', under whatever guise, has a financial and economic cost in terms of lost revenues and lost, or

forgone, employment. Companies may spend many years and much investment capital in order to build intangible assets (such as intellectual property). The concept of intellectual property affords various legal entitlements and may yield them exclusive rights. (Wikipedia, 2010). Attempts to harmonize the laws in this area have proved problematic and have (perhaps) opened an 'opportunity' for those individuals seeking to game the system. Global agreements under the World Trade Organization such as the 1994 Agreement on the Trade-

Related Aspects of Intellectual Property Rights ('TRIPS') have set new universal standards for how countries are to grant and protect intellectual property rights (IPR's) (Dreyfuss and Lowenfeld, 1997; Shadlen, Schrank, and Kurtz, 2005). Under the TRIPS agreement, counterfeiting and piracy are defined as being "goods bearing without authorization, a trademark which cannot be distinguished in its essential aspects from the trademark registered for such goods". Pirated copyright goods are those that infringe upon copyrights and related intellectual property rights (World Trade Organization, 1994). Stakke, et al. (2002) denote these definitions as problematic for understanding the counterfeit supply chain and therefore provide a substitute definition where,

... "*Counterfeit trade* as trade in goods that, be it due to their brand, a manufacturer, or any organization that warrants for the quality or standard conformity of the goods in such a way that the counterfeit merchandise could, potentially, be confused with goods that rightly use this reference".

Heller and Eisenberg (1998) state that too much protection may lead to the 'tragedy of the *anti-commons*' by limiting access to upstream ideas and thus deterring downstream innovation. Therefore, pirates may be useful in that they serve to signal the marketplace and the political landscape of a disconnect between law(s) and economic reality. If legislation is successfully utilized as a protective device then marketplace failures should decline as firms have become more protected. However, perceived 'success' in protection may hinder learning as firms would be artificially insulated from failure. Firms face multiple paths to failure—one of which is market deterioration Moulton (1996). It may be 'pirates' who supply the 'destructive' portion of the 'creative destruction' concept noted by Sombart (1913) and Schumpeter (1942).

Webb, Tihanyi, Ireland, and Sirmon (2009) have argued that shadow players are actually entrepreneurs and another may declare what one may declare as illegal legitimate. Therefore, a conflict may arise between norms, beliefs, and values, (informal institutional boundaries) and the laws and regulations of a society (formal institutional boundaries). These entrepreneurs exploit opportunities by working around imperfections in enforcement of laws and regulations (Webb, et al., p.500). Collective identity, or rather, a group with a strong identity, may provide access to both markets and resources. This may become important when the time comes to move a market due to increase risk of exposure in that market. They argue that it is much better (and with less risk of exposure) for a participant in the shadow economy to provide innovation in the 'means' versus 'ends'.

Raustiala and Sprigman's (2006) study of the global fashion industry suggests an entrepreneurial dimension. The authors note that piracy might actually increase diffusion rates.

Despite this lack of protection, the fashion industry continues to create new designs on a regular basis. The lack of copyright protection for fashion designs has not deterred investment in the industry. Nor has it reduced innovation in designs, which are plentiful each season. (Page 1775)

Ben-Shahar and Assaf (2004) follow in this logic. They assert that a creator may actually benefit from copyright violations as such a violation establishes a mechanism to effectively induce a price break in a subset of the market, which, given sufficiently high entry costs, deters competitors from entering. Therefore, profits may be greatly enhanced through the actual promotion of an optimal level of copyright infringement.

The findings of Konstantakis, et al. (2010) tended to support previous studies. He found that computer science students in Greece saw software piracy as a low morality issue (e.g. Lau 2003, Al-Rafee and Cronan 2006) with price as the reason for using pirated software (e.g. Lau 2003, Al-Rafee and Cronan 2006). A majority believe that real software is overpriced. At the same time, the students thought that the enforcement of intellectual rights laws is not only impossible but also unrealistic.

However, a gap still exists in understanding the mechanisms of supply side (producer) activities with little attention having been paid to how criminals organize or to how they structure their markets (Levitt and Venkatesh, 2000; Staake, Thiesse, and Fleisch, 2009). In order to provide appropriate (e.g. anti-counterfeit) measures requires in their view "some knowledge of the current situation" (p 341).

So, while the students interviewed by Konstantakis, et al. consider enforcement problematic, agencies have called for increased understanding of organized crime and criminal organizations. The FBI (2008) believes that organized crime poses numerous threats, for example:

Penetration of strategic sectors of the economy Logistical and other support to terrorists, foreign intelligence services, and governments Smuggling/traffic people and contraband goods into the United States

Exploiting the U.S. and international financial system to move illicit funds Use cyberspace to target U.S. victims and infrastructure.

As early as 2001, the European Commission claimed that ...'traditional hierarchal structures are being replaced by loose networks of criminals' (p.8).By 2008, the United States Department of Justice noted"International organized criminals have evolved toward loose network structures....It is felt that these loose networks may be an adaptive response to more vigorous enforcement against more established hierarchies. These 'groups' tend to lack independent institutional identity and may have existed for some time (UN page 28).The market has become more important than the group, a paradigm to which law enforcement may have difficulty adapting. Research on industrial organization of criminal enterprises (Leeson and Rogers, 2009) indicates that 'contestability' of industry directly affects shape of hierarchy. If this conclusion is correct then areas of the shadow economy that are less 'contestable' should be populated by flatter organizations. Factors such as consumer demand and producer-provider costs are barriers to entry (see Table 4 for factors that may drive the decision to supply shadow goods). These barriers are hypothesized to impact activity in a direct fashion. Also, enforcement of a collusive agreement is difficult—one must be able to enforce punishments on those who 'cheat' Therefore, vertical structures would be expected where tight control needs to exist and preside in the hands of a powerful leader. Lacking a central leader who can marshal the forces or distribute rewards (or punishments) most likely leads to a system of entrepreneurs (or independent operators).

Table 4/Tablo 4: Factors Driving Supply of Infringements/ *İhlale Sebep Olan Faktörler*

| Driving factor | Condition favoring counterfeiting and piracy | Category |
|--|--|-----------------------|
| Market characteristics | | |
| Unit profitability | High unit profitability | } Market potential |
| Market size | Large potential market(s) | |
| Genuine brand power | High level of brand recognition or popularity | |
| Production, distribution and technology | | |
| Production investments | Simple, low cost equipment | } Market exploitation |
| Technology requirements | Not sophisticated, easy to acquire | |
| Logistics | Simple and cheap logistics | |
| Marketing and sale of products | Easy to establish/infiltrate distribution channels | |
| Ability to conceal operation | Easy to hide illicit operations | |
| Ability to deceive | Easy to deceive consumers | |
| Institutional characteristics | | |
| Risk of discovery | Low risk of detection | } Market risks |
| Legal and regulatory framework | Weak laws | |
| Enforcement | Weak enforcement | |
| Penalties | Weak sanctions | |

Source: OECD 2008

6. The Proliferation of 'Letters'- ACTA, SOPA, PIPA, and TPP- A Brief Review

As evident from the prior discussion, counterfeiting and piracy in the area of intellectual property rights are both global issues. The Organization for Economic Cooperation and Development (OECD) estimates that the international trade in goods infringing intellectual property rights accounts for more than \$250 billion yearly with Europe losing more than €8 billion (annually) through counterfeit goods. This is considered to negatively impact nation competitiveness and is considered a prime reason for loss of jobs. (Intellectual Property Office for the United Kingdom)

In response to concerns such as these, a new proliferation of 'letters' has caused much reaction on a global basis. While most of this is centered on 'protecting the internet' (author's words) the outcome has been far short of this 'goal'.

ACTA (Anti-Counterfeiting Trade Agreement)

| | |
|---------------------|---|
| Targets: | Counterfeit Goods, Generic Medicines, Internet Copyright Infringement |
| Enforcement Method: | Legal |
| Infrastructure: | New Governing body yet to be determined |
| Opposition: | Strong/EFF (Electronic Frontier Foundation) |
| Ratified: | No (Requires six signatories.) |

The goal of this treaty is to develop and establish "international standards for intellectual property rights enforcement". For example, ACTA is seen as a mechanism for dealing with large-scale infringement activities, often pursued by criminal organizations and which frequently pose a threat to public health and safety. ACTA aims to establish shared international standards on how countries should act in these cases (UK Intellectual Property Office) This agreement has been signed (but not ratified) by Australia, Canada, Japan, Morocco, New Zealand, Singapore, South Korea and the United States.

Entities in favor of the agreement tend to be large repositories of intellectual property such as those bodies representing pharmaceutical firms. Opposition hinges on "the convention adversely affects fundamental rights including freedom of expression and privacy." As early as November 2008 the European Commission described ACTA as an attempt to enforce intellectual property rights and states that countries involved in the negotiations see intellectual property rights as "a key instrument for their development and innovation policies". It argued:

'The proliferation of intellectual property rights (IPR) infringements poses an ever-increasing threat to the sustainable development of the world economy. It is a problem with serious economic and social consequences. Today, we face a number of new challenges: the increase of dangerous counterfeit goods (pharmaceuticals, food and drink, cosmetics or toys, car parts); the speed and ease of digital reproduction; the growing importance of the Internet as a means of distribution; and the sophistication and resources of international counterfeiters. All these factors have made the problem more pervasive and harder to tackle.'

European Commission. 23 October

2007

However, the European Parliament resolution of March 2010 on the transparency and state of play of the ACTA negotiations stated that "according to documents leaked, the ACTA negotiations touch on, among other things, pending EU legislation regarding the enforcement of IPRs..and on existing EU legislation regarding e-commerce and data protection." The resolution furthermore states, "Whereas the ongoing EU efforts to harmonize IPR enforcement measures should not be circumvented by trade negotiations which are outside the scope of normal EU decision-making processes." Also, that the enforcement of intellectual property rights (IPRs), including patent, trademark, and copyright law, must be "accomplished in a manner that does not impede innovation or competition, undermine IPR limitations and personal data protection, and restrict the free flow of information or unduly burden legitimate trade. European Parliament. 10 March 2010

For example, in the Slovak Republic the adoption process for ACTA has been interrupted by outgoing Economy Minister, Juraj Miskov. Generally, ACTA has been poorly received in the Slovak Republic with numerous protests and cyber-attacks the result. Some have expressed belief that ACTA is not a serious impediment to normal day-to-day operations. For example, Radovan Pala, a partner in a local law firm states that ACTA only impacts large-scale infringers who seek a profit .The Slovak Copyright Act already states that : " A natural person may make a copy of the published work for himself/herself without the copyright holder's permission ,provided the copy is made for non-commercial purposes." . . (Slovak Spectator, March 2012)

The Slovak Pirate Party however argues that one of their ten platforms is to change the Copyright Act which they consider to be both obsolete (does not reflect current technological capability, nor the existence of modern free licenses), and biased towards corporate profits. (SPP website)

According to pro-internet advocates, ACTA will be a deterrent to the internet and to economic freedoms. For example, in their "Stop ACTA" campaign, the Open Rights group asks the following: *Why you should care*

ACTA has no democratic credibility: ACTA is an affront to our democratic right to have a stake in the decisions that affect us. It was written by a cabal of bureaucrats behind closed doors. There have been repeated efforts to deny us a fair say in what happens to our Internet. Like other laws related to intellectual property, civil society and other voices were excluded. It is only now we have a chance to say what we think. This is one reason why Kader Arif, the lead MEP for ACTA in the European Parliament, resigned.

ACTA threatens your privacy and freedom of speech: The broad definitions of criminal liability will push private companies to police the Internet. Private interests will be given more control over what you do online, would encourage harsh measures be taken against large numbers of citizens for trivial offences, and could mean more disclosure of your personal information.

ACTA would be a hindrance to innovation: The vague threshold for criminal measures, including liability for 'aiding and abetting' infringement, alongside harsher potential fines and other measures will create disincentives to innovate, as companies fear unsustainable liability for their users' behaviour.

ACTA could hurt developing countries: Charities such as Oxfam have complained that it will make it harder for developing countries to access life saving generic medicines.

Source: www.openrightsgroup.org/campaigns/stopacta

SOPA/PIPA (Stop Online Piracy Act) / (Protect IP Act)

| | |
|---------------------|--|
| Targets: | Copyright Infringement (e.g. "Piracy") |
| Enforcement Method: | Legal |
| Infrastructure: | Existing US --perhaps outside US |
| Opposition: | Strong/Broad |
| Ratified: | No |

These proposed pieces of legislation have lead to widespread protests with the most notable one coming on January 18, 2012, when a series of coordinated protests occurred. The protests have centered upon the fear that widespread censorship of the internet will be instituted. (Wikipedia, 2012)

SOPA has defined cyber threat intelligence and cyber security purpose to include "theft or misappropriation of private or government information, intellectual property, or personally identifiable information." The language is generally considered to be vague and may lead to ISP's (Internet Service Providers) acquiring broad powers which could be used to delist or block web accounts .(Reitman and Tien, March 8,2012) . A recent European Court of Justice (ECJ) ruling falls into this area. In the SABAM v. Netlog decision, the ECJ ruled that "... social networks cannot be required to monitor and filter their users' communications to prevent copyright infringement of music and movies." The court indicated that "imposing a broad filtering obligation on social networks would require active monitoring of users' files in violation of EU law and could undermine citizens' freedom of expression".Hinze notes that this case follows a landmark ruling by the European Court of Justice (SABAM v. Scarlet Extended) where the Court held that a Belgian ISP (Scarlet) could not be required to adopt a system to filter and block the transfer of potentially copyright infringing music files.

TPP (Trans-Pacific Partnership, also known as the Trans-Pacific Strategic Economic Partnership)

| | |
|---------------------|---|
| Targets: | Free Trade Agreement |
| Enforcement Method: | Legal/treaty |
| Infrastructure: | Ten Countries; mostly Asia Pacific (United States has interest) |
| Opposition: | Minimal |
| Ratified: | No |

While this agreement is limited in scope there has been some discussion as the restrictions placed into the agreement such as endless copyright terms and stricter punishments for infringements.

7.Examples from EU Members (and one EU aspirant)

Most research is conducted with Asian or American consumers,yet the issue of shadow activity is a real one for select members of the European Union,(especially those in for Central and Eastern Europe),and for one aspiring EU member,Turkey.In the early 1990's as these economies transitioned, the CEE informal marketplace was already estimated to represent between 7%-28% as a percentage of GDP (Schneider and Enste, in Fleming, et.al, 2000). More recently, the Business Software Alliance (Business Software Alliance, 2010) has indicated that while software piracy rates are still high (85%) in the CEE despite having exhibited a downward trend since 1994[however,see Shadlen,et.al.2005 who note that central and eastern Europe are not separated in some calculations).

The following vignettes represent the variety and complexity of the situation.

Bulgaria (Piracy Rate- 64% / World IT Competiveness Rank-43rd; n=66)

Bulgaria leads the way in piracy in the European Union, according to Frances Moore, executive vice president and regional director for Europe of the International Federation of Phonographic Industry (IFPI), broadcaster bTV reported on April 27 2010.Moore said that since 2008, more than 100 000 jobs had been lost in the "arts sector" in the EU. If internet piracy continues to develop at the same rate, by 2015, about 1.2 million people would be out of work, he said. It is estimated that as much as 60 per cent of all software in Bulgaria is pirated.

Among the measures that need to be implemented in the country are amendments to existing legislation. Additionally, internet providers should "police" their clients and make sure they do not use pirated software, music, and films. Internet providers should be issued with a warning initially and subsequently fined, if they fail to act. (*The Sofia Echo*, Tuesday, April 27, 2010).

Czech Republic (Piracy Rate- 35% / World IT Competiveness Rank- 27th; n=66)

According to the Union of the Czech Spirits Producers, approximately one in four of the millions of bottles of alcohol sold annually in the country are counterfeit. Vladimir Steiner, chairman of the Union of the Czech Spirits Producers, told *The Prague Post* the counterfeiting usually involves cheap, generic types of alcohol like vodka and Czech rum."Counterfeit producers either make alcohol by using additives to extract chemicals from denatured alcohol or import it illegally, from Poland, we suspect," Steiner said. "We cannot solve this situation. It is the responsibility of the customs officers, the police and the Czech Agriculture and Food Inspection Authority," he said. (*One in four bottles of liquor is counterfeit*, April 28, 2010), *The Prague Post*.)

Recent rankings by Nationmaster and the Business Software Alliance indicated that the Czech Republic has the best ranking of the CEE in terms of software piracy with "only" a 35% level. (86th lowest out of 107 countries).This places them on par with Taiwan and Singapore. However, they have fallen one position in the past two years on BSA IT competitiveness rankings.

Poland (Piracy Rate- 53% / World IT Competiveness Rank- 30th; n=66)

Poland experiences illegal activity in pesticides to the tune of nearly € 400 million. These illegal pesticides can be broken down into three categories: fake pesticides, counterfeit pesticides, and illegal parallel imports. The system of producing illegal pesticides is very sophisticated and are mainly produced in China (86%).They enter Poland through multiple distribution channels, primarily from Russia and Ukraine. Poland lacks a proper judicial framework for deterring those found producing the product. Poland lacks a proper judicial framework for deterring those found producing the product as these individuals receive only minimal jail time and small fines. (Dunnevant, Al Johar, Collier, Davis, and Dominic, 2010)

Recent rankings by Nationmaster and the Business Software Alliance indicate that Poland is on par with Latvia and Greece in terms of software piracy with a 57% level. (62nd out of 107 countries).Poland has improved by five positions in the past two years on BSA IT competitiveness rankings.

Slovak Republic (Piracy Rate- 40% / World IT Competiveness Rank- 33rd; n=66)

Piracy is a questionable issue in the Slovak Republic. OECD calculations show the Slovak Republic to carry a small weight (*GRTIC-e*) in terms of a trade-related index of counterfeiting and piracy (0.0036, the lowest of all CEE countries-CEE average is 0.3552, with Albania receiving the highest score of 1.2216). While this may be factual, the value of the activity has actually risen by nearly 5% to \$ 65 million.

A question arises as to Slovakia's role relative to its neighbors who themselves show a wide range of piracy. (E.g. 25% in Austria; 85% in Ukraine). Economic analysis places black market economic activity of the four countries (Czech Republic, Hungary, Poland, and Ukraine with which the Slovak Republic shares at border at \$1.9 billion (Havoscope, June 30, 2010). The Slovak Republic has improved by one position in the past two years on BSA IT competitiveness rankings.

Hungary (Piracy Rate- 41% / World IT Competiveness Rank-28th; n=66)

The proportion of Hungarians ready to buy pirated or counterfeit merchandise has fallen for all categories of goods this year compared to last, the National Association Against Counterfeiting (HENT) said on Tuesday. A HENT survey shows just 27 percent of Hungarians would buy pirated or counterfeit merchandise under certain conditions. About 3 percent said they would purchase such goods under any conditions. The survey shows about 13 percent of Hungarians bought at least one counterfeit product in the past year. (<http://www.visegradgroup.eu/news/>)

The Hungarian Customs and Finance Guard indicate that violation of copyrights or the rights related to it dropped from 2010 to 2011 by nearly 17% in number ,and yet in terms of 'value of crime' there has been a 555% *increase*. Fake description of goods in this same time period increased 10% yet value of these crimes dropped nearly 45%. Overall, the Hungarian marketplace experiences a nearly 7:1 ratio in terms of copyright violations to fake goods .The value of these crimes exhibits a ratio of approximately 1.5:1 (value of seized goods however has a 6:1 ratio in terms of faked goods). Source- Hungarian Customs and Finance Guard (<http://www.vam.hu/mainMenu.do?modulId=11>)

Hungary has shown no change in the past two years based on BSA IT competitiveness rankings.

Slovenia (Piracy Rate- 46% / World IT Competiveness Rank-25th; n=66)

In the case of Slovenia, information from the official government website states the “Slovenian Intellectual Property Office is not competent to take measures related to the enforcement of intellectual property rights; however, it cooperates with other bodies authorized to carry out such measures.” (Republic of Slovenia, 2010)

Romania (Piracy Rate- 63% / World IT Competiveness Rank-37th; n=66)

Smuggled cigarettes account for as much as 36.2% of the total Romanian cigarette market. Cigarette producers say the increase in sales of contraband cigarettes is due to the Romanian Government's austerity measures. Cigarette producers estimate cigarette contraband would account for almost 33% of the total market in 2013 (Havoscope, 2013).

Turkey (Piracy Rate- 65% / World IT Competiveness Rank-41st; n=66)

Turkey, an aspiring EU member also suffers heavily from illegal activities in several areas,most notably in the area of counterfeiting ,which represents 35% of all illicit trade.(the primary product is counterfeit purses). Frontier Economics reported that Turkey suffers a loss in total economic value of counterfeiting and piracy of in excess of 1% of Turkish GDP (Frontier Economics,2011). Domestic production and consumption accounts for between \$2.6 billion and \$5.2 billion, while digital piracy accounts for between \$400 million and over \$1 billion.Their conclusion was that for the Turkish economy to move to becoming a more innovation-driven

economy,there is a need to have firms which can create lasting,unique,value. They conclude that counterfeiting stunts Turkey's ability to become a more global country. (Frontier Economics,2011)

The IIPA Has also recommended that Turkey remain on the 'Watch List'. While upcoming legislation is poised to address copyright issues,the IIPA notes that Turkey 's candidacy for the EU requires the country to meet EU standards. The system is considered to be "further weakened by burdensome court processes, long delays in adjudication of cases, and recidivism." (International Intellectual Property Alliance [IIPA]2013 Special 301:Turkey)

8.Conclusion

The resolution of such a thorny and complex issue is beyond the scope of any single paper. The complexities that exist in the tension between a desire to leave a brighter legacy for future generations, the existing legal structure(s) and a desire to exhibit free(er) distribution of property will only lead us deeper down the rabbit hole in terms of reexamining our existing concepts of property and rights. While many infer that there exists a growing concern over the protection of rights, groups such as Anonymous, disagree indicating that there is actually a struggle between 'control' and 'freedom'. Complicating this issue is the varied disagreements that governments have as to how to balance the varied ideals of intellect, competition, wealth, and freedom, among others. These issues will take many years to untangle-if ever they can.

Genişletilmiş Özet

Aklınızda gelişen şeyin sahibi kimdir? Sahtecilik ve korsanlık araştırma için yeni bir alan olsa da uzun bir geçmişe sahiptir. Bir fikir, başkalarına da yarar sağlıyorsa ücretsiz mi olmalıdır? Sahtecilik ve korsanlık, küresel ve eski kavramlardır. Günümüzdeki endişe bu tip aktivitelerin ekonomi içerisinde kurumsallaşma yolunda olmasıdır. Korsan ve sahtecilik arasında genel olarak kabul görmüş bir ayrım olmasa da yasa dışı pazarlar (gölge, yer altı,siyah) gelişmeye devam etmektedir.

"Sürdürülebilir" genellikle "dayanılabilir" anlamına gelse de bir kavram olarak sürdürülebilirliği yorumlayabilmek adına en az 255 yol vardır. Bruntland Raporu sürdürülebilir kalkınmayı şu şekilde tanımlamaktadır: "Kalkınma, kendi ihtiyaçlarını karşılamak için gelecek nesilleri tehlikeye atmaksızın mevcut ihtiyaçların karşılanmasıdır". Söz konusu tanım içerisinde iki anahtar kavram barındırmaktadır ki bunlar; ihtiyaçlar ve sınırlamalardır Buradaki soru birbirlerinden farklı gibi görünen bu 2 modelin bir araya getirilip getirilemeyeceğidir. Diğer taraftan, özgürlük ve yeniden dağıtım gibi sahtecilik ve korsanlık birbirine bağlı kavramlar haline gelmişken sürdürülebilirlik nasıl zengin bir gelecek yaşanacağı sorusunu sorar. Bu kavramlar oranlanabilir mi? Sürdürülebilir ekonomi alanında genellikle sermayenin 3 tip yönetimi (ekonomik, sosyal ve doğa) ve bunların tüketiminin baskı altında olduğu kabul edilmektedir. Peki bu kavramın yasadışı üretilen malların tüketimi ve "soyut varlıkların" siber evrende akışıyla nasıl bir ilgisi vardır?

Sahte mal üreticileri genellikle bir çeşit "stratejik planlama" yürüten ve iyi tanımlanmış stratejileri olabilen karmaşık örgütlerdir. Staake, Thiess ve Fleisch (2009) söz konusu arz yönlü faaliyetlerin mekanizmalarını anlamak adına az araştırma olduğunu ileri sürmüşlerdir. Günümüzdeki endişe bu tip faaliyetlerin ekonomik yapı içerisine kurumsallaşarak girmesidir. Bulgular göstermektedir ki; kayıtdışı ekonominin piyasa ekonomisi üzerindeki etkisi anlamlıdır ve problem düşünüldüğünden daha ciddi boyuttadır. Rakamlar farklılık arz etse de sahtecilik 10 yıl önceki dünya ticaretinin %5-7'si olarak tahmin edilmiştir. (OECD, 98) Küçük şeyler gerçekten bilinen sorunun gerçek boyutuyla ya da ilgili oyuncuların stratejik duruşuyla ilgilidir. Dolayısıyla sorulacak olan yeni soru şudur; ekonomik korsanların küresel pazarda stratejik rolleri nelerdir ve bunun ekonomik sürdürülebilirlik ile nasıl bir ilişkisi vardır? Bu soru yeni incelemeleri de beraberinde getirmektedir. Peki bu gölge faaliyetleri olanlar aslında inovasyonun girişimci sürücülerini ve ekonomik kriz dönemlerindeki pozitif güçler midir? Eğer öyleyse sürdürülebilirlik modelleri önerildiği gibi düzenlenmelidir.

Pazara girmek isteyen herhangi bir karar verici için; risk, zamanlama ve bilgi önemli değişkenlerdir. Yeni bir pazar seçimi karmaşık ve zorlu bir süreçtir, daha da zor olanı karı belirlemek adına bir faaliyet alanı seçmektir. Zhao ve Decker (2004) pazara giriş modu seçimini anlamak adına 5 temel yaklaşım olduğu sonucuna varmıştır. Bunlar; SD -Kalkınma Aşamaları- Modeli (Johanson ve Paul -1975-,Brooke -1986-, Young ve diğerleri -1989-, Firma Teorisi) , TCA -İşlem,maliyet analizi- Modeli (Anderson ve Gotignen -1986-, Hill ve diğerleri -

1990-, Klein ve diğerleri -1990-, Ennomilli ve Rio -1993-, İşlem maliyeti teorisi ve Kurum teorisi), OLI Modeli - Mülkiyet, konum ve uluslararasılaşma- (Dunning -1977, 1980, 1988, 1995, 1998 ve 2000-, uluslararası üretim teorisi, organizasyon teorisi, içselleştirme teorisi, konum teorisi ve diğerleri), OC Modeli –Kurumsal Kapasite- (Aulakh ve Katobe -1997-, Modhok -1998-, organizasyon teorisi), DMP –karar verme süreci- Modeli (Root, -1994-, Young ve diğerleri, -1989-, Kumar ve Subramaniam,-1997-, davranış teorisi, olasılık teorisi, ve diğerleri). Hangi modelin kullanışlı olduğu hususunda faktörler şu 4 alandan bir tanesine eğilimlidir. Bunlar; Ülke özellikleri (döviz kuru gibi), sanayi özellikleri (Pazar büyüklüğü gibi), firma özellikleri (firma büyüklüğü), ve ürün özelliğidir (ürün tibi vb.). Tüm bunlarla beraber söz konusu modellerin bir takım sınırları vardır. TCA modelinde ölçüm zayıflığı vardır ve buradaki soru işlem maliyetinin esas olarak nasıl hesaplanacağıdır. Modhok'a (1998) göre, TCA modeli, firma faaliyetlerini geniş stratejik bağlamda ele almada başarılı değildir. DMP, OCI ve OC modelleri ise karar vericileri göz ardı etmektedir. Yazarlar; pazara giriş modu ve kararları analiz etmek yerine daha genel bir iş stratejisi modeli kullanılması sonucuna varmışlardır. Örneğin Zhao ve Decker'a göre bir model; kurumsal ya da toplumsal faktörler gibi makro faktörlerin yanı sıra bireyler ve firmalar gibi mikro faktörleri de bünyesinde barındırmalıdır.

Model ve yöntemler; kalıcı rekabet avantajı ve ekonomik değer oluşturmayı hedeflemektedir. Buradaki soru “korsanlığın” böyle bir modeli temsil edip edemeyeceğidir. Burada yasadışı faaliyetler yeni değilken, yeni olan soru şudur; Korsan/sahteciliğin küresel pazardaki stratejik rolü nedir? Gerçek girişimciler gölge faaliyetleri olanlar mı? Eğer öyle ise bu, gölge faaliyetleri olanların, ekonomik sürdürülebilirliği savunanlar tarafından benimsendiğine mi işaret ediyor?

Böylesi zorlu ve karmaşık bir sorunun çözümü, tek bir çalışmanın kapsamı ötesindedir. Gelecek nesiller için parlak bir miras bırakma arzusu ile mevcut yasal yapı(lar) ve mülkiyetin ücretsiz dağıtılması arzusu arasındaki karmaşıklık; mevcut mülkiyet ve hak kavramlarının yeniden gözden geçirilmesini gerektirmektedir. Hakların korunmasına dair artan endişeler ile ilgili pek çok görüş karşısında, Anonymous gibi gruplar, “kontrol” ve “özgürlük” arasında bir mücadele olduğu hususunda hemfikir değillerdir. Konuyu karmaşık hale getiren ise hükümetlerin fikirleri, rekabeti, zenginliği, özgürlüğü nasıl dengelemesi gerektiği hususunda sahip olduğu bir takım anlaşmazlıklardır. Sonuç olarak bahsi geçen sorunların çözüme kavuşturulabilmesinin uzun yıllar süreceği aşikardır.

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