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# Standing Committee on Industry, Science and Technology

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EVIDENCE

**Wednesday, April 25, 2007**

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**Chair**

**Mr. James Rajotte**

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## Standing Committee on Industry, Science and Technology

Wednesday, April 25, 2007

• (1530)

[English]

**The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)):** We'll call this meeting to order, members. We are here at the 56th meeting of the Standing Committee on Industry, Science and Technology.

There are a couple of housekeeping items I need to address before turning to the witnesses. The first thing we have to do is to formally elect a vice-chair because our second vice-chair, Monsieur Crête, has moved to the finance committee. So I will technically vacate the seat as chair and ask the clerk to take over for the election of the vice-chair.

**The Clerk of the Committee (Mr. James):** So pursuant to Standing Order 106(2),

[Translation]

you need to elect someone to the position of second vice-chair.

I am prepared to hear motions to that effect.

**Mr. Robert Vincent (Shefford, BQ):** I nominate Paule Brunelle.

**The Clerk:** Mr. Vincent moves that Ms. Brunelle be named vice-chair.

[English]

Are there other motions?

[Translation]

**Hon. Dan McTeague (Pickering—Scarborough East, Lib.):** I would ask the chair to close the floor to any more motions so that we may proceed to the vote.

[English]

**The Clerk:** Seeing no other motions, is it the pleasure of the committee to put the question?

**An hon. member:** Put the question.

**The Clerk:** Very good. All those in favour of Madame Brunelle being second vice-chair? All those opposed?

(Motion agreed to)

[Translation]

**The Clerk:** I declare Ms. Brunelle elected second vice-chair.

[English]

**The Chair:** May I resume the chair again?

**The Clerk:** Yes, you may.

[Translation]

**The Chair:** Congratulations, Ms. Brunelle.

[English]

Mr. Van Kesteren.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Mr. Chair, could I just make a comment? I hope the Bloc doesn't find it offensive, but she's much better to look at than the former vice-chair.

**Some hon. members:** Oh, oh!

**The Chair:** Thank you for that comment.

I have just two items for the information of members. First of all, with respect to the issue that has been raised on briefing material that is from the researchers to the members, one member, at least, has raised with me the request that it be in a more timely manner. People could certainly raise it with me outside of the committee, but I would just respond by saying all information has to be produced in both official languages, and translation takes about four days.

The second item is that it's up to the members themselves to set the agenda as far in advance as we can so that the researchers can produce that material as far in advance as they can. I wanted to address that, first of all. Secondly, if any members ever want to approach the researchers of the library independently, they can certainly do so.

The second item is with respect to the report on the issue we will be starting on today. I need some indication from members, and they can certainly do so after the session today, as to what kind of document they want, whether it's a report or timelines, when they want to discuss what we hear with the witnesses over the next four sessions on counterfeiting and piracy. If members could indicate that to me or to the clerk, we would appreciate that.

We will go now to the witnesses. Pursuant to Standing Order 108 (2), we are beginning our study at the industry committee of counterfeiting and piracy with respect to intellectual property. We have with us here today six witnesses, I believe, and I will just go down the list, and then we will have the members give their presentations.

First of all, from the Department of Industry we have Susan Bincoletto, director general, Marketplace Framework Policy Branch. Secondly, from the Department of Canadian Heritage we have Ms. Danielle Bouvet, director, legislative and international projects, Copyright Policy Branch. From the RCMP we have Mr. Ken Hansen, superintendent director, Federal Enforcement Branch. From Canada Border Services Agency we have Mr. Steve Sloan, director, investigations division, Enforcement Branch. From the Department of Health we have Diana Dowthwaite, director general, Health Products and Food Branch Inspectorate. Finally, from the Department of Foreign Affairs and International Trade we have Mr. Douglas George, director, intellectual property, information and technology trade policy division.

My understanding is there's an agreement that we will start with DFAIT. We will start with Mr. George, with your presentation. We have five minutes each for your presentations.

Mr. George, we'll start with you. Welcome.

• (1535)

[Translation]

**Mr. Douglas George (Director, Intellectual Property, Information and Technology Trade Policy Division, Department of Foreign Affairs and International Trade):** Thank you, Mr. Chair.

I am pleased to be with you today and I want to thank you for the opportunity to speak to the committee.

As the chair said, I am the Director of Intellectual Property, Information and Technology Trade Policy Division within the Department of Foreign Affairs and International Trade. I am also the principal negotiator regarding intellectual property issues and trade agreements.

[English]

I am also appearing here today as chair of the interdepartmental working group on intellectual property issues. The working group is comprised of 10 departments and agencies, all of which have an interest or responsibility for intellectual property rights. This helps to explain the number of officials you have before you today.

[Translation]

I intend to provide you with an overview of the issue, outline international efforts to combat counterfeiting and piracy and explain the purpose of the working group. My colleagues, Ms. Bincoletto from Industry Canada and Ms. Bouvet from Heritage Canada, will describe Canada's current intellectual property legal framework. Then, Mr. Hansen from the RCMP, Mr. Sloan from the Canada Border Services Agency and Ms. Dowthwaite from Health Canada will describe their authorities and efforts with regard to the enforcement of intellectual property rights in Canada.

[English]

First and foremost, counterfeiting and piracy is a growing global problem. The Government of Canada takes the issue seriously and is working toward addressing the problem. Although the issue has been presented by opponents of stronger IP enforcement as a "victimless crime" and one that is only a problem for rich countries, this truly is not the case. The problem poses negative consequences for economies, industries, governments, societies, and consumers. My

colleagues will address these issues in further detail during their presentation today.

Counterfeiting and piracy has gained the attention of the international community, as witnessed by the prominence of the issue on the agendas of the North American Security and Prosperity Partnership, SPP; the G-8; the OECD; APEC; the WCO, World Customs Organization; the WTO, World Trade Organization; and the WIPO, World Intellectual Property Organization.

For instance, the SPP enables closer cooperation between Canada, the U.S., and Mexico on IPR protection and awareness initiatives; the G-8 is providing leadership and guidance by making IP innovation and protection a priority; the OECD is undertaking a process to measure the economic impact of counterfeiting and piracy; APEC has a system to encourage experts from member countries to discuss and share best practices on a range of IP issues, including counterfeiting and piracy; the World Customs Organization is discussing instruments for border authorities to improve their efforts to address counterfeiting and piracy violations, including model legislation; the WTO provides a forum for members to discuss a wide range of issues related to IP, including enforcement; and finally, WIPO is the forum for all countries to address key issues related to the international legal framework, including being the main focus for technical assistance to developing countries.

• (1540)

[Translation]

Let me return to the efforts of the OECD. This point deserves further emphasis. There is a challenge in measuring the impact of counterfeiting and piracy as a great deal of it goes undetected. Enforcement data only summarizes those instances where goods and efforts are intercepted. That is why you will see a range of estimates from different parties attempting to quantify the total impact, and this may cause confusion.

[English]

This is only the multilateral side of our international work. Bilateral interests and activities are equally focused on IP issues. The U.S. has allocated significant resources to this issue for the bilateral diplomacy efforts with specific countries, Canada included.

[Translation]

Canada appeared in the U.S. Trade representative's 2006 Special 301 Report, which is driven by U.S. industry and is typically used by the United States representative to apply pressure on trading partners. Canada has been on the lowest level of lists for the last 11 years, along with the European Union, Italy and Mexico.

[English]

Both domestic and international factors have led the Government of Canada to undertake a review of our domestic IP enforcement regime. That's where the interdepartmental working group comes in. Ten key agencies and departments are examining the issues to identify and analyze potential solutions. The group is currently studying options to improve our regime, with the intent to prepare recommendations for consideration. Significant progress has been made, but the work is not yet complete.

In order to be effective as government officials, we work closely together and call on stakeholders such as the Canadian Chamber of Commerce and the Canadian Anti-Counterfeiting Network, among others, for input and advice through surveys, round tables, and seminars. This partnership is essential to better understand our respective interests and concerns.

[Translation]

Canada believes that cooperation between countries, including industry, not just governments, is essential as the problem is global.

On that note, I will hand it over to my colleagues from Industry Canada and Canadian Heritage.

[English]

**Ms. Susan Bincoletto (Director General, Marketplace Framework Policy Branch, Department of Industry):** Thank you very much, Doug.

Good afternoon, and thank you for inviting us to speak today on counterfeiting and piracy.

My name, as was mentioned, is Susan Bincoletto. I'm the director general at Industry Canada dealing with marketplace framework policies.

You had the pleasure of meeting one of my staff members, Doug Clark, in the review this committee conducted a couple of weeks ago. You might actually have the pleasure of meeting me and Doug again on the Olympics bill that is before Parliament as well.

We have been very busy on intellectual property, and counterfeiting and piracy is clearly one of our main focuses in the branch.

My colleagues and I are here today because we're each responsible for an aspect of the file. Industry is responsible for IP laws, and we share this task with the Department of Canadian Heritage as far as copyright policy is concerned. My colleague, Danielle Bouvet, is here, and she is more than happy to answer any of the questions that you may wish to direct to her department. I will be happy to answer your questions as to Industry Canada's role.

● (1545)

[Translation]

The federal working group represented here is actively engaged, with a view to providing advice to ministers on how to better address the global problem of counterfeiting and piracy. But there are no easy solutions to a problem that is global in nature, not easily quantifiable, and inherently underground.

I will focus my remarks on two points: measurement challenges and the role of intellectual property laws in curtailing counterfeiting

and piracy. My colleagues from law enforcement agencies can provide greater insight into the reality on the ground. I will focus on global figures.

[English]

On measurement—and my colleague, Doug George, already alluded to it—first, the basic principles. Why is counterfeiting and piracy a problem? IP laws are in place to promote creativity, research, innovation, and growth. To the extent that counterfeiting and piracy undermine IP protection, these activities can have serious negative effects on innovators, creators, and the economy as a whole, through lower tax revenues and increased cost for anti-counterfeiting activities.

Consumers as well can be worse off if they unknowingly purchase counterfeit or pirated goods. Worse yet, in some cases, their safety may be at risk. In addition to economic and social costs, there may be a link to criminal activity. My RCMP colleague will expand, I'm sure, on that point. More recently, the Internet has also become an attractive distribution channel, more difficult to monitor and enforce.

The second question is, how big is the problem? Current knowledge is wanting. The OECD has been tasked to examine this issue, to inform governments of its magnitude and to facilitate the development of coherent policies to effectively combat counterfeiting and piracy. They have yet to finalize their report and have already indicated that there are significant gaps in information. Nevertheless, their most recent preliminary finding suggests that counterfeiting in pirated items traded internationally accounts for about \$176 billion U.S. or 2% of world trade in goods. The OECD itself acknowledges that this figure is not final, as it does not take into account exclusively domestic trade in counterfeit and pirated goods, or digital piracy, among other things.

[Translation]

The most widely cited international statistics date back to 1997, from a report originating with the International Chamber of Commerce. The report concluded that counterfeiting and piracy represented between 5% and 7% of world trade. This would be between \$350 billion and \$600 billion based on today's global trade. But caution must be exercised when using these figures as the report did not rely on hard data.

The OECD refers to the fact that close to 60% of seizures originated from only five countries: China, Thailand, Hong Kong, Korea and Malaysia. The products intercepted differ quite significantly between countries but most of them include clothing and apparel, electrical equipment, leather articles, toys, clocks and watches.

[English]

In Canada—this is for the international estimates—industry estimates situate the cost at \$20 billion to \$30 billion. There seems to be little supporting methodology to arrive at this figure, and if these estimates are accurate, Canada would be responsible for between 6% and almost 18% of global counterfeiting, despite accounting for only 2.5% of world GDP.

More work is clearly required to get a better handle on the size and nature of the problem. This is central for policy-makers such as ourselves to make evidence-based recommendations on how to tackle the problem. Why? Because combating counterfeiting costs money, for IP rights-holders and for governments.

Let me turn to my second point, which is the IP regime. Intellectual property rights are, by definition, private rights, which, when transgressed, are the responsibility of the individual rights-holder to enforce through the commencement of civil proceedings. In contrast, criminal law is public law, in that it is concerned with acts thought to constitute an offence against society as a whole or to a government's authority and legitimacy.

The decision to criminalize behaviour, which has traditionally been addressed civilly, should not be taken lightly. Thus, it is all the more important to have a true and accurate picture of the degree to which counterfeiting and piracy pose a societal harm before introducing further criminal sanctions in this respect. This is one of the clear challenges facing the federal working group and is a focal point of our efforts.

• (1550)

[Translation]

In a civil context, businesses and persons already have considerable means at their disposal to enforce their intellectual property rights. Both the Trademarks Act, for which my department is responsible, and the Copyright Act, for which responsibility is shared with the Department of Canadian Heritage, allow rights holders to bring an action for infringement, and to obtain remedies by way of damages, and accounting of profits, interlocutory or final injunctions and the return of goods in the even a court finds in the rights holder's favour. Similarly, both acts empower rights holders to commence civil proceedings seeking a court order directing the CBSA to detain suspected counterfeit or pirated goods at the border.

[English]

That's on the civil side.

On the criminal side, Parliament has already deemed some activities involving counterfeit and pirated goods to be sufficiently harmful at the societal level to warrant criminal sanction.

Thus, there are long-standing provisions in the Criminal Code prohibiting persons from forging trademarks and possessing equipment for the purpose of forging trademarks. There are also criminal prohibitions in the Copyright Act for various activities involving pirated goods, such as selling, renting, offering for sale or rent, exhibiting or distributing for the purpose of trade, or importing for the purpose of sale or rent. The list goes on.

The industry has raised some concerns about the effectiveness of these provisions, and the working group is taking their claims very seriously. For example, in spite of criminal copyright offences being punishable by fines of \$1 million or imprisonment not exceeding five years, or both, private industry contends in their recent CACN report, which was issued in March, that sentencing is usually a fraction of this.

Presumably, the introduction of new or stronger criminal offences may not change that per se. A better system would also require that IP cases be given priority and the courts take them more seriously.

For us in the working group, this requires an examination of the interface between police, the involvement of prosecutors and judges, and an assessment of the amount of resources required for effective enforcement.

It stands to reason that this approach would either cost a lot more or displace current efforts in other areas. That is a choice to make.

[Translation]

Other jurisdictions have put in place different regimes for dealing with counterfeiting and piracy at the border. Some, such as the United Kingdom, rely more heavily on rights holders involvement; others, such as the United States, shift the responsibility and costs of enforcement to governments. Identifying the advantages and drawbacks of these various approaches, and their relative fit with Canadian legal, administrative and procedural structures, is a big part of the analytical work being done by the federal working group. As always, cost considerations are central to this undertaking.

[English]

To conclude, new rights alone cannot be the solution. A multipronged approach, with consideration of resource requirements, consumer awareness, and international industry cooperation, is also required. In this regard, this group is focusing on all these elements. We appreciate the efforts and contribution of the Canadian private sector in helping us better understand the reality and their concern.

*Merci beaucoup.*

• (1555)

**The Chair:** Thank you very much, Ms. Bincoletto.

We'll go directly to Mr. Hansen.

[Translation]

**Mr. Ken Hansen (Superintendent, Director, Federal Enforcement Branch, Royal Canadian Mounted Police):** Mr. Chair, committee members, thank you for inviting me here today. After a brief statement, I would be happy to answer any questions you may have.

Ten years ago, IPR crime was generally not considered a major criminal problem in Canada. Counterfeit goods usually consisted of luxury items such as fake Rolex watches or brand-name clothing. They were generally sold at flea markets, and most consumers knew what they were buying.

[English]

Although many members of the public, and even some police officers, still have this perception, it's no longer accurate. The situation has changed dramatically over the last few years. Counterfeit goods seized in Canada now include almost any product you can think of—and I brought some examples here today—such as auto parts, electrical products, pharmaceuticals, food products, cosmetics, and so on.

In some cases, these goods have infiltrated the supply chains. The major retailers often aren't aware and, as a result, unknowingly sell these counterfeit goods to unsuspecting consumers.

In many cases, these products pose serious health and safety risks, and may even have contributed to deaths in Canada. Of particular concern are the cases involving counterfeit pharmaceuticals, though thankfully these cases are relatively rare in Canada. Many people unknowingly purchase these products via the Internet.

At the moment the RCMP is involved in several ongoing long-term investigations involving Internet pharmacies. These cases are very difficult for the police because the companies may appear to have a Canadian address but in fact the server is actually in another country.

Counterfeit batteries are another concern. We've seen them leak and even explode. Although it is not known if all cases of leaking or exploding batteries involve counterfeits, the RCMP is aware that numerous such cases have been reported to Health Canada, and many involve children's toys, including eight cases where children were burned.

I have personal experience with this risk, as a package of counterfeit batteries, which I gave to my supervisor, recently exploded spontaneously in his desk drawer.

In Quebec, investigators seized over two and a half tonnes of counterfeit batteries in 2005 alone. They pose a serious disposal and storage problem. I did not bring any batteries here today, but I brought a package to show you that it's very difficult to determine if the packages are counterfeit. Why would anyone knowingly create such dangerous products? There are really two answers: high profits and low risk.

Strategic intelligence reports indicate that profit margins are very high. For example, a kilo of cocaine is worth about \$40,000 on the street, while a kilo of counterfeit pharmaceuticals in pill form can be sold for over \$100,000. The risk of being caught and then incarcerated is very low.

In Canada, virtually all major organized crime and, at least in one confirmed case, terrorist groups are heavily involved in the manufacture, importation, and distribution of counterfeit products. While we expect the private sector to handle minor retail issues, serve cease and desist orders, and take civil action cases where their copyright is violated, we cannot expect them to handle organized crime.

While it is not possible to give exact figures—as my colleague, Ms. Bincoletto, mentioned—from our experiences with this crime, I'm comfortable stating that the impact is in the billions of dollars, and it is growing. Canada is not alone in this phenomenon. For the last five years I've been co-chairing an Interpol subgroup on this issue. As my colleague, Mr. George, stated, this is a global problem, usually involving international criminal networks.

Partially for these reasons, the RCMP has designated economic integrity, which specifically includes IPR crime, to be one of its five strategic priorities. We are making some progress. The RCMP conducts about 400 criminal investigations into IPR crime annually,

and the number of charges has increased from an average in past years of about 400 to over 700 in 2005.

As I mentioned, the RCMP co-chairs the Interpol Intellectual Property Crime Action Group, based out of Interpol in Lyon, France. This consists of representatives from law enforcement and the private sector around the world. It is working on implementing initiatives such as an international IPR databank to improve enforcement coordination.

There is also recognition among law enforcement agencies that we have to work more closely together to successfully target the major organized crime networks, which are often connected internationally.

Recently the RCMP teamed up with the Canadian Anti-Counterfeiting Network in a public awareness campaign, creating posters with tips for identifying counterfeit product, as well as making radio public service announcements.

The RCMP also works with many government departments, such as the Canada Border Services Agency and Health Canada, to investigate these crimes. Municipal police forces are recognizing the importance of such investigations, and they have made some major seizures and also laid numerous charges.

That said, we still have a long way to go and many challenges to overcome. Presently we have no authority to seize criminal proceeds under the Copyright Act. There are no criminal provisions in the Trade-marks Act, which means we have to prove that a fraud occurred and lay charges under the Criminal Code. Under the Criminal Code, the maximum penalty is two years. As my colleagues said, that is extremely rare.

- (1600)

Criminals will often import hang-tags and labels separately from the product, and there is no legislation to counter this technique. The current criminal penalties imposed by the courts pose little deterrent, and it is not unusual to charge the same group multiple times for IPR crimes, as they see fines or seizure of product as simply the cost of doing business.

While CBSA is willing to help, and their assistance is appreciated, we recognize that they do not have the necessary authority at the ports of entry to stop such goods. Neither does the RCMP, which is responsible for the Customs Act between the ports of entry, as counterfeit goods are not illegal under the Customs Act.

There is also a major issue with resources. Other than small joint RCMP-CBSA project teams in Montreal and Toronto, there are no dedicated investigational teams for IPR crime. To reduce the impact on our resources, we have developed guidelines with the Department of Justice that our priority will be at the manufacturing, importation, and wholesale level. Generally, we expect the private sector to handle retail, unless health and safety issues are involved or we need to target upwards.

In Vancouver alone, the number of counterfeit containers referred by CBSA to the RCMP for investigation went from about 50 or 60 annually in 2002-03 to over 300 in 2005, and this is under the current regime, under which CBSA is not specifically searching for such goods but simply comes across them during the course of their duties.

Similar statistics are found in other major centres. For example, due to a lack of resources, the RCMP in Toronto can conduct criminal investigations on only about 25% of the cases referred to them. Given that most of these investigations should be conducted as projects to try to take down the group involved, which most likely has an international component, investigational resources are simply overwhelmed. In most cases a criminal investigation is not conducted and the goods are simply relinquished by the importer, who again sees this as the cost of doing business.

On a positive note, public awareness is increasing, and the federal government's interdepartmental IPR working group, led by DFAIT, has brought together all government stakeholders to determine the gaps in the legislation and resources and to recommend ways of filling those gaps.

On that note, I would like to thank the committee for this opportunity to speak with you about IPR crime. I feel that reaching out to build a better understanding of these issues is important and will be very constructive.

Thank you.

**The Chair:** Thank you, Mr. Hansen.

We'll go now to Mr. Sloan.

**Mr. Steve Sloan (Director, Investigations Division, Enforcement Branch, Canada Border Services Agency):** Thank you.

I'm Steve Sloan, the director of investigations for CBSA.

I want to thank you for the opportunity to present the manner in which Canada Border Services currently helps to combat the proliferation of counterfeit and pirated goods.

The first is via a civil remedy. Both the Copyright Act and the Trade-marks Act permit rights-holders to obtain a court order directing CBSA to detect and detain shipments of goods that are suspected of violating their intellectual property rights. However, it should be noted that as rights-holders have difficulty obtaining the necessary information for a court order prior to the arrival of a shipment, the court order process in Canada is seldom used. It is used less than once a year; I think the exact figure is five times in the last eight years.

Additionally, CBSA may detain IPR-infringing goods pursuant to the criminal process. The Copyright Act provides for criminal sanctions, as does the Criminal Code. When the RCMP shares intelligence regarding importations that would be evidence of a criminal offence, the CBSA will assist a system lookout for the goods. When the shipment is intercepted, CBSA will seize the goods as evidence and transfer the goods to the RCMP, which will proceed with the prosecution. CBSA may also seize and prosecute if the goods are smuggled or are otherwise in contravention of the Customs Act.

Finally, if the CBSA, in the course of examining a shipment for the purpose of administering the Customs Act, consequentially finds goods that may be infringing intellectual property rights, it will ask the RCMP if the shipment meets prosecution criteria that Ken just described, and if so, the goods will be seized as evidence. It is not practical, however, for the RCMP to pursue criminal charges for every suspected violation involving IPR-infringing goods. When the shipment is not significant enough to warrant criminal action, the importer is advised of the suspect authenticity of the goods and in these instances will often choose to abandon the shipment.

This brings us to one of our challenges as an agency. The Customs Act permits the CBSA to detain goods that are prohibited, controlled, or regulated by any act of Parliament until satisfied that they are dealt with in accordance with the applicable act. Currently, however, there is no legislation that specifically identifies counterfeit goods themselves as prohibited, controlled, or regulated. Under the Copyright Act the goods themselves are not prohibited; rather, the offence is against a person who knowingly makes, sells, or imports for sale counterfeit goods. The Trade-marks Act is also silent. There is no ancillary legislation defining counterfeit goods as prohibited. They cannot be targeted or detained by the CBSA under authority of the Customs Act.

Over the years, CBSA has collected some statistics on shipments that border services officers have suspected to be counterfeit. The shipments were examined for unrelated purposes, and the data are therefore not inclusive of all offices.

Nevertheless, over 1,000 shipments of suspected counterfeit goods were observed in the course of a year. The goods consisted mainly of designer clothing, but the CBSA has also come across a wide range of other goods, including DVDs, CDs, MP3 players, software, memory cards, ink cartridges, cellphones, satellite cards, transit tokens, jewellery, watches, perfume, sunglasses, pharmaceuticals, batteries, tobacco, electrical fireplaces, Olympic labels, and military hats. Just recently, CBSA officers in Vancouver and Montreal uncovered a \$2 million shipment of suspected counterfeit designer goods smuggled in a marine container.

As you have heard, CBSA is working with interdepartmental partners to explore options that will address the growing concerns over the risks of unsafe counterfeit products, loss of revenue, and involvement of organized crime.

Thank you very much. I look forward to answering any questions you may have.

• (1605)

**The Chair:** Thank you.

We will go now to Ms. Douthwaite.



**Ms. Diana Dowthwaite (Director General, Health Products and Food Branch Inspectorate, Department of Health):** Good afternoon, Mr. Chairman and committee members. My name is Diana Dowthwaite. I am director general of the inspectorate with the health products and food branch of Health Canada.

One of the ways in which Health Canada fulfills its mandate is by playing the role of regulator. This is a stewardship role that involves both protecting Canadians and facilitating the provision of products vital to the health and well-being of citizens. The department regulates and approves the use of thousands of such products, including pesticides, consumer goods, and toxic substances. We deliver a range of programs and services in environmental health and protection and have responsibilities in the areas of substance abuse, tobacco policy, workplace health and safety, and safe use of consumer products. Each of these areas is regulated by a regulatory framework or by a combination of regulatory frameworks, all designed to protect the health and safety of Canadians by facilitating access to quality products.

However, I'm here to speak to the connection of IPR and one specific set of products only, namely, health products, which fall under the mandate of the Health Products and Food Branch. I am going to start by providing a brief overview of the role and the mandate of the inspectorate, the group that I work in.

The inspectorate's role is to deliver a national compliance and enforcement program under the Food and Drugs Act for all products under the Health Products and Food Branch mandate, with the exception of products regulated as foods. This includes pharmaceuticals, veterinary drugs, biologics, natural health products, and medical devices. We deliver these services across the country, with inspectors in B.C., Manitoba, Ontario, Quebec, and the Atlantic provinces.

We have four core functions that help us verify that health products on the Canadian market are legally authorized for sale and are safe.

First is our proactive role in compliance promotion. Our various inspection programs require companies intending to conduct activities such as manufacturing, importation, packaging, labelling, wholesaling, testing, and distribution of drugs in Canada to pass an inspection before they are licensed to operate. Companies are inspected on a regular cycle that can vary from two to four years, depending on their activities, and these inspections are linked to licensing requirements.

Second is the reactive role we play with compliance verification and investigation. We actively look at mitigating risks, based on information from sources such as complaints from consumers, industry, or other regulatory authorities. It is in this area that the majority of our work takes place with counterfeit health products.

Third is our laboratory capacity. Our two ISO-certified labs in Ontario and Quebec provide lab analysis, which is a necessary part of compliance investigations and is especially relevant in counterfeit investigations.

Last is our fourth core activity, which is our establishment licensing program. In this program we issue a drug or a medical

device establishment licence for the licensing activities I've just mentioned.

To help in carrying out our mandate and to help reduce the potential for counterfeit health products to enter the supply chain, we work with other enforcement and regulatory organizations, such as the CBSA, the RCMP, and the provincial colleges of pharmacy. We also work with our international partners through MOUs and treaties and other international forums to increase our capacity for detection and identification of counterfeit health products.

Counterfeit products pose a health and safety risk because they may contain an incorrect dose, the wrong ingredients, dangerous additives, or no active ingredients at all, which could result in potentially serious health risks to patients. These products are an emerging trend in the supply chain of developing countries—and yes, even in Canada.

In the summer of 2005, the RCMP laid charges against two separate pharmacies for selling counterfeit pharmaceuticals at the retail pharmacy level. In both of these cases, as counterfeiting is a criminal activity, the inspector worked with the RCMP and the relevant college of pharmacy to provide investigative and laboratory expertise and advice pertaining to the Food and Drugs Act.

Incidents regarding counterfeit health products are very complex, often involving numerous domestic and international regulatory agencies and policing bodies. In Canada, the sale of counterfeit health products is a violation of the Food and Drugs Act and regulations, as these products fall within the scope of unapproved products. The sale of these products may also violate other acts, such as the Copyright Act and the Criminal Code, and as such can be referred to other regulatory authorities.

- (1610)

It is clearly impossible for any one entity to combat counterfeiting alone; a multi-partner, multinational approach is essential.

The inspectorate is currently developing an anti-counterfeiting strategy to help reduce the opportunities for counterfeit health products to enter the Canadian supply chain, to increase our capacity for detection and identification, to increase our awareness of the associated risks, and to reduce the incentives that facilitate the counterfeiting of health products.

We have many challenges ahead of us. For example, our current regulatory oversight mechanisms are outdated. The act is over 50 years old, and there are no prohibitions in the Food and Drugs Act or regulations that pertain to counterfeiting directly. As well, within the act the penalties are related more to health risk and are less oriented toward punishment, so they may not provide a sufficient disincentive to fraudulent activities such as counterfeiting. Prosecutions, as we're all aware, are very resource-intensive, and we are not well equipped at this point to identify fraud; it is in this area that the RCMP helps us with their expertise. We are working to modernize our regulatory framework to more effectively address these types of violations.

We are currently not experienced or equipped in investigating intent. Our traditional approach is focused on mitigating risks to health, so that it is a regulated party's responsibility to take appropriate action to comply with legislative and regulatory requirements. Within this new paradigm of counterfeiting, those responsible not only have deceitful intentions but also complete disregard for the regulatory system.

We are now operating within an environment of rapidly changing, expanding global trade. We see complex drug supply chains, increased sales via the Internet of cheaper and possibly counterfeited health products, and a higher volume of imported health products. Their deceptive characteristics make it difficult to assess the validity of these products.

The established regulatory oversight mechanisms alone are insufficient to appropriately address the threats posed by such products. Protecting the health and safety of Canadians is a responsibility shared between federal and provincial and territorial authorities, health care professionals, industry, and consumers. Our anti-counterfeiting strategy will work to mitigate the health and safety risks posed to Canadians by these products. It will focus on new legislative authorities, an education plan for consumers, and, most importantly, building stronger partnerships with regulatory authorities and with industry.

Thank you.

**The Chair:** Thank you very much, Ms. Dowthwaite.

We'll go immediately to questions. We'll start with Mr. Brison, for six minutes.

**Hon. Scott Brison (Kings—Hants, Lib.):** Thank you, Mr. Chair.

Thanks to all of you for being here today.

I want to focus on one specific area, and that is film piracy—specifically, camcorder piracy. Recent statistics indicate that more than 90% of pirated films seized throughout the world are coming from camcording; 190 of these films have been camcordered in Canada since 2003. Copies of these films have been downloaded from over 130 different Internet release groups and found on pirated discs in over 45 countries. Camcordings sourced to Canadian theatres actually accounted for about 20% of the worldwide total of copies identified under theatrical camcording.

This has become a huge issue, and our understanding is that both the RCMP and the police are limited in terms of actions they can take to address this issue. Local police refuse to respond on the basis that the copyright is a federal enforcement mandate. There's no specific prohibition in the Criminal Code against camcording; that has been cited by local police as justification for refusal to take action. Similarly, the RCMP sometimes do not respond to, or fail to respond to, camcording incidents, and they point to the current provisions of the Copyright Act as requiring proof that the copy of the film being camcordered is actually being made for commercial purposes.

I have some suggested verbiage, Mr. Chair, for amendments to the Criminal Code that would make camcording in a theatre an offence in Canada's Criminal Code. Would you, as witnesses with some understanding of this issue and the broader issue of copyright law,

believe it could be an appropriate measure to actually change the Criminal Code? To cut off this practice, which seems to be an underground growth industry in Canada, would you support changing the Criminal Code and amending it to make camcording in a theatre an offence under the Criminal Code?

• (1615)

**The Chair:** Who would like to respond?

[*Translation*]

**Ms. Danielle Bouvet (Director, Legislative and International Projects, Copyright Policy Branch, Department of Canadian Heritage):** Thank you, Mr. Brison, for your question.

First, I want to make it clear for everyone that this is an issue on which we are working. The interdepartmental working group believes that this matter merits our attention, and that this issue should not be taken lightly, on the contrary. There has been general recognition that it is important for the interdepartmental working group to look at this issue. Amending the Criminal Code is one of a number of options we are considering.

If you have texts to provide us, we would be pleased, as members of the interdepartmental working group, to look at your proposal. Obviously, it will be taken into consideration within the framework of our committee's work, in order to make recommendations to our respective ministers.

[*English*]

**Hon. Scott Brison:** Thank you. *Merci*.

**The Chair:** Is there anyone else?

Go ahead, Mr. Brison.

**Hon. Scott Brison:** Is there anything further, perhaps from the RCMP?

It's said that one of the reasons the RCMP feels limited in addressing it is that the current copyright law requires actual proof of the use of the material for commercial purposes. That's being cited as one of the reasons the RCMP is limited in addressing it. Would you like to speak to that on behalf of the RCMP?

**Supt Ken Hansen:** Yes, sir. Certainly, that's one reason.

We are conducting an investigation at this moment that involves camcording, but the investigation essentially has to be conducted backwards. In other words, we have to have proof there is distribution and then go back to the theatre. Using a digital camera in a theatre is not an offence in itself, but that is one of the issues this group is aware of, and certainly we're looking at possible options.

Obviously it's a little more complicated than that, because there are also resource issues. Yes, it's an economic crime, but at the same time, the health and safety aspect has a higher priority, so—

**Hon. Scott Brison:** Certainly.

Well, it's in fact becoming an international issue. I have a letter here, Mr. Chair, that I suspect you're in possession of as well. It's from Dianne Feinstein, a senator from California, to the Prime Minister, and it's on this issue.

We will be under increased pressure to act on this. It's my understanding that other countries, including the United States, have in fact moved to change their criminal codes so as to specifically ban camcording in theatres. It's a very simple change that we could make in conjunction perhaps with bringing it before the justice committee as well.

It strikes me that if we value cultural industries in Canada, and if we value the film industry in Canada—and I'm talking about distribution and production here in Canada—it is a small but important step to make it clear to the international community and the industry that we are serious about acting to protect intellectual property here in Canada.

• (1620)

**The Chair:** Does anyone want to make a quick comment?

[*Translation*]

**Ms. Danielle Bouvet:** Within the context of our work, it is obvious that we look at legislation from other countries. We always do this when we develop policies. We make comparisons with other laws when they are relevant to the issues we are dealing with.

It is important to point out that under the current Copyright Act, a rights holder can take civil action when a film has been copied in a movie theatre. And that is already provided for in our legislation. Intent does not even have to be proven. As soon as a film has been copied, it can lead to civil litigation. A rights holder can ask the court for an injunction and to receive damages. Further, Canada's Copyright Act also contains the notion of pre-established damages, which means that a rights holder can choose to launch a court action and ask for statutory damages, which would entitle him to receive over \$500 for each copy made in a movie theatre without having to justify the damages.

This already exists in law. But, as you said, I recognize that, as far as launching a criminal suit is concerned, the court must be convinced that there was criminal intent to allow the case to go forward. We are examining that situation.

[*English*]

**The Chair:** Madame, I'm terribly sorry, but we're way over time. Members are very limited in their time.

Please go ahead, Monsieur Vincent.

[*Translation*]

**Mr. Robert Vincent:** Thank you, Mr. Chairman.

Ms. Bincoletto, your brief says that since 1997, between 5% and 7% of world trade comes from counterfeit goods, representing between \$350 billion and \$600 billion. For Canada, that amount varies between \$20 billion and \$30 billion.

I do not want you to take this the wrong way, but I would like you to tell me what happened in the last 10 years and what measures have been taken to fight piracy and counterfeiting.

**Ms. Susan Bincoletto:** As far as the international data is concerned, I told you in my presentation that the assumption that between 5% and 7% of international trade came from pirated and counterfeit products was not based on a methodology but

represented the opinion of industry. So you have to take those figures with a grain of salt.

You also have to determine how those figures were evaluated, what the impact was, whether it was a perfect substitution, in other words if the consumer would have bought the same luxury product, but the Real McCoy. You also have to see whether fraud was involved and whether people knew exactly what they were buying. All you have to do is go to New York to better understand this phenomenon. I was there recently for a conference on intellectual property. On the famous Canal Street, there are tonnes of counterfeit goods, and some are indeed more dangerous than others. But when you see school buses filled with tourists who come to buy \$10-bags featuring a fake logo, you tend to think that these consumers know what they're doing.

In my opinion, we also have to take into account the level of education of consumers and the impact their purchases may have on their health or on organized crime. I'm referring here to products which are not of the same quality as the authentic, legitimate products. The question is whether the \$10-handbag really could be a perfect substitute for the original handbag, which retails for \$3,000. So that is the scope of the impact of this phenomenon on rights holders and the economy in general. I am not referring to public health, but rather to the economy.

• (1625)

**Mr. Robert Vincent:** That's a good answer, but it does not answer my question. I asked you what measures have been taken since 1997 to eliminate counterfeiting.

**Ms. Susan Bincoletto:** I will probably defer to the chair of the working group, but first, I would like to clarify that, as you heard earlier, the RCMP is cooperating more and more with other agencies and Interpol. We have been studying the industry for several years. For us, that is a very positive contribution, since it enables us to know how these phenomena affect people in the field. The analysis is very important for us, in that it helps us determine what our next steps are, be it from a legal perspective or in terms of increased cooperation with industry and our trading partners. All of this has been done more or less independently. Moreover, the working group brings about cooperation within the federal government that enables us to examine these issues more homogeneously.

**Ms. Danielle Bouvet:** I would like to add this, Mr. Vincent. That data has been around since 1997, but for a long time the government thought that legislation, in its current form, could resolve the problem. The Copyright Act covers an area where digital works are constantly used. It was long thought that the act could enable holders to enforce their rights. I believe that is the case with virtually all pieces of legislation dealing with intellectual property.

**Mr. Robert Vincent:** I am going to reword my question. I know that you are thinking about measures, but what specific measures have you put in place since 1997 to eliminate counterfeiting? Figures like \$350 to \$600 billion are not hard data. Can we agree on a figure of \$100 billion? If counterfeiting represented \$100 billion, what measures would you put in place to eliminate it? Have you done anything in that regard, or have you just studied the issue?

**Mr. Douglas George:** Thank you, Mr. Vincent.

This is a global problem, and we have worked to a large extent with other countries at the multilateral, regional, and bilateral levels. We have done considerable coordination work between the RCMP and U.S. authorities on exporters. We are now endeavouring to raise the awareness among consumers and businesses. There is also the G8, and the Security and Prosperity Partnership, or the SPP. These concrete measures yield concrete results. The working group is in the process of examining our system and comparing it to others.

**Mr. Robert Vincent:** You mentioned five countries. You talked about China, Thailand, and so on. Has any concrete action been taken against these five countries? Are exports from these five countries verified? Do we require these products to be patented before they enter Canada? It seems to me that would be a good place to start.

• (1630)

[English]

**The Chair:** Who would like to answer?

[Translation]

**Ms. Susan Bincoletto:** That is not really an Industry Canada issue. If you want to know what has been done at the border, my colleague should answer your question.

**Mr. Robert Vincent:** It affects Industry Canada as well, because Canadian industrial products are being copied by these countries. If a product that enters Canada does not have a patent, there should be a verification to see if it was made in China under a Canadian patent. These products can be verified directly as soon as they enter the country.

**Ms. Susan Bincoletto:** Rights holders can have access to civil action. In the event that a Chinese product was imported into Canada in violation of a Canadian patent, the patent holder in Canada can initiate action for counterfeiting.

**Mr. Robert Vincent:** But the cost of taking action like that is exorbitant.

[English]

**The Chair:** *Merci.*

We'll go to Mr. Carrie.

**Mr. Colin Carrie (Oshawa, CPC):** Thank you very much, Mr. Chair.

My background is in the health care field, and it really concerns me that there are so many instances in which we're seeing counterfeit drugs coming into the country.

Madame Dowthwaite, you mentioned that you're working to modernize our regulatory framework to more effectively address these types of violations. How fast can Health Canada actually change regulations if they want to get that done?

**Ms. Diana Dowthwaite:** That's a good question.

As I said in my remarks, the regulations are 50 years old.

**Mr. Colin Carrie:** How are they doing on that?

**Ms. Diana Dowthwaite:** We're moving. We're moving forward on that. It's really the tools we need to give to our inspectors, a better suite of tools to be able to do their job.

We're looking at the legislative side and we're looking at the non-legislative side as well. On the non-legislative side, we're doing some initiatives. We're looking at what makes industry comply and what a deterrence is. Is a deterrence the fact that we would post a warning letter on a website? Is that something that would deter an industry? Is a ticket a deterrence? Is going to a prosecution a deterrence? We're taking a look at some analysis and some—

**Mr. Colin Carrie:** Excuse me for interrupting you, but have you changed one?

**Ms. Diana Dowthwaite:** Have we changed one of the regulations?

**Mr. Colin Carrie:** Have you modernized one regulation to help—

**Ms. Diana Dowthwaite:** No. They're coming in through a suite. It has to come in.... It's definitely a priority, and we're doing a lot of work on that area.

**Mr. Colin Carrie:** You mentioned, too, that prosecutions are very resource-intensive. Have there been any prosecutions?

**Ms. Diana Dowthwaite:** Yes.

**Mr. Colin Carrie:** Could you tell me how many we have done?

**Ms. Diana Dowthwaite:** I would say that in the last couple of years we've probably had five or six. We're taking a look at that because we've had some success and some lack of success. We're taking a look at whether they are an effective tool and at the resources it takes to actually do a prosecution, because after all that work, the penalties we have right now are \$500.

I'm just saying that's how old the regulations are.

**Mr. Colin Carrie:** Thank you very much.

I recently attended a trade show in Oshawa, where I'm from. It was plumbers and some electricians. They mentioned that they're having a problem because they're getting these products that are CSA-approved, and sometimes they're very good. They don't even know if they are the real thing or not.

I recognize that tracking this thing is very difficult, but in your estimation, is Canada a net importer or net exporter of counterfeit and pirated goods? Is there any data to let us know how we're doing in that regard?

**Supt Ken Hansen:** We don't have hard data. We do have some anecdotal information that indicates about 80% of the counterfeit goods in Canada are imported, primarily from countries such as China. Part of the reason is that many of these take a factory to produce. Generally what you'll see produced in Canada are things like DVDs, CDs, and sometimes pharmaceuticals, because all you basically need is a powder and a pill press. You'll see items that are easy to produce done here, but articles like these in front of me are produced outside the country.

**Mr. Colin Carrie:** Do you know where they're going? When Canadian counterfeiters export, do you know where those products are going most of the time?

**Supt Ken Hansen:** Canadian counterfeiters mostly export DVDs and CDs and so on, as I mentioned. They're exported through the Internet; they're being sold through the Internet.

• (1635)

**Mr. Colin Carrie:** So they could be going anywhere?

**Supt Ken Hansen:** They could be going anywhere, yes.

**Mr. Colin Carrie:** To what extent do you think organized crime is involved in Canada, or are these mostly mom-and-pop operations?

**Supt Ken Hansen:** It's not mom and pop for the most part, because you need a network to distribute these things. The only thing you would see produced very easily by one or two people would be something like DVDs or CDs. You can do that. If you have 100 burners, for example, you can put them in a room and start burning copies and selling them across the Internet.

For anything else you're going to need a network. You'll need a factory in some cases, and wholesalers and the whole organization that goes with that. We have actually found—in some cases, at least—that almost all the organized crime groups in Canada are involved in this now.

**Mr. Colin Carrie:** Would you be able to explain what the Canadian government is doing to help educate Canadians and consumers about this problem? I think if we can shut down some of the demand, that would be helpful as well. Are there things we're doing right now?

**Supt Ken Hansen:** I can answer some of that. We have started a public awareness campaign working with the private sector. We've produced four different posters that are going up at airports and bus stops and so on. They've been distributed across the country over recent months. We've done a lot of media interviews. It has been keeping our branch very busy.

We've worked with Health Canada. They've put out public health advisories on things like counterfeit Tamiflu, for example, and on the counterfeit batteries. They'll put them on the website so that the public is aware, and we've done all kinds of presentations to different groups, so I think public awareness is being raised.

The problem is that the public, most of the time, don't know that it's counterfeit. You can give them some indicators, but you can't stop them from buying electrical cords or circuit breakers or batteries. It's very hard to shut off that side of the demand.

**Mr. Colin Carrie:** As I mentioned, I was amazed to hear the tradespeople at this trade show saying how big a problem this is becoming. They're concerned. It just spreads out. There are the liabilities issues for them. I think we all agree we have to do something quickly.

Have we prioritized? What's the most important thing to do first?

**Supt Ken Hansen:** That's part of the reason for the working group. We've got so many government departments involved that we have to determine what we need in terms of legislation and resources.

**Mr. Colin Carrie:** Could you provide the committee with recent stats on the number of charges laid for IP crimes under the Criminal Code and the Copyright Act and the number of successful prosecutions? Do you have those?

**Supt Ken Hansen:** I know that overall in 2005 there were about 700 charges laid, using both the Criminal Code and the Copyright Act. I didn't bring the breakdown with me and I can't recall exactly offhand. There were also some charges laid by police force jurisdiction that wouldn't be included in those statistics. Those are only RCMP.

**Mr. Colin Carrie:** What's your opinion on the penalties?

**Supt Ken Hansen:** The penalties are very low. It's very rare that you'll see jail time. I don't think I've ever seen a case in which somebody got more than a year.

**Mr. Colin Carrie:** You've never seen more than a year?

**Supt Ken Hansen:** I can't recall a single case that got more than a year, even on multiple charges.

**Mr. Colin Carrie:** Does that mean they actually served more than a year, or was the sentence a year?

**Supt Ken Hansen:** That would be the sentencing. Most of the time it's a fine.

**Mr. Colin Carrie:** So it could be a couple of months at the most and a slap on the wrist?

**Supt Ken Hansen:** Most of the time it's a fine. We've sometimes seen \$200,000 or \$300,000 fines with repeat offenders—but again, it's not a deterrent, because they're making more money than this.

**Mr. Colin Carrie:** Okay. Thank you very much.

**The Chair:** Thank you, Mr. Carrie.

We'll go to Mr. Masse.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair. Thank you to the delegations for coming here today.

I'm sorry if I'm coming and going. I'm handling two things at once here.

My first question is to Mr. Hansen. I think you identified one of the first things when you raised the electrical cord. How does the ordinary consumer even have the choice of knowing whether they're purchasing something that's a knock-off? Have any consumers' rights groups or any other partners come forward? There are a couple of issues that come to hand right off the bat. I mean, that's a good example of liability. Electrical cords are very dangerous if they're not designed and used properly. Have there been any partners in consumers' rights organizations in this attempt?

**Supt Ken Hansen:** I'm not familiar with any in consumers' rights. We have worked with the private sector—the Canadian Anti-Counterfeiting Network and several other companies, including the 2010 Olympic committee, etc.—to raise awareness. Through our website and the posters, we're trying to educate the public, but it's very difficult; I've been dealing with this for quite a while and sometimes I can't tell. Sometimes even the manufacturer can't tell without analyzing.

•(1640)

**Mr. Brian Masse:** Maybe I'll turn this across to everyone in the panel here. Has there been a particular sector, such as the dollar store, for example? I don't want to cast a perception that they might be doing something, but I know if I go there I see certain items that I'm at least more generally suspicious of than at other times that they can actually be produced there. What happens in terms of the pressure on them? Has there been an identifiable retail store or outlet in Canada that has been a perpetual problem?

**Supt Ken Hansen:** Probably the three highest risks are flea markets, the Internet, and discount stores. I won't mention a dollar store by name, but I'll say discount stores. Part of the problem is that 10 years ago, that's the only place you would have seen these. Now we see these in major stores and in major chains in some cases. It's less frequent in major chains, obviously—there's less risk—but we have seen them.

These, for example, have been found in eight hospitals in Quebec and one in Ontario so far.

**Mr. Brian Masse:** How do you even—? I mean, you have professionals who can't distinguish them.

**Supt Ken Hansen:** They can't distinguish it from the exterior.

Part of the problem with these is that they don't trip when they're supposed to, or they trip too soon. That's how it was identified. It was in an intensive care unit and it kept tripping. An electrician looked at it, said it was faulty, and sent it back to the manufacturer; the manufacturer said no, it was not faulty, it was counterfeit.

**Mr. Brian Masse:** Have any cases we know of led to death or injury, cases in which we can actually track down the original distributor, put some culpability on them, and make an example of them? Everything is serious, but obviously injury or loss of life is something that is at the farthest end of all of this. Has there been any type of example that we could make of a supplier? Mr. Carrie mentioned the CSA, and he's absolutely right. I hear that as well. Does it mean we have to fix our CSA branding in some capacity?

**Supt Ken Hansen:** No. That is what is counterfeit on this—the CSA brand, plus “Westinghouse”.

**Mr. Brian Masse:** That's a very dangerous situation. It affects Canadian patients. Can we not track where it came from and go after them?

**Supt Ken Hansen:** We have. We've charged the individual in this case.

**Mr. Brian Masse:** What about the company that actually made it?

**Supt Ken Hansen:** That's the individual, yes. When I said “individual”, I meant the person who was making it.

**Mr. Brian Masse:** It was really an individual.

**Supt Ken Hansen:** These came from Canada. They're one of the exceptions to the rule.

**Mr. Brian Masse:** What sentence or fine did they get?

**Supt Ken Hansen:** I don't think they've appeared yet. The charges have been laid, but I don't think they've been sentenced yet. As a matter of fact, I'm sure they haven't been sentenced yet.

**Mr. Brian Masse:** Could we get back for the committee...? I'd be interested to see what the full penalties could be in a case like that,

because that, to me, would determine whether you can even make an example of someone.

**Ms. Susan Bincoletto:** What you're raising is extremely important. In this case it is a counterfeit and perhaps pirated good, to the extent that there is unauthorized use of a CSA logo and perhaps some copyright violation as well. So yes, it might be a counterfeit good. Where it becomes trickier is if, as you say, the consumer buys something in the discount store that would cost five times the price outside. Are they being defrauded? Do they actually know there's something wrong with that? Or, in normal stores, do they think they're buying the legitimate product and they are not?

To protect the consumer, we have to distinguish the circumstances of the purchase. What Ken is suggesting is that more and more we're blurring those two lines. The consumer is getting more and more confused. Perhaps there are also circumstances in those discount stores where there is no copyright or trademark infringement; there is no CSA label, and consumers know they're taking a risk. Those are more public safety and health issues than a counterfeit issue in the context of an intellectual property crime.

We are still trying to figure out where the trend is and how important the public and health issues are versus the counterfeit. It goes without saying that the counterfeiters, or those who replicate in an unauthorized manner, will go where the money is. If people know that using the CSA logo will increase their sales, they will use it; hence, they will become counterfeiters.

The situation is more complicated on the ground than one is led to believe by looking at IP laws versus public and health safety issues.

•(1645)

**Mr. Brian Masse:** Do I have any time left?

**The Chair:** You have time for one little question.

**Mr. Brian Masse:** Has the insurance industry been part of the discussions of your working group?

**Mr. Douglas George:** We met with the Chamber of Commerce and the Canadian Anti-Counterfeiting Network. I don't believe there are any specific insurance issues that have been brought before us.

**Mr. Brian Masse:** I worry that in the future someone may not get their insurance coverage if a counterfeited item is seen in their home and it was the cause of a fire or something.

**Supt Ken Hansen:** Until a couple of years ago we never would have considered that this might have been the cause of a fire. It's only been in the last two years that CSA has been doing training with fire marshals and so on.

I investigated lots of arsons when I was in the field. If something like this caused a fire, it was defective. I never would have looked to see if it was counterfeit.

**The Chair:** Thank you.

We'll go to Mr. Byrne.

**Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.):** Thank you very much for your presentations.

We, as a committee, were seized with this particular issue about an hour and fifteen minutes ago, but you've obviously been working on it for some time. How long has your particular interdepartmental working group been in place?

**Mr. Douglas George:** A little over two years.

**Hon. Gerry Byrne:** Based on each and every one of your presentations I think all of us are seized with the notion that one of the key issues is updating various acts to meet modern-day realities. Some of these acts are 50 years of age. They were born in eras when closed trade existed, prior to free trade and increased globalization.

Has your committee been asked to report to the Privy Council Office or to cabinet with specific recommendations on legislative and regulatory changes? If so, could you share them with the committee so we may not necessarily reinvent this particular wheel and fraudulently copyright it.

**Mr. Douglas George:** I don't think we've taken out a copyright on it.

We have been working on this. As you notice, it's a very complex issue, with a number of different players and agencies and international questions. We've analyzed the problems. We're looking at legislative gaps. Resource issues have come up. We're in the process of looking at very specific options and the technical details with the intent of preparing recommendations. Unfortunately, at this time we cannot share them with you. These will be shared with our respective ministers when we're in a position to do so. But the work is ongoing.

**The Chair:** Ms. Bincoletto.

**Ms. Susan Bincoletto:** That being said, there have been lessons learned, clearly. We are looking at our international partners. In my introductory remarks, I was saying that there are two basic philosophies out there. In one, border enforcement in particular is strengthened *à la* U.S. The U.S. is taking on a very strong and costly role to try to stop the importation of counterfeit goods. In the more moderate approach, in the E.U. for example, there is a partnership with industry, to try to set up a system whereby they share the cost and the burden of trying to prevent the entry of those counterfeit goods. So clearly we are informed by those.

We are very much informed by the industry in Canada as well. They've invested a lot of time and effort in the CACN report itself and in issuing recommendations. Obviously we're looking at those recommendations, because as my colleague, Danielle, mentioned earlier, until recently—five years is fairly recent in legislative terms,

believe me—there was no attention given to the fact that global trade was so great and that the Internet was such a great factor in terms of incentivizing the flow of counterfeit goods and pirated goods. It is now clearer that we should be focusing more on the various legislation. I'm not just saying IP legislation; I'm also saying, as did my colleague, that we should be focusing on the legislation in terms of regulatory frameworks, in terms of what works. So clearly that's a focus that is—

• (1650)

**Hon. Gerry Byrne:** I think, though, the committee, in our generation of a study and ultimately in recommendations, at that point comes to a bit of a crossroads. If there are no specific recommendations for legislation, we can investigate and probe further the Copyright Act, the Patent Act, and a whole plethora of legislation and regulations that are out there, and we can come to cross ends and determine whether or not we should be recommending this. Basically, that's probably not going to happen. So we'll have to wait until a future time when the government comes forward with recommendations, notwithstanding my friend Mr. Brison's recommendation for an amendment to a piece of legislation.

The next issue is that we're trying to control, manage, and make safe the Canadian supply chain and the distribution for wholesale and retail purposes within the Canadian supply chain. I guess the other point would be how we secure the competitiveness of Canadian industry in terms of the global marketplace. What mechanisms should we be looking at? Say, for example, a Canadian company has a particular piece of patented intellectual property that's being infringed on by a foreign manufacturer in Asia, potentially. What should we be looking at as a committee?

**The Chair:** Mr. George.

**Mr. Douglas George:** This issue is a problem not just for Canada; it's a problem for a lot of countries, in that you're seeing your copyrights, your trademarks, your patents infringed on. We're working closely through the G-8, APEC, and other agencies to try to get international cooperation. That's on the international side. Domestically, Foreign Affairs and International Trade has trade commissioners overseas, and we can provide advice overseas on particular markets.

The biggest problem we've found with some of the smaller companies is that they don't understand the need for registering patents in other countries or how to go about doing it. So it's an issue that we're working on in cooperation with the U.S., EU, and others to ensure that there's information available to companies working overseas and producing overseas. We have some very specific information on some of the procedures for anyone interested in dealing with China.

**The Chair:** Thank you.

We'll go to Mr. Shipley, please.

**Mr. Bev Shipley (Lambton—Kent—Middlesex, CPC):** Thank you very much.

This has actually been a bit of a startling investigation—or at least it has been for me anyway—learning the extent and the breadth and the number of products that we're actually dealing with. I know we focused on some of the ones that are available—the CDs and those types of things, which are important in the industry. Obviously, and this was brought up earlier, those that put human life at risk, to my mind, are the things that are the most significant, but we need to tackle all of them as a package.

I'm wondering whether or not one avenue would be the stores that actually put them on the shelves. In your thoughts, is there something that should be put in place in terms of their being charged for carrying counterfeit products, or are they so sophisticated that some actually don't know they're there?

**Mr. Douglas George:** The Canadian Anti-Counterfeiting Network is in a better position to give you details from the industry. But we've heard from Canadians and internationally that some very sophisticated organizations are introducing counterfeits into supply chains. So one of the recommendations to industry is to better secure its supply chain to make sure this isn't a problem. Big industries are unknowingly buying products that are counterfeit.

**Mr. Bev Shipley:** I'm looking at that breaker. It has Westinghouse and CSA labels and everything on it. A major construction company has purchased that for a hospital. You would think that a reputable electrical company doing that, knowing that it is going into a hospital in this particular case, in intensive care...so the conscience is not there.

Do you believe that a change in regulation with stiffer criminal codes will actually be a deterrent, or is there just so much profit that it will be more of a nuisance than a deterrent in stopping it?

•(1655)

**Supt Ken Hansen:** I was asked earlier if we usually get convictions. Most of the time we do get convictions, but part of the reason is that we pick and choose which ones we go to court with.

The reason we don't get convictions in some cases is because we have to prove the knowledge, and that's a very hard thing to prove. Between the manufacturer and the retail level there's a supply chain, and you have to prove how many people in that supply chain knew this thing was counterfeit. Sometimes that's not easy. So maybe the retailer didn't know, maybe they did, or maybe they were told it wasn't counterfeit, it was refurbished, or something like that. There's also the concept of wilful blindness.

We do sometimes charge the retailer, although generally we try to work backwards and go for the wholesaler, the importer, and the manufacturer, and leave the retailer up to the private sector.

**Mr. Bev Shipley:** Industry groups have come together. You're talking about a working group that is meeting. We're listening to dialogue and information that's coming to us. To follow up a little on Mr. Byrne's perspective, we're going to be looking for some direction. Where do we as a committee fit in to help the Canadian consumer—our families? Whether it's in pharmaceuticals, electrical, or whatever, it all affects families.

Quite honestly, we've tried to do some fairly concrete things in the justice system to help it go against people who commit serious crimes against our families. So is it totally about resources or

legislation, or is there a combination that we need to be looking at more stringently?

**Mr. Douglas George:** This is part of the work we're doing, analyzing the situation and looking at both legislative questions and resource questions.

Other countries, like the U.S., the EU, and Japan, have worked on updating their legislation in recent years. We're all responding to the same international phenomenon.

If you look at some of the developing countries with less secure systems, they have much more significant problems than we do when it comes to health and safety issues. In some of the least-developed countries, up to 50% of the pharmaceuticals sold there are fake.

It's a recognized problem in Canada that we're working on, but it's a major international problem.

**The Chair:** Thank you.

We'll go to Madame Brunelle.

[*Translation*]

**Ms. Paule Brunelle (Trois-Rivières, BQ):** Good afternoon, ladies and gentlemen. Thank you for coming.

I did not expect to find such a widespread problem, and that is what really surprises us. Moreover, you say that companies that are victims of counterfeiting can take legal action, but that very little legal action is taken.

Why? Is it because the process is long and costly, which is what I suspect, or for another reason?

**Ms. Susan Bincoletto:** Criminally speaking?

**Ms. Paule Brunelle:** Yes, criminally speaking.

[*English*]

**Supt Ken Hansen:** If I can use an example, one international investigation that was successful was led by the FBI. This was a case of high-level hackers—people who would decipher the codes on software and then sell it. Some of the best people in the world were doing this. It resulted in 90 searches being conducted in 12 different countries simultaneously. The coordination on that was absolutely incredible, but it took down the whole network.

That's the way it should be done, but in most cases it's not, because we simply don't have the resources to do that. Normally we take out one level. It's just like drugs. We take out perhaps the middle level, and somebody down the road fills it in, or the same person comes back. So there's definitely an issue there. It's not as if we're doing nothing. We're doing about 400 investigations a year, but we could easily be doing ten times that if we had the resources.

•(1700)

[*Translation*]

**Ms. Paule Brunelle:** You say that when you dismantle a network like that, it can come back. How long does it take criminals to rebuild a network that large? Does that mean that once those networks have been dismantled, it takes some time for them to come back?



[English]

**Supt Ken Hansen:** It does if they're getting jail time. In some cases these people get jail time, but if it's a fine, we've had many cases where—

I can give one example. A national company was selling dangerous electrical products right across the country. He was charged in 1999 with five counts. He was convicted and fined \$1,500 on each count—that was \$7,500. He was convicted again in 2004 and given a \$150,000 fine. We investigated the same company again in 2006, and it's presently in front of the court. It's alleged that he's been at it three times at least, so fining was not much of a deterrent for him to stop.

[Translation]

**Ms. Paule Brunelle:** Does that mean that the sentences are not harsh enough? The person may expect to make a lot of money and to lose a little, and will start over.

[English]

**Supt Ken Hansen:** I think that's one of the main reasons, but it's not the only one. The legislation is difficult to use sometimes.

[Translation]

**Ms. Danielle Bouvet:** In some cases, educating a large number of people, including judges, is extremely important. Under the Copyright Act, a judge can already find a person guilty of a criminal offence and sentence that person to a maximum of five years. However, it is clear that to date, the courts have been reluctant to give sentences that long. The act exists and gives the court to power to impose sentences like that. So there is no need to amend the act to enable it to do that, that is already the case, except that to date, the courts have been very reluctant to act.

**Ms. Paule Brunelle:** There is something I find very troubling. You are showing us electrical equipment that was found, for example, in institutions. But there are standards in place. When a hospital, for example, places an order, it relies on suppliers, on wholesalers. There are order forms. I do not understand how equipment like that can end up there. I suppose these are highly complex criminal networks.

[English]

**Supt Ken Hansen:** Yes, I guess that's our point. Ten years ago this probably wouldn't have happened, but now we're starting to see it infiltrate into the legitimate supply chain.

Just to add to what my colleague Danielle said, she's accurate when you speak about the Copyright Act—it does have up to five years. But the Trade-marks Act has no criminal offences. When we use the trademark provisions of the Criminal Code, the maximum is only two years, which is unheard of. I've never heard of anybody getting that.

**The Chair:** Thank you.

We'll go to Mr. Van Kesteren.

**Mr. Dave Van Kesteren:** Thank you, Mr. Chair.

Thank you all for attending.

I have a few questions.

We talked about electronics and things of that nature. I'm surprised we haven't mentioned tobacco and alcohol. Where would tobacco rate percentage-wise in this country?

Mr. Hansen.

**Supt Ken Hansen:** I don't have all of the statistics for the whole country, but I do have them for Vancouver, a major entry point. In Vancouver, since 2003, the RCMP and CBSA, working together, have seized over 800,000 cartons of counterfeit cigarettes.

**Mr. Dave Van Kesteren:** With 800,000, you've got about 5%. Is that right?

**Supt Ken Hansen:** Well, I don't know if we're even getting... I don't know what percentage we're getting. I guess CBSA might be able to answer that.

And that's one commodity in one city—although it's a pretty major city.

• (1705)

**Mr. Dave Van Kesteren:** So am I right in assuming that tobacco is the number one problem, cost-wise?

**Supt Ken Hansen:** I don't think I'd say that; I'd be more concerned about things like batteries. We seized over two tonnes in Quebec, and these things float, so that's a—

**Mr. Dave Van Kesteren:** With all due respect, are you trying to tell me there is more smuggling of batteries than tobacco?

**Supt Ken Hansen:** I'm not sure if we have—

**Mr. Steve Sloan:** Do you mean smuggling now or—?

**Mr. Dave Van Kesteren:** Smuggling. Well, I guess we're talking about counterfeit goods, you're right. And I understand there are cigarettes coming in from other countries that are counterfeit, too, but—

**Mr. Steve Sloan:** I'll just add one point on that. In terms of smuggling, because counterfeiting itself isn't an offence—it's not an offence to import counterfeit goods—we don't see counterfeit goods smuggled in many of the instances. However, for goods that are highly taxed, like tobacco and alcohol, it's a different matter. So counterfeit tobacco is almost always smuggled, and we have had a significant number of seizures. In terms of smuggling cases, that would be one of the highest ones.

**Mr. Dave Van Kesteren:** Okay.

I guess I should have said it was number one, along with smuggling and counterfeit; I suppose that would have been more correct.

Mr. Sloan, I'm going to go to you now, as you brought it up.

**Mr. Steve Sloan:** Oh, me and my big mouth!

**Mr. Dave Van Kesteren:** No, it's to do with something else.

I heard once—I think I saw it on 20/20—that there were criminal elements at the ports causing people who were supposed to check this stuff to look the other way. Do you want to comment on that? That's a scary thought, too, that if we're catching 5%—I think this was a problem in the States, but—

**Mr. Steve Sloan:** Well, no organization is immune from certain of its employees being compromised. That's certainly a rare occurrence.

I'm not sure if you're referring to CBSA staff.

**Mr. Dave Van Kesteren:** No.

**Mr. John Sloan:** We have had instances of internal conspiracies involving transport companies, airline companies, particularly in the drug area. As I said, no organization is immune from that. But I certainly wouldn't see it as a significant problem.

**Mr. Dave Van Kesteren:** Well, I wasn't laying a charge specifically at your office.

Are there other people involved in the process of checking goods that come through, besides the border guards? Do these goods have to reach the border guards? Can they be diverted? And is this something you have investigated?

**Mr. Steve Sloan:** For the most part, the examination process is handled by CBSA.

**Mr. Dave Van Kesteren:** Okay. I don't want to dwell on this too long.

That's good. I needed to know that, too.

I guess I have a question for Mr. George. When we went to China—McTeague, Mr. Masse, and I—we were informed that if one wanted to set up a company in China, it's a 50-50 deal.

Do you want to comment on that? Is that happening? Are there Canadian companies setting up and producing counterfeit goods? Are you aware of any of them?

**Mr. Douglas George:** I'm personally not aware of Canadian companies setting up counterfeiting networks in China. What we are aware of is that sometimes it's a partner, or an ex-partner, in a company who has acquired the know-how to produce the identical product, but one that is not licensed and therefore is counterfeit.

We have specific advice to give companies on protecting their IP and various steps they can take. Sometimes it's as simple as them having rushed into something without taking the necessary steps to protect their intellectual property.

**Mr. Dave Van Kesteren:** I don't know if you want to comment on this, but is there any suspicion that—

**The Chair:** Last question.

**Mr. Dave Van Kesteren:**—countries are involved in this, too? And let's not pick on China.

**Mr. Douglas George:** We've got some pretty hard stats on certain countries having predominantly more counterfeiting and piracy than others.

**Mr. Dave Van Kesteren:** Are they directly involved?

**Mr. Douglas George:** Direct involvement of the country? I wouldn't want to speculate on that without specific information.

**Mr. Dave Van Kesteren:** Okay. Thank you, sir.

**The Chair:** Thank you.

We'll go to Mr. Masse.

**Mr. Brian Masse:** Thank you, Mr. Chair.

One of the groups we heard testimony from in this committee on our manufacturing study was the tool-and-die and mould-making industry, and I've seen some of the moulds they had. They were claiming some of their partners were taking prototypes and then bringing them to China and the automotive industry and having them shopped around there. Have you run into any of this in your discussions so far, and is anything being done on that front?

• (1710)

**Mr. Douglas George:** I can answer just based on a discussion with industry, both Canadian and international.

There is a great deal of concern over counterfeiting and piracy. They have specific recommendations on protecting your plans, your drawings, whatever, and being careful whom you share information with. One of the recommendations is that you have multiple suppliers supplying different pieces so that no one supplier has all the knowledge of the product.

On specific questions of tool and die, I haven't had anything specific.

**Mr. Brian Masse:** Maybe what I'll do is get them in touch with you. I think they hope to make a submission as well. They're getting squeezed because they're being told to go to third-market countries for part of their procurement, so that's an issue in itself.

This OECD report notes that 60% of the seizures originated from five countries: China, Thailand, Hong Kong, Korea, and Malaysia. Is that North or South Korea, or is it both?

**Mr. Douglas George:** I'd have to look at the report.

**Mr. Brian Masse:** I wouldn't be surprised if it were North Korea, but I'm wondering if there's a problem in South Korea as well. A lot of trade also goes back and forth between the two countries.

**Mr. Douglas George:** In our discussions with South Korea, I think they have equal concerns over counterfeiting and piracy of their goods. We've been talking to them about cooperation. They're in an area where nearby countries are the sources of counterfeits of their products because they're getting more patents, more trademarks, more copyright. They are becoming producers of intellectual property, as is China, as is India, which makes them tend to think it's more important to protect their own intellectual property.

Certain Chinese firms have taken U.S. companies in Texas to court over violation of Chinese intellectual property.

**Mr. Brian Masse:** You're getting into my next question, which is good. Mr. Van Kesteren mentioned we were in China, and one of the things they identified to us was that they're now getting concerned. It's a myth that they're just producing cheap junk, so to speak. Higher-end manufacturing is happening over there now. They seem to be indicating an interest, but I'm not sure.

For example, these reports say, whether it be DVDs or a whole series of things, they gut them, the whole thing, they shred them and all that kind of stuff. I don't want to put you on the spot, but at the same time, have relationships in terms of that changed? I'm somewhat skeptical that they're at the point where they really want to crack down on this stuff to another level. Has there been an improved relationship in this to the degree that you think is...?

**Mr. Douglas George:** I think the Chinese are taking action to deal with intellectual property issues; they're taking legislative educational action. We've had a number of Chinese delegations come over here to learn from Canada how we approach intellectual property, but they are still the single largest source of counterfeiting and piracy. So there is still concern over China, but they are taking action, yes.

**Mr. Brian Masse:** If they are successful in a crackdown, should we then be looking at where they're going to go next? I don't imagine it's just going to disappear. What would be next? Would another potential third world country become a net producer, India or so forth?

**Mr. Douglas George:** A quick answer is a number of countries are involved. China may be the biggest, but any number of countries around the world are involved in counterfeiting and piracy. Our hope is to work with the key ones to improve intellectual property enforcement.

**Mr. Brian Masse:** Thank you, Mr. Chair.

**The Chair:** Thank you.

We'll go to Mr. McTeague.

**Hon. Dan McTeague:** Thank you, Mr. Chair.

I want to thank all of you for being here today. I know some of you have already appeared before the public safety committee and that there was an interesting exchange. I'm going to take it that all of you believe there's a problem with respect to counterfeiting and piracy and the theft of intellectual property in Canada. I think that's a fair assumption. I don't see anybody deviating from that.

However, do you all have the same view in terms of a solution to the many problems? You obviously have a plan that your interdepartmental working group could put together, but what department is actually leading this? You're talking about a problem. This committee recognizes this problem. It put it in terms of a recommendation, number 11. It was done unanimously. I think the previous government had the public safety department take the lead. This time I'm concerned that there's no political leadership. You can talk about this issue until you're blue in the face.

Mr. Chair, I'll leave this with the committee. I see that China's WCT and the WPPT are effective June 9, well before Canada will do that. So while we're doing the work to figure out how to get this right, other nations we've pointed a finger to in the past—even Mr. Emerson did the same thing as recently as today in his press release that calls on China to do more—such as China, are doing more, but Canada is lagging behind.

I want to ask you very simply, who is taking ownership of this? You have some good ideas, but I don't see any coordination leading to one department saying this is how we're going to get it right; we're going to get it done as quickly as we can and we'll get the right framework. Who's doing it?

Mr. George, I'll start with you, and Madame Bincoletto, could you respond as well?

•(1715)

**Mr. Douglas George:** I think it's evident from what we've explained today that this is not a single department issue. These are

multiple departments that have different parts of the puzzle. We're working together to develop a set of options and recommendations for ministers that deal with the various different issues and problems. We can't do it with a single tweak to one piece of legislation or a few extra resources. The reason we sound like we're all singing from the same song sheet is that we've been working together to analyze the problem and develop the recommendation. I think we've made very significant progress.

**Ms. Susan Bincoletto:** We have explored options in order to strengthen our IP regime. Now the question is to bring it all together, as a group, to our ministers' attention. There is not a natural lead because we each have a piece of it. This will involve a number of ministers who will have to make a decision based on our options, and eventually our recommendation, as to how to move this forward. It's not unheard of to go to cabinet with a number of ministers signing an MC.

And this will be it. We could improve the IP regime. We could add additional resources. We could equip the CBSA with more powers in order to detect.... There are a number of permutations, and we have all of them in front of us. But we have to make choices in terms of how much it is going to cost, how effective it is going to be. As policy analysts, those are the kinds of questions we still have to ask ourselves in order to give the best recommendation to the minister.

As far as the WIPO treaties, I'm sure you're going to be asking that question. We're also working very closely.... The two departments are always working to try to propose a bill to actually implement the WIPO treaties. We've done it with the past government. Now we're focusing on it again. There is the video piracy. There is this enforcement, counterfeiting. This is the universe we're looking at in order to make progress on dealing with this issue.

**Hon. Dan McTeague:** The concern I have, and it's no reflection on my good colleagues here who agreed with me—We all agreed with each other on what framework, what formula, could work with respect to our recommendation 11. But how honest do we look when we're pointing a finger at another country, as we did today? The Minister of International Trade and Pacific Gateway, Mr. Emerson, said:

“We are seeking clarification from China on its intellectual property rights enforcement regime, given concerns expressed by Canadian industry,”... “Our goal is to resolve this issue through dialogue with the Chinese government and through cooperation with our trading partners.”

It seems to me to be a little patronizing to tell another country, which seems to be getting its act together—when we can't seem to coordinate ourselves to get anything done.

I realize the obstacles you're faced with, but I really want to hear what department and what minister is taking the lead here. They have the political will of consensus—unanimously—from the House of Commons. What's the holdup?

• (1720)

**Mr. Douglas George:** As we've explained, this is a complex issue. We've been looking at a number of options. I think you'll also notice in the minister's press release that he did point to the fact that we are working to strengthen our own intellectual property regime.

**The Chair:** Thank you.

We will go to Monsieur Arthur.

[Translation]

**Mr. André Arthur (Portneuf—Jacques-Cartier, Ind.):** Thank you, Mr. Chairman.

Good afternoon, everyone, and thank you for coming. It is a pleasure to see you go to the lengths that you do to answer our questions.

Personally, I am somewhat surprised that I have not heard about such large-scale problems. When I go to New York and I bring back a Rolex that cost me \$35, instead of \$20,000, I know full well that I bought a knock-off. I don't know who the victim of my offence is, but I am convinced that I am not jeopardizing security in Canada.

When the RCMP goes off looking for bad Canadians who, without the permission of the government, watch a channel as seditious as HBO or ESPN, I know that my national police force is being used for ridiculous issues.

However, there is a topic that I have not heard mentioned here. I would like to have, I don't know from whom, a report on the current situation. I am referring to the problem of counterfeit spare aircraft parts. A few years ago, serious tragedies that led to the death of dozens if not hundreds of people were attributed to the use on certain aircraft, namely the DC-9, of parts that had been fraudulently manufactured, that were of very poor quality, and that shortly thereafter caused wide-scale deaths.

In the United States, at least one MD-11, a modern version of the DC-10, crashed as did a Boeing 737 with a rudder control system. We also heard about an Airbus that lost its tail over New York and it is now thought that some of the bolts were counterfeit. When the issue was examined, it was discovered that all North American companies had counterfeit parts in their inventories. All of them, including Air Canada, clearly said they acted in good faith, with officials stating that they had no idea how those parts ended up in their hangars.

Would someone like to really scare us by talking about counterfeit aircraft parts, please?

[English]

**Mr. Douglas George:** Speaking personally as a pilot, yes.

While we don't have anyone from Transport Canada here, they do have an active program of advising people of the concerns with respect to counterfeit airplane parts.

**Mr. André Arthur:** But to my knowledge, nobody—nobody—has ever been prosecuted in Canada for that. We never knew who put those parts in the Air Canada inventory. Nobody knew. And nobody knows at this time.

[Translation]

**Mr. Douglas George:** I have no idea about that. We have, however, discussed the issue of supply chains. It is truly an international problem, and a topic in which the G8 is interested.

As to whether anyone has been prosecuted in Canada, I don't know. I don't have that information, but I can ask.

[English]

**Mr. André Arthur:** Do we have any knowledge of how those things happen, of what the channel was, of which organization was behind it? Do we know, or is it still a mystery?

**Supt Ken Hansen:** With regard to aircraft, I am familiar with the FAA, which stated, I believe, that 2% of the aircraft parts in the FAA are counterfeit. I haven't seen a comparable study in Canada.

I am not familiar with the one you're talking about, the Air Canada aircraft. As far as I know, we've never been asked to do an investigation on that. Certainly if we were asked, that is something we would look at, definitely, to see if the parts came from Canada—

**Mr. André Arthur:** We are led to believe at this time that this problem is settled, and I don't believe that. I just think we forgot about it. We just thought, well, nobody talks about it, and nobody crashed recently, so we'll talk about something else.

• (1725)

**The Chair:** Last question.

**Mr. André Arthur:** Thank you.

**The Chair:** Mr. George.

**Mr. Douglas George:** I don't think we have the expertise here to answer your specific question. If you want, we could follow up with Transport Canada to see if they have any additional information.

**Mr. André Arthur:** And the TSB, the Canadian Transportation Safety Board, they're the ones who picked up the aluminum fallout.

**The Chair:** Okay, *merci*.

We'll go now to Mr. McTeague.

**Hon. Dan McTeague:** I'm going to pursue exactly what I said before. We've given you the parameters of what we as a Parliament, as a committee, want. I think it's fairly easy for you to speak to the justice department and work on that assumption.

We have a credibility problem in this country on this issue. It's leaving all of us, regardless of what party we come from, with the perception that despite the gargantuan requirements and the Herculean efforts you're going to require in terms of drafting this together, if you can't do it and no minister wants to take responsibility for it, it's conceivable this committee may very well come up with specific recommendations the government could implement.

I want to make sure we get the right policy mix, but we need to do it quickly. We know the problem. We've known the problem for years. I'm suggesting that even if it comes to what the Americans are doing with the Department of Homeland Security, having customs representatives in China or in other nations where there is a problem, we could be looking at the same outcome.

Let me ask this to you. We know, and we have a pretty good idea of the two conventions we need to implement. If we need to put a stronger perspective on our Criminal Code with respect to people who copyright movies, for instance—which is something I definitely support, and I think a number of members on this committee support—how long do you think the legislation would take to at least address some of these problems? Frankly—and I appreciate all the discussion that's going into this—we're just not getting where we need to get, and we're looking like the laughingstock of the international community. It would be funny, except that we've just gone to many communities that have lost jobs across this country as a result of our not getting our act together.

So I'm putting it at your feet and saying you have to get this together, but we also need political direction. When can we expect that your working group will actually come forth with concrete proposals? I want a timetable.

**The Chair:** Mr. George.

**Mr. Douglas George:** Thank you, Mr. Chairman.

As I said, we're working. We're developing options. I am not—and I don't think my working group is—in a position to give you a timetable.

**Ms. Susan Bincoletto:** On the other hand, we will bring the options to the attention of our respective ministers, so we can't tell you next week or next month. We can't tell you exactly what the timetable is. Clearly, the work has progressed to a point where we are exploring options now. It is no longer just academic or theoretical discussion. We know there are pockets of possibilities. The question is how we move them forward.

So don't lose faith. This isn't going to be a perpetual studying group. It is complex. In order to be effective, a number of actions are required. They are not just federal actions. They also involve industry actions and international actions. We are trying to prepare some pockets like that in order for ministers to make a decision, and that's as much as we can tell you right now.

**Ms. Danielle Bouvet:** Speaking on behalf of the Department of Canadian Heritage, I can tell you that the camcording issue is taken extremely seriously. Our minister is aware of the issue. We know she wants to move on it as soon as she can. It's an important issue for her.

**The Chair:** Thank you, Mr. McTeague.

I'm going to take a few minutes, just to have a few questions for myself. I do want to indicate to members that there are votes at 5:45. If they feel they want to leave, I will not keep them here.

I have four questions I want to ask.

First of all, Mr. Sloan, you state in your presentation that currently there is no legislation that specifically identifies counterfeit goods themselves as prohibited, controlled, or regulated. Should there be such legislation?

**Mr. Steve Sloan:** You're asking for a personal opinion?

**The Chair:** Yes, no, or I can't say?

**Mr. Steve Sloan:** I didn't think we were supposed to give personal opinions, but let me say it this way—

• (1730)

**The Chair:** If you can't say, you can't say.

**Mr. Steve Sloan:** Let me say it this way. The WCO, the World Customs Organization, has set up best practices, suggestions for customs administrations on how to deal with counterfeit goods, and that is part of their model of recommendations.

**The Chair:** Thank you.

My second question is for Ms. Bincoletto. I want to follow up on what Monsieur Vincent asked, because I don't think he actually got an answer. His question, as I understood it, concerned what is on page 3 of your presentation: "The OECD refers to the fact that close to 60 per cent of seizures originated from only 5 countries". Then the countries are named.

What specific actions, if any, has Canada taken with respect to those five countries or the counterfeiting of goods in those areas?

**Ms. Susan Bincoletto:** Thank you, Mr. Chairman.

From Industry Canada's perspective, obviously we're interested in the issue, but our intellectual property tools are not targeted to deal with that.

**The Chair:** Should I ask Mr. George that then?

Mr. George.

**Mr. Douglas George:** We have been engaged in sharing intelligence with other organizations, through the RCMP, Interpol, and other points. One thing we have been hearing back is that exporters are getting increasingly sophisticated in redirecting shipments through other countries, so the original source of the shipment is not evident.

**The Chair:** Let me ask you, if one of these five countries counterfeits this, what are we going to do about it?

**Mr. Douglas George:** The first step in this country is that RIM has intellectual property rights, which they can—

**The Chair:** I understand Canada and the U.S., but for the five countries named in this presentation, what is Canada going to do about it?

**Mr. Douglas George:** We have the domestic option of catching it at the border, and we're working internationally with others to try to turn off the problem overseas.

One of our problems is not if it's produced in China and shipped here. If it's produced and shipped to a third country, does the Canadian producer lose his market there without becoming aware that he's lost the market in the third country?

**The Chair:** Okay.

I want to move to a third issue. If I go into a movie and set up a little camcorder to record it—perhaps this is for you, Mr. Hansen, and you may think this is an unfair question—realistically, is anything going to happen to me for recording that movie?

**Supt Ken Hansen:** No, because as far as we're concerned, you haven't committed an offence at that point.

[Translation]

**Ms. Danielle Bouvet:** I do want to make a correction. It is possible for rights holders to take civil action for copies made in a theatre.

[English]

**The Chair:** Speaking plainly, as a simple-minded MP from Alberta, if I walk in, record a movie, and walk out, then the rights-holder is supposed to somehow find this out and take action against me. Realistically, nothing is going to happen to that individual.

**Ms. Susan Bincoletto:** Again, Ken mentioned that it's not a criminal offence. But if it were, do you believe that the RCMP is going to go into all the movie theatres as well? That's a resource issue, and it goes back to priorities. Do you focus on the aircraft or on video recording?

The question is if the data show that there is a societal harm—I'm not talking economic—this will bolster the ability of the RCMP to establish those priorities. Otherwise they have finite resources, and it becomes very difficult to choose where to focus those resources.

**The Chair:** Let me move to that.

Mr. Hansen, I don't know what page it is on, but I very much appreciate that you talk about the authorities that you have and do not have. This is very helpful for the committee.

The RCMP has no authority to seize criminal proceeds under the Copyright Act, the Trade-marks Act, or the Criminal Code.

From the RCMP's perspective, could you comment on what legislative changes you would recommend? I believe the government recently put in some additional resources with respect to white-collar crime. How much is it a resource issue and how much is it a legislation issue?

On the legislation side, what legislative changes are needed to give you the authority to act in these cases?

• (1735)

**Supt Ken Hansen:** In terms of the legislative changes, that's part of what the working group is doing. They've identified the gaps. What we don't have right now is the precise way to plug those gaps. Some of them are pretty self-evident; we can't seize the proceeds of crime. Change the Governor in Council order so we can, because that's what's stopping us under the Copyright Act right now. Some of them are not quite so self-evident. Something the working group has to work on is, how do we fill those gaps?

In terms of resources, the resources you're talking about that we received, I presume you're talking about the 1,000 positions. First, it's not 1,000 police officers. It wound up being 1,000 positions, of which about two-thirds were police officers and the rest wound up being technical support and so on. Those were not to handle new issues such as this. This is a relatively new issue. Those resources were to restore integrity to our program. In other words, they were to allow funding to fill positions that had either been deleted or kept vacant to provide funding for operations. We wouldn't even have the authority from Treasury Board to take those and create dedicated positions out of them.

**The Chair:** Okay. I appreciate that.

My time is up. I'd love to keep going, as I'm sure members would, but we have a vote in the House.

I want to thank each of you for appearing with us today, for your presentations and your answers. If there's anything further you'd like to submit to the committee, please do so through me or through the clerk. Thank you all for your time.

The meeting is adjourned.

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