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# Standing Committee on Industry, Science and Technology

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EVIDENCE

**Monday, April 30, 2007**

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**Chair**

**Mr. James Rajotte**

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## Standing Committee on Industry, Science and Technology

Monday, April 30, 2007

• (1530)

[English]

**The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)):** Members and guests, I'll call to order the 57th meeting this session of the Standing Committee on Industry, Science and Technology. Pursuant to Standing Order 108(2), we are continuing our study of counterfeiting and piracy of intellectual property.

Members, before I introduce the guests, I want to point out that you have a briefing note for the three meetings we will have on the counterfeiting and piracy of intellectual property.

I also want to mention that there was a report, the *2007 Special 301 Report*, issued this morning, I believe. We were able to get that translated for members, because it in some ways perhaps amends what's in the actual briefing note, if I can put it that way. So I think you should definitely read the briefing note in conjunction with the one-pager that we have from the *2007 Special 301 Report*.

We have six witnesses with us here today, so it will be a very full session. I should just point out to members that I have to leave at about 4:45 or 4:50, at which time the second vice-chair, Madame Brunelle, will assume my position.

We'll get right to the witnesses. We have, first of all, from Polyform Foam Plastics Inc., Monsieur François Beauchesne, who is the vice-president of sales and business development. From Eaton Electrical Canadian Operations, we have Mr. Brian Savaria, who is the manager of codes and standards—and I see he's brought some goods with him today. From Caccia Fashion, Groupe Imperial, we have Mr. Michael Halickman, the president. From the Underwriters Laboratories Inc., we have Mr. Warren MacInnis, manager of criminal law enforcement. From the Entertainment Software Association of Canada, we have Ms. Danielle LaBossiere Parr, who is the executive director. And finally, from CSA International, we have Mr. Doug Geralde, who is the director of corporate audits and investigations and chair of the Canadian Anti-Counterfeiting Network.

I understand there has been agreement on who will speak first. For the witnesses' information, you'll be giving an opening statement of five minutes. Because there are six of you, it will take half an hour. Then we will go immediately to questions from members.

Monsieur Beauchesne, I believe, will start it off. *Vous avez cinq minutes.*

[Translation]

**Mr. François Beauchesne (Vice-President, Sales and Business Development, Polyform Foam Plastics Inc.):** Good afternoon,

ladies and gentlemen, members of the committee. My name is François Beauchesne and I am co-owner of a private company operating in the plastics industry. Currently, we employ approximately 300 people at our Granby, Quebec, facility, in addition to maintaining a sales offices in Barry, Ontario, and two plastic processing plants in Michigan and Georgia.

We specialize in the manufacture of products such as moulds, high-performance insulation, protective equipment such as hockey helmets, bicycle helmets, hockey gloves and shin pads. We supply packaging for commodities such as electrical appliances, furniture and so on.

Industrial workers and entrepreneurs face numerous challenges, including today's main topic of discussion, piracy and the protection of intellectual property. With our flagship product, NUDURA, we certainly have a bright future and we are optimistic. But with counterfeit products from Asia, and more specifically, China, we are nonetheless worried about wide-scale counterfeiting.

As we speak we are victims of intellectual property theft. Four American companies are currently copying our patents in force, but with our limited means, we cannot invest the millions of dollars required for rapid and proactive protection. Every day, many contracts are lost, and instead of progressing and creating jobs, we are presently experiencing negative growth and have had to lay off employees. We are working on an action plan to counter the American companies, but if the Asian companies copy us, then who are we going to prosecute and, above all, how?

Our customers are victims of industrial counterfeiting by Asian companies too. In 1997, a 160,000 square foot building was built to produce bicycle helmets for Bell Helmets. For economic reasons, they changed their business plan and purchased from China instead. At that time, our annual production was 3 million units with peaks of 30,000 helmets per day, which created at least 50 jobs, in addition to creating jobs for our customers and our suppliers.

To this, we can add the purchase of components for the Canadian manufacturing operation, such as boxes, conveyors, finishing materials, etc. The objective was to manufacture up to 10 million units annually, with at least \$50 million in economic spinoffs for component purchases, salaries and taxes. But then, the entire, fine project went to Asia.

We also have a customer located in Quebec, Louis Garneau Sports, the pride of Quebec. The same thing happened with this company. They tried to avoid sending production to China, but, unfortunately, the last made-in-Canada products will be produced this summer.

An administrative decision based on economic performance is acceptable. If someone can make a product as well as we do at a better price, then fine, that's the principle of competition. But if these companies do not have to contend with the same social and environmental constraints, if they have no respect for intellectual property, then you, our representatives, should take action and do something to limit their encroachment, or even prohibit the entry of certain products into the country.

Is this protectionism? Certainly. Given the extent of our unfavourable trade balance with China, it is inconceivable that our ideas, jobs and economy could be forfeited without any reaction whatsoever on our part. If you disagree with this, please explain. Enlighten me.

To conclude my little story, the Asian companies that have manufactured products for Bell and Louis Garneau have learned how to manufacture. They know the North American market demand, they have obtained customers' addresses, and they have started selling directly to Bell and Garneau customers products that are identical in every way, except for the logo, which is so similar that it fools most people. The result is a total loss, for our customers, for us, and for our suppliers, not to mention the governments that have lost the revenues being generated by such significant economic activity. These people have stolen the design and pirated the product. They have betrayed their professional and economic relationship with our companies and our country.

Thank you for allowing me to speak. I am now prepared to answer any questions you may have.

• (1535)

[English]

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

We'll go now to Mr. Halickman, please.

**Mr. Michael Halickman (President, Caccia Fashion, Groupe Imperial):** Thank you, Mr. Chair.

My name is Michael Halickman. I'm the president of Caccia Fashions. We've been in the garment business in Canada for close to 50 years. I personally have been involved for 30 years. We're located in Montreal and Toronto. We have over 130 employees across the country, and we service over 1,000 retail customers in Canada.

Our business involves sales of upwards of \$50 million per year. We pay millions of dollars in taxes and customs duties and support hundreds of suppliers and service providers in Canada. We're involved in the sales, marketing, production, and distribution of clothing and related accessories for numerous famous brand names such as Ecko Unlimited, G-Unit, Avirex, and Gotcha, just to name a few. Some of you may not be familiar with these brands, but I can assure you that if you check with your children, they're very familiar with them.

To the young consumer, we represent a quality product with an iconic image that is well known and accepted by customers who purchase nearly two million items per year, from headwear to shoes and everything else worn in between.

My purpose in speaking to you today is to express my deep concern for the apparel industry in Canada as it is affected by the flood of counterfeit product in the market. Counterfeiting, if left unchecked, places our whole business in jeopardy.

It's been difficult enough to deal with non-counterfeiting issues in a worldwide market, but it is clear to me that the need to protect the intellectual property of Canadian brand owners, distributors, and licensees is more important than it has ever been. The counterfeiters are stealing our sales and destroying our brand, and if they are left unchecked, they will ultimately destroy our business.

In addition to having to face the normal cost of business, which obviously counterfeiters do not, we are obliged to fight back and pay tens of thousands of dollars to private investigators, lawyers, and destruction facilities to combat these illicit operations. Last year we found ourselves in litigation and prosecution of over 100 cases of counterfeit merchandise, the real cost of which is in lost sales and brand dilution.

How many consumers have purchased inferior shoddy merchandise thinking it was real? They've been dissatisfied and are no longer customers. How many of my retail customers have stopped carrying our brands because they cannot compete with unscrupulous sellers of fakes? No one knows the real number, but judging by the amount of fake product, we find it significant and extremely damaging.

In the past, our lawyers and investigators have been involved in cases in which we have identified goods bearing our trademarks being imported into Canada. We have subsequently found out that Customs or the RCMP were aware of the situation and were willing to take action, but unfortunately, due to the lack of resources, were unable to do so. This puts us in the position of having to pay lawyers and inspectors to have the goods seized and destroyed after they have already entered the marketplace. Even with this effort, we are losing the battle as the amount of counterfeit is increasing, not decreasing.

I'm speaking today not only on my own behalf, but also on behalf of all my competitors who face similar problems. We are happy to compete against each other on a level playing field, but we cannot compete with the criminal counterfeiters. Nobody can.

In addition to the problem described above, there is a growing phenomenon of even legitimate businesses mixing counterfeit product with legitimate product. This puts us in the position of having to prosecute our own customers, which, to say the least, isn't conducive to building strong business relationships.

We are not seeking subsidies or financial aid. We are asking only that criminals who copy our product not destroy our industry. The criminal counterfeiters do not have to comply with any regulations, laws, taxes, or other legitimate business expenses such as licensing fees, large royalty payments, and the millions of dollars we spend on marketing.

In short, we are asking for increased protection from these criminal counterfeiters in the form of increased political pressure on countries that do not sufficiently respect intellectual property rights; more resources for the police and border patrol to intercept goods as they enter the country; and stricter penalties for those involved in the manufacture, sale, and distribution of counterfeit product.

Thank you for giving me the opportunity to express my concerns today.

• (1540)

**The Chair:** Thank you very much, Mr. Halickman.

We'll now go to Ms. LaBossiere Parr.

**Ms. Danielle LaBossiere Parr (Executive Director, Entertainment Software Association of Canada):** Thank you, Mr. Chair.

I represent the Entertainment Software Association of Canada, which is the trade association for companies that publish and distribute video games in Canada. We represent companies like Ubisoft, Electronic Arts, Nintendo, Sony, and others. I know Ubisoft had been originally invited to attend today and very much wanted to, but were unable to at the last minute, so they have asked me to represent them and our other members.

Thank you very much for inviting me to speak to you today about the urgent need for Canada to increase its protection and enforcement of intellectual property rights.

To begin, I want to briefly outline the important contribution that the video game industry makes to Canada's economy because I think traditionally people just assume it's what their kids and their staff are doing when they should actually be doing work. But in fact the video game industry is a very important one for Canada. It's one of the fastest growing market segments in the global economy.

Our market is projected to grow at 16.5% annually, with worldwide consumer spending on video games soaring to \$55 billion by 2009. Over the next few years this rapidly expanding segment of the entertainment market is predicted to overtake recorded music as the second most popular form of entertainment in the world, and Canada is establishing itself as a leader in the international video game industry. In fact, according to a study by New Media BC, there are over 300 companies from coast to coast. There are over 20 video game development studios and over 140 new and support services companies in B.C. alone.

In 2005, more than 40 of the top 200 games in North America were made or worked on in Canada. We're proud to tell you that two of the largest entertainment software development studios in the world are located here in Canada. Electronic Arts has studios in B.C. and Ubisoft has studios in Quebec.

[Translation]

Ubisoft employs over 1,600 creators in Canada, with plans to employ 3,000 by 2013. The average Ubisoft employee is 30 years old. Since 1997, Ubisoft has developed over 40 games in Quebec, including *Tom Clancy's Splinter Cell*, with 14 million units sold, *Myst*, with 11 million units old and *Prince of Persia*.

Ubisoft forecasts that its projected annual revenues for 2007-08 will be 750 million Euro.

[English]

Electronic Arts employs nearly 2,300 employees in Canada, almost half of their worldwide employee base. Over 1,800 of these employees are located in B.C., and 11 of EA's top franchises are developing in Canada, including *FIFA Soccer*, *Need for Speed*, *NBA Live*, and *SSX*. EA also works with over 500 vendors in Canada.

THQ has 186 employees in Canada; Activision employs 65 people in Quebec; Microsoft Canada has a team of 40 who are involved in sales, marketing, field merchandising, and the public relations aspect of their video game business; Nintendo of Canada, with 62 staff, provides similar sales and marketing functions from its head office in Vancouver; and Disney Interactive Propaganda Games Studio employs 140 employees today and 25 staff on contract, and plans to expand to 230 employees and additional contract staff by December 2008. Edmonton's BioWare Corporation was named one of the Deloitte Technology Fast 50, with a five-year growth of more than 650%. And there are numerous studios across the country that are really world-class, top-selling video game developers.

The entertainment software industry has created thousands of highly skilled, high-paying jobs in Canada. A study that was done for our association indicated that entertainment software workers earn twice as much as the average college graduate. In fact, the average starting salary for a video game developer is \$67,000.

Canada is increasingly becoming an important market for the sale of entertainment software and hardware, generating a record-breaking \$933 million in sales last year.

• (1545)

[Translation]

The video game industry is especially valuable to the Quebec economy, something which governments at both the provincial and federal levels have recognized through their own investment. For example, the Quebec tax credit for multimedia titles can be as high as 37.5% of labour costs.

Under a 2005 deal with the Université du Québec, Ubisoft will invest up to \$16 million in the development of various educational programs to train the next generation of Canadian video game developers.

[English]

I've taken so much time to talk about these things because I want to underline for the committee the importance of intellectual property to Canada's prosperity and to innovation and competitiveness, particularly in this digital age.

Piracy in Canada negatively affects Canadian jobs and Canadian tax revenue. Why would we condone illegal business activities that reduce job opportunities for Canadians and cost the country substantially in lost taxes and wasted investment dollars? By failing to enforce the intellectual property rights of companies in Canada, we're allowing pirates and organized crime syndicates to unfairly compete against our own national interests.

To develop and market a bestselling video game title requires a massive investment by companies. Development costs range from \$10 million to \$30 million, and it takes a team of 100 to 200 people at least a year to complete. In developing and publishing a new game, our members take a considerable risk that they will be able to sell enough games to recoup their investment—

**The Chair:** I'm very sorry, Ms. LaBossiere Parr.

**Ms. Danielle LaBossiere Parr:** I'm sorry. I always end up talking for too long.

Thank you very much for inviting me.

We are very much encouraged by the committee's interest in this topic. We urge all members of Parliament to take urgent action to combat intellectual property crime in Canada.

**Hon. Scott Brison (Kings—Hants, Lib.):** You're not alone at this table as being someone who always speaks longer than expected. You're in good company.

**The Chair:** I appreciate it that you spoke in turn, which I am still trying to teach members of this committee.

We'll go to Mr. Savaria.

**Mr. Brian Savaria (Manager, Codes and Standards, Eaton Electrical Canadian Operations):** Mr. Chairman and honourable members, thank you for this opportunity to appear before you today.

My name is Brian Savaria. I'm a professional engineer employed by Eaton Electrical in our Canadian operations in Burlington, Ontario. We manufacture electrical equipment and systems that range from 120 volts to 46 kV. My company employs about 1,000 Canadians in several manufacturing and sales facilities across the country.

The electrical industry in Canada and all across North America faces grave challenges from reconditioners who place counterfeit labels on used electrical products, and from product counterfeiters, both domestic and foreign. While this unlawful activity impacts our business, there is far more serious impact and danger to our citizens here in Canada. Unsafe and dangerous electrical products that can not only cause significant property damage but also have life-threatening effects are being installed in facilities. Electrical shocks and fire hazards can result when an electrical product does not perform as a consumer expects from reading the label on the product. This consumer can be a trained electrician relying on information on the product labels. Consequently, counterfeit labels and/or products with false labelling can lead innocent users to believe, albeit incorrectly, that they are dealing with safe products.

I'm here today to tell you about my experience and involvement in our attempts to keep these fakes and counterfeits out of the Canadian market. My involvement includes working with my American and British industry colleagues, as well as with the RCMP, Canadian and

American customs officers, and the electrical regulating authorities here in Canada.

The worst problems in this area occur with the electrical safety device known as a circuit breaker. These products are designed to prevent electrical wires and wiring devices from overheating and short-circuiting. As you know, the electrical wires in your homes and businesses are located behind walls; you cannot see a wire that's burning due to an overheating condition.

Imagine a light support system in a hospital that suddenly shuts down because of a false trip, or a machine that should shut down because of a short circuit and does not. All of these conditions have the makings for a catastrophe, not only in property damage but potentially in human lives.

The CBC television program *Marketplace* had an excellent program in November of 2006 on counterfeit electrical products that I recommend all of you watch.

Our industry, represented by Electro-Federation Canada, EFC, recognizes the serious and grave issues with domestic relabelling, which is outright counterfeiting, and with international product counterfeits. Let me explain.

Ten years ago, we found an electrical product reconditioner selling unauthorized circuit breakers. Using private investigators, we purchased these breakers, and our subsequent laboratory analysis concluded that our investigators purchased used circuit breakers that were being passed off as new. These breakers were likely salvaged from demolition sites in questionable circumstances, tampered with, and relabelled to change the electrical ratings of the breaker, an extremely serious and dangerous situation. The new labels contained the trademarks of certification organizations such as CSA and UL, along with the original manufacturer's labels.

Subsequent litigation in the Federal Court of Canada with one such counterfeiter has had little impact on this activity in Canada. Over the past 10 years, we have found examples of these dangerous electrical devices in the intensive care unit of a hospital, a grocery store, and even in schools.

This problem, like cancer, is appearing to grow and spread, threatening the electrical safety and integrity of this country. I have been involved with our industry's attempt to stop this for seven years. It still continues, and we need your help.

Five years ago, the RCMP agreed to act on a formal complaint that I lodged. That complaint was based upon discovery of a counterfeit-labelled moulded-case circuit breaker in a Quebec City hospital. Other investigations and seizures found similar cases of counterfeit and tampered-with circuit breakers in hospitals. These investigations culminated in search and seizure operations against three suspected businesses, with charges laid in two instances. The charges brought were forgery and passing off under the Criminal Code. In the cases in which charges were laid, the perpetrators pleaded guilty. In the first case, the defendant was fined \$76,000; in the second, \$40,000 was assessed, with an unconditional discharge. The first fellow got a criminal record. The third case was not prosecuted because the Crown did not believe there was sufficient evidence to bring charges.

I was present during the third RCMP search warrant execution on that guy. What I saw there brought shivers to my spine. I saw thousands of used circuit breakers stored in an unheated barn. Many bore counterfeit labels, the basis of RCMP seizures. Loose product certification labels were in filing cabinet drawers. The evidence was the basis for my victim impact statement, in which I emphasized how the activities threatened the safety of Canadians. This problem continues.

Are you sure your electrical system will function as it was intended? As long as Canada has electrical retailers selling suspect reconditioned breakers from unauthorized sources, how do we know that they have not been tampered with? We cannot possibly check all of them. Obviously, we check the ones that look suspicious. But with better copying technology, there should be serious concerns about this issue.

•(1550)

The Canadian electrical safety community has been on guard and for several years has been alerted to the potential hazards these products can cause. The fact that we have not encountered the foreign counterfeits in Canada is not cause for complacency. One of the seizures from a reconditioner who was relabelling circuit breakers included a sheet of breaker toggle amperage markings—1,740 of them on that black sheet in your information package. What do you think that sheet was being used for?

Also in your information package is a photograph of what happens when an electrical circuit breaker fails. The result is catastrophic. In this case, it shows a U.S. customs-seized Chinese residential breaker failing the UL standard test. The spectre of substandard, defective counterfeit circuit breakers and domestically relabelled circuit breakers with false information and settings entering Canadian homes, stores, public buildings, schools, and hospitals poses a serious threat to a safe electrical infrastructure. It is truly frightening and it must be addressed.

May I have your questions?

**The Chair:** Thank you very much, Mr. Savaria.

We'll go now to Mr. MacInnis.

**Mr. Warren MacInnis (Manager, Criminal Law Enforcement, Underwriters Laboratories Inc.):** Mr. Chair and honourable committee members, thank you for giving me the opportunity to speak with you today.

My name is Warren MacInnis, and I am the criminal enforcement manager for Underwriters Laboratories Inc., more commonly referred to as UL.

I'm testifying on behalf of UL, but I will also be sharing my views on and experiences with intellectual property crime prior to assuming my current position. I assumed my role with UL after retiring in February of this year from the Royal Canadian Mounted Police with over 21 years of service. Prior to my retirement, I spent nearly 10 years investigating intellectual property crimes in the greater Toronto area.

In Canada and around the world, intellectual property theft is a serious crime that has arguably reached epidemic proportions and continues to grow each successive year. This national scourge has grown into a criminal activity that is complex, sophisticated, and as hard to eradicate as illegal drug operations.

Not only does product counterfeiting rob billions from our economy, it also places the health and safety of the consumers at risk and it funds organized crime. Make no mistake, the trade in counterfeit products is a clear, persistent, and direct threat to our economy and to the health and welfare of all Canadians.

Examples of IP crime span the economic spectrum and go far beyond the familiar news stories of music downloading, counterfeit designer goods, and fake Swiss watches. Today virtually no product is too obscure or insignificant for the counterfeiter, and no industry is immune from this illegal activity.

It is impossible to accurately determine the magnitude of this problem due to the clandestine nature of the crime. I've seen a dramatic increase in the scope, nature, and quantity of counterfeit products that are being sold across Canada. Particularly alarming are the items bearing forged safety certification marks and counterfeit products that present serious health and safety risks, such as pharmaceuticals, consumables, and personal care products.

These potentially hazardous goods are increasingly finding their way into the national distribution system, onto the shelves of large retailers, and into the homes of Canadians across the country.

For over a century, UL's mission has been the protection of human life and property from product risks and hazards. UL is an independent, not-for-profit product safety testing and certification organization. Founded in 1894, UL has earned a reputation as a global leader in product safety standards, development testing, and certification.

UL evaluates tens of thousands of products, components, materials, and systems for compliance to specific requirements, and it enables manufacturers and the public to benefit from the products that meet standardized safety requirements. Approximately 21 billion UL safety certification marks appear on products entering the stream of commerce each and every year.

Certification bodies such as UL and our affiliate, Underwriters Laboratories of Canada, ULC, as well as CSA, have seen an increase in the amount and type of counterfeit products appearing in the marketplace with fake certification marks. Products such as extension cords, night lights, power bars, circuit breakers, and other types of electrical items bearing counterfeit certification marks are now being found across this country.

This is of particular concern since consumers throughout Canada rely upon these marks to help determine whether they are purchasing products that have been evaluated and found to comply with safety standards. Electrical products or fire suppression devices bearing counterfeit certification marks can pose a severe health and safety risk to the consumer.

Criminals who deal in these products care nothing about national pride, our property, or even our families' safety. They do not discriminate between brands or product types and will manufacture and distribute anything, regardless of the consequences to consumers, in order to selfishly create wealth for themselves at the expense of all others.

UL cannot and will not tolerate this type of criminal activity. UL has invested heavily in building one of the most intensive anti-counterfeiting programs in the world and will continue to do so. Since UL's anti-counterfeiting program was launched in 1995, we have deliberately focused on stemming the flow of these illegal goods. For more than a decade, UL has taken an aggressive stance against counterfeiting through a comprehensive program that involves partnerships with various police, customs, and regulatory agencies internationally and has supported the criminal prosecution of offenders who deal in counterfeit UL products.

Over the last decade, it has become abundantly clear that no company is immune from this illicit activity. Criminals in Canada have learned that dealing in these goods is essentially a risk-free venture with an opportunity for unsurpassed profitability. I have personally witnessed many criminals who have turned to product counterfeiting as their crime of choice. Profit margins are huge and the risk is low. They know the profit potential of dealing in counterfeit products and will exploit the potential until it is no longer viable or lucrative.

I have personally spoken with criminals over the last 10 years who believe they can flood the Canadian market with counterfeit products and do so with impunity. I have further witnessed these same individuals make hundreds of thousands of dollars per year without paying any type of taxes. I can also state that many of these same individuals have reoffended time and time again with the same types of counterfeit products. For nearly a decade, I have witnessed the vast majority of counterfeiters I've dealt with walk away without penalty. Of the small percentage who have been charged and convicted, most have received fines that are insignificant compared with their illegally derived profits.

●(1555)

It is interesting to note that if someone steals, defrauds, or embezzles \$1 million from a bank, the government, or a private company, they will likely go to jail. If the same person sells \$1 million worth of counterfeit products or distributes hazardous electrical goods, which may injure a person or destroy their property, the offender will generally receive only a small fine.

The current legal environment includes border regimes, laws, and a judicial framework that has been essentially impotent in dealing with intellectual property crimes. During my service with the RCMP, I watched a handful of dedicated police officers and crown prosecutors attempt to deal with counterfeiting through the use of a patchwork of ineffectual, antiquated trademark laws that were not designed to combat these types of offences.

I have dealt with individuals who have turned to selling counterfeit products because they felt that such activity is an acceptable crime in Canada.

●(1600)

**The Chair:** Mr. MacInnis, we'll have to get you to wrap up here.

**Mr. Warren MacInnis:** Okay. Yes, sir.

Thank you.

**The Chair:** That's it? Okay. Thank you, Mr. MacInnis.

We'll go now to Mr. Geralde, please.

**Mr. Doug Geralde (Director, Corporate Audits and Investigations and Chair of the Canadian Anti-Counterfeiting Network, CSA International):** Thank you very much, Mr. Chair and honourable members.

I appreciate the opportunity to address you today on this very serious problem. I'll try to be brief.

CSA is a standards-writing and certification agency, the largest and oldest in Canada. We do not manufacture products. We test and certify products to ensure they comply with Canadian safety requirements.

The key issue for us in this fight against counterfeiting is that if the products that my colleagues are talking about are counterfeit, so are the marks. As Brian Savaria said earlier, they counterfeit the marks. They make money by reducing in the product some of the safety requirements that are necessary.

While I'm talking I will pass around an extension cord, as an example. Copper is a major commodity in manufacturing, but we find as we travel throughout China and other developing countries where they're cutting corners and placing their products in the marketplace that they save money by not putting so much copper in. The result is that the wire will burn up, posing a potential fire hazard.



In the black insulated wire you'll see 16 gauge wire. That's the type of copper wire that should be in there. What we're finding is 26 gauge wire, comparable to telephone wire. Because there is so little copper inside, the cords tend to overheat and cause a fire hazard. In addition to that, the insulation can melt, and if people were to grab the cord, they could become electrocuted. So we have a potential health hazard, shock hazard, and fire hazard.

Another example of the types of things I'd like to highlight.... The counterfeiters are not as clever as they think they are and they will make mistakes. This is a power bar, and essentially there are three conductors. The third conductor is what we call a ground. It's for safety. What they put inside, again to save on the copper, is only a two-conductor cord.

What you're finding is that counterfeiters will cosmetically focus on making things look the same. Where they save money is on the safety for the public. Therein lies the concern that we have with those products.

The problem with counterfeiting is growing. It's an underground economy so it's hard to get numbers, but different agencies—Interpol—have talked about counterfeiting representing 5% to 7% of global trade. That equates to almost \$500 billion a year.

Canada and developing countries are looking for a GDP growth rate of anywhere from 2% to 3% and are happy with that, just with inflation, but what we're finding in the counterfeiting area is that it's growing at 20% to 25%.

Our issues are safety related. There are commercial issues as well, but we have spent an inordinate amount of time and built up a great safety network in Canada that relies on manufacturers and distributors working within the requirements with bona fide equipment, meeting the certification and standard requirements that the public requires to ensure a safe system and enforcement.

This new area of counterfeiting is something that is really taxing our systems. We don't believe that the current system and structure we have in place is viable for capturing it or containing it.

I urge you to take the steps we have discussed with several groups on fixes for this problem.

I appreciate the time you've given me to display those examples. I will be glad, as I'm sure all my colleagues are, to take any questions you have.

Thank you very much for your time.

**The Chair:** Thank you very much, Mr. Geralde.

We'll begin with Mr. Byrne.

**Hon. Gerry Byrne (Humber—St. Barbe—Baie Verte, Lib.):** Mr. Chair, with your indulgence, I'll share my time with Mr. Cullen.

•(1605)

**Hon. Scott Brison:** Given the nature of the last topic, his name is spelled B-y-r-n-e.

**Hon. Gerry Byrne:** I think you've reinforced to each member of this committee the economic and human health consequences of counterfeit products and intellectual property in the Canadian

marketplace and the supply chain. I think what's most relevant for this committee is remedies.

Obviously each and every one of you, not only as individual manufacturers but as umbrella organizations representing manufacturers and safety certifications, has been contacted by the federal government and its working departments on this. Have you been asked to submit to the federal government your drafts or considerations on changes to statute, regulation, or enforcement policy? If so, would you be able to table to this committee those specific recommendations, particularly focusing on the statutory and regulatory revisions that you feel would be beneficial to your efforts?

**Mr. Doug Geralde:** I will start and then turn it over to my colleagues.

As part of the Canadian Anti-Counterfeiting Network that I chair, we have a road map that delineates our recommendations, and all that. It's available at [www.cacn.ca](http://www.cacn.ca), and I'll be sure to get copies for the committee that highlight that.

We've also worked with many members on recommendations for everything from proceeds of crime to reinforcement and allocation of additional resources for Canada Border Services to stiffer penalties.

**The Chair:** Mr. Savaria.

**Mr. Brian Savaria:** Our industry association, Electro-Federation Canada, wrote a letter to Health Canada two years ago in response to their request for input from Canadians on renewal of the acts. We learned about two weeks ago that the whole program had been shelved.

**Hon. Gerry Byrne:** Which program was that?

**Mr. Brian Savaria:** It was the renewal of the Hazardous Products Act and another act that belonged to Health Canada.

We wrote a letter to them declaring that when these products are removed from a building, as in demolition, they become potentially hazardous and should be considered very specifically under that act.

**Hon. Gerry Byrne:** You say you received a letter to this effect.

**Mr. Brian Savaria:** We wrote the letter.

**Hon. Gerry Byrne:** How did you find out that the program had been shelved?

**Mr. Brian Savaria:** It was from a member of Health Canada.

**Hon. Gerry Byrne:** Was it just in a conversation?

**Mr. Brian Savaria:** No, it was at an association meeting that Health Canada attended.

**The Chair:** Ms. LaBossiere Parr.

**Ms. Danielle LaBossiere Parr:** I will echo Mr. Geralde's comments about the road map that CACN has put together. It outlines some very specific recommendations on what the government could do, specific to increasing the power of border officials, such as providing them with ex-officio power to seize goods at the border and resources to specifically target counterfeit goods.

Resources of the RCMP should be increased so that they are equipped to combat this crime. Changes should be made to legislation specific to our industry—criminal legislation that defines offences for commercial circumvention activities and commercial distribution of pirated digital works.

It's quite a lengthy document, and I would say that our association fully endorses the recommendations in it.

**The Chair:** Mr. Cullen.

**Hon. Roy Cullen (Etobicoke North, Lib.):** Thank you, Mr. Chair.

Thanks to all the witnesses, especially Mr. Geralde, who's with the Canadian Standards Association in my riding. I've certainly had a look at the road map and I think it is good.

We're doing some work at the public safety committee. Mr. Geist came as a witness and said that trademark infringement could be a problem if the trademark was forged or purported to be the CSA stamp of approval, which we know in many cases is not the case. Maybe you could elaborate on that.

Second, the Canada Border Services Agency does not have the mandate, mission, resources, or authority to search, seize, store, and destroy counterfeit goods. So that's an issue that needs to be dealt with. There are ways of sharing intellectual property information back and forth, so at least in the interim there could be some civil remedies. But I gather there are some privacy constraints with the Canada Border Services Agency. I wonder if you could talk about them briefly.

Finally, the last Parliament enacted legislation on proceeds of crime, the burden of proof, and the reverse onus. Would it be helpful if that were applied to counterfeit goods perpetrators?

• (1610)

**The Chair:** The time is up for the member. Those are excellent and very big questions. Could I suggest we do that in the next round for the Liberal Party?

**Hon. Roy Cullen:** Sure.

**The Chair:** It's going to take five minutes to answer those questions. I don't think it's fair to the other parties that I...

**Hon. Roy Cullen:** Mr. Geralde seems to think he can answer them more quickly.

**The Chair:** Mr. Geralde, can you do it in 20 seconds?

**Mr. Doug Geralde:** On reverse onus, certainly any fine will be a cost of doing business. So if we take what drug enforcement has done, try to get proceeds of crime, and then have them prove that what they acquired was from a legitimate source, that is a very effective tool.

On trademark and copying, that's exactly what we run into. To regulators and consumers, the mark is an indication of complying with safety, and that poses a problem.

**The Chair:** Thank you.

I'll go to Monsieur Vincent.

[*Translation*]

**Mr. Robert Vincent (Shefford, BQ):** Thank you, Mr. Chairman.

My question is for Mr. Beauchesne. The end of your brief reads as follows:

What can the government do to help us?

- Stop trade missions to countries classified as "exporters"
- Protectionism: tax Asian imports of products that are available in Canada
- Punitive tax on polluting countries
- A legal entity to take prompt action against copies of patents
- Simplified government assistance
- Program to encourage companies from elsewhere to set up operations in Canada...

Could you tell us what led you to come up with such points? I want to come back to this punitive tax on polluting countries. What do you mean by this? I would like to understand the reason behind these recommendations.

**Mr. François Beauchesne:** With regard to a punitive tax on polluting countries, currently, the economic context is such that there are fairly strict regulations on the environment, employees and working hours. There are fees we must pay and requirements we must comply with as a result of a whole series of factors.

When we talk about polluting countries, we're talking, among others, about Asia, which is a major polluter. Our competitors are not subject to the same regulations. They are heavy polluters, if we compare their levels to the level imposed on us. Consequently, their costs are extremely low and their employees work under social conditions that are completely unacceptable in Canada. So, if it costs \$3 to produce a product in Asia, it will cost \$8 in Canada. We will never be able to compete with those costs, due to environmental and social conditions.

A punitive tax would be imposed on countries that fail to respect certain environmental and labour standards. When products are imported, companies would have to pay a 15%, 20% or 50% tax — the amount doesn't matter—, but the purpose would be to prevent such companies from too easily importing products. This could apply to any product. If companies have to satisfy a number of requirements, it would be easier for our products to compete with theirs.

The environment is something you hear about on a daily basis. It is a real problem. It is not actually the reason for our appearance here today, but it is really a problem. Currently, the plastics industry is suffering enormously because some countries are failing to comply with these rules.

What was the second part of your question?

• (1615)

**Mr. Robert Vincent:** I would like to know how you came up with the recommendation: "Stop trade missions to countries classified as 'exporters'".

**Mr. François Beaudesne:** As a Canadian company we are invited on a regular basis to take part in trade missions, be it to Asia or elsewhere in the world. When I am invited to take part on a trade mission to China to forge strategic production alliances, the trip may be fully or partially paid for. I find this completely unacceptable, because, as a manufacturer, I'm going there to forge a relationship in order to do business with people who are not respecting environmental standards, as I said earlier, and to show them what I need and how to make it.

I want to come back to the example I gave earlier regarding Louis Garneau Sports, a Canadian and Quebec company. Its representatives went there, found manufacturers, showed them how to make the products, shared their expertise with them by telling them North American market preferences with regard to esthetics, colours and so forth. They gave them addresses and did business with them.

We've greatly reduced the number of jobs in our plants. Louis Garneau Sports did the same, in addition to closing its helmet manufacturing facility, and sent contracts to Asia. This year, contracts were negotiated directly between China and the customers, meaning Wal-Mart, Canadian Tire, just to name a few. Everyone is in the same boat. Louis Garneau Sports had its clients, its designs and its products stolen from it.

I think that we have to stop participating in trade missions because our involvement means taking work from people here and giving China, among other countries, the opportunity to do business by manufacturing our products.

**Mr. Robert Vincent:** Ultimately, we're giving them all of our tools.

Who funds these missions? Is it the exporting country, such as China? Does Canada pick up part of the tab in order to allow entrepreneurs to go to China to create business partnerships?

**Mr. François Beaudesne:** I don't know the answer to that question. However I do know that I am invited by Canada and Quebec to participate.

I regularly receive invitations to take part in trade missions. Some of them are to France, Brazil, etc. Some of these places are excellent countries with which to establish good business partnerships, but there are also countries where you know there is a culture of non-compliance. I find this completely unacceptable. I told them to stop inviting me, because I don't ever want to go. Agreeing to go means agreeing to transfer my technology, my knowledge and my clients' needs directly to those companies.

Who pays? Perhaps the Asian government pays a portion of the costs, I don't know. One thing is clear, the Government of Canada is the party extending the invitation to take part in these trade missions.

[English]

**The Chair:** *Merci.*

We'll go now to Mr. Carrie, please.

**Mr. Colin Carrie (Oshawa, CPC):** Thank you very much, Mr. Chair. So many questions, so little time.

Mr. Savaria, when these electrical devices and breakers are installed, what happens to the counterfeit goods? You mentioned you

could catch somebody, and he may have installed them in hospitals, schools, Parliament buildings—who knows? Who's liable for these things? Insurance? Are costs going up? Is there any evidence of increased claims because of this counterfeiting?

**Mr. Brian Savaria:** That's a complicated question.

Typically these devices sit silent until there's an electrical problem. Thank God we don't have short circuits and overloads that frequently. When those conditions occur, these devices are expected to function as they were designed and clear the fault. When these devices are tampered with, the probability of them not operating correctly is many times greater. If the fault meets the device, then we have a potential catastrophe—fire and potential loss of life.

Who is responsible? Everyone. Typically, when there's a catastrophe everyone ends up in front of the judge. The results of a fire don't leave much evidence. That's why we hire an army of lawyers to help protect us.

• (1620)

**Mr. Colin Carrie:** Certain people come in and say, "Everybody's exaggerating. Counterfeit isn't all that bad." I wonder if there's evidence of increased claims. Mr. Geralde said they're growing by 25% a year in Canada. What are we basing these numbers on? Do you people have some ideas?

**Mr. Doug Geralde:** With respect to the numbers there, we received some of that from Interpol through ICC. I will agree that it is hard to determine the numbers. From my experience, and I've been doing investigations for CSA for about 30 years, it's only in the last five years that I've really seen growth in the counterfeiting. That's not to say it hasn't happened; it's that we weren't looking for it. We've been looking at it for a relatively short period of time.

In a lot of cases, even when talking to manufacturers, we've told them to be on the lookout for this. Many times, it's just considered to be bad quality control, or somebody serviced it. And now we're realizing that it could very well be counterfeit.

It's a little difficult to get that. It's just that as you see the proliferation of counterfeits, and even when I go to China and talk with the government people there, they know it's growing, and it's hard to control in that area. Just like the wire, we know the techniques they're using are not going to be safe. So they will eventually lead to problems.

**Mr. Colin Carrie:** I was just wondering if there was any hard evidence, for example, like increased claims for fires and things along those lines, that we'd be able to track. Are you aware of anything like that?

**Mr. Doug Geralde:** Right now, the fire marshals put out fires, and they are not broken down for counterfeiting at this point. We've advised them to start looking at that aspect and have helped them with those investigations. I don't think there's anything conclusive at this point, but I'll ask the other associations to see if I can get something back to you.

**Mr. Colin Carrie:** Madam Parr, you mentioned video games. You didn't get to go through your whole presentation, but I kind of popped ahead. My kids love video games, so they're always...

One of the statements in there is this:

Today, pirated video games sold at retail stores in Canada are prevalent. In fact, industry research conducted in 2005 identified that an alarming 20% to 30% of retail specialty stores visited in Toronto and Vancouver were selling pirate products.

Are these legitimate stores selling pirated goods?

**Ms. Danielle LaBossiere Parr:** Yes, we actually had our private investigators visit a number of specialty retail stores that sort of sell exclusively entertainment software products—often they also sell DVDs—in different malls and places like that across the country. And we found, in fact, that 20% to 30% were selling pirated product.

In some cases, they have catalogues. You can just go in and say I want X, Y, and Z games, and they burn them while you wait. In other cases, you can go in and buy them right off the shelf. They're imported cartridges or imported game consuls that have been modified, and things like that.

**Mr. Colin Carrie:** Current Canadian law provides for sentencing of up to five years and fines of up to \$1 million for persons convicted of copyright infringement. However, quite often, these people get small fines and a slap on the wrist and no jail time. Why would the result be any different if we introduced legislation providing even stronger criminal penalties?

**Ms. Danielle LaBossiere Parr:** Certainly, I think Parliament's expression of its desire that this crime be taken very seriously would be very helpful. Having some clarity in legislation, particularly around stuff like circumvention devices, would also. I've talked about that a couple of times. Basically, to be able to play a pirated video game on your Xbox or PlayStation or Nintendo, you have to install a chip, and those chips are not illegal in Canada. You can manufacture them, you can sell them. They're only illegal if you use them to circumvent.

So under current law, we're really only able to go after the kid in their parents' basement. We can't go after the organized crime syndicates that are manufacturing this stuff and shipping it around the world.

**The Chair:** I'm sorry, Mr. Carrie, your time is up.

We're going now to Mr. Masse, who's the expert on video games. He routinely plays them on the plane, as I found out one day.

**Mr. Brian Masse (Windsor West, NDP):** Yes, PS3, Xbox, PS2—I have them all. I still lose to 14-year-olds, though. That's the problem.

I'd like to carry on with where Mr. Carrie was going with regard to that. We spent a lot of time, actually, back in 2002 to 2004 looking at satellite piracy and that issue. Some of it could actually have been a fix and was actually fixed by the industry itself. Some of the products were very deficient in terms of protection of their own property.

As to what Mr. Carrie was leading us towards, I think an important aspect of the law is that you can go after kids, but you can't go after the organized crime element. If that did happen, do you think it would improve your situation? And how fast would the changes, if they were to be positive, happen for the industry itself?

• (1625)

**Ms. Danielle LaBossiere Parr:** I'll answer it in two parts.

I think it would be extremely helpful for our industry in terms of even the civil actions we take on a regular basis.

I think what would especially have an impact would be to couple those legislative changes with additional resources for the RCMP. We are finding that the RCMP is very willing to undertake cases, but they don't have the manpower to go after as many targets as the ones that exist. If we were able to couple those two things together, I think we'd see tremendous results.

But our industry certainly welcomes any change. It's having a huge impact on our bottom line and on our ability to be innovative and create jobs. We would welcome any change, and we would work very closely with the government and law enforcement.

**Mr. Brian Masse:** It's an interesting parallel when we talk about it because it was the same thing for satellites. It seems to be that it's rearing itself in this industry in the same way.

I would like to know this. We've focused on other countries so far, with what they're doing in flooding us, but I'll open this to the panel. One of the things we have to look at is a credibility check. What about Canadian companies that might be doing that type of thing and they're also exporting to other countries? Is there growth in that industry as well, from your perspective?

To really quickly follow up on that, I'm looking at the breakers here, the products and such. You can maybe add to this in your answer as well.

For example, when they find an actual product in a brand store, they go to the brand store. Does anybody have any insight in terms of where the system is failing in going to that shelf and tracking it to the very source of production, whether it be in Canada or outside Canada? For example, if you find an electrical cord at a particular big-name brand store and chase it down to the actual location, what happens to put pressure on the store to cease and desist not only bringing in the product from that supplier but for other products as well?

**The Chair:** Mr. Geralde.

**Mr. Doug Geralde:** I'll take a stab at the last part.

First, it's very difficult to trace back. In my experience, going back to China, they'll set up shops, and their whole goal is to mix counterfeit products into the distribution network. We're training and working with the major retailers to identify counterfeits and trace them back, but a lot of the time it goes back to trading companies and some of the factories. There are factories that produce counterfeits on a midnight shift, and there are factories down the road. A lot of mixing and matching goes on. Then there are legitimate counterfeiters who get into problems such as with the breakers.

When you have a Katrina disaster, Red River floods, and all those areas where they have a need for a big supply of products, with the just-in-time manufacturing and the lack of holding stock, it's perfect for counterfeits.

It's very difficult to actually trace it back, and the sources dry up quickly. Law enforcement is used along with private industries to try to correlate it, but it's an expensive and a difficult task to zero in on.

**The Chair:** Mr. Savaria.

**Mr. Brian Savaria:** As a matter of interest, four of my six samples here have counterfeit labels. They're all domestic recycled materials.

You asked what we're doing about the problem. I'd like to tell you about our U.K. adventures.

My colleague in the U.K. is the chairman of the U.K. industry associations anti-counterfeiting task force. He visits China twice a year in conjunction with the Canton trade fair and, with the Chinese officials, conducts raids, seizures, and smashing of moulds. It goes on and on. Of course, I read his reports and discussed his trips with him. This isn't coming to an end anytime soon.

• (1630)

**The Chair:** There's another 20 seconds.

Mr. MacInnis.

**Mr. Warren MacInnis:** You have to look at it from different perspectives.

Over the years, I've dealt with a large number of retailers in Canada who have been caught with counterfeit products of varying types, including hazardous goods. For the most part, the larger legitimate retailers don't want to sell the stuff. They want to compete on a level playing field, and they'll do what they can to get it off the shelf and to give the information. But they're buying from importers or distributors that are trying to deal in margins of pennies, and it's a really competitive area.

From the other perspective, you're looking at a lot of video game retailers and stuff. They're just counterfeiters and they don't care. All they sell is counterfeit product.

There are different levels of business and different perspectives. It's a multifaceted thing and there's no one quick fix to any of this. Although the copyright legislation with the penalties is effective, it's not being meted out by the courts or the prosecutors aren't seeking it.

**The Chair:** Okay. Thank you.

We'll go now to Mr. Brison.

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

The first question is about the need for multilateral action, for Canada to act as part of an international community to effect change in this area. There was an article in the *Wall Street Journal* the week before last on auto manufacturing in China. A company that was manufacturing cars under licence for General Motors, that was producing Buicks, started a couple of years ago to produce their own cars, in fact using the intellectual property from General Motors to produce cars in China that are very similar to the Buicks they were producing previously but for about \$6,000 or \$7,000 less. This is one

example. So it's gone from fake Rolex watches being sold in front of Tiffany's in New York to the car industry. It's massive in terms of its potential impact.

If we accept that it has to be dealt with multilaterally...and if you look in North America, we have huge trading power with the NAFTA countries, particularly with the American market, and the desire for the emerging markets to have access to it. There is currently being negotiated a North American security and economic partnership between the three governments. Should we be negotiating, as part of that, stronger approaches on the protection of intellectual property? Should we be making our representations at the WTO? The WTO membership means that you're going to enforce these measures more rigorously in your domestic markets. If you want access to the North American market, you need to enforce copyright protection and intellectual property protection in your own country. And also, put this hand in hand with a regulatory harmonization such that, regardless of where products are manufactured—for instance, on the electrical side—we move towards global harmonization of the rules on these items and other ones.

My point is that the Canadian market in and of itself represents a certain level of leverage that we could be using. But if you add in the U.S. market, we have very significant leverage that we could be exercising on these countries. Right now, the Chinese auto industry is looking at the U.S. market a few years down the road, but it's going to become more important to them in time.

Would you support that kind of initiative: once again, the government working with NAFTA, the North American security and economic partnership, to develop one approach within North America, basically to say to any country in the world producing anything that if you want to sell legitimate products here in North America, you have to enforce and stop producing knock-offs and trying to sell them here?

**Mr. Brian Savaria:** In the NACC, the U.S. chose regulatory matters as their subject. I understand that one of our colleagues from the U.S. electrical industry raised counterfeiting as an issue that they're trying to deal with. At least that's my understanding.

By the way, I took a run at the Canadian Council for Chief Executives last year, based on that *Maclean's* magazine article on the new NAFTA, believing just what you said, that there was room at NACC negotiations to potentially solve this problem.

• (1635)

**Hon. Scott Brison:** We'll follow up. Is there any further comment?

**The Chair:** Does anyone else want to...?

**Ms. Danielle LaBossiere Parr:** A short answer? Yes.

**Mr. Doug Geralde:** Yes, just to that point, not only NAFTA, the G-8...it is a global issue. Europeans have trouble with Eastern bloc countries, developing countries, farming it in, and it's taking circuitous routes. I think we recognize through law enforcement that there is circuitous routing with organized crime. They are the global perspective.

So not only would I endorse that approach, but I would look at it holistically, as part of a global approach for all countries.

**The Chair:** Mr. Beauchesne.

**Mr. François Beauchesne:** The answer is definitely yes. As nations, those countries have to clean it up themselves. If we have to deal with these people, if we have to deal with those countries, they must perform to some standards, and they must go after the ones who are counterfeiting and infringing the patents.

As a general aspect, not only for specific Nintendo games or plastics or electric cords, but as a nation, they must clean up and act by themselves. Then, yes, we can deal with them, without having tax restrictions or anything like that.

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

Mr. Shipley.

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

I appreciate your coming today.

As we listened to witnesses over the last couple of days, I think some of the stuff is a little more frightening than most of us, as lay people, would have recognized when we walk into the store and see the CSA, a recognized name stamped on it, and then we find out that it may or may not be. As a consumer, when I looked at some of the products, I wouldn't know they didn't come from the original manufacturer.

But understanding that the U.S. would have tougher laws than we have, and we've been reading some of the information that's coming across, do you agree with that? Should we use some of their legislation as a format, if it is tougher?

**Ms. Danielle LaBossiere Parr:** I'm sorry, can you repeat the last part of the question?

**Mr. Bev Shipley:** If it is tougher legislation, should we use that as a guideline for our legislation?

**Ms. Danielle LaBossiere Parr:** Absolutely. We can take lessons from a number of countries around the world that have already grappled with a lot of these very complex issues. I know the EU has a border model that is worth looking at, as does the United States, the U.K....

We can learn a number of lessons from other jurisdictions, and I would urge the government to do so.

**Mr. Bev Shipley:** Is it too complex to deal with?

**Ms. Danielle LaBossiere Parr:** No, absolutely not. I think to suggest it's too complicated so let's just not deal with it is, frankly, a scary proposition. You think about our economy. Intellectual property is the future of our economy, plain and simple. These issues are not necessarily easy to solve, but they're absolutely worth doing. Canada has such a tremendous opportunity to be a leader in

the digital age, in the age of intellectual property, so it's critical that the government examines and deals with these issues in an urgent manner.

**Mr. Bev Shipley:** Obviously, the numbers in lost revenues, lost jobs...the criminal aspect of it alone would make you think we would not want to condone this type of activity. I don't think many of the counterfeiters are mom and pop. I think this is criminal activity. I think most would agree with that.

Are they single-item production criminals that pirate, if you don't mind my using that term, or do they pirate a number of products?

I have another question. I don't know if I heard you right, that a manufacturer may produce legitimate ones throughout the day and then run an operation at night?

I have two points on that.

**Ms. Danielle LaBossiere Parr:** On the first part of your question, which I've forgotten now.... I'm sorry, I had something very—

**Mr. Bev Shipley:** Are they single-production criminals?

**Ms. Danielle LaBossiere Parr:** Yes. I would say that organized crime is involved. We have evidence to that effect. But we also see smaller operators running burning operations, for example, out of a storefront. So you definitely see both.

A report by the RCMP recently indicated that 90% of the counterfeits in Canada are imported, many of them from Asia. So I would say we see both, but certainly the large-scale operations are of the most concern.

● (1640)

**Mr. Bev Shipley:** Mr. Geralde.

**Mr. Doug Geralde:** With respect to counterfeiting, we have found everything. When you think about it, it is so lucrative to use counterfeits. You're not paying taxes; you're not paying for design. You're not doing any of these things. It's pure profit, other than the assembly. Certainly, we see that. The more sophisticated organized crime have their own factories, their own facilities, and they're done there.

But there's no doubt knock-offs are done and filtered into the distribution system. I remember Johnson & Johnson looking for shampoo. They had some with E. coli bacteria in it. When they went into the factory, they had an order of 700,000 bottles but 1.2 million caps. So you know they're storing, and those things are going on. Both are problems.

**Mr. Bev Shipley:** Just one other quick one. How do reliable distributors or consumers protect themselves against this type of activity?

**Mr. Doug Geralde:** They want to look at their channel, their network. Sometimes they can go into the factory and look at the capability of that factory. If they can produce 10,000 a week and you're ordering 400,000 and you're getting that in a month, you know something doesn't line up.

For consumers, we have tips on the CSA website for what to do. You look for spelling mistakes. We're talking to regulators about failures, and that's a little bit reactive. What we've said in the past is if the price is too good to be true, chances are it is. Certainly, with many of the products we're talking about today, you cannot afford to do it. It's not a matter of performance, it's a matter of safety. So those are some of the issues.

**The Chair:** Thank you.

Madame Brunelle, please.

[*Translation*]

**Ms. Paule Brunelle (Trois-Rivières, BQ):** Good afternoon everyone. Thank you for coming here.

A number of problems have been raised today. Obviously, we are talking about intellectual property and counterfeiting with a view to security. It's also about social dumping, working conditions and living conditions which conspire to keep prices very low. We are navigating in different waters, depending on the problem. During a previous meeting, we also heard—and this really surprised me—that Canada was also a source of counterfeit goods. So we can't say that we're as pure as the driven snow.

For its part, the Canadian Anti-Counterfeiting Network has asked that the act be amended. I want to know whether you think that this next suggestion would be a solution.

Among other things, the network is proposing new legislation with a clear definition of the prohibited activity, along with provisions to ensure that the offences committed were in fact committed with criminal intent and are strict liability offences. It also recommends applying special legislation along the borders, which a number of others have suggested as well. The network suggests that the Canada Border Services Agency obtain a clear mandate to target, seize and destroy counterfeit or pirated products. It also talked about imposing fines, laying charges under the act, adopting provisions authorizing communications between the police and intellectual property rights holders, in order to facilitate investigations and civil suits, and about using summary proceedings in order to obtain compensation in counterfeiting cases.

Would amendments of this nature to the legislation resolve problems? Should we in fact amend the legislation? Also, there is something we haven't talked about, but which I believe is important. People selling these products don't always know that they are counterfeit. Nonetheless, this practice is very widespread. Should we not prohibit, through legislation, such people from selling these products? If the counterfeit goods are identical to the legal goods, we cannot fault the consumer for purchasing them cheaply, albeit in good faith. I always thought that counterfeit goods were sold on the street or in flea markets. In such locations, the prices were always so low that you suspected something. Now this phenomenon is extremely widespread.

**Mr. François Beauchesne:** I would fully support legislative changes of this nature. They are critically important. However, there are two factors to consider: legislation supporting victim's rights, on the one hand and, the speed with which the legislation can be applied, on the other. The problem is that, in some cases, even if we discover a counterfeit or a clearly pirated product, it takes too long

for justice to prevail. It is already too late. This is a very important factor because it directly threatens the survival of the company. This is true for us as it is true for the other witnesses here. In the case of the individual manufacturing apparel, a two-year wait before getting a favourable ruling is too little too late.

The time factor is extremely important. I don't know whether we would need a parallel system or something else, but the legal system needs to be able to stop or prevent these activities.

• (1645)

**Ms. Paule Brunelle:** Do you believe that harsh sanctions should be imposed?

**Mr. François Beauchesne:** Absolutely. I would even recommend extreme measures. If there is evidence that someone is knowingly selling counterfeit or pirated products, the fines should be really very heavy. The second point that you raised is equally important.

With regard to products, let me tell you that currently, you can choose a cycling helmet on a shelf with every intention of buying a certified, safe and legal product. Unfortunately, things have changed. The dealer—I mentioned Canadian Tire, but I would have mentioned any other dealer—may sell you a helmet for your child or for yourself, and you will only know whether or not it is effective when an accident happens.

Unfortunately, China does not meet safety standards. The products in my industry are subject to stringent specifications and constant verification. This is not the case in China. In China, we visited factories that produce products similar to ours, and we saw that they did not follow the same procedures at all. They have no respect at all for factors like density, safety, straps and so forth. The products are brought to Canada, and people buy them in good faith. Such products may even bear a tag that says "designed in Canada". Clearly, this is cheating the consumer. The product was designed by someone in Canada, but entirely produced in China. Nonetheless, people think that they are buying a Canadian product. We can see that the product is marked "Made in China". It could also come from some other country. It's important that products be identified in a way that does not cheat the consumer.

[*English*]

**The Chair:** *Merci.*

We'll go to Mr. Van Kesteren, please.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Thank you, Mr. Chair.

Thank you all for coming out.

Counterfeiting is theft, it's harmful, and it destroys market rules.

Quickly, to Mr. Geralde, when the perpetrators are brought to justice, what is the attitude of the courts? Are they taking this seriously?

**Mr. Doug Geralde:** I'm not a lawyer, so—

**Mr. Dave Van Kesteren:** Neither am I, and that's why I had bit of difficulty with whom to ask.

**Mr. Doug Geralde:** It doesn't seem to be on the high end of priorities, certainly not the penalties. Anything that's a fine for that seems to be just the cost of doing business.

Perhaps Mr. MacInnis would add more.

**Mr. Dave Van Kesteren:** Mr. MacInnis.

**Mr. Warren MacInnis:** When I started this 10 years ago, essentially I was laughed out of court; in a lot of cases the prosecutors wouldn't even look at these cases. It's changed somewhat, but still, within the judiciary, I don't know if it's a lack of education or if they don't want to take the problem seriously.

First of all, there's law enforcement; you have a problem getting the products seized. You need the resources to do it. It's a whole chain. But you have to find a prosecutor willing to take the case, and once they're willing to prosecute it, you have to get it in before the courts.

For them, if they're going to take it seriously and actually take it to the extreme, the Copyright Act has all these great sentences, but they're never applied as far as the severity of it is concerned. In dealing with the trademark legislation, there are no criminal sanctions under the Trade-marks Act. Anytime you deal with certification marks, they're all under trademark legislation, and there's nothing there that can deal with it. You have to go to the Criminal Code, and those sections were never set up to deal with this. Then you're going back and forth, to the Department of Justice, to criminal prosecutions, you're trying to Crown-shop, and you're trying to get it before the courts. At the end of the day, this may take two years, and the sentences, essentially, up to this point, except for a few rare occasions, are a joke.

**Mr. Dave Van Kesteren:** Mr. Halickman, on job loss, money, what's it costing? Give us your opinion as to the effect in our marketplace today.

• (1650)

**Mr. Michael Halickman:** In the entire market of the clothing industry?

**Mr. Dave Van Kesteren:** Yes.

**Mr. Michael Halickman:** Take our company, for instance. If we're losing 1% or 2%, and we're just one small player, that's a couple of million dollars a year just for me. I'm medium-sized, and there are many others. There are millions and millions of dollars lost to this.

As Mr. MacInnis was saying, for the people who are doing it to them it's a parking ticket. To put it in simple terms, it's like getting a parking ticket. We threaten them, we take them...they pay \$1,000 or even \$50,000, they don't care; they're doing it the next day. There's zero fear.

**Mr. Warren MacInnis:** There's no disincentive.

You have to look at the different levels of criminality. Of course, there are smaller operations that are doing it because other people are doing it and it's accepted. If they get a knock on the door from the police, they're going to give it up. But the ones we have the biggest problem with are the hard-core criminals, where time and time again you go after the same people, take them back to the same court system, and they just get an increase in fine.

**Mr. Dave Van Kesteren:** I was going to say, just listening to this, that there are going to be some who set up shop in their own garage, but there's a level of sophistication here that would point to a high level of organized crime.

What about nations? Are we seeing nations involved in this too? I don't want to specifically mention anybody, but are there nations jumping on the bandwagon and taking advantage of our lax...?

**Mr. Doug Geralde:** My experience is that it involves primarily developing countries where they don't have an infrastructure for intellectual property rights and there's a big demand for hard currency. That's certainly where we see it proliferating, and in the globalization of manufacturing and distribution, certainly that's one.

**Mr. Dave Van Kesteren:** I don't want to name names, but I will. Are nations like China turning a blind eye?

**Mr. Doug Geralde:** Certainly, and we saw it counterfeiting with the watches and things like that in Taiwan in the 1970s on a smaller scale. The big concern with China is its size and the potential volume for this activity. In addition to that, from a counterfeiting perspective, it's coming on at the perfect time, as you can do scanning now of any labels, any marking, any material, and make them look identical on the outside. There's sophistication for that, as well as the organized crime element for the distribution and getting things in. All of these things are issues that we have to look at, and certainly those countries that you mentioned, like China, are at the top of the list.

**Mr. Warren MacInnis:** There are a lot of people within Canada who have connections to other countries that are either family related or through organized crime, whether they're involved with factories, whether it be family members, or connections, or partners back in different countries. For instance, this cord appeared throughout North America. A lot of times they'll do penetration tests through different ports. If they can't get it through San Francisco, they'll move to Seattle. If they can't get it through Seattle, they'll move to Vancouver or over to Montreal. This is a complex network in a lot of cases, where hundreds of thousands of these things are being manufactured—and ordered through the distribution centre. It's not somebody out of their garage or basement organizing this.

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

We'll go to Mr. Masse.

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

First, Ms. Parr, I'm curious to know how downloads affect your industry.

As you know, Mr. Chair, one of the reasons we're here is that Dan McTeague has brought this issue up numerous times with regard to recording and the effect on Canadian jobs.

So in terms of the future of your industry, I'm curious about downloads and the effect on jobs. It's not just the hard replication done in the factory; it can be done in other ways.

**Ms. Danielle LaBossiere Parr:** Yes, absolutely. Thank you for that question.



Certainly hard-goods piracy is a huge problem for us now. Downloading is going to become an even greater problem for us in the future. We have been a little bit saved from a lot of the downloading problems—or we were until fairly recently—because of the massive size of video game files.

Today, as bandwidth continues to expand, we see a lot of piracy through Internet downloads. Among any changes that the government introduces to the Copyright Act, we'd very much like to see notice and takedown to really try to prevent the proliferation of Internet downloads. But again, talking about mod chips, even if you download a game, you still need a mod chip to be able to play it on your console.

So that's something that helps in either case.

• (1655)

**Mr. Brian Masse:** That's where you say a lot of the organized crime comes into play as well.

**Ms. Danielle LaBossiere Parr:** Yes, absolutely.

**Mr. Brian Masse:** Mr. MacInnis, you were bringing up some really good points about distribution and chasing down where it came from. I'm a little bit concerned, though, about the culpability and the responsibility of the retail supply chain we have and whether we're doing enough there.

I'll use the example of circuit breakers. And I'm not saying they have them, but let's say they're in a Wal-Mart. If a person walked in, bought that, and had a problem with it, shouldn't the retailer have some culpability there? I mean, this is a multinational conglomerate company that's making a lot of money, and for the safety of our own selves, I have a hard time believing we should just say, well, too bad, sorry I bought it. That might be the real situation, obviously, but there should be some checking.

What happens at the next stage? Is there follow-up to make sure they don't purchase from that supplier any more, or else, following that chain, to make sure the supplier identifies where they got it from and never purchases from there again?

I agree that there has to be greater commitment—it's obvious from the hearings we've had already—from government policies and supports in the field, but shouldn't there be some expectations on retailers? If you were in a food service industry, you couldn't serve rancid meat. You couldn't have practices that produced that type of atmosphere that would poison people without repercussions. Do we need to do more to the retailers and put expectations on them?

My concern is that the people who are playing by the rules, who are stocking their shelves with the proper things, are going to be penalized as well by this. They're actually going to have increased prices and lose customers. It becomes a race to the bottom if we don't have tough penalties on retailers.

**Mr. Warren MacInnis:** Retailers have been penalized and charged criminally. I mean, if they're caught with this particular type of product and then they resell it and resell it, they're charged. With the national chains, when I was in the RCMP, we did go after that.

I think a big part of it is education of retailers, the distributors, and manufacturers. The retailers, the large legitimate ones, have just over

the last few years come on board. With organizations like CACN and other international organizations, it's not a hidden epidemic any more. People realize it, so they're a little more careful.

It costs a legitimate retailer huge if they get caught with a counterfeit product. They have to recall it. They have to destroy it. They may face potential lawsuits with the public relations nightmare that would follow. So large retailers want to be part of the solution, not part of the problem. But if they continue to turn a blind eye, I would totally agree that they have to face a penalty, as any other type of criminal would.

**Mr. Brian Masse:** Would the staff, the suppliers, or the management be part of this and have to face any criminal charges, similar to the Westray mine bill we had here, where it was changed?

**Mr. Warren MacInnis:** If it's a director of a corporation or something, and it can be proved in a criminal court that they were negligent or wilfully blind or had a guilty mind and knew what they were doing, then certainly they will be prosecuted, and hopefully convicted.

**The Chair:** Mr. Masse, you're almost out of time, but Mr. Savaria did want to comment on your question.

**Mr. Brian Savaria:** I am confident that the big-box stores, certainly in my field, have this under control. The sixth-level distributors, though, are the ones who are liable to be committing the offences, and they're doing it willingly by sourcing this material from totally unauthorized directions, such as from Asia.

**The Chair:** Thank you.

We'll go to Mr. Cullen, please.

**Hon. Roy Cullen:** Thank you, Mr. Chair.

I'd like to come back in a minute to the question I posed earlier to Mr. Geralde about the Canada Border Services Agency, but I'll just make a comment first about the need to have some concerted efforts internationally and to harmonize.

In fact, the European Parliament has just passed some laws to harmonize and stiffen the penalties. There is so much we can do here at home that we need not wait for these multilateral efforts to take hold.

One specific case that comes to mind is that the United States trade representative has just added Canada again to the watch list, or has retained Canada on the watch list. There are some in Foreign Affairs Canada who minimize this. They say that in the U.S. there is such a heavy lobby from the motion picture industry and the software industry that it's not surprising that they do this.

What other developed economies that are huge trading partners with Canada are on this same list?

**Mr. Doug Geralde:** If I may comment on it, I'd like to say in alignment with that—and CACN feels this way—that there is a lot that we have to do ourselves.

One of the arguments I get from China is that Canada is no better. It's an embarrassment to go there, with the legislation and the porous activities we have. We have to key in on this. We have to do it ourselves, in addition to the others.

Clearly we're in with countries that are developing nations, as opposed to being a leader at the level we should be. It's imperative that we work on these things and take those recommendations seriously: enhancing the border services—

• (1700)

**Hon. Roy Cullen:** Thank you.

Let me come back, sir, to the Canada Border Services Agency, which currently doesn't have a mandate or the authority to search and seize and store and destroy counterfeit goods. I think that's something that needs fixing.

But in the meantime, let's say they come across a container filled with something that looks like counterfeit batteries—they just come upon it; they don't go out and actively search for it. I gather there are constraints right now in terms of what information they could share with intellectual property rights holders, such as the intellectual property rights holders for Eveready batteries in Canada, because of privacy constraints.

But in some countries there is a lot of information that is shared, so that at least intellectual property rights holders can exert their civil remedies. But right now there are constraints even to do that, and the criminal sanctions are not severe enough.

**Mr. Warren MacInnis:** You're exactly right. It's beyond ludicrous that a border services agency cannot actually search out hazardous products and things like this. It's beyond me why they don't have the authority already. This issue has been beaten to death for many years, and I'm glad it's coming to the forefront now.

But my colleagues and I have been beating the same drum for nearly ten years and nothing has changed. Hopefully it will come about.

If a rights holder wants to take civil action, a shipment can come into the country and they don't get any information. Right now, under the current regime, if the RCMP don't have the resources or can't take it, the rights holders get no information and that product is let into the country, regardless of the type of product.

**Hon. Roy Cullen:** Madame LaBossiere, I want to come back to the idea that Montreal seems to be a haven or an area where motion pictures are replicated, I gather, in great numbers. I don't know why particularly Montreal; I'm sure it happens also in Toronto and other places. I gather they used to come into the theatres with video cameras, but people have cottoned on to that. Now they have the cameras, I'm told, and you can correct me if I'm wrong, actually hidden in their ties or garments, and they hope that someone doesn't get some popcorn or something.

They film, and I don't expect the quality is that great, but they walk out of the theatre and in about an hour they're burning these

onto CDs and DVDs at an incredible profit and with not much risk of anything happening.

Is that the case?

**Ms. Danielle LaBossiere Parr:** I can tell you anecdotally. I don't represent the movie industry, but I work closely with my colleagues in that industry, because we find that often where pirated movies are sold, pirated video games are sold.

I very much have heard stories to that effect, and that Montreal is definitely a haven for camcording and other crimes. Certainly for our industry, we've found that Montreal is actually a haven for the manufacture of circumvention devices, as well as B.C. and some parts of Ontario. So it is happening here in Canada, and it's quite shocking how blatant and egregious it is.

**Hon. Roy Cullen:** Thank you.

**The Chair:** Thank you.

Just for your information, the movie industry, I think, will be here on May 7.

I have the privilege of having the next Conservative spot, and I have a few questions. One of the questions I've been thinking about is how we actually get hard data on counterfeiting and piracy, because what we have at best case now is estimates. But it seems to me it's actually difficult to get hard data because of the nature of what we're dealing with.

Another question I had, especially concerning counterfeit products, was how and when counterfeit products actually enter the supply chain, at what stage they do, how they go up that chain, and then how you chase them back. One thing I just want to ask, following on the points that Mr. Masse and Mr. Shipley made—and thinking we could actually do this might perhaps be pie in the sky—is whether we can actually trace, for instance, the goods you have there. Is it feasible to think we can trace them from the retail right back to where they started and all the points where they have gone?

I would use the example, as Mr. Masse mentioned, of restaurants. If you look at the trade we're doing with countries like Japan on beef, the Japanese have demanded to know, and I think rightly so, for any finished beef product or beef product that they buy, where it was packaged, where it was slaughtered, where it was born, whether it was transferred between one farm and another, what it was fed, and where it was fed this. It's all traceable now in answer to a legitimate concern with respect to BSE or other animal health or human health issues.

So is it feasible to expect, for instance, for the products you have there, Mr. MacInnis or Mr. Geralde and Mr. Savaria, that we could actually trace them back and thereby enforce that better?

Mr. Savaria.

•(1705)

**Mr. Brian Savaria:** Yes. Without getting into details, there are all kinds of pieces of information on the legitimate product that lead us back to who made it, who on the production line made it.

**The Chair:** Okay.

Mr. Geralde.

**Mr. Doug Geralde:** Yes, if we're talking about a legitimate product, we can trace it back, and usually there are ways to do it. For a counterfeit product, those markings will indicate that it was made at a factory that it wasn't made at. So I'm not sure you can get back to that.

There are some techniques that we can use, at the source, looking at things, and with those who are buying to line up products, sampling methods.... So there are some steps that could be taken. But to do a truly counterfeit product.... They have found in eastern bloc countries in Europe that products are marked now with "made in China", just because they know they can focus it. So the counterfeiters are getting the counterfeiters. It's really hard to definitively take a counterfeit product made in Shenzhen in an unlisted factory, which just makes its way through the system, and actually trace that back. It requires the network on the ground.

So some steps can be taken that way. Certainly legitimate products can be traced back. But there's a hole even in that approach.

**The Chair:** Do we then take the approach that if we cannot trace it back, we would almost assume that it's not a legitimate product? For instance, that's what the Japanese do with the beef, and say, "If you can't trace all these 20 steps back, we're not buying it."

**Mr. Warren MacInnis:** They're starting with a legitimate product going through a legitimate market. Where we're dealing with counterfeit products, there's no legitimate market for a counterfeit product. Counterfeiters don't keep any types of records. So who knows where it's manufactured at the end? When you do catch the mid-level players in Canada, they're never going to turn on their larger brothers in other countries and things like that, especially in a complex network.

If you're talking about grey market items coming into the legitimate chain, then you can probably trace them back. But for a counterfeit product, it has no business in any market, so there's no way you could possibly track it unless it had legitimate components.

**The Chair:** This is my point, that the retailer says, "Look you cannot track this back, so we're not accepting it."

**Mr. Warren MacInnis:** Okay, now I understand that. I know they're doing that with pharmaceuticals in the States, where they have to be tracked. So if a legitimate retailer says he'll buy only if you can show the steps to it.... But then again, documents are counterfeited; forgeries are put in place; false companies are set up. Things like that happen. So it would be a very complex thing to do.

**The Chair:** Okay.

Mr. Geralde, go ahead, please, quickly.

**Mr. Doug Geralde:** It's an interesting concept, something we should look at. But as Mr. MacInnis has said, I can give you counterfeit documentation. That's what we're seeing as well.

The other thing is, for a lot of these products, catching that in the timeframe in which the products come across, at what point will they do that?

**The Chair:** Thank you.

We'll go to Mr. Thibault.

**Hon. Robert Thibault (West Nova, Lib.):** I have two points. One is that the border agency can inspect Canadian product, but they must have a warrant currently. They must get a court warrant first. Am I not correct?

**Mr. Warren MacInnis:** No. If something comes into Canada, you don't need a court order to inspect it. The thing is, customs in Canada don't have the mandate; they don't have the legislation to actively look for counterfeit products.

If they come across something in a shipment, the next step is to contact the RCMP, wherever it comes into in that part of the country, and then they say, "Can you deal with this product?" If the RCMP says, "No, we don't have the resources, we don't have the time, we can't do it", then they have no choice but to release it, unless there's—

**Hon. Robert Thibault:** Okay, but there is a way. If you find that one of the distributors of electrical equipment has found some bad product in his chain of supply, you can advise the police and they can get the next shipment coming in. You don't have to catch it on the store shelf itself. There is a way you can get it at the border.

•(1710)

**Mr. Warren MacInnis:** If they'll do that for you. Under the current structure, if you want to target a shipment, customs want the departure date, the container number, the name, address, and birthdate of the bad guy. It's impossible for—

**Hon. Robert Thibault:** The point I want to make is this. If I or any customs officer opens a container and it has this cord that I'm seeing, unless it's been plugged in and burnt he's not going to know. You're not going to know unless you know that this shipment is coming in and it's bad. There's no way you can visually tell the difference between a bad shipment and a good shipment.

**Mr. Warren MacInnis:** Yes, if they have the training to...which a lot of them have come to at the lower levels. The lower levels, in the people I've dealt with in the field, want to stop this stuff; they don't want it coming into the country. It's the upper levels and into the government that don't seem to have the will to....

**Hon. Robert Thibault:** I don't want to spend too much time on that, but I just wanted to make sure that point was made.

Madam LaBossiere Parr, is there a legitimate use for those chips other than pirating, other than making pirated games or pirated software useful? Is there another reason we would permit them on the market? Would they have a use for anything else?

**Ms. Danielle LaBossiere Parr:** The only other thing they could conceivably be used for is if you had a video game console from Asia, for example, and you wanted to play video games from another jurisdiction on them, you could technically use a mod chip to circumvent those protections. Other than that, there is no legitimate use.

I would compare it to, say, somebody who buys a radar detector because they want to track the speed of traffic on their street. How many times is that?

**Hon. Robert Thibault:** The radar detector doesn't track that; it just tracks the radar going by on the street. But it's a similar law. You're allowed to own it, but you're not supposed to use it. I was wondering why it's allowed on the market at all.

You've been on this case, in this line, for eight or nine years, you were saying. What are you hearing from the people in the bureaucracy, or where you've been dealing with this, as the reasons that these actions aren't being advanced?

**Mr. Warren MacInnis:** I don't think there's any legitimate reason. What I'm hearing is it just takes more study. There are people who come up with reasons, saying it's not a serious issue, that industry has exaggerated the claims of organized crime, health and safety, things like that.

To be honest, I don't understand why there is any claim that this is not being taken seriously up to this point.

**Hon. Robert Thibault:** I know from the debate that I followed—I'm looking at your cord, and especially when you're looking at your breakers and your emergency room—there's no doubt that there's a safety issue there.

On intellectual property, I have a little more trouble, because I agree from the point of the jobs and so on, but as a Canadian consumer I'm a little dismayed. I saw last week that—and I won't name them—the largest manufacturer of software for computer management operating systems was selling exactly the same software for \$100-and-some-odd in North America, but in the Chinese market they would sell it for \$3 because they didn't want the counterfeiters to take over.

So if you bought a PC there and you wanted that operating system, it would be \$3 to \$4 on that computer, and if you wanted it in the North American market, you'd be paying over \$100. It would almost appear to me as if there's a bit of gouging on that one in our market, and that is disappointing.

It doesn't excuse piracy, but it doesn't bother me, in the same way as if my house burns down or some children get burned today because somebody has a piece of equipment that they think they have for safety—that circuit breaker piece you're showing me—and it's actually dangerous.

**The Chair:** Okay. We're almost out of time. Does someone want to quickly respond?

Mr. Halickman.

**Mr. Michael Halickman:** I note that clothing—the product we bring in—is not very interesting. Nobody is getting burned, nobody is dying, but that's not entirely true. I'm aware of counterfeit shipments for little children, where the zippers would break off and

be choking...where the buttons would break off, where it's sleepwear that's supposed to be flame retardant and it isn't. These have brand names, and of course the brand name would conform to all of these regulations. However, the counterfeit conforms to none of them, and the poor consumer is buying the product thinking it's safe for their children and it's not. So even in clothing there's danger, besides the intellectual property.

**The Chair:** Thank you.

We'll go to Monsieur Arthur.

[*Translation*]

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

Let me continue in the same vein as Mr. Masse and Mr. Rajotte. I want to discuss the chain of possession of adulterated goods.

There is no excuse for a restaurant to be in possession of tainted meat. If it has tainted meat in his possession, it can never be excused because it purchased it from someone else. It will be prosecuted for possession, even if it has not sold any of that tainted meat. Simple possession makes it liable to prosecution.

We want to solve these problems of shady dealings, but we cannot trust either China, or Russia, or organized crime. Americans do not trust Canada, and Montreal is becoming the world's greatest clearance house for counterfeit art work. Try as we may to strike at the heart of the counterfeit industry, we will still be working at it 20 years from now.

If possession of adulterated goods was an offence under Canadian law, not necessarily a criminal offence but very costly in fines, no one would dare neglect to verify their supply sources. If any retailer possesses or has sold this kind of product, which could be a product that might catch on fire, or a bogus M. Halickman vest or a Louis Garneau helmet, which the company unfortunately gave to the Chinese, it will be committing an offence subject to harsh fines.

Would the problem not be solved if retailers had to be mindful of their sources of supply? Monitoring supply sources is not the responsibility of the State. That's the retailer's job.

• (1715)

**Ms. Danielle LaBossiere Parr:** I think that there would be problems with enforcing such measures. Who would determine the amounts of the fines?

[*English*]

Who is going to go after these criminals, or the individual?

**Mr. André Arthur:** If you can do it for restaurants, we should be able to do it for Canadian Tire.

**Ms. Danielle LaBossiere Parr:** We should, but the problem is resources I think to a large extent. The RCMP and the border agency don't have the resources currently to do it. We want to go after the larger-scale criminals who are perpetrating this behaviour on a regular basis and are profiting tremendously from it.

We're in support of anything that's going to really crack down on this problem, but I think a more viable solution is to increase enforcement and to go after large-scale—

**Mr. André Arthur:** My point is not enforcement; my point is responsibility. My point is that if you hit the guy responsible for owning such goods, he's going to be careful after that, and if you hit him harder, he's going to be more responsible after that. Isn't that a fact?

**Mr. Doug Geralde:** To that point, certainly I think we want to go after that. I think the counterfeiting is so lucrative that if you just hit piecemeal at it, you'll never make it unviable for him.

It's a difficult thing. I think we need a multilateral attack on these things.

We outlined items in the road map. Certainly making people accountable is also a factor, but I don't think there's one answer here, or a silver bullet for everything. I think we need a collage of ideas and concepts. We need to tighten the legislation, we need to have increased resources, and we need to go after legislative changes as well.

**Mr. André Arthur:** In other words, you want government to do your job.

**Mr. Doug Geralde:** No, not at all. We're out there doing the work as well—

**Mr. André Arthur:** You don't want to be alone and be the one who complains when you find something that's false. You want government to move in and do it with its own resources. It's going to be more economical for you.

**Mr. Doug Geralde:** Well, personally...we're out there. We're not even a manufacturer of the product and we're working to help in that area. I think it's a collaborative effort. I think it's private industry; I think it's distributors. I think government has a role. I think everyone has a role. Consumers have a role to become educated and understand that it's not a victimless crime. It's everywhere.

**Mr. André Arthur:** But the retail store is the place where things get to the public.

**Mr. Doug Geralde:** It's one of the areas of access, but flea markets are also....

**Mr. André Arthur:** That's retail.

**The Chair:** I have two people who want to comment.

We're over time, so briefly, Ms. LaBossiere.

• (1720)

**Ms. Danielle LaBossiere Parr:** I think there really is a public interest at stake. That is the reason we feel government should be involved in this issue.

**The Chair:** Mr. Beauchesne, briefly.

[*Translation*]

**Mr. François Beauchesne:** Let me respond to Mr. Arthur. Yes, I think that the owners of such businesses should be harshly prosecuted. There would be a heavy fine for the first offence, a heavier for the second offence, and if there is a third offence, the business would be shut down. Under these conditions, business owners would be mindful of their sources of supply.

This is a big problem. What applies to me does not apply to them, but if we could solve the problem on their side, it would be a step

forward. We would solve half of the problem, which is better than doing nothing at all. We have to start somewhere.

[*English*]

**The Chair:** Thank you.

We'll go to Mr. Carrie, please.

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

Mr. Beauchesne, what percentage of your business is affected by counterfeit? Do you have any idea?

**Mr. François Beauchesne:** At least 20% of the business is affected. We're going after companies on a weekly basis.

Being in plastics, there are no mom-and-pop shops in Canada that are going to do something like this because it's not possible. So we have that chance. Our problem is on a much larger scale. We're talking about nations that are counterfeiting. They are not strict with their intellectual property. The whole sports equipment area is affected, including the hockey stuff, helmets. We do thousands of construction helmets. If somebody falls and the helmet is not good enough.... There could be some very, very bad consequences if products are not legal.

We are fighting. We do okay, but we're getting exhausted. We're tired. We need some regulations that will help on our side of the deal, to develop and be cost-effective for the business and the product.

**Mr. Colin Carrie:** With all the testimony, I'm starting to see how difficult a problem it is.

I was at a trade show with electricians and plumbers and they were saying they can't even tell the difference. They're concerned because of the insurance and the liability. If they ever installed some of it, they would feel horrible. As Monsieur Arthur said, we've really got to slap the guy at the end. But sometimes customers get the product and it looks like the official one.

I am wondering if you're aware of any international efforts. I know a lot of these products have this ISP code and that it can be photocopied, but I've heard about a little chip that could be coming or something along those lines. Have you gentlemen, or Madame Parr, heard about international ways of tracking these things? I know we have these codes on our products that get scanned at the retail point. Are there international efforts being made so that each factory in the world that is importing to Canada has to have a unique chip or code that we could identify? Are you aware of any international things?

**Mr. Doug Geralde:** I'm certainly aware there's a number of techniques they use. I think what you're referring to are the RFID chips they're putting into products so they can do the traceability from the factory through the distribution network. That's certainly one of the applications.

There are two types of labels. We have overt, which is easy to see. That might be a hologram, but that too can be copied. It's a cat-and-mouse game. There are also covert techniques that can be used. In the testing area, I think industry, and I know our association, the UL, are also trying to take actions to determine anything legitimate. There's a whole bunch of techniques that are being used, and there's a business that has actually come out of this.

So there are different techniques being used by manufacturers and testing organizations and traceability systems.

**Mr. Michael Halickman:** I'd like to tie in to something that you and Mr. Arthur are saying.

I tell people I see with counterfeit, if you want to be sure, buy it from the legal distributor. Most of the counterfeiting we encounter is through secondary and third distributors—stuff that is brought in. In our industry, the retailer has no excuse. If they want to know it's real, they buy from the real guy. When this stuff is bought and there are five or six distributors, nobody knows where it came from. If they go to the original guy, they're not going to have a problem.

• (1725)

**Mr. Colin Carrie:** Are your associations working on educating the public about these things? I heard a stat that about 39% of Canadians have bought a counterfeit product, either knowingly or unknowingly, whereas only 13% of Americans have done so. Is there something that we or you could be doing as associations to help educate the end consumer? Or are you doing things right now?

**Mr. Doug Geralde:** At CSA, we always have the education about that out to consumers, manufacturers, industry, and retailers. CACN also has a group that does education. There's always more you can do.

We have a poster campaign to educate people, and we're getting cooperation from transit authorities and different organizations to put that out. It's really a matter of changing people's perspective that this is a serious problem. It's not a victimless crime, it's not just a commercial issue, and it can be a safety issue. That's all part of it.

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

For the last member, we go to Monsieur Vincent.

[Translation]

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

First, in answer to the question from the Conservatives, who asked why the government should invest money to protect intellectual property, I have a very simple answer. Counterfeiting costs the industry between \$20 and \$30 billion a year. I think that government has responsibilities in this regard and that it is able to provide funds to protect us and to protect our industries.

Moreover, Mr. MacInnis, do you think that by going to the source, and by that, I mean the point of entry into Canada of the counterfeit goods, we could display a patent along with the stamp as the product comes into Canada? In this way, we could tell whether the object is patented, where it is coming from and whether it is counterfeit. If there is no patent accompanying the product, we can be sure that it is counterfeit. Then, we can simply block it at customs or send it back to where it came from.

When a product enters Canada, the patent could be directly attached to the container, be it in an airport or anywhere else. I understood what Mr. Geralde said earlier, about the possibility of forged documents. In anticipation of such cases, we could assign someone who would verify the documents. This person could verify whether the product was ordered by some specific industry or whether it was made outside Canada, and so forth. Then, we could

trace its source and determine whether it was manufactured according to the rules.

[English]

**Mr. Warren MacInnis:** It would be really hard to do something like that. There are so many different types of products and industries that have different products coming in.

I don't know what the current statistics are even for legitimate products being examined at the border, but I think about 1% to 2% of containers and shipments imported into Canada are actually examined.

So to put that other burden of trying to contact rights holders or other people on the CBSA or another agency, I don't know that they'd ever have the resources or the time.

The thing with counterfeiters is that no matter what type of security features are added on to a product—on packaging or anything—the counterfeiters catch up.

[Translation]

**Mr. Robert Vincent:** However, the simplest thing is to find out whether proof of authenticity, or a patent, is displayed when the product comes into Canada. If there are 10 containers, the customs official will have to know, for instance, that these containers are suppose to contain electrical products which are accompanied with a patent as evidence. We can find out who ordered the products. If it is a Canadian company and if the shipment is labelled with its patent, we can presume that the products are authentic and respectful of the patent.

Would it be possible to proceed in this way? Regarding resources, the fact that we are losing \$20 or \$30 billion per year should encourage us to invest in an effort to mitigate these losses.

• (1730)

[English]

**Mr. Warren MacInnis:** A lot of companies already do that. Depending on the type of product, they have certificates with the product. With software and things like that, they have to have certificates of authenticity, or COA, labels affixed. A lot of companies are doing this, so when they do come across, if it's handed over to the police, they contact the companies to verify that.

Once again, you're dealing with counterfeiters who are very sophisticated. If a legitimate manufacturer puts a power cord together and it costs them \$5, the counterfeiter may only spend 50 cents. So they can spend a little more money falsifying or forging documents or certificates, and so on.

Once again, it's always about catch-up with the counterfeiters. The companies are always trying to change their technologies with certificates of authenticity and things like that. The counterfeiters are always doing the same thing.

[Translation]

**Mr. Robert Vincent:** I specifically mean the patent. We could use all kinds of stickers, but if the patent of the electrical equipment says that it should contain certain components, the components should actually be in the product.

[English]

**The Chair:** Go ahead, Mr. MacInnis.

**Mr. Warren MacInnis:** With patents, you're looking at a whole different type of law as well. In Canada, currently the patent laws on the criminal side of it are weak. In my 10 years I never did a patent case, because we never looked at that sort of thing.

In any system you put in place to help identify counterfeit products and take them off the market, the biggest line of defence in Canada is the border. Once it comes in, it's death by 10,000 cuts, because once a container enters the marketplace, there is no way to stop it. If you can take that container out of the legitimate chain before it even enters the country, that's our first line of defence.

Regardless of any other legislation or changes, the border system has to be in place so that they can actually attack this problem.

**The Chair:** Okay. Thank you.

I want to thank all of you for coming in today. I want to thank you for your presentations and your discussion.

If there is anything further you'd like to pass on to the committee and its members, please do so through me or through the clerk.

I want to thank you for your time today and thank members for their questions. I think it was a very good session today. Thank you.

The meeting is adjourned.

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