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# Standing Committee on Industry, Science and Technology

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EVIDENCE

**Monday, May 7, 2007**

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**Chair**

**Mr. James Rajotte**

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## Standing Committee on Industry, Science and Technology

Monday, May 7, 2007

• (1530)

[English]

**The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)):** We'll start our meeting. This is the 59th meeting of the Standing Committee on Industry, Science and Technology. Pursuant to Standing Order 108(2), we are continuing our study of counterfeiting and the piracy of intellectual property.

We have six guests with us here today. Each will have up to five minutes for an opening statement, and then we'll go immediately to questions from members. I will introduce them in the order that they are speaking.

First, we have Mr. Lee Webster, chair of the intellectual property committee of the Canadian Chamber of Commerce. Second, we have someone who is well known to us here, Mr. Jayson Myers, the senior vice-president and chief economist of Canadian Manufacturers & Exporters. Third, from Microsoft Canada Co., we have Mr. Michael Hilliard, corporate counsel. Fourth, we have Mr. Douglas Frith, president of the Canadian Motion Picture Distributors Association. Fifth, we have Mr. Lorne Lipkus, chair of the education and training committee of the Canadian Anti-Counterfeiting Network. Finally, we have Mr. Graham Henderson, president of the Canadian Recording Industry Association.

Welcome, gentlemen.

As I mentioned, we will start with Mr. Webster and go down the row. If you can keep your opening statements to five minutes, we'd appreciate that very much, so we could have as much time as possible for questions from members.

Mr. Webster, we'll start with you.

**Mr. Lee Webster (Chair, Intellectual Property Committee, Canadian Chamber of Commerce):** Good afternoon, Mr. Chairman, honourable members of the committee.

My name is Lee Webster, and I'm chair of the Canadian Chamber of Commerce intellectual property committee. I'm also a partner at the law firm of Osler, Hoskin & Harcourt in Toronto and have practised in the area of international property law for over 25 years.

I'm here to tell you that Canada is losing the war on counterfeit goods. While counterfeiting used to consist mainly of knock-off t-shirts, watches, and other luxury items, the low risk and high profit margin have encouraged criminals, including organized crime, to become very active, counterfeiting everything from drugs, brake pads, and other car parts to electrical products and personal care products. No industry is immune to this illegal activity.

Counterfeiting also may pose a serious health and safety risk due to poor and inconsistent quality and the potential hazardous nature of counterfeit products. Counterfeiters do not care if counterfeit products are unsafe for consumers; they only care about turning a profit, money alone. Some counterfeit batteries imported into Canada have been found to contain mercury, and pose a threat of explosion. Counterfeit shampoo contaminated with bacteria has been found in Canada, and has been imported from the U.S. into Canada. I'm sure you've heard of the unfortunate woman in British Columbia who purchased drugs over the Internet that poisoned her. She succumbed from the poisoning. These drugs were found to be laced with filler, including, believe it or not, lead and uranium.

The prevention of the distribution of counterfeit goods is not simply a matter of protecting the legitimate rights of designers of high-end watches and handbags. Aside from safety, we cannot lose sight of the fact that there is an issue of lost jobs and tax revenue. Counterfeiting and piracy are relatively unchecked in Canada and continue to grow at an exponential rate. It is estimated that the value of counterfeited goods in Canada is worth billions annually, and growing. The economic impact of this problem on Canadian companies and the lost tax revenue for the government are significant. This has a negative impact on Canadian business and the chamber's members.

The Canadian Chamber has the view that with the rapidly changing global economy, protecting intellectual property is critical to ensuring a competitive Canada.

Intellectual property is an essential element in a knowledge-based economy for promoting investment in research and innovation, international trade and investment, consumer protection, and overall economic growth. Some may argue that this is all about the entertainment industry trying to protect their intellectual property from illegal downloading. Although this is a very real concern, the issue is much larger. The entertainment industry's problems are simply one aspect of the broader problem of intellectual property theft. Stealing the intellectual property of another not only robs the rights holder of the economic benefits of those rights, long recognized under our traditional civil laws, such as our patent, trademark, and copyright legislation; it also lowers our country's reputation abroad, deceives the consumer, and may be putting the consumer's health and safety at risk.

This issue has not escaped the notice of our principal trading partners. Just last week, the United States trademarks representative again placed Canada on the special 301 watch list, an annual review of countries deemed lacking in the protection of intellectual property, for our 13th consecutive year.

The Canadian government must begin to take vigorous and meaningful action on this issue immediately. The Canadian Chamber has been pressing for action, and we are very encouraged that this committee and the public safety committee are giving careful study to the problem of counterfeiting in Canada. It is time that the government took this issue seriously and acted.

The Canadian Anti-Counterfeiting Network has released a comprehensive report on counterfeiting and piracy in Canada, entitled *A Road Map for Change*. The Canadian Chamber strongly endorses this report and its recommendations. This committee has already begun to tackle the issue by including a section on counterfeiting in its recent report on the manufacturing sector. The public safety committee will soon be releasing a report on the health and safety implications of counterfeit goods.

While my colleagues on the panel today will delve further into the specific recommendations for change for IP, I want to highlight some of the facts.

One, law enforcement agencies and prosecutors need better tools to provide them with the ability to effectively combat the importation, manufacture, distribution, and sale of counterfeit goods in this country.

Two, among other matters, customs officials need to have new powers and the associated additional resources to search and to seize suspected counterfeit goods at the border.

Much else needs to be done. Our current IP laws are not up to the task of providing an efficient—and I emphasize “efficient”—and effective relief against counterfeit goods.

To close, a thorough review of all of our IP-related statutes, such as the Copyright Act, the Trade-marks Act, and the Patent Act, as well as the IP-related provisions of other statutes such as the Criminal Code, is urgently needed so that rights holders and the authorities have the tools they need to efficiently and effectively stop the flow of counterfeit goods in this country. Counterfeiters must be stopped. Canada's IP environment must be brought up to the standard of our international trading partners.

● (1535)

We thank you for the opportunity to present the Canadian Chamber's views. I'd be happy to take any questions you might have at the end of our presentations.

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

We'll go to Mr. Myers.

**Dr. Jayson Myers (Senior Vice-President and Chief Economist, National Office, Canadian Manufacturers & Exporters):** Thank you very much, Mr. Chair.

Good afternoon, ladies and gentlemen.

[*Translation*]

Hello, ladies and gentlemen. I will now read my presentation. I am sure that the translated will soon be ready to be distributed to committee members.

[*English*]

First of all, I'd like to recognize and thank all the members of this committee for your hard work, your effective representation, and your common effort on behalf of Canada's manufacturers. Thanks to your efforts, we saw a budget that contained a number of measures that picked up on recommendations made by this committee, and I'm looking forward to a very positive response from the government to your report on manufacturing competitiveness.

One of the priority issues that you recognized as you were speaking to manufacturers across the country was the issue of unfair trade and the issue, particularly, of the challenge being presented to the Canadian economy by counterfeit products and intellectual property theft. I'd like to echo what Mr. Webster has said. This is an urgent challenge affecting a wide variety of products and services in Canada.

I also want to say that industry doesn't have good economy estimates of the scope of this. I think some of the estimates we have made are reasonable, but they also understate some of the economic and social impacts of counterfeit activity.

I'd like to tell you a bit about what CME's experience has been and what we are doing to combat counterfeit trade. Also, as members of the Canadian Anti-Counterfeiting Network, we strongly endorse the recommendations that you'll hear later in this presentation.

You do have a copy of my presentation. I've listed here the number of products we've identified over the last three years that have been brought to our attention by our members.

Food, beverage, and tobacco Products: cigarettes, beer, liquor, ice wine, maple syrup, and canned fruit.

Apparel: of course, clothing, shoes, purses, jewellery. I've taken a wide and very interested look at what my wife has in her closet, and it's not a pretty sight, I can tell you that.

Electronics: microchips, semi-conductors, electronic packages, switches, CDs and DVDs, Playstations, iPods, cell phones, computers, lights, batteries, consumer appliances.

Metal and plastic products: castings. There are more automotive castings being imported and logged as imports into the United States than are manufactured in Canada, coming in as fraudulently marked product into the United States from Canada.

Automotive parts: brakes, electronics in the automotive parts, automotive textiles, automotive dyes.

Equipment: cement mixers. Our first vice-chair works with Monarch Industries in Winnipeg, and he visited a trade show in the United States and saw a cement mixer—they manufacture cement mixers—went up and thought, this looks very familiar. He looked through the catalogue that was provided by a Chinese company and there was a picture of him beside a cement mixer with the caption, “Another happy customer”.

There are a wide range of products, especially on the medical side—pharmaceutical products, medical devices—and of course, software.

The scope of counterfeit activity in Canada—we've tried to put some estimates around this—is from \$20 billion to \$30 billion annually. I know the estimates have been challenged, but these are pretty reasonable estimates. They represent 2% to 3% of our imports and exports combined, they're in line with the OECD estimates, and they're in line with the estimates of the International Chamber of Commerce. But I have to tell you this doesn't account for the domestic counterfeit production, and it certainly doesn't account for the social and economic impacts of counterfeit product in Canada either. But ultimately, definitive economic analysis is impossible to achieve. This is criminal black market activity. If we could count this, it wouldn't be a problem in the first place. We are unable to actually track the goods.

The one thing I do want to say, because I know you've heard a witness who said we need good solid information like this before we can proceed, is yes, we do need some economic analysis, but that shouldn't impede action being taken.

You'll be able to see the rest of my presentation when it's circulated.

The social and economic impacts are significantly higher than the scope of the activity. It's not only lost sales, wages, tax revenue or market share; it's the lost investment, and it's the lost innovation activity. But there are health and safety impacts as well, as Mr. Webster has pointed out, and there are legal and financial impacts. And the real danger is that if the American border closes because we cannot effectively secure our own borders, then this is going to tie up cross-border activity that is today, of course, \$1.5 billion across the Canada-U.S. border. That's the problem when Canada is on the USTR watch list.

CME is taking action to combat counterfeit activity. We're working with CSA. We're working with the RCMP. We're working with the Anti-Counterfeiting Network itself. But our experience in this is that the onus has fallen entirely on Canadian businesses to detect counterfeit activity, that it's almost impossible to know when the counterfeit activity is taking place and therefore to get a court order to enforce the law. Civil enforcement is inadequate, it's impractical, it's costly, it's ineffective, and there are problems, too, in terms of enforcement and resourcing on the criminal enforcement side. And frankly, it's not a priority for government.

The recommendations we've made are totally in line with those of the anti-counterfeiting coalition network, and I'll pass the floor to a representative of that network to talk about specific recommendations.

• (1540)

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

We'll go to Mr. Hilliard, please.

**Mr. Michael Hilliard (Corporate Counsel, Microsoft Canada Co.):** Thank you, Mr. Chair.

My name is Michael Hilliard and I am corporate counsel for Microsoft in Canada. I appreciate the opportunity to appear before this committee to share with you a few thoughts on the importance of protection and enforcement of intellectual property rights, in particular software.

The problem of software piracy in Canada is a significant one. According to the most recent BSA and IDC global software piracy study, the software piracy rate in Canada is 33%. Thirty-three percent of software in Canada is pirated. While this rate has declined in recent years, it is still considerably higher than the rate in the U.S., which is at 21%, New Zealand at 23%, Finland at 26%, and in many other developed countries.

The losses attributed to piracy in Canada are over \$800 million. This is a problem that has many negative economic consequences. It undermines efforts of local software developers, it results in fewer jobs in the legitimate software market, and there's a loss of tax revenue. The IDC has suggested that if you could reduce the piracy rate in Canada to 26%, you would see 14,000 new jobs in the software industry and \$2 billion in additional tax revenue.

In other words, it's not simply a problem for software manufacturers such as Microsoft. For every one dollar of software sold, there is at least another \$1.25 in services to design, install, customize, and support software. Most of these additional services or revenue go to local firms.

Beyond the economics of piracy, there are also significant risks that pirated software creates for Canadians who use it. A recent IDC study examined websites that offer counterfeit product keys, pirated software, etc., and 25% of the websites attempted to install either malicious or potentially unwanted software. The negative impact of unwanted software like this can range from mild, such as adware, pop-ups, or home page hijacking, which are annoying; to the destructive impacts of Trojans being installed on your computer that use up the resources of the computer; and up to devastating, where bots or keyloggers take over the machine to relay spam, store illegal files, or give access to sensitive data.

For businesses, a recent survey of IT security professionals suggested that the cost to an organization to correct the problems of a virus, an unauthorized access to information, or the theft of information can be over \$20,000 per incident.

At Microsoft, we take the problem of software piracy very seriously. We have focused our various activities investments into a single initiative that we call the Microsoft genuine software initiative. This has three key strategic areas. The first is education, by raising the awareness of the risks of counterfeit software and the importance of proper licensing through consumer-oriented communications. The second is engineering, in that we engineer our software with anti-counterfeiting techniques that can alert the consumer to the presence of counterfeit software, and that protect them from some of the harms that I've spoken about. And the third is enforcement, in that Microsoft actively supports government officials and law enforcement taking action against software piracy and those who would victimize unsuspecting Canadian consumers and businesses.

Furthermore, we are not simply relying upon the government to address this problem. Microsoft will take whatever legal steps are necessary to protect its honest partners and consumers.

To address the problem of software piracy, in addition to strongly supporting the recommendations of CACN, Microsoft believes the Government of Canada should do the following: first, immediately implement the provisions of the WIPO Copyright Treaty and the WIPO Performance and Phonograms Treaty; second, grant the Canada Border Services Agency the independent authority to seize or destroy counterfeit goods; three, make the manufacture, sale, and distribution of labels of authenticity an offence in the Criminal Code; and four, provide the RCMP and the Department of Justice with adequate resources to effectively address counterfeiting.

Intellectual property rights are playing an increasingly important role in the global economy. In order for Canadians to derive the benefits of, and compete in, such an economy, it is imperative that Canada's legal and enforcement regime be strengthened to encourage the development and protection of intellectual property.

On behalf of Microsoft, I wish to express my appreciation for the committee's interest in this issue and for the opportunity to appear before you.

• (1545)

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

We'll go to Mr. Frith, please.

**Mr. Douglas Frith (President, Canadian Motion Picture Distributors Association):** Thank you, Mr. Chairman, and members of Parliament.

I'm president of the Canadian Motion Picture Distributors Association, which serves as the collective voice and advocate of the major motion picture, home entertainment, and television studios. Our members include Sony Pictures, Universal Pictures, Warner Bros., Paramount Pictures, 20th Century Fox, and Disney—in other words, the producers who make many of the films that your kids, my kids, and my grandkids are waiting to see this summer.

Canada has a serious intellectual property crime problem, and clear action to strengthen Canada's IP enforcement system is long overdue. To quote the RCMP, from a criminal enforcement perspective it is critical to recognize who's losing and who's profiting. Rights holders, legitimate retailers, the Canadian public, Canadian businesses, and the Canadian economy lose. Criminals are

the ones who profit. Therefore, the CMPDA supports all the recommendations in the report you have from the CACN.

I want to focus my comments today on our most critical area of concern, which is the impact of camcordings from Canadian movie theatres on worldwide movie piracy.

Here are the facts. All movie piracy, whether DVD piracy or Internet piracy, begins with a stolen film, and today over 90% of all newly released pirated films come from movies illegally camcorded in theatres. Camcorders make a profit by selling copies to people who distribute them on the Internet and to organized criminal networks that reproduce and sell millions of illegal DVDs around the world.

How do we know this? It's because in 2003 the major motion picture studios began tracking the problem of camcording by using sophisticated watermarking of their movie prints, so that it's possible to determine through technical analysis the very theatre where camcording took place. Pirated discs from around the world and illegal copies available on the Internet are continually analyzed to determine their source, the place where the image was first stolen right off the screen. This is why we know Canada is now a major and growing source of movie piracy.

In 2006 overall, Canadian camcorders were the source of approximately 20% to 25% of all illegally camcorded films from the major motion picture studios that appeared either online or as illegal DVDs around the world.

The illegal DVDs and online copies of major releases have been traced to theatres in British Columbia, Nova Scotia, Ontario, Alberta, and Quebec. Copies of those stolen films have been found on DVDs in over 45 countries and have been posted on the Internet by over 130 different so-called release groups, which are largely responsible for the online distribution of illegal copies of movies. With advances in digital technologies, believe me, these are highly organized thieves. They're using various methods to produce extremely good-quality copies, including techniques that utilize facilities for assisted listening to produce clean audio tracks in both official languages.

Despite the gravity of the problem, Canada has failed to enact specific legislation to effectively deter camcorder thieves. Under existing Canadian copyright law, there must be proof that the copy of the film being camcordered was made for commercial purposes. Professional camcord thieves know this all too well and simply claim they have made the copy for personal reasons. The fact that there is no specific anti-camcording provision in the Criminal Code has been cited by law enforcement repeatedly when they're called for assistance by theatre employees who have caught a camcorder in the act.

Camcorders, left alone by law enforcement, return time and time again. These thieves are intimidating and threatening to theatre employees, and the continued escalation of their actions is disturbing. Concern for the over 17,000 employees at theatres across Canada who are generally left to confront these thieves without law enforcement is obviously a significant issue for the Motion Picture Theatre Associations of Canada, and we're joined by MPTAC and all members of the major unions and guilds, as well as by the Canadian distributors, in asking for the government to take action to amend the Criminal Code to include camcording.

In terms of what we as an industry are doing, we've dedicated substantial resources toward pursuing educational, technological, security, and training initiatives to help fight this problem and we will continue to do so. But we cannot be successful without laws that act as a deterrent and ensure authorities to take effective action to stop movie theft and send a message that criminal activity will not be tolerated in Canada.

Thank you, Mr. Chairman.

• (1550)

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

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

**Mr. Lorne Lipkus (Chair, Education and Training Committee, Canadian Anti-Counterfeiting Network):** Thank you, Mr. Chairman and members of Parliament.

[*Translation*]

Thank you for giving me an opportunity to speak before your committee. I greatly appreciate being invited to give my viewpoint on the issue of counterfeiting and piracy.

[*English*]

In addition to being a founding member of the Canadian Anti-Counterfeiting Network, I have been a lawyer in private practice for 26 years. My entire practice is spent dealing with several hundred counterfeiting cases per year across Canada for over 75 different brands and manufacturers. In these dealings, it is rare that I am not able to find counterfeit products in a particular area.

I'm here to explain that on a constant and continual basis I have found—and am still finding—counterfeit products at virtually every major shopping mall or shopping centre across Canada. We find counterfeits in numerous, and I mean hundreds, of retail locations per year across Canada.

I have been personally involved in raids of manufacturing facilities in Canada caught manufacturing clothing, cellular batteries, and accessories.

I have raided a distribution facility in Canada that imported hundreds of thousands of dollars of ink-jet cartridges separate from counterfeit packaging and assembled the units together for sale in the Canadian marketplace.

We recently seized large quantities of cellular headsets from an importer of counterfeit Bluetooth headsets who imported the packaging separate from the units themselves. These were destined for delivery over the Internet, into Canada and into Canadian businesses. Since the end of November of last year, I have personally opened over 50 new cases of counterfeit cellular headsets. They are not approved and not made with the proper materials.

A large number of counterfeiters or pirates are dealing only in cash. We deal with them on a regular basis, and I have every confidence that they are not reporting their income to the Canada Revenue Agency.

A few brief examples of what we've encountered include the following.

I've attended the Richmond Night Market in Richmond, B.C. with our anti-counterfeiting enforcement teams and the RCMP and Health Canada on more than one occasion in each of the past few years. Each time we've identified over 60 businesses, of the several hundred there, that had counterfeit products, ranging from—the list that was mentioned before—batteries to apparel, ink-jet cartridges, electrical products, jewellery, and sunglasses. We have only ever been able to catch, notwithstanding that we've had as many as 15 people there, 10% to 15% of those businesses, because they leave as soon as they see us.

It is a requirement of that market that every vendor also have a retail location in Richmond, so they have another opportunity to sell these goods. Dozens of businesses have been identified in Richmond and Burnaby, B.C., selling large quantities of luxury goods in the back of regular stores. You have to know someone to get in there.

On many occasions per year, I am personally contacted by members of the RCMP and CBSA, and they've informed me that they've just let a shipment of counterfeit products come into Canada without stopping it, even though they knew the goods were counterfeit. On many occasions per year, I've been advised by police or customs that even though they have identified counterfeit products being imported into Canada, either because the goods were protected by trademark and not copyright, or more often because they don't have the resources, they've just decided not to proceed with the charges.

In many cases, I've been involved where brand owners are not formally advised of who the importers or exporters are, and therefore they have no ability, if the government doesn't seize the goods, to follow them into the marketplace. Very often I've been involved in shipments that come into Canada, are broken down, and shipped back into the United States.

Until there is an investigation, how is the brand owner supposed to know who is involved in organized crime? We don't have access to the database that keeps track of who the criminals are. The police do, and if they don't share that information, we have no way of knowing. However, I can tell you that I have been involved in numerous cases—I will put it into dozens—where I have personally been advised by the police that the case I'm working on involves members of organized crime.

I conduct training sessions and conferences on anti-counterfeiting, and I'm in my 12th year of doing so. Representatives of Canada Revenue Agency regularly attend, and when they do, they're happy having these cases referred to them. Conspicuous by their absence are many crown prosecutors and members of Canada customs.

I have recently observed, at a location called the Pacific Mall, over 50 businesses selling counterfeit products of various kinds. Every time we conduct a raid and we walk into the first location, they all close. I've tried to make purchases with my Interac card or my credit card, and they say no, they will only deal in cash. One informant told me that one business at one of the flea markets in the Toronto area—I think it was St. Jacobs—takes in \$5,000 to \$7,000 cash per week.

• (1555)

When people ask me where to find counterfeits in Canada, I have a one-word answer: everywhere. When people ask me how big the problem is, I say it's bigger than everyone thinks. When they ask me what we're doing about it, I say not enough.

Thank you very much for the opportunity to speak with you.

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

We'll go, finally, to Mr. Henderson.

**Mr. Graham Henderson (President, Canadian Recording Industry Association):** Thank you, Mr. Chairman and members of Parliament.

My name is Graham Henderson. In addition to being president of the Canadian Recording Industry Association, I'm also on the steering committee of the Canadian Anti-Counterfeiting Network. It's on their behalf that it's my pleasure to specifically address the Canadian Anti-Counterfeiting Network's recommendations.

I should say at the outset that the solutions are not complicated, nor need they be expensive. Other countries have already figured this out. There are road maps..

In many respects, we are far behind our trading partners. We can look to the intellectual property enforcement policies of Europe, the United States, and Japan, as well as the model legislation promulgated by the World Customs Organization, of which Canada is a member.

If I may, I would like to direct the committee's attention to the documents that the Canadian Anti-Counterfeiting Network has tabled for your review. The first is a press release in which a CACN/Pollara study found that 39% of Canadians have knowingly or unknowingly purchased counterfeit products. The number in the United States is 13%. It's three times higher in Canada. The second item is the questions that were asked.

The third document is a case study, a morality tale, if you will, that shows exactly how bad it is out there. It focuses on a Vancouver counterfeiter of DVD products who repeatedly flouted the system over a period of years. He was repeatedly charged, repeatedly convicted, and in his final bout with the law he received a \$5,000 fine. It's worth reading.

We've also included a PowerPoint deck, which I've seen some of the members flipping through. This is included to show the shocking variety of products available in Canada as counterfeit products.

I've also included a speech that I gave to the Economic Club of Toronto, which will serve as a summary of the road map that I'll talk about momentarily.

Finally, and perhaps most importantly, is the Canadian Anti-Counterfeiting Network's road map for change. This is the executive summary, together with—and most importantly—in the last few pages, our recommendations.

We've also provided you with an excerpt from that road map that decisively links the activities with organized crime. I might add that this two-page document flatly contradicts the testimony you heard from a previous witness. Organized crime is involved, and you'll see here that CSIS, Interpol, and the RCMP have all indicated that this is the case.

What exactly do we need to do? Well, as I say, the Canadian Anti-Counterfeiting Network has drafted a detailed list of recommendations, a copy of which is in front of you. It would be impossible to cover them all in depth, so let me touch on a few.

To remedy the lack of police and prosecutorial resources dedicated to counterfeiting and insufficient criminal penalties, we must, one, provide the RCMP and the Department of Justice with adequate financial and human resources to effectively address counterfeiting; and two, adequately fund an intellectual property crime task force composed of police officers, customs officers, and federal prosecutors to guide and coordinate IP criminal enforcement. These exist in many, many countries.

To update outdated and ineffective intellectual property crime legislation, we need to, one, enact legislation that clearly defines trademark counterfeiting as a specific criminal offence under the Trade-marks Act; and two, enact legislation to make camcording in a theatre a criminal offence. To empower customs officials, we need to implement legislation clearly prohibiting the importation of counterfeit goods. And we need to provide the CBSA with the express authority, which it lacks, to detain, target, seize, and destroy counterfeit goods on its own initiative.



Finally, and perhaps most importantly—although it's difficult to pick one—to help elevate the status of intellectual property in this country and to make us a more prosperous and more competitive nation, we need to follow the lead of other nations and establish federal and provincial intellectual property coordination councils with ministerial involvement. They exist in Brazil, in the United States, in England, and they exist in Japan.

We can do this. You have heard from officials only about how hard this is and about how many hurdles have to be cleared. I think a world record was set for the use of the word “complex”. We and the other stakeholders who have appeared before you are here to tell you that it is simply not that difficult.

• (1600)

Starting five months ago, the Canadian Anti-Counterfeiting Network began preparing a pioneering study that examined the economic impact of counterfeiting, the legislative and regulatory weaknesses giving rise to the problem, and the intimate link between innovative economies and the robust protection of intellectual property. Finally, it surveys best practices internationally. It was officially released today and is in the process of being translated. The moment it is, it will be provided to this committee.

Thank you.

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

We'll now go immediately to questions from members. We have a lot of witnesses—there are six of you—and members have either five or six minutes for all the questions they have. So try to be as brief as possible in your responses. If the members direct it to one witness before us and the witness wants to answer, please do so. If another witness would like to address it, just indicate that to me, and I'll try to get you on, depending on the time.

We'll start with Mr. McTeague for six minutes.

**Hon. Dan McTeague (Pickering—Scarborough East, Lib.):** Chair, thank you very much.

Witnesses, I want to thank you all for being here. You are complementing very much the work this committee has already heard, as Mr. Myers suggested in his comments, with respect to our industry report. It was unanimous. I think we understand the issue. We get it.

We do have some who believe that the best approach, perhaps complementing the rather complex problems that seem to be confronting the working group, is—A witness here last week suggested that we would need further study of this issue, that we should have a committee issue a report, that the government should not proceed with any measures, and that we, in effect, should look at this all over again.

Mr. Frith, you may be able to bear this out, as a former member of this committee, and others. I've never seen a situation in my 14 years here when we've had two committees study the same issue at the same time and come up very much with the same conclusion.

Mr. Henderson, perhaps I'll go to you first. Could you give us an illustration of what this would mean if we were to in fact do this all over again—begin a report, begin a study? What does this do for

Canada's international reputation, let alone for the problem of counterfeiting in Canada?

• (1605)

**Mr. Graham Henderson:** I think it just shows that we lack the will to deal with what is an extremely obvious problem. The idea that this hasn't been studied enough is incorrect. Not only has it been studied at length in Canada—and we have produced a report, which, I might add, only took us six months, not six years—but it has been studied at great length both here and around the world.

For example, on the issue of links to organized crime, Criminal Intelligence Service Canada, in two annual reports in 2005 and 2006, linked it with organized crime. The RCMP IPR crime hazard report did so too. In testimony before the security committee, Mike Cabana said:

Our strategic intelligence reports indicate that profit margins are so high, the risk of getting caught so low [...] that virtually all major organized crime in Canada and, in at least one confirmed case, even terrorist groups are heavily involved in the manufacture, importation, and distribution of counterfeit products.

I don't know what more we need to study about that.

As far as economic loss goes, you've heard repeatedly from witnesses, today and a week ago. I have here in front of me a study that was prepared by the Los Angeles County called *A False Bargain—The Los Angeles County Economic Consequences of Counterfeit Products*. This is available on the web, and the website is: [www.laedc.org/consulting/projects/2007\\_piracy-study.pdf](http://www.laedc.org/consulting/projects/2007_piracy-study.pdf). Do we really think we're going to come up with a different result, that in some way Canada is not going to have a serious and economic consequence? I don't think so. Our laws are worse.

So I would echo what Mr. Myers said earlier today. We've studied it. Inaction will only let this problem get worse.

**Hon. Dan McTeague:** Mr. Henderson, Mr. Lipkus, and Mr. Hilliard, you've all suggested some specific remedies with respect to the Criminal Code.

Mr. Lipkus, you've done some great work on this for a number of years. I attended your last session in Markham, not very far from the Pacific Mall, and I'm very familiar with the situation there.

Let me ask you, sir, given some of the options that are available, about Canada's international reputation as it currently stands—Mr. Frith and Mr. Henderson may be more willing to speak to this, as well—with respect to our inability to combat what is happening with camcorders. What could this mean for future movies in Canada? What could this mean for Canada's ability to continue to trade as a proud member of the international trading community?

**Mr. Douglas Frith:** I can tell you now, Mr. McTeague, that one studio in particular has already taken action by withdrawing the first runs from certain theatres in certain cities of Canada. It doesn't mean the product is not available in the greater area of Montreal, but the specific theatres were having specific problems. Their product has been withdrawn. Hopefully that is not a fact that's going to spread.

Clearly there is a huge concern among the Hollywood studios that within 18 hours of the opening of a movie here in Canada it is in up to 45 countries, on their streets. This has serious financial implications on the bottom line to the studios, and they're not taking this lightly south of the border, I can tell you that.

**Mr. Lorne Lipkus:** I must tell you, Mr. McTeague, that I've also gone to numerous international conferences on anti-counterfeiting—the recent global conference, conferences of the International AntiCounterfeiting Coalition, and others—and I am regularly cornered by people from other countries around the world saying, what's wrong in Canada? What is happening? It doesn't make sense. They don't understand how a nation with our reputation has the present reputation it has, which is not good.

**Hon. Dan McTeague:** Mr. Lipkus, let me ask you this. It was interesting. We met some individuals from the Department of Homeland Security at that conference in Markham. It was suggested to me that the Americans are so advanced in this that they in fact—and other countries have done the same—have officials in other countries where the counterfeiting may begin.

Can you give, for this committee, very briefly, an outline of what Canada could be doing to catch up to the rest of the world as far as being able to prevent counterfeiting from even leaving the ports of other countries?

•(1610)

**Mr. Lorne Lipkus:** In terms of some of the things that are on the road map, we can record our trademarks and copyrights. There is no recording of copyrights and trademarks in Canada. People at customs don't even know what copyrights and trademarks there are. In other countries they're recorded with customs, and customs have the ability to seize it by themselves. They don't need to call the RCMP. They don't need to call any law enforcement. They just can seize it on their own initiative, and that stops it right then and there.

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

We'll go now to Monsieur Vincent.

[*Translation*]

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

You're welcome.

In terms of intellectual property and counterfeiting, other witnesses have told us that there are patents, but that it is very expensive to defend them before the courts because of the lawyer fees and the lengthy delays before concrete action is taken.

Do you have an idea of how we can reduce the delays and establish a procedure that is significantly less costly? Do you have any suggestions in this regard?

Mr. Myers, as Senior Vice-President at Canadian Manufacturers & Exporters, can you tell us how much revenue is lost a year to theft related to counterfeiting in Canada?

[*English*]

**Dr. Jayson Myers:** I wish I could tell you what the total scope of this activity is. But I think that's extremely difficult, apart from applying economic estimates to try to come to an approximation. If we knew the entire scope of the activity, we'd be well ahead of the

game, in that we would be able to record at least some of this counterfeiting activity much better than we do right now. But because we're not enforcing the rules, we really don't have a good sense of the scope of this in Canada. But that's just the scope of the market.

If you look at the social and economic impacts of the lost investment, the lost innovation activity, the concerns that are raised at the border because of issues around stricter enforcement because of the concerns that we are not securing our borders and that there is this inflow of counterfeit products, especially coming from Asia through Canada and being transshipped into the United States, no real economic analysis has taken a look at all those impacts, apart from the work that the CACN has done. I think that's the most authoritative analysis that has been done to date in Canada.

In terms of some of the recommendations—and again I would endorse what Mr. Henderson has said—I think the first step is to see this as a priority issue. I think that between 1999 and 2004 U.S. border authorities made something like 36,000 seizures at their ports of entry. Canadian border authorities made six seizures over that time, and even on a scale of one to ten, that doesn't come close to the activity of the Americans.

If this isn't seen as a priority for legislators, for our border agencies, and we don't have the funding that's necessary, we're not putting enough attention on this issue. I think that's probably the first step, and certainly the recommendations that have been outlined by CACN are much more specific and detailed recommendations.

**The Chair:** Mr. Lipkus wanted to comment.

**Mr. Lorne Lipkus:** I would also like to say that in my experience it's been growing exponentially. As for businesses I raided three or four years ago that maybe were just dealing in luxury purses, now you go into their stores and they might still have the purses, but now they have lighters, they have novelty items, they have toys—because counterfeiters don't specialize in one product, and they specialize in greed.

•(1615)

[*Translation*]

**Mr. Robert Vincent:** But based on your experience, what would be the most effective way to stamp out counterfeiting? What can you suggest to the committee so that it can issue a recommendation in a report?

[*English*]

**The Chair:** Mr. Henderson.

**Mr. Graham Henderson:** I think the answer to that is to accept our report. This has been languishing in the wilderness. The recommendations are not overly complex; they're very straightforward. Some of them could be done by regulation. It doesn't require overhauling statutes; it's very straightforward.

I would also add that in addition to embracing the recommendations, we have to take a step afterwards, and that step is into education.

The French have known about this problem for a long time and have been very active. In March they announced an initiative by—and it's interesting to look at who is involved in this—the ministry of economy, finance, and industry, in cooperation with a national anti-counterfeiting committee. They have that; we don't. The national IP office has a campaign going that you can see at <http://www.non-merci.com>. It's rather breathtaking to see what happens when a government takes this as a priority and acts.

**Mr. Douglas Frith:** Mr. Chairman, let me give you one example. Under the proceeds of crime legislation, the copyright industries were exempt. There's an issue. It doesn't require legislative change; it means an order in council. We're not interested in protecting.... We want, at the Pacific Mall or elsewhere, forces that can go after the owner's car, the house, the cash. There's something that doesn't even require legislative change, but an order in council.

**The Chair:** Okay, Mr. Lipkus, just briefly.

**Mr. Lorne Lipkus:** I believe that if we have the right laws and—especially with what Mr. Frith has said—if they go in under proceeds of crime, the government is going to recover perhaps more than the cost of the resources necessary to do a lot of this work.

**The Chair:** Thank you.

I just want to remind witnesses and members, if you do have a BlackBerry, please put it as far away as possible from the microphone. It does sometimes interfere, and it certainly interferes with the translation as well.

We'll go now to Mr. Carrie, for six minutes.

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

Mr. Frith, I have a quick question. We just saw *Spider-Man 3*, and I heard that they had a copy or a counterfeit in Beijing two days before that. Now, you mentioned how they have it figured out as far as these watermarks and stuff go, as far as theatres go, but how would that have come about?

**Mr. Douglas Frith:** That was a report in *The Globe and Mail* that came out about a week ago. I'm told that it was erroneous.

**Mr. Colin Carrie:** It was?

**Mr. Douglas Frith:** Yes, because the only way that could occur is that you would have to have a breach of security prior to it going into the theatre. They investigated that, and it was a false report that was in *The Globe and Mail*.

**Mr. Colin Carrie:** A false report in *The Globe and Mail*?

**Mr. Graham Henderson:** What they found when they examined it was that they had the artwork for *Spider-Man 3* and they stuck in *Spider-Man 2*. That's what it was. So there is no honour among thieves.

**Mr. Colin Carrie:** Well, thanks for clearing that up on the record, that's for sure.

I had a question specifically for Microsoft too. My understanding is that you did just win a case—I think it was \$500,000—and I'm curious. Could you elaborate on the case a little bit for us? Was that Windows 95 or Windows 98? How long did it take to get into court to be a successful resolution for you? And are these cases constantly ongoing for you?

**Mr. Michael Hilliard:** In answer to your latter question, yes, we bring probably 10 to 20 anti-piracy cases a year. The particular one to which you're referring we call the Interplus case. It was quite a significant achievement for us in that it took us, I believe, six years to get it to trial. It went through 10 days of trial. We got the largest award of damages under the statutory damages provisions of the Copyright Act. In addition, we also got personal liability against two of the leading players, aside from the corporate entities.

The thing you should know about that is that in spite of the large award, it pales in comparison to the costs we've incurred. And the defendants have gone on to appeal, so we will now pay the costs of appealing this, and I wouldn't be surprised if, at the end of this, we are found to simply have a bankrupt set of individuals and companies.

• (1620)

**Mr. Colin Carrie:** Would you have numbers of how much you're actually spending per year to fight this problem?

**Mr. Michael Hilliard:** In Canada we are spending over \$1 million a year.

**Mr. Colin Carrie:** Can you explain your policy recommendation on labelling and trademarks, and how this would benefit Microsoft?

**Mr. Michael Hilliard:** Our policy recommendation in terms of labels?

**Mr. Colin Carrie:** Labels and trademarks.

**Mr. Michael Hilliard:** Probably all of you who have laptops have, underneath, a certificate of authenticity label. What you're seeing is a movement away from high-end counterfeit of products like Windows and Office to people who are just distributing the label. What they'll do is take cheap knock-offs, they'll put them on a computer, and then they'll slap that label on the bottom.

The problem is that the label is an indication to the consumer that this is a legitimate product, and that it's in great shape and they'll get all the benefits of the genuine software. The fact is that they won't.

Our concern is that it's very difficult to go after the people who distribute just those little labels. And it's not a problem unique to Microsoft. This is a problem that many of the sports companies in the U.S. had, and as a result, they lobbied Congress and got a provision similar to one that we're requesting to deal with this very issue.

**Mr. Colin Carrie:** I have a question for Mr. Myers. Because the majority of Canada's trade is with the U.S. now, maybe I can throw this to a few people to answer.

We've heard from other witnesses that this really isn't a big deal, that organized crime isn't involved in it. But it seems that everybody else is agreeing this is a major problem. If we don't do something, what is our relationship with the States going to be over the next few years, if we don't handle this as far importing and exporting our business with the States?

**Dr. Jayson Myers:** I think that's a very important concern. Our trade with the United States is the largest component of our trade, and in fact of the economy. So it is a concern when Canada is on the watch list of the USTR for as long as it has been, as a major exporter of counterfeit product into the United States, both because it's produced here and because it's being transshipped through Canada.

I think the real danger is that if we cannot secure our borders, those borders will be secured for us. And if they are not closed to particular products, then the delays that companies will incur for exporting their line of product into the United States will significantly increase. What we're seeing right now is already a thickening of the border: many, many more delays, and many more costs incurred in regulation and then inspections at the border. That is already very onerous for Canadian exporters.

The real concern here is that if the Americans decide to enforce their restrictions at the border against counterfeit product coming from Canada, those costs would significantly increase and of course then have major implications for investment in Canada.

**The Chair:** Mr. Henderson wanted to comment.

**Mr. Graham Henderson:** I was just going to add that we know that intellectual property rights have now soared to the top of U.S.-Canada trade issues. For those of us here who are in business, we find that perplexing. We're a sophisticated democratic nation. This doesn't make sense. When you look at these recommendations, you'll see how simple these fixes are. I think this goes to the whole issue of reputation, both at the government level and among average people around the world. They just can't understand it.

**Mr. Colin Carrie:** I was going to ask Mr. Webster if he could comment too.

You've been a little silent over there, but from a Canadian business standpoint—

**Mr. Lee Webster:** From a business standpoint, in my practice, I see this all time. I can't help but think it is going to be a serious problem with the United States. About a month ago, I was asked by one of our clients to register their trademarks with our border authority so that we could help them in seizing goods as they came in. I wrote them a letter about how we could do absolutely nothing for them because we had no enforcement mechanism.

I met with a fellow last week at the International Trademark Association meeting, and he was absolutely astounded that we have no border enforcement mechanisms.

I would like to say another thing too, to give you another angle on this. I do some work for a foreign-based slot machine company. They make gaming technology, and their machines are in the casinos here in Canada. I was told by them that knock-off slot machines are not a big problem for them in Canada because we're highly regulated here. However, they are a huge problem for them in South America,

in countries like Colombia, Peru, Argentina, as well as in the former Soviet states in Eastern Europe.

However, Canada did not escape their eye, because they've discovered knock-off machines in Colombia that are being sold into the marketplace by organized drug cartels. When they looked at those machines, they found out where the circuit boards are manufactured. I don't have to tell you that they are manufactured here in this country, which makes you wonder how knock-off circuit boards are getting into Colombia. There has to be an organized crime connection to that.

I am speculating here. Perhaps it's transferring value back for drug deals into Canada. I don't know that as a fact, but it just makes me wonder why we're finding Canadian EPROMs in Colombia.

• (1625)

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

I'm sorry, we're over time here. We'll go now to Mr. Masse, please.

**Mr. Brian Masse (Windsor West, NDP):** Thank you, Mr. Chair.

Thank you to the delegation today.

Going to the issue of where the stuff is coming from, what ports is it coming into? Obviously I represent Windsor West, which is the busiest border crossing in North America, but that would involve goods coming in from the United States. What percentage is coming in from the United States? What's coming in from the east coast? What is coming in from the west coast? What is coming in on airplanes? We should be able to narrow some of this down, unless it's coming from the United States.

**The Chair:** Mr. Lipkus.

**Mr. Lorne Lipkus:** In October 2000, I believe, there were some changes to the legislation, and customs started looking at shipments. If they found counterfeit, they would contact the RCMP. A regional intelligence officer would pick up the phone and speak to the RCMP. If the RCMP would take the case, then they would seize the product.

I've been doing this work since 1985 in anti-counterfeiting. Until then, I had never seized a container shipment out of Vancouver. We seized about 10 containers in less than six months. We ran out of space to store everything, and for years there were no more seizures of container-quantity product. However, when we stopped, in that six-month period, we started seeing it come in through Lethbridge, Alberta. So if you stop it in one place, it comes in somewhere else. For a period of time, when we got more active in the Toronto area, we started seeing that instead of using shipping containers, the counterfeiters would ship 45-kilogram shipments by air into Toronto or Montreal. Why? Because they were under the radar, and people just don't grab them.

Halifax, Montreal, Toronto, and Vancouver are the four main places.

**Mr. Brian Masse:** So they're not coming in—except in Alberta, I would suppose—from the United States. The United States wouldn't have much of an argument to put to us if it were circumventing, going through there and then through us. There are problems on our border. I can tell you that.

What are we going to do? If we're looking at the Pacific gateway agreement coming up, and more trade deals potentially with South Korea and China, and we do nothing, what's going to happen if we don't change our public policy on this, and we expand those avenues, if they are primarily the ones that give us the problems?

That is open to everybody.

**Mr. Lorne Lipkus:** We're going to have more counterfeit here and we're going to be a hub for counterfeit going all over the place. I've seen cases where counterfeit is coming from Asia into Canada and then back worldwide, because with the Internet now there are a lot of websites that are in Canada and they're selling worldwide. I'm working on a case where the goods never actually land in Canada; they're in customs-bonded warehouses, waiting to be shipped from the bonded warehouse back into somewhere else in the world.

**Mr. Graham Henderson:** It's not lost on anyone elsewhere what's happening here. If you were a counterfeiter and you knew that the Port of Vancouver wasn't searching, detaining, ceasing, destroying, or doing anything, because they couldn't, where would you send your products? Would you send them to Portland? Would you send them to Seattle? Would you send them to the Port of Los Angeles? You might, because not every shipment is getting searched, but you might put Vancouver at the top of your list, and that is going to create increasing problems for us in the international community.

**Mr. Brian Masse:** Does anybody have an idea, for Vancouver port, what percentage is legitimate and illegitimate trade?

**Mr. Lee Webster:** Nobody does, because you can't open up every box. That's just not done.

How many drugs are sold in your kid's high school? You just don't know. You know there's a problem, but you can't quantify the amount.

**Mr. Lorne Lipkus:** Only 2% to 3% of shipments are checked, period.

**Mr. Graham Henderson:** They're covert, they're sophisticated, they know what we're looking at, they know where we're looking, and they know how to evade it.

**Mr. Lorne Lipkus:** And they know the laws better than we do.

• (1630)

**Mr. Brian Masse:** The one example that's really interesting is the almost one million batteries and the mercury. It is an excellent point, as part of this. It's not just the immediate problem you have with the object and its questionable state for use; it's the legacy it leaves behind.

What public policy things do you think we should do? When I look at that, I start thinking, why should we have any batteries come in from China if during that year we had almost one million come in that were a danger to our citizens and poisoning our landfills? Any

trace of mercury is absolutely devastating. What public policy things would you suggest in terms of trade agreements if we are going to be entering into more of that?

**The Chair:** Mr. Henderson.

**Mr. Graham Henderson:** We can have as many policies as we want, but the issue is that it's not going to be recognized businesses in China that are sending us that, it's going to be the pirates. The issue then becomes, what do we need the Chinese to do, or what do we need whatever source country to do? What do we need to require? Do we need to have laws that require countries not to export? Should there be that kind of a prohibition? That type of treaty has been talked about.

**Mr. Brian Masse:** You could do some form of pre-clearance, so to speak. You can identify the proper ones, and everything else is not.

**Mr. Graham Henderson:** Only to discover that the certificates are forged and counterfeit themselves. It's a terrific problem.

**Mr. Brian Masse:** That concerns me. When we start talking like that, it almost discourages people from taking any action, period. I think there is a role for public policy as part of this. The enforcement aspect is critical, and that has to be part of it.

Thank you, Mr. Chair.

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

We'll go to Mr. Scott, please.

**Hon. Andy Scott (Fredericton, Lib.):** Thank you very much.

I'm sure you can't answer this precisely, but I can guarantee you'll answer it better than I would. What is the profile of the trade? Imported from the United States and imported from elsewhere and exported out, what does it look like? Just give me a visual of what's manufactured in Canada, what's imported to Canada, what's transshipped through Canada, and how that works.

**Mr. Graham Henderson:** The World Customs Organization has identified China as, I think, the source of about 80% to 90% of the counterfeit goods. That's not to say that it's all manufactured in China, but it's the source. It could start someplace else, end up on a boat in Hong Kong, and come over here. You're not going to find much counterfeit product coming from the United States into Canada. Believe me, it's going the other way, if anything.

Increasingly you're finding manufacturing taking place here. One of the reasons you're finding manufacturing taking place, particularly in the entertainment end of the business and the software end of the business, is that the technology is available now to manufacture counterfeit copies using DVD burners on a massive scale in the basement of a mall. Hundreds of thousands can be manufactured like that. So they don't necessarily need to manufacture them in sophisticated operations in Malaysia, or wherever, and then send them here—although they do.

You might have read the stories about Lucky and Flo, the two black Labradors that can smell polycarbonate through steel doors. Did you read about these guys? The two dogs are touring Southeast Asia right now with a bounty on their heads. There's a bounty that has been put on their heads by the counterfeiters because they're the only two dogs in the world that can sniff polycarbonates through steel doors, so it's driving the counterfeiters crazy.

But they're doing it here in very large numbers, and it's very sophisticated.

**Mr. Douglas Frith:** The two dogs in question were trained by the Motion Pictures Association of America. I simply wanted that on the record.

I think what Graham has said is important to note. Three or four years ago, the pirated DVD product was being imported. Today it has changed completely. It's being burned, as Mr. Henderson said, in small portions of the malls in Toronto, Montreal, and so on. It's much more difficult.

**Mr. Lorne Lipkus:** I don't know what the percentages are from Asia, but we know that's the major problem. There's no country, really, that's immune to manufacturing product that is coming into Canada. For example, we had someone go to the St-Eustache flea market a few weeks ago, and they reported to me that over 8,000 counterfeit garments were counted—8,000. They all appeared to be manufactured in Canada. Well, if they're at the St-Eustache flea market, I would venture it's a good guess to say they were manufactured in the Montreal and surrounding area. That's where the manufacturing takes place. Sometimes we find the same or similar products imported, with tags and labels, coming in from Asia. So it's a combination.

With the technology that exists, if you can manufacture it in Canada, then there's somebody who is likely manufacturing it here. We talked about batteries. I was conducting a raid in Winnipeg several years ago at a toy store, and in the back someone was manufacturing cellular batteries. They were putting a fake label of the company on it, and they were sitting with soldering irons and manufacturing batteries. I wouldn't want to put that next to my ear.

•(1635)

**The Chair:** Briefly, Mr. Myers.

**Dr. Jayson Myers:** We've been talking about bilateral and trilateral trade in counterfeit product, but of course we usually talk about a global marketplace. What we're really concerned about here is the security of global supply chains.

The Federal Aviation Administration estimates that somewhere around 580,000 parts going into airplanes manufactured in the United States are counterfeit product. We have auto parts coming in,

brake linings made of compressed grass. We have oil filters that use rags for filter equipment.

The thing is, if we can't secure the supply into the supply chain, who knows what that part contains if it's an assembly of parts coming in for a legitimate assembly and manufacturing process? Many of these are caught in quality control.

**The Chair:** Mr. Scott.

**Hon. Andy Scott:** We had a committee meeting last week about prioritizing—I don't mean to make it too tough a debate—around health and safety versus the rest, and all those kinds of issues. Are there remedies? I've identified five different areas: regulatory, statutory, resources, borders, maybe social marketing. Of the remedies, is it fair to say that they're not sectorally specific? Are the remedies generally agreed upon in terms of whether it's entertainment or IT or whatever? Is it generally the case that the remedies—

**A witness:** Yes.

**Hon. Andy Scott:** You're of that view?

All of this is to the big question. I'm not a member of this committee. In fact, I'm on the Canadian heritage committee. I should have been a member of this committee, I think.

Speculate as to why Canada would find itself in the position you've described. There's no jurisdictional problem, is there, in the context of...? No? So what explanation would you give?

**Mr. Lee Webster:** I think I can answer that. I've been enforcing IP rights on behalf of clients for a long time.

What I find is that although the basic tools are there, it's very difficult to bring these rights to bear. I would say the border enforcement tools are not there, but if you're in-country dealing with an in-country sale of product, you can look to the Copyright Act, you can look to the Trade-marks Act. The causes of action are there, but it's very difficult to bring these things to bear.

You've heard Michael Hilliard testify about the Microsoft Interplus case. It takes a lot of work and time to litigate on a file like this. And faced with a vigorous defence, it's going to cost a fortune.

We need to have our legislation fine-tuned to make it more efficient and effective. There are other specific things, like camcording—we talked about border enforcement—but the rights that are there have to be tuned up a bit to allow us to pursue this effectively and efficiently.

**The Chair:** We're over time, but briefly, Mr. Frith.

**Mr. Douglas Frith:** I want to add, Mr. Chairman, that you have the legislative vacuum, then we have the enforcement vacuum, and then the judiciary, the system. There has to be an education, so that when a person is charged for the third time, he doesn't plea bargain and get a \$3,000 fine.

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

We'll go to Mr. Shipley.

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

I appreciate our witnesses coming out today.

Mr. Hilliard, you talked about our being able to move ahead with grant, seize and destroy, bring it into the Criminal Code and have the resources to actually carry out this sort of seizure. Do you believe this will deter the piracy and counterfeiting, and is there evidence that it will work?

**Mr. Michael Hilliard:** I think it's fair to say it would deter piracy. The reality is that as hard as Microsoft works on the civil side to go after people, criminal sanctions, particularly if they are significant, would be a considerably stronger deterrent to people's actions. As I mentioned to your colleague Mr. Carrie, the reality is that if you sue somebody, at the end of the day they could be nothing more than a bankrupt shell.

**Mr. Bev Shipley:** Obviously Microsoft has the resources and money to do this, but I suspect that not every company does. Is that an issue?

•(1640)

**Mr. Michael Hilliard:** Absolutely. One of the comments I make about the problems with piracy and counterfeiting is that they deter local software developers. It is unfortunate that there are very few companies that have the resources to go after this problem.

**The Chair:** Mr. Henderson.

**Mr. Graham Henderson:** You're asking if it will make a difference. I think it is instructive to look at piracy rates in the United States, where they've had effective, vigorous laws against intellectual property rights crimes, and where they pay a lot of attention to intellectual property rights. As I said, 39% of Canadians knowingly or unknowingly acquire counterfeit products. It's 13% in the U.S. I believe Mr. Hilliard mentioned that the piracy rate of business software is 33% versus 21%. We have a case in the road map of video games, where it's 34% and 17%.

So it clearly makes a difference.

**Mr. Bev Shipley:** When we talk about the illegal drug industry, we know what it does to our families, our economy, and our kids. As a committee person here, I have to tell you that in the last week or two the awareness has gone from almost zero to the top end. I suspect it's not just politicians who don't understand or realize the impact of this; it's families and parents too.

So when we talk about the need to do studies, we don't likely understand the full impact of the drug industry. We don't fully understand the numbers that are coming in. We don't fully understand the full manufacturing of that and the impact on our economy. Yet we have laws and actions in our Criminal Code to deal with that.

Can you relate to the fact that this is something we need to know—that there really isn't recognition of the piracy and counterfeiting issue in terms of intellectual property?

**The Chair:** We'll go with Mr. Webster, and then Mr. Henderson.

**Mr. Lee Webster:** I think people are becoming more aware of it. You look at the recent dog food scare with pets being poisoned, and that's a form of counterfeiting. People think they're buying a food ingredient of a particular type, and they're getting something else that kills them. There's the example we gave of the woman in British Columbia who was eating the uranium and lead filler. Just today on

the cover of the *New York Times* there was an article about poisoned drugs in China killing people.

With articles like that, you start to get some public awareness. But you don't get public awareness of the fact that intellectual property infringements cost lost jobs and lost revenue. This is not simply a safety issue. A safety issue is a byproduct of the lack of quality control in these goods. Where the rubber meets the road primarily is in the lost economics of this.

People are losing their jobs, and companies are not investing in this country. The innovation that's typically sparked by strong enforcement of intellectual property rights is not happening here. That is a serious harm. It's a dollars-and-cents problem that affects Canadians and the federal government as well, because you're not getting the tax revenue on this stuff.

So we can't lose sight of that.

**The Chair:** Thank you.

We'll go to Mr. Henderson.

**Mr. Graham Henderson:** The point is that we know a surprising amount about this. When we get the study translated and you've had a chance to read it, I think you'll agree that we know a surprising amount. As far as I'm aware, only one person and maybe one official have suggested we don't know enough.

As someone else said today, we do know a lot, but just because we don't know everything doesn't mean we shouldn't act now.

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

We'll go to Monsieur André.

[*Translation*]

**Mr. Guy André (Berthier—Maskinongé, BQ):** Welcome, gentlemen.

I am very surprised to see the number and variety of counterfeit goods. It is easy to imagine the major impact that this might have on the manufacturing sector, which is currently facing some difficulties. I have seen your recommendations and I was wondering whether a larger public awareness campaign should be launched about this issue. You included a survey showing that generally speaking, consumers know that some goods are counterfeit but buy them anyway, probably because these goods are less expensive. There are willing to take a risk. In other cases, consumers buy goods not knowing that they are counterfeit.

In light of the range of goods that you are showing us today, people should be more aware of these counterfeit goods and the socioeconomic and employment-related consequences of counterfeiting.

•(1645)

[*English*]

**The Chair:** Mr. Lipkus.

**Mr. Lorne Lipkus:** Thank you for that question.

The Canadian Anti-Counterfeiting Network has members who actively go out and educate the public. There is also a poster campaign, with some posters in English and French, that was done in conjunction with the RCMP. Those posters are in places across Canada, and the poster campaign is getting bigger, showing the dangers of counterfeiting.

Last year France developed an extremely effective campaign on television. If you ever have a chance to see the commercials, you will see how strong they are in how they impact upon the public.

We need the government to be part of the educational process, and we welcome it. Rest assured that private industry has been involved in that education process for quite some time. I regularly go to public schools to teach 6- to 14-year-old children how to tell the difference, and they understand right from wrong. Perhaps it's their parents who we're having trouble with.

**The Chair:** I have Mr. Henderson and Mr. Myers.

**Mr. Graham Henderson:** I'll go back to the French campaign I cited earlier, the *Non merci* campaign that you're talking about. It's been going for two years. Look at the partners again. The ministries of economy, finance, and industry—that tells you how significantly the French treat this. They see it as an economic issue and a financial issue. But they actually have a national anti-counterfeiting committee made up of stakeholders from business, government, and consumer groups. Why can't we do that? We can.

Education is very important. You've touched on an extremely important thing there. A lot of Canadians know that watches are counterfeit. They don't know that batteries are.

**The Chair:** Mr. Myers.

**Dr. Jayson Myers:** I think a campaign to alert the public is extremely important, but we also need to educate customers about the potential impact of purchasing counterfeit products and, from an industry point of view, the quality assurance that companies can provide.

I think part of the campaign to the public as well as businesses doesn't have to be that counterfeiting is bad, but that the CSA mark and other quality marks are an important part of that quality assurance process. It needs to support the efforts of CSA and the quality networks out there in getting that message across, not only to the public but to businesses.

**The Chair:** Do you have another question?

[Translation]

**Mr. Guy André :** I agree that public pressure can lead to change when the public is aware of this kind of social problem. Citizens are often more effective than any criminal legislation. When people are more aware, they affect change through social pressure and this has a big impact!

Thank you.

[English]

**The Chair:** Thank you.

Mr. Henderson.

**Mr. Graham Henderson:** We don't have to amend the entire Criminal Code. When you look at the recommendations, they're very

surgical. It's legislation and amendments coupled with an ongoing, down-the-road education campaign.

**The Chair:** Thank you.

We'll go to Mr. Van Kesteren.

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

And thank you, witnesses, for appearing.

**I read from one of your briefs that this is theft:** There's a societal interest involved here which, in my view, is very important. In my view, this kind of theft constitutes a very serious offence, more serious than the theft of some other material item or property because it strikes at the heart of what differentiates a progressive, creative society from one that is not.

I share that view. I said at the last meeting too that why governments haven't done something about this yet just baffles me.

Very briefly, I want maybe one comment. Maybe you can answer that question: why haven't governments jumped on this and already instituted legislation that would have put an end to this? Is there a reason? What's going on?

• (1650)

**Mr. Lee Webster:** I'll jump on board that one.

I think there's a baffling internal bureaucratic inertia to doing anything about this. I cannot honestly understand it at all. Intellectual property rights have been around for 400 years, since the English Statute of Monopolies in 1623. Why can't this government see that IP rights are important and give us the best tools we can have to restrain intellectual property infringement? We're now seeing serious safety issues out there. There are economic problems, and I don't understand why people just don't jump on board this issue.

**Mr. Dave Van Kesteren:** I have a few more questions. Mr. Frith, maybe we can go back to that in a second. I would like to ask Mr. Myers a question.

You mentioned auto parts and aviation parts. Who's importing and selling these parts? Is it primarily a black market? Are honest distributors and retailers selling such items, and what's the auto sector doing about this?

I had a few questions I wanted to ask. Could you answer that?

**Dr. Jayson Myers:** I think to a large part it is the black market. Distributors or importers are bringing product in and then distributing it into the North American market, and this is one of the reasons it's so difficult to actually stop this activity at the border. I'll give you an example.

I've been working for 12 years with a foundry that makes automotive castings. They have had fraudulently marked product coming into the Canadian market over that period of time. We've been bounced between the Department of Finance and the CBSA. The Department of Finance, which is in charge of the regulation, says they're not prepared to rewrite the entire act; CBSA is saying that they can't enforce it unless the act is rewritten.



This is a small company. It's left to them to identify exactly who is importing this. It's probably a distributor operating a semi-black market and selling into the United States, but unless they have some evidence that this product is coming in, the security force at the border is saying that they can't stop it. So they've just basically... actually, they not only gave up, but they shut down operation.

**Mr. Dave Van Kesteren:** I have another question for Mr. Frith. Maybe you can just hop in after that, because I didn't give you an opportunity to answer the other one.

Previously we heard contrary statements about the camcording and that it really wasn't a problem in Canada. There seem to be some conflicting statistics. Can you please clarify this issue?

**Mr. Douglas Frith:** The witness in this case appeared here a week ago. He took some of his facts from newspapers. I used to be in politics, and I know you're in politics, and when you take facts from newspapers, they're not always the correct ones.

Second, when he did his analysis, we believe he had a fundamental misunderstanding of the industry data, etc. More importantly, when he talked about those numbers, he was really referring to this pirated website over three years ago, so that data is totally irrelevant.

It's been in the last three years that we have the watermarks. We can empirically prove now where the pirated copy is originating from. Studios now have the watermark even on screeners. They've increased their production security and their post-production security. To quote a study from over three years ago is totally irrelevant today, when the majority, almost 100%, of our product now has that watermark and we can now empirically prove the numbers.

I wanted to talk though, about.... I was in government back in 1980. This whole fight on intellectual property has really been a fight at the bureaucratic level between industry and heritage for 20-some-odd years that I know of, and it really crosses political lines, because it didn't matter whether it was a Liberal government in power or the current Conservative government.

It really requires two strong ministers, the Minister of Canadian Heritage and the Minister of Industry, to have the political will to do this, because there is a bureaucratic mindset within industry that if you waited for them to come up with legislation to be tabled that would put us in conformity with WIPO, we're going to look like Rip Van Winkle by the time it's done.

• (1655)

**The Chair:** Mr. Lipkus, just briefly.

**Mr. Lorne Lipkus:** I want to respond to the question of what the automotive companies are doing. I'll make a general statement.

The automotive companies regularly come to anti-counterfeiting conferences worldwide, and they have sophisticated anti-counterfeiting programs, not unlike many of the people at this table. Many of the companies have these programs. The problem is that without the proper laws and without the assistance of customs, you just can't go very far.

**The Chair:** Thank you.

We'll go to Mr. Masse, please.

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

I want to go back to the recommendations you have proposed. They're very good.

I wonder how much thought has been put into how we work with the United States. Could we get some more specifics on not just stopping it on our side when it comes over, but also sending it over to the United States, if that is a real legitimate problem? Can we quantify that data and also focus it on specific types of industries? Is it DVDs, or what?

What types of suggestions do you have for dealing with that? I don't want trucks backed up again, that's for sure; there's nobody more motivated on that than me. But what can we do? We must be able to do more, on our part.

**Mr. Lorne Lipkus:** I think a lot of it has to do with getting out and doing it. Once we put the legislation in place and give people a mandate, we are going to have the intelligence we need to target shipments. Right now we're not targeting shipments.

I'm very confident in saying that if we have dedicated personnel who are able to target things, we're going to find the shipments without disrupting trade, because it's working elsewhere. When you start targeting, and you put intelligence into the system, and people are looking at it, and they have been trained, then you will find it.

**Mr. Graham Henderson:** I think you have to also remember that intellectual property rights are not a zero-sum game. Helping another country to build an effective intellectual property rights regime does not hurt you; it actually strengthens the entire international marketplace.

I think there's a terrific opportunity here for Canada and the United States to work together effectively and in close cooperation on an issue that we share. They create great intellectual property rights; we create great intellectual rights. We're incredibly good at this. They're protecting; we're not. I would think that one step, particularly because of this thickening of the border that was alluded to earlier and that you've alluded to again.... We can, working together, solve this. Sharing information would be key.

**Mr. Brian Masse:** Is there a role as well for the trucking industry, for example, if it's predominantly coming from Canada into the United States? The shipping industry might have a role to a certain degree as well, but I would imagine it's probably the trucking industry. Is there a role for engagement with them?

I think there's a responsibility. We were talking in the last session of all the businesses involved in this. Has there been a scrutiny or engagement of Mr. Bradley and the trucking association? This is not to point a finger at them and say they're culpable in this.

Or maybe it's independents. How is it getting there through transportation modes?

**Dr. Jayson Myers:** We've spoken to Mr. Bradley and a number of transportation firms. Talking about this is part of their C-TPAT certification system and the processes that have to be put in place.

I think there are a couple of issues here. One is just the issue around enforcement. It's all well and good to say that this is an important thing to do, but from the truckers' point of view, this is just backing up more and more cost onto the trucking industry, which already sees itself as overburdened by having to deal with border costs and overall security costs.

I think the shippers, the truckers, marine transport, the airlines are all looking at doing this too, but they need some support in terms of the effect of enforcement at the border.

Let me say one other thing. You asked before, Mr. Masse, about overall trade policy. I think this is a particularly important issue when we're dealing with our major trading partner, the United States. We should be coming at our trade agreements from a common point of view. This is a major area in which the Americans and the Europeans and the Australians have brought action against other countries, particularly China, on IP issues. I think we should be there and very forceful in our representations at the WTO. We should be incorporating stronger IP protection in all of our international trade treaties, including the one that is being negotiated with Korea.

But I have to tell you that if we're not enforcing it, at the end of the day we really can't get out there and expect anybody else to be enforcing their rules. In fact, some would argue that the Chinese have had stronger enforcement of IP regulations and compliance than Canadians have had.

• (1700)

**The Chair:** Thank you, Mr. Masse. You had five seconds left.

We'll go to Monsieur Thibault.

**Hon. Robert Thibault (West Nova, Lib.):** *Merci, monsieur le président.*

Thank you all for being here and thanks for the very good specific recommendations.

I should point out that I'm not a regular member of the committee, but I think this is the third panel I have heard on this subject, and the only demand for research that we've heard is from researchers. The people affected by it understand its importance and ramifications.

Mr. Hilliard, I have a quick question for you that you can perhaps clear up for me. I saw in a media report last week or the week before that Microsoft, because of the piracy problem in Asia—and I believe it was in the Chinese market specifically—was selling the same software in that market for \$10 or \$15 that they sell for \$125 or \$135 in the North American market.

Is that correct?

**Mr. Michael Hilliard:** A couple of weeks ago, Bill Gates appeared in China and made an announcement about an initiative that Microsoft is engaging in.

As you may know, there's a concept around of the "digital divide". The reality is that while many of us, particularly in Canada, have the benefit of technology, there are billions of people in the world who do not. What Microsoft has said it will do—and this is part of its corporate citizenship initiative—is say to governments, and China was where we announced it, that if they're prepared to invest in purchasing computers for students for school and home use in the

very poorest parts of their country, we're prepared to make a special suite of software available to them, called Microsoft student innovative solution, which has some Windows and some Office, and we'll make it available to governments for bulk purchase for \$3.

**Hon. Robert Thibault:** Thank you for clarifying. From the article I read, I thought it was the same program as we were buying.

On the question of the camcorders, Mr. Frith, it seems odd to me that you could go into a theatre with a camcorder and record the film, and that the quality would be good enough for reproduction and distribution. Everybody is looking for 5.1 Dolby in the North American market, not camcording with a single speaker. But I suppose the market is out there.

When I go to a concert, I'm asked to not bring in a camera or such things. But it is the promoter who organizes that; it's not done by law. It seems to me quite simple to have a law that would make it illegal, in order to protect IP. It's not very expensive; it's just a question of drafting the law itself.

Why hasn't it happened? Is there a jurisdictional dispute? Are there charter disputes? What are the arguments? What are the blocks?

**Mr. Douglas Frith:** In particular, at the present time the only way we can lay charges is to prove that the camcording was going to be used for commercial purposes, for distribution. The onus then is left with—First of all, we have our own internal surveillance and ex-police officers who are tracking this. It's not as easy as you think to be able to—

**Hon. Robert Thibault:** That's under the current law. What's the resistance to bringing in tougher laws under privacy or IP protection?

**Mr. Douglas Frith:** We believe that if you were to do a Criminal Code amendment to make camcording, if you're caught knowingly camcording in the theatre, part of the Criminal Code, it would go a tremendously long way to solving our issues. It's not the be-all and end-all of the problem, but it allows us to—

**Hon. Robert Thibault:** We understand that. What I'm trying to get at is what the resistance is. What is Department of Justice saying? Why are they not doing anything?

**Mr. Douglas Frith:** My understanding at the moment is—and we're hoping—that they're taking this issue extremely seriously. I personally have met with many of the opposition parties to gather momentum and support for a Criminal Code amendment, and I'm still hopeful that this is going to be taken seriously by the government, which could address it by the Criminal Code amendment.

**Hon. Robert Thibault:** Mr. Lipkus, I have a one-minute question, so I'll try to keep it short.

We have heard a lot about prioritization, about public safety as opposed to economic activity. There's also the consumer protection of "intended benefits" of a purchase of a product, and all those attacks. If we did everything that's being suggested to us at the committee, there would probably still be some prioritization required.

Do you agree with that, or do you think you should act on the leads that come in?

• (1705)

**Mr. Lorne Lipkus:** I think that would be something decided out in the field, because the reality is that every police force is going to prioritize their work. Every business prioritizes their work in some way. The problem is that you have to have enough resources to handle everything. Otherwise, you're only making a law for the more serious parts of the crime, and that wouldn't be solving the problem. You would be pushing people from one end to the other.

**Mr. Graham Henderson:** If we had an intellectual property rights council that could consider these issues, that could prioritize them... that's part of what we're lacking. Part of it is to get some laws. The next step is to have some coordination between a variety of departments, where we actually sit down as Canadians, stakeholders and otherwise, and set priorities.

**The Chair:** Thank you.

We'll go to Monsieur Arthur.

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

I don't know what we'll be doing in a few months about that, but I know we'll have to do something. This Parliament will have to do something, depending on the kind of leadership that comes from the government and from the possibility of having two departments, heritage and industry, talk to each other, but we'll have to do something. We have a certain number of routes we can take. We can go this route, this route, or this route.

People talk to us about customs. I go through customs a fair number of times every year, and I'm still convinced that if any problem has as its solution the good judgment of a customs officer, we're in trouble. Every time I go through customs I could have a big robe and an AK-47 and still be asked, "Are you carrying cigarettes?" That's the way it goes in Canada. Maybe the day we have a continental policy as far as borders are concerned, we'll be more serious, and so, maybe customs.

The Criminal Code that everybody wants to have modified is a complex thing in Canada. We've all those different jurisdictions having responsibility for applying a law that's centrally edicted, and the problems of criminal intent and the complexity of evidence gathering certainly constitute quite a formidable obstacle.

We talk about education, as Mr. André just said. Maybe we'll tell people, don't buy counterfeit things; it might not be the quality you think. But when in Quebec 60% of your revenue goes up in smoke in taxes, I think that one day, necessarily, price will speak louder than quality for those consumers.

Which brings us to a very simple notion: you have to attack the retail level. We've been able everywhere, in all jurisdictions in Canada, to say to a restaurant owner, if you have carrion in your refrigerator, you are in infraction. You don't have to say that you were intending to sell it. There is no defence against the fact that you own it. It's there on your premises; therefore, it's an infraction, now. The chain of evidence is easy; it's there. You cannot put the responsibility on somebody who sold it to him. It's there, so it's an infraction.

So of all those routes, we'll have to listen to simplicity at one point. What are your reactions to the fact that we should attack the retailer?

**Mr. Graham Henderson:** We've provided you with one case study of what happens when a retailer is treated the way they're currently treated. It's an extraordinary story. He's charged repeatedly, and he keeps doing it. What is the common feature here? He's not going to jail.

That's sending a very serious message to the criminal community. You've heard that from the RCMP, we hear it from police forces all the time, and you'll hear it from the business community. We agree.

In this case, this gentleman, the second time he was charged, had 75,000 blank DVDs and burners sufficient to turn them all into counterfeit product. So yes—

**Mr. André Arthur:** But that's not the retailer.

**Mr. Graham Henderson:** He is a retailer. He has a store in a mall.

**Mr. André Arthur:** But if you go to the flea market and you seize those things in the hands of somebody and there's a hefty fine, that will send a message up the line.

**Mr. Graham Henderson:** No, that person needs to be charged, as opposed to just fined.

But what's happening—and I think Mr. Lipkus can attest to this, because he sees it on the ground every day—is that this is moving into retail. It's not just flea markets; these are stores in malls. And in the case of the Pacific Mall, there are 50 or more of them. When Lorne goes in there with his teams, doors are slammed and people go running for the hills, because they don't want to get charged. It's incredible. You should tour it sometime.

• (1710)

**Mr. André Arthur:** It works for the restaurant.

**The Chair:** Mr. Lipkus.

**Mr. Lorne Lipkus:** I agree with your comment. It is moving into retail.

When we went in recently to the Pacific Mall, we walked into our first store location at 1:30 p.m. We did three stores. We had about 15 people there. The mall closed at 8 o'clock at night. From the time we walked into the first store, within five minutes—and if I'm exaggerating, it was within four minutes—approximately 45 businesses closed for the entire time we were there. They were made up of approximately 28 or 29 stores selling DVDs and music, and three stores that we had raided, with cellular accessories, were closed for the entire time. There were purse stores that had counterfeit there; they were closed. We weren't even there for purses, but they were closed the entire time.

So yes, the retailer needs to be looked at, and the road map for change that we're advocating will deal with that. It may be not exactly the way you've mentioned, by equating it to restaurants, but we have to deal with the retailers.

Thank you.

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

We'll go to Mr. McTeague.

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

Mr. Frith, maybe you could explain to the committee your concern. I think you raised the issue of the proceeds of crime and that for some reason there seems to be some evasion, or that the Copyright Act is certainly not covered by the proceeds of crime. Can you explain to us why that might be?

**Mr. Douglas Frith:** It's not only to the movie industry, Mr. McTeague, that this came into being. When the proceeds of crime legislation was introduced—I believe it was a decade ago, in that timeframe—without any consultation with the copyright industries, we were exempt from it. It's baffling to us because we don't want to be exempt from the proceeds of crime.

That is an issue we have raised with departmental officials. If you want to just signal one part, you don't even have to go through a legislative process. This can be done by order in council.

**Mr. Lorne Lipkus:** Mr. Chair, I deal with these cases in the following way. When we have a civil case, or when we're dealing with the police without the proceeds legislation, we go in— Let's say, we go in with a court order. We want to get their assets, but we don't have sufficient information about their assets. As a civil remedy, we don't have access to the information the police do, so we can't grab the assets. Even though under the legislation we're allowed to, we just don't know what their assets are, so we can't get the assets. We find the counterfeiter who's been doing this for a long period of time, we take whatever product they have, but we never get the assets.

If we have the legislation changed, now we go in with the police. The police have the information, and they grab the assets as they're going in. They grab the product. Now they have somebody who has been charged, who is going to go through the court process, and lo and behold, at the end of the day the government has all the assets, which, as I said before, will likely be more than the cost to the government of actually doing that case.

**Mr. Graham Henderson:** I was going to say that the RCMP has done an interesting study to illustrate just how profitable this activity is and why the proceeds of crime legislation is so important. It's in our report here. They do this comparison, drugs compared to intellectual property crime, a risk analysis: cocaine, three kilograms, worth \$90,000 to the criminal, it fits in a small box, and conviction is five to seven years; Windows XP, a thousand of them, worth \$450,000—not \$90,000, but \$450,000—or five times as much to the criminal, it fits in a small box, and conviction is a minimal fine. No wonder they're moving into it.

**Hon. Dan McTeague:** Let me ask you, what about the question of other penalties? You refer to section 5.1 in your recommendation: “Strengthen civil remedies for counterfeiting. In particular, the civil legislation should provide for”, etc.

We've talked about the criminal, but it seems to me—and I think Mr. Lipkus could certainly bear this out, and Mr. Webster could as well—that it would be a lot easier to obtain the quick-fix damages that were caused by this, quite apart from the issue of proceeds of crime. Are you suggesting, then, that we ought to have more vigorous remedies in terms of civil procedure?

I'm open to anyone here on this.

**Mr. Lee Webster:** I would strongly recommend that. I've litigated actions in the Federal Court. They go along at their own pace, and I guess that's fine more or less for domestic companies litigating against each other, but it's ridiculous when it takes six years to get one counterfeiter to trial. Something has to be done to get the courts to move a lot more efficiently and a lot faster. I don't know whether that's more judges or a stricter case management system.

I've been involved in cases in the United States where very complicated patent infringement actions have been brought to trial in eight months. Why can't we do something like that here, particularly when you have infringements of the same objects over and over again—*Spider-Man 3* on a DVD?

I live in the Beaches in Toronto, and every night if I park my car on the street I get a ticket, and there's no fighting it; you have to pay it. I don't know why we can't have somebody going around these malls and ticketing them for obvious counterfeit merchandise. It doesn't make any sense. Why should it cost one of my clients \$125,000, or whatever it takes to go in and do a raid and—

• (1715)

**Hon. Dan McTeague:** Mr. Webster, let me stop you at this point, if I could. If you ticket somebody, where is that money going? Is it going back to general revenue, to the Government of Canada? Are you suggesting it would be damages to the company that had been infringed?

**Mr. Lee Webster:** Frankly, I don't think it would really matter whether it goes to general revenue or to the company, provided the activity is stopped. If the infringing activity stops, then the rights holder will make money based on that. If it's a criminal charge and the proceeds of crime—the yacht—is sold, the money goes into the general revenue, that's fine. It helps fund these enforcement mechanisms we're talking about.

**The Chair:** Mr. Lipkus wanted to comment.

**Mr. Lorne Lipkus:** I think it's important to strengthen the civil remedies, and I think because we're dealing with an illegal activity, the rules of the Federal Court could be streamlined. As well, we could look at things they've done in the U.S., where they've had major task forces in New York City, and now there's one in Los Angeles, that have been money-making, revenue-producing projects for those governments.

They have gone in and targeted landlords and retailers, as you have said. They've gone in and said to the landlord that because he had a contract with someone and that person was breaching that contract, if he was going to allow people who are not allowed to sell illegal goods to be selling them, then he, the landlord, was going to be responsible. When they were caught, they had to post bonds.

I understand it has been wildly successful, and they've reported on it at a few international conferences I've been to. They're now starting it in other cities in the United States.

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

I have one main question and perhaps a supplementary question.

Your recommendation is, "Provide the CBSA with the express authority to target, detain, seize, and destroy counterfeit goods on its own initiative". You talk about "promoting the detection of such goods, such as mandatory reporting of brand information with shipments".

Mr. Lipkus, perhaps you can address that, because I believe this document is yours, where you show examples of counterfeit goods. Just looking through this, frankly, I would not be able to tell, as a consumer, that these are counterfeit goods. How do you identify something? You show a Burberry tie. If you turn it around and it says Burberry, I think a consumer would say that's a Burberry tie. How do custom officials, or even retailers, or whoever, wherever you want to hit it in the supply chain, identify that as a counterfeit good?

**Mr. Lorne Lipkus:** It's simpler than most people think. It's like anything else; when you don't know at all, of course it seems overwhelming. The reality is that just by looking at some simple indicia, you can tell if something is counterfeit or not. For example, you picked Burberry, you picked a luxury bag. I've been contacted by a combination of customs and the RCMP over many years and I've yet to find once where they've contacted me and the luxury goods have been authentic.

The reality is that the legitimate companies ship from point A to point B, and the counterfeiters don't ship from point A to point B, they ship to points C, D, E, and F. Customs have the ability to put the proper addresses in there, and then literally it becomes sitting at the computer. They just put in Burberry bags, they're coming from this city to that city, is that possible? It might be possible, but 99.999% of the time it's going to be counterfeit. That's the targeting aspect.

In terms of whether the item is counterfeit or not, we regularly conduct training sessions. Companies conduct training sessions. I'm starting one on Wednesday, in Calgary, for over 100 law enforcement personnel. Over 40 companies are represented. By the end of those three days, the people who are there will be able to tell whether the goods are counterfeit or authentic.

• (1720)

**The Chair:** Is it practical for us to do what we've done in other areas, like human or animal health? Is it practical, without slowing down trade?

I think Mr. Masse talked about the Detroit-Windsor border. Without slowing down trade, if we can trace a steak from here back to when it was born and how many farms it was moved to, what it ingested all along the way, is it practical at all to suggest that we ought to be able to trace something from the retailer right back? If we can't trace it back, if there's a lack of information along the way, we should perhaps be suspicious and assume it is counterfeit, and then direct the reference there.

Is that practical for the government to do, from that point of view?

**Mr. Lorne Lipkus:** What's practical is to have a group of trained personnel, and you could have more than one of them across the country. They're trained to deal with these kinds of cases. All they have to do is pick up a phone to call the right people in any of these companies and they have their answer.

As a practical matter, on the few cases we're dealing with now, the identification issue isn't really a problem. We're able to identify them

fairly quickly. We do web-based identification training. I have someone in Vancouver who calls my office in Toronto to ask what to do about the six companies' goods they have. We ask them to call a number, they're on the web and they're looking at a PowerPoint that shows them the indicia and that's it. It doesn't take long. Once they're at that stage, they have a shipment that they believe is counterfeit.

**The Chair:** Thank you.

Mr. Henderson.

**Mr. Graham Henderson:** These regimes have been in place in other countries. Believe me, everybody would want to think about this. We have the advantage of going last. It simply hasn't presented a problem.

**The Chair:** Then just briefly— have less than a minute left—I have a question for Mr. Frith. I asked the people from Heritage and Industry about camcording. I believe the response from the Department of Heritage was that there are civil procedures, and this is going to prevent it. I just wanted you to respond to that.

**Mr. Douglas Frith:** There are civil procedures that can be followed under the Copyright Act, and frankly, at the working level they are not working. We have had cases in certain major metropolises in Canada in which we know that individuals are tied to organized crime, and we cannot get the law enforcement agencies interested in the issue. This is why, as long as you leave this under the Copyright Act, we're not going to get any traction. There are precedents for putting camcording into the Criminal Code amendment. We did it with the Radiocommunications Act for satellite.

The reason is that the RCMP does not operate in every jurisdiction. So if something happens in Peterborough, what's left? What we need is the Criminal Code amendment so we can get local police forces engaged in the issue.

**The Chair:** Okay, thank you.

Mr. Henderson, go ahead, please, just briefly.

**Mr. Graham Henderson:** Civil remedies are not appropriate for criminals. That's the bottom line.

**The Chair:** Thank you.

I have Monsieur Vincent.

[*Translation*]

**Mr. Robert Vincent:** You talked about awareness. RCMP officials brought us counterfeit electrical cords like these that were installed in hospitals because even electricians couldn't tell the difference.

We should launch an awareness campaign because people have a hard time determining whether a product is really counterfeit. The price can be a factor, but we can be fooled because these cords look identical to standard ones, except that they have three wires. Couldn't this money be better used for increasing staff at customs and border crossings?

If goods entering the country in containers are patented, we could try to contact the owner to find out if these products were manufactured abroad. This could be a possible solution.

Mr. Webster, you said that there were lengthy legal delays. It may be very clear, for example, that two handbags are counterfeit, but it takes many months before the court makes a decision. You proposed appointing more judges.

• (1725)

**The Vice-Chair (Hon. Dan McTeague):** Mr. Vincent, are you directing your question to Mr. Webster or Mr. Myers?

**Mr. Robert Vincent:** First, I would ask Mr. Myers to talk about awareness. Then, other people can add their thoughts.

**The Vice-Chair (Hon. Dan McTeague):** I give the floor to Mr. Myers and Mr. Henderson.

Mr. Myers.

[English]

**Mr. Lee Webster:** I think I can answer that.

What I would like to see is a form of summary enforcement mechanism. I was not directly involved in the Interplus case, although my firm was, and I know the lengths to which Microsoft went to prove that this particular product was counterfeit. There was a huge amount of evidence that had to be put together to prove that. For future actions, why would Microsoft have to do that every time? Do it once. You have a summary enforcement, so a lot of these evidentiary issues that have to be proven each time in court are resolved in one proceeding. You deal with most of the case, in a summary proceeding, very quickly.

I can't recommend to you specific changes and how I would tinker with the Federal Court act or rules that I had to do that, but I think there has to be a way to be able to deal with these things more quickly by providing the proper evidence quickly for one proceeding and also by eliminating a lot of unnecessary discovery that we tend to have in our Federal Court.

**The Vice-Chair (Hon. Dan McTeague):** Mr. Henderson.

**Mr. Graham Henderson:** My feeling is that we should implement the recommendations. That's very important. From there on, it becomes a question of working with industry and stakeholders to implement and roll out the legislation and make it have effect. I don't believe—and I think this is what Mr. Lipkus's point is—that it is impossible for people to tell the difference. What it requires us to do is to work with the government and to work with the police, which is something that we do, and which is working very effectively in jurisdictions around the world.

**The Vice-Chair (Hon. Dan McTeague):** Monsieur Vincent.

[Translation]

**Mr. Robert Vincent:** Counterfeiters won't be too concerned about the measures that you are recommending because they are making millions of dollars off these products. We need tougher fines and legal action.

[English]

**Mr. Graham Henderson:** Well, they have to go to jail.

**The Vice-Chair (Hon. Dan McTeague):** Mr. Lipkus.

**Mr. Lorne Lipkus:** I was going to say that today we have criminals who are getting more and more into the counterfeiting area. The companies are also doing more, including brand protection

technologies. Microsoft is a leader in that area, and there are other companies. They put enough brand protection in their product to make it easy to spot if you know what to look for.

I happen to agree very strongly with Mr. Webster's comment that once those technologies have been proven in court, then that should be it. You shouldn't have to prove them again and again. You shouldn't have to call witnesses from around the world to prove that's the technology in there. Either it's there or it's not, and if it's not, it's counterfeit.

[Translation]

**The Vice-Chair (Hon. Dan McTeague):** Thank you, Mr. Vincent.

Now let's open the floor up to Mr. Colin Carrie.

[English]

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

Mr. Frith, you mentioned that some changes of the regulations could be made through order in council. Did you provide the ones that you specifically thought should be changed?

**Mr. Douglas Frith:** The one I was told to address would be the proceeds of crime. It does not require a legislative change; it can be done through an order in council. Believe me, there would not be any opposition from any of the copyright industries to that.

**Mr. Colin Carrie:** Are there other ones that you're aware of?

**Mr. Graham Henderson:** To the extent that they need to be made, a lot of the others can be very simple one-line amendments. The CACN, by the way, is proposing an omnibus anti-counterfeiting piece of legislation. Rather than doing a piecemeal chop and change, we need to do a single bill. This is the way they've done it in a variety of jurisdictions around the world: one bill that makes counterfeiting and importing counterfeit items clearly illegal, and then everything flows from there.

**Mr. Colin Carrie:** I have another question.

Are you aware of anything that's coming up internationally? We have these bar codes on products, which anyone can slap on, but I've heard they have these new chips and things like that. Have you heard of any technology coming out that might help us track where these things are going through the supply chain?

**Mr. Lorne Lipkus:** There are numerous technologies that are able to do that. Canada has a company called IDGLOBAL, out of Kelowna, that has synthetic DNA, for lack of a better description. There is RFID—radio frequency. There are chemicals. There are very sophisticated holograms.

**Mr. Colin Carrie:** Is anybody using them?

**Mr. Lorne Lipkus:** Yes. Microsoft, for example, has multi-layered technology. I certainly don't know all the technology they have; some of it has been shown in court. I'm quite confident that they, along with other companies, have multi-layered approaches to the anti-counterfeiting technologies. It can be quite sophisticated, and they work. Some are covert and some are overt.

• (1730)

**Mr. Colin Carrie:** Would you be able to provide a list of some of the things that are out there?

**The Vice-Chair (Hon. Dan McTeague):** That was your final question, Mr. Carrie.

Mr. Lipkus.

**Mr. Lorne Lipkus:** Yes. I believe we could provide you with that. We actually have a PowerPoint presentation with some of the major ones, which we use in our training.

**The Vice-Chair (Hon. Dan McTeague):** Mr. Carrie, thank you very much.

Mr. Lipkus, guests, thank you very much for being here today. It was extremely informative and very helpful to this committee. I think we're on the right track. We look forward to hearing from you on any other question you may think is helpful to this committee. Please feel free to send us supplementary information as we come forward with a decision.

Thank you again.

The meeting is now adjourned until Wednesday.

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