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Chair

Mr. Garry Breitkreuz

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• (1110)

[English]

The Chair (Mr. Garry Breitkreuz (Yorkton—Melville, CPC)): I'd like to bring this meeting to order. This is the Standing Committee on Public Safety and National Security, and it is our 35th meeting. Today we are dealing with the issue of counterfeit goods.

We would like to welcome our five witnesses to this committee. You can tell us a little about yourselves. I presume all of you will give a presentation of approximately ten minutes.

We will begin with Ms. Nancy Segal, the deputy director of the intellectual property, information, and technology trade policy division for the Department of Foreign Affairs and International Trade. I hope I said the title correctly.

Ms. Nancy Segal (Deputy Director, Intellectual Property, Information and Technology Trade Policy Division, Department of Foreign Affairs and International Trade): The title is correct. Right now I'm actually acting director as well.

The Chair: Thank you.

Welcome to our committee. You may begin.

Ms. Nancy Segal: Thank you very much.

It's good to be with you. Thank you for the opportunity to speak to the committee.

[Translation]

My branch chairs the Interdepartmental Working Group on Intellectual Property Issues. That working group is composed of representatives of the 10 departments and agencies that all have an interest or responsibilities related to intellectual property, which explains the number of officials that are here today.

[English]

I intend to provide you with an overview of the issue, outline international efforts to combat counterfeiting and piracy, and explain the purpose of the working group.

My colleague from the Department of Justice, Cal Becker, will describe Canada's current IPR system. RCMP Chief Superintendent Mike Cabana will address the criminal enforcement aspects of the issue. Kimber Johnston, from the Canadian Border Services Agency, will speak to civil procedures and border enforcement issues. Lastly, Diana Dowthwaite, from Health Canada, will speak to health and safety concerns. We would then be pleased to take any questions you have.

First and foremost, counterfeiting and piracy is a growing global problem. Although the issue has been presented by opponents of stronger IP enforcement as a victimless crime and one that's only a problem for rich countries, this is really not the case.

For example, fake pharmaceuticals represent at most 1% of our drug supply. Some developed countries are faced with a drug supply that consists of up to 50% fakes, which poses a much bigger threat to the health and safety of their societies and more severe financial impacts on their economies.

There are also concerns about fake merchandise, such as car brake pads made from sawdust, unsafe electrical goods, and a range of other products.

I will ask my colleague from the RCMP to address this concern and other emerging trends when he speaks to enforcement activities.

Counterfeiting and piracy has gained the attention of the international community, as witnessed by the prominence of the issue on the agendas of the Security and Prosperity Partnership of North America, or the SPP, the G-8, the OECD, the APEC, the WCO, the WTO, and the WIPO.

For instance, under the SPP, we drive closer cooperation among Canada, the U.S., and Mexico on IPR protection and awareness initiatives. The G-8 is providing leadership and guidance by making IPR a priority. The OECD has undertaken the task of measuring the economic impact of counterfeiting and piracy. APEC encourages IP experts from member countries to discuss and share best practices. The World Customs Organization is discussing instruments for border authorities to improve efforts to address counterfeiting and piracy violations. The World Trade Organization provides a forum for members to discuss the trade-related aspects of intellectual property rights. The World Intellectual Property Organization is a forum for all countries to address issues related to the international legal framework.

[Translation]

That is only the multilateral side. Bilateral activities and interests all focus on this issue. The United States has devoted significant resources to this as part of its bilateral diplomatic efforts with specific countries, including Canada.

[English]

Canada appeared in the U.S. trade representatives' 2006 special 301 report, which is driven by U.S. industry and is typically used by the United States trade representatives to apply pressure on trading partners on IP issues. Canada has been on the lowest level of the list for the last 11 years. We share the company of the EC, Italy, and Mexico, among others on this list.

Both domestic and international factors have led the Government of Canada to undertake a review of the regime. That's where our interdepartmental working group comes in.

Ten key agencies and departments are examining the issues to identify and analyze potential solutions. The group is currently studying options to improve our regime, with the intent to prepare recommendations for consideration. Broad progress has been made, but the work is not yet complete.

[Translation]

As government representatives, we rely on private sector groups and work closely with them. They include the Canadian Chamber of Commerce and the Canadian Anti-Counterfeiting Network. We regularly consult these groups through surveys, round tables and seminars. That partnership is absolutely critical for a better understanding of our respective interests and concerns.

• (1115)

[English]

Canada believes that collaboration between countries, including industry and not just governments, is essential. The problem is global.

On that note, I will hand it over to my colleague from the Department of Justice, Cal, so he can provide you with an explanation of our current IPR system.

The Chair: Go ahead, Mr. Becker.

Mr. Cal Becker (Coordinator and Senior Counsel, Intellectual Property Secretariat, Department of Justice): The Department of Justice has been providing legal support to the departments with lead responsibilities on the enforcement of intellectual property rights.

You heard Nancy refer to counterfeit and pirated goods. Before I describe the legal framework I thought it might be useful to simply distinguish between counterfeited goods on the one hand and pirated goods on the other. I appreciate that the title for today's hearings relates to counterfeit, but for all practical purposes there are equivalences here in enforcement.

When we talk about pirated goods, for example, we're talking about goods that represent commercial infringement of copyright. So we're talking about DVDs, camcording, software, and music. When we talk about counterfeit goods we're talking about goods that represent a commercial-scale infringement on trademarks. So we link counterfeit with trademarks, and pirated with copyright.

The enforcement often looks very much the same, but there are different legislative regimes, depending on whether it's counterfeit or copyright, and I think you'll find that most of the witnesses today are linking the two in their presentations. In other words, we're trying to combat both counterfeit and piracy.

Today I intend to outline the legal regime we have in place with reference to counterfeit and pirated goods. I think the first thing is to appreciate—and forgive my using this word—the architecture of customs enforcement in Canada.

The Border Services Agency personnel enforce the legislation of other departments where goods are prohibited, controlled, or regulated. For example, the Hazardous Products Act is legislation for which Health Canada is responsible, but customs does the enforcement at the border on behalf of a client department, in effect. So customs personnel are enforcing the Hazardous Products Act at the border on behalf of the client department in whose legislation the goods are either prohibited, controlled, or regulated.

It's important to appreciate that customs has the same repertoire of powers and prerogatives for border enforcement in relation to all of their client departments. Put another way, to take this particular example, the prohibitions on hazardous products don't show up in any customs legislation. They have standard protocol procedures and prerogatives for enforcement of hazardous products. The prohibition per se on hazardous products is in the legislation of the host department, in this particular case Health Canada.

It's important to appreciate that, because it means if there were amendments in relation to counterfeit or pirated goods, they wouldn't be in the legislation on customs, generally speaking. They would be in the legislation of Industry Canada, in this particular case, which is responsible in large measure for the Copyright Act and the Trade-marks Act. That architecture is common to the U.S., Australia, the European community, and the U.K.

• (1120)

It's important to appreciate as well that in Canada we do not prohibit the entry of counterfeit or pirated goods at this time. That leaves Canada Border Services with a relatively limited role in relation to counterfeit and pirated goods.

Specifically, there are procedures that permit rights holders to apply to a court of superior jurisdiction to obtain an order intercepting goods at the border. So Border Services are authorized to intercept goods on court order. They also have a role in relation to RCMP criminal enforcement. It is possible, for example, for the RCMP to share intelligence with the CBSA on suspected importations of counterfeit or pirated goods. In those particular cases there's a role for the Border Services Agency to establish a lookout, intercept the goods, and advise the RCMP. The RCMP will effect a seizure, and there may or may not be a criminal prosecution.

Canada Border Services also have a role in reporting to the RCMP shipments of suspected counterfeit or pirated goods. In those particular cases the RCMP may attend, effect the seizure, and initiate criminal proceedings. But having said that, the principal role of Canada Border Services is to respond in civil cases to court orders, and collaborate with the RCMP in criminal investigations to advise of suspicious shipments or intercept them on intelligence from the RCMP.

Our intellectual property regime invests our border services personnel with a rather smaller role than you'll find in the other jurisdictions I mentioned. In the U.S., for example, the border services agency is the competent authority for making determinations about whether goods are counterfeit or pirated, and the U.S. border services agency will effect the seizure, store the goods, and destroy the goods, largely at the expense of the U.S. government.

You have to appreciate that the U.S. government is itself a source of considerable intellectual property. The interests of the intellectual property industries are coincidental with the interests of the U.S. government. It's said to be a \$810-billion industry in the U.S. Its copyright goods are said to be its single largest export, so you can appreciate that the U.S. government will go to considerable length to enforce intellectual property rights, because often as not they're American intellectual property rights.

In the other jurisdictions of the EU, the U.K., and Australia, the tendency is to facilitate the enforcement of intellectual property rights by the rights holder. Generally speaking, in those jurisdictions I mentioned, the costs of enforcement are borne not by the government but by the rights holders. The rights holders would be responsible for the costs entailed in operating registration schemes, storing counterfeit and pirated goods, and in the destruction of those goods. Generally speaking, in the other jurisdictions I mentioned, those costs are borne by the rights holders themselves through a registration scheme compounded with bonds, sureties, and guarantees.

• (1125)

To sum up, basically Canada has not invested its border services with significant authorities in relation to counterfeit or pirated goods; other jurisdictions have rather more. The only real difference between those other jurisdictions, with the U.S. on the one hand and the EU, the U.K., and Australia on the other, is the point at which a determination is made with respect to whether the goods are counterfeit or pirated. The second point of decision is who's going to bear the costs of enforcement.

In the U.S., as I say, the interests of IP rights holders are considered synonymous with the U.S. government's. The other jurisdictions look on this question as being how much state support is going to be supplied to the enforcement of what are essentially private economic rights. As I say, in the U.S.A. the U.S. government supports the system; in the other jurisdictions, by and large the costs are borne by the rights holders.

That's the scheme, Mr. Chairman.

The Chair: Thank you very much, Mr. Becker.

Ms. Segal, did you have Mr. Cabana next on your list?

Ms. Nancy Segal: Yes, I did.

Thank you.

The Chair: Mr. Cabana, would you like to give us a brief overview as well?

Chief Superintendent Mike Cabana (Director General, Border Integrity, Federal and International Operations, Royal Canadian Mounted Police): Certainly.

Mr. Chairman, honourable committee members, thank you for inviting us here today, and good morning.

My name is Mike Cabana, and I'm the director general for border integrity for the RCMP. Border integrity includes the federal enforcement program, which holds the enforcement mandate for the RCMP with respect to counterfeiting.

After a brief statement, I'll be happy to answer any questions you might have, as Ms. Segal has pointed out.

Intellectual property rights crime, frequently known as IPR crime, has been called the crime of the 21st century. I believe that's an apt description. Ten years ago, IPR crime was generally not considered to be a major criminal problem in Canada. Counterfeit goods usually consisted of luxury items such as fake Rolex watches and brand-name clothing. They were generally sold at flea markets, and for the most part the consumers knew exactly what they were buying. Although many members of the general public still have this perception, as do some police officers, this is no longer accurate.

The situation has changed dramatically over the last few years. Counterfeit goods seized in Canada now include almost any product you can think of—auto parts, electrical products, pharmaceuticals, food products, cosmetics, and so on. In some cases, these goods have infiltrated the legitimate supply chain. The major retailers usually aren't aware, and they unknowingly sell these counterfeit goods to unsuspecting customers as a result. In many cases, these products pose serious health and safety risks, and they may even have contributed to deaths in Canada. Of particular concern are the cases involving counterfeit pharmaceuticals.

Another layer that adds to the complexity of counterfeit medicine is that many people are purchasing products via the Internet. At the moment, the RCMP have a number of long-term, ongoing investigations involving Internet pharmacies. These cases are very difficult for the police. Although the companies may appear to have Canadian Internet addresses, the servers for the companies are in fact located abroad.

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

I have an empty package here, and I've had personal experience with this risk. It's a package of counterfeit batteries that actually originated from the same shipment, I'm told, as one that exploded in my desk at the office. It's surprising to see the size of the deflagration.

In Quebec, investigators seized over two and a half tonnes of fake batteries in 2005 alone. They pose a serious storage and disposal problem, so why would anyone knowingly create such dangerous products? They do it out of greed, for money, and because of the low risk. Our strategic intelligence reports indicate that profit margins are so high, the risk of getting caught is so low, and the risk of being incarcerated if caught is 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.

The private sector estimates the impact to the legitimate economy and various levels of government to be in the range of \$20 billion to \$30 billion annually. While the RCMP are not prepared to give exact figures, from our experiences with this crime, I'm comfortable stating that the impact is easily in the billions of dollars, and it is growing.

Canada is not alone in this phenomenon. Interpol states that a significant portion of the world trade—a sum in the hundreds of billions of dollars—now involves counterfeit goods. Partially for these reasons, the RCMP has designated economic integrity, which specifically includes IPR crime, to be one of its five strategic priorities.

We are making some progress. The RCMP conducts approximately 400 criminal investigations into IPR crime annually, and the number of charges has increased from an average of approximately 400 in the past, to 700 in 2005.

• (1130)

The RCMP, for the past five years, also co-chairs the Interpol intellectual property crime action group, based out of Interpol in Lyons, France, which consists of representatives from law enforcement and the private sector around the world, and is working on implementing initiatives such as an international IPR data bank to improve enforcement coordination worldwide.

There's also the recognition among law enforcement agencies that we have to work more closely together to successfully target the major organized crime networks that are often connected internationally. Recently, the RCMP teamed up with the Canadian Anti-Counterfeiting Network in a public awareness campaign, creating posters with tips for identifying counterfeit products, as well as radio public service announcements.

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

That being said, we still have a long way to go and many challenges to overcome.

Presently, we have no authority to seize criminal proceeds from IPR crime. There are no criminal provisions in the Trade-marks Act, which means we have to be able to prove a fraud occurred and lay charges under the Criminal Code. Criminals often import hang-tags and labels separately from the product, and there's no legislation to counter this technique.

The current criminal penalties imposed by courts pose little deterrence. It is not unusual to charge the same groups multiple times for IPR crimes, as they see the fines simply as the cost of doing business.

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

There is also a major issue with resources. Other than small, joint RCMP-CBSA project teams in Montreal and Toronto, there are no dedicated investigational teams for IPR crime. In Vancouver alone, the number of counterfeit containers referred by CBSA to the RCMP for investigation went from about 50 to 60 annually in 2002-03 to over 300 in 2005. This is under the current regime, where CBSA is not specifically searching for such goods but comes across them during the course of their duties. Similar statistics are found in other major centres.

Given that most of these investigations should be conducted as projects to try to identify and take down the groups involved, which most likely have an international component, investigational resources are simply overwhelmed. In most cases, criminal investigation is not conducted, and the goods are simply relinquished by the importer, who again sees this as the cost of doing business.

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

On that note, I'd like to thank the committee for this opportunity to speak with you about IPR crime. Reaching out to build a better understanding of these issues is important, constructive, and appreciated.

Thank you.

• (1135)

The Chair: Thank you very much.

Ms. Johnston, do you have a presentation as well?

Mrs. Kimber Johnston (Director General, Policy and Program Development Directorate, Canada Border Services Agency): Yes, I do. I realize that my colleagues from the RCMP and the Department of Justice have already made remarks with respect to border enforcement, so I will keep my introduction brief.

I do thank you for the opportunity to present on the manner in which the Canada Border Services Agency currently helps to combat the proliferation of counterfeit and pirated goods. As previously mentioned, the first is via a civil remedy. Both the Copyright Act and the Trade-marks Act permit a rights holder to obtain a court order directing the CBSA to detect and detain shipments of goods that are suspected of violating their intellectual property rights.

Additionally, the CBSA may detain IPR-infringing goods pursuant to the criminal process. The Copyright Act provides for criminal sanctions, as does the Criminal Code.

When the RCMP shares intelligence regarding importations that would be evidence of a criminal offence, the CBSA will create a system lookout for the goods. When the shipment is intercepted, the CBSA will seize the goods as evidence and transfer the goods to the RCMP, who will proceed with prosecution.

Finally, if the CBSA, in the course of examining a shipment for the purposes of administering the Customs Act, consequentially finds goods that may be infringing intellectual property rights, we will ask the RCMP if the shipment meets prosecution criteria, and if so, the goods will be seized as evidence.

It is not practical, however, for the RCMP to pursue criminal charges for every suspected violation of IPR-infringing goods. When the shipment is not significant enough to warrant criminal action, the importer is advised of the suspected authenticity of the goods and in these instances will often choose to abandon the shipment.

This brings us to one of our challenges as an agency. The Customs Act permits CBSA to detain goods that are prohibited, controlled, or regulated by any act of Parliament until they are satisfied they are dealt with in accordance with the applicable act. Currently, however, there is no legislation that specifically identifies counterfeit goods themselves as prohibited, controlled, or regulated.

Under the Copyright Act the goods themselves are not prohibited. Rather, there are offences against a person who knowingly makes, sells, or imports for sale counterfeit goods. The Trade-marks Act is also silent. As there is no ancillary legislation defining counterfeit goods as prohibited, they cannot be targeted or detained by the CBSA under the authority of the Customs Act.

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

Thank you very much, and I look forward to your questions.

The Chair: Thank you very much.

Finally, from the Department of Health, Ms. Dowthwaite.

Ms. Diana Dowthwaite (Director General, Health Products and Food Branch, Department of Health): Good morning. My name is Diana Dowthwaite. I am the director general of the

inspectorate part of the Health Products and Food Branch of Health Canada.

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

We have four key core functions that help us verify that health products on the Canadian market are legally authorized for sale and are safe. First is our proactive role in compliance promotion with our various inspection programs, under which companies intending to conduct an activity such as manufacturing, importation, packaging, labelling, wholesaling, testing, and distribution of drugs in Canada are required to pass an inspection before they are licensed to operate. Companies are inspected on a regular cycle that can vary from two to four years, depending on their activities. These inspections are linked to our licensing requirements.

Second is our reactive role through compliance, verification, and investigation, whereby we actively look at mitigating risk, based on information from sources such as complaints from consumers, industry, or other regulatory authorities. This is where the majority of our work takes place with respect to counterfeit health products.

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

Last is our establishment licensing program whereby we issue a drug or a medical device establishment licence for the licensing activities I have just mentioned.

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

Counterfeit products pose a health and safety risk because they may contain the incorrect dose, the wrong ingredients, dangerous additives, or no active ingredients at all, which could result in potentially serious health risks to patients.

These products represent an emerging trend in the supply chain of developing countries and, yes, even in Canada. In the summer of 2005, the RCMP laid charges against two separate pharmacies for selling counterfeit pharmaceuticals at the retail pharmacy level. In both of these cases, as counterfeiting is a criminal activity, the inspectorate worked with the RCMP and the relevant college of pharmacy to provide investigative and laboratory expertise as well as advice pertaining to the Food and Drugs Act.

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

It is clearly impossible, as you've heard my colleagues say, for any one entity to combat counterfeiting alone. It requires a multi-partner, multinational approach.

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

As is the case with the RCMP, we have many challenges ahead of us. For example, our current regulatory oversight mechanisms are outdated. The act is over 50 years old, and there are no prohibitions in the Food and Drugs Act or regulations that pertain to counterfeiting directly.

• (1140)

As well, within the act the penalties are more health-risk-oriented and less penalty-oriented and may not provide a sufficient disincentive to fraudulent activities such as counterfeiting of health products. Prosecutions, as we can all appreciate, are very resource-intensive, and we are not well equipped at this point to identify fraud; this is where the RCMP provides its assistance. We are working to modernize our regulatory framework to more effectively address these types of violations.

We are currently not experienced and equipped in investigating intent. Our traditional approach is focused on mitigating risk to health where it is the regulated parties' responsibility to take appropriate action to comply with legislative and regulatory

requirements. Within the paradigm of counterfeiting that we are seeing today, those responsible not only have deceitful intentions, but complete disregard for the regulatory system.

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

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

• (1145)

The Chair: Thank you very much. You all have given us very informative presentations. I appreciate that. And of course you've impressed on us the need to improve legislation in this area.

I don't know if any of you have any concluding comments. Ms. Segal?

Ms. Nancy Segal: No, I don't think so. We are ready to take any questions the committee might have.

The Chair: Okay. The usual practice at this committee is to now begin a round of questions and comments. The usual practice is to allow seven minutes for the official opposition to begin, and then we'll go over to the Bloc Québécois, the NDP, and the government side.

Again, thank you.

We will begin with Mr. Cullen, please.

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

Thank you to all the witnesses today.

I guess the part that concerns me is the time that it is taking to bring some answers, some resolution, some ideas to how we deal with this problem.

It was in 2005 that the U.S. put us on a watch list, and months before that the anti-counterfeiting coalition in Washington urged the U.S. government to designate Canada, along with China, as a priority foreign country for its woeful enforcement of intellectual property rights.

We had in 2005 the case of five deaths in Hamilton that were linked—and I don't know how that was finally resolved—with counterfeits of the pharmaceutical Norvasc. We've had recently the death of a woman on Vancouver Island because of a website pharmacy.

This is a problem we've known about for some time. In fact, Interpol states that 5% to 7% of global trade now involves counterfeit goods. The World Health Organization says that fake pharmaceuticals are worth \$36 billion a year and estimated to jump to \$75 billion by 2010.

If we look at trademark infringement—in my riding there's a Canadian Standards Association—goods are coming into Canada, the goods that the gentleman from the RCMP talked about, the fake batteries, the fake electrical products, with a CSA stamp.

We know roughly what the solutions are. I'm not trying to simplify. We need to beef up our Trade-marks Act. We need to increase the criminal sanctions. We had people in Montreal going into movie theatres with very sophisticated cameras in their ties now, apparently. They're taking photos of films and then putting them on DVDs within an hour. Organized crime is involved. The criminal sanctions clearly aren't stiff enough there.

We know some of the answers with respect to the Canada Border Services Agency. We talked about the fact that they don't have a mandate. They need a mandate, and they need the resources not to be an ancillary effort—because that's their current mandate now, it's quite appropriate—but they need to be given the mandate, and with that they need to be given the resources to deal with counterfeit goods and pirated goods.

To be put on a watch list by the United States and equated with China—no disrespect to China—for intellectual property violations, the penny has to drop somewhere. I'm particularly concerned about the safety of Canadians, whether it's pharmaceuticals or electrical products.

Now, I understand—and I know I was involved back in 2005 when this working group was working on this—we've known about the problem. In fact, the pharmaceutical issue was known to the RCMP in 2000, at least, and I'm sure they had briefed the department.

So we know what the problems are. I know there are some complexities because there are so many departments involved, but when are we going to find some solutions and come forward? Hopefully the government will come forward with some sort of omnibus bill that will deal with trademark law, with copyright law, with the Canada Border Services Agency, with the criminal sanctions that are required. When are we going to see something?

• (1150)

Ms. Nancy Segal: Thank you very much.

I agree with you. We've been working at it for a long time, and I agree that it's a very complex issue.

One of the things we have been doing in the committee is trying to get it right. This is going to have to serve to move us forward and to provide a framework to move forward with the international community as we address this problem on a global basis.

In the last year, we have actually made very significant progress both domestically and internationally. Domestically we have engaged with prominent Canadian stakeholders to hear their views, including the Canadian Standards Association and others in industry that have very strong views and a lot of experience in this. We've taken the information to look at what kinds of recommendations we can put forward to the government. Internationally, in addition to taking part in discussions in a number of international fora, we're looking at what other countries are doing. Cal described a couple of the other systems that we're looking at and trying to evaluate to see which parts we can take to incorporate within our own legal and administrative regime.

The work is ongoing. There is consensus around the table with all government departments and agencies on the broad outlines of what needs to be done, and we're working on the details right now. We're going to bring this forward as soon as possible. We do not have a timeline at this point.

You mentioned certain things. We're looking at all of the things you mentioned in terms of the Trade-marks Act, CBSA authorities, copyright, and all of those things. The complexity of it is part of the reason we have to take our time to get this right.

We are working within other fora at the same time. We're working internationally, as our RCMP colleagues have said. We are not standing still on this. We are addressing the issues in Canada and internationally right now to the best of our capacity, and we're trying to provide the best recommendations possible to move forward.

In regard to the watch list, Canada does not recognize the 301 watch list process. It basically lacks reliable and objective analysis. It's driven entirely by U.S. industry. We have repeatedly raised this issue of the lack of objective analysis in the 301 watch list process with our U.S. counterparts.

I also recognize that the U.S. industry likes to compare anyone they have a problem with, concerning their IPR regime, to China and the other big violators, but we're not on the same scale. This is not the same thing. If you aren't on the watch list in some way, shape, or form, you may not be of importance. Most countries with significant commercial dealings are on the watch list.

The Chair: You may have a brief follow-up.

Hon. Roy Cullen: I would urge you to get on with it. As for the watch list, the fact is there are people in Montreal and other places with little cameras, as you well know, taking these things and turning them into DVDs.

Organized crime is much more engaged, and the longer we wait, the more engaged they're going to be. The risks are limited right now and the profits are huge. We're putting the health and safety of Canadians at stake.

Mr. MacKenzie, I hope the government will attach some priority to this and get on with it.

The Chair: I am sure the message has come through.

Thank you very much.

Monsieur Ménard.

[Translation]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you.

Like my colleague, who represents a different party, I see this as a very serious problem. I would simply like to add that it's important to realize that if our welfare and health status is what it is, that is largely due to the fact that copyright has been respected since the French Revolution. That was then maintained in the 19th century.

Clearly, when copyright is not respected in the entertainment business, a lot of profit is lost, as well as exceptional artists that cannot be paid. And then there are the technological advances that we benefit from nowadays. If we have access to them, in my opinion, it's because our societies respect copyright. Of course, neighbouring societies are always very much tempted to steal our copyright. That is what happened with China, but it is my feeling that as this country gradually becomes more of a global economic player, it will suffer the same treatment. Perhaps then it will opt for economic respect.

But let's talk about penalties. There is no doubt that they are necessary and must act as a disincentive. In my opinion, we need something more than just a prison sentence. Between prison and what we have now, it seems to me we have some way to go.

In cases where we actually arrest someone for an IPR-related offence and that person comes before the courts, what penalties are currently provided for? Can someone answer that question?

• (1155)

[English]

The Chair: Are you addressing that to anyone in particular?

[Translation]

Mr. Serge Ménard: I am thinking of the RCMP, which may be more aware of the situation, or the Director of...

Ms. Nancy Segal: In terms of our legal system, I will ask Cal Becker to respond. We can then move on to the RCMP.

[English]

Mr. Cal Becker: With respect, I'm going to respond in English. I think it should be appreciated that there are already quite serious penalties in the Copyright Act, specifically a maximum on prosecution on indictment of up to five years in prison and a \$1 million fine. As has been noted, there is no corresponding offence in the Trade-marks Act with respect to counterfeit goods.

To get to your main question about the kinds of punishments we are looking at, I think there's a general consensus that punishments in the order of five years in prison and/or a million-dollar fine are adequate to the purpose. What's missing, if I can identify that, is legislation that would empower the Canada Border Services Agency to participate in this exercise of enforcement. It's not so much that the penalties are inadequate—on paper, at least—but rather that authorities that would permit the Canada Border Services Agency to participate fully in anti-counterfeit, anti-piracy exercises are missing.

[Translation]

Mr. Serge Ménard: I'm sorry to interrupt you, but we have so little time. The evidence and the way in which these laws are enforced is also of concern to me. Through my own experience, I know that in many cases, people appear before a judge who hears about 60 cases in the course of a single afternoon—mostly guilty pleas. Agreements are then negotiated based on some sort of average. Ultimately, for someone to be given a fine amounting to several thousand dollars, the offence has to be quite serious.

Having some awareness of this issue, if I were a judge and were hearing that kind of case, I would like to be given evidence of the profits the accused realized by committing the offence and of his lifestyle. We do that for organized crime. Of course, they are people we have under surveillance for long periods of times. I always ask the police officer responsible for these investigations to try and find out how much money they had in their bank account, what their lifestyle was and what kind of car they drove. Is that what you do?

When you investigate a counterfeiting case, do you delve even deeper, in order to be able to prove to the judge the profits realized by the suspect as a result of his offence and ensure that the punishment is in keeping with the profits, rather than being just the cost of doing business?

That question is addressed to the officer from the RCMP.

• (1200)

C/Supt Mike Cabana: Thank you for that excellent question.

It really depends on the type of investigation. Currently, the RCMP's priority is organized crime. If we are investigating a counterfeiting case that involves a criminal organization, the kind of process you have just referred to—where we look at the assets and lifestyle of the individuals involved—is part of the investigation, up to a certain point. Unfortunately, the laws currently in place have no mechanism which would allow us to seize or confiscate those assets. However, as I just said, as part of an investigation, we do look at that.

Mr. Serge Ménard: How do the courts react when you bring forward this kind of evidence? Very often, these cases are given to young Crown attorneys who are just starting out. They aren't really criminal offences; they're less serious offences. They don't have either the experience or the background to argue these cases. Would you agree?

C/Supt Mike Cabana: I would not want to generalize, but that fact is that, in certain cases, these cases are entrusted to Crown attorneys who may be somewhat younger. In terms of awareness efforts, the RCMP has met with Crown attorneys. I believe the last time that happened was in British Columbia, several months ago, for the very purpose of raising awareness among Crowns of the reality of counterfeiting and explaining that things are not the way they used to be 10 or 15 years ago. These are large-scale operations. It will take us some time before we are able to effectively raise awareness across the entire judicial system, but the integrity of the system is such that judges impose the penalties they believe to be appropriate.

[English]

The Chair: Thank you.

Mr. Comartin, please, for seven minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I just want to pursue the hypocrisy quickly, Ms. Segal.

My perception, and I think this is based on fairly decent material, is that if anybody was going to be on that watch list, the U.S. should put themselves on it, in the sense that they have more counterfeit material and goods going through their country, getting into their country, and manufactured in their country on a proportional basis than Canada does, by a long shot. Would you agree with that statement?

Ms. Nancy Segal: Actually, I don't have the statistics on that at all. In fact, the OECD is looking at the economic analysis of counterfeiting and piracy worldwide. That's one of the big problems, that actually none of the countries have perhaps the statistics required. Also, it is an underground activity, so even gathering these statistics is fairly difficult.

Obviously, if you put more enforcement at the border and can track that, you might actually get more seizures. If you don't have the resources there, it's hard to see also what things are getting past. So the numbers are very difficult, actually, to make any conclusions.

Mr. Joe Comartin: That was a very diplomatic answer, Madam Segal.

Ms. Nancy Segal: I'm actually just being truthful. We work with the U.S. on many things, including intellectual property rights enforcement, and with other countries, and statistics are a very serious problem.

Mr. Joe Comartin: Chief Superintendent, I'm a bit concerned about what I'm hearing.

Maybe I should say this to all of you. I was hoping that what we would get from you today was specific recommendations of amendments to various pieces of legislation. I don't know if we're going to get that from anybody else, but I had expected we were going to see some specific recommendations.

Chief Superintendent, with regard to the points you've raised, I don't know if this is just a lack of resources, but I'm not quite sure why we're not able to use or why we are not using the organized crime sections of the code to identify the groups as being organized crime syndicates, charge them accordingly, and then seize the goods pursuant to those sections, even the section that has the reverse onus in it. Is the structure not there? Are we missing something? If we are, we'd like to know that.

C/Supt Mike Cabana: To be very honest here, I think we're missing a strong legislative framework for these types of offences. And most of the investigations we're involved in are historical in nature, which almost requires working backwards to prove the existence of the criminal organization, the implication of a criminal organization, which is extremely difficult to do with the resources we have presently.

● (1205)

Mr. Joe Comartin: Does the RCMP have specific recommendations on how we improve the organized crime sections of the code?

C/Supt Mike Cabana: This is something I would have to look at to come up with specific recommendations. Before we look at...

Mr. Joe Comartin: Let me interrupt you, since time is short.

Are there are models that we can be looking to elsewhere that have been effective? Whether it's in the EU, or—I know it's not in the United States, but maybe there are some states there that have done some work in it—elsewhere, are there other models in industrialized countries of a nature like Canada's that have been successful in pushing back effectively?

C/Supt Mike Cabana: I'm not aware, sir.

Mr. Joe Comartin: Ms. Segal, do we have any?

Ms. Nancy Segal: I think that's part of the problem. Every country is dealing with a growing global problem of counterfeit and piracy. Countries are improving their regimes. All of the countries are, on an almost continuous basis, looking at what they are currently doing and what they could be doing, and at whether it's working or not.

It's very difficult to say that any one country is actually effective at this point. With new technologies and everything else, it's very difficult to counter. The countries are doing what they can do domestically, but also internationally. We need more integrated cooperation and information exchange to actually combat this.

One of the things we've encountered is that when we stop a shipment of fake batteries, we now have links with Mexico and the U.S. to tell them that we have stopped a fake shipment from X country, because the next step, if we stop it, is that the same shipment often goes either to Mexico or the U.S. and tries to get in. If they have warning in advance—we get them also from our colleagues in other countries—then we can adequately prepare and alert CBSA to look for these kinds of shipments.

A lot of this is going to be international cooperation, because one country's efforts aren't going to stop a problem.

Mr. Joe Comartin: Ms. Johnston, assuming you get the authority that was referred to earlier by Justice, is there any assessment by CBSA as to how much it's going to cost and how many additional staff we're going to need, and how much it is going to cost to properly deal with this problem at the border?

Ms. Kimber Johnston: I can't give you figures with respect to actual cost for resources. What I could share with you is the current number of interdictions we're doing of counterfeit goods via the means I explained earlier, whereby we come by them in the enforcement of the Customs Act or in association with our joint forces operations with the RCMP.

We have about 1,000 interdictions of counterfeit goods annually under the current regime, and we can only speculate that these would increase multifold if we were to get the authority to do the actual targeting and the examination specifically for counterfeit goods. I can tell you that we would anticipate that if we were to be given the legislative authority, the volume of counterfeit goods we would be dealing with would be significant. Of course, we would have to assess the resourcing consequential upon that, but we haven't actually done a costing at this stage.

Mr. Joe Comartin: And there's not one underway at this point?

Mrs. Kimber Johnston: It is part of the various analyses we're going through with our interdepartmental partners as to the various options we might pursue. Of course, ancillary to that would be that if we chose that option, we would look at this type of cost implication, but because we haven't come to any conclusions on it, we haven't drawn any conclusions with respect to definitive costing.

Mr. Joe Comartin: Okay.

The Chair: Thank you very much.

Just as a clarification, Ms. Segal, is there no documentation from any other countries as to how they deal with this? Some of them have been critical of us. We would presuppose that they would be doing a good job of countering this in their own country. I find it hard to believe there are no policies out there that are somehow working.

The second part of my question would be, are we getting good cooperation from the other countries in the world, or are there certain ones that are a problem?

First of all, are there no good exemplary policies out there?

• (1210)

Ms. Nancy Segal: I wouldn't say there aren't any good examples out there. I think there are excellent examples out there, but the question was, is there a regime there that has addressed the problem?

It is addressing the problem, but certainly there's no regime out there that I know of that actually has solved this problem, that actually stops all of it at the border or combats it within the country completely.

Things are moving very rapidly, and it's very difficult with globalization, with the increased trade, with technological advances, to stop all of these things completely. So it's more a matter of putting in the best measures that you have—sharing best practices, updating regimes as you can—to combat it, and of working cooperatively.

On the second part, obviously there are countries that are bigger problems than others. A lot of the intellectual property rights infringement, a lot of counterfeiting, is coming from places like China, like Russia, and others. We also hear from some of the countries that some counterfeit goods are created in Russia and say "Made in China" on them, so it's certainly not clear sometimes where all this stuff comes from. Yes, you can certainly track back some of it, but it takes an enormous effort, and it's a moving target. When one jurisdiction closes it down, it just moves someplace else. There are lots of jurisdictions, and it's not necessarily that those countries don't have an interest.

I think earlier it was mentioned that China is gaining a certain interest in protecting its own intellectual property rights, and I believe that China actually might have, in the last year, filed the second-highest number of patent applications. The highest number were filed by the U.S. There is going to be pressure from within the countries where there are currently large-scale problems to address it.

It is an international problem. You have to work at it on an international basis.

The Chair: I would understand that. Sure—every country will have a problem, but I was really wondering if there was any legislative framework in other countries that might be something we could take a closer look at.

Ms. Nancy Segal: No. We have—and I think Cal spoke to it—the U.S. and the EC models, those kinds of models, but one places more emphasis on government responsibility, on government taking the costs and everything else, while the other one says "We're going to facilitate, to the greatest extent possible, our private rights holders' enforcing of their own rights".

The Chair: Yes. We as a committee would like to look at what legislative—

Ms. Nancy Segal: Those are the two models right now, neither of which is 100% effective.

The Chair: Okay. I don't want to abuse my privilege as chair here.

Let's move over to the government side here, and we'll have Mr. Norlock, please, for seven minutes.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Good morning, and thank you for coming and informing us on the current situation with regard to piracy and intellectual property infringement.

I'm going to address Mr. Becker from the Department of Justice first, with a question to follow through on my good friend Mr. Cullen's statements. It's a question with regard to an indictment, that since about the year 2000 we've been seeing an incremental increase—and I wouldn't say it's an incremental increase, I think it's really an explosion—of infringements in those two areas I mentioned.

I guess my questions are going to be based on the fact that we have Canada looking at us right now, and the average citizen wondering what's going on and whether we have enough resources in government. The first thing the man or woman on the street might ask the Department of Justice is how many lawyers we have on staff, approximately, with the Department of Justice, and since the problem has been going on for at least five or more years, would not the group or some of that group of lawyers and experts we have in the Department of Justice have been working on legislation that they think the minister or the minister's staff might want to look at, with a view to beginning to stem this growing tide, which actually endangers not only our desks but the people who use things such as batteries, the people who consume pharmaceuticals, the people who feed food to their pets and to their families? Has the department drafted legislation, etc.?

Before I ask too many more questions, I would like you, and anyone else who might feel disposed, to respond to that question.

• (1215)

Mr. Cal Becker: The short answer is no, we haven't drafted legislation to address specifically the problems of counterfeiting and piracy.

What we have been doing is providing legal support to the departments with responsibility for these issues, providing legal support to the departments with policy responsibility for border services, for trademarks, for copyright, and so on. Our role, in other words, has been, apart from the prosecution role in relation to counterfeit and pirated goods, one of simply providing legal support to those with policy responsibilities for the legislation we are looking at.

As to how many lawyers are actually involved in that, which I think was the first part of your question, you've got I think ten departments more or less represented today, not necessarily at the table, but there would be ten distinct legal services involved in providing that support in relation to their particular clients. The quick answer is going to be around ten to fifteen, I expect.

Mr. Rick Norlock: Is that ten or fifteen lawyers on staff at the Department of Justice or ten or fifteen lawyers across the board dealing specifically with that problem?

Mr. Cal Becker: All of the lawyers we're talking about would be Department of Justice lawyers, but they would be located with their clients, whether it's Health, Border Services, Industry Canada, or

Canadian Heritage. In other words, they are all justice department lawyers, because the justice department supplies all legal services.

Mr. Rick Norlock: So we'd have ten to twelve lawyers dealing with these very complex issues and departments.

The impression out there would be that they've got a pantheon of lawyers, and what are they all doing?

Mr. Cal Becker: No. Of course, we've got ten or so departments with a direct interest in these issues as well.

Mr. Rick Norlock: Thank you for that answer, because I would like to auger down to get to the meat of the issue.

Until you receive explicit or specific—I will not say instructions, I'll be very tender here—requests to draft legislation there wouldn't be a self-motivator to do just that. Based on your experience with the other departments, it sounds like you're providing legal support. So with this legal support you would be able to identify some of the problems and exigencies involved in being in the enforcement of the law. So wouldn't there be a push back to quite frankly the political arm of governance, saying we need this; this is what we need specifically and here is what we think the answer should be—can you help us out by bringing this legislation forth to Parliament? Does that occur, or because I'm a rookie in government am I supposing things that just don't happen?

The first responsibility of a politician, quite frankly, of a member of Parliament, is the health and safety of the people who bring us here. I want to know, does the legislation have to come from the minister? Does the minister have to say you need to do this, that, and the other thing, or should the minister expect you to say, "Listen, this is what we've been encountering for the past five or ten years. It's a big issue out there. We need some help. Here's what we think you guys should be passing as far as legislation goes."

Would that be an unreasonable expectation?

Mr. Cal Becker: You used the word "instruction" with some delicacy.

Mr. Rick Norlock: It is not a tender word. I suppose I could have used—

Mr. Cal Becker: No. I think it is a very good word to apply in the circumstances here. I think what you've heard is officials have mobilized in the context of an interdepartmental committee comprising ten departments. They have identified possible improvements to the system.

If you like, to some extent we are awaiting instructions.

Mr. Rick Norlock: Thank you.

I don't want to make you feel like this is all about you, because you're part of a team of people who are trying to do their best to help the people of Canada, especially the enforcement arm, for which I have a great kinship.

I would like to follow up on some of Mr. Ménard's questions with regard to the appropriate penalties.

I heard you mention that the maximum penalty is five years imprisonment or \$1 million. Would I be correct in saying maximum penalties in Canada are rarely enforced, so usually when you have a maximum penalty the courts would look at not a minor but somewhat serious offence somewhere in the middle of that? So one would assume two years to \$500,000. Would that be a correct assumption?

• (1220)

Mr. Cal Becker: Probably not. The penalties, generally speaking, would be much lower, as actually applied. That's not a reflection of anything, really, except possibly the nature of the case that is brought forward and any understanding that might have been entered into between the Crown and defence in terms of stays in exchange for pleas, and so on.

The penalties, by and large, are low. You will rarely find imprisonment as a dedicated penalty. More often it will be house arrest for up to six or eight months, plus or minus, and a fairly substantial fine. By substantial I'm talking about perhaps \$5,000 to \$15,000, in that range, depending on the scale of the offence.

I think what has to be appreciated, too, is that many of these offences are very resource-intensive in terms of investigation and prosecution. As I think was intimated by Chief Superintendent Cabana, the RCMP tends to identify as priorities copyright offences that also entail threats to public health and safety, organized crime, or terrorism. You're dealing with a fairly narrow band of what are really threats to public safety from organized crime, terrorism, or the product itself. To some extent, they're not, if you like, pure piracy or counterfeiting crimes. They're something else altogether.

The Chair: I'm sorry, but we're going to have to move on here. That ends the first round.

We'll now go to Mr. Chan for a five-minute round.

Hon. Raymond Chan (Richmond, Lib.): Thank you very much for coming here to give us such detailed information.

I share the same passion that's around the table about the seriousness of the issue. I want us to pay special attention to those counterfeits that are harming the health and safety of Canadians. Particularly when we are drafting or proposing legislation, we should maybe have minimum sentencing terms for those people who have a huge disregard for the safety of Canadians.

Also, I would like to commend Diana for the department's effort at the border. In 1996-97, when Health Canada proposed to crack down on herbal products, I think that was a serious matter, and it harmed the ethnic community greatly.

I think the most important thing that is bothering us, when we talk about China, is that they now have counterfeit food products. I don't know if you've heard, but they can make eggs that look like eggs. They have fake eggs on the market. It's amazing, right? They make eggs that look like eggs, and they still make a profit.

What really concerns me is that they are counterfeiting even cheap products, like noodles. They are stealing the trademarks, and they are manufacturing them in a very bad manner that hurts the health of people who consume them. It's a big issue in China. People are worried about the food chain that supplies them, particularly when

people are stealing trademarks that are very good brands that people rely on, both for health products and for drugs, particularly compounds.

I know that we allow them to come in. It's very difficult to supervise and legislate against them and so on. I accept that sometimes we have to let them in to allow the ethnic community to have access to them. But I think the trademark issue is very important. I hope that when we draw up the new legislation, Cal, you don't overlook those kinds of trademarks on health products and medicines that are coming into the country. It's common.

• (1225)

The Chair: That's very interesting.

Maybe we should give a little time for comments. There really wasn't a question there, but does anybody have a comment in regard to this?

Ms. Nancy Segal: I'll just say that we do recognize that. It's part of the reason why international efforts at cooperation with China are so important. There are ways of addressing it here, yes, but there ways of addressing it there as well.

As you say, this is not an issue that isn't of concern to developing countries. As I said at the beginning of my presentation, this is not rich country versus poor. In fact, the developing countries are much more at risk, in many ways, because they don't have the type of resources we already dedicate to this.

There are always ways to improve, but we need to work all together, developing countries and developed countries, to address the problem.

The Chair: One minute, Ms. Barnes.

Hon. Sue Barnes (London West, Lib.): Thank you.

Ms. Segal, you're the chair of this working group. Heritage Canada has a role in this, in intellectual property. I want to know where they stand in relation to your working group. I'm concerned that not all members of your working group have the same priorities on these issues.

I would like to have seen intellectual property people from Heritage Canada be here today, and I'm wondering why they're not.

Ms. Nancy Segal: I think part of the answer to your question is that this has to do with counterfeit, or at least the title has to do with it. I believe we do actually have someone from Heritage Canada as our backup if there were issues raised, but this was supposed to be about public health and safety risks. To the extent that, yes, there are organized crime elements dealing with copyrighted goods, there is that piracy element, but we had focused our presentation mostly on the health risks of counterfeit goods, counterfeit pharmaceuticals, things like that.

With respect to where they stand in the working group, they are an essential part of the working group. They are there, along with all of the other agencies and departments, at every meeting we have interdepartmentally. We have a very broad consensus, really, on what needs to be done. There is no dissent among the departments or agencies involved; we do need to update our regime, and we're trying to look at the specifics, the details, even the broad strokes of what we need to do. We're trying to look at the resources, the types of changes that probably need to be made in the legislation. There is no dissent in the group.

The Chair: Thank you.

Ms. Mourani.

[Translation]

Mrs. Maria Mourani (Ahuntsic, BQ): Thank you, Mr. Chairman.

First of all, I would like to thank you for your testimony. I have learned a great deal today.

My question is addressed to Mr. Becker. In your discussion earlier with Mr. Norlock about a working group composed of officials from 10 departments, I understood that you are awaiting instructions from the Minister to draft legislation, but that you already have an idea of the kinds of improvements or initiatives that could be helpful. What potential improvements are we talking about?

[English]

Mr. Cal Becker: If I may, Madame Mourani, I'll respond in English.

• (1230)

Mrs. Maria Mourani: That's fine.

Mr. Cal Becker: This will probably be a very frustrating answer for members of the committee.

What we have done in the context of the committee is to come to substantial agreement on what the problems are and perhaps how they ought to be properly addressed. But those are policy issues, frankly, and some kind of ministerial direction or position is going to have to be taken on them before we can actually identify them specifically. Those choices haven't been made; they're not our prerogative, if you like, as public servants.

You've heard from various members of the panel this morning on what some of those problems were. Perhaps identifying a problem suggests an answer. For example, the Canada Border Services Agency isn't authorized to intercept counterfeit or pirated goods at the border. That problem suggests an answer. Our trademark legislation doesn't have an offence analogous to the offence in the Copyright Act. That problem suggests an answer.

I could go on here. The problems that have been identified to some extent at the table today also suggest what kind of answer would be appropriate. I'm very conscious of the fact that our role here today has to be descriptive rather than prescriptive because ministers have not made the prescriptive choices, the policy choices, with respect to these issues.

[Translation]

Mrs. Maria Mourani: You say that the penalties are light and may consist of house arrest, and so on. Are those the penalties for traffickers or for people who are found in possession of trafficked or counterfeit goods?

[English]

Mr. Cal Becker: Those would be for people convicted of selling pirated or counterfeit goods. Usually we're talking about people with major Internet-based operations for the sale of pirated software or we're talking about major retailers, for example, of sporting equipment, who are selling counterfeit product. They're getting reasonably substantial fines and penalties in the order of six to eight months of house arrest.

[Translation]

Mrs. Maria Mourani: Are they also imposed on merchants who may not necessarily have manufactured the product but are selling it? That is what I understood. It may include businesses that are not aware and buy counterfeit goods without realizing that the product is illegal.

[English]

Mr. Cal Becker: In the cases I am describing, we're talking about retailers who were aware they were selling counterfeit or pirated products. However, it does happen that—without naming any particular retailers—they will have a line of counterfeit designer clothing on their shelves, and usually the presence of those counterfeit goods will be spotted by the company responsible for the distribution of that particular line of clothing. Those goods will be taken off the shelf and there will be a settlement between the rights holder and the retailer that does not involve any kind of criminal prosecution.

[Translation]

Mrs. Maria Mourani: When you arrest members of organized crime groups, are they given this kind of light sentence or do you consider the fact that they are part of an organized crime group, and so on?

[English]

Mr. Cal Becker: The brief answer is we're talking mostly about retailers of pirated or counterfeit goods, who are not linked to organized crime.

Chief Superintendent Cabana could perhaps speak to prosecutions involving organized crime, but I'm not personally aware of that.

[Translation]

C/Supt Mike Cabana: To my knowledge, there have been very few criminal prosecutions involving people identified as members of traditional organized crime groups. As I explained earlier, judicial independence means that it is up to the judge to decide what sentence is appropriate. I believe one can reasonably conclude that the sentences handed down to people involved in organized crime would be tougher than for merchants.

• (1235)

[English]

The Chair: Time is up. Do you have a brief—

[Translation]

Mrs. Maria Mourani: I'm just trying to understand.

Is it difficult or complicated to make an arrest in the context of that kind of criminal activity? Let's forget about drugs for the moment and talk about trade in counterfeit goods involving members of criminal organizations. Is the perception of the judicial process not the same when you are arresting people for possession of drugs or firearms?

C/Supt Mike Cabana: In terms of the perception of the judicial system, that question should probably be addressed to people who are part of the system—the judges, in other words.

Mrs. Maria Mourani: Have sentences been handed down on that basis, or does that not work? Have there been such cases?

C/Supt Mike Cabana: The main distinction is the one I mentioned earlier. It has to do with our ability to get at the property of these organized crime groups. Whether we're talking about these kinds of assets or narcotics, the same groups are involved. The difference is that if the offences were committed under the Controlled Drugs and Substances Act, we are able to seize the assets of the organization.

Ms. Maria Mourani: But not in this case?

C/Supt Mike Cabana: No, not in this case.

Mrs. Maria Mourani: I understand. Thank you.

[English]

The Chair: Thank you.

I'd like a clarification on that. Wouldn't there have to be some kind of illegal organization bringing in goods from another country? How do you define "organized crime", as opposed to organizations that are bringing in all these illegal goods? I'm trying to grapple with that.

C/Supt Mike Cabana: The definition of organized crime is found in the Criminal Code. It's pretty broad. It's three or more people, but I would submit to you that "three or more people" would include, especially if importation is involved, just about everybody who brings in counterfeit. The focus for the RCMP, of course, is on the traditional criminal organizations such as—

The Chair: They're traditional.

C/Supt Mike Cabana: —the outlaw motorcycle gangs and groups of that nature.

The Chair: You would have to have some kind of organization to involve....

Let's move on to Mr. Brown, please.

Mr. Gord Brown (Leeds—Grenville, CPC): Thank you very much, Mr. Chairman.

I've been interested in copyright and counterfeit goods and piracy for a long time. In the last Parliament I sat on the heritage committee and learned a lot about the WIPO treaty. Canada signed that treaty quite a few years ago, but it hasn't been ratified. The former government didn't, and at this point nothing has come forward from our government, but there seems to be significant interest again in moving this forward.

There's a lot of frustration in Canada about this. I never really thought a lot about it in terms of the public safety side until you folks were planning on coming forward to the committee. I'm really happy to see that.

The industry ministry would also have a lot to be involved with on this issue. I know that late in the last Parliament there was a proposal to have a joint special legislative committee to deal with copyright, so there seems to be a lot of interest. I'm glad you folks are here today, and that we're hearing more about this. Some of us have been pushing to see something come forward.

I'm very interested especially, Ms. Segal, in this committee that you're working on, the interdepartmental group that you've got. Maybe you can tell us about that. I really want to get more into it. I know you've talked a bit about it, but I want to hear a bit more about that group, because it's important for that group to be a party to this. Tell me more about the progress the committee has been making.

Ms. Nancy Segal: The group has been together for a while, as was pointed out. Part of the issue at the beginning was that there wasn't a group; rather, everyone had a piece of the pie, so to speak, in terms of addressing intellectual property rights protection, whether it was through the legal regime, the enforcement aspect, or the international cooperation aspect. No one was really coordinating it or assuring that the lines of communication with all of the involved parties were there.

The interdepartmental group started out, basically, with trying to figure out what the problems or challenges were with Canada's regime. The regime has been working; we do protect intellectual property rights, and we allow the rights holders to enforce those through our legal regime. There are certain gaps, but things have moved forward.

It was to identify both what was happening domestically—so we needed everyone involved domestically—and also to bring in the international dimension of what was happening outside Canada in other countries and other partner countries. We wanted to know how they were addressing the challenges and how we could amend our regime suitably so that we could address it in a consistent way with our international obligations, but also with the cooperation that's already in existence. That is becoming more and more developed as these things progress, because now it is recognized internationally that this is not a problem that can be addressed within one country.

• (1240)

Mr. Gord Brown: Obviously there's the legislative side and there's the enforcement side, but what do you see as the mandate of your group?

Ms. Nancy Segal: It's to look at the holistic kind of approach of what we need to do in Canada to address these issues. It's to put the framework in place, to put the resources, and to see what kinds of resources we need to address this.

Mr. Gord Brown: So you want to bring forward some recommendations in terms of specific legislation that will help—

Ms. Nancy Segal: Oh yes.

Mr. Gord Brown: Okay. So tell me a little more about when you think there's going to be a report from this group, and who are you going to report to?

Ms. Nancy Segal: Who are we going to report to? Because everyone has a piece of the pie, everyone really has to be aware of that and be in agreement with the recommendations that we're going to put forward. So basically, by and large, most of the agencies and departments need to have ownership of this.

Now, in terms of legislative changes, the departments that actually kind of own the legislation need to be on board with those, but also for the resources aspect. Everyone has to be on the same page.

Mr. Gord Brown: So when might we expect to see something from your group?

Ms. Nancy Segal: We're working as hard as we can to bring something soon.

Mr. Gord Brown: Two months, three months, six months? I'm trying to get a feel for when you might expect to be finalizing your report.

Ms. Nancy Segal: We're trying to work out the details and go forward as soon as possible, but I'm not in control of the agenda. I don't know when—

Mr. Gord Brown: Who does control it, then?

Ms. Nancy Segal: Probably central agencies, by and large, but—

Mr. Gord Brown: Central agencies as in industries?

Ms. Nancy Segal: But we're not in position. We're still working out the details, but we're trying to get it forward as quickly as possible.

Mr. Gord Brown: Okay.

Thank you very much, Mr. Chair.

The Chair: I would just like to note that the Standing Committee on Foreign Affairs and International Trade back in October 2005 had an indication that there were strategies being developed to improve the enforcement in the issues we're talking about. So we're still doing that and we're not getting anywhere? Is that the impression I'm getting from you? Is there not a lead minister or department taking charge of this?

Ms. Nancy Segal: I wouldn't say we aren't getting anywhere. Certainly we have a lot more activity and awareness of the problem, and we've been working within the existing framework to address it. So there is a framework in place that we can use and we are using.

We are using increased cooperation with our partners internationally, specifically also with the U.S. and Mexico, because we do have integrated borders and things like that. So it's not that we're standing still on this. The improvements to our own domestic regime are one part of the puzzle, but we haven't been standing still.

The Chair: Is there a lead minister or department?

Ms. Nancy Segal: No.

The Chair: There isn't? Okay.

Ms. Nancy Segal: I mean, there's Industry Canada and Heritage Canada that are responsible for the Copyright and the Trade-marks Act. There's CBSA, which is involved with their legislation. There's the Department of Justice, which has their part.

The thing is, this doesn't fit neatly in one department, so we do not have one minister who is responsible for everything.

The Chair: But usually doesn't the justice department develop legislation, coordinating all these other things? That was my impression.

•(1245)

Ms. Nancy Segal: It's usually the policy department—my understanding anyway—that develops the recommendations, and then the justice department assists to develop the legal framework to implement those policies.

The Chair: Yes, okay.

Ms. Barnes, please.

Hon. Sue Barnes: I'm a little confused, because I thought that in the past, at least with the former government, the Department of Public Safety was driving this work taskforce and that they would have done a memorandum to cabinet that brought in other people if they were going in that direction. But if you're telling me now that nobody's driving this, no one department's taking the lead on it, I can see why we don't have anything coming forward.

Ms. Nancy Segal: This is a joint responsibility. The question—

Hon. Sue Barnes: There's no leader?

Ms. Nancy Segal: The question was is there one minister who is responsible for this. There is not one minister—

Hon. Sue Barnes: My question is, is there one minister leading this? Has any one minister in the current government taken the lead on this file?

Ms. Nancy Segal: We haven't got to that stage.

Hon. Sue Barnes: I don't think so. That's shocking, actually, because this was about public safety, and that's why the public safety minister in a former government was taking the lead in driving the agenda.

Maybe I'll try to ask some health questions, then, seeing as no one's in the lead.

Let's try Health Canada. You do an awful lot of good trying to get out to the community, and I think for the most part you strive very hard when there's a health food safety issue. You have, I understand from our researchers, a hotline that anybody wishing to give information or lodge a complaint concerning medications bought over the Internet can call.

I want to know your evaluation of that program, whether you feed that information into something that can be effective. I'm not talking about a legislative solution, I'm talking about non-legislative strategies right now. What actually happens to that service? Have you assessed it? Is it helpful in this regard?

Ms. Diana Dowthwaite: There are different processes. We have a phone number that we put at the bottom of advisories to alert consumers that they can phone in on a specific complaint. We have another process called an adverse drug reaction reporting system. It's in another part of the branch that I'm in within Health Canada. Consumers, doctors, and patients can phone in and report adverse reactions to different drugs. That kind of information is then analyzed so that we can see if there are any trends, and we can then make any determinations on where we need to go with action.

Hon. Sue Barnes: What does the service tell us about counterfeit medications in Canada?

Ms. Diana Dowthwaite: That's where it's really hard. That's one of the difficulties in trying to come up with a substantive number of counterfeit products in Canada. It's very difficult to make a direct linkage between a counterfeit product and a death, because sometimes it could be linked to it or it may not be linked to it.

Hon. Sue Barnes: The World Health Organization estimates that 50% of Internet medications are counterfeit. They've made a linkage. How come we can't make that linkage?

Ms. Diana Dowthwaite: We can't do it for all kinds of reasons that I talked about: because the testing has to be done of the drugs; because you have to be able to do lab analysis to find out if they're actually counterfeited drugs; because you have to do a lot of research to find out where they've come from; and because you have to do a lot of collaboration with lots of different partners. I cannot say we have any substantive numbers to be able to come with a 50% number or a 20% number.

Hon. Sue Barnes: I'll turn to the Canada Border Services Agency.

Is there specific training for the Border Services Agency on counterfeit products right now?

Mrs. Kimber Johnston: Not specifically. As I indicated earlier, we don't have a program specifically on counterfeiting and interdiction of counterfeit goods. For the reasons we outlined earlier, we don't have the legal authority to be doing the targeting and detection. That being said, we have developed some level of expertise. Training would come, of course, if we did get the legal authority. We would include training as part of the program development and delivery.

We have developed some expertise, as mentioned by my colleague from the RCMP. We do have a few joint forces operations in Toronto and Montreal. Those officers have developed some expertise as a result of working on the job with these goods.

Hon. Sue Barnes: Are they counterfeit specialists inside CBSA?

Mrs. Kimber Johnston: I wouldn't go so far as to define them as counterfeit specialists. What I would say is that by reason of them dealing with these goods in their day-to-day activities they have developed a certain experience and expertise around counterfeit products.

Hon. Sue Barnes: Thank you.

I also commend the RCMP for trying to get out some information on the counterfeit goods. I've seen some of the materials that are out on your website, and I think that's a good start. Obviously, with this government, you're not going to be at the border unless you're called to the border.

What we're now down to is a strategy. Some of that strategy, Mr. Becker has said very clearly, has to be legislative. I would think, Ms. Segal, that you are going to have some non-legislative parts to that strategy. Can you outline for us some of the non-legislative parts, and potentially some of those that might be capable of being put into play right now, like sharing of databases when you find information? That's something I know was in an idea that was around a couple of years ago, but I haven't seen any pickup on it.

• (1250)

The Chair: You have time for a brief response.

Ms. Nancy Segal: The short answer is that we're looking at all of the possibilities to try to improve the regime. Things like sharing of information are part of it. We do have to also look at the consistency with our privacy laws and everything else when we look at putting things like that into place.

As Cal said, I'm not at liberty to talk about the prescriptive nature. I'm trying to do a technical briefing on what we're actually looking at, but I can't get into what specific recommendations we're putting forward.

The Chair: Thank you.

For the last two witnesses, let me put an obvious question to you, and maybe Mr. Cabana can answer this as well.

Do you have any data on counterfeit goods? How many charges have been laid either by the health department, Canada Border Services, or the RCMP? Do you have any idea of what's happening there? Is there any data on the extent of this?

Mrs. Kimber Johnston: As I mentioned earlier, we've come across approximately a thousand shipments on an annual basis. I should emphasize, though, that these shipments that are discovered in the course of our administration of the Customs Act are not necessarily large. We're not talking about necessarily huge amounts or about large containers of counterfeit goods. It's important to understand this, because as I mentioned in my opening remarks, when we refer the goods to the police agency, it's often not practical for the RCMP to pursue the matter. The size of the shipment is often so minimal that it really doesn't warrant going ahead with prosecution and charges, etc.

I will have to turn over the question of numbers of charges and prosecutions to the RCMP, of course, because that's their jurisdiction.

Ms. Diana Dowthwaite: I would give the same answer as well. We have a number of investigations that are underway with respect to potential counterfeit drugs, but, again, we turn them over to the RCMP for prosecution.

The Chair: Do the thousand shipments per year include my constituent trying to bring in his cassava from someplace? I got a complaint about that, because he was stopped at the border and they regarded his cassava as counterfeit goods. Is that included or...?

Mrs. Kimber Johnston: I'm not sure I understand what cassava is.

The Chair: They're those large potatoes that they buy in the market when they're not allowed to. The number doesn't include those?

Mrs. Kimber Johnston: I don't know. I can't speak specifically to that, but I can tell you that the range of goods is significant. In terms of breakdown, most often what we're seeing are the designer clothing goods.

The Chair: Mr. Cabana.

C/Supt Mike Cabana: As I stated, historically we've had approximately 400 charges per year, and in 2005 there were approximately 700 charges laid nationally. I have to understand those 700 charges are not all related to organized crime in the traditional sense. As well, they represent a very small percentage. I would suggest that they're less than 15% or 20%.

The Chair: Thank you.

The final questioner is Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

I'd really like to thank my friend Ms. Barnes for pointing out that they didn't get the job done when it came to legislation that you folks need to do your job.

I would ask you, Ms. Segal, if there was ever a lead minister as such.

Ms. Nancy Segal: We never got to the point of putting forward an MC. That's usually when a lead minister is....

• (1255)

Mr. Dave MacKenzie: I appreciate that.

Has anybody had an opportunity to look at what the job losses and revenue seepage would be to Canada because of both pirated and

counterfeit goods coming into the country? What does our legitimate industry lose, and what is the revenue seepage?

Ms. Nancy Segal: We're looking at that now in the context of the OECD study, but it's very difficult as well. When you're talking about percentage of the world trade, does that include things that can't be counterfeited, like commodities such as oil—although if they can counterfeit eggs, maybe they can do that too. In terms of the statistics coming out, it's not clear if they're comparable.

That's part of the work that we're doing internationally, but it's hard to estimate domestically as well, because it is an underground activity. Industry groups have their own estimates, and they are substantial in terms of their losses. Whether those losses are here or in external markets as well is sometimes not as clear.

Mr. Dave MacKenzie: Chief Superintendent, I notice that you have some items sitting in front of you. Are those counterfeit items?

C/Supt Mike Cabana: Yes, sir, they are.

Mr. Dave MacKenzie: Can you tell us what they are?

C/Supt Mike Cabana: One is a tube of counterfeit Crazy Glue. I would invite you to have a look at it, because in looking at it, you can't tell. The only way it was determined to be counterfeit was through analysis. To develop expertise even for the border enforcement officers is therefore next to impossible. You actually require a detailed analysis of the product.

Mr. Joe Comartin: Does it work?

C/Supt Mike Cabana: I haven't tried it. I had my experience with the batteries, and that was enough, frankly.

I also have a package of Duracell batteries that are counterfeits. The way you can tell they are counterfeits is through some grammatical errors and spelling mistakes on the backs of the packages.

I brought a strobe light. Although there's no brand on the strobe light, there's a UL logo or sticker on the back, and that UL logo is counterfeit.

The second lamp, which I assume is similar to a lava lamp, is not contained in there, because it actually caught fire. This goes a bit to the discussion we had earlier. This product was purchased at a reputable store, and the store was not aware that they were selling counterfeit products. As soon as they were made aware, they recalled the product as counterfeit. Again, you will find the proper UL labelling on the box, which is counterfeit.

The last lamp is a fluorescent type of lamp. It's the same thing. It's a counterfeit product.

Mr. Dave MacKenzie: Would it be fair to say, then, that even an informed Canadian consumer would be hard pressed to pick out a counterfeit item that may be dangerous or that may cause injury to the consumer or their family?

C/Supt Mike Cabana: I think it would be fair to say that, depending on the type of product, they would not only be hard pressed to tell the difference, they would find it impossible to tell the difference.

Mr. Dave MacKenzie: You pointed out the batteries that caught fire. If you were to put that on your website, would it also negatively impact the legitimate producer of that battery pack?

C/Supt Mike Cabana: Actually, it is of concern to industry how the warnings are being put out to the public. This is why we work closely with private industry, to try to minimize those impacts.

Mr. Dave MacKenzie: Thank you.

To the CBSA, we do a reasonable job, maybe better than reasonable, of checking containers coming into the country. If we have an industry in Canada that produces counterfeit items, do we check containers going out of the country?

Mrs. Kimber Johnston: To reiterate, we don't have any legal authority to check containers for counterfeit goods coming in or out of the country. That was from the discussion earlier.

Generally speaking, customs officials do have the authority to inspect exports leaving the country, provided that, again, as mentioned earlier, the exportation of that good is prohibited or controlled or regulated under a piece of legislation. So it's the exact same regime, if you like, as importation.

Customs officials will inspect containers of goods being exported provided they are prohibited or they need, say, a permit under the Import Export Permits Act. But unless and until it is prescribed in legislation as requiring control, prohibition, or regulation for leaving the country, then no, we do not examine or interdict things leaving the country.

• (1300)

Mr. Dave MacKenzie: It's fair to say, though, that we would not regularly, in any manner, check outgoing shipments, and that may be one of the reasons why some of our trading partners would take exception to us?

Mrs. Kimber Johnston: That's correct.

Mr. Dave MacKenzie: So that's not too far out?

Ms. Nancy Segal: Just to modify that a bit, Canada is not a large source country of counterfeit goods.

Mr. Dave MacKenzie: Do we know that?

Ms. Nancy Segal: Yes, we know that. It's estimated that most of it comes from places like China, Russia, various other countries. There are estimates out there. Canada is not a huge source country of counterfeit.

Mr. Dave MacKenzie: Do I have any time left?

The Chair: Yes, just quickly.

Mr. Dave MacKenzie: My recollection of the news on the counterfeit CDs in Toronto, for instance, was that they were actually being produced in Toronto—not the counterfeit, but the intellectual property rights. So it would seem to me that there is certainly the potential, since it's not difficult to do and doesn't take a lot of space, for those to be manufactured here.

Are you suggesting it's mostly for domestic consumption, then?

Ms. Nancy Segal: I'm not sure of the specific case. Obviously there is the capacity to do so. Again, it's not clear that Canada would be a major producer. My understanding of those types of goods, in terms of mass production, is that often they are done in other countries. There are cases of production in Canada, as I would expect there would be in most countries of the world, developed and developing.

Mr. Dave MacKenzie: Okay.

Thank you very much.

The Chair: Mr. Cabana made a comment on informed Canadians sometimes being hard pressed to tell the difference. I bought some crazy glue that was as effective as cornstarch in gluing things together. I never, ever suspected that it might be counterfeit. So thank you very much.

Mr. Cullen, you have a brief question.

Hon. Roy Cullen: Thank you, Mr. Chairman.

I just want to make a comment for the record.

I know most of the people on this interdepartmental working group—except for Ms. Segal, who I think is a newer member—and I can speak on very good authority that in the absence of the kind of coordination that was necessary, the Minister of Public Safety, in our government, took charge of this. He was trying to move it along, recognizing the challenges of trying to bring departments all together.

So it was the Minister of Public Safety, given the threats to public safety and health, who had taken charge of this issue and was leading it.

The Chair: With that, we will wrap up.

I would like to thank our witnesses for coming.

Do any of you have a final comment? Our time is up, but...

Ms. Segal.

Ms. Nancy Segal: I would like to thank members of the committee for the attention they have displayed to this issue. Obviously it's one we all take very seriously, and we're trying to work as quickly as possible to address the gaps in Canada's regime. But we are also continuing to work with our partners, domestically and internationally, to address the challenges we face and try to make sure that Canadians are as safe as possible.

The Chair: Thank you.

We're going to meet briefly to discuss future business. Can we do it after the Thursday meeting?

Some hon. members: Agreed.

The Chair: Would you all put that on your schedules, please?

Thank you.

This meeting stands adjourned.

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