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# Standing Committee on Public Safety and National Security

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EVIDENCE

**Thursday, April 26, 2007**

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**Chair**

**Mr. Garry Breitkreuz**

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## Standing Committee on Public Safety and National Security

Thursday, April 26, 2007

• (1110)

[Translation]

**The Vice-Chair (Hon. Roy Cullen (Etobicoke North, Lib.)):**  
Good morning and welcome to this meeting of the Standing Committee on Public Safety and National Security. This is meeting No. 40.

Pursuant to Standing Order 108(2), we are going to study the issue of counterfeit goods.

Our witnesses today are: Mr. Michael Geist, Canada Research Chair Internet and E-Commerce Law, University of Ottawa; Mr. Paul Hoffert, Chief Executive Officer of Noank Media, Faculty Fellow, Harvard Law School and Mr. Bob Sotiriadis, lawyer and partner, Léger Robic Richard.

[English]

I welcome all the witnesses and thank you for coming.

We're going to proceed first with Mr. Geist, followed by Mr. Hoffert and Mr. Sotiriadis.

Mr. Geist, you may take the floor.

**Professor Michael Geist (Canada Research Chair, Internet and E-commerce Law, University of Ottawa, As an Individual):**  
Good morning, and thank you very much for the invitation to come and speak.

I'm a law professor at the University of Ottawa, where I hold the Canada Research Chair in Internet and e-commerce law. I'm also a syndicated weekly columnist on law and technology issues for the *Toronto Star* and the *Ottawa Citizen*, and I served on the national task force looking at spam that the Minister of Industry struck in 2004. I appear today, though, before the committee in my personal capacity, and I represent only my own views.

Let me begin by stating the obvious: counterfeiting is not a practice that anyone with any credibility supports. At worst, counterfeiting may pose a public safety issue. Even when it's viewed in the best possible light, when counterfeiting activities may be relatively harmless, it is not a practice to be condoned.

But of course you don't need committee hearings to determine whether or not counterfeiting is good or bad: it's bad. It's whether or not it is particularly problematic in Canada such that the issue merits a strong legislative response. I believe that depends on two things: the state of counterfeiting in Canada and the state of anti-counterfeiting law in Canada. On these two questions, I would submit that the situation is far less certain. Once we get past

attention-getting props and dig into the details, I believe it becomes clear that there is much that we do not know.

Rather than doing a Donald Rumsfeld imitation, where I talk about discussing the "known unknowns", allow me instead to talk about what we do know. I'd like to point to eight issues in particular.

First off, we know there are different definitions for what constitutes counterfeiting. It seems to me that "counterfeiting" has become a catch-all for a wide range of issues. While no one would dispute that the sale of fake watches or handbags would be included within the counterfeiting definition, that umbrella has been used to capture far more. This committee has heard claims that stuffed animals that don't contain a label confirming that they're made of new materials are counterfeit products. Such products are merely mislabelled or fail to meet safety standards. But I'd argue that they are not counterfeit. Similarly, extension cords that fail to meet Canadian Standards Association's standards are a safety concern but not necessarily a counterfeit concern, unless they include a CSA logo that has been mistakenly or fraudulently applied.

Second, we know that public safety counterfeiting issues are relatively rare in Canada. We know that according to the RCMP, significant physical harm from counterfeiting is extremely rare, and indeed we know that from the RCMP's most recent report on counterfeiting, which is *Project Sham*, a report I obtained under the Access to Information Act and would be happy to share with the committee, if you don't already have a copy. In fact, there was a recent B.C. case that allegedly involved the sale of fake pharmaceuticals that may have led to a death of one woman. That is the first such case on record in Canada. By comparison, studies have found that thousands of Canadians die every year simply from bad drug interactions, where there's been a mistake in terms of how the pharmaceuticals have been dispensed. *Project Sham*, as I say, has acknowledged that there are no documented cases, until this point, of death or illness from counterfeit pharmaceuticals.

Third, it's important to note that counterfeiting is not limited to organized crime. While some advocates have been quick to characterize counterfeiting as strictly an organized crime issue, again the RCMP study found otherwise. For example, it noted that in the northwest region of Canada, only a few cases could be classified as "organized crime", and that for the most part IP crime there involves people who are trying to make a dollar. This doesn't justify counterfeiting by any means, but it does suggest that claims that counterfeiting involves revenues that go to directly to organized crime may be greatly exaggerated.

The fourth thing we know is that Canadian law has not left law enforcement powerless in dealing with this issue. I must say that to listen to some advocates, one would think that Canada is a lawless society when it comes to counterfeiting, but we know that is not the case. Canada is compliant with its current international copyright obligations. Moreover, claims that there is police inaction I think do a great disservice to law enforcement across the country, who are active in pursuing IP crime. Indeed, the RCMP has noted that between 2001 and 2004 it conducted more than 1,800 investigations and laid charges against 2,200 individuals and more than 100 companies. Indeed, just yesterday the industry committee heard from the RCMP that in 2005 the number of charges they laid nearly doubled over the prior year, with 700 charges, nearly two per day, being laid within the country. It should be noted that law enforcement action in this area raises public resource questions. I'm sure this is something that's obvious to you already, given that you focus on public safety and security. Any counterfeiting activity works primarily for the benefit of private parties. While some of that may be warranted in some circumstances, particularly health and safety issues, it unquestionably results in a shift away from other law enforcement priorities.

• (1115)

Fifth, we know there are no obvious legal solutions. While there are advocates for reform who suggest that there is an obvious blueprint for addressing counterfeiting in Canada, we know there is no silver bullet. Indeed, experience elsewhere—and this is a global issue, as you have heard repeatedly—illustrates that most anti-counterfeiting measures have been exceptionally unsuccessful. The proof is in the data.

Counterfeiting is widely viewed as a growing international phenomenon, even in those countries that have adopted tougher border measures or criminal penalties. It is easier to obtain counterfeit products in Manhattan than in Markham, home to the much discussed Pacific Mall. If anything, we know that many legal reforms will do no more than provide the illusion of addressing the counterfeiting issue.

Sixth, we know that the WIPO Internet treaties are not related to counterfeiting. There's been a surprising connection made between counterfeiting and the fact that Canada has not yet ratified the World Intellectual Property Organization's Internet treaties. While there is considerable debate about the merits of these treaties, many analysts, including those who helped create those treaties, now have their doubts. There is no question that those treaties bear little relation to the counterfeit issue. No policy-maker should be fooled into thinking they are addressing counterfeiting by promoting treaty ratification.

Seventh, we know there is likely to be limited economic impact in Canada from counterfeiting. We know that the data on the economic impact of counterfeiting is very difficult to come by. The RCMP itself has acknowledged that there has been no comprehensive, independent study on the issue. That said, we know a number of things that suggest the economic impact in Canada may be fairly limited. First, the RCMP confirms in some of its studies that at least 90% of counterfeit products are produced outside the country, confirming that there are few counterfeit manufacturing operations within Canada.

Second, we know that counterfeit products and genuine products are not perfect substitutes. I think it's obvious that a person who purchases a \$10 fake Rolex watch would not otherwise purchase, and does not expect to receive, the \$5,000 genuine article. The same is true for the \$20 Gucci handbag that sells for hundreds of dollars in stores. While there are rightly concerns about lost retail tax dollars, the impact on name-brand sales is negligible.

Finally, we know that data in this area is inconsistent. Not only is it difficult to obtain, but the data that is released is so often inconsistent that it loses much of its credibility. For example, earlier this year there were reports that Canada was responsible for 50% of camcorder movies later appearing on pirated DVDs. Over the weeks that followed, industry sources began to alter that number, with suggestions that the figure was actually 20%, 23%, 30%, or 40%. Such a broad range of possibilities suggests that the industry simply does not know what is taking place in the marketplace. Moreover, a closer examination of actual industry data indicates that many of these figures are wildly inflated, with the actual number likely closer to 3% of movies released by the Motion Picture Association of America.

So where does that leave us? Given the uncertainty about the impact and severity of counterfeiting, the lack of reliable data, the inconsistent definitions, and the ineffectiveness of legislation elsewhere, the starting point ought not to be knee-jerk legislation that is unlikely to work and may be a solution in search of a problem.

Instead, I believe this committee can play a crucial role in ensuring that Canada provides global leadership in addressing the harms associated with counterfeiting. Based on what we know, the starting point is not new laws, but independent, quality research that will allow legislators, law enforcement, business, and the general public to better understand what is and is not a problem and how our country can move beyond rhetoric to address the legitimate public safety concerns.

Thank you.

**The Vice-Chair (Hon. Roy Cullen):** Thank you, Mr. Geist, for your testimony.

Having worked on the government side on this issue, many of the things you say run totally counter to everything I've ever known about the subject. But that's why you're here—so we can get a good balance of views.

I want to turn now to Mr. Hoffert. Do you have any opening comments?

• (1120)

**Mr. Paul Hoffert (Chief Executive Officer of Noank Media, Faculty Fellow, Harvard Law School, As an Individual):** Yes, I do. Thank you.

I'm a former chairman of the Ontario Arts Council and former president of the Academy of Canadian Cinema and Television, and currently I have faculty positions in the Harvard Law School and at York University.

This morning I'd like to discuss some threats and dangers of counterfeiting and piracy from perhaps a perspective different from the one this committee has heard in the past. To begin, perhaps it's helpful to look at these issues as being in three particular categories. Category one, I would suggest, is the sale of physical goods in physical stores, what we hear about a lot with the Gucci watches and handbags and plush toys and that sort of thing.

The second category, which the committee has also heard some testimony about, is the sale of physical goods, but in this regard, instead of being bounded territorily into the country of Canada by physical borders, so perhaps coming from outside the country, we have goods that are purchased on the Internet—everything from prescription drugs to movies or CDs and the same handbags—essentially, the same goods you could get in a physical store, but also probably augmented by goods that would not pass muster with the physical examination in a store, where the consumer has the opportunity to look the goods over and perhaps, as was suggested, look for a tag that says 100% original material and that sort of thing.

The third category, about which I ask the indulgence of the committee, and which may or may not be central to your purview, is the sale of intellectual property goods online directly, in the form of files, whether it's software, or music, or educational courses that may be branded with trademarks, such as McGill University or any other institution.

There are three large implications of those three categories of counterfeiting and piracy, in my view. In one situation, and in many cases, we have citizens who are duped, are fooled. They basically have product substitution; they think they're getting one thing and in fact they're getting another. They pay for one thing, and they think they're getting another thing. I think we would all agree that that's not a good outcome.

The second outcome, which hasn't been dealt with, and which I would suggest to the committee is at least as harmful, is the encouragement of citizens to break the law. In this case, to use the example that was just given, a Gucci watch is purchased for \$10. I think it would perhaps strain our belief that a consumer would buy a Gucci watch for \$10 and be duped into believing he's getting the real thing. That consumer understands that full well because of, in some cases, the absurdly unreasonably low price. Another case of this is the wilful circumvention of protections that have been put on products—as happens when a consumer goes to a shop and says, here's my game machine, remove the protection, or here's my cell phone, remove the protection, or something like that. We are encouraging a culture and a society that have a kind of disregard for law in general.

The third outcome, which has been discussed, and on which I won't dwell, though I think it's quite important, is that companies and individuals who invest in creating businesses and intellectual property lose money because they can't sustain a business model that's viable, because others are poaching their business at unfair low prices through counterfeiting.

•(1125)

I suggest that insufficient action by government has some rather severe consequences, one of which is that, in general, innovation is stifled, because if we don't have a society in which people are

rewarded for the investments they make in innovation through normal business practices, then there's less incentive for them to make those investments.

Secondly—and I would suggest to the committee that this comes under the heading of what I would suggest is the broad health and safety not just of individual citizens but of our culture, our government, and our ability to receive good government and live in the kind of society Canadians believe they are entitled to—there is a general breakdown of a sense of law and order, whereby we begin to accept that if you get a good deal at somebody else's expense, it's okay; that it's okay if the government does not provide a framework for commerce, a framework for entertainment, and a framework for getting information that's secure and reliable.

In that regard, I would ask that the committee indulge me for a moment. I just returned from China, where I have a business that I've been getting going for the last nine months or so. I've had a chance to see first-hand in another jurisdiction what I believe has some relevance for potential outcomes of government inaction on counterfeiting and piracy.

I'm sure the members of this committee are familiar, at least from the press, with the almost 100% non-compliance in countries such as China with any intellectual property, trademark, or other regimes that would prevent counterfeiting and piracy. I've had first-hand knowledge, speaking to companies in China—Chinese companies, not just foreign companies—who are unable to sustain business models because of the counterfeit and pirated goods that are available there.

In fact, the outcome of what has been a general government disregard for counterfeiting and piracy is that in the realm of counterfeit goods, there are now levels. The Chinese words are “*daoban*” or “*zhaoban*”. One is legal and one is counterfeit.

The quality of the counterfeit goods that have been accepted by the general population as okay has differentiated into tiers. You can buy a DVD of a movie on the street for about 70¢ or 80¢, but the quality of that movie is going to be pretty poor on the DVD, because somebody perhaps went to the back of a theatre with a video camera and basically just shot the movie. But if you pay more, you can get the same movie. And consumers are willing to pay more for differentiated levels of counterfeit. They'll pay more to get a movie that has Chinese subtitles and a better quality.

There are companies that are establishing brands that have value as counterfeit brands, based on the fact that they have different levels of quality for the intellectual properties they steal.

•(1130)

The question is, what's wrong with this? What's the impact?

In my view, there are some serious impacts that are pretty obvious in countries like China. The greatest one would be what I suggest is the overwhelming evidence throughout the world, and particularly in China, that this has led to a copycat economy, one that is not innovative. One does not go to China to design new and innovative stuff; one goes to China to get cheap knock-offs.

This is a problem for the Chinese, and it's one of the reasons they're interested in this issue and are trying hard, I believe, to begin to address it. It's one of the reasons for the government to address piracy and to address counterfeit. They simply realize that they can't disregard it if they are going to become a country that can innovate and have successful indigenous industries that will be able to thrive in a business world.

Those are my opening remarks.

**The Vice-Chair (Hon. Roy Cullen):** Okay. Thank you very much.

Mr. Sotiriadis, would you please take the floor?

**Mr. Bob Sotiriadis (Lawyer and Partner, Léger Robic Richard, L.L.P., As an Individual):** I'm a lawyer, a partner, in what's called an intellectual property boutique, which is a fancy way of saying that our law firm does almost only intellectual property law. It's an old firm. We've been working for rights owners since 1892.

I don't come here representing any association or interest group. Because of my conditioning, I'm predisposed to helping people who are IP owners. I do believe, with respect to the arguments of Mr. Geist, many of which are well founded and should be taken into consideration, that what it all boils down to is fairness.

We have a legal system. There are laws in place, and it's logical, in any event, to have an infrastructure that supports the laws you have in place. If you have speed limits on the highways, you have to finance police to make sure people aren't going over the speed limit.

The fairness aspect is that it's simply not fair. Maybe the Mafia isn't behind counterfeiting. Maybe there aren't that many batteries that explode each year. The fact is, there are honest people who pay the full price for something. There are honest people who try to create new things, who go through the rigmarole and the cost of creating them and who pay taxes and so on, and there are people who do not.

Those are my introductory comments.

What do I know? I don't represent the film producers of Canada or any of these groups. Our firm has represented luxury product makers, and so on. Just to give you an idea of the type of infringement or counterfeiting you get, it's not just luxury goods. Recently, we had occasion to seize counterfeit tractors, believe it or not—big tractors; big, two-ton tractors. One of our young lawyers went to a port in the Montreal area in her high heels and her business suit, actually went up to the containers, and seized these tractors.

The nature of the seizures is getting even more complicated and dangerous. We went to a hotel in Montreal recently. I don't know if you've heard of it. It's a classic. I think it's Ruby Foo's on Decarie. People were selling Louis Vuitton. Mr. Hoffert referred to different levels of counterfeit and acceptability. Well, it's at the point where now you can get a fine quality Louis Vuitton rip-off openly. Fine, prim, and proper people go to a hotel room, there's a bouncer in the hallway with dark sunglasses on, and when we show up, of course, everyone just scrams. It's as if it was a bust for a drug deal.

It's not just at flea markets and things like that.

In Canada now, the degree or the lack of fairness and the lack of seriousness that your previous witnesses have testified to—Mr. Webster and those representing interest groups—is not all exaggerated.

I've been practising IP law for over 20 years. I'm a past chair of the IP executive of the Canadian Bar Association. When I was on the executive and when I was chair, one of the things we did each year was meet with the Department of Justice, with Mr. Becker, in fact, who has already testified. This was in the late 1990s. At the time, there were some modifications to the Copyright Act going on. Some of you might be familiar with that. We were always told that IP was not a priority right now and don't count on us to finance helping you find counterfeiters. They didn't want the RCMP spending too much money on that. They had other things to do.

It's not their fault, and it's not up to Mr. Becker and his colleagues to decide what's to be done. It's the government's role, I believe, to pass legislation to provide those powers. That's the backdrop of what I've seen in Canada.

What I'll try to do in my testimony for the next ten minutes is share my experience with you. If I can be helpful afterwards in answering questions, maybe it will help, as well.

I'm also very much involved in the International Bar Association, which is a worldwide association of lawyers. I'm vice-chair, right now, of the IP section. Invariably, every year we have panels on counterfeiting and how to stop counterfeiting, and so on—and I'll be frank, as Canadian lawyers, we do go hide our heads in the sand. We're very embarrassed. We are lacking those simple recourses and little things that a lot of other jurisdictions have.

● (1135)

I take issue with the suggestion that the United States does a better job in enforcing because they themselves, as a government, have IP. The fact is, I think it's more like Mr. Hoffert mentioned: either you're a leading country and you're a value-added country, or you're a country that is developing. I think Canadians like to think of themselves in the first category.

So it is true. We lack a lot of very simple, easy to implement measures that I don't believe can lead to abuse.

I admit there are abuses in the seizure system we have in place. We are entitled, in certain circumstances, to apply in Canada for an Anton Piller order, which basically is a sweep. You're allowed to walk into a business without prior notice and seize infringing goods, packaging, and accounting records. You can even get a gag order to stop them from telling their cousin up the street that you're coming there next, and so on. There have been some abuses, but there are ways of controlling them.

I've pleaded one of the rare criminal cases involving counterfeiting. It concerned watch boxes that contained grey goods. I wasn't particularly envious of the resources of my colleague at the Crown. I felt sorry for him. He was an excellent, experienced lawyer who probably, with a good briefing from an experienced IP counsel, could have done a much better job.

We, of course, on defence, the private sector, have all the money, articling students, and binders, and everything, and the crown prosecutors are sitting there with 50 cases on their desk. This is of interest to them. And of course you have the private sector party who's pushing them, with Seiko, a big watchmaker at the time, and they were very upset.

I've read in the testimony about people complaining about the lack of training of the crown prosecutors, the lack of resources. I can tell you it's true. I've seen it first-hand. I'm not saying they would have won, but it would have certainly helped and it would have made things a lot more balanced.

I've also authored articles on the criminal provisions in the Copyright Act and the Trade-marks Act concerning IP. Again, my experience is to the effect that having some provisions in the Criminal Code, some in the Copyright Act, some in the Trade-marks Act, and all kinds of confusion in your testimony in the last while about piracy and counterfeiting, and so on—someone is going to have to teach the legislators, crown attorneys, and so on, what we're talking about.

Call it counterfeiting, or call it whatever you like. We have a Copyright Act that states there are certain things only a copyright owner is allowed to do. If you're doing one of those things and you're not the copyright owner, then you're not allowed to do them. It's not that complicated. For trademarks, it's the same thing.

Again, in regard to open counterfeiting, in the last year or so I had the occasion to carry out an Anton Piller order on the premises of a DVD replicator who got the glass master to make a DVD from a U. S. company, made DVDs of hundreds of movies, including one movie—well, I had two cases, actually, but one was concerning a very famous X-movie from the seventies, *Behind the Green Door*. This fellow was sitting in his premises, openly copying this film. These films, these DVDs, have copyright notices all over them, trademark notices all over them. We had to seize and close down his replicating facilities. We traced more replicating into Ontario.

We got another case for other makers of these types of movies in California as well. I tell you, in that case we actually traced—

The problem is that the Americans are coming to say, "You have to close these people down in Canada. They're making them there, but they're selling them in the States." By the way, it costs about a dollar to make. We found the counterfeit version of the film in Toronto, in a video store, for \$65. That's not fair. Normally, this DVD in the States is sold wholesale for \$10 to \$15 U.S., and I guess it retails for \$20 to \$25 U.S. We found it at some \$60 in Toronto, being made in Montreal for about 80¢.

It's a lot more present than we think. This wasn't underground or organized crime; this is just people who think it's okay.

• (1140)

It's so expensive to sue them, and the damages you can get are so low. It's extremely frustrating, and again, it gives us a bad name.

Now, is the fact that Canadian lawyers are embarrassed vis-à-vis their American colleagues a reason to completely change legislation? No. I understand that. That's not the reason. But is it fair? I think that's the question to ask.

I personally believe, and again, it's just Bob Sotiriadis speaking, that our tolerance and lackadaisical attitude in everyday things like luxury goods have created an environment in which now, yes, we do have these batteries and we do have these stuffed toys, and so on.

**The Vice-Chair (Hon. Roy Cullen):** Could I ask you, sir, to wrap it up?

**Mr. Bob Sotiriadis:** My wrap-up is that there are very simple measures that can be taken, such as making a registration system in customs so that rights owners can register there and customs officials would be allowed to communicate information; creating easier recourses; perhaps making an anti-counterfeiting statute and putting all the criminal infractions in it; and making Anton Piller orders clearly obtainable under very specific conditions.

I have more but I can throw them in when you're asking me questions. Perhaps someone would like to ask me a question about what my suggestions are.

**The Vice-Chair (Hon. Roy Cullen):** Okay. I'm sure everybody heard that, and there might be one who will take that on.

Thank you, Mr. Sotiriadis, for your testimony.

Now we'll go to the first round of seven minutes each.

Mr. Wappel.

**Mr. Tom Wappel (Scarborough Southwest, Lib.):** Thank you.

Thank you, gentlemen, for appearing today.

I'm not a regular member of this committee, but I note that this is our third meeting on this subject matter.

Just sitting here and listening, I think that whenever the committee begins its deliberations we should have in front of us the eight points the professor made. The chairman made some comments about how startling it was in contrast to the evidence that has previously been heard. But I think the professor has made some very interesting observations from what I would characterize as an objective point of view, being a professor of law, as opposed to someone acting on behalf of clients or who has produced some intellectual property upon which he's going to be making a profit. And there's nothing wrong with that. I'm very interested in, and was surprised to hear, the professor's testimony.

Let me just play the devil's advocate here. I wonder if there's a difference between a person who buys a \$10 fake Rolex, clearly knowing it's a fake Rolex—No one in the world would expect to purchase a Rolex watch for \$10. That's one side of it.

On the other side of it, we have the example that Mr. Sotiriadis gave us, where a fake product, I presume, is being sold as a real product for \$65. Surely that is fraud and there is some section under the Criminal Code that would deal with someone who is passing off a fake product as a real product and thereby ripping off a consumer, on the one hand, as opposed to, on the other hand, a consumer who knows perfectly well that he's purchasing something that is not the real item.

I'm asking both Professor Geist and Mr. Sotiriadis if there is something the Criminal Code already covers with respect to those people who are trying to charge real prices for fake goods—let's put it that way. Let's start with that.

Professor.

• (1145)

**Prof. Michael Geist:** The example that Mr. Sotiriadis gave focused on someone burning these DVDs and then selling them at huge commercial profit. It seems to me that's a pretty clear case of where the Copyright Act's criminal provisions would well apply, where someone is making a copy without authorization with the intent to distribute. If you have someone who is able to make multiple copies of this thing for 80¢ apiece and sell them for many times over that, with no authorization to have made those copies, that person faces significant potential fines as well as jail time.

So we do have provisions already within the Copyright Act that would address precisely that kind of behaviour.

**Mr. Bob Sotiriadis:** That's correct. The provisions are there. The enforcement, however, in criminal court is very difficult and arduous.

Usually the problem isn't really there. If you're lucky enough to find the DVD and then lucky enough—We had to take the DVD, send it to California, locate the original glass master maker, and trace it back to Montreal and so on. That's fine.

The tricky thing is the importing. Right now, importing a counterfeit is not something that is prohibited as such. Our customs agency can't do much about it. What I'm saying is that at that level it's drying up the demand by putting in something that's not expensive to operate, a registration system. If my clients want to block entry, they should have to have some sort of registration system with customs. That's it.

I don't know what else to say. Yes, it's—

**Mr. Tom Wappel:** Can I stop you there, because I only have a certain amount of time?

If you had to do what you had to do in order to verify this, how can you expect border agents to make a decision instantaneously when something happens to be in front of them, if it takes that much effort for a private company to determine that there was this fraud? I have a problem with—

**Mr. Bob Sotiriadis:** I don't know.

**Mr. Tom Wappel:** Exactly. I have a problem with throwing this kind of burden on a customs agent to make a decision at an instantaneous level.

**Mr. Bob Sotiriadis:** It's done in other countries. There are plenty of models to choose from. That's the legislator's role, to try to figure out a system that answers some questions. I don't expect any legislation to solve all the problems you've been hearing about for the last two weeks. But that is one of the easier ones. It has been done in other countries with a relative degree of success.

**Mr. Tom Wappel:** If the law is there, and if the law provides for substantial penalties, and if the Crown is either not prosecuting the law or the judges aren't giving the substantial penalties—? The law is already there. We already experience this in many other aspects of

maximum sentences not being given for whatever crime you want to pick, and yet the law provides for a maximum sentence. Any particular judge or crown prosecutor will not seek the maximum sentence, so the people come back here saying, change the law. Well, what's the point if the judges and the crown prosecutors aren't even using the law that is already there?

In my remaining time, Mr. Hoffert's point, however, is a good one, and that is I think this general breakdown of respect for the rule of law. I find it difficult how we as legislators can deal with that. Way back in the early nineties, when we were dealing with the GST, one of the arguments about the GST was that it was going to create an underground economy of people dealing with cash and costing the federal government billions of dollars. In fact, this indeed occurred, and to my personal knowledge, it still happens. If you pay cash for something, you don't pay the GST or the PST and they don't charge it.

That, to me, is a breakdown in respect for the rule of law. What the legislators can do about it, I'm not sure. It's the same with how we expect people to include all of their tips and all of their cash earnings in their declarations for income tax purposes. We know they don't.

So, Mr. Hoffert, what suggestions would you have for us to bring back a respect for the rule of law?

**Mr. Paul Hoffert:** I'm glad you mentioned that. I think the underlying issue with the other half of your example, which is the \$10 watch, is that by not taking action, by implicitly accepting that this is okay—I don't know if that was inherent in your question or not, but if one assumes that inaction could lead to that, we are encouraging individuals in our society to take the view that if there is what they might personally consider a victimless crime, what's the harm? They're saying, what am I doing wrong? For something that costs a lot of money, I'm getting a good deal. I'm a smart guy. I'm a smart buyer.

• (1150)

**Mr. Tom Wappel:** But you're not. You're getting a fake watch. You're not getting a good deal. You're getting a \$10 watch. It just looks like a \$10,000 watch.

**Mr. Paul Hoffert:** I won't deal with that. There are many books being written that say that the \$10 watch might be in many ways close to the quality of the other. It's not the issue.

**Mr. Tom Wappel:** Sometimes it's true.

**Mr. Paul Hoffert:** Sometimes it could be true, but here's the issue. Are those citizens going to be more likely, in April of each year, to cheat on their income tax because they think it's a victimless crime? So my view is there are larger issues at stake here other than just who loses money and who makes money. It's not just a matter of, okay, there's probably some poor manufacturer in a third world country and why can't I let him make some money instead of this big fat cat who makes Gucci watches? Underlying this is law and order and the ability to have a civil society—and that's my view.

**The Vice-Chair (Hon. Roy Cullen):** Thank you very much, Mr. Wappel.

Now, Monsieur Crête.



[*Translation*]

**Mr. Paul Crête (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, BQ):** Thank you, Mr. Chairman.

Thank you for your testimony. You probably know that today is the World Intellectual Property Day. The subject of this meeting is then very timely.

I have four short questions. First, has there been a significant change since globalization? Has the opening of markets changed the counterfeit market?

Second, is there a jurisdiction which is doing better than other countries in the fight against counterfeiting and that we could use as a model?

Third, if we do not change anything, what might be the consequences? Could you give us some more details?

My fourth question is to Mr. Sotiriadis in particular, but the others can also answer. Could you summarize the action plan that you would like to put in place, if you were the minister, to deal with that issue?

**Mr. Bob Sotiriadis:** I think that we should establish a registration system. Products and trademarks should be watched by customs officers. Furthermore, they should create an offence for possessing counterfeit products for resale purposes. Furthermore, the legislation should provide for higher penalties for counterfeiting and not for simple product imitation or classic counterfeits.

There should also be a higher fine for a second offence. Someone in Montreal has been twice the object of a seizure and an order from the court. He was copying books from McGill University. He was condemned twice for contempt of court and finally he did some jail time. He was not particularly fearful. He operates a business in downtown Montreal.

Furthermore, in counterfeit cases, summary enforcement tools that will require as little procedure as possible even if we have to put in place safeguard systems such as high bonds, protections for defendants, responsibilities for the lawyer doing the seizure, etc.

I can only answer one other question. The model country is France.

I am not an expert on globalization. As concerns its consequences, I do not think that I have the necessary qualifications to answer that question.

**Mr. Paul Crête:** Are there additional answers or other aspects that you would like to raise?

[*English*]

**Prof. Michael Geist:** I think you've raised a number of interesting questions.

Have things changed due to globalization? I think they probably have. Technology and the Internet have clearly made it both easier to copy and easier to distribute. I don't think it's necessarily a surprise that you're looking at these issues today as opposed to perhaps not seeing it as a critical issue even a few years ago. Technology is unquestionably making a change.

The question as to whether or not there is a model out there is perhaps the most challenging one. We'd all love to be able to point to a particular country that is doing very well on this issue and come up with the right legislative framework. I would suggest to you there isn't a model out there. We have a large number of countries moving in any number of different directions, most of them unsuccessfully, given the fact that we see this as a global issue.

You mentioned it's World Intellectual Property Day. This week the U.S. government will likely release its special 301 report, where it will unquestionably criticize Canada for the steps it has taken on issues related to copyright. But it's important to note we'll be joined by dozens of other countries that the U.S. will also criticize.

In fact, some of the recommendations the U.S. has been making on an anti-camcorder law, for example, haven't been adopted in virtually any other country outside the United States. There are only a handful of countries that have done so, and even in the U.S. it's been spectacularly unsuccessful.

Even with France as a proposed model...it's true that France certainly has a number of very powerful luxury goods companies and has done very well on some issues. But on other issues, they've taken steps that are perhaps interesting and could also serve as a model. For example, two weeks ago they established the first agency to look at issues on digital rights management, the technical locks that can be used to lock down CDs and DVDs, out of concern for the lack of interoperability, what consumers might lose, and the potential that these technologies might well be abused.

We see that many countries are taking a range of different approaches. I'd submit, as I did in my comments, that no one is for counterfeiting. Everyone is looking for the right solution.

I think to reach the right solution we really need more independent study and analysis about what is taking place in our own country. I think the reality is that once you get beyond some of the rhetoric, we just don't know.

•(1155)

**Mr. Paul Hoffert:** While I'm not an expert, I think we might look to countries other than the large United States or France as the two polar opposites that we frequently cite.

The Scandinavian countries come to mind as countries that in general have a very strong regard for intellectual properties. They are leading the world and leading Canada as well within the G-7, in terms of the success of industries like Nokia cellphones, etc. High levels of innovation are leading to great commercial success.

[*Translation*]

**Mr. Paul Crête:** About the big tractors—In my riding, someone who sells tractors came to see me three weeks ago to tell me that it was impossible that a certain type of tractor be sold at such a low price. It is a reality. We talk about products costing hundreds of thousands of dollars. In the case of those items that are not luxury products but industrial products, the fact is that something should be done. The Standing Committee on Industry, Sciences and Technology is beginning a study on that issue. It will focus on legal sanctions, but it will also deal with that issue.

I shall come back to my question. If we leave the law unchanged, are we going towards the same position as China which was described earlier by Mr. Hoffert, or are we simply maintaining the status quo? The problem is rapidly growing. When you tolerate that kind of thing, you tend to tolerate all sorts of other things in our society. Do you think that this raises a real danger or that it is only a reality that we must accept?

**Mr. Bob Sotiriadis:** I can see, from my files, that we normalize more and more that kind of behaviour. Logically, when a behaviour is penalized—as Mr. Hoffert said earlier—it raises the tolerance level for illegal activities and make them more prevalent. Furthermore, with modern digital technologies, the tools used for counterfeiting are more diversified. Are they more numerous? I do not know, but they are more diversified and more sophisticated. The importation of counterfeit tractors certainly brings with it potential jail time and penalties.

**Mr. Paul Crête:** As concerns China, you have—

**The Vice-Chair (Hon. Roy Cullen):** Mr. Crête, unfortunately, your time is up.

[English]

Now, over to you, Mr. Norlock.

**Mr. Rick Norlock (Northumberland—Quinte West, CPC):** Thank you very much, gentlemen, for coming here this morning, in particular Mr. Geist for offering us a different take on the issue we're looking at currently.

I'm going to ask all three witnesses a question about a scenario, and then you can tell me what the difference is in your view.

A person owns a production company and they make a movie, so they have to hire a whole lot of folks, spend a lot of money, invest a lot of their time, etc., in producing the movie, versus someone who just takes that product and spends a bit of time and money at reproducing it.

I guess, to get to your personal situation—I'm speaking to the lawyers—what's the difference between a company that hires pharmacists and doctors and purchases some of the best equipment on the face of the earth to produce a product that does a lot of good for people, versus a person who invests some time and some effort in going to a strip mall, a person who has a very good or reasonable knowledge of the law and goes to a good counterfeiter to produce a nice certificate saying he went to a particular university and obtained a law degree, and then opens his door and gives people legal advice? What's the difference between those two people?

Why should one particular group of people, because they have greater influence on the law, have more influence than another? When people see a product, shouldn't they be able to have reasonable confidence that a lot of research and development—a lot of effort—went into it, making it worth what they're paying for...as a person who wants to take advantage of good faith?

Perhaps we could start with Mr. Geist.

• (1200)

**Prof. Michael Geist:** I must admit that I don't see a huge amount of difference between the two, and in fact I don't think the law necessarily treats them differently either. Someone who wrongfully

practises law using a fake degree is going to be subject to some sort of charges, and the law can crack down on that. As we heard, someone who burns copies of DVDs also faces the prospect of both financial penalties and jail time under the Copyright Act when they intend to distribute these.

So I think the law already seeks to address both of those. As I said in preface to my remarks, no one is suggesting that counterfeiting is a good thing. The second example is more of a fraud than anything else, but to the extent to which these things occur in society, I think everybody would agree that it's appropriate to take action.

I don't know that this is really the question you're facing, though, when we're talking about the "Canadian counterfeiting question". The question here, as we heard earlier, is, do we already have laws to address many of these issues? I think the answer is yes. Are there some things that are more severe and more problematic than others? I think the answer is again yes.

I'm a father with an eight-year-old, a six-year-old, and a three-year-old, and the stories of exploding batteries and other sorts of health and safety issues scare me too. So when I hear the RCMP—as they said yesterday before the industry committee—say that they have limited resources and with all due respect to the Hollywood studios are going to focus on health and safety first, I'm thankful that this is their perspective. I hope that's the perspective we generally bring to this issue: that there is a difference between an allegedly pirated movie and an exploding battery. If we're going to put resources and attention into some of these issues, then surely it's to protect the health and safety of Canadians.

**Mr. Rick Norlock:** Thank you.

Either one of you may comment.

**Mr. Paul Hoffert:** Professor Geist and I actually agree on the broad strokes, but when it comes down to interpretation, we don't always come to the same conclusion.

I agree that there's a fine and a difficult line that the government needs to draw between balancing the need to prevent harm from coming to Canadians and the need to let business run in a less fettered manner and in a manner less expensive to police. However, I still believe very strongly that the two examples Professor Geist uses—one in which there's a case of an exploding battery and the other one in which there's a case of Canadian consumers who are buying illegal goods—are both serious. I don't see one as more serious.

In fact, there was a situation just a while back in which computer batteries were catching fire. In that particular case, the large manufacturers such as Dell and Apple had been purchasing their batteries from reputable, non-counterfeit sources such as Sony, and the net result was that all the consumers who had bought computers with faulty batteries were sent new batteries, and there were remedies. I would put it that the line between that and the fact that we protect a company that has a name like "Sony", which is a big international company in the entertainment business—Theirs should not be dealt with differently than a little battery that's made by a small company with no name and is counterfeit. I think it's all part of the same issue.

And it's a larger issue. It's really an issue of whether we want to live in a society in which we encourage people to save money at the expense of having a framework that's fair or in a society in which we don't. If you look at it from a point of view of fairness, I don't think there's a big difference between the exploding battery and people ripping off DVD movies.

• (1205)

**Mr. Bob Sotiriadis:** I agree with the last comment on the basis of fairness. I know everything is a question of resources and compromise when it comes to legislating one problem vis-à-vis another. There are competing interests.

I still think one of the inexpensive ways is to make it easier for the private sector, with their civil remedies, to do this work. If at least we had full-fledged civil remedies and perhaps a clearer statute that identifies certain infractions or creates new ones, we wouldn't have to ask the government to do everything for us. That's what I think could help, at least as a compromise, vis-à-vis real health and safety issues versus luxury goods and movies.

**The Vice-Chair (Hon. Roy Cullen):** Thank you very much, Mr. Norlock.

We'll go to our second round now of five minutes each.

Mr. Chan.

**Hon. Raymond Chan (Richmond, Lib.):** Thank you, Mr. Chair.

I am sorry that because of other commitments I couldn't listen to Professor Hoffert's and Professor Geist's presentations.

I would like to follow up on what my colleague Mr. Wappel started to talk about: the breakdown of the law and order system. That is an overriding problem that I'm really concerned about—besides the health and safety factor, which of course is important. If you don't deal with the fairness issue to make sure our youth grow up in an environment where the Canadian values of honesty and fairness are preserved, you will see a deterioration in behaviour, and eventually we'll lose what we have.

When I put it into the context of what we're dealing with today and other law and order issues on civil litigation, because of the cost of the legal system we might not get fair play decisions in our daily operations. Also, with the youth justice problem, a lot of the property crimes are not being addressed because of a lack of resources.

If I put this all together, the biggest problem we face today besides legislation is the lack of resources in the whole law and order sector. I think we need to put more resources in it at this time when we have surpluses in government. This is the sector we have ignored for a long time—enforcement, administration, application of the law, and the criminal penal system. How do you respond to that?

**Prof. Michael Geist:** Thanks. It's an interesting comment. I'd raise a couple of things, since it's a theme that has recurred with a number of people who have spoken.

First, this notion that people who buy fake Louis Vuitton handbags are going to cheat on their taxes strikes me as a dramatic stretch for which there's absolutely no evidence at all. The practical reality is that people who buy that \$10 handbag know they're buying a \$10 handbag. We can argue whether that is fair or unfair, good or

bad. I don't think it's necessarily a good thing. Then again, when I know of family members who buy the \$1,000 handbag, I'm not convinced that's a good thing either.

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

**Prof. Michael Geist:** I think the practical reality is that these are not people who are necessarily more likely to commit crimes, or the like. I just don't see any kind of evidence for that at all.

I do think there are some people whose respect for certain sorts of laws have diminished. Let's take intellectual property, for example. But I would argue that much of the lack of respect has come from the industry itself, which has failed to respect the customers.

The person who buys a DVD while on vacation in Europe and brings it back to play on their DVD player finds that it will not play because it is locked down. The honest consumer buying a legitimate product finds that the industry is stopping them from playing it. The honest consumer who goes out and buys a song from some of the online music services and then tries to play it on their iPod finds it's not interoperable and won't play. The honest consumer who wants to use the DVD to make a parody and take a portion of it finds that the content is locked down. So even though our legislation might well have things like fair use or fair dealing to permit that, they're not permitted to do so.

If we're going to talk about lack of respect, I think it's a two-way street here. In many of these areas there has been a lack of respect for the customer. When we talk about embarrassment and embarrassment of laws, I run into many people who are deeply embarrassed that Canada doesn't have a parody exception that would allow them to speak out. It doesn't have fair use in the way the U.S. does. So there's plenty of embarrassment to go around, if we want to talk about where our laws could get to in addressing all the concerns of Canadians.

• (1210)

**The Vice-Chair (Hon. Roy Cullen):** Thank you, Mr. Chan.

Monsieur Ouellet, you have five minutes.

[*Translation*]

**Mr. Christian Ouellet (Brome—Missisquoi, BQ):** Thank you, Mr. Chairman.

I shall talk from my own life experience and that of my father. He was an architect and I am one also. Fifty or sixty years ago, in the beginning of contemporary architecture, architects started copying the work of other architects who got mad and started legal proceedings but to no avail.

Then there were the technicians. They were not trained as architects, but they started preparing architectural plans at a much cheaper cost by copying architects. The GST and other costs were lower. We could not stop that either. The only thing we managed to do was to better inform the public on our services and their costs. To build a house, the services of an architect cost around \$15,000 when those of a technician cost \$2,000 or \$3,000. Those services were not the same and people had to be informed about it. Things went far enough that finally, the province and the Order of Architects agreed to solve the matter clearly so that there are now architect services and technician services. It is legal. We went from an immoral system, as it was not acceptable to copy, to a moral system. We now accept that situation.

I think that this trend is the same in many other areas. What have been the consequences for architects? They had to work harder to be able to give a more interesting product, to renew themselves constantly, to be more at the avant-garde, to be faster than others. It has been very positive.

Following that I taught at university for several years. What happened at that time? Students started submitting plagiarized work. In view of that situation, teachers had to be better informed, read more, to avoid being fooled by students. It has been very positive. It was immoral but positive.

The same thing happened in the area of copyright. Books are copied, but they get subsidies from the government. More books are subsidized. The provincial governments, but particularly the federal government, gave significant support to the publishing industry for the creation of new books. Even if they are copied later, their owners have the time to make money. There is a line of thinking which allows us to see the positive consequences of that.

We talk about China, but let us not forget that in the past, there was a time when Japan was producing very poor quality products. It is not true anymore. It is a matter of time. We talk about tractors and I think that if you paid \$100,000 less for a tractor than someone else, unless you are completely stupid, you should know that the quality will not be the same. We morality according to 19th century norms. You agree with me, do you not? We are not considering the fact that certain changes might be positive. Mr. Geist, I entirely agree with you that health and security should be the prime considerations.

There is also fraud that is committed mostly by electronic means. People are told that they won the jackpot, for instance, or that they got a wonderful job and they are asked money to get it. That kind of trend is mostly coming from the United States. The police is trying to solve that problem, but does it have the necessary tools? I am not really advocating public order at all costs. On the contrary, I believe that all this brings changes. However, in some cases, the result is not necessarily positive. Batteries are copied, but some day they will be all at the same price and it won't go further. If it is a type of battery that is dangerous, it is another matter, but otherwise, all this has positive results. Some individuals are extorting money from people that are naive and unsuspecting. What can we do about this?

• (1215)

[English]

**Prof. Michael Geist:** I think a lot of those points are really terrific. There are people out there who argue that counterfeiting

forces people to innovate when they're facing competition from both legitimate competitors and otherwise.

I'd also note that this notion that Canada is not innovative, or somehow we're going to suffer from innovation because of our current state of affairs, simply doesn't give enough credit to the amazing creativity and innovation we already see. For every Nokia we have a Research in Motion, a world leader in its delivery of technology. Our Canadian musicians are world leaders. In fact, Canadian musicians have succeeded over the last number of years in increasing their profiles both internationally and at home.

So I don't know that the sky is necessarily falling, although when we hear about the real health and safety issues I think there are legitimate concerns. When we also hear that the RCMP is laying double the number of charges and is prioritizing those issues, I think there is good reason to feel somewhat optimistic that law enforcement has its priorities straight and clearly has some of the powers it needs to try to deal with the issue.

**The Vice-Chair (Hon. Roy Cullen):** *Merci beaucoup, Monsieur Ouellet.*

I don't know if any of the other panellists want to answer. The time is essentially up.

Mr. Brown, I'll turn to you now. You can take the floor.

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

I want to thank our witnesses for coming.

I am very curious about a number of things. First, I know our witnesses—at least Professor Geist was quite quick to be concerned about the testimony we heard from the group that was concerned about counterfeiting.

What is it that you fear? I have a feeling that if you were to review the testimony from other witnesses you would get the sense that committee members were strongly opposed to counterfeiting and seeing the government clamp down on it—So what is it? Clearly you have a somewhat different view. You were quick to want to come in front of us. What is it you fear the government would do that makes you want us to see a different view? What is it that you think the government could bring forward in terms of legislation?

**Prof. Michael Geist:** That's a terrific question. I'm always glad to have people read my blog.

I thought it was a very powerful presentation from the witnesses, and my sense was that the committee was very sympathetic. If the government was to move forward with health and safety issues, as I say, I think we first need to better understand where the shortcomings in the law are. But just for the purposes of argument, if we accept that there may be some things we could do to bolster our laws that are concerned with health and safety, I think that's a very good thing.

However, my concern with this file generally—and it really relates to the very first issue I pointed to—is the attempt to use the counterfeiting umbrella to cover all sorts of other things.

There are other legal issues that could be recommended. I'll give you one example. Ratification of the World Intellectual Property Organization Internet treaties has caused an enormous amount of controversy in countries around the world. Even in the United States, the architect of that law has now admitted that the laws have been unsuccessful. In my view, they have negative consequences for privacy, for security research, and for innovation more generally. I think it has had a negative impact, in many respects. The laws are a decade old. They don't look forward.

My concern is that we could see a government take that broad look at counterfeiting and move forward, not just on the core issues that may need something such as health and safety, but as an opportunity to venture into other areas. The impact would be felt much more widely than merely dealing with the fake Gucci bag.

• (1220)

**Mr. Gord Brown:** One of the things we're hearing a lot about is that CBSA doesn't really have the powers to confiscate counterfeit goods. Do you have any problem with the CBSA getting more powers to be able to confiscate those goods?

**Prof. Michael Geist:** I think if we had the appropriate counter-balances to ensure that what they are confiscating is counterfeit, perhaps it would be helpful. As I think we already heard, though, that strikes many as a difficult burden to put on border security.

I note, in many instances, that the umbrella of counterfeiting begins to include things like grey market. Just in the last couple of months the Supreme Court of Canada heard a case where you had one company trying to stop the importation of chocolate—this literally involves Toblerone—in arguing that the design of the mountain was copyright infringing. It was legitimate chocolate that was being brought in.

I have some concerns that if we pressure border authorities, in some instances they may not only confiscate the stuff we might agree we want to see confiscated, but they may venture into legitimate products that don't pose health and safety issues and that in fact are legal to be sold in this country.

**Mr. Gord Brown:** Okay. You don't have any problem with it becoming illegal to take a video camera into a movie theatre to make a movie?

**Prof. Michael Geist:** It's already illegal to go into a—

**Mr. Gord Brown:** Well, it's not illegal to take that video camera into the theatre.

**Prof. Michael Geist:** No. It is an infringement of copyright law to make an unauthorized copy of that movie. Full stop. If you go ahead with the intent to distribute, as we are led to believe is occurring, that then brings both potential jail time and penalties.

I would argue that we already have legislation to deal with this particular issue. Even with that, I would note two things. One, the U. S. has seen a proliferation of that kind of legislation, and it has been unsuccessful. Indeed the president of the National Association of Theatre Owners in the United States noted that the issue has expanded from a New York-Los Angeles issue to 15 states where this is now happening. I would also note that if we are going to criminalize that, we have to be very careful. Everybody walking in with a cellphone nowadays is effectively walking in with a

camcorder as well. We have to be careful that this captures what I think copyright law already seeks to capture, which is those who are camcording for the purposes of distributing and actually profiting from that activity.

**The Vice-Chair (Hon. Roy Cullen):** Thank you, Mr. Brown.

For the record, Mr. Geist, you made a comment that the notion had come up that it was a difficult burden to put on customs authorities to search and seize with that mandate in terms of counterfeit goods. I think Mr. Wappel threw that out as a proposition. What I thought I heard was Mr. Sotiriadis saying that there are many effective models around the world that do that. But anyway I'll just leave that there.

We'll go back to Mr. Wappel.

**Mr. Tom Wappel:** Far be it from me to lead the witness.

Mr. Sotiriadis, I'm going to read you a quote from an article by Professor Geist:

While the USTR report and its supporters seek to paint Canada as a laggard on copyright, this rhetoric ignores the fact that Canada is compliant with its international obligations and that Canadian law is consistent with the laws in most countries around the world. For example, of the three highlighted issues (WIPO ratification, copyright extension and camcording), only three of 192 United Nations members — the U.S., Singapore and the Czech Republic — have completed all three reforms.

Would you comment on that statement?

**Mr. Bob Sotiriadis:** I'll answer like a good lawyer. I think this statement is quite correct. I don't think the United States, necessarily, should dictate our decisions on our own legislation. The United States have in fact, to be quite frank, themselves not followed up on their own treaty obligations in such areas as patent law, for example. They complicate things for people from other countries who apply there.

I much prefer to use the fairness criteria. It's neutral. We don't get into arguments about whether it's organized crime, millions of dollars that are lost, or batteries. We don't have to argue whether it's electric goods, people, pretexting, or that we need safety in batteries. I think when we stick to a simple question of fairness and respecting the law and really putting in stronger civil remedies, at least, that don't cost much, we avoid a lot of this unnecessary debate.

I understand Mr. Geist's frustration with all those amazing statistics you get. They're very difficult to follow up on and they are contradictory.

• (1225)

**Mr. Tom Wappel:** It's interesting what you say, because I'm hearing two different possible approaches: one is somehow to further criminalize matters in some manner, which obviously would involve the Criminal Code, which is federal jurisdiction; secondly, as you put it, to make civil remedies easier, which then would involve the Copyright Act and the trademark situation.

I'm curious as to how—

**Mr. Bob Sotiriadis:** Excuse me, or a new anti-counterfeiting act.

**Mr. Tom Wappel:** This would be enforced civilly, presumably, by the people who are allegedly injured by the actions, taking it away from the resources of the federal government, except to the extent that you would have to, presumably, go before a Federal Court judge. So you'd have to have Federal Court judges, and one presumes the infrastructure that flows from that, although you don't need fancy trappings and things like that for a courtroom. You could have a courtroom in a simple room.

Is that your recommendation, then, if I hear it correctly, that it should be more moving towards simplified civil procedure to allow the people or the corporations that allege that they have been hurt by these actions to deal with it in a civil litigation way amongst themselves in the Federal Court?

**Mr. Bob Sotiriadis:** For me, the ideal situation would be to beef up the criminal section...a lot of the suggestions you've received. I think my suggestion is that if it's a question of competition for scarce resources and there are serious worries about abuse in the criminal system and the fact that there are criminal remedies that exist and why not use them and so on, it will, at the very least, give rights owners easier access through the civil remedies. That's what I'm saying.

I would be very pleased if we had more resources from the criminal side, and I also believe the customs part is part and parcel with civil remedies.

**Mr. Tom Wappel:** That's fair enough. My own personal bias, just hearing the evidence—and by the way I'm very happy I came today, as it's very interesting—is that the law is already on the books to prevent those people who are breaching the Criminal Code. In 99% of the cases, the penalties that are imposed by the criminal law are already there. They're simply not being imposed by the courts and by the prosecutors who are asking for the penalties. That's my bias. Sorry.

Thank you, Mr. Chair.

**The Vice-Chair (Hon. Roy Cullen):** Go ahead very quickly, please, Mr. Geist. We're just about out of time.

**Prof. Michael Geist:** I have just a very quick intervention.

I'm certainly sympathetic to those who see the potential for civil remedies to try to deal with this issue, but I think it's important to recognize that it's necessary to be somewhat cautious even there. In the United States they have statutory damages, creating the prospect of damages of \$150,000 per infringement. That has an enormous amount of impact when you're suing teenagers and grandmothers, for certain, with allegations of peer-to-peer file sharing, for which the liability runs into the millions or even billions. But it also has a significant impact on potential innovation, when businesses looking to push the envelope sometimes are advised by their counsel that they're pushing the envelope and that there's the potential for some real liability.

We're one of the only other countries in the world to have statutory damages as well, at \$20,000 per infringement, so let's note that. Pushing forward on beefing up the prospect of taking action from a civil perspective has the potential for some negative consequences as well.

**The Vice-Chair (Hon. Roy Cullen):** Thank you very much, Mr. Wappel.

I'll respect the role of the chair and stay out of the debate further.

Mr. Hawn.

**Mr. Laurie Hawn (Edmonton Centre, CPC):** Thank you, Mr. Chair, and thank you to the witnesses for coming.

I missed the last meeting, unfortunately, at which some of this was discussed.

Professor Geist, you talk about the rights of the consumer versus the rights of the producer and who makes the calls and so on. How far would you go in the suggestion of fairness to the consumer, in allowing a consumer to copy part of a DVD but not all of it, or part of something but not all of it? How far would you go, and who makes that call?

• (1230)

**Prof. Michael Geist:** The Supreme Court of Canada has already tried to make the call, arguing that we have fair dealing under the current Copyright Act, which, it argues, ought to be interpreted in a broad and liberal manner such that even copies, in certain circumstances, of full articles would be seen as fair dealing.

In the United States they have an even broader approach of fair use, which sometimes allows for even more. The problem I think we see is that technology, and sometimes the law supporting that technology, trumps even some of those very basic rights.

So even if we could agree that copying a song for personal purposes is covered by the private copying levy already, so that's already being compensated, if we're talking about movies, someone who, for the purposes of parody or education or a range of different things, might want to copy a portion of a DVD—I think it's pretty clear—ought to be entitled to do that. I think the Supreme Court of Canada would agree, and my fear is that technology is taking away those rights.

The prospect of these WIPO treaties will further take those rights away such that someone who seeks to exercise those rights might well find themselves subject to copyright infringement. Teachers who want to take a segment for something might well find themselves violating the law if they try to educate their students in that fashion.

**Mr. Laurie Hawn:** Okay, thank you.

It's been suggested that Canada's customs regime fails to meet some basic requirements of model legislation under the World Customs Organization.

Very briefly, first, can you explain what the World Customs Organization is, who its members are, and what powers to advocate are given to customs officials in its model legislation? Perhaps Mr. Sotiriadis could answer that.

**Mr. Bob Sotiriadis:** I can't answer that.

**Mr. Laurie Hawn:** Does anybody know who these guys are? No? Okay.

We talked about best practices and models from other countries and so on, whether that's France or otherwise.

Are you aware, Professor Geist or anybody, of border enforcement regimes that are in place in Canada's major trading partners among the G-8 or anywhere else? What other regimes allow border enforcement officers to have the authority to seize counterfeit goods on their own authority?

**Prof. Michael Geist:** I believe some of our trading partners do have stronger border measures. The United States would certainly be one such example. The question becomes whether or not they're effective. As I noted, one only needs to walk down Canal Street in Manhattan to recognize that this is not exactly keeping counterfeit goods out of the country.

**Mr. Laurie Hawn:** In your article, "Counterfeiting Can Kill"—I guess it was on your blog, and I'm sorry if I violated copyright by copying it—you suggested, and this is in reference to the last meeting that was held on March 29, that there was some focus on the desire to alter proceeds of crime legislation to include copyright, but that it was the copyright industries initially that had wanted it excluded. Have the copyright industries changed their mind, and if so, why?

**Prof. Michael Geist:** Yes, they have changed their mind. Initially they wanted it excluded. The sense was that the civil remedies, I suppose, might well allow them to go after the potential proceeds as opposed to the Crown itself through proceeds of crime. They now have, obviously, before that committee suggested that was something they'd like to see changed.

**Mr. Laurie Hawn:** Okay.

Mr. Sotiriadis, you had asked for anybody to ask you to expand on the ideas you didn't get to expand on.

**Mr. Bob Sotiriadis:** I mentioned a few initiatives from the civil remedy point of view and the recordation system, with customs beefing up some resources, training.

Regarding the IP bar in Canada, we're used to giving training sessions. All the experienced counsel would be very happy to help with the crown attorneys with continuing education. Mr. Lipkus already mentioned that in his testimony.

**Mr. Laurie Hawn:** Currently there are two departments with the responsibility for copyright policy in Canada: Canadian Heritage and Industry Canada. Does this cause a problem? Should it be given to one department only, and if so, which one, Professor Geist?

**Prof. Michael Geist:** That's a loaded question. The practical effect has probably been a good one in Canada. The perception is that Canadian Heritage and Industry Canada bring different perspectives to the table. Given the complexity of copyright, having two departments seeking to work through some of those issues probably leads us to a better result in many instances, than if one side alone were given the mandate.

**Mr. Laurie Hawn:** Have any of the three of you, Mr. Sotiriadis, seen any conflicts there, or has this resulted in any conflicts?

•(1235)

**Mr. Bob Sotiriadis:** It's a fair assessment. There's industrial property and intellectual property. This is an old distinction we used to make; I think it was sort of dropped by those two departments.

**Prof. Michael Geist:** If I might just add, the more difficult challenge we face in developing the appropriate policy is ensuring

that all stakeholders are heard. Certain groups are well able to ensure that their voices are heard. They have the dollars, the lobbyists, and so on.

There are stakeholders on all sides, whether on the industry side, or that of some of the copyright collectives, or of the industry associations often representing foreign interests.

My concern is that these sorts of issues now impact individual Canadians in ways they never have before. I don't know that we have frameworks in place to ensure that those voices are heard—perhaps occasionally in your e-mail inboxes—but generally some of those voices aren't heard as effectively. We're missing a very important part of the puzzle if those voices and those considerations aren't taken into account.

**The Vice-Chair (Hon. Roy Cullen):** Thank you, Mr. Hawn. Unfortunately, the time is up.

If we have no one else on this side, we'll go to a concluding—

Sorry, Mr. Wappel.

**Mr. Tom Wappel:** Sorry to be a pest. Somebody handed me this; it's kind of interesting: "Members of the European Parliament back criminal sanctions for counterfeiters." This is Wednesday, April 25, so it's pretty topical. "In an effort to clamp down on piracy and counterfeiting, Parliament"—that's the European Parliament—"endorsed, on 25 April 2007, measures for fining counterfeiters up to €300,000 or, in the most serious cases, jailing them for up to four years."

I don't know what "Parliament endorsed" means. Does that mean it passed a law or some committee—? If any of you have any further knowledge about this article, could you please expand on it for us?

**Prof. Michael Geist:** It's an interesting example of the timelines and shift in perspective on some of these issues. That was proposed fairly recently and made its way through the European Parliament quite quickly.

Over the last two to three weeks, thousands of Europeans signed petitions, calling on the European Parliament not to adopt that particular provision. Yesterday's vote was far closer than anyone had initially anticipated.

The indications in a number of reports were that it's just at the European Parliament stage, and then it would go to the European Council. The sense is that at the Council this will become far more contentious as people begin to recognize that this issue is more complex than simply upping the penalties.

**Mr. Tom Wappel:** Mr. Sotiriadis, do you have any comment on this?

**Mr. Bob Sotiriadis:** No, but you also have to keep in mind that in Europe there are some very interesting recourses that allow rights' owners to go from jurisdiction to jurisdiction in counterfeiting situations, which I can't expand on right now.

With those torpedo recourses, they've really—notwithstanding the more complex structure than ours as one country—managed to put in place some very efficient measures that we should look at, considering that they're different countries all acting in concert.

**Mr. Tom Wappel:** Okay.

The article also says, “Economic losses related to counterfeiting are estimated at around €500 billion per year through lost business opportunities and tax revenues, and some fake products also present a serious health threat.” I don’t know, but that seems like an enormously huge amount of money to estimate as a loss.

I have to believe that those estimates would include what we were talking about at the very beginning. Assuming that someone who buys a \$10 Rolex would also be someone who would buy a \$10,000 Rolex, they didn’t buy the \$10,000 Rolex because they bought the \$10 Rolex. In my view, that’s a false assumption, because it’s a different consumer in the two instances.

**Mr. Bob Sotiriadis:** But that’s the thing everyone thinks of. You have to look at it this way. At the Burlington Coat Factory in the United States—it’s a very big reputable discount store—I had a case where they were selling very good quality fake Burberry. Just one individual imported the stuff from ex-authorized factories in Italy that weren’t authorized anymore, and it sold for, geez, a couple of million dollars’ worth. The price was almost 20% or 30% cheaper than you’d get at the new store, so you would think, oh, it’s just not this year’s model or something. The same thing for movies, for example. Yes, when you get them at the retail level at a pretty high price, that’s where the comparison should be made.

• (1240)

**Mr. Tom Wappel:** That’s because the sellers are trying to convince the buyers that they’re getting the real thing, although perhaps last year’s model, and that’s fraud.

**Mr. Bob Sotiriadis:** No. Often even reputable department stores sell counterfeit goods unknowingly. It’s the person who imported them who got good quality, put the right labels on, he’s the person who’s making us lose all this money. From what I understand, the policy is not to go after retail counterfeiting. The store is not a counterfeiter. They happen to be selling what we call infringements, or—

**Mr. Tom Wappel:** They’re an innocent buyer.

**Mr. Bob Sotiriadis:** Yes, and that’s where the price goes up fast on the lost goods, you’re right. But \$10, \$10,000, maybe they throw it into their figure, but it goes up fast. It goes up very fast.

**Mr. Tom Wappel:** Thank you.

Thank you, Chair.

**The Vice-Chair (Hon. Roy Cullen):** Thank you, Mr. Wappel.

That’s going to wrap it up. I should point out that Interpol estimates about 5% to 7% of world trade is now counterfeit goods. In fact, I was just in Europe at the Council of Europe, where they are doing a lot of work on this and trying to elevate the importance of it. The studies there are saying it’s 7% to 10% of world trade that’s now in counterfeit goods.

Nonetheless, I want to thank all the witnesses for coming. Of course, as the name of this committee would suggest, we’re focused primarily on public safety and national security, and I note that the Standing Committee on Industry, Science and Technology is beginning some work, and I think they will delve, I’m sure, looking at their witness list, more into the piracy issues, as they do not affect us directly at public health and safety.

I have a request, Mr. Geist. You had mentioned the RCMP report *Project Sham*, I think it was called. We didn’t hear about that from the RCMP, to my recollection, and I think you accessed it through Access to Information? If you could make a copy of that report available to the committee, we’d much appreciate it. It would be quicker to do it that way.

Thank you again, ladies and gentlemen. We’re going to pause now for about two minutes, and then we have to come back in camera to deal with the item on the agenda, Bill C-279. I don’t think it should take too long.

Thank you very much.

[*Proceedings continue in camera*]









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