

A Road Map For Change: Taking Action Against Counterfeiting and Piracy to Secure Canada's Future Prosperity

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Today I am going to talk about a missing link in Canada's innovation agenda: specifically, intellectual property. At almost all levels of government, and even business discourse, it has been somehow overlooked. And it has been ignored to our detriment - economically and socially.

In 2002, WIPO reported that intellectual property represented 45 to 75 percent of the overall corporate value of the Fortune 500's largest companies. These figures would be no less true for small and medium enterprises here in Canada. And they should not surprise us. We are moving rapidly away from industrial, manufacturing and resource based economies. Pundits accurately point to the "knowledge economy" as the foundation for any country that wants to become or remain competitive in the 21st century.

So, why is it that Canada has relegated those two words, "intellectual property," to subsidiary status?

It's all the more perplexing when one considers that we have become almost obsessed – correctly, in my view – with sustaining our flagging reputation as an "innovation economy." Summits and conferences take place almost monthly in an effort to understand why Canada's productivity is slipping; to understand why a widening "prosperity gap," as the Institute for Competitiveness and Prosperity calls it, yawns between Ontario and its peer states.

Part of the reason has to be that Canadians only imperfectly understand the link between prosperity and competitiveness on the one hand and intellectual property on the other. We have a poorly developed marketplace framework for intellectual property rights. We do not adequately nurture their creation, nor do we have the laws or enforcement mechanisms to protect such property once it has been introduced into the marketplace.

The Minister for Innovation in the UK recently said, "intellectual property rights are the means by which creators and innovators have the incentive to produce. The problem is that intellectual property crime can undermine or even completely negate these incentives.... A strong system of rights and strong institutions are of no use if there is not a proper system of enforcement."

Canada has neither a strong system of rights, nor strong institutions; and our enforcement system is, to say the least, under-resourced. The mobilization of our latent intellectual property resources is inextricably connected with closing the prosperity gap and improving our ability to innovate. Yes, we need to focus on the commercialization of our ideas, but just as importantly we need to ensure the integrity of our marketplace; a marketplace that has been infiltrated by counterfeit and pirated goods, endangering consumers and compromising our prosperity.

Our marketplace for ideas is in a shambles and we need to fix it.

Increasingly, experts view the global economy as under threat. The former Executive Director of the World Bank, Moises Naim, in his book, "Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy," noted the destabilizing effect of counterfeiting on innovation and economic progress: "Without guaranteeing ownership rights – and income – to the creators of new, valuable ideas, the incentives for inventors will disappear and innovation will dwindle."

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*"Illicit: How Smugglers, Traffickers, and Copycats are Hijacking the Global Economy"
Moises Naim, former Executive Director of the World Bank*

This is an issue that is leaping to the front pages of daily newspapers. It has caught the eye of top government officials all over the world, and sparked calls for action from economists, business leaders, innovators and many others. Yet here in Canada, the pleas of entrepreneurial Canadians have gone unheard for years.

The sale of unauthorized knockoffs of legitimate products has mushroomed into a multi-billion dollar underground economy; an economy that robs many Canadians of their ability to earn a living, and that dims the light of innovation that is essential to our future economic prosperity.

Before I began speaking – on the screen (behind me) – you got a flavour of the many everyday items that are counterfeited and which find their way into literally millions of Canadian homes. Pharmaceuticals, auto parts, batteries, apparel, DVDs and yes, even toys.

The House of Commons Standing Committee on Industry, Science and Technology, during cross-country hearings last fall, heard again and again from entrepreneurs who were worried about how counterfeit goods undermined their businesses.

That the Government of Canada immediately bring forth legislation to amend the Copyright Act; ratify the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT); amend related acts; and ensure appropriate enforcement resources are allocated to combat the scourge and considerable economic and competitive damage to Canada's manufacturing and services sectors, and to Canada's international reputation by the proliferation of counterfeiting and piracy of intellectual property.

*"Manufacturing: Moving Forward – Rising to the Challenge"
Standing Committee on
Industry, Science and Technology*

The Committee had an epiphany. They suddenly "got it." This led to a specific and unanimous recommendation in the all-party Committee's Report to Parliament two weeks ago. You can see the full text on the screen. They called on the government to provide adequate laws and enforcement to prevent what they called the "scourge" of counterfeiting and piracy of intellectual property. They referenced the economic and competitive damage to Canada's manufacturing and services sectors. And they drew attention to Canada's sinking international reputation.

This is a terrific start, and the Chair and Vice Chair of the Committee, James Rajotte and Dan McTeague, are to be congratulated for the very considerable leadership they have shown in coming to grips with this issue. Canada's innovators await the government's response with bated breath.

Mounting international concern was evident in Geneva a few weeks ago, at the 3rd Global Congress on Combating Counterfeiting and Piracy – a now-annual event that brought together 1,200 delegates from over 100 nations. A year ago, the Congress attracted just 400 delegates. The Congress was sponsored by some of the biggest names on the international economic scene: the World Intellectual Property Organization; Interpol; the World Customs Organization; the Global Business Leaders Alliance Against Counterfeiting; the International Chamber of Commerce; and the International Trademark Association.

Most governments took the Congress very seriously. They sent large delegations of senior officials. Italy sent 16. The United States, 15. China, 24. Malaysia, 13. Algeria, 9. They joined a startlingly large assemblage of leaders from the business and law enforcement communities. Developing and developed, the nations of the world stood united in their concern and resolve.

As for Canada? Well, according to the published registration lists, there was a single, junior government delegate from Canada. No one from the Department of Industry, no one from Justice, no one from Foreign Affairs and International Trade, and no one from Public Safety and Emergency Preparedness. The RCMP, who alone seem to have grasped the seriousness of the situation, was out in force -- as usual.

Given the alarming impact of counterfeiting, Canada's under-representation in Geneva was a grievous oversight. It sends a disturbing message.

We *should* care about this. According to the RCMP, Canada is experiencing billions of dollars in economic losses. This is a jobs issue. This is an investment issue. This is above all an issue connected intimately with the health and safety of consumers and with the competitiveness and prosperity of our nation.

To highlight just one of many industry examples, Canada's software industry estimates that losses from business software piracy exceeded \$730 million in 2005, wiping out 32,000 jobs and \$345 million in taxes.

Importantly, consumer purchases of counterfeit goods displace legitimate commerce. A new POLLARA survey conducted for the Canadian Anti-Counterfeiting Network shows that almost half of those Canadians who had purchased counterfeit music, software and film products, would have purchased the legitimate product if the counterfeit versions were not available. This is certainly a tangible inducement for our government to act. Clamping down on the illicit market will translate directly to the sale of legitimate goods.

Allow me to put a face to the problem for a moment.

Ajax, Ontario's Bayly Communications is a leading manufacturer of telecom network access and transmission products. They recently estimated that 25% of their business was lost to Chinese-made counterfeits.

Autodesk, an Ottawa-based software firm, estimates that for every program it sells, five are pirated. This has directly cut into the company's capacity to hire developers and reinvest in the innovation economy.

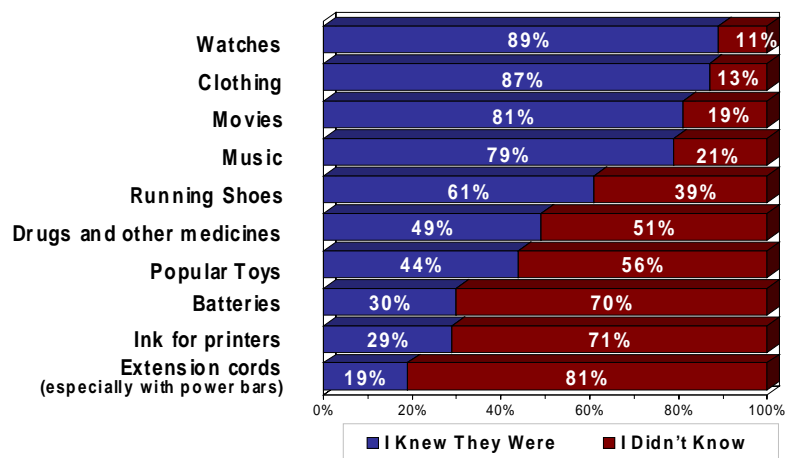
The challenges facing businesses such as these are emblematic of piracy's high cost *today*. But they also presage the significant costs we all will pay *tomorrow*. We are selling out our future.

Whether or not you work in an industry driven by intellectual property, that future cost will affect you profoundly. Rampant counterfeiting undermines our capacity to innovate and compete. It comes down to maintaining the integrity of our marketplace – a key determinant of success in any modern economy, where innovation is a primary driver.

The link between an orderly, lawful marketplace and prosperity is *extremely* important. I will explore this further. But before I do so, two hallmarks of counterfeiting and piracy must be addressed. First is the risk to the health and safety of our citizens. Second is the involvement of organized crime – to the point, in fact, that the market for counterfeit goods has almost become their exclusive preserve.

These issues come starkly into play because so few Canadians realize that counterfeiting isn't limited to apparel, DVDs and CDs. It also includes items such as electrical appliances, where health and safety considerations are paramount. And our citizens don't know it – increasing the danger. According to Pollara, only 19 percent of Canadians know that extension cords are counterfeited and only 30 percent know about counterfeit batteries. Less than half were aware that drugs and other medicines are counterfeited.

Which of these items did you know were counterfeited?



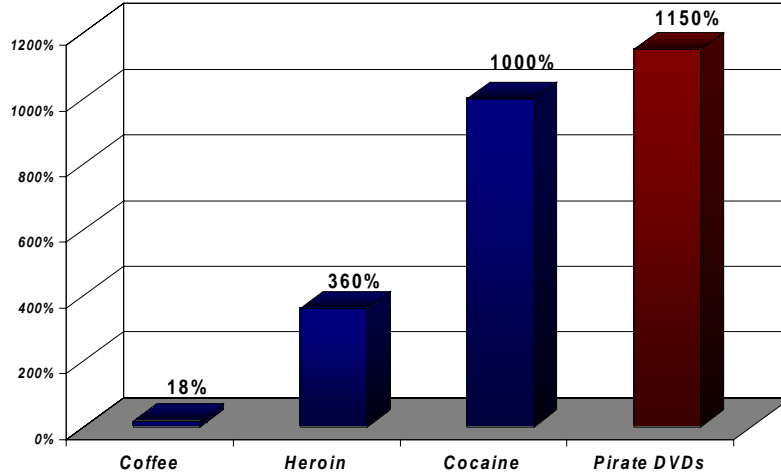
Source: Pollara, February 2007

These concerns flashed into public view after a Hamilton pharmacist was charged with selling counterfeit blood pressure medicine to unknowing consumers. As a result of the incident, the Chief Coroner for Ontario made a number of formal recommendations, including that (1) current resources allocated to the elimination of counterfeit medication should be reviewed; and, (2) existing statutes and regulations regarding counterfeit medications should be reviewed taking into account “emerging trends in criminal methodology” and “enforcement strategies that have proven effective in other jurisdictions”.

And regardless of WHAT the counterfeit product is, you can rely on the fact that in some way or another, organized crime is involved. Law enforcement agencies around the world – Interpol and the RCMP included – have identified a clear link between counterfeiting and organized crime. In its 2006 annual report, the Criminal Intelligence Service of Canada noted, “across the country, multiple criminal groups are involved in the manufacturing, importation and distribution of counterfeit products.”

Given the profits, this is grimly understandable. The RCMP has stated that since, “counterfeiters spend no money on research and development, marketing, taxes and quality control, they operate with huge profit margins.” According to a study by the Motion Picture Association markups on pirated goods average over 1100 percent – far exceeding profits on illegal drugs like heroin and cocaine.

PRODUCT COMPARISONS: Cross-border Mark-Up



Source: Motion Picture Association – International, “Optical Disc Piracy v. Illegal Drug Tracking, October 2005”, pg. 3, Figure 1.1
 Adapted from U.K. National Criminal Intelligence Service SU/Drug Project (2004)
 Cocaine mark-up is from Colombia to Spain/U.K.; Heroin mark-up is from Iran to U.K.,
 DVD markup is from Malaysia to U.K.

The RCMP has also drawn attention to the disparity the penalties associated with drug and counterfeiting convictions. They note that a conviction for selling 3 kg of cocaine, with a street value \$90,000, typically nets a 5 to 7 year jail sentence, while a conviction for selling 1,000 pirated copies of Windows XP (which produces \$450,000 in criminal profits) typically nets a minimal fine – and rarely time in jail.

DRUGS vs. INTELLECTUAL PROPERT CRIME: A Risk Analysis

COCAINE	WINDOWS XP
<ul style="list-style-type: none"> • 3 kg = \$90,000 • Fits a small box • Conviction = 5 to 7 years 	<ul style="list-style-type: none"> • 1,000 = \$450,000 • Fits a small box • Conviction = minimal fine

On top of all this, as the Standing Committee correctly noted, Canada's inaction is damaging our international reputation. At the Geneva congress, Canada was the only developed nation singled out for approbation. Recently, the US Congressional Anti-Piracy Caucus placed Canada on their six-country "priority watch list" – tantamount to according Canada pariah status.

And matters may get worse. Angered by what they referred to as Canada's "chronic failure" to update our copyright laws, the International Intellectual Property Alliance, has asked the United States Trade Representative to elevate us from the Special 301 Watch List to the 301 *Priority* Watch List. Not only would that place Canada – as the *Globe and Mail* recently put it – "among a select group of notorious copyright pirates," but also it would open us to possible trade challenges and sanctions.

As the Intellectual Property Association's legal counsel remarked in the story: "The disturbing thing is that the Canadian government doesn't seem to take this very seriously." Nor, it would appear, do many of our citizenry.

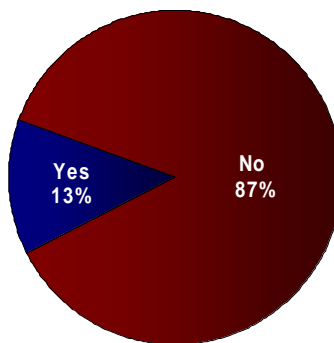
POLLARA's new survey shows how counterfeiting has moved into Canada's cultural mainstream. Two-fifths of the population acknowledges having purchased counterfeit goods. 40 percent! As Brian Isaac, a board member of the Canadian Anti-Counterfeiting Network, puts it, "Our government's failure to effectively address intellectual property crime has led to wide-spread acceptance of product counterfeiting in Canada." This number is astoundingly high. Compare this situation with the United States. There, Gallup found that only 13 percent of Americans participate in the counterfeit market.

"Our government's failure to effectively address intellectual property crime has led to wide-spread acceptance of product counterfeiting in Canada."

*Brian Isaac
Canadian Anti-Counterfeiting Network*

Purchased, copied or downloaded any imitation or counterfeit product in the past year (U.S.)

	<u>Purchased*</u>
Brand Name Fashion Clothing	3.3%
Brand Name Watches	1.2%
Music CDs or Audiocassettes	5.1%
Movies (VHS, VCDs, DVDs)	3.3%
Computer Operating Systems (Windows, Mac)	1.4%
Computer Application Software (Word, Excel, etc.)	2.0%
Video Games	2.2%
Pharmaceuticals or Medicines	3.1%
Alcoholic Beverages	0.9%
Tobacco	0.9%
Tools or Auto Parts	1.6%
Jewelry	1.8%



Q. Have you personally purchased, copied or downloaded any imitation or counterfeit products in the past year in any of the following categories?
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What is behind this failure, and why is Canada so vulnerable to piracy compared with other developed countries? Why are Canadians three times more likely than Americans to buy counterfeit goods?

Let's begin with the situation at our borders. Most counterfeit goods sold in Canada are imported. Unlike customs services in many other developed and even developing nations, the Canada Border Services Agency has no authority to seize or destroy counterfeit goods.

It's not that Customs agents don't *want* to stop illicit goods, they do. They are as alarmed as the rest of us by what they see. It's just that their hands are tied.

The police are also deeply concerned about piracy and the profits generated by organized crime. But with few resources and outdated policies, their hands too, are tied.

The prosecution of a Vancouver counterfeit movie manufacturer and retailer, Chui Lau, is a case in point. He faced three RCMP raids over a couple of years – all related to the same criminal activity. On his third strike, Mr. Lau received a \$5,000 fine and an order to stay in his residence from 11 pm to 7 am. This is no deterrent; it is virtually an invitation. The full details of this amazing story have been placed at your table.

It comes down to this: In Canada, criminals engaged in the theft of intellectual property are, after years of flouting the legal system, finally brought to justice, given a slap on the wrist, and sent to bed. The travesty is that there are so many more criminals like Mr. Lau who are either not charged or face the same type of nominal penalties after repeatedly profiting from their crimes.

Canadians appear to understand this. According to POLLARA, 90 percent of Canadians believe criminals are more likely to sell counterfeit goods because there is little chance of being caught.

For criminals rolling in their illicit profits, it's a free pass. You can see this for yourself. Take a stroll through the world famous Pacific Mall in Markham. Check out the flea markets and street-front stalls dotted throughout downtown Vancouver and other cities. The activity is open and flagrant. It's like a massive new retail channel has been opened up, except that the profits go to organized criminals instead of tax-paying businesses.

On that point, Canadians react as you might expect, or at least hope. POLLARA found that, when Canadians are informed that proceeds of counterfeiting go to organized crime, the vast majority – 86 percent – would be less likely to buy pirated goods.

If our efforts against piracy are to succeed, we'll have to convince Canadians to amend their behaviour. Based on the POLLARA study, this is an attainable goal; education, in this case, may be as important as enforcement.

There is good reason to think that change is in the air; that 2007 will be the year when *finally* a decades old logjam breaks. Messrs. Rajotte and McTeague are showing us the way forward, providing the leadership at a political level that has been lacking for so many years.

There are also some morale building stories. Despite a lack of resources and weak laws, it remains possible for motivated police officers and businesses to make a difference. Let me offer one such example. In December, Toronto Police, working closely with my own Director of Anti Piracy, Terry Hunter, managed to shut down a major pirate ring in the heart of downtown Toronto. Three of the ring's leaders were arrested on charges of fraud and possession of property obtained by crime.

The raid would not have been possible without the yeoman work of Terry and Toronto Police Detective Constable Sean Thrush. DC Thrush championed the case internally at 52 Division and the resulting raid involved 16 officers. They hauled in so many counterfeit CDs and DVDs – about 10,000 in all – that the police were afraid the suspension of their van would break! DC Thrush has kindly joined us here today. He has our gratitude.

I would be remiss if I did not acknowledge the other law enforcement officials here today, who are working hard to bring about change: Also from the Toronto Police Service are Detective Paul Oliver, DC Jason Tomlinson and Sergeant Rob Whalen. From the RCMP, we are delighted to welcome Constable Judy Laurence, Intellectual Property Crime Co-Ordinator, and Warren MacInnis her predecessor, now with Underwriter Laboratories. From the Canada Border Service Agency, we welcome Regional Intelligence Officers Andrew Donaldson and Sheila Reith.

To each of you, I offer sincere thanks for your commitment to protect the rights of artists, entrepreneurs and innovators. I invite you to join me in applauding their efforts.

Canadian businesses and entrepreneurs are committed to fight for the tools you need to do your jobs – tougher laws and more resources. It has been a long struggle.

The solutions are not complicated nor need they be expensive. Other countries have already figured it out. Road maps exist. In many respects we are far behind our trading partners. We can look to the Intellectual Property enforcement policies of Europe, the United States and Japan. as well as the model legislation promulgated by the World Customs Organization.

The Canadian Anti-Counterfeiting Network is in the process of developing an action plan in response to the Standing Committee's recent report. The CACN is a volunteer organization and if it weren't for the commitment of some key individuals, many of whom are here today, we would have a lot further to go than we do. I would be remiss if I didn't recognize Doug Geralde the Chair, Carol Osmond the Vice Chair, as well as Lorne Lipkus and Brian Isaac. The CACN has also worked closely with the Canadian Chamber of Commerce – another organization that has lent enormous credibility to the task of updating our laws and upgrading the regard in which intellectual property is held in this country. I would like to acknowledge and thank Chris Gray who is here today representing the Chamber.

So, what exactly do we need to do? Well, the CACN has drafted a detailed list of recommendations, a copy of which has been provided to you. It would be impossible to cover them all in depth, so let me touch on just a few:

To remedy the lack of police and prosecutorial resources dedicated to counterfeiting and insufficient criminal penalties, we must:

1. Provide the RCMP and the Department of Justice with adequate financial and human resources to effectively address counterfeiting; and
2. Adequately fund an Intellectual Property Crime Task Force, composed of police officers, customs officers, and federal prosecutors, to guide and coordinate IP criminal enforcement.

To dismantle the incentive to counterfeit we must remove the Copyright Act from the list of indictable offences excluded from proceeds of crime legislation.

Summary of Recommendations

Lack of Police and Prosecutorial Resources Dedicated to Counterfeiting and Insufficient Criminal Penalties

- 1.1 Provide the RCMP and the Department of Justice with adequate financial and human resources to effectively address counterfeiting.
- 1.2 Adequately fund an Intellectual Property Crime Task Force, composed of police officers, customs officers, and federal prosecutors, to guide and coordinate IP criminal enforcement.

Dismantling the Incentive to Counterfeit: Applying Proceeds of Crime Legislation to Copyright Piracy

- 3.1 Remove the Copyright Act from the list of indictable offences excluded from Proceeds of Crime legislation.

To update outdated and ineffective Intellectual Property crime legislation we need to:

1. Enact legislation clearly defining trade-mark “counterfeiting” as a specific criminal offence under the Trade-marks Act.
2. Enact legislation to make camcording in a theatre a criminal offence.

To empower customs officials, we need to:

1. Implement legislation clearly prohibiting the importation of counterfeit goods; and
2. Provide the CBSA with the express authority to detain, target, seize, and destroy counterfeit goods on its own initiative.

Finally, to help elevate the status of intellectual property in this country, to make us more prosperous and more competitive nation, we need to follow the lead of other nations and establish federal and provincial Intellectual Property Coordination Councils at the Ministerial level.

Summary of Recommendations

Outdated and Ineffective IP Crime Legislation

- 4.1 Enact legislation clearly defining trade-mark “counterfeiting” as a specific criminal offence under the Trade-marks Act with minimum penalties, including jail time for repeat offenders.
- 4.2 Enact legislation to make the fastest growing source of commercial video piracy – camcording in a theatre – a criminal offence.

Disempowered Customs Officials

- 6.1 Implement legislation clearly prohibiting the importation of counterfeit goods.
- 6.2 Provide the CBSA with the express authority to detain, target, seize, and destroy counterfeit goods on its own initiative and to implement policies promoting the detection of such goods, such as mandatory reporting of brand information with shipments.

Troubling Ethics: The Culture of Piracy in Canada

- 7.1 Establish a federal Intellectual Property Coordination Council

Thanks to the efforts of the Canadian Anti-Counterfeiting Network and the Canadian Chamber of Commerce as well as the groundbreaking work of the Standing Committee on Industry Technology and Science, the nature of the problem is well known, and the answers to Canada’s counterfeiting problem are being articulated.

The time has come for the federal and provincial governments to put intellectual property protection on the innovation and prosperity agenda.

Reforms are long overdue and polls indicate they will be popular with Canadians.

All that’s needed is the political will.

Thank you.