

Counterfeiting and Piracy

Product counterfeiting and copyright piracy continues to have a major impact in Canada and worldwide. While intellectual property (IP) crime may lack the social stigma of many other criminal offences, this illegal activity is a drain on the economy, is responsible for loss of employment opportunities and results in a reduction in tax revenues for governments. These crimes also pose serious consumer health and safety risks due to the poor quality and sometimes hazardous nature of the fakes.

Counterfeiting and piracy have also been linked to organized crime. Virtually no industry escapes this illegal activity. The International Chamber of Commerce (ICC) has estimated that the global trade in counterfeited and pirated goods is over \$700 billion annually and growing. A recent documentary by National Geographic entitled *Illicit: The Dark Trade* estimates that 25 million people in China are employed to produce counterfeit goods. Trade-mark rights and copyrights are particularly affected by IP theft and Canada has committed through international treaties to provide effective criminal and border enforcement against willful trade-mark counterfeiting and copyright piracy on a commercial scale (eg. TRIPS, NAFTA).

While the counterfeit market used to consist of t-shirts and other novelty items, larger criminal rings are now pirating everything including, but certainly not limited to, pharmaceutical products, electrical products, software, movies, food, wine, personal care products, automobile parts and other luxury goods. The economic impact of IP theft on Canadian companies and government revenues is significant. Apart from the economic ramifications of IP theft, consumers are increasingly being harmed by counterfeited goods, such as medicines, electrical products, toys and foodstuffs that do not meet Canadian safety standards. These fake products pose serious health and safety risks to the public and undermine consumer confidence in established brands.

In an effort to better protect intellectual property rights in Canada, the Canadian Chamber launched the Canadian Intellectual Property Council in 2008 to specifically work on better protecting IP rights and to fight counterfeiting and piracy.. The CIPC's mandate mirrors to a large extent the ICC's Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative that connects businesses in all industry sectors and across national borders in the fight against counterfeiting and piracy. BASCAP has aggressively taken on counterfeiting and piracy in order to compel national governments to act. Changes to the legal frameworks to strengthen laws addressing enforcement against trade-mark counterfeiting and copyright piracy are required, as well as implementation of the World Intellectual Property Office (WIPO) copyright treaties that deal with the protection of IP rights in the borderless internet world.

In 2005, Canada, along with the United States and Mexico launched the Security and Prosperity Partnership of North America (SPP). One of the initiatives under the SPP is referred to as "Fake-Free North America" and involves working towards a coordinated anti-counterfeiting strategy amongst the three countries that will focus in enhancing detection of and deterrence against product counterfeiting and piracy. The Canadian Chamber continues to participate in the SPP IPR working group meetings with the three countries to work towards effective solutions all three nations can use in the fight against counterfeiting and piracy. In 2007, two House of Commons Parliamentary Committees produced unanimous reports that recommended changes to Canada's IPR

system to better fight counterfeiting and piracy and the government has indicated its willingness to take action on IPR crimes with commitments in the 2007 and 2008 Throne Speeches.

Enforcement

The RCMP and the Canada Border Services Agency (CBSA) currently work collectively with other law enforcement agencies across Canada in a coordinated manner in an attempt to counter threats posed by IP crime. However, Canada's enforcement regime is weak, particularly in respect of trade-mark violations and the complete lack of any mandated border enforcement. Law enforcement agencies and prosecutors need new laws providing a greater ability to combat product counterfeiting and piracy. Customs officials need to have new powers, and the associated additional resources, to search suspected shipments for counterfeit goods and to communicate with IP rights holders so as to allow for effective criminal, civil and/or administrative enforcement and deterrence against distribution of counterfeit and pirated products.

Legislative changes required

In order to effectively deal with the increase in counterfeiting and piracy of IP rights, Canadian law enforcement agencies need to have effective tools to police our markets. Changes to the Customs Act, Trade-marks Act, Criminal Code, and Copyright Act must be considered. Changes should provide a clear definition of the prohibited activity: the power to search, seize and destroy counterfeited/pirated products both within Canada and at our borders; clear criminal offences for knowingly importing or commercially distributing counterfeited and pirated products (there are currently no effective trade-mark offences); an offence to manufacture, distribute, use or possess products whose primary purpose is counterfeiting/piracy; the removal of copyright offences from the excluded offences under the proceeds of crime legislation; ability for the crown and IP owners to seek reasonable costs from convicted perpetrators; administrative fines for importation of counterfeited and pirated goods (AMPS); and increased intelligence sharing between Canadian and international agencies, as well as with IP owners.

Recommendations

That the federal government:

1. Make the needed legislative changes to ensure Canadian law enforcement and border agencies have both the authority and resources to proactively confront the growing reality of counterfeiting and intellectual property piracy. The implementation of effective trade-mark provisions and border measures should be treated as an urgent priority. CBSA needs to be able to have the authority to search and seize suspected counterfeit goods at Canada's border points.
2. Implement WIPO copyright treaties to deal specifically with the protection and enforcement of intellectual property rights over the internet.
3. Enact criminal legislation that expressly targets IPR crimes.
4. Establish a specialized IP Crime Task Force to guide, coordinate and lead anti-counterfeiting and anti-piracy efforts in Canada with the necessary representation from all relevant stakeholders.

5. Work with the business community to find effective solutions and undertake a public awareness campaign to highlight the benefits of IP protection and the damage that is caused by counterfeiting and piracy, including both economic and public health.