



Project STRIDER  
August 2010



A National Intellectual Property  
Crime Threat Assessment  
2005 to 2008



**Prepared by RCMP Criminal Intelligence**

1200 Vanier Parkway, Room C-350  
Ottawa, ON K1A 0R2  
[HQ\\_Criminal\\_Intelligence@rcmp-grc.gc.ca](mailto:HQ_Criminal_Intelligence@rcmp-grc.gc.ca)

# TABLE OF CONTENTS

---

<b>KEY FINDINGS</b> .....	<b>3</b>
<b>INTRODUCTION</b> .....	<b>4</b>
<b>BACKGROUND</b> .....	<b>5</b>
Consumer Demand for Counterfeits .....	6
<i>Consumer Perspective</i> .....	6
Federal Enforcement Branch Mandate. ....	7
<b>CURRENT TRENDS</b> .....	<b>8</b>
Counterfeit Supply Chain. ....	8
Source and Transit of Goods .....	8
Technology .....	8
Camcording. ....	9
Commercial Espionage .....	10
<b>CRIMINAL ENVIRONMENT</b> .....	<b>11</b>
Organized Crime .....	11
<i>When Things go Unchecked</i> .....	12
<i>Money Laundering</i> .....	12
<b>IMPACT</b> .....	<b>13</b>
Health and Safety .....	13
<i>Consumer Electronics and Components</i> .....	13
<i>Pharmaceuticals</i> .....	14
Economic Impact. ....	14
<b>CHALLENGES TO LAW ENFORCEMENT</b> .....	<b>15</b>
Legislation .....	15
<i>Proceeds of Crime</i> .....	15
<i>Bill C-61</i> .....	15
Prosecution .....	16
Border Issues .....	16
Enforcement .....	16
<i>Rightsholder Collaboration</i> .....	16

**CONCLUSION AND OUTLOOK. . . . . 17**

**APPENDIX A — COMMODITY TYPES . . . . . 18**

**APPENDIX B — IP CRIME OFFENCES IN CANADA . . . . . 19**

**APPENDIX C — RCMP STRATEGIES . . . . . 21**

## KEY FINDINGS

---

- Traditionally viewed as being victimless, Intellectual Property (IP) Crime has become a source of health and safety concern in Canada. Additionally, IP Crime poses a threat to Canada's economic integrity and international reputation.
- Despite Canadians' awareness of the risks posed by the purchase of counterfeit goods, there is a continued demand for counterfeit products. The depressed economy and the availability of such goods may play a role in the increasing demand for counterfeit and pirated products.
- Counterfeiting and piracy techniques have become more sophisticated rendering detection more difficult than ever.
- Counterfeiters utilize a variety of methods to evade detection at Canada's international borders.
- IP Criminals make up an eclectic demographic ranging from Organized Crime (OC) groups, to small-scale retailers who sell small quantities of IP-infringing goods to supplement their income.
- Although the RCMP investigated nearly 1,500 cases of IP Crime between 2005 and 2008, these numbers are believed to be a fraction of the true IP Crime situation in Canada.
- China (including Hong Kong) is the most common source/transit country for counterfeit goods imported into Canada. The United States (US), given its proximity to Canada, is the second most common source/transit country for counterfeit goods imported into Canada.
- Canada has also been identified as a source of pirated DVD and CD media, primarily for domestic consumption. However, some investigations have revealed Canada as a source country for pirated media found online, as well as a transit country for various IP-infringing goods.





## INTRODUCTION

This assessment is designed to provide an overview of IP Crime between 2005 and 2008, from an RCMP perspective.

Recent estimates by IP Crime experts within the International Anti-Counterfeiting Coalition (IACC), the World Customs Organization (WCO), and the International Trade Commission (ITC) have placed global counterfeiting losses at 5 to 7 percent of world trade or between 500 and 700 billion USD annually. Although these figures have been subject to debate in recent years, the total retail value<sup>1</sup> of seizures reported by the RCMP alone, from 2005 to 2008, is estimated at more than 63.6 million CAD, highlighting that IP Crime is a profitable line of business.

Counterfeiting and piracy techniques have become increasingly sophisticated, causing considerable challenges for law enforcement, border services and rightsholders to differentiate the genuine from the IP-infringing product. Furthermore, foreign governments and private industry have revealed that OC groups regard counterfeiting and piracy as a low risk, high profit crime, and are now involved in multiple crimes including counterfeiting and piracy.

In Canada, the fact that IP Crime is difficult to detect, that limited enforcement resources are dedicated to it, and that sentences are not sufficiently significant to deter all serve to generate an attractive criminal undertaking, especially when compared to other crimes such as drug trafficking.

<sup>1</sup> Retail value refers to the value a commodity would be sold for if it was the legitimate product, rather than how much the counterfeiter is selling the item for, which is referred to as the street value. The former method of measurement evaluates the potential loss to the rights holder, while the latter measures potential profits to be made by IP criminals.

## BACKGROUND

Health, safety, and economic damages from the consumption and usage of counterfeit goods are being reported on an international scale. Victims of IP Crime include, among others, people suffering from life threatening diseases who unknowingly use counterfeit medicines containing little or too many active ingredients, or toxins. According to the World Health Organization (WHO), countries with weak drug regulations have an increased risk of counterfeit pharmaceuticals infiltrating the legitimate supply chain. However, even drug regulations in industrialized countries such as Canada do not provide full immunization to this growing phenomenon. Incidents of compromised safety are on the rise both internationally and within Canada.

Loss of economic integrity is another threat posed by IP Crime to Canadians and the international community. In a knowledge-based economy such as Canada's, innovation has been identified as the key driver of economic growth, productivity and competitiveness. The creative industry<sup>2</sup> has been estimated to encompass 7.4 percent of Canada's Gross Domestic Product (GDP), and employs more than one million Canadians. The protection of Canadians' IP Rights (IPR) is therefore vital to support innovation, creativity, and, consequently, to ensure Canada's long-term economic prosperity.



"Home to some of the most prominent Canadian advanced technology businesses, including global success story Research in Motion, the Waterloo region has become a bastion for Canada's knowledge-based sector. Today, the region houses 514 high-tech companies that, in 2008, generated \$13 billion in revenue, and enjoys a 7% growth rate in high-tech employment.<sup>3</sup> Waterloo's success can be credited to its distinctive IPR policy and education system, which stresses the importance of profit sharing with innovators." — *A Time For Change: Towards a New Era for Intellectual Property Rights in Canada*, The Canadian Intellectual Property Council

Current Canadian copyright and trade-mark laws have been criticized by domestic stakeholders and majors trading partners for failing to address IP Crime. This criticism stems from the fact that Canada has not implemented an "ex officio" border regime that would enable customs officers to target and detain suspected counterfeit and pirated goods, that Canada has not remedied the perceived ineffectiveness of trade-mark offences in the Criminal Code, and that Canada has not implemented the *World Intellectual Property Organization (WIPO) Copyright Treaty (WCT)*<sup>4</sup> and the *Performances and Phonograms Treaty (WPPT)*.<sup>5</sup>

In the past year, the Government of Canada has reaffirmed its commitment to strengthen laws governing IPR; most notably in the 2010-03-03 Speech from the Throne and in the tabling on 2010-06-02 of Bill C-32, *The Copyright Modernization Act*.

- 2 The creative industry sector is comprised of sub-sectors including the performing arts, advertising, architecture, writing, fashion, film and video, software and computer services, and television and radio.
- 3 Scott Inwood. "Commercializing Intellectual Property: The Waterloo Miracle." Power Point Presentation. May 26th 2008.
- 4 The WCT aims to protect authors, composers and other creators of literature, art, music, films, software and other such creative works, and requires members to recognize works set in a digital form and to implement anti-circumvention measures for those works. <http://www.innovationlaw.org/archives/projects/dcr/reform/wipo.htm>
- 5 The WPPT protects producers of "sound recordings" including music CDs, cassettes and other recordings, as well as performers, such as singers and musicians. The WPPT can be seen as a specialized version of the WCT with a particular focus on the music recording industry. <http://www.innovationlaw.org/archives/projects/dcr/reform/wipo.htm>



## Consumer Demand for Counterfeits

A 2008 public opinion survey<sup>6</sup> found that two-thirds of Canadians felt that the purchase of counterfeit goods would cause unjustifiable harm to legitimate manufacturers, retailers, and employees. Additionally, the survey found that the public supports government action against the trade in counterfeit products, especially if OC is involved. Despite recognition of the potential harm posed by the purchase of counterfeit products, one quarter of Canadians admitted to having purchased such goods. This highlights that the public maintains a certain tolerance for the purchase of lower priced counterfeit items.

In a recent enforcement action aimed at Markham, Ontario's PACIFIC MALL, a store owner was fined 30,000 CAD for selling pirated DVDs. After previous warnings from the police, the suspect stated that "burned DVDs were sold openly in Asian malls in Toronto and nobody seemed to care". The federal prosecutor also stated that the subject "[was] not remorseful for his actions and [did] not even acknowledge his conduct as criminal."  
— *The Hamilton Spectator*, 11 May 2009

### Consumer Perspective

In the context of this assessment, a consumer is presumably either an informed consumer (*non-deceptive market*) or an uninformed consumer (*deceptive market*). A *non-deceptive market* refers to the sale of counterfeit items where the buyer is fully aware that items for purchase are counterfeit. Generally, when a consumer is aware that the product is counterfeit, he or she balances the advantages over the risks involved in purchasing the item and consciously decides that the benefits outweigh the risks. This is particularly common when purchasing brand-name luxury items such as clothing, handbags and pirated media.

A *deceptive market* refers to the instance where a consumer is unaware that the product is counterfeit and is deceived into believing that the item is genuine. This market poses a potential threat as it relies on deception. Counterfeiters in a *deceptive market* go to great lengths to acquire the appearance of legitimacy by focusing on apparent quality, packaging, and price. Furthermore, a *deceptive market* operation relies on the fact that counterfeit items must be sold in a venue that does not raise consumers' suspicions. It is imperative that a counterfeiter enters the product into the legitimate supply chain or into an unregulated market such as the Internet.

In 2007, a company from New York State purchased more than 500,000 tubes of counterfeit brand-name toothpaste that had been imported from China and resold 3,100 of them to an unsuspecting Toronto retailer who in turn sold them at local discount stores. The shipment was later seized by Health Canada, in conjunction with the RCMP. Public health advisories were issued as laboratory tests revealed the toothpaste lacked fluoride and contained microorganisms and diethylene glycol, a component commonly used in anti-freeze.

<sup>6</sup> Survey commissioned by the Canadian Intellectual Property Council (CIPC) and conducted by the Environics Research Group in 2008.



## Federal Enforcement Branch Mandate

The RCMP Federal Enforcement Branch has been mandated to enforce the *Copyright Act* for copyright offences<sup>7</sup> and the *Criminal Code* for trademark offences in the aim of protecting the public from infringing products posing health and safety risks.<sup>8</sup> At the Divisional level, IP Crime is investigated by the Federal Enforcement Sections, which are also responsible for the enforcement of over 250 other Federal Statutes.



<sup>7</sup> Copyright protection grants authors of artistic, literary and creative works, such as music, film, paintings, and software, with the exclusive right to control, for a certain period of time, the reproduction, marketing or adaptation of their works. In Canada, Copyright is criminally protected under the *Copyright Act*, and under the newly enacted (2007) s.432 of the *Criminal Code*, which pertains to the unauthorized recording of a movie.

<sup>8</sup> Trademarks refer to protection that is granted in favor of a distinctive sign, such as marks or symbols, characterizing a commercial activity or the supply of a product or service. Trademarks incorporate the reputation acquired by entrepreneurs through years of activity and are an assurance of good quality for consumers. In Canada, trademarks are criminally protected under the *Criminal Code*. Section 380 pertains to the general offence of fraud, whereas s.406 pertains to the offence of forging a trademark, s.408 to passing off wares, s.409 to possessing the instruments to forge a trademark, and s.410 to defacing or concealing a trademark without the consent of the rights holder.



## CURRENT TRENDS

### Counterfeit Supply Chain

Licit and illicit goods generally go through a series of processes prior to final distribution to the consumer. This includes the gathering of raw materials, the manufacturing of the product or product components, final assembly, distribution to the market via retailers and finally, distribution to the consumer. The legitimate supply chain is very complex due to its transnational nature, rendering it at risk of infiltration by counterfeit products at any time during the cycle.

Counterfeiters may exploit the product life cycle at any step from manufacturing to the disposal or waste management stage of the cycle. Furthermore, refurbishing a product enables a counterfeiter to recycle and re-package a product that no longer meets the required safety standard and is designated for disposal, and to re-introduce the counterfeit product into the supply chain generating an increased health and safety risk to the consumer.

### Source and Transit of Goods

China (including Hong Kong) is the most common source/transit country for counterfeit goods imported into Canada. Since the inception of the Asia-Pacific Gateway and Corridor Initiative (APGCI),<sup>9</sup> the marine transportation of containerized cargo from the Asia-Pacific Region, the main source of counterfeit goods imported into Canada, has increased and is predicted to continue to increase as the initiative develops.

The US, given its proximity to Canada, is the second most common source/transit country for counterfeit goods imported into Canada. Cases involving the US as a source/transit country were mostly a result of interceptions at land border crossings by Canada Border Services Agency (CBSA) officials and referred to the RCMP for further action.

Canada has also been identified as a source of pirated DVD and CD media, primarily for domestic consumption. However, some investigations have revealed Canada as a source country for pirated media found online, as well as a transit country for various IP-infringing goods.

### Technology

The phenomenon of IP Crime has increased considerably with the advancement and accessibility of technology and communications. As the ability to make counterfeit products pass for authentic goods increases and counterfeiting techniques improve, detection will become increasingly difficult.

- For instance, Markham's PACIFIC MALL is a significant source for pirated goods. Although some goods sold at the mall are imported from outside the country, a large proportion of pirated DVDs are believed to have been produced locally.

<sup>9</sup> This initiative, aimed to boost trade and Canadian commerce with the Asia-Pacific Region, is a network of transportation infrastructure that includes the British Columbia Lower Mainland and the Prince Rupert ports and associated road and rail connections, which stretch across western Canada and south to the US.



Markham's Pacific Mall (Source: RCMP "O" Division)

The Internet provides boundless opportunities for the sale and distribution of counterfeit goods. The Internet is likely to continue to provide counterfeiters with the ability to gain expertise in their craft, expand their client base, and to perform online business transactions, all while conserving anonymity.

## Camcording

Up until a few years ago, Canada, and more specifically Montreal, was recognized worldwide as a haven for the illegal recording of movies in theaters, accounting for as little as 20 percent or as much as 70 percent of global illegal recordings depending on the source. Bill C-59, an amendment to the *Criminal Code*, was introduced in June 2007. The Bill rendered recording a movie without permission a crime punishable by two years of incarceration and has reportedly led to a decline in Canadian camcording activities. The arrest and prosecution of key players in the illegal recordings industry in Canada is believed to have been the driver behind this decrease, as these individuals alone accounted for the majority of Canadian-produced illegal recordings.

- Due to the fact that videos imported from Asia do not usually contain any French, the demand for Quebec-camcordered DVDs is believed to be higher than in primarily English-speaking provinces.

## Commercial Espionage

Although economic espionage<sup>10</sup> is traditionally associated with national security interests, commercial espionage in the context of IP Crime poses a threat for the competitiveness of Canadian rightsholders. Conducted either by a foreign or domestic commercial entity or simply by a single facilitator in which trade secrets are exchanged for cash payments, commercial espionage generates unfair competitive advantages and potential illicit profits to the recipient of prime trade information.

Commercial espionage in the context of this assessment can be defined as the theft of trade secrets or “ingredients” of a trademarked or copyrighted product by illicit clandestine activity. Theft of trade secrets enables counterfeiters with the partial or complete blue prints to re-create or market the product as their own. Canada is a world leader for advances in sectors such as pharmaceuticals, technology and communications, and thus may be a target for such activities.

---

10 The Canadian Security Intelligence Service defines economic espionage as “illegal, clandestine, or coercive activity by foreign governments in order to gain unauthorized access to economic intelligence, such as proprietary information or technology, for economic advantage...”

## CRIMINAL ENVIRONMENT

IP Criminals make up an eclectic population ranging from OC groups, to small-scale retailers who sell small quantities of IP-infringing goods to supplement their income.

### Organized Crime

As defined by the *Criminal Code*, OC is “a group, however organized, that is composed of three or more persons in or outside of Canada, and has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including a financial benefit, by the group or by any of the persons who constitute the group. It does not include a group of persons that forms randomly for the immediate commission of a single offence”.

Traditionally, OC has been viewed as being structured in a hierarchical manner with a division of labor while retaining a strong connection to its territory. These organizational structures or criminal factions are often comprised of common characteristics such as background, ethnicity and origin. However, it is now recognized that OC takes advantage of globalization by segmenting structures to facilitate the commission of their crimes, spreading their operations over continents. Law enforcement and the intelligence community are continuously challenged by the opportunities afforded to OC by globalization and increasingly sophisticated telecommunications.

Similarly, the United Nations (UN) defines the new face of OC as being increasingly similar to a transnational commercial entity, or commercial enterprise (e.g. Mafia Inc.) combining rigid hierarchies and territorial rooting with flexible structures that are easily adaptable to changing circumstances. Specialization into one illegal commodity type has been replaced by the diversification in the trade and supply of goods and services, such as drugs, weapons, and counterfeit products.

OC groups use IP Crime as another undertaking within their criminal activities, often combining IP Crime with other illegal business ventures. Evidence shows that transnational OC groups are actively involved in IP Crime, and that IP Crime has been linked to money laundering, drug trafficking, firearms smuggling, as well as other types of crime. Transnational trafficking of IP-infringing goods is both complex and sophisticated, and thus requires logistical organization.



The Winnipeg Free Press published an article which discussed how the Italian CAMORRA group utilized among a number of crimes (including extortion and drug trafficking) piracy and counterfeiting, more specifically the sale of counterfeit designer clothing originating from China, as conduits to generate illicit profits. The article further discussed how the group used financial assets derived from their crimes to purchase real estate, including hotels, restaurants and cafés, in the prominent areas in the Italian capital of Rome, such as the Spanish Steps. During the economic downturn, where consumers search for a bargain, OC groups profit by acquiring real estate from closing businesses, then using the spaces to sell illicit and pirated goods while lowering overall cost and generating significant profits. — *The Winnipeg Free Press*, 26 April 2009

OC have recognized the benefits of engaging in IP Crime. International trends have revealed the involvement of OC in all levels of manufacturing, distribution and sale of counterfeit and pirated goods.

---

*According to the Organisation for Economic Co-Operation and Development (OECD), “Counterfeiters and pirates target products where profit margins are high, taking into account the risks of detection, the potential penalties, the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products”.*

---

It has been recognized that the commission of piracy offences can also be conducted without the need for an extended network. Although the importation of counterfeit clothing or pharmaceuticals, for instance, requires a level of sophistication, piracy offers the ability to generate significant illicit profit with readily available technology at little operating cost.

### ***When Things go Unchecked***

IP Crime, when committed by OC, poses additional potential risks to society and challenges to law enforcement. For instance, Mexico’s LA FAMILIA cartel is heavily involved in piracy and counterfeiting, and has a monopoly over the counterfeit market in the Mexican state of Michoacán. According to the state’s Attorney General, individuals attempting to penetrate the market without the cartel’s sanction face assault, or, in some cases, death. Already possessing the necessary infrastructure, LA FAMILIA shifted its focus from drug trafficking to counterfeiting following a Mexican government initiative against the drug trade.

### ***Money Laundering***

Counterfeiting enables OC groups to launder the proceeds from other illicit activities by investing them into commercial entities. By acquiring and selling counterfeit goods at commercial outlets, they can introduce the proceeds from other illicit activities into the operation and ultimately use those funds to purchase counterfeit inventory and “generate” licit profits from commercial sales.

## IMPACT

Traditionally viewed as a victimless crime, IP Crime has evolved and diversified from the peddling of counterfeit luxury goods in local flea markets and street corners to trusted brand-name goods such as pharmaceuticals or electrical components being counterfeited and infiltrating the legitimate supply chain. This type of counterfeiting, otherwise known as *deceptive counterfeiting*, ultimately poses a serious threat to the public health and safety of Canadians, as individuals purchase these goods with the belief that they are purchasing genuine articles. In recent years, there have been a number of reports of counterfeit products infiltrating the legitimate supply chain.

- In 2006, counterfeit batteries imported from China were seized by the RCMP. A sample of the batteries was later handed over to RCMP Headquarters, where it subsequently exploded in an RCMP official's desk.



## Health and Safety

### Consumer Electronics and Components

Counterfeiters tend to focus on reducing costs to maximize profits, which is done, consequently, at the risk of the consumer. In the interest of saving operating costs, counterfeiters will continue to cut corners and circumvent safety regulations, resulting in an increased risk to public health and safety.

- In 2007, a lava lamp with a counterfeit security label purchased on the legitimate market caught fire in a child's bedroom in New Brunswick. The lamp, imported from China, had been available for sale in stores in Ontario, Quebec, and the Maritimes. A voluntary recall was led by the Electrical Safety Authority following the incident.

The Eaton Corporation, a US-based company with approximately one thousand employees in Canada and a major supplier of moulded case circuit breaker (MCCB) products to the Canadian market, has identified two major streams of counterfeiting, namely, knock-off breaker products from Asia and used/tampered circuit breakers with bogus labels, including certification marks. Both types of counterfeits are found for sale in the global market and pose serious risks to consumers.<sup>11</sup> Although there are no confirmed cases of such knock-off circuit breakers being sold in Canada, the sale of used/tampered products is well-documented.



MCCB on left is used/tampered and MCCB on right is legitimate. (Source: Eaton Corporation)

<sup>11</sup> Circuit breakers are protective devices that protect against overload and short circuit conditions in electrical systems.



After receiving information regarding used/tampered circuit breakers in 2003, the RCMP began an investigation. With the Province of Quebec's *Régie du Bâtiment*, they undertook an inspection initiative of all public buildings, including schools and hospitals, in the province. In 2005, sixty used/tampered breakers were found and removed in the Montreal-area alone. Two individuals and two corporations were charged.

### Pharmaceuticals

Industrialized countries such as Canada are not immune to the phenomenon of counterfeit pharmaceuticals. Although pharmaceuticals involved in RCMP-reported occurrences were mostly lifestyle drugs, namely, Erectile Dysfunction drugs obtained primarily by questionable online pharmacies, there have been occurrences involving individuals unknowingly purchasing pharmaceutical products from seemingly legitimate sources.

- In 2005, KINGWEST PHARMACY, in Ontario, was raided following an investigation into the sale to patients of counterfeit brand-name blood pressure medication, to patients. Lab analysis revealed the tablets contained talcum powder, which may have contributed to the death of several patients.

Three particular difficulties emerge when attempting to measure harm caused by counterfeit goods. Firstly, in cases involving *deceptive counterfeiting*, consumers are unaware that the product that has caused harm is counterfeit. They assume the harm was caused by poor usage practices or a manufacturing defect. This leads to counterfeit product incident underreporting. Secondly, medical personnel and coroners are not generally trained to look for the presence of counterfeit pharmaceuticals when examining the subject. Individuals ingesting counterfeit pharmaceuticals are at risk not only because their condition is not being suitably treated due to improper dosage, but also because they may be actively harming themselves with unsafe additives. Lastly, the online purchase of pharmaceuticals, which does not always require a prescription, usually means the circumvention of normal distribution channels, and, therefore, foregoing a health care specialist's evaluation of possible interactions and/or side-effects.

A British Columbia woman died from accidental metal poisoning in 2006 after ingesting counterfeit pills purchased online. The investigation revealed that the subject had been visiting unlicensed pharmaceutical websites, the type often advertised in spam emails, yet she appeared unaware her purchases were counterfeits. The pills are believed to have been produced in Southeast Asia and sold by a website based in Eastern Europe, possibly the Czech Republic, but purporting to be Canadian.

### Economic Impact

In addition to the potential health and safety risks posed by counterfeit goods, there has been a tangible economic impact not only in terms of lost government revenue, but also on legitimate retailers having to deal with the loss in revenue to online file sharing and the availability of cheaper counterfeit products on Internet websites.

Some legitimate retailers have reported difficulty in competing with vendors selling counterfeit goods at unfairly low prices, some having had to lay off staff in order to remain in operation. In more extreme cases, some have had to shut down their business.

# CHALLENGES TO LAW ENFORCEMENT

## Legislation

Current Canadian copyright and trade-mark laws have been criticized by domestic stakeholders and major trading partners for failing to address IP Crime. In the past year, however, the Government of Canada has reaffirmed its commitment to strengthen laws governing IPR; most notably in the 2010-03-03 Speech from the Throne and in the tabling on 2010-06-02 of Bill C-32, *The Copyright Modernization Act*.

### Proceeds of Crime

Some of the proposed legislative changes are to remove *Copyright Act* violations from the list of excluded indictable offences from the definition of “designated offences” under the *Proceeds of Crime (Money Laundering) and Terrorism Financing Act*. This proposed change aims to generate a greater effect on IP Crime by enabling law enforcement to seize the proceeds gained from IP Crime. This is expected to have a significant financial impact on the offender and to satisfy the requirement to increase deterrence measures, ultimately demonstrating, both nationally and internationally, that Canada is serious about tackling IP Crime.

In March 2010, amendments to the *Criminal Code* to remove *Copyright Act* violations from the list of excluded indictable offences from the definition of “designated offences” under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* came into effect.

### Bill C-61

The Canadian government introduced *Bill C-61* in 2008 in its first major attempt at modernizing the *Copyright Act* in over a decade. The attempt failed when the election was called in the fall of 2008. A previous effort also went by the wayside in 2005. In the summer of 2009, the Government of Canada began to consult with the Canadian population through an online discussion forum in which the Canadian public could post thoughts and submissions concerning the proposed changes. Roundtables for experts and organizations as well as town hall meetings hosted by the Ministers were conducted. Proposed amendments include the following:

- New exceptions that will allow Canadian consumers to legally record TV shows for later viewing and copy legally acquired music onto other devices.
- New exceptions for some educational and research purposes.
- Provisions to address the liability of Internet service providers and the role they should play in curbing copyright-infringing activities on their networks.

In June 2010, an Act to amend Canada’s *Copyright Act* was introduced by the Canadian government, namely Bill C-32 *The Copyright Modernization Act*. As stated within the summary of Bill C-32, the focus of the new proposed legislation is aimed toward modernizing “the rights and protections of copyright owners to better address the challenges and opportunities of the Internet, so as to be in line with international standards”. The Bill must still undergo a rigorous process before being endorsed by Parliament. <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=4580265&file=4>



In addition to trade-mark and copyright-related charges for counterfeiting and piracy offences, other possibilities include laying charges under the Customs and Excise Act for offences detected at the border (CBSA), and the Food and Drugs Act for offences pertaining to pharmaceuticals or toiletries, household products, food or medical devices (Health Canada).

## Prosecution

IP Crime is a relatively new phenomenon, legally speaking. It is anticipated that rates of prosecution will increase in the future as awareness increases for both law enforcement officers and prosecutors, and as IP Crime evolves from the peddling of counterfeit luxury goods in local flea markets and street corners to trusted brand-name goods being counterfeited and infiltrating the legitimate supply chain, ultimately posing a serious threat to the health and safety of Canadians.

However, the notion that current legislative provisions do little to deter IP Crime in Canada is generally felt by both private industry and law enforcement. Even after a successful prosecution, penalties imposed are typically mild and reflect, for the accused, the cost of doing business rather than serving as a deterrent. Judges are still faced with sentencing difficulties as there is no precedent, at this time, for imposing stiff penalties.

In June 2005, the RCMP raided KINGWEST PHARMACY after an investigation into the sale of counterfeit blood-pressure medication to patients. Lab analysis revealed the tablets contained talcum powder, which may have contributed to the death of several patients. The owner was charged with 11 counts of fraud and 1 count of passing off under the *Criminal Code*. Despite the accused having purchased the drugs from a travelling peddler, the judge ruled, in 2007, that he could not have known the Norvasc was counterfeit and found him not guilty.

## Border Issues

International trade has systematically increased the movement and distribution of goods. As a result, border services worldwide, which are the first line of defense in identifying and preventing illicit goods from entering the country, are burdened with increases in transnational shipments.

## Enforcement

### ***Rightsholder Collaboration***

Lack of rightsholder collaboration may occur for a variety of reasons, including the unwillingness to admit publicly that their products have weaknesses and can be duplicated. Some rightsholders believe this would erode consumer confidence in their brand. Others simply feel they do not have the resources to send a representative on location to assist law enforcement. In any case, the success of a prosecution relies on the expert analysis of the rightsholder to demonstrate to the court that the item in question is in fact counterfeit and constitutes an infringement.

---

*In 2007, David Petratis, president and CEO of Schneider Electric's North American Operating Division, announced, while addressing attendees at the United States Chamber of Commerce's annual Summit of Counterfeiting and Piracy, in 2007, that industry cannot afford to treat counterfeiting as "our dirty little secret, given the danger posed by counterfeit circuit breakers and other counterfeit goods." — NEMA Electroindustry, November 2007*

---

## CONCLUSION AND OUTLOOK

---

Despite Canadians reportedly recognizing the potential risks posed by the purchase of counterfeit goods, the demand for such products is not expected to decline as they remain widely available. Due to the depressed economy, consumer loyalty to brand names may fall in favor for the purchase of cheaper counterfeit versions. While the economy is expected to improve, it remains to be seen whether consumers will return to the legitimate market for brand-name products as a precedent for cheaper alternatives will have been set during the downturn.

Given criminals' increasing awareness of the benefits of counterfeiting, more individuals, criminal networks, and OC groups are expected to include IP Crimes in their portfolios. Furthermore, given the increasing availability of technology, counterfeiting techniques are expected to improve, rendering detection more difficult than ever.

Expected to contribute to an increasing availability of counterfeit products for sale in Canada is the inception of the Asia-Pacific Gateway and Corridor Initiative and the increase in global free trade. The marine transportation of containerized cargo from the Asia-Pacific Region to North America and imports from partner nations have amplified, further increasing the potential for the importation of counterfeit and pirated goods.

Although the RCMP has investigated nearly 1,500 cases of IP Crime in Canada between 2005 and 2008, this number is believed to represent a mere fraction of the true IP Crime situation in Canada. IP Crime enforcement requires a cooperative response from law enforcement, governments, the private sector, and the consumer. However, with limited law enforcement resources for the investigation and enforcement of IP Crime, it is not expected that such crimes will decrease, and thus, will continue to pose a threat to the health and safety of our communities.





## APPENDIX A — COMMODITY TYPES

Commodity types examined in this assessment were categorized by the Security and Prosperity Partnership (SPP) agreement based on definitions from the Organization for Economic Co-Operation and Development (OECD).

- 1) **“Apparel, Footwear, and Designer Clothing”**  
This commodity type was the most commonly counterfeited between 2005 and 2008 with such cases recorded by the RCMP involving trade-mark offences of items such as designer sunglasses, clothing, baseball caps, belts, shoes, purses, and wallets.
- 2) **“Audiovisual, Literary, and Related Copyrighted Work”**  
The second most commonly counterfeited commodities between 2005 and 2008 involved copyright infringements. Such cases recorded by the RCMP pertained to music, movie, literary work, artwork, video game, and computer software piracy.
- 3) **“Other”**  
The third most commonly counterfeited commodities between 2005 and 2008 involved those categorized as ‘other’. Such cases recorded by the RCMP involved items such as batteries, stickers, decals, car flags, lighters, belt buckles, mobile phone cases, tableware, guitar straps, and fishing lures.
- 4) **“Personal Accessories”**  
This commodity type was the fourth most commonly counterfeited between 2005 and 2008, with 115 such cases recorded by the RCMP involving trade-mark infringements for items such as jewelry, watches, and toys.
- 5) **“Consumer Electronics and Components”**  
Between 2005 and 2008, the RCMP recorded occurrences involving the counterfeiting of items such as mobile phones, hair straighteners, lamps, appliances, and circuit breakers.
- 6) **“Pharmaceuticals”**  
In Canada, the RCMP recorded cases involving counterfeit pharmaceuticals such as erectile dysfunction drugs, cancer drugs, and pain-relievers.
- 7) **“Toiletries and Other Household Products”**  
Between 2005 and 2008, the RCMP recorded occurrences involving the counterfeiting of toiletries and household products such as shampoo, perfume, razor blades, and dental care products.
- 8) **“Tobacco”**  
Between 2005 and 2008, the RCMP recorded occurrences involving counterfeit tobacco products, namely, cigarettes.
- 9) **“Automotive”**  
The RCMP recorded occurrences involving the counterfeiting of automotive parts, such as spark plugs and tire rims, between 2005 and 2008.
- 10) **“Food, Drink, and Agricultural Products”**  
In Canada, the RCMP recorded one instance involving counterfeit food, namely, soybean meal, between 2005 and 2008.

## APPENDIX B — IP CRIME OFFENCES IN CANADA



### **COPYRIGHT ACT**

**s. 42 (1)** / Every person who knowingly (a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists, (b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists, (c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, (d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or (e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists is guilty of an offence. (U)

**s. 42 (2)** / Every person who knowingly (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists. (U)

### **CRIMINAL CODE**

#### **Fraud**

**s. 380 (1)** / Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, defrauds the public or any person, whether ascertained or not, of any property, money or valuable security or any service. (U)

**s. 380 (2)** / Every one who, by deceit, falsehood or other fraudulent means, whether or not it is a false pretence within the meaning of this Act, with intent to defraud, affects the public market price of stocks, shares, merchandise or anything that is offered for sale to the public is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years. (U)

#### **Forging Trade-Mark**

**s. 406** / For the purposes of this Part, every one forges a trade-mark who (a) without the consent of the proprietor of the trade-mark, makes or reproduces in any manner that trade-mark or a mark so nearly resembling it as to be calculated to deceive; or (b) falsifies, in any manner, a genuine trade-mark. R.S., c.C-34, s. 364. (U)

**s. 407** / Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not, forges a trade-mark. R.S., c. C-34, s. 365. (U)

**s. 409 (1)** / Every one commits an offence who makes, has in his possession or disposes of a die, block, machine or other instrument, designed or intended to be used in forging a trade-mark. R.S., c. C-34, s.367. (U)

**s. 410** / Every one commits an offence who, with intent to deceive or defraud, (a) defaces, conceals or removes a trade-mark or the name of another person from anything without the consent of that other person. R.S., c. C-34, s. 368. (U)

**s. 411** / Every one commits an offence who sells, exposes or has in his possession for sale, or advertises for sale, goods that have been used, reconditioned or remade and that bear the trade-mark or the trade-name of another person, without making full disclosure that the goods have been reconditioned, rebuilt or remade for sale and that they are not then in the condition in which they were originally made or produced. R.S., c. C-34, s. 369. (U)

### **Passing Off**

**s. 408** / Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not, (a) passes off other wares or services as and for those ordered or required; or (b) makes use, in association with wares or services, of any description that is false in a material respect regarding (i) the kind, quality, quantity or composition, (ii) the geographical origin, or (iii) the mode of the manufacture, production or performance of those wares or services. R.S., 1985, c. C-46, s. 408; 1992, c. 1, s. 60(F). (U)

### **Unauthorized Recording of a Movie**

**s. 432 (1)** / A person who, without the consent of the theatre manager, records in a movie theatre a performance of a cinematographic work within the meaning of section 2 of the Copyright Act or its soundtrack.

**s. 432 (2)** / A person who, without the consent of the theatre manager, records in a movie theatre a performance of a cinematographic work within the meaning of section 2 of the Copyright Act or its soundtrack for the purpose of the sale, rental or other commercial distribution of a copy of the cinematographic work. 2007, c.28, s.1. (U)



## APPENDIX C — RCMP STRATEGIES

The RCMP works closely with its partners, including Health Canada, CBSA and private industry to develop a strategy to combat IP Crime, mainly focusing on public awareness and integrated enforcement. Common initiatives include partaking in local media interviews and participating in partnerships with various national and international-level organizations.

- The RCMP's Federal Enforcement Branch (FEB) is responsible for coordinating Divisional IP Crime enforcement resources and guiding efforts, providing training opportunities for its members, and promoting IP Crime awareness initiatives to the public.
- The RCMP's FEB also participates in various workshops and conferences, in addition to being an active contributor to national and international IP Crime working groups which aim to combat IP Crime.

The RCMP Federal Enforcement Sections (FES) attend mall exhibits, trade shows, expos, and flea markets. Attendance at these events includes patrolling the grounds for educational, preventative, and enforcement purposes, manning booths, giving presentations, distributing pamphlets, and affixing IP Crime awareness posters.

- FES in the Quebec Region has recently produced a video titled "Federal Investigation". This video is played in shopping centers to increase public awareness and at "Depot", the RCMP's training facility, to educate RCMP recruits on the Federal Enforcement mandate, which includes IP Crime.

FES frequently provide lectures on IP Crime in municipal police and RCMP detachments, regional and national RCMP Program-Oriented Work Planning Meetings (POWPM), and high schools, colleges, and universities as well as to private industry and the general public.

Although public awareness initiatives take time away from investigations, it is widely recognized that the benefits of prevention outweigh time-related disadvantages.



Project STRIDER  
August 2010



A National Intellectual Property  
Crime Threat Assessment  
2005 to 2008

