

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### CANADA

**Special 301 Recommendation:** IIPA recommends that Canada be elevated to the Special 301 Priority Watch List in 2008.

## **EXECUTIVE SUMMARY**

Almost alone among developed economies in the OECD, Canada has taken no meaningful steps toward modernizing its copyright law to meet the new global minimum standards of the WIPO Internet Treaties, which Canada signed more than a decade ago. Its enforcement record also falls far short of what should be expected of our neighbor and largest trading partner, with ineffective border controls, insufficient enforcement resources, inadequate enforcement policies, and a seeming unwillingness to impose deterrent penalties on pirates. In 2007, parliamentary leadership and even the government itself, at the highest levels, acknowledged many of these deficiencies, and the government listed copyright reform among its top legislative priorities. But by the end of the year, these encouraging statements produced almost nothing; apart from the welcome enactment and enforcement of a federal criminal law against unauthorized camcording, the piracy picture in Canada is as bleak as it was a year ago. Only two of America's top 10 trading partners (China and South Korea) surpass Canada's record of appearing continuously on a Special 301 list every year since 1995.<sup>1</sup> To underscore U.S. insistence that Canada finally take action to address the serious piracy problem it has allowed to develop just across our border, and that it bring its outmoded laws up to contemporary international standards, IIPA recommends that Canada be elevated to the Priority Watch List in 2008.

## **Actions Which the Canadian Government Should Take in 2008:**

### **Copyright Law Reform**

- Enact legislation bringing Canada into full compliance with the WIPO "Internet" Treaties (WIPO Copyright Treaty [WCT] and WIPO Performances and Phonograms Treaty [WPPT])
- Create strong legal incentives for Internet Service Providers (ISPs) to cooperate with copyright owners in combating online piracy
- Amend the Copyright Act to clarify the scope of the private copying exception for sound recordings
- Amend the Copyright Act to clarify liability for those who knowingly facilitate, encourage or contribute to infringement (such as illicit file-sharing services)

### **Enforcement**

- Make legislative, regulatory or administrative changes necessary to empower customs officials to make *ex officio* seizures of counterfeit and pirate product at the border without a court order
- Increase resources devoted to anti-piracy enforcement both at the border and within Canada
- Direct the Royal Canadian Mounted Police (RCMP), Canadian Border Services Agency (CBSA), and Crown prosecutors to give high priority to intellectual property rights enforcement, including

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<sup>1</sup> Dismissive Parliamentary testimony by a senior representative of the Department of Foreign Affairs and International Trade may help explain why. "Canada does not recognize the 301 Watch List process," the DFAIT officer told the Standing Committee on Public Safety and National Security on March 27, 2007. "It's lacking reliable and objective analysis, basically. It's driven entirely by U.S. industry. ....If you aren't on the watch list in some way, shape or form, you may not be anyone of importance. Most countries with significant commercial dealings are on the watch list." House of Commons, Standing Committee on Public Safety and National Security, No. 35, 1st Session, 39th Parliament (March 27, 2007), at 1150 (testimony of Nancy Segal).

against retail piracy and imports of pirated products, and to seek deterrent penalties against those convicted of these crimes

## **COPYRIGHT LEGAL REFORM AND RELATED ISSUES**

What IIPA reported in last year's Special 301 report remains, disappointingly, true today: "Canada remains far behind virtually all its peers in the industrialized world with respect to its efforts to bring its copyright laws up to date with the realities of the global digital networked environment. Indeed, even most of the major developing countries have progressed further and faster than Canada in meeting this challenge." With the notable exception of outlawing unauthorized camcording of motion pictures, the Canadian government has scarcely begun to tackle the main items on its copyright and enforcement legislative agenda: bringing its laws into full compliance with the globally accepted benchmarks for modern copyright legislation (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)); making the necessary legislative changes to empower customs officials to make ex officio seizures of counterfeit and pirate product at the border; and dedicating sufficient resources and establishing adequate policies to ensure effective copyright enforcement efforts within the country.

Several developments during 2007 gave rise to hopes that the Canadian government would finally begin to translate into reality its oft-stated commitment to modernization of its copyright laws and border controls:

- In May 2007, the Standing Committee on Public Safety and National Security of Canada's House of Commons issued a report entitled "Counterfeit Goods in Canada – A Threat To Public Safety," in which the committee concluded that "the legislative framework for trademarks and copyrights has serious weaknesses," and agreed with most of the witnesses before it that "amendments to the Copyright Act are needed to give public authorities and intellectual property owners the powers and resources needed to stem the tide of counterfeiting and piracy."<sup>2</sup>
- In June, 2007, another parliamentary standing committee – on Industry, Science and Technology – issued a report entitled simply "Counterfeiting and Piracy are Theft," which contained detailed recommendations for amendments to enable more effective enforcement against piracy, as well as calling for Canadian ratification of the WCT and WPPT.<sup>3</sup>
- On October 16, 2007, the Government's Speech from the Throne, laying out its top legislative priorities, promised to "improve the protection of cultural and intellectual property rights, including copyright reform."
- Two days later, in parallel responses to the two parliamentary reports noted above, the government asserted that it "is committed to the importance of providing a robust framework for intellectual property rights, not only to address the risks posed by counterfeit goods to consumer health and safety, but to foster an environment conducive to innovation, in an effort to attract further investment and high paying jobs to this country's growing knowledge-based economy." The government response laid out a four-point "IPR Strategy" that includes "strengthen[ing] and moderniz[ing] Canada's enforcement regime," and "bringing Canada's copyright regime into conformity with the WIPO Internet Treaties."<sup>4</sup>

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<sup>2</sup> See <http://cmte.parl.gc.ca/Content/HOC/committee/391/secu/reports/rp2985081/securep10/securep10-e.pdf>.

<sup>3</sup> See <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10476&Lang=1&SourceId=213200>.

<sup>4</sup> See <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10476&Lang=1&SourceId=215779>. Enactment of anti-camcording legislation (see below) was the first point of the government's IPR strategy as set out in its responses to the parliamentary committee reports. Points 2 and 3 are referenced in the text above. The fourth point was for the government to "demonstrate its commitment to addressing counterfeiting and piracy at the international level," citing declarations joined by Canada in the G8 and NAFTA Security and Prosperity Partnership contexts. To this might be added Canada's participation in the anti-counterfeiting trade agreement (ACTA) negotiations. Such initiatives, while important, are no substitute for bringing Canada's own laws and enforcement practices up to minimum international standards.

Building on these explicit public commitments, the government was widely expected to unveil its specific legislative initiatives before Parliament rose in mid-December for its winter recess. Sadly, all the hopes raised by these encouraging developments were dashed. Nothing happened: no legislation was tabled and no result was announced by the Interdepartmental Working Group tasked to address enforcement shortfalls. Although Canada's Parliament, and its government at the highest levels, have pledged to bring its copyright law and enforcement regime into the 21st century, the ministries responsible for fulfilling this pledge seem somehow unable to deliver.

Thus, as we enter the twelfth year following negotiation of the WIPO Internet Treaties, in which Canada played an important and positive role, Canada not only remains entirely out of compliance with the global minimum world standards embodied in the Treaties, but still has not even issued a legislative proposal to bridge this gap.<sup>5</sup> Similarly, 2008 opens as yet another year in which Canadian law enforcement officials are denied the legal tools and the resources needed to secure Canada's borders against pirate imports and to crack down effectively on infringing activities being carried out by organized criminal groups within its borders.

There was one exception to this bleak picture of Canadian policy failure in 2007: the enactment (with support from all political parties) of Bill C-59, which makes unauthorized camcording of theatrically exhibited motion pictures a federal criminal offense. IIPA commends Canada for this achievement, which (as discussed below) is already beginning to have an impact. We can only hope that this is a positive sign that there may be a broad political consensus in 2008 for Canada to finally tackle its broader copyright law and enforcement shortcomings that continued to fester in 2007. Some of the key shortcomings include:

**Technological Protection Measures:** When Canada signed the WCT and WPPT more than a decade ago, it pledged support for treaties that were designed to respond to what were then new technologies. Notably, as a crucial element to foster the healthy development of e-commerce in copyrighted materials, these treaties obligated adhering countries to enact effective legal regimes to protect technological measures used by copyright owners to control access to and copying of their works. While nearly every other OECD country either has met this obligation or is well on the way to doing so, Canadian law remains hopelessly outdated in this area. IIPA urges Canada to fulfill its pledge by enacting laws that deal with technological protection measures (TPMs) in a manner that fully complies with the WCT and WPPT. This means legislation that:

- comprehensively protects TPMs, both in so far as they manage access to copyright works and in their use to prevent unauthorized copying and the exercise of other exclusive rights;
- outlaws trafficking in devices aimed at circumventing TPMs, or providing circumvention services, and defines violations without imposing onerous intent requirements;
- defines exceptions or defenses with care, so as to avoid the creation of a market for circumvention devices or services; and
- provides strong civil and criminal remedies for violations.

Canada's failure to provide legal protection for TPMs is not a mere theoretical lapse: it has already had concrete consequences. In the absence of strong prohibitions to the contrary, Canada now finds itself one of the world's epicenters for the distribution and export of several categories of tools aimed at circumventing TPMs – so-called "modification chips" and similar devices that enable pirated and counterfeit video games to be played on videogame consoles. Highly organized international crime groups have rushed into the gap left by Canada's outmoded copyright law and now use the country as a

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<sup>5</sup>The previous government unveiled legislation (Bill C-60) in 2005 that, while positive in some respects, fell far short of meeting the WCT and WPPT benchmarks. While we continue to urge the current government to jettison the approach taken by Bill C-60, in favor of legislation more consistent with international norms for nations that have already implemented these treaties, the direction Canadian copyright reform will take remains unknown.

springboard from which to undermine legitimate markets in the United States, the United Kingdom, Australia and elsewhere, through the export of circumvention devices. It is long past time for Canada to put into place the legal tools that will enable it to put a stop to this increasing pollution of the markets of its trading partners.

**Online Piracy:** Copyright reform legislation in Canada is also needed to counter the growing problem of Internet piracy. It can best do so by conditioning liability limitations for Internet Service Providers (ISPs) on affirmative cooperation with copyright owners in combating online infringements. In a 2004 decision (*SOCAN v. CAIP*), the Supreme Court of Canada observed that the “effective remedy ... would be enactment by Parliament of a statutory ‘notice and take down’ procedure as has been done in the European Community and the United States.”<sup>6</sup> Accordingly, legislation should also provide a true “notice and takedown” system that offers an expeditious means of shutting off access to infringing online activity, rather than confining itself to the mere “notice and notice” regime proposed by previous Canadian governments. While an obligation for an ISP to forward notices from copyright owners to end-users would be a useful supplement to a system that gives ISPs strong incentives to “take down” infringing materials—particularly if coupled with an obligation to terminate the accounts of repeat or serious infringers—it is no substitute for it.<sup>7</sup>

New legislation should also clarify liability under Canadian law for those (such as peer-to-peer (p2p) service providers and distributors of file sharing software) who in the Internet context knowingly facilitate massive infringements. In contrast to the international trend, exemplified by successful lawsuits in Australia, Korea, Taiwan and the U.S. against p2p services that were facilitating massive worldwide infringement, recent Canadian case law on liability for authorizing infringement raises questions as to whether a comparable enterprise would be found liable under Canadian law. The Copyright Act should be amended to enable rights holders to obtain effective remedies against those who in the Internet context knowingly facilitate infringements (such as p2p service providers and distributors of file sharing software who offer services or software knowing that their actions will likely result in infringement), or who encourage, induce or materially contribute to the infringement. Clear rules on this topic would allow copyright infringement to be dealt with at the source instead of at the point of consumption, thus facilitating the avoidance of litigation against users of illicit p2p services as direct infringers (the topic of much public discussion in Canada).

**Other Copyright Issues:** New legislation must also address the scope of the private copying exception for sound recordings. While IIPA hopes that further judicial interpretation of Canada's current law will more clearly establish that the private copying exception applies only to individuals who make copies for their own use, a legislative amendment is also required to clarify that the exception applies only to copies of non-infringing recordings owned by the person who makes the copies. Any broader application of the private copy exception would raise serious questions about Canadian compliance with its WTO TRIPS obligations.

Bill C-60, proposed by the previous government in 2005, contained several positive features, notably the specification of an exclusive right of “making available,” and a new section banning dissemination or public performance of a copy of a sound recording made under the private copying exception. These should be brought forward in new copyright reform legislation. On the other hand, Bill C-60 also included flawed proposals in the area of educational and library exceptions, such as an ill-defined

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<sup>6</sup> *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004] 2 S.C.R. 427, 2004 SCC 45, available at <http://scc.lexum.umontreal.ca/en/2004/2004scc45/2004scc45.html>.

<sup>7</sup> The previous government's Bill C-60 failed to address this problem, and would in fact have exacerbated it, because it would have provided sweeping safe harbors to network service providers without creating any incentives for them to cooperate with copyright owners to deal with copyright infringements that take place in the digital network environment. In particular, it would have immunized service providers against liability even when they had actual knowledge of infringement and the power to restrict or prevent it, until an independent court order was obtained; would also have sheltered p2p file sharing services that contribute to massive infringement; and would have prevented rights holders from even obtaining injunctions against service providers whose services are used to facilitate infringement. Such an approach failed to comply with the mandate of the WIPO Internet Treaties that national law “permit effective action against any act of infringement of rights covered by this Treaty.”

new exception for use of a work in a "lesson, text or examination" in educational settings, and a provision authorizing interlibrary distribution of digital copies, that would have had a significant detrimental impact on publishers of scientific, technical and medical materials in particular. These should be carefully re-examined. The Canadian government should ensure that any legislative proposals it makes on educational and library exceptions to copyright can pass muster with its existing and anticipated international obligations, and that they provide ample room for market solutions.

**Enforcement provisions:** Finally, along with reform of Canada's substantive copyright law, legislative changes are necessary, though not alone sufficient, for Canada to begin to remedy its serious deficits in copyright enforcement (discussed in more detail in the next section). Among other critical changes, the Canadian Border Services Agency (CBSA) must be given the independent authority it currently lacks to act *ex officio* against any suspected pirate or counterfeit imports. Furthermore, both the parliamentary committees that issued reports in 2007 on the problems of counterfeiting and piracy recommended other essential changes, including allowing seizure of income and property derived from copyright piracy; providing the Royal Canadian Mounted Police (RCMP) and the Department of Justice with adequate resources for enforcement against piracy; establishing a copyright enforcement policy that effectively targets piracy and counterfeiting; and increasing damages and penalties. These recommendations should be acted upon promptly, to provide the legal framework necessary for effectively addressing piracy.

## **COPYRIGHT PIRACY AND ENFORCEMENT**

The piracy problem within Canada continues to get worse, not better, and is causing serious problems for markets in other countries, including the U.S.

In 2007, the Entertainment Software Association's investigations uncovered numerous piracy operations in Alberta, British Columbia, and Ontario. Pirates openly advertised these operations on the internet through their own websites and/or online classifieds such as Craigslist. Many pirates also operated stores full of pirated materials, often found in malls. During a raid of a mall-store in Richmond, British Columbia, several stores within the vicinity of the target closed within minutes of the RCMP entering the mall, leading the RCMP and ESA to believe that this mall housed a network of stores selling pirated goods that trade and communicate with each other. The ESA also discovered a network of individuals involved in selling pirated video games across the Lower Mainland region of British Columbia. Popular pirated materials sold by these operations included burned optical discs (authorities often seized several hundred discs) and circumvention or modification devices. Each pirate typically owned at least one personal computer containing thousands of pirated software titles that he could easily burn onto optical discs. One operation in Ontario that the ESA confronted on June 23, 2007, possessed over 2,000 burned games on optical discs for various gaming systems, six optical disc burners, thirty-five modification chips and tools for soldering these chips to game consoles, and three personal computers with multiple hard drives containing the operation's business records. Only a few criminal cases have been brought in Toronto, Edmonton and Richmond against vendors of pirated entertainment software.

The estimated 2006 piracy rate for business software in Canada of 33% far exceeds that of the U.S. or of many Western European countries. Servers at universities continue to act as digital storage facilities for large quantities of pirate intellectual property, including games, music and movies.

Internet piracy appears to be on the increase in Canada, aided by the uncertain legal environment and serious shortfalls in enforcement. These factors contribute to the formidable propensity of Canadians to patronize illegal online sources of copyright material, thus stunting the growth of legal alternatives. For instance, although channels such as digital downloads, online subscription services and delivery of music to mobile devices account for nearly 30 % of the legitimate U.S. market for recorded music, the comparable figure for Canada is only 12%; and the estimated number of unauthorized

downloads (1.3 billion) swamps the number of legitimate downloads (20 million) by a factor of 65:1.<sup>8</sup> These statistics bear out the OECD's 2005 conclusion that Canada has the highest per capita incidence of unauthorized file-swapping in the world.<sup>9</sup>

These realities point to serious deficiencies in enforcement against piracy. Much of the problem is attributable to the inaction of Canada's government on law reform. For example, Canada's outmoded copyright law contains no criminal prohibitions on the manufacture or distribution of devices (such as mod chips and the like) whose only plausible use is to circumvent technological protection measures used by copyright owners to fight piracy. Consequently, although both RCMP and local authorities are well aware of the organized criminal groups in Canada that dominate trade in these circumvention devices, they are powerless to act against them. Only when Canada's copyright law is modernized to include clear criminal prohibitions against this activity will Canadian law enforcement even have the legal authority to enforce against mod chip manufacturers, distributors and exporters. Until then, rather than attacking the problem at its source, the burden of combating this activity is unfairly shifted to law enforcement in the countries to whose markets these devices are being exported, and whose governments (unlike Canada's) have already stepped up to the problem by adopting laws to enable implementation of the WIPO Internet Treaties.

A key anti-piracy battlefield where Canadian government inaction has effectively handcuffed its law enforcement agencies is at the border. Canadian customs officers in the CBSA lack statutory authority to seize even obviously counterfeit products as they enter Canada. Unless a court order has been previously obtained<sup>10</sup>, only the RCMP can carry out an *ex officio* seizure, and coordination between the two agencies is generally not effective. As a result, virtually no seizures at the border have occurred, and Canada's borders are effectively wide open to imports of pirate CDs, DVDs or videogames and other infringing materials. CBSA must be given independent authority to act against any suspected pirate or counterfeit imports. Although the Canadian government has acknowledged this deficiency and has been studying the issue for years, it has failed to introduce the necessary legislative changes. Perhaps the parliament's Committee on Public Safety and National Security was correct when it identified "a lack of strong leadership" as a major "obstacle to the development of an effective Canadian strategy to fight counterfeiting and piracy." Whatever the explanation for Canada's years of policy paralysis in this area, it is long past time for the Canadian government to identify which statutes, regulations or policies must be amended in order to confer meaningful *ex officio* authority on border enforcement agencies, and to act promptly to institute the needed changes.<sup>11</sup>

Similar legal deficiencies hamper attempts by copyright owners or law enforcement to combat piracy on the Internet. Though the online piracy problem is pervasive and growing, Canadian law lacks the fundamental legal tools for addressing it. Notably absent are clear legal incentives for network operators to cooperate in anti-piracy efforts, whether through a notice and takedown system such as the regime that has been in place in the U.S. since 1998, or through the use of liability doctrines to encourage network operators to take more proactive steps to detect and deal with pirate activity online. Until Canada adopts a modernized legal regime that includes such incentives, prospects for progress against online piracy will remain dim.

However, not all enforcement problems in Canada can be traced to deficiencies in the law. Even when pirate activity is clearly illegal, Canada's response to it all too often falls short. While Canadian

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<sup>8</sup> "Nielsen SoundScan Figures Confirm Canada's Weak Digital Music Market and the Sharp, Ongoing Decline in Overall recorded Music Sales," Jan. 4, 2008, at [http://www.cria.ca/news/08-01-08\\_n.php](http://www.cria.ca/news/08-01-08_n.php).

<sup>9</sup> Organization for Economic Cooperation and Development, "Digital Broadband Content: Music," Dec. 13, 2005, p. 75, <http://www.oecd.org/dataoecd/13/2/34995041.pdf>.

<sup>10</sup> Court orders, however, can only be obtained upon the filing of an application by the right holder, supported by affidavit evidence, including information regarding the identity of the importer, exporter or vendor; country of origin or export; quantity and value of the infringing goods; estimated date of arrival in Canada; mode of importation; identity of the ship, train or truck used to transport the infringing goods, and (if available) the serial number of the container in which these goods may be found. In many instances, a right holder will not have access to this information and the necessity of obtaining the court order is itself unduly burdensome and not designed to prevent pirated and counterfeit imports from entering the country.

<sup>11</sup> Both parliamentary committees that studied this topic in 2007 called explicitly for such amendments to be enacted.

authorities may say that combating copyright piracy is an important objective, some of their actions – in terms of priority setting, resources, training, and the outcome of prosecutions – suggest the contrary. Piracy is a serious problem in Canada, but the evidence is that the Canadian government is not taking it seriously.

In its Special 301 announcement last April, USTR called for more anti-piracy resources and training to be provided both to CBSA and to domestic law enforcement officials. This has not happened. Both CBSA and RCMP remain short of dedicated resources – including manpower and data and intelligence management – to address Canada’s growing piracy problems. Nor is there progress to report on interagency cooperation, another problem flagged by USTR last year. The existing arrangement under which CBSA can refer cases to the RCMP through designated RCMP liaison officers is unwieldy and impractical.<sup>12</sup>

The continued prevalence of pirate product in Canada’s retail market indicates another enforcement shortcoming: the RCMP’s long-standing reluctance to target retail piracy. While this may be attributable to the Canadian government’s failure to provide RCMP with adequate enforcement resources, its record of cooperation with right holders to attack piracy remains spotty. Examples of unwillingness to share information, reluctance to disclose the inventory of pirate entertainment software product seized, and insistence on formalities such as Canadian copyright registration are all too common. Although the RCMP has now listed intellectual property crimes among its top stated priorities, its actions too often do not fulfill this commitment. Under the Justice/RCMP Copyright Enforcement Policy, RCMP still will rarely take action against retail outlets engaged in piracy. The Enforcement Policy does not account for the reality that as technology constantly advances, the “retailers” now use ordinary computer equipment to become mass manufacturers, producing literally hundreds of thousands of pirated DVDs, CDs, software and video games.<sup>13</sup>

Not surprisingly, the retail piracy problem in communities such as Vancouver, Montreal, Edmonton, Calgary and Greater Toronto continues to worsen. Various local authorities have chosen not to pursue at least ten major piracy operations uncovered in 2007,<sup>14</sup> even after confiscating the pirated materials. When government authorities refuse to pursue criminal investigations against retail pirates, copyright owners are left with only civil remedies to pursue, and pirates are not deterred. While there have been some important successes – for instance, RCMP criminal actions have been critical in the near-total suppression of the pirate retail videogame market in Quebec City – on the whole the Canadian law enforcement commitment to enforcement against retail piracy is inconsistent and generally under-resourced.<sup>15</sup>

The same problems extend to prosecutors and courts in Canada. Few resources are dedicated to prosecutions of piracy cases; prosecutors generally lack specialized training; and too many judges seem to deprecate the seriousness of copyright piracy. The result is that those few pirates who are criminally prosecuted generally escape any meaningful punishment.<sup>16</sup> An illustrative example is the story of Chui Lau, a well known owner/operator of a pirate retail store in Richmond, British Columbia, who pled guilty to over eighty counts of criminal copyright infringement over a three year period beginning in 2003, as a result of a series of raids in which equipment for manufacturing counterfeit DVDs was seized, along with a

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<sup>12</sup> The reports of both parliamentary committees called for the government to devote increased resources to, and to require better coordination and information sharing between, CBSA and RCMP.

<sup>13</sup> RCMP continues to take actions against some producers of high volumes of pirate optical disc products, most recently in raids in Montreal in December that targeted a major producer of pirate DVD versions of television series. Tens of thousands of DVD-Rs involving 350 different titles were seized, as well as 200 DVD burners and other equipment, and some 2500 shipments of the counterfeit product were intercepted, in the largest enforcement operation of its kind in Canada.

<sup>14</sup> This includes the June 2007 ESA-led operation against an Ontario pirate described above.

<sup>15</sup> The Industry, Science and Technology Committee report called for a higher priority for enforcement at the retail level, while the Public Safety and National Security Committee report proposed that knowing possession of counterfeit or pirate goods for purposes of sale be criminalized.

<sup>16</sup> While calling for increased statutory penalties for piracy, the Industry, Science and Technology Committee of the House of Commons also opined that “the justice system should be imposing stiffer penalties for such offences within the limits of current legislation,” and recommended that the government “immediately encourage prosecutors” to do so.

large quantity of pirate product. Despite being charged on three separate occasions, the total punishment Mr. Lau received for his repeat offenses was a fine of C\$11,000 (US\$9400) and an order to remain in his residence from 11pm to 7am for 12 months. Even the RCMP acknowledges that the penalties for engaging in copyright piracy in Canada – usually insignificant fines – remain simply insufficient to deter people from engaging in this highly profitable and relatively risk-free crime.

The light penalties also encourage recidivism. As the RCMP told a parliamentary committee in 2007, “[t]he current criminal penalties imposed by courts pose little deterrence. It is not unusual to charge the same groups multiple times for IPR crimes, as they see the fines simply as the cost of doing business.”<sup>17</sup> For example, despite the fact that a vendor of pirated entertainment software products was charged by the Richmond RCMP, pled guilty to twenty-six fraud-related charges, and was fined C\$25,000, he resumed selling pirated materials just weeks after his sentencing.

USTR should press the Canadian government to initiate and adequately fund a coordinated federal law enforcement effort against copyright piracy. This should include a nationwide program to crack down on the importation of pirate goods at all major Canadian points of entry. Raids and seizures against retail targets, as well as against the manufacturers of pirate products, must be stepped up. Since the availability of pirated products will not be reduced without criminal prosecutions against infringers and the imposition of deterrent sentences, Crown counsel should be encouraged to take on more copyright infringement cases, and be provided with the training and other support needed to fully prosecute them. Canadian courts should be looked to for more consistent deterrent sentences, including jail time for piracy cases. Canadian authorities should be encouraged to accord a high priority – in practice, not just in rhetoric – to the serious piracy problems within their country, and to devote adequate resources to the investigation and prosecution of these cases.<sup>18</sup>

On a positive note, IIPA is pleased to observe that the new federal criminal law against unauthorized camcording has already had a constructive impact, both as a deterrent and as an effective means to catch movie thieves. Since Law C-59 was enacted last June, Montreal, previously a leading global source of camcorded masters for DVD piracy, has been supplanted by other, non-Canadian cities in the vanguard of this illicit business. People caught camcording in theaters have already been arrested in both Montreal and Calgary.<sup>19</sup> IIPA commends Canadian authorities for their work thus far and encourages them to keep up vigorous enforcement of the new law.

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<sup>17</sup> See Public Safety and National Security Committee report, at 12. RCMP has been saying this consistently in policy assessments going back at least 8 years. See RCMP, “An Assessment of Commercial Scale Criminal Copyright Piracy and Trade-mark Counterfeiting in Canada”, 2000 (“minimal sentences and low fines offer little incentive for law enforcement to pursue this issue more vigorously, and every incentive for criminals to continue pirating copyrighted goods”); see also, RCMP, “A strategic intelligence assessment of Intellectual Property Crime in Canada”, 2004; RCMP, “Intellectual Property Crime in Canada – Hazardous and Costly,” 2005.

<sup>18</sup> Numerous recommendations of the parliamentary committees echo these concerns.

<sup>19</sup> Meilleur, Philippe. “Montreal se retait une virginiete,” *Journal de Montreal*, January 24, 2008. Bill Kaufman, “Crackdown on pirating; Calgary called hotspot for illegal movie copying,” *The Calgary Sun*, January 18, 2008.