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THE CANADIAN CHAMBER OF COMMERCE
LA CHAMBRE DE COMMERCE DU CANADA



**Submission to the Government of Canada on the
proposed Anti-Counterfeiting Trade Agreement (ACTA)**



April 30, 2008

The Voice of Canadian Business TM
Le porte-parole des entreprises canadiennes ^{MD}



CANADIAN CHAMBER SUBMISSION ON ACTA

Background:

The Canadian Chamber of Commerce (Canadian Chamber) is pleased to provide comments to the Government of Canada regarding the proposed Anti-Counterfeiting Trade Agreement (ACTA). The Canadian Chamber is very supportive of Canada entering into ACTA.

The Canadian Chamber is Canada's largest and most representative business association. Through a unique two-way consultative process, the Chamber represents approximately 170,000 members through our network of over 350 local chambers of commerce and boards of trade located in every province, territory, and federal electoral constituency.

It is vital that Canada begin to take a larger role in protecting IP in Canada and internationally. Conservative estimates put the annual cost of IP theft in Canada in the \$22 billion dollar range. While counterfeiting used to consist only of knock-off t-shirts and other novelty items, IP theft now negatively impacts nearly all Canadian businesses - everything from pharmaceutical products, to brake pads, electrical products, software, tobacco products, movies, food, wine, personal care products, music, automobile parts and luxury goods. Virtually no industry escapes this illegal activity. Simply put, inadequate legislation, ineffective policies, and insufficient resources are preventing efficient and effective criminal and civil enforcement against IP theft in Canada. It is imperative that Canada become more proactive and aggressive in protecting IP.

Leading economic jurisdictions around the world have made IP protection a priority. In Japan, an IP Strategy Council has been organized. This issue was deemed so important in Japan that it has the Prime Minister leading the organization. In France, an anti-piracy commission designed to curtail internet piracy was launched and is overseen by French President Nicolas Sarkozy with the Minister of the Economy and Minister of Culture as the lead Ministers responsible. Clearly, other nations are taking charge and effecting global changes in IP. If Canada does not follow suit, Canadian businesses will be left at the periphery of the global economy.

While the passage of Bill C-59 (*An Act to Amend the Criminal Code - unauthorized recording of a movie*) was a positive first step towards protecting IP, we need decisive, broad-based measures to restore an orderly, legal and safe marketplace, both in the physical and the digital realm. Legal certainty will foster investment in innovative business models. And tougher laws and enforcement against counterfeiting and piracy will not only protect consumers from shoddy and often dangerous products such as knock-off electrical cords, batteries and medicine, but will also make it tougher for criminal syndicates to profit from their sale.



In 2002, the World Intellectual Property Organization reported that IP represents 45 to 75 percent of the overall corporate value of the Fortune 500's largest companies. While almost all companies are increasingly reliant on IP rights, the highest growth areas of the global economy are IP-based industries.

By better protecting and defining IP rights, we will develop a marketplace that rewards and protects investments in innovations, creations and goodwill, fostering new and innovative business models, stronger economic growth, job creation and prosperity. In modern, developed nations like Canada, where services, innovation and creative-based industries have become key economic drivers, this has never been more important.

As awareness of the need for action grows, so does consensus on the reasons underlying Canada's troubling IP rights situation. These include the lack of a clear legal framework for IP, the failure to modernize Canada's IP laws in the digital realm, a lack of police and prosecutorial resources dedicated to counterfeiting, insufficient criminal penalties, a lack of effective civil remedies, and disempowered Customs officials.

The House of Commons Industry Committee's conclusions followed hard on the heels of a virtually identical report tabled by the Public Safety and National Security Committee. Taken together, the reports – each of which received unanimous, all-party support – urged the government to:

- Make it a clear criminal offence to manufacture, import and sell counterfeit goods;
- Strengthen civil remedies for counterfeiting and piracy infringements;
- Authorize the Canada Border Services Agency to seize and destroy counterfeit and pirated goods on its own initiative;
- Provide adequate resources to the RCMP to address counterfeiting and piracy; and
- Ratify the World Intellectual Property Organization (WIPO) Internet Treaties.

These recommendations are based on measures already successfully implemented by Canada's major trading partners, most of which began targeting counterfeiting and piracy years ago. In contrast, Canada's absence of an action plan has harmed our economic growth, innovative capacity, international competitiveness and has landed us on international IP rights watch lists.

The Canadian Chamber and its members remain very concerned about the weak intellectual property protection and enforcement regime in Canada. While intellectual property (IP) crime can lack the social stigma of many other criminal offences, this illegal activity harms Canadian businesses and is responsible for loss of employment, a reduction in tax revenues for governments, and, in some cases, poses serious consumer health and safety risks due to the poor quality of products and sometimes hazardous nature of the fakes. Intellectual property is an essential element for promoting investments in research and innovation, international trade and investment, consumer



protection and overall economic growth. In the rapidly changing global economy, protecting intellectual property is critical to ensuring a competitive and prosperous Canada.

The Canadian Chamber encourages the government to begin acting upon the two reports issued by the House of Commons Industry, Science and Technology Committee and the Public Safety Committee in 2007 on protecting intellectual property and adhere to the commitments made in the 2007 Throne Speech and at the 2007 North American Leaders meeting in Montebello. In light of these developments, the Canadian Chamber recommends the following:

Recommendations:

1. The federal government must strengthen the current IPR protection legislative framework by:
 - a. Enacting legislation that clearly stipulates trademark counterfeiting as a specific criminal offence under the Trade-marks Act.
 - b. Amending the Criminal Code, as well as the Trade-marks, Copyright and Customs Acts where necessary, to criminalize the intentional manufacture, reproduction, distribution, importation and exportation or sale of counterfeit products.
 - c. Amending the Criminal Code, as well as the Trade-marks and Copyright Acts where necessary, to criminalize the intentional possession of counterfeit goods for the purpose of sale under these acts.
 - d. Taking concrete steps to significantly curtail the rampant online piracy and counterfeiting in Canada, including immediately implementing the WIPO Internet Treaties.
 - e. Enacting sufficiently severe penalties to deter piracy and counterfeiting, including jail time as punishment in cases of commercial piracy and counterfeiting and allowing police to seize income and property derived from copyright piracy.
2. Canada Border Security Agency (CBSA) to be given the legislative authority to conduct searches, seize counterfeit and pirated goods, and impound such goods and destroy them in accordance with due process and Canadian law.
3. Federal government to provide additional funding and training to CBSA, police, Crown attorneys and judges, specifically for the purpose of fighting IP theft and enhancing IPR protection.
4. Develop and implement effective strategies for combating IP crime involve improvements in data collection methods and analysis of information by government, business and other stakeholders.
 - a. Public and private sector stakeholders involved in data collection methods and analysis of IP information should adopt internationally accepted data collection methods.



- b. All IP enforcement officials, (i.e. police and border officials) should be given access to databases
5. Federal government to establish an IP Crime Task Force and an IP Inter-ministerial Coordination Council.
- a. IP Task Force:
 - i. comprising of specialized IPR prosecutors and police officers dedicated to IP related crime
 - ii. will coordinate enforcement and prosecution activities against counterfeiters and pirates
 - iii. will work with border officials to address counterfeit products detected at border crossings
 - b. IP Inter-Ministerial Coordination Council:
 - i. Would be led by the PMO's office, and would be comprised of high-level representatives from key ministries, specifically, the departments of Industry, Public Safety, Foreign Affairs and International Trade, and Finance. Under guidance of the PMO, this core IP leadership group would be supported by a small, dedicated IP policy staff, and would work in partnership with key industry stakeholders as well as other effected departments, in particular, the departments of Health, Justice and Heritage.
 - ii. Would be responsible for developing an effective national strategy for combating piracy and counterfeiting and creating policy programs to promote the protection of IP and increase innovative capacity.
 - iii. Would produce progress reports on the ongoing fight against IP theft and implement policy initiatives to enhance Canada's innovation performance and promotion of IP rights. Examples of such policy initiatives would include: multi-pronged education programs targeting youth, consumers, and enforcement officials; IP information/resource kits for Canadian SMEs; and, creating effective programs designed to stimulate the commercial exploitation of IP rights.
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