

June 12, 2012



[Michael Geist](#)

Canada a Pirate's Paradise? Way Overboard

Posted: 06/11/2012 5:26 pm

The Canadian intellectual property's lead lobby group, the [Canadian IP Council](#) (itself a group within the Canadian Chamber of Commerce) released a new policy document on June 7 that identifies its legislative priorities for the coming years. Anyone hoping that the SOPA protests, the European backlash against ACTA, and the imminent passage of Bill C-11 might moderate the lobby group demands will be sorely disappointed.

"[Counterfeiting in the Canadian Market: How Do We Stop It?](#)" is the most extremist IP policy document ever released in Canada, calling for the implementation of ACTA, SOPA-style rules including website blocking and stopping search results from resolving, liability for advertisers and payment companies, massive surveillance at the border and through delivery channels including searching through individual packages without court oversight, and spending hundreds of millions of tax dollars on private enforcement.

The report unsurprisingly begins by trying to make the case that Canadian counterfeiting has become a major concern, relying heavily on European and U.S. numbers. There are some references to RCMP seizures, but the data is limited. Indeed, the report admits that "the lack of clear and credible data makes it difficult to drive policy makers to action and can compound the problem."

The most credible number comes from the OECD, which has estimated global counterfeiting at \$250 billion. This represents a huge decline from previous estimates as the Canadian share of this figure, based on 2 per cent of world trade, would be \$5 billion. That obviously isn't insignificant, but it pales in comparison to the 2009 IP Council report which claimed the cost could be \$22 billion.

Last year, the IP Council suggested that the number could actually be \$30 billion. Canadian counterfeiting data has long been the source of speculative numbers without evidence or reliable methodology. In 2007, I used RCMP Access to Information requests to [reveal that prior estimates](#) were based on nothing more than a single article found on the Internet. The RCMP and government officials no longer cite these unreliable figures.

In fact, the widespread use of unreliable counterfeiting claims has been repeatedly debunked. The [CATO Institute](#) did a nice job of taking U.S. claims to task earlier this year, while the world's most comprehensive study on media piracy, "[Media Piracy in Emerging Economies](#)," thoroughly dismantles numerous piracy claims (the study was partially funded by Canada's IDRC). Perhaps

the most authoritative debunking comes from the U.S. government, whose General Accounting Office conducted a comprehensive study into the claims and [concluded](#) that they could not "be substantiated or traced back to an underlying data source or methodology."

The report also claims that there are significant links between counterfeiting and organized crime, citing a 2009 Rand Corporation study on the issue. Yet that study was also debunked by the IDRC funded report which [noted](#):

Arguing that piracy is integral to such networks means ignoring the dramatic changes in the technology and organizational structure of the pirate market over the past decade. By necessity, evidentiary standards become very loose. Decades-old stories are recycled as proof of contemporary terrorist connections, anecdotes stand in as evidence of wider systemic linkages, and the threshold for what counts as organized crime is set very low.

The RAND study, which reprises and builds on earlier IFPI and Interpol reporting, is constructed almost entirely around such practices. Prominent stories about IRA involvement in movie piracy and Hezbollah involvement in DVD and software piracy date, respectively, to the 1980s and 1990s. Street vendor networks in Mexico City -- a subject we treat at length in the Mexico chapter -- are mischaracterized as criminal gangs connected with the drug trade.

Piracy in Russia is attributed to criminal mafias rather than to the chronically porous boundary between licit and illicit enterprise. The Pakistani criminal gang D-Company, far from "forging a clear pirate monopoly" in Bollywood, in RAND's words, plays a small and diminishing part in Indian DVD piracy -- its smuggling networks dwarfed by local production.

The report also points to a single death in 2007 reportedly due to the ingestion of counterfeit medicine. That is obviously a tragic and unacceptable incident, but the report might note that in the broader context, death due to legitimate [prescription drugs](#) are the fourth leading cause of death in Canada and the United States with tens of thousands of deaths in Canada every year due to the wrong drug, dosage errors, or adverse reactions. At the same time, [Canadian Internet pharmacies](#) serve millions of patients every year.

The report unsurprisingly cites criticism from the U.S. and Europe on Canadian practices. The U.S. placement of Canada on the Priority Watch list receives the usual mention, even though the placement on the list is the result of lobbying from the same groups who are behind this report. The Canadian government position on the U.S. complaints, as described to a [House of Commons committee](#) in 2007 (and repeated regularly in internal government documents), sees this for what it is:

In regard to the watch list, Canada does not recognize the 301 watch list process. It basically lacks reliable and objective analysis. It's driven entirely by U.S. industry. We have repeatedly raised this issue of the lack of objective analysis in the 301 watch list process with our U.S. counterparts.

The same could be said for this report.