



# A TIME FOR CHANGE:

TOWARD A NEW ERA FOR INTELLECTUAL PROPERTY  
RIGHTS IN CANADA

A REPORT FROM THE CANADIAN INTELLECTUAL PROPERTY COUNCIL



**Bob Weese**  
Chair, The Canadian  
Intellectual Property Council



When discussing the major policy challenges that are likely to have the greatest impact on Canada's future, few people would think to include intellectual property rights. But they should.

Intellectual property (IP) is the economic currency of the future. Properly applied IP rights drive job creation, economic growth and innovation. They are truly a pillar of a competitive economy. The protection of intellectual property rights is equally as important for the health and safety of Canadians. Counterfeit goods are becoming more common in Canadian markets and the international trade of these goods has reached well into the hundreds of billions of dollars.

Despite playing such an important role in Canadian society, intellectual property rights are under attack. Weak domestic legislation has allowed criminals to become rich from the proceeds gained from the sale of counterfeit goods, while at the same time the lack of regulation in the virtual world weakens the ability of industries to protect their intellectual property. IP theft has become a major problem within Canada. The Canadian government must take action now to curb the threat posed by counterfeiting and piracy.

There has been a growing awareness of the need to reform Canada's IP regime. The Canadian Intellectual Property Council (CIPC) stands at the forefront of this call for action. Backed by the Canadian Chamber of Commerce, the CIPC is a business coalition which is designed to provide a central voice to press for stronger intellectual property protection both in Canada and worldwide.

*Bob Weese*

## EXECUTIVE SUMMARY

The existence of a strong and competitive intellectual property rights (IPR) system is as vital to a knowledge-based economy as the presence of a world-class higher education system. Unfortunately, Canada's current IPR regime has serious weaknesses that undermine the country's innovation capacity and economic prosperity. These weaknesses pose other problems as well, including risks to the health and safety of Canadians. These issues must be addressed.

The development and implementation of an effective IPR system in Canada continues to lag behind the efforts of other developed nations. Not only is the current Canadian system outdated, but it is also unable to provide the necessary protection of IPR within Canada. As a result, counterfeiting and piracy go largely unchecked within our borders.

### Building Consensus for Change

The demonstrated failings of the current Canadian IPR system have spurred a growing consensus of need for IPR reforms within the Canadian government, the Canadian business community, and the general population. This emerging consensus points to a new direction for IPR protection in Canada, where the promotion of IPR allows for continued economic growth and the protection of Canadians from the dangers of counterfeit and pirated goods.

One of the first calls for action was the publication in March 2007 of the *Report on Counterfeiting and Piracy in Canada: A Road Map for Change*. Based on a detailed examination of Canada's IPR situation, the Road Map recommended substantial reforms, including improved domestic IPR legislation, the empowerment of border and law enforcement agencies, and the creation of a national IP Council at the Ministerial level.

Support for better IPR protection continues to grow and has taken root on Parliament Hill. The Government has twice made official commitments to proceed with reforms in the 2007 and 2008 Throne Speeches. Two House of Commons Standing Committees also recognized the need for changes within Canada. Building on this momentum, the Conservative government noted that it would "... support Canadian researchers and innovators in developing new ideas and bringing them to the marketplace..." and "will improve the protection of cultural and intellectual property rights in Canada."<sup>1</sup> In its response to the June 2007 Standing Committee on Industry, Science and Technology report *Counterfeiting and Piracy are Theft*, the Government declared its support for increased protection of intellectual property rights in Canada:

"This government is committed to the importance of providing a robust framework for intellectual property rights, not only to address the risks posed by counterfeit goods...but [also] to foster an environment conducive to innovation, in an effort to further attract investment and high paying jobs to this country's growing knowledge-based economy."<sup>2</sup>

### The Time for Action is Now

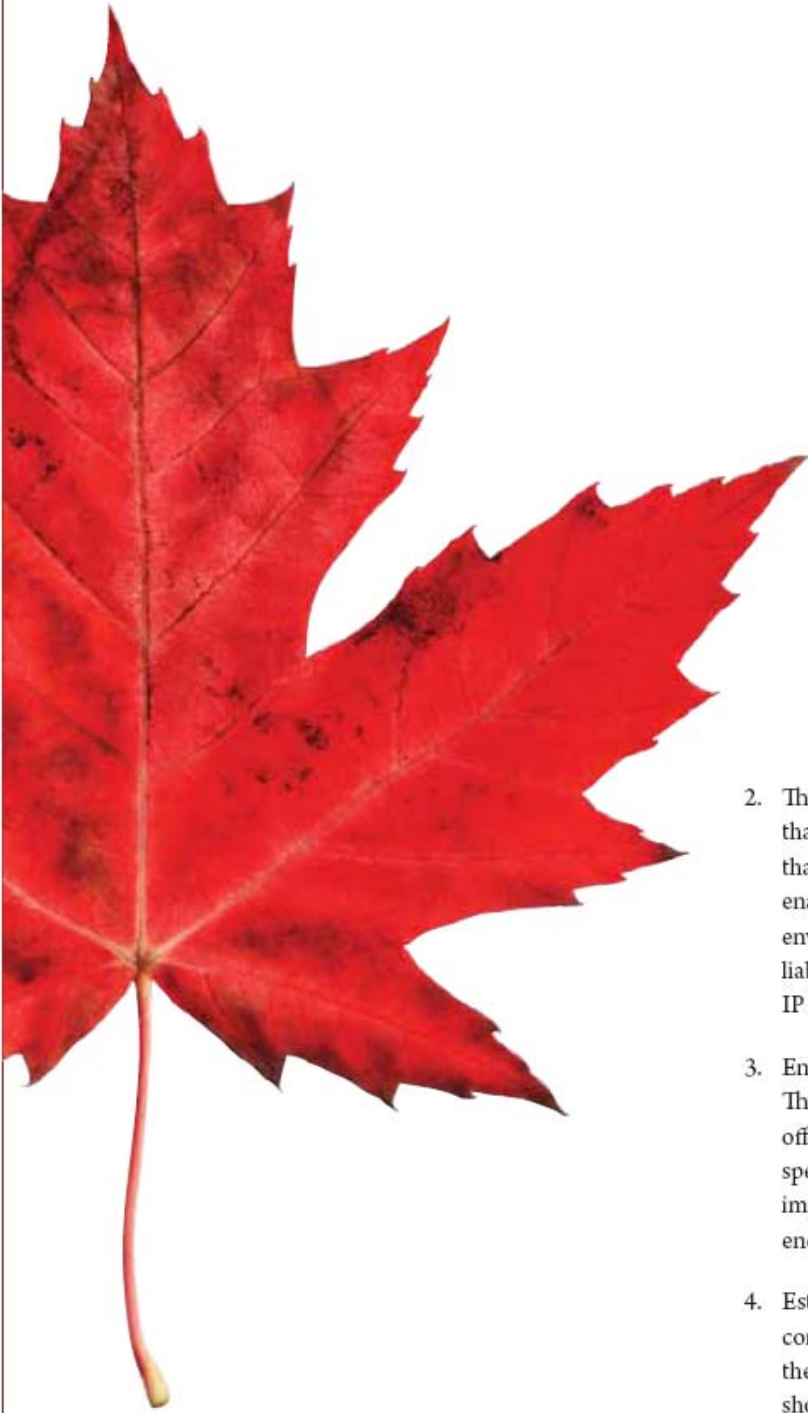
Despite the widespread support for increased protection of IPR in Canada, little has been accomplished to date to implement the necessary policy changes. This is not to say that the Canadian government has not made any advances in the development of a stronger IPR framework, but these advances have been slow in coming and leave many issues still unaddressed. With each year that passes without the implementation of changes to Canada's IPR system, Canadians and the Canadian economy will continue to suffer. Across the nation, small businesses are unable to secure the investment needed to move their ventures from the drawing board to the marketplace. At the same time, criminal organizations are getting rich off of the proceeds generated by the trafficking of counterfeit and pirated goods. Finally, the health and safety risk to consumers grows with every shipment of counterfeit goods that passes through the Canadian border.

The Canadian government must establish an efficient IPR system within Canada. The recommendations outlined in this document address the three main areas where Canada continues to falter: legislative reform; education; and institutional support for the judicial and legal system.

The creation of an effective IPR system is critical for the Canadian economy because Canadian businesses need a level playing field to remain competitive in global markets. This is even more crucial today given the global economic slowdown.

### Summary of Recommendations

1. Implement an IPR border enforcement system to stem the flow of counterfeit and pirated goods coming into Canada. The Canada Border Services Agency (CBSA) should be provided with the necessary legislative authority and resources to target, detain, seize and destroy counterfeit and pirated goods.



2. The Government of Canada should rapidly adopt IP legislation that fully implements the WIPO Internet treaties in a manner that is consistent with international norms and standards and enables the curtailment of counterfeiting and piracy in the online environment (whether physical or digital), as well as clarifying the liability of counterfeiting and piracy operations under Canadian IP law.
3. Enact criminal legislation that expressly targets IPR crimes. This legislation would make counterfeiting and piracy criminal offences under the Criminal Code; trademark counterfeiting a specific criminal offence under the Trade-marks Act; and would impose stronger penalties for counterfeiting and pirating that endangers the health and safety of Canadians.
4. Establish an Intellectual Property Rights Coordination Council consisting of senior government officials, representatives from the business community and IP rights holders. The Council should develop and implement an IPR framework that promotes the creation and commercialization of innovative products and services in Canada.
5. Establish a specialized IP Crime Task Force to guide, coordinate and lead anti-counterfeiting and anti-piracy enforcement efforts in Canada.
6. Establish an intellectual property education program targeting the public, businesses, innovators, creators, and government officials.