

RCMP Set Its Sights on Counterfeiters and Pirates

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Counterfeiting and piracy is an ever-present and growing problem for intellectual property rights holders. The problem is particularly serious for the entertainment industry. One executive reports that his company has experienced a forty percent drop in business in Canada over the past two years, based on sales of pirate copies of DVDs and compact disks and internet downloads of digital copies of works.

Enforcing your client's or company's intellectual property rights is an important part of any rights holder's business strategy, but is often a difficult task. Trying to track down a pirate can be an expensive game of cat-and-mouse; despite the array of civil remedies available to rights holders, such as Anton Piller orders, permanent injunctions and damages awards for copyright and trade mark infringement, trying to obtain evidence against pirates or enforce judgments can be akin to chasing shadows.

Recent media reports of RCMP enforcement activity against alleged counterfeiters and pirates may be a sign that help is on the way. In late spring, RCMP officers seized more than \$800,000 worth of pirate copies, including more than 30,000 DVDs, 3,000 video games and 1,600 multi-game cartridges, from four stores in Markham's Pacific Mall. In June, RCMP officers uncovered a counterfeiting manufacture and distribution workshop in the basement of a house in an upscale Markham neighbourhood; more than \$3 million in counterfeit clothing and accessories were seized from the house and from an intercepted shipping container.

But how can you get the RCMP involved on behalf of your client? With limited resources and competing priorities, the police cannot investigate every incidence of intellectual property crime. The GTA Federal Enforcement Section of the RCMP has prepared a guide for copyright and trade mark rights holders entitled "Reporting Intellectual Property Crime" that sets out the following GTA RCMP intellectual property crime priorities:

- 1 Counterfeit products which constitute a health and safety risk to the consumer.
- 2 Investigations which involve links to organized crime or terrorist groups.
- 3 Large scale investigations which deal with importation, manufacturing or distribution.
- 4 Investigations which have links to other ongoing matters or repeat offenders.
- 5 Smaller scale investigations which will help gather intelligence or target upwards.

The RCMP will also accept reports on offenders from intellectual property owners even if they do not fall within the force's investigative mandate in order to include them in intelligence files.

According to RCMP Corporal Cathie Glenn of the Toronto North Detachment, the first and foremost message that the force wants to get across is that the RCMP is taking intellectual property crime seriously, and they want to have the courts take the issue seriously as well.

"We need to reinforce the seriousness of counterfeiting, and to educate the public about the effect that this activity will have on the economy," said Cpl. Glenn.

Another goal is to better inform the courts about the seriousness of the problem. In a recent case, five individuals charged in a sophisticated scheme to distribute well-packaged high-end counterfeit goods were convicted of counterfeiting-related offences and sentenced to pay only a \$500 fine (although it should be pointed out that the non-residents in the group were ordered to be deported from Canada).

Asks Cpl. Glenn, “What message is this sending to organized crime?” From her point of view, it is no wonder that drug traffickers and others involved in organized crime are switching to intellectual property crime, because of the light penalties and lucrative nature of counterfeiting.

The RCMP wants to encourage rights holders and their legal representatives to come forward with information. According to Cpl. Glenn, the RCMP is always there to listen. Complaints go through the force’s proof system, to prioritize files and determine which to pursue. Information is a valuable commodity in the fight against counterfeiters and pirates – in some cases, the names of the same individuals and companies come up again and again in databases. Accumulated information on small operations such as flea market vendors may lead to those higher up the chain who are organizing the manufacturing and distribution of counterfeit and pirate copies of works.

Of course, there are some negatives for intellectual property rights holders who choose to rely on law enforcement to investigate and prosecute counterfeiters and pirates. The pace at which the proceedings unfold is completely out of the hands of the rights holder, which may be frustrating for a client who wants action taken right away. The police may decide not to investigate a complaint that falls outside its mandate, or decide not to charge suspected counterfeiters and pirates following an investigation. The information collected in the investigation may be kept confidential and not shared with the rights holder. Furthermore, fines levied against convicted counterfeiters and pirates are paid into the public purse, and not to the rights holder.

Nevertheless, in the right circumstances, the involvement of law enforcement officers can be invaluable in the battle against counterfeiters and pirates, as the recent enforcement activities against alleged counterfeiters and pirates demonstrate. As the trade in unauthorized and counterfeit merchandise continues to increase, intellectual property rights holders have to do their part in cooperating with law enforcement officials, and hope that these investigations and seizures of counterfeit and pirate copies of works continue.

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