

# **2008 International Law Enforcement IP Crime Conference**

*Selected Conference Notes*

Halifax, Nova Scotia, CANADA  
June 24-26, 2008

Compiled by Harry Crossley  
28 June, 2008

Raf Souccar (RCMP Asst. Commissioner)

- 10 years ago counterfeiting was not seen as a serious problem. Luxury goods were the main targets and consumers *knew* they were fake.
- Now, *everything* is being counterfeited. Latest examples include hockey helmets, toothpaste, and chainsaws!
- Law enforcement is getting more focused and better equipped to meet the IP threat.
- IP investigations tend to be complex – much more so than most other crimes and therefore cooperation is critical.

David Asante-Apeatu (INTERPOL)

- INTERPOL is increasing its focus on IP:
  - o IP staff levels have been increased.
  - o IP database is being utilized on Operation Jupiter 3 (South America) and other investigations.

Judge Ronald Lew (Sr. US District Court Judge – Central California)

- Columbian drug organizations are leaving the illegal narcotics business and moving into counterfeiting! The risk-reward ratio is much lower in counterfeiting. Drug penalties (especially in the United States) are now very severe.
- Counterfeit investigations and prosecutions are complex and need collaboration among investigators.
- Use this conference to meet your peers from other organizations around the world and build relationships!

Brian Monks (Underwriters Laboratories)

- Private industry needs to collaborate and work with each other and with law enforcement when it comes to fighting counterfeiting and IP crime.
- Use this conference to exchange business cards and meet people. Don't take any of your own business cards home with you. Hand them all out. This conference is full of the people you will need work with in the year ahead.

### Justice Marshall Rothstein (Supreme Court of Canada)

- Intellectual property needs protection in criminal law (not just civil). Why? Because counterfeiters ARE criminals. Counterfeiting is a deliberate criminal act and therefore merits criminal prosecution.
- IP law is unique. In IP law there is an unusual situation that puts the burden of proof on the *accused* because the accused has to prove they did not know they were copying. Also, there is the issue of “who is the offender”? Is the offender the retailer? The producer? Or someone else? Different countries treat this differently. Some treat retailers with kid gloves while others go after retailers aggressively.
- Canada has a new copyright act before Parliament now that would strengthen IP protection. It’s similar to the US act for digital copyright.
- Most here would probably agree that criminal laws are not strong enough to protect against counterfeiting.
- Public safety will be a key driver for strengthening anti counterfeiting laws. ...For example, think about the change in societal and legal perception of drunk driving. What was once not viewed as a problem is now viewed with strong public distain and offenders face (relatively) severe sentences upon conviction.

### Ken Hansen (RCMP)

- Eight (8) main components of an effective IP protection program:
  1. Sufficient resources
    - a. IP Coordination
    - b. System for managing files & data
    - c. Focus efforts on Manufacturing and Wholesale! (Retail only as the exception)
  2. Training and Education
  3. Tactical & Strategic Intelligence (without this you are only REACTIVE)
  4. Border Enforcement
  5. Legislation
  6. Public Awareness
  7. International investigations
  8. Partnerships (an integrated approach)
- Use all the tools available: Civil action, criminal IP and tax evasion charges, asset seizure. Everything. Why? Because counterfeiters would be happy to continue their operations with even 10% of their revenue – it is that profitable! We must use every tool at our disposal to fight this.

### Murray Taylor (Australian National Police)

- Profits of counterfeiting are funding organized crime, especially drug crime - counterfeiting requires less investment and carries much less risk than drugs.
- Australian National Police data for Australia in 2007:
  - o 50,000 film and TV jobs are at risk due to DVD counterfeiting.
  - o 37% of compact discs purchased are counterfeit.
  - o 38% of anti-malarial drugs in Asia are counterfeit.
  - o Counterfeit pay TV cards are emerging as a huge problem now in Australia.

### Ed Kelley (Tilleke & Gibbons Intl. - Thailand)

- Factors that tend to create ideal conditions for IP crime:
  - Loose visa rules
  - Relaxed rule of law
  - Geography located on trade routes, vast borders, wilderness, etc.
  - Low paid government officials (vulnerable to bribes)
  - Business & trading relationships based on centuries of history between families & clans
- Two excellent books:
  - ILLICIT (Moises Daim) and
  - Welcome to the Bangkok Slaughterhouse (Father Joe Maier)
- The “Powell Doctrine” is the appropriate response to counterfeiters: “...force, when used, should be overwhelming and disproportionate to the force used by the enemy”.

### John Newton (INTERPOL)

- Interpol has 3 Core Functions:
  1. Secure global police communication services
  2. Operational data services and databases for police
  3. Operational police support services
- Interpol Intellectual Property Crime Action Group (IIPCAG)
- INTERPOL is a bridge for member law enforcement agencies.
- Information sharing is critical and is not at the levels needed.
- Private company engagement remains a challenge when it comes to collaboration and information sharing. Rights holders must become more engaged and work more collaboratively with law enforcement to combat the global counterfeiting threat.
- Local police deserve a lot of credit for successful international counterfeiting investigations.
- INTERPOL’s role is one of coordination and information sharing.

### Warren MacInnis (Underwriters Laboratories)

- Individual rights holders cannot fight counterfeiting alone and neither can individual law enforcement agencies. We must find better ways to work together.
- The challenge is that IP criminals have no boundaries and no rules.
- We need:
  - o Enforcement
  - o Education
  - o Partnerships
- A good example of cooperation was the recent “Operation Overshock” in which the largest certification companies came together to plan collaboration and information sharing to combat global counterfeiting. INTERPOL is coordinating this.
- Partnerships and cooperation are popular words at these conferences and they are needed but many of us don’t know how to make them happen. It is all about relationships – most partnerships and collaborative anti-counterfeiting efforts begin at the working level with people like us calling each other for help and working together. It’s all about relationships!

### Colin Cushley (Police Service of Northern Ireland)

- Shared case studies of counterfeit gas cylinder filling and counterfeit alcohol (Smirnoff vodka) production.
- Counterfeiting in Ireland is controlled by organized crime made up of former IRA and other terrorist groups.
- PSNI takes a standardized project approach to its investigations. Steps include: Surveillance, appointment of a Project Manager & Financial Manager, as well as other key resources.
- Three levels of command are set up also.
  - o Gold (strategic) ...Defines objectives, engages stakeholders, works with the press office, etc.
  - o Silver (tactical) ...Establishes operational plans, secures resources, etc
  - o Bronze (operational) ...Runs the operation

## Panel Discussion on “Managing IP Prosecutions”:

### Mike Manson (Smart & Biggar)

- Some brand owners just want to “get the counterfeit product off the market”. Others want to get damages back.
- The key to successful prosecution is to have solid investigation and to get assets lined up properly.
- In Canada the weakest link when it comes to prosecuting IP crime is prosecutors who do not take IP crime seriously enough.

### Mark Mutterperl (Fulbright & Jaworski)

- IP practices in the United States are similar to Canada’s:
  - o Get evidence
  - o Work up the food chain to get to the king pin.
  - o Request a cease & desist order and seize assets.
  - o Issue subpoenas for bank, phone and other records.
  - o Also, use private investigators to collect evidence, using pretext.
- Most rights owners would like to see counterfeiters in jail but there are considerations to make in deciding on criminal vs. civil action. For example, if criminal action is taken then civil action cannot proceed until the criminal trials are completed.
- It is usually preferable to pursue BOTH criminal and civil action in IP cases.

### Matthew Bassiur (US Prosecutor)

- In the United States, 90% of IP legal action is civil and 10% is criminal.
- And of the criminal 10%, most is settled and does not go to trial.
- Within the US Department of Justice, IP crime is the responsibility of the Computer Hacking & IP Section.

Sherri Schornstein (Asst. US Prosecuting Attorney)

- Tools in successful prosecutions:
  - o Undercover buys of counterfeit product
  - o Search warrants (with PI as needed and with rights holder for prod. ID)
  - o Monitoring of consensual conversations
  - o Subpoenas for 3<sup>rd</sup> party records (banks, paypal, ebay, etc)
  - o Target interviews
- Caution: On IP investigations the rights holder is (usually) allowed to support the crown with financing for buys and the use of facilities. What is NOT allowed is for a rights holder to “self-fund” an investigation! The test for this is that rights holders cannot be funding law enforcement budget “line items”.

Mark Allen Cohen (Sr. United States Attaché to China)

- Mark is the first Attaché to China since the post was created.
- China is a puzzle. Contrary to perception there is actually much IP enforcement in China BUT IP crime is a constant and growing issue.
- Current IP enforcement environment in China:
  - o There is a *slight* improvement in the world’s perception of China as a source of counterfeit goods.
  - o Guangdong province is the center of counterfeiting in China.
  - o In 2007 there were 17,000 civil IP cases in China; 2,684 criminal.
  - o Criminal enforcement is very weak.
  - o In China there is a third category of legal action called “administrative” which refers to infractions of trademark, copyright, patent, and shoddy or unsafe goods that are below the threshold of “criminal”. There were 50,000 administrative cases in 2007.
  - o There were approximately 450,000 customs seizures in 2007 in China.
  - o In general, low damage awards in criminal cases drive rights holders to the civil and administrative routes.