

**MEASURING THE RESPONSE TO INTELLECTUAL PROPERTY CRIME
IN THE GREATER TORONTO AREA BY
THE ROYAL CANADIAN MOUNTED POLICE**

By

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the requirements for the degree of

MASTER OF ARTS

In

LEADERSHIP AND TRAINING

We accept this thesis as conforming
to the required standard

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ABSTRACT

This project analyzed the Royal Canadian Mounted Police, Federal Enforcement Sections approach to combating Intellectual Property Crime in the Greater Toronto Area. Further more, it is anticipated that this project will provide new ideas and techniques for the Royal Canadian Mounted Police to combat Intellectual Property Crime in the Greater Toronto Area and other areas of Canada.

More specifically this project has developed new ideas and approaches for the Royal Canadian Mounted Police to consider in the fight against Intellectual Property Crime. A major component of this Major Project is the evaluation of the Joint Forces Operation, Project OCAT. Project OCAT has operated for over 5 years and has experienced considerable success and perhaps most importantly Project OCAT has strengthened the partnership between the Canada Border Services Agency and the Royal Canadian Mounted Police in the Greater Toronto Area.

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on me, my project and my future leadership, I'm truly going to miss working with you.

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CHAPTER ONE:

FOCUS AND FRAMING

Introduction

This goal of this project was to analyze the Royal Canadian Mounted Police (RCMP), Greater Toronto Area Federal Enforcement Section (GTA FES) approach to combating Intellectual Property (IP) Crime in the Greater Toronto Area (GTA). After providing a detailed account of the predominant issues facing IP crime investigators, this major project attempted to provide realistic ideas, techniques and solutions for the GTA FES and the Royal Canadian Mounted Police in the fight against IP Crime. A major component of this project is in evaluating the Joint Forces Operation, Project OCAT, which partnered Canada Border Services Agency and the Royal Canadian Mounted Police. During its 5 years of operation, Project OCAT has experienced considerable success and has become a significant tool in the fight against IP crime.

For 7 years, I have been assigned to the Greater Toronto Area Federal Enforcement Section, investigating IP crimes. Prior to this position, I was part of an Economic Crime Section, investigating a variety of crimes which included Fraud, Copyright and Trademark violations, at Richmond Detachment in Vancouver's Lower Mainland. Upon my transfer to the Greater Toronto Area, I continued investigating IP crimes eventually becoming the RCMP IP Crime Coordinator in Ontario. In my roles as an investigator and IP crime Coordinator, I am responsible for conducting public education and training opportunities for Law Enforcement as well as participating in Seminars and Conferences within the area of IP crime. My role as a team leader within the GTA FES has provided me an opportunity to be the RCMP coordinator for Project OCAT for 4 of the 5 years this project has been in operation.

Finally, this major project presents a reference point for future research as a result of the extensive cataloguing and reviewing of IPR literature, in addition this project also aims to promote discussions regarding IP crime and the need to further explore the scope of IP crime and eventually how to combat it. The key areas of focus within this major project are:

- A) To measure the scope of IP crime.
- B) To identify the major IP crime issues and facing the RCMP and rights holders combating this type of crime?
- C) To identify what methods may be most effective combating IP crime?
- D) To review and analyse the RCMP IP crime enforcement activities within the GTA.
- E) To explore the Future of IP crime investigations.
- F) To assist to develop an advanced knowledge and understanding of IP crime by RCMP investigators.

During the last 9 years, I have investigated IP crimes and gained considerable insight into the plight of various companies fighting IP crimes and the Canadian public who are so often the unknowing victims of these crimes. I have been fortunate enough to meet a number of people who form a community, focussed on combating IP crime and product counterfeiting and who protect the public from the harmful effects of these products. In conducting this research project I wanted to stress that I am presenting my conclusions and opinions based on my findings. I have no interest in devaluing the work of the IP crime investigators, rights holder, and their representatives or lawyers working in this field, many of whom I have been fortunate enough to work with. My underlying

premise in writing this paper was to present an in depth and accurate study of IP crimes and product counterfeiting within the limits of my knowledge and experience, supported by the literature. After several years, I believe I have achieved this balance.

The Opportunity and its Significance

As a member of the RCMP GTA Federal Enforcement Section this project had direct relevance to my work, that of my peers and ultimately my organization. I am involved daily with law enforcement officers investigating IP crimes, IP rights holders, their representatives and finally the public (arguably those most impacted by IP crimes). The mandate of my unit, the Federal Enforcement Section is to investigate federal offences covering over 118 federal statutes and regulations. Within this mandate is the Consumer Protection sub-program which is focused on criminal infringement of Copyright and Trademarks. The main statutes under this program are the Copyright Act and Trademark provisions in the Criminal Code. (RCMP, 2006) Due to increased requests for service by IP rights holders related to counterfeit products, the GTA FES have been spending an increasing portion of work hours on IP crime investigations. (MacInnis, 2003) As a result of increasing work involving IP crime, the GTA FES developed an initiative in 2004, known as Project OCAT. The project was developed as a pilot to counter the growing number of IP infringing imports entering through various GTA ports. Project OCAT is a joint RCMP/CBSA team of investigators who target major importations of counterfeit merchandise violating Canadian laws. The CBSA, GTA Investigations Unit partnered with the GTA FES for this initiative. (Goulet, 2004)

As the RCMP unit responsible for IP crime in the GTA, the GTA Federal Enforcement Section is the primary beneficiary of the research conducted for this project. By conducting this study and in measuring the response to IP crime in the GTA, it was intended that the GTA FES would receive a database of its major efforts and initiatives to aid in the fight against IP crimes. Further, this project aimed to present numerous findings which should create new ideas and opportunities for the GTA FES, which could help guide them in future policy decisions and enforcement actions in the area of IP crime. The researcher also intended the considerable insight and knowledge developed in conducting this research would be transferred to other RCMP employees, which would benefit the overall IP crime strategy of the RCMP. Therefore, it was intended that this report and its recommendations be shared with the Federal Enforcement Branch in Ottawa in order to enhance efforts to combat IP crimes across Canada. It was further intended this report will be shared with CBSA to assist in efforts to increase knowledge in the area of IP crime and to help with their enforcement efforts.

Organizational Context

As the National Police force of Canada, the RCMP is tasked with investigating a wide range of criminal activity including IP crime. Although this paper will focus on the Greater Toronto Area Federal Enforcement Section, it will be distributed throughout the RCMP and made available to RCMP units investigating IP crime. This research project had at its foundation a goal of generating new approaches for the RCMP to explore in investigating IP crime.

Within the Greater Toronto Area, the Federal Enforcement Section is the RCMP unit tasked with investigating IP Crimes. (RCMP FIO website, 2010)

The 2006 Commissioners directional statement which reflects the strategic priorities of the RCMP for the coming year, for the first time contained reference to IP crime. One year later, IP crime had been given a prominent place within the strategic priorities of the RCMP. The RCMP position was that economic integrity will be pursued by the police, contributing to the confidence in Canada's economic integrity, via crime reduction efforts. The focus is on the health and well being of Canadians moving beyond financial crime to include amongst other things counterfeiting. (Zaccardelli, 2006) This was a significant change from the 2005 Commissioners directional statement which does not contain any reference to Economic Crimes. (Zaccardelli, 2005)

Over 1400 reports, documents and books were reviewed for this research Project, the most relevant being summarized in section two, the Literature Review. These documents have been organized into groups to facilitate access to specific areas of interest. These documents will provide a knowledge base to other IP crime investigators and future researchers.

The Government of Canada and the RCMP have been under pressure from rights holders to do more in the fight against IP crime, as the perception of Canada as a haven for counterfeiters has gained acceptance throughout the IP crime and anti-counterfeiting communities. Although the evidence is anecdotal at best, Canada has certainly garnered negative perceptions within the IPR community. One of the most important questions to be asked coming out of this thesis was, whether the negative reputation of Canada was

warranted and will my research provide any answers as to why this perception developed?

A good example of Canada's negative perception in relation to IP protection can be seen in the headline that appeared on the Daily News, Friday July 28th, 2006. The headline of the story was "Canada top of the Pops for Music Piracy, Industry Says". This headline suggested Canada was at the top of the list in terms of music piracy. However, a closer look at the article revealed that the IFPI is not measuring Music Piracy, but rather those nations "...where increased enforcement action and legislation are needed to combat illegal or unauthorized music downloading and distribution." In fact, the report states clearly that the named 10 priority countries are where enforcement efforts by governments need to be increased in their opinion, not what actual piracy rates are. (Daily News, 2006) In other words, the music industry was arguing that Canada is the top of their list of countries that need to increase enforcement actions and that new legislation is required to combat illegal downloading. This is very different than being the top of the list in music piracy. Regardless of whether the music industry claims are factually true and Canada needs increased efforts by government to address this problem, there is definitely a perception Canada needs to be more aggressive in its fight against IP crimes. Further research showed, according to the IFPI, Canada was the 6th largest market in total music sales. (IFPI, 2005) The fact that Canada is such a large market has increased pressure upon the nation to address music piracy, not Canada's piracy rates.

As the calls for action on the IP crime front grew louder during the last 5 or 6 years, the GTA FES responded by developing several major initiatives aimed at combating IP crime. The main initiative was Project OCAT, a joint forces operation

involving the GTA FES and CBSA Investigations. Since its inception this project has resulting in the seizure of over \$10 million dollars of IP infringing goods, several charges and hundreds of thousand's of dollars in court ordered fines for violators of various IP laws.

It is believed that at the conclusion of this project the GTA FES will have an improved view of its response to IP crime. In addition, this project will clarify some of the misconceptions about IP crime in Canada and provide a starting point for future enforcement efforts in the GTA and the rest of Canada. Finally, this project will provide a comprehensive database of relevant IPR literature for both the GTA FES and other investigators throughout Canada. This database is intended to provide easily accessible IPR literature, focused exclusively on IP crime in order for RCMP investigators to increase their knowledge in this very specialized area.

CHAPTER TWO:

LITERATURE REVIEW

The Following 13 subject areas have been identified as critical during the literature review, as these best frame the need for new research in the area of IPR and IP crimes:

1. IP crime Overview
2. The Global nature and extent of IP Crime
3. The Scope of IP crime in Canada
4. RCMP response to IP crime in the GTA
5. Project OCAT
6. Client centered service delivery or problem oriented policing.
7. United States and Canadian Import and Trade Statistics
8. Health and Safety
9. Organized Crime and Terrorism
10. IP Rights Holders
11. Civil versus Criminal Responsibility
12. The Perceived View of the Canadian Response
13. Office of the United States Trade Representative Special 301 Report

Anyone that has travelled to Canal Street in New York City can attest to the ease at which a counterfeit watch, DVD or purse can be purchased, however, the counterfeit product phenomenon and IP crimes in general have gone global in recent years with every kind of product being found all over the World. The magazine headline “Do you know what you are buying” summed up the IP crime problem as it detailed a two billion dollar (U.S.) problem of counterfeit products, from automotive parts to pharmaceuticals.

Ironically, this magazine article appeared back in a 1955 Saturday Evening Post article. (Frank, 1955)

The Subway sandwich stamp program which was a very well known and very successful customer loyalty program was severely damaged by counterfeiting as it grew. On June 2, 2005, Subway announced it was ending its decades old customer loyalty stamp program. Gone was the program which provided the customer a stamp with every Subway sandwich purchased, when 8 of the stamps were collected the customer received a “free” Subway sandwich. Company officials had discovered thousands of counterfeit stamps being sold over the internet, which ultimately killed the program. The total loss by the Subway restaurant chain, related to the counterfeit coupon scheme is unknown. (Apuzzo, 2005)

IP crime Overview

The subject of this paper is IP crime, pirated and counterfeited goods, as such, it is important to define and differentiate these terms as they are often used incorrectly and synonymously with one another.

The World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) negotiated in the 1986 – 1984 Uruguay round, introduced Intellectual Property rules into the multilateral trading system for the first time, and developed the following definitions of counterfeit trademark goods, also known as counterfeits, and Pirated copyright goods, also known as pirates:

Sec14 of the agreement states:

“(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

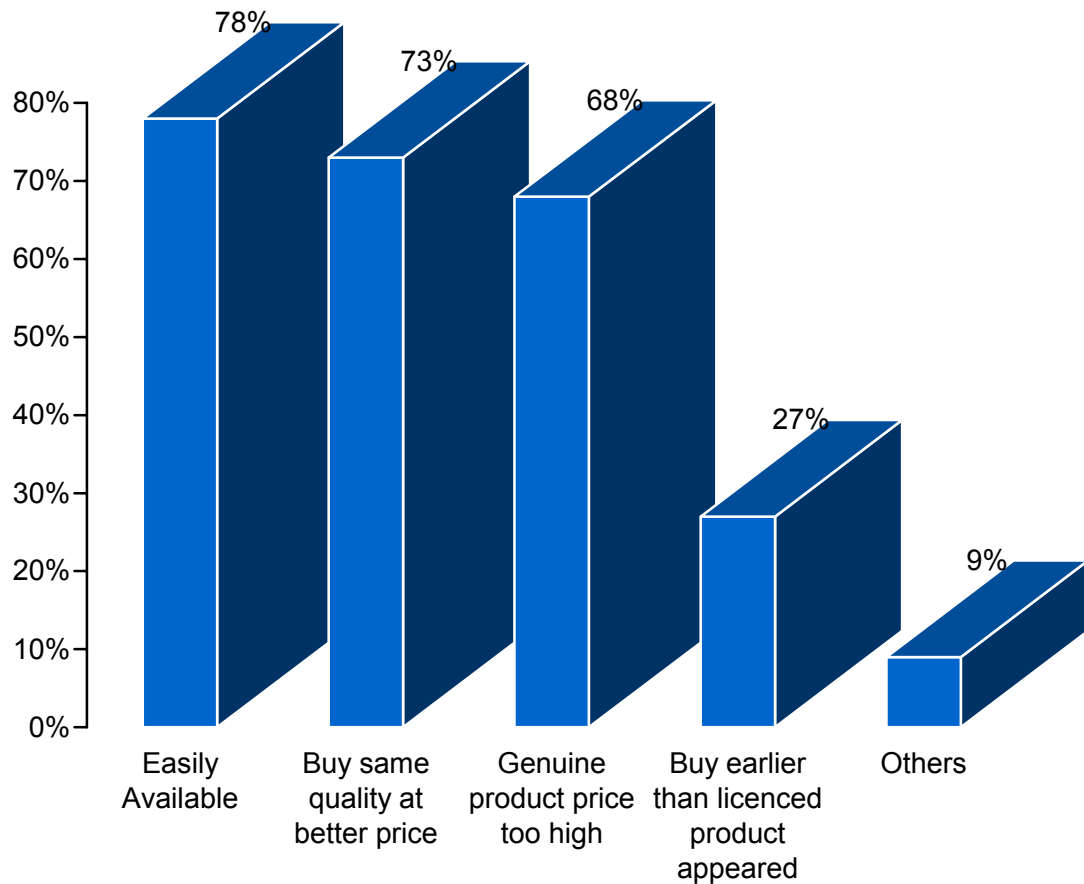
(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.” (WTO, 1994)

WIPO defines IP as the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields. (WIPO, 2004) In essence, IP rights are rights which incorporate both pirated and counterfeit goods.

Although there are clear gaps in the available data related to the size and scope of the IP crime problem worldwide there are some things that are clear. In 2005, Gallop conducted a poll in the United States, regarding brand piracy, product counterfeiting and public perceptions regarding counterfeit products and consumer intentions related to those perceptions. (Stewart, March 2005) The following data was obtained from the poll:

When asked “which of the following were factors in you’re purchasing of an

imitation or counterfeit product” respondents indicated:



(Derived from Stewart, March 2005)

This same March, 2005, US Gallup poll indicated that 72% of people who had not purchased imitation or counterfeit products believed IP laws should be stricter, while only 52% of people who had purchased imitation or counterfeit products believed IP laws should be stricter. 48% of those polled believed terrorists were involved in the production or distribution of imitation or counterfeit products. Surprisingly however, 20% believed Government officials were involved in the production or distribution of imitation or counterfeit products. (Stewart, March 2005)

Previously, a February 2005 US Gallop Poll inquired as to “whether people have personally purchased, copied, or downloaded any imitation or counterfeit products in a number of different product categories during the past year. 13% of those polled indicated they had purchased counterfeit goods, according to this study, 53% of Americans who admitting purchasing counterfeit goods, indicated they knew at least one of those products was counterfeit before making their purchase. (Stewart February 2005) The following categories and percentages represent purchases by the 13% of people who indicated they had purchased counterfeit products;

Brand-name fashion clothing 3%

Brand-name watches 1%

Music CD's or audiocassettes 5%

Movies (VHS, VCD's, DVD's) 3%

Computer operating systems (Windows, Mac) 1%

Computer application software (Word, Excel, etc.) 2%

Video games 2%

Pharmaceuticals or medicines 3%

Alcoholic beverages 1%

Tobacco 1%

Tools or auto parts 2%

Jewellery 2%

Of note in this study are the types of counterfeit products purchased, by people who

knowingly bought them;

Brand-name fashion clothing 51%

Brand-name watches 39%

Music CD's or audiocassettes 51%

Movies (VHS, VCD's, DVD's) 45%

Computer operating systems (Windows, Mac) 59%

Computer application software (Word, Excel, etc.) 49%

Video games 38%

Pharmaceuticals or medicines 47%

Alcoholic beverages 29%

Tobacco 62%

Tools or auto parts 40%

Jewellery 53%

(Stewart February 2005)

The literature review indicated there was a strong perception among many IP holders, industry representative and trade groups that public education needs to clearly show a link between the counterfeiters and dangerous criminals to emphasize the problem of counterfeit goods. This is often accomplished through identifying counterfeiters as part of large criminal organizations or tied to more serious crimes, such as terrorism. It is however interesting to note that some researchers indicate that the very opposite is likely more effective in lessening IP crime and the sales of counterfeit

products to the general public. The notion is that public education efforts to combat counterfeiting might be more successful if it targets an individual's attitude towards their decision to purchase a counterfeit rather than their views of the counterfeiter. (Penz & Stottinger, 2005)

One obvious problem in terms of the legitimacy of the conclusions about IP crime is that much of the published literature on product counterfeiting is not created by academics, but rather those with a direct interest in the issue, such as trade association publications and the popular press. This published work often simply touches upon the real issues at play in IP crime and simply highlight occurrences of counterfeiting, raids and seizures of counterfeit merchandise, or legislative issues. (Field, 2000)

The Global nature and extent of IP Crime

A full accounting of the scale and reality of IP crime is beyond the scope of this paper. However, the global nature and extent of IP crime is crucial to understanding the major issues surrounding IP crime that I will briefly comment upon the global measure of and scope of IP crime.

Financial losses attributed to counterfeiting is most often expressed as 5%- 7% of world trade. In 1998, the Organization for Economic Co-operation and Development (OECD) released a report entitled "The Economic Impact of Counterfeiting" which is perhaps the most widely cited source for the 5% - 7% estimate of counterfeiting as a percentage of world trade. The report used 1995 statistics of world wide export levels, which were approximately \$5 000 billion U.S. dollars, 5% - 7% would equal between \$250 billion and \$450 billion U.S. dollars. In addition to these ever cited numbers, the

report further suggests there is no concrete method to substantiate these percentages; however this has not changed the wide acceptance of 5%-7% of world trade being counterfeit goods. (OECD, 1998)

By 2004, the International Anti Counterfeiting Coalition (IACC) estimated the annual economic loss attributed to IP theft worldwide had grown to at least \$450 billion U.S. dollars a year, while the United States alone lost over \$200 billion dollars each year. (IACC, 2005) In 2005, the International Chamber of Commerce stated the world wide losses as a result of IP theft had grown to \$600 billion USD annually. (ICC, 2005)

In a reversal of sorts, in 2008 the OECD conducted an update report on IP crime, titled the study on counterfeiting and piracy - 2008. The OECD report provided an analysis of the scope of IP crime and stated up to \$200 billion of internationally traded products could have been traded or counterfeited in 2005. (OECD, 2008) After considerable criticism, in November 2009, OECD released an update entitled the magnitude of counterfeiting and piracy of tangible products - an update. This report provided updated figures related to IP crime and stated the share of counterfeit and pirated goods in world trade is estimated to have increased from 1.85% in 2000 to 1.95% in 2007. The report further explained the low values are based on the fact the new amounts do not reflect domestically produced and consumed products, or non-tangible pirated digital products. The report added that total trade in counterfeit and pirated goods could amount to as high as \$250 billion (OECD, 2009)

The Scope of IP crime in Canada

The dollar amount most often attributed to IP crime and counterfeiting in Canada

is between \$20 billion and \$20 billion dollars annually. This figure appears repeatedly referenced in the literature as the monetary losses attributed to IP crime and counterfeiting in Canada and it is based on numbers provided by the Canadian Manufacturers & Exporters. (Myers, 2005)

Although the financial losses attributed to IP crime and counterfeiting can be debated, these specific amounts remain the only concrete dollar values attributed to IP crimes. Regardless of the specific percentages, the reality is counterfeit goods and IP crimes are occurring on a large scale worldwide and in Canada. Although beyond the scope of this paper, as will be outlined below, there are concrete measures available to researchers that might more accurately assist in determining the scope and range of IP crime losses in Canada.

In terms of a Canadian measure of IP crime a viable reference point might be the scale and scope of counterfeit money and counterfeit credit cards. For the year 2010, financial losses attributed to counterfeit credit cards totalled \$135 million. (RCMP, 2011) While the financial losses for the year 2007, to counterfeit Canadian currency totalled \$3.3 million with just over 163 000 bank notes being passed and subsequently seized. (RCMP, 2008) The resulting annual financial loss is a combined \$138.3 million dollars for counterfeit credit cards and counterfeit money. This amount appears comparable to the amount of losses attributed to the Canadian motion picture industry, who have indicated each year they lose \$118 million dollars to pirated films.

RCMP response to IP crime in the GTA

In the Greater Toronto area IP crime began to capture the attention of Law

Enforcement during the late 1990's. The RCMP response in the GTA at the time was to assign a couple of investigators full time to the issue of IP crime. As a result of having full time investigators looking at the problem, the number of investigations grew. By the year 2000 the counterfeit issue started to generate closer scrutiny from a larger number of public, law enforcement and government officials within Canada, however this greater scrutiny was based largely on external pressures. The RCMP in the GTA continued to add resources to the fight against counterfeiting and IP theft until it became one of the largest IP crime fighting units in the country.

During the period of rapid expansion of the GTA FES anti counterfeiting efforts, one of the greatest challenges to enforcement efforts was obtaining cooperation from Canada Border Services Agency (CBSA). In fact, many IP rights holders believed that CBSA was not fulfilling their mandate of stopping counterfeit goods from entering Canada. As the GTA FES was increasing efforts to combat IP crime, CBSA believed they did not have the legal authority to stop counterfeit products from entering Canada and was not cooperating with the GTA FES efforts. In a highly public show of frustration in 1999, Staff Sgt. Doug Ford, in charge of the anti counterfeiting unit of the GTA RCMP Federal Enforcement Section, echoed the prevalent industry view when he stated he could not see a reason why Canada Customs (CBSA back in 2000) was not stopping counterfeit products from entering Canada. (Hawaleshka, 2000)

The RCMP policy for combating IP crimes guides is the RCMP Copyright Enforcement Guideline, which is a statement of Federal Enforcement Policy and aids in focusing the deployment of scarce publicly funded police resources. As a matter of priority, cases selected for investigation should constitute copyright piracy on a

commercial scale; this translates into infringements by manufacturers, wholesalers or importers. The policy further states that retail level enforcement should not be a priority but rather a means for furthering investigations towards commercial scale targets.

(RCMP Operational Manual, 2008) RCMP Copyright Enforcement Guideline state the two most critical evidentiary components of Copyright investigations are knowledge of infringement and subsistence of Copyright. Knowledge is a key component and can be stated as being able to demonstrate the accused acted with knowledge that the works being manufactured for sale, sold, distributed exhibited or imported were infringing works. (RCMP Operational Manual, 2008) Perhaps easy to state, but very difficult to prove ones knowledge, this area remains one of the most difficult areas of an IP infringement investigation.

The RCMP Copyright Enforcement Guideline closely mirrors the department of Justice - Canada, Copyright Enforcement Policy. The DOJ Copyright Enforcement Policy states that cases selected for investigation and prosecution should infringe Copyright on a commercial scale for example by a manufacturer, wholesaler or importer. It continues by stating infringement at the retail level should not be a priority although it may prove to be a useful tool in gaining access to more serious copyright infringements. (Department of Justice – Canada, 2006)

The RCMP gives priority to investigating counterfeit products that involve commercial manufacturing, importation and distribution or IP crime involving health and safety risks and organized crime groups. As such, the RCMP recommends IP rights holders involved in retail level IP crimes should work through the civil process rather than the criminal realm, in order for them to effectively deal with the infringement.

(RCMP -Intellectual Property Crime, 2010)

The GTA FES unit has followed the RCMP and DOJ Copyright Enforcement Guidelines with regards to IP crimes. These policies have provided some direction, context and consistency to the GTA FES and other FES units in Canada in their fight against IP crimes. This type of firm policy lets rights holders and those involved in the fight against IP crime know what publically funded resources are going to be provided to them.

The main initiatives in the GTA FES fight against IP crime are varied and directly related to the types of crimes investigated by the unit. One initiative developed by the GTA FES after several counterfeit medications investigations was Project OMEDS. The project was an educational initiative and involved members of the GTA FES meeting with pharmacists in the GTA to discuss counterfeit medications and to solicit their assistance in combating this problem.

As a result of several large scale counterfeit good seizures in early 2008 at the Pacific Mall in Markham, Ontario, members of the GTA FES developed Project OPAC. Project OPAC was a criminal enforcement effort designed to combat IP crime infringement at Pacific Mall, through police presence, product seizures and finally charges. Pacific Mall is a Chinese market style Mall in the Greater Toronto Area, notable for the numerous IP crime infringements that have occurred over the past decade. During this project, Pacific Mall and its stores have been the focus of several large scale investigations, resulting in numerous charges against store owners and in significant seizures of counterfeit products.

In addition to these proactive projects a good measurement of the work being

conducted by the GTA FES in relation to IP crime enforcement are the numerous successful investigations and subsequent prosecutions. The following investigations reflect the GTA FES desire to ensure successful prosecutions are an integral component of the fight against IP crime, whether this is seen as a deterrent or not. In the spring and summer of 2005, Optimum Compounding Pharmacy was found to be selling counterfeit Viagra as a result of seizures through Project OCAT and some good work by CBSA employees. The investigation involved a bricks and mortar pharmacy in the Richmond Hill area, north of Toronto and a U.S. company selling counterfeit Viagra pills online. In this case, the Toronto area pharmacy was fulfilling online orders for U.S. retailers. After a lengthy investigation, the pharmacist plead guilty to 1 count of Fraud over \$5000 against Pfizer and paid a \$300 000 fine. This was the first time a pharmacist in Canada had been found guilty of selling counterfeit medications. In addition to the financial fine, as part of the plea agreement involving the College of Pharmacists, the pharmacist gave up his license to practice pharmacy in Ontario. (Ontario College of Pharmacists, 2006)

Although there are many other examples of successful IP crime investigations conducted by the GTA FES, another notable investigation was Project OCISCO. Project OCISCO was an investigation into the sale of counterfeit Cisco networking components by a Richmond Hill company. The Richmond Hill Company was buying products from China and selling them to a large number of U.S. companies. Eventually this investigation resulted in a partnership between Canadian and U.S. law enforcement. One of the main concerns to arise from this investigation was the significant numbers of the counterfeit product turning up in U.S. government installations. The obvious concern was over the failure of these components when used in key government systems. In the

end, the Canadian portion of this investigation resulted in a guilty plea by the Markham company to 1 count of fraud against Cisco systems and a fine of \$200 000. (U.S Department of justice, 2008) In addition to the Canadian outcome, there was a significant impact in the United States regarding this investigation. The main U.S. investigation related to the selling of counterfeit Network components was known as “Cisco Raider”. This operation was coordinated between U.S. and Canadian Law Enforcement and resulted in the seizure by U.S. agencies of over US\$75 million of counterfeit Cisco networking equipment. On the U.S. side, this project resulted in over 28 investigations, 115 seizures of counterfeit Cisco products with an estimated value US\$20.4 million, 6 criminal indictments and 4 convictions. (Gross, 2008)

What is most notable about the pharmaceutical investigation and the Cisco components case are the significant fines levied against the guilty parties, \$300 000 and \$200 0000 respectively. In the Canadian context, these two cases are important in terms of the precedent they set for significant fines for large scale IP crime infringement.

Another notable effort by the GTA FES has been in building partnerships with external partners. The two main partners for the GTA FES in relation to IP crime are Canada Border Services Agency (CBSA) and Health Canada. Both play an equally important and critical role assisting the GTA FES and the RCMP’s IP crime efforts.

Project OCAT

After many years of investigating IP crimes, by the fall of 2004 the GTA FES begins to work more closely with CBSA to develop a new protocol and establish an improved working relationship. This newfound cooperative effort culminated in a Joint

Forces Operation to be known as Project OCAT. Project OCAT is an RCMP led initiative bringing together investigators from CBSA and the RCMP to combat the importation of counterfeit products into Canada. (Goulet & Thompson, 2004)

Each agency assigned a full time investigator to the project with a goal to working together to target importers of counterfeit goods entering through Canadian ports in the GTA. One of the most important goals of this project was to bring cases to prosecution, not to simply seize counterfeit shipments at the border, allowing the importer to walk free. The project officially kicked off September 2004 and has continued through 2011. During the 12 month period between September 2004 and August 2005, project OCAT participated in investigations that seized over 7 million dollars of infringing products. The commodities seized during this period are consistent with commodities seized in other jurisdictions, such as those seen in U.S. Customs seizure statistics. (Sutherland, 2005)

In a public show of support for Project OCAT, the IACC in its 2006 submission to the office of the United States Trade Representative for the Special 301 list stated that the JFO in Toronto has probably been the best of any region in Canada. (IACC, 2006) This is in reference to similar joint forces operations involving CBSA and the RCMP in other areas of Canada. The results of Project OCAT during this one year period were overwhelmingly positive with over 581 documented referrals resulting in 160 investigations and infringing products seized. The total monetary value of the intercepted shipments was over CDN \$7 million. In terms of bringing cases to the courts, Project OCAT resulted in 8 RCMP search warrants and 2 CBSA search warrants; as a result, 10 charges were forwarded to the courts by Project OCAT. (Sutherland, 2005)

As with most Joint forces operations, challenges arose throughout the year; however there is little doubt the overall outcome of this project was positive. One of the main challenges was a lack of resources to deal with a significant number of suspected shipments of counterfeit goods. Another challenge was in the number of investigations going to the courts as there was hope for a significant number of prosecutions however, 10 charges during the first year was a good start. One hurdle experienced by investigators was the type and quantity of commodities referred by front line CBSA officers. Too often the shipments were small or lacked a health and safety component. It took considerable time to deal with these seizures which took time away from other suspected shipments. (Sutherland, 2005)

A comparable project to project OCAT was operating in the Montreal region known as Project Castille. Although the operation of the teams was moderately different the project goals were very similar, which was to disrupt the importation of counterfeit and pirated goods. (Canada Customs Investigations Unit, 2004)

Client Centered Service Delivery or Problem Oriented Policing

The RCMP developed a problem solving model known as “CAPRA”, which is an operational and management model designed to put the focus on solving problems as they arise, at its core, the CAPRA model focuses on the client and forming partnerships. This model also applies the principles of the RCMP vision and mission.

The acronym CAPRA is derives from the following:

C – Client

A – Acquiring and Analyzing Information

P – Partnerships

R – Response

A – Assessment and Continuous Improvement

(Royal Canadian Mounted Police, 2008)

Project OCAT exemplified the spirit of CAPRA in many ways. Every effort has been made to involve key partners in the project and in keeping them informed of the outcomes of various actions. During the life of this project, partnerships developed with rights holders to train CBSA and the RCMP in identifying counterfeited products. Rights holders made themselves available to the RCMP and CBSA in a timely manner in order to deal with goods once detained at the border to ensure only those products identified as counterfeit are seized. A big part of this project was the continual assessment and improvement process. As a new initiative, constant modifications were required to keep the operations of the team efficient and productive. It was crucial with the constant changes that were made that the CBSA and RCMP investigators discussed these changes and ongoing improvements in order to make the Project as effective as possible. Ongoing assessment and continuous improvement is still being carried out to this day, and will be as long as the project is in existence.

United States and Canadian Import and trade Statistics

As previously discussed, there is great debate over the true size, scale and scope of IP crime and counterfeited goods. Although beyond the scope of this paper, I will attempt to provide information on what is known and what is measurable. The intention of this section is to summarize the major issues related to the perceptions and realities of

IP crime and counterfeiting, mostly within the Canadian context.

One of the major misperceptions in the world today is that Canada is a transshipment point to other countries for counterfeited goods and IP crime. This specific reference is often cited as one of the main reasons Canada needs to strengthen its IP laws. One of the most notable proponents of this viewpoint is the United States government through the office of the United States Trade Representatives (USTR) special 301 list. This view is highlighted within the USTR's 2009 special 301 report, where it states;

“The United States also continues to urge Canada to improve its IPR enforcement to enable authorities to take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the volume of infringing products transshipped and transiting through Canada.”

The main problem with this statement is that import and seizure statistics from the U.S. Department of Homeland Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement do not support the above statement. Although Canada remains the largest US trading partner, for the last 7 years Canada has appeared on the top trading partners top ten list of IPR infringing exporters twice, in 2010 and 2007. For the years, 2009, 2008, 2006, 2005 or 2004 Canada does not appear on the list of top ten exporting counterfeit countries. Canada's appearance on the top ten list of exporting IPR infringing nations takes place in 2010 and 2007 and at the ninth position accounting for less than 1% of infringing product seized at the U.S. border. In 2010, this amount was \$608 533 while in 2007 was \$842 158. (U.S. Customs and Border Protection, 2011) and (U.S. Customs and Border Protection, 2008)

According to statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2010 were as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$124 681 247	66%
Hong Kong	\$26 173 057	14%
Jordan	\$7 713 398	4%
India	\$1 571 142	Less than 1%
Malaysia	\$1 286 373	Less than 1%
Taiwan	\$1 138 414	Less than 1%
Korea	\$1 049 466	Less than 1%
Vietnam	\$741 974	Less than 1%
Canada	\$608 533	Less than 1%
United Arab Emirates	\$493 931	Less than 1%
All others	\$22 667 811	12%

(U.S. Customs and Border Protection, 2011)

According to statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2007 were as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$158 082 597	80%

Hong Kong	\$12 729 121	6%
Taiwan	\$3 454 048	2%
Pakistan	\$2 530 545	1%
United Kingdom	\$1 136 268	Less than 1%
Egypt	\$992 895	Less than 1%
Korea	\$902 904	Less than 1%
India	\$855 231	Less than 1%
Canada	\$842 158	Less than 1%
Colombia	\$720 699	Less than 1%
All others	\$14 754 911	7%

(U.S. Customs and Border Protection, 2008)

Based on the statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2009 are as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$204 656 093	79%
Hong Kong	\$26 887 408	10%
India	\$3 047 311	1%
Taiwan	\$2 453 914	Less than 1%
Korea	\$1 510 443	Less than 1%
Paraguay	\$1 496 043	Less than 1%

Philippines	\$1 479 958	Less than 1%
Switzerland	\$1 277 646	Less than 1%
Pakistan	\$710 658	Less than 1%
Vietnam	\$603 529	Less than 1%
All others	\$16 574 934	6%

(U.S. Customs and Border Protection, 2009)

In 2009, the tenth ranked country from the list, Vietnam, accounted for only \$603 529 or less than 1% of infringing product seized at the U.S. border. Based on this, Canada's seizure total at the U.S. border in 2009 would have totalled less than \$600 000, not exactly a compelling argument that Canada is transshipping vast quantities of counterfeit goods into the United States.

Based on the statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2008 are as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$221 661 579	81%
India	\$16 258 368	6%
Hong Kong	\$13 433 606	5%
Taiwan	\$2 631 980	1%
Korea	\$1 028 348	Less than 1%
Dominican Republic	\$942 128	Less than 1%
Pakistan	\$780 109	Less than 1%

Vietnam	\$747 567	Less than 1%
United Arab Emirates	\$658 626	Less than 1%
Indonesia	\$649 066	Less than 1%
All others	\$13 937 502	5%

(U.S. Customs and Border Protection, 2009)

Based on the statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2006 are as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$125 595 844	81%
Hong Kong	\$9 389 464	6%
Taiwan	\$1 843 764	1%
Pakistan	\$1 838 815	1%
Korea	\$1 810 140	1%
Singapore	\$1 198 735	Less than 1%
Malaysia	\$1 174 071	Less than 1%
Indonesia	\$983 425	Less than 1%
India	\$832 541	Less than 1%
Mexico	\$535 826	Less than 1%
All others	\$10 166 611	7%

(U.S. Customs and Border Protection, 2007)

Based on the statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2005 are as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$63 968 416	69%
Hong Kong	\$5 799 112	6%
United Arab Emirates	\$2 118 409	2%
India	\$1 966 638	2%
Pakistan	\$1 753 154	2%
Korea	\$1 418 060	2%
Russia	\$1 377 835	1%
Italy	\$1 268 188	1%
Taiwan	\$1 091 873	1%
Vietnam	\$780 644	1%
All others	\$11 682 181	13%

(U.S. Customs and Border Protection, 2006)

Based on the statistics from the U.S. Department of Homelands Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, the top U.S. trading partners for IPR seizures in 2004 are as follows:

Trading Partner	Domestic Value	Percent of Total
China	\$87 274 373	63%

Russia	\$7 304 746	5%
Hong Kong	\$7 019 670	5%
South Africa	\$4 444 218	3%
Vietnam	\$2 599 561	2%
Korea	\$1 960 980	1%
Philippines	\$1 352 021	1%
Kuwait	\$1 071 068	Less than 1%
Mexico	\$1 018 107	Less than 1%
Netherlands Antilles	\$1 013 539	Less than 1%
All others	\$23 709 602	17%

(U.S. Customs and Border Protection, 2005)

The relationship between Canada and the United states is the largest trading partnership in the world. In 2006, the trade between these two countries surpassed \$577 Billion worth of goods, with Canada representing 22.2% of U.S. exports and 16.5% of U.S. imports. (Foreign Affairs and International Trade, 2008)

Based on findings by the GTA FES, our investigations into IP crime shows China is the overwhelming source country for counterfeit goods sold in Canada. As a result of this conclusion, the value of imports into Canada from China should therefore provide some insight into the scope of the counterfeiting problem in Canada.

Distribution of Imports into Canada by major region for the year 2003

Source Country	Value of Trade	Percentage
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United States	\$204.3 Billion	61%
Asia	\$52.5 Billion	15.5%
Europe	\$47.5 Billion	14.5%
Central/South America	\$19.5 Billion	5.7%
Africa	\$4.3 Billion	1.3%
Middle East	\$3.6 Billion	1.1%
Oceania	\$2.3 Billion	0.7%
Total imports	\$335 Billion	100%

(Roy, 2004)

Summary of Imports into Canada by Commodity for the year 2003

Source Country	Value of Trade	Percentage
Machinery and Equipment	\$98 Billion	29%
Autos	\$76 Billion	23%
Energy	\$20 Billion	6%
Consumer goods	\$54 Billion	16%
Industrial goods	\$64 Billion	19%
Food	\$22 Billion	7%
Total imports	\$334 Billion	100%

(Roy, 2004)

China accounts for nearly \$18 billion or 5.5% of Canada's annual imports, in comparison, the U.S. accounts for 203 billion dollars or 60.7% of Canada's imports

annually. Of the \$18 billion worth of goods imported into Canada from China nearly 40 percent are consumer goods. Therefore, approximately \$7.2 billion dollars of the \$18 billion imported into Canada by China are consumer goods. (Roy, 2004) According to most IP crime experts, the vast majority of counterfeit goods being sold in Canada are consumer goods. With China being responsible for only \$7.2 billion of Canada's Consumer imports, the oft quoted \$20 to \$30 Billion losses to the Canadian Economy as a result of the counterfeit market becomes a little less likely. Based on Canadian import statistics by country, commodities by sector and my extensive experience investigating IP crime, I believe, a more conservative estimate of the direct losses attributed to the sale of counterfeit would be between \$1 and \$3 Billion annually. Suspected losses from counterfeiting suffered by the Canadian motion picture industry are estimated at approximately \$118 million each year. For Canada to attain losses in the \$1 to \$3 billion range would require more than 9 other industries or groups with an equivalent or greater loss to counterfeits and piracy than the Canadian motion picture industry. Based on seizure numbers measured by the Greater Toronto Area RCMP, motion picture film seizures make up approximately 15% of IP seizures. (Sutherland, 2005) However, this figure does not take into consideration any possible domestically manufactured infringing products. Nor does it take into account the fact that not every infringing DVD is seized by the Police, at best this figure represents an estimate.

Health and Safety

Health and safety concerns with regards to IPR infractions and counterfeit products are of paramount importance to governments and law enforcement. This is the

one area of IPR where private interests are generally trumped by the public interest. Although health and safety issues can be further broken down into subgroups and categories, for the purpose of this paper, most health and safety issues related to IPR will be dealt with under this one heading.

As with many other areas of IPR and counterfeiting the pharmaceutical industry does not have independent data detailing the scope of this problem, estimates remain the only measure.

One often misstated measure of counterfeit medication levels is attributed to the World Health Organization (WHO). The incorrect attribution is that 10% of medications worldwide are counterfeit. Rather, the WHO has stated that obtaining an exact number with regards to the scope of counterfeit medicines is difficult, but estimates range from around 1% of sales in developed countries to over 10% in developing countries. (WHO, 2007) This stated range was developed after many years of WHO statistics regarding counterfeiting being misquoted in reports, news articles and presentations. On November 15th, 2006 the World Health Organization, International Medical Products Anti – Counterfeiting Taskforce (IMPACT) issued an update on Counterfeit Medicines statistics. They indicated, the commonly accepted statistic of 10% of medicines around the world being counterfeit is simply unsupportable. Instead the WHO suggested a range be used to describe the scope of the counterfeit drug issue. The new figure suggested by the WHO is, 1% of sales in developed countries progressing to over 10% in developing areas are counterfeit. Detailed data on Counterfeit medicines is difficult to obtain so the estimated range does not aim to provide an exact figure but rather a range which is a more realistic indication of the different possible levels of counterfeiting around the

world. (WHO, 2006)

In stating these possible counterfeit levels, it is important to understand what the WHO considered a counterfeit drug:

- *Counterfeit medicines are medicines that are deliberately and fraudulently mislabelled with respect to identity and/or source.*
- *Use of counterfeit medicines can result in treatment failure or even death.*
- *Public confidence in health-delivery systems may be eroded following use and/or detection of counterfeit medicines.*
- *Both branded and generic products are subject to counterfeiting.*
- *All kinds of medicines have been counterfeited, from medicines for the treatment of life-threatening conditions to inexpensive generic versions of painkillers and antihistamines.*
- *Counterfeit medicines may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient or too much active ingredient, or with fake packaging.*

(WHO, 2010)

In 2010, several WHO member states have been debating the definition of what constitutes a counterfeit medicine or pill. This debate focuses on a belief by some that generic drugs fall within the scope of the WHO definition of a counterfeit drug. The uncertainty over this point has led to a call by several nations that the WHO reconsiders its definition of a counterfeit drug. Some nations have gone even further and questioned whether it is appropriate to have industry involved in the formulation of the WHO counterfeit drug definition in the first place. (Smith, 2010) Despite the growing

concerns of some regarding the wording of the WHO definition of a counterfeit drug, the definitions used in practice by and/or based on the laws of different countries differ sufficiently to create problems in the collection of data and the implementation of measures to combat counterfeit drugs. A wider consensus on the definition of a counterfeit drug is needed. (Forzley, 2005)

The WHO documented the global nature of the counterfeit drug problem by collecting data as early as 1982. Recent “unofficial” estimates by various researchers of the percentage of the illicit pharmaceutical market which counterfeit drugs represented range from as high as 50% down to 1%. These estimates are heavily quoted, but include no supporting data. Of course, if these unacceptably high levels of counterfeit drugs are confirmed as reality, it would be clear, National measures were insufficient in the battle against these counterfeit medications. (Forzley, 2005)

Sometimes, alarmingly simplistic methods measuring the scope of the counterfeit medication problem are used to show a trend, which is then picked up and highlighted in studies throughout the world. One such example is the Food and Drug Administration case load for counterfeit pharmaceuticals. In September 2006, the US Food and Drug Administration (FDA) associate commissioner for policy and planning indicated before US Congress that intercepted communications by Customs officials suggested counterfeit prescription drug smuggling was on the rise as agents had opened 58 cases in 2004 up from 30 in 2003. (Kramer, 2007) In 2005, the FDA opened 32 cases and in 2006 54 cases. (FDA 2008) However, there are numerous possible explanations for the rise and fall of cases opened by the FDA which include new resources, increase prioritization and increasing agent awareness. However, the number of cases opened and investigated by

the FDA or any other agency is in and by itself not a very accurate indication of a growing problem.

Organized Crime and Terrorism

Although there are strong indicators of organized crime and terrorist groups involved in IP crime internationally, there are few examples of direct links in Canada. Within the GTA, over the last 7 years, none of our investigations have demonstrated a link to traditional organized crime or terrorist activity. During the first year of project OCAT, 147 seizures of counterfeit goods were made and in none of those seizures no links to traditional organized crime or terror groups were found. Although not completely random, these seizures were based on large financial impact for industry or a perceived health and safety risk to the Canadian public. As a result, it was determined investigations should be initiated on these 147 shipments from the over 600 imported counterfeit shipments located by CBSA. The majority of the remaining imports were checked for links to traditional organized crime and terrorism with none found.

(Sutherland, 2005)

Sourcing information regarding the link between traditional organized crime and terrorist activity with IP crimes has been difficult and sometimes confusing. An example of the sourcing issue can be seen in the following reference to organized crime involvement in IP theft as it appeared in the Interpol IP Guide;

“It should come as no surprise to governments and law enforcement agencies that the prospect of huge profits for a small capital outlay and very small potential penalties in a poorly regulated environment

is attractive to the criminal and is exploited in an organized and determined fashion. The manufacture and traffic of counterfeit products, both domestically and internationally is often an organized crime activity. Groups engaging in such activities may be less formalized and only associate for the duration of a particular enterprise. The evidence of organized crime involvement is incontrovertible. Confirmed links to international drug and human trafficking illegal firearms, money laundering, massive tax and revenue evasion and more recently the funding of terrorist activities have been established. In some developing areas whole economies are being distorted internally leading to loss of revenue and the failure of legitimate domestic enterprise to flourish. (Interpol, 2003)

Although, this passage appeared in an Interpol training document, the passage does not come from the FBI, the RCMP or any other law enforcement agency. Instead the source is the International Federation of the Phonographic Industry, IFPI, an industry advocacy association representing the interests of the phonographic industry worldwide. The original source of the Interpol passage was from a report produce by the IFPI regarding organized crime which stated;

“It should come as no surprise to governments and law enforcement agencies that the prospect of huge profits for a small capital outlay and very small potential penalties in a poorly regulated environment is highly attractive to the criminal, who will exploit it to the full. The manufacture and traffic of illegal music products, both domestically and internationally,

is often organized crime activity. Groups engaging in such activities may be established hierarchical criminal organizations such, such as triads and La Cosa Nostra, or they may be less formalized and only associate for the duration of a particular enterprise. The evidence of organized crime involvement is incontrovertible. Confirmed links to international drug trafficking, illegal firearms, money laundering, massive tax and revenue evasion and more recently the funding of terrorist activities have been established. In some developing areas whole economies are being distorted internally leading to loss of revenue and the failure of legitimate domestic enterprise to flourish.” (IFPI, 2003)

This type of circular sourcing has appeared repeatedly throughout my research of the IP crime literature and can distract from the point being made by an author or even worse, it could minimize the credibility of those repeating the passage. Organized crime involvement in IP crime worldwide is not imagined, however, in the Canadian context the amount of organized crime involvement in IP crime has not been widely established. Some believe, organized crime in Canada has to be involved in the movement, sale and manufacture of counterfeit goods for obvious reasons. However, with 80% of Canada’s counterfeit products, originating outside of Canada, (Criminal Intelligence Service Canada, 2005) there is a strong possibility that much of the organized crime involvement related to Canadian products occurs outside of Canada, long before the introduction of these goods into the Canadian marketplace.

IP Rights Holders

One of the most vocal groups pushing the worldwide anti-counterfeiting agenda forward is the Motion Picture Association of America (MPAA) which represents the major US motion Picture film studios. The Motion Picture Association – Canada (MPAC) is the new name of the Canadian Motion Pictures Distributors Association (CMPDA) which is the Canadian Association representing the US motion picture studios in Canada. In 2005, the MPAA stated worldwide losses due to piracy were \$6.1 Billion USD. Canada’s loses to piracy are believed to be approximately \$118 million, while the U.S. experiences a \$1.3 billion loss. (Doran, 2006) According to a report prepared by LEK for the MPAA Motion Picture Association America (MPAA) entitle “the Cost of Movie piracy in Canada”, Canada places right in the middle, 11 of 21, International countries surveyed regarding losses attributed to piracy by the motion picture studios. (MPAA – Canada, 2005). In 2005, the last year such statistics are available, the following countries all generated larger losses than Canada by the U.S. motion picture studios;

United States	\$1.3 Billion
Mexico	\$483 Million
United Kingdom	\$406 Million
France	\$322 Million
Russia	\$266 Million
Spain	\$253 Million
China	\$244 Million
Japan	\$216 Million

Italy	\$161 Million
Germany	\$157 Million
Thailand	\$149 Million

(MPAA - Canada, 2005)

In 2006, the U.S. motion picture industry indicated Canada was the 2nd largest International market for Hollywood movies. In that same year, the size of the Canadian motion picture movie industry grew to \$1.84 billion, representing a 23% growth or a \$341 million increase over the 2005 numbers of \$1.5 billion. Ironically, this 23% growth led all nations internationally; worldwide growth was measured at only 4%. (Hollinger, 2007) Below are the percentages, by nation, of piracy rates of total sales; Canada had a piracy rate of 6%, which is the lowest piracy rate of the top 6 international markets, this rate is second only to the US piracy rate of 5%;

Canada	6%
Germany	9%
UK	11%
Japan	14%
France	19%
Spain	23%

Compare Canada's 6% piracy rates to a 2005 study conducted by L.E.K, for the MPAA, piracy rates per nation are as follows;

China	90%
Russia	79%
Thailand	79%

Hungary	76%
Poland	65%
Mexico	61%
Taiwan	54%
Spain	32%
India	29%
Italy	25%

(MPAA, 2005)

These statistics are nowhere near the 6% piracy rate experienced in Canada and are nearly never mentioned by the motion picture industry when discussing the Canadian problem.

In 1984, the motion picture industry indicated piracy was costing them approximately \$20 million annually. (Carey, 1984) By 2005, 21 years later, the motion picture industry indicated their hard goods losses had grown to \$46 million annually. (MPAA - Canada, 2005) However, the markets have also grown considerably during this time so the piracy rates have stayed relatively consistent during this time, at least according to the movie industry's own numbers.

The statistics are much less available for music than movies, but the perception of the industry is very similar to that of the movie industry, with Canada being a problem nation regarding counterfeit rates. In a speech to the Canadian Club in Toronto on May 1, 2006, Mr. Graham Henderson, the President of the Canadian Recording Industry Association (CRIA), described a very bleak outlook for the music industry in Canada. Mr. Henderson stated that Canadians rarely download music from legal sources and that

Canada has been left behind as the rest of the world races to build digital markets. It was also suggested, Canada is seen as a backward nation that doesn't respect or protect intellectual property, throughout the rest of the world. (Henderson, 2006)

In terms of Canada's place in the world rankings regarding music piracy there are few measures to draw specific conclusions. What limited information is known, according to the International Federation of the Phonographic Industry (IFPI), Canada was the 7th largest market in the world for digital music sales in 2005, totalling \$15 million. According to this same report, Canada was the 6th largest market for retail music sales at \$744 million. The report further stated Canada lost 3% of its total revenue of hard merchandise, in 2005, but that it picked up 3% in digital sales, resulting in no change from the previous year, 2004. (IFPI, 2005)

What is interesting from all this research is that the percentage of piracy rates seemed to have not changed over the last 20 years. In 1984 the Canadian Recording Industry Association indicated their losses to piracy were 10% of sales. (Carey, 1984) As stated in the IFPI 2005 Piracy report, piracy rates in Canada remain at less than 10% of sales. (IFPI, 2005) The lack of change in the piracy rates is interesting and far beyond the scope of this paper. However, there are two thoughts that immediately come to mind; perhaps piracy rates are not affected by factors such as changing technology or piracy rates are merely arbitrary numbers picked by industry to reflect what they believe the problem is.

Civil versus Criminal Responsibility

An important yet often ignored aspect of IP Crime is the civil component as it is

often over shadowed by the criminal side of IP crime due to a variety of factors such as the nature of the criminals, the countries they operate, etc. In fact, Many IP rights holders indicate the cost of doing civil investigations as prohibitively expensive; therefore, they cannot pursue IP crime violators, unless the police or customs officials get involved. In 1984, the cost to conduct a civil action, which included the investigation and lawyers fees, totalled approximately \$30 000 and it could take several years to get the case into the courtroom. (Carey, 1984) There is little doubt that these costs have risen substantially in the last 25 years. On the other side of this issue is the cost of a criminal investigation which can take a year or more to complete and would cost over a hundred thousand dollars. Including all investigative costs including seized product transport, storage and disposal, a medium sized investigation would easily cost the police upwards of \$150 000 which doesn't include any court costs.

In addition, many of the arguments used to show the civil side of fighting IP crime is an ineffective way to deal with this issue, fail to consider these same problems plague criminal investigations. Some argue that civil enforcement against counterfeiting and piracy is not effective due to the underground nature of the activity and the fact that the perpetrators are criminals. (Isaac, Osmond, 2006) The high cost of investigating IP crime is often referred to as another reason the police should be investigating this type of crime. It has been repeated often, that litigation is expensive and time consuming and even if successful the counterfeiter usually has no assets and can't pay the fine, so the final civil outcome is not cost effective. (CACN, 2007) The main argument against using civil enforcement of trade-mark counterfeiting cites expense as the main reason rights holders don't pursue these matters, as indicated mostly because the defendants if found,

rarely have assets to pay any kind of penalty. (Isaac, 2005) However most of these observations would ring true in criminal cases as well. One of the most important rationales to proceed with criminal charges in Canada is the notion of serving the public interest. This loosely refers to the notion that prior to commencing criminal proceedings; one has to ask if consideration has been given to what the outcome will be and how will that affect the public interest. It is often a consideration in law enforcement efforts in assessing all investigations, especially those involving IP crimes.

An extension of the criminal versus civil issue is the often repeated assertion that Canadian Copyright and Trademark legislation is wholly inadequate to deal with modern IP crimes in the criminal courts. There are major limitations to the above noted legislation, but a review of one of the most active criminal complainants across Canada shows these laws can be effective. The Motion Picture Association – Canada (MPAC) had on their website of the previously named Canadian Motion Picture Distributors Association a list of 29 counterfeit investigations which involved the laying of criminal charges. Of those 29 charged, 16 (55%) were laid under the Copyright Act, 8 (27%) were laid under the Criminal Code and 5 (17%) were laid under both the Copyright Act and the Criminal Code. (Canadian Motion Picture Distributors Association, 2006) This data would show that current laws, although problematic, can still be used by law enforcement to combat IP crime.

It is important to note that intellectual property rights are privately owned rights. As a result, the majority of the responsibility for the IP or product rests with the rights holder, they need to protect these rights; however more and more the public and the government are being asked to protect these rights. (Cauchy, 2005)

The Perceived View of the Canadian Response

Although it is difficult to define IP crime in Canada down to a single issue or concern, the office of the United States Trade Representative (USTR) has repeatedly indicated Canada is a problem country with regards to IPR protection and enforcement. In addition to the USTR, there are numerous others claiming Canada inadequately protects IPR, but; is this view justified and what prompts these negative perceptions of the Canadian response to IPR and IP crime.

Domestically, the Canadian Anti-Counterfeit Network (CACN) leads call for greater IPR protection in Canada. The CACN has publicly stated they believe there are serious issues in Canada regarding the lack of IPR protection which requires immediate action. In order to strengthen Canada's IPR enforcement system the CACN believes the following must take place. Canada needs to increase and improve the coordination of government resources dedicated to IP enforcement and education. Canada needs to create an effective IP border enforcement regime and finally, Canada needs to improve current legislation and create new legislation to adequately deal with trade-mark violations. (Canadian Anti-Counterfeiting Network, 2007)

Another leading voice in the fight to push the Government of Canada to enact stronger legislation and IPR is the International Anti-Counterfeiting Coalition (IACC). The IACC is a Washington, D.C. based non-profit organization, formed in 1979, devoted solely to combating product counterfeiting and piracy. Membership comprises companies and organizations across the business spectrum including pharmaceutical, luxury goods, automotive, food, software and entertainment companies. The principle

focus of the IACC is to combat counterfeiting and piracy by promoting laws and regulations to make IP theft undesirable and unprofitable. (IACC, 2007)

A CTV news report indicated past IACC president Tim Trainer stated Canada is home to a \$20 billion-per-year industry in fake designer goods, counterfeit software and countless other fraudulent goods. Trainer continued to state that 20% of the Canadian market is now pirate product, Canada is doing little to stop the illegal industry and that China offers better enforcement against counterfeit products than Canada. (CTV.ca, 2005) However, as with many other references to the size and scale of this problem, the numbers discussed by Mr. Trainer are not substantiated. The claim that China offers better enforcement against counterfeit products than Canada does is largely unsubstantiated.

In another example of unsubstantiated information being presented as fact appears in the paper by Richard Cauchy; *The Border Enforcement of Intellectual Property Rights in Canada and the Obligation of “Effectiveness” Under Article 41(1) Of the TRIPS Agreement* on page 13 stated the following;

“There are two major systems of border enforcement of IP rights: a notification system and a recordation system. Under a notification system, such as the system that is in place in Canada, Customs officials only acts if a notice is filed by an applicant – generally right holders or their agents – giving the agency information about the impending infringing imports. 46”

The notes section under number 46 continues with, in other words, Customs authorities have absolutely no power to seize and detain goods suspected of infringing IP rights without this initial mandate from the IP holder. If the IP holder is unaware of the

importation Customs authorities cannot prevent even an “obvious” infringing import of they cannot act on their own initiative. However, this statement is not accurate, CBSA does indeed have the authority to detain and refer a suspected counterfeit shipment to the RCMP, who along with the IP rights holder will make a determination regarding further action. In most cases, if the product is an infringement, consultation by CBSA with the RCMP will result in a seizure.

With the absence of reliable measures of IP crime, we must rely on actual measureable studies of benchmarks to determine the scope of IP crime in Canada. One of the arguments made by proponents of a weak Canadian IP regime point to the lack of action by the Canadian Government in cracking down on counterfeit goods. However, according to the OECD 2007 report titled, “The Economic Impact of Counterfeiting and Piracy, Part 1: Overall Assessment Draft, details the value of seizures by country, in US dollars. Of 35 nations surveyed, Canadian authorities seized counterfeit or infringing goods valued at \$17,260,470, this places Canada #7 of 35 nations surveyed. While, the United States seized goods valued at \$93,234,510 which positions the United States #3 on the list. (OECD, 2007)

Office of the United States Trade Representative Special 301 Report

The “special 301 list” is published by the Office of the United States Trade Representatives annually and reports on the adequacy and effectiveness of IP rights protection around the world. The list is developed as a result of the Trade Act of 1974 which instructed the Office of the US Trade Representative to identify annually those countries that deny adequate and effective protection for IPR or deny fair and equitable

market access for persons that rely on intellectual property protection. Section 182 of this act is commonly referred to as the “Special 301” provisions of the Trade Act. Within the “Special 301 list” there exists a hierarchy of severity by which countries are ranked; The countries with the worst ranking are found on the “priority watch list” while those countries which have issues, but less severe appear on the “watch List”. (USTR, 2011)

The importance of these rankings in determining what if any trade sanctions will be levied against a trading partner by the United States is crucial to many countries, however, it is especially important to Canada, due to the large amount of trade between the two nations. The placement of a country on the Priority Watch List or the Watch List is a result of perceived problems from a U.S. viewpoint, within the assessed country, with respect to protecting IPR, enforcement, or market access for persons relying on Intellectual Property. The placement of a country on the Priority Foreign Country list can result in trade sanctions against that country; they are placed in this category when they fail to enter into good faith negotiations to provide adequate and effective protection of IPR. (USTR, 2006)

Canada has found itself placed on some level of the Watch List by The Office of the United States Trade Representatives for the last fifteen years. (Geist, 2010) In 2011, Canada was placed on the Priority Watch list, the highest possible level, for the 3rd consecutive year. (USTR, 2011) As shown throughout the literature review, the USTR Special 301 Report is often cited by IP crime experts as important evidence that Canada is not taking IPR protection or enforcement seriously. The rationale for placing Canada on the “Priority Watch List” in 2009 is described as follows:

“Canada will be added to the Priority Watch List in 2009.

The United States appreciates the high level of cooperation between our two governments in many important bilateral and multilateral IPR initiatives. The United States also welcomed the Government of Canada’s reaffirmation earlier this year of its 2007 and 2008 commitments to improve IPR protection and enforcement. However, the Government of Canada has not delivered on these commitments by promptly and effectively implementing key copyright reforms. The United States continues to have serious concerns with Canada’s failure to accede to and implement the WIPO Internet Treaties, which Canada signed in 1997. We urge Canada to enact legislation in the near term to strengthen its Copyright laws and implement these treaties. The United States also continues to urge Canada to improve its IPR enforcement system to enable authorities to take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the volume of infringing products transhipped and transiting through Canada. Canada’s weak border measures continue to be a serious concern for IP owners. The United States hopes that Canada will implement legislative changes to provide a stronger border enforcement system by giving its customs officers the authority

to seize products suspected of being pirated or counterfeit without the need for a court order. The provision of additional resources and training to customs officers and domestic law enforcement personnel would enhance IPR enforcement. The United States will continue to follow Canada's progress toward providing an adequate and effective IPR protection and enforcement regime, including near term accession to and implementation of the WIPO Internet Treaties and improved border enforcement.”

Although the above statement may be largely accurate, one particular inference in the above passage which states the need for Canada to curb the transshipment of counterfeit goods into the United States bears closer scrutiny. Although this statement is often repeated, Canada does not appear to be a transshipping point for counterfeit goods entering the US. As previously indicated in this paper, Canada remains the largest US trading partner, for the last 7 years Canada has appeared on the top trading partners top ten list of IPR infringing exporters only twice, in 2010 and 2007, at the ninth position each year. In 2010, the amount of counterfeit goods seized at the U.S. border was \$608 533 while in 2007 it was \$842 158. These figures represent less than 1% of infringing products seized at the U.S. border and are based on a trade relationship in excess of \$500 billion annually. (U.S. Customs and Border Protection, 2011) and (U.S. Customs and Border Protection, 2008) Statistics aside, Canada's elevation to the priority watch list may have been aided by Canadian government officials, including the policy director for

the Minister of Industry Canada. It was suggested by a particular Canadian government official to the U.S. Embassy in Ottawa; that Canada being moved to the more severe USTR special 301 Priority Watch list would not hinder, but might help the Government of Canada enact copyright legislation. (U.S. Embassy, 2009) Ironically, only days after the Canadian Government Official encouraged the U.S. to increase their lobbying of Canada's copyright legislation, Canada was elevated to the USTR special 301 Priority Watch list. (GEIST, 2011)

Prior to conducting the literature review, I had fully expected to find independent, indisputable, un-debatable, scientific evidence regarding the scale and scope of IP crime. However, a review of the literature regarding IP crime and in particular IP crime in the Canadian context revealed a lack independent, credible research. In fact, while completing the literature review, I was struck by the amount of anecdotal evidence and opinion expressed in the various White Papers, government reports and other reviewed materials focused on IPR. I was surprised to discover much of the literature was created by private enterprise with a direct self interest in IPR. Much more has to be done to determine the true extent of the counterfeit problem and to create an accurate measure of the scope and impact of IP crime.

Key Terms and Abbreviations

CACN	Canadian Anti-Counterfeiting Network
CBSA	Canada Border Services Agency (Canada Customs)
CISC	Criminal Intelligence Service Canada
CRIA	Canadian Recording Industry Association
FES	Federal Enforcement Section, (Royal Canadian Mounted Police)
GTA	Greater Toronto Area
IFPI	International Federation of the Phonographic Industry
IP	Intellectual Property
IPR	Intellectual Property Rights
JFO	Joint Forces Operation
IACC	International Anti Counterfeiting Coalition
NAFTA	North America Free Trade Agreement
RCMP	Royal Canadian Mounted Police
TRIPS	Trade Related Aspects of Intellectual Property Rights (WTO)
USTR	Unites States Trade Representative
WTO	World Trade Organization

CHAPTER THREE:

RESEARCH METHODOLOGY

Research Approach

The purpose of this study was to measure the RCMP response to IP crimes within the GTA and to determine what changes to our approach might satisfy our partners and rights holders. A survey was chosen as the preferred method of data collection in order to reach as many people and gather the widest possible range of ideas concerning IP crime by those working in this field each day. Other methods may have proven equally beneficial to my research but, it was believed the survey was the least restrictive method with regards to time, both of the researcher and the research participants. A focus group was a viable alternative to the surveys but in order to gather the amount of data obtained by survey would have required at least 3 separate focus group meetings. This increase in time for the researcher and those attending the focus group meetings was seen as a major obstacle. Direct interviews were a considered as another method to acquire data, but were not chosen as it was felt the resulting data set would be too small, a wider audience and increased participants was desired by the researcher.

Research Methods and Tools

The Primary research method to gather information was a comprehensive literature review and survey questionnaire involving stakeholders and the partners of Project OCAT, which are CBSA and the RCMP.

Project Participants

The main participants of the surveys conducted within this research paper were

RCMP members investigating IP crime in the GTA, CBSA investigations personnel involved in the Joint forces operation known as Project OCAT and various IP rights holders, mostly invited through the Canadian Anti Counterfeiting Network CACN.

The GTA FES RCMP members were key participants in this research paper as a result of their specialization investigating IP crime. CBSA Investigations were also key participants as they are the unit working within the JFO (project OCAT) with the RCMP GTA FES. Within Project OCAT, when the CBSA personnel were not directly working with the RCMP members, they often worked independently on investigations that contained some element of IP crime.

The final participants in this research project were rights holders and their representatives. It was crucial that this group be represented in this research project as they often do a great deal of preliminary investigation prior to engaging law enforcement. In many other cases, this group also assess damages caused by infringers and often become expert witnesses for their product or within their industry at the request of law enforcement. (RCMP, 2004)

These three groups were essential when completing this research project as they work closely together in order to fight IP crime; failure to work together would seriously hamper any IPR criminal investigation, therefore failure to consult each group would have left a sizeable void in this research. Each one of these participants held a key function within the group, one that would cripple the effectiveness of the RCMP's efforts if they did not all work together, and would be improper to exclude them from participating in this research project.

Ethical Issues

The primary ethical issues to be considered in this study were the privacy of the study participants and the potential bias of the researcher and study participants.

Privacy considerations included both the individuals that were willing to participate in this research and the organizations that those individuals represented.

One ethical issue that evolved during this research project was regarding the distribution of potentially classified material held by the project sponsor, the RCMP or by CBSA. A decision was made by the researcher to use only publicly available materials. As a result only materials currently in the public domain were reviewed and made it into this research paper.

In terms of the survey participants ethical considerations were made to ensure no personal information was collected from any of the survey participants. Each individual involved in the survey provided self-approval for their participation in the project, by agreeing to respond to the voluntary survey. This was an important ethical consideration due to the fact that the anti-counterfeiting community is relatively small and most people involved in this survey have a direct professional relationship with the author. In considering ethical situations, every effort was made by the researcher to identify potential risk areas for bias and to eliminate them; however, other than potential unknown biases within the surveys, the researcher could find no sign of bias in the paper, the facts were presented as they were understood, based on the scope of this research.

Another potential area of bias by the researcher could have been as a result of the considerable pre-existing knowledge of IPR issues. However, it is believed the literature review was conducted thoroughly and in a comprehensive manner, the researcher

attempted to review a wide range of literature, not simply items he was already aware of. The findings of the literature review were not what the researcher expected; they were in fact contrary to what the researcher believed prior to commencing this study. Prior to initiating this paper, the researcher believed there would be overwhelming quantitative data presented in the literature about the size and scope of IP crime in Canada and around the world. However, this was not the findings of the literature review, much of the literature showed the weakness of previous research. Based on the literature review findings, the researcher was more concerned about bias contained within previous research than any bias presented in this paper.

Study Conduct

This research project was designed to use a three pronged survey soliciting the thoughts of police, CBSA and rights holders using mostly the same questions to determine how each group perceives the same question or statement. Police officers from the RCMP, GTA FES were one group surveyed, while CBSA officers working on project OCAT were another and finally, rights holders mostly contacted through the CACN formed the second group. Once it was decided a survey would produce the best results for this research, 3 surveys were prepared, one for each group. The surveys involved 35 questions, with the first 25 questions for each survey group being similar to the other groups. The remaining 10 questions for each group were directly aimed at that specific group. This triangulated survey method solicited answers from each group which were compared to the answers of other groups.

During the first week of June 2006, surveys were sent to each member of the

RCMP, GTA FES, with a three week deadline for a response. An email reminder was sent to each member of the RCMP, GTA FES at the end of the first week in order to solicit the highest possible rate of return. Several survey respondents chose to email the survey back to the researcher, but were provided anonymity as the researcher printed each emailed survey and then deleted the emails, not keeping any identifiers for any of the participants. Of the 20 surveys distributed to members of the RCMP GTA FES, 11 were completed and returned to the researcher. However, due to a variety of reasons involving people being away from work, the actual sample size of the RCMP survey is only 16, which represents a 68% participation rate.

During that same first week of June, 2006, surveys were sent to CBSA staff working on Project OCAT and they were provided the same 3 week deadline to complete the surveys, as the other groups. An email reminder was sent at the end of the first week in order to solicit a higher response rate to the survey. There were only 4 CSBA officers working on Project OCAT at the time of the surveys and all surveys were returned to the researcher within 2 weeks and in sealed envelopes, representing a 100% participation rate. These surveys did not contain any identifiers and were all anonymous.

During the first week of June, 2006, surveys were distributed directly to 5 rights holders or their representatives, by the researcher; they were also informed of the 3 week deadline. An email reminder was sent at the end of the first week in order to solicit the highest possible response rate for this survey. The researcher then determined a wider audience would be acquired by sending the surveys through the Canadian Anti-Counterfeiting Network (CACN). Full disclosure should be made at this time; the RCMP is directly involved in the CACN as an advising agency. Utilizing the CACN to

distribute the survey proved to be a more effective technique to solicit random responses rather than having the researcher send the survey to selected rights holder and their representatives that he has personally worked with in the past. These rights holders and their representatives were provided a full 3 week deadline consistent with the other participants. The initial 5 rights holders sent the original survey requests, were also contained within the CACN survey distribution, as a result they were asked to only respond once. The total number of surveys sent by the researcher and the CACN was approximately 40, but 5 were sent twice, thereby reducing the actual sample size to 35. The survey respondents were asked prior to conducting the survey to only do the survey if they had sufficient knowledge of Project OCAT. Of the 35 surveys sent, it was anticipated by the researchers that as many as 25 participants may have sufficient knowledge and ability to answer the survey. Of those 25 who could potentially participate in the survey, 8 indicated they could not complete the survey due to other commitments. The end result was 14 participants participated in the surveys, representing approximately 48% of total surveys distributed, or roughly 82% of the 17 people who were capable of responding.

Each respondent was asked to submit their responses to the researcher in writing. Once all the surveys were received by the researcher within the allotted time, the surveys were separated into the appropriate grouping; the results were tabulated by the researcher. All completed surveys were placed into sealed envelopes sorted by group and placed subsequently placed into a locked cabinet, to be held in a secure manner as described by Royal Roads University policy and procedures regarding survey results.

Upon the completion of the research project a meeting was held with the project

sponsor. A presentation was also made to members of the GTA FES, some of whom participated in this research project by answering surveys.

Data Analysis

Data analysis procedures and project results included the following:

1. Assessment and enhancement of the GTA FES and the RCMP response to IPR crimes. (Qualitative Survey).
2. Information enhancement to the GTA FES and the RCMP on the subject of IPR crime. (Resource Database)
3. Information enhancement to partner agencies and IP rights holders. (Qualitative Survey)
4. Better understanding by the general public in the area of IPR crimes and the Canadian perspective.

CHAPTER FOUR:

ACTION RESEARCH PROJECT RESULTS AND CONCLUSIONS

Study Findings

This project was designed to measure the response of the GTA FES in the area of IP crime. This has proven to be a difficult research topic for me as it has been very difficult to quantify IP crime, let alone the response to it. As a result, this research paper will include other notable findings, based on my research.

The survey of RCMP IP crime investigators, CBSA IP crime investigators and IP rights holders and their representatives inquired directly about IP crime in the GTA and the RCMP response to it. The final results displayed significant areas of agreement between all three groups, which was not anticipated by the researcher.

A secondary finding, unrelated to the surveys, was the discovery of a major gap in independent research regarding the scope and size of IP crime in Canada.

Survey Results of Royal Canadian Mounted Police Intellectual Property Crime

Investigators

		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	The GTA FES is making serious efforts to combat IP crime.	10%	70 %	10%		10%
2	Given their limited resources, the GTA FES has been successful in combating IP crime.	10%	25%	10%	45%	10%
3	The GTA FES is working to meet the service expectations of their clients fighting IP crime.	10%	62%	18%		10%
4	The RCMP as an organization is making		36%	36%	18%	10%

	serious efforts to combat IP crime.					
5	The RCMP as an organization needs to dedicate more resources to combat IP crime.	46%	36%		18%	
6	To be more effective the RCMP should set up designated units to combat IP crime.	55%		35%	10%	
7	IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.	10%	36%	36%	18%	
8	The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.	10%	64%	26%		
9	The Project OCAT JFO has been successful in combating IP crime.	10%	45%	45%		
10	The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.	54%	36%	10%		
11	The Project OCAT is a positive program for IP rights holders and their representatives.	18%	45%	27%	10%	
12	The Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime.	18%	64%	18%		
13	The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.	18%	54%	18%		10%
14	Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.		10%	27%	36%	27%
15	CBSA as an organization is committed to combating IP crime.	10%	27%	18%	35%	10%
16	IP crime is taken more		64%	36%		

	seriously by CBSA as an organization since the inception of Project OCAT.					
17	CBSA is meeting the service expectations of their clients with regards to IP crime.		10%	54%	18%	18%
18	There are definitive legislative gaps in conducting criminal investigations of IP crime.	63%	27%	10%		
19	Penalties for committing IP crime are too lenient.	72%	18%			
20	The most difficult component of an IP crime investigation by law enforcement is proving knowledge.	36%	28%	18%	18%	
21	When violating IP laws most importers rely on the difficulty in proving “knowledge” faced by law enforcement as a defense.	18%	54%	18%	10%	
22	Most importers that violate IP legislation are knowingly and willingly doing so.	54%	36%	10%		
23	Only IP crime that involves a product which poses a health and safety risk to the public should be investigated criminally by law enforcement agencies.	10%	18%	18%	44%	10%
24	Investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies.		36%	36%	10%	18%
25	Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies.	10%	53%	10%	27%	
26	Rights holders are providing a timely analysis of suspect products for law enforcement	55%	18%		27%	

	agencies when requested to do so.					
27	Crown Prosecutors in the GTA take IP crime cases as seriously as the other types of crimes.			28%	36%	36%
28	Judges in the GTA take IP crime cases as seriously as other types of crimes.			18%	55%	27%
29	IP crime investigators require specialized skills that only develop with experience working on IP crime investigations.	18%	46%		36%	
30	The RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units.	18%	45%	10%	27%	
31	It is an expensive endeavor for a rights holder to civilly investigate IP crime.		63%	27%	10%	
32	It is an expensive endeavor for law enforcement to criminally investigate IP crime.	18%	62%	10%	10%	
33	I possess sufficient training to conduct IP crime investigations.	10%	62%	18%	10%	
34	The RCMP GTA Federal Enforcement Section has provided an enhanced response to IP rights holders by participating in project OCAT.	10%	80%	10%		
35	An IP crime unit removed from the GTA FES would be more effective in combating IP crime.	25%	45%	10%	10%	10%
36	The RCMP should only focus on health and safety IP crimes.	18%	28%		54%	
37	The public would support more active enforcement of IP crimes if law enforcement focused on health and safety issues only.	10%	53%	27%	10%	
38	Having law enforcement	18%	18%	28%	36%	

	investigating luxury goods detracts from the seriousness of IP crimes as perceived by the public.					
39	Investigating luxury goods depletes resources from law enforcement efforts to combat IP crime.	18%	27%	18%	27%	10%
40	The RCMP should not distinguish between different types of IP crimes when choosing which files to investigate.		27%		54%	19%

Survey Results of Canada Border Services Agency Intellectual Property Crime

Investigators

		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	The GTA FES is making serious efforts to combat IP crime.	25%	50%		25%	
2	Given their limited resources, the GTA FES has been successful in combating IP crime.		75%		25%	
3	The GTA FES is working to meet the service expectations of their clients fighting IP crime.		50%	25%	25%	
4	The RCMP as an organization is making serious efforts to combat IP crime.		75%		25%	
5	The RCMP as an organization needs to dedicate more resources to combat IP crime	50%	50%			
6	To be more effective the RCMP should set up designated units to combat IP crime.	25%	75%			
7	IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.		75%	25%		
8	The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.		100%			
9	The Project OCAT JFO has been successful in combating IP crime.		75%		25%	
10	The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.	50%	50%			

11	The Project OCAT is a positive program for IP rights holders and their representatives.	25%	75%			
12	The Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime.		75%			25%
13	The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.		100%			
14	Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.				25%	75%
15	CBSA as an organization is committed to combating IP crime.	25%	25%		25%	25%
16	IP crime is taken more seriously by CBSA as an organization since the inception of Project OCAT.		75%		25%	
17	CBSA is meeting the service expectations of their clients with regards to IP crime.			25%		75%
18	There are definitive legislative gaps in conducting criminal investigations of IP crime.	75%	25%			
19	Penalties for committing IP crime are too lenient.	75%	25%			
20	The most difficult component of an IP crime investigation by law enforcement is proving knowledge.	25%	75%			
21	When violating IP laws most importers rely on the difficulty in proving “knowledge” faced by law	25%	75%			

	enforcement as a defense.					
22	Most importers that violate IP legislation are knowingly and willingly doing so.	75%	25%			
23	Only IP crime that involves a product which poses a health and safety risk to the public should be investigated criminally by law enforcement agencies.				50%	50%
24	Investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies.	50%	50%			
25	Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies.		75%		25%	
26	Rights holders are providing a timely analysis of suspect products for law enforcement agencies when requested to do so.		50%	25%	25%	
27	Crown Prosecutors in the GTA take IP crime cases as seriously as the other types of crimes.		25%		50%	25%
28	Judges in the GTA take IP crime cases as seriously as other types of crimes.		25%		50%	25%
29	IP crime investigators require specialized skills that only develop with experience working on IP crime investigations.	75%	25%			
30	The RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units.	25%	75%			

31	It is an expensive endeavor for a rights holder to civilly investigate IP crime.		75%	25%		
32	It is an expensive endeavor for law enforcement to criminally investigate IP crime.	25%	75%			
33	I possess sufficient training to conduct IP crime investigations.		25%	25%	50%	
34	I require additional training to become more comfortable investigating IP crimes.	50%	50%			
35	CBSA Investigations (project OCAT JFO partner) has been a good partner in combating IP crime.	25%	75%			
36	CBSA as an organization should dedicate more resources to combating IP crime.	50%	50%			
37	CBSA should focus on health and safety IP crimes only.			25%	75%	
38	CBSA should investigate IP crime involving luxury goods		100%			
39	CBSA should not distinguish between different types of IP crimes.	25%	50%	25%		

Survey Results of Intellectual Property owners and their Representatives

		Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
1	The GTA FES is making serious efforts to combat IP crime.	43%	57%			
2	Given their limited resources, the GTA FES has been successful in combating IP crime.	28%	42%	15%	15%	
3	The GTA FES is working to meet the service expectations of their clients fighting IP crime.	28%	72%			
4	The RCMP as an organization is making serious efforts to combat IP crime.	15%	57%	28%		
5	The RCMP as an organization needs to dedicate more resources to combat IP crime.	100%				
6	To be more effective the RCMP should set up designated units to combat IP crime.	85%	15%			
7	IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.	28%	44%	28%		
8	The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.	15%	85%			
9	The Project OCAT JFO has been successful in combating IP crime.	28%	44%	28%		
10	The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.	72%	28%			
11	The Project OCAT is a positive program for IP rights holders and their representatives.	44%	56%			
12	The Project OCAT JFO is a	44%	56%			

	good model for other CBSA offices to follow in combating IP crime.					
13	The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.		44%	56%		
14	Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.			44%	28%	28%
15	CBSA as an organization is committed to combating IP crime.		16%	28%	28%	28%
16	IP crime is taken more seriously by CBSA as an organization since the inception of Project OCAT.		44%	44%	12%	
17	CBSA is meeting the service expectations of their clients with regards to IP crime.			44%	28%	28%
18	There are definitive legislative gaps in conducting criminal investigations of IP crime.	56%	28%	16%		
19	Penalties for committing IP crime are too lenient.	100%				
20	The most difficult component of an IP crime investigation by law enforcement is proving knowledge.	44%	12%	44%		
21	When violating IP laws most importers rely on the difficulty in proving “knowledge” faced by law enforcement as a defense.	44%	28%	28%		
22	Most importers that violate IP legislation are knowingly and willingly doing so.	72%	14%	14%		
23	Only IP crime that involves a product which poses a health and safety risk to the public should be investigated				28%	72%

	criminally by law enforcement agencies.					
24	Investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies.	44%	56%			
25	Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies.	14%	28%	14%	44%	
26	Rights holders are providing a timely analysis of suspect products for law enforcement agencies when requested to do so.	58%	14%	28%		
27	Crown Prosecutors in the GTA take IP crime cases as seriously as the other types of crimes.		28%	28%	28%	16%
28	Judges in the GTA take IP crime cases as seriously as other types of crimes.		14%	28%	44%	14%
29	IP crime investigators require specialized skills that only develop with experience working on IP crime investigations.	28%	58%	14%		
30	The RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units.	44%	56%			
31	It is an expensive endeavor for a rights holder to civilly investigate IP crime.	56%	44%			
32	It is an expensive endeavor for law enforcement to criminally investigate IP crime.	44%	28%	28%		

The survey findings were consistent with the beliefs of the researcher prior to conducting this research, however there remained several areas of the survey that required highlighting, they are as follows:

The first question of the survey was focused on the efforts of the GTA FES and asked, "Is the GTA FES making serious efforts to combat IP crime?" While 80% of the GTA FES either agreed or strongly agreed the unit was making serious efforts to combat IP crime, 75% of respondents from the CBSA either agreed or strongly agreed, while 100% of respondents from the rights holders group believed the GTA FES were making serious efforts to combat IP crime. There appeared to be agreement that the GTA FES is making serious efforts to combat IP crime.

When provided the statement, "Given their limited resources, the GTA FES has been successful in combating IP crime" the numbers were less consistent. Members of the GTA FES were split with 35% agreeing or strongly agreeing with the statement, 55% disagreed or strongly disagreed. 75 % of CBSA respondents indicated they agreed with this statement while 70% of rights holder's responded they agreed the GTA FES have been successful in spite of their limited resources. Although 55% of the GTA FES indicated they disagreed or strongly disagreed with the statement, both the CBSA and rights holder groups believed the GTA FES are overcoming the lack of resources and are successful in combating IP crime.

Rights holders unanimously (100%) stated they believed the GTA FES is working to meet the service expectations of their clients, fighting IP crime. While 72% of GTA FES members agreed or strongly agreed with that statement, CBSA is split only with 50% stating the GTA FES is working to meet the service expectations of their clients. With rights holders overwhelmingly of the belief the GTA FES are meeting their

expectations; the investigators involved in this work don't believe they are meeting the expectations of their clients to the same rate.

GTA FES members were split over the question whether the RCMP as an organization was making serious efforts to combat IP crime. 36% agreed, 36% neither agreed nor disagreed, while 28% disagreed or strongly disagreed with the statement. Rights Holders are more convinced in their belief that the RCMP as an organization was making serious efforts to combat IP crime with 72% agreeing or strongly agreeing with the statement. CBSA echoed this belief with 75% agreeing with the statement. In effect, some within the GTA FES believe there is more the RCMP can do to combat IP crime.

Regarding the question of whether the RCMP as an organization needs to dedicate more resources to combat IP crime the responses were pretty clear, 82% of GTA FES members agreed or strongly agreed, 100% of CBSA investigators agreed or strongly agreed and 100% of rights holders strongly agreed with this statement.

When asked whether the RCMP needs to set up designated units to be more effective in combating IP crime, 55% of the GTA FES strongly agreed, however 35% neither agreed nor disagreed both 100% of CBSA investigators and rights holders agreed or strongly agreed. Clearly the RCMP's partners believe the RCMP needs to develop stand alone units to be more effective in the fight against IP crime.

The statement "Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime" was agreed or strongly agreed to by 74% of GTA FES members, 100% of CBSA investigators agreed, while 100% of rights holders agreed or strongly agreed with the statement.

However, the limitations of Project OCAT are seen in the following. “The Project OCAT JFO has been successful in combating IP crime, 55% of GTA FES members agreed or strongly agreed, while 45% neither agreed nor disagreed with the statement. 75% of CBSA agreed with the statement, while 72% of rights holders agreed or strongly agreed with the statement.

90% of GTA FES members agreed or strongly agreed the Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project. 100% of CBSA investigators and rights holders also agreed or strongly agreed with this statement.

When asked if they believed Project OCAT was a positive program for rights holders and their representatives. 63% of GTA FES members agreed or strongly agreed, while 100% of CBSA and rights holders agreed or strongly agreed with the statement.

Regarding CBSA, 72% of the GTA FES agreed or strongly agreed “the Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime. 75% of CBSA agreed while 100 % of Rights holders agreed or strongly agreed with this statement.

It was agreed or strongly agreed by 72% of GTA FES members that “the implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA. 100% of CBSA investigators agreed, while 44% of Rights holders agreed with the statement and 56% neither agreed nor disagreed. This may be attributed to the fact that many rights holders were not aware of the nature of the relationship between the GTA FES and CBSA investigations with regards to Project OCAT.

When asked if there are definitive legislative gaps in conducting criminal investigations of IP crime, 90% of GTA FES members agreed or strongly agreed, 100% of CBSA investigators also agreed or strongly agreed, while 84% of rights holders agreed or strongly agreed.

In considering whether penalties for committing IP crime are too lenient 100% of the GTA FES members and CBSA investigators agreed or strongly agreed with this statement. Rights holders were more direct with 100% of them indicating they strongly agreed.

90% of GTA FES members agreed or strongly agreed with the statement “Most importers that violate IP legislation are knowingly and willingly doing so”, while 100% of CBSA investigators agreed or strongly and 86% of rights holders agreed or strongly agreed with this statement.

When asked “if only IP crime that involves a product which poses a health and safety risk to the public should be investigated criminally by law enforcement agencies”, GTA FES members were split with 28% agreeing or strongly agreeing, while 54% disagreed or strongly disagreed. 100% of CBSA investigators disagreed or strongly disagreed while 100% of rights holders disagreed or strongly disagreed.

When asked “if investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies” the GTA FES provided a varied response, with 36% agreeing , 36% neither agreeing nor disagreeing and 28% disagreeing or strongly disagreeing. Meanwhile, 100% of CBSA investigators and 100% of rights holders agreed or strongly agreed with the statement.

When asked “if Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies” 63% of the GTA FES members agreed or strongly agreed, 75% of CBSA investigators agreed, while rights holders were divided with 42% of them agreeing or strongly agreeing and 44% disagreeing with the statement.

64% of GTA FES members agreed or strongly agreed “IP crime investigators require specialized skills that only develop with experience, working on IP crime investigations”. 100% of CBSA investigators agreed or strongly agreed with this statement. While 86% of rights holders agreed or strongly agreed.

In terms of career paths, 63% of GTA FES members agreed or strongly agreed the RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units. 100% of CBSA investigators and rights holders agreed or strongly agreed with the statement.

63% of GTA FES members agreed it was an expensive endeavor for a rights holder to civilly investigate IP crime. 75% of CBSA investigators agreed with the statement and 100% of rights holders agreed or strongly agreed.

80% GTA FES members agreed or strongly agreed it was an expensive endeavor for law enforcement to criminally investigate IP crime while 100% of CBSA investigators agreed or strongly agreed 72% of rights holders agreed or strongly agreed with this statement.

RCMP IP crime investigators were exclusively asked the following questions.

72% agreed or strongly agreed they felt they possessed sufficient training to conduct IP crime investigations.

When asked if they believed the GTA FES has provided an enhanced response to IP rights holders by participating in project OCAT 90% agreed or strongly agreed.

When asked if they believed an IP crime unit removed from the GTA FES would be more effective in combating IP crime 70% agreed or strongly agreed.

When asked if The RCMP should only focus on health and safety IP crimes there was a real split amongst investigators, 46% agreed or strongly agreed while 54% disagreed.

When asked if the public would support more active enforcement of IP crimes if law enforcement focused on health and safety issues only, 63% agreed or strongly agreed.

When asked if having law enforcement investigating luxury goods detracts from the seriousness of IP crimes as perceived by the public, a real split of opinions was evident, 18% strongly agreed, 18 % agreed, 28% neither agreed nor disagreed while 36% disagreed.

When asked if Investigating luxury goods depletes resources from law enforcement efforts to combat IP crime a split of opinion emerged again, 18% strongly agreed 27% agreed 18% neither agreed nor disagreed, 27% disagreed and 10% strongly disagreed.

When asked if they believed the RCMP should not distinguish between different types of IP crimes when choosing which files to investigate 73% disagreed or strongly disagreed.

CBSA investigators working on IP crime were exclusively asked a series of questions, the most notable question from this series was related to training.

When asked if they require additional training to become more comfortable

investigating IP crimes 100% of CBSA employees indicated they agreed or strongly agreed. Clearly, efforts are required to ensure CBSA employees receive the necessary training to carry out their functions in the area of IP crime.

Study Conclusions

Based on my research, I feel confident when I state IPR crime is a complex issue that requires much more independent research and study, however, based on my experience and research to date, I can offer the following conclusions.

It cannot be overstated that the need for independent, scientifically based research in the area of IP crime in Canada is paramount. While conducting the literature review, I found many of the original sources referenced in an article or paper was incorrect; furthermore, attempting to discover the original source was nearly impossible in many cases. I was also surprised by the lack of independent research conducted by IP crime professionals prior to publishing their research papers and articles. I found many have simply taken a source at face value without digging further, in several cases the authors failed to review original sources but relied on incorrect secondary sources. The results of poor quality research could create confusion by those researching IPR crime, including government, law enforcement, rights holders and other researchers.

One major conclusion revealed during my research is that, Canada is not, as some have intimated, “a pirate haven” or “lawless” when it comes to IPR crimes. There is no evidence to support statements describing Canada as a major hub or a transnational shipping point for IP infringing goods, these statements are simply not supported by the literature. Import and seizure statistics from the U.S. Department of Homeland Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement show no evidence of Canada being a transshipment point. Although Canada remains the largest US trading partner, Canada has appeared on the U.S. top trading partners top ten list of IPR infringing exporters only twice once during the last 7 years. Canada’s two

appearances on the U.S. top ten list of exporting IPR infringing nations took place in 2007 and 2010. In 2010, Canada was in the 9th position on the list at \$608 533 accounting less than 1% of total seizures. (U.S. Customs and Border Protection, 2011) In 2007, Canada was at the 9th position and accounted for less than 1% of infringing product seized at the U.S. border with a total value of \$842 158. (U.S. Customs and Border Protection, 2008) For the years, 2009, 2008, 2006, 2005 or 2004 Canada does not appear on the list of top ten IPR infringing countries. This list should be the best evidence of Canada being used as a transshipment point for IPR infringing goods, yet this data does not support that conclusion. Perhaps even more problematic in my view is that even though these statistics are publically available, those in the IPR realm continue to repeat the assertions that Canada is a transshipment point of IPR infringing products, while one of the best and most accessible measures, the US import statistics, have shown the exact opposite.

The RCMP must determine the types of IPR investigations they want to explore. By some estimates the amount of IP crime in Canada is wide spread and there is little reason to believe the RCMP can investigate all types of IPR crimes. The RCMP needs to determine which IP crimes should constitute a publicly funded police investigation, versus a privately led investigation, best handled by privately owned rights holders. This separation is crucial and appears in many other areas of law enforcement where civil remedies co-exist with criminal remedies. Perhaps the best starting point for this discussion is the RCMP and DOJ priority system for investigating and prosecuting IP crimes.

Unsubstantiated IPR crime rhetoric is damaging legitimate IPR crime debate in

Canada and most likely worldwide debate is also adversely affected. Estimates of IP crime financial losses have been criticized for being over inflated as they are most often measured by self interested groups. In addition, some IPR crime experts have published reports that contain inaccuracies, quote unsubstantiated statistics and provided poor sourcing, if it is available at all.

Contrary to what many involved with IPR crimes suggest, Canadian law enforcement receive sufficient training to conduct IPR investigations. Each year, IPR groups report that Canada needs to increase training of IPR investigators. However, this is already taking place on a large scale. Based on my observations and experience, there is as much IPR specific training available to RCMP members investigating IP crime as there is for RCMP members investigating other types of crimes. There are no less than six formal, multiple day IPR enforcement training events held annually in Toronto and other major Canadian cities, open to law enforcement, usually at no cost. In addition to the formal training conferences, many companies routinely provide law enforcement product specific training related to their brands. It should be further stated, that although IPR training is always welcome the most important skills required to combat IPR crime are the same skills required to combat other types of crimes, basic law enforcement skills. There is no need to turn every law enforcement officer into an IPR expert, the rights holders should always play the role of the expert with law enforcement relying on their expertise.

There remains little to no evidence that traditional organized crime groups or terrorists are involved in any major way with IPR crimes in Canada. Although there have been documented cases in other countries, there is no evidence these groups have become

involved in IP crime in Canada.

Scope and Limitations of the Research

During the completion of this project, the researcher anticipated additional research opportunities emerging from this project. In some ways, this project was viewed as the first step in identifying IPR issues directly related to Canada and to a lesser extent the GTA. The scope of this project was limited to the experience and knowledge of the researcher, a literature review, surveys of those in the GTA involved in fighting IPR crimes, namely RCMP members, CBSA Investigations and rights holders. This research is limited in geographic terms to the GTA however; the literature review involves articles from around the world. As a result, some elements of this research have very limited applications and very limited conclusions should be drawn.

A clear limitation of this study appears with the survey sample groups. RCMP investigators in the GTA, with knowledge of IP crime are a limited group, but even more limited are CBSA investigators, in the GTA, with knowledge of IP crime. The samples size of the CBSA investigators was a severe limitation in this study, but the researcher felt the need to include CBSA in this study, even with a small sample size. Therefore it should be recognized, the results of the surveys are of limited value and caution should be exercised when interpreting the results.

CHAPTER FIVE:

RESEARCH IMPLICATIONS

Recommendations

There are a number of key recommendations that have surfaced during this project. The primary target of these recommendations is the RCMP GTA FES, the project sponsor. However there are recommendations that fall outside of the scope of the project sponsor and upon other groups within the RCMP, as well as other agencies and companies based on the findings of this project. These recommendations are suggested as new ways of thinking, new ways of looking at old problems and in some cases perhaps new ways of doing things. If nothing else these recommendations should form the basis of discussions to evaluate where the RCMP finds its IPR program.

The first recommendations involve the RCMP GTA FES, the project sponsor. There are numerous recommendations, some of which will easily be achieved while others may require significant efforts to achieve.

Recommendation One

The GTA FES should expand Project OCAT by adding additional dedicated resources to it. The implementation of this recommendation would impact the resources of the GTA FES minimally but would improve the project by allowing for more seizures, investigations and charges. An expanded Project OCAT would conduct counterfeit product blitzes at numerous border points within the GTA. The increase in resources for this project would be a re-alignment of currently deployed resources. By having a 3 – 4 person team, the amount of work that could be achieved by this team would be considerable. This team would be responsible for stopping a large number of imports

from entering the marketplace and should in theory reduce the amount of requests for assistance currently being made to the GTA FES. The expansion of Project OCAT would result in a significant increase in awareness of the GTA FES efforts to reduce IPR crime.

Recommendation Two

The GTA FES should prioritize investigational efforts on goods that pose a health and safety risk to Canadians. The implementation of this recommendation would see the GTA FES filter calls for service into potential Health and Safety IPR investigations and those that pose no Health and Safety concerns. This initiative would require no additional resources for the GTA FES. A major result of implementing this recommendation would be that efforts targeting luxury goods may take less priority than other investigations; however, this would be consistent with current policies of both Canada's DOJ and the RCMP. Prioritizing efforts specifically on Health and Safety investigations would likely reduce the overall demand for GTA FES resources as rights holders that do not possess Health and Safety concerns will be asked to use other means to deal with their infringements. This recommendation is also consistent with court jurisdictions in the GTA that will not currently prosecute non-Health and Safety IPR crimes. An additional benefit to the implementation of this recommendation would be a significant reduction in storage costs currently being borne by the GTA FES as most non health and safety investigation require a great deal of storage space.

Recommendation Three

The GTA FES should develop enhanced partnerships with other agencies in the GTA that have an IP Crime interest, such as local police forces, CBSA, Health Canada, other government agencies and non-governmental agencies. The implementation of this recommendation is intended to create a GTA IPR law enforcement group which would create a venue for agencies investigating IPR crimes to discuss common issues, concerns and cases, as well as providing an opportunity to potentially share scarce resources on overlapping cases. This group would have a positive effect on the fight against IPR crimes in the GTA; it would raise the profile for this type of crime and eliminate many of the borders and other impediments to combating IPR crimes currently in place. The implementation of this recommendation would have a marginal effect on resources within the GTA FES, but could have a significant impact on combating IPR in the GTA. Currently, these partnerships exist informally and the RCMP tends to reach out to each agency or group as needed. Although this has proven to be effective, a coordinated and formal group effort may prove significantly more productive for the GTA FES as it engages our partners continuously. As indicated, much of this work is taking place, but it is informal and largely unorganized. Bringing together a group such as this could also reduce the current workload of GTA FES members.

Recommendation Four

The GTA FES should avoid making any references to unproven statements, such as those regarding traditional organized crime involvement in IPR crime or any statistical representations of the size and scope of IPR crimes.

The implementation of this recommendation is intended to remove any notion that the

GTA FES has firm estimates regarding the scope and/or scale of IPR crimes in Canada. In addition, the implementation of this recommendation is to avoid any potential for the RCMP or GTA FES to become the source for unsubstantiated statistics. Until the RCMP and GTA FES conduct a significant statistical analysis of IPR crimes, we should avoid talking about its specific numbers. Without documented Canadian examples of traditional Organized Crime involvement in IPR crimes, the RCMP should steer clear of making any statements about traditional Organized Crime involvement in IP crimes as well.

Recommendation Five

IP crimes should only be investigated by the GTA FES after rights holders have attempted civil remedies. As previously indicated, the exception to this would be in areas with a Health and Safety concern. The implementation of this recommendation would filter the complaints and result in significant reductions in the amount of calls for service for the GTA FES, many rights holders would be advised that they need to make every effort in the civil realm to solve their problem. A civil process, followed by a criminal investigation would in theory make proving knowledge much easier. The cases investigated by the police, that end up going to court would be significantly strengthened as one of the key elements of IPR crimes is proving knowledge. This recommendation also means that in most cases where charges are laid by the police, the infringer is a repeat offender. Although a contentious recommendation, this would be an important change in local policy that would solve several significant issues with our IP crime investigations. The most significant change would be that a larger number of our

investigations would get to court as the essential element of knowledge will be easily provable based on the prior civil process. As previously indicated, the exception to this recommendation would be where Health and Safety concerns arise.

The next series of recommendations involve the RCMP Federal Enforcement Branch (FEB), the RCMP entity responsible for amongst other things, determining National IP Crime Priorities and setting National IP investigation Guidelines and Policies.

Again, some of these recommendations are easily achieved while others will require significant effort.

Recommendation Six

The RCMP, through FEB, should develop a National strategy for IPR crime investigations.

The implementation of this recommendation would bring numerous changes to National efforts of the RCMP to combat IPR crimes. The first step in this initiative would be to determine a consistent set of parameters for which IPR crimes the RCMP will investigate. Currently there are no firm guidelines for the level of loss the RCMP will investigate in relation to IPR crimes. Certain jurisdictions initiate investigations into several hundred items while a neighbouring jurisdiction may not even initiate an investigation into thousands of the same commodity. This type of discrepancy sends an uneven and confusing message to rights holders who are making their complaints often to multi jurisdictions within the RCMP. The long term repercussions could be the re-

deployment of scarce RCMP resources. Currently many smaller jurisdictions spend a considerable amount of time investigating retail level non-Health and Safety products, while many of the larger jurisdictions cannot even investigate distributor level complaints due to insufficient resources. The RCMP message to the public and rights holders should be more direct and consistent; the public has indicated support for IPR enforcement efforts when the focus is health and safety; however that support drops significantly when the enforcement effort includes luxury goods, Motion Picture Films and music. RCMP IPR investigators should be deployed to areas of widespread IPR infringement and working on large scale distributors and significant IPR crimes or at least those with a Health and Safety component to it. The intention of this recommendation is not to take all the resources from the various regions, but rather to refocus some resources to larger centres where the majority of IPR crimes take place.

Recommendation Seven

The RCMP and FEB should assign dedicated units of IPR investigators, across the country.

The implementation of this recommendation may be one of the most important changes suggested by this paper, directed at the GTA FES and the RCMP. These IPR crime teams would be responsible for IPR crimes within their geographic area and would gradually develop the type of expertise that is required to effectively investigate IP crimes. By being immersed full time in IPR investigations, these units would liaise with external partners, increasing the profile of the program, to show the RCMP is prepared to take IP crime seriously and invest in physical units working on IP full time. Although

the preferred method to investigate IPR crimes is with dedicated units, there is an alternative to this recommendation. The alternative would provide some flexibility to the RCMP in terms of additional costs and structures required to set up stand alone IPR investigative teams. The alternative is to set up teams within already established FES units and it has two main benefits;

- a. It would allow for the IPR investigators to pull from established home units when the IP crime investigations become large or require additional assistance.
- b. It would still allow for much needed development of IP crime expertise by investigators.

It is not anticipated that either method of creating IPR investigative teams would require new funding for new positions. This would be the preferred method to organizing these teams, as it would avoid the re-assignment of current resources by the RCMP. In the GTA, the best method to achieve an IPR team would be to divide the current unit into separate units. One unit would handle all matters related to IP crime, while the other member would continue with the remaining FES mandated responsibilities. Under a common command, these two units could each conduct their own investigations and develop their own expertise, but when necessary, they could join forces.

Recommendation Eight

The RCMP and FEB should develop a comprehensive internal training regiment, focused exclusively on IP crime.

To implement this recommendation, the RCMP needs to develop an in house training program or it could partner with an established IP rights holder group to develop a

customized program for the RCMP. Currently RCMP training in the areas of IPR is largely delivered on an ad hoc manner based on the needs of each geographical area. Training is provided by a number of sources, most times it is a rights holder or similar group. Instead, a centrally coordinated RCMP training program would allow the RCMP to have a consistent message to IPR investigations across Canada. RCMP focused IPR training would also provide for training on relevant topics and issues, wherever the RCMP sees a need and value. In addition to IPR crime training for current investigators, equally important would be the training for new RCMP recruits. This training would be ideal to raise awareness of IP crimes prior to new RCMP members completing their training and being dispatched throughout Canada. There is no reason for members who are not primarily tasked with investigating IP crimes to have a basic understanding of the issues surrounding IP crime and counterfeit products. This simple effort could be achieved by bringing current IP investigators to Regina 3 or 4 times a year to meet with as many troops as possible for a few hours, offering an introductory course on IPR crimes.

Recommendation Nine

Due to the uniqueness of this type of crime and in light of the particular expertise investigators must possess, the RCMP, through FEB should create promotional opportunities within IP specific teams in order for members to have promotional opportunities without having to leave their unit.

The implementation of this recommendation involves the RCMP and FEB creating promotional opportunities within the IPR program to maintain some continuity and expertise within a unit and the overall program. The impact on the RCMP to implement

this recommendation would be neutral in terms of costs; there would be no additional costs and no difference in resources. This change however, should maintain some level of expertise within IPR units across the country for many years.

Recommendation Ten

The RCMP and FEB should adopt a policy of only investigating IP crimes once the rights holders have first attempted to deal with their complaint civilly.

The implementation of this recommendation should increase the number of IPR investigations getting to court and filter out many of the IPR investigations currently undertaken by the RCMP each year. The reason this would occur is due to the fact that the main element of a criminal investigation, which is knowledge would have been established by the rights holder prior to the police even investigating the infringement.

The only exception to this recommendation would be when dealing with Health and Safety related IPR infringements. The implementation of this recommendation, although not the most popular position to take with rights holders, would see them adapt as they realize the police can't investigate all IPR crimes, there has to be a priority system.

Recommendation Eleven

The RCMP through FEB should develop an RCMP rapid deployment team to assist IPR investigators and units across the country, when required.

The implementation of this recommendation could be achieved in several ways and would depend on the preferences of the RCMP. This team could be comprised of RCMP members from one area or it could take members from across Canada or across a

region, brought together for one event or incident. These teams could also help investigator across the country to bolster local resources when required. This would allow the RCMP to have fewer resources around the country, but when required this team could be deployed. It would become a highly visible component of the RCMP's National efforts to combat IPR crimes. This type of team would be used during large scale National Events, such as the Grey Cup, the Stanley Cup or an Olympic event or other similar major events. These types of events require a National response as local authorities are often focused on essential security functions associated to these large scale events. The costs of this unit would be shared from a National fund and would be mitigated by not having to deploy so many full time resources to an area that is not necessarily an IP crime hot spot. A rapid response team would allow for a significant transfer of knowledge from experienced IPR investigators to other investigators as they assist each other.

The final series of recommendations are intended for CBSA and Rights holders and are well beyond the scope of the RCMP IP crime mandate.

Recommendation Twelve

Rights holders, IP lawyers, and IP related trade groups or associations must conduct, encourage and fund independent research into various aspects of IP crime including, but not limited to the scope, scale, and source of IP crime in Canada and internationally. Additional evidence is required to support many of the claims being made by rights holders and IPR advocacy groups. The impact of rights holders and IPR advocacy

groups conducting or paying for independent research in this area will ultimately push the issue to the forefront. Currently many are seeking answers to major questions, such as what is the scope and of this problem. The impact on the RCMP could be significant as resources could be requested if the evidence was shown to be conclusive regarding the impact of IPR crimes.

Recommendation Thirteen

IPR holders should use civil powers available to them to protect their brands.

The use of civil remedies by IPR holders would remove some of the pressure currently placed on the RCMP to combat IPR crimes. It would also allow the RCMP to focus precious resources on investigating only the most serious IPR crimes and IPR infringers.

Recommendation Fourteen

Law Enforcement training needs to evolve away from product identification sessions towards a more focused solutions based training.

The RCMP should control their own training in the area of IPR crimes; it should not rely on private industry and rights holders to provide training to its members. The majority of IPR investigator training is conducted by rights holders or their representatives and involves product identification. Although helpful, Law Enforcement should not be experts in product identification in fact; their training should de-emphasize the need for the police to do product identification. The focus should be on more important issues of IP law, investigative techniques, increased intelligence and other best practices.

The following recommendation involves policy makers and Canadian government officials.

Recommendation Fifteen

Canada should consider studying IPR crimes in the Canadian context to determine if Canada is a problem nation with regards to IPR infringing goods.

The fact that Canada appears on IPR watch lists and is held in a very negative light as it relates to IPR crime should be addressed through serious study of this issue, by the government. The Canadian government should commission a study to determine if the perception of Canada as a haven for counterfeiters is accurate. The RCMP is not best suited to study this subject on behalf of the government of Canada, however they would greatly benefit by learning if claims of IPR crimes in Canada are accurate.

Implications for Future Research

IPR crime is an emerging issue in Canada and around the world. As a result of my research, I believe a better understanding of this issue would be achieved through additional independent research. The initial focus of this research should be to determine the scope and extent of IPR crime in Canada. Without a quantitative measure, we have no idea how big a problem IPR crime really is.

I believe the lack of specific IPR crime statistics in Canada and to some extent abroad has diminished the perception of IPR Crime. In order to change laws, modify the public's attitude and conduct public educational campaigns, a much better understanding of this problem has to occur, this understanding would be considerably increased if we

could find independent verifiable IPR crime statistics. Failing to develop a more thorough understanding of this problem could result in ineffective laws and a misguided attempt at changing public perceptions concerning IP crime. For example, Canada enacted camcorder legislation that prohibits people from filming in movie theatres on June 1, 2007. This legislation was hailed widely as a way to combat illicit camcording in Canadian movie theatres. The effort and energy required to enact this legislation was substantial, yet over the years since its enactment, there is only evidence of 2 people in Canada being charged for camcording in a movie theatre. Although both have since been found guilty, the penalties were minimal. By some accounts this is a positive example of necessary changes, by other measures having only 2 people convicted of a crime over a 3 year span have some believing the investment of time and energy could have been spent elsewhere. This view is bolstered by the fact that this legislation protects only one industry, not all IPR holders. Similar to the size and scope of the IPR crime problem is the issue related to financial losses attributable to this type of crime. Additional research regarding IPR crime statistics related to financial losses should be conducted, currently a number of assumptions are being made about these losses, but there is insufficient data currently available to make an informed decision. I believe my project has provided a basis and possible suggestions for future research into the validity of certain widely held beliefs within the IPR crime.

CHAPTER SIX:

LESSONS LEARNED

Research Project Lessons Learned

One of the main lessons learned in conducting this research project was the lack of a sufficient sample size for the CBSA survey. Although this information is helpful, the purpose for including CBSA in my research was to learn directly from people in the organization working on IP crime in the GTA and to compare how their views would correspond with the views of RCMP IP crime investigators, and rights holders. The number of CBSA employees matching the requirements to participate in the survey was very small. To avoid the problem of such a small sample size, I could have involved CBSA employees from other geographic regions or loosened the requirement for specific IPR experiences. However, the reality is CBSA does not actively investigate IP crime at this time so the expertise within the organization is very limited.

From a logistics perspective, another major lesson experienced during this project was ensuring you have sufficient time to complete your research project. As my work increased and life unfolded, I found my time available for this research was diminished to the point that the project suffered and was almost never completed. When life circumstances wouldn't allow for me to get my tasks completed on my project, I should have been better prepared or at least tried to find a way to mitigate these problems.

Another lesson learned related to the action research nature of this project. Regardless of how the researcher feels about their recommendations it remains possible that the project sponsor could be less than enthusiastic about carrying through with the suggestions.

Ensuring strong "buy in" from your project sponsor is important to ensure your research is relevant and forms a basis for action within the organization being studied. I believe having a high level manager within the organization to champion your recommendations

may allow for the greatest potential change.

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APPENDIX A

LETTER OF INVITATION

I would like to invite you to participate in a research project that I am conducting in partial fulfillment for a Masters of Arts Degree with a Specialization in Justice and Public Safety at Royal Roads University. You have been chosen as a prospective participant because of the work you have been doing in the area of Intellectual Property Crime.

The primary objective of my research project is to measure the response of the Royal Canadian Mounted Police in combating Intellectual Property Crimes within the Greater Toronto Area. In addition to submitting my final report to Royal Roads University, I will also be sharing my research findings with the RCMP. There is also the possibility that this research or parts thereof could be published in journals, magazines, books or other media.

As the RCMP Manager of Project OCAT, the joint forces operation involving the RCMP and the Canada Border Services Agency, the findings of this survey could also enhance our overall delivery of service in the area of IP crime.

This survey will take approximately 30 minutes. Information will be accepted in hand-written or typed format and where appropriate summarized, in anonymous format, in the body of the final report. At no time will any specific comments be attributed to any individual unless your specific agreement has been obtained beforehand. All documentation will be kept strictly confidential and a copy of the final report will be housed at Royal Roads University and will be publicly accessible.

You are not compelled to participate in this research project. If you do choose to participate, you are free to withdraw at any time without prejudice. Similarly, if you choose not to participate in this research project, this information will be maintained in confidence. You can fax the completed questionnaires to me at _____ or you can email them to the address below. Should you wish to maintain your anonymity please return your questionnaire through the mail at the address listed above. My credentials with Royal Roads University can be established by emailing my Faculty Project Advisor Tom Marcinkiewicz at _____

Please feel free to contact me at any time should you have additional questions regarding the project and its outcomes. No final decision has been made on whether or not there will be a formal debriefing, but if you are interested please contact me at _____ or _____ .

Completed surveys should be returned no later than June 30th, 2006.

Sincerely,

David Sutherland

APPENDIX B

SURVEY PREAMBLE

This survey is an important element for my research in partial fulfillment for a Masters of Arts Degree with a Specialization in Justice and Public Safety at Royal Roads University.

The primary objective of my research project is measure the response of the Royal Canadian Mounted Police in combating Intellectual Property Crimes within the Greater Toronto Area.

This survey will to take approximately 30 minutes. Information will be accepted in hand-written or typed format and where appropriate summarized, in anonymous format, in the body of the final report. Should you wish to make additional comments or submissions beyond the survey questions, please feel free to do so in the format you desire.

You are not compelled to participate in this research project. If you do choose to participate, you are free to withdraw at any time without prejudice. Similarly, if you choose not to participate in this research project, this information will also be maintained in confidence. Your completion and submission of this survey will constitute your informed consent.

Completed surveys should be returned as soon as possible but no later than June 30th, 2006. You can submit surveys electronically or through the mail.

Survey Legend

CBSA	Canada Border Services Agency (Canada Customs)
RCMP	Royal Canadian Mounted Police
FES	Federal Enforcement Section (Royal Canadian Mounted Police)
GTA	Greater Toronto Area
IP	Intellectual Property
JFO	Joint Forces Operation
OCAT RCMP)	Joint Forces Operation to combat importation of Counterfeit goods (CBSA and RCMP)

APPENDIX C

Survey Questionnaire

Royal Canadian Mounted Police Intellectual Property Crime Investigators

- 1) The GTA FES is making serious efforts to combat IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 2) Given their limited resources, the GTA FES has been successful in combating IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 3) The GTA FES is working to meet the service expectations of their clients fighting IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 4) The RCMP as an organization is making serious efforts to combat IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 5) The RCMP as an organization needs to dedicate more resources to combat IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 6) To be more effective the RCMP should set up designated units to combat IP crime.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 7) IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.
Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 8) The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

9) The Project OCAT JFO has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

10) The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

11) The Project OCAT is a positive program for IP rights holders and their representatives.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

12) The Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

13) The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

14) Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

15) CBSA as an organization is committed to combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

16) IP crime is taken more seriously by CBSA as an organization since the inception of Project OCAT.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

17) CBSA is meeting the service expectations of their clients with regards to IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

18) There are definitive legislative gaps in conducting criminal investigations of IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

19) Penalties for committing IP crime are too lenient.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

20) The most difficult component of an IP crime investigation by law enforcement is proving knowledge.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

21) When violating IP laws most importers rely on the difficulty in proving “knowledge” faced by law enforcement as a defense.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

22) Most importers that violate IP legislation are knowingly and willingly doing so.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

23) Only IP crime that involves a product which poses a health and safety risk to the public should be investigated criminally by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

24) Investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

25) Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

26) Rights holders are providing a timely analysis of suspect products for law enforcement agencies when requested to do so.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

27) Crown Prosecutors in the GTA take IP crime cases as seriously as the other types of crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

28) Judges in the GTA take IP crime cases as seriously as other types of crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

29) IP crime investigators require specialized skills that only develop with experience working on IP crime investigations.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

30) The RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

31) It is an expensive endeavor for a rights holder to civilly investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

32) It is an expensive endeavor for law enforcement to criminally investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

- 33) I possess sufficient training to conduct IP crime investigations.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 34) The RCMP GTA Federal Enforcement Section has provided an enhanced response to IP rights holders by participating in project OCAT.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 35) An IP crime unit removed from the GTA FES would be more effective in combating IP crime.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 36) The RCMP should only focus on health and safety IP crimes.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 37) The public would support more active enforcement of IP crimes if law enforcement focused on health and safety issues only.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 38) Having law enforcement investigating luxury goods detracts from the seriousness of IP crimes as perceived by the public.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 39) Investigating luxury goods depletes resources from law enforcement efforts to combat IP crime.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree
- 40) The RCMP should not distinguish between different types of IP crimes when choosing which files to investigate.
- Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

APPENDIX D

Survey Questionnaire

Intellectual Property Rights Holders

1) The GTA FES is making serious efforts to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

2) Given their limited resources, the GTA FES has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

3) The GTA FES is working to meet the service expectations of their clients fighting IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

4) The RCMP as an organization is making serious efforts to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

5) The RCMP as an organization needs to dedicate more resources to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

6) To be more effective the RCMP should set up designated units to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

7) IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

8) The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

9) The Project OCAT JFO has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

10) The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

11) The Project OCAT is a positive program for IP rights holders and their representatives.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

12) The Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

13) The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

14) Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

15) CBSA as an organization is committed to combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

16) IP crime is taken more seriously by CBSA as an organization since the inception of Project OCAT.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

17) CBSA is meeting the service expectations of their clients with regards to IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

18) There are definitive legislative gaps in conducting criminal investigations of IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

19) Penalties for committing IP crime are too lenient.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

20) The most difficult component of an IP crime investigation by law enforcement is proving knowledge.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

21) When violating IP laws most importers rely on the difficulty in proving “knowledge” faced by law enforcement as a defense.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

22) Most importers that violate IP legislation are knowingly and willingly doing so.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

23) Only IP crime that involves a product which poses a health and safety risk to the public should be investigated criminally by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

24) Investigations of IP crimes involving luxury goods are in the public interest and should continue to be investigated criminally by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

25) Rights holders should pay for some of the costs associated to criminal IP investigations by law enforcement agencies.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

26) Rights holders are providing a timely analysis of suspect products for law enforcement agencies when requested to do so.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

27) Crown Prosecutors in the GTA take IP crime cases as seriously as the other types of crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

28) Judges in the GTA take IP crime cases as seriously as other types of crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

29) IP crime investigators require specialized skills that only develop with experience working on IP crime investigations.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

30) The RCMP should cultivate IP crime investigators by providing a career path that retains experienced members within IP crime units.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

31) It is an expensive endeavor for a rights holder to civilly investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

32) It is an expensive endeavor for law enforcement to criminally investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

APPENDIX E

Survey Questionnaire
Canada Border Services Agency

1) The GTA FES is making serious efforts to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

2) Given their limited resources, the GTA FES has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

3) The GTA FES is working to meet the service expectations of their clients fighting IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

4) The RCMP as an organization is making serious efforts to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

5) The RCMP as an organization needs to dedicate more resources to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

6) To be more effective the RCMP should set up designated units to combat IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

7) IP crime is taken more seriously by the RCMP as an organization since the inception of Project OCAT.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

8) The Project OCAT JFO template is a good model for other RCMP units to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

9) The Project OCAT JFO has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

10) The Project OCAT JFO would be more successful in combating IP crime if more resources were added to the project.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

11) The Project OCAT is a positive program for IP rights holders and their representatives.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

12) The Project OCAT JFO is a good model for other CBSA offices to follow in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

13) The implementation of Project OCAT has improved the working relationship between CBSA and the RCMP in the GTA.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

14) Excluding Project OCAT, CBSA as an organization has been successful in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

15) CBSA as an organization is committed to combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

16) IP crime is taken more seriously by CBSA as an organization since the inception of Project OCAT.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

17) CBSA is meeting the service expectations of their clients with regards to IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

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Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

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Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

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31) It is an expensive endeavor for a rights holder to civilly investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

32) It is an expensive endeavor for law enforcement to criminally investigate IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

33) I possess sufficient training to conduct IP crime investigations.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

34) I require additional training to become more comfortable investigating IP crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

35) CBSA Investigations (project OCAT JFO partner) has been a good partner in combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

36) CBSA as an organization should dedicate more resources to combating IP crime.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

37) CBSA should focus on health and safety IP crimes only.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

38) CBSA should investigate IP crime involving luxury goods.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

39) CBSA should not distinguish between different types of IP crimes.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree