

The Canadian Intellectual Property Council

Submission on a Digital Economy Strategy



Affiliated with the Canadian Chamber of Commerce

July 13, 2010



The Canadian Intellectual Property Council
Conseil canadien de la propriété intellectuelle

Canada's Digital Economy Strategy: Intellectual property is a cornerstone for success

Intellectual property (IP) and innovation are key elements for economic success, especially as other nations continue to fully embrace their benefits. By building on our strengths and working together with the federal and provincial governments, Canadian businesses will be in the right position to realize the benefits of digital technologies and achieve a competitive advantage internationally.

The Canadian Intellectual Property Council (CIPC) welcomed the federal government's announcement in Budget 2010 that a Digital Economy Strategy will be developed and implemented. With the introduction of Bill C-32, the *Copyright Modernization Act*, the government has taken the first step towards updating Canada's copyright laws to meet the needs of the digital age. The amendments in the bill strike an acceptable balance between various interests and if implemented in accordance with the objectives of the legislation, will provide a solid foundation for future economic growth and job creation in Canada.

Intellectual property, economic growth and job creation in Canada

Over 15,000 people work for more than 50 research-based pharmaceutical companies in Canada. Approximately 10,000 medical researchers are employed as a result of pharmaceutical companies' investment in R&D.

Film and television production reached an all-time high of \$5.2 billion in 2007/2008. The production studios associated with the CMPDA are key contributors to the foreign location production industry in Canada, in total valued at 1.77 billion dollars annually.

Film and television production generated 131,600 full-time equivalent jobs (FTEs) in Canada in 2007/08, including 51,700 FTEs directly in film and television production activities. An estimated \$225,000 (U.S.) per day is added to the local economy where film production occurs.

Canada's entertainment software industry comprises approximately 247 establishments located in eight provinces. These establishments include 241 active firms and six subsidiary studios that together employ over 14,000 people.

For years, Canada's music industry has consistently contributed major stars to the international marketplace.

From 2001 to 2008, Canada's major record labels invested over \$1.5 billion in the Canadian economy. Additionally, Canada is home to more than 650 independent record labels.

It is widely accepted that productivity is directly linked to policies that promote innovation and the adoption of technology. Countries like the United States, Britain, Australia and Denmark but a few of the countries that are pouring resources into the digital economy and in some cases, creating federal ministries to oversee opportunities and challenges. Canada's productivity gap compared to the United States remains problematic. While the business community understands the government's current financial constraints, there are pioneering creative ways to work together to advance the digital economy strategy.

Leading economies around the world have made IP protection a priority. In Japan, an IP Strategy Council has been organized. This issue was deemed so important that the Japanese Prime Minister leads the organization, with the CEOs of leading companies such as Canon and Mitsubishi participating. In France, an anti-piracy commission designed to curtail internet piracy is overseen by French President Nicolas Sarkozy, with the Minister of the Economy and Minister of Culture sharing lead responsibilities. We need to step up too, seize the opportunities of IP and look at the models in other countries to see what might best work for Canada.

Create an environment that better protects intellectual property rights

Canada has the opportunity to continue to carve out a niche in terms of digital content, especially in the areas of animation, visual effects and gaming software development. To ensure that Canada builds on its strong start (particularly in the areas of animation and special effects for film production), training and educational infrastructure as well as investment-friendly tax regimes need to be expanded. The global competition for this type of sophisticated, cutting-edge production does not allow Canada to be complacent. Attracting continued production is essential to build a cycle of growth and development in order to attract investment.. The level of investment required for Canada to be a leader in digital content can be sustained only if the output is successfully monetized. To enable this to happen, Canada needs to modernize its copyright legal framework to allow rights holders to manage the terms by which they make their product available to the public. Canada also needs to recognize that education regarding the importance of IP and active enforcement of IP rights must be priorities.

The CIPC remains concerned about the significant delays that have occurred in implementing remedial intellectual property rights legislation. However, the business community also realizes that governing with a minority does present challenges. Through 2010 and beyond, the CIPC, working under the umbrella of the Canadian Chamber of Commerce, looks forward to working with Parliamentarians to improve our IP system. With Bill C-32, the *Copyright Modernization Act*, the government has taken the first step towards updating Canada's copyright laws. The CIPC has advocated for this bill since the previous bill, C-61, died with the call of the 2008 federal election. We support the objectives of Bill C-32 and are optimistic it will be passed before the next election. It seems that MPs on all sides of the House of Commons have been listening and see the need to update Canada's public policy on IP issues.

Over the last decade, the proliferation of IP theft has helped to weaken the global economy. In particular, digital piracy has increased dramatically as internet access has expanded. Research conducted by the International Chamber of Commerce (ICC) finds that legitimate businesses worldwide lose more than €600 billion in sales annually. In another report by UK-based Frontier Economics, researchers found that IP theft robs G20 governments of more than €100 billion in tax revenues, and puts 2.5 million legitimate jobs at risk each year.

IP theft remains a significant drain on the economy, deceives the public and is harmful in many ways including the loss of jobs, a reduction in tax revenues for governments and, last but not least, serious consumer health and safety risks due to the poor, inconsistent and often hazardous nature of fake products. Virtually no industry is immune from this illegal activity. In addition, the misuse of a rights holder's intellectual property rights not only erodes the value of intellectual property but also discourages investment in innovation and creation. In the rapidly changing global economy that focuses on global trade and digitization, protecting intellectual property is critical to ensuring a competitive Canada.

The CIPC also looks forward to working with the government towards the conclusion of the Anti-Counterfeiting Trade Agreement that advances Canadian interests.

Reform of our IP related statutes such as the *Copyright Act* and *Trade-marks Act*, as well as the IP related provisions of other statutes such as the *Criminal Code* is urgently needed so that rights holders and the authorities have the tools that they need to efficiently and effectively stop the flow of counterfeit goods into, and protect IP in, Canada. Canada's IP environment must be brought to up the standard of our international trading partners. On a positive note, the government did take a step forward recently by allowing for the proceeds of copyright crimes to be confiscated.

Recommendations to protect intellectual property rights:

- Make counterfeiting and piracy a government-wide priority and act on appropriate legislative reforms now.
- Provide resources for the necessary reforms and their implementation. This would enable authorities to search and seize suspected counterfeit goods at Canada's major ports and gateways.
- Strengthen existing statutes, such as the *Criminal Code*, *Copyright Act* and *Trade-marks Act*, either individually or through a dedicated anti-counterfeiting statute. Initiatives that should be taken in relation to this include:
 - Enacting the long anticipated amendments included in Bill C-32, the *Copyright Modernization Act*,
 - Amending the *Criminal Code* to properly define "counterfeiting" as a special criminal offence, thereby making it a criminal offence to manufacture, reproduce, distribute and/or import or offer for sale counterfeit products for commercial purposes,
 - Amending the *Federal Court Act* to provide for expedited civil proceedings for cases involving counterfeit products and other IP infringement,
 - Adding counterfeit goods to the proceeds of crime regime, making it possible for law enforcement officers to seize the illicit wealth of counterfeiters, similar to that of copyright crimes,
 - Ratifying the two outstanding WIPO treaties that specifically deal with enforcement of intellectual property rights over the internet,
 - Enacting amendments to the *Customs Act* to allow for search and seizure of counterfeit and pirated goods and provide customs and law enforcement agencies with the ability to share information with rights holders and licensees, and

- Creating a government task force or central resource to oversee the advancement of IP in Canada.

Canada is a world leader in many areas: energy, natural resources and the financial services sector to name a few. Unfortunately, we have slipped internationally in ensuring that our digital infrastructure is world class and, as a result, we risk being able to attract and keep jobs in the knowledge-based economy.

By better defining and protecting IP rights, we will develop a marketplace that rewards and protects investments in innovations, creations and goodwill, fostering new and innovative business models, stronger economic growth, job creation and prosperity. Better laws and enforcement against counterfeiting and piracy will not only protect consumers from shoddy and often dangerous products, such as knock-off electrical cords, batteries and medicine, but will also make it more difficult for criminal syndicates to profit from their sale. In modern, developed nations like Canada, where services and innovation have become key economic drivers, this has never been more crucial.

Intellectual property, economic growth and job creation in Canada

“The film and television industry is important both to the economic and cultural well-being of our province. It contributed \$365 million to the economy from 2003/04 to 2007/08, employing thousands of Manitobans and helping showcase Manitoba to the world.” Tara Walker, Executive Director of On Screen Manitoba.

British Columbia is the third-largest film and television service production centre in North America, contributing over one billion dollars annually to B.C.'s economy and providing an estimated 20,000 direct and 15,000 indirect jobs.

In Montreal, the 43 entertainment software firms have an expected annual growth (3 years) of 26% and employ 4442 people.

Montréal ranks 8th in North America for pharmaceutical jobs, with a pool of 32,000 stable, experienced and skilled workers in the biopharmaceutical industry and over 13,000 researchers in the public biomedical.

Over 249,000 people are working directly in Ontario's IT industry.

Ontario's life sciences industry employs more than 43,000 people at more than 815 companies which generate more than \$14 billion annually.