



# “Hey Mister, wanna buy a watch?”

Doing battle against counterfeiting and the piracy of intellectual property

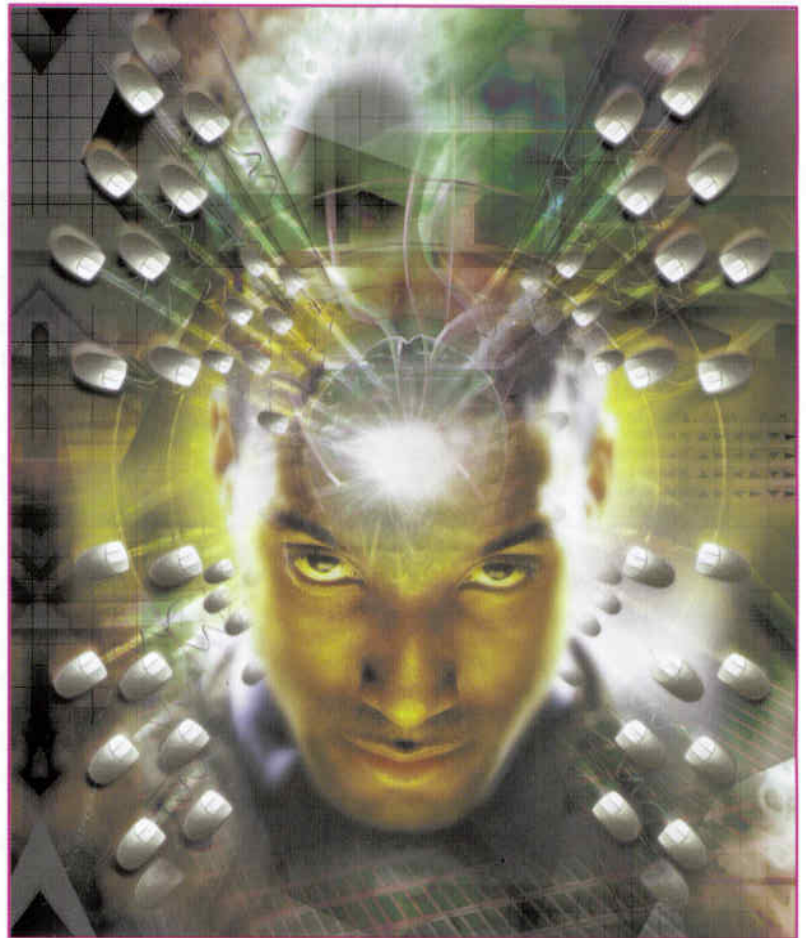
By Alan Young

We have all seen people on the street and in flea markets selling “Rolex” watches and “Hermes” handbags for a fraction of what would be paid in high-end retail stores. Some of us may even have purchased a \$20 Rolex, or downloaded free music and movies, or installed unlicensed software on our home computers. What harm could possibly be done? Surely, some may say, the faceless multi-nationals that earn billions of dollars developing software and producing pharmaceuticals and manufacturing automobile parts will not be harmed by knock-offs and free downloads. This is a “victimless” crime.

CMA Canada and Canada’s parliamentarians beg to differ. This past spring, both the House Standing Committee on Industry, Science and Technology and the House Standing Committee on Public Safety and National Security concluded major studies of counterfeiting and piracy of intellectual property (IP) and goods in Canada. Committee members heard evidence of automotive brake pads being made with sawdust and of prescription drugs containing dangerous additives or no active ingredients at all. They heard that software piracy has resulted in 32,000 job losses and \$345 million in lost tax revenues. In its report to Parliament, the Public Safety Committee concluded that,

*In light of the evidence heard, there is no doubt that counterfeiting and piracy cause economic harm to intellectual property owners, private companies and Canadian governments. In addition to the economic impact of these activities, there is no denying that the presence of counterfeit goods on the Canadian market represents a serious health and safety risk for Canadians.*

Of particular concern to CMA Canada is the direct link between counterfeit and pirated intellectual property and Canadian productivity.



The one piece of troubling news in an otherwise admirable story of national economic performance is Canada’s record on productivity growth. Since 2000, Canada’s labour productivity growth has been “dismal.”<sup>1</sup> Output per hour in Canada’s business sector grew 1% per year from 2000 to 2005, compared to 2.4% in the previous five years, and our productivity standing in the Organization for Economic Cooperation and Development (OECD) has fallen from third in the 1950s and 1960s to seventeenth in 2004.<sup>2</sup>

## Strengthening legal links

CMA Canada believes that the single biggest economic question facing Canada today is how to bring the country’s productivity growth back, at



a minimum, to pre-2000 levels. Getting the answer to this question right is the key to improving the standard of living enjoyed by Canadians. And the answer to this question lies, at least in part, in protecting the rights of intellectual property owners.

The OECD describes the three core drivers of a nation's productivity growth as "human capital, physical capital, and innovation." Furthermore, research has determined that strong protection of intellectual property rights can promote innovation.<sup>1</sup> Laws are put in place to protect the intellectual property rights of authors and inventors in order to encourage their pursuit of innovation. Holding the rights to intellectual property is a reward to the innovator for his or her contributions to a society's economic and/or social development. It's imperative, therefore, that the links between protecting intellectual property rights, promoting innovation, and improving Canada's productivity performance be strengthened.

The Government of Canada has a pivotal role to play in establishing a legal framework that vigorously protects copyrights and trademarks and strongly enforces intellectual property laws. Some elements of protection for innovators do exist today, in legislation such as the *Patent Act* and the *Copyright Act*. But recent history has demonstrated the failings of the current legislative regime.

The Canadian Anti-Counterfeiting Network (CACN) released a report in March 2007 highlighting the extent of the economic damage done to Canada by counterfeiting and piracy activities. Among other things, the CACN found that the loss to the software industry in 2005 as a result of piracy was approximately \$736 million, and that the annual consumer spending loss in Canada in 2005 due to film piracy was estimated to be \$270 million.<sup>4</sup> Moreover, the CACN report stated that there is a clear link between organized crime and counterfeiting, with organized crime involvement at some or all points of the supply chain.

### Strong recommendations

The two House of Commons committees studying counterfeiting and piracy offered several strong recommendations to the government that would go

some distance to reducing the detrimental economic and health and safety impacts on Canada and individual Canadians caused by counterfeiting and piracy. Those recommendations include:

- Defining trademark counterfeiting as a specific criminal offence.
- Making it a criminal offence to knowingly possess counterfeit goods for the purpose of sale.
- Prohibiting the importation of counterfeit and pirated products into Canada.
- Making commercial circumvention activities an offence and making persons who distribute pirated digital works and manufacture and/or distribute circumvention devices for commercial gain liable.
- Strengthening civil remedies for counterfeiting and piracy infringements.
- Making corporate directors and officers of a corporation that engages in counterfeiting or piracy personally liable.
- Increasing the damages and penalties that are payable under the Copyright Act.
- Ensuring that adequate financial and human resources are available to Canadian border officials and law enforcement agencies to combat counterfeiting and piracy of intellectual property.

CMA Canada has written letters to each of the Ministers bearing some responsibility for addressing counterfeiting and piracy, urging them to adopt the Committees' recommendations. In addition, CMA Canada's submission to the House of Commons Standing Committee on Finance, as part of that Committee's pre-budget consultation process, asks Committee members to recommend to the Minister of Finance that strong anti-piracy measures be adopted and that increased financial and human resources be directed to fighting this drain on Canada's competitiveness and productivity.

The Government of Canada is obligated to reply to the Committees' reports. These replies, expected in the fall of 2007, will chart the path to be taken by Canada in protecting the intellectual property rights of Canada's innovators. The time has come to ensure that Canada is a safe haven for innovation. ■

Alan Young is vice-president of Tactix Government Consulting Inc.

<sup>1</sup> *Lessons for Canada from International Productivity Experience*, Andrew Sharpe, International Productivity Monitor, Number 14, Spring 2007, page 21.

<sup>2</sup> *The Economists' Manifesto for Curing Ailing Canadian Productivity*, Don Drummond, International Productivity Monitor, Number 13, Fall 2006, page 21.

<sup>3</sup> *Lessons for Canada from International Productivity Experience*, Andrew Sharpe, International Productivity Monitor, Number 14, Spring 2007, page 27.

<sup>4</sup> *Report on Counterfeiting and Piracy in Canada: A Road Map for Change*, The Canadian Anti-Counterfeiting Network, March 2007, page 5.