

OPINION

Unravelling Canadian copyright policy recycling strategy...

There's a much larger strategy to influence Canadian copyright policy by creating a narrative of crisis and the false impression of Canada as a piracy haven.



BY MICHAEL GEIST

OTTAWA—The Conference Board of Canada recently garnered national headlines when it recalled three reports on intellectual property policy after acknowledging that the reports contained plagiarized materials drawn from U.S. copyright lobby documents. In its follow-up report, the board admitted that in addition to the plagiarism, there was undue reliance on feedback from a funder, the reports relied heavily on too few sources, and lacked balance.

These further admissions are perhaps the more significant development since they provide a glimpse into the long-standing copyright policy recycling effort in Canada. Over the past three years there has been a clear strategy of deploying seemingly independent organizations to advance the same copyright reform goals, claims, arguments, and recommendations.

Although many groups are involved in copyright lobbying in Canada, at the heart of the strategy are two organizations—the Canadian Recording Industry Association and the Canadian Motion Picture Distributors Association. CRIA's board is made up the four major music labels plus its director, while the CMPDA's board is comprised of representatives of the Hollywood movie studios. Those same studios and music labels provide support for the International Intellectual Property Association, which influences Canadian copyright policy by supporting U.S. government copyright lobby efforts.

In addition to their active individual lobbying, CRIA and CMPDA have provided financial support for three associations newly active on

copyright lobbying—the Canadian Anti-Counterfeiting Network, the Canadian Chamber of Commerce's IP Council, and the Ontario Chamber of Commerce (there are other funders including pharmaceutical companies and law firms). Those groups have issued virtually identical reports and in turn supported seemingly independent sources such as the Conference Board of Canada and paid polling efforts through Environics. Table One highlights the connections between the groups and their reports.

The similarity in the reports' recommendations, claims and arguments is striking. The table below highlights some of the overlap in recommendations.

Not only are the recommendations the same, so too are the claims and the arguments used to support the recommendations. For example, all four reports make the same claims that inaccurately seek to paint a picture of Canada as a piracy haven that is losing investment due to its intellectual property laws.

The CACN reports states that "by providing a marketplace where investments in creative goods and services will be profitable, IP protection fosters innovation, job creation and economic prosperity. In developed nations like Canada, where innovation has become a key economic driver, this has never been more important. Unfortunately, it appears that all levels of government in Canada lack a sophisticated understanding of the connection between innovation and IP"

Similar claims can be found in the Ontario Chamber report ("There is a real concern that mounting criticism of Canada's IPR regime will impact Ontario's attractiveness to foreign investors, its ability to foster innovation as well as overall competitiveness."), the IP Council report ("Canadian failure to properly protect IPR directly affects the willingness of foreign firms to invest domestical-

ly."), and the recalled Conference Board report ("The role of intellectual property systems in Canada has received inadequate attention. If Canada does not change, its economic outlook will suffer.")

False momentum

It is not just that these reports all receive financial support from the same organizations and say largely the same thing. It is also that the reports each build on one another, creating the false impression of growing momentum and consensus on the state of Canadian law and the need for specific reforms.

Consider the IP Council's A Time for Change report, which was released in early 2009. The very first chapter of the report is titled "Canada's Emerging Consensus on Intellectual Property Rights." Where does this consensus come from? According to the IP Council, it starts with the CACN report, followed by two House of Commons committees that heard primarily from these groups and which led to the 2007 Speech From the Throne and Canada's participation in ACTA. The chapter then states that IPR policy was taken to the "next level" with the Ontario Chamber report, the founding of the IP Council, and the 2008 Conference Board of Canada conference that led to the three recalled IP reports.

The chapter then notes the "growing public awareness of the need for action" which cites Environics polls (paid for by the IP Council) and a Toronto Star supplement on counterfeiting (paid for by the CACN). In all, the IP Council cites the CACN four times, the Ontario Chamber twice, the Conference Board of Canada proceedings 13 times, and the Environics research five times.

Environics

The influence over some of these independent reports is evident in other ways. For example, Environics has emerged as the survey company of choice for this effort. On June 4, 2008—one week before the introduction of the controversial Bill C-61—Environics released a poll that it said found that Canadians

are looking for leadership on IP issues. The report repeats the CACN, Ontario Chamber, and IP Council assertions, stating:

"Over the past several years, Canada has fallen behind the international community when it comes to the protection of intellectual property and products of the mind. The gap between Canadian laws and international standards in the area of counterfeiting, piracy, and illegal downloading is growing ever wider. Canada has been maintained by the U.S. Trade Representative on a special watch list specifically because of its laxity in the realm of protecting intellectual property."

What makes the timing particularly noteworthy is that even though Environics issued a press release claiming that the data came from a new study, the data was not new. Rather, it was drawn from a 2006 CRIA-funded survey that seemingly sat idle for two years until the opportune moment to raise it days before the introduction of new copyright legislation. Moreover, Environics oddly proceeded to re-issue the near identical press release six months later in conjunction with an IP Council commissioned survey on counterfeiting.

What does it all mean?

At a certain level, none of this will come as a surprise. Companies lobby for their position and what made the Conference Board of Canada series of events so unusual was the way in which it was exposed. Yet the Conference Board of Canada's recalled reports were clearly just a part of a much larger strategy to influence Canadian copyright policy by creating a narrative of crisis and the false impression of Canada as a piracy haven.

Last week Industry Minister Tony Clement and Canadian Heritage Minister James Moore provide the strong sense that they better understand the current dynamic around copyright and are determined to consult Canadians before introducing new legislation. If recent history is any guide, Clement and Moore must prepare for intensified lobbying on the issue with groups presenting multiple reports that unsurprisingly sound exactly alike.

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A Look at Various Recommendations from Different Reports on Copyright Reform in Canada

Recommendation	CACN	Ontario Chamber	IP Council	Conference Board
Create an IP Council	Establish a federal Intellectual Property Coordination Council consisting of senior civil servants and IP rights holders	IP Inter-Ministerial Coordination Council: —comprising high-level representatives from ministries involved in innovation and intellectual property rights protection partnered with key industry stakeholders.	Establish an Intellectual Property Rights Coordination Council consisting of senior government officials, representatives from the business community, and IP rights holders.	IP Inter-ministerial coordination council: comprising high-level representatives from the IP sector
Create an Intellectual Property Crime Task Force	Adequately fund an Intellectual Property Crime Task Force, composed of police officers, customs officers, and federal prosecutors.	IP Task Force: —comprising of specialized IPR prosecutors and police officers dedicated to IP related crime—will coordinate enforcement and prosecution activities against counterfeiters and pirates.	Establish a specialized IP Crime Task Force to guide, coordinate and lead anti-counterfeiting and anti-piracy enforcement efforts in Canada	IP Task Force: comprising individuals dedicated to IP-related crime; would coordinate enforcement and prosecution activities against counterfeiters and pirates
Tougher penalties	Immediately encourage prosecutors to seek more significant penalties, including jail time.	Sufficiently severe penalties to deter and neutralize offenders, i.e. inclusion of jail/prison time as punishment.	Impose stronger penalties for counterfeiting and pirating violations that endanger the health and safety of Canadians.	Enact appropriate penalties as a deterrent.
Implement the WIPO Internet Treaties and anti-circumvention measures	Enact criminal legislation clearly defining offences for commercial circumvention activities (including trafficking in circumvention devices).	Implementing the World Intellectual Property Organization (WIPO) Internet Treaties to curtail internet piracy and counterfeiting.	The Government of Canada should rapidly adopt IP legislation that fully implements the WIPO Internet treaties.	Implementing WIPO Internet treaties to curtail internet piracy and counterfeiting.
Create public education and awareness programs	Creating and implementing educational programs, with emphasis on Canadian rationale for and youth, that teach the importance of intellectual property.	Private and public sector stakeholders should work in partnership with consumer education institutions to protection groups and generate greater public awareness of the impact of counterfeiting and piracy on public health and safety, as well as to the economy.	Establish an intellectual property education program targeting the public, businesses, innovators, creators, and government officials.	Private and public sector stakeholders should work with consumer protection groups and academia to generate awareness of the impact of counterfeiting and piracy on public health and safety, as well as to the economy.