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Chair

Mr. David Sweet

Standing Committee on Industry, Science and Technology

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● (0845)

[*English*]

The Chair (Mr. David Sweet (Ancaster—Dundas—Flamborough—Westdale, CPC)): Good morning, ladies and gentlemen. *Bonjour à tous*. Welcome to the 35th meeting of the Standing Committee on Industry, Science and Technology.

As always, we have an issue with our clocks. You'll see they're all over the map, so we're running by our BlackBerry time, which says 8:45 exactly right now—at least for the members of Parliament. Our witnesses probably have different personal digital devices, but we'll be going by this time.

We have four witnesses before us today. The first witness is from UBM TechInsights, Harry Page, chief executive officer. As an individual we have Richard Gold, who is a professor in the faculty of law, McGill University. From Microsoft Canada Inc. we have Chris Tortorice, corporate counsel; and from Hockey Canada we have Dale M. Ptycia, senior manager of licensing.

We'll give each person six to seven minutes for their opening statement, and then we'll go to our rounds of questions.

I will just go by our agenda here. Mr. Page, would you please go ahead, for seven minutes?

Mr. Harry Page (Chief Executive Officer, UBM TechInsights): Mr. Chairman, thank you for the opportunity to come and speak this morning. Obviously intellectual property is a very important issue with our country in general, and is something we have some very strong experience in and opinions on.

As the chairman mentioned, I am CEO of UBM TechInsights, which is a company located here in the west end of the city. We have been here for the entire time of our almost 25-year history.

Our primary mandate is to protect intellectual property for creators and owners. We are like the CSI crime lab. We assist inventors and owners in intellectual property. We employ some very exotic and extensive reverse engineering forensic techniques to help people identify instances of infringement and to help them prove that to be able to enforce their intellectual property rights.

We are part of a growing cluster. Most of the world-renowned companies that help people protect intellectual property rights are located here in Ottawa as a result of the genesis of NRC, CRC, the defence research community, and some of the early commercial activities around Microsystems International. We have now grown a global and internationally renowned cluster of technology companies, with revenues probably exceeding $300 million a year and probably employing somewhere north of 300 people as well in the city.

We say we play a critical role in helping Canadian innovators and people on the global stage protect their intellectual property.

I'm sure the committee is aware that intellectual property takes many more forms than copyright itself. There's a variety of legal regimes for inventors to help them protect their intellectual property. Obviously Parliament is moving forward in modernizing the Copyright Act, but there are a number of other forms of intellectual property we feel are just as important in promoting and protecting Canadian innovators and owners. These include patents, trademarks, and integrated circuit topologies, to name but a few.

That's where we see the anomaly of how this has been proceeding. The protection of intellectual property relies on international laws and regimes, but technology is borderless. In many instances the rights of creators and innovators in Canada rely upon their access to international markets, and rely heavily on ensuring that the intellectual property rights of foreign intellectual property holders remain intact and sacrosanct here within Canada. Similarly, when foreign-based companies come to Canada and participate in our market, they believe they will receive the same comprehensive intellectual property protection here in our country as they do within their native regimes.

It's in that context that creators and innovators work hard to monitor and detect infringement of their intellectual property in the rapidly evolving and highly complex technology environment we see today. We have to look at intellectual property as intellectual assets. People have to be able to get a return on their investment in order to be able to refresh that cycle of innovation. That's where the protection of intellectual property becomes so important.

We applaud the government in all its activities in pushing forward on modernizing and improving intellectual property protection, but I would like to stress to the committee the importance of ensuring that these efforts do not unintentionally impede the ability to protect other forms of intellectual property. In this regard, we have a concern that aspects of the Copyright Act may actually have an unintended consequence with respect to our local technology community and our ability to help people in the protection of their intellectual property.

Specifically, our concern is that the anti-circumvention provisions could create legal uncertainty and could actually discourage the use of forensics to detect infringement of other forms of intellectual property, even though the circumvention of those protection measures actually has nothing to do with the copyright material under protection.

While the copyright legislation will soon be enacted, we will continue our pledge to continue to work with the government and the appropriate bodies to ensure that the regulatory language bringing the act into force is clear and precise so it does not hinder the full and forceful protection of Canadian intellectual property and the protection of intellectual property creators and owners in the international marketplace.

May I say we are very encouraged to date with the discussions we've had. We've had access to a number of people, some of whom are here today. We have every faith that these matters will be addressed proactively through the regulatory phase. However, this experience has underscored the importance and the complexity of the intellectual property regime.

Canada is a global leader in the protection and validation of intellectual property rights. The cluster of technology companies to do this through global companies resides within a 20-mile radius of where we sit here today. We recognize that Canada is the champion of international property rights for global creators and owners.

● (0850)

I'm confident that our role in the in the local cluster will continue to grow in importance and scope. It has been increasingly recognized —as I'm sure this committee does itself—that intellectual property is the engine of the new economy. Canada must do everything possible to ensure the full and complete protection of IP in all of its respective forms and manifestations, but also to respect how each intellectual property regime must be enabled to complement and not interfere with the protection and rights that are provided from other forms.

We are committed to working with the appropriate committee and the appropriate government and regulatory bodies to advance the cause of intellectual property protection. For our part, we'll continue to invest in improving and enabling our skills to make sure that Canada remains at the forefront of global leadership in intellectual property protection and innovation in its own right.

Thank you, committee.

The Chair: Thank you very much, Mr. Page.

Now we go on to Mr. Gold.

Mr. Richard Gold (Professor, Faculty of Law, McGill University, As an Individual): Thank you to the committee.

It's always a pleasure, as an academic, to be able to talk to the people who allocate the funds to the research agencies that fund my research, and I'm happy to give back. I feel it's a part of our mission to assist government committees whenever possible.

To tell you a little bit about who I am, I have about 20 years' experience in IP and innovation, both as a practising lawyer in Toronto in the technology area, and then as an academic at the University of Western Ontario, and for the last 11 years at McGill University, where I am the James McGill chair in the faculty.

I work in the area at the intersection of patents and innovation, and have provided advice to the World Intellectual Property Organization, the Organisation for Economic Co-operation and Development, the World Health Organization, UNITAID, both federal and provincial governments, and university tech transfer organizations in Canada and the United States. I've met with House of Representatives members and the Senate in the U.S. on innovation matters. I've been involved in traditional education in Canada, France, and the U.S., and I teach regularly in France. In fact, in August I will be meeting with similar high-level decision-makers in France to look at the issue of collaborations.

I come to you not with any particular agenda, but to share the result of our research in some areas where this committee may want to look.

I have two things I want to bring up. One is building the capacity of some of the institutions that administer IP, particularly the Canadian Intellectual Property Office, and giving it a little bit more power to determine the scope of patent law. I'm going to be concentrating on patent law today.

The second thing I want to bring up is looking at building incentives to help build collaborations and partnerships that develop IP in Canada, which can be used to build the complementary assets that are necessary to make the IP system work.

I submitted a brief, but I'm not going to go through it.

To start with, Canada meets all international obligations. We could still discuss whether we should have more or less, but the bottom line is that we're not in violation of any rules. We fall somewhat in the middle of the pack, except in patent law. In patent law, in fact, I would argue that, except in a couple of areas—not necessarily insignificant areas—we are actually ahead of many countries in terms of the protection of the patent holder. This is in comparison to the United States.

First of all, the criteria to obtain a patent are generally lower in Canada than in the U.S., if you look at what the courts say. There are fewer reasons to invalidate a patent in Canada than in the United States; they have a whole bunch of rules around estoppel and clean hands. We have no jury trials, which set confusion within patent litigation in the United States, whether you're prosecuting or not. We have a better selection of damages. The United States only allows damages and treble damages. We allow damages, and punitive damages—that would be the equivalent of the treble—but we also allow accounting of profits, which is something that does not exist in the U.S. system. It is a very powerful tool to patent holders because it makes the other side open their books, not the patent holder. In addition, our provinces are subject to patent law. In the United States, in fact, under their constitution, the states are not subject to patent law unless they pass special legislation, and not all have.

For all of those reasons, there are many areas within patent law where we actually have higher standards from the point of view of a patent holder. Having said that, though, patents are really only one of many factors necessary to create an innovation system. So while we have strong patent laws, we've neglected many of the other things, the complementary assets that make innovation possible, such as having home-grown ability to enter into distribution channels; bundling different types of technology to be able to buy it and put it together and have the science to be able to do that; expertise in taking innovations through the regulatory system, not only in Canada but internationally; and of course financing.

We spend a lot of time talking about patent law, looking at the minutiae, and saying, “Well, in this one little area, we're not as good as them”, ignoring the big picture, which is that you can fiddle around all you want with the patent system, but if you don't concentrate on the complementary assets, you don't have an innovation system.

● (0855)

Let me talk about the two things I mentioned, investing and institutions. Patent law is complex, rather like the Income Tax Act. Having either Parliament or even, by regulation, the government act often throws more confusion into the mix than anything else. When we look at the notice of compliance linkage rules, every time those are changed, litigation is spawned, and this creates more uncertainty than not.

One of the bodies best able to deal with patent law is the Canadian Intellectual Property Office. But under a decision of the Federal Court of Appeal last fall they basically have no policy function. They had made a policy around the Amazon.com “one click” patent, and the court told them they didn't have a say in this. Given that they are closest to what's happening in the world of innovation and patent law—they can follow what's happening in the United States—they should be given more authority to make certain fundamental policy decisions.

On top of that are the courts. We do our best in Canada, but we only have one sitting judge with any substantial experience in patent law, and he'll be retiring in two years. We don't need a speciality court—we don't have enough patent cases—but we do need judges who have patent experience to be appointed to the bench and we need more training.

Finally, we need to build the complementary assets. The only way to really do that is to build collaborations in which Canadian universities, industry, finance, and so on work together in collaborations.

We have a few examples. I mentioned some in my brief: the Structural Genomics Consortium and CRIAQ in Quebec. Those collaborations not only allow for the creation of Canadian IP, but of knowledge about how to get through the regulatory system, and they bring them and the other assets into conjunction with university research.

We could also use that effort to build policies about not only having patents created in Canada but seeking patents in key areas of innovation in which we're interested that are held by Canadians under some funding mechanism whereby we can leverage the patents in order to attract further investment.

Thank you.

The Chair: Thank you very much, Mr. Gold.

We'll move on to Mr. Tortorice for seven minutes.

● (0900)

Mr. Chris Tortorice (Corporate Counsel, Microsoft Canada Inc.): Good morning. Thank you, Mr. Chair and honourable members.

My name is Chris Tortorice. I'm corporate counsel with Microsoft Canada, where my responsibilities include overseeing Microsoft's Canadian anti-piracy program. I'm also a registered Canadian patent agent and trademark agent.

I welcome the opportunity to appear before the committee today, particularly to discuss the importance of effective protection and enforcement of intellectual property rights, with a special focus on the software industry.

Software piracy and counterfeiting have many negative economic consequences and create significant risks for Canadians. Make no mistake: software piracy is big business. It's estimated that piracy robs the software industry of in excess of $60 billion globally every year. But the costs go much beyond that lost revenue for software makers. They directly impact local economies and people's lives. Software piracy costs jobs in Canada and deprives the government of tax revenues. It's the entire software ecosystem in a country, from developers to resellers to systems integrators and IT specialists, who depend on effective intellectual property protection for their livelihood.

Beyond the economics of piracy, pirated and counterfeit software can create significant risks for the Canadians who use it. Unsuspecting consumers and businesses who acquire counterfeit software can expose their computers to spyware, malware, and viruses that can lead to identity theft, loss of data, and system failures. There are studies by the IDC and the Harrison Group that confirm that pirated software frequently contains viruses and malicious code that causes serious damage to computer systems, resulting in expensive repairs and lost productivity due to extensive downtime.

In one study, nearly one in four pirated or counterfeit operating systems became infected at installation or independently downloaded and installed malicious software when first connected to the Internet.

Beyond the dollar figures, the consequences of piracy and its impact on software innovation are even more important. There's no doubt that piracy, which is really a byproduct of an inability to protect intellectual property rights, is a disincentive to society's most innovative enterprises. We know that software companies and other innovative companies consider the strength of a country's IP laws and its ability to enforce IP rights when deciding where to locate research and development facilities.

This issue should be of particular importance to Canadians. Many of our trading partners have been more active and have done a better job protecting their domestic innovation.

In my remaining time, I'd like to highlight three areas in which legislative reforms could make Canada's intellectual property regime more effective.

First, I have to emphasize the importance of copyright law reform as reflected in Bill C-11. The Copyright Modernization Act will bring Canada into compliance with its obligations under the World Intellectual Property Organization's Copyright Treaty and Performances and Phonograms Treaty. It will provide authors, artists, and other rights holders with important tools in our increasingly online world. We support speedy passage of Bill C-11.

Second, the government needs to take action to strengthen enforcement at our borders. The World Customs Organization has noted that customs officers often are the only ones to know when counterfeit goods are being transported. Unless those customs officers are empowered to act on their own to stop suspected shipments at the borders, border measures are simply ineffective.

Currently, customs officials in Canada do not have the authority to seize suspected counterfeit goods. Rather, the Canada Border Services Agency may only detain goods if the IP rights owner has obtained a court order, which is extremely rare—you have to know when the goods are coming in and where the shipment is going and all sorts of information that rights holders just wouldn't have—or if the RCMP or local police agree to seize the goods. There's no legislation that specifically prohibits the importation of counterfeit goods.

To address these deficiencies, the government should enact legislation to strengthen border enforcement. That legislation should provide customs officials with express authority to detain or seize counterfeit goods, it should permit disclosure of information and provision of samples of suspect goods to rights holders, it should specifically prohibit the importation of counterfeit goods, and it should make non-compliance subject to both civil and criminal remedies.

● (0905)

Third, I'll speak briefly to Canada's trademarks legislation, which really needs some amendments to address counterfeiting issues. In this area, the government should look at enacting legislation to introduce criminal provisions for trademark counterfeiting and to provide for statutory damages in trademark counterfeiting cases. Statutory damages have been part of the Copyright Act since 1999, but there's no similar provision in the Trade-marks Act. To address this deficiency, the government should amend the Trade-marks Act to provide for statutory damages, which should be at least as great as the nominal damages currently awarded by Canadian courts in trademark infringement cases.

Before I conclude, today, June 7, is World Anti-Counterfeiting Day. It is an interesting day to be appearing before the committee to talk about these issues. World Anti-Counterfeiting Day is an initiative of the Global Anti-Counterfeiting Network, which is a coalition of national and regional anti-counterfeiting organizations. On World Anti-Counterfeiting Day there are all kinds of events and public awareness campaigns in countries around the world to highlight the problems with counterfeiting.

In that vein, here in Canada, today marks the release of a new report by the Canadian Intellectual Property Council, which is an arm of the Canadian Chamber of Commerce. The report, which is entitled “Counterfeiting in the Canadian Market: How do we stop it?”, provides an overview of the counterfeiting problem and makes a series of recommendations to improve Canada's intellectual property rights regime to help combat counterfeiting. I have been told that the report is going to be tabled with the committee, and I certainly would be happy to provide the committee with a link to the document as soon as it's available online.

In conclusion, we need government to clearly and frequently convey the importance intellectual property plays in developing knowledge-based economies and ensuring our country's ability to compete globally. For Canadians to derive the benefit of and compete in that global economy, it's imperative that Canada's legal and enforcement regimes be strengthened to encourage development and protection of intellectual property.

On behalf of Microsoft Canada, I wish to express my appreciation for the committee's interest in this issue, and for the opportunity to appear before you today.

The Chair: Thank you, Mr. Tortorice.

Before we go on to Mr. Ptycia, Mr. Tortorice mentioned a study that's coming from the Canadian Intellectual Property Council. We also have a message sent to us through the clerk from George Addy, who is referring us to a study called “Mind the Gap: Economic Costs and Innovation Perils in the Space between Patent and Competition Law”. It can't be distributed because it's not in both official languages, but if you're interested in accessing that yourself, the clerk can advise you how to get a copy of that.

Now on to Mr. Ptycia for seven minutes, please.

Mr. Dale Ptycia (Senior Manager, Licensing, Hockey Canada): Good morning, Mr. Chair, honourable members, ladies and gentlemen. Thank you very much for inviting Hockey Canada to participate this morning in the standing committee's study of the intellectual property regime in Canada.

Hockey Canada is the country's national sport organization. Our association is responsible for the creation and implementation of hockey-specific programming for Canadians from entry-level beginners through to high-performance athletes competing at world championships and in multi-nation games, such as the Paralympic and Olympic Games.

Our programming extends to volunteer coaches, officials, and administrators from coast to coast to coast. Over the last 20 years, through retail licensing Hockey Canada's brands—Team Canada, *Équipe Canada*, our logos, our trade dress, etc.—have all been diligently cultivated to provide a substantial revenue stream for the association. The growth in the popularity of the Team Canada brand over this time period has caught the eye of counterfeiters not only here at home but abroad as well.

Counterfeiting of the Team Canada brand has developed into a robust form of underground commerce, as expressed by my colleagues here today with their specific product lines. It's regularly found in the marketplace alongside a multitude of other brands and intellectual properties. It's found at bona fide retailers, among mass merchants, in convenience stores, at flea markets. It's found on Internet auction sites. We even found counterfeit Hockey Canada products advertised on downtown Toronto parking meters.

Counterfeiting of Hockey Canada products not only dilutes the value of the intellectual property itself; it takes millions of dollars away from legitimate Canadian retailers selling Hockey Canada products. Counterfeiting also affects our licensing partners. It reduces Canadian jobs and services in the Canadian supply chain and elsewhere, all leading to a multitude of direct and indirect domino-type effects, such as lost taxes that would be paid by legitimate Canadian businesses.

In our particular case, counterfeiting means lost royalty revenue. Lost revenue for Hockey Canada equates to lost opportunities to support wholesome athletic opportunities for all Canadians.

Several recent observations by my colleagues at the NHL and the NHLPA have indicated that as many as 75% of all jerseys worn to an NHL game are counterfeit.

We saw a similarly high ratio of counterfeit to authentic jerseys during the 2010 Olympic Games. In a time span of less than two weeks during the 2010 games, the RCMP and the Canada Border Services Agency at the Vancouver mail facility only intercepted and detained more than 16,000 counterfeit jerseys with a retail value above $2.3 million. Once we were contacted and the RCMP provided us with background information on the escalating arrival of suspicious Team Canada jerseys, together we estimated that less than 20% were intercepted compared with the number of counterfeit jerseys imported into Canada leading up to and during the Winter Games.

At the request of the RCMP, Hockey Canada arranged for additional personnel to assist with the processing of these counterfeit jerseys. Costs were absorbed by our association for this step, which highlights the limited resources available to front line officials.

There are substantial costs and inherent difficulties to the enforcing by brand owners of intellectual property rights through civil avenues. We are dealing with criminals who do not adhere to any laws and do not keep any records for anyone to be able to establish what profits may have been made. As a double whammy, many counterfeiters simply view any exposure to civil remedies here in Canada as a cost of doing business. Monetary penalties or awards are generally small and much less than the actual costs associated with the enforcement and civil action, even assuming that we can collect on those. Without statutory damage awards or appropriate border seizure capabilities, Canada's current civil remedy toolbox is somewhat limited.

Counterfeit product cannot be considered safe by any means whatever, with no adherence to the Canadian Consumer Product Safety Act, the Competition Act, the Consumer Packaging and Labelling Act, etc.

Unknown origins also lead to a whole sector of unknowns, all too numerous to list and all too common to everyone in the room. The current supply chain of counterfeit Team Canada jerseys is dominated by manufacturers based overseas, and counterfeit commerce is conducted through the Internet. This channel makes it virtually foolproof for any individual with a credit card and a mailing address to participate as an importer of counterfeit goods.

For example, our case file has civil action conducted in Ontario against a barber shop owner and a school teacher; in Manitoba, against a butcher shop owner; and in Alberta, two students who attempted to offset their Olympic ticket expenses by selling Team Canada counterfeit jerseys that they imported from Asia.

● (0910)

This underscores the need for better education of the public. Industry is prepared to partner with government in the education process, but cannot do it alone. The ease of access via the Internet has exponentially added to the counterfeit Team Canada products in the country. Importing or for that matter exporting counterfeit products should be treated with strong measures. With virtually no deterrent currently for importing or possessing counterfeit goods in Canada, this channel will continue to be utilized by counterfeiters to ply their unauthorized goods.

As a registered brand owner with the Canadian Intellectual Property Office, Hockey Canada has the responsibility to monitor and police our intellectual properties and brands. The tools afforded to brand owners such as ourselves through the Trade-marks Act and the Copyright Act realistically are limited. Hockey Canada regularly engages the services of anti-counterfeiting experts, dedicated legal counsel, and trained investigators to assist with the ever-elusive task of counterfeit enforcement, consuming very valuable financial resources for our association.

Hockey Canada continues to support and participate in actively engaging the efforts of the Canadian Anti-Counterfeiting Network and the Canadian Intellectual Property Council, as Chris mentioned earlier. We support the need to strengthen Canadian legislation to empower front-line enforcement officers to target and seize counterfeit goods. Greater resources are also necessary for the officers to process seized counterfeit goods and effectively deal with these items. We strongly support the recommendations these two organizations have proposed.

The Chair: Thank you very much, Mr. Ptycia. That's the end of your time.

Did you have one quick point?

Mr. Dale Ptycia: I have one more paragraph, if I could, Mr. Chairman.

The Chair: Okay. Make it very quick.

Mr. Dale Ptycia: Counterfeiters are not regular day-shift workers. Officers need to be able to contact authorized brand representatives at any time to validate and assist with the situation at hand. We look to support the exchange of information and intelligence on a national basis for our partners in enforcement. Perhaps this can be achieved through a national database containing pertinent information, with front-line officers who can readily access such information as brand owner contact information, counsel of record, etc.

● (0915)

The Chair: All right, we need to hold it there. If you need to add anything, when you're questioned you can do that, Mr. Ptycia.

[*Translation*]

Ms. Hélène LeBlanc (LaSalle—Émard, NDP): Mr. Chair, the motion did not clearly state whether there would be a report or, if so, whether it would be tabled in the House of Commons. I would like us to reserve a few minutes at the end of the meeting to clarify that, unless it is possible to get that information directly from the clerk.

[*English*]

The Chair: I think it's best, when we have witnesses here, that we chat about it at the end.

Mr. Braid, you have seven minutes.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you, Mr. Chair.

Thank you very much to all of our witnesses for being here this morning and contributing to our important study on the role of IP in fostering innovation in Canada.

Mr. Page, you're from the Ottawa area, as you indicated, and part of an important tech cluster that has developed here. You mentioned that the cluster has developed because of government supports through government agencies because of a climate of innovation here in Ottawa.

Can you point to anything with respect to the current IP regime that has contributed to the forming of this tech cluster in Ottawa? What has worked, beyond those other conditions?

Mr. Harry Page: Obviously there's a growing focus and importance being put on this. My colleague Mr. Gold talked about how effective CIPO is in allowing people to obtain intellectual property rights. It's actually allowing Canadian companies to become competitive and to understand that on a global basis, if they don't have a solid intellectual property position they're not going to be able to compete and also be able to maintain their competitive position within the country.

The ability within Canada to obtain intellectual property rights is helping us grow our business with emerging companies. Obviously, the more established companies have long had well-established intellectual property rights programs. But for emerging companies now, the ability to rapidly obtain intellectual property rights and the strengthening of the Copyright Act are going to help them compete better globally.

Mr. Peter Braid: Thank you.

With respect to the Copyright Act—and I don't want to spend a lot of time on this, because I spent hundreds of hours on copyright—

Mr. Harry Page: I'm sure you have.

Mr. Peter Braid: —I don't recall hearing the concerns about the Copyright Act that you expressed today, as part of either Bill C-11 or Bill C-32. Did you take the opportunity to either appear or to provide a submission?

Mr. Harry Page: We tried to get in. We were a bit late getting into the process.

We have submitted a briefing to the committee. We do no work around copyright, but it came to our attention that some of the focus being put on the TPMs actually, in our opinion, subordinated the rights of other intellectual property holders. It appeared that TPMs became more important than the underlying intellectual property rights, and that's what spurred us to become involved in the process.

Mr. Peter Braid: Yes, and that discussion was fully aired, now that you've clarified that.

Mr. Regan was there too. He remembers.

Are you confident that whatever concerns you have will be addressed through regulatory change?

Mr. Harry Page: I think so. As I said, we're committed—

Mr. Peter Braid: Great. Thank you.

Mr. Gold—

Mr. Brian Masse: At least let him take a breath.

Mr. Peter Braid: I have three other witnesses to question. You'll have your opportunity.

Mr. Gold, you gave a great comparison of the Canadian and U.S. jurisdictions. You suggested that in many respects the regime here in Canada is better, that we're further ahead. Are there any aspects of the American system that are good and that we should consider?

Mr. Richard Gold: There are many aspects of the U.S. system. It's a very complex system.

For example, concerning the rules around university funding through the Bayh-Dole Act, the part everybody concentrates on is the aspect whereby the universities have a commercialization mandate. The part we never talk about is that also, the government has what are called march-in rights, which they contemplated using in the case of the drug shortage that was facing the United States.

Some of the rules, as I said.... If you look at their non-obviousness rules in the United States, ours are easier to comply with, but probably less fair to the second-generation innovator. You not only have to worry about the patent holder but also the people building on it. They developed a concept called “obvious to try”, which was imported into Canadian law but didn't quite work.

There is a whole bunch of minutiae I can walk you through, which I presume you don't want to do today. They have patent term extension, which is very important to their pharmaceutical industry. We don't do much research, especially in my city of Montreal. Merck and AstraZeneca are pulling out of research, so the necessity for that in Canada is not as clear.

Overall, they're centralized. The Court of Appeals for the Federal Circuit is a very good innovation, but again, we just don't have enough patent cases in Canada to justify a separate court.

Many of the things are good but are suited to the United States. I don't think we have a whole lot, otherwise, to take on.

● (0920)

Mr. Peter Braid: Great.

Can you point to one or two examples of the U.S. framework that we definitely don't want to adopt, for which we just don't want to go there?

Mr. Richard Gold: The jury trial is clearly one. I think it's bad for everyone. You could even see the courts pulling back.

I like the U.S. system. It's really well suited to the United States. But you have to remember that they do both the innovation in the United States, the research, and the selling in the United States. As Mr. Page mentioned, our markets are in the U.S., so the incentive is provided by U.S. patent law. The cost to the next generation of innovator is Canadian patent law.

You have to think about the Canadian patent system quite differently from that of the United States, because we're in the unique position whereby the incentive is not under our control; it's under someone else's control. Only the costs are in ours.

Mr. Peter Braid: Thank you.

Mr. Tortorice, I want to ask whether you would contribute to a debate we've been having as part of this study so far. Some have suggested that software is the one aspect of technology that shouldn't be patented, that it actually stifles innovation, that it should be freer in terms of its development. Could you comment on that?

Mr. Chris Tortorice: Well, I'm not an expert in software patent matters, but I can say that there are many good examples of software patents being used well in industry. There's a lot of cross-licensing between different groups of companies; there are lots of instances when different companies use both proprietary patented software items and open-source items in their development.

I think it's working well. I think software patents should be granted. Doing so helps to set up signposts for the industry as to where people can and can't go. I certainly think that's—

The Chair: Thank you, Mr. Tortorice and Mr. Braid.

We now go to Madame LeBlanc.

[*Translation*]

You have seven minutes.

Ms. Hélène LeBlanc: Thank you very much, Mr. Chair.

I want to thank you all for coming this morning. I believe this will be a very interesting conversation.

Mr. Gold, you cite a number of examples of open collaboration on intellectual property management in your written presentation, which I read. You mentioned the Consortium for Research and Innovation in Aerospace in Quebec, CRIAQ. Since our study concerns intellectual property that would encourage innovation, could you tell us more about that kind of model?

Mr. Richard Gold: Yes, if you allow me to answer in English.

Ms. Hélène LeBlanc: That's fine.

[*English*]

Mr. Richard Gold: In the brief I talked about two examples, CRIAQ and the Structural Genomics Consortium. I was also the lead author on an OECD study looking at intellectual property and collaborative mechanisms in life sciences and intellectual property. I would be happy to send the link or the document to the committee if so desired.

They held a series of workshops and looked at a whole bunch of examples from around the world. So they are all structured differently. The one thing we know is there is not going to be one structure, one type of collaboration that's going to work in all industries.

What you have to think about is what are you building, and to what extent do people need things to be proprietary and when do they leave it open?

Getting patent protection or any intellectual property protection incurs some expense. Most patents that people obtain never go anywhere and are just an expense. So asking people to patent for the sake of patenting is just costing people more. It's strategically figuring out what to patent. So in a consortium you have to ask what are the key intellectual assets that we need to protect and what in fact are we better off sharing?

In fact the pharmaceutical industry and the aerospace industry have been at the forefront of this in saying there's a whole area of pre-competitive innovation where we're all better off if we fund it and share it, so let's not get into the expense of getting intellectual property protection; we will compete further downstream. So the Structural Genomics Consortium I talked about is basically a patent-free zone. You have Glaxo and Novartis. All the big companies are there. They put up one quarter of the funding, and nothing is patented.

In CRIAQ, the situation is a little bit different. Within the consortium, which is quite large, made up of universities and industry, anybody is able to use the technology for free. So it's helping that local economy, because no matter who innovates, everybody gets access to it. But to the extent that it has an application outside of aerospace, we get a patent and we allow whoever developed it to license it and make revenue that way.

So you can have these tiers of structures in which some of the information is completely free to everyone, and others where it is free within the consortium—it is called the “club good” and everybody is able to use it without having to go to the expense of negotiating licences and so on—and a third set where you have technology that can be licensed for revenue and bring some economic return.

Each consortium will have a mixture of these three things. There is no one right answer for any one consortium.

● (0925)

[*Translation*]

Ms. Hélène LeBlanc: This is really interesting. This is not a model that would suit everyone, but which of the models you mentioned would generate more innovation? Is it the one that would entail stricter, clearly defined rules concerning intellectual property, or the one that would be a little more open and based on collaboration?

[*English*]

Mr. Richard Gold: The world is moving towards collaboration. The industrial models about 30 years ago had high intellectual property rights. A single firm would take a product basically from invention all the way to the market.

There was a study done about five or six years ago. They looked at the top 100 innovations, and they said that of those, two-thirds were from collaborations. So the world has changed, because the early stuff that was easy to get could be subject to a property right and commercialized by a single firm. That's no longer true. People have to work together. As soon as you have that, you have transaction costs. So we're moving to more openness, especially greater pre-competitive space, in the pharmaceutical industry, for example, where it's completely free.

It's not a system of one or the other; it's a system of both but with a greater mixture of openness, basically not wasting money on getting patents that you are never going to enforce or that you'll have to spend a lot of time licensing.

I'll give one brief example. In the U.K. they have something called the Lambert agreement, under which any university funding contract with a pharmaceutical company used to have to be negotiated. Now they have a standard form agreement, and it is just signed. It takes twice as long to negotiate an agreement in the United States as it does in the U.K. So there is more openness, making it more broadly available.

[*Translation*]

Ms. Hélène LeBlanc: Do you believe our current intellectual property regime is flexible enough to permit that type of collaboration in particular?

[*English*]

Mr. Richard Gold: Well, in some ways our patent system is too strict. If you look at the U.S. Supreme Court, for example, or if you look at the U.K. courts, they're actually softening some of the rules around non-obviousness, about patentable subject matter. We're moving or have moved in the opposite direction. So we need greater flexibility on that side. I think it should be done by the courts or by the Canadian Intellectual Property Office.

But in terms of legislative change to increase it, there's no evidence that I have seen to indicate that giving greater rights or longer rights would increase innovation. In fact, it will just increase the transaction costs that get in the way of collaborations.

[*Translation*]

Ms. Hélène LeBlanc: What is your view on the free trade agreements currently being negotiated, mainly by Europe, on intellectual property and patents?

● (0930)

[*English*]

Mr. Richard Gold: I don't know what's in the clauses. I've just seen what's being negotiated. I'm assuming the government will be resisting some. Some are put up just to trade away with.

Certainly, we're under pressure from both the United States and Europe to increase patent rights, especially in the pharmaceutical sector. There's no evidence that this will benefit Canadian innovation. It will likely cost us.

The question then becomes whether there are trade-offs that more than compensate for that loss. If we have patent term extension, it means we'll be paying higher prices for longer, so it will cost more to the Canadian system. Is that justified; can we offset it by other things? I don't know.

But in terms of intellectual property itself, are you asking me whether there is a Canadian justification? The answer is no.

The Chair: Thank you, Mr. Gold, and thank you, Madame LeBlanc. We're over the time now.

Now we go on to Madam Gallant for seven minutes.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Thank you, Mr. Chairman.

I have questions for each of the witnesses today, starting with the representative from Microsoft.

With respect to piracy and anti-piracy, ultimately cyber-security is the responsibility of the stakeholder. With respect to government, are there any measures that are in our purview which we are not taking and which we could be taking to better defend our intellectual property, from the cyber-security standpoint?

Mr. Chris Tortorice: I have to think about that for a second.

Mrs. Cheryl Gallant: Okay. I'll come back to you, then.

Mr. Page, you mentioned that the legislation we just passed may impede and prevent the forensics from occurring. How do you suggest this be mitigated? Are you looking for exclusions, or...?

Mr. Harry Page: There are a number of ways to do it. We've looked at the legislation around the world. New Zealand's legislation, for example, has the concept of an authorized circumventor, which essentially defines a situation in which circumvention is allowed.

Within our own act there is an investigative exemption, and we think that if the investigative exemption were modified to include investigating breaches of all laws and international IP treaties as well, that could also be a focus of it.

In our mind, it's really more the intent of breaching the TPMs than the act itself. Obviously, breaching a TPM for the purpose of infringing the copyright should be a breach of the law and be heavily prosecuted. But we believe that under the fair dealings provision, you should be allowed to circumvent any provision in order to investigate breaches of personal rights.

So it's a questsion of the circumstances under which you would actually investigate.

Mrs. Cheryl Gallant: Thank you.

Mr. Gold, you mentioned and we had testimony before that there is a sort of blockage in the court system when different patent or IP challenges occur. We've heard that there's a shortage of lawyers. You mentioned yourself, as we've heard before, that there is a shortage of judges who understand patent law. Yet you suggested that maybe we should be contemplating trials by jury.

Mr. Richard Gold: No, I said the opposite—no trials by jury.

Mrs. Cheryl Gallant: So we're not looking for juries. Good. My concern was that we would never find the jurist who would be sufficiently educated. Thank you for clarifying that.

For Hockey Canada, you had mentioned it was your belief that 20% of the total number of jerseys during the 2010 Olympics were authentic. I'm trying to find out how you arrived at that number. Was it an extrapolation of what was seized at the border with the 16,000? How did you come up with...?

Mr. Dale Ptycia: Just to clarify, we estimate that we intercepted about 20% of the jerseys we thought came into the country. That was based purely on the information we received from the RCMP and the Canada Border Services agents about how many packages were entering the country through the mail facility, coupled with the number of jerseys we were seizing on the street with our investigators and counsel compared to the number of jerseys we actually sold.

It was virtually impossible to do an accurate count of the actual people wearing the jerseys, but it was quite evident to us, for example, that it is easy to spot counterfeit jerseys when you're in a group of fans. Our authentic jerseys at the Olympics had the inukshuk and the five Olympic rings all in one colour. That was an emblem on the left sleeve. All the counterfeit jerseys had the same emblem, a little bit larger in size, but the rings were in the five Olympic colours.

The counterfeiters thought we were making mistakes with the authentic jerseys, when in fact they were in error, which obviously gave us a signal that a jersey was counterfeit.

As we were watching people walk into the venues across the Olympics, it was quite easy to see those numbers were quite accurate. Almost three out of four were counterfeit.

● (0935)

Mrs. Cheryl Gallant: Still with Hockey Canada, governments are often criticized as imposing sin taxes, for example on alcohol and cigarettes, which drive the black market in those products.

When we look at consumers, essentially it's the price of the product that drives them to the underground market. Consumers perceive that they're paying in excess of what they need to pay, because it's available, as you know, elsewhere.

How do we or how do you convey to the people—and in some cases they don't even realize it's counterfeit—that there is value in paying a much higher price for the authentic versus the counterfeit?

Mr. Dale Ptycia: I'd first like to respond by saying education is always important, and we continue to educate as many consumers and other participants in the supply chain as possible. We have colleagues through the Canadian Anti-Counterfeiting Network, etc., who do a public education campaign, and so on, but that's just the tip of the iceberg.

Hockey Canada also actively engages for Team Canada products for all Canadians at all price levels. We have Team Canada jerseys at lower-priced levels at mass merchants for families under budget constraints, if you will. We have replica jerseys that are middle of the road. We also have the authentic on-ice versions for the true collector, which are obviously quite a bit more expensive.

I think other leagues and other brands mirror that approach in their retail commerce. We all try to reach out to all Canadians at all price levels and all price points.

So the excuse of trying not to support the cost might be weak at best when made by some consumers, because there are products out there at the $50 mark, there are products out there at the $100 mark, and there certainly are products out there at the $400 mark as well.

Mrs. Cheryl Gallant: So when we go to a discount store and we find jerseys from Hockey Canada, they're not necessarily counterfeit. We don't have to worry about that.

Mr. Dale Ptycia: The jerseys are generally found in bona fide retailers. We wouldn't have jerseys in discount retailers or at flea markets. The channels are relatively protected to try to ensure we're providing bona fide retailers with bona fide product. We would see a lot of counterfeit product in discount chains, flea markets, for example, online sites, etc.

The Chair: Thank you, Mr. Ptycia. That's all the time we have.

Madam Gallant, thank you.

Now we'll move to Mr. Regan for seven minutes.

Hon. Geoff Regan (Halifax West, Lib.): Thank you very much, Mr. Chairman.

Thanks, gentlemen, for coming today.

Let me start with Professor Gold. You talked about the need for building incentives for collaborations and partnerships. Over the past 15 years some government programs have in fact required for research grants that there be collaboration among different researchers across the country and have encouraged that sort of thing. Is that the sort of incentive, or can you give me some examples of the kinds of incentives you're talking about?

Mr. Richard Gold: Thank you for the question.

There certainly has been a move through most of the major granting agencies, including Genome Canada, which requires matching funds. It's been on a “you have to get partners” basis. I think it was a good start, but it hasn't necessarily translated into the type of innovation we're hoping for. We still don't have many of those complementary assets I was talking about.

What I am suggesting is actually something I think the government has already been contemplating. It came out of the committee looking at innovation in the fall—the Jenkins committee—moving away from the subsidies and the tax code or direct subsidies just for innovation blankly and trying to invest strategically.

I think we have to pick winners and losers. I think one of the problems is we don't. All technology is equal, and we fund whatever. When it comes to basic research, that's a really good idea. When it comes to developing a cluster, I don't think it is as good a deal.

The types of things I'm thinking about will include funding that specifically goes partially to acquiring patents. So either the research group itself creates the innovation or you buy it.

Michigan has had some success in purchasing patents in the plastics field, for example, and then anybody who locates in the state has access to it at a low cost, whereas other people don't. So the idea is to be a little bit more strategic about intellectual property management, rather than just saying come together and so on. But in doing so, I think you have to pick winners.

CRIAQ, obviously, in Quebec, would be a good example, as would the Structural Genomics Consortium. But not all consortia out there are real consortia. They're just a whole bunch of people who get together every once in a while to talk.

● (0940)

Hon. Geoff Regan: Let me take advantage of your mentionning winners and losers to segue to an area in which we're seeing some companies winning with a new approach to intellectual property, whereas others seem to be losing. I'm thinking, for example, of something I recently raised with Professor de Beer from the University of Ottawa, a law professor, about how some companies are kind of shooting themselves in the foot by very strictly adhering to old models. An example of that is what HBO, with the program *Game of Thrones* , is doing whereby they've taken a very restrictive approach to their distribution system. On the other hand, there was an article recently in the *Globe and Mail* about how Getty Images has gone to a different approach for promoting and getting revenue for its images by having a new kind of watermark that doesn't interfere with the main picture but has a web link in the corner that you can go to and then offer to pay. That's actually been wildly successful for them, it appears, and it's created real revenue. They are two very different approaches.

What does this tell us, in view of the fact that trying to control this kind of IP for a company is a bit like picking up mercury? It's very slippery, right? They're difficult to control—and very toxic, someone said. That's fair. Mercury would be, of course, right? But they're easily pirated.

The question is what are some guiding principles or legal structures that government could put in place that might be suited well to where the world is going in this regard and the kinds of models that are most likely to be successful in the future?

Mr. Richard Gold: The laws that need to be thought about are not IP laws. Our IP laws are perfectly flexible as they are. We just don't have much in terms of knowledge about intellectual property management. How do you use them?

Let me give you a couple of examples where government does go wrong.

There was a deal a while back between the Government of Canada and the universities about funding the so-called Canada research chairs and other funding agencies. The universities said that if the government did that the universities would double their commercialization and they would measure that based on licence fees, number of patents, and number of licences. The problem with that is it makes everybody look at the short term: let's just get patents out there; let's just increase them. You can always increase the number of patents. It doesn't mean any of them are useful. It doesn't mean they're used well.

What you want is strategic use. It looks increasingly as though universities shouldn't necessarily be in the patenting business. They won't make money off it. If you look at the United States, more than half either lose money or just break even on technology licensing. They're spending a lot of time and they're facing lots of litigation because of it, so their litigation costs are going up.

So the idea would be to change policies like that to say no, you don't have to go commercialize it; we want you to work with industry, within these key areas, and we'll facilitate that. A lot of it, contracting rules and so on, is going to fall within provincial jurisdiction, but it's taking away the measurements that we put on universities to commercialize.

Hon. Geoff Regan: Thank you very much.

Mr. Page, I'm going to turn to you if I may.

I think what you've told us is a good example of how it's important to take a nuanced approach to intellectual property. In fact, the way the copyright bill has gone in relation to a company like yours and the kind of thing you are doing is that in trying to strengthen anti-circumvention measures it's in fact declawing one of our best resources against intellectual property circumvention, and that is the kind of work you do.

Can you give us some examples of how this actually works in practice? For instance, do you on some occasions talk to Microsoft or other companies and ask, "Can we have permission to mess around"—if you can put it that way—"with your software in order to work on it and develop things that will prevent problems with IP circumvention?” Is that how it works? How does it actually work in practice?

● (0945)

Mr. Harry Page: Typically we have a client—sometimes it's even my esteemed colleague here—come to us and identify that they feel someone has misappropriated their technology. Then we actually do the physical forensic work to be able to link what they have protected in their intellectual property rights with the products that people are making.

A good example of where we see the TPMs and the Copyright Act and the nuance needed for IP is around gaming, for example. Obviously there's a growing gaming community in Canada. Someone could produce a gaming console and they could actually be the legitimate author and creator of the game itself, but the physical implementation of that, the hardware and some of the software that's actually used to implement and create that game, could actually be misappropriated by somebody else, actually knowingly. Perhaps that could include some of the algorithms for running the images, some of the hardware that is embodied into the console itself.

That would allow the particular author of that to actually hide behind the TPM, to say the TPM prevents you from looking at the underlying implementation of my game, and in violating the anti-circumvention provisions it might be questionable to use anything you find in allowing the original intellectual property holder of the underlying physical technology to enforce their rights. We feel that it could hinder the investigative process that would allow our clients to actually implement their IP rights.

The Chair: Thank you, Mr. Page.

We went over substantially, but I thought that answer would be something everybody wanted to hear.

Now we're on to five-minute rounds, beginning with Mr. Carmichael.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair, as we shorten up here.

The testimony from our witnesses today has been very interesting, and I thank you all for your contribution to this study, which I hope will benefit the country.

Mr. Tortorice, we talked today about IP and some of the issues around reverse engineering and some other things. Talk to, if you would, your perspective on Canada's IP regime. Are we doing it right? Are there gaps we need to pay strict attention to right away? Who else is doing it? What other regimes and what other governments are doing it that we might look to, to take an example of best practices?

Mr. Chris Tortorice: Thank you for that.

There are actually a lot of things we're not doing quite right, and I think our trading partners are reminding Canada of that on a regular basis, whether that's the U.S. government, whether that's the European Union in the CETA negotiation, or whether it's through Canada attempting to gain admission to the Trans-Pacific Partnership negotiation. There has been some reluctance on the part of some of the other countries in that negotiation to allow Canada to participate.

I've highlighted a few of the things I think are gaps for Canada. Obviously Bill C-11, once it's passed, will take us a long way towards the gaps in copyright. I would point out, when it comes to anti-circumvention measures with respect to TPMs, there are a number of exceptions in the act. One of them includes getting consent, which is something that was just discussed. But that list of exceptions isn't closed. So I would say there's ample opportunity in the regulatory process, if different organizations think there are gaps, to add other exceptions. I think there's room there to make that work for Mr. Page and companies like his.

On the trademark side, I've identified some of the problems we have. We don't have a specific offence for counterfeiting in Canada. There are gaps between offences in the Criminal Code and what the Copyright Act and Trade-marks Act say. We need to bring those closer together to make sure those systems work. When you go and try to enforce your rights in Canada, you're quite often dealing with two different sets of prosecutors—provincial and federal. You're dealing with two different sets of laws, and a lot of times the prosecutors don't want to take the case because it's not in their jurisdiction or it's not what they're familiar with. We have a long way to go on the enforcement side as well.

As far as other countries you asked about go, Japan is a good example of a country with an IP crime task force with people right up to the president being responsible for leading their efforts in battling counterfeiting. Some of the recommendations in the paper on counterfeiting identify those best practices. There are lots and lots of those best practices in there. I'd commend them to you.

● (0950)

Mr. John Carmichael: Good. Thank you. I'm sure we'll have an opportunity to examine some of them.

I have a bunch of questions for you here, but I wonder if you could just talk about the impact of counterfeiting on Microsoft, on your company specifically. You talked about viruses. You talked about the bad guys and their intent with regard to identity theft. What's the dollar cost? How significant an issue are you dealing with every day?

Mr. Chris Tortorice: Well, I can't talk about numbers globally. There are estimates that put the software industry's losses to counterfeiting and piracy each year at over $60 billion. For the companies that make software, develop it, manufacture it, and distribute it, if they're not getting paid for it, that's money they can't put back into development, and money they can't put back into employing people, and money they can't put forward towards developing new products. So it definitely has a major impact on software companies.

Mr. John Carmichael: Thank you.

Mr. Ptycia, could you talk quickly about your issue with counterfeit product, which is obviously significant? Who's doing it right, from your perspective? Is there any other area we should be looking at in order to plug the gap and facilitate some corrections to your industry?

Mr. Dale Ptycia: What I might be able to do is to echo Chris's remarks about enforcement. We find the remedies or the tools that are available to us civilly, and even through the respective acts, very weak and in need of a lot of shoring up and support and momentum from all groups across the country and across government to help us find those solutions.

Thank you very much.

The Chair: Thank you.

Now we go to Mr. Masse, for five minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

I'll start with Mr. Ptycia and Mr. Tortorice.

I'm just curious. Where are the counterfeit products that undermine your products coming from, and what ports of entry are used? Do you know? Are they coming from Asia via the U.S. into Canada, or are they going into Vancouver or Montreal or Halifax? Where are they coming from?

Mr. Chris Tortorice: Typically, things don't come through the U.S., because they do a better job of dealing with counterfeit shipments at the border than Canada does. As is the case with Canada, in the U.S. it's hit and miss as well. There's a good example from the port in Prince Rupert, B.C. The CBSA group there said they were not going to inspect any containers that went outside of their region any more, and when they decided to do that, that meant every container went through unchecked.

There's a project the RCMP in the Toronto North detachment have been doing called Project O-Scorpion—I think because it's Division O of the RCMP—and in just a seven-month period they've found containers with close to $70 million worth of counterfeit goods. They're just scratching the surface.

Now, for our company, it's not so much the containers as it is the small packages in the mail and courier services. It's very easy to do business over the Internet. It's easy to do business with people overseas. When you do business with people overseas and you place an order, those shipments come in through the mail and through a courier. Less than 1% of things coming in get looked at by CBSA, and counterfeit product is flooding into the country that way.

Mr. Dale Ptycia: Just to support some of Chris's comments, we see that pipeline through the Internet coming from overseas as a primary source of jerseys. We've worked closely with the criminal intelligence analytical unit from the Canadian Anti-Fraud Centre in North Bay. They have a project in place now—if you're not familiar with it—through which they're trying to hit the money of the counterfeiters overseas. They're working with the Visas and the MasterCards through their merchant accounts. Through their merchant account agreement, if there's any breach of the agreement, their merchant account can be suspended indefinitely. So once the folks at the Competition Bureau are able to identify suspect product on the Internet, we make a purchase. We inspect that purchase once it arrives in Canada, and confirm it's counterfeit. Then they'll go back and spend some time with the folks at the merchant account, whether it's Visa, MasterCard, or PayPal, tell them it's counterfeit, make a declaration, and those folks will then suspend the merchant account of the exporter in Asia.

Eventually we hope to try to stop it at the money source, and we see those sites coming down. For example, last fall, through our pilot project, between August and September, we actively shut down over 75 sites out of China based on counterfeit Team Canada product only.

There are hundreds of other sites that are doing other counterfeit product, from fashion brands to software brands, etc. But this is just one small project led by Mr. Barry Elliott that has found a solution outside of the formal cross-border legislation, to help us fight counterfeit products.

● (0955)

Mr. Brian Masse: Is most of the material coming across going through Canada Post's courier service, or are mainly private courier services being used? How do we regulate that? Because there would seem to be an opportunity to cut that off there too.

I agree, and in the past this committee has actually recommended that CBSA be empowered for the seizure, but the government has not acted on that recommendation. We've done that, and we've seen no action on that and just cuts at the border.

Is it coming through Canada Post or private couriers? Where is this coming from predominantly?

Mr. Dale Ptycia: We see primarily the flood coming through the mail system, and there is probably less inspection of mail parcels than there is of commercial packages in commercial containers. It was only when one or two officers observed that many packages of 10, 20, 30, or 40 jerseys were going to the same address with different names that it became suspicious.

As they mentioned to us, they're sometimes overwhelmed with the volume, and they don't have enough front-line resources to deal with the volume that comes through the mail system.

Mr. Brian Masse: So improving the resources there would probably provide the opportunity to actually cut some of this off and seize it?

Mr. Dale Ptycia: It would definitely help, as would empowering front-line officers to target and seize counterfeit product.

Several times we've been able to alert the border officials as well to anticipated shipments coming in, but they have said they don't have enough resources to target particular shipments.

Mr. Brian Masse: In some of these cases, do we get other merchandise and other types of contraband coming through? Is there a combination of those things?

Mr. Dale Ptycia: Absolutely. There's a mix of not only licensed product from sport brands like ours, the NHL, but we'll also see other counterfeit brands of other products, whether it's software or other components, sometimes in containers when the container is opened or inspected.

The Chair: Thank you very much, Mr. Ptycia and Mr. Masse.

Mr. Brian Masse: Thank you.

The Chair: Now we go to Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Thank you for being here today.

Mr. Ptycia, you mentioned in your opening comments that 75% of the jerseys that are worn to NHL games are probably counterfeit, and the number of Hockey Canada jerseys during the winter games was also very high.

Could you estimate the loss of revenue to Hockey Canada? You mentioned earlier that your group does a lot of work in promoting activities on the part of youth and getting them engaged in sports and engaged in physical activity, which obviously we're all concerned about here. If you're losing resources because counterfeit goods are taking away your profit margin, could you estimate what the loss of revenue is to your agency?

Mr. Dale Ptycia: Just based on the numbers of jerseys that we detained and ultimately destroyed at the Vancouver mail facility—16,000 units—we probably would have lost in excess of a million dollars' worth of royalty revenue that just didn't come into our coffers.

Mr. Harold Albrecht: You estimated that was 20% of it, so you're looking at $5 million potentially?

Mr. Dale Ptycia: We are, if those numbers are indeed accurate, which we are pretty confident they are.

Mr. Harold Albrecht: In terms of educating the public and making them aware that this is piracy—and, Mr. Tortorice, you mentioned not only the financial loss but also the physical danger to the person and to their computer systems and so on of using that software—what would either of you say are some ways the government could be more proactive in partnering with you in education modules?

Mr. Chris Tortorice: In some countries there's definitely a coordinated effort between government and industry. There could be the same sort of advertising that talked to people about wearing seat belts so long ago, which said “if you don't wear a seat belt, this can happen”.

We've talked a little bit about the threat to health and safety, and I mentioned the safety and security of your personal information, your business data. But there are counterfeit medicines, there are electrical products, there are automobile and airplane parts that threaten Canadians.

If you've ever seen a video of one of those counterfeit electrical cords put under load and bursting into flames in seconds, you would not want that in your house, but you might go to the dollar store or you might go to sort of a medium-sized retailer and buy something because it's cheap. I think you need to be able to get the message out to people that it's not worth the risk.

There was a mention earlier about price, and I would say that once upon a time “if the price seems too good to be true, it probably is” was a great message. We don't see that so much now. We see that the price of the counterfeit product is often the same as the genuine one, and it's very difficult for unsuspecting consumers.

We need to find ways to get messages that hit home to Canadians, and maybe it would be through government and industry together saying “this could happen to you”.

● (1000)

Mr. Harold Albrecht: Mr. Ptycia, do you want to...?

Mr. Dale Ptycia: I would support those comments and say that the collaborative approach to educating Canadians would be a very good first step.

Mr. Harold Albrecht: I have to confess that this is my first meeting at this committee, so I'm no expert on this, nor will I ever be. But it appeared to me when Mr. Gold and Mr. Tortorice gave their opening statements that there was some fairly significant degree of differing views, if I could say that. As a person who is just beginning to learn this file, I would be interested in having each of you give me a one-minute statement.

Mr. Gold, why do you think we currently meet all our obligations?

And Mr. Tortorice, you think we have further to go in some of these issues.

Maybe I missed some of the nuances of what you were saying, but if I could have a minute from each of you....

Or am I running out of time?

The Chair: You have about 40 seconds.

Mr. Harold Albrecht: There you go.

Mr. Richard Gold: We're both lawyers, so we're both right.

Mr. Harold Albrecht: So 40 minutes would be more appropriate?

Mr. Richard Gold: Technically, and I think Mr. Tortorice would agree, we do meet all international agreements that we have ratified. I think he was suggesting that Canada has signed but not ratified certain treaties from the World Intellectual Property Organization, which would include TPMs, etc., and he would like us to comply with those even though we have not yet ratified them.

So we meet the current state of intellectual property law, internationally. If we were to ratify those without changes, our laws would not be in compliance. However, there are a lot of different ways one could implement those.

Mr. Chris Tortorice: There is perhaps a nuance in there that I don't fully appreciate. I would hope that if Canada were going to sign those treaties, it would be prepared to live up to them. I think our trading partners, once we've signed those agreements, look to us to live up to them.

Whether it's implementation or formal ratification or whatever word you want to say, copyright is a perfect example. We're not finished yet. We're close. Everyone is pleased that it has gone as far as it has. We need to get the job done to make sure that Canada's keeping up with those obligations. Once it signs those treaties, I think it's time for Canada to measure up to the international standards that other countries that have signed them are living up to.

The Chair: Thank you very much, Mr. Tortorice and Mr. Albrecht.

Yes, that was well more than 40 seconds each.

Now we go to Mr. Harris for five minutes.

Mr. Dan Harris (Scarborough Southwest, NDP): Thank you very much.

Thank you to everyone for being here today.

Just to follow up without increasing the chances of some conflict arising, Mr. Gold and Mr. Tortorice, perhaps very quickly—in less than 40 seconds—do you think parliamentarians should have the opportunity to study these new agreements before Canada signs and ratifies them?

Mr. Richard Gold: That's a loaded question. I'm trying to find a lawyerly answer to it.

I think any time we enter into international trade agreements that have an impact on Canada, all Canadians, including our representative, should be debating how that is done. I don't know what the best way to do that is. That is your bailiwick. And I take the government at its word that it will be open and transparent about it.

I understand that during negotiation processes there are sometimes restrictions, but I would anticipate we would all have an opportunity to discuss them and look at the implications of them and the perhaps unforeseen implications of certain things at some point.

Hopefully that was a diplomatic enough answer.

Mr. Chris Tortorice: That's tough. The way in which international agreements are negotiated is sort of beyond my comprehension most of the time, so I think I would have to defer to Professor Gold's view, which is that it would be great to have information made available as soon as possible so that people could have an opportunity to review and comment on it, but I don't know how much further than that I could go.

Mr. Dan Harris: That's great. Thank you.

In your opening statements, I think all of you made some very important remarks about IP, and I think it was pretty unanimous that we do have to protect our intellectual property. Certainly there are different approaches and views as to how to do that, and where we should be headed. Mr. Tortorice brought up Japan, which of course has a different IP regime, which is more focused on receiving those internal strategic benefits of holding IP so that it benefits their local businesses in a significant way. Michigan is perhaps also moving in that kind of direction.

On that front, of course, we've had some large cases in Canada—for instance, if you look at Nortel, in which huge volumes of IP were sold off, and we just most recently had changes to the Investment Canada Act that are raising the threshold. In any case, if just intellectual property is sold off, that's not subject to review under the act. We've been trying for a while to get this committee to start a study on the Investment Canada Act, and as yet we've been unsuccessful.

Perhaps across the board in the remaining time each of you could perhaps offer an opinion as to whether you think it would be valuable to look at including intellectual property in the Investment Canada Act, so that we don't sell it all off.

● (1005)

Mr. Harry Page: To start, to go back to your Nortel example, when Nortel was broken up, the operating companies with Nortel—with all the patents related to the people, the equipment, and all the contracts installed—sold for a total of $3 billion to four foreign companies. The residual patents that were left—around 6,000 patents—sold for $4.5 billion, or 50% more than the entire operating units of Nortel. That was without any review whatsoever.

The core of the value of Nortel was in their patents, and that went on to a consortium, obviously, of six foreign organizations, without review. That was the value of that company.

We are in a knowledge-based economy, and the fact is that intellectual property can be sold without review. Intellectual property that has been significantly funded by the government through IRAP, SR and ED, and various funding organizations and programs like that can be sold literally without review and significantly monetized against Canadian companies moving forward. So there's a double jeopardy to the country in a situation like that.

Mr. Richard Gold: I don't claim to have any expertise on the Investment Canada Act, but I will just follow up on Mr. Page's comment that 1992 or 1993 was the big year when most of the assets went from being physical to most of them being intellectual. In some industries it's upwards of 95%. So to not consider the value of intellectual property is to miss out on what is very important to many industries.

Mr. Chris Tortorice: It would be very tough to know. Nortel is an easy example. You can say that there were thousands of patents and they had a huge value to other companies, but sometimes the most valuable patents are the ones where you haven't quite figured out what you have yet, and I don't know how the government would get involved in reviewing that.

There's probably a place where there can be a line drawn as to where the significance of the assets becomes so great that you say it should be looked at, but it's very difficult to know, because sometimes you find out ten years later; you dust off that patent and finally realize what you have. It's a challenge to know how.... You can't be involved in reviewing every deal that involves intellectual property, because those are assets that companies cross-license and sell back and forth fairly freely.

The Chair: Thank you very much, Mr. Tortorice and Mr. Harris.

Now we'll go to Mr. Braid for five minutes.

Mr. Peter Braid: Thank you, Mr. Chair.

I have a quick clarification, Mr. Page. The Nortel patents were sold to a consortium. Not all the companies were foreign. Last I checked, Research in Motion is a Canadian company, and they were part of the consortium.

Mr. Harry Page: Yes, that's right.

Mr. Peter Braid: Thank you.

Professor Gold, you suggested earlier that one of the things we need to consider would be greater powers for CIPO, the Canadian Intellectual Property Office. Could you elaborate on the sorts of powers you think that office needs and that they don't have now?

Mr. Richard Gold: I'll give the example of the Amazon.com patent. I'm not commenting on whether their decision was right or not, but what the Commissioner of Patents did was to set up an expert panel to advise her on whether business methods ought to be patented in Canada and what the implications were for Canada and Canadian industry. She followed that recommendation and did not issue the patent. The court said sorry, you're not allowed to do that.

It's that type of decision over patentable subject matter, especially in new areas to see what is happening internationally, etc.... The United States is having difficulty with business method patents, and the Supreme Court of the United States has been pulling back.

But instead of waiting for this to go through the court system, which can take 10 or 20 years, CIPO is better empowered to make those decisions. Other micro-decisions I think are better made by the court, but that sort of big policy about what kind of thing should be patented is the type of thing that CIPO should be doing.

● (1010)

Mr. Peter Braid: Great.

You also talked about the importance of training judges. There's currently only one Federal Court judge with some expertise in this area, who will be retiring in two years. How do we support...? How do we assist that training? Is that a federal responsibility or a provincial one? Who does it?

Mr. Richard Gold: A lot of judges learn on the job, so I don't want to undermine my colleagues on the bench who try, but they don't have the bigger picture. A lot of it's done through the National Judicial Institute. They've done some. I've worked with something called EINSHAC, which is based in the United States.

But this is a federal responsibility. These are federal judges, at the Federal Court especially, but also at the superior courts, so it does not fall within provincial.... The province has responsibility over the administration of justice, but not on the judges themselves. So I'd say it's a federal responsibility to support the NJI and other types of organizations by putting money specifically into this.

Mr. Peter Braid: Okay.

Mr. Tortorice, you've made a strong case for the importance, with respect to anti-counterfeiting, of stronger laws and stronger enforcement in Canada. Can you point to any other jurisdictions we could look to as models of stronger laws and stronger enforcement powers?

Mr. Chris Tortorice: Certainly.

I mentioned Japan a little while ago. I'd also point you in the direction of some of the initiatives in the United States, where the national intellectual property centre brings together people from the FBI and from CBP, the customs and border protection group. They work much more closely to bring enforcement resources together, to bring expertise together.

We have a problem in Canada, in that how well the RCMP and the CBSA talk depends on what area of the country you're in. The relationship isn't formalized, and information sharing isn't required.

So there are examples of places where there is a centralized IP crime task force and a centralized IP centre where enforcement bodies can work together. It's a key thing that we should be doing.

Mr. Peter Braid: Great.

Mr. Pytcia, you gave the example of the counterfeit jerseys that were seized in Vancouver as part of the Olympics. They were seized by the RCMP. Is the issue here a lack of powers or a lack of resources? Clearly the RCMP had whatever powers to seize those jerseys. Can you help us with this?

Mr. Dale Ptycia: I can try. Maybe I can be corrected by some of my colleagues about the legislation.

They intercepted and detained the jerseys through the Canada Post act, I believe. They notified the intended recipient that they were holding the package because of suspicious circumstances. They were asked to present themselves to make a claim to the package and to explain why the jerseys should be released. Those individuals never showed up. We held the package for the allotted time, as per the act, and then had those jerseys destroyed.

So through the steps in the Canada Post act, we were able to detain, if you will, the jerseys. We had to go through the process of notifying those folks, add extra manpower to write the letters and do the follow-ups, etc., and then do the monitoring if they actually did show up.

Mr. Peter Braid: So if these things had arrived—

The Chair: I'm sorry, Mr. Braid, that's all the time we have.

I would like to have been a fly on the wall, had they shown up, and heard the kind of conversation they would have had.

A voice: It would like be an episode of *The Simpsons*.

The Chair: I think so, yes.

Mr. Stewart, for five minutes.

Mr. Kennedy Stewart (Burnaby—Douglas, NDP): Thank you very much.

My questions are mostly directed to Mr. Gold.

I'm interested in hearing how the work you've done in collaboration and innovation links ultimately to productivity. Productivity in Canada is not in a very good state at the moment. Maybe I can start with the first link, that between innovation and productivity, and you can give us a sense of how those two concepts are tied together.

Mr. Richard Gold: This is an emerging literature that's really taken off in the last 20 years. Increasingly, statistical evidence shows that when you have greater levels of innovation, you get economic growth, because it enables the industry locally to use that innovation to bring down its costs or increase standards.

So innovation goes to sometimes just cost reduction, which passes through the system, or it makes the materials better, and therefore we're able to get for every dollar of investment a better product or cheaper product. That's the basic link.

● (1015)

Mr. Kennedy Stewart: Then there's the link between working in collaboration and increasing innovation. I think that's the really interesting part. You're saying that's what is emerging here globally.

Mr. Richard Gold: Right.

Innovation is not coming up with an idea. Universities come up with a lot of ideas. Canada is one of the best in the world at inventing, at coming up with ideas. What we're terrible at is turning those inventions into something you can put on the market. That's because we lack many of the skills around it, such as financing, and so on. Part of it is because we are a resource-based economy and we never developed it. Now we need to develop it. One of the ways is through collaborations, by getting people to talk to each other.

We know that university researchers publish more in higher-quality journals if they work with industry. We have to figure out how to structure that deal. It used to be let's just get more patents and licensing. That doesn't work. That has not been shown to do anything.

If you're looking for models of countries in the world, then Israel, for example, has been one of the world leaders.

I'd really focus on how we build these collaborations of different sizes. Some of them are very small and some of them are bigger. What a collaboration does is it locally creates the knowledge of how to get into distribution channels. It develops the local marketing skills. That then spills over to the companies that aren't in the consortium, because it's there.

David Teece did a study in 1986 showing that a country that just invents is not going to get anywhere. Often the innovator doesn't make the money; it's the second or third, because they have the skills to get into the distribution channels and so on.

Our Canadian companies are selling to foreign companies because they already have those complementary assets. Collaborations provide a setting where those can be developed and nurtured. Then they have to go on their own and expand.

Mr. Kennedy Stewart: Since this is an emerging area, can you suggest how we might track these relationships, what data we could collect, what we should be collecting, what we might ask StatsCan to collect? Maybe, if there's not enough time to elaborate fully, you could submit that to the committee.

Mr. Richard Gold: We don't collect a whole bunch of information. One of the things we know is that graduate students, for example, carry a lot of knowledge from university into industry. We don't know where they go unless they become university professors.

We count the number of licences and fees, but we're not tracking the number of collaborations. We don't look at the contents of licensing. Under U.S. law, any time a university licenses to industry, it has to submit an abstract of it to the government. We don't follow that. We have no clue.

The Japanese government, to use that example, is trying to get a hold on what kinds of licences people enter into. We don't need to know the numbers, but we need to know how they structure these things. Does that lead to knowledge flows? Does that lead to jobs?

We have very little idea of the innovation landscape. We don't know where knowledge moves, from whom and to whom, under what conditions. Until we start tracking those two things—and I'll supply you a list after—it's very hard to know what's going on.

The Chair: You have 30 seconds.

Mr. Kennedy Stewart: Okay.

So if we track it back to productivity, then collaboration, if you do it right, equals or leads you to innovation, and then of course it can increase your productivity.

Is there anything else you can give us, in 30 seconds, that would be critical to improving the links in that chain?

Mr. Richard Gold: I would move a lot of our subsidies, because they go nowhere, and reinvest them there.

I know this is not Quebec, but Quebec has this 15-year exclusivity rule, which is just giving money away on pharmaceutical products rather than investing it strategically into these types of structures. The money has to come from somewhere. R and D tax credits and general subsidies have kept afloat an awful lot of biotech companies in Canada that frankly shouldn't be around.

The Chair: Thank you very much, Mr. Gold and Mr. Stewart.

Now we go to Madam Gallant for five minutes.

Mrs. Cheryl Gallant: Thank you, Mr. Chairman.

Mr. Tortorice, I'll go back to the question you wanted time to think about. The question had to do with whether or not the federal government should be taking measures to improve cyber-security over and above what the stakeholders themselves must do.

Mr. Chris Tortorice: I was struggling with whether or not cyber-security is necessarily an IP law issue. Certainly from Microsoft's perspective, we have a group called the digital crimes unit, which spends all of its time investigating these sorts of international cyber-security breaches and taking down botnets that infect people's computers and turn them into spam-sending machines and those sorts of things. They've had some great successes there.

I believe that most of those successes have been centred on using U.S. law to take action against people who might somehow touch the United States in some ways and on being able to take down these networks by getting orders from the courts.

I can't tell you today whether we have similar laws in place that would permit that to happen, but I know it's a very big problem. As we are increasingly in an online world, it's a big problem for companies like Microsoft, and it's a big problem for governments. It's something we really need to work together on.

Certainly with the digital crimes unit in the U.S., our team's working with the FBI and with other groups to find where these—I don't know what the right word is—“black hats” are, and where their assets are, and where their computers are, and to put a stop to the things they're doing to interfere with the flow of data and that sort of thing.

● (1020)

Mrs. Cheryl Gallant: My questions don't necessarily pertain to IP law itself, but what you said previously on the lack of collaboration between Canada Border Services and the RCMP was very constructive criticism.

If we look at the international picture as well, sometimes governments just turn a blind eye to the piracy that's going on. Are there mechanisms in place or do you have suggestions we could implement in order to have countries themselves not just be up to par on where the IP law should be but take measures that can discourage piracy within their own companies, within their own limitations?

Mr. Chris Tortorice: We have to be persuasive through the channels we have, government to government or through international organizations, by saying, "Hey, you're not living up to your obligations." They need to protect intellectual property of Canadians in their country, or else how can Canada extend those same protections to people from those places?

One big initiative we have at the moment, which Microsoft and other companies are working on, is cleaning up supply chains that involve stolen IT. So we're looking to pursue companies that have a supply chain that's all built on using other people's intellectual property and to put a stop to it. It's something that's going to take a coordinated effort and a long time, because those other countries that don't provide the same protection for IP rights make it difficult for us to compete. We need to make sure we stay on top of that.

Mrs. Cheryl Gallant: Sometimes we see that state actors themselves are at fault in terms of piracy. Are there international mechanisms in place to deter state actors from breaching security?

Just as one example of state-to-state theft of technology and software, we look at the JSF project, the joint strike fighter project. Some of the cost spikes and production delays are attributed to or being investigated as being a result of piracy. So internationally speaking, are there any mechanisms in place to deter that, or are there any mechanisms you would suggest be put in place to better protect our IP?

Mr. Chris Tortorice: Candidly, I have to say I don't know the answer to that question. I don't know if any of the other panellists could help on that.

The Chair: We have ten seconds left, if anybody wants to chime in on that.

No? Okay.

Thank you very much, Madam Gallant.

Now we go to Mr. Carmichael for five minutes.

I'll just say quickly that I'll keep these last two tight—Mr. Carmichael and Madame LeBlanc—and then we'll have that two-minute discussion. I have to estimate the time, because we all know there are things going on in the House. So if you just go quickly, then we'll have that good discussion regarding the report.

Mr. Carmichael.

Mr. John Carmichael: Thank you, Chair.

Mr. Tortorice, how are global trends of increased litigation in patent thickets affecting businesses operating in Canada? I wonder if you could comment on that.

Mr. Chris Tortorice: That's a good question. Obviously there are lots of good examples of patent litigation being used strategically for companies to sort out rights in complex areas. There is an ongoing battle in the smart-phone industry, just as there is when every technology changes. Think of the railroad or the telephone. With all the different leaps forward in technology, there were battles over patents.

Usually these things are being sorted out through complicated cross-licensing agreements between companies. Those kinds of licensing agreements are something that Microsoft embraces and looks to take part in wherever they can, because we think it's much better to be involved in cross-licensing of technology to enable products to get to market than to be fighting about them endlessly in court. Sometimes you can't get to a resolution and you need to go forward and have a legal proceeding to determine where those boundaries lie.

● (1025)

Mr. John Carmichael: I understand.

Professor Gold, I see you nodding. Do you have any additional comments on that?

Mr. Richard Gold: The large enterprises, especially in the IT field, are very sophisticated, and they'll have a licence. It's almost impossible to put a product on the market without violating somebody's patent. So you come up with arrangements about how you're going to do it.

It's really the smaller enterprises that exist mostly in the United States, the so-called trolls, that take advantage of the U.S. jury system to win exceedingly high damage awards that are out of proportion. So as long as we resist those, we can at least lessen the threat of trolls in Canada.

There is very little IP patent litigation in general in Canada. Most of it happens in the United States, and then we follow. So it's hard to get an exact figure on what the cost is to Canada, because most of the litigation happens elsewhere, and we're just the tail.

Mr. Chris Tortorice: I would agree, because most of the time, if you look at the statistics year over year in Canada, there are about five patent trials. There's a reason for that: it takes too long and it's far too costly to get to a result here.

I've heard some comments that maybe our patent system is somehow better than that in the United States. I would say most people wouldn't agree with that, because it's often not worth pursuing your rights in Canada because it just takes forever and it costs a fortune.

Mr. John Carmichael: I think our study clearly shows that the goal has to be to find ways to fill the gaps and make improvements to the overall system, and hopefully that's what we're going to achieve with this report.

Professor Gold, could I just take you down a little different path? We had a witness earlier in this study, and I just wonder if maybe you had some input on board-of-director fiduciary responsibility. You talked about Nortel, and we talked briefly about IP value. I wonder if you have any thoughts on what it's going to take to educate members of our boards of directors to better understand the importance of IP value when we talk about it in the context of values of companies today.

Mr. Richard Gold: I don't have an answer to it. I agree with you that it's a serious issue. The larger companies I think are quite aware and have put a lot of effort into IP management, but the smaller enterprises are often small technical people who come out of universities and have very little knowledge.... It's probably best done by the university—encouraged in the university—or perhaps by giving some money to the university to set up programs to provide better education, not just about how to get a patent but how to think about a patent.

Mr. John Carmichael: Well, my question is directed more at the value issue. For boards of directors, when you have that overriding fiduciary responsibility of managing a company and establishing and understanding a value, my concern, from earlier testimony, is based on what it's going to take to get that level of management, that level of responsibility, to truly understand the changing value equation in companies today when you have IPs that represent such significant parts of what that value is.

I have experience with the Institute of Corporate Directors, and I know there are other organizations. I'm just curious about whether you had any input into that, but that's fine. Thank you very much. I appreciate it.

The Chair: Thank you very much.

Now we'll go to Madame LeBlanc.

[*Translation*]

You have five minutes.

Ms. Hélène LeBlanc: I am going to ask one question and then let Mr. Stewart ask the next one.

Mr. Gold, I am a Montreal member and, as you know, we have recently had a number of research centres shut down, in particular those of Johnson & Johnson, AstraZeneca and Sanofi Canada.

From what I understand, you do not believe that extending the terms of pharmaceutical companies' patents under free trade agreements will encourage pharmaceutical companies to increase their research and development investment in Canada or to keep their research centres in operation.

● (1030)

[*English*]

Mr. Richard Gold: Again, I'll answer in English.

If you look at the accord that was done in around 1989 with the pharmaceutical industry, they promised to move us up to 10% of the revenues we invested in R and D, which would still be about half of the OECD average. They hit it for a few years, but most of it was in clinical research. Clinical research means basically funding doctors to give it to patients. It's important, but it's not building an innovation system, because there's no knowledge to leave behind. They invested about 20% into actual or what I would call real R and D, and we're now back to the old levels.

If the IP system had been driving the investment decisions, that wouldn't have happened—it was all the other policy. So giving them more is not going to bring them back. They're restructuring anyway. The reason they're pulling out of Canada has nothing to do with Canada; it has to do with them moving out of R and D and going more to biotechnologies and consolidating. We can triple our patent rights and it's not going to have a marked increase, at least on an economic basis. Whether it would on the basis of you scratch my back and I'll scratch yours, I don't know, but in terms of economics, it will not have an impact.

[*Translation*]

Ms. Hélène LeBlanc: Thank you.

I will now hand the floor over to Mr. Stewart.

[*English*]

Mr. Kennedy Stewart: Just going back again to innovation and protecting property, you've seen the stress and tension between those two things a little bit, and I'd like you to elaborate on it. If we tighten our protections too much, we could actually reduce our innovation in Canada. Is that correct? Could you elaborate on that a little?

Mr. Richard Gold: Yes. I mean, I fully agree with Chris that streamlining procedures and getting to cases is to everybody's benefit, but looking at patent law itself, if you increase, it's always a.... There are two sides of patent, right? If I'm the patent holder, I want to get as much out of it as I can, but people who are doing follow-on research, improving it, making it better, and who are often better positioned to actually put a product on the market, can be negatively affected if the patent right is just too long or too broad.

So there's always a compromise. In the last dozen years in the United States, we've seen the Supreme Court pulling back and giving more rights to users. For example, the big pharmaceutical company Merck was able to do research on an anti-cancer drug, free of having to worry about the patent, because of a decision in the U.S.

So every time you give more rights to the current patent holders, it's the next generation of innovator that suffers. That's point number one.

The second point just goes back to the cross-border issue. The ideal situation is that Canadian companies have infinite patent rights in the United States and Europe, and no patent rights here, because that would give us the market. We sell it and we get to do whatever we want here. Obviously it's not realistic, but we have to understand that the pull is being driven by U.S. markets, and Canadian law has to have at least subtleties to allow the research and development of it without being overly constrained. So if you go too far, you have an opportunity to constrain innovation.

Mr. Kennedy Stewart: Thank you.

Do I have any time left?

The Chair: You have one minute left.

Mr. Kennedy Stewart: Okay.

I'm interested in this whole idea of using the number of patents to measure innovations. Is there a different way you...? Obviously we should count the number of patents, but we shouldn't rely on that. Do you have any other suggestions on specific measures?

Mr. Richard Gold: Just to go back to that, when Japan changed its patent laws in 1980 they suddenly had a doubling in the number of patents. There was no more innovation, it was just....

Mr. Kennedy Stewart: Right.

Mr. Richard Gold: We have a lot of universities patenting everything. Instead of getting one patent, they'll get three, just to meet those numbers.

What I think you have to do is measure such things as where the knowledge is going. Again, it's tracking very difficult things. It goes back to the previous question, about where graduate students are going, the nature of the licences, the funding from industry to universities, the terms of those, getting a better feel, and then throwing the social scientists at it and trying to extract learning.

We also need probably the CIPO database to go back in history. It's not particularly user-friendly. We can draw relatively little information out of the Canadian system, because the data is just not there.

The Chair: Thank you very much, Mr. Gold, Mr. Page, Mr. Tortorice, and Mr. Ptycia. You gave some very good answers to some very tough questions, and we appreciate it.

We have an estimated time of some situations in the House we have to respond to, so we want to thank you and set you free to go. We have to have a brief conversation among our members before the bells go.

Was the question pretty well put, Madame LeBlanc, regarding the...? You just wanted a response from the government regarding a report or whatever? Is that the case?

● (1035)

Mr. Brian Masse: We're just wondering whether or not we're going to compile a report and report to the House, because the motion didn't have that in it. I think it was more of a housekeeping mistake.

We don't want to spend all this money and time on witnesses and not have a report.

The Chair: Thank you very much.

Mr. Peter Braid: I think I touched on that at a previous meeting. If the members of the NDP weren't so busy listening to themselves, they would have heard me indicate that I was in fact interested in seeing a report come out of this study, and see recommendations develop.

Mr. Brian Masse: But in your motion—

Mr. Peter Braid: If we could actually get on with the study and stop playing frivolous games—

Mr. Brian Masse: That's what you're doing right now.

The Chair: Order. Hang on just a second.

Mr. Brian Masse: Why didn't your motion include this?

The Chair: Mr. Masse, hang on.

The translators can't work without decorum at a meeting. They can't do the job.

I'll go to Mr. Braid, and then I'll go back to you.

Mr. Peter Braid: As I was saying when I was rudely interrupted by Mr. Masse, I had indicated at a previous meeting that the intention is to see a report come out of this important study, with recommendations.

Mr. Brian Masse: Well, your motion never had that, so.... I mean, you can blame us all you want for your lack of planning in your motion, but the reality is that we're just raising it here.

You can try to throw it out as a partisan-type thing, but had you actually tabled a motion that had that in it, we would have supported that part of it.

Mr. Peter Braid: Completely unnecessary. The indication is clear: we wish to see a report with recommendations.

I'm not sure why you can't take yes for an answer, Mr. Masse, today.

Mr. Brian Masse: It's because of your comments; I have to actually respond to them, because they're inaccurate.

The Chair: Mr. Masse, your own colleague wants to speak here.

Mr. Dan Harris: Rather than just firing back and forth, and the government expecting everybody to just assume that this is what they meant, let's actually put that into the motion, then, and deal with the issue.

The Chair: Well, I think it's done. It's on record now. We've accomplished what we wanted to.

We know that any second the light will flash and the klaxon will go in the House, so the meeting is adjourned.

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