

**Submission to the Parliamentary Joint Committee Inquiry on the future impact of serious and organised crime on Australian society, by Alex Malik**<sup>1</sup>

**(1) Introduction**

I refer to the invitation of the Parliamentary Joint Committee on the Australian Crime Commission to those with an interest in the future impact of serious and organised crime on Australian society to make a submission on these and related issues. I am a lawyer and PHD researcher at the University of Technology in Sydney with an interest on intellectual property (IP) rights, technology, enforcement and related issues.

Based on my area of academic specialisation within my PHD, this submission will deal primarily with IP related issues and in particular, the relationship between IP infringements and enforcement activity, and organised and/or serious crime. I note, this submission is based on my PHD research, and private analysis arising out of this research.

**(2) Executive Summary**

The surging number of IP enforcement activities in Australia by organisations representing IP rights holders, combined with increased activity in this area by Government agencies, suggests that there is an increasing level of professionalism in the execution of IP related crime in Australia. This trend is apparent from an examination of recent material disseminated by the Australian music, film, software and gaming industries, as well as the increased level of IP-related activity by the Australian Customs Service, the State Police, and the Australian Federal Police.

It is unclear whether or not this increasing level of professionalism in the execution of IP related crime in Australia can be characterised as an increase in organised or serious crime. However, based on an examination of the available statistics, it is noteworthy that in most instances the complainants tend to avoid Federal enforcement activity in the area of IP rights infringement.

While at best there is little empirical evidence but some anecdotal evidence of links between organised crime and IP rights infringement in Australia, the same cannot be said of the international situation.

Based on information collected and made available by Interpol, the United States Department of Justice (USDOJ), Interpol, and other international agencies it is clear that there is considerable evidence of links between organised/serious crime and IP rights infringement. This evidence extends to a connection and/or relationship between IP crime and the phenomena of associated illicit enterprises, ie. IP crime

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taking place alongside taxation and corporate fraud, drug trafficking, weapons trafficking, human smuggling and terrorism.

If we accept the international experience in the area of IP rights infringement, we should look at international responses to IP crime, in order to assist in formulating effective Australian responses to IP crime.

These responses suggest there should be additional activities undertaken in Australia, in the expectation that there will be increased links between organised and/or serious crime and IP rights infringement in Australia.

These responses should take the form of additional enforcement activity by Government agencies, and the obtaining of additional assistance in this area, from IP rights holders. These responses should also include the development of independent specialist Government enforcement units to deal with IP crime, perhaps with multi-agency links.

### **(3) Definition of organised crime**

For the purposes of this submission, I refer to the following definition of "organized criminal group" from Article 2 of the *UN Convention on Transnational Organized Crime*:

*... a group having at least three members, taking some action in concert (i.e., together or in some co-ordinated manner) for the purpose of committing a 'serious crime' and for the purpose of obtaining a financial or other benefit. The group must have some internal organization or structure, and exist for some period of time before or after the actual commission of the offence(s) involved.*<sup>2</sup>

### **(4) Assertions by international IP rights holders**

Different groups and their representatives have from time to time made assertions regarding the existence of, and extent of links between IP infringements and enforcement activity, and organised crime. The following is a sample of these assertions:

#### ***(i) Sound recording industry and their representatives***

In 2003 the International Federation of Phonographic Industries (IFPI), representing the world wide sound recording industry said:

*Much of the proceeds from ... piracy are funding organized crime syndicates.*<sup>3</sup>

In a speech also made in 2003, IFPI's Iain Grant claimed that organised criminal gangs are involved in 65 to 70% of piracy cases.<sup>4</sup>

In 2005 IFPI said:

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<sup>2</sup> [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf).

<sup>3</sup> IFPI. (2003). *IFPI Commercial Piracy Report - 2003: Global sales of pirate music CDs top 1 billion; one in 3 discs is illegal; pirate sales at US\$4.6 billion; Recording industry for first time names top 10 priority countries for Government action*. Media Release. July 10.

<sup>4</sup> Speech by Iain Grant, Head of Enforcement, IFPI, European Forum for the Prevention of Organised Crime, Brussels, 30th January 2003.

*One in three music discs sold worldwide is an illegal copy, creating a US\$4.6 billion music pirate market that destroys jobs, kills investment and funds organised crime.* <sup>5</sup>

According to IFPI:

*There is absolutely no doubt that in many situations the theft of intellectual property constitutes an organised and serious crime. The nature and context of the activity must be examined.*

*It should come as no surprise to governments and law enforcement agencies that the prospect of huge profits for a small capital outlay and very small potential penalties, in a poorly regulated environment, is attractive to the criminal and is exploited in an organised and determined fashion. This lack of risk is a major incentive for criminal gangs whose only motive is profit. The manufacture and traffic of illegal music products, both domestically and internationally, is therefore often an organised crime activity.*

*Groups engaging in such activities may be established hierarchical criminal organisations, such as the Mafia, or they may be less formalised and only associate for the duration of a particular enterprise. The evidence of organised crime involvement is incontrovertible. Confirmed links to international drug trafficking, illegal firearms, money laundering, massive tax and revenue evasion and more recently the funding of terrorist activities have been established. In some developing areas whole economies are being distorted internally, leading to loss of revenue and the failure of legitimate domestic enterprise to flourish.* <sup>6</sup>

IFPI, in their 2006 Piracy Report, which is referred to in the (Australian) Music Industry Piracy Investigations (MIPI) website noted:

*Italy's anti-terrorist squad conducted a series of raids in December 2005 aimed at dismantling an arm of the Algerian-based GIA Islamic terrorist group. The raids took place in Naples, Ventimiglia and Milan. They led to the seizure of warehouses controlled by the organisation and containing a large number of counterfeit products. Colonel Grimaldi, who coordinated the raids, said the investigation proved that the group was obtaining funding by selling pirated and counterfeit DVDs, CDs and fashion goods (page 10).*

*(In Greece, there is a need to) tighten its border controls and step-up the monitoring of organised crime rings which are largely using illegal immigrant labour. Illegal immigrants who commit copyright crimes should be considered for deportation (page 13).*

*There is no doubt though that Italy needs to go further to crackdown on the organised gangs that are running much of the pirate music trade in the country (page 14).*

*The pirate music business is, like many other industries in (Bulgaria), run by organised criminal syndicates. Bulgaria's trading partners should continue to exercise strong pressure until the rule of law is effectively applied in the country (page 17).*

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<sup>5</sup> IFPI. (2005). *New IFPI piracy report sets sights on Spain*. Website content. IFPI Network, October, p. 2. <http://www.ifpi.org/site-content/library/newsletter15.pdf>.

<sup>6</sup> IFPI, *Music Piracy: Serious, Violent and Organised Crime*, p.3, <http://www.ifpi.org/content/library/music-piracy-organised-crime.pdf>.

In Taiwan organised gangs put minors in charge of piracy gangs to evade police arrest (page 18).<sup>7</sup>

According to the Brad Buckles, Executive Vice President of Anti-Piracy for the Recording Industry Association of America (RIAA), representing the US recording industry:

*The practice and trade of music piracy have become more sophisticated, cunning and connected to organized crime.*<sup>8</sup>

A 2005 media article in Wired by Abby Christopher, entitled *Mob Pirates: Menace or Myth?* included an interview with various representatives of rights holders, including Warner Music spokesman Craig Hoffman. According to Hoffman:

*The markup for a kilo of heroin is 200 percent. The markup for pirated CDs and DVDs is 800 percent.*

According to Chuck Hausman, deputy director of anti-piracy for the Motion Picture Association of America (MPAA):

*The business model is similar to dealing drugs. The technology makes it easier -- cheap burners, color laser printers and scanners (for high-quality disc art and packaging). It's low cost to entry and they're (CDs, DVDs) easy to hide.*

Bill Shannon, the MPAA's anti-piracy director on the US East Coast said:

*Each link in the chain is organized -- the manufacturers or burners, the distributors who collect the discs from the burners and the peddlers who get the discs from the distributors.*<sup>9</sup>

The article suggests that even in the US links between IP crime and organised crime have not been proven – despite the best attempts of the public relations experts on behalf of IP rights owners to assert otherwise. According to the article:

*In the latest public relations strike in the war on copyright infringement, the music and film industries are sowing fears that content piracy, like drug trafficking before it, is being taken over by organized crime syndicates. The problem is that the evidence -- so far, at least -- is lacking ... In fact, links between large gangs and piracy are well-documented in China and Russia, along with other developing countries. But U.S. cases invariably target more run-of-the-mill outlaws, like download site operators and theater camcorder pirates. Asked to cite actual U.S. convictions involving organized crime, the RIAA and MPAA instead presented a handful of pending piracy cases against warez networks, commercial replicators, a few members of street gangs and a smattering of individual drug dealers -- but no John Gotti or Tony Soprano.*

Mike Goodman, a senior analyst at the Yankee Group added:

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<sup>7</sup> <http://www.mipi.com.au/statistics.htm>.

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<http://72.14.253.104/search?q=cache:V4kFexL5YN0J:www.riaa.com/news/newsletter/071305.asp+riaa+%2B+organised+crime+%2B+piracy&hl=en&ct=clnk&cd=1&gl=au>.

<sup>9</sup> <http://www.wired.com/news/digiwood/0,1412,68490,00.html?tw=rss.CUL>.

*In the U.S., piracy tends to be small-time players. I've not seen any cases of organized crime.... It's four, five, six guys who (burn discs and) sell them on the street.*<sup>10</sup>

**(ii) Film industry and their representatives**

According to one report:

*... movie DVD counterfeiting is an acute problem, with criminal gangs operating factories in Russia, Malaysia and other countries that have weak copyright laws. Large, violent, highly organised criminal groups are getting rich” from copyright theft.*<sup>11</sup>

According to the UK's Industry Trust for IP Awareness Limited, representing film distributors and retailers:

*Compared to other forms of crime, DVD piracy offers criminals high returns and relatively low risk in terms of penalties. It is an attractive option for organised crime groups, who use the trade in DVD piracy to launder cash and fund other forms of crime. A report from Interpol states:*

*“One estimate is that the profits from counterfeiting are similar to drugs trafficking; there is a return of 10 Euros for each 1 Euro invested; other estimates are that counterfeiting is more profitable than drugs trafficking, one kilo of pirated discs is worth more than one kilo of cannabis resin.”*

*In line with the definition by the National Criminal Intelligence Service (NCIS), all the following seizures made in the UK this year by FACT, involved organised crime groups.*

- *Counterfeit DVD production was found to be financing drug trafficking, when a seizure of counterfeit DVDs from a boot sale in East Sussex led police to raid premises at which cannabis resin and cocaine were seized with a street value of £20,000.*
- *Following an 18 month investigation ... a seizure was made at Heathrow Airport of parcels imported from the Far East and Pakistan, leading to a single haul of more than 23,000 counterfeit DVDs.*
- *... FACT was involved in an investigation into an organised crime group with bases in Northern Ireland, Sheffield and Manchester. This resulted in the seizure of a large quantity of counterfeit DVDs and manufacturing equipment, including 156 DVD burners, as well as a forged police warrant card, a counterfeit driving licence, 20 credit cards, a stun gun, an imitation firearm, various offensive weapons and £21,000 in cash. This then led to 100 search warrants being issued throughout America and Europe, demonstrating the global extent of this particular crime network.*
- *A year-long investigation in Sussex, uncovered an organised crime gang with links to Malaysia, which was found to be selling counterfeit DVDs through websites and local newspaper adverts. The case resulted in five arrests and*

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<sup>10</sup> <http://www.wired.com/news/digiwood/0,1412,68490,00.html?tw=rss.CUL>.

<sup>11</sup> McCullagh, D. (2003). *Antipiracy allies watch out for the mob*. ZDNet, March 14. <http://news.com.com/2100-1028-992468.html>.

*the ringleaders being sentenced to up to nine months in prison. The Assets Recovery Agency is now pursuing these criminals under the Proceeds of Crime Act.*

- *In Cambridgeshire, following a major surveillance exercise, a joint operation involving police, trading standards, representatives from the Department of Work and Pensions, FACT and HM Customs & Excise, resulted in thousands of pounds worth of pirate film and music products being seized from market traders. A stun gun and an open bladed kitchen knife were found in the vehicle of one of the arrested males ...*

*A recent trend that the Industry Trust for IP Awareness is highlighting in its publicity material is the growing involvement of human trafficking gangs in DVD piracy ...*<sup>12</sup>

### **(iii) Software industry and their representatives**

Katharine Bostick, a senior Microsoft executive based in South East Asia said:

*Increasingly ... infringements ... are being linked to large multinational syndicates who systematically infringe copyright. These syndicates include professional or career infringers and organised crime groups ... (they) are sophisticated. They are often split into business units which operate across borders and defy easy detection. In addition, they are able to generate a very high level of supply to meet the demand for copyright infringing products. Where enforcement action is taken against business units in one country, the remainder of the syndicate re-routes the products through other countries or even absorbs the loss directly before re-starting the operation in the place of prosecution. The increasing professionalism of organised infringers has seen them develop into a form of competition for copyright owners, often competing directly for market share and in many ways mirroring the other operations activities. Syndicates have been identified as having sufficient funds to purchase and operate CD pressing plants where (millions) of infringements can be produced.*<sup>13</sup>

ELSPA, the Entertainment & Leisure Software Publishers Association was founded in 1989 to establish a specific and collective identity for the British computer and video game industry.<sup>14</sup>

Terry Anslow, an ELSPA investigator, said software piracy "is directly connected" with organized crime in the UK:

*Criminals have been quick to realize the connection with counterfeit products and huge financial rewards. They can carry out the business of counterfeiting discs with a small chance of detection, and in the comparative safety of their own home amass huge profits. We have evidence that major drug importations, child pornography, and paramilitary organizations in Northern Ireland are being funded by this illegal activity. Last year the ELSPA conducted almost 1,000 raids, and in 80% (4 out of 5) discovered evidence of other criminal matters being involved ... A major drug importer was still funding the importations of drugs to UK. Despite extensive*

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<sup>12</sup> Press release issued by Industry Trust for IP Awareness Limited, 12 July 2004, *UK's largest ever DVD Anti-Piracy Campaign places organised crime and terrorist gangs in the frame: National consumer awareness campaign launch.*

<sup>13</sup> East Asia Economic Summit 2003. *IPRs and Innovation: How Can Asia Move Beyond Piracy?* World Economic Forum Website Content, October 14.

[http://www.weforum.org/site/knowledgenavigator.nsf/Content/S9471?open&country\\_id=](http://www.weforum.org/site/knowledgenavigator.nsf/Content/S9471?open&country_id=)

<sup>14</sup> <http://www.elspa.com/>.

enquiries in the country, the source of his cash could not be found. A sustained period of observations revealed he was regularly visiting a small shed where he spent some hours each day. An eventual raid showed that he was producing about 2,000 counterfeit discs each fortnight giving him a profit well in excess of £10,000 each week. The hardware he had purchased gave him the capability of producing thirty copied discs in one operation. Anslow is quick to warn of the close link between organized piracy and other crimes ... counterfeiting in general is used as a means of funding other kinds of criminal activity. In 80% of raids carried out by the ELSPA in the past year, we have found evidence of crimes ranging from fraud and drug running to prostitution and child pornography.<sup>15</sup>

##### **(5) Assertions by international authorities**

Interpol said IP crime has much in common with crimes involving narcotics, stolen vehicles, and fake credit cards, as these activities are part of the “informal economy”, involving organised crime groups. IP crime involves:

*...a wide range of criminal actors ranging from individuals to organised criminal groups. (It) includes the manufacturing, transporting, storing and sale of counterfeit or pirated goods (and) is organised and controlled by criminals or criminal organizations.*<sup>16</sup>

Interpol state, on their website:

*The last decade has seen a steady worldwide increase in these types of criminal offences. One reason is the ready availability of modern technology to counterfeiters, who systematically use it to infringe trademarks and breach copyrights ...*

*The industrialised scale of counterfeiting is itself indicative of the involvement of organized crime. The amount of counterfeit goods in the global marketplace requires an efficient and effective distribution network, and this provides opportunities for organized criminals to manipulate counterfeit products to generate significant profits.*

*Interpol member countries have recognised the involvement of organized crime in IP crime. At the 69 th General Assembly in Rhodes, Greece, in 2000, a resolution on IP crime was adopted ([AGN/69/RES/6](#)). It mandated the General Secretariat in Lyon, France, to take action to raise awareness of the problem and develop a strategic plan to combat IP crime in close co-operation with affected industries.*<sup>17</sup>

In 1999, Interpol's International Criminal Police Review published a special issue on counterfeiting, where they discussed the links between intellectual property crime and organised crime, as well as related issues.<sup>18</sup>

According to Interpol's 2003 publication *Counterfeiting & Organised Crime*:

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<sup>15</sup> Cuziz, D. (2004). *Software Piracy Report: Part II*, gamespy.com, [http://archive.gamespy.com/legacy/articles/spr2\\_a.shtm](http://archive.gamespy.com/legacy/articles/spr2_a.shtm)

<sup>16</sup> Noble, R. (2003). *The links between IP crime and terrorist financing - Text of public testimony of Ronald K. Noble, Secretary General of Interpol, Before the United States House Committee on International Relations, One hundred eighth congress.* July 16. <http://www.interpol.com/Public/ICPO/speeches/SG20030716.asp>.

<sup>17</sup> <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>.

<sup>18</sup> Kendall, R.E. (1999). *Editorial by R.E. Kendall, Secretary General of the ICPO-Interpol.* Interpol International Criminal Police Review - No 476-477.

*Counterfeiting can be said to have become a form of organised crime on the basis of several criteria, including the scale of the industrial plant used by counterfeiters ..., their organisation in networks ... and the financial flows generated by counterfeiting activities (page 6).*

*From being a small-scale activity conducted in illegal workshops in the 1990s, counterfeiting has become an industry using costly, modern facilities. Counterfeiters no longer work in isolation on an ad hoc basis; they have become international entrepreneurs with connections to highly organised networks. Counterfeiting has never been so highly structured. Experience shows that counterfeiters are very quick to learn how to use technological advances. Equipped with sophisticated machines for making their goods, from textiles to spare parts for industry, counterfeiting networks can be seen as a mass production industry. It is becoming increasingly common to find that factories in developing regions (e.g. China, Thailand, Turkey and Morocco) and in the countries of the former USSR, naturally led by Russia, are using leading-edge technology to manufacture fake products (page 7).*

*Counterfeiters try to exploit legal loopholes and inaction on the part of the authorities wherever they operate. Economic globalisation and the development of international trade have facilitated the emergence of organised counterfeiting networks that operate across borders, making it more difficult to break them up. These networks use rapid transmission systems and modern transport facilities and logistics. They are the dark side of globalisation. Thus, counterfeit products are usually manufactured in a non-EU country and sold in an EU country or other non-EU countries. Sometimes products are partly manufactured in one country, assembled in another, transported through a third one and eventually sold in a fourth country. In other words, capital, production units, distribution channels and markets are usually compartmentalised (page 7).*

*Counterfeiters try to conceal product origins to avoid arousing the suspicions of customs officials, which is why each counterfeit product usually has its own route and distribution channel. There are no conventional or consistent networks; instead a series of transit countries is used, usually chosen because the checks are not very stringent ... Counterfeiters use every form of transport available: by air, land and sea, and readily use the fastest means ... The importance of the counterfeiters' sales force should also be emphasised. For instance, counterfeit products are frequently offered for sale via advertising and catalogues. The Internet is also opening up new distribution channels, with counterfeiters putting their products on line. Some of them wholesale counterfeits of several branded products on the same site and some hide behind on-line auctions (page 8).*

*Counterfeiters also use shell companies for their operations ... So counterfeiting involves extensive logistics and a complex, structured, flexible and reactive organisation from the manufacturing phase to sales. As is often the case, the advances, methods and channels of the lawful economy are misused for the purposes of the underground economy. Finally, counterfeiting represents a easy, profitable investment for the tremendous amounts of money that can be earned cheaply from various forms of trafficking (as "unlawful" money is obviously cheaper than "honest" money) (page 9).*

*... "counterfeiters take fewer risks than drugs traffickers. Let me give you an example: one kilo of pirate CDs is worth more in the EU than a kilo of pot" ... The high profitability of counterfeit trafficking encourages criminals to use this activity as a way of laundering money ... In short, counterfeiting is a very attractive activity for criminal networks because it generates maximum profits with a minimum risk of*



*imprisonment. It has become a form of organised crime with its own experts specialising in production in the industrial sectors concerned, its own financiers, logistics experts, importers, wholesalers and distributors, right up to the end consumer. It clearly has links with other forms of criminal activity and its networks cooperate or overlap with known criminal organisations ... There is every sign that counterfeiters are becoming increasingly involved in other criminal activities or mafia type organisations looking for economies of scale, a "Taylorist" division of labour and additional resources (page 10).*

*In France, Ms Nicole Fontaine, Junior Minister for Industry, wrote in her plan in favour of industrial property presented on 28th November 2002, that .counterfeiting has become one of the main sources of support for serious criminal activities and one of the most significant threats to consumer safety..<sup>35</sup> More specifically, the Union des Fabricants has identified increasingly obvious links between counterfeiting and criminal activities, such as terrorism, drugs trafficking, arms trafficking, illegal employment and illegal immigration. Our information shows that counterfeiters also engage in duress, blackmail and intimidation (page 11).*

*Certain examples suggest the existence of strong connections between counterfeiting and drugs trafficking and several of our members have had to deal with cases in which counterfeiters were also accused of drugs trafficking (page 12).*

*In August 2000, two people were arrested by the Greek police. During the ensuing search, ammunition and explosives were found next to pirate CDs and industrial piracy equipment. In September 1999, one of the largest pirate CD trafficking rings was discovered in Holland. Raids uncovered large amounts of cash and weapons ... Counterfeiters often use undeclared workers as cheap labour because they are docile and highly profitable (page 14).<sup>19</sup>*

In 2000, the link between IP rights infringement and organised crime was recognised by the US government. Attorney General Janet Reno said:

*Criminal organizations appear to be using the proceeds of IP-infringing products to facilitate a variety of enterprises, including guns, drugs, pornography and even terrorism. Invariably, when there is IP crime, there is tax evasion and money laundering.<sup>20</sup>*

The US Department of Justice said:

*Organised crime syndicates are frequently engaged in many types of illicit enterprises, including supporting terrorist activities ... (The USDOJ) will do everything ... to make sure that IP piracy does not become a vehicle for financing or supporting acts of terror.<sup>21</sup>*

Based on this analysis:

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<http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/UDFCounterfeiting.pdf>

<sup>20</sup> Reno, J. (2000). *The threat of digital theft: IP theft is faster, costlier and more dangerous than ever.* The Standard.com, December 25.

<sup>21</sup> McCullagh, D. (2003). *Antipiracy allies watch out for the mob.* ZDNet, March 14. <http://news.com.com/2100-1028-992468.html>.

**It is clear that there is evidence of links between international organised and/or serious crime and IP crime.**

While Australia is a member of the international community, the situation is less clear in Australia

**(6) Assertions by Australian IP rights holders**

**(i) Australian sound recording industry and their representatives**

According to an IFPI media release:

*Albums by some of the biggest selling artists of all time – from ABC to Zappa – joined Top 40 CDs recently seized from one of Australia’s largest retailers, in a scene of mass destruction of illegal recordings. On July 31, the results of many months of raids on pirate operators by Music Industry Piracy Investigations (MIPI) were crushed in Sydney. The haul of 120,000 CDs, **with a street value of A\$2 million**, is more solid evidence that **piracy in the country is on the increase** and was a timely reminder to local industry and authorities that **Australia is a target for music piracy and other organised criminal activity. Piracy levels are presently nearing 10% in Australia and there is no indication that this trend will abate.** ARIA and MIPI joined with Shadow Attorney General, The Hon. Robert McClelland MP, in highlighting the dangers piracy poses, and stressing the need for government and industry to work together ... **There is evidence that the counterfeit trade is escalating** and that the remedies available to swiftly stop this illegal activity are limited ... (emphasis added).<sup>22</sup>*

According to the MIPI submission to Enforcement Inquiry:

*In short there is evidence of organised crime groups involved in copyright infringement in the music industry. Whilst details of this are given within this submission, it is important to note that this industry has previously provided relevant information to an appropriate Commonwealth authority and has, for some time, informally exhorted law enforcement professionals to make their own efforts to identify and assess this trend. Prior to providing the further details, we must also draw your attention to the fact that the terms of this item are restrictive and have the potential to perpetuate a number of common misconceptions.*

*The first of the misconceptions relates to the definition and perception of organised crime. There are two definitions of organised crime provided in the glossary. The first is the more traditional and stereotypical, it is the one by which this industry collects relevant data. The second is a more contemporary one. Finally, the definition of ‘organised fraud’ is included as an offence that carries a maximum possible penalty of 25 years imprisonment in Australia and one which reflects, in part, the behaviour of professional or organised criminals.*

*Organised crime is often perceived as the province of gangsters and thugs generally tied to cultural, social or political circumstances. The reality is that organised crime is more akin to sophisticated business driven by economic objectives. It is a business diverse in interests, trans-national in nature and more likely to be dissuaded by difficulties in trade routes than the prospect of detection. Accordingly, members or employees of organised crime groups do not need to be detected in a territory for*

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<sup>22</sup> IFPI recording industry network newsletter, Issue 8: Piracy on the increase in Australia, <http://www.ifpi.org/site-content/library/newsletter8.pdf>.

them to have had an impact. As such, evidence of systemic, entrenched or indeed increasing involvement of organised crime in activities anywhere against a legitimate global industry, is indicative of a global impact or reach by organised crime and demands attention.

*The second misconception is that any copyright infringement of itself is not necessarily an organised criminal enterprise. This misconception is generally associated with the cultural bias in law enforcement against intellectual property rights infringements often being viewed as not a crime at all. The simple facts are that intellectual property rights infringements require sophisticated and costly technology, sophisticated documentation, a network of participants - all items that are invariably in short supply to amateurs or opportunists. It is a highly unusual course to ask victims to show evidence of organised criminal involvement in attacks against their property. This is likely to be due to the fact that law enforcement agencies are not sufficiently involved in this area (see section (g)). It is indeed difficult to locate a precedent. Also, it is highly unlikely that many victims could recognise "organised crime".*<sup>23</sup>

While this information points at links between organised crime and music piracy, MIPI website currently does not appear to include any suggestion of any links between piracy and organised crime.<sup>24</sup>

In addition, IFPI's worldwide publication explaining the links between piracy and organised crime includes 38 international examples in support of claims of links between piracy and organised crime – yet no Australian examples are included in this list. The 38 international examples provided by IFPI were taken from Europe (11), South East Asia (8), Latin/North America (8), Russia (5), Africa (3), and the Middle East (3).<sup>25</sup>

An Australian lawyer who frequently acts for the sound recording industry did suggest enforcement activities should be focused on the "criminals that are funding the (organised) activities", rather than shopfronts.<sup>26</sup>

## **(ii) Australian film industry and their representatives**

According to AFACT (Australian Federation Against Copyright Theft) there are clear links between IP crime and organised crime and IP crime and terrorism.

In 2004, AFACT's Adrienne Pecotic said:

*Links between IP [intellectual property] crime and terrorism have been documented by Interpol ... You have to look at the Interpol report. Piracy attracts people involved in terrorism and organised crime ... We know of links with Hezbollah and the IRA and other similar terrorist groups.*<sup>27</sup>

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<sup>23</sup> MIPI submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright in Australia, 30 June 1999, page 6.

<sup>24</sup> <http://www.mipi.com.au/index.htm>.

<sup>25</sup> IFPI, Music Piracy: Serious, Violent and Organised Crime, <http://www.ifpi.org/content/library/music-piracy-organised-crime.pdf>.

<sup>26</sup> Williams, M. (2001). Effective IP enforcement strategic approaches to countering software piracy. *New South Wales Society for Computers and the Law Journal*: March 2002, Issue 47.

<sup>27</sup> [http://radar.smh.com.au/archives/2004/05/its\\_curtains\\_fo.html](http://radar.smh.com.au/archives/2004/05/its_curtains_fo.html).

One Melbourne case involving the film industry is typically used as evidence of the existence of links between organised crime and IP rights infringement in Australia:

According to page 2 of AFACT's submission to the inquiry on the provisions of the Copyright Amendment Bill 2006, hosted by the Senate Standing Committee on Legal and Constitutional Affairs:

*Police jurisdictions now recognize organized crime involvement in film piracy. Organized crime links to movie piracy in Australia were first uncovered following a raid on Malaysia-linked movie pirates in 2002.*

*Film piracy in the digital age has become more profitable than drug dealing. Recent copyright prosecutions in Australia show connections between film piracy and ALL the below crimes, also known to involve and attract organized crime syndicates:*

- *Illegal Pornography*
- *Child exploitation*
- *Child pornography*
- *Classification Offences*
- *Stolen goods*
- *Internet based crimes*
- *Software & games piracy*
- *Counterfeit goods*
- *Social security fraud*
- *Drug dealing and supply.* <sup>28</sup>

According to a 2004 newspaper article:

*Australia is being flooded with pirate DVDs - and the money is helping fund global terrorism. The number of pirate discs recovered by police and customs during the first quarter of this year has already matched the total for last year.* <sup>29</sup>

*Sales of counterfeit film and pornographic DVDs was worth \$200 million-a-year in Australia alone, the Australian Federation Against Copyright Theft said. Executive director Adrienne Pecotic said market stall holders who sold them at knockdown prices were often an unwitting front for crime gangs in Malaysia, Indonesia and China ... "Australians buying a pirate film here or in Bali, or many other Asian tourist destinations, are supporting the organised crime and corruption that goes on in those countries," Ms Pecotic said.* <sup>30</sup>

In Melbourne, 35,000 discs were seized in a raid on a suburban house by Australian Federal Police (AFP) and Australian Customs Service (ACS) officers following a tip-off from Malaysia. They watched:

*... discs being collected from the Tullamarine freight depot, followed the suspect, made the arrest and seized a large quantity of discs. (The haul was) a mere drop in an ocean of illegal discs.* <sup>31</sup>

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<sup>28</sup> [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/copyright06/submissions/sub57.pdf](http://www.aph.gov.au/Senate/committee/legcon_ctte/copyright06/submissions/sub57.pdf).

<sup>29</sup> Wallace, M (2004), *Illegal DVDs funding global terror*, The Australian, 19 September.

<sup>30</sup> Wallace, M (2004), *Terrorism by DVD - Illegal discs in homes fund organised crime*, The Daily Telegraph, 16 September 16.

<sup>31</sup> Barker, G. (2002). *Melbourne illegal film capital, says industry*. The Age, May 25.

The two defendants were fined \$20,000 each. They also received suspended custodial sentences. Both defendants were deported, and left Australia without paying their fines.

*Evidence suggests their bosses in Malaysia have already replaced them with other distributors and the gang is still intent on dominating the trade.*

The gang had been set up by organised crime bosses, who had given them the following written instructions which were tendered into evidence. The instructions were as follows:

- *KEEP dealing in the family where possible, or at least within the close brotherhood of established international hierarchal allegiances and loyalties.*
- *BRING anonymous but steadfastly loyal collegiate followers from overseas to assist in the most risk-prone activities.*
- *LAUNDER money through the casino.*
- *AVOID the risk of betrayal or the potential for undercover infiltration by dealing and then redealing only with the most trusted of colleagues.*

The defendants used a “complicated system of mail box addresses” to the Clayton South house shared by the defendants.

*The AFP seized records of every illegal transaction ... including selling pirated DVDs to Melbourne motels, markets, video stores and other businesses ... The documents name those at weekend markets who were enlisted to sell pirated new-release Hollywood films and illegal porn too hardcore to be classified in Australia ... They intended using Melbourne as a base to establish a distribution network.*

100 titles were recovered in the raid, including 655 copies of Baz Luhrmann's Moulin Rouge. It was intended that the distribution network would be established in 6 Australian cities within 4 months of its commencement.<sup>32</sup>

In a more recent case, the police charged a Hui Ping MO with IP rights infringement offences. She was convicted of 5 Copyright and 5 Trade Marks offences and was fined \$8,000.00 in the Downing Centre on the 22 August 2006. According to a media report at the time,<sup>33</sup> MO had been convicted of importing more than 400 prohibited weapons including 60 Butterfly Knives, 12 Flick Knives, 10 Electric Shock Devices, 8 Air Pistols and 100 extendable Batons into Australia. MO has been given a gaol term for importing the prohibited weapons.

### ***(iii) Australian software industry and their representatives***

According to a 2003 report by Allen Consulting, which examined counterfeiting in the Australian toy, business software, and computer and video gaming industries:

*... to some degree, counterfeiting is likely to have links to organised crime attracted by the large profits in this illicit trade, exacerbating the scale and scope of*

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<sup>32</sup> Moor, K. (2002). *Film pirate gangs flourish*. News Interactive/The Australian, July 28.

<sup>33</sup> See page 7 of the Daily Telegraph dated 31 August 2006.

*the problem. This problem is acknowledged by Interpol ... Interpol has recognised the extensive involvement of organised crime and terrorist groups in IP crimes (page 8).*<sup>34</sup>

*... organised crime units are believed to be responsible for much counterfeit activity. Such goods are often sold on "grey markets" alongside genuine products, over-runs, recycled goods, copies and stolen products.*<sup>35</sup>

The report also said:

*Information from the computer and video games industry suggested that the organised production overseas of counterfeit games and their importation into Australia and subsequent sale via normal distribution channels — while significant — is generally not the main source of counterfeit products they face. Nor did the industry consider that large scale (national) organised domestic producers were the main source of counterfeit product.*<sup>36</sup>

#### **(iv) Australian gaming industry and their representatives**

The Interactive Entertainment Association of Australia (IEAA) is an organisation whose members are Australian computer and video game companies.

According to the IEAA website:

*All too frequently large scale piracy and organized crime go hand in hand. Piracy provides the cash flow for other crimes including pornography, vehicle rebirthing and identity theft.*<sup>37</sup>

In 2005, raids took place in 15 countries, including Australia in what was described as the "largest global sweep against organised crime online". The USDOJ alleged the defendants were involved in the "warez scene" – which allegedly involved the trade in illegal software, games, movies and music online. US Acting Assistant Attorney General Richter said:

*(the probes were the) two largest and most aggressive international enforcement actions against criminal organizations (involved in online piracy).*<sup>38</sup>

#### **(v) Australian pay television industry and their representatives**

On page 7 of their submission to the inquiry on the United States/Australia Free Trade Agreement, the Australian Subscription Television and Radio Association (ASTRA) wrote:

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<sup>34</sup> The Allen Consulting Group 2003, *Counterfeiting of Toys, Business Software, and Computer and Video Games*, Report to the Australian Toy Association, the Business Software Association of Australia and the Interactive Entertainment Association of Australia, Sydney, page 8, <http://www.bsaa.com.au/bsaaweb/main/downloads/CostofCounterfeit.pdf>. The report cites: <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>.

<sup>35</sup> Ibid, p. 14.

<sup>36</sup> Ibid, p. 30.

<sup>37</sup> IEAA website content, <http://www.ieaa.com.au/intellectualProperty/impactOfPiracy.do>. See also <http://www.ieaa.com.au/intellectualProperty/reportGamePiracy.do;jsessionid=FEE499340D130AD1C1A56D22E8D01CC6>.

<sup>38</sup> <http://www.theage.com.au/news/breaking/eight-charged-with-copyright-piracy/2005/07/29/1122143997932.html>.

*The deterrence of piracy of subscription television services ... also limits the financing of well developed organized criminals who are known to receive considerable funding through out the world via funds received through sales of equipment to pirate subscription television. Pirate activities globally are proved to be linked to groups involved in the smuggling of illegal immigrants, terrorism, extortion, money laundering, drug sales and extreme violence.*<sup>39</sup>

**(vi) Other Australian industries**

According to Stephen Stern, a partner from law firm Corrs Chambers Westgarth and lawyer representing a large number of trade mark owners:

... the level of counterfeits increased from 2002 to 2003 ... the problem, as I see it, is that so many consumers ... aren't aware that their funds are quite often going to organised crime or - if you accept the accounts that have come out of the US - often go to terrorism.<sup>40</sup>

The Anti Counterfeiting Action Group (ACAG) describes themselves as "an association of manufacturers and wholesalers of clothing and other goods who are concerned with the sale of counterfeit products throughout Australia".<sup>41</sup>

In their Enforcement Inquiry submission, ACAG wrote:

*Politicians and Police talk about organised crime in the context of drugs, extortion and money laundering. In NSW a syndicate operates in which counterfeit clothing is sold as authentic product to lower socio-economic folk in Sydney's Western suburbs, South West and South Coast around Wollongong – Warilla. The organisers use counterfeit embroidered labels, iron on transfers and screen printing techniques to make the clothing. The brands most frequently abused are those popular with children (surf and street wear labels) who put pressure on parents to buy them. The inferior quality goods are sold at parties in private homes. The customers, many single parents, are shown samples by a host/hostess belonging to the syndicate. The attendees place orders and the householder receives a commission. 7-14 days after the party the goods are delivered by another person and the householder hands over the money. When the goods are unwrapped they are inferior quality. The whole network operates via pagers and cellular telephones.*<sup>42</sup>

**(7) Assertions by Australian Government and enforcement authorities**

Attorney-General Philip Ruddock announced significant copyright reforms in 2006. In the press release announcing these reforms, there was a reference to fears of organised crime links in IP crime:

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<sup>39</sup> [http://www.aph.gov.au/senate/Committee/fretrade\\_ctte/submissions/sub543.pdf](http://www.aph.gov.au/senate/Committee/fretrade_ctte/submissions/sub543.pdf).

<sup>40</sup> ABC News On Line, 2 November, 2004, <http://www.abc.net.au/business/mnb/content/s1233043.htm>.

<sup>41</sup> ACAG submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright in Australia, 30 June 1999, page 1,

<http://www.aph.gov.au/house/committee/LACA/copyrightenforcement/sub36acag.pdf>.

<sup>42</sup> Ibid, page 6.

*The Government is also concerned about reports of organised crime involvement in piracy and counterfeiting. It has taken steps to refer this issue to the board of the Australian Crime Commission (ACC) for its consideration.*<sup>43</sup>

However, there was no positive statement by the AG that he believed that such links currently existed in Australia.

In their submission to the Enforcement Inquiry, the NSW Police seemed to concede that there are links in Australia between organised and/or serious crime and IP rights infringement:

*The Commercial Crime Agency believes there is evidence of organised crime group involvement in copyright infringement in NSW, however, it is not aware of the level of such involvement and further investigation would be necessary to establish the extent. The Commercial Crime Agency considers copyright infringement to be an area of crime that is emerging and expanding with advances in technology and is being facilitated by a lack of resources (finance, training, intelligence) provided to law enforcement.*

*The Commercial Crime Agency believes there are opportunities for organised crime groups to expand their criminal enterprises from the importation of narcotics to copyright infringement. There is considerable difference in penalties between the two, profits can be similar and there is far less associated risk. There is also the opportunity for laundering money.*

*Overseas experience (eg., Hong Kong) indicates that organised crime groups (eg., Triads) are involved in copyright infringement. Crime Agencies notes UK intelligence is that there is Russian Mafia involvement in copyright infringement, however, there is no information that it has spread to Australia. Crime Agencies believes that the potential threat is from South East Asia, however, at present it is difficult to substantiate the extent of the threat.*

*The Commercial Crime Agency advises there are examples of lower level criminal involvement in NSW in commercial based copyright infringement. These can be identified on the Computerised Operational Policing System (COPS) (page 1).*

*... in December 1998, Greater Hume North Anti Theft Unit police met with an investigator of the Music Industry Piracy Investigations (MIPI) concerning CD, digital CD and video piracy. The information report on the matter notes that it is estimated by MIPI that copyright offences alone add up to millions of dollars illegally obtained. A number of businesses in the Cabramatta CBD were identified and investigated under Operation Cedar which has been recognised by ARIA as being Australia's largest cd piracy seizure to date. The Operation was successful due to the coordinated efforts of the external agencies and police.*

*The Industry Committee needs to establish clear and definable guidelines as to what matters are to be civil or criminal prosecutions ie. what matters will exclusively be investigated by the police with criminal penalties and those that are the responsibility of the copyright owner to prosecute civilly. It is envisaged that police involvement would be focused upon:*

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\* *organised criminal group involvement;*  
\* *offences that have a relationship with other serious crime;*  
\* *activities that a likely to have a significant impact on Commonwealth and State interests (trade, revenue, etc);*  
\* *activities that have the potential to impact upon Commonwealth and State international relationships (page 4).* <sup>44</sup>

Graham Ashton of the AFP reportedly said Asian organised crime syndicates targeted Australia with respect to IP infringing activity. He said:

*We have found the level of sophistication is such where they operate almost in a franchise structure. Operators in this country are given fairly strong written instructions on how to conduct their business in Australia. They are required to keep very detailed records to report back to their syndicate bosses overseas as to how they are travelling in terms of sales and marketing.* <sup>45</sup>

Peter Drennan, AFP national manager for economic operations reportedly said:

*Piracy of intellectual property has links into organised crime. We're interested in the higher echelons of organised crime. At any particular time, they [criminals] could be involved in any particular kind of offence ... It's a matter of what's generating a return.*

According to a media article at the time Crime Stoppers and the AFP had commenced a campaign to fight video-game piracy. The article reported that the AFP had said:

*The major contributors to Australia's piracy problem are more likely to be crime gangs, located here and overseas.* <sup>46</sup>

These views seem to conflict with some other AFP statements. For example, according to the AFP in the copyright cases they had investigated they had:

*... not established any significant evidence to substantiate the involvement of organised criminal groups within Australia in copyright infringement.* <sup>47</sup>

In Australia, the enforcement enquiry seemed to accept, perhaps implicitly, the existence of a link between infringement and organized crime. <sup>48</sup>

Submissions by industry associations suggested copyright infringement is part of “a sophisticated illegal business driven by economic objectives”. Counterfeiting proceeds were claimed to have been used to fund other illicit activity. NSW Police

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<sup>44</sup> NSW Police submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright in Australia, <http://www.aph.gov.au/house/committee/LACA/copyrightenforcement/sub44nswpolice.pdf>.

<sup>45</sup> Mr Graham Ashton, Australian Federal Police General Manager (Southern Region), 2002. AVSDA Submission to TPM Review. This quote is also cited by the Interactive Entertainment Association of Australia in their analysis of Video & Computer Game Piracy, known as *The Facts*. See: [http://www.ieaa.com.au/doc/PiracyInfo\\_0.pdf](http://www.ieaa.com.au/doc/PiracyInfo_0.pdf).

<sup>46</sup> <http://www.theage.com.au/news/icon/sink-the-pirates/2005/04/21/1114028479184.html>.

<sup>47</sup> AFP submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the Enforcement of Copyright in Australia, at p.4.

<sup>48</sup> Barker, G. (2002). *Melbourne illegal film capital, says industry*. The Age, May 25.

suggested that with easy distribution and minimal penalties/risk, criminals may expand their businesses from drug importing to copyright crime.<sup>49</sup>

In one example of organised crime involvement, on 22 December 1999, NSW Police executed a search warrant on premises in Cabramatta. An unemployed Vietnamese immigrant operated the premises. A sophisticated counterfeiting operation was discovered which included 16 CD burners, a large quantity of video cassette recorders, 2 photocopiers, and a commercial cassette replicator. Also seized was unclassified pornographic material, infringing material manufactured on site, and imported infringing sound recordings. The total value of the seizure was \$250,000. The defendant was alleged to be a receiver of stolen property, a conduit for an illicit home shopping operation, and an associate of a people who are members of the 5T heroin gang operating from Cabramatta.

### **(8) Findings based on Australian cases**

The Australian cases discussed have been put forward as examples purporting to demonstrate links between IP rights infringement and organised crime. However, it is uncertain whether or not these cases do more than demonstrate the existence of links between IP rights infringement and other forms of professional criminal conduct.

This behaviour appears to fall below the threshold definition of organised crime, based on the definition of "organized criminal group" from Article 2 of the *UN Convention on Transnational Organized Crime*, provided above.

Certainly, unsupported assertions by particular groups do not stand as evidence of a certain type of behaviour.

From the perspective of Australian activity there appears to be no empirical evidence of any links between IP rights infringement and serious and/or organised crime, although there appears to be some anecdotal evidence in support of these links.

**Fortunately, there is no need to make a determination on whether or not in Australia there are any *proven* links between IP rights infringement and serious and/or organised crime.**

This is because based on the international experience of IP rights holders it is **inevitable** that even if links between IP rights infringement and serious and/or organised crime do not currently exist in Australia, **they will develop in the future**, and probably in the near future.

As a result, there is no need to further labour over the definitions of organised crime, and whether or not there are *currently* strong and provable links between organised crime and IP rights infringements in Australia.

### **(9) International trends and responses**

Interpol and others have observed the increasing use of digital technology and the incorporation of this technology in illicit business models – especially internationally. This trend is likely to continue, and probably worsen, as unscrupulous individuals continue to see increasing opportunities to profit from the use of technology in the context of IP rights infringement.

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<sup>49</sup> House of Representatives Standing Committee on Legal and Constitutional Affairs (2000). *Cracking down on copycats: Enforcement of copyright in Australia*. Canberra: Commonwealth of Australia.

The existence and use of digital technology makes it easier for IP crime to be adopted in portfolio of crime of criminal enterprises. This is the case, given that it is low risk/high return endeavour, with low and rarely enforced penalties. As a result, it is inevitable that we will see increased links between organised crime and IP rights infringements in Australia in the future.

#### **(10) International responses**

How have international agencies responded to this trend of increased links between organised and/or serious crime and IP rights infringements?

There is some similarity in the manner in which the USDOJ, Interpol, the Metropolitan Police Film Piracy Unit and other agencies have responded to IP crime. These agencies have typically set up specialists units to deal with IP crime.

For example, in 2006:

*A new police unit dedicated to combating film piracy and the organised criminal networks sustaining the manufacture and distribution of counterfeit film product (was) launched ... by the Met's Economic and Specialist Crime Command, in partnership with the Federation Against Copyright Theft [FACT].*

*The Unit will investigate those individuals and organisations accruing sizeable criminal profits and leading affluent lifestyles from illegal activity in the area of film piracy. The Proceeds Of Crime Act 2002 will act as a powerful tool in this respect, providing officers with the necessary powers to take the cash out of this type of crime, and in turn preventing both the funding of further criminal activity and reducing the presence of criminal role models in local communities.*<sup>50</sup>

Interpol set up the Interpol Intellectual Property Crime Action Group (IIPCAG), whose mission is:

*... to assist the General Secretariat and provide a collective response to the threat posed by organized criminal involvement in IP crime. It does this by carrying out an advisory group function and actively supporting the Interpol IP Crime Programme.*<sup>51</sup>

The Federal Bureau of Investigations (FBI) developed Cyber Action teams, Computer Crimes Task Forces and the Internet Crime Complaint Center<sup>52</sup> as part of its fight against piracy. The FBI also developed the FBI's Anti-Piracy Warning Seal "to deter illegal practice and to increase public awareness of the penalties associated with piracy".<sup>53</sup>

#### **(11) Australian lessons from the international experience**

The international experience in relation to IP crime should be very useful in developing Australian responses to the potential for the involvement of organised and/or serious crime in IP crimes.

For example, possible actions available to Australian authorities include the following:

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<sup>50</sup> <http://www.fact-uk.org.uk/site/about/metpolice.htm>.

<sup>51</sup> <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Default.asp>.

<sup>52</sup> <http://www.fbi.gov/cyberinvest/cyberhome.htm>.

<sup>53</sup> <http://www.fbi.gov/ipr/>.

(1) The training or further training of specialist IP investigators to work for IP rights holders.

(2) The development or further development of relationships between IP rights holders and Government authorities such as the AFP, ACS and State Police so as to create an environment of collaborative enforcement.

(3) The secondment of AFP and State Police to enforcement units representing IP rights holders so as to enhance communication and skills development by the Police and IP rights holders and increase field experience for police.

(4) The training or further law enforcement training of members of the AFP and State Police in the understanding of and protection of IP rights.

(5) The delegation of responsibility for anticipating and/or identifying actual and/or prospective IP crimes to a specialist unit. Such a specialist unit may be developed as an entirely unit. However, it may be preferable to extend the functions and operations of an existing unit to deal with these issues.

For example, the Australian High Tech Crime Centre (AHTCC) is hosted in Canberra by the AFP. The role of the AHTCC is to:

1. *Provide a national coordinated approach to combating serious, complex and multi-jurisdictional technology enabled crimes, especially those beyond the capability of single jurisdictions.*
2. *Assist in improving the capacity of all jurisdictions to deal with technology enabled crime.*
3. *Support efforts to protect the National Information Infrastructure (NII).*<sup>54</sup>

The AHTCC, with its considerable focus on technology related crimes, and its high level of in-house expertise may be a suitable agency to deal with IP crime from an operational viewpoint.

(6) The development of additional or an extension of existing fora allowing key stakeholders including the IP rights holders, and key Government organisations to consider how to best respond to increased links between organised and/or serious crime, and IP crime. Membership of this fora should be open to key IP rights holders, the AFP, the State Police, the ACS, the CDPP and various state offices of the Department of Public Prosecutions.

(7) Consideration should be given to the extent to which any Australian response to organised crime in the IP area should take place under existing criminal law statutes. This response should be compared to the extent to which IP rights holders should launch civil proceedings in response to organised crime in the IP area. Consideration should also be given to the extent to which these different types of responses should be mutually exclusive.

Some individuals have expressed the view that where serious and/or organised crime is involved in IP rights infringements copyright owners should have a choice whether or not to undertake civil proceedings, or press for the commencement of criminal proceedings. In this regard, there would be no difference in the range of

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<sup>54</sup> [http://www.ahtcc.gov.au/about\\_us](http://www.ahtcc.gov.au/about_us).

responses available to copyright owners in response to IP rights infringement – whether or not organised crime is involved.

While the autonomy of IP rights holders should at no time be threatened, it is important that the Federal Government not abrogate its responsibility to act in response to serious criminal acts. Indeed, when IP crime is linked to organised crime and/or other serious crime such as threats to national security or terrorism, the Federal Government should as a matter of course commence criminal proceedings against the individuals involved in these activities.

Further, when IP crime is linked to organised crime and/or other serious crime copyright owners and/or their agents should *not* have the right to commence civil proceedings against the individuals involved in these activities. In these situations copyright owners and/or their agents should be obligated to support the AFP, State Police, ACS, CDPP and any other groups involved in the investigation and commencement of criminal proceedings against the alleged IP rights infringers.

If you have any questions regarding the above, please do not hesitate to contact me. I also look forward to the opportunity of possibly speaking to the committee regarding this issue.

Regards,

Alex Malik