

CANADA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2015 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Canada remain on the Special 301 Watch List in 2015.¹

Executive Summary: Despite some advances, Canada's strong potential to be a robust market for copyright materials is compromised by some problems that recent legislative advances have not adequately addressed, and others that this legislation (notably the Copyright Modernization Act) and its implementation have exacerbated. Canada's intent to change the country's reputation as a haven for technologically sophisticated international piracy operations has not been fully realized; notorious pirate websites hosted in Canada remain in full operation, undermining the growth of legitimate digital services around the world. Legal incentives for cooperation against piracy remain too weak; and the implementation of a "notice and notice" statutory system, while welcome, needs to be supplemented by notice and takedown, as well as by other measures to encourage all players to address online infringement in a timely and effective way. Enactment of Bill C-8 has modernized many aspects of Canada's deficient copyright enforcement regime; but until the non-legislative hurdles of insufficient resourcing and low prioritization of copyright by law enforcement, prosecutors and courts are surmounted, the legislation's promise is unlikely to be realized. Expanded copyright fair dealing exceptions in the new law, combined with problematic legal interpretations of the previous law, have left in shambles well-established markets for licensing educational uses of copyright materials; the damage to the publishing sector extends beyond collective licensing. In addition to doing more to prevail on Canada to address the situation as soon as possible, the U.S. Government should monitor other new and expanded Canadian copyright exceptions for market impact and compliance with international standards. Finally, Canada's long-delayed accession to the WIPO Internet Treaties has been tarnished by its decision to discriminate against U.S. performers and sound recording producers. IIPA urges that the U.S. Government remain extensively engaged with Canada on these and other issues in 2015, with the aim of making additional progress toward the goal of achieving a healthy marketplace for copyright works in our neighbor and largest trading partner.

PRIORITY ACTIONS REQUESTED IN 2015

- Strengthen legal incentives for Internet Service Providers (ISPs), hosting providers, and other intermediaries to cooperate with copyright owners in combating online piracy, in accordance with international best practices.
- Take steps to repair the decimation of the educational collective licensing market arising from legislative changes and judicial precedents on fair dealing.
- Closely monitor the implementation of new or expanded copyright exceptions with regard to market impact and conformity with Canada's international obligations.
- Direct the Royal Canadian Mounted Police (RCMP), Canadian Border Services Agency (CBSA), and Crown prosecutors to give high priority to intellectual property rights enforcement, including against retail piracy and imports of pirated products, and to seek deterrent penalties against those convicted of these crimes.
- Increase resources devoted to anti-piracy training and enforcement both at the border and within Canada, including retail and online.

¹For more details on Canada's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Canada's Special 301 placement, see <http://www.iipa.com/pdf/2015SPEC301HISTORICALCHART.pdf>.



INTRODUCTION

In many ways, Canada is a good export market for U.S. creative works. Canadians have a strong appetite for U.S. movies, music, video games and books, and high levels of disposable income to acquire them. For example, Canada represented the seventh largest national market worldwide for recorded music in 2013.² There are also good reasons to consider Canada as an attractive potential market for online commerce in copyright works. As reported by the Canadian Internet Registration Authority, “Canadians have long led the world in Internet usage.” CIRA points to the fact that in 2013, Canadians visited more web pages per month (3,731) than any other country’s Internet users. “They also ranked a close second behind the United States for the average number of hours spent online per user (41.3 hours per month).” Furthermore, CIRA notes that “Canadians also continued to be heavy consumers of online video, ranking second behind the United Kingdom for average hours per month (24.8 hours) and average number of videos watched per month (291).”³ These trends help explain the growth of legitimate digital distribution of music in Canada, with more than thirty services now offering licensed downloads, streaming, or both.⁴ Similarly, as studios and producers continue to work with a multitude of partners and platforms, some four dozen licensed services now offer Canadians movies, TV programming, or both, online.⁵

However, numerous countervailing factors prevent the Canadian market (online and offline) from realizing its full potential, and thus leave the market less than fully open to U.S. copyright owners. These include:

- (1) A defective legal framework for enforcing against online infringement, and insufficient incentives for inter-industry cooperation against this pervasive problem
- (2) Insufficient resources and political commitment for law enforcement efforts against piracy, along with some remaining legal shortfalls
- (3) Excessive and ill-defined new legal exceptions to copyright protection, which have already decimated some licensing markets and threaten to inflict broader damage
- (4) Unjustified discrimination that deprives U.S. performers and sound recording producers of revenue streams from public performance

We discuss each of these issues in turn below, and urge the U.S. Government to focus its continued high level of bilateral engagement with Canada on these topics.

1. Online Infringement

Although there has been some improvement in recent years, Canada still has far to go to rectify its reputation as a safe haven for Internet pirates. Indeed, a number of the world’s most popular Internet sources dedicated to online theft of copyright material retain connections to Canada. These include at least three sites that appear on the most recent USTR list of online “notorious markets,” released in February 2014.⁶ *Torrentz.eu*, one of the most popular and long-standing aggregators of third party BitTorrent sites, visited by over 7.6 million unique users per day, remains hosted in Canada. So is *kickass.to*, the 73rd most visited site on the entire Internet, visited by 16 million unique users per day to gain access to tens of thousands of torrents of infringing movies, TV shows, music, video games, books and apps. *Free-tv-video-online.me*, formerly known as *projectfree.tv*, specializing in links to illicit copies of first run motion pictures and TV content, has also been hosted in Canada.

²IFPI, *Recording Industry in Numbers: 2014 Edition*, at page 9, available at <http://ifpi.org/recording-industry-in-numbers.php>.

³<http://cira.ca/factbook/2014/the-canadian-internet.html>

⁴<http://www.pro-music.org/legal-music-services-north-america.php>

⁵www.wheretowatchincanada.com. Online video services that debuted in 2014 included Shomi (a Rogers/Shaw offering), Hollywood Suite, and Crave TV (from Bell).

⁶ [http://www.ustr.gov/sites/default/files/FINAL-PUBLISHED%202013 Notorious Markets List-02122014.pdf](http://www.ustr.gov/sites/default/files/FINAL-PUBLISHED%202013%20Notorious%20Markets%20List-02122014.pdf).

Because Canada's legal environment provides inadequate tools to deal with the problem at its source, courts in many other countries, including Belgium, UK and Malaysia for torrentz.eu; Italy, Ireland and the UK for kickass.to; and UK for projectfree.tv, have had to order major ISPs to block access to these sites. In effect, Canada continues to outsource to other jurisdictions the burden of combating these online theft operations. As long as these sites continue to use Canada as a base, efforts to provide a space within which legitimate, licensed services can take root and grow are undermined, not only in Canada, but around the world. Other Canadian-connected sites nominated by IIPA members for inclusion on USTR's next notorious markets list include *solarmovie.is*, *sumotorrent.sx*, and *seedpeer.me*.

The same is true of sites dedicated to technologies to circumvent tools used by copyright owners to control access to or copying of their works. Despite the enactment of anti-circumvention prohibitions as part of the 2012 copyright reform, many Canadian sites (such as *R4cardmontreal.com*, *gamersection.ca*, *ncardcanada.com*, and *r4itoronto.com*) continue to offer circumvention devices. Computer software that effects a "soft modification" of the security technology of game consoles, and thereby facilitates the play of pirated video games, remains available on sites hosted in Canada. Some sites, such as *r4isdhc.ca*, offer counterfeit video games as well. Additionally, direct download (ROM) sites offering hundreds of infringing video game titles for classic and new video game platforms are operated and/or hosted in Canada. Even those sites that have been terminated from payment processing services can generate significant revenue, including from advertisements on the websites, while offering global users unauthorized free content.

The 2012 enactment of the Copyright Modernization Act, with its new prohibition of online services "designed primarily to enable copyright infringement," was heralded by the Canadian Government as a critical step toward purging the Canadian online environment of these outlaw services that undermine legitimate digital markets for copyright materials worldwide. Thus far, at least, that potential has not been fully realized. Clearly the legal incentives remain insufficient for Canadian providers of hosting services to cooperate with right holders to deal with massive and flagrant infringements carried out using their services.

Previous IIPA submissions in the Special 301 process have provided detailed critiques of the overbroad safe harbors accorded to hosting services under the Copyright Modernization Act, as well as other shortcomings of the online liability regime established by that legislation.⁷ The bringing into force, in January 2015, of the last element of that regime — Canada's much-touted "notice and notice" system — is unlikely to change the overall picture. As implemented, while the Canadian "notice and notice" system requires service providers to retain records on the identity of subscribers whose accounts have been used for unauthorized file sharing or other infringing behaviors, multiple repeat infringers will be delivered the same notice. Moreover, the system makes it impossible to identify serial infringers for whom some response other than receiving a letter might be appropriate.

The propensity of many Canadian consumers to patronize illegal online sources of copyright material has been well documented. A report released in September 2012 found that, on a per-capita basis, Canadians download more unauthorized music than residents of any other country, and two-and-one-half times as much as Americans.⁸ As noted above, recent growth in the Canadian market for licensed online music and audio-visual services gives hope that this propensity may be declining. Nevertheless, the digital music space continues to underperform in Canada: the uptake on legitimate subscription music services lags well behind the levels in comparable countries. While the gap is narrowing, deficiencies in Canada's online liability legal regime still tilt the field of competition against licensed services, and also continue to send the wrong signals to consumers about whether infringing activities are tolerated.

⁷For IIPA's more detailed analysis of the Copyright Modernization Act, see our 2013 Special 301 submission on Canada at <http://www.iipa.com/rbc/2013/2013SPEC301CANADA.PDF>, at pp. 127-131, and other sources referenced therein.

⁸http://www.huffingtonpost.ca/2012/09/20/music-piracy-canada-top-countries_n_1899752.html.

IIPA urges USTR to continue to press Canada to address these deficiencies in order to fully open its digital marketplace in copyright works. USG should encourage Canadian authorities to do what they can to give service providers greater incentives to come together with right holders to make meaningful progress against online copyright infringement; but further legislative change is likely to be needed.

2. Enforcement

In 2014, Canada's parliament finally took steps to address long-acknowledged gaps and shortfalls in its legal regime for copyright and trademark enforcement. Bill C-8, which received the Royal Assent on December 8, 2014, gives *ex officio* authority to Canadian Border Services Agency (CBSA) officers to seize suspected pirate or counterfeit imports or exports at the border, as well as to share information about suspect shipments with right holders upon request. The legislation also contains other important copyright enforcement improvements, including creating new offenses for export of infringing copies, and for possession of such copies for sale, rental, or distribution of public exhibition "by way of trade." However, Bill C-8 falls well short of providing a comprehensive upgrade to Canada's legal regime to enforce copyright. Notably, it denies CBSA agents *ex officio* authority with regard to in-transit goods; imposes on right holders the full costs of border enforcement enhancements; and fails to increase the maximum penalties for piracy. Overall though, enactment of C-8 is a significant and long-awaited step forward, and IIPA urges the Government of Canada to bring it into force as promptly as possible.

As IIPA has consistently pointed out in its annual Special 301 reports over the past decade, copyright enforcement problems in Canada are attributable only in part to the fact that enforcement agencies lack adequate legal tools. Now that enactment of Bill C-8 has addressed many (though not all) of these legal insufficiencies, it is critical that Canada turn its attention to the other half of the equation – the lack of resources devoted to copyright enforcement, and the accompanying shortfall in political will to address the problem as a priority. Nothing in Bill C-8 directly addresses this problem, and the new legislation will be unlikely to realize its potential without a clear change in direction on the importance of enforcing against copyright infringement.

For Canada's main federal law enforcement agency, the Royal Canadian Mounted Police (RCMP), intellectual property crimes in general and copyright crimes in particular are neither a strategic nor an operational priority. Only a handful of copyright criminal investigations were conducted by the RCMP in 2014. On the local level, while police agencies have generally responded well to anti-piracy training programs offered by industry, they too often lack the human and financial resources, and the strategic mandate, to properly investigate IP crimes or to prepare the cases for prosecution. For instance, Toronto police conducted only a few criminal investigations of audio-visual piracy in the Greater Toronto Area (GTA) in 2014, even though the illegal sale of counterfeit DVDs continues in a number of GTA flea markets. Criminal investigations of Internet piracy are even more rare in Canada than actions against sellers of counterfeit DVDs and similar hard goods. On the whole, the Canadian law enforcement commitment to act against copyright piracy remains under-resourced, and too few agencies consider it a priority. In other words, while some of the statutory gaps identified in parliamentary reports going back almost a decade have been addressed, the non-statutory barriers to effective enforcement remain basically unchanged.⁹

Similar problems extend to prosecutors and courts in Canada. Few resources are dedicated to prosecutions of piracy cases; prosecutors generally lack specialized training in prosecuting such offenses, and too often dismiss the file or plead the cases out, resulting in weak penalties. The result is that those few pirates who are criminally prosecuted generally escape any meaningful punishment.¹⁰ The weak penalties further discourage prosecutors from

⁹For instance, a report from the Industry, Science and Technology Committee in 2007 called for a higher priority for enforcement at the retail level, see <http://cmte.parl.gc.ca/cmte/CommitteePublication.aspx?COM=10476&Lang=1&SourceId=213200>. A report the same year from the Public Safety and National Security Committee raised similar concerns about law enforcement priorities and funding. See <http://cmte.parl.gc.ca/Content/HOC/committee/391/secu/reports/rp298508f1/secure10/secure10-e.pdf>.

¹⁰While calling for increased statutory penalties for piracy, and for new remedies such as forfeiture of the proceeds of piracy, the Industry, Science and Technology Committee of the House of Commons also opined that "the justice system should be imposing stiffer penalties for such offences within the limits of current legislation," and recommended that the government "immediately encourage prosecutors" to do so.

bringing cases, creating a vicious cycle that encourages recidivism. There have been exceptions to this trend, including the Audiomaxx case cited in IIPA's 2014 Special 301 report, and an Ontario case in which three men recently pled guilty to copyright and other offenses in connection with a large-scale online DVD burning and manufacturing operation targeting consumers in Canada, New Zealand, Australia and the United Kingdom.¹¹ They were sentenced to lengthy house arrest and probation along with fines and forfeitures of approximately \$500,000. IIPA hopes that these cases will be harbingers of similar results in the future, and that Canadian law enforcement, prosecutors and courts will extend their reach beyond retail hard goods onto the Internet, including sites on third party marketplaces such as kijiji.ca and ebay.ca. On such sites, devices intended to circumvent access controls on video game consoles, as well as counterfeit video game copies whose use is enabled by such circumvention, remain readily available.

Bringing the legal reforms contained in Bill C-8 into force is necessary, especially at the border; but it will not be sufficient. We continue to urge the U.S. Government to press the Canadian Government to initiate and adequately fund a coordinated federal law enforcement effort against copyright piracy. This should include specialized training on the new prohibitions on circumvention of technological protection measures and its relationship to piracy. Since the availability of pirated products will not be reduced without criminal prosecutions against infringers and the imposition of deterrent sentences, particularly jail time, Crown counsel should be encouraged to take on more copyright infringement cases, and should be provided with the training and other support needed to fully prosecute them. Canadian courts should be looked to for more consistent deterrent sentences, including jail time for piracy cases.

3. Excessive exceptions

During the years-long debate that culminated in enactment of the Copyright Modernization Act, most of the attention focused on provisions dealing with online liability and other topics closely linked to Canada's ability to accede to the WIPO Internet treaties.¹² But in fact, much of the legislation consisted of nearly a score of new or expanded exceptions to copyright protection. IIPA flagged several of these broad new exceptions in a succession of special 301 reports on Canada, and after enactment we urged USG to monitor their implementation closely, with an eye both toward their market impact and toward their compliance with Canada's international obligations. This year we can report that the damage inflicted by overly broad exceptions in Canadian law is current, concrete, and unremediated.

Prior to 2012, a well-established collective licensing regime was in place to license and administer permissions to copy books and other textual works for educational uses, both at the K-12 and post-secondary levels across Canada, generating millions of dollars in licensing revenues for authors and publishers on both sides of the U.S.-Canadian border. Today, that regime is on the brink of collapse, undermined by the combined impact of adverse judicial decisions and drastic legislative changes; and the revenue stream it long produced has slowed to a trickle.

The Copyright Modernization Act added "education" to the list of purposes (such as research and private study) that qualify for the fair dealing exception. Because "education" is not defined, the amendment creates an obvious risk of unpredictable impacts extending far beyond teaching in bona fide educational institutions (and far beyond materials created specifically for use by such institutions). Even before the fair dealing amendment came into force, some of the decisions in the "pentology" of copyright decisions issued by Canada's Supreme Court in July 2012 posed a direct threat to the educational licensing market.¹³ These decisions underscored, among other things, that Canadian courts are to treat fair dealing, not as an exception, but as a "user's right," subject to a "large and

¹¹See <http://www.theglobeandmail.com/news/national/ontario-police-bust-operation-selling-counterfeit-dvd-box-sets-worldwide/article11640091/>.

¹²Of course, some important copyright law issues were not even considered in the context of copyright modernization, notably the disparity of term of protection of copyright between the U.S. and its largest trading partner. Canada should join the growing international consensus in support of term extension.

¹³Of the five copyright decisions announced on July 12, 2012, the main rulings addressing the issues discussed in this submission were *Alberta (Education) v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 SCC 37, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/9997/index.do?r=AAAAAQALQmVsbCBDYW5hZGEAAAAAAB>, and *Society of Composers, Authors and Music Publishers of Canada v. Bell Canada*, 2012 SCC 36, available at <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/9996/index.do?r=AAAAAQALQmVsbCBDYW5hZGEAAAAAAB>.

liberal interpretation;¹⁴ that the purposes of the putative user, not those of a commercial or non-commercial intermediary that actually makes the copy and supplies it to the user, are of primary relevance in determining whether a dealing is fair; and that factors such as the availability of a license to make the use, and even the overall impact of widespread unlicensed use on the actual or potential markets for the work, carry much less weight in Canadian law than they do in U.S. fair use jurisprudence.

Although the *Alberta Education v. Access Copyright* case in the Supreme Court's pentalogy directly affected only a marginal aspect of the educational copying collective licenses — reprographic copying of a few pages per student per year of short excerpts of already purchased supplemental texts by K-12 teachers for use in class instruction — its ultimate impact, combined with the recent statutory amendment, has been much more broadly destructive. Lawyers for primary and secondary school systems across Canada, giving both the precedents and the new fair dealing amendment the “large and liberal” reading that the pentalogy decisions encouraged, concluded that fair dealing now eliminates the need for them to obtain any license from a collecting society such as Access Copyright, including for uses such as copying of primary textbooks or of newspaper articles, course packs, digital copying (including digital storage and distribution through learning management systems), and copying for uses outside the classroom. Consequently, as soon as the new Act came into force, virtually all K-12 school boards across Canada cancelled their licenses with Access Copyright. Anticipated 2013 annual licensing revenue of at least C\$12 million to right holders and authors — much of it destined for U.S. publishers, which enjoy a large market share in the educational sector — evaporated. Similar legal advice was provided to post-secondary institutions, and many of them have declined to renew their Access Copyright licenses as they expire. Universities that for years paid C\$26 per student for reproducing copyright material are now paying nothing. Once the withdrawal of the Canadian educational enterprise from collective licensing for copying is complete next year, the annual losses are projected to total C\$30.8 million (US\$24.7 million).

Nor is the damage confined to licensing revenue. As part of an overall attrition of revenues from the sale of educational works in Canada, textbook publishers report significant drop-offs in book orders from university bookstores, presumably because more of the demand is being met by uncompensated copying under the current fair dealing interpretation. Not surprisingly, some publishers that focus on the educational sector have begun to shutter their Canadian operations, specifically citing revenue losses flowing from copyright law changes as a reason for closure.¹⁵

The impact is even greater when foregone revenue is factored in. Access Copyright was just beginning the process of implementing new licenses for digital copying in Canadian schools when the “double whammy” of the 2012 Supreme Court decisions and the copyright modernization legislation hit them. The prospects for achieving any licensing revenue for digital copying, which is already becoming more pervasive than photocopying throughout Canadian educational institutions, now appear extremely bleak, because of the widespread belief in the education community that Canada's copyright law gives educators *carte blanche* for all uses of copyright works¹⁶.

Publishers received repeated assurances during the copyright revision process that the expansion of fair dealing would not cause a diminution in publishers' business. These assurances have proven false. We urge the U.S.

¹⁴For instance, the Supreme Court ruled that that listening to a sample of a popular recording to decide whether or not to buy it qualifies as “research,” and that classroom discussion of a work qualifies as “private study.” This helps explain the trepidation about how broadly Canadian courts will define “education.”

¹⁵See L. Williams, “Copyright Changes Hit Canadian Publishers Hard,” *Publishers Weekly*, Aug. 8, 2014, available at <http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/63630-copyright-changes-hit-canadian-publishers-hard.html>.

¹⁶The fair dealing amendment of the Copyright Modernization Act is not the only provision of the legislation that may be contributing to this belief. For instance, the broad new exception in section 30.04 would immunize nearly anything done “for educational or training purposes” by an educational institution or its agent with respect to “a work or other subject matter that is available through the Internet,” so long as the Internet site or the work is not protected by a technological protection measure. The Act's extremely low C\$5000 cap on statutory damages for all infringements carried out by any defendant for “non-commercial purposes” — an undefined phrase sure to be interpreted expansively by advocates for educational institutions — renders that remedy virtually insignificant in any copyright dispute with a school, further discouraging enforcement of rights. Indeed, there is a pressing need to clarify the overall scope of the new statutory damage limitation, lest it act as a de facto compulsory license in which only the first copyright owner to sue can enjoy any meaningful monetary relief no matter how widespread the defendant's “non-commercial” infringements may be.

Government to engage with Canadian authorities to ameliorate this threat to the entire educational publishing market in Canada, which is already having deleterious impacts on publishing revenue, royalty payments to authors, investments and jobs on both sides of the border. Nearly 41% of all revenue distributed by Access Copyright in 2013 went to authors.¹⁷ Canadian authorities should be encouraged to communicate directly to the educational institutions and their representatives to reinforce the government's stated objectives for the fair dealing exception. Even if some expanded uses are permitted, the appropriate balance must still be struck so that educational publishers and authors are duly compensated for their works, thus ensuring a viable domestic marketplace for commercially-published educational materials. While the parliamentary review of copyright law mandated by Section 92 as amended by the Copyright Modernization Act is not scheduled to begin until late 2017, nothing prevents the government from accelerating its own review in order to ensure that the serious consequences for the publishing sector are addressed.

IIPA's frequently-stated concerns about the breadth of the new exceptions in Canadian law are by no means limited to the educational fair dealing context. In particular, new section 29.21, entitled "Non-commercial User-generated Content," allows any published work to be used to create a new work, and the new work to be freely used or disseminated, including through an intermediary (including a commercial intermediary), so long as the use or authorization for dissemination (though not necessarily the dissemination itself) is "solely for non-commercial purposes" and does not have a "substantial adverse effect" on the market for the underlying work. The provision could substantially undermine the exclusive adaptation right that Canada is obligated under the WTO TRIPS Agreement (TRIPS) and the Berne Convention to provide, and its breadth raises serious questions of compliance with the 3-step test for permissible limitations and exceptions.¹⁸ Although this exception may have been globally unprecedented at the time of its enactment, it has already spawned imitators, such as the proposal (thus far rejected) for a similar exception to the Hong Kong Copyright Ordinance. This underscores the importance of close monitoring of how the Canadian UGC exception is applied in practice, including whether it leads to abandonment of established licensing arrangements, as has already occurred with regard to educational publishing.

4. Discrimination against U.S. performers and sound recording producers

On May 22, 2014, Canada deposited with the World Intellectual Property Organization (WIPO) its instruments of ratification of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). Three months later, Canada's accession to these treaties was formally completed.

In conjunction with its accession to the WPPT, Canada brought into force the provisions of the Modernization Act recognizing an exclusive making available right in sound recordings. At the same time, however, the Canadian Government exercised its prerogatives under the Copyright Act to deny all equitable remuneration to U.S. sound recording producers for recordings publicly performed in Canada through terrestrial broadcasting, and for any form of communication to the public by telecommunication of virtually all pre-1972 U.S. sound recordings (those first or simultaneously first published in the United States). Performers on these sound recordings were similarly denied remuneration.

While we welcome Canada's entrance into the community of nations that accord sound recording producers the broad scope of exclusive rights needed to manage digital dissemination of their products, IIPA also urges Canada to reverse its unfair and discriminatory policy embodied in Canada's implementation decision. We highlight that US law provides for full national treatment, regardless of whether the country of origin provides reciprocal rights. The Canadian decision to exercise its prerogatives in a discriminatory fashion is inappropriate for its relations with its neighbor and largest trading partner, and should be reconsidered.

¹⁷See "2013 Domestic Distribution," Access Copyright, available at http://www.accesscopyright.ca/media/67163/2013_distribution_summary.pdf (last visited, Jan. 30, 2015).

¹⁸See, e.g., Article 13 of the WTO TRIPS Agreement.