

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Mr. Douglas Bell
Chair, Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

**Re: Canada's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations,
76 Fed. Reg. 76480 (December 7, 2011), Docket No. USTR-2011-0019**

Dear Mr. Bell:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to submit the views of the U.S. copyright industries on Canada's expression of interest in the proposed Trans-Pacific Partnership Trade Agreement (TPP).

IIPA supports Canadian participation in the TPP at an appropriate time. We urge the U.S. government to encourage Canada to take prompt action to bring its copyright law into line with evolving global norms, including by making amendments to ensure that the current Copyright Reform Bill (C-11) achieves its objectives and is effective in strengthening the copyright framework. This action would create a platform that will allow Canada to play a constructive role in the negotiations. We also urge the U.S. government to seek to resolve longstanding U.S. concerns, such as the shortcomings of Canada's enforcement regime, and to ensure that Canada agrees that the TPP will not admit of any "cultural exception" such as provided in NAFTA.

About IIPA

The IIPA is a private sector coalition of seven trade associations representing U.S. copyright-based industries. IIPA works to improve international protection and enforcement of copyrighted materials, and to open up foreign markets closed by piracy and other market access barriers. IIPA's seven member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These materials include all types of computer software, including business applications software and entertainment software (such as videogame discs and cartridges, personal computer CD-ROMs, and multimedia products); theatrical films, television programs, DVDs and home video, and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and

scholarly journals, databases and software. Members of the IIPA include the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Independent Film & Television Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA).

Canada and TPP

IIPA has been a strong supporter of the concept of a TPP Free Trade Agreement (FTA) since its inception. A TPP-FTA that builds on the strong intellectual property chapters of existing FTAs, notably the state-of-the-art provisions contained in the recently ratified Korea-US FTA, would help to further open Pacific Rim markets to U.S. copyrighted materials. Inadequate legal protections and insufficient enforcement policies against widespread copyright infringement remain the leading barriers to full access for the U.S. copyright industries to these markets. The TPP negotiating process also offers the opportunity to address other market access barriers in some of these markets to U.S. exports and foreign sales of products and services protected by copyright. These outcomes would buttress one of the most dynamic sectors of our economy, and preserve and expand the nearly 11 million U.S. jobs that depend wholly or partially on copyright protection.¹

As USTR noted in its Special 301 decision last spring, when it retained Canada on the Special 301 Priority Watch List, Canada's failure to enact copyright reform legislation is a matter of great U.S. concern. Canada's regime for enforcement of copyright, both internally and at its borders, also remains inadequate and needs significant improvement. As stated by USTR:

“The United States encourages Canada to make the enactment of copyright legislation that addresses the challenges of piracy over the Internet, including by fully implementing the WIPO Internet Treaties, a priority for its new government. The United States encourages Canada to provide for deterrent-level sentences to be imposed for IPR violations, as well as to strengthen enforcement efforts, including at the border. Canada should provide its Customs officials with *ex officio* authority to effectively stop the transit of counterfeit and pirated products through its territory.²”

We urge the U.S. government to use Canada's expression of interest in the TPP negotiations as an opportunity to resolve these longstanding concerns about IPR standards and enforcement.

¹ For a further summary of IIPA's views on the TPP process in general, see the comments filed in January 2010 in response to a Federal Register notice on the TPP, at <http://www.iipa.com/pdf/IIPAWrittenStatementonProposedTransPacFTA012510.pdf>

² <http://www.ustr.gov/about-us/press-office/reports-and-publications/2011/2011-special-301-report>.

IIPA is also concerned about the significant market access barriers to U.S. copyrighted materials that Canada maintains pursuant to the "cultural exception" in its FTA with the U.S. Canada has interpreted this exception to be unreasonably broad, even to encompass discriminatory application of its copyright law, and has insisted on this misinterpretation of the exception in similar provisions in other trade agreements. IIPA strongly opposes the inclusion of any such cultural exclusion in the TPP, and the Canadian government must understand that TPP will not admit of such exceptions.

IIPA commends the U.S. government's vigorous efforts to encourage Canada to resolve these long standing problems. We urge that this engagement be maintained and intensified. Once Canada adopts legislation that sufficiently addresses the copyright law and enforcement concerns that the U.S. government has clearly and consistently expressed, and once it disavows the introduction of overarching cultural exemptions into the TPP-FTA, its participation in the TPP negotiations should be welcomed. Thank you for considering the views of the U.S. copyright industries.

Respectfully submitted,



Steven J. Metalitz
On behalf of
International Intellectual Property Alliance