



January 8, 2007

VIA E-MAIL

Mr. Everett Eissenstat, AUSTR for Americas
Ms. Victoria Espinel, AUSTR for Intellectual Property and Innovation
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Special 301 Out-of-Cycle Review (OCR) of Canada

Dear Everett and Victoria:

This letter supplements IIPA's submission of September 29, 2006 to the Section 301 Committee with regard to the Committee's out-of-cycle review (OCR) of Canada.¹ Based upon the absence of any progress since IIPA's September 29 submission, IIPA recommends that the Committee place Canada on the Special 301 Priority Watch List and conclude the OCR.

In its September submission, IIPA noted that Canada's reform of its outdated copyright laws would determine IIPA's recommendation on two of the three main copyright-related issues USTR identified in its April 2006 Special 301 decision,² and would be critical to the third as well.³ Noting that the Canadian government had not proposed a new copyright reform bill, IIPA urged that the OCR "remain open for a reasonable time to permit a full evaluation of whatever legislative proposal is brought forward by the Canadian government."

¹ The submission may be found at <http://www.iipa.com/pdf/IIPA%20Canada%20301%20OCR%20submissionFINAL%200929.pdf>. IIPA comprises seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

² These were summarized in the September submission as (1) ratification and implementation of the WIPO Internet Treaties, and (2) copyright law amendments "to provide adequate and effective protection of copyrighted works in the digital environment".

³ Improvements in Canada's IPR enforcement system. IIPA noted in its September submission that there had been "little if any forward progress" on enforcement, and that the copyright piracy problems its members experienced in Canada had not improved, and in some cases had demonstrably worsened. The picture has not substantially changed in the ensuing three months. IIPA expects to provide a more detailed report in its 2007 Special 301 filing on Canada.

Last September, IIPA had hoped that a draft reform bill would be forthcoming from the Government of Canada in a matter of weeks. Since then, however, there has been no sign of progress toward a bill. During its tenure of nearly ten months, and in spite of its own commitment to do so, the Canadian government has yet to introduce copyright reform legislation. Parliament has adjourned, and will not resume until February. Under these circumstances, IIPA believes it is virtually impossible that Canadian authorities will present a reform proposal soon enough to permit a full evaluation before the 2007 Special 301 cycle gets underway, and indeed unlikely that such an evaluation could be carried out before this year's cycle is completed.

In the eight months since the 2006 Special 301 decision, Canada has done virtually nothing to address any of the critical copyright law and enforcement issues USTR identified in that decision. In this light, maintaining Canada in its current status on the Special 301 Watch List cannot be justified. Canada's long tenure on the Watch List has had no discernible effect on Canadian copyright policy. Consequently, IIPA believes that USTR should elevate Canada to the Priority Watch List as a concrete expression of U.S. disappointment that the Government of Canada has given insufficient priority to this crucial item of unfinished business. At a time when every other developed country and major U.S. trading partner has made significant progress toward modernizing copyright legislation to respond to the challenges of an ever changing technological universe, Canada's failure to do so is particularly striking, and should elicit a commensurate reaction from the U.S. government.

In coming to this conclusion, IIPA highlights the fact that the WIPO Internet Treaties were concluded over a decade ago and were designed to respond to what were then new technologies. The global community adopted certain critical features in the Treaties, such as clarifying the right of making available, and protecting technological measures used by right holders, in order to drive legitimate electronic trade in creative works. Canada's unconscionable delay in adopting the instruments for preserving copyright protection in the digital age, in spite of its longstanding commitment to do so, simply cannot be countenanced.

IIPA greatly appreciates your consideration of its views. Please do not hesitate to contact me if we can provide any further information that would assist you or your interagency colleagues in the resolution of this matter.

Respectfully submitted,



Steven J. Metalitz
on behalf of IIPA

Steven J. Metalitz
Tel: (202) 973-8136
Fax: (310) 231-8432
E-mail: metalitz@iipa.com

cc: Ms. Sybia Harrison, Special Assistant to the Section 301 Committee