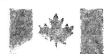


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Patrimoine canadien

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CONFIDENTIAL

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INFORMATION NOTE FOR THE HONOURABLE MÉLANIE JOLY

**2016 UNITED STATES SPECIAL 301 REPORT ON  
INTELLECTUAL PROPERTY**

**Issue**

- Canada is on the “Watch List” of the United States Trade Representative (USTR) annual *Special 301 Report*, issued on April 21, 2016. This report discusses the adequacy and effectiveness of United States (U.S.) trading partners’ protection and enforcement of intellectual property (IP).
- The Government of Canada does not recognize the validity of the process as the findings tend to rely predominantly on allegations from U.S. industry stakeholders rather than on objective analysis.

**Background**

- The USTR provides advice on trade issues to the Executive Branch of the U.S. Government, which includes the President. The *Special 301 Report* is an annual monitoring exercise led by the USTR to gauge the efforts of other countries in protecting American IP, including patents, trademarks, and copyright. The annual *Special 301 Report* ranks countries in three categories: “Watch List,” “Priority Watch List” and “Priority Foreign Country.”
- Countries at the “Watch List” level are said to “merit bilateral attention to address intellectual property rights problems.” Countries on the “Priority Watch List” are subject to particularly intense engagement through bilateral discussion. Countries identified as a “Priority Foreign Country” may be subject to an investigation by the USTR, which can lead to dispute settlement proceedings at the World Trade Organization (WTO) or other relevant trade agreements and international fora.
- Canada remains this year again on the “Watch List” (with 23 other countries), despite recent significant achievements domestically in relation to IP reform – on copyright, this includes the passage and coming into force of the *Copyright Modernization Act*, and Canada’s accession to the World Intellectual Property Organization (WIPO) Internet Treaties. In previous years, the absence of such

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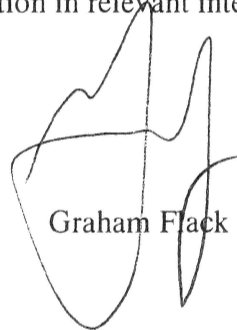
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reforms was a central concern of the U.S. Amongst positive developments, the USTR welcomes the amendment made in 2015 to the *Copyright Act* extending the term of protection for sound recordings from 50 to 70 years after publication. The Report repeats its broad recommendations also made last year, asking that Canada fully implement its WIPO Internet Treaties commitments and to continue to address copyright piracy in the digital age. The Report concludes by stating that the U.S. will work closely with Canada on the implementation of the Trans-Pacific Partnership if ratified.

- During the hearings leading to the preparation of the Report, the International Intellectual Property Alliance, representing U.S. IP rights holders in the music, film, and publishing sectors, submitted complaints about Canada's copyright framework. The organization raised concerns that the expansion of "fair dealing" to include education has caused educational institutions to not renew collective licencing agreements, leading to the decimation of Canada's educational publishing market. This issue was not raised however in the final Report.

#### Current Status

- As usual, the Report has not garnered significant attention in Canadian media. Global Affairs Canada have prepared media lines and questions and answers on the Report (see Annexes A and B) and will respond to any media inquiries. Canadian Heritage officials, and their counterparts at Innovation, Science and Economic Development Canada, have been consulted on these materials.
- Canada continues to work with the U.S. and other countries to improve the protection of IP, including via its participation in relevant international forums, such as the WIPO and WTO.



Graham Flack

#### Attachments

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819-994-2356



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# Media Lines

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## 2016 USTR Special 301 Report on Intellectual Property Rights

**ISSUE:** On April 27, 2016, the United States Trade Representative (USTR) published its annual *Special 301* Report, which reviews the global state of intellectual property (IP) rights protection. In the 2016 Report, Canada remains on the Watch List. Canada was previously on the Report's Watch List from 1995 to 2009, when it was elevated to the Priority Watch List from 2009 to 2013. Twenty-two countries appear alongside Canada on this year's Watch List, including Brazil, Colombia, Greece, Mexico, Peru, Turkey and Vietnam.

In the 2016 Report, U.S. industry stakeholders continue to raise concerns with Canada's requirements for patent utility, citing industry allegations concerning the invalidation of patents on this basis by the Canadian courts. Other stated concerns related to pharmaceuticals include a lack of a right of appeal for innovative drug makers regarding decisions of generic drug marketing approvals, as well as concerns about the breadth of ministerial discretion to make available confidential business information about pharmaceutical medicines in Health Canada's disclosure regime. The "right of appeal" issue will be addressed through the CETA implementation bill. Since 2013, the U.S. has also noted disappointment that Canada's IPR enforcement reforms do not provide for "ex officio" or administrative powers for customs authorities to detain goods in-transit (Canada's reforms under the 2014 *Combating Counterfeit Products Act* provide such "ex officio" authority in respect of imports and exports only).

Canada considers the *Special 301* process and the Report to be invalid and analytically flawed because the process relies primarily on U.S. industry allegations rather than empirical evidence and objective analysis. Canada has a strong regime for the protection and enforcement of IP rights that is fully consistent with its international obligations, including under the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

Canada remains on the Watch List in 2016 despite recent significant achievements domestically in relation to IPR reform – namely, the passage and coming into force of the *Copyright Modernization Act* and the *Combating Counterfeit Products Act*. In previous years, the absence of such reforms was a central concern of the U.S. in relation to Canada's regime.

The Canadian Government also passed amendments to the *Trade-marks Act*, the *Patent Act* and the *Industrial Design Act* to make Canada's intellectual property regime consistent with key WIPO treaties (the Madrid Protocol, the Singapore Agreement, the Nice Agreement, the Patent Law Treaty and the Hague Agreement). In 2015, Canada also completed its ratification of the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (UPOV 91).

In March 2016, the Government introduced Bill C-11 which will amend the *Copyright Act* and will enable Canada to implement and accede to the WIPO Marrakesh Treaty to

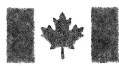
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Canada

facilitate access to published works for visually impaired persons. In spring 2015, the *Copyright Act* was amended to extend the term of copyright protection for a published sound recording and a performer's performance in these sound recordings from 50 years to 70 years after publication.

### Key Messages

- Canada does not recognize the validity of the *Special 301* and considers the process and the Report to be flawed. The Report fails to employ a clear methodology and the findings tend to rely on industry allegations rather than empirical evidence and objective analysis.
- Canada is of the view that a strong regime for the protection and enforcement of intellectual property rights is central to economic growth in any knowledge-based economy.
- Canada has a solid record of taking action to strengthen Canada's intellectual property system and continues to make significant advances domestically to modernize Canada's intellectual property regime.
- Canada continues to make significant achievements domestically in relation to intellectual property rights reform; namely, the passage and coming into force of the *Copyright Modernization Act* and the *Combating Counterfeit Products Act*, the implementation of key World Intellectual Property Organization treaties and recently announced initiatives regarding copyright exception for visually impaired persons.
- Canada's current regime for the protection and enforcement of intellectual property rights is fully consistent with its international obligations, including under the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and relevant WIPO treaties.



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## Questions and Answers

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### Canada's Intellectual Property Regime – General Lines

#### Q1: What efforts has Canada made to strengthen its intellectual property regime?

- The Government takes the protection and enforcement of intellectual property rights seriously and has taken significant steps in this regard.
- The Government has a solid record of taking action to strengthen Canada's intellectual property system and Canada continues to make significant advances domestically to modernize its intellectual property regime.
- In 2010, the Government revised the proceeds of crime regulations to allow Canadian enforcement authorities to seize assets obtained through large scale copyright piracy.
- In 2012, the Government passed and enacted the *Copyright Modernization Act*. Canada's copyright regime is in line with international standards, including the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty which Canada ratified in 2014.
- In 2014, the Government passed the *Combating Counterfeit Products Act*. The Act updates Canada's intellectual property rights enforcement regime by strengthening enforcement measures at the border, providing enhanced tools for rights holders to pursue civil enforcement and facilitating the criminal enforcement of trademark counterfeiting and copyright piracy.
- In March 2014, the Canadian Government announced the modernizing of Canada's intellectual property administration framework to better align it with international practices, by joining five widely recognized WIPO treaties: the Madrid Protocol, the Singapore Treaty, the Nice Agreement, the Patent Law Treaty and the Hague Agreement.
- Taken together, Canada's joining these five WIPO treaties will cut red tape and make trademark and industrial design registration and patent applications easier for businesses, while reducing costs over time and enabling our innovators to take their products global faster and easier. As a first step, the Government passed legislative amendments to the *Trade-marks Act*, the *Patent Act* and the *Industrial Design Act* to make Canada's intellectual property regime consistent with the five treaties.
- In March 2016, the Government introduced Bill C-11 which will amend the *Copyright Act* and will enable Canada to implement and accede to the WIPO Marrakesh Treaty to facilitate access to published works for visually impaired persons. In spring 2015, the *Copyright Act* was amended to extend the term of copyright protection for a published sound recording and a performer's performance in these sound recordings from 50 years to 70 years after publication.

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- **Q2. Does Canada's intellectual property regime comply with its international trade obligations?**
- Canada's regime for the protection and enforcement of intellectual property rights is fully consistent with all of its international obligations, including under the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and relevant WIPO treaties.

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