

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

SPECIAL MENTION

CANADA

In 2002, the Canadian Government unveiled a three-tiered agenda for Copyright Reform. The Copyright Reform process will address the areas in Canadian copyright law in which amendments will be required in order to adequately implement obligations under the World Intellectual Property Organization's Copyright Treaty, and its Performances and Phonograms Treaty. The first tier (so-called "short-term agenda" review) addresses WIPO digital treaties implementation issues including the making available right, technological protection measures and rights management information, plus issues of ISP liability. Consultations on these issues are expected to continue beyond the end of 2004.

After playing a major role in negotiating and drafting the WIPO digital treaties more than seven years ago, and nearly six years after the Government of Canada signed the treaties, the government still has failed to introduce legislation to implement those treaties. Meanwhile, over 40 countries worldwide, including the United States, have acceded to the treaties. Canada is the only North American country that has not done so. Ratification is needed to harmonize Canada's regime with that of other WIPO-enacting states around the world, and the timing of these necessary changes is highly relevant. The copyright industries are experiencing difficult challenges from technical advances that have left them vulnerable. The availability of pirate copies of materials on the Internet and illegal digital copying are devastating sales. In the music sector alone, over one billion songs were copied without authorization in Canada in 2001-2002. Canada must act swiftly to address this large and growing problem.

The WIPO digital treaties provide the principal legal tools required to fight piracy. The treaties provide strong practical support for intellectual property rights by encouraging and protecting the use of technological measures in controlling and administering these rights. The treaties are also critical for creating a legal environment in which rights owners can protect against infringement in information networks, and develop new, more sophisticated products and licensing options. Electronic commerce in copyrighted content requires a working digital marketplace in which only legitimate copies of works are transmitted, and only under the terms negotiated or permitted by the rights owner.

A number of troubling policy notions are emerging in Canada, and it is critical that the reforms undertaken meet WIPO treaties requirements and not undermine the ability of copyright owners to protect their works in the digital environment.