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Daniel Watson
Assistant U.S. Trade Representative for the Western Hemisphere
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, DC 20006

Re: International Intellectual Property Alliance's Public Comment in Response to "Request for Comments on the Operation of the Agreement between the United States of America, the United Mexican States, and Canada" (90 FR 44869, September 17, 2025).

Dear Mr. Watson:

The International Intellectual Property Alliance (IIPA),[1] which represents significant sectors of the copyright-based industries in the United States, appreciates this opportunity to provide the Office of the United States Trade Representative (USTR) with written comments regarding the operation of the Agreement between the United States of America, the United Mexican States, and Canada (USMCA) in advance of its joint review on July 1, 2026.

I. IIPA's Interest in the USMCA Review Process

Since 1984, IIPA and its members have worked with the U.S. government to improve the ability of the U.S. copyright industries to compete fairly in foreign markets. This cooperation has resulted in notable improvements in copyright protection and enforcement and reductions in market access barriers around the world. This progress has helped the creative industries to employ more workers at higher wages. In fact, the core copyright industries employed over 11.5 million workers in 2023, accounting for 5.43% of the entire U.S. workforce and 6.10% of total private

[1] IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (https://publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com). Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and distributed by IIPA member companies include video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

employment in the United States.[2] The average annual 2023 compensation paid to core copyright workers – $141,880 – far exceeds the average annual compensation paid to all U.S. workers – $94,363 – amounting to a 50% "compensation premium" over the average U.S. annual wage.[3] For the total copyright industries, the numbers are even more compelling, employing over 21.1 million workers in 2023, accounting for 9.91% of all U.S. employment, or 11.14% of all private employment in the United States.[4] The average annual compensation paid to employees of the total copyright industries was 28% higher than average at $121,018.[5]

These comments focus on issues of compliance with the Agreement, particularly regarding those USMCA provisions that impact the copyright industries. While IIPA has significant concerns regarding compliance with the USMCA in Canada and Mexico as detailed below, IIPA strongly believes it is important to maintain an integrated trilateral North American trade framework and believes the United States should remain in the USMCA. From the perspective of the copyright industries, which make significant economic contributions to the United States as noted above, a trilateral approach is needed to provide harmonized high-standard rules for intellectual property rights protection and enforcement and digital trade and to ensure consistent and predictable market access and efficient cross-border trade of goods and services throughout North America.

II. Mexico and Canada Have Failed to Fully Implement USMCA's Copyright-Related Provisions

As part of this review process, it is important to consider that both Mexico and Canada have failed to fully meet their USMCA obligations. In 2018, IIPA submitted written comments to the International Trade Commission as part of Investigation No. TPA-105-003, 83 Fed. Reg. 52232, noting that if effectively implemented the USMCA was likely to produce important results for the creative industries, particularly regarding protection of technological protection measures (TPMs), enforcement against camcording, and a wide range of other copyright protection and enforcement measures. Unfortunately, this has not occurred because as discussed below neither Canada nor Mexico have fully implemented the agreement.

Regarding Canada, the USMCA has delivered targeted benefits for the copyright-based industries including Canada's extension of the term of protection for sound recordings and the provision of national treatment for U.S. producers for the uses of their sound recordings in radio broadcasts However, despite its USMCA commitments, Canada continues to advance implementation of the Online Streaming Act (Bill C-11), which conditions market access for streaming services on making financial payments to certain government-linked funds intended for Canada's domestic industry. It is also regrettable that the USMCA effectively grandfathered in Canada's wholly inadequate notice-and-notice system for addressing online copyright piracy.

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[2] Secretariat, *Copyright Industries in the U.S. Economy: The 2024 Report* (February 2025), p. 12, available at https://www.iipa.org/files/uploads/2025/02/IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf.
[3] *Id* at p. 14.
[4] *Id* at p. 12.
[5] *Id* at p. 14.

Mexico passed reforms addressing its USMCA copyright obligations in 2020. However, even after a definitive May 2024 decision by the Mexican Supreme Court upholding these reforms, Mexico has yet to achieve full implementation, including with respect to technical protection measures (TPMs) and notice and takedown. Implementing regulations were required within 180 days of the enactment of USMCA and to date have not been published. While responsibility rests primarily with the administration of former President López Obrador for failing to implement these commitments in any meaningful way, it has now been over a year since the Mexico Supreme Court upheld the copyright provisions and since Mexico's current President Claudia Sheinbaum was sworn in. Like its predecessor, the Sheinbaum administration has provided no indication that copyright-related implementing regulations are forthcoming, even after USTR placed Mexico onto the Special 301 Priority Watch List in April 2025 based in part on the lack of implementing regulations.

Mexico's failure to implement its USMCA copyright obligations means it has yet to provide essential protections for TPMs, including civil and criminal penalties for acts of circumvention and trafficking in circumvention devices. TPMs are critical protections that enable digital delivery of copyrighted works, including films, music, video games, and printed materials (books and journals). Mexico has also not fully implemented the WIPO Internet Treaties (WIPO Copyright Treaty (WCT) and WIPO Performances and Phonogram Treaty (WPPT)), which were concluded nearly 30 years ago, even though implementation of these foundational treaties is a USMCA obligation. Furthermore, Mexico's 2020 bill adopted important notice and takedown procedures, with measures to prevent infringing content from being uploaded, as well as an important mechanism to ensure ISPs can impose effective relief to remove infringement. Implementation of these provisions is critical for Mexico to meet its USMCA obligations and to ensure effective enforcement in Mexico against online piracy.

Mexico and Canada must fully implement these obligations into their laws, regulations, and policies. The failure to do so means that the U.S. copyright-based industries will not enjoy the full economic benefits promised by USMCA. However, even if Canada and Mexico do fully implement their USMCA obligations, as discussed below, there are several additional improvements to the USMCA that would allow the agreement to respond to new challenges and issues that should be addressed as part of the USMCA review.

III. Legal and Judicial Reforms in Canada and Mexico Should Be Monitored to Ensure USMCA Compliance

There are several new and ongoing legal and judicial reforms in Mexico and Canada that raise concerns regarding compliance with USMCA obligations. These include Canada's implementation of the Online Streaming Act, Mexico's implementation of the Cultural Heritage Law, and ongoing judicial reforms in Mexico. It is critical that the U.S. government monitor these developments to ensure USMCA compliance.

A. Canada Online Streaming Act

The Online Streaming Act received Royal Assent on April 27, 2023. As a result, the Canadian Radio-television and Telecommunications Commission (CRTC) now has the explicit power to regulate non-Canadian digital media services, including the authority to impose financial and reporting obligations to support the Canadian broadcasting system.

As part of its regulatory plan to implement the Online Streaming Act, the CRTC issued a decision in June 2024 requiring non-Canadian digital media services with $25 million or more in annual Canadian gross broadcasting revenues (or part of an ownership group reaching the threshold in the aggregate) to pay 5% of those revenues to certain funds. The CRTC began collecting payments on August 31, 2025. Certain aspects of this decision are currently under appeal. The CRTC's plan also provides for additional public consultations culminating in finalized spending requirements of between 5 to 30 percent of gross revenues for foreign streaming services set to take effect in 2025. In addition to these spending requirements, the CRTC is also considering rules that interfere with creative decision making, including rigid rules on the citizenship of main creative roles, prominence requirements, and a mandate that the IP must be owned by a Canadian entity.

The current implementation of the Online Streaming Act unfairly discriminates against U.S. streaming services and is clearly inconsistent with Canada's USMCA obligations, including the prohibitions against discrimination of digital products (Article 19.4), prohibitions against requiring foreign firms to purchase domestic content (Article 14.10.1(b), and a violation of national treatment of investors (Article 14.4). USTR should ensure that the CRTC's implementation of the Online Streaming Act is compliant with USMCA.

In addition to the federal Online Streaming Act, the film and television industry has raised concerns with a Quebec Bill, *An Act to affirm the cultural sovereignty of Quebec and to enact an Act respecting the discoverability of French-language cultural content in the digital environment* that imposes both local content quotas and prominence requirements on U.S. audiovisual streaming services.

B. Canada Right to Repair Bill

On November 7, 2024, Canada passed Bill C-244 which allows broad circumvention of TPMs. Specifically, Bill C-244 amended the Copyright Act to allow the circumvention of a TPM in a computer program if the circumvention is solely for the purpose of the diagnosis, maintenance, or repair of a product in which the program is embedded. The video game industry is especially concerned about the passage of this bill as copyright owners (or their licensees) rely heavily on TPMs to control access to and control the copying of their works and recordings, which are key to enabling a full range of online digital services and content distribution models. In particular, the circumvention of crucial TPMs that protect video game consoles presents unique security and piracy risks to the video game ecosystem, which has an estimated market value in Canda of US$3.9 billion. Already, repair shops like *picorepair.ca* and *motherboardrepair.ca* offer mod services for video game consoles, while many offer services through social media or online marketplaces, like *Kijiji*. Without proper limitations, which Canada is obligated to provide as a party both to the WIPO Copyright Treaty and to the USMCA, the exception opens the door to abuse and copyright infringement. IIPA strongly urges the Government of Canada to repeal these laws, and at the very least, ensure implementation is narrowed to prevent abuses that could undermine digital platforms and services. Any such implementation should be narrowly tailored for specific, necessary purposes that do not open a back door to infringing devices or services that could undermine legitimate digital services and devices.

C. Mexico's Cultural Heritage Law

On January 18, 2022, Mexico enacted the "Federal Law for the Protection of the Cultural Heritage of Indigenous and Afro Mexican Peoples and Communities" (the Cultural Heritage Law), which raises serious concerns regarding Mexico's USMCA obligations on copyright.[6] The law aims to register, classify, and document the traditional cultural expressions (TCEs) of indigenous communities, while broadening their scope of protection, acknowledging their economic rights, and introducing an enforcement scheme. The law's implementing regulations should have been issued within 180 days of its publication. However, the *Instituto Nacional del Derecho de Autor* (INDAUTOR, the National Copyright Office) asserted the law can be enforced even in the absence of implementing regulations. Unfortunately, the lack of implementing regulations continues to create legal uncertainty for a range of creative industries, especially regarding the granting of authorization for certain works and the fact that some forms of creative expressions could be removed from the public domain.

The law also lists a catalog of administrative infringements that are unclear and ambiguous and establishes fines that range from US$2,240.00 to US$224,000.00. In addition, the law establishes criminal penalties for the improper use and exploitation of the elements of cultural heritage of indigenous and Afro-Mexican communities or peoples, and for the cultural appropriation of elements of the cultural heritage of indigenous communities or peoples. Criminal penalties range from two to ten years of imprisonment and double if the conduct results in "cultural ethnocide." Mexico's Human Rights Commission filed a claim of unconstitutionality against the Cultural Heritage Law, citing policymakers' lack of consultation with indigenous communities during the law's formulation, and the excessive nature of the penalties. Unfortunately, the case remains pending before the Supreme Court but has been deferred due to ongoing judicial upheaval, making resolution unlikely in the near term.

Furthermore, in September 2024, the Mexican Senate approved a constitutional amendment to Article 2 on Indigenous Communities, establishing TCE protection as a communities' right and expressly establishes that indigenous people hold collective rights over their TCEs. Consequently, both federal and local governments must now create a legal framework for protecting and promoting this right. Implementing regulations will be critical for the practical use of this reform. This constitutional reform, coupled with the 2022 Cultural Heritage Law, increases legal uncertainty for creative industry investments. The U.S. government should encourage Mexico to implement this initiative transparently, with stakeholder engagement, good regulatory practices, and adherence to USMCA commitments.

Because the scope of these provisions is unclear, IIPA is concerned that the implementation of this *sui generis* system for the protection of TCEs threatens to undermine copyright exclusive rights that are guaranteed by the USMCA, including in Articles 20.57-20.61 and risks non-

[6] *Ley Federal de Protección al Patrimonio Cultural de los Pueblos Indígenas y Afromexicanos*, January 17, 2022, available at https://www.diputados.gob.mx/LeyesBiblio/ref/lfppcpcia.htm.

compliance with contractual transfer (Article 20.65). Furthermore, to the extent that protections for TCEs function as a limitation or exception to these exclusive rights, these protections must be within the scope of the three-step test governing copyright exceptions and limitations (Article 20.64). To ensure that U.S. rights holders are protected, IIPA recommends that as an outcome of this Review process Mexico signs a side letter or other binding instrument with the United States confirming that protections for copyright and related rights under USMCA will not be undermined by Mexico's implementation of TCE protections.

D. Judicial Reform in Mexico

Recent judicial reform in Mexico threatens to undermine Mexico's compliance with its USMCA obligations. In September 2024, the Mexican Congress enacted a sweeping reform requiring that justices, magistrates, and judges be elected by popular vote. The reform generated significant debate in Mexico on how the new model will guarantee the independence and impartiality of the judiciary. The first elections, held on June 1, 2025, resulted in the election of all nine Supreme Court Justices, 486 magistrates, and 386 judges; elections for the second half of the judiciary will be held in 2027. Unfortunately, initial reports indicate that none of the new judges have experience trying IP cases, and many lack experience handling general judicial matters, including proof of ownership and evidentiary procedures. Without properly trained judges, IIPA is concerned that this judicial upheaval will undermine the rule of law, due process, and access to justice in Mexico. More particularly, without a fully functioning judiciary, Mexico will be unable to meet its USMCA obligations to effectively enforce copyright protections.

V. Conclusion

A thriving copyright sector that produces and distributes creative content creates well-paying jobs, increases exports, and expands economic output. Ensuring that Canada and Mexico fully implement their USMCA copyright obligations will help to improve standards of copyright protection and enforcement and eliminate unfair trade practices directed against American creative industries. Moreover, the U.S. government should ensure that Canada and Mexico do not run afoul of their USMCA obligations in their implementation of ongoing legal and judicial reforms. Addressing the serious concerns identified by IIPA in this submission will allow the U.S. copyright industries to finally enjoy the full benefits promised under USMCA. IIPA and its members appreciate the opportunity to provide USTR with this information as part of this important review process and we encourage USTR to contact us with any questions or requests to provide further information.

Respectfully submitted,

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