CANADA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2026 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Canada remain on the Watch List in 2026.[1]

Executive Summary: Canada's copyright ecosystem continues to be a challenging one due to new laws that removed copyright protections for technological protection measures (TPMs) and laws that created new market access barriers (such as the discriminatory Online Streaming Act). Simultaneously, the Government of Canada fails to address longstanding piracy challenges, copyright legislative deficiencies, and other burdensome market access barriers.

There continues to be serious concerns in Canada regarding piracy, including: piracy operators that offer stream ripping, video-on-demand (VOD), and download offerings; subscription piracy services (infringing paid Internet protocol television (IPTV) and VOD services) and the ever-increasing Canadian re-sellers of these services; streaming sites and other online sources for unauthorized movies and TV shows; piracy devices (PDs also known as illicit streaming devices, ISDs) and apps, readily available both online and in the retail market, that suppress demand for legitimate digital streaming and VOD services; and the sale of devices, software, and services for circumventing access controls on video game consoles. While Canada has made some progress in shedding its reputation as a haven for online piracy, too many Canadian Internet companies still allow their services to be abused by piracy operators, highlighting the fact that inter-industry cooperation must be a priority. All levels of the Government of Canada must allocate sufficient resources and make it a strategic priority to enforce its USs, especially online.

The mandated parliamentary review of Canada's Copyright Act that was initiated in 2017 should have been a vehicle for addressing many of these problems. Prior IIPA submissions have detailed the many urgent problems, including the overbroad fair-dealing exception for education, lack of effective remedies and legal incentives to combat growing online piracy, an unjustified radio royalty exemption, a wholly ineffective "notice-and-notice" system, and a globally anomalous exception for user-generated content (UGC). In addition, Canada should remedy its deficient online copyright liability regime, which lags behind global norms. Unfortunately, the shortcomings in Canada's current copyright regime not only remain unaddressed, but the passage of Bill C-244 further weakens the system by allowing broad circumvention of TPMs. This is especially concerning for creative industries that rely on TPMs to protect the investment in producing copyrighted works and rights holders' exclusive rights to license these rights, including controlling access to and the copying and distributing of their works and recordings, and to license the full range of online digital services and content distribution models.

Finally, significant market access barriers continue to impede U.S. creative industries in Canada. IIPA urges the U.S. government to remain extensively engaged with Canada on this and other important intellectual property (IP) issues in 2026 (e.g. market access issues), such as ensuring Canada repeals the Online Streaming Act which mandates that certain foreign streaming services pay an initial base contribution of 5% of their gross Canadian broadcasting revenues to certain government-approved funds which directly subsidize their Canadian production competitors and cross-subsidize their Canadian competitors in broadcasting; who also operate streaming services. In addition, Canada's broadcast regulator, the Canadian Radio-Television and Telecommunications Commission (CRTC), indicated it is considering imposing additional funding and expenditure requirements of between 5% to 30% of gross revenues for foreign streaming services, which could cost U.S. streaming services well over $9 billion (CAD) annually. Further, in November 2025, the CRTC imposed rigid rules around the citizenship of key creative roles and mandated that at least 20 percent of the intellectual property of a "Canadian Program"[2] must be owned by a Canadian

[1] For more details on Canada's Special 301 history, see previous years' reports, at https://www.iipa.org/reports/special-301-reports/. For the history of Canada's Special301 placement, see https://www.iipa.org/files/uploads/2026/01/Appendix-C-FINAL-2026.pdf.

[2] CRTC, Broadcasting Regulatory Policy CRTC 2025-299 (18 November 2025), Broadcasting Regulatory Policy CRTC 2025-299 | CRTC.

entity. In parallel, the Quebec government also enacted Bill 109, which conflicts with and is in addition to the existing obligations set by the federal government under the Online Streaming Act and seeks to favor certain content and impose unequal obligations on streaming services.

PRIORITY ACTIONS REQUESTED IN 2026

Enforcement

- Prioritize enforcement against online piracy and other forms of copyright infringement.
- Provide the Royal Canadian Mounted Police (RCMP), Crown Prosecutors, and local law enforcement with the resources and training required to implement IP enforcement priorities.

Legal Reforms

- Swiftly enact legislative recommendations IIPA has noted in several previous submissions to counter piracy.
- Address the crisis in the educational publishing market by clarifying that the fair-dealing exception for "education" does not apply to educational institutions when the work is commercially available and amend the Copyright Act to confirm that tariffs approved by the Copyright Board are mandatory in nature.
- Harmonize remedies for collective management organizations (CMOs) under the Copyright Act.
- Ensure that recorded music producers and performers are fully compensated for all forms of radio broadcasting of their recordings, including by eliminating the radio royalty exemption.
- Eliminate, or at least clarify, the UGC exception, in accordance with parliamentary recommendations and Canada's international obligations.
- Repeal Bill C-244, which allows broad circumvention of TPMs.
- Provide full rights for communication to the public and public performance of sound recordings.

Market Access

- Ease long-standing market access barriers for U.S. creative industries, in accordance with Canada's United States-Mexico-Canada Agreement (USMCA) commitments.
- Repeal the Online Streaming Act and the CRTC's implementation of it to ensure Canada's compliance with the USMCA.

ENFORCEMENT

The digital marketplace for copyrighted content in Canada continues to face challenges in realizing its full potential due to competition from illicit online sources. Stream-ripping services remain the leading form of music piracy in Canada. Stream ripping enables users of licensed streaming services, like *YouTube*, to convert streams into unauthorized audio downloads that can be stored and replayed at will, with no royalty payment to rights holders.[3] Stream-ripping services, such as through websites like *y2mate.nu*, *ezconv.com*, and *yt1s.com.coor* and unlicensed mobile apps, undermine the legitimate markets both for streaming and licensed music downloads. Additionally, music piracy is also enabled by BitTorrent sites such as *ThePirateBay* and *1337x*, as well as French-language BitTorrent sites such as *YggTorrent*.

As with music piracy, online movie and television piracy remains a formidable challenge in Canada, inflicting major financial harm. NERA Economic Consulting and the Global Innovation Policy Center (GIPC) estimate the commercial value of pirated digital film content at US$285.7 billion and the commercial value of pirated digital television content globally in 2017 at US$280.5 billion. The displacement of legitimate economic activity by piracy has a negative impact on economic growth.[4] Research by Carnegie Mellon University found that if pre-release piracy could be eliminated from the theatrical window, U.S. and Canadian box office revenue would increase by 14-15% (equivalent to

[3] The music industry reports that some 93% of Canadians who visited YouTube used the site to access music in 2021.

approximately US$1.5 billion per year).[5] According to the Government of Canada's own study published in May 2018, more than one-quarter (26%) of content consumers reported having "consumed" (downloaded or streamed or accessed) illegal online content in the previous three-month period. Movies (36%) and TV shows (34%) were among the forms of content most likely to be illegally "consumed."[6] Canadians made 2.6 billion visits to piracy sites in 2018, and the nature of this piracy continues to evolve.[7] In 2020, 76% of Canadians' visits to sites used for online piracy were to non-peer-to-peer (P2P) sites, such as streaming sites and cyberlocker (host) sites, up from 39% in 2015.[8] Mimicking the look and feel of legitimate streaming services, infringing streaming websites continue to overtake P2P sites as a highly popular destination for Canadians seeking premium content in both English and French.

The film and television industry in Canada continues to battle an influx of operators, sellers, and resellers of infringing paid subscription IPTV/VOD services. Canadian businesses are actively involved in the theft of on-demand streams and telecommunication signals for the purposes of: (1) making unauthorized streaming of live television and motion pictures programming available to their own for-profit IPTV service or for sale as a "source" for other infringing IPTV services; and (2) for release on the broader Internet, including, but not limited to cyberlockers, social/UGC sites, peer-to-peer sites, and other pirate sites. Many of these piracy operators act as resellers of — often multiple — illegal IPTV services that sell directly to consumers. These illegal services in Canada have generated millions of dollars in revenue, often laundering the money through seemingly legitimate businesses set up solely for this purpose. The lucrative financial return of an infringing business model encourages a large ecosystem of players, including the operator of the service itself, individuals supplying the infringing content, resellers of the service, payment processors, advertisers, and networks that facilitate electronic transfers. Additionally, law enforcement or border officials continue to fail to take action against the sale of pre-loaded set-top boxes that are also not in compliance with electrical safety standards. Recidivists often have no other comparable source of lucrative income.

The circumvention of TPMs and other means of stealing legitimate signals for the purposes of: (i) making available unauthorized streaming of live television and motion pictures on their own for-profit subscription IPTV service, or (ii) selling the content to other infringing subscription IPTV services available inside and outside of Canada is damaging and pervasive. Mimicking the look and feel of legitimate streaming services, infringing streaming websites continue to overtake P2P sites as a highly popular destination for Canadians seeking premium content in both English and French. In fact, since 2015, Canadian visits to streaming sites used for online piracy increased from 39% to 77% whereas Canadian visits to P2P sites used for online piracy decreased from 51% to 16%.[9]

Compared to 2024, Canada has risen in the global ranks for online piracy of video game files. In 2025, Canada ranked 15th in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member video game titles on public peer-to-peer (P2P) networks. By the same metric, Canada ranked 5th in the world for unauthorized file-sharing of console-based games – up from 8th in the world in 2024, a change that coincides with an increased availability of modded consoles from video game device repair shops. Video game publishers report that Canada has experienced a spike in the past year in total users and download attempts for unauthorized proprietary video game titles, as well as in the appearance of circumvention devices, counterfeit peripherals, and unauthorized preloaded consoles on ecommerce platforms, since the country's new TPM circumvention legislation. Console makers conducted enforcement actions on hundreds of infringing listings via online marketplaces, ranging from preloaded game consoles, modded Nintendo Switch consoles, and counterfeit game accessories.

Given these significant piracy challenges in Canada, IIPA and its members strongly encourage Canada to take the following priority actions.

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[9] What Do We Know About: Movie & TV Piracy Trends in Canada," Motion Picture Association – Canada.

- **Prioritize enforcement against online piracy and other forms of copyright infringement.**

There has been some recent positive engagement by local law enforcement regarding cases involving online piracy in Canada. For example, in the recent Federal Court decision in *Bell Media Inc. Macciacchera (c.o.b. Smoothstreams.tv)*, 2025 FC 1378, two defendants who operated an illegal IPTV service were incarcerated after being found in contempt of court for disobeying an Anton Piller order. Additionally, on July 9, 2024, the Federal Court in *Rogers Media Inc. v. John Doe 1* (2024) issued a "wide" injunction to prevent the unauthorized online streaming of live games produced/broadcast by multiple sports leagues to be captured simultaneously. The decision was based on the decisions of the Federal Court of Appeal (FCA) in *Teksavvy Solutions Inc. v. Bell Media Inc.* ("*GoldTV*") and of the *Federal Court in Rogers Media Inc. v. John Doe 1* (2022), the latter of which granted a dynamic site-blocking order for the "live" blocking of NHL games ("*NHL Case*"). Further, on January 22, 2025, the Federal Court in *Bell Media Inc. v. John Doe 1* (*Soap2day*) issued a site-blocking order requiring Internet service providers (ISPs) to prevent access to websites and Internet services associated with the operation of *Soap2Day* platforms, including a mechanism to encompass additional *Soap2Day* platforms (copycat sites) that appear, or increase in popularity, following deactivation of existing platforms.

IIPA welcomes these results, but unfortunately, the consistent absence of any criminal enforcement in Canada against even the most blatant types of online theft completes the picture of a system that is still not up to the challenge. It is more important than ever for each level of government in Canada to initiate and adequately fund a coordinated law enforcement effort against these many forms of copyright piracy, including with specialized training regarding subscription piracy services, PDs, and devices and software that enable circumvention of TPMs, particularly following the Heritage Report's recommendation, discussed in more detail below, to increase enforcement efforts.[10] IIPA encourages RCMP, as a member of the U.S. National Intellectual Property Rights Coordination Center (IPR Center), to work collaboratively with U.S. enforcement officials on online piracy cases. Since the availability of piracy services (and of PDs or circumvention tools) will not be reduced without criminal prosecutions against traffickers and the imposition of deterrent sentences (particularly jail time), Crown Counsel must take on and fully prosecute more copyright infringement and TPM circumvention cases and should be provided with the training and other support that is needed.

- **Provide the RCMP, Crown Prosecutors, and local law enforcement with the resources and training required to implement IP enforcement priorities.**

While IIPA has seen positive engagement by law enforcement in recent years, within Canada's main federal law enforcement agency, the RCMP, IP crimes are neither a strategic nor an operational priority. Instead, the RCMP often transfers its IP cases to municipal police forces, which, like the RCMP, often lack the human and financial resources, as well as the strategic mandate, to thoroughly investigate IP crimes or prepare the cases for prosecution. Thus, while local police agencies have generally responded well to anti-piracy training programs offered by industry, they are simply unable to effectively deal with organized copyright piracy, and thus, increasingly fail to pursue even well-documented referrals from industry stakeholders. The non-statutory barriers to effective enforcement, as identified in parliamentary reports going back more than a decade, remain basically unchanged because Canadian law enforcement remains under-resourced, and too few agencies consider IP enforcement a priority. Given the widespread availability of hundreds of commercial, subscription-based piracy services, additional resources are needed to address this growing problem.[11] Furthermore, while there were some recent positive developments in cooperation between the

[10] See Julie Dabrusen, Chair, Standing Committee on Canadian Heritage, *Shifting Paradigms: Report of the Standing Committee on Canadian Heritage* (Heritage Report), 42nd Parliament, 1st Session, May 2019, Recommendation 6, p. 19, available at https://www.ourcommons.ca/Content/Committee/421/CHPC/Reports/RP10481650/chpcrp19/chpcrp19-e.pdf?mc_cid=d88779154e&mc_eid=0183856a67.

[11] Standing Committee on Public Safety and National Security, *Counterfeit Goods in Canada – A Threat to Public Safety*, May 2007, available at https://www.ourcommons.ca/Content/Committee/391/SECU/Reports/RP2985081/securp10/securp10-e.pdf (raised similar concerns about law enforcement priorities and funding). See also, Standing Committee on Industry, Science and Technology, *Counterfeiting and Piracy Are Theft*, June 2007, available at https://www.ourcommons.ca/Content/Committee/391/INDU/Reports/RP3060548/391_INDU_Rpt08/391_INDU_Rpt08-e.pdf (called for a higher priority for enforcement at the retail level).

Canadian Competition Bureau and RCMP to identify piracy targets, the longstanding legislative deficiencies described below render these collaborations ineffective and require improvement.

Similar problems arise with Canadian prosecutors and courts. Historically, Crown Prosecutors decline to seek the breadth of remedies for IP crimes. This often arises from knowledge gaps concerning the prosecution of IP crimes, which is amplified when dealing with emerging piracy models, such as infringing IPTV or VOD services. While there have been some recent prosecutions, ongoing education of Crown Prosecutors is key to ensuring Canada stays ahead of emerging piracy business models. In addition, Canadian customs procedures place a legal compliance burden on rights holders (who must file a claim and track down importers of counterfeit goods and seek undertakings and/or consent for destruction of goods) rather than on importers. The Canadian government should reform these procedures to place the burden on the importer, as is the case in the United States. Further, rights holders report negligible customs seizure actions involving counterfeit video game products in 2025. While the Canada Border Services Agency (CBSA) was helpful in sharing information and working with rights holders, more priority and focus needs to be placed on IP infringement, including increasing screening and detainment of infringing goods.

LEGAL REFORMS

- **Swiftly enact legislative recommendations IIPA has noted in several previous submissions to counter piracy.**

In December 2017, Canada's Parliament launched the inaugural five-year copyright law review mandated by the 2012 Copyright Modernization Act (CMA).[12] The review provided an invaluable opportunity for Canada to assess whether the Copyright Act has kept pace with rapid technological and market changes and to upgrade, improve, or correct the Copyright Act where it falls short in today's digital environment, including correcting deficiencies in the CMA. The inaugural review concluded with the May 2019 release of the Heritage Committee Report called "Shifting Paradigms" (Heritage Report) and the June 2019 Industry Committee Report (Industry Report).

The Heritage Report recognized the negative impact the 2012 amendments have had on the publishing industry due to the introduction of an undefined "education" as fair-dealing exception, as well as the "disparity between the value of creative content enjoyed by consumers and the revenues that are received by artists and creative industries" (known as the "value gap").[13] The Heritage Report made several positive recommendations which have yet to be adopted to address these concerns and significant shortcomings of Canada's legal framework. IIPA supports the Heritage Report[14] recommendations that the Government of Canada:

- clarify that fair dealing does not apply to educational institutions when the work is commercially available;
- increase efforts to combat piracy and enforce copyright;
- "review the safe harbor exceptions and laws to ensure that ISPs are accountable for their role in the distribution of infringing content;"
- harmonize remedies for collecting societies under the Copyright Act;
- narrow the radio royalty exemption so that it applies only to "independent and/or community-based radio stations;"
- increase support for creators and creative industries in adapting to new digital markets;
- create educational materials to raise awareness of copyright provisions and artist remuneration for consumers;
- review and clarify or remove exceptions contained in the Copyright Act, ensuring that any exception respects Section 9 of the Berne Convention for the Protection of Literary and Artistic Works;

[12] The Copyright Modernization Act (CMA), adopted in 2012, was fully brought into force in January 2015. Section 92 of the Copyright Act mandated that a parliamentary review of Canadian copyright law begin in 2017.
[13] See Heritage Report, p. 6.
[14] See Heritage Report, List of Recommendations, pp. 1-3.

- ensure that the Copyright Board reviews tariffs for online music services to ensure that royalty payments provide fair compensation for artists; and
- meet international treaty obligations (including the Berne Convention for the Protection of Literary and Artistic Works, the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), and WIPO Copyright Treaty (WCT)).

The Industry Report also included some notable recommendations.[15] Unfortunately, in preparing its report, the Industry Committee did not consult the Heritage Committee, which was tasked with examining the specific issue of artist and creative sector remuneration. This lack of consultation created inconsistencies with the Industry Committee's analysis, resulting in certain recommendations (often on those overlapping issues) that lack an evidentiary basis. IIPA urges the Government of Canada to swiftly enact the recommendations IIPA has noted in several submissions and adopt needed reforms that have been delayed for too long, including to:

- strengthen legal incentives for hosting providers, payment processors, advertising networks, domain registries, registrars, and other intermediaries, which fail to stand by their terms of service and acceptable usage policies clearly outlining an intolerance for copyright infringing activities to cooperate with copyright owners, in accordance with international best practices, to deter piracy from taking place via their services;
- ensure that ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities (as reflected below in the recent positive case law in this area);
- reform the currently inadequate and globally anomalous "notice-and-notice" regime, under which an ISP's failure to forward notices from rights holders is without significant consequence, in favor of a more effective mechanism;
- clarify that safe harbors should apply only to passive and neutral intermediaries that do not contribute to infringing activities;
- enact measures where marketplaces should be required and all relevant intermediaries encouraged to institute a "know your business customer" (KYBC) policy to ensure they keep up-to-date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers;
- amend Section 27(2.3) of the Copyright Act to also apply to those who provide offline piracy services for the purpose of enabling copyright infringement, such as those who traffic in PDs and ISDs pre-loaded with software applications or the enabling software tools themselves;
- avoid introducing inappropriate licensing tools, such as compulsory licensing and extended collective licensing (ECL).

Moreover, the lack of adequate tools in the Copyright Act concerning Canadian intermediaries continues to hamper enforcement against rogue sites or services in Canada. The law's conditioning of liability for hosting infringing material on obtaining a judgment against an end user is unworkable in practice, particularly regarding valuable, time-sensitive pre-release content, and creates a disincentive for hosting providers to cooperate or take effective action, even where they know or ought to know content is infringing.

The lack of incentives has a real-world impact. For example, the International Federation of the Phonographic Industry (IFPI) reports that *Tucows*, a Canadian based domain registrar, provided either incomplete or inaccurate information when rights holders sought customer details to enable action to be taken against infringing site operators.

In positive news, as noted above, Canadian case law continues to underscore the ability of rights holders to obtain site-blocking orders on the basis of the courts' equitable jurisdiction to grant injunctive relief.

[15] See Industry Report, pp. 3-10.

However, taken as a whole, the deficiencies noted above significantly disadvantage creators and creative industries continuing to send the wrong signals to consumers about whether infringing activities are tolerated. The Government of Canada should adopt the above recommendations to make its current regime more effective and provide meaningful incentives to stimulate inter-industry cooperation against online piracy.

- **Address the over decade-long crisis in the educational publishing market by clarifying that the fair-dealing exception for "education" does not apply to educational institutions when the work is commercially available.**

The bulk of the 2012 CMA consisted of several new or significantly expanded exceptions to copyright protection. None has had a more concrete and negative impact than the addition of "education," undefined and unlimited in application, to the list of purposes (such as research and private study) that qualify for the fair-dealing exception. Previous IIPA submissions have extensively analyzed how this exception led to the current over decade long crisis in the educational publishing sector, hurting not only U.S. authors and publishers, but devastating Canadian publishers and authors in the educational sector.[16]

The Government of Canada is fully aware of the dire state of its educational publishing market. Even the flawed Industry Report noted above acknowledged a problem with the current state of affairs, although it stopped short of recommending an adequate solution and instead took a wait-and-see approach.[17] The Government of Canada's Budget 2022 underlined the government's commitment to ensuring that the Copyright Act "protects all creators and copyright holders," and noted that "the government will work to ensure a sustainable educational publishing industry, including fair remuneration for creators and copyright holders, as well as a modern and innovative marketplace that can efficiently serve copyright users."[18] Yet, rights holders appear to be waiting in vain for any meaningful change.[19]

Canadian federal authorities and the country's Parliament should act with speed to redress this crisis by implementing the corrective measures recommended in the Heritage Report,[20] including clarifying the scope of the fair-dealing exception for education. Furthermore, to prevent educational institutions from circumventing the tariff system, the Copyright Act should be amended to confirm that a tariff approved by the Copyright Board is mandatory in nature, and its enforceability is not dependent upon a person's assent to, or agreement with, its terms. The goal must be an appropriate balance under which educational publishers and authors are once again compensated for their works, thus ensuring a viable domestic marketplace for commercially published educational materials.

- **Harmonize remedies for CMOs under the Copyright Act.**

Amendments to the Copyright Board took effect in April 2019.[21] The amendments introduced statutory rate-setting criteria that require the Board to consider, among other things, the willing buyer/willing seller principle in determining the royalty rates. While the Board may consider "any other criterion that the Board considers appropriate,"

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[16] Stephens, Hugh, "Copyright and Education in Canada: Have We Learned Nothing in the Past Two Centuries? (From the "Encouragement of Learning" to the "Great Education Free Ride"), Hugh Stephens Blog, July 17, 2024, available at https://hughstephensblog.net/2024/07/17/copyright-and-education-in-canada-have-we-learned-nothing-in-the-past-two-centuries-from-the-encouragement-of-learning-to-the-great-education-free-ride/.

[17] Dan Ruimy, Chair, Standing Committee on Industry, Science and Technology, *Statutory Review of the Copyright Act: Report of the Standing Committee on Industry, Science and Technology* (Industry Report), 42nd Parliament, 1st Session, June 2019, Recommendation 16, p. 65, available at https://www.ourcommons.ca/Content/Committee/421/INDU/Reports/RP10537003/indurp16/indurp16-e.pdf.

[18] Government of Canada, 2023 Budget, available at https://budget.canada.ca/2023/report-rapport/toc-tdm-en.html.

[19] Id. at 7.

[20] See Heritage Report, Recommendation 18, p. 43.

[21] These reforms included: an overhaul of the legislative framework governing tariff-setting proceedings before the Copyright Board, which should improve the timeliness, clarity, and efficacy of the proceedings; substantial revisions to the timelines for proposing and objecting to the tariffs, which allow tariffs to be filed earlier and remain effective longer, should help to avoid the extreme delays that have made economic forecasting nearly impossible for stakeholders (both users and rights holders), and have made it very difficult for collective management organizations (CMOs) to collect and distribute license fees by forcing them to apply tariffs retrospectively; and streamlined procedures and formalized case management to allow the Board to operate more efficiently, and to focus its resources on contested tariffs in cases in which negotiated agreements are not possible. The government has also implemented regulations requiring the Copyright Board to issue its decisions within 12 months following the close of hearings, which is a positive development.

if implemented properly, the new criteria should be a welcome improvement.[22] However, it remains very important to ensure that the Board actually applies and does not override the willing buyer/willing seller criterion, and that it is not displaced by other amorphous and undefined criteria, such as the "public interest." In practice, this allows the Board to consistently override marketplace rates that the willing buyer/willing seller principle would dictate and tariffs for use of music, or applications to settle disputes over rates, are routinely set at sub-market and sub-global standard rates. The "public interest" criterion – which the Industry Report notes could cause unpredictable results prompting costly, lengthy appeals and significant effects or other tariffs – is unclear and does not have a basis in economics.[23]

The amendments also broaden enforcement prohibitions to cover users who have offered to pay proposed tariffs in addition to users who have paid or offered to pay tariffs that have been approved. It is critical that, in implementation, this broadened enforcement prohibition does not delay or undermine CMOs' ability to collect royalties from active users. Unfortunately, the July 2021 Supreme Court of Canada decision upheld the April 2020 decision by the Federal Court of Appeals (FCA) in *York University v. Access Copyright* that the Copyright Board approved tariff issued by Access Copyright is not mandatory and, therefore, not enforceable against York University or other non-licensees.[24] This presents a significant obstacle to a well-functioning market for the collective management of rights. To operate in that market, CMOs require the ability to enforce the rights they represent, in accordance with their mandates from rights holders.

- **Ensure that recorded music producers and performers are fully compensated for all forms of radio broadcasting of their recordings, including by elimination of the radio royalty exemption.**

A key concern for the music industry is the statutory exemption from protection of recorded music used by commercial radio stations in Canada. The Copyright Board concluded that there is no economic rationale for this provision, which it called a "thinly veiled subsidy" to "large, profitable broadcasters." This royalty exemption applies only to sound recordings; musical works are fully protected. Furthermore, this exemption discriminates against other Canadian businesses that publicly perform or communicate recorded music (such as online music services, satellite radio, restaurants, or background music suppliers), none of which are subject to such an exemption from paying royalties to sound recording producers and performers. This exemption deprives performers and record labels of approximately CAD$14 million annually in rightfully earned royalties. Since 1997, when the radio royalty exemption was enacted, record labels have been deprived of over CAD$215 million that they would have received in the absence of the exemption. Further, the Canadian system does not guarantee the "equitable" remuneration that Canada is obligated to provide under Article 15 of the WIPO Performances and Phonograms Treaty (WPPT) and that Canada committed to provide under the USMCA. Unfortunately, the 2020 USMCA implementation legislation did not address this problem. Both the Heritage Report[25] and the Industry Report[26] called for narrowing this exemption so that it does not apply to most commercial radio stations. IIPA urges the Government of Canada to eliminate the radio royalty exemption.

- **Eliminate or at least clarify the UGC exception, in accordance with parliamentary recommendations and Canada's international obligations.**

The copyright exception for "non-commercial user-generated content" merits close scrutiny. This provision allows any published work to be used to create a new work, and the new work to be freely used or disseminated, including through an intermediary (commercial or otherwise), so long as the use or authorization for dissemination (though not necessarily the dissemination itself) is "solely for non-commercial purposes" and does not have a "substantial adverse effect" on the market for the underlying work. The provision could substantially undermine

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[22] Under the old framework, the Board's assertion of unlimited discretion to set tariff rates leads to results that are not only unpredictable, but often wildly out of step with the evidence presented at hearings, including rates agreed to in freely negotiated agreements and in comparable markets.
[23] See, Industry Report, Recommendation 11, pp. 45-46.
[24] York v. Access Copyright, 2020 FCA 77.
[25] See Heritage Report, Recommendation 10, p. 26.
[26] See Industry Report, Recommendation 31, p. 109.

exclusive rights that Canada is obligated to provide under international agreements and treaties, including the TRIPS Agreement, the Berne Convention, WCT and WPPT (collectively known as the WIPO Internet Treaties), and its breadth raises serious questions of compliance with the three-step test for permissible limitations and exceptions. Although the exception has no precedent in global norms, it has spawned would-be imitators. This underscores the importance of removing, or at least clarifying, the UGC exception, in accordance with recommendations in the Heritage Report.[27]

- **Repeal Bill C-244, which allows broad circumvention of TPMs.**

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 Canada of US$3.9 billion. Already, repair shops like *picorepair.ca*, *itking.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 WCT 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, or at the very least, implement them narrowly 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.

- **Provide full rights for communication to the public and public performance of sound recordings.**

The Copyright Act should be amended to provide full rights for communication to the public of sound recordings, including the retransmission of sound recordings. Although Article 15 of the WPPT is clear that the right to remuneration for public performances encompasses both direct and indirect uses of phonograms, the Canadian Copyright Act (s.72.1) prohibits rights holders from directly licensing "indirect" uses, where commercial businesses like shops or bars play music as part of their business operations or for ambiance, but the music comes from the radio rather than from a CD player or a background music provider service (for example). By prohibiting rights holders from directly licensing the users who actually use and benefit from their music, this provision effectively undervalues the right. Canada should amend the Copyright Act to ensure that the right allows the direct licensing of such uses in accordance with Article 15 of the WPPT.

MARKET ACCESS

- **Ease long-standing market access barriers for U.S. creative industries, in accordance with USMCA commitments.**

Significant market access issues continue to impede participation by U.S. creative industries in the Canadian market. Unfortunately, Canada has not made progress on certain long-standing market access issues as part of its USMCA implementation efforts, and as noted below, is considering additional measures that would discriminate against foreign online digital service providers. In accordance with its market access commitments under the USMCA, such as the national treatment for investors, digital products and services and performance requirements, Canada should

[27] See Heritage Report, Recommendation 12, p. 30.

change course and eliminate the following measures that restrict access by U.S. film and TV producers to Canada's market.[28]

Television Content Quotas: The CRTC imposes two types of quotas that determine both the minimum Canadian programming expenditure (CPE) and the minimum amount of Canadian programming that licensed Canadian television broadcasters must carry (Exhibition Quota). Such quotas are discriminatory and artificially inflate the amount expended on, or the time allocated to, Canadian programming.

First, large English-language private broadcaster groups have a CPE obligation equal to 30% of the group's previous year's gross revenues from their conventional services and discretionary services (specialty and pay-TV) combined, but there is some flexibility as to allocation among the services within the group. CPE obligations have also been assigned to operators of independent television stations and independent discretionary services that have over 200,000 subscribers upon renewal of their licenses and are based on historical levels of actual expenditures on Canadian programming. Second, per the Exhibition Quota, private conventional broadcasters must exhibit not less than 50% Canadian programming from 6 p.m. to midnight. Private English-language discretionary services (specialty and pay-TV) must exhibit not less than 35% Canadian programming overall.

Non-Canadian Signal and Service Restrictions: Canadian broadcasting distribution undertakings (BDUs), such as cable, IPTV, and direct-to-home satellite, must offer more Canadian than non-Canadian services. These protectionist measures inhibit the export of U.S. media and entertainment services.

First, BDUs must offer a "skinny basic" tier for not more than $25 per month that may include one set of "U.S. 4+1" (ABC, CBS, FOX, NBC, and PBS) from the same time zone as the BDU's headend, where available, if not, from another time zone. BDUs may also offer an alternative basic tier that includes the same set of U.S. 4+1 signals. A BDU may offer a second set of U.S. 4+1 signals to its subscribers only if it receives authorization by the CRTC pursuant to a condition of license. Unless otherwise authorized by conditions of license, the second set of U.S. 4+1 signals may be offered only to cable or satellite subscribers who also receive at least one signal of each large multi-station Canadian broadcasting group originating from the same time zone as the second set of U.S. signals.

Second, except as permitted in a BDU's license from the CRTC, all other non-Canadian signals and services may be carried only on a discretionary basis and must be selected from the list of non-Canadian programming services authorized for distribution (the Authorized List) approved by the CRTC and updated periodically. A service will not be added to the Authorized List if a competitive Canadian pay or specialty service (other than a national news service) has been licensed. Further, a service may be removed from the Authorized List if it changes formats and thereby becomes competitive with a Canadian pay or specialty service, if it solicits advertising in Canada, or if it does not conduct its negotiations and enter into agreements with BDUs in a manner that is "consistent with the intent and spirit of the Wholesale Code." A principal purpose of the Wholesale Code is to prohibit contractual terms that discourage or penalize the offering of services on a stand-alone basis.

Broadcasting Investment Limitations: The Broadcasting Act provides that "the Canadian broadcasting system shall be effectively owned and controlled by Canadians." Pursuant to a 1997 Order in Council, all broadcasting licensees, which are both programming undertakings (conventional, pay and specialty television) and distribution undertakings (cable and IPTV operators and satellite television distributors), must meet certain tests of Canadian ownership and control: (1) a licensee's CEO must be Canadian; (2) at least 80% of a licensee's Directors must be Canadian; and, (3) at least 80% of the licensee's voting shares and votes must be beneficially owned and controlled by Canadians. If the licensee is a subsidiary corporation, its parent must be Canadian and at least two-thirds of the voting shares and votes of the parent must be beneficially owned and controlled by Canadians. The parent corporation or its directors cannot exercise control or influence over the programming decisions of its licensee subsidiary where

[28] IIPA expects that if Canada resorts to the "cultural carve out" under Article 32.6 to avoid implementing any of its obligations under the USMCA, USTR will use the robust retaliation provision under that provision to ensure that Canada meets its commitments.

Canadians own and control less than 80% of the voting shares and votes, the CEO of the parent company is non-Canadian, or less than 80% of the directors of the parent corporation are Canadian. In such circumstances, the CRTC requires that an "independent programming committee" be put in place to make all programming decisions pertaining to the licensee, with non-Canadian shareholders prohibited from representation on such independent programming committee. No other developed market in the world maintains such discriminatory foreign investment limitations.

Québec Restrictions: The Québec Cinema Act severely restricts the ability of non-Québec-based theatrical film distributors to do business directly in Québec. Since 1986, some MPA member companies have been permitted to apply for a Special License for any film produced in English that meets the less restrictive requirements set out in an Agreement between the MPA and the Québec Minister of Culture and Communications. The Agreement was revisited in 2022 and was extended for seven years, expiring in 2029.

More recently, Quebec's Minister of Culture and Communications introduced and ultimately passed Bill 109, 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[29] The Bill: (1) provides that the Quebec government may, by regulation, define obligations applicable to online platforms (including the online streaming services operated by MPA members), including establishing the quantity and proportion of French-language cultural content; and (2) creates a new quasi-constitutional right to discoverability that provides for a private right of action against online platforms. In addition, on October 9, 2025, Quebec's Minister of Justice introduced Bill 1, Québec Constitution Act, 2025[30], which enacts a provincial/sub-national constitution in Quebec aimed at enshrining Quebec's Charter of Human Rights and Freedoms, including to insulate Bill 109 from constitutional challenges through a specific provision that states that a founding principle for the "National State of Québec" is the protecting and ensuring "the cultural sovereignty of Quebec" and that the Quebec government "has the right and the capacity to act so as to preserve and promote the French language and Québec culture, including in the digital environment" (Article 25). This both conflicts with and is in addition to the existing obligations set by the federal government under the Online Streaming Act. At a minimum, Bill 1 and 109, would violate USMCA's non-discrimination of digital products rule (Article 19.4) and it is a prohibited performance requirement (Article 14.10.1 (b)).

Online Harmful Content: From April to June 2022, an expert advisory group on online safety held eight sessions to advise on developing a legislative and regulatory framework to address harmful online content. The government then held 19 roundtables from July to November 2022 and released a summary report in January 2023. While the government has discussed this potential legislation for some time, the policy has proven difficult because of its relationship to public protection, censorship, freedom of speech, and misinformation, with parties holding conflicting positions on many of those topics. IIPA urges the U.S. government to continue to monitor the Canadian government's work and any effects it may have on the broader online ecosystem.

- **Repeal the Online Streaming Act and the CRTC's implementation of it to ensure Canada's compliance with the USMCA.**

The Online Streaming Act received Royal Assent on April 27, 2023. As a result, the CRTC now has the explicit power to regulate foreign streaming services, obligating U.S. streaming services to finance their Canadian competitors and the Canadian broadcasting system more broadly. The Online Streaming Act violates Canada's obligations under the USMCA, which prohibit the discriminatory treatment of U.S. digital products (Article 19.4), prohibit requiring foreign firms to purchase local content (Article 14.10.1(b)), and require equal treatment of foreign and domestic investors (Article 14.4). Given this discriminatory impact and incompatibility with the USMCA, the Online Streaming Act should be repealed.

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[29] Bill 109, *An Act to affirm the cultural sovereignty of Québec and to enact an Act respecting the discoverability of French-language cultural content in the digital environment*, 2nd Sess, 43rd Leg, Quebec, 2025,
[30] Bill 1, *Québec Constitution Act, 2025*, 2nd Sess, 43rd Leg., Quebec, 2025, https://www.assnat.qc.ca/Media/Process.aspx?MediaId=ANQ.Vigie.Bll.DocumentGenerique_213841en&process=Default&token=ZyMoxNwUn8ikQ+TRKYwPCjWrKwg+vIv9rjij7p3xLGTZDmLVSmJLoqe/vG7/YWzz.

As part of its regulatory plan to implement the Online Streaming Act, the CRTC issued a decision in June 2024 requiring that foreign streaming services with over $25 million in annual Canadian gross broadcasting revenues (including foreign streaming services with less than $25 million in annual Canadian gross broadcasting revenues but that are part of a broadcasting ownership group that reaches the $25 million threshold in the aggregate) to pay 5% of those revenues to certain government-approved funds that benefit Canadian production companies, broadcasters, and the major Canadian streaming services they operate.[31] To participate in the Canadian market, U.S. streaming services must now directly subsidize their Canadian production competitors and cross-subsidize their Canadian competitors in broadcasting; who also operate streaming services. This initial payment was due by August 31, 2025. The MPA and other U.S. stakeholders are appealing various aspects of this decision. The CRTC has estimated that this initial base contribution will provide $200 million per year in new funding to Canadian competitors.[32]

The initial base contribution is indeed just the 'initial' aspect of the full obligations. The CRTC completed hearings on other aspects of the Online Streaming Act in June 2025 to determine the totality of obligations it will impose on U.S. streaming services and how the initial base contribution requirements will be subsumed. The CRTC indicated that they are considering imposing additional funding and expenditure requirements between 5% to 30% of gross revenues for foreign streaming services.[33] Estimates are that, if the CRTC builds on the 5% initial contribution and adds additional funding obligations at up to 30%, this could cost U.S. streaming services well over $9 billion CAD annually.[34]

In addition to these mandatory spending requirements, the CRTC is considering rules on prominence and how the expenditure requirement will apply based on a narrow definition of what constitutes a "Canadian Program."[35] These rules could include a mandate that a program's IP must be owned by a Canadian entity, stripping ownership from U.S. companies; rigid rules around the citizenship of the main creative roles in the production of film, television, and streaming content; and prominence requirements that will compel U.S. companies to give special visibility or placement to Canadian works. Such heavy-handed intervention by government into creative decision making is out of step with global practices and penalizes U.S. businesses. Essentially, under the regulatory obligations, the Canadian government will dictate to U.S. companies what is produced, under which deal terms, and how it is presented on screens, while giving preferential treatment and access to Canadian content versus American content. The CRTC also established obligations for foreign streaming services to publicly disclose sensitive confidential financial information, a ruling which has been appealed by several streaming services.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

Canada's international agreements with the United States most relevant to copyright obligations include TRIPS and the USMCA.[36] As noted above, some aspects of Canada's current copyright regime may raise significant issues of compliance with these agreements (for example, whether Canada's copyright and TPM exceptions, as applied, comply with the well-established "three-step test"),[37] and Canada's Online Streaming Act and other market access restrictions are inconsistent with the country's commitments under the USMCA.

[31] CRTC, Broadcasting Regulatory Policy CRTC 2024-121 (4 June 2024), https://crtc.gc.ca/eng/archive/2024/2024-121.htm.
[32] Ibid.
[33] CRTC, Staff Letter, Reference 1011-NOC2024-0288 (29 May 2025), question 20, https://crtc.gc.ca/eng/archive/2025/lb250529.htm.
[34] CCIA, "Cost of Canada's Online Streaming Act" (September 2025), https://ccianet.org/wp-content/uploads/2025/09/Cost-of-Canadas-Online-Streaming-Act.pdf.
[35] CRTC, Broadcasting Notice of Consultation CRTC 2024-288 (15 November 2024), https://crtc.gc.ca/eng/archive/2024/2024-288.htm.
[36] United States-Mexico-Canada Free Trade Agreement, available at https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between.
[37] See TRIPS Article 13 and USMCA Article 20.64.