

# Why Canada Does Not Belong on the U.S. Piracy Watchlist

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In what has become an annual rite of spring, each April the U.S. government releases its Special 301 report

- often referred to as the Piracy Watch List - which claims to identify countries with sub-standard intellectual property laws. Canada has appeared on this list for many years alongside dozens of countries. In fact, over 70% of the world's population is placed on the list and most African countries are not even considered for inclusion.

While the Canadian government has consistently rejected the U.S. list because it "basically lacks reliable and objective analysis", this year I teamed up with Public Knowledge to try to provide the U.S. Trade Representative Office with something a bit more reliable and objective. Public Knowledge will appear at a USTR hearing on Special 301 today. In addition, last week we participated in meetings at the U.S. Department of Commerce and USTR to defend current Canadian copyright law and the proposed reforms.

The full submission on Canadian copyright is available [here](#).

It focuses on four main issues: how Canadian law provides adequate and effective protection, how enforcement is stronger than often claimed, why Canada is not a piracy haven, and why Bill C-11 does not harm the interests of rights holders (critics of Bill C-11 digital lock rules will likely think this is self-evident). The section challenging the piracy haven claims states the following:

In recent years, some groups have claimed that Canada has become a "piracy haven." These inaccurate perceptions have been fuelled in part by the Special 301 process. However, evidence suggests the contrary. In 2010, the World Economic Forum found that global executives actually rank Canadian intellectual property protection ahead of the United States, the United Kingdom, Japan, and most of Europe. The WEF's Global Competitiveness Report ranked Canada 13th for IP protection, including anti-counterfeiting measures. That is ahead of Australia (14th), Norway (16th), United Kingdom (17th), Japan (21st), and the United States (24th).

Evidence even from industry sources suggests that rates of infringement have been declining in Canada. For

example, the Business Software Alliance's annual Global Piracy Report shows Canada steadily declining as it stands among the 15 lowest piracy countries in the world. Canada's is well below the Western European average and well below the other countries on the USTR Special 301 Watch List. While the BSA noted an increase in the dollar amount, this is due almost entirely to currency fluctuations given the stronger Canadian dollar. According to Michael Murphy, Chairman of the BSA Canada Committee, "at 28 per cent, Canada's piracy rate is at an all time low, dropping six percentage points since 2006."

This decline in piracy is not limited to software. In the aftermath of anti-camcording legislation, the Canadian Motion Pictures Distributors Association acknowledged that illegal camcording had largely disappeared from the Canadian market.

Not only have piracy rates been declining in Canada, the legal markets for content have been expanding and revenues of the creative industries have been growing. Statistics Canada reports that operating revenue for motion picture theatres in Canada has grown steadily since 2005, with the industry enjoying operating profit margins of 11.3% in 2010.

Canada is a leader when it comes to online music sales. It is the 6th largest market for recorded music in the world, ranking 6th for digital sales and 7th for physical sales. In fact, the Canadian digital music market has grown faster than the U.S. market for five consecutive years. The Canadian Recording Industry Association recently cited new survey data confirming that young Canadians are music buyers, which it said leads to the conclusion that Canada "is a digital greenfield opportunity." In fact, Canada has been home to a robust digital music market with download services such as iTunes, Hip Digital, Puretracks, Archambault, HMV Digital, 7Digital; non-interactive streaming services such as Galaxie Mobile and Slacker Radio; on-demand streaming such as Rdio, BBM Music, and Zune Music Pass; and streaming music videos such as YouTube and Vevo.

The entertainment software industry has also enjoyed remarkable growth in Canada. The industry is now the third largest in the world, employing 16,000 skilled workers. In 2010, the Entertainment Software Association of Canada commissioned a study by SECOR Consulting that surveyed the industry and asked for the top three risks faced by the Canadian video game industry over the next two to five years. Copyright and piracy concerns ranked near the bottom, well below issues such as changing industry dynamics, lack of talent, government support, rising costs, lack of funding, and outsourcing. In fact, the reference to copyright as a concern was so low - barely above concerns about an economic recession - that SECOR did not discuss it further.

A long section assessing many provisions in C-11 follows, with the conclusion that:

While the Trade Act directs the USTR to ensure that other countries provide adequate and effective protection to US IP rights, it does not define the scope of those rights. In pursuing the Trade Act's mandate, the USTR must not

interpret copyrights to mean unlimited rights tolerant of no limitations and exceptions. Rather the USTR should be guided by U.S. law in evaluating the laws of other countries. Viewed from a U.S. law

perspective, Canadian copyright laws provide adequate and effective protection to US IP rights owners. Limitations and exceptions in current Canadian law as well as proposed limitations and exceptions do not derogate from the effectiveness of these protections. Furthermore, Canadian authorities effectively enforce copyright laws. Consequently, rates of infringement in Canada are low and the markets for creative works are expanding. Placement of Canada on the Special 301 Watch List or Priority Watch List in the face of this evidence would be unjustified. It would only lead to undermining the legitimacy of the Special 301 process.

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