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A Changing Media Landscape in Asia: Challenges for Canada

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This piece examines the forces reshaping the media industry in Canada and Asia and its impact on the regulatory landscape for media and entertainment in the Asia Pacific region across a spectrum of issues, from content control to protection of intellectual property to dissemination of the national ”voice”.

Grappling with a Limited Canadian Brand in Asia

The technological advances of the last 20 years have fundamentally changed the nature of the media and entertainment industry, both in Asia and in Canada. The ‘Canadian brand’ within the media and entertainment industry in Asia remains virtually non-existent. It is ironic that despite Canada’s welcoming environment to foreign content, including considerable content from across the Pacific, Canada’s voice in the region does not reflect its status as a major Asia Pacific nation. A major Canadian ‘content deficit’ persists, adding to the continued challenge of sustaining a Canadian presence among the ‘eyes and ears’ of Asia’s vast population.

The internet has made national boundaries and jurisdictions more porous forcing national regulators to scramble to keep up with the new ways, both legal and illegal, that consumers use to access content. No where is this more true than in Asia where the ubiquity of mobile devices has powered the widespread availability of content. At the same time some jurisdictions, with varying degrees of success, are endeavouring to limit or control what their consumers can access while using media to promote a global image of their national “brand”. Canada faces the same technological and market challenges and its responses provide some useful examples, both positive and negative, of how regulators and industry are adapting to the digital world.

About The Author

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IMAX Peace Cinema in Shanghai, China
Photo Credit: Andrew Fletcher

Despite regulatory challenges, growth in Asia in both cinema box office and television revenues is phenomenal. The Chinese theatrical market is the fastest growing market in the world, and last year topped $2.1 billion. It grew by 64% from 2009 to 2010 and "slowed" to just a 30% growth over the past year.[1] The booming theatrical movie business is driven by massive expansion in the number of cinemas as the growing middle classes add movie-going to their lifestyle options.[2] In India, the media and entertainment industry demonstrated a steady 11% growth in 2010, dominated by television,[3] and was forecast to grow by 13% in 2011. Although India is known as the country that produces annually the most films,[4] the industry is challenged by a declining box office owing to lack of quality content and the closure of many, older single-screen cinemas. The television market, however, is robust and growing, driven largely by advertising revenues.[5] By far the largest entertainment and media market in Asia is Japan at US$174 billion.[6]

Media and entertainment markets in Asia are remarkably diverse. South Korea, arguably the world's most wired nation, has cheap, readily accessible broadband that has fuelled a huge appetite for local content yet it has also almost destroyed the local music and film industries owing to the high prevalence of piracy. In India, despite growing popularity of mobile phones, most content is still consumed at the theatre or through cable or satellite television owing to the paucity of affordable bandwidth. India and Korea are the "bookends" for the surge in popularity of local content across Asia, manifested also in Japan, China, and Southeast Asia.

Canada by contrast is a mature market with a well developed ecosystem both for media and television entertainment, and a well developed film distribution infrastructure. What makes the Canadian market almost unique is the high degree of penetration of foreign (mostly US) content on Canadian screens despite generations of effort by Canadian regulators to influence content consumption patterns.

Turn on television anywhere in Asia, however, and you will hear almost no Canadian stories.[7] In fact, it would be surprising if you found any reference to Canada at all other than in the global weather report. By contrast, the Australia Network, funded by the Australian Government and currently delivered under contract by the Australian Broadcasting Corporation, is widely available.[8] The same is true of China, with its CCTV-9 international service,[9] Japan, with NHK, and Korea with its Arirang Network, not to mention national services from Germany, France, Spain, Portugal, Italy, Russia and the BBC.[10]

Amongst this multitude of national networks distributed on television platforms across Asia, Canada's voice is silent. Canadian governments have grappled with this content deficit over the years, but the only significant government support has been for Radio Canada International (RCI), a shortwave service established immediately after WWII. RCI has undergone major funding cuts but still broadcasts on shortwave and now over the internet.[11] Although recently announced cuts to 80% of RCI's budget have cast even this minimal broadcast service in doubt.[12] While radio has its role, in the absence of a viable commercial model to distribute Canadian TV programming in Asia (other than some Canadian programming available on the francophone network TV5),[13] Canada's audio-visual presence in Asia will remain virtually non-existent.

Photo Credit: Creimerd

Key Trends in Distribution and Content

It is important to understand the regulatory environments in Canada and Asia, as these reflect and present differing political traditions and doctrine, as well as cultural and historical factors. Technically, the industry is facing convergence and the rapid deployment of new and sometimes disruptive technologies on both sides of the Pacific. Socially, we are seeing a new generation of consumers who prefer to access content in different ways on a range of devices and at a time of their choosing. Culturally, both Canada and some Asian countries continue to struggle to preserve their voices in the face of the world's most prolific and successful creator of content, the US. Thus regulators in both Canada and Asia share a number of common concerns that are worth exploring.

Media regulators have many tools at their disposition, but the ability to control or licence distribution of content is the ultimate weapon in their arsenal. While the objective of all regulators is maintenance of an orderly market, many are expected to extend their mandate far beyond this basic role. The power to regulate distribution can be used to *influence* what consumers can view (as in Canada or Korea for example), to *limit* the choice of what they can see, or to completely *prohibit* them from accessing certain types of programming or films either because of their origin or their content (China being the prime example). Censorship is one element of control that limits availability of content, but in many jurisdictions, including Canada, the approach generally is to classify content, and then enforce limitations associated with that classification (e.g. PG-13) rather than censoring it. In parts of Asia Pacific, censorship goes well beyond merely enforcing standards of taste but extends into issues of cultural or political acceptability. For some governments, international media and content is something to be wary of, to control tightly and to censor heavily. In these jurisdictions, distribution of content (print or electronic) is still seen to be the ultimate prerogative of the state (e.g. China). In other cases, international content is welcomed as offering diverse perspectives but there are concerns over cultural domination and the ability of local creators to survive (e.g. Korea). In yet other cases, governments are responsive to the pleas of local enterprises for protection, more for economic than cultural reasons (e.g. Indonesia), while in still others (e.g. India, Hong Kong and Singapore), the market largely prevails and audiences are generally free to watch what they are willing to pay for.

The Television Market

For countries wary of foreign content, it is not just broadcast news that is considered "sensitive". In China, the regulator, SARFT[14] has just issued a decree[15] further limiting foreign content on Chinese television.[16] All these restrictions are quite apart from restrictions on foreign broadcast news media. While CNN or BBC are available to foreign visitors in hotel rooms or "foreign compounds" in China, no foreign news networks are distributed over cable and satellite to Chinese domestic viewers.

Other countries exercise distribution and content controls to a lesser degree. South Korea maintains local content quotas that vary by genre. Australia has local program expenditure quotas for drama and movie channels. Canada, of course, has pioneered and fine-tuned the concept of local content requirements both in terms of percentages of programming time and program expenditure. Most of the countries that impose some sort of local content requirement, with the notable exception of China, find themselves in a situation, perceived or real, where they fear cultural domination by a larger geographical or cultural neighbour. The policy impact of the content quotas in these cases is more to influence viewer choice, by ensuring that domestic alternatives are made available, than to limit choice by blocking foreign content. Whether or not this policy has been successful is a matter of debate. As any Canadian viewer can attest, Canadian broadcast TV carries most of the popular US shows. While organizations like the Friends of Canadian Broadcasting decry the annual trek to Hollywood by Canadian media executives to purchase US programs,[17] most Canadian channels would argue that they need to purchase popular US programming in order to generate the viewership, and thus the advertising revenues, that will allow them to invest in the required level of Canadian content. Canadian producers thus have to fight for air time in their own market while facing local content preferences in many markets in the Asia Pacific region.

Photo Credit: http://www.friends.ca/

The Cinema Market

While television is an important medium for bringing international content to Asian audiences, a more traditional distribution platform is cinema exhibition. As in broadcasting, China is the example where state control of film distribution is the most far-reaching. Foreign films in China can be imported only by a state-owned monopoly, China Film, and distributed by one of two state owned distribution entities. The number of foreign films, from all sources, that China will distribute annually on a revenue-sharing basis is limited to 20.[18] While censorship in China is tight, censorship is a reality in all markets with the acceptable standards of taste and content varying widely by culture. What is unique in China is that even after clearing the censorship process, the few foreign films that have been approved for import still face restrictions since the government-controlled distributor exercises the right to limit the exposure of Chinese audiences based on its own (non-commercial) criteria.[19] The policy goal is to ensure that Chinese made films occupy a majority of screen time and audience revenues by handicapping popular foreign films.[20]

This practice has long been a bone of contention for US studios but the issue is a difficult one to deal with since the Chinese, who have the exclusive control over film distribution within China, can claim they have the best market knowledge and that Chinese films reserved for showing over the popular local holidays best respond to consumer demand. The argument cannot be disproved because China Film effectively controls all import and distribution. However, the high degree of piracy of foreign films in China suggests that limiting consumer access to foreign content has not been successful.

For Canadian producers, the best means to deal with this market barrier is to use the umbrella of the Canada-China Co-Production Film Agreement, whereby any joint venture films made under its terms are considered by China to be domestic films, thus falling outside the annual 20 film quota,[21] although TV production is not yet covered by the Agreement.[22] Another would be to partner with Hong Kong entities since Hong Kong films are considered domestic under Chinese regulations and are not subject to the quota regime.

There are alternatives to the imposition of import quotas. South Korea has for many years imposed a WTO-compliant measure known as screen quotas, whereby Korean cinemas are mandated to exhibit only local productions for a specified number of days per year. Korea halved the quota from 40% to 20% of screen days just prior to entering successful free trade negotiations with the US. The reality was that in recent years the artistic success of the Korean film industry resulted in roughly 50% of the box office going to local films based on commercial appeal, rendering screen quotas a non issue.[23] Indonesia recently passed a law requiring films distributed in that country to be printed there, a measure that has been temporarily suspended after it was shown that the limited local print labs lack the technical expertise to meet international standards.

Many countries are concerned about the degree of penetration that foreign (mostly Hollywood) films enjoy. Domestic film industries, while enjoying the advantage of telling local stories in the local language for domestic audiences, often lag owing to weak investment, poor production values or limited distribution opportunities. A notable exception is India. One of the most successful producers of films in Asia and the world, India does not interfere with foreign film importation or distribution nor does it offer subsidies for production of local films[24] yet it enjoys a local market share in excess of 90% in most years.[25] India has become proof that good product catering to local tastes without unnecessary government intervention can succeed. However despite the success of the Indian model (which may be due in part to unique cultural factors of language and taste) most governments, with the distinct exception of the United States, subsidize domestic film production in one form or another although, none, apart from China, have chosen to promote local production by limiting access to foreign content.

Photo Credit: Jelson25

In comparison, Canadian television and film regulation is far less restrictive than in a number of the Asia Pacific economies. In terms of unrestricted access to foreign content, Canada is one of the most liberal markets in the world, notwithstanding the government's traditional policy of encouraging and promoting greater exposure of Canadians to domestic programming and films. One has only to turn on the television in any Canadian city to be aware of the wide range of content readily available, not only from US and Europe, but also from countries reflecting the ethnic make-up of Canada.[26]

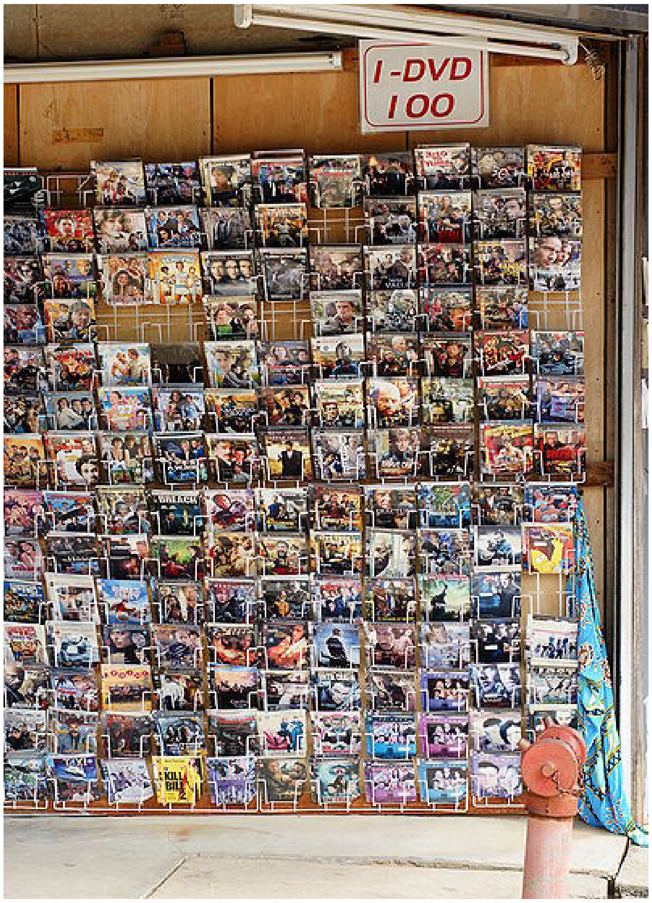
Fighting Content Piracy

In parts of Asia where broadband access is still limited, satellite or signal piracy is the greatest threat to the industry. The use of 'piracy' to describe copyright infringement dates back several centuries,[27] and today is enshrined in international treaties.[28] When applied to the broadcasting and film industries it refers to the unauthorized distribution of content without compensation to the owners of the copyright of that content. This type of infringement is usually done for commercial gain where a pirate operator will take content or a broadcast signal and distribute it either through satellite or cable distribution, in hard copy (DVD) format, or over the Internet.[29]

Piracy of broadcast signals is a major problem in Indonesia, the Philippines, Thailand, India and Vietnam.[30] For example, consumers receive television signals that are not authorized for distribution in a particular country (grey market distribution) or signals stolen from legitimate providers that are illegally distributed by middlemen who have hacked into cable or satellite signals and resold the content for a fee (black market distribution). The nature of the problem varies from one country to the other. In the Philippines, there are an estimated 45% of total cable customers who subscribe to pirate connections due to weak enforcement of laws against pirate operators. In Thailand, a regulatory vacuum has until very recently allowed unlicensed provincial operators broadcasting pirated content to continue to operate openly. In Vietnam, there have been instances where networks owned and operated by the government freely help themselves to foreign content without payment on an 'experimental basis.'[31]

This problem is not unknown to Canada. Given its proximity to the US, the reception in Canada of US signals not authorized for the Canadian market was a problem in recent years. This 'grey market' was facilitated by middlemen selling satellite equipment and decoders to Canadians who accessed US or other international programming. However, between greater enforcement against sellers of illegal decoders[32] and greater availability in Canada of content from all sources, the problem has largely disappeared.

Online piracy is a major challenge. As in Canada, this is the primary form of piracy in China, Korea, Japan, Taiwan, Australia, and New Zealand. Owing to the ambiguity of its copyright law regarding liability for the enabling and inducement of piracy, Canada has become the location of choice for a number of the top "online notorious markets" that distribute content online commercially without payment to rights holders.[33] Many countries, including Canada, are seeking to strengthen their ability to tackle internet-based piracy, and to determine the right balance of responsibilities among content owners, Internet service providers (ISPs), other web-based services, and consumers. In Canada, a new Copyright Bill (C-11) is now before Parliament, the fourth attempt to update Canada's copyright laws in the past six years. Passage would allow Canada to comply with its obligations under the World Intellectual Property Organization (WIPO) Internet treaties that it signed in 1997, and to bring its copyright regime into the digital era.



A store selling pirated movies *Photo Credit: AlexanderKlink*

Given Canada's role as an economic and technologically advanced G7 nation, it is somewhat surprising that it is behind several of the countries in Asia Pacific when it comes to protecting content and intellectual property in the online environment. Despite Canada having a panoply of intellectual property (IP) laws in place to protect and promote innovation, creativity and brand value, the US Trade Representative's intellectual property "scorecard" puts Canada into some uncomfortable company as a country where IP protection is considered weak.[34] Canada's copyright legislation has been in place since the 1920s, but since the Act was last amended in 1997, legislation has not kept up with the pace of technological change.

Assuming Bill C-11 is adopted at some point in 2012, Canada will have taken a considerable step forward in addressing weaknesses in its copyright regime, notably by enabling rights holders to protect their content online through "technical protection measures" that prevent unauthorized users from accessing or copying content without the necessary authorization, normally through payment. This is particularly important given changing business models where audio-visual content is increasingly being delivered through the internet, on a subscription streaming model by services like Netflix, or through a variety of web based platforms for transactional video such as Amazon, Apple or Cineplex.ca. Passage will also bring Canada back into line with leading digital economies including those in Asia Pacific, and should have a positive impact on the success of Canada's current expression of interest in joining the Trans-Pacific Partnership (TPP) trade talks.[35]

The media and entertainment business is changing at a rapid pace globally and regulators, whether in Canada or across the Pacific, are scrambling to keep up. Many of the old national paradigms are being challenged by new technologies. Despite these developments, many regulators continue to favour various national restrictions on distribution and content, although whether they will be able to continue in the future remains to be seen. Technological change has also brought great opportunities with new forms of digital delivery for content, but also great challenges, such as new forms of piracy and challenges to established business models. For Canadian content producers wanting to expand their presence in Asia, the obstacles are not insignificant. There is no established Canadian "platform" in Asia to project the Canadian voice, as is the case with national broadcasters of other countries. Canadian producers, like those from other countries, face national quotas or other forms of content restriction plus the debilitating effect of widespread piracy in many markets in Asia. Despite these challenges, the potential rewards of an economically expanding region thirsty for good content cannot be ignored.

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[1] Feature Film Co-Production Report, CMM Intelligence Ltd, Beijing, February 2012, Executive Summary, accessed at http://www.cmmintelligence.com/files/CMM-I_China%20Film%20Co-Production%20Report_Extract_0.pdf, cited as FFCP.

[2] In 2011, more than 8 new cinema screens were added each day in China as urban malls expand, usually anchored by a multiplex theatre. By the end of the year, the number of cinemas had a year over year growth of 42% reaching a total of 9,286, yet China remains hugely "underscreened" on a per-capita basis. China is becoming an increasingly prolific producer of films as well; in 2011 China produced released almost 600 films, making it the third largest producer of feature films after India and the US.

[3] KPMG-FICCI; Indian Media and Entertainment Industry Report, 2011, p. 3.

[4] In 2010 India produced almost 1300 films, the vast majority in regional languages; PwC: Indian Media and Entertainment Outlook, 2011, p. 59 at http://www.pwc.com/en_IN/in/assets/pdfs/publications-2011/India_Entertainment_and_Media_Outlook_2011.pdf

[5] India's TV advertising market was estimated in 2010 at (USD millions) 2255. By way of comparison, the US market was 70,693, China 9115, UK 5511 and Canada 3558; PwC, Indian Media and Entertainment Outlook, p. 31.

[6] PwC; p. 8

[7] However it is encouraging to note that the NFB and Phoenix New Media Ltd of China have announced the creation of **NFB ZONE**, the first Canadian-branded online channel in the People's Republic of China. This partnership will showcase approximately 130 NFB animated or documentary films on Phoenix New Media's digital platforms in China, with titles made available for streaming, video on demand and download-to-own. http://www.onf-nfb.gc.ca/eng/press-room/index.php?id=20787

[8] Established in 2001, Australia Network is Australia's international television service, beaming 24/7 to more than 44 countries across Asia, the Pacific and Indian subcontinent. We are part of ABC International, a group that facilitates cross-cultural communication, encouraging awareness of Australia and building regional partnerships. http://australianetwork.com/about/

[9] China is expanding its international footprint with the establishment of CNC News. See http://www.cncworld.tv/

[10] Most of these networks have limited audience but nevertheless provide an on-air presence in many Asian countries.

[11] http://www.rcinet.ca/english/about-us/

[12] http://www.montrealgazette.com/cuts+cherished+Radio+Canada+International/6444023/story.html

[13] Funded by the governments of France, Canada, Quebec, Belgium and Switzerland

[14] SARFT-State Administration of Radio, Film and Television

[15] "Further Strengthening and Improving the Import and Broadcast Management of Foreign TV Series and Movies", SARFT decree of February 9, 2012

[16] Foreign content, for example, is not allowed on television during the peak evening hours, and the total broadcast time allowed for foreign TV series and movies on a given channel is capped at 25%. Moreover foreign TV series and movies will be capped at 50 episodes. There is a longstanding prohibition on foreign animation on television.

[17] "Taxpayers fuel Hollywood buying spree", http://www.friends.ca/press-release/121

[18] The United States has challenged a number of these practices at the WTO. A WTO dispute resolution panel found that many of the measures implemented by China were not in compliance with China's WTO obligations. See http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm: DISPUTE DS363 China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products. In February of 2012 China and the US reached a negotiated settlement whereby China would maintain its quota but increase the number of special films (IMAX and 3D) imported annually by 14 as well as increasing the revenue share allotted to US studios. See "China Agrees to Increased Access for US Films", WSJ, Feb.18, 2012; http://online.wsj.com/article/SB10001424052970204880404577230172401449982.html

[19] Those criteria appear to include political objectives such as ensuring that Chinese films are shown at the most advantageous times of year or limiting the box office returns of popular foreign films by restricting distribution windows or the availability of screens.

[20] During the period 2006-2010 foreign productions achieved a total of 48% of the box office, based on the 50 highest grossing films (China Film Co-Production Report, 2012, CMM Intelligence Ltd., Beijing, Executive Summary).

[21] See Canada-China Business Council, Cultural Industries: Market Overview at http://www.ccbc.com/research-reports/sector-research/cultural-industries/; http://www.treaty-accord.gc.ca/text-texte.aspx?id=100727

[22] https://trade.britishcolumbia.ca/Export/Markets/Documents/China_FilmTV.pdf, p. 4

[23] Under WTO rules, Canada could impose a Canadian screen quota but there is no political or consumer support for such a measure. Theatre owners would be among the first to object.

[24] Prior to 1992, regulations administered by the National Film Development Council restricted access to the Indian market.

[25] See Stanley Rosen "Hollywood, Globalization and Film Markets in Asia", Department of Political Science, University of Southern California, Los Angeles, isites.harvard.edu/fs/docs/icb.topic152447.files/rosen_Hollywood.pdf

[26] Mandarin, Punjabi and Korean language programming, for example, is available in major Canadian cities.

[27] Bodo Balazs, Coda: A Short History of Book Piracy, accessed at http://piracy.ssrc.org/wp-content/uploads/2011/06/MPEE-PDF-Coda-Books.pdf

[28] (b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation. Note 14 of the TRIPS Agreement, accessed at http://www.wipo.int/enforcement/en/faq/counterfeiting/faq01.html

[29] The business model depends either on the pirate operator collecting fees from consumers (usually much less than would be charged by legitimate competing services since the distributor has no content costs to cover), or through selling advertising on sites that attract consumers seeking access to "free" content.

[30] Regulating for Growth, 2011, Cable and Satellite Broadcasting Association of Asia; see www.casbaa.com/rfg2011

[31] Ibid.

[32] See Coalition Against Satellite Signal Theft; http://www.cab-acr.ca/english/media/news/03/nr_sep0503.pdf

[33] Of the top 6 online "notorious markets" cited by the Motion Picture Association in its submission to the US Trade Representative's Office on notorious markets outside the United States, no less than half were hosted in Canada. (Kat.ph; Isohunt.com; Torrentz.eu). October 26, 2011. MPA to USTR.

[34] Canada is listed as a "Priority Watch" country in the US Trade Representative's Section 301 annual report on IP conditions among its trading partners, along with countries such as China, Pakistan, India, Algeria, Argentina, Russia and Thailand. The "Special 301" Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, which the Office of the United States Trade Representative (USTR) conducts pursuant to Section 182 of the Trade Act of 1974. Canada is included because of the "continuing challenges of copyright piracy over the Internet". http://www.ustr.gov/about-us/press-office/reports-and-publications/2011/2011-special-301-report

[35] These negotiations currently comprise the United States, Australia, New Zealand, Singapore, Chile, Vietnam, Peru, Malaysia and Brunei. Canada announced in November of 2011 that it was interested in joining the negotiations (along with Japan and Mexico). Canada is currently discussing its participation with the other negotiating partners. Given the USTR view of Canada's IP laws, it is clear that an updating of Canadian copyright law would remove one significant irritant from a US perspective.

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