

EU uses trade talks to pressure Canada on copyright laws

But a former trade official warns against major regulatory changes in negotiations.

By Laura Payton

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Canada's much-maligned intellectual property and copyright laws have been blasted in an internal European Union strategy document prepared for trade negotiations between the two sides. However, while the EU is hoping the talks will serve to pressure Canada into changing them, a former top Canadian trade official says trade discussions aren't the place to deal with major regulatory changes.

Earlier this month, *Embassy's* new sister publication, *The Wire Report*, obtained the highly critical document. It referred to "many serious shortcomings" and noted the Canadian government is "substantially lacking" in political will to change the laws.

"We can hope that the negotiation of the bilateral [Comprehensive Economic and Trade Agreement]...will provide a good opportunity to exert pressure on [Canada] regarding the upgrade of its IPR regime to developed-country standards," the document reads.

But while the EU may hope to convince the Canadian government to strengthen its intellectual property laws, the reform process shouldn't become part of the trade talks, says a former deputy chief economist at the International Trade department.

"The trade aspects of the deal itself are good and benefit both parties," Dan Ciuriak said. "[But] this one [aspect] does not benefit both parties, and the process is not a sound one. In a hotly contested area, to have fundamental business regulation made in this fashion is not sound.

"They should not feel pressured to sign onto this because there's a need to sign a deal. You don't sign a bad deal," he added.

Mr. Ciuriak says he's concerned about the number of trivial patents granted that lead to patent trolls buying up the rights held by failing companies, then looking for similar ideas over which they can sue for patent infringement. It's a piece of the patent debate, but the biggest problem for him is that regulation should be dealt with publicly, not within closed trade talks.

"The question of the public interest in this case demands that the process for regulating how that new technology is to be used. In terms of its impact on competition, that ought to be held wide open and take a considerable amount of time," Mr. Ciuriak said. "[It should] not be subject to international agreements where, in point of fact, if the political desire to sign onto the trade provisions is sufficient, you then have a lot of bad regulations signed onto."

Canadian Heritage Minister James Moore and Industry Minister Tony Clement led cross-Canada public consultations last year on copyright reform, but are still in the process of drafting new legislation on the issue. A spokeswoman for Mr. Moore said she couldn't provide a release date for the legislation, and that no report on the consultations would be released.

Both the EU and the US have been pushing the government to strengthen intellectual property protection, covering patents, copyright and trademark and counterfeiting. And while there's more pressure from the

US than the EU on the issue, there is a sense the CETA is less likely to be successful if Canada doesn't pass new IP laws, says Jason Langrish, executive director of the Canada-Europe Roundtable for Business, says

"The reality is, what would be the point of an agreement if it doesn't address the concerns of the business community?" he asked. "The concerns of the business community are the barriers that lie behind the border. They're not just tariff issues but they're also regulatory."

Mr. Langrish says pressure from the US and the EU, Canada's biggest trading partners, must have an effect on how the government sets its policy. But he says the EU negotiators aren't trying to influence Canadian legislation; they're pointing to the principles they need enshrined in the agreement to be able to sell it to their own citizens.

Waiting for reform

Previous Liberal and Conservative governments have both tabled legislation to reform Canadian intellectual property and copyright laws, but both bills died on the order paper in, respectively, 2005 and 2008 when Parliament dissolved for elections.

The EU document refers to Bill C-61, the Conservative government bill that died in 2008, calling it a positive step. The Europeans seem suspicious, however, of the government's motivations on the public consultations that drew more than 8,000 submissions.

"The reform process was revived in summer 2009 through a public consultation, although this might have been a tactic to confuse (much negative feedback is to be expected from anti-IPR lobbyists)," the paper reads.

The document also refers to Canada's "non-compliance" with two World Intellectual Property Organization treaties that Canada signed more than a decade ago but hasn't yet ratified.

Canadian officials are in Mexico this week to continue negotiations on an international Anti-Counterfeiting Trade Agreement, which has been criticized for its secrecy. Negotiators haven't yet released a text outlining what's up for discussion.

US Ambassador David Jacobson says Canada should make changes to its IP laws for its own economy, not just because the Americans think it should.

"This isn't something to do to as a favour to the US," Mr. Jacobson said in an interview with CTV's *Power Play* last week. "We care about it, but we care about it in large part because our economies are so integrated...if we both want to be successful, the United States and Canada, in a knowledge-based economy, one of the things you have to do is protect the fruits of that knowledge. And that's what we're interested in."

Both the EU and the US have singled out Canada for criticism on intellectual property, says Perrin Beatty, president of the Canadian Chamber of Commerce.

"Europe isn't alone in this. The Americans have us on a watch list as well," he said, referring to US Trade Representative Ron Kirk's priority watch list for countries soft on IP offenders. "So we are out of step with our major trading partners and with most of the industrialized world."

"It's going to be important for us, if we're going to encourage innovation and investment in Canada, and if we're going to make progress on some of the bilateral trade negotiations we have with other countries, that we give adequate protection for intellectual property here. That doesn't mean simply buying the agenda that other countries have when we're in negotiations with them, but at least recognizing that a modernization is essential...and it's in our interests to do so."

Mr. Beatty says it's also important that Canadians have adequate protection for their own exports.

"Increasingly, Canada's success in the global economy is going to be founded on knowledge-based products," he said, pointing to Research in Motion's Blackberry. "We're seeing knock-offs of the Blackberry taking place in China and elsewhere, and it is important that Canadians have adequate protection in terms of the intellectual property that they develop here. We expect it of other countries and press them to reform their regimes to protect our property abroad, but it means as well that we have to maintain a regime here that is attractive for people to invest in Canada."

But the idea that Canada is a haven for copyright abusers is simply propaganda, says University of Ottawa law professor Michael Geist.

"Canada is compliant with its international obligations today...the notion that we're some piracy haven just isn't true based on what our legal provisions look like and it isn't true based on any data that's out there," said Mr. Geist, who holds the Canada Research Chair in internet and E-commerce law.

"The numbers don't come close to supporting it. And certainly for the EU to be claiming Canada is a piracy haven brings to mind the notion of glass houses and not throwing stones. There are more peer-to-peer based sites, of the top sites, based in Europe than anywhere else in the world...it's Netherlands, it's Sweden, it's Spain, it's France. Those countries have more peer-to-peer torrent sites than almost anyone. Certainly collectively the EU is far ahead of what you'd find in Canada."

Still if the issue is important enough to Canada's major trading partners, perception might be all that matters, says Mr. Langrish, who feels Canada could become the EU's number one trade priority.

"I don't think we've ever been number one to anyone, including the United States," he said. "When we have the attention of a European Union, this is a once in a lifetime opportunity. We can't allow this to slip away."