

### Identifying Information

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### Paper Information

Title:	A Potential Silver Lining for Canadian Users' Rights in the Cloudy Intellectual Property Provisions in the USMCA
Abstract:	<p>Perhaps the biggest challenge to the globalization afforded by the Internet and the fourth industrial revolution's knowledge economy is the recent political shift to nationalism in so many countries, not least of all in the United States. The need for both cultural access and cultural protection has possibly never been greater, but the need for that access to be on a global scale is also a clear necessity to aid in greater understanding between countries and cultures. Patricia Aufderheide and Peter Jaszi point out that copyright should be seen as "a set of policies that govern how we collectively manage our cultural heritage." Canada has long sought to maintain a full cultural exception in any trade agreements, particularly with the United States. The recent United States-Mexico-Canada Agreement (USMCA) saw Canada make some extreme concessions in Intellectual Property, such as a TRIPs-plus copyright duration agreement of life of the author plus 70 years. While there is some debate that the USMCA ultimately may not be ratified due to the recent US election, Canada is currently in the midst of a mandated five year review of the Canadian Copyright Act, making it easier to push such legislation through quickly. Copyright maximalists and protectionists have been lobbying for changes and have welcomed the longer duration provision. Canada was able to suspend the controversial Intellectual Property provisions from the CP-TPP (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) that replaced the Trans-Pacific Partnership, but it seems likely that the agreed to provisions of the USMCA may make it through the current copyright review before the deal is even ratified in all three countries. Canada has always striven to balance owners' and users' rights, and the duration and digital locks provisions in the USMCA would appear to destabilize that relationship in favor of owners. However, there is the potential to push for the expansion of users' rights within the scope of the Copyright review in order to re-establish that balance and ensure access to cultural heritage and encourage innovation and creativity. For example, a more open fair use approach could replace Canada's currently closed-list fair dealing. This paper will examine the terms of the USMCA and their effect on the ongoing legislative reviews in Canada of the Copyright Act, Broadcasting Act, and Telecommunications Act. As Michael Geist so succinctly states, "If Innovation, Science and Economic Development Minister Navdeep Bains it to retain a made-in-Canada approach to copyright, it is time to take back the pen and restore the balance lost in the fine print of the USMCA."</p>