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Legally Speaking

by **Glen Secor** (Yankee Book Peddler, Inc.
and Suffolk University Law School)

The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) has been in the news quite a bit lately. The pact between the United States, Canada and Mexico was agreed to in August, but has not yet been ratified by any of the three countries.

The NAFTA was the subject of some discussion during the presidential campaign, with then candidate Clinton expressing only qualified support for the treaty. His concerns reflected the central concerns of many, namely the potential loss of jobs to low-wage Mexico and the impact of higher levels of trade on the already damaged Mexican environment. Some in Congress have indicated that amendments in these two areas will be needed if the U.S. is to ratify the treaty. On the other hand, a front-page column in the *Wall Street Journal* (1/11/93) speculates that the NAFTA represents but the first step towards a European Community-like union.

You may not realize it, but our industry is at the center of another point of contention over the NAFTA. This controversy, like that over the environment, shows us that free trade involves more than just economics. The issue is cultural sovereignty, and it has been the subject of an ongoing debate between the United States and Canada dating back to the negotiation of the U.S.-Canada Free Trade Agreement (FTA), precursor to the NAFTA. Before discussing this issue, let me provide some background on the relevant provisions of the FTA and the NAFTA.

The FTA and NAFTA generally eliminate tariffs and other trade barriers between the countries. The guiding principal behind the agreement is national treatment, meaning that each government agrees to treat its domestic companies and companies from the other two countries the same. The countries are generally not restricted in terms of what laws they can enact, so long as the laws apply equally to domestic companies as to companies from the other treaty members.

Through the FTA, U.S. businesses and individuals are exempted from Canadian restrictions on foreign investment. These restrictions, which take the form of governmental review rather than outright prohibition, were enacted as a result of Canadian concern over excess foreign ownership of Canadian companies and properties.

The intellectual property provisions of the NAFTA are being hailed as a model for international cooperation in the area. NAFTA provides more protection for intellectual properties than any previous bilateral or multilateral agreement, or than has been contemplated in the GATT negotiations.

U.S. publishers, however, cannot take advantage of most of the terms of the FTA or NAFTA, at least as they pertain to trade with Canada. This is because book publishing, along with other "cultural industries," was exempted from the FTA. The exemption is carried forward in the NAFTA, but only as between U.S.-Canada trade, not trade between either country and Mexico.

Article 2005 of the FTA states that "[c]ultural industries are exempt from the provisions of this Agreement," with a few exceptions. Cultural industries are covered by the tariff reduction provisions, special terms as to forced divestiture of certain acquisitions, broadcast retransmission rights, and repeal of "print-in-Canada" requirements for tax deductibility of print advertising. Otherwise, cultural industries are excluded from the benefits of the Agreement, including most importantly the relaxation of restrictions of American investment in Canada and, through the NAFTA, the stepped up intellectual property protections.

Article 2012 of the FTA defines cultural industries as including publishing (book, magazine, newspaper), film, music, television and radio. Annex 2106 of the NAFTA simply provides that trade in cultural industries between the U.S. and Canada shall be governed by the terms of the FTA

(i.e., the exemption applies also to the NAFTA).

As you might expect, Canada insisted upon the cultural industries exemption, and the U.S. objected vigorously to it. Space does not permit a full exposition of the two positions, but they can perhaps be summarized as follows.

Products from the United States dominate the Canadian cultural markets. Some estimates place the U.S. share of various Canadian markets at 93% for film, 90% for music, and 70-80% for publishing. The 1992 edition of *The Bowker Annual* reports U.S. book exports to Canada in 1990 (shipments over \$2,500) at \$664 million (US). The next largest U.S. export market was the U.K. at \$171 million.

The Canadian book publishing industry is relatively small, fairly concentrated, and somewhat reliant on government subsidies. The book market itself is geographically expansive, but not large population-wise (25 million per the 1986 Census, with 15 million listed as English-speaking . . . far below the 30 million suggested by UNESCO as the minimum population needed to support an indigenous book publishing industry). Print runs for Canadian publishers tend to be short and Canadian publishers have difficulty competing with U.S. publishers on price (hence the government subsidies). Also, Canadian copyright law, unlike U.S. law, does not prohibit the importation of copies even when someone in Canada holds the copyright or exclusive distribution rights.

Against this backdrop, Canadians publishers worried that the FTA would add to their problems, as Canadians generally feared that the FTA would allow American companies to buy up Canadian cultural producers and otherwise take over the rest of Canada's cultural markets. Cultural domination could quickly turn to cultural obliteration. The cultural industries exemption

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of the FTA was one attempt to preserve Canadian culture in the free trade context. A majority of Canadians voted for the FTA in a national referendum, but it is not clear that it would have passed without the cultural industries exemption.

To U.S. officials, the cultural industries exemption is antithetical to free market principles and to the objectives of the FTA and NAFTA. Further, the U.S. negotiating position attempts to treat cultural products as informational products, and to link culture with such issues as the free flow of information, technologic transfer, trade in services, and the protection of intellectual property. This approach is consistent with certain U.S. economic and foreign policy objectives, namely the stimulation of world trade in services, where we enjoy significant competitive advantages, and the promotion of democracy throughout the world.

In this context, the FTA and NAFTA are important to the U.S. not so much in terms of actual trade with Canada and Mexico, but rather as models for other multilateral trade agreements, including the mother of all such treaties, the GATT. The stakes are somewhat high for the U.S. here, since we probably cannot expect the rest of the world to accept our rules for international trade if we cannot get our largest trading partner, and closest neighbor, to go along with us. The cultural industries exemption is sticking in the collective craw of U.S. policy makers because it may set a precedent for others, especially the members of the European Community, to discriminate against American music, entertainment and publishing companies.

Most Americans are undoubtedly unaware of the disagreement with Canada over cultural industries (heck, a Macleans poll in 1987 showed that only 57% of Americans knew that we had even entered into the FTA, and only 12% knew that Canada was our biggest trading partner, versus 97% and 83% of Canadians, respectively). Canadians, on the other hand, are keenly aware of the issue. Cultural preservation is closely linked with national identity in Canada, and is thus the subject of intense interest. When U.S. Trade Representative Carla Hills, prior

to commencement of NAFTA negotiations, made an off-the-cuff remark about the FTA's cultural exemption being on the table for NAFTA, a firestorm ensued in Canada. Blistering editorials appeared in the Canadian press, and the Canadian government responded forcefully that cultural industries were not on the table. As the NAFTA text indicates, the U.S. backed off quickly.

As we debate the future of the book, as we discuss the role of electronics in scholarship and reading generally, as we talk increasingly about information products, and as we describe ourselves with some phrase beginning with "information" (and ending with "provider," "broker," "manager," etc.), it is interesting to note how "information" is being treated in the international trade context. Culture is not information, and cultures should be preserved. Cor-

Letters

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Dear Editor:

The last two issues of *ATG* have been especially good and just chock-full of information. *ATG* is really wonderful for those of us without other acquisitions/collection development professionals at our institutions with whom to share ideas.

Well, it is beautiful up here in western Michigan, so I only occasionally miss going to the Virginia, N.C. and S.C. coasts. The sand dunes of Lake Michigan are beautiful, and the water is the color of the Caribbean (just a lot cooler). I still yearn for the Charleston Conference again, but it's hard to wrangle money for travel. Still, Charleston or bust . . .

Marcie Kingsley
(Western Michigan University)

Dear Editor:

In the "thank you" department, I don't want to forget Dorinda and Dana who gave me more cooperation at the Charleston Conference than I deserved.

Lyman Newlin
(Book Trade Counsellor)☞

rectly or not, Canada has determined that the cultural industries exemption is necessary for the preservation of Canadian culture.

While U.S. concerns about the potentially damaging precedent established by the cultural industry exemption of the FTA are legitimate, do they rank with Canadian fears about completely losing their cultural identity? I think not, especially in light of the huge shares of the Canadian cultural markets that American companies already control. For U.S. trade officials to continue to insist otherwise is to say that too much is not enough.☞

And They Were There

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Ms. Backlund provided a generous assortment of handouts and brochures. Members then had the choice of touring either the UT Fine Arts Library or the UT Visual Resources Collection.

Following lunch, participants were treated to a tour of the studio of Austin fine printer **W. Thomas Taylor**. Mr. Taylor, a former rare book dealer, is now principally a designer who works with a master printer in the production of books, brochures, posters and other publications. He gave an informal talk on different fine printing technologies, with an emphasis on his current use of photo-polymer printing plates which incorporate the use of negatives produced with the Macintosh.

The annual meeting was a success, as ARLIS members learned about the wonderful resources in Austin, and established or renewed contacts with other Texas art and visual resources librarians. As one member put it, "We only meet once a year because people are so widely dispersed throughout Texas, but we do know how to put on a great conference."☞

Sibling Rivalry

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and the Association of American University Presses provide the kind of forum that allows publishers, librarians, and in some cases vendors, consultants and academics to mingle and to debate the issues of mutual interest and concern that prove once again that we are all truly in the same family. ☞