

# NAFTA's Double Standard: What Can you Do if Your Rights are Violated?

## Which of my rights are protected?

### **IF YOU'RE A BUSINESSMAN:**

#### **NAFTA protection for Intellectual Property Rights**

The agreement contains 14 pages of fine print spelling out detailed standards for protecting video and cassette recordings, films, literary and artistic works, industrial property, new varieties of plants, copyrights, trademarks, patents, satellite signals, semiconductor designs, geographical indicators, industrial designs and trade secrets.

### **IF YOU'RE A WORKER:**

#### **NAFTA Side Agreement protection for Worker Rights**

The Side Agreement contains no specified labor standards. Moreover, only the persistent failure of a government to enforce its own labor laws in three areas – minimum wage, child labor, worker health and safety, may be subject to sanction. A government's persistent non-enforcement of the most fundamental labor rights – the right to strike, the right to organize and collective bargaining rights – is specifically excluded from the reach of sanctions. Thus the victimization of workers seeking to organize is not eligible for redress through sanctions, only through voluntary consultation between governments. Nothing in the NAFTA prevents a government from lowering its labor standards. Moreover, a government cannot be charged with a "persistent failure to enforce," and is insulated from the reach of sanctions if it asserts that it made a reasonable allocation resources to another area believed to have a higher priority.

## Are my rights defined by international standards?

### **IF YOU'RE A BUSINESS MAN:**

**YES:** Countries must "give effect" to the 1971 Geneva Convention for the Protection of Producers of Phonograms, the 1971 Berne Convention for the Protection of Literary and Artistic Works, the 1967 Paris Convention for the Protection of Industrial Property, and the 1978 and 1991 UPOV Conventions for the Protection of New Varieties of Plants.

### **IF YOU'RE A WORKER:**

**NO:** Countries are not required to respect internationally recognized worker rights as defined in conventions of the International Labor Organization (ILO)

## **Must the country change its laws to conform to the standards?**

### **IF YOU'RE A BUSINESS MAN:**

YES: NAFTA countries *must* change their laws to conform to international conventions and the standards in the agreement. NAFTA also requires countries to change their judicial and administrative procedures to conform to specific requirements of due process, standing, transparency, timetables, appeal procedures etc., with respect to the adjudication of intellectual property rights disputes.

### **IF YOU'RE A WORKER:**

NO: Existing national labor laws *need not be changed* in any way to conform to any standards.

## **May I initiate a complaint directly if my rights are violated?**

### **IF YOU'RE A BUSINESS MAN:**

YES: As a business person with intellectual property, you are a "rights holder" and may initiate a complaint under the Agreement. Associations and federations with a business interest in intellectual property rights can also be recognized as rights holders. Rights holders can seek redress against violators under another country's judicial and administration procedures that must be made to conform to the requirements specified by NAFTA.

### **IF YOU'RE A WORKER:**

YES, BUT: Although Individuals and unions can file complaints with their own "National Administrative Office" (NAO) (government agencies established under NAFTA) those complaints cannot be against a company or individual. They can only be against a government's "persistent failure to enforce" certain limited specified aspects of its own law. It is up to the NAO to decide whether or not to proceed with a complaint.

## **May I file a complaint about a particular violation?**

### **IF YOU'RE A BUSINESS MAN:**

YES: As a rights holder you may file a complaint if you suspect a particular act of piracy of your intellectual property.

### **IF YOU'RE A WORKER:**

NO: Violations by individual companies *do not count*, even if they involve the 3 rights mentioned in the Side Agreement. You must demonstrate a government's "persistent pattern" of failure to enforce existing laws. "Persistent pattern" is not defined.

## **Can I stop goods at the boarder if I suspect a violation?**

### **IF YOU'RE A BUSINESS MAN:**

YES: As a businessman you can merely *allege* a violation and your own country's customs officials are empowered to provisionally impound suspected goods at the boarder.

### **IF YOU'RE A WORKER:**

NO

## **Do I have the right to bring legal action in the country where the violation occurred?**

### **IF YOU'RE A BUSINESS MAN:**

YES: As a businessman you have standing both to file a civil suit and to demand a criminal investigation in the other country. Under the NAFTA Agreement, other governments must "make available effective enforcement procedures" to protect intellectual property.

### **IF YOU'RE A WORKER:**

NO

## **Once a violation is proven, are criminal penalties applied?**

### **IF YOU'RE A BUSINESS MAN:**

YES: If the courts in the other country rule in your favor, the government must impose criminal sanctions "sufficient to provide a deterrent," including monetary fines, imprisonment, and the seizure and destruction of the infringing goods.

### **IF YOU'RE A WORKER:**

NO

## **May I be compensated for loss or damages?**

### **IF YOU'RE A BUSINESS MAN:**

YES: Under the Agreement, the other government "shall have the authority" to order payment of damages and legal expenses, even, in the case of copyrights and sound recordings, when the violation was committed unknowingly.

### **IF YOU'RE A WORKER:**

NO: As a worker, you have no recourse against particular violations even if your livelihood is threatened by unfair competition.

## **If the violations continue and go unpunished by the other country, may I seek remedies at a higher level?**

### **IF YOU'RE A BUSINESS MAN:**

YES: You may take your case to the NAFTA Free Trade Commission.

### **IF YOU'RE A WORKER:**

NO: Neither individual workers nor their unions have standing to seek remedies at a higher level. Only government agencies can pursue complaints related to labor. Even they must demonstrate that the other *government* has engaged in a *persistent pattern* of failure to enforce *its own laws* in the limited areas of minimum wage, child labor and health and safety standards, and *only* if the persistent violations relate to *exported goods* or services.

## How long does it take before my complaint is decided?

### IF YOU'RE A BUSINESS MAN:

180 DAYS There are fixed time limits for each stage of the process: consultations, commission study, and two reports of an arbitration panel, which issues a final recommendation for resolving the violation.

### IF YOU'RE A WORKER:

WHO KNOWS? There are no fixed time limits for dealing with labor violations. To reach the ultimate stage of fines or removal of NAFTA benefits would take a *minimum* of nearly four years. First you must persuade your own country's National Administrative Office to "consult" with other NAO's, then "consult" with a Ministerial Council, which *may* request a report from an "Evaluation Committee of Experts" after which, if at least one other government agrees, an arbitration panel *may* be convened and write a second report and recommendation.

## If the other government refuses to abide by the decision, are trade sanctions imposed?

### IF YOU'RE A BUSINESS MAN:

YES: Tariff benefits may be suspended and duties imposed on the entire industrial sector if the other government refuses to provide effective remedies to protect your intellectual property.

### IF YOU'RE A WORKER:

UNLIKELY: NAFTA benefits can be suspended only if the offending government fails to pay a fine 180 days after it is imposed. The value of the suspended benefits can be no greater than the value of the fine. There are no minimum fines. The arbitral panel setting the fine is required to take into account a government's "resource constraints" for enforcement activities, when it sets the amount of the fine. When a fine is paid, it goes into a fund that is recycled back to that government to help it enforce its laws. There are no provisions for auditing how those funds are actually spent.