



December 10, 2018

Delivered by E-Mail

Mr. Dan Ruimy
Chairperson
Standing Committee on Industry, Science and Technology
House of Commons
Ottawa, ON, K1A 0A6

Re: MPA-Canada's Submission to Standing Committee on Industry, Science and Technology in respect of the Statutory Review of the Copyright Act

The Motion Picture Association - Canada ("MPA-Canada") files this submission in order to provide the Standing Committee on Industry, Science and Technology ("Committee") with an update on the key issues of concern to the studios we represent and the amendments to the *Copyright Act* that we proposed when we appeared before this Committee on June 19, 2018.

Background

During our appearance, we highlighted the significant investments and economic opportunities created in Canada by film and television producers. The MPAA member studios are long-standing partners and investors in Canada through the production of television series, major feature films, and post-production, visual effects, and animation projects. In 2017, film and television producers spent more than \$8.3-billion in Canada and supported more than 177,000 jobs. Moreover, MPAA member studios alone supported more than 11,000 local Canadian businesses last year, from Montreal to Manitoba and Toronto to Vancouver.

We also detailed the significant threat of online piracy, which causes loss to the Canadians whose livelihoods depend upon the film and television industry and to legitimate businesses across the country.

We therefore focussed our submissions on two key recommendations for amendments to the *Copyright Act*:

1. allow rights holders to obtain injunctions, including site-blocking and de-indexing orders, against intermediaries whose services are used to infringe copyright; and
2. narrow the scope of the safe harbour provisions so that they only apply where the service provider is acting in a passive or neutral manner and ensure that broad exceptions do not shield (non-passive) intermediaries (such as hosting providers and search engines) that have knowledge their systems are being used for infringing purposes but take no steps to stop it.

The Need for Injunctive Relief against Intermediaries

Following our appearance before the Committee, many other Canadian creators, organizations, and representatives of Canada's creative industries echoed the need for amendments to the *Copyright Act* to provide rights holders with the ability to obtain effective injunctive relief against *all* intermediaries whose services are used by third parties to infringe copyright. While much of the discussion revolved around the application by the FairPlay Canada coalition to the Canadian Radio-television and Telecommunications Commission (CRTC) seeking the creation of an *administrative* site-blocking regime, the overarching appeal is the need for an effective framework that addresses *all* intermediaries whose services are used to infringe copyright and harm the internet ecosystem.¹

The CRTC ultimately denied FairPlay Canada's application, although it did so on the basis that it lacked jurisdiction under the *Telecommunications Act* to implement the proposed regime. In its decision, however, the CRTC expressly acknowledged the harm caused by online piracy to the Canadian broadcasting system, and pointed to the review of the *Copyright Act* by this Committee as an appropriate forum to address this pressing issue.²

For over a decade, the ability for rights holders to obtain injunctive relief against intermediaries, including site-blocking orders against Internet Service Providers (ISPs), has been available throughout the European Union (EU) through the implementation of Article 8(3) of the *EU Copyright Directive*.³ As a result, there is now a body of research on the effectiveness of site-blocking that has conclusively established that it contributes to: (1) *reduced* usage of infringing websites to which access has been blocked; (2) *reduced* overall usage of infringing websites; and (3) *increased* traffic to legitimate offerings for copyrighted content.⁴

While effective, site-blocking only applies to ISPs in disabling access to copyright-infringing websites. In addition to site-blocking, therefore, broader forms of injunctive relief pursuant to Article 8(3) of the *EU Copyright Directive* have been obtained by rights holders in the EU.⁵ These include de-indexing

¹ The desire for Canadian rights holders to obtain effective injunctive relief granted by *courts*, like rights holders are able to obtain in much of Europe, that applies against all intermediaries whose services are used by third-parties to infringe copyright, has been demonstrated before this Committee and/or the Standing Committee on Canadian Heritage. This includes members of the FairPlay Canada coalition, such as BCE Inc., Rogers Communications Inc., and the Canadian Media Producers Association (CMPA), as well as the Canadian Musical Reproduction Rights Agency (CMRRA), the Canadian Chamber of Commerce (CIPC), the Canadian Anti-Counterfeiting Network (CACN), and Business Coalition for Balanced Copyright (BCBC).

² CRTC, [*Telecom Decision CRTC 2018-384: Asian Television Network International Limited, on behalf of the FairPlay Coalition – Application to disable online access to piracy websites*](#) (2 October 2018).

³ For example, in the United Kingdom, France, The Netherlands, Germany, Denmark, Norway, Ireland, and Sweden. *Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society*, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>.

⁴ See *Highlights of Global Site-Blocking Research* referenced in our letter to the Committee filed on July 25, 2018.

orders against search engines in France, Spain, and Portugal; injunctions against hosting providers in France, Germany, Sweden, The Netherlands, Luxembourg, and Romania; and injunctions against domain name registrars and registries in France, Germany, Belgium, and Luxembourg.

New research released following our appearance has confirmed how using the complementary measures provided for under Article 8(3) of the *EU Copyright Directive* against online intermediaries whose services are used by third-parties to infringe copyright improves the overall effectiveness of such measures. As detailed in the study conducted by Médiamétrie-Netratings, when site-blocking is used in conjunction with de-indexing, the overall effectiveness of the injunctions dramatically improved while decreasing traffic to the online piracy website in question by **60%**.⁶

Canada's current internet policies were conceived at a time when the online platforms were nascent. They are nascent no longer.

The current tools in the *Copyright Act* are insufficient to appropriately deal with the new forms of online piracy that were not present, dominant, or contemplated in 2012. Rights holders need modern, common sense legislative tools and policy solutions in-line with proven international best practices, including those requested herein.

We are grateful for your consideration of these important issues and would be pleased to address any follow-up questions the Committee may have.

Yours truly,



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⁵ The principle that all intermediaries have to role play as part of a wider strategy to reduce the global problem of online copyright infringement has also been acknowledged in a report prepared for Canadian Heritage where it concluded: “Canada’s legal framework should be reviewed in comparison with international standards for defining [commercial-scale copyright infringement] and facilitating Follow-the-money counter-measures” and that “[t]he role of website hosting services and Internet service providers and legislation governing them could also be investigated as these services can ultimately stymy efforts to follow money to its ultimate destination by protecting the identity of [commercial-scale copyright infringement] operators.” See: Government of Canada (prepared by Circum Network Inc. for Canadian Heritage), [Examination of the “follow-the-money” approach to copyright piracy reduction](#) (14 April 2016).

⁶ Médiamétrie-Netratings, *Étude d’impact des mesure prises sure la fréquentation du site K-STREAMING*, filed with the Paris District Court in *Fédération Nationale des Distributeurs de Films et als. v. Bouygues Telecom et als.*, Case Number 18/10652.