

December 10, 2018

Hon. Dan Ruimy, MP
Chair, Standing Committee on Industry, Science and Technology
Sixth Floor, 131 Queen Street House of Commons
Ottawa ON K1A 0A6
Canada

Dear Mr. Ruimy:

I am writing to you on behalf of OpenMedia, a community-based organization that works to keep the Internet open, affordable, and surveillance-free. We work toward informed and participatory digital policy by engaging hundreds of thousands of people in protecting our online rights.

OpenMedia is deeply concerned about the threats facing the future of Canada's copyright regime, which would lead to a more restricted version of the Internet. These threats are more salient than ever, in light of recent events such as the renegotiation of the United States-Mexico-Canada Agreement (USMCA), the Canadian Radio-television Telecommunications Commission (CRTC)'s deflection of the FairPlay Canada's website blocking proposal to this consultation, and dangerous proposals within the EU Copyright Directive.

We hope that through this review process, we can address these threats to Canada's world-renowned balanced copyright laws, amend the Copyright Act to improve access to content, and restore balance to the system.

Comments from the OpenMedia Community

As a part of this consultation, OpenMedia built a platform to allow our community members to directly participate in this process, and share their views on what needs to stay or change within Canada's copyright system. Over 4,400 people took action at LetsTalkCopyright.ca, each sharing their perspectives on the Copyright Act review.

We greatly appreciate the Committee treating each of these submissions received via email as unique contributions to this consultation, and a reflection of the needs and concerns of people across Canada.

Impact of USMCA on Canada's copyright regime

Canada has a strong and balanced copyright system. However, in signing the USMCA, Canada made significant concessions in the copyright realm which will have detrimental impacts on our economy, culture and access to knowledge.



By agreeing to extend copyright terms from life of the author plus 50 years (consistent with the international standards of the Berne Convention) to life of the author plus 70 years, works that would have otherwise entered the public will remain locked down for decades.

This move will significantly reduce access to Canadian heritage and cultural products, which will have a major impact on culture – in addition to costing Canadian taxpayers and the education sector millions of dollars. Term extensions are unlikely to yield any benefits to rights holders and their heirs, but are guaranteed to take a heavy toll on the public at large, only to profit major corporations.

While Canada is permitted to maintain our current, and much revered, notice and notice system, the USMCA framework restricts us in any potential changes we might want to make in future. Any future alternatives are limited to adopting the U.S.' notice and takedown system – an extremely overreaching and punitive system that often results in legitimate content being censored. This agreement removes Canada's sovereignty over its own legal system for addressing alleged copyright infringement online.

By adopting these restrictive copyright rules in the USMCA, the government has undermined the value of this public consultation and the voices of all of those citizens who have taken part, letting a backdoor international trade agreement set the agenda instead.

FairPlay Canada's Website Blocking Proposal

In October 2018, the CRTC rejected a proposal to implement a website blocking agency to curb piracy, suggesting instead this consultation as a potential avenue to further examine the proposal.¹ We strongly urge the committee to reject this dangerous censorship proposal.

FairPlay's proposal for website blocking without court oversight is a solution in search of a problem. Piracy rates have been on the decline in Canada, thanks to the rise of subscription based services like Spotify and Netflix, and the fact that Canada is home to some of the toughest anti-piracy rules in the world, as pointed out by Canada Research Chair in Internet and E-Commerce Law, Michael Geist.²

If implemented, this proposal will result in sweeping censorship of legitimate online content and speech, violating Canadians' right to free expression. There will inevitably be false positives, and innocent content will be blocked – especially without any due process. This proposal violates Net Neutrality protections for which the federal government has pledged support. This proposal was vehemently opposed by dozens of experts, over 70,000 individual submissions via

¹ Huge win for Canadians as CRTC rejects Bell's website blocking proposal: OpenMedia: <https://openmedia.org/en/huge-win-canadians-crtc-rejects-bells-website-blocking-proposal>

² Canada is now home to some of the toughest anti-piracy rules in the world: The Globe and Mail: <https://www.theglobeandmail.com/report-on-business/rob-commentary/canada-is-now-home-to-some-of-the-toughest-anti-piracy-rules-worldwide/article34223771/>

OpenMedia's website DontCensor.ca, and 57,000 other submissions across Canada, as part of the CRTC's consultation.³ This plan is not only unnecessary and ineffective, but highly unpopular. Approving such a censorship agency would create a dangerous precedent for other censorship mechanisms in the digital landscape, and must be rejected.

Copyright taxes on smartphone devices and Internet use and services

Over the past two years, a number of extremely problematic levies, or taxes, have been put forward as a means to find additional funding mechanisms from the Internet to offset the reduction of cultural funding from broadcast television revenues, and the government's own contributions. However, Canadians already pay some of the highest prices in the world for what is widely recognized as middle of the road service. We simply cannot afford to increase the costs of connectivity.

While there have been a number of different proposals made on how to find ways to tax the Internet to subsidize content creation, there's a few that stand out, which we feel obligated to address directly.

An iPod Tax: This recycled idea was already rejected in the last iteration of the Copyright Act, but has resurfaced yet again. It would tax all smartphone and similar devices sold in Canada, to compensate for alleged music copying.⁴ This idea ignores the decrease in private music copying with the rise of subscription-based services, and that people use smartphone devices for a wide variety of reasons far beyond music consumption – let alone illegal music consumption.

A Netflix Tax: This proposal would reverse the CRTC's Digital Media Exemption Order to see Over-The-Top (OTT) providers required to comply to the same Canadian content regulations as broadcasters. This fundamentally misunderstands the nature of the Internet, and would actually target all OTT services of all sizes – not just Netflix. While the disruptive nature of the Internet can be clearly seen to have an impact on traditional content distribution methods, this innovation, disruption and flexibility is exactly why people are moving away from cable and towards the Internet. We should be embracing these new digital technologies – not trying to force them back into the old boxes of legacy distribution methods.

An Internet Tax: This proposal would require Internet Service Providers to pay into CanCon funding as Canadian broadcasters do, for each of their subscribers. Unfortunately, we know these prices will simply be passed directly onto customers, which ultimately makes it simply a new tax on going online, and an increase to the already extraordinary costs of connectivity in

³ Against website blocking: What OpenMedia submitted to the CRTC: OpenMedia: <https://openmedia.org/en/against-website-blocking-what-openmedia-submitted-crtc>

⁴ Canadian Music Industry Wants Government to Pay Copying Fee for Every Smartphone Sold in Canada: Michael Geist: <http://www.michaelgeist.ca/2018/06/canadian-music-industry-wants-government-to-pay-copying-fee-for-every-smartphone-sold-in-canada/>

Canada. We can't afford to raise the prices of our already overpriced Internet connections in Canada, furthering our digital divide. This idea has been rejected by nearly 40,000 Internet users and the federal government.^{5 6}

A Copyright Tax on Broadband Data Use:⁷ Recently, we heard a proposal for all Internet use over 15GB per month per household to be taxed to help supplement creators who are underpaid in their current licensing agreements. This is based on the misguided claim that any Internet usage over 15GB **must** be due to streaming content, and that streaming content (even if users pay for it legally), means users are inadequately compensating creators.

There is no question that creators should be fairly compensated for their work. However, these solutions that penalize end users by unfairly assuming they're breaking the law are not the way to make this happen. Instead, we need to focus on ensuring the creators are being fairly paid by those that are licensing their works, and that there are adequate funding mechanisms available to a wide variety of content producers throughout Canada – including government contributions.

Sales Tax: Charging federal sales tax to online providers is often conflated with the above proposals, but is critically distinct. Should the federal government choose to apply HST to international online services, those taxes should rightly be charged and remitted to the government, then allocated into the general budget as the government sees fit – including as funding for arts, culture, and creators. Paying corporate taxes, as the rest of companies operating within Canada do, is a reasonable contribution to our economy, and provides the federal government with the necessary resources to support content creators and Canadian cultural products.

We cannot afford to further increase our digital divide, and the price of the Internet in Canada. A fast, affordable Internet connection is essential.

The European Union Copyright Directive

Over the past few years, the European Union has been considering, studying, and forwarding a directive to overhaul copyright legislation in the EU. The copyright directive, which was subject to a recent vote in September, raises concerns about proposals that will have a global impact. Articles 11 and 13 are of particular concern to our domestic copyright review as they are poised to set a dangerous precedent on how copyright is managed in the digital age.

Article 11, also known as the Link Tax, would copyright the snippets of text that usually

⁵ Stop this 'Digital Tax on Everything': OpenMedia: <https://act.openmedia.org/internettax>

⁶ Trudeau Puts An End to the Netflix and ISP Tax Debate: "Consumers...Pay Enough for Their Internet": Michael Geist: <http://www.michaelgeist.ca/2018/02/trudeau-puts-end-netflix-isp-tax-debate-consumers-pay-enough-internet/>

⁷ Canadian Music Group Calls For Copyright Tax on Broadband Data Use: Michael Geist: <http://www.michaelgeist.ca/2018/09/canadian-music-group-calls-for-copyright-tax-on-broadband-data-use/>

accompany links – often used as previews to help Internet users find content online. Requiring aggregators to pay for content, just to be able to promote it, actually harms content creators by reducing the discoverability of their content. It also entrenches the largest content aggregators, such as Facebook and Google, by making the costs for new entrants even higher.

This proposal has already been implemented, and failed, in both Germany and Spain.⁸

Article 13 introduces content filtering requirements, which would turn online platforms into the copyright police. By making platforms liable for any infringing content on their sites, it forces them to implement mechanisms to identify and block materials believed to infringe copyright – before even being posted. This would require all content platforms to implement expensive filtering systems, similar to YouTube’s multi-million dollar Content ID system. Even Content ID still results in false-positives.⁹ These kind of pre-filtering systems will inevitably result in the takedown of legitimate content, and silencing of voices, and again entrench the largest corporations who are able to afford these technologies.

If passed, the ripple effects of these detrimental proposals will be felt far beyond the borders of the EU, including in Canada. While the committee may not be able to impact the decisions made within the EU, we hope that the value in standing up for an open Internet can be protected by this committee. We urge the committee to reject any resembling proposals as part of the review.

Recommendations

Overall, we believe that Canada has a strong and balanced copyright system. But with the introduction of the USMCA, the system has been knocked askew. However, there are some simple amendments can be made to the system that help restore balance.

In exchange for the major trade-offs that were made in the USMCA, and to retain what is salvageable from Canada’s robust copyright regime, we ask the committee to strengthen user rights. At the very least, the government should maintain the current fair dealing list, including education, parody and satire. Additionally, explicitly adding transformative use would be greatly beneficial. Ideally, Canada will adopt broader fair use provisions, similar to those in the U.S.

Any proposals to eliminate or narrow down current exceptions to user rights, like the one for user generated content, should be rejected.

⁸ Implementing the Link Tax in the worst way possible: OpenMedia:
<https://openmedia.org/en/implementing-link-tax-worst-way-possible>

⁹ The future is here today: you can’t play Bach on Facebook because Sony says they own his compositions: Boing Boing: <https://boingboing.net/2018/09/05/mozart-bach-sorta-mach.html>

OpenMedia is a community-based organization that works to keep the Internet open, affordable, and surveillance free.



We also urge the government to eliminate Crown Copyright and recommend enabling the circumvention of digital locks for lawful purposes.

Lastly, we urge the committee to increase its focus on open access and open educational resources for the public, especially as these will now become more limited due to the additional term extensions.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Marie Aspiazu".

Marie Aspiazu
Digital Rights Campaigner, OpenMedia

A handwritten signature in black ink, appearing to read "Laura Tribe".

Laura Tribe
Executive Director, OpenMedia