

February 22, 2018
Canadian Radio-television and Telecommunications Commission
1 Promenade du Portage
Gatineau, Québec
J8X 4B1

Re: Part 1 – Application to Disable On-Line Access to Piracy Sites, CRTC File No 8663-A182-201800467

To Whom It May Concern,

The Information Technology and Innovation Foundation (ITIF) is pleased to submit these comments in response to the Canadian Radio-television and Telecommunications Commission’s (CRTC) request for comment on FairPlay Canada’s application asking the commission to implement rules that require Internet service providers (ISPs) to disable access to specified piracy sites for their customers.¹ ITIF is a nonprofit, non-partisan public policy think tank committed to articulating and advancing a pro-productivity, pro-innovation, and pro-technology public policy agenda that spurs growth, prosperity, and progress. ITIF supports FairPlay Canada’s application for the CRTC to create anti-piracy rules.

The proposal that the CRTC is considering will block Canadians from accessing websites that “blatantly, overwhelming, or structurally engage in piracy.”² The proposal expands on successful efforts in other countries to address the growing problem of online piracy, while imposing extraordinary safeguards to protect users’ digital rights. In short, it is a balanced and pragmatic attempt to address online piracy that has garnered support from a diverse group of stakeholders, including broadcasters, distributors, media companies, ISPs, and artists in the film, TV, and music industries. Yet for some of the most extreme digital activists, any attempt at addressing copyright infringement, is a step too far. These comments will examine and assess detractors’ counter arguments.

¹ Asian Television Network International Limited, “Application Pursuant to Sections 21, 24.1 36 and 70(1)(a) of the Telecommunications Act, 1993 to Disable On-Line Access to Piracy Sites,” *Canadian Radio-television and Telecommunications Commission*, January 29, 2018, hosted on Square Space, <https://static1.squarespace.com/static/5a68f49af6576e4326f50337/t/5a6f33bd24a694fb93a51111/1517237184069/FairPlay+Canada+CRTC+Report+2018-01-29+EN.pdf>.

² Ibid.

BACKGROUND

The proposal before the CRTC would create an anti-piracy nonprofit called the Internet Piracy Review Agency (IPRA).³ The IPRA would identify websites that egregiously peddle pirated content and, upon their recommendations, the CRTC would work with ISPs to block subscribers' access to those websites. Website owners would be entitled to object to the IPRA throughout the application process, and would have access to legal recourse through judicial review by the Federal Court of Appeals if their website is blocked.

This approach has already been tested in many other countries, and Canada is not the first to block unlawful content. At least 25 countries—including Argentina, Belgium, France, and the United Kingdom—have created systems to block piracy websites.⁴ Some of these systems are administered by governmental agencies, like the CRTC, while others are administered by courts. Not only do these countries still have a free-and-open Internet, but these policies have effectively driven users away from illegal websites.⁵ Indeed, one study of the United Kingdom's blocking program found that after blocking 53 piracy websites, there was not only a 22 percent decrease in total piracy, but also a 6 percent increase in visits to legal subscription streaming services and a 10 percent increase in ad-supported websites.⁶

ANALYZING DETRACTORS' ARGUMENTS

Several Internet activists insist this proposal is “sweeping Internet censorship.”⁷ For example, the University of Ottawa Professor Michael Geist warned that the proposal is “enormously problematic,” “raises serious due process concerns,” and “will gradually expand into demands for blocking of a wide range of other content.”⁸

³ Asian Television Network International Limited, “Application Pursuant to Sections 21, 24.1 36 and 70(1)(a) of the Telecommunications Act, 1993 to Disable On-Line Access to Piracy Sites.”

⁴ Nigel Cory, “How Website Blocking Is Curbing Digital Piracy Without ‘Breaking the Internet,’” (Information Technology and Innovation Foundation, August 2016), accessed February 14, 2018, <http://www2.itif.org/2016-website-blocking.pdf>.

⁵ Ibid.

⁶ Danaher, Brett, Michael D. Smith, and Rahul Telang. “Website Blocking Revisited: The Effect of the UK November 2014 Blocks on Consumer Behavior.” SSRN Scholarly Paper. Rochester, NY: Social Science Research Network, April 18, 2016. <https://papers.ssrn.com/abstract=2766795>.

⁷ Christine Dobby, “Anti-piracy group urges CRTC to create website-blocking system,” *The Globe and Mail*, January 29, 2018, accessed February 14, 2018, <https://www.theglobeandmail.com/report-on-business/anti-piracy-group-urges-crtc-to-create-website-blocking-system/article37766686/>.

⁸ Rose Behar, “Bell, Rogers Media among coalition urging CRTC for anti-piracy system,” *Mobilesyrup*, January 29, 2018, accessed February 14, 2018, <https://mobilesyrup.com/2018/01/29/bell-rogers-and-more-come-together-to-urge-crtc-for-anti-piracy-website-blocking-system/>.

But there is no substance to back up these assertions. The proposal outlines a process with extensive checks and balances that would only take down sites egregiously engaged in copyright-infringement. No serious reading of this proposal would suggest that sites that have minor, inadvertent copyright violations would get caught up in takedown efforts. Furthermore, any website blocked in this way would be able to appeal the decision with the IPRA and, if that fails, have access to judicial review by the Federal Court of Appeals.⁹ This process minimizes the possibility that any legitimate sites would be blocked.

Another claim that advocates make is this proposal would end net neutrality or the open Internet in Canada. For example, the advocacy group Open Media started an online petition to stop the measure on the grounds that it would end net neutrality protections in Canada.¹⁰ However, net neutrality was never designed as a defense against distributing unlawful content. It is absurd to suggest that, for example, if an ISP blocks a website that distributes child pornography it would somehow violate net neutrality principles. Web sites focused on distributing other kinds of illegal content are no different. Moreover, if enacted, the CRTC would make the decisions about what sites ISPs block, allowing ISPs to remain neutral in how they treat Internet traffic.

Finally, some argue that the proposal is unnecessary. For example, Brenda McPhail of the Canadian Civil Liberties Association, argues this plan is not needed because copyright holders can already go to court and get a takedown order.¹¹ However, this is an impractical solution given that most of the most widely-accessed pirate sites are hosted abroad outside the jurisdiction of Canadian courts. Moreover, for domestic sites, the time and expense of going to court for domestic sites is disproportionately high compared to the low cost of moving a website to a new domain.

Most of these critics ignore the magnitude of the piracy problem in Canada. Canadians contribute to 3 percent of total global piracy, visiting piracy websites roughly 1.9 billion times in 2016.¹² A full 33 percent of Canadians access unlicensed music, with 27 percent of Canadians reporting that they illegally copy music

⁹ Asian Television Network International Limited, “Application Pursuant to Sections 21, 24.1 36 and 70(1)(a) of the Telecommunications Act, 1993 to Disable On-Line Access to Piracy Sites.”

¹⁰ “Don’t Let Canada Censor the Web,” *Open Media*, accessed February 14, 2018, <https://act.openmedia.org/StopCanadaCensorship>.

¹¹ Behar, “Bell, Rogers Media among coalition urging CRTC for anti-piracy system.”

¹² “MUSO Global TV Piracy Insight Report,” (MUSO, 2017), accessed February 14, 2018, <https://static1.squarespace.com/static/5a68f49af6576e4326f50337/t/5a6f31a1ec212d3a1503db00/1517236645551/FairPlay+Canada+2018-01-29+Exhibit+1.pdf>.

from lawful streaming services, such as YouTube or Spotify.¹³ Piracy sites often expose users to online threats—one-in-three piracy sites exposes visitors to malware.¹⁴ Moreover, 7 percent or over one million Canadian households own streaming media boxes enabled with software designed to allow users to stream pirated content.¹⁵ Cultural industries—which contribute over \$54.6 billion and over 150,000 jobs to the Canadian economy—may already be feeling the effects of rampant piracy.¹⁶ Data from the CRTC shows that between 2012 and 2016, subscriptions for cable and satellite TV declined as Canadians turned to online streaming services—both legal and illegal—resulting in plummeting revenues.¹⁷

¹³ Corey Poole, “IFPI’s 2017 Connecting With Music report includes Canadian insights,” *Music Canada*, September 2017, accessed February 22, 2018, <https://musiccanada.com/news/ifpis-2017-connecting-with-music-report-includes-canadian-insights/>.

¹⁴ Digital Citizens Alliance, “Dangerous Partners: Digital Citizens Investigation Finds That Malware Operators and Content Theft Websites – Assisted by U.S. based Tech Firms – are Targeting Millions of Consumers,” *news release*, July 20, 2016, accessed February 14, 2018, <http://www.digitalcitizensalliance.org/news/press-releases-2016/dangerous-partners-digital-citizens-investigation-finds-that-malware-operators-and-content-theft-websites-assisted-by-u.s.-based-tech-firms-are-targeting-millions-of-consumers/>.

¹⁵ Dan Deeth, “Global Internet Phenomena Spotlight: The ‘Fully-Loaded’ Kodi Ecosystem,” *Sandvine*, May 4, 2017, accessed February 14, 2018, <https://www.sandvine.com/blog/2017/05/global-internet-phenomena-spotlight-the-fully-loaded-kodi-ecosystem>.

¹⁶ Canadian Heritage, “Creative Canada: Minister Joly outlines the Government’s vision for cultural and creative industries in Montréal,” *Cision*, news release, December 8, 2017, accessed February 14, 2018, <https://www.newswire.ca/news-releases/creative-canada-minister-joly-outlines-the-governments-vision-for-cultural-and-creative-industries-in-montreal-662829663.html>.

¹⁷ “Communications Monitoring Report 2017: Broadcasting sector overview,” (Canadian Radio-television and Telecommunications Commission, 2017), accessed February 14, 2018, <https://crtc.gc.ca/eng/publications/reports/policymonitoring/2017/cmr4.htm#s42v>.

CONCLUSION

As these comments have shown, these arguments against blocking piracy websites fail on their merits and are inspired more by an “information should be free” ideology than by rational analysis.¹⁸ As the CTRC reviews this proposal, the agency should investigate how this approach has been successfully used in other countries and move swiftly to adopt similar measures to protect Canadian consumers, content makers, and distributors.

Sincerely,

Robert D. Atkinson

President and Founder, The Information Technology and Innovation Foundation

Daniel Castro

Vice President, The Information Technology and Innovation Foundation

Alan McQuinn

Research Analyst, The Information Technology and Innovation Foundation

¹⁸ Robert Atkinson, “Copyright Policy and Economic Doctrines,” (The Information Technology and Innovation Foundation, November 2012), accessed February 22, 2018, <http://www2.itif.org/2012-copyright-economic-doctrines.pdf>.