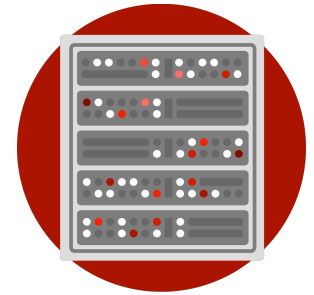


Comments to CRTC from i2Coalition On FairPlay Canada Website Blocking Plan



1. Founded in 2012 by a diverse group of Internet infrastructure companies, the i2Coalition is a global organization that supports and represents the organizations that build and maintain the infrastructure of the Internet. The i2Coalition maintains strong representation within Canada, where we represent many top Canadian Internet innovators including CogecoPEER1, Tucows, Inc., and Tuangru. The i2Coalition is the leading voice for hosting companies, data centers, registrars and registries, software services providers, and related technology firms. We appreciate the opportunity to provide input to the Canadian Radio-television and Telecommunications Commission (CRTC) on the FairPlay Canada proposal to create a new, government-backed internet censorship committee with a mandate to combat online piracy.
2. The not-for-profit organization envisioned by the FairPlay Canada proposal lacks accountability and oversight, and is certain to cause tremendous collateral damage to innocent Internet business owners. There is shockingly little judicial review or due process in establishing and approving the list of websites being blocked -- and no specifics of how this blocking is actually to be implemented. Then, once the block is established, the appeals process envisioned afterwards is too slow and costly for small businesses who have found themselves caught up in this blocking mechanism to bear. For these reasons and those further described herein, we strongly believe that the FairPlay Canada proposal would weaken Canada's economy, as well as its Internet leadership globally. We believe that it would be a mistake for CRTC to adopt the FairPlay Canada proposal.



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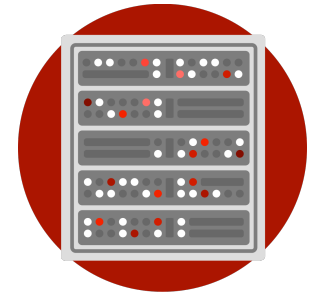
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The FairPlay Proposal Would Shutter Legitimate Businesses

3. Many of the entities associated with FairPlay are suggesting that the position of intellectual property owners be given special consideration by infrastructure providers. These providers have a vested interest in a particular interpretation of IP law. IP claims are rarely so simple that intellectual property law can be applied in an automatic or easily systematized way. Asking for the suspension of the role of the judiciary in this process will chill free speech, place the interests of those who claim ownership of intellectual property ahead of those who may have legitimate disputes with the claimants, and impose costs on companies with few resources to resolve these disputes.
4. Examples of erroneous, political and competition motivated takedowns are legion. In the United States, for example, there have been many examples of websites being taken down by government agencies for erroneous or faulty reasons, with massive implications for free speech and the kind of free and open competition that drives innovation and growth. The mass takedowns¹ by the United States Department of Homeland Security of dozens of websites in late 2010—including legitimate content sites like torrent-finder.com,

¹ See, ASOP Global Comments (USTR-2016-2013)

OnSmash.com, Dajaz1.com, RapGodFathers.com, and rmx4u.com—are excellent examples of the flaws in a focus on intermediaries as a method of addressing allegations of infringement. The difficulties each of these entities had in securing their assets as a result of these flawed takedowns, as well as the kind of damage they caused their small businesses should raise a red flag on the suggestions made by entities who seek mass takedowns. Even in cases where mass takedowns do not occur, the landscape is littered with small entrepreneurs whose businesses are shattered by “accidental” takedowns.² Suggestions to employ mass blocking of websites ignores the rubble that those processes have left in their wake.



The FairPlay Proposal Would Harm Canada's Internet Economy

5. Canada's Internet is not merely made up of the major broadband ISPs. In fact, the Internet ecosystem is predominantly made up of cloud infrastructure providers, domain registries and registrars, web hosting providers, data centers, and various other Internet intermediaries, many of them small businesses. These small businesses, and the customers who rely on them, would be negatively affected by the FairPlay proposal.
6. Undermining the Internet infrastructure marketplace is not good for any of the stakeholders involved. The Internet infrastructure industry generates more than \$100 billion in annual revenue and is growing at a rate of nearly 20% per year.³ Creating regulatory and legal hurdles to the industry's progress will not only negatively impact the architecture and viability of the global Internet, it will also impact the overall Canadian economy, which is dependent on the continued growth of the Internet infrastructure industry. Maintaining a strong and growing Internet infrastructure is vital to creating an environment of innovation, both globally and domestically.
7. The FairPlay proposal is a “guilty until proven innocent” statute. Entities who are outside Canada do not understand laws and procedures in which their assets may be blocked without due process. The marketplace would experience uncertainty and fear over the fact that the FairPlay proposal does not mandate a hearing to determine the legitimacy of infringement complaints, and hear from those affected by any resulting block. We are certain that the FairPlay proposal will reduce Canadian competitiveness.

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The FairPlay Proposal Would Stifle Innovation

8. Many customers of Internet infrastructure businesses use new and novel technologies that disrupt current businesses and business models. YouTube and Twitter are clear examples of this. Innovators like these would be threatened by the FairPlay proposal, which would allow disruptive, but legal sites to be shut down without traditional due process, even due to a complete misinterpretation of the site's intentions or activities. Because the FairPlay proposal does not provide the targets of actions the ability to legally

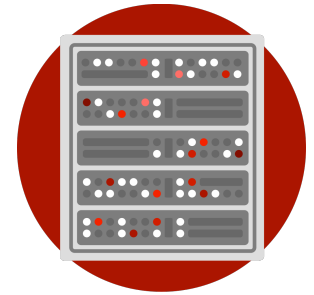
² See, e.g. <https://www.techdirt.com/articles/20160118/07513633369/hollywood-helps-show-why-dmca-takedowns-are-dangerous-taking-down-links-to-mpaas-search-engine.shtml>; <http://motherboard.vice.com/read/the-mpaa-is-trying-and-failing-to-take-down-an-entire-subreddit>

³ See <http://www.gartner.com/newsroom/id/2352816>

defend their businesses prior to establishment of a block, it will have an undoubtedly stifling effect on innovation. Courts will not have the ability to thoughtfully consider how a new technology fits into existing intellectual property law. For many new businesses, blocking their ability to access Internet users, even for a month, is tantamount to the death penalty.

The FairPlay Proposal Could Easily Become A Slippery Slope

9. The mandated blocking system proposed by FairPlay is designed to block portions of the Internet that "blatantly, overwhelmingly or structurally" engage in infringing or enabling or facilitating the infringing of copyright. This terminology can prove to have wide interpretation, depending on who you ask, and may be broad enough to eventually swallow technologies whole, even ones with many legitimate uses.
10. In 2015, Bell Media executives claimed that Canadians who used virtual private networks (VPNs) to access U.S. Netflix were stealing.⁴ VPN usage itself could be targeted by this proposal, as could the use of torrents, another technology with wide legitimate usage, including digital security on public wifi, along with myriad other business requirements. We caution that this proposal could be used to attempt to restrict technology innovation. There are no provisions within the FairPlay proposal to avoid vilification of specific technologies. Technologies themselves cannot be bad actors. This broad approach to intellectual property and infringement would be harmful to the Internet infrastructure marketplace, and therefore to the Internet itself, as well as the Canadian and global economies.



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The FairPlay Proposal Would Undermine the Copyright Modernization Act

11. Internet infrastructure providers have many motivations to minimize copyright infringement activities on their networks, including preventing abuse, maintaining high quality service for other customers, and reducing credit card fraud, which comes hand-in-hand with copyright infringement. The Copyright Modernization Act is an effective tool to address copyright infringement, as it provides almost immediate results for owners of intellectual property interests. Its Notice and Notice procedures protect third parties like Internet infrastructure providers from the litigation costs associated with determining often unclear legal issues associated with intellectual property rights.
12. Unfortunately, the FairPlay proposal undermines the Copyright Modernization Act. Both deal with determining which online content is responsible for engaging in infringing or enabling or facilitating the infringing of copyright, but under significantly different regulations. Conflicting interpretations of what constitutes intermediary liability and who is responsible will create confusion about its meaning in the Copyright Modernization Act, destabilizing it, and undermining compliance strategies employed by Internet infrastructure providers for years. Stability of the

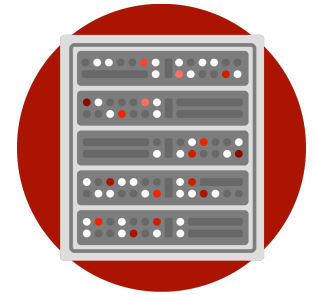
⁴ See https://www.thestar.com/business/tech_news/2015/06/03/canadians-are-stealing-us-netflix-content-bell.html

Copyright Modernization Act, as well as its Notice and Notice provision, is crucial to the continued viability of the Internet infrastructure industry.



Concluding Comments

13. After careful review of the FairPlay proposal, we believe that it will lead to significant loss of high-wage, high-tech jobs in our industry and other industries that are directly or indirectly supported by our industry. These impacts will diminish the attractiveness of Canadian companies to foreign customers, while also reducing the Canadian Internet industry's ability to compete with foreign competition within its own borders. Further, and of equal importance, the weaknesses in the FairPlay proposal may actually lead to less protection for intellectual property owners by undermining the stability of the Notice and Notice provisions in the Copyright Modernization Act.
14. Canada's Copyright Modernization Act already features some of the world's toughest anti-piracy laws. The government and the CRTC should not hesitate to firmly reject the website blocking plan as a disproportionate, unconstitutional proposal sorely lacking in due process that is inconsistent with the current communications law framework.
15. Thank you for the opportunity to comment. We look forward to continuing to communicate with the Commission, and would welcome working with them to suggest regulation that protect the rights of intellectual property owners without fundamentally undermining a robust, growing industry.



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