

**OpenMedia Submission to the
Copyright Consultation on a Modern Framework for Online Intermediaries**

March 31, 2021



OpenMedia Submission to the Copyright Consultation on a Modern Framework for Online Intermediaries

March 31, 2021

I'm writing on behalf of OpenMedia, a community of over 200,000 people in Canada that work together to keep the Internet open, affordable, and surveillance-free. We have a long history of working on issues related to copyright and free expression in Canada, including the proposals being put forward in this consultation's [policy paper](#).

Over the past month, 16,775 members of the OpenMedia community have submitted individual comments to this consultation, expressing their concerns about the proposals being put forward. We would like to take this opportunity to reiterate some of our community's top concerns, and request a full report from our government on public feedback received during the consultation once it is closed.

OpenMedia is strongly opposed to the development of any measures that would block access to websites, or encourage penalizing or disconnecting Internet users on the grounds of copyright. These proposals are disproportionate, unjustified measures highly open to abuse that will harm Internet users in Canada.

The kind of website blocking regime being proposed in this consultation will not only be expensive and unlikely to accomplish its key purpose, but will also infringe on the rights of Internet users in Canada – specifically their freedom of expression and access to information.

Requiring Canadian ISPs or other intermediaries to implement website blocking mechanisms is an expensive task that will raise the cost of using the Internet in our country, which is already amongst the highest in the world. This solution will also be trivial for dedicated copyright infringers to evade, providing little value. Additionally, these mechanisms will inevitably catch many inappropriately flagged or mixed use websites within the blocking mandate, as has occurred in other countries that have adopted website blocking. Each of these problems will directly affect the basic access to information and expression rights of everyone in Canada.

We also have deep concerns with the consultation paper's proposal to reduce the safe harbour provisions of intermediaries as a lever to motivate them to work with rights-holders on tracking and restricting the activities of their users on the Internet. Online intermediaries commonly



function as neutral carriers for content for good reason; they have tremendous power to influence what we see, hear, and say through the Internet, or place limits on that activity.

If the legal risk for copyright infringement is shifted to intermediaries, and responsibility for addressing rights-holder complaints delegated to them, the inevitable outcome will be that these intermediaries default to the rapid blocking or takedown of content, in protection of their own interests. This creates an enormous potential for abuse and censorship. Expediency, cost management and minimizing risk at intermediaries will produce a system where blocking a website or user on rights-holder request is the default outcome, and appeal of decisions is a slow and painful process, even if successful.

Under no circumstance is it acceptable for an ISP to disconnect an Internet user for allegedly accessing copyright-infringing content. The Internet is an essential service – not a privilege to be withheld upon the whims of ISPs, who are being incentivized to overpolice Internet usage. Placing the legal burden for copyright-infringing content on ISPs would guarantee innocent Internet users are disconnected without proper recourse. In many areas of Canada, Internet users are limited to a single, or small handful of Internet service providers, making these penalties only more extreme. Disconnection for an alleged copyright infringement is simply not acceptable, and seeing the government consider such a proposal – especially during a global pandemic where the Internet has been a literal lifeline to so many – is incredibly concerning.

This probable outcome is reinforced when considering that many of Canada’s largest ISPs are also vertically integrated with major rights-holding companies, such as Bell Media and Corus Entertainment. This vertical integration throws the likely procedural justice of any blocking appeals mechanism developed by them into deep question, in a conflict of interest. As the Standing Committee on Industry, Science and Technology (INDU) rightly noted in its [Statutory Review of the Copyright Act](#),

“It is not hard to imagine a situation where one vertically integrated ISP–rights-holder seeks an injunction that would apply to another ISP–rights-holder, who would gladly provide it with little contest given that they share similar interests in the outcome of the case. In such situations, where the actual alleged infringer is most likely ex parte, the risk for overreach is obvious.” (pg. 98)

We want to emphasize that this is only the latest iteration of proposals that different branches of our government have repeatedly considered and fulsomely rejected. It is incredibly discouraging to see the Government of Canada actively soliciting consultations on a proposal so actively proposed by one of the most vertically integrated companies in the country, Bell Canada.

Since 2017, Bell Canada has proposed remarkably similar proposals to those suggested in this consultation’s policy paper at least four times, including at the [NAFTA trade negotiations](#) in 2017; at the [CRTC](#) in 2018; to the [BTLR](#) panel in 2019; and to the standing Parliamentary



Committee on Industry, Science and Technology (INDU) during their [Statutory Review](#) of the Copyright Act in 2019. Each time these proposals have rightfully been rejected. The INDU committee found that,

“The Committee therefore agrees that there is value in clarifying within the Act that rights-holders can seek injunctions to deny services to persons demonstrably and egregiously engaged in online piracy, provided there are appropriate procedural checks in place. The Committee does not, however, support the development of an administrative regime to these ends. It is for the courts to adjudicate whether a given use constitutes copyright infringement and to issue orders in consequence. The courts already have the expertise necessary to protect the interests of all involved parties.” (pg. 97)

It is important to highlight that rates of copyright infringement online have been falling globally for years, and research suggests that it is the [growth of attractive market alternatives for accessing content](#), not punitive and overreaching regulation, driving the change.

We believe existing copyright law in Canada has and continues to effectively balance the interests of rights-holders in receiving revenue from their licenses with the public’s interest in untrammelled freedom of expression and access to information on the open Internet.

To ensure transparency in this process, OpenMedia requests the government issue a “What We Heard” report, summarizing the key findings from all of the submissions received in this consultation before moving forward with any further recommendations on how the government might proceed. This is in addition to the publication of submissions received in this consultation, which we appreciate the government has already committed to making public.

In summation, we request the government reaffirm the effectiveness of the current copyright regime; that it plainly reject website blocking, reducing safe harbour protection of intermediaries, and user disconnection as effective remedies for copyright infringement in Canada; and clearly report on everything they heard from the public during this open consultation process.

Sincerely,

A handwritten signature in black ink, appearing to read "matt", written over a light blue horizontal line.

Matthew Hatfield
Campaigns Director
OpenMedia