

OPENMEDIA

Standing Committee on Industry, Science and Technology

October 29, 2018

3:30 p.m. - 5:30 p.m.

Room 415, 180 Wellington, Ottawa, ON

Laura Tribe and Marie Aspiazu, OpenMedia

LAURA:

Good afternoon, and thank you for having us. I would like to begin by acknowledging that we are in the traditional territory of the Algonquin people.

My name is Laura Tribe, and I am the Executive Director of OpenMedia, a community-based organization working to keeping the Internet open, affordable, and surveillance-free. I am joined by my colleague Marie Aspiazu.

Let me be clear in stating that Canada has a strong and balanced copyright system. But the recent NAFTA renegotiations have struck a significant blow to this balance, and to Canada's position as a global leader on copyright. We hope that through this review process, we can amend the Copyright Act to improve access to content, and restore balance to the system.

By allowing an international trade agreement to set a significant portion of Canada's copyright agenda, the government not only accepted troubling amendments, including extending copyright terms by 20 years – but actively undermined this consultation.

Over the past year, a number of extremely problematic levies, or taxes, have been put forward as a means to help compensate Canadian creators. We simply cannot afford the following proposals that will increase the costs of digital connectivity:

First, an iPod Tax: This recycled idea would tax all smartphone devices sold in Canada, to compensate for alleged music copying. This idea ignores the decrease in private music copying with the rise of subscription-based services, *and* that people use smartphones for a wide variety of reasons far beyond music consumption – let alone illegal music consumption.

Next, the 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.

Then, the Internet Tax: A requirement for Internet Service Providers to pay into CanCon funding as Canadian broadcasters do. Unfortunately, we know these prices will be passed onto customers. Canadians already pay some of the highest Internet prices in the world, for subpar service. This idea has been rejected by nearly 40,000 Internet users.

Now, a Copyright Tax: Recently, we heard a proposal for all Internet use over 15GB per month per household to be taxed. 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 should pay more to compensate creators.

Creators should be adequately compensated, but these are not the solutions to make this happen.

As our community member Bill put it:

[quote] "I'm a small business owner and use a lot of bandwidth for online meetings and other related activities. An internet tax would kill my business, putting 6 people out of work." [end quote]

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

Separately, let's talk 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.

MARIE

Bell Canada's FairPlay proposal is one of the most dangerous suggestions we've heard yet.

This would inevitably censor legitimate content and speech online, and violate Net Neutrality protections, all without court oversight. And it would set a dangerous precedent for other censorship proposals in the future.

Experts have pointed out the expensive and problematic technical aspects of implementing these censorship interventions. Additionally, nearly one hundred thousand OpenMedia supporters spoke out against Bell Canada's FairPlay website blocking proposal, when it was tabled both during NAFTA and before the CRTC.

In the words of our community member Ryan:

[quote] “Arbitrarily allowing website blocking and website takedowns will result in a severe reduction of civil rights and political freedoms, as companies and organizations can decide to remove websites that they don't like, regardless if any terms were violated... We have a strong legal system, where the accused is deemed innocent until proven guilty. Let the courts handle the matters, since they are subject to public scrutiny and inquiry by law.” [end quote]

Additional dangerous proposals making their way to Canada in light of the EU's proposed Copyright Directive, are the Link Tax, and mandatory content filtering algorithms.

The Link Tax would copyright the snippets of text that usually 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. But 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 proven a failure, in both Germany and Spain.

Content filtering requirements would turn online platforms into the copyright police. Forcing online platforms to implement mechanisms to identify and block materials believed to infringe copyright before being posted – similar to YouTube's multi-million dollar content ID system – won't come cheap. And, as we know, still result in false-positives, and inevitably result in the takedown of legitimate content.

We have outlined a number of concerning proposals on the table. But we believe some simple amendments can be made to the system that help restore balance.

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.

We also urge the government to eliminate Crown Copyright.

As OpenMedia has previously stated, Canada's notice-and-notice system is a fair regime for addressing alleged content infringements. However, the government should provide content guidelines for notices that prevent threats or demands for settlements.

OpenMedia has been advocating on copyright issues for over six years. Our community's lengthy efforts include:

- **5 years of campaigning** against the secretive Trans-Pacific Partnership, and its dangerous IP Chapter.

- [“Our Digital Future: A Crowdsourced Agenda For Free Expression”](#), a positive vision for sharing and creativity online, sourced from **over forty thousand** people.
- **Over fifty thousand people** urging Canada’s Minister of Foreign Affairs to stand up for citizens’ digital rights in NAFTA.
- **Over twenty five hundred** submissions to this committee’s consultation via OpenMedia’s tool at [LetsTalkCopyright.ca](#).

Before coming here today, we asked our community what we should say to you. We hope their voices are well represented.

In conclusion, we ask the Committee to address the needs of the people these rules affect the most — everyday people who depend on a balanced copyright regime for their daily activities.

Thank you, and we look forward to your questions.