

March 29, 2018

Mr. Claude Doucet
Secretary General
Canadian Radio-television and Telecommunications Commission
Gatineau, QC, K1A 0N2

RE: Part 1 Application 2018-0046-7, File 8663-A182-201800467: Application to disable on-line access to piracy sites

Dear Mr. Doucet:

Thank you for the opportunity to participate in the consultation regarding the proposal submitted by Asian Television Network Limited (ATN) on behalf of a coalition of 25 stakeholders (henceforth the “Bell Proposal”).

Creative Commons¹ (“CC”) is a 501(c)(3) nonprofit organization that stewards simple tools to make it easier to share and build upon the creativity of others, consistent with the rules and spirit of copyright. CC provides standard, free, open licenses and other legal tools to mark creative work with the freedoms the creator wants it to carry. CC Canada² is an affiliate of Creative Commons, focusing on Canadian-specific issues and activities. We work to help society realise the full potential of the internet, including universal access to research and education, and full participation in culture. The website blocking proposal suggested by the Bell coalition will almost surely lead to legitimate content and speech being censored, thus harming the work of Creative Commons, as well as the millions of creators who have shared over 1.2 billion works³ online under CC licenses.

The Creative Commons licenses allow authors to share creativity on more open terms than the presumed default “all rights reserved” typically associated with copyright. The CC licenses do not replace copyright; instead, they work inside the bounds of copyright. CC licensors are making a commitment to share their creativity so that others may benefit, with only minimal conditions on reuse. CC licensors should feel confident that they can share their creativity on the web without it being filtered, removed, or blocked.

Regarding the Bell proposal, it is not apparent why online copyright infringement should be dealt with as a telecommunications matter—as opposed to a copyright matter. Canadian copyright law already includes significant measures curb copyright infringement of the type targeted by the Bell proposal. Michael Geist points out that the “enabler provision” in the Canadian Copyright Act is already well-suited to handle sites whose primary purpose is for

¹ <https://creativecommons.org/>

² <https://ca.creativecommons.org/>

³ <https://stateof.creativecommons.org/>

copyright infringement.⁴ Furthermore, it's up for debate whether the CRTC has the expertise to conduct this sort of piracy review. The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic observes that the Bell proposal “calls upon the Commission to undertake a new role under which it will be obligated to make legal determinations under the Copyright Act, a role far removed from the Commission’s area of expertise and one with which the Commission has not had significant historical experience.”⁵ Furthermore, the CRTC may only permit website blocking “in ‘exceptional circumstances’ and only where doing so would further the objectives found in the Telecommunications Act.”⁶ The arguments laid out in the Bell proposal do not align with instances that would meet the standard of an exceptional circumstance under this framework.

Some of the targets of the Bell proposal would certainly include websites also used by Creative Commons licensors to share their creativity with the world. The Bell proposal includes in an annex the Canada Country Level Report as a part of the 2017 MUSO Global TV Piracy Insight Report. That annex describes websites that potentially would be targeted by the so-called Internet Piracy Review Agency (IPRA), including public torrent sites. If all public torrent sites are targeted by the IPRA for blocking, it would harm those users who use the platforms for the sharing of legal content from CC licensed films, books, music—to open source software available under free and open source software licenses—to works in the public domain. For example, popular Canadian science fiction author Cory Doctorow releases many of his books and audiobooks under Creative Commons licenses. These are shared on various public torrent sites for easy (and legal) distribution under the terms of the license. Targeting all public torrent sites for blocking via the mechanism in the Bell proposal would sidestep the various existing legal mechanisms available to rights holders under copyright law, and censor works that are purposefully meant to be freely shared. Blocking these sites would prevent access, reuse, and proliferation of creativity and knowledge from authors who have specifically asked for their works to be shared freely with the world under open content licenses.

We respectfully request that you reject the Bell proposal.

Sincerely,

Creative Commons Canada
Creative Commons

⁴ “It is an infringement of copyright for a person, by means of the Internet or another digital network, to provide a service primarily for the purpose of enabling acts of copyright infringement if an actual infringement of copyright occurs by means of the Internet or another digital network as a result of the use of that service.” Copyright Act (R.S.C., 1985, c. C-42) *Infringement — provision of services* (2.3), see <http://laws-lois.justice.gc.ca/eng/acts/C-42/page-8.html>

⁵ <https://wiki.creativecommons.org/images/5/50/Cippic.pdf>

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<http://www.michaelgeist.ca/2018/03/case-bell-coalitions-website-blocking-plan-part-14-failure-telecom-munications-act-policy-objectives/>