

Notice the Difference: Canada's Notice-and-Notice Rules

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TPP Creates Legal Incentives For ISPs To Police The Internet. What Is At Risk? Your Rights.



The draft chapter of the **Trans-Pacific Partnership Agreement** on Intellectual Property—as of **its current leaked version** [PDF], article 16—insists that signatories provide legal incentives for Internet Service Providers (ISPs) to privately enforce copyright protection rules. The TPP wants service providers to undertake the financial and administrative burdens of becoming copyright cops, serving a copyright maximalist agenda while disregarding the consequences for Internet freedom and innovation.

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Draft TPP forces ISPs to terminate user accounts



By *Juha Saarinen* on Nov 15, 2013 12:14 PM

Filed under *Telco/ISP*



214



83



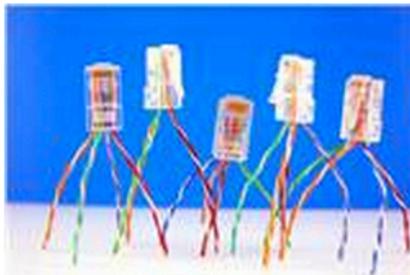
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9 Comments



Network monitoring, content blocking also proposed.

Australian internet service providers would be forced to terminate accounts and block content from users that are found to have infringed local copyright law, according to draft text contained in the leaked intellectual property rights chapter of the Trans Pacific Partnership agreement.

Lessons from Peru: A tough start to regulating ISP liability (Eng / Esp)

2:49 pm | 13 December 2012 | by Peter Micek , Inglés

By Miguel Morachimo, Hiperderecho ([@hiperderecho](#))

A Spanish translation is below.

*About half of all Latin American countries country have signed **free trade agreements With the United States** . As part of the bilateral Commitments, Peru and others Agreed to pass more restrictive copyright enforcement laws. Lawmakers said they'd consult Peruvian various writing before the industries Their Law. But as Miguel contributor Morachimo of **Hiperderecho** found, the process is much less transparent and accessible than civil society groups had hoped.*

Last month, the Peruvian Government made public its intention to **hold Internet Service Providers (ISPs) responsible for copyright infringement** by Their users. Peru Committed to doing so - imposing intermediary liability -. In a Free Trade Agreement With the U.S. in 2006 However, many have Criticized the legislative process thus far as lacking transparency. The outcome of this process will Affect Peru's position on the **Trans Pacific Partnership Agreement (TPP)** , a trade agreement being Negotiated Among Pacific Rim Governments. Also it displays the worst practices in multi-stakeholder decision-making, a key component of Internet governance.

Canada, U.S. 'battle' over ISP liability in TPP negotiations: Geist

BRIEFS | THE WIRE REPORT

PUBLISHED: THURSDAY, 11/14/2013 5:26 PM EST

LAST UPDATED: MONDAY, 03/24/2014 11:01 AM EDT

Canada and the U.S. are in a “battle” over ISP liability in the Trans-Pacific Partnership agreement, Michael Geist, the Canada research chair of Internet and e-commerce law at the University of Ottawa, said in a blog post Thursday.

On Wednesday, WikiLeaks posted a 95-page draft of the intellectual property chapter of the agreement, which includes the negotiating positions of the 12 participating countries.

“ISP liability in the TPP is shaping up to be a battle between Canada and the U.S., with countries lining up either in favour of a general notification obligation (Canada) or a notice-and-takedown system with the prospect of terminating subscriber Internet access and content blocking (U.S.),” Geist wrote.

Chile, Brunei, New Zealand, Malaysia, Vietnam, Singapore and Mexico support the Canadian approach, while the U.S. and Australia oppose it.

Intermediary liability/ responsibility

effective enforcement
public awareness

effective enforcement
public awareness

vs.

free speech
privacy
copyright balance

The Canadian experience

Legislative & industry history
Notice-and-Notice
Data

Legislative and Industry History

CONSULTATION PAPER ON DIGITAL COPYRIGHT ISSUES

June 22, 2001

Issued by:

*Intellectual Property Policy Directorate
Industry Canada*

*Copyright Policy Branch
Canadian Heritage*

SOCAN v. CAIP (SCC 2004)

“I conclude that the Copyright Act, as a matter of legislative policy established by Parliament, does not impose liability for infringement on intermediaries who supply software and hardware to facilitate use of the Internet. The attributes of such a “conduit”, as found by the Board, include a lack of actual knowledge of the infringing contents, and the impracticality (both technical and economic) of monitoring the vast amount of material moving through the Internet, which is prodigious.”

Chilling Effects

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Monitoring the legal climate for Internet activity

> [Copyright](#) > Home

Copyright

The "Copyright" topic area includes discussions of traditional copyright, fair use, reverse engineering, and the new additions to copyright of the Digital Millennium Copyright Act (DMCA). Under DMCA, we discuss the ISP safe harbor and its conditions (notice and takedown), and the anticircumvention provisions of section 1201.

Related sub-topics:

- [Copyright and Fair Use](#)
- [Derivative Works](#)
- [Reverse Engineering](#)
- [Piracy or Copyright Infringement](#)
- **Digital Millennium Copyright Act:**
 - [Anticircumvention \(DMCA\)](#)
 - [DMCA Safe Harbor](#)
 - [DMCA Subpoenas](#)

Voluntary Notice & Notice

- Major ISPs agree to forward notifications to subscribers
- No disclosure of personal information
- No removal of content
- No costs to rights holders

Viewing cable 05OTTAWA2970, CANADIAN STAKEHOLDERS' CONCERNS ON COPYRIGHT

If you are new to these pages, please read an introduction on the [structure of a cable](#) as well as how to [discuss them](#) with others. See also the [FAQs](#)

Reference ID	Created	Classification	Origin
05OTTAWA2970	2005-10-04 18:21	UNCLASSIFIED//FOR OFFICIAL USE ONLY	Embassy Ottawa

This record is a partial extract of the original cable. The full text of the original cable is not available.

041821Z Oct 05

UNCLAS SECTION 01 OF 03 OTTAWA 002970

SIPDIS

SENSITIVE

DEPT PASS USTR FOR CHANDLER AND ESPINEL

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [CA](#)

SUBJECT: CANADIAN STAKEHOLDERS' CONCERNS ON COPYRIGHT AMENDMENT, SPECIAL 301 OCR, AND ENFORCEMENT

REF: A. OTTAWA 2833 (DEMARCHE ON SPECIAL 301

OUT-OF-CYCLE REVIEW)

¶B. SECSTATE 173476 (DEMARCHE ON SPECIAL 301
OUT-OF-CYCLE REVIEW)

¶C. OTTAWA 1168 (CANADIAN REACTION TO GOC'S PROPOSED
COPYRIGHT LAW AMENDMENTS)

Voluntary Notice & Notice

“The Canadian Motion Picture Distributors Association (CMPDA) is satisfied with the current notice-and-notice proposal in the draft legislation, hoping that the record-keeping requirements for ISPs will help their industry keep track of actions against online infringers. In CMPDA's view, the advent of peer-to-peer filesharing has lessened the need for notice-and-takedown, since fewer users are downloading their files from large websites of infringing material.”

Notice-and-Notice

**Multiple attempts at
copyright reform
(C-60, C-61, C-32, C-11)**

expand fair dealing
user generated content
caps on statutory damages
internet exceptions
new consumer exceptions
enabler provision

Notice & Notice

- Copyright holder can send notice:
 - a) state the claimant's name and address and any other particulars prescribed by regulation that enable communication with the claimant
 - (b) identify the work or other subject-matter to which the claimed infringement relates;
 - (c) state the claimant's interest or right with respect to the copyright in the work or other subject-matter;
 - (d) specify the location data for the electronic location to which the claimed infringement relates;
 - (e) specify the infringement that is claimed;
 - (f) specify the date and time of the commission of the claimed infringement; and
 - (g) contain any other information that may be prescribed by regulation.

Notice & Notice

- Once receive valid notice, ISP will:
 - Forward notification to subscriber (or explain why can't forward it to claimant)
 - Retain records for six months
 - If proceedings launched within six months, retain for a year
- Fee for service can be set by government (if no fee set, no fee)
- Damages for ISP - \$5,000 to \$10,000
- No takedown
- No disclosure of subscriber information

Notice & Notice

- 2012-13 consultation
 - Fees?
 - Additional language in the notification
 - Record retention
- June 2014
 - Government of Canada announces no further regulations
 - Notice-and-notice formally to take effect in 2015

Data

Notice & Notice Data

- 2006 - BSA
 - BSA said it sent out 60,000 notices
 - “They’ve been most effective”
- 2010 – ESAC
 - 71% of recipients do not repeat infringe
- 2011 – Rogers
 - Only five percent of subscribers receive notice
 - 68% receive only one notice
 - 89% receive two notices
 - 1 in 800,000 receive numerous notices

Future?

Chile's Notice-and-Takedown System: An Alternative Approach

AUGUST 28, 2012

| Digital Copyright

9 May 2014 Last updated at 01:01 ET



Deal to combat piracy in UK with 'alerts' is imminent

By Dave Lee

Technology reporter, BBC News



Tinchy Stryder says illegal music downloaders should be fined, as a last resort

After years of wrangling, a deal between entertainment industry bodies and UK internet service providers to help combat piracy is imminent.

BT, Sky, TalkTalk and Virgin Media will send "educational" letters to customers believed to be downloading illegally.

Related Stories

[Major piracy site to be shut down](#)

[Pirates 'take one in](#)

effective enforcement
public awareness

vs.

free speech
privacy
copyright balance

@mgeist