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Regulatory

March 29, 2018

VIA GC Key

Mr. Claude Doucet
Secretary-General
CRTC
Gatineau, QC K1A 0N2

Dear Mr. Doucet:

Subject: **Asian Television Network International Limited, on behalf of a Coalition (FairPlay Canada): Application to disable on-line access to piracy sites: CRTC File 8663-A182-201800467**

1. The Canadian Cable Systems Alliance (“CCSA”) speaks for independent communications distributors which provide broadcasting distribution, Internet and telephone services across Canada. CCSA represents more than 110 companies operating from sea to sea to sea, including across the North.
2. CCSA wishes to appear at any oral hearing of this matter to expand on our comments in this submission and address the submissions of other intervenors, as necessary.
3. For the reasons set out herein, CCSA supports the subject application of the FairPlay Coalition¹ provided that smaller ISPs do not have to bear any of the costs associated with implementing the proposed regime. To clarify: CCSA’s support is conditional upon the Commission establishing that smaller ISPs are not obliged to incur or cover any upfront, operational or any other costs that would arise to set up and adhere to the proposed regime, if approved. Having to bear such costs would jeopardize the ability of smaller ISPs to offer affordable Internet services to their customers and to continue their efforts to extend broadband services to unserved and underserved communities in the rural areas where they generally operate. This would be contrary to important Canadian public policy objectives.

¹ FairPlay Coalition, “Application Pursuant to Sections 24, 24.1, 36, and 70(1)(a) of the *Telecommunications Act*, 1993 To Disable On-Line Access to Piracy Sites”, January 29, 2018 (hereinafter, the “FairPlay Application”)



The Evolution of Online Copyright Infringement and Efforts to Address It

4. Online copyright infringement began when the Internet began over twenty years ago. There have been many efforts in the intervening years to address infringing activity in fair and effective ways while still promoting and supporting an open Internet and respecting freedom of expression and net neutrality. Some of these efforts have had some success. Nevertheless, online infringement still occurs on a large scale, with certain forms of infringing activity replacing previous forms as new means of delivering content have been developed and consumers' preferred methods of accessing content have evolved.
5. In that respect, CCSA agrees with the FairPlay Application's conclusions regarding the continued seriousness of the piracy problem in Canada. This includes the recent proliferation of Kodi boxes loaded with applications which permit the illegal streaming of video content. Legislated initiatives such as Notice and Notice and industry initiatives which offer new and attractive content services with increased choice and lower prices have helped address online copyright infringement in some respects, but a serious problem still persists. And it should be understood that, contrary to the arguments of some, this problem is not limited to large corporate interests but also extends to small players, including CCSA's members who operate small Broadcasting Distribution Undertakings ("BDUs).
6. It is because online copyright infringement remains a significant problem despite all the efforts to address it over the last twenty (plus) years that CCSA is now open to Canada considering new methods to reduce it – methods which in past years we may have considered unnecessary or inappropriate in the circumstances of the time. As such – by not holding on to past arguments simply for the sake of doing so and instead being open to examining new and novel approaches for Canada which have proven to be successful elsewhere – we believe we have matured in our views regarding this issue.
7. All this being said, CCSA wishes to assure Canadians and the Commission that we would unequivocally reject any approach to addressing online copyright infringement which would fail to *respect freedom of expression and net neutrality, and which, on balance, would threaten Canada's ability to meet other fundamental public policy objectives.*
8. For the reasons described below, CCSA is satisfied that the regime proposed in the FairPlay Application would respect freedom of expression and net neutrality. As also described, however, we are very concerned that the cost implications for



smaller ISPs would pose a significant threat to the ability of Canadians to access affordable Internet services generally and, specifically, to access robust broadband services in areas which are currently unserved or underserved, both of which are fundamental Canadian public policy objectives. Accordingly, while we have found no reason to oppose the FairPlay Application due to freedom of expression or net neutrality concerns, we cannot support it unless the regime, if ultimately adopted, does not impose set-up or implementation costs on smaller ISPs which would jeopardize Internet affordability and broadband extension across the country.

Satisfying the Freedom of Expression and Net Neutrality Test

9. CCSA and our members respect and adhere to Canada's laws, including Canada's copyright laws. CCSA members commit to their customers and their partners in the Canadian communications ecosystem to participate ethically and responsibly within the system; part of this commitment is to respect the rights of creators and other rightsholders of copyrighted works. As ISPs, CCSA's members participate in the legislated Notice and Notice regime. Through their contractual affiliation payments to TV programmers and Copyright Board-established copyright tariffs, CCSA's licensed or licence-exempt BDUs pay millions of dollars each year to clear the rights to legally distribute copyright works to their customers.
10. CCSA members value their reputation with their customers as legitimate players within the rights ecosystem and intend to remain as credible participants in that system. Equally, CCSA's members unequivocally support freedom of expression and the principles of net neutrality. Moreover, we support the application to ISPs of common carrier rules and principles. It is for these reasons that we have done our due diligence to closely examine the FairPlay Application to fully understand the structure of the regime proposed and its potential impact on the smaller ISPs we represent and their customers; on copyright-related public policy objectives; and on other public policy objectives.
11. To reiterate, CCSA would oppose attempts to address online copyright infringement that we believed offended or were contrary to freedom of expression and the principles of net neutrality.
12. To those ends, it is critical that any new anti-piracy regime that involves site blocking be
 - administered by an expert and duly-authorized third party (or parties);



- narrowly targeted and address only clearly infringing sites;
 - designed to guard against over-blocking; and
 - governed by fair, robust and appealable procedures.
13. In our view, the regime proposed in the FairPlay Application satisfies the above criteria.
 14. In that respect, CCSA notes the FairPlay Application's observations regarding the effectiveness of site-blocking regimes implemented by other democratic nations around the world. As the Application outlines, international experience shows that a legally established and properly constrained site-blocking regime is a proportionate, fair and effective response to the piracy problem.
 15. We also appreciate the fact that the proposed system is intended and designed to be a mechanism whereby ISPs would not act on their own volition to influence content traveling over their networks, but would only act when required to do so by law and by a legitimized third-party (the regulator, acting on the advice of an expert and independent administrator), and only in respect of sites that are narrowly targeted on the basis that the content they offer is clearly infringing.
 16. We note the statement at paragraph 76 of the FairPlay Application that "the role of ISPs would be restricted to implementing a legal requirement to prevent access to piracy sites". That is, the only role of the ISP should be compliance with an order duly issued by the Commission, as the regulator of the Canadian communications system.
 17. So long as the system is structured and administered in this manner and remains restricted to that narrow purpose, CCSA agrees with the FairPlay Coalition's assertion that "[t]he system we propose does not raise net neutrality issues. ISPs remain neutral and simply implement decisions of the CRTC that restrict the distribution of content that is unlawful."²

² FairPlay Application at para. A.1.



Need to Ensure that the Regime's Costs Do Not Outweigh its Benefits

18. All of the above being said, the potential benefits of the proposed FairPlay regime in terms of reducing online copyright infringement in a fair and narrowly-targeted way must be weighed against the costs of such a regime in terms of meeting other important public policy objectives.
19. In that respect, we are very concerned about the potential impact the proposed regime could have on both the provision of affordable Internet services and the extension of broadband service to currently unserved and underserved parts of the country – two very important public policy objectives. Our concern here arises from the potential costs to ISPs of setting up and implementing the proposed regime.
20. As we understand it, there are three likely technical ways to legitimately undertake site blocking. The first is URL blocking, which would be the least expensive but would also be the least effective as it could be circumvented with relative ease. The second would be IP blocking, which would be expensive to do in IPv4 and extremely expensive (and perhaps impossible) to do with IPv6. The third would be blocking based upon deep packet inspection signatures: while technically the best solution, it would also by far be the most expensive of all to implement.
21. It is critically important that any regime to reduce online copyright infringement not increase the technical costs and administration burden placed on ISPs. This is especially important for smaller ISPs. Such cost increases would lead to increased Internet retail prices, making service less affordable. It would also require ISPs to divert revenues away from investing in their networks to extend broadband services to currently unserved and underserved communities. While these extra costs would impact on all ISPs, it is smaller ISPs and their customers who will be the most affected because their costs are already high and their revenues limited. It is also because they are generally situated and operate in smaller and remote areas, and so are in the best position to understand the needs of their communities and – where funds are available – extend broadband services to them.
22. As another disturbing potential cost element, we also note the statement at paragraph 77 of the FairPlay Application that the independent administrator, IPRA, should be “based to a large degree upon the structure of the Commissioner of Complaints for Telecommunications Services Inc. (“CCTS”)”. That statement is of concern because mandated participation in the CCTS and its dispute resolution



processes has imposed considerable costs on some CCSA members, sometimes in relation to consumer complaints that are nonsensical or simply unresolvable.

23. CCSA submits that great care must be taken to ensure that the mandate and activities of an independent anti-piracy agency do not also impose burdensome costs or procedures on ISPs. To that end, ISPs should not be required to “join” such an agency or to engage in its processes. Moreover, ISPs should not be subjected to any new data collection, monitoring, reporting or other similar requirements in relation to either the operation of such an agency or the issuance of blocking orders by the Commission.
24. Given our cost concerns, CCSA can only offer conditional support for the FairPlay Application. Specifically, we can only support it if smaller ISPs are exempt or protected from any costs associated with setting up and implementing the regime. If smaller ISPs are forced to bear these costs, Internet retail prices will increase and the extension of broadband services to unserved and underserved areas will be jeopardized. In such circumstances, we submit the real public policy costs of the proposed FairPlay regime would far outweigh its potential benefits. Accordingly, we urge the Commission to pay particular attention to our cost concerns as it reviews the FairPlay Application.
25. CCSA reserves the right to comment on other aspects of the FairPlay Application and third party interventions at subsequent stages in this proceeding.
26. CCSA thanks the Commission for the opportunity to provide these comments.

Sincerely,

Christopher J. Edwards
Vice-President, Regulatory Affairs

cc The Applicant (c/o [atn@asiantelevision.com](mailto:atn@asiantelelevision.com))