



Canadian Labour Congress

Congrès du travail du Canada

## **Canadian Labour Congress Policy Statement on Copyright and Net Neutrality**

As the quickening pace of technological change impacts Canadian society altering the nature of our work, our education and health care systems, our social and family structures, and our culture, the Canadian Labour Congress (CLC), representing millions of Canadian workers, adopts this Policy Statement on Copyright as a first step to address all intellectual property rights.

The CLC's Policy Statement on Copyright and Net Neutrality has been developed through discussion among and consensus between representatives of affiliated unions representing thousands of Canadian cultural, educational, library, health care, service, industrial, and manufacturing workers from all walks of Canadian society who recognize that Canadian workers play critical roles as creators, owners and users of copyrighted materials.

### **What is Copyright?**

Copyright is a form of intellectual property, a legal concept regulating products of the mind that can be owned. Copyright's purpose is to balance the needs of creators, owners and users of literary and artistic works. It does this by ensuring income for creators and owners and access to works for users.

Copyright provides the creators of literary and artistic works (such as music, movies, television programs, books, educational course material, paintings, sculptures and newspaper stories) with certain economic and moral rights governing their use by others. In Canada, copyright is a

federal responsibility and its rules are set out in the *Copyright Act* dating back to 1924.

Copyright economic rights provide the creator with compensation not only to earn a living, but also with the resources to re-invest in the creation of new works. Under current Canadian copyright legislation, where works are created as part of an employment relationship, the employer is deemed to be the first owner of the copyright (whether it is a corporation, a public institution or other organization) unless negated by customary practice or by direct agreements to the contrary. As a result, in many Canadian workplaces, copyright is transferred to the employer under unfavourable circumstances for the employees involved, particularly in the public sector.

Copyright moral rights provide a means for the creator to control the integrity of his or her creation and to be identified or not identified as the author of the work. Moral rights cannot be sold or otherwise transferred; they can only be waived by the creator. Employers often apply economic coercion in order to force workers to waive their moral rights.

In addition to creator and owner rights, copyright also provides the users of works (which includes people creating new works) with certain rights. Copyrights are time-limited, resulting in a public domain containing works that everyone can use freely. Current Canadian copyright law also contains certain exceptions (e.g. when transferring copyrighted works to formats accessible to visually impaired persons) and an explicit “fair dealing” right (the right to use works without permission or payment for research, private study, criticism, review and news reporting).

### **The CLC Plan for Copyright Reform**

The *Copyright Act* passed by the Parliament of Canada sets rules on the creation, ownership and use of literary and artistic works, such as books, music and movies. Copyright law is important to Canadian workers whose livelihood directly depends on the creation and sale of such works. It is also important to those who use these works for educational, political, creative and entertainment purposes, including

libraries, museums and educational institutions charged with maintaining and preserving our cultural and social identity, and providing popular access to knowledge, learning and ideas.

New forms of digital information technology such as the internet have created opportunities and challenges for the creators, users and owners of copyright works. These technologies allow works to be illegally copied with great ease. They also allow copyright owners to impose restrictions on access to information. The challenge for Canadian society is to reform the *Copyright Act* so that it ensures digital technology is not used to undermine legitimate copyright interests or restrict the open flow of information.

The CLC urges the Canadian Government, and all Members of Parliament, and the Senate, when implementing new copyright legislation and policy positions in Canada:

- to engage in open and genuine consultation with Canadians before drafting new copyright legislation;
- in the drafting of any new copyright legislation, to balance the needs of Canadian users, creators and owners of copyrighted works in a manner that reflects and addresses Canadian concerns;
- to introduce and pass amendments to the Canadian *Copyright Act* to conform with the World Intellectual Property Organization's (WIPO) Internet Treaties and to implement those treaties;
- to expand the Fair Dealing provisions of the *Copyright Act* to achieve an appropriate balance between the rights of users, creators and owners of copyrighted works;
- to direct enforcement measures at commercial copyright infringement, including the counterfeit and pirated goods that threaten the health, safety and jobs of Canadians;

- to amend the Statutory Damages provisions of the *Copyright Act* to remove their application from those who copy a work with a reasonable belief that their actions are justified by Fair Dealing or other statutory rights;
- to advocate for the establishment of an audio-visual performance rights treaty at the WIPO and establish such rights in domestic legislation to benefit performers and creators for use of their work;
- to eliminate Crown Copyright so that government materials can be freely used by Canadians;
- to introduce anti-circumvention provisions (measures that protect digital locks) in the *Copyright Act* that renders circumvention unlawful if such circumvention is for the purposes of copyright infringement;
- to ensure that the use of digital locks or other such technological measures for the protection of copyrighted works in Canada will be consistent with the established principles and practices of current copyright legislation in relation to access for “fair dealing” purposes;
- to amend the *Copyright Act* to protect the holders of moral rights either by recognizing such rights as non-waivable and inalienable personal rights, or by considering further limitations and conditions on such waivers;
- to amend the current Canadian copyright ownership formulation in section 13(3) of the *Copyright Act* where the employer, not the author or creator, is deemed to be the first owner of the copyright so it is less onerous for a wider range of creative workers;
- to update and expand the Canadian private copying regime to ensure that creators are appropriately compensated for uses of their work in all media while affording users the right to copy works they have obtained legally for personal use; and

- to enact an effective legal framework in the *Copyright Act* governing internet service providers that ensures providers play a role in addressing copyright infringement on the internet and that allegations of copyright infringement are dealt with fairly.

## **Defending Net Neutrality**

The Internet is a powerful tool for economic growth, a source of information and entertainment, and essential for democratic discourse.

Having access to broadband, high-speed Internet services is a necessity for many in the developed and developing world. This is another defining issue between the world's haves and have-nots. A key question today is whether this profoundly important tool is going to be available equally to all citizens, or is it going to become a tool of the world's elite?

There are two dimensions to the issue of access. Does every citizen have the ability to get online and do they have access to all of the content that is available? One of the great appeals of the Internet is that, with the proper hardware and software, most people can both access and provide content over the web.

Some corporations are trying to control Internet access by providing preferential treatment to some users, content and websites. If they succeed, they will be able discriminate on whatever basis they want, and there is no doubt they will do it in a way that maximizes their profits.

This is not only an issue solely about corporate profits or the growing power of telecommunications, cable companies and Internet Service Providers, but also about the rights of citizens to exercise control over one of the greatest innovations in communications history. It is about ensuring that innovation in the development and uses of the technology continues and that all Canadians benefit from it.

The question is whether the companies which control our access to the Internet should be able to favour some websites over others by charging different rates to different customers, controlling download speeds, or

making some sites easier to access than others. Should these companies succeed, it will undermine the Internet's level playing field and will make it much more difficult for the small, independent voice to be heard.

It is essential to defend Network Neutrality, the principle that all Internet traffic be treated equally, regardless of origin, destination, or application type. The Canadian Labour Congress calls on the federal government and the Canadian Radio-television and Telecommunications Commission (CRTC) to take action to protect the Internet from these increasingly invasive corporate interests.

### **Public funding helped build and maintains the Internet**

Some telecommunications and cable companies and Internet Service Providers (ISPs), argue that network discrimination is appropriate because they have spent the money creating the infrastructure that makes the Internet possible.

These companies conveniently ignore the vital role that the public, in Canada and around the world, played in funding and supporting the development of the Internet. A quick summary shows:

- The creation of the Internet, on campuses and in the military, received considerable financial support from all levels of government.
- Some of the companies that dominate the sector have their origins in public service corporations others have grown as regulated monopolies.
- The infrastructure for the Internet is situated on publicly-owned land or utilizes the public airwaves.
- Many governments provide tax incentives and other support to companies that promise to expand service, particularly to rural and remote communities.

Governments in Canada have supported the development of the Internet as a tool for its citizens and the common good.

## **Threats to Net Neutrality**

There have been a number of instances in Canada where telecommunications and cable companies, and Internet Service Providers, have acted in a discriminatory manner toward some websites or Internet users. Examples include:

- Blocking access to specific websites;
- Slowing down (throttling) users who are utilizing some forms of software (e.g. peer-to-peer), or are “heavy down loaders”; and
- Downgrading or interfering with access to competitors’ sites or services.

With the growth of vertical integration between content providers and distributors, permitting the telecommunications and cable companies to control access will inevitably lead them to provide preferential access to the services and sites in which they have an economic interest.

## **Rebutting the ISPs**

The telecommunications and cable companies, and the big ISPs, argue that they need to create a two-tiered Internet to allow the continued expansion and development of the service. If they are left unregulated, they claim that competition will ensure that services to Canadians are improved and expanded.

This argument ignores a few basic facts about the sector.

First, many of the companies involved are very large corporations which have grown rich because they have enjoyed support from governments and public agencies. Second, consumers have few options since the key providers continue to enjoy an oligopoly. Third, allowing these already profitable companies to discriminate against certain users or content will only serve to allow them to extract even more rents from the public.

There are two ways of dealing with Internet congestion. One is to expand the capacity and to serve everyone on an equal basis and the other is to keep the bottleneck in place and charge users to get around the blockage.

The solution to the problem is for these large and profitable companies to invest in infrastructure development.

### **Need for government action**

It is important that the federal government and the CRTC take action to protect the Internet from these increasingly invasive corporate interests. They must develop and implement appropriate rules to govern ISPs, including treating all Internet traffic equally, regardless of origin, destination, or application type.

October 26, 2009  
CA:mf\cope 225