

## Internet Service Interruptions on the Horizon

After almost three years of discussion, major Internet service providers agreed to disrupt users' Internet access for alleged online copyright infringement.

A Memorandum of Understanding between Internet Service Providers and the music and motion picture industry associations was issued on July 6, 2011 as a way to combat "Online infringement" by "educating subscribers about the importance of copyright protection and lawful ways to obtain movies and music online". Under the agreement, ISPs will, on the instructions of the Center for Copyright Information,\*\* notify account holders by sending emails and/or pop-up warnings to warn that their accounts have been used to commit "online copyright infringement". After four warnings of alleged copyright offenses, ISPs will initiate "mitigation measures" which include reducing Internet speeds and redirecting subscribers' service. If copyright infringement constitutes a breach of the ISP's terms of service, suspending service for those who fail to heed the warnings is also a possibility.

\*\*The companies and associations that collaborated to establish the Center for Copyright Information include:

- Motion Picture Association of American and MPAA members: Walt Disney Studios Motion Pictures, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox Film Corporation, Universal Studios, and Warner Brothers Entertainment.
- Independent Film & Television Alliance representing the independent producers and distributors of film and television programming.
- Recording Industry Association of America and RIAA members: Universal Music Group Recordings, Warner Music Group, Sony Music North America, and EMI Music North America (all of which have Canadian units)
- American Association of Independent Music.
- Internet Service Providers including: AT&T, Cablevision, Comcast, Time Warner Cable and Verizon (all of which have Canadian units)

**Is the arrangement moving north?** Three seemingly unrelated items might enable a similar strategy to take hold in Canada.

**One.** Music Canada, the former Canadian Recording Industry Association, "works with other industry organizations to help curtail piracy and counterfeiting, and to build a legitimate music market in Canada". Music Canada is a non-profit trade organization that promotes the interests of its members as well as their partners, the artists. Its members are EMI Music Canada, Sony Music Entertainment Canada Inc., Universal Music Canada Inc., and Warner Music Canada Co.

Music Canada's work might be made easier by a legislative framework that provides some valuable tools to prevent computer crime.

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**Two.** Canada is one of the original negotiating parties that established the Anti Counterfeiting Trade Agreement (ACTA), developed to be a global standard to protect intellectual property and combat piracy. ACTA requires that participating countries have civil and criminal penalties to give force and effect to ACTA’s provisions. The initial provisions of ACTA called for a “three strikes” provision, so that alleged infringers would be subject to being disconnected from the Internet. The final draft of ACTA does not contain the three strikes rule, but it does contain a provision allowing ACTA to be amended, thus facilitating the reintroduction of the three strikes rule.

**Three.** The Government of Canada introduced several legislative provisions that will enable Canada meet its commitment under ACTA.

The *Copyright Modernization Act* was introduced to “modernize Canadian copyright law for the digital age while protecting and creating jobs, promoting innovation and attracting new investment to Canada,” and to give “creators and copyright owners the tools to protect their work and grow their business models.”

The *Investigative Powers for the 21st Century Act*, would compel ISPs, telecom providers, and search engines to monitor, retain and preserve email, Internet and telephone communications, and provide them to authorities upon request, but without any need for a warrant. ISPs have often cooperated with the police; but the new provisions facilitate fishing expeditions and guilt by allegation.

*An Act to amend the Criminal Code (interception of private communications and related warrants and orders)* and *An Act Regulating Telecommunications Facilities to Support Investigations* were introduced to address different aspects of a proposed lawful access regime that may be useful to give further force and effect to ACTA and the detection and prosecution of alleged copyright infringement.

As Canada’s Information and Privacy Commissioners noted\*, the provisions will enhance “the capacity of the state to conduct surveillance and access private information while reducing the frequency and vigour of judicial scrutiny,” making it “easier for the state to subject more individuals to surveillance and scrutiny.”

\* [http://www.priv.gc.ca/media/nr-c/2011/let\\_110309\\_e.cfm](http://www.priv.gc.ca/media/nr-c/2011/let_110309_e.cfm)