Canadian Sovereignty Online – one year later

Submission to the 2012 Canadian Internet Forum
February 7, 2012

In February 2011, concerned citizens as well as members of the academic and policy community signed a public letter asking the Canadian Internet Registration Authority (CIRA), the Canadian Radio-television Telecommunications Commission (CRTC), and the Canadian Parliament to address democratic shortcomings in how the Generic Top Level Domain (GTLD) system is managed.

Our letter, entitled 'Internet Sovereignty in Canada', responded to unilateral pre-trial domain seizures conducted by the US government. These seizures continue to challenge the democratic governance of the Internet today, and have been accompanied by extradition requests[1] and the seizure of major foreign GTLD addresses for actions that are have been found legal in their home countries.[2]

We asked CIRA, CRTC, and Parliament to develop a plan by Dec 31, 2011 that would ensure that Canadians would retain the right to self-determination when it comes to digital policy. Sadly, no such plan has been officially developed or outlined by any of these three institutions in the time frame we proposed. We have not formally heard from any of these organizations about their intention to develop such a plan, nor an official acknowledgement of any of the concerns that we raised in 2011. In the meantime, domain seizures and challenges to national Internet policy sovereignty have grown worse.

During the last year, the American Stop Online Privacy Act (SOPA) and Protect IP Act (PIPA) have made international headlines as web sites around the world held the first ever general Internet strike. As a result of this strike, sites such as Wikipedia, Wired, and the Huffington Post shuttered their digital doors, effectively closing critical Internet content resources. The protest was largely over the Domain Name System (DNS) seizure provisions included in the respective bills. After this action, the bills appear to have been taken off the legislative agenda and support for them has been retracted within their respective legislative bodies. This response to the bills arose because DNS interference threatens the very fabric of the Internet while simultaneously making critical Internet security technologies, such as Domain Names System Security Extensions (DNSSEC), impossible to deploy. These bills endangered innovation, free speech, and the security of Internet users around the globe.

Unfortunately, immediately following the strike, the US government seized Megaupload.com. Megaupload allegedly represented up to 4% of the web.[3] While the organization's criminality will (or will not) be proven in a court of law, the very action of unilaterally seizing the domain once again brings the question of sovereignty to the Canadian context, insofar as the domains were seized from foreign entities prior to definitive legal findings of guilt or jurisdiction. To be

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[1] P. Walker. (2012). "'Piracy' student loses US extradition battle over copyright infringement," *The Guardian*. Published January 13, 2012. Online: <http://www.guardian.co.uk/law/2012/jan/13/piracy-student-loses-us-extradition>

[2] N. Anderson. (2011). "Senator: domain name seizures "alarmingly unprecedented," *Ars Technica*. Published February 2, 2012. Online: <http://arstechnica.com/tech-policy/news/2011/02/senator-us-domain-name-seizures-alarmingly-unprecedented.ars>.

[3] D. Kravets. (2012). "Feds Shutter Megaupload, Arrest Executives," *Wired*. Published January 19, 2012. Online: <http://www.wired.com/threatlevel/2012/01/megaupload-indicted-shuttered/>

absolutely clear: *there is no evident reason why a similar action could not be launched against a site operated by a Canadian citizen, who operated from Canadian soil*.

The behaviours and actions of the American government, in terms of their imposing understandings of copyright law upon the global Internet, are of deep concern to us. We worry about what this means for Canadian website operators that make available content that is legal in Canada while not legally made available under American law. As an example, were a Canadian dot-com serving the works of Ernest Hemingway they might see their operators extradited and charged with criminal copyright infringement in the US simply because Canada and the US disagree on the duration of copyright. Canada believes 50 years is a sufficient period of time to provide authors an incentive to produce content, whereas the US holds that 70 years is the appropriate period of time. In Canada, this means that we can legally share the works of Hemingway under public domain rights while in the US the same action could provoke strong sanctions. Sanctions might include domain seizure, extradition and prison sentences. Obviously, Hemingway is not the only major work that is in the Canadian public domain and outside of America's legal framing of the public domain: if a Canadian shared a large body of public works they might be served with serious charges from American authorities whilst simultaneously abiding Canadian legal and social norms.

Canada often does not agree with the US on many areas of digital policy. Canada's concept of what constitutes contributory copyright infringement does not match with the US'; in the US, merely operating a search engine can result in website operators being charged under criminal statute whereas this is less obvious under Canadian law. Further, beyond copyright, American citizens can engage in free speech that is protected in the US while being identified as hate speech in Canada. While such defamatory speech is protected under First amendment rights, similar speech would be a violation of the Canadian Criminal Code. If Canada, and Canadians, were to adopt the American approach to jurisdiction then we must logically inquire: do Canadians, and the Canadian government, have the right to seize dot-com addresses and extradite operators whose speech violates Canadian law? This creates a slippery slope: what of Thailand,[4] France,[5] Germany,[6] and other nations who's censorship and speech and content distribution laws stand in contravention to our own? We worry that the GTLD system could, ultimately, be governed by a lowest-common-denominator of law, where website operators are expected to comply with the laws of all Internet-connected nations or, conversely, where operators are first expected to obey US law and (secondarily) that of their own government.

As a submission to the Canadian Internet Forum, we believe CIRA, as Canada's democratic DNS governance organization and as our key link to the International Corporation for Assigned Names and Numbers (ICANN), must take seriously how Canada will define its own digital

[4] See the discussion of censorship concerning speech towards Thailand's king at: http://opennet.net/research/profiles/thailand

[5] See the discussion on inciting hate, racist attitudes, denying the holocaust and Armenian genocide at: http://opennet.net/research/profiles/france

[6] See German laws concerning holocaust denial at: http://opennet.net/sites/opennet.net/files/ONI_Germany_2010.pdf

policy framework. This framework will be essential as Canada stands up and supports its right to autonomously participate in Internet governance in the future.

To achieve such autonomy - and thus defend Canada's sovereign rights - we believe that CIRA should embark not only on policy development, but also technical development of tools that can protect Canadian interests when they are challenged. We also believe that CIRA should invest in educational processes to raise awareness about the threats and challenges facing the contemporary Internet and DNS ecosystem. Such a three-pronged effort would entrench and support national self-determination surrounding sovereign digital policy actions, while also educating Canadians about digital sovereignty. In aggregate, these efforts will serve to protect Canada's long-term cultural, economic, and political interests, and we maintain that the means of doing so are within CIRA's organizational mandate.

Sincerely,

Kris Constable
Christopher Parsons
Kevin McArthur

For

Digital Policy Canada