



WARNING TO ALL PIRATES: CHECK YOUR MAILBOX!

JEAN-SÉBASTIEN RODRIGUEZ-PAQUETTE^{*}
ROBIC, LLP
LAWYERS, PATENT AND TRADE-MARK AGENTS

Canadian Internet users who illegally download content are now even more likely to get a warning notice from their Internet Service Provider (ISP)

The final provisions of the Copyright Modernization Act came into force in January 2015, thus making official an already widespread voluntary practice: the so-called “notice and notice” regime.

In particular, Sections 41.25 and 41.26 of the Copyright Act now require ISPs to forward their users notices of claimed infringement on behalf of copyright owners whose works have allegedly been pirated. In the event of an illegal download of a copyrighted work, the copyright owner may alert the ISP of the infringement by providing them with the electronic location data (IP address) of the alleged infringer. The ISP is then required to send a notice to the user, informing them that content has been illegally downloaded to their IP address and, as the case may be, advising them to cease any activity that violates the Copyright Act.

ISPs must now also keep records that allow the identification of alleged infringers, for six months after the Internet users receive the notice of claimed infringement. If legal proceedings are initiated by the copyright owner, the records must be kept for one year.

It should be noted that Section 41.26 also applies to online storage services, hosting providers and search engines, all of which must comply with the same requirements as ISPs.

The Notice

The notice sent by an ISP must identify the work or other subject-matter to which the alleged infringement relates. It must also state the interests or rights of the copyright owner regarding the infringed work, state the IP address from which the alleged infringement occurred, and specify the date and time of the infringement.

© CIPS, 2015.

^{*} From ROBIC, LLP, a multidisciplinary firm of Lawyers, and Patent and Trade-mark Agents. Published in the Winter 2015 (Vol. 18, no. 3) Newsletter of the firm. Publication 068.185E.

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

Consequences of Receiving a Notice

An alleged infringer who receives a notice of claimed infringement will have their name entered in a register, without any other short-term consequences. As such, the notices sent by ISPs are not equivalent to a cease-and-desist letter, and do not grant a copyright owner the right to claim damages of any kind. In order to claim compensation for damages, a copyright owner must initiate legal proceedings. In the past, similar actions have already been undertaken against Canadian Internet users who illegally downloaded the movies *The Hurt Locker* [<http://newsletter.robic.ca/nouvelle.aspx?lg=EN&id=207>] and *Dallas Buyers Club* [<http://newsletter.robic.ca/nouvelle.aspx?lg=EN&id=284>].

It should be noted in passing that the ISPs that refuse to cooperate and transmit notices under the Copyright Act will be liable for damages of \$5,000 to \$10,000.

Privacy Rights

The “notice and notice” regime was designed to respect Canadian privacy laws. Since the onus is on copyright owners to identify cases of infringement, it is implied that ISPs do not need to monitor the activities of their users. Furthermore, by requiring that the notices be sent by the ISPs, this legislation ensures that Internet users preserve their right to anonymity with respect to copyright owners. The latter must therefore go to court to learn the identity of alleged infringers. This is consistent with the *R. v. Spencer* decision rendered by the Supreme Court in 2014, in which the court recognized the constitutional right to privacy with respect to anonymity in the context of Internet use.

No Removal of Pirated Works

The “notice and notice” regime is the Canadian response to infringement on the Internet. Unlike the U.S. “notice and takedown” approach, the Canadian system does not require ISPs to remove allegedly infringing content, or deny access to it.

Impact of the New Provisions on Canadian Internet Users

For Canadian Internet users, the impact of Sections 41.25 and 41.26 of the Copyright Act may not be significant, since most ISPs are already collaborating with copyright owners on a voluntary basis. Many users have already received such notices from their ISPs. Of course, the fact that this practice is now based in law may well result in a greater number of notices received by users.

ROBIC

- + LAW
- + BUSINESS
- + SCIENCE
- + ART

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006