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**Via e-mail [ic.btlr-elmrt.ic@canada.ca](mailto:ic.btlr-elmrt.ic@canada.ca)**

Ms. Janet Yale  
Chair  
Broadcasting and Telecommunications Legislative  
Review Panel  
c/o Innovation, Science and Economic Development Canada  
235 Queen Street, 1<sup>st</sup> Floor  
Ottawa, Ontario  
K1A 0H5

Dear Ms. Yale:

**RE: The Consultation Process Regarding the Broadcasting  
and Telecommunications Legislative Review.**

I am very glad that this Panel has been set up to undertake a  
consultation process regarding the Broadcasting and  
Telecommunications Legislative Review.

I believe that the matters before the Panel raise Charter issues.

Please find enclosed herewith are submission, which I file herein on  
behalf of myself, personally.

Yours sincerely,

  
Shantichandra B. Shah

enc.

## SUBMISSIONS TO THE BTLR PANEL

1. The facts set out in the following paragraphs go to indicate that the matters are quite serious and raise a Charter issue for review and consideration by the Panel.
2. IP rights in the programming content and Trademarks as the same relate to the cultural industry ought to receive the same quality and degree of protection as that which is extended to the rest of the IP rights which relate to other industries, and in this case, particularly the IP rights (copy-rights, trademarks, labels, designs) which relate to the fashion industry.
4. The cultural industry is under attack by pirates and the fashion industry is under attack by counterfeiters.
5. Incidentally, piracy and counterfeiting have a lot in common. In both cases, major invasion is from off-shore, underground economy is set up, money laundering follows and jobs are lost.
6. Fortunately, the fashion industry has not been neglected. The fight against counterfeiting has been and is led by the international community.
7. Canada signed Anti-counterfeiting Trade Agreement (ACTA) in 2011.
- 8 This was followed by enactment of Combating Counterfeit Products Act (CCPA) in 2014. The following is from the Summary set as a preamble to the Act itself.

### “SUMMARY”

*“This enactment amends the [Copyright Act](#) and the [Trade-marks Act](#) to add new civil and criminal remedies and new border measures in both Acts, in order to strengthen the enforcement of copyright and trade-mark rights and to curtail commercial activity involving infringing copies and counterfeit trade-marked goods. More specifically, the enactment*

- *(a) creates new civil causes of action with respect to activities that sustain commercial activity in infringing copies and counterfeit trade-marked goods;*
- *(b) creates new criminal offences for trade-mark counterfeiting that are analogous to existing offences in the [Copyright Act](#);*
- *(c) creates new criminal offences prohibiting the possession or export of infringing copies or counterfeit trade-marked goods, packaging or labels;*
- *(d) enacts new border enforcement measures enabling customs officers to detain goods that they suspect infringe copyright or trade-mark rights and allowing them to share information relating to the detained goods with rights owners who have filed a request for assistance, in order to give the rights owners a reasonable opportunity to pursue a remedy in court;*
- *(e) exempts the importation and exportation of copies and goods by an individual for their personal use from the application of the border measures; and*
- *(f) adds the offences set out in the [Copyright Act](#) and the [Trade-marks Act](#) to the list of offences set out in the [Criminal Code](#) for the investigation of which police may seek judicial authorization to use a wiretap.*

*The enactment also amends the [Trade-marks Act](#) to, among other things, expand the scope of what can be registered as a trade-mark, allow the Registrar of Trade-marks to correct errors that appear in the trade-mark register, and streamline and modernize the trade-mark application and opposition process.”*

9. Enactment of CCPA enabled Canada to comply with its commitments under ABTA.

10. Unfortunately, fashion industry is the exception in this case. The cultural industry for sure have been totally neglected and there has been no protection availed to it under the existing legal system we have.

11. The protection against counterfeiting as legislated under CCPA operates more in the mode of the criminal justice system entailing pro-active involvement of Canada Border Security Agency and Canada Customs which police and interception and detention of suspected counterfeit merchandise before and not after due process.

12. In contrast to that the cultural industry is left totally unprotected and to its own devices.

13. The situation of the cultural industry is more like being left in high seas without a life jacket and for good measure with hands and feet tied up (in this case by Section 36 of the Telecommunications Act).

14. CRTC has expressed a degree of frustration in the WARMAN decision (copy attached). The Parliament, however, appears not to have taken notice of that Decision. The decision in WARMAN still stands as CRTC decisions post WARMAN bear out.

15. Be that as it may, in order to comply with Section 15(1) of the Charter of Rights and Freedoms, piracy needs to be combated with same zeal and vigor as in the case of combating counterfeiting and that can be done best by using CCPA as a model and enacting a new Statute titled, Combating Piracy of Content Act (CPCA) along with amendment to other existing legislation as necessary. In this instance also CBSA and Canada Customs should be the agencies with responsibility and power to perform policing, interception, blocking and prosecution, aimed at combating piracy.

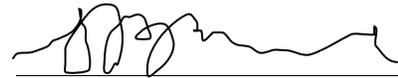
16. Since piracy is so eroding and damaging it needs a band aid solution while a permanent solution through legislative action gets implemented in the near future.

17. Self help would be an ideal temporary solution. That raised a few question, such as: if an ISP takes down a pirate site, does it have to report doing so to CRTC? If it reports so, would CRTC take any action unless the pirate initiates the action? And, would the pirate who needs to remain underground file a complaint with CRTC and blow his cover? And, if he did so, if in fact it is a pirate and CRTC determines that to be so, would there be any consequences to be faced by the ISP which took down the pirate, save and except, hopefully, a note of appreciation from CRTC for a service rendered to the cultural industry?

18. In WARMAN, it is clear that CRTC has set out the narrow limits relating to what it is empowered to do under Section 36, which is reassuring and which bears out that: (a) S. 36 does not prohibit taking down of pirate websites without CRTC consent; and (b ) only where the website owner files a complaint with CRTC, the shall be involved in the matter and be required to go through the due process; and, (c ) if, at the end of the due process, CRTC determines that the subject website indeed was a piracy site, there shall be no consequences. A confirmation from CRTC that to be so, would work as a temporary solution for combating piracy.

19. All of the above is respectfully submitted.

31 December, 2018



Shantichandra B. Shah

enc. CRTC letter – decision in WARMAN