

Technology

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The FCC repeals net neutrality – What it means for Canadian companies

The FCC repeals net neutrality

On December 14, 2017, the United States' Federal Communications Commission (FCC) voted to repeal the net neutrality protections established in 2015 by the Obama administration. "Net neutrality" generally refers to a requirement that internet service providers (ISPs) must allow a subscriber to access all content online at equivalent speeds. This has often been referred to as protecting a "free and open internet".

Prior to its decision to repeal the regulations, the FCC classified broadband internet as a common carrier service under its telecommunications legislation, prohibiting ISPs from providing superior or inferior access to particular internet services. The repeal of net neutrality allows ISPs to charge companies for providing superior access to their services or services of affiliates, to throttle or block access to services with which the ISPs compete and to charge consumers more for access to particular services.

A number of states have announced that they will file lawsuits against the FCC to challenge the FCC's decision to repeal the net neutrality protections.

Canada continues to protect an open and accessible internet

The concept of net neutrality continues to be protected in Canada. Section 27(2) of the federal *Telecommunications Act* prohibits Canadian carriers (including ISPs), in respect of the provision of telecommunications services or the rates charged for such services, from unjustly discriminating or giving an undue or unreasonable preference toward any person, including the carrier itself, or from subjecting any person to an undue or unreasonable disadvantage.

As recently as April 2017, the Canada Radio-television and Telecommunications Commission (CRTC) reaffirmed its commitment to net neutrality by denying wireless carriers the freedom to prefer specific music streaming services by not counting their usage against subscribers' data limits. In that decision, the CRTC confirmed it will evaluate any differential treatment in respect of the provision of internet services on the basis of, among other things, the impact on internet openness and innovation.

Prime Minister Justin Trudeau has also stated he will continue to defend net neutrality in Canada, notwithstanding the developments in the United States.

Practical Considerations for Canadian Businesses

With the repeal of net neutrality in the U.S. Canadian businesses operating online with U.S. customers should be aware the provision of those same services to such users may now come at an additional price. The Canadian market, however, remains unchanged. Canada's strong stance in support of net neutrality is another factor (among many) in favour of Canada's growth into a burgeoning technology hub, as explored further in our Reference Guide: *Canada's Future as a Global Leader in Technology*.

Goodmans Technology Group

To assist clients in the technology sector, Goodmans brings together our acknowledged expertise in corporate/commercial, private equity, corporate finance, mergers and acquisitions, outsourcing, licensing, intellectual property, privacy, regulatory and media, cleantech, tax, litigation, human resources, corporate restructuring and administrative law. We do so both for innovative businesses in their start-up phase and for well-established businesses of all types. Goodmans continues to lead in the technology sector and is partnered with the DMZ at Ryerson University. The DMZ is a leading business incubator (selected by UBI as the top-ranked university incubator in North

Goodman's Update

America, and third in the world), which connects its start-ups with resources, customers, advisors, investors, and other entrepreneurs. Goodmans is also a proud partner of IDEABOOST, an initiative of the Canadian Film Centre's Media Lab; building the next generation of technology-based media entertainment products, services and brands. Through these partnerships, Goodmans provides legal advice, mentorship and networking opportunities to assist startups in maximizing their potential.

Goodmans is also an internationally recognized leader in other aspects of technology law and transactions. From our thought-leadership, through participation on the Boards of associations such as CanTech (Canadian Technology Law Association), CORE (Centre for Outsourcing Research and Education), CIEG (Canadian Institute for Exponential Growth, which organized the Summit) and iTechLaw (International Technology Law Association), to our involvement in major technology procurement, joint venture and outsourcing transactions, to our representing, in court proceedings and in arbitrations, major technology providers, and users of technology, in ground-breaking cases, our Technology Group is consistently at the forefront of leading technology transactions and cases.

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