

This newsletter covers CIPPIC work from February to August 2008

Le bulletin est également disponible en français!  
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### 2008 Summer Internship Program



**2008 Summer Interns** (clockwise from upper left)  
Robert Hester, Lisa Feinberg, Christopher Ball, Michael De Santis,  
Rishi Hargovan, Nicholas Dodd.

CIPPIC enjoyed an unusually productive summer thanks to the hard work of our six interns, pictured above. We got off to a flying start with two high-  
>> see **2008 Summer Internship** on page 2

### Announcements



#### **New webmaster wanted!**

CIPPIC is seeking a part-time webmaster to take care of its website. Application deadline: Sept. 10, 2008. See [www.cippic.ca/webmaster](http://www.cippic.ca/webmaster) for details.

#### **Samuelson-Glushko Donation**

University of California (Berkeley) Professor Pamela Samuelson and her husband, technology innovator, professor and philanthropist Robert Glushko, have donated \$500,000 to CIPPIC, allowing us to continue our clinical operations with a renewed emphasis on student education. CIPPIC joins several US-based university technology law clinics generously funded by Professors Samuelson and Glushko.

#### **Other Donations**

CIPPIC has received a generous donation of \$11,000 from an anonymous supporter of our work on privacy law reform. We have also received significant pro bono assistance from the law firm of Bates Barristers. Many thanks to all donors!

#### **Law Foundation awards 2009-2010 Articling Fellowship to CIPPIC**

CIPPIC has been awarded a Public Interest Articling Fellowship from the Law Foundation of Ontario, for the 4<sup>th</sup> year in a row. The award covers the salary, benefits, Bar Admission course fees, and overhead costs for the articling student, who will begin in 2009.

#### **New Articling Student**

We are pleased to welcome Tamir Israel, CIPPIC's articling student for 2008-2009. Tamir's 10-month articling term runs from July 2008 to May 2009.

#### **CIPPIC is moving!**

CIPPIC will soon be moving to a new office. Our mailing address, telephone numbers and email addresses will all remain the same; only our fax number will change (see [www.cippic.ca](http://www.cippic.ca) for details).

## **2008 Summer Internship**

>> continued from page 1

-profile privacy complaints, first on ISP use of Deep Packet Inspection and then on Facebook's practices, both of which generated extensive media attention at home and abroad. Bill C-61 kept us busy all summer, with all interns working on at least one aspect of the new copyright bill and contributing to a detailed FAQ now posted on the CIPPIC site.

Interns also prepared FAQs on the proposed Anti-Counterfeiting Treaty and on Social Networking Sites. The issue of Network Neutrality occupied much of our time, given CAIP's application to the CRTC to stop Bell from throttling its P2P traffic and two private members' bills. CIPPIC interns prepared a detailed submission in the CAIP proceeding, researched ISP throttling practices and analysed their legal implications, prepared FAQs on Net Neutrality, submitted comments to the CRTC on how Net Neutrality affects broadcasting policy, and assisted the SaveOurNet.ca coalition with its advocacy efforts. Interns also worked on the emerging issue of behavioural targeting by ISPs, producing another set of FAQs for our site, and submitting a formal request to the Privacy Commissioner for an industry-wide investigation of the practice. A PIPEDA complaint about banking practices was also filed. All of this work was in addition to client advice on matters ranging from workplace privacy rights to the legality of accessing unsecured wireless networks.

Congratulations and thank you to the interns for this amazing work!

## **PRIVACY**



### **CIPPIC asks Privacy Commissioner to investigate banking practices**

By way of a [formal complaint](#) filed August 1, 2008, CIPPIC is challenging the legality of bank policies that require clients to allow the bank to use their personal information for such purposes as "to determine your eligibility for products and services we offer". CIPPIC also argues that banks must obtain the express consent of clients to any such secondary uses of personal financial information; opt-out consent is not sufficient.

### **CIPPIC asks Privacy Commissioner to investigate ISP web surveillance**

In a letter sent July 25th, CIPPIC asked the federal Office of the Privacy Commissioner (OPC) to begin an investigation into the internet service provider (ISP) industry's controversial new practice of profiling users online to target them with advertising. The OPC has promised to look into the matter.

### **CIPPIC files privacy complaint against Facebook**

On May 30th, CIPPIC filed a 35-page [complaint](#) under the [Personal Information Protection and Electronic Documents Act](#) (PIPEDA) against Facebook, alleging 22 separate violations of the Act. This filing generated media attention across North America and beyond. A team of five student interns researched and produced this complaint, some of whom later handled media inquiries, wrote articles, and gave presentations on the matter for CIPPIC.



Jordan Plener and Harley Finkelstein, two of the five CIPPIC interns who lodged the Facebook complaint.

### **CIPPIC files privacy complaints about ISP use of Deep Packet Inspection for traffic shaping**

In filings made in May and July, CIPPIC [asked the Privacy Commissioner of Canada to investigate](#) the use by Canadian ISPs of "Deep Packet Inspection" for traffic management purposes. Bell Canada and Rogers have admitted to using the technology in order to prevent congestion on their network. CIPPIC's argues that there are other, less privacy-invasive means of managing traffic.

### **CIPPIC calls for reform of Privacy Act**

On May 6, CIPPIC testified before a Parliamentary Committee, [calling for](#) a number of changes to the federal *Privacy Act* in order to better protect Canadians against state incursions on their privacy.

## **CIPPIC files comments on data breach notification proposal**

In response to stakeholder consultations by Industry Canada regarding the specifics of a new legislated data breach notification requirement, CIPPIC filed [comments](#) on April 28<sup>th</sup>. These comments are further to [CIPPIC's January 15th submission](#) to Industry Canada on the PIPEDA Review, which submission called for a public registry of data breaches.

## **CIPPIC Provides FTC with Comments on Proposed Behavioural Advertising Principles**

In April, CIPPIC provided the FTC with [comments](#) on the FTC's [proposed online behavioural advertising Principles](#). The FTC proposes that the Principles guide the development of industry self-regulation of the practice of tracking consumers' activities online to target advertising.

## **CIPPIC supports Bill to establish ID Theft offences**

On April 1<sup>st</sup>, CIPPIC filed a [brief](#) with the House of Commons Standing Committee on Justice and Human Rights, on the matter of *Bill C-27: An Act to amend the Criminal Code* (identity theft and related misconduct). CIPPIC supports the Bill, but emphasizes that it is just one small piece of a much bigger law reform agenda needed to effectively address the identity theft problem.

## **Service Canada changes policy re: posting personal data online**

In response to a formal complaint filed by CIPPIC last summer about the unnecessary inclusion of personal details in employment insurance appeal decisions posted online, Service Canada (the federal government department responsible) has finally agreed to change its policy. The Privacy Commissioner of Canada found CIPPIC's complaint to be well-founded, and made a number of specific recommendations which Service Canada has now agreed to implement. The OPC will be addressing this issue more broadly in its Annual Report on the *Privacy Act*, due this fall.

## **COPYRIGHT**



### **New Copyright Bill: Consumers Come Last**

On June 12, 2008, Industry Minister Jim Prentice introduced into the House of Commons Bill C-61, an *Act to Amend the Copyright Act*. Bill C-61 represents

a harsh vision of digital copyright law that gives new rights to distributors who use digital locks while stripping user rights in the face of those locks. Interns Chris Ball and Mike de Santis worked throughout the summer analyzing the Bill, raising awareness about it, and assisting various stakeholder groups concerned about the Bill's impact.

## **Massive Consumer Coalition Demands Copyright Policies that Put Canadians First**

On June 5, a coalition of Canada's leading consumer advocates, including CIPPIC, released an [open letter](#) calling on the Canadian government to embrace copyright policies that put Canada's interests first. Consumer advocates from across the country - including two of Quebec's leading consumer rights organizations - have demanded a principled approach to copyright policy from Canada's government that rejects any law modeled on the American *Digital Millennium Copyright Act*. Simultaneously, some members of this coalition released a [White Paper](#) on Consumer Copyright. The White Paper lays out a standard against which the coming copyright legislation may be measured.

## **CIPPIC releases a short video about copyright law reform in Canada**

On February 20, CIPPIC released its first short video, designed to explain how copyright legislation affects Canadians' everyday life. The video is available in English and in French on YouTube CIPPIC's channel page, at [www.youtube.com/cippicteam](http://www.youtube.com/cippicteam)

## **TELECOMMUNICATIONS**



### **Net Neutrality : Information and Advocacy**

Throughout the summer, CIPPIC interns researched the issue of Network Neutrality in the Canadian context and worked on various projects designed to inform the public about the issue, to attract the attention of legislators and policy-makers, and to represent the interests of Net Neutrality advocates in regulatory processes. Interns Rob Hester and Nicholas Dodd gathered evidence about ISP throttling of P2P traffic, analysed the legal issues it raises, drafted FAQs for CIPPIC's website as well as submissions to the CRTC, and assisted the "Save Our Net.ca" coalition in its campaign to raise

awareness of the issue. CIPPIC expects to publish a detailed set of FAQs on this issue soon.



Summer student Lisa Feinberg and articling student Jocelyn Cleary at the Rally to save the Open Internet (Net Neutrality) on May 27<sup>th</sup>.

### **Net Neutrality relevant to Broadcasting Policy, says CIPPIC**

In response to the [CRTC's call for comments](#) on issues that should be examined in the context of a proceeding on broadcasting policy and new media, CIPPIC filed a [submission](#) on July 11, urging the CRTC to examine ways in which proposals for protecting Canadian content could actually undermine important policy objectives of the *Broadcasting Act* as well as the *Telecommunications Act*.

### **CIPPIC challenges legality of ISP throttling**

CIPPIC filed [comments](#) on July 3, 2008 with the CRTC on behalf of the [Campaign for Democratic Media](#) ("CDM"), objecting to Bell Canada's throttling of P2P traffic, and calling for a public proceeding to examine the legality of ISP traffic-shaping practices generally.

### **CIPPIC defends CRTC jurisdiction to establish Consumer Complaints Agency**

On March 5, CIPPIC responded to formal Applications by various telecom service providers to overturn a CRTC Decision that required their

participation in the new [Commissioner for Complaints for Telecommunications Services](#) ("CCTS") and that allowed the new agency to disregard the liability limitation clauses included in TSP terms of service. A team of students helped prepare CIPPIC's detailed factum in this case. The Decision was largely upheld.



## **OTHER**

### **Civil Society issues Declaration on OECD Role in Internet Policy**

CIPPIC joined other civil society groups participating in the [OECD Ministerial on the Future of the Internet Economy](#) in Seoul, Korea on June 16-18th. Director Philippa Lawson chaired the Civil Society Forum held on June 16<sup>th</sup> and participated in the Canadian government delegation. Participating Civil Society groups jointly issued "[The Seoul Declaration](#)", calling on OECD countries to adopt policies designed to ensure the inclusiveness, fairness and effectiveness of the internet for all citizens.

### **ACTA (Anti-Counterfeiting Trade Agreement)**

On April 30<sup>th</sup>, CIPPIC offered [comments](#) to the Department of Foreign Affairs and International Trade on ACTA, the proposed *Anti-Counterfeiting Trade Agreement*. CIPPIC's comments focus on the unusual venue of discussions (which provides no room for participation by developing nations or civil society groups), the vague process (which is unusually opaque, even for trade discussions) and the danger posed by the potential substantive content of the treaty itself. Intern Chris Ball prepared FAQs on ACTA, now posted on the CIPPIC site.

### **Industry Committee Review on Science and Technology**

In April, CIPPIC provided the House of Commons Standing Committee on Industry, Science and Technology with a [submission](#) on open access to scientific data, Crown copyright, and the challenges DRM and anti-circumvention laws pose for security researchers.

### **Library and municipal wireless service filtering**

Prompted by a client request, CIPPIC interns Carisa Gorrell and Rishi Hargovan investigated and analysed the free speech vs. child protection issues raised by this activity, wrote a letter to the Board of Trustees of the London Public Library about it, and

investigated the city of Edmonton's restrictive approach to these services.

### Unfair Terms and Methods in Electronic Contracting

Work continued on this project, with numerous students conducting research and analysis, as well as drafting portions of the report, which is expected to be published this Fall.

## CLIENT FILES



CIPPIC provided advice to a number of clients over the past six months on matters including (but not limited to) the legality of voice recordings and biometric employee ID in the workplace, the legality of accessing open wireless accounts; copyright in census data, fair dealing rights in judicial education materials, governance of a non-profit joint venture on web education, and how to deal with copyright infringement claims involving use of images on websites.



## Events and Presentations

CIPPIC hosted a presentation by Tom Jarmyn at the Faculty of Law on Feb.28<sup>th</sup>, on effective political advocacy: "[Persuading the Battleship to turn; talking to Government](#)". As part of its summer program from May to July 2008, CIPPIC hosted a series of weekly seminars led by experts on various topics:

- o **Access to Information Law and Practice:** Aaron Freeman, Policy director for Environmental Defence; David McKie, CBC News journalist – Investigative Unit
- o **Dissecting the body politic: Political parties and the collection and use of voter information:** Tom Jarmyn, lawyer and consultant; past Director of Parliamentary Affairs for the President of Treasury Board
- o **Internet Filtering: Libraries, Municipalities and the Constitution:** Professor Samuel Trosow, University of Western Ontario
- o **Google and Innovation Policy in Canada:** Jacob Glick, Legal and Policy Counsel, Google
- o **Current Copyright Highlights in Canada:** Howard Knopf, Counsel, Macera & Jarzyna/Moffat & Co
- o **Digging for Gold in Cyberspace: How to take full advantage of what is on the Internet:** David McKie, CBC News journalist – Investigative Unit

- o **The Internet Economy in Canada:** Richard Simpson, Director-General, Electronic Commerce Branch, Industry Canada
- o **Legal Issues Arising from the Use of Geospatial Data:** Professor Teresa Scassa, uOttawa, Canada Research Chair in Information Law
- o **Network Neutrality: Is the virtual sky falling or can existing law and regulation deal with discrimination and undue preference on the Internet?:** Professor Richard French, uOttawa Faculty of Graduate Studies in Public and International Affairs
- o **Reasonable Expectations, Reasonable Suspicions: What Courts Don't Get About Informational Privacy:** Professor Ian Kerr, uOttawa, Canada Research Chair in Ethics, Law & Technology

Director Philippa Lawson and Staff Counsel David Fewer had numerous speaking engagements in Canada and elsewhere throughout the spring and summer of 2008. Their speaking engagements are listed and copies of their presentations are accessible under "Events and Presentations" on the CIPPIC website.



### The Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic

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