

Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic
Clinique d'Intérêt Public et de Politique d'Internet du Canada Samuelson-Glushko

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2012 CIPPIC Summer Interns



Left to right: Robert Vitulano, Laura Crestohl, Ken Dunham, Laurie Birbilas (Google Policy Fellow), Thomas Gagnon-Van Leeuwen Kent Mewhort (Staff Lawyer) & Paul Holden

Visit our website: <http://cippic.ca>
Contact us at cippic@uottawa.ca

Announcements //

CIPPIC Expands!

Kent Mewhort has joined CIPPIC as its second Staff Lawyer after successfully completing his articles. As staff lawyer, Kent will focus on open data/licensing, copyright, access to knowledge and freedom of information activities. He is also Legal Project Lead for Creative Commons Canada.

2012 Public Interest Articling Fellowship

CIPPIC is pleased to announce that Alex Cooke has joined us as our 2012 Public Interest Articling Fellow. The Public Interest Fellowship is made possible by the gracious support of the Law Foundation of Ontario.

Google Policy Fellowship

For the fourth consecutive year, CIPPIC joined several organizations throughout North America as host to a Google Policy Fellow. Laurie Birbilas, our policy fellow for 2012, joined our other CIPPIC summer interns and worked on challenging issues such as the nature of privacy policies and application of copyright protection to postal codes.

Our New Admin

CIPPIC welcomed Maria Paulina Garcia as the newest member of our team. Paulina joins us as our latest Administrative and Financial Assistant and is also responsible for office morale.

Our Mission //

Who we are and what we do.

CIPPIC is a public interest legal clinic based at the University of Ottawa's Centre for Law, Technology & Society. The CIPPIC roster for 2012 included: David Fewer (Director), Tamir Israel (Staff Lawyer) and Paulina Garcia (Administrative & Financial). In addition, Kent Mewhort began as our Articling Fellow and then joined us as a second Staff Lawyer. Finally, CIPPIC benefited from the efforts of numerous students who worked with our lawyers for course credit, as paid interns and as volunteers.

CIPPIC's mission is to advocate in the public interest on policy matters arising at the intersection of law and technology. In pursuit of this objective, we participate in a range of policy debates and proceedings to ensure that the public interest perspective receives due consideration. Our activities regularly take us before the Courts, parliamentary committees, regulatory bodies, and Internet governance fora. Another central facet of our work involves public advocacy and education campaigns and media outreach.

In addition to research grants and cost awards, CIPPIC relies on donations for to maintain its day to day operation. If you wish to support our efforts, please visit: <http://www.cippic.ca/donate> or email us at cippic@uottawa.ca. All donations are tax deductible.

Advocacy & Outreach //

Lawful Access & Online Spying

CIPPIC, along with OpenMedia.ca, helped spearhead the 'Stop Online Spying' coalition. The objective of this coalition was (and continues to be) to fight a legislative package aimed at increasing the government's capacity to surveil online communications and transactions (Bill C-30, in its most recent incarnation).

The legislative proposals raised serious privacy issues. They put in place a range of new powers designed to mobilize online intermediaries in order to assist the state's surveillance capacity. These include unfettered access to online identifiers, which would let police identify any anonymous online commentary upon request. Also included is easier access to data deemed less sensitive, such as transmission data and location data.

Following significant public outcry on the matter, the government has agreed to reconsider elements of the legislation and generally placed it on 'hold'.

Bill C-11 Modernizing Copyright

Bill C-11 marked the culmination of a multi-year effort by Canada's federal government to bring Canada's copyright regime into the digital era. The legislation included many benefits for individuals, including the right to remix content for non-commercial purposes, rights to shift content from one media to another (Canadians can finally place their CDs onto their iPods without breaking the law!) and the recognition that parody, satire and education are all legitimate reasons for dealing with a work and, hence, such dealings are exempt from general copyright protections if fair.

One massive flaw in the legislation is its adoption of strict protection for circumvention activities. Bypassing any type of technical protection placed on a copyrighted work is an infringement, even if the purpose for circumvention is to do something 'legal' such as copying a DVD to your iPod.

International Telecommunications Regulations: ITU WCIT-12

CIPPIC joined an international coalition of civil society groups in denouncing proposals by the U.N.-based International Telecommunications Union to expand the scope of its mandate in order to include Internet communications. The concern is that the ITU as a venue is not well-suited to the inclusive

multi-stakeholder governance processes that have made the Internet what it is today.

Specifically, the ITU adopts direct obligatory standards at the international level as opposed to more flexible recommendations used by other venues such as the OECD. Additionally, the ITU venue is hostile to direct input from relevant stakeholders such as civil society. In addition to participating in international civil society statements on the matter, CIPPIC was a member of the Canadian Preparatory Committee for WCIT-12 (CPC/ITU-WCIT12).

COE Modernizing Convention 108

The Council of Europe's Convention 108, a foundational privacy document that has informed privacy and data protection regimes across the world, is under review. CIPPIC submitted detailed comments on a draft proposal to update this regime. CIPPIC drew on its experience with PIPEDA in order to make specific suggestions on an overly narrow right of opposition, overly broad exceptions, and the nature of the breach notification regime adopted in the proposal.

Online Tracking & Privacy

Online tracking became a prominent and contentious issue in 2011, with regulators across the world seeking to resolve what is currently effectively an 'all you can eat buffet' for third parties seeking to buy and sell individuals' online browsing activities. Building in detailed submissions provided to a consultation held by the Office of the Privacy Commissioner of Canada on online tracking in late 2010, CIPPIC monitored developments on this file, including the issuance of two guidelines documents from the OPC on the matter. In addition, CIPPIC actively participated in the W3C Tracking Protection Working Group, the multi-stakeholder entity tasked with developing a browser-based signalling mechanism so that individuals can inform third parties they do not wish to be tracked.

OECD Privacy Guidelines

The OECD Privacy Guidelines on Privacy and Transborder Data Flows are, alongside the Council of Europe's Convention 108, one of two core documents that have had incalculable impact on the development of data protection around the world. As part of the 30 year review of this foundational document, Industry Canada sought input from stakeholders in order to guide its submissions to the OECD. CIPPIC provided input, calling for a process that enhances transborder data flows by providing strong privacy protections in all domestic regimes.

CIPPIC additionally called for key updates to the Guidelines, including the addition of data breach notification obligations, a right to anonymity and caution in any attempt to expand individual obligations.

Canada's Anti-Spam Legislation

CIPPIC joined the Public Interest Advocacy Centre in a letter to the Minister of Industry setting out concerns over several proposed changes to Industry Canada's regulations set to accompany the 'coming into force' of Canada's Anti-Spam Legislation (CASL/S.C. 2010, c. 23). The concerns were over reports that Industry Canada was seeking to use the regulations in order to undermine core customer protections adopted in the legislation itself by adopting broad-ranging exceptions.

Identity Theft Support Centre

CIPPIC has been active in supporting the creation and development of what will be Canada's federal source of support for victims of identity theft. The Canadian Identity Theft Support Centre officially launched in July 2012, and is set to provide an intake venue for identity theft victims, a focal point for stimulating and producing research on identity theft issues, and a source of public education materials on online security, privacy and identity theft.

Open Government Consultations

CIPPIC provided input into Open Government consultations held by the federal government on issues covering open data and transparent governance. CIPPIC called on the government to release employ Creative Commons licensing when releasing data, to mandate releases of certain high-value datasets, and to create a full-text database of all responses to access to information requests.

SOPA/PIPA Blackout

CIPPIC joined groups around the world in blacking out its website in protest of the Stop Online Piracy Act (SOPA) & the Protect Intellectual Property Act (PIPA), two legislative proposals circulating in the United States Congress and Senate. The laws sought to expand the United States' domain name seizure program by applying it to foreign domain names accused of infringing copyright. Given the international implications of such a practice, CIPPIC felt obligated to join the protest:



As the U.S. Government uses existing powers to seize domestically registered domains and redirect them to a government owned warning page, a number of organizations including CIPPIC 'blacked out' their websites for this day of protest.

Litigation //

SCC Hears Copyright Pentalogy

This year was a busy year at the Supreme Court of Canada on the copyright front. Canada's highest court heard five cases jointly, spanning a broad range of issues core to Canada's copyright regime.

CIPPIC, jointly with Professor Jeremy de Beer, intervened in all five, arguing for teacher's rights to fairly use materials in schools, for copyright rules that do not hinder online delivery mechanisms, and the right of users to preview online content such as music files on iTunes prior to purchasing.

The Supreme Court's rulings in these various decisions were broadly viewed as a strong statement of online innovation, technical neutrality and of the scope of user rights in fairly using copyrighted materials. In addition, the Court adopted a purposive approach to defining the role of copyright collectives. It made it clear that these entities exist to facilitate the efficiency of copyright clearance/artist remuneration transactions. As such, attempts by collectives to burden copyright mechanisms with additional and unnecessary transaction costs should be avoided.

Crookes v. Newton, 2011 SCC 47

The Supreme Court of Canada released its decision on defamation and hyperlinking. CIPPIC's intervention in this appeal had focused on the need to adjust traditional defamation principles in order to account for freedom of expression and innovation concerns. A strict application of historic defamation principles would stifle online platforms and seriously chill online conduct as every tweet is transformed into a potential lawsuit.

The decision was a great vindication of online freedom of expression, and set a strong precedent in favour of a flexible approach to defamation liability that recognizes both the free expression of individuals, and the need to preserve the expressive potential of the Internet as a whole.

A.B. v. Bragg Communications

The Supreme Court of Canada has granted CIPPIC leave to intervene in this case, which will decide the extent to which anonymity and privacy of litigants must be protected in judicial processes. Historically,

courts have held that permitting litigants to proceed anonymously in order to protect their privacy is an unjustifiable restriction on the open court principle. In this particular case, the lower courts refused to permit a teenage girl to sue her cyber-bully anonymously.

Canada Post Corporation v. Geolytica

CIPPIC is representing an entrepreneur against allegations that he infringed copyright in Canada Post's database of postal codes. As counsel for the entrepreneur, CIPPIC puts forth that a claim of copyright in postal codes is an untenable overreach of copyright. Postal codes are facts, and cannot be copyrighted.

Regulatory //

Telecom Notice of Consultation CRTC 2011-77: Usage-Based Billing & Net Neutrality

CIPPIC participated (representing OpenMedia.ca) in Telecom Notice of Consultation CRTC 2011-77, on the role of 'usage based billing' in Internet service provision. CIPPIC successfully convinced the CRTC to recognize the public policy harms of its proposed usage-based billing system, and adopt a new wholesale tariff model that is designed to maximize wholesale ISP autonomy and customer choice. CIPPIC argued that competition on usage-based Internet pricing was desperately needed in Canada in order to protect customers, foster downstream online innovation, and preserve net neutrality.

Usage-based billing is inherently unfair to customers in that it is non-transparent and imposes mental transaction costs on users that act as a heavy and disproportionate deterrent to Internet usage. Additionally, there is little or no correlation between the ever-rising per MB rate imposed on Internet users in Canada and the actual per MB cost of delivery for incumbent ISPs (the latter is in fact dropping not rising).

The proposed justification for UBB – to 'discipline' above-average Internet users – is inherently flawed. The CRTC should be encouraging Internet use, not stifling it. In making these arguments on behalf of its client, OpenMedia.ca, CIPPIC was assisted by internationally renowned network traffic and economic expert Dr. Andrew Odlyzko.

Access Copyright Post-Secondary Educational Institution Tariff, 2011-2013

CIPPIC continued to represent the Canadian Association of University Teachers (CAUT) and the Canadian Federation of Students (CFS) and their ongoing opposition to a controversial tariff filed by Access Copyright with the Copyright Board. The tariff sought a %1,300 increase in what it charges post-secondary institutions. In justification of this phenomenal increase in rates, Access Copyright claimed it was monetizing activities such as the posting of a hyperlink, although it is at best dubious whether copyright even protects such activities.

Broadcasting Notice of Consultation CRTC 2012-370: Proposed Bell/Astral Merger

CIPPIC intervened in the proposed merger of Bell Canada Enterprises and Astral Media, arguing that the extreme concentration of telecommunications and broadcasting market power that this merger will provide to Bell must be avoided. The proposed merger would have had serious detrimental impact on user choice, market pricing and innovation, as it would have concentrated an unprecedented amount of power in ancillary markets in the hands of one entity.

CIPPIC submission was supportive of other groups such as the Public Interest Advocacy Centre's, and focused on highlighting concentration harms that result from the proposed level of vertical integration. In addition, CIPPIC's submission aimed to point out specific harms to online innovation that may result if the merger was approved. The CRTC ultimately refused the merger.

Broadcasting & Telecom Notice of Consultation CRTC 2011-344: Taxing New Media/Online Video

With the recent prevalence of Netflix in Canada, the CRTC decided to re-examine the role of online video delivery within the context of its regulatory obligations under the *Broadcasting Act*. Currently, online video is exempted from general regulatory obligations imposed on other broadcasters. CIPPIC presented written comments as well as an oral presentation to an *en banke* Commission closed session consultation on the matter. CIPPIC argued that online video delivery platforms should not be subject to Canadian content percentage requirements, production fund contribution obligations, or other regulatory requirements as these are not well tailored to the realities of the online environment and could make online delivery platforms difficult or impossible.

canvassing the issues and aimed at broader public awareness.

Creative Commons Canada

CIPPIC has been active in Creative Commons licensing since our clinic opened and this year we formalized our affiliation with Creative Commons. Joining together with Athabasca University and BCcampus, we re-established a CC affiliate team for Canada. To celebrate this launch, we held a Creative Commons salon in March where exciting speakers from across Canada talked about “Open Data”.

With financial support from Geoconnections (a program led by Natural Resources Canada), CIPPIC has also been studying the possibilities for Creative Commons licenses to help governments and others release their data in an open way.

Projects & Research //

Agents of the State

With generous funding from the Office of the Privacy Commissioner of Canada’s Contributions Program, CIPPIC carried out a comprehensive research program exploring the growing and changing role of Internet intermediaries in state surveillance activities. Through the use of ATI/FOI requests, as well as surveys of news sources and experts in the field, the project uncovered uses of publicly available social networking data in government decision-making.

It also documented and analyzed ways in which intermediaries shape user privacy expectations, and provided normative analysis of the resulting impact on privacy protections. CIPPIC hosted a roundtable to discuss the findings/issues with representatives from law enforcement, ISPs, the privacy commissioner’s office, the department of justice, academics and civil society. Findings were also presented in report format, FAQs, and a podcast

“To Share or to Share-Alike?”

CIPPIC released a report on the nature of municipality license restrictions on information released through open data portals. The report concludes that while the open data portals have led to wide-ranging benefits, the imposition of ‘share-alike’ licensing conditions has been a significant impediment to achieving the underlying objective of opening datasets for public use – facilitating downstream innovation.

CyberJustice Project

CIPPIC, in conjunction with Professor Jane Bailey of the University of Ottawa, Faculty of Law, is participating in a multi-disciplinary research initiative that examines the positive and negative impacts of incorporating new technologies into the discovery process. This includes investigating the privacy implications of such technologies as well as their access to justice dimensions. The objective is to provide an empirical basis for the adoption of these technologies while ensuring their adoption does not undermine privacy and access to justice. The project

has a seven year trajectory, and year one involved cataloguing existing technologies, their uses, and perceptions surrounding their adoption.

“How To: Redistributing Datasets from Open Data Portals”

In ever increasing numbers, entities are taking steps to release data sets in order to further downstream innovation and the data-driven economy. However, accompanying these data set releases is an increasingly complex web of licensing restrictions. This causes problems for any individuals attempting to mix datasets, as most of these licensing regimes will only permit re-use of their datasets if the initial licensing conditions are replicated. To address this problem, CIPPIC produced a ‘how-to’ guide with specific instructions on how to merge multiple licensing restrictions into a manner that respects ‘share alike’ obligations by, for example, appending a ‘license.txt’ file to new works that clearly states which licensing terms apply to which included dataset.

“Leveling the Spectrum Policy Playing Field”

CIPPIC, in conjunction with OpenMedia.ca, co-authored a report on policy concerns raised by the 2012 spectrum auction. The report called for a set-aside of several contiguous bands for new or recent entrants, for a healthy open spectrum allocation, and for license conditions guaranteeing net neutrality, tower sharing and mandatory roaming.

Safety Net Canada

CIPPIC, along with the BC Society of Transition Houses (BCSTH) and the National Network to End Domestic Violence (NNEDV) has received a grant from the Office of the Privacy Commissioner of Canada to research legal and technical challenges faced by victims of domestic violence in Canada. The project involves detailed research into available legal remedies and tools, and the preparation of education materials and resources.

Summer Internship Program //

Snoop Dogg [and, or, vs.] the Snoop Dogs: Reflections on the Future of the Reasonable Expectation of Privacy

July 18th, 2012: Professor Ian Kerr, Canada Research Chair in Ethics, Law & Technology, University of Ottawa.

Cyber-Insecurity & the Hard Problems of Privacy

July 4th, 2012: Dave McMahon, Complex Security Program, Bell Canada.

Ghosts in the US Network Neutrality Debate: An Inter-textual Perspective on Policy Change

June 27th, 2012: Becky Lentz, Professor of Media & Public Policy, McGill University, Department of Art History & Communications Studies.

Video Games 101: An Industry Overview

June 20th, 2012: Jason Kee, Director, Policy & Legal Affairs, Entertainment Software Association of Canada.

Canada’s Copyright Forest

June 13th, 2012: Michael Geist, Canada Research Chair in Internet & E-Commerce Law, University of Ottawa.

A Copyright Practice

June 6th, 2012: Jay Kerr-Wilson, Partner, Fasken Martineau DuMoulin.

Data Maps, Location & Law

May 30th, 2012: Teresa Scassa, Canada Research Chair in Information Law, University of Ottawa & Tracy Lauriault, Researcher, Carleton University.

Deconstructing C-30

May 18th, 2012: Jacob Glick, Senior Policy Counsel, Google Canada.

Appropriation Art: The Growing Rift Between Artistic Practice & Law

May 9th, 2012: Gordon Duggan, Co-founder, Appropriation Art Coalition.

Staff Presentations //

Online Surveillance: Where to Stand?

Presentation: *Maintaining Progress: Newfoundland and Labrador Access and Privacy Workshop 2012*, St. John's, July 18, 2012

David Fewer, Keynote Speaker

Open Content Licensing for Educators

Online Workshop: OER Foundation, June 20, 2012

Kent Mewhort, Facilitator

Copyright Update 2012

Professional Development Session: *45th Circuit – Law Forum*, Ottawa, June 5, 2012

David Fewer, Moderator

Privacy Policies: The Consumer's View into your Organization's Privacy Practices

Professional Development Session: *Canadian Bar Association*, Toronto, May 31, 2012

David Fewer, Speaker

Creative Commons Salon

Conference: University of Ottawa, March 30, 2012

Kent Mewhort, Event Organizer

Creative Commons Licensing: User Benefits to Data Users

Presentation: Creative Commons Salon, University of Ottawa, March 30, 2012

Tamir Israel, Presenter

Creative Commons Compatibility & License Adoption

Data Provider Roundtable Discussion: Creative Commons Salon, University of Ottawa, March 30, 2012

Kent Mewhort, Facilitator

Bill C-11: An Informal Discussion

Roundtable Discussion: Carleton University, University of Ottawa, March 6, 2012

Tamir Israel, Presenter

How Your Smartphone is Spying on You!

Presentation: University of Ottawa Law & Technology Student Society Speaker Series, February 16, 2012

Tamir Israel & Kent Mewhort, Presenters

Bill C-30: Public Forum on Internet Surveillance

Town Hall: Ottawa, February 8, 2012

Tamir Israel, co-organizer

Canada & the TPP

Panel: *Copyright and the Internet*, American University Program on Information Justice & Intellectual Property, Los Angeles, January 30, 2012

David Fewer, Panelist

Privacy in System Design & Liability for Software Development

Guest Lectures: CSI 2911 Professional Practice in Computer Science, School of Information Technology & Engineering (SITE), University of Ottawa, January 25, 2012 & March 14, 2012

Tamir Israel, Guest Lecturer

The SCC Copyright Pentalogy

Discussion Panel: Torys Technology Law Speaker Series, University of Ottawa, November 22, 2011

David Fewer, Panelist

Yours , Mine, Ours: A Panel Discussion on Fair Dealing & Copyright Law in Canada

Discussion Panel: Claw UOttawa, Creative Law Society, University of Ottawa, November 14, 2011

David Fewer, Moderator

The New Media: Strategies for Maximizing Canada's Online Content Presence

Presentation: Canadian Radio-television & Telecommunications Commission *en banke* Consultations, Ottawa, November 16, 2011

Tamir Israel, Presenter

Privacy/Data Protection on the Internet

Panel: Canadian Council on International Law, 40th Annual Conference: Culture and Innovation in International Law, Ottawa, November 4, 2011

David Fewer, Panel Chair

See you next year!
