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### Announcements

[Robert Glushko](#), a professor at the University of California at Berkeley and successful technology entrepreneur, has donated US\$100,000 to CIPPIC. Mr. Glushko is a pioneer in electronic document engineering and is actively involved in the development of e-business standards. He and his wife, Professor Pamela Samuelson, are strong supporters of technology law clinics in North America.

### Recent Advocacy

#### **Dell Computer Corp. v. Union des consommateurs et al**

Represented by Mistrale Goudreau, a lawyer and professor at the University of Ottawa's civil law faculty, CIPPIC intervened in a precedent-setting case before the Supreme Court of Canada on the issue of the validity of pre-dispute binding arbitration clauses in consumer contracts. Also at issue was the enforceability of Dell's "browsewrap" contract. The case was heard on December 13, 2006, and the decision is pending.



Left – Right: Tara Berish (Articling Student), David Fewer and Philippa Lawson

#### **Philippa Lawson v. Accusearch Inc.**

CIPPIC's case against the federal Privacy Commissioner on an important jurisdictional issue was heard by the Federal Court on January 22, 2007. CIPPIC staff counsel David Fewer argued the case, challenging the Commissioner's decision not to investigate a US-based databroker for alleged breaches of PIPEDA. CIPPIC argued that there was ample evidence of real and substantial connections to Canada on the face of the record for the Commissioner to assume jurisdiction. In a judgement released just two weeks later, the Federal Court agreed with CIPPIC and ordered the Commissioner to investigate.

#### **Palmer et al v. SonyBMG et al**

With the assistance of Toronto firm Deeth, Williams, Wall LLP, CIPPIC intervened in a class action against SonyBMG regarding the company's surreptitious distribution of "rootkit" software on CDs that

automatically loaded on consumers' computers, sent information about users back to the company, and created a security hole in users' computers. CIPPIC objected to the proposed Canadian settlement of the class action, on the grounds that SonyBMG offered Canadian consumers far less than it offered American consumers in the similar US class action settlement, without adequate rationale for the differences. CIPPIC's objection resulted in an improved settlement for Canadian consumers.

### **Parliamentary review of PIPEDA**

CIPPIC appeared before the House of Commons Standing Committee on Access to Information, Privacy and Ethics on December 6, 2006 on the matter of the *Personal Information Protection and Electronic Documents Act* (PIPEDA). CIPPIC's written submission to the Committee contains 20 recommendations for reforms to the law. In her oral comments, Philippa Lawson focused on the need for stronger incentives for business compliance with the Act, including a mandatory security breach notification requirement. Earlier, in September 2006, CIPPIC filed a submission with the Privacy Commissioner of Canada on PIPEDA reform, in response to a call for comments.

### **PIPEDA Complaints**

Following widespread publicity across North America, CIPPIC filed a formal complaint with the federal Privacy Commissioner regarding a breach reported by Winners/HomeSense, in which a database containing credit card (and possibly other) information of Canadians was hacked into by thieves. In its complaint, CIPPIC asked the Commissioner to investigate and report on a number of specific questions, including why this information had been collected, retained, and transferred to the U.S. (where it was hacked into) in the first place, and whether such activities were justified. CIPPIC did not file a similar complaint regarding the CIBC security breach publicized at the same time, because the Privacy Commissioner had already announced an investigation of her own motion into that incident.

Earlier in the fall, CIPPIC filed formal complaints against SonyBMG with a number of Canadian authorities, alleging violations of privacy laws, competition laws, and consumer protection laws as a result of SonyBMG's surreptitious distribution of "rootkit" software on CDs that automatically loaded on consumers' computers, sent information about users back to the company, and created a security hole in users' computers.

## **Current Projects and Cases**

### **Legal & Policy Approaches to Identity Theft**

With funding from ORNEC (the Ontario Research Network on Electronic Commerce), CIPPIC has been researching legal and policy approaches to identity theft over the past several months. This research will culminate in a White Paper later this spring with recommendations for law and policy reform. In the meantime, a series of working papers covering techniques of ID theft, legislative approaches, policy approaches, caselaw, and law enforcement is forthcoming, and CIPPIC has published a webpage with FAQs and resources on ID theft. CIPPIC hosted a full-day workshop on its research and that of project partners on January 30, 2007 at the University of Ottawa.

### **Unfair Terms and Practices in Consumer E-Contracting**

Also with funding from ORNEC, CIPPIC is researching and analyzing legislative approaches to a variety of common practices and terms in consumer electronic contracting. In addition to its legal research, CIPPIC is collaborating with Professor Warren Thorngate of Carleton University on psychological research of consumer awareness, comprehension, attitudes and behaviour in relation to these terms and practices.

### **Digital Rights Management & Privacy**

With funding from the Privacy Commissioner of Canada, CIPPIC is researching uses of Digital Rights Management ("DRM") technologies in the Canadian marketplace, the impact of such technologies on individual privacy, and the compliance of DRM distributors with PIPEDA.

### **Consent under Canadian Data Protection Laws**

With funding from SSHRC, CIPPIC is collaborating with the Ontario Information and Privacy Commissioner's office on a research paper examining and comparing different approaches to consent under various privacy law regimes in Canada. This paper will be presented at a SSHRC-funded workshop in May.

### **The Virtual Consumer**

Together with Industry Canada's Office of Consumer Affairs, CIPPIC is co-hosting a Roundtable on February 28, 2007 with consumer groups from across Canada on key emerging issues facing consumers in the electronic

marketplace. This Roundtable is expected to help Industry Canada prepare for the 2008 OECD Ministerial on the Internet and Society.

### **WIPO Broadcasting Treaty**

The World Intellectual Property Organization (WIPO) continues its deliberation of a proposed treaty designed to offer new intellectual property protections to broadcast communications signals. CIPPIC has concerns with the impact these proposed rights would have on Internet intermediaries and consumer electronics manufacturers, as well as fears that this new layer of rights would strip Canadians of important user rights that they enjoy under copyright law. CIPPIC has joined an international coalition of civil society groups, consumer electronics manufacturers, and telecommunications firms opposing any Treaty with broad scope.

### **Copyright law reform**

The Canadian government continues to deliberate over draft copyright legislation that would implement Canada's obligations under the WIPO Internet Treaties. While no one has seen a bill, it is anticipated that the current government's approach will appease conservative interests calling for interventionist, DMCA-like legislation. Access to Information disclosures indicate that foreign entertainment industry interests are enjoying unprecedented access to copyright policy makers, while Canadian creator groups, such as the Canadian Music Creators Coalition, the Appropriation Arts group, and the Documentary Organization of Canada, have had minimal (and in the case of DOC, no) access to policy makers.

### **Anti-Spyware Coalition**

The Anti-Spyware Coalition released two important documents in January 2007. First, the ASC released its draft Best Practices document. This document is intended to provide software publishers with guidance as to how anti-spyware companies go about analyzing whether or not any given piece of software may be potentially unwanted. Second, the ASC released its draft Conflicts document, which provides anti-spyware publishers with guidance for resolving disputes between one another. Both documents are open for public comment until February 25, 2007. The ASC anticipates releasing final versions of both documents in March, 2007.

### **Client advice and assistance**

Over the past six months, CIPPIC has assisted a number of clients on such issues as workplace privacy, copyright, the misappropriation of websites, and the privacy of email communications. Particular matters include:

- rights in respect of an online fraud employing a fake escrow site;
- options for addressing an online vendor's failure to insure a purchased item prior to sending it by post;
- the acquisition of personal information collected and stored by an online auction service;
- cross-border litigation options;
- copyright-related media reproduction inquiries;
- liability issues arising from allegedly defamatory comments made online; and
- options for retrieving a website from an ISP who had cut off the client's access to the site.

### **Webpages**

CIPPIC students are currently working on webpages with FAQs and resources on workplace privacy, public video surveillance, free speech on the internet, end-user licence agreements, trusted computing, RFIDs, the WIPO Broadcast Treaty, and the private copying regime under Canada's *Copyright Act*.

## **Events**

### **ID Policy Workshop, Jan.12, 2007**

CIPPIC co-hosted, with researchers from the London School of Economics and the University of Toronto, a workshop on Identity Policy with Canadian government officials and private sector experts on January 12, 2007. This workshop was one of a series of consultations that form part of a research project funded by the Office of the Privacy Commissioner of Canada.

### **ID Theft Workshop, Jan.30, 2007**

CIPPIC hosted a workshop on Legal and Policy Approaches to Identity Theft on January 30, 2007. Five ORNEC-funded researchers, including Professor Robert Biddle of Carleton University, Professors Valerie Steeves, Elizabeth Judge, and Jennifer Chandler of uOttawa, and Wendy Parkes, CIPPIC's Research Associate on the ID Theft project, presented their research results to project partners and public sector invitees.

## Publications

CIPPIC, *Approaches to Security Breach Notification: A White Paper* (January 2007).

David Fewer, *Privacy Piracy: Digital Rights Management, Para-Copyright and the Primacy of Privacy*, Ontario Bar Association Privacy Subsection Newsletter (October, 2006).

## Presentations

### **29 November 2006, Ottawa, ON**

Philippa Lawson, [Consumer Information as Commodity](#), presentation to the Privacy Commissioner of Canada's Lunch Lecture Series

### **17 November 2006, Ottawa, ON**

Philippa Lawson, *Privacy and Security : Finding the Balance*, presentation to the Friday Club, YMCA

### **16 November 2006, Valaparaíso, Chile**

David Fewer, *Exceptions and Limitations in Canadian Copyright Law*, presentation to Roundtable: Exceptions and Limitations in Copyright Law – Valaparaíso University

### **15 November 2006, Ottawa, ON**

Philippa Lawson, *Privacy and Security: Finding the Balance*, presentation to Canadian Civil Liberties Association – National Capital Branch

### **14-15 November 2006, Santiago, Chile**

David Fewer, *Intellectual Property Entitlements in Canada's Universities* presentation to Ministerio de Educación y Pontificia Universidad Católica de Chile

### **13 November 2006, Ottawa, ON**

Philippa Lawson, [Consumer Health Information as Commodity](#), presentation to [E-Health Privacy conference](#)

### **2-3 November 2006, Toronto, ON**

Philippa Lawson, [Tackling Identity Theft: Legal and Policy Approaches](#). presentation to [CACR Annual Privacy and Security Conference](#)

### **27 October 2006, Ottawa , ON**

Philippa Lawson, Convenor, CAUT, *Copyright Action Conference* on "Controlling Intellectual Property: The Academic Community and the Future of Knowledge

### **20 October 2006, Ottawa, ON**

Philippa Lawson, *Telecom Reform: Are Market Forces the Answer?*, presentation to [Alternative Telecom Policy Forum](#)

### **19 October 2006, Ottawa, ON**

David Fewer, *Internet Law Update: Focus on Security*, [Ottawa Centre for Research and Innovation](#)

### **12 October 2006, Montreal, QC**

David Fewer, *Anti-Spyware Coalition – working together to combat spyware*, presentation to [Virus Bulletin Conference](#)

### **7 October 2006, Montreal, QC**

David Fewer, *Policy-making: How to Make an Impact* presentation to [Future of Music Conference](#)

### **6 October 2006, Toronto, ON**

Philippa Lawson, *Privacy Challenges for Boards and Tribunals*, presentation to [Osgoode Professional Development](#) annual conference on New Directions in Administrative Law and Practice

### **14 September 2006, Toronto, ON**

Philippa Lawson, *Compliance with Privacy Laws: Issues, Lessons, and Best Practices for Retailers* presentation to [CMA Regulatory Affairs Conference](#)

## Staff Changes

Vanessa Lavoie took over the CIPPIC administrative assistant position in Oct. 2006. Welcome Vanessa!

### **Canadian Internet Policy and Public Interest Clinic**

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