



BULLETIN

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Canadian Internet Policy and Public Interest Clinic • Clinique d'intérêt public et de politique d'internet du Canada

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Announcements

CIPPIC now has a full time administrative assistant! Annie Binet replaced Sue Gemmell in May 2005. Annie is fully bilingual and brings great enthusiasm and a glowing track record to this challenging position. While sorry to lose Sue, we are delighted to have Annie on board.

CIPPIC has received a grant of \$30,000 from the Beal Fund of the Triangle Community Foundation, for public interest research and analysis of digital copyright law reform issues. The Beal Fund is a philanthropic initiative of Bob Young, co-founder of Red Hat, a leading open-source software company, and current owner of the Canadian Football League's Hamilton Tiger Cats. This donation enables CIPPIC to work more closely and effectively with other public interest groups to ensure that Parliament hears all sides of these important issues, not just from select stakeholders. The grant is particularly timely given the recent introduction of Bill C-60, an omnibus copyright reform bill that dramatically increases the rights of copyright owners while doing little to address education and user interests.

The Beal Fund grant has been matched by the Ontario Research Network for Electronic Commerce (ORNEC), which also provided start-up funding for CIPPIC.

CIPPIC has also been awarded a public interest articling student fellowship by the Law Foundation of Ontario for 2006-2007. Tara Berish, completing her law degree at McGill University, will join us in September 2006. CIPPIC was one of six public interest organizations in Ontario to receive this new grant, which is being administered by Pro Bono Students Canada.

Le bulletin est également disponible en français – contactez nous à l'address en page 4.

2005 Summer Program



CIPPIC's 2005 summer internship program kept five law students busy from mid-May to the end of July. Jeremy Schwartz (Queen's), Shane O'Herlihy (Western), Alina Neventsels (Windsor), Dixie Ho (Dalhousie), and Rhoderica Chan (Ottawa) (clockwise from upper left) worked with Director Philippa Lawson and staff lawyer David Fewer on numerous projects during the summer of 2005. Highlights of their work included:

- Preparing and filing complaints to the Privacy Commissioner of Canada about privacy-invasive practices in the private and public sectors;
- Assisting a client with an online hate speech complaint;
- Researching and preparing the facts and law for a potential class action;
- Advising clients on a number of legal issues involving the internet;
- Creating the copyrightwatch.ca and digitalsecurity.ca websites; and
- Making a presentation to government officials on spyware.

Recent Advocacy

BMG v. Doe

In April 2005, CIPPIC Associate Alex Cameron and outside counsel Howard Knopf, of the Ottawa law firm Macera & Jarzyna, presented oral argument before the Federal Court of Appeal in the hearing of the appeal in *BMG v. Doe*. At trial, the Federal Court had dismissed the music companies' attempts to require Internet Service Providers (ISPs) to disclose the identities of customers whom the labels claimed were illegally uploading music over file-sharing networks. On May 19, 2005, the Court of Appeal rejected the labels' appeal, ruling that the labels' evidence was inadequate to overcome the John and Jane Doe's privacy rights. In the process, the Court laid down a test for disclosure of identities that includes significant privacy protections for ISP customers. CIPPIC continues to monitor the courts to ensure that Canadians obtain the benefit of these privacy protections in future cases.

Making Privacy Laws Work

During the summer of 2005, CIPPIC students researched and analyzed the privacy policies and practices of a number of private sector companies. As a result of these investigations, a formal complaint was lodged with the Privacy Commissioner of Canada against a Canadian-based data-broker, InfoCanada. CIPPIC's complaint focuses on the practice of combining publicly available data (names, addresses and telephone numbers from telephone directories) with aggregated demographic data from Statistics Canada for the purpose of creating and selling marketing lists.

CIPPIC also asked the federal Privacy Commissioner to investigate the CRTC's policy of posting on its website the personal contact information provided by individuals who submit comments on public proceedings. CIPPIC seeks a determination as to whether this policy violates the Privacy Act, and if not, whether it is an appropriate approach to balancing the privacy interests of individuals with the need for accountability and transparency in public proceedings. The Privacy Commissioner is investigating, and treating this as a systemic matter rather than a complaint.

Privacy & Human Rights 2005

CIPPIC prepared this year's Canadian update for the Electronic Privacy Information Center's *Privacy and Human Rights 2005* report. The EPIC publication identifies legal protections, new challenges, important

issues and events relating to privacy in countries around the world. This year's report focuses on national responses to terrorism and how they have been implemented and enforced in practice.

Online Hate Speech

CIPPIC assisted a client with a complaint to the Canadian Human Rights Commission about hate speech on the internet. After the Supreme Court's ruling on same-sex marriage in late 2004, some individuals posted extremely homophobic messages online. CIPPIC's client is arguing that these messages expose homosexuals to hatred and contempt contrary to section 13(1) of the Canadian Human Rights Act, and that those responsible should be held accountable for their hate-inciting speech.

Spyware

In July 2005, CIPPIC staff and students gave a presentation on spyware to members of Industry Canada's E-Commerce branch, the Competition Bureau, the Office of Consumer Affairs, the Office of the Privacy Commissioner, and the Public Safety and Emergency Preparedness Canada. This presentation focused on the threat of spyware to Canadian e-commerce, the challenges in defining spyware, the work of the Anti-Spyware Coalition in which CIPPIC is involved (see below), Canadian companies involved in the distribution of spyware, and gaps in Canadian legislation addressing the growing problem of spyware.

Lawful Access

CIPPIC participated in a consultation with federal government departments on proposed "lawful access" legislation in March 2005. We posted a webpage on the issue and are assisting other civil liberties groups in responding to these proposals. A bill is expected in the fall.

Biometrics

Two CIPPIC students attended a Citizenship and Immigration Canada (CIC) meeting regarding CIC's use of biometrics in upcoming field trials. CIPPIC urged the CIC to approach privacy as a human right versus merely as data security. CIPPIC will be monitoring the field trial.

Current Projects and Cases

Children's Protection Online

CIPPIC is working with a client to investigate the practices of an online children's website that CIPPIC alleges violates privacy laws, consumer protection laws as well as industry standards for transacting with minors. CIPPIC is preparing to engage in discussions with the website to review its practices. This project will be particularly useful in assessing if and how children's privacy rights should be protected, particularly in the online context.

Spyware

Spyware is a growing online threat that affects both consumers and businesses. In May 2005, CIPPIC joined the Anti-Spyware Coalition (ASC), a coalition of North American technology companies and consumer/public interest groups. The ASC, an initiative of the US-based Centre for Democracy and Technology (CDT), is establishing guidelines and standards for the industry, with the aim of making it easier for companies, consumers and policy-makers to identify, avoid, and prosecute harmful spyware. CIPPIC is actively involved in this multi-stakeholder initiative.

CIPPIC is also conducting a comparative analysis of legislative approaches to spyware for Industry Canada. This report will be completed and submitted in September 2005.

Copyright Reform

CIPPIC continues to maintain up-to-date information on copyright law reform in Canada. We have created a special website, www.copyrightwatch.ca, to function as a public portal to facts on copyright revision in Canada. Contributors are members of the University of Ottawa Law and Technology program and practitioners in the industry. Comments from the public will be used for online discussion and information dissemination. CIPPIC has also assisted in the creation of a website – www.digitalsecurity.ca – for the Digital Security Coalition, a group comprising leading Canadian digital security companies. Its mandate is to advocate on behalf of its members and of all Canadians for sound public policies and laws affecting digital security technologies.

Access to Information Manual

Together with other members of the SSHRC-funded “On the Identity Trail” project, CIPPIC is completing an *Access to Information and Privacy Manual* covering access to information laws in all Canadian jurisdictions. The Manual provides tips and general guidance to Canadians seeking access to their personal information held by governments and corporations, as well as to general information held by governments. It will be published online in the fall of 2005, with hard copy publication following.

Making Privacy Laws Work

CIPPIC continues to research and analyze the privacy policies and practices of major Canadian retailers, service providers and information brokers. When egregious violations of PIPEDA or controversial practices are identified, CIPPIC lodges complaints under the relevant privacy legislation.

Consumer Profiling

CIPPIC continues to research the information-brokerage industry in Canada, with a view to identifying key information “hubs” and understanding when, where, and how Canadians’ personal information is collected, used and disclosed to third parties for marketing purposes.

PIPEDA Review

CIPPIC is preparing for the upcoming Parliamentary review of the *Personal Information Protection and Electronic Documents Act* by reviewing and analyzing past findings and court rulings, comparing different data protection regimes, conducting its own investigations of privacy policies and practices, and identifying problematic aspects of the law that could be improved through legislative amendments.

Unfair Terms in Online Consumer Contracts

CIPPIC is continuing its investigation into the consumer contracting practices of Canadian businesses and will report the findings later in the year. CIPPIC’s research and analysis focuses on the banking, software, and telecommunication industries.

Telecom Policy Review

Together with the Public Interest Advocacy Centre and other consumer groups, CIPPIC prepared a joint submission to the national Telecommunications Policy Review Panel on a wide range of issues central to Canadian telecommunications policy. The submission, filed in mid-August, addressed such issues as technological developments affecting the regulation of telecommunications, the need for stronger consumer protection in a deregulated environment, approaches to the extension of broadband connectivity throughout Canada, challenges for telecommunications regulation in the online environment, and appropriate regulatory approaches to such challenges. CIPPIC and its partner groups will be responding to submissions made by other stakeholders, in September.

Client Advice

Over the past five months, CIPPIC has provided advice to numerous individuals and non-profit organizations on a variety of technology-related issues including the use of P2P networks, online hate speech, children’s rights in the context of websites soliciting their personal information and transacting with them, copyright in databases, appropriate disclaimers when offering materials for download, extraterritorial application of Digital Millennium Copyright Act, theft of wireless signals, copyright in classroom music, smart cards, the rights of a deceased’s estate to access

deceased's email, and the legality of copy control technology on CDs from a consumer standpoint.

Staff Notes

CIPPIC director Philippa Lawson moderated a panel on "Lawful Access" at the Canadian InfoSec Summit in Ottawa on June 2, 2005.

David Fewer spoke on "Copyright: The State of the Nation", at the Canadian Association of Law Libraries' Annual Conference in St. John's, Newfoundland, on Tuesday, May 17, 2005.

Philippa Lawson presented a paper on consumer surveillance at the tenth international conference on consumer law, organized by the International Association of Consumer Law and hosted by ASPEC, the Peruvian consumers' association, in Lima, Peru on May 5, 2005.



Philippa Lawson presenting on Consumer Profiling at CFP2005 (Pyrik Photography)

Along with a number of colleagues from the Anonymity project headed up by Dr. Ian Kerr of the University of Ottawa, CIPPIC director Philippa Lawson, Associate Alex Cameron and student Catherine Thompson made presentations at this year's Computers, Freedom and Privacy conference held in Seattle, Washington in April 2005. The theme of CFP2005 was "Panopticon", and the Anonymity project's one-day workshop was titled "Vanishing Anonymity".

Philippa Lawson gave a presentation to the Kanata Probus group on consumer profiling and Canadian privacy laws applicable to organizations engaging in such practices on March 15, 2005.

David Fewer spoke on Copyright Revision and Innovation Policy at a forum hosted by the University of Ottawa's

Centre for e-Learning (TLSS) on the issues surrounding copyright law reform and the particular concerns of colleges and universities on March 10, 2005.

David Fewer and two CIPPIC interns, Rhoderica Chan and Alina Neventsels, appeared on CJOH's show "Tech Now" on July 17, 2005, on the subject of spyware.

David Fewer appeared on CTV's "Countdown", with Mike Duffy, on June 27, 2005, to discuss the implications of the American Supreme Court's decision in *MGM v. Grokster* for technology companies.

David Fewer has discussed Bill C-60, an Act to Amend the Copyright Act, on a number of radio shows.

CBCRadio3.com selected CIPPIC's Creative Commons Canada as one of 100 contemporary issues facing Canadians

Publications

Philippa Lawson's article "The PIPEDA Five-Year Review: An Opportunity to be Grasped" was published in the July 2005 edition of *Canadian Privacy Law Review*.

David Fewer's article, "A Dangerous but Canadian Road: The Government Proposes to Revise the *Copyright Act*", was published in the June 2005 issue of *Internet and E-Commerce Law in Canada*.

The *National Post* on May 9, 2005, carried an op-ed by David Fewer called "Piracy Talk Is Just Spin", on the major music labels' characterization of *BMG v. Doe*.

Upcoming Events

David Fewer will be speaking about copyright revision and innovation policy at an Insight Law Conference on Canadian Copyright Reform, to be held in Toronto **September 15-16, 2005**.

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