



BULLETIN

Vol. 3 - Winter 2006

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

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Announcements

Deeth Williams Wall LLP, a Toronto intellectual property and technology firm, is generously providing CIPPIC with pro bono legal assistance on client files, legislative advocacy, and public legal education materials. This pro bono arrangement was facilitated by UOttawa LL.M. and CIPPIC alumnus, Jason Young, who is now an associate at DWW. Deeth Williams Wall LLP joins Fogler Rubinoff LLP, another highly-regarded Toronto firm, as pro bono counsel to CIPPIC.

Jennifer Seligy, a graduate of the University of Ottawa's National Program (joint civil law-common law degree), was hired in September as CIPPIC's first articling student. She has already proven to be a tremendous asset to the clinic!

CIPPIC has been awarded \$50,000 by the Office of the Privacy Commissioner of Canada to conduct research into the Canadian data-brokerage industry and to assess private sector compliance with data protection laws. This research is being conducted over the fall and winter of 2005/2006, with a report due in the spring.

CIPPIC has also obtained funding from the Ontario Research Network for Electronic Commerce (ORNEC) to research legal and policy approaches to identity theft. CIPPIC is heading up a research project involving six other academic researchers at the Universities of Ottawa and Carleton, each inquiring into different legal and policy aspects of the problem. The overall ORNEC project involves three other related research projects focusing on technical solutions, management solutions, and issues in defining and measuring ID theft.

Recent Advocacy

In October 2005, The **Anti-Spyware Coalition** (ASC), an alliance of the leading technology companies, academics and public interest groups united in the battle against computer spyware, released its "**Spyware Definitions**". This document is intended to assist in policy and law-making with respect to spyware. A few months later, the ASC released its "**Risk Model Description**", describing the sorts of behaviours anti-spyware companies evaluate in assessing the potential for any particular technology to be unwanted by consumers and so targeted by anti-spyware software. CIPPIC is an active member of the ASC.

In November 2005, CIPPIC and the Center for Democracy and Technology simultaneously lodged formal, documented **complaints with the Canadian Competition Bureau and the US Federal Trade Commission** (FTC), requesting official investigations into the business practices of Montreal-based software distributor Integrated Search Technologies and several of its business partners. This is first time that the Bureau has been asked to investigate a spyware company, and the first time that the FTC has been asked to investigate the practices of a Canadian spyware vendor.

In the run-up to the Jan.23rd **2006 federal election**, CIPPIC asked each federal party a set of questions on pressing and controversial legal and policy issues involving the internet. Party responses were posted on the site. Interestingly, neither the Conservatives nor the Bloc bothered to respond, while the Liberals provided only vague responses and the NDP didn't answer the questions we posed. Of the parties with more than 1% of the popular vote, the Greens were the only ones to set out clear positions on most of these important issues.

In the fall of 2005, retired Supreme Court Justice Gerard LaForest was commissioned by the Prime Minister to assess the merits of **merging the currently separate Offices of the Information and Privacy Commissioners of Canada**. CIPPIC wrote to Justice LaForest, opposing the merger, on the grounds that it would have minimal benefit, while unnecessarily jeopardizing the effectiveness of privacy law oversight. Justice LaForest ultimately recommended against such a merger.

In early December 2005, CIPPIC and the Electronic Frontier Foundation (EFF) jointly launched the website **OnlineRights.ca**. This new site provides a home on the Internet for grassroots activism on digital issues of importance to ordinary Canadians. Its first campaigns have focused on unwarranted surveillance law and the need for balanced copyright law. During the recent election, onlinerights.ca helped to throw a spotlight on some of the problems associated with the link between content industry campaign contributions and the copyright revision process.

On December 19, 2005, CIPPIC filed an **application for judicial review** in the Federal Court of Canada challenging the Privacy Commissioner's determination that she lacks jurisdiction to investigate a US-based data-broker. For more information, see CIPPIC's Privacy webpage, under "PIPEDA complaints - Abika.com".

In a Declaration sent to the Minister of Industry on January 10, 2006, CIPPIC joined 32 other public interest groups calling on the federal government to maintain regulatory control over the **telecommunications industry**, so as to protect consumers from abusive practices and to ensure the delivery of high quality telecom service at affordable prices throughout the country. See CIPPIC's webpage on telecom policy for more information.

In late January, 2006, CIPPIC and its partners on the "On the Identity Trail" research project released an **Access to Information User Manual**, explaining access to information laws in all fourteen Canadian jurisdictions. The Manual, designed for citizen activists, was researched and drafted by a team of students and experts working under the direction of CIPPIC. It provides essential "how to" information on accessing one's personal information held by governments and private sector companies, as well as accessing general information held by governments.

During fall 2005, CIPPIC posted **new webpages** on "**Lawful Access**", the federal government's proposals to give law enforcement agencies greater surveillance powers, **spyware**, and **internet accessibility**. CIPPIC has posted FAQs and resources for each topic, as well as a "Projects" page reporting on our work on each of the Lawful Access and Spyware projects.

Current Projects and Cases

Client advice

CIPPIC provides advice to individuals and organizations who can't afford lawyers on issues involving law and technology, where there is a broader public interest involved. During the past six months, we advised numerous clients on issues involving copyright, jurisdiction, privacy, and free speech on the Internet.

Copyright Law Reform

CIPPIC continues in its role of providing Canadians with accurate and up-to-date information on copyright law reform in Canada. With the demise of Bill C-60 and the election of a Conservative government, CIPPIC will continue to advocate for copyright laws that address the public interest. CIPPIC will be calling on the Conservative government to ensure that any successor bill to C-60 is balanced, adopting C-60's strengths while addressing its weaknesses and omissions.

Privacy

CIPPIC is currently engaged in two research projects funded by the Privacy Commissioner of Canada: investigating the data-brokerage industry in Canada, and testing online retailer compliance with key provisions of the federal *Personal Information Protection and Electronic Documents Act* ("PIPEDA"). Over a dozen students are involved in one or other of these research projects, for which reports are due in the spring.

CIPPIC students are also investigating the legality of Statistics Canada's practice of selling aggregated census data to data-brokers, who then match it with names and addresses for the purpose direct marketing. This investigation constitutes the flip side of our formal complaint against the data-broker InfoCanada, in which we argue that the matching of names with Statistics Canada census data violates PIPEDA.

With the Parliamentary review of PIPEDA scheduled for this year, we are noting and analyzing problems with the legislation and enforcement regime. We are

preparing a submission to Industry Canada with preliminary recommendations for amendments and issues for further consideration.

As noted above, we have filed an application for judicial review in Federal Court of the Privacy Commissioner's determination that she lacks jurisdiction to investigate a Abika.com, a US-based data-broker. This case could establish an important precedent on jurisdiction under PIPEDA, as well as on the scope of the Privacy Commissioner's investigatory powers.

We are monitoring the government's "Lawful Access" proposals to give law enforcement agencies greater search powers and to require ISPs to reconstruct their systems so as to facilitate police wiretaps. We are also providing information and analysis on these initiatives to the public and other civil liberties groups, with a view to ensuring that individual privacy and free speech are not sacrificed in the international "war on terror" and clampdown on cybercrime.

Children's Protection Online

A client file brought CIPPIC to investigate the practices of an online children's website. Our investigation led us to conclude that the website violates privacy laws, consumer protection laws as well as industry standards for transacting with minors. CIPPIC engaged the website owner in discussions, which unfortunately proved fruitless. CIPPIC will now be turning to regulatory means of bringing the website into compliance with Canada's laws that protect children's privacy.

Spyware

CIPPIC continues its work with the Anti-Spyware Coalition (ASC), a coalition of anti-spyware software developers and distributors and public interest organizations dedicated to addressing the growing threat of spyware and other potentially unwanted technologies. The ASC is planning to develop a "best practices" document to assist software developers in avoiding deploying technologies that will be likely identified by anti-spyware software as potentially unwanted. On May 16, 2006, the ASC will host a one-day workshop in Ottawa focusing on the international dimensions of the of spyware challenge. The workshop

will be free to public interest organizations and government employees.

CIPPIC continues to monitor the Canadian landscape for spyware developers and distributors that may be violating Canadian laws, and to follow up on our complaint against Integrated Search Technologies, a Montreal company CIPPIC alleges to be a distributor of spyware. We are also investigating the possibility of working with a team of engineers from SITE, the University of Ottawa's School of Information Technology and Engineering, to create a Public Interest Technology Lab to help address the need for a forensic analysis of harmful technologies such as spyware and spam in bringing complaints before Canadian law enforcement agencies.

Unfair Terms in Online Consumer Contracts

CIPPIC is continuing its investigation into the consumer contracting practices of Canadian businesses, focusing on the banking, software, and telecommunication industries. That research will be expanding this summer to consider standard consumer contracting practices in the face of digital standard form contracts and End User License Agreements (EULAs). CIPPIC anticipates reporting its findings later in the year.

We will soon be posting a set of FAQs and resources on our website on Mandatory Arbitration in Consumer Contracts.

Staff Notes

David Fewer spoke on "Copyright Revision and Innovation Policy" at an Insight Law Conference on Canadian Copyright Reform, held in Toronto, September 15-16, 2005.

David Fewer spoke on "Making Available and File Sharing: A Solution in search of a Problem?" at an Osgoode Hall Continuing Legal Education Forum on "Bill C-60 and Copyright Reform in Canada", held in Toronto October 25, 2005.

Philippa Lawson spoke on "Privacy and Security: Finding the Balance", at the Canadian Access and Privacy Association (CAPA)'s annual conference in Ottawa on Nov.22nd, 2005.

David Fewer presented an "Introduction to Spyware" at the Tory's Technology Law Speaker Series at the University of Ottawa's Faculty of Law on Nov.8, 2005.

David Fewer is teaching "Regulation of Internet Communications" this term at the University of Ottawa's Faculty of Law.

Publications

The *Access to Information User Manual*, a work-in-progress for the past two years is now freely accessible online at www.atipmanual.ca. Designed for use by laypersons, this publication is a guide to access to information laws in all fourteen Canadian jurisdictions.

David Fewer's article on policy laundering, "The Genie in the Information Bottle", was published in the November, 2005 edition of *Index on Censorship*. The edition focused on Western efforts to launder intellectual property policies.

David Fewer published a Chapter entitled "Making Available: Existential Inquiries" in *In the Public Interest: The Future of Canadian Copyright Law*, edited by Michael Geist (Irwin Law: Scarborough, 2005).

Upcoming Events

CIPPIC and the Anti-Spyware Coalition (ASC) are hosting a one-day international workshop on **spyware** at the University of Ottawa Faculty of Law on **May 16, 2006**. The workshop will be free to public interest organizations and government employees.

CIPPIC is supporting a one day workshop, titled "**Copyright in Libraries: the Digital Conundrum**", of the Information Commons Interest Group of the Canadian Library Organization, scheduled for **June 14, 2006**, at the University of Ottawa.