

# IT.CAN NEWSLETTER/BULLETIN

Canadian IT Law Association

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Les auteurs de la première partie du présent bulletin sont les professeurs [Teresa Scassa](#), [Chidi Oguamanam](#) et Stephen Coughlan de l'Institut de droit et de technologie de la [Faculté de droit de l'Université de Dalhousie](#). Les professeurs [Pierre Trudel](#) et [France Abran](#) de la Chaire en droit des technologies de l'information et du commerce électronique L.R. Wilson de la Faculté de droit de l'Université de Montréal ont rédigé la seconde partie du présent bulletin.

## Part 1

### Domain Names

IN *CANADIAN BROADCASTING CORPORATION/SOCIÉTÉ Radio-Canada v. Dhalla*, sole panelist Pierre-Emmanuel Moyse considered a dispute over the domain name [hockeynightincanada.ca](#). The respondent filed no response to the complaint.

The dispute was triggered when the respondent sent a letter to the CBC offering to transfer the domain name to the CBC. In the letter the respondent indicated that his original intention in registering the domain name was to create a website for hockey pools. The letter did not indicate a dollar amount requested for the transfer, but merely stated “any consideration would be much appreciated.” (para 11) Negotiations between the parties followed, in which the respondent indicated that since it would cost the CBC \$4 000 plus legal expenses to file a dispute resolution claim, this amount should be factored into the cost of the transfer. During the period of the negotiations, the domain name was “parked” with an internet referral site.

Moyse found that the CBC had clear trade-mark rights in “Hockey Night in Canada”, and that these rights existed prior to the registration by the registrant of the disputed domain name. He also found that the domain name is identical to the mark. On the issue of bad faith, Moyse found that “Speculation was

the main purpose of the registration”. (para 28) He also concluded that the registrant could have no legitimate interest in the name.

IN *BEST WESTERN INTERNATIONAL INC. v. MONTANBAULT*, sole panelist Rodney Kyle considered a dispute over the domain name [best-western.ca](#). The dispute resolution provider, BCICAC deemed that the registrant had not responded to the complaint because the registrant “did not provide all copies required by Resolution Rules within the time limits prescribed by Resolution Rules” (at p. 2). As a result, the complaint proceeded as if there had been no response.

Kyle stated that he found the substance of the complaint to be very straightforward, but spent a great deal of time considering certain points of procedure. The CDRP Rules provide that the Complainant must certify the complaint according to a form set out in the first Appendix. The form includes a paragraph indicating that the complainant must agree to submit to “the jurisdiction of a superior court of a province or territory of Canada having jurisdiction over the Registrant”, or if no such court has jurisdiction, then “the jurisdiction of the superior court of the province or territory in Canada in the city in which the provider has its principal place of business in Canada...or the jurisdiction of the superior court in the City of Ottawa in the province of Ontario.” In this case, the Complainant changed “Ottawa” to “Vancouver” and “Ontario” to “British Columbia”. Kyle found this to amount to noncompliance with the Rules. Kyle next considered whether the extent of this noncompliance was sufficient to exempt the registrant from having to submit to the procedure. He noted as well that the provider sent notice to the Registrant in English only, even though the Rules required service in both English and French. Kyle found that because the registrant had communicated with the panel, albeit in a manner that was found not to amount to a response, and because his communication was in English, that he had waived the bilingual

notice requirements, and that he had, in making the communications, acknowledged that the panel had jurisdiction. He then went on to determine that the complaint had been made out, and that the domain name was registered in bad faith.

The complainant, a U.S. based company had not named a nominee for the proceeding. Kyle next considered whether the complainant is “entitled to have the panel find, that as part of implementing the panel’s decision, the complainant is entitled to name a nominee to CIRA and that CIRA is to determine whether that nominee satisfied the CPR in respect of that domain name?” (at p. 20) His answer was “yes”. He ordered the transfer of the domain name to a nominee who satisfied the Canadian Presence Requirements.

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## Extraterritoriality And The Internet

The Federal Court Trial Division has helped clarified the question of jurisdiction by Canadian tribunals over internet activity which is not confined to Canada. In *Lawson v. Accusearch Inc.* the applicant had complained to the Privacy Commissioner concerning the activities of Accusearch Inc., a company which operated through the website Abika.com. Abika.com offered to provide, for a fee, search services on individuals, including background checks, criminal record checks, psychological profiles, email traces, listed and unlisted telephone numbers, and license plate information. These searches were conducted without the consent of the person being investigated. Although Accusearch was registered and based in the United States, it offered to investigate persons in many countries, including Canada, the United Kingdom, Australia, France, Germany, Russia, Italy, Hong Kong, Singapore, Japan and Taiwan. It also offered its services to people not located in the United States.

The applicant Lawson ordered a search on herself, and paid Abika.com the necessary fee. In return she received a psychological profile as well as a report noting that she had no criminal record. The applicant then complained to the Privacy Commissioner that

Abika.com, in the course of private commercial activities, routinely collected, used and disclosed personal information about Canadians for inappropriate purposes and without their knowledge or consent. She claimed that in so doing Abika.com was violating PIPEDA.

The Privacy Commissioner declined to hear the complaint, on a jurisdictional basis. The Commission did contact Abika.com in Wyoming, its home state, but the company refused to provide the names of its Canadian-based sources. The Commissioner then stated that in order to investigate the matter it would need to have the authority to exercise its powers outside Canada. Although it was possible for Parliament to legislate extraterritorially, she stated, this was rarely done, and had not been done in the case of PIPEDA. The Commissioner noted her frustration that her office had not been enabled to investigate the transborder flow of information, given the challenges posed by global electronic commerce and the disclosure of information through data-brokering. Nonetheless she held that she did not have the jurisdiction to investigate the complaint.

On appeal, the Federal Court held that the Privacy Commissioner had erred in finding that she lacked jurisdiction to investigate the complaint. The judge held that the Commissioner had failed to distinguish between her power to investigate and the effectiveness of her investigation.

PIPEDA was intended to protect personal information collected, used or disclosed in the course of commercial activities in connection with a business, whether interprovincially or internationally. Either the country of transmission or the country of reception can take jurisdiction over the issue. Although the Privacy Commissioner was correct that Parliament had not intended to legislate extraterritorially with PIPEDA, that did not mean that the Commissioner had no jurisdiction in this case: the fact that the Commissioner could not subpoena Abika.com or enter its premises in Wyoming did not mean that the Commissioner had lost jurisdiction.

The judge held that it was necessary to consider jurisdiction over the subject matter, over the person, and over the territory. The important question was territorial jurisdiction. The trial judge agreed that Parliament had not intended PIPEDA to govern

the collection and use of personal information worldwide. Accordingly, if the applicant in this case had been an American living in the United States, PIPEDA would be irrelevant. But in this case there was a clear connection to Canada, and the only basis for refusing to investigate was the inability of the Commissioner to compel the US-based company to comply with demands for information. The judge held that “The fact that an investigation might be ineffective is not the point. While it is true, as the Commissioner says, that her office has no extraterritorial subpoena power over a non-resident, neither does a court of law”. The judge noted that courts in Canada make use of letters rogatory to obtain the assistance of courts in other countries in order to obtain subpoenas.

The trial judge also noted that the Commissioner was pursuing a similar complaint where it had been able to identify the sources of Canadian information. He noted that the jurisdiction of the Privacy Commissioner should not depend on whether a foreign-based business voluntarily names names. Accordingly he held that even in the absence of PIPEDA having extraterritorial effect the Commissioner nonetheless had jurisdiction to investigate the complaint.

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## Intellectual Property Law

In *Microsoft Corp. v. 9038-3746 Quebec Inc.* Justice Harrington of the Federal Court considered a case involving allegations of copyright and trade-mark infringement in relation to Microsoft products. Harrington J. found that the case involved the importation and sale of counterfeit copies of Microsoft Windows, Office and Outlook products.

The defendant in the case sold a variety of Microsoft software which it imported from the United States, outside the authorized distribution network. Harrington J. noted: “Leaving copyright and licensing issues aside, it is quite legal to buy a genuine article on the “grey market”.” (at para 24). However, in this case, he found that the items purchased were, for the most part, not genuine. Under s. 27(3) of the Copyright Act, where a work is imported into Canada, the knowledge of the importer as to whether

the works were infringing is irrelevant. Harrington J. noted that even if the works had not been imported, he would have found that the “defendants knew or should have known that the items in which they were trading were counterfeit.” (at para 90). In fact, he found that the defendant Mr. Cerrelli “deliberately, willfully and knowingly engaged in a course of conduct likely to infringe Microsoft’s trade-mark and copyright entitlements and that he pressed on regardless.” (at para 96)

Harrington J. issued a declaration that the 25 copyrights and 10 trade-marks at issue in the case were valid and subsisting, and that the defendant had infringed them. He ordered a delivery up of all infringing materials.

The plaintiff claimed statutory damages in this case. Under the *Copyright Act*, the amount of these damages can range from \$500 to \$20,000 for each work that is infringed. Harrington J. also noted that where more than one work has been infringed, the Court may also adjust the amount of the award of statutory damages if “it would otherwise be grossly out of proportion to the infringement.” (at para 105). In this case, 25 copyrights were infringed. Microsoft sought \$20,000 for each of the 25 infringed copyrights, in addition to punitive and exemplary damages.

Harrington J. noted that to give the minimum amount of statutory damages would be so low that it would be grossly out of proportion to the infringement. He also observed that the defendant had been extremely reticent about providing his business records, offering “lame” excuses for not providing them. He stated: “Based on the facts provided and the conduct of the defendants, I infer that they continued to deal in counterfeit product.” (para 111) He granted the maximum statutory damages amount of \$20,000 for each of the 25 infringed copyrights, for a total of \$500,000. He also noted that Microsoft had claimed an accounting of profits for the trade-mark infringements, under the Trade-marks Act.

Harrington J. ordered a further \$100,000 in punitive damages against the two numbered companies who were defendants in the case, and \$100,000 against the defendant Cerrelli, stating that the conduct of the defendants was “outrageous.” He also granted a permanent injunction barring the Cerrellis, the two defendant companies, their officers, directors,

servants, employees and agents, as well as any other person acting under their instruction, from ever dealing in counterfeit Microsoft works. Harrington J. declined to extend the injunction to prevent any dealing with copyrights not specifically identified in the suit, noting “the defendants are entitled to know the case they have to meet.” (at para 130). Further, he refused to grant an injunction against the defendants “from dealing in Microsoft products other than those packaged and licensed to Microsoft’s satisfaction”, noting that this was, in effect “seeking an order that Inter-Plus be kept out of the grey market.” (at para 132) He noted that in some cases non-counterfeit products have found their way “out the back door” of the authorized distribution network, and stated: “[i]n my opinion, the *Copyright Act* cannot be invoked to support Microsoft’s current business model.” (para 136)

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## Privacy

A RECENT *FINDING* BY THE ASSISTANT PRIVACY Commissioner of Canada considers the meaning of the obligation to provide access to personal information at “minimal or no cost”. The complaint was filed by a lawyer who objected to a charge of \$245 to gain access to his client’s file held by a company. The charge included a \$20 fee to extract the file from storage, and a fee of \$225 for photocopying over 1000 pages at 20 cents per page.

The Assistant Commissioner was of the view that the \$20 storage fee should not be charged to individuals seeking access, as the choice to use third party storage was that of the company. She accepted that the photocopying rate of 20 cents per page was in line with similar fees charged by government organizations. However, she noted that the obligation under the Act was not to provide a copy of records, but to provide access to personal information records. She urged the company to explore less costly alternatives to photocopying the entire record, including allowing the client and/or her lawyer to view the records and select which items should be copied.

IN *CASE SUMMARY #355* THE ASSISTANT PRIVACY Commissioner of Canada considered a case where disclosure of information was made in pursuit of a debt. The complainant, with her brother, had made arrangements for their father’s funeral with a funeral home. The complainant undertook to pay for the funeral expenses. When the invoice remained unpaid after 30 days, the funeral home wrote to her to remind her that the account was past due. The complainant claimed she did not receive this letter. When the bill remained unpaid after 4 months, another letter and statement was sent to the complainant. The complainant was then contacted by telephone. Based on that conversation, the funeral director concluded that payment would not be forthcoming for some time, if at all. It was decided that before going to a collection agency, it would be appropriate to contact the complainant’s brother. After communications back and forth between the funeral home, and his sister, the brother paid the account. When the complainant learned of this, she went to the funeral home and paid the amount. The home then tore up the brother’s cheque. The complainant filed a complaint with the OPC, stating that the disclosure of the unpaid account to her brother had caused a rift between them.

The funeral home took the position that it was entitled to disclose the information because paragraph 7(3)(b) of PIPEDA permits the disclosure of personal information without knowledge or consent if the disclosure is for the purpose of collection a debt owed by the individual to the organization. The Assistant Commissioner agreed, and found that the complaint was not well founded. She noted that the information disclosed to the brother was directly related to the collection of the debt owed.

## Voice Recognition Software and Privacy

The interaction between voice recognition software, conditions of employment, and the terms of PIPEDA were at issue in *Wansink v. Telus Communications Inc.* Telus had introduced new technology called “e.Speak” for use by its field personnel. This new technology permitted employees to execute various commands over the telephone, rather than needing to be at a computer terminal. Security for

confidential information within Telus' system meant that it was necessary for the computer to recognize the voiceprint of the employee when he or she telephoned. To achieve that, employees who were to use e.Speak were required to provide an enrolment voice sample which was turned into a matrix of numbers, representing the employee's voice and vocal tract characteristics. When that employee later called in to give commands, the system would take an access voice print and match it against the enrolment voice print in order to decide whether to give the person access. The enrolment voice print was retained as long as the employee remained with Telus, while the access voice print would be destroyed in a month or two.

Telus identified a number of employees who were expected to enroll in the system, but of those three refused. In addition a fourth employee initially consented to the collection of his voice print but subsequently withdrew his consent. The four employees filed a complaint with the Privacy Commissioner of Canada arguing that the e.Speak system gathered personal information about them in violation of PIPEDA, and further that they were being threatened with discipline for failing to consent to the gathering of the information.

The Privacy Commissioner rejected the complaints, holding that collection of the information was justified under PIPEDA. On appeal to the Federal Court, Trial Division, this decision was upheld, with the additional finding that the consent requirements of the Act were complied with. On further Appeal to the Federal Court of Appeal this result was upheld, though with a different finding on the issue of consent.

PIPEDA provides in s. 5(3) that "an organization may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances". The Federal Court of Appeal upheld the lower court finding that the e.Speak system complied with this standard. Although a person's voice print was personal information, it was information which was towards the lower end of the scale in terms of the need for privacy protection. The voice print told very little about a person and could not effectively be used for any improper purpose, so its collection was benign. Given the security measures implemented to protect

the samples, the bona fide business interests in collecting the voice prints and the reasonableness of collecting the voice prints against alternative methods of achieving the same levels of security, the collection of the samples was appropriate.

However, although use of the voice prints might be appropriate, the Court of Appeal held that this did not relieve Telus of the obligation to obtain the consent of the employees to the collection of the samples. The circumstances in which consent is not necessary were exhaustively set out in s. 7(1) of the Act, of which only s. 7(1)(a) was potentially relevant in this case: that "the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way". On the facts, that standard was not met. Most obviously, three of the employees had specifically refused when asked, and the fourth had initially consented but then withdrawn his consent. Given that consent had been sought, it could not be the case that consent could not be obtained within the meaning of the Act: "[t]he exception applies where consent cannot be obtained, not where consent is not obtained" (para. 25). The reference to timeliness showed that this provision was meant to apply in temporary and exceptional situations. Further, given the refusal, it could not be said that the employees felt collection of the information was clearly in their interests. Accordingly Telus was required to obtain consent before collecting the voice prints. As a practical matter, though, the voice prints could not be collected without consent, and so this obligation had not in fact been breached.

The question did arise as to whether consent might be vitiated by threats of discipline made by the employer if the employee refused to provide the samples. For the most part this issue was left unsettled, because there was not sufficient evidence as to what discipline had been threatened, and no disciplinary measures had in fact been taken. The court did note that for an employee to give informed consent, he or she would need to be told that failure to provide the sample could have an effect on that employee's tenure of office: informing the employee of this fact would not be a threat of disciplinary measures.

The employees argued that s. 27.1(1) of PIPEDA, which prevented an employer from disciplining an

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employee who refused to do something contrary to the Act, should protect them in this situation. However, the Court of Appeal held that this provision only protected employees who refused to take actions which would violate the privacy rights of others.

Ultimately the court concluded that any decision regarding disciplinary matters if the employees refused to provide the breath samples would have to be made after such measures were taken, and should be pursued in a labour law forum.

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## 2<sup>ème</sup> partie

### Le point sur l'environnement futur du système canadien de radiodiffusion

En juin 2006, la ministre du Patrimoine canadien, conformément à l'article 15 de la *Loi sur la radiodiffusion*, demandait au CRTC de procéder à un examen de l'environnement dans lequel l'industrie canadienne de la radiodiffusion était appelée à évoluer (Décret C.P. 2006-519 du 8 juin 2006). Le décret demandait un rapport factuel sur des questions telles que :

- la situation actuelle des technologies audiovisuelles et leur évolution prévue dans les années à venir;
- le type de contenu offert par les éléments réglementés et non réglementés du système de radiodiffusion, ainsi que les méthodes de fourniture;
- l'incidence économique prévue des nouvelles technologies sur les entreprises de radiodiffusion; et,
- l'incidence que l'utilisation des technologies audiovisuelles par les Canadiens aura sur le système de radiodiffusion de même que sur les choix de contenu et d'émissions offerts à la population canadienne et la manière dont les générations futures accéderont au contenu, à la programmation et aux services de programmation.

Le 14 décembre 2006, le CRTC a déposé son rapport intitulé *L'environnement futur du système canadien de radiodiffusion*. On y trouve une revue de l'évolution des technologies, un portrait de l'utilisation des technologies audiovisuelles par les Canadiens de même qu'une discussion de l'incidence de ces tendances sur le système de réglementation de radiodiffusion. Le rapport note que la plupart des parties sont implicitement ou explicitement favorables au cadre législatif actuel établi en vertu de la *Loi sur la radiodiffusion*. Tout en soutenant des opinions diverses sur les priorités et le degré de surveillance réglementaire, les parties, même celles qui souhaitent des priorités différentes, réclament

surtout des changements à l'intérieur du cadre législatif actuel. Le CRTC conclut que pour l'essentiel, la législation actuelle répond encore aux impératifs. Mais le défi de plus en plus important est de trouver un équilibre entre les intérêts des Canadiens, qui sont à la fois des consommateurs et des citoyens. Le Conseil se dit conscient des désirs et des besoins en constante évolution des consommateurs canadiens qui souhaitent bénéficier d'un accès à un contenu partout, en tout temps et en tous lieux. Mais la *Loi sur la radiodiffusion* ne voit pas les Canadiens uniquement comme des consommateurs de radiodiffusion, mais aussi comme des citoyens. En l'absence d'un amendement à la Loi ou d'une preuve du contraire, le Conseil doit trouver par exemple des façons de s'assurer que le système continue à « sauvegarder, enrichir et renforcer la structure culturelle, politique, sociale et économique du Canada ». Le rôle du gouvernement et de l'organisme de réglementation est de veiller à ce que le système canadien de radiodiffusion donne aux Canadiens les outils nécessaires pour exercer leurs responsabilités en tant que citoyens.

- CRTC, *L'environnement futur du système canadien de radiodiffusion*, 14 décembre 2006.

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### Rapport annuel de gestion 2005–2006 de la CAI

La Commission d'accès à l'information (CAI) a déposé son rapport annuel de gestion 2005-2006 à l'Assemblée nationale. Le rapport présente les dossiers majeurs de l'année, entre autres les changements importants apportés par le projet de loi 86 (*Loi modifiant la Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels et d'autres dispositions législatives*) ainsi que le projet de loi 83 (*Loi modifiant la Loi sur les services de santé et les services sociaux et d'autres dispositions législatives*) qui aura un impact majeur sur la circulation des renseignements de santé au Québec. Le président souligne que, dans un contexte de modifications législatives et de contraintes financières importantes, la priorité a été accordée au maintien des opérations

régulières, soit maintenir le rythme dans le traitement des demandes de révision, des demandes d'examen de mésestimation et des activités de surveillance.

- Commission d'accès à l'information, *Rapport annuel de gestion 2005-2006*.

## Concours par Internet – Droit de retrait

Le plaignant porte plainte à la CAI car dans le cadre d'un concours de « Lotopompier », on lui aurait demandé de fournir des renseignements personnels. Pour participer au concours, les participants sont appelés à compléter le formulaire du document « concours Internet » et à gratter une case à cette fin. Tous les billets réfèrent au portail « Confidentialité », où le public est invité à consulter le site Internet de l'entreprise. Ce concours est géré par la fondation de pompiers mais organisé par l'entreprise afin d'aider sa filiale à des fins de prospection commerciale.

La CAI rejette la plainte car l'entreprise a respecté la *Loi sur la protection des renseignements personnels dans le secteur privé*. Un participant n'est pas tenu de fournir à l'entreprise un renseignement personnel le concernant dans la mesure où celui-ci exerce son droit de retrait et ce droit de retrait est prévu à la clause 22 des « Règlements du concours Internet Industrielle Alliance ». De plus, l'entreprise avait mis à la disposition des participants l'exercice de ce droit de retrait via le concours Internet en cliquant sur le portail « confidentialité ».

- *X c. Industrielle-Alliance, Assurance et services financiers inc.*, Commission d'accès à l'information, CV 04 00 08, 20 décembre 2006.

## Détermination de la peine pour menaces et propagande haineuse par Internet

Presseault a plaidé coupable d'avoir opéré un site Internet où il fomentait volontairement la haine contre les gens de race noire et les gens d'origine juive, crime prévu à l'article 319(2) du C. Cr.

La peine pour cette infraction doit se mesurer en fonction des manifestations de l'expression haineuse. Après une revue de la jurisprudence, le juge fait une liste non exhaustive de l'expression

haineuse (expression spontanée vs préméditée; œuvre d'un individu isolé vs membre d'un groupe raciste; œuvre d'un individu perturbé à un moment de sa vie vs individu aux valeurs racistes ancrées; œuvre d'un délinquant primaire vs un récidiviste; expression répandue publiquement à un groupe restreint ou viser un large public; expression fondée sur des croyances sincères mais erronées plutôt qu'à l'expression brutale d'une violence envers un groupe identifiable etc.). Presseault a des convictions profondément racistes, des antécédents judiciaires, une attitude réfractaire aux changements et minimise son crime. La Cour conclut que la sécurité du public serait compromise en permettant à Presseault de purger sa peine dans la collectivité. Le Cour le condamne à une peine de détention de six mois et à une période de probation de trois mois.

- *R. c. Presseault*, [2007] J.Q. no 72, 500-01-018771-037, 23 janvier 2007, (cour du Québec).

## Portail « guichet unique 24h24.gouv.fr » – France

Un « guichet unique » regroupant sur un seul site l'ensemble des démarches administratives en ligne pouvant être effectuées par les internautes français a été lancé le 24 janvier 2007. Le portail « [www.administration24h24.gouv.fr](http://www.administration24h24.gouv.fr) » est sécurisé. Il assure une confidentialité optimale des échanges de données entre l'administration et les internautes. Les objectifs de ce guichet unique sont de « simplifier la vie des Français » et « d'améliorer l'efficacité du service rendu ». On estime que plus de 600 démarches, s'adressant à la fois aux particuliers et aux professionnels, sont réunies sur le portail. Les démarches possibles vont de la demande d'extrait d'acte de naissance au certificat de situation administrative en passant par la consultation du dossier fiscal. Il est prévu que 300 nouveaux formulaires seront mis en ligne sur le site tout au long de l'année 2007 avec pour objectif de « donner accès, à l'horizon 2008, à l'intégralité des démarches administratives de l'État ». Le portail offre également plusieurs « guides pratiques de l'administration en ligne » téléchargeables, édités par la Direction Générale de la Modernisation de l'État (DGME) présentant les services en ligne à destination des particuliers, des professionnels et des collectivités locales.



- FORUM DES DROITS SUR L'INTERNET, *Lancement du « guichet unique » : [www.administration24h24.gouv.fr](http://www.administration24h24.gouv.fr), 25 janvier 2007.*
- *Le site [administration24h/24.gouv.fr](http://administration24h/24.gouv.fr) est lancé*, communiqué du Premier ministre.

## Le contrat de services de communication électronique, l'un des plus encadrés – France

Le contrat de services de communication électronique est le contrat le plus encadré par la Loi française. Pas moins de trois codes -le code civil, le code de la consommation et le code des postes et communications électroniques- comportent des dispositions qui l'encadrent. Olivier Iteanu écrit que « *le contrat d'accès Internet, le contrat de service téléphonique fixe ou mobile, ont un nom : contrat de services de communications électroniques. La Loi du 9 Juillet 2004 relative aux communications électroniques a inséré dans le Code de la consommation une Section spéciale et totalement dédiée à ce contrat, ce qui est exceptionnel. Le contrat de services de communications électroniques est défini à l'article L 121-83 comme "tout contrat souscrit par un consommateur de services de communications électroniques".* ».

- Olivier ITEANU, *Accès Internet, mobile, téléphone fixe : des contrats très encadrés*, Journal du net.
- Voir aussi : Olivier DE MATTOS, *Contrats de services de communications électroniques proposés aux consommateurs : quelles sont les mentions obligatoires*, Juriscom.net, 23 mars 2006.

## Associer une marque à la mort : un abus de la liberté d'expression – France

Dans ses sites Internet accessibles sur le territoire français, Greenpeace informait les internautes sur les actions menées par l'association contre l'industrie nucléaire et invitait à signer une pétition contre les rejets radioactifs. Les sites reproduisaient la lettre « A » stylisée et la dénomination « Areva », associées à une tête de mort et au slogan « stop plutonium - l'arrêt va

de soi » dont les lettres « A » reprenaient le logo de l'entreprise.

Dans un arrêt rendu le 17 novembre 2006, la cour d'appel de Paris a estimé que l'association d'une marque à la mort dépasse le cadre de la liberté d'expression. Elle a confirmé que la société Greenpeace s'était rendue coupable d'actes de dénigrement à l'encontre de la SPCEA, connue sous le nom d'Areva. L'association écologique avait détourné le logo de cette société en y faisant apparaître une tête de mort ou un poisson à l'aspect maladif. Les juges ont estimé que cette superposition d'images conduisait « *à penser que tout produit ou service diffusé sous ce sigle (était) mortel* ». Ils en ont déduit que Greenpeace avait dépassé le cadre de la liberté d'expression en incluant dans sa parodie toutes les activités d'Areva alors que certaines d'entre elles ne concernaient pas le but poursuivi par l'association.

- *Greenpeace France, Greenpeace New Zealand / SPCEA*, Cour d'appel de Paris 4ème chambre, section B, Arrêt du 17 novembre 2006.

## Diffusion en ligne de photos de défilés de mode sans autorisation – France

La cour d'appel de Paris, dans un arrêt du 17 janvier 2007, a condamné trois photographes à verser près de 300 000 euros de dommages-intérêts à la Fédération française de la couture et à huit maisons de haute couture. Les photographes ont diffusé sur Internet et vendu sans autorisation des photos de défilés de mode. Depuis 1968, la Fédération française de la couture a mis en place une pratique de contrôle de l'exploitation des images des défilés de mode prises en France. Les médias doivent souscrire un « engagement de presse » dans lequel ils désignent les photographes dont ils demandent l'accréditation. Les photographes inscrits sur la liste ne peuvent reproduire et diffuser les clichés que sur les organes de presse pour lesquels ils sont accrédités. Dans cette affaire, les trois photographes ont fourni des photos de défilés à la société Zeppelin qui les transmettait au site firstview.com.

- *Roberts A.D., Olivier C., Marcio M.M. / Chanel, Céline et autres*, Cour d'appel de Paris 13ème chambre, section A, Arrêt du 17 janvier 2007.

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## À signaler

- Barreau du Québec, *Vie privée et protection des renseignements personnels*, Cowansville, Éditions Yvon Blais, Service de la formation continue du Barreau du Québec 2006, Volume 258, 2006.
- Xavier JORELLE, *Spam : du nouveau en Common Law*, Juriscom, 15 janvier 2007 (responsabilité de « l'instigateur », celui qui vend les listing d'adresses électroniques hébergées par un service de messagerie)
- Alain BUQUET, *Droit d'auteur et mondialisation*, Droit & Nouvelles technologies, 15 janvier 2007.
- Philippe LAURENT, *Un logiciel de la Communauté européenne en open source? - Le choix crucial d'une licence libre*, Droit & Nouvelles technologies, 3 janvier 2007.

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This newsletter is intended to keep members of IT.Can informed about Canadian legal developments as well as about international developments that may have an impact on Canada. It will also be a vehicle for the Executive and Board of Directors of the Association to keep you informed of Association news such as upcoming conferences.

If you have comments or suggestions about this newsletter, please contact Professors Teresa Scassa, Chidi Oguamanam and Stephen Coughlan at [it.law@dal.ca](mailto:it.law@dal.ca) if they relate to Part 1 or Pierre Trudel at [pierre.trudel@umontreal.ca](mailto:pierre.trudel@umontreal.ca) if they relate to Part 2.

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Le présent bulletin se veut un outil d'information à l'intention des membres d'IT.Can qui souhaitent être renseignés sur les développements du droit canadien et du droit international qui pourraient avoir une incidence sur le Canada. Le comité exécutif et le conseil d'administration de l'Association s'en serviront également pour vous tenir au courant des nouvelles concernant l'Association, telles que les conférences à venir.

Pour tous commentaires ou toutes suggestions concernant la première partie du présent bulletin, veuillez contacter les professeurs Teresa Scassa, Chidi Oguamanam et Stephen Coughlan à l'adresse électronique [it.law@dal.ca](mailto:it.law@dal.ca) ou en ce qui concerne la deuxième partie, veuillez contacter Pierre Trudel à [pierre.trudel@umontreal.ca](mailto:pierre.trudel@umontreal.ca).

Avertissement : Le Bulletin IT.Can vise à informer les lecteurs au sujet de récents développements et de certaines questions à portée juridique. Il ne se veut pas un exposé complet de la loi et n'est pas destiné à donner des conseils juridiques. Nul ne devrait donner suite ou se fier aux renseignements figurant dans le Bulletin IT.Can sans avoir consulté au préalable un conseiller juridique.

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