



# NEWSLETTER

Canadian IT Law Association

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*NOTICE TO READERS: Our apologies for the late arrival of this issue of the IT.Can Newsletter. The production of the newsletter was hampered by the state of emergency declared in Halifax due to last week's blizzard.*

## Copyright

The Canadian Recording Industry Association has brought an application to have the identities of “large scale” Internet music pirates disclosed by five Internet Service Providers. The move is in preparation for launching copyright infringement suits against the online distributors of music. The application will test the scope of s. 7(3)(c) of PIPEDA, which permits the disclosure of personal information held by an organization where it is “required to comply with a subpoena or warrant issued or an order made by a court...”. The hearing before the Federal Court was adjourned until March 12.

## Defamation

In [Vaquero Energy Ltd. and Robert N. Waldner v. Weir](#), the Alberta Court of Queen’s Bench considered a claim of defamation arising from the posting of certain messages in an Internet chat room. The posted messages used highly derogatory language to describe the second plaintiff, who was the president and CEO of the plaintiff company. The court found them to be defamatory in nature.

The postings were by users with the aliases alec6 and napa9. The court heard considerable computer forensic evidence relating to establishing the identity of the person responsible for the postings. The defendant Weir denied having posted the messages.

The court found against Weir, rejecting evidence designed to raise the possibility that his IP address was spoofed, or that someone else in his office had used his computer to send the defamatory messages.

In awarding damages in the amount of \$40,000.00 to Waldner and \$10,000.00 to Vaquero, the court considered the particular nature of the defamation at issue. Kent J. noted that “E-mails are easy to send and can be sent anonymously in the sense that readers cannot know who the author is and that person’s motives for sending the e-mail.” (at para 17). As a result, the court reasoned, this increases the chances that the defamatory messages will be believed, as readers will not be able to discount obvious biases. Kent J. also awarded \$25,000.00 in punitive damages to Waldner.

## Domain Names

CIRA has completed a quarterly review of its policies, rules and procedures. In an [Operations Update](#) issued February 19, 2003, CIRA announced a number of changes due to take effect on March 23, 2004. Two of the amendments relate to privacy issues. The Registrar Agreement has been changed to make it clear that Registrars must comply with both the applicable privacy legislation and the CIRA Privacy Policy. The [Privacy Policy](#) itself has had a few changes, and Version 1.1 will take effect on March 23, 2004.

## Jurisdiction

A recent decision of the Ontario Superior Court employed the High Court of Australia’s judgment in [Dow Jones & Company Inc. v. Gutnick](#) to allow a plaintiff to sue in Ontario for allegedly defamatory comments that were accessible in the province via the Internet. The plaintiff in [Bangoura v. Washington Post et al](#) claimed that three articles published by the defendant on its web site were defamatory. The defendant sought to stay the action, asserting that the presence of the *Washington Post* in Ontario, which

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consisted of leased office space in Toronto, was for newsgathering purposes only. At the time of the publication of the articles, there was no wholesale distribution of the *Washington Post* in Ontario or anywhere else in Canada, and the only recipients of the *Washington Post* in Ontario were seven paid subscribers. The plaintiff resided in Ontario for only two years, and when the material was first published, he was not in Ontario.

The court determined that there would be problems whether the action was tried in Ontario or the District of Columbia. Although the publication took place in Washington, the plaintiff's reputation was affected in Ontario. The Court found that it was difficult to determine where the tort occurred, but because Ontario and the District of Columbia were both appropriate fora, concluded that the plaintiff's choice of forum should not be disturbed when no forum was clearly more appropriate.

## Privacy

The Ontario Privacy Commissioner has released a [paper](#) on the privacy implications of radio frequency identification (RFID) technology, which uses radio waves to automatically identify individual items. According to the paper, RFID systems are being viewed by many businesses as the preferred

technology for keeping track of products and vehicles, and threaten to replace bar coding. Among the privacy concerns identified in the paper include the possibility of personal identity being linked with unique RFID tag numbers, resulting in individuals being profiled and tracked without their knowledge or consent.

## Spam

Senator Donald Oliver has re-introduced his Senate Bill that would prevent certain unsolicited commercial messages ("spam") on the Internet. His original Bill died when parliament was prorogued. [Bill S-2](#) would require the establishment of a "no-spam" list, and allow the Minister of Industry to create an Internet Consumer Protection Council to set procedures and standards to reduce spam.

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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 Michael Deturbide, Anne Mussett and Teresa Scassa at [it.law@dal.ca](mailto:it.law@dal.ca).

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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 le présent bulletin, veuillez communiquer avec les professeurs Michael Deturbide, Anne Mussett et Teresa Scassa à l'adresse suivante : [it.law@dal.ca](mailto:it.law@dal.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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