



# NEWSLETTER

Canadian IT Law Association

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## Copyright Law

THE MINISTERS OF INDUSTRY AND HERITAGE have released their [Status Report on Copyright Reform](#) on March 24, 2004. The Report provides an update on “the progress being made with regard to the further modernization of Canada’s Copyright Act”, and contains a brief synopsis of where matters stand on the various issues for reform that are being considered. The Report also indicates that the Ministers will be seeking Cabinet approval of proposed amendments to the Act later in 2004. This time frame is consistent with remarks made recently by Canada’s Heritage Minister which indicate that amendments to the legislation are in the works to ensure that music file sharing remains illegal under copyright law. The Report notes that the “private copying regime as a whole has itself been identified as an issue for medium-term reform.” It indicates that consultation on the private copying regime will likely take place later this year.

**BMG CANADA ET AL HAVE FILED** a [Notice of Appeal](#) of the March 31, 2004 decision of Justice von Finckenstein.

*IN LES ENTREPRISES BIGKNOWLEDGE INC. v. Skura Corporation*, Bishop J. of the Superior Court of Quebec considered an application for an order for seizure before judgment of certain materials which included software and computerized files. In reaching its decision, Bishop J. considered s. 38(1) of the Act which permits the owner of copyright in a work to take proceedings for seizure of infringing copies of works where the relevant rules of civil procedure allow such seizure before judgment. In

considering the definition of infringing “copies”, Bishop J. took the view that reproduction in “any material form” required a copy to have a material form before it could be seized before judgment. He ruled that this would include manuals and other corporeal documents, but would not include software, codes or computerized files.

THE WIPO STANDING COMMITTEE ON COPYRIGHT and Related Rights has released a draft [Treaty on the Protection of Broadcasting Organizations](#). Among other things, the treaty aims to address problems posed by new technologies in relation to the unauthorized use of broadcasts both within and outside national borders.

## Criminal Law

The Supreme Court of Canada has granted an application for leave to appeal the 2003 decision of the Alberta Court of Appeal in *R. v. Hamilton*. The case involved the acquittal of an individual who was charged with counseling four indictable offences (which were not committed) contrary to s. 464 of the *Criminal Code*. The accused had sold, via email, a package of files containing material relating to constructing bombs, breaking and entering, and generating credit card numbers. Both the trial judge and the Court of Appeal held that, in order to meet the *mens rea* requirements of s. 464, an accused must both intend to counsel a criminal act and also intend that the counseled crime be committed.

## Practice

The Canadian Intellectual Property Office has published on its web site the [comments](#) it has received regarding its proposals for privilege protection and self-regulation of patent and trademark agents. The proposals were issued by Industry Canada in a November, 2003 [Discussion Paper](#).

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## Privacy Law

The *Personal Information Protection Act* of Alberta and the *Personal Information Protection Act* of British Columbia have each been declared to be substantially similar to *PIPEDA*. The *Organizations in the Province of Alberta Exemption Order* and the *Organizations in the Province of British Columbia Exemption Order* each exempt from the application of Part 1 of *PIPEDA* any organizations to which the respective provincial private sector privacy Acts apply.

## Telecommunications

In the recently released Telecom Public Notice CRTC 2004-2, the CRTC has indicated its preliminary view that voice communications services using Internet Protocol, which allows subscribers to make voice calls over a broadband connection, should be subject to the existing regulatory regime. According to the notice, such voice communication services that provide universal access to and/or from the Public Switched Telephone Network and utilize telephone numbers that conform to the North American Numbering Plan (“VoIP” services) “have characteristics that are functionally the same as circuit-switched voice telecommunications services... Consistent with the principle of technological

neutrality, in the Commission’s preliminary view VoIP services should be subject to the existing regulatory framework, including the Commission’s forbearance determinations.” The Notice referred to Telecom Decision CRTC 94-19, which established a comprehensive regulatory framework for the telecommunications industry, and concluded: “Although in Decision 94-19 the Commission did not specifically contemplate the advent of VoIP services, it laid the groundwork for a future characterized by efficiency, innovation and affordability, regardless of the technology that was to follow.” The CRTC is inviting written comments on its preliminary views by April 28.

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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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