



NEWSLETTER

Canadian IT Law Association

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This newsletter is prepared by Professors [Michael Deturbide](#), [Anne Mussett](#) and [Teresa Scassa](#) of the Law and Technology Institute of Dalhousie Law School.

Les auteurs du présent bulletin sont les professeurs [Michael Deturbide](#), [Anne Mussett](#) et [Teresa Scassa](#) de l'Institut de droit et de technologie de la Faculté de droit de l'Université de Dalhousie.

Copyright

IPSOS-REID HAS RELEASED THE RESULTS of a [survey](#) which states that there has been a decrease in the volume of downloading of MP3's by Canadians. The survey was conducted prior to the release of the decision in [BMG Canada Inc. v. John Doe](#) by the Federal Court of Canada. (In that decision, Von Finckenstein J. ruled that music file-sharing on the internet did not constitute copyright infringement.) The survey results show that “[c]urrently 32% of Canadian adults with an Internet connection have downloaded at least one music file, which is down from a high of 47% in June 2002.” The survey also finds that adults in Canada are more likely to have downloaded a music file than those in the United States. It indicates that of those respondents who indicated that they no longer download music, 21% stated it was out of fear of legal ramifications (as compared to 12% who cite moral concerns). The findings seem to support that the strategies of the RIAA in the United States and CRIA in Canada, to target individual downloaders do have a deterrent effect. In this light it would be interesting to see whether these results might be affected by the [BMG Canada](#) decision. Survey respondents also indicated a high level of dissatisfaction with the poor quality of some free music files or problems with incorrect labeling.

THE STANDING COMMITTEE ON CANADIAN HERITAGE has released the Interim Report on Copyright Reform available at: <http://www.parl.gc.ca/InfocomDoc/Documents/37/3/parlbus/commbus/house/reports/herirp01-e.htm>. The report makes six recommendations which will form the basis

for proposed legislation the Committee plans to introduce in Parliament by November 15, 2004. The recommendations include ratification of the WIPO treaties that strengthen copyright law for online property; granting photographers the same authorship rights as other creators; making internet service providers liable for copyrighted material, unless they are acting as “true intermediaries”; extending licenses for internet material used for educational purposes; creation of an extended collective licensing regime to ensure educational institutions’ are more efficiently licensed and finally, the creation of a licensing process that ensures the orderly and efficient electronic delivery of copyright material to library patrons. Of particular note are the recommendations relating to the ratification of the WIPO treaties which could, effectively, end free music downloading and making ISPs subject to liability for copyright infringements. Committee Chair Sarmite Bulte, said it was clear to the Committee that the current practices by ISPs of voluntary notice to their customers of potential copyright infringement was not “enough of an option to protect copyright holders.” Not surprisingly, CIRA, having lost its recent Federal Court attempt to force ISPs to identify downloaders, is overjoyed. If enacted, according to CIRA President Brian Robertson, “the industry would be able to control illegal activity through the courts.” However, the report is likely to generate broad-based debate among all the stakeholders, and whether the changes actually become law may be affected by a federal election.

Criminal Law

A RECENT ONTARIO SUPERIOR COURT DECISION, *R. v. Jamieson*, [2004] O.J. No. 1780 (available on Quiklaw), involved the admissibility of original and enhanced videotaped evidence collected by a “nanny” camera and a constitutional issue relating to s.8 of the *Charter*. Parents of an infant child with multiple medical challenges that required 24 hour care became concerned over a series of unusual injuries

that could not be explained. They installed a hidden videocamera focused on their daughter's crib and surrounding area located in their living room. During the relevant time, several nurses and therapists had cared for the child, including the defendant and therefore, according to the father, he did not have a particular suspect in mind, but did want to rule out abuse as the explanation for his daughter's injuries. The videotape of the first night is the subject matter of the admissibility question in which the child and the defendant are the only people identified on the videotape and which purport to depict the defendant assaulting the baby contrary to s.268(1) of the *Criminal Code*. Police delivered the tape to an audio-video technician employed by the department who testified that he added a time scale and adjusted the contrast and brightness to the copy because the images on the original videotape were darker than normal, but did not alter what was on the tape. The Court held that the tapes were an accurate representation of actual events and there was no indication of distortion, editing or tampering which might impair the accuracy of either tape. The enhanced tape merely added brightness to provide more detail than the original videotape and as such both tapes were admissible as "they accurately and fairly represent the information they purport to convey." One of the constitutional issues raised was whether the defendant had a reasonable expectation of privacy while in the home employed to care for the child through the night. The defendant's right to privacy argument was rejected on the basis that while she had some control as to who may enter the living room, absolute control remained with the parents, either of whom could have entered the room during the alleged events. However, according to the Court, even if the defendant nurse had some expectation of privacy, it is outweighed by the rights of the child in these circumstances. In addition, the question of whether the videotapes could be excluded under s.24(2) of the *Charter* was decided in favour of the Crown because the parents were acting in good faith, the tapes are "cogent evidence" and it is a "very serious charge of aggravated assault...I cannot imagine another case which would bring the administration of justice into greater dispute than if these videotapes were excluded."

A RECENT [NEWS RELEASE](#) ANNOUNCES that British Columbia has introduced amendments to the *Vital*

Statistics Act in an effort to reduce the increasing incidents of identity theft.

Electronic Commerce

THE GOVERNOR IN COUNCIL HAS ISSUED [Secure Electronic Signature Regulations](#). These are enacted pursuant to the statutory authority granted in s. 48(1) of the [Personal Information and Electronic Documents Act \(PIPEDA\)](#). The regulations are necessary in order to specify the technologies and processes required to meet the definition of a secure electronic signature in *PIPEDA*. The regulations provide for certificates to be issued by certification authorities as a means of ensuring that secure electronic signatures can be trusted. The President of the Treasury Board is given the authority to verify that an entity wishing to act as a certification authority "has the capacity to issue digital signature certificates in a secure and reliable manner within the context of these Regulations and paragraphs 48(a) to (d) of the Act." (s. 4(1)). Those entities recognized as certification authorities will be listed on the website of the Treasury Board Secretariat.

INDUSTRY CANADA HAS RELEASED [HIGHLIGHTS from the Survey of Electronic Commerce and Technology \(SECT\)](#) measuring the use of information and communications technologies by Canadian businesses, the extent to which the internet is used to buy and sell goods and services and the barriers to commercial transactions online.

Internet Regulation

THE FEDERAL GOVERNMENT HAS ESTABLISHED a task force on spam as part of its [Anti-Spam Action Plan for Canada](#). The Action Plan addresses [five main issues](#), the resolution of which will involve coordinated efforts between public and private sector players. The ten member task force contains representatives from industry, government, the legal profession and consumer groups. A list of task force members and brief biographies is [available online](#).

AN ONTARIO MLA HAS INTRODUCED a private members bill into the Ontario legislative assembly aimed at fighting spam. The Bill is titled [An Act to Prevent Unsolicited Messages on the Internet](#).

Recent Article:

Bailey, J. "Private Regulation and Public Policy: Toward Effective Restriction of Internet Hate Propaganda", (2004) 49 *McGill L.J.* 59-104.

Privacy

The Federal Privacy Commissioner's office has posted three speeches, the first delivered by Assistant Commissioner Jennifer Black to the House of Commons Standing Committee on Industry with respect to Bill C-2, *An Act to Amend the Radiocommunication Act*. In her appearance before the Committee, [Ms. Black's comments](#) focused on the proposed amendments dealing with the powers of inspectors. Commissioner Jennifer Stoddard spoke to the [Canadian Marketing Association](#) where she addressed the issue of trust in relation to marketing and privacy, consent under *PIPEDA* and marketing challenges. Commissioner Stoddard also attended the Reboot Communications Public Safety Conference Strategies for Public Safety Technology and Counter Terrorism: Prevention, Protection and Pursuit. In her talk, "[Public Safety and Privacy: An Inevitable Conflict?](#)", the Commissioner broadly canvasses security and privacy, highlighting the American *Patriot Act*, *CAPPS II*, amendments to the Canadian *Public Safety Act* Bill C-7, as well

as addressing security and social relations in the urban environment and social values and efficient information use.

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.

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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

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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