

# IT.CAN NEWSLETTER/BULLETIN

Canadian IT Law Association

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Les auteurs de la première partie du présent bulletin sont les professeurs [Anne Uteck](#), [Teresa Scassa](#) et [Chidi Oguamanam](#) 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

### Criminal Law

#### Breathalyzer

In *R. v. Boucher*, the Supreme Court of Canada considered the issue of what evidence is required for an accused person to avoid conviction on a charge of driving with a blood alcohol level over the legal limit. The accused was stopped at a police roadblock and given a breathalyzer demand. The two readings on the breathalyzer certificate indicated levels of alcohol in the accused's blood of 93 and 92 mg. Section 285(1)(g) of the *Criminal Code* creates the presumption of accuracy of this reading, unless the accused leads evidence to the contrary. Attempting to rebut the presumption, the accused testified that he had only had two beers in the two to three hour period before he was stopped. He then led expert evidence indicating that a person of his age and size having consumed that amount of alcohol should have a blood alcohol level of only 45 mg. The trial judge had rejected the accused's evidence about the amount which he drank, and therefore concluded that the expert's report, based on that evidence, could not constitute evidence to the contrary. On appeal the Superior Court judge held that even if the accused's evidence was rejected, there might still be a reasonable doubt, in which case the accused was entitled to an acquittal. He held that the absence of any signs of impairment beyond the smell of alcohol

raised a reasonable doubt and entered an acquittal. The Quebec Court of Appeal, in three sets of reasons, upheld the Superior Court Judge's acquittal. The Supreme Court of Canada restored the conviction at trial.

All nine judges agreed that if the trial judge's decision to reject the accused's testimony was correct, then there was no basis to find that there was evidence to the contrary to the breathalyzer certificate. Evidence which is disbelieved fails to neutralize the presumption. The expert opinion was based on that evidence, and if it was rejected then the expert's calculation was no longer of any help. The absence of signs of impairment could not be evidence to the contrary on a charge of driving while over the legal limit: since impairment did not need to be proved for the accused to be guilty, the absence of impairment was not relevant. Further, the expert evidence only dealt with statistical averages, but said nothing about the accused's own rate of alcohol absorption: accordingly there was no evidence as to how impaired the accused might have been expected to be. The low level recorded by the breathalyzer (which the Quebec Court of Appeal suggested was evidence to the contrary) was the very figure the accused was trying to discredit, and so he could not rely on it as evidence to the contrary.

All nine judges also agreed that the results of the breathalyzer tests could not be used without the presumption of accuracy as a piece of evidence in assessing the accused's evidence to the contrary, the trial judge could take into account the breathalyzer readings absent the presumption of accuracy. In doing so the trial judge had followed the authority of *R. v. Bernard* (1999), 140 C.C.C. (3d) 412 (Que.C.A.) and *R. v. Gilbert*, an approach also recently confirmed in *R. v. Suttie*. The Supreme Court here overrules that approach and describes it circular.

The majority of five judges held that as there was no error in the trial judge's decision to reject the accused's testimony, the trial judge's decision was correct, and therefore they restored the conviction.

A minority of four felt the trial judge had erred in the way in which she assessed credibility and they would have returned the matter for a new trial.

## Videotaped Statements

In *Echeverry-Forero* the trial judge addressed the issue of who is responsible for the manpower and cost involved in producing transcripts of videotapes in a criminal prosecution. The Crown had sought a ruling rendering admissible a videotaped statement by the accused, to be used if necessary in cross-examination of the accused. The tape was virtually incomprehensible, and efforts in court to enhance the sound quality were unsuccessful. The trial judge ordered the London Police Service to provide a transcript of the tape. The transcript which was provided the next day was agreed by all counsel to be “woefully inaccurate”, to the detriment of the accused. The trial judge had a member of the court staff correct the transcript to accurately reflect the accused’s primarily exculpatory statement. The London Police Force subsequently sought a ruling on the issue of having been ordered to prepare a transcript.

The trial judge noted the potential advantages for both the Crown and the defence of a videotape of a statement. However, she also noted that the purpose of involving technology is to produce reliable evidence. The medium that is used must provide for effective communication and comprehension of the statement, failing which the statement might be inadmissible. To be admissible, a videotaped statement must be adequate for a jury to form a fair and reliable assessment of the substance of the recorded conversation. Technologically sound videotaped statements might not require a transcript. However, where a transcript is required, that transcript must be accurate, despite issues of manpower and cost. The London Police Service was ordered to produce the transcript of the videotaped statement, and any issues of apportioning liability for the cost involved was not a matter for the courts, but was to be negotiated between the Crown and the police.

## Domain Names

IN *GLAXO GROUP LTD. v. TURVILL CONSULTANTS* SOLE panelist Michael D. Manson considered a dispute

over the domain name advair.ca. The registrant did not file a response in the case. The complainant was the owner of the registered trademark ADVAIR for use in association with pharmaceutical preparations, and the mark had been used in Canada by the complainant since April 2002. The domain name was registered in 2004. Manson found that the domain name advair.ca was virtually identical with the trademark and thus confusingly similar under para. 3.4 of the CDRP. The domain name resolved to an internet pharmacy website which sold, inter alia, the complainant’s products. Manson found that there was no evidence that the registrant had a legitimate interest in the domain name. He noted that “even if the Respondent was a retail seller of the Complainant’s products, it has not been conferred any proprietary rights in the Complainant’s marks, nor could it use the complainant’s mark as a domain name.” (at para 15) Manson was satisfied that the domain name was registered in bad faith. He accepted evidence “that the Registrant has registered the domain name advair.ca primarily for the purpose of disrupting the business of the Complainant, by directing potential customers of the Complainant to a website that advertises and offers for sale competing products of competitors.” (at para 16) He went on to find that anyone who saw the domain name advair.ca would assume that the registrant’s online pharmacy business was in some way linked to the complainant.

IN *INTERNET MOVIE DATABASE, INC. v. 384128 CANADA Inc.* a three-member panel considered a dispute over the domain name imdb.ca. The complainant Internet Movie Database, Inc. (IMDb) operates a website at imdb.com through which it provides movie reviews and information. The site is very well known. Its unregistered trade name and trademark IMDb have been used since 1996. The disputed domain name was registered in 2000. The complainant also holds a registered trademark for IMDB in relation to its services. The mark was applied for in 2001 and registered in February of 2004.

The panel, consisting of Elizabeth Cuddihy, Q.C., Kenneth A. Gamble and R. John Rogers found that imdb.ca was confusingly similar to the complainant’s mark. Although the mark was not a registered trademark at the time the registrant registered his domain name, the panel was satisfied that the

complainant had rights in the mark which flowed from its use since 1996.

On the issue of bad faith, the panel noted that the registrant had registered 300 .ca domain names, none of which resolved to a completed web site. The registrant submitted that these sites were in development, including a site featuring inspirational quotations to which imdb.ca would eventually resolve. The panel noted that there was no hard and fast rule to determine when a “pattern” of registering domain names to prevent other parties from registering them (bad faith under para 3.7(b) of the CDRP) has been established. However, based on the nature of some of the domain names registered by the complainant (which included nhl.ca, nbabasketball.ca and nflfootball.ca), they ruled that the complainant had succeeded in establishing that such a pattern existed.

The panel also found that bad faith as per para. 3.7(c) of the CDRP was also made out. This paragraph requires the complainant to establish that the domain name was registered “primarily for the purpose of disrupting the business of the Complainant....who is a competitor of the Registrant”. While the parties were not in direct competition with respect to movie-related services, the panel noted that IMDB was an inherently distinctive mark, and its use in the domain name was likely to be confusing to users who might think that there was some association between the complainant and the registrant’s site. They found that “the Registrant is clearly competing directly with the Complainant for Internet traffic, the very traffic that is intended for IMDb.” (at para 61)

The registrant claimed to have been working on a web site for its imdb.ca domain name for five years – from the time of registration to the time of the complaint. The panel took the view that it was not enough to use the domain name to identify a web site. In their view, to demonstrate a legitimate interest in the domain name the registrant would have to demonstrate “a present offering of non-commercial activity and not a future offering of an activity some five years in the future.” (at para 65) The panel ordered the transfer of the domain name registration to the complainant.

**IN *PRICELINE.COM INC. v. SUPRIYO MALAKER*, A THREE-member panel considered a dispute over the domain**

name priceline.ca. The complainant was a U.S. based company that operates a well-known and high-volume Internet-based travel service, and holds the registration for the domain name priceline.com. It holds many trademark registrations internationally for PRICELINE and PRICELINE.COM. In Canada, it holds the registered trademark PRICELINE since April 2002, and the registered trade-mark PRICELINE.COM since March 2005. The registrant registered the disputed domain name on January 8, 2003. The domain name did not resolve to a website until 10 months after its registration. At the time of the complaint it resolved to a web site that linked to various other websites in the fields of travel, insurance, finance and health. It contained links to competitors of the complainant, including expedia.ca.

The panel, consisting of Patrick D. Flaherty, John Lee and David Wotherspoon, found, without difficulty, that priceline.ca was confusingly similar with the complainant’s registered trade-mark. The panel noted that the “test is not whether the websites of the Registrant and Complainant are confusingly similar, but rather whether the Domain Name itself is confusingly similar to the trade-mark at issue”. (at p. 7)

On the issue of bad faith, the panel found that there was insufficient evidence to support the complainant’s allegation that *primary purpose* for which the domain name was registered was to sell it back to the complainant. In fact, they found the evidence suggested that the registrant was not interested in selling the domain name, even when approached by the complainant. However, the panel found sufficient evidence that the registrant’s primary purpose was to disrupt the business of the complainant. They found that the registrant’s claim that he was unaware of the complainant’s mark was “dubious”, given the degree of renown of the complainant’s mark. Further, the panel noted that there was no active website to which the domain name resolved for 10 months following its registration. A chat room posting by the registrant was provided as evidence that he sought advice “on how to bolster a claim that he was not acting in bad faith in using a domain name that made use of a well-established company’s trade-mark”. (at p. 9) The panel also took note of the fact that the registrant’s current site at priceline.ca provided links to the web sites of competitors of the complainant.

The CDRP requires not only that a domain name be registered for the purpose of disrupting the business of the complainant, but also that the complainant be a competitor of the registrant. The panel found that “[b]y providing links to online travel services that compete with the services provided by the Complainant, the Registrant has made himself a competitor of the Complainant.” (at p. 10) Further, the panel noted that “the Registrant is clearly competing for internet traffic with the Complainant since his use of the domain name that is identical to the Complainant’s mark is likely to cause confusion...” (at p. 10).

The panel also found that the registrant had no legitimate interest in the mark. They noted that the term “priceline” was neither descriptive of nor the generic term for services offered by the registrant. Further, the panel noted that while the earlier case of *Acrobat Construction v. 1550507 Ontario Inc.* found that a registrant could have legitimate interest in operating a web portal service, the case could be distinguished in that in this case the registrant did not use the domain name as a mark. The panel ordered the transfer of the registration to the complainant.

**IN *STANDARD LIFE ASSURANCE CO. OF CANADA V. HANK Morin***, sole panelist Denis Magnusson considered a dispute over the domain name standard-life.ca. The complainant had been doing business in Canada under the name Standard Life since 1833, and provided evidence that it had over 1.2 million Canadian customers. It holds four trademark registrations for marks containing the words STANDARD LIFE and STANDARD LIFE with design. The registrant’s domain name resolved to a web site containing headings for different kinds of insurance, with a series of links to sites selling various insurance products.

Magnusson easily found the domain name standard-life.ca to be confusingly similar to the trade-mark STANDARD LIFE. On the issue of bad faith, the complainant had argued that the registrant had registered the domain name in order to prevent the complainant “from registering the Mark as a domain name”, and that the registrant had a pattern of such activity. The complainant submitted a list of 98 domain name registrations held by the registrant, a number of which were very similar to other well

known trademarks. However, Magnusson noted that the insertion of the hyphen in the domain name meant that the complainant could not succeed under para 3.7(b) of the CDRP because such a registration did not prevent the complainant from registering its mark as a domain name. Magnusson noted that the complainant in fact had registered standardlife.ca, and “The fact of this domain name registration by the Complainant contradicts the claim that the Registrant has registered its domain name with the effect, and thus for the purpose, of preventing the Complainant from registering its trademark or trade name as a domain name.” (at pp. 4-5) However, Magnusson nonetheless found bad faith registration under para. 3.7(c) of the CDRP. Para. 3.7(c) would allow for a finding of bad faith where the registrant has registered the domain name “primarily for the purpose of disrupting the business of the Complainant....who is a competitor of the Registrant.” Magnusson noted that the interpretation of this provision has generated some uncertainty because the UDRP, from which the CDRP was derived, contained a further ground of bad faith relating to creating a likelihood of confusion. This ground is not present in the CDRP. He observed that decisions under the UDRP tended not to consider confusion as relevant to the issue of disruption of the business of a competitor. However, he indicated that this might be due to the availability of a separate ground in the UDRP that is directed at confusion. He concluded:

...the purpose of the Policy is to protect the owners of established trademarks and trade names against unfair and unreasonable predation by others’ registrations of domain names Confusingly Similar with those trademarks or trade names. Five hundred years of legal consideration of the misuse of trademarks and trade names has focused on causing confusion as the paradigm instance of such misuse. Thus, though the Policy may be clumsily drafted in this regard, the Panel must interpret “disrupting” as including the causing of trademark and trade name confusion. (at p. 6)

In considering whether the registrant was a competitor of the complainant, Magnusson indicated some reservations about the finding, in the *Glaxo* decision (discussed above) that a registrant becomes a competitor of the complainant by linking to

the web sites of competitors. Here, because the registrant's websites lists the links to competitor's sites as "sponsored links", Magnusson noted that "[a] reasonable inference is that the Registrant receives compensation for featuring these links on its web site. The Registrant is a joint venturer in selling competing products with the enterprises located at the links on the Registrant's web site." (at p. 7) Magnusson thus found that the registration was made in bad faith. He went on to find that the registrant had no legitimate interest in the domain name. He ordered the transfer of the domain name to the complainant.

[Comment on the issues raised in these cases at IT.CAN blog.](#) 

## Privacy

### Government Guidelines Re US Patriot Act

[Reports](#) indicate that the government has drafted guidelines which would assist in preventing violations of Canadian privacy law that might be caused by trade with US companies, and the requirements of that country's *Patriot Act*. Under the *Patriot Act*, American companies can be required to reveal confidential data to the FBI. That could include revealing data maintained in Canada about Canadians, through American companies having dealings with Canadian companies. The draft guidelines suggest that databases of personal information about Canadians created by contractors should be located in and only accessible from Canada, or alternatively that contracts should include a condition requiring the contractor to comply with Canadian privacy laws. The guidelines would also permit government departments to cancel a contract with any American firm which delivered personal information about Canadians to US authorities under the *Patriot Act*.

### Personal Health Information Protection Act

The governor in council has issued an [exemption order](#), ruling in effect that Ontario's *Personal Health Information Protection Act 2004* is substantially similar to PIPEDA.

## 2<sup>ème</sup> partie

### Loi sur le cadre juridique des technologies de l'information – Guide

La *loi sur le cadre juridique des technologies de l'information* constitue désormais la référence législative encadrant les documents utilisés dans les échanges électroniques. Cette loi reflète les bouleversements induits par le passage du papier aux technologies de l'information et précise comment utiliser des documents technologiques de façon sécuritaire. Ce guide s'adresse à toute personne susceptible d'utiliser des documents technologiques, qu'il s'agisse d'un particulier, d'une entreprise ou d'une institution publique. Ce guide propose des solutions concrètes reflétant les exigences de la loi pour une gestion adéquate des documents technologiques. « L'analyse [...] vise donc à se faire l'écho de la Loi, d'une part, en identifiant l'importance d'une meilleure prise de conscience des avantages d'une bonne gestion documentaire et, d'autre part, en faisant mieux connaître les conditions légales qui y sont rattachées pour y parvenir ».

Le guide présente les trois principes fondamentaux de la loi, soit l'équivalence fonctionnelle, la neutralité technologique et l'intégrité. La façon d'assurer la sécurité tout au long du cycle de vie du document technologique (notamment lors du transfert, de la conservation, de la consultation et de la transmission du document), l'utilisation des documents technologiques en preuve ainsi que les responsabilités associées aux documents technologiques sont aussi examinées. Enfin, le guide offre des indications utiles pour la rédaction d'une entente de sécurité qui est souvent la précaution à prendre pour une gestion documentaire diligente. Le guide propose les éléments constitutifs d'une telle entente.

Vincent GAUTRAIS, *Afin d'y voir clair-Guide relatif à la gestion des documents technologiques*, Fondation du Barreau, 2005, 42 p.

## Gouvernement en ligne – Bilan

Dans son numéro de décembre, le bulletin *e-Veille* fait un bilan de l'année en matière de gouvernement en ligne. On y retrouve une synthèse des principales idées véhiculées, des cas exemplaires et des études importantes concernant la transformation des administrations publiques par les technologies de l'information. Ce portrait de l'avancement de la réflexion et des réalisations en gouvernement électronique dans le monde est présenté en trois sections. Le bilan présente d'abord un portrait global et les défis restant à relever du gouvernement en ligne, puis fait un survol de l'évolution des prestations de services en ligne et de la cyberdémocratie. La dernière section du bilan est consacrée à l'informatisation de l'administration publique, la sécurité informatique (biométrie, authentification électronique) et les nouvelles tendances dans le domaine des technologies de l'information (logiciels libres et autres technologies d'avenir).

L'édition de décembre 2005 du bulletin *e-Veille* du ministère des Services gouvernementaux du Québec.

### Diffamation sur un site Internet

Un employé municipal a fait un canular à une collègue de travail en se servant de la signature de Lacroix, directeur général de la ville, sans son autorisation. Cette lettre laisse croire que Lacroix avait congédié abusivement ladite collègue. Par un concours de circonstances, cette lettre est transmise à Dicaire, producteur acéricole qui a fait des demandes répétées au service d'environnement de la ville pour que ce dernier procède à des études afin de solutionner le mauvais état des érables. Dicaire met la lettre, entre autres, sur un site Internet, sachant qu'il s'agit là d'un canular. Lacroix demande une injonction et réclame des dommages et intérêts.

La requête est accueillie. Selon le tribunal, « le dévoilement aux employés municipaux, aux élus municipaux, ainsi qu'au public en général d'une lettre que l'on sait fautive, tout en se gardant de le dire constitue en soi un acte injustifiable. Ce geste n'avait qu'un seul but, ridiculiser et humilier le directeur général ». Dicaire a utilisé un moyen de communication puissant, l'Internet, pour détruire

le plus largement la réputation de Lacroix, il n'a pas obtempéré aux mises en demeure de cesser de diffuser la lettre et il a fait usage de supercherie pour faire valoir ses opinions.

*Lacroix c. Dicaire*, 2005 IJCan 41500 (QC C.S.), 11 novembre 2005.

## Résiliation unilatérale d'un contrat de services

Gendron inc. réclame des dommages à Vidéotron suite à la décision de Vidéotron de mettre fin avant terme à un convention intervenue entre eux pour la vente de commandites. En demande reconventionnelle, Vidéotron réclame le remboursement d'une somme qu'elle allègue lui avoir versée en trop.

Le tribunal accueille l'action de Gendron inc. et rejette la demande reconventionnelle de Vidéotron. D'abord, le tribunal est d'avis que la convention signée par les parties constitue un véritable contrat de services tel que défini aux articles 2098 et 2099 C.c.Q. L'article 2125 C.c.Q. donne la faculté au client d'un contrat de services de mettre unilatéralement fin à son engagement mais les parties peuvent y déroger si cette dérogation n'est pas équivoque. La preuve révèle que les parties ont voulu définir à l'avance entre elles les situations où il y aurait résiliation avant terme de la convention, s'écartant ainsi de façon non équivoque de la règle de l'article 2125 C.c.Q. De plus, le tribunal n'est pas convaincu que Vidéotron avait mis fin avant terme à la convention en raison d'un manquement de Gendron inc. à ses obligations prévues à la convention. Le reproche de Vidéotron à l'endroit de Gendron inc. constitue plutôt « un écran de fumée » camouflant le véritable motif. Vidéotron a agi illégalement et de façon contraire à son obligation de bonne foi privant ainsi Gendron inc. des revenus auxquels il pouvait prétendre. Comme Vidéotron ne peut bénéficier des dispositions de l'article 2125 C.c.Q. et de 2129 C.c.Q., le tribunal évalue les dommages selon les règles usuelles qui prévalent lorsqu'une partie refuse ou néglige d'exécuter ses obligations prévues à un contrat (article 1611 C.c.Q.).

*Gendron communication inc. c. Vidéotron ltée*, 2005 IJCan 42217 (QC C.S.), 16 novembre 2005.

## Responsabilité de l'hébergeur – France

Le métier d'hébergeur demeure une énigme pour plusieurs observateurs et juristes. L'hébergement est une activité à multiples facettes et les diverses prestations ainsi que les obligations et responsabilités qui en découlent peuvent compliquer le travail du juriste (activité fourniture d'accès, location de « baies », hébergement de serveurs, hébergement simple (« *hosting* »), hébergement avec infogérance (« *housing* »), hébergement mutualisé (« *sharing* »)). L'auteur constate que malgré les réformes juridiques successives, l'activité d'hébergement est encore à haut risque et n'a pas trouvé de véritable cadre juridique garantissant un exercice paisible.

Jean-Claude PATIN, *FAI, hébergeurs et Internet : quand Ali baba n'a pas encore le mot de passe*, 1<sup>er</sup> décembre 2005.

## Droit d'auteur et droits voisins dans la société de l'information – France

En France, l'Assemblée nationale et le Sénat se prononceront bientôt sur le [projet de loi](#) relatif au droit d'auteur et aux droits voisins dans la société de l'information. Cet examen permettra la transposition dans le droit interne de la directive communautaire no 2001/29/CE du 22 mai 2001, texte destiné à adopter un cadre commun de réglementation du droit d'auteur et des droits voisins dans les pays de l'Union européenne en considération des évolutions technologiques liées à la société de l'information. Ce projet de loi, qui a suscité bien des passions, fait l'objet d'un dossier du Forum des droits sur l'Internet. Le Forum se propose « de présenter le texte [...] et d'éclairer, en toute indépendance, les enjeux qui y sont attachés en rappelant les positions publiques qui ont pu être exposées à ce jour ».

[Forum des droits sur l'Internet](#), Dossier : *Comprendre le projet de loi sur le droit d'auteur et les droits voisins dans la société de l'information*, 13 décembre 2005.

## Données de connexion – France

Le projet de loi relatif à la lutte contre le terrorisme et portant diverses dispositions relatives à la sécurité et aux contrôles frontaliers présenté par le ministre de l'intérieur a été adopté par l'Assemblée nationale le 29 novembre dernier et sera soumis au Sénat prochainement. Ce projet de loi tend à appliquer aux cybercafés et aux fournisseurs Wi-Fi notamment, les mêmes obligations de conservation qu'aux opérateurs de communications électroniques; ils devront aussi transmettre ces données sur demande des services de police spécialisés dans la lutte contre le terrorisme. En plus d'élargir le cadre légal de la conservation des données de connexion, le projet de loi prévoit que la communication des données s'inscrit dans une procédure administrative en dehors de tout contrôle du juge et de la CNIL. L'auteur émet des réserves sur l'efficacité de ce dispositif et sur la garantie des libertés individuelles.

Franck BERGERON, *Données de connexion : le temps de l'urgence ou l'urgence d'attendre?*, 13 décembre 2005.

Sur la durée de conservation des données de connexion du projet de loi par rapport à la directive européenne, voir : Illiana BOUBEKEUR, *Conservation des données de connexion : accord du Conseil de l'UE sur une durée comprise entre 6 et 24 mois*, 8 décembre 2005.

## À signaler

Le Forum des droits sur l'Internet publie son guide pratique d'achat en ligne pour la deuxième année consécutive. *Achats en ligne: suivez le guide*, édition 2006.

La cour d'appel de Paris a réaffirmé que la campagne en ligne de Greenpeace contre la politique environnementale de la compagnie pétrolière ESSO (en remplaçant les deux SS de ESSO par des \$\$, soit E\$\$O) respectait la liberté d'expression. *Esso/Greenpeace France*, Cour d'appel de Paris, 4<sup>ème</sup> chambre, section A, arrêt du 16 novembre 2005; *Greenpeace/Esso : liberté d'expression confirmée pour la parodie de marques*, 21 novembre 2005.

*Livre blanc sur le peer to peer*, éditions des Parques. Ce livre réunit plusieurs contributions de différents organismes représentant les auteurs et éditeurs de

logiciels, les consommateurs, les artistes-interprètes, les auteurs de musique et les utilisateurs de logiciels libres. On y expose, entre autres, les deux thèses pour encadrer le P2P, soit l'instauration d'une licence légale ou l'application du droit commun.

Toujours concernant le *peer to peer*, Thibault Verbiest rapporte que deux rapports publiés le même jour préconisent des solutions diamétralement opposés... (*Peer-to-peer : deux rapports contradictoires publiés le même jour. Le débat s'envenime...*, 12 décembre 2005.

La directive « Télévision sans frontière », qui date de 1989, est en pleine réforme pour tenir compte des nouvelles technologies nées depuis son adoption et du milieu concurrentiel dans lequel ce secteur évolue. Étienne WERY, *Nouvelle directive Télévision sans frontière (TSF) : le voile se lève petit à petit*, 13 décembre 2005.



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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 Anne Uteck, Teresa Scassa and Chidi Oguamanam 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 Anne Uteck, Teresa Scassa et Chidi Oguamanam 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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