



International Institute of Communications
Canadian Chapter

New Developments in **Communications Law and Policy**

15th Annual Conference

November 14 -15, 2017

Shaw) Centre

Ottawa

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07:00 Registration

08:00 Welcome and Opening Remarks

Hank Intven, President, IIC Canada

Grant Buchanan, Partner, McCarthy Tétrault LLP

Laurence Dunbar, Partner, Fasken Martineau DuMoulin LLP

08:30 Keynote Speech

Ian Scott, Chairperson and Chief Executive Officer, Canadian Radio-television and Telecommunications Commission

09:10 Canadian Courts and Internet Jurisdiction

Canadian courts are increasingly asserting jurisdiction over companies without traditional “bricks and mortar” in Canada and issuing orders with extraterritorial effect. What impact will this have on non-Canadian over-the-top (OTT) services available in Canada? This panel will examine how the “real and substantial connection” test has evolved in light of recent caselaw, including the Supreme Court of Canada’s (SCC) decisions in *Google Inc. v. Equustek Solutions Inc.* and *Douez v. Facebook, Inc.* It will examine the court’s jurisdiction to make extraterritorial orders and orders against Internet service providers (ISPs), search engines and other Internet intermediaries and whether choice of laws and forum selection clauses will be upheld in this new environment. It will also examine the potential reaction of courts in other jurisdictions to extraterritorial orders, including Google’s recent injunction application to a U.S. court, arguing that the SCC’s global injunction against Google violates the First Amendment of the U.S. Constitution.

Research Paper

Janet Walker, Professor, Osgoode Hall Law School

Moderator

Peter Ruby, Partner, Goodmans LLP

Panellists

Barry Sookman, Partner, McCarthy Tétrault LLP

Mark Hayes, Partner, Hayes eLaw LLP

Vivek Krishnamurthy, Clinical Attorney, Harvard Law School

10:25 Networking Break

10:40 Copyright Act Reform: Key Issues for the Five-Year Review

The government will launch its five-year review of the *Copyright Modernization Act* this fall. In parallel, it is in the throes of renegotiating NAFTA, and copyright issues, particularly related to stronger protections for online content, could well be on the table. Since the Act was amended in 2012, online piracy has remained a force: is the Act’s tool kit sufficient to combat piracy or are stronger measures needed? In addition, Canadian courts have weighed in on the notice and notice regime. Does the *Voltage v. John Doe #1 and Rogers* (2017 FCA 97) Court of Appeal decision offer a fair assessment of an ISP’s responsibilities under the regime, and what are its potential impacts if it is not successfully appealed? Meanwhile, the NAFTA process has also seen U.S. broadcasters calling for compensation from Canadian BDUs for carriage of their signals. Should the Copyright Act be amended to permit retransmission consent in Canada and should U.S. broadcasters similarly be compensated? More generally, the government has launched a consultation on Copyright Board processes and procedures to expedite decisions in a fast-paced environment. What reforms will meet with success? This panel will tackle these issues and more from the perspective of both users and rights holders in an attempt to strike a “balanced” approach.

Research Paper

Jay Kerr-Wilson, Partner, Fasken Martineau DuMoulin LLP

Kristina Milbourn, Director, Copyright and Broadband,
Rogers Communications Canada Inc.

Moderator

Stephen Zolf, Partner, Aird & Berlis LLP

Panellists

Carys Craig, Associate Dean (Research & Institutional Relations),

Associate Professor, Osgoode Hall Law School, York University

David Kent, Partner, McMillan LLP

Erin Finlay, Chief Legal Officer, Canadian Media Producers Association

12:00 Lunch

Keynote Interview

Brendan Carr, Commissioner, Federal Communications Commission

In conversation with **Greg O’Brien**, Editor & Publisher, CARTT.CA

Tuesday, November 14, 2017

13:30 Privacy and Big Data

Communications service providers (CSPs) have access to a broad range of personal information from their users (both subscribers and non-subscribers). The digital information trail of communications services users (from browsing, location and set-top-box data to segmentation created by matching user information with other third party data) can reveal much about the individual's current behaviour and future intentions. This personal information presents both commercial opportunities and privacy responsibilities for CSPs, especially if they seek to monetize the personal information for marketing or other commercial uses. The paper reviews the current notice and consent obligations on CSPs when using personal information in Canada, the European Union and the United States. The paper also explores how notice, consent and their alternatives (such as legitimate business interest and de-identification) are evolving in Canada and how these changes may impact the competitiveness of Canadian CSPs.

Research Paper

Bill Abbott, Privacy and Data Protection Expert

Moderator

Jennifer Stoddart, Regulator Advisor, Nymity; Visiting Scholar, Centre of Genomics and Policy, McGill University

Panellists

Alex Cameron, Partner, Fasken Martineau DuMoulin LLP

David Fewer, Director, CIPPIC, University of Ottawa

Lisa Austin, Professor, Faculty of Law, University of Toronto

14:50 Networking Break

15:10 Internet Piracy

Internet piracy is a significant social and economic problem. Every year, billions of dollars of creative content is stolen online, causing significant harm to the Canadian creative and broadcasting sectors. Despite extensive efforts by rights holders, Internet piracy has proven particularly resistant to conventional legal action. What makes Internet piracy so difficult to combat? Would blocking access to Internet piracy sites be a proportionate and effective solution to the problem? How have similar regimes been implemented internationally, and what criteria should courts or tribunals employ in making such orders?

Research Paper

Richard Lizius, Associate, McCarthy Tétrault LLP

Moderator

Susan Wheeler, Vice President Regulatory, Media, Rogers Communications Canada Inc.

Panellists

Ariel Katz, Associate Professor, Innovation Chair—Electronic Commerce, Faculty of Law, University of Toronto

Bram Abramson, Ford-Mozilla Open Web Fellow, The Citizen Lab, University of Toronto

Thomas Sutton, Partner, McCarthy Tétrault LLP

16:30 Cocktail Reception (Cash Bar)

Wednesday, November 15, 2017

07:00 Registration

08:00 The Impact of New Legal Technologies on the Legal Profession

It's enough that the profession is under siege by competitors from all sides, but the advance of legal technology, including through the use of artificial intelligence, is resulting in a need for lawyers who are adept at using these new tools to lower costs and improve outputs. Some of those techniques include e-discovery, process automation, legal research, practice management, document storage and handling, and improved billing and accounting practices but despite incentives for lawyers to become more technologically competent it is difficult training (and retraining) them.

Research Paper

Jordan Furlong, Principal, Law21

Moderator

Gina Alexandris, Senior Director, Law Practice Program, Ryerson University

Panellists

Laura van Wyngaarden, COO, Diligen

Mathew Goldstein, Associate, Dentons Canada LLP

Monica Goyal, Lawyer and Entrepreneur, Barrister and Solicitor

09:30 Networking Break

09:45 Surveillance and Cyberattacks

News headlines and security leaks show us that government agencies and police have the potential to use consumer devices for surveillance. On the other side of the equation, ransomware, viruses and denial of service attacks are becoming an everyday reality. These issues are the backdrop as the government is re-thinking Bill C-51, and Public Safety Canada is concluding its cyber security consultations. As we enter the age of the "Internet of things" the debates continue surrounding mandatory breach notifications and protecting critical infrastructure. What legal tools should be made available to the government? Who bears the burden of keeping our data and all the devices that our everyday life relies upon safe? What **should** happen when sensitive information or critical networks have been breached and what **could** happen when fingers get pointed at network operators, equipment manufacturers or large institutions?

Research Paper

Craig Forcese, Professor, Faculty of Law, University of Ottawa

Moderator

Catherine Beagan Flood, Partner, Blake, Cassels & Graydon LLP

Panelists

Eugene Ng, Partner, Eastern Canada Cyber Security Leader, MNP LLP

Robert Gordon, Executive Director, Canadian Cyber Threat Exchange

Scott Hutchison, Partner, Henein Hutchison LLP

11:15 Networking Break

11:30 Regulating "Uncivil Discourse" on the Internet: Defamation, Hate Speech, and Fake News

Not so long ago, the Internet held great promise as an unfettered forum for individuals, groups, businesses, and government to share information and views. Today, there is increasing talk of monitoring, moderating, and even regulating that forum. Lawyers are advising clients and watching their own step at the same time. Online aggression, anonymity, and fake news are social problems. When do they become legal issues, and are we heading for more regulation and more litigation? When do they present ethical dilemmas, and how does a lawyer spot and deal with them? Facing a rush of unverified information, and quick action/reaction cycles of online discourse, how does today's lawyer keep up?

Research Paper

Sheldon Burshtein, Partner, Blake, Cassels & Graydon LLP

Moderator

John D. Gregory, Retired General Counsel,
Ontario Ministry of the Attorney-General

Panelists

Marina Pavlović, Assistant Professor, Centre for Law, Technology and Society,
University of Ottawa

Paul Schabas, Partner, Blake, Cassels & Graydon LLP

Edward Greenspon, President & CEO, Public Policy Forum

13:00 Lunch

Keynote Panel on NAFTA

Sarah Goldfeder, Principal, Earncliffe Strategy Group

Colin Robertson, Senior Advisor, Dentons LLP

In conversation with Hank Intven, President, IIC Canada

14:30 The CRTC's Enforcement Regimes

The Canadian Radio-television and Telecommunications Commission (CRTC) conducts regulatory enforcement of nuisance communications and spam under the Telecommunications Act and Canada's Anti-spam legislation (CASL). How do these regulatory regimes compare with other regulatory models (such as that of the Competition Bureau or the Federal Trade Commission (FTC) in the United States)? This session will also consider the role of counsel in navigating the rules to help their clients come into compliance and in responding to notices to produce or preserve information during an investigation; and issues such as retaining external legal counsel to identify and sever solicitor-client privileged information during an investigation.

Research Paper

Kelly-Anne Smith and **Adam Balkovec**

Legal Counsel, CRTC

Moderator

Leslie Milton, Senior Counsel, Regulatory Affairs, Telesat Canada

Panelists

Andrea Rosen, President and CEO, Andrea Rosen and Associates Inc.

Jonathan Chaplan, Executive Director and Senior General Counsel,
Competition Bureau Legal Services

Phillip Marchesiello, Partner, Wilkinson Barker Knauer, LLP

16:00 Closing Remarks