

CIPS's Position on Copyright Reform

written by John Boufford, I.S.P.

(October 5, 2001)

An opportunity for CIPS to comment on submissions made in response to proposals to reform the Copyright Act.

(Approved by CIPS National Board of Directors on October 5, 2001)

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Government of Canada Copyright Reform
c/o Intellectual Property Policy Directorate
Industry Canada
235 Queen Street
5th Floor West
Ottawa, Ontario, K1A 0H5

Subject: Consultation on Copyright Reform

Thank you for the opportunity to comment on the submissions made in response to proposals to reform the Copyright Act. As noted in the document titled "A Framework for Copyright Reform", there are compelling economic and cultural policy reasons to undertake reform at this time and we welcome this initiative.

With approximately 8500 members, CIPS is Canada's largest association of IT professionals, representing the interests of IT professionals to industry and government. Through the volunteer efforts of its members, CIPS is involved in a number of initiatives relating to setting standards within the IT profession and providing assistance to its community. Our advocacy role is intended to reflect the public interest as well as that of our members.

We are writing in support of the comments made by Mr. John Boufford, I.S.P., President of e-Privacy Management Systems (Letter dated September 15, 2001).

Digital Issues

Like most Canadians, we believe that there are commonly accepted "fair use practices" that should be preserved. It seems very peculiar that the public would be limited in their ability use legally-obtained copyrighted products in a variety of playback devices. For example, some of the initiatives proposed under the "Digital Issues" banner would seem to limit the consumer's ability to use music and video media in a variety of playback devices, and also limit software developers from writing software that would allow new media to be played-back on personal computers. Had this proposal been implemented five years ago, we probably would not have DVD play-back capabilities on computers today.

Certainly copyright infringement is not a trivial issue. But the development of software to leverage the use of digital media is seldom as monolithic as an attempt to circumvent copyright protection. It appears that software that is developed with a view to providing some new service will fall prey to legislative provisions intended to "prevent the circumvention of technical measures aimed at limiting access to or reproduction of works".

Liability of Internet Access Providers

The "Framework" call for discussion on liability of Internet access providers (IAP)¹ raises significant issues. One wonders about the practicality of such measures. We would not want to speak on behalf of their industry association regarding the practicality of this proposal. But one does wonder, for example, how an IAP would determine that web content infringes copyright when the IAP has no first-hand knowledge of whether the website owner has obtained permission or paid royalties to use the copyrighted material.

We certainly acknowledge that misuse of copyrighted material is a significant issue. We also acknowledge that promotion of racism and hatred is a blight upon the landscape. While racism and hatred are inconsistent with Canadian values, these issues appear unrelated to copyright and would be better addressed, in our view, under the Criminal Code.

From our perspective, there is an unidentified public policy issue.

If IAP's are legally responsible for content, they will be forced to give themselves (via contract) greater latitude to conduct surveillance on their customer's web sites. This is a significant invasion of privacy when you consider that some sites and virtual communities contain sensitive personal information about educational, medical and psychological matters.

While it would be unusual to deal with policy issues of surveillance and privacy in a Bill aimed at copyright reform, Industry Canada and the Department of Canadian Heritage have opened that door for discussion purposes, admittedly without taking a position. Perhaps this provision should be reversed. For example, one option could make it illegal for anyone not authorized by the site owner to access NON-PUBLIC areas of a web site for purposes of monitoring content, without a subpoena or search warrant. The Bill could also prohibit contractual arrangements that allow the IAP to conduct surveillance and nullify existing contractual provisions.

This provision would benefit the application service provider (businesses that host out-sourced computer applications on behalf of other businesses) by supporting the framework in which they operate. Under the Personal Information Protection and Electronic Documents Act, businesses are required to implement privacy protection and they cannot do so if a third party (ie., an application service provider) can arbitrarily conduct surveillance on content.

Copyright laws face a huge challenge in a wired world as compared to any physical reproduction. There is presently no way to control transmission of copyrighted material. Any intermediary enforcement (i.e. I.A.P.) will simply force the offending material to uncooperative jurisdictions resulting in loss of business for Canadian companies.

Legislation must focus on those (companies or individuals) directly infringing on copyright protection. Such enforcement has always been difficult and the Internet certainly raises the stakes.

That being said we believe that technology could provide aids to such enforcement. Depending on the specific proposal, CIPS might support changes to media standards to include strong copyright notifications imbedded within their formats.

The issue of copyright protection is a complex issue but in general, we think it more appropriate to provide the tools to identify the violations and to impose appropriate penalties, rather than implementing unrealistic and highly intrusive means to prevent it.

In closing, let us say that CIPS members have a tremendous respect for the need to protect intellectual property and allow the creators to obtain appropriate rewards for their efforts. But at the same time, if we make it 'impossible' to easily distribute and share that property, the creativity and growth of knowledge and art will be restricted and stunted. It is a difficult challenge for our electronic age but one that must be addressed without throwing the proverbial baby out with the bathwater.

We hope that this letter provides constructive input in the dialogue.

Sincerely,

Les Oliver, I.S.P.
President

¹ We use the term Internet access providers instead of Internet service providers to avoid confusion when the terms are abbreviated. The Information Systems Professional of Canada (I.S.P.) designation is registered under Section 9 of the Act with the Federal Registrar of Trade Marks as an official mark of the Canadian Information Processing Society. The I.S.P. is a CIPS-administered designation awarded to IT professionals who have met the required education and industry experience and have demonstrated a commitment to professional ethics. It can be used ONLY by certified CIPS Members in the form of I.S.P. and the French translation, I.P.A. Since its inception, CIPS and the Provincial Bodies use I.S.P. when referring to the designation. For additional information, refer to www.cips.ca/standards/ispcert/