Response from the Marijuana Party of Canada to CIPPIC's questions for the Election 2006

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Copyright Law and Technical Protection Measures

Question: Do you agree that we need legislation to protect Canadians from harmful technologies like the Sony-BMG rootkit DRM?

Answer: Technically speaking, there is no difference between spyware and the Sony-BMG DRM tool. Any device that modifies an individual's operating system without prior notice breaches his/her privacy, period.

Double standards must be avoided; hence, there should not be a distinct legal category for major players like Sony, just because they are bigger and have more lawyers than lonesome geeks working in their basements.

Copyright Revision and Innovation

Question: Do you support Canadian innovators' rights to reverse engineer or otherwise deal with a work for the purposes of security or interoperability research?

Answer: It is true that the fair dealing clause in the *Canada Copyright Act* is much more restrictive than the American "fair use" Common Law defense. But what appears even more problematic to us, is the very narrow guidelines with regards to educational institutions. Art 29.4 (1) appears totally outdated, and we recently noticed that some teachers in Canadian universities now openly defy their copyright/royalties obligations because it seriously hampers their work. (By the way, do not expect students struggling to make ends meet to go and complain that they haven't paid all the usual fees!) Universities, as long as they remain independent from their funders, are a hotbed of innovation, and provisions of the *Canada Copyright Act* dealing with educational institutions should be revised as soon as possible.

As you may know, the Marijuana Party is against cannabis prohibition, because prohibition is unenforceable, unscientific and is an arbitrary way of excluding certain natural substances from the market economy, to the benefit of patented drugs and genetically modified organisms. Moreover, hundreds of thousands of Canadians do not feel "morally compelled" to comply with a legislation that violates their basic rights.

We thus fear Canada is heading in the same direction with regards to intellectual property. The current system favors wealthy patent and digital rights owners (and their lawyers!) But in the meantime the willingness of the general public to comply with the law is eroding, since giant DR owners like Sony or Microsoft are also flooding the marketplace with very profitable Minidiscs, DVD burners, 500G hard drives and other gizmos that make piracy as easy as 1, 2, 3. This is all very confusing! What is a 15 year old youth supposed to think?

Eventually, the disrespect of rigid intellectual property rights which is plaguing the entertainment sphere, may spill over and affect the research and educational fields as well. More flexibility in the law is definitely needed.

Spyware

Question: Do you agree that we need stronger laws and enforcement mechanisms to protect Canadians from unwanted behaviours associated with spyware?

Answer: We totally agree, and must stress once again that any technology that modifies an individual's operating system without notice breaches his/her privacy, and may also hamper the valuable work usually done with a computer (academic research, professional contracts, etc.) Spyware and DRM "Rootkits" (as long as the consumer is unaware they are installed on his/her machine) should be treated the same way.

Additionally, of particular concern is the "bloatware" pushed to the consumer by aggressive salespersons working for otherwise "trustable" firms.

Here is a very specific example: last spring, the Marijuana Party leader had a particulartly bad experience with promotional bloatware. He was led to believe that he needed to install a particular kind of browser to retrieve webmail from his new account – a misleading information from the very start. After installation, the "RAM guzzler" taking up to 55 MB of precious memory made his 4-year old computer almost unuseable. Our leader formatted his hard drive in a hurry and lost some information, not knowing that the "trustable" Sympatico/MSN browser – and not some mysterious virus – was the cause of his problems. Selling bloatware is the equivalent of selling a car owner the wrong kind of fuel, or the wrong set of tires: it is IRRESPONSIBLE AND CRIMINAL. There should be a way of communicating important technical information to the customer, other than in small print on page 43 of the user's manual!

The Marijuana Party will endorse all initiatives aimed at better informing consumers, with regards to what may affect their physical health (legal and illegal drugs, genetically modified foods) and the health of their computers! As silly as this may sound, computer malfunctions directly affect one's physical health: anybody stuck with a nasty computer virus while having to meet rigorous professional deadlines experiences a lot of stress!

Spam

Question: What would your government, if elected, do to stop the flood of spam that continues to plague Internet users?

Answer: Of course, there is a need for a better Federal legislation. But basically, spam is an international issue, which needs an international institutional response. The kind of “invisible hand” approach defended by the U.S. at the last WSIS in Tunis is clearly not working.

As to the major high-tech firms, they seem more preoccupied with selling beige boxes and other $100 hand-cranked laptops to the developing countries than tackling the problem.

The Canadian government should engage in substantive dialogue with leaders of the emerging economies (Brazil, for instance, where a lot of spam comes from) as well as with capable NGOs and the few private actors who are willing to do something, and start drafting a binding international anti-spam convention, which would contain an enforcement mechanism for countries willingly and knowingly letting spammers operate on their soil. (In the process, Canada should also encourage countries such as China, Iran and Tunisia to stop persecuting bloggers, and start cooperating on the cybercriminality and spam issues.)

Lawful Access

Do you agree with civil liberties groups that:

1. There should be no increase in state surveillance without full justification, including clear evidence of the need for such new capacities and powers and of their likely effectiveness?

2. Searches and surveillance should require judicial authorization on a "reasonable and probable cause to believe" standard; and that exceptions to this rule must be narrowly limited, subject to strict conditions and safeguards, and should not be expanded to include subscriber data?

3. All state search and surveillance activity should be subject to rigorous oversight by an independent body to guard against police abuse of these intrusive powers?

Answer: We totally agree with all these points. The October 2004 Indymedia affair involving Switzerland, Italy, the U.S. and the UK gave us the shivers. It is way too easy nowadays for a police force to show up, summon an ISP and seize personal information, if not an entire hard drive. The Indymedia ordeal was in many ways comparable with the Maher Arar affair, in the sense that when *any issue* is deemed a *security issue*, there seems to be no more accountability! The national and international security apparatus, CSIS, INTERPOL and the like, have acquired tremendous autonomy from their respective governments, and seemingly operate above all laws.

More worrisome is the fact that while international anti-globalization activists saw 20 of their websites shut down for several weeks, international jihadists like Mossad Al Zarqawi apparently kept posting their heinous messages and bloody footage on mysterious “Islamist websites” without being bothered throughout 2004 and 2005. There is obviously something wrong going on with the Web.

Identity Theft

Question: Do you support a Canadian law requiring companies to notify individuals of security breaches that expose the individuals to identity theft?

Answer: One of our members was personally notified by snail mail of some “possible theft” last winter; and that “possible theft” (which affected thousands more people) made it to the National on CBC the next day. People are getting more aware of identity theft nowadays. What is more, private firms know that if they do not notify all interested parties quickly, they expose themselves to potential lawsuits. As to phishing and pharming, we also noticed an increased awareness of the general public and the mainstream news media in 2005. Banks are aware of the problem too: Internet banking home pages now display very obvious warnings to customers.

By “obvious” we mean as obvious as technology providers *should* be, when they sell us bloatware or plan to install DRM tools on our computers. In other words, private actors’ “best practices” do achieve results, but they are insufficient. What we are facing once again are double standards. When the “wrong” is caused by a third party, businesses always inform the customer in a more appropriate and timely manner than when they are themselves the source of the “wrong” (the exception being Sony-BMG, thanks to thousands of infuriated bloggers).

Unfortunately, we are not certain that a Canadian law defining security breaches in narrow technical terms would be the right thing to do. The issues that will exist 10 years from now are as esoteric and unpredictable as the terms “phishing” and “keylogger” were 10 years ago. The mistake in Art 29.4 (1) of the *Canada Copyright Act* (which uses vocabulary such as “dry-erase board” and “overhead projector”) should not be repeated.

Finally, we are not certain that the privacy issue and the identity theft issue are so different that they should be covered by separate laws.

Telecom Policy

Questions:

1. Do you support continued government and regulatory intervention in telecommunications so as to ensure that Canadians of all income levels and in all regions of the country, including those with disabilities, have access to good quality, reliable, and functional telecommunications services at affordable and reasonable prices?

2. Do you agree that the following policy objectives currently set out in the *Telecommunications Act* are fundamentally important and should remain the guiding principles of Canadian telecommunications policy:

   s.7(a) “to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions”;

   s.7(b) “to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada”?

3. Do you agree that any reforms to the *Telecommunications Act* should be subject to a full public review five years after they have been enacted?

Answer:

1. We totally agree with this point. An equal access to information for all Canadians is paramount; be it through radio, television, the Internet or a reliable phone service.

2. The problem is *who* produces the information Canadians have access to. Par. 7d) of the *Telecommunications Act* aims at implementing the a) and b) principles by fostering "increased reliance on market forces for the provision of telecommunications services." As a result, the public airwaves have been commercialized so much that the situation already amounts to expropriation. How many strikes/lockouts at the CBC under Mr. Rabinovich? How many minutes of Bell Canada advertising during the 10 o'clock Téléjournal at the SRC? No wonder why podcasting and the ad-free BBC World News website are getting so popular.

   Now, please let us give you a specific example once again: In the Province of Quebec, large telecom providers (that are probably calling for the "radical deregulation" mentioned in your backgrounder) have tightened their grip on the information itself, and mergers have produced the so-called *convergence* phenomenon, where a radio station belonging to the *x* media consortium won't broadcast the music of an artist signed by the *y* consortium. People in Quebec City got so angry and frustrated by this concentration of the media that they took the streets by the thousands in the summer of 2004, to defend the "freedom of speech" of a local radio station whose license renewal was denied by the CRTC. The underlying message was: "CHOI-FM is the only mainstream radio station still in the hands of local owners, and it must remain in activity no matter how offensive its hosts are". The CRTC and the Montreal corporate media were portrayed as "the big evil" and were totally discredited.

   To us, there could not be a clearer sign that "the social fabric of Canada and its regions" is under threat. Minister of Canadian Heritage Liza Frulla recently had a lot of success in securing the adoption of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* at the October 2005 UNESCO General Conference. On the other hand, the CRTC and the *Telecommunications Act* have failed to address the diversity of expressions problem *within Canada*, by focusing exclusively on the "affordable and reliable access" issue and letting the "market forces" take complete control of what people see and hear.

3. Telecommunications is a major identity issue that should not be reduced to its "physical access" dimension. Telecommunications is a topic that *must* be put on the constitutional agenda, whenever the Powers That Be realize that our current Constitution is totally antiquated and dysfunctional. This would be the most relevant of all "public reviews".