

May 17, 2006

VIA COURIER

The Honourable Bev Oda P.C., M.P.
Minister of Canadian Heritage and Status of Women
25 Eddy Street
Gatineau, Quebec K1A 0M5

- and to -

The Honourable Maxime Bernier P.C., M.P.
Minister of Industry
5th floor, West Tower
C.D. Howe Building
235 Queen St.
Ottawa, Ontario K1A 0H5

Re: Copyright Reform and Canada's Privacy Community

We are a group of Canada's leading public-interest oriented organizations and academic privacy experts concerned with how privacy, freedom of expression and civil liberties are implicated by Canadian copyright reform. We have enclosed a short Background Paper which outlines the ways that Canadian copyright reform poses threats in these areas. In this letter, we focus on the most significant threat: the use and proposed legal protection of 'digital rights management' (DRM) technology in Canada.

DRM is used by some copyright holders ostensibly to control access to and use of copyright works. In fact, DRM technology can be used to override fundamental privacy protections. DRM typically uses surveillance to monitor and collect detailed information about people's access to and use of creative works. People are frequently unaware of this and may sometimes unwittingly 'agree' to the surveillance. Information about people's private browsing, reading, listening and viewing habits collected by DRM is highly sensitive 'core biographical' information.

The Information and Privacy Commissioner of Ontario wrote about DRM's threats to privacy as early as 2002. In 2004, the Privacy Commissioner of Canada identified copyright holders' DRM as posing a threat to individuals similar to the threat posed by 'spyware'. This concern came to fruition in 2005 when a major public outcry erupted over Sony BMG's use of 'rootkit' DRM on millions of music CDs. This single instance of DRM, characterized by experts as a form of 'spyware', created a fundamental privacy and security breach for hundreds of thousands of computer networks and for many more governments, businesses and individuals worldwide. Among other consequences, the incident prompted a division of the U.S. Department of Homeland Security to issue a public warning recommending that individuals not install DRM used on music CDs. The Sony BMG case is not an isolated incident of privacy and security problems with DRM.

Rather than consulting on privacy and considering copyright law reforms that would protect Canadians *from* the use of DRM (as an increasing number of commentators have suggested we should do), our former government proposed copyright reforms that would provide protection *for* DRM. Proposed 'anti-circumvention' provisions would make it illegal for people to circumvent copyright holders' DRM. Such legal provisions could cripple Canadians' ability to protect their

privacy and to enjoy copyright works in private, free from copyright holders' DRM 'spyware'. This problem is aggravated by free-market arguments that attempt to justify DRM on the basis that people often 'agree' to the surveillance when they agree to the standard-form contracts implemented by DRM. However, the law must protect individuals by ensuring that such 'agreements' reflect the expectations of the parties and are not used to circumvent privacy. Deceptive standard-form agreements that add provisions on surveillance undermine consumer confidence and hurt the acceptance of market-based solutions.

The Canadian privacy community supports a balanced copyright law. We are concerned that the government has never consulted on the privacy implications of copyright reform. The community stands ready to work with policy makers and politicians on this issue. We seek assurances that:

- (1) any proposed copyright reforms will prioritize privacy protection by including a full privacy consultation and a full privacy impact assessment with the introduction of any copyright reform bill;
- (2) any proposed anti-circumvention provisions will create no negative privacy impact; and
- (3) any proposed copyright reforms will include pro-active privacy protections that, for example, enshrine the rights of Canadians to access and enjoy copyright works anonymously and in private.

We look forward to hearing from you regarding the important matters raised in this letter and the attached Background Paper at your earliest convenience.

Sincerely,

"Canada's Privacy Community"

(full list of signatories is attached)

Encl.

cc: Susan Bincoletto, Director General, Marketplace Framework Policy Branch
Industry Canada

Patricia Neri, Director General, Copyright Policy
Department of Canadian Heritage

“Canada’s Privacy Community”

Association for Media and Technology in Education in Canada

Atlantic Provinces Library Association

BC Civil Liberties Association

BC Freedom of Information and Privacy Association

BC Library Association

Colin Bennett, Professor of Political Science, University of Victoria

Canadian Association of University Teachers

Canadian Federation of Students

Canadian Internet Policy and Public Interest Clinic

Canadian Library Association

CLUE : The Canadian Association for Open Source

Consumers Association of Canada

Electronic Frontier Canada

Electronic Frontier Foundation

FLORA.org

Michael Geist, Canada Research Chair of Internet and E-commerce Law at the University of Ottawa

Marsha Hanen, Adjunct Professor of Philosophy, University of Victoria

Ian Kerr, Canada Research Chair in Ethics, Law & Technology at the University of Ottawa

Library Association of Alberta

Online Rights Canada

Ontario Library Association

Bruce Phillips, Former Privacy Commissioner of Canada (1991-2000)

Privaterra

Public Interest Advocacy Centre

Teresa Scassa, Director of the Law and Technology Institute and Associate Professor at Dalhousie Law School

Val Steeves, Professor, Faculty of Criminology, University of Ottawa

Paul Van Oorschot, Canada Research Chair in Network and Software Security, at Carleton University