



December 15, 2016

## Chairman's Report

### Christmas 2016

This report is intended to provide members of the Internet Society Canada Chapter with an update of our policy activities this year. It will be as simple and direct as I can make it, and it is not intended to be a complete overview of everything we do. Our President, Lynne Hamilton, would emphasize other activities, and quite rightly.

Roughly speaking, the work of the Chapter is divided into policy interventions, and programs and events, which provide speaking platforms, fund raising opportunities, and feedback to government initiatives.

#### Policy Interventions

Our policy interventions are intended to keep the Internet free, as in free speech, and cheap, as in affordable.

As governments slowly start to understand that their treasured monopolies, business models, subsidies, and legislative frameworks have in many cases been rendered ineffective, some of them reach out to correct what they see as deficiencies in the Internet, or to limit people in their choices of where they can go. There is nothing new in this. The State and the Market have been having this fight since society began.

Nevertheless it is my observation that governments on the whole, with some sterling exceptions, have a poor understanding of the Internet and many would destroy its effectiveness in a trice to salvage obsolete business models. We lack no instances of this at either the federal or provincial level in Canada in 2016.

The issues on which the Society has intervened have been:

- Quebec's gambling legislation
- Intervention with the Governor in Council to support the CRTC's decision on access to wholesale facilities of underlying carriers (CRTC Regulatory Policy 2015-326)
- Intervention in relation to the CRTC Proceeding on Differential Pricing Plans (Telecom)
- Notice of Consultation CRTC 2016- 192)
- Review of basic telecommunications services [Telecom Notice of Consultation CRTC 2015-134, February 08, 2016]
- Intervention in response to Canadian Heritage Consultation on Canadian Content in a Digital World (November 2016).
- Intervention on Government Consultation on National Security

### Quebec's Gambling Legislation

We wrote to the Minister of Finance of Quebec, Carlos Leitao, a letter which described what were then budget proposals to block access by Quebecer to all gambling sites, other than its own Lotto Quebec site, as technically futile and unconstitutional, in that the law exceeded the jurisdiction of the province. Gamblers will use Virtual Private Networks (VPNs) to avoid the restriction. Since then the National Assembly of Quebec has legislated to this effect, and the [CWTA \(Canadian Wireless Telecommunications Association\)](#) has taken the government of Quebec to court over it. [The CRTC has twice affirmed its jurisdiction](#) over the matter in no uncertain terms.

The head of the Quebec Chapter of the Internet Society, Louis Houle, and I continue to talk on the issue. However the completeness of the pleadings of the CWTA, especially as they concern the freedom of speech aspects of this legislation, led the Policy Committee to conclude that our Chapter had no need to intervene judicially.

The case has yet to be brought to trial.

### Access to Wholesale Facilities, Intervention with the Governor in Council of Bell's Appeal

Bell Canada tried to roll the new Liberal government with the usual claims that it has to make uncounted zillions of dollars lest they be disinclined to invest in fiber networks. Their appeal was premature, in that the CRTC had not then settled what the wholesale prices should be, but it was designed to be within the one-year time limit for appeals to cabinet.

I quote from it:

The essential premise of Bell's argument is that the relevant form of competition must be between networks. The carrier must absolutely own the whole of its network and not be obliged to share it – on any conceivable terms – with other entities.

Competition of this nature is said to be “facilities-based”. It conjures an image of heroic competition between capital intensive giants slugging it out manfully for market share. To the Internet Society, such a view of competition is predicated on completely pre-Internet ideas. “Facilities-based competition” is a term that predates the explosion of consumer interest in the Internet that followed the development of the world wide web by Tim Berners-Lee in 1989 and the subsequent adoption of web browsers, in the mid-1990s. The term “facilities-based” competition derives from a world in which voice telephony was the only relevant game, and when competition in long distance telephone service was finally introduced in Canada, in 1992, it was thought that different and competing physical networks would provide more effective competition than by merely resale and sharing.

There was, at that period, no public internet, and competition was confined to a couple of services, long distance voice and data telecommunications. Yet the idea persists – or continues to be propagated - that real and effective competition can only be provided by rival silos of end-to-end carriers.

One sees this idea propagated from several sources: the MacDonald-Laurier Institute, the Montreal Economic Institute, the U.S. Republicans, and the telcos, who sponsor this doctrine. It is one of those truly bad ideas that friends of competition consistently engage in. The relevant form of competition is not in the pipes, it is in the services you get from the pipes. At the level of pipes, conduits, wires, and towers, the duplication of facilities will always remain hugely expensive. In an age of optical fiber, with its virtually unlimited bandwidth, duplication of pipes is probably superfluous or impractical in most situations. But at the level of services and applications, the field of competition is virtually unlimited, as we find out every time we open our browsers.

In any case the government turned down the Bell appeal, and the CRTC later ordered a vast (86%) reduction in the price of Bell's wholesale product.

Why bother to write, you may ask? The goal is to influence the advice given by the Department of Industry's telecom experts to the Cabinet. Since the vast preponderance of advice will be weighted in favour of carrier-centric views, it is important for the Internet Society to offer a countervailing view. They need to be encouraged in their inclinations to resist the domination of carriers.

[Review of Basic Telecommunications Services \(CRTC proceeding\)](#)

In February of 2016 the Society wrote to the CRTC in support of its review of basic services proceeding, telling the Commission that it was asking the right questions and proceeding in the right direction. The Society did not seek to intervene.

[Intervention in relation to the CRTC Proceeding on Differential Pricing Plans \(Telecom Notice of Consultation CRTC 2016- 192\)](#)

This issue arose in relation to the plans of some carriers to make some applications available for “free” if the consumer used them and not others as their preferred carrier. It is usually referred to as “zero rating”.

We intervened in June 2016. We did not seek to appear at the hearing on this subject which occurred in the autumn of 2016.

The problem, we stated, was self-inflicted. Usage caps are the creation of carriers; they inhibit usage, and are intended to maximize revenue. To get around their own usage caps, carriers devise schemes to incent usage over their own networks. Differential pricing schemes constitute marketing strategies, and we recommend that the regulator develop guidelines as to how it would envisage interpreting the stipulation against unjust and undue discrimination in the Telecommunications Act, particularly as they would apply to dominant vertically integrated carriers.

[Intervention in response to Canadian Heritage Consultation on Canadian Content in a Digital World \(November 2016\).](#)

In November 2016, the Policy Committee of the Society engaged in a vigorous debate about this issue, which concerned the scope of our intervention, and the points to be made within it. Thanks to Len St. Aubin and Philip Palmer, we were able to draft what I think is a well-crafted and substantial response to the Heritage Ministry’s request for comments.

Our intervention says, in part:

ISCC believes that the prescriptive regulatory approach taken to support Canadian content in broadcasting cannot and should not be applied to the Internet. Such regulation imposes heavy costs and inefficient use of resources, which results in:

- a. higher prices for Canadians;
- b. disincentives to innovation; and
- c. incentives to produce content for which there are no audiences in Canada or abroad

The Society took vigorous exception to the notion that the Broadcasting Act can or should be extended to apply to programming on the Internet.

The ISCC is wholly opposed to any “Netflix Tax”, whether by way of a regulatory levy or by way of a tax imposed by Parliament. Either would be detrimental to interests of Canadian Internet users, and could prove negative to the interests of Canadian content creators.

We take no issue with government objectives to support Canadian content. Indeed, we applaud the direction taken by the consultation paper to refocus policy on:

- 1 promotion rather than protection;
- 2 global rather than just domestic markets;
- 3 investing rather than subsidizing;
- 4 platform agnosticism, rather than platform-specific support; and
- 5 realizing the potential of Canadian culture as a driver of economic growth in addition to its social and cultural benefits.

#### Intervention on Government Consultation on National Security

Our submission responded to the federal government’s [Green Paper](#) in relation to national security in an information age. The report was drafted by our counsel Chris Copeland on the basis of discussion held at a colloquium hosted by ISCC at CIRA offices.

In relation to the expectation of privacy for basic subscriber information, our points were:

- Tools of investigation should not come at the expense of the reasonable expectation of privacy of basic subscriber information that was recognized and protected in R v. Spencer. Accordingly, any tools and measures intended to improve timely access to basic subscriber information must be carefully calibrated to prevent potential abuses of such information by law enforcement agencies.
- Government should consider means to expand the powers and resources of privacy oversight agencies so that they can fulfill the role of overseer and rebuild public trust and confidence. The government should ensure that these agencies are capable of acting proactively rather than reactively and that these agencies must

have the legislative authority to impose appropriate consequences that will promote deterrence.

In respect of interception of messages by carriers, we said

- First, providers of communications services must be compensated for the cost of acquiring and installing the equipment that is necessary to intercept communications and for engaging in interception activities. Second, communications providers must be subject to a strict set of requirements that are intended to ensure that interception capabilities are only utilized to comply with court orders.
- Substantial statutory damages should be available for a communications provider's use of interception capabilities in a manner that is not authorized by court order or in accordance with the prescribed guidelines

On data retention, we considered that the Green Paper was biased towards the needs of investigators over carriers.

- Data retention requirements should stipulate different retention periods for different categories of information, based on the sensitivity of that information. More specifically, retention periods should be reversely proportionate to the sensitivity of a category of information.

On the subject of encryption, the colloquium came to no consensus.

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The Internet Society's submissions to various agencies of government can be found in full at <http://internetsociety.ca/2016/12/14/2016-annual-report-from-the-chair/>

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Once again I call attention to the fact that this report deals only with our regulatory and policy interventions. Special events, conferences, and colloquia constitute another important aspect of the Society's work. I trust we will have a further report on them in a near future.

Special thanks to our President, Lynne Hamilton, our Treasurer, Nancy Carter, and our Secretary-Counsel, Chris Copeland, for keeping the lights on, the bills paid and the committees organized and their discussions and decisions recorded.

*Timothy Denton*

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Chairman

Internet Society, Canada Chapter