
Recent Canadian Legal Developments also Impact US and Other Online Companies

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While it is well known to Canadians that the United States is Canada's largest trading partner, it is less well known that the reverse is also true: Canada is the United States' largest trading partner, although to a much less significant extent. This is true for the Internet and e-commerce industries as well, where early Canadian adoption of these new technologies have very much paralleled developments in the United States.

While many of the laws in Canada are similar to the laws in the United States, there are important differences, including those related to privacy and intellectual property. In addition, Québec, which represents a significant portion of the overall Canadian market, has its own set of provincial laws which affect these issues.

Recently, several lawyers from the Canadian law firm of Fraser Milner Casgrain gave a presentation on Canada's privacy regime and intellectual property and related rights under Québec's new civil code. Those presentations focused on the affect of such laws on U.S. and other non-Canadian online companies.

Canada's New Privacy Regime

The Canadian government has passed new federal legislation known as the [Personal Information Protection and Electronics Documents Act \("ACT"\)](#). Some of the privacy provisions came into effect on January 1, 2001 and the others will become effective in stages on January 1, 2002 and January 1, 2004. That statute was previously discussed in our [April 18, 2000 Internet Alert](#).

While legislative authority over privacy in Canada is shared between federal and provincial legislatures, the Act is federal legislation, and is expected to be followed over the next several years with provincial legislation. The federal legislation was passed to make Canada's standards for the protection of personal information consistent with international data protection standards. In particular, the legislation addresses concerns over the ability of European Union ("EU") countries to block information transfers to Canada, if Canada had failed to meet those international standards.

As we have previously discussed in our [May 2, 2000 Internet Alert](#), the United States has preferred industry self-regulation to legislative action. However, as was discussed in our [May 26, 2000](#)

[Internet Alert](#), a sharply divided Federal Trade Commission recommended broad new federal Internet privacy laws in order to protect consumers. So far, Congress has not enacted any such legislation.

In contrast, Canada has chosen to proceed down a legislative path which will result in a framework of both federal and provincial legislation governing privacy matters. In general terms, the Act applies to organizations in respect of personal information that an organization collects, uses or discloses in the course of a commercial activity. There are also provisions in the Act concerning personal information on employees which are applicable to employers in federally regulated industries, such as telecommunications, broadcasting, banking and airlines. Fundamentally, the Act is a consent-based system which permits individuals to withhold consent in connection with the collection, use or disclosure of their personal information. The Act incorporates 10 privacy principles which are based on the Canadian Standards Association's Model Code for the Protection of Personal Information. These principles are similar to the safeguards that are currently part of the US-EU safe harbor program, as was discussed in our [April 18, 2000 Internet Alert](#).

Click [here](#) for a more detailed explanation of the Act. Click [here](#) to view the Fraser Milner Casgrain PowerPoint presentation discussing the Canada's new privacy regime.

Intellectual Property and Related Rights under Quebec's New Civil Code

In Canada, legal aspects of the Internet, with the exception of criminal law, some privacy aspects and intellectual property matters, are governed by the laws of its ten provinces and three territories. Unlike the rest of the provinces and territories, Quebec is governed by civil law and French is the official language of the province. The Quebec civil code, which was amended in 1994, differs from the common law followed in the rest of Canada with respect to several issues, including torts, property, publication and certain contractual matters.

The Civil Code of Quebec contains a number of provisions designed to facilitate and promote the development of e-commerce. For example, the Civil Code recognizes the validity of electronic signatures. However, on November 14, 2000, the Quebec Government submitted draft Bill 161, entitled "An Act to Establish a Legal Framework for Information Technology," among other things, to harmonize the laws presently in force in Quebec relating to e-commerce with the laws of the other Canadian provinces and territories.

The Charter of French Language provides that French is the official language of Quebec. The Charter also states that contracts, product labeling and advertisements (including advertisements on a web site of a company having an address in Quebec) must be drafted in French, with certain exceptions.

For further information on intellectual property and related rights in Quebec, click [here](#) to view the the Fraser Milner Casgrain PowerPoint presentation.

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