



Privacy Advocacy In An Age Of Surveillance: The CIPPIC Approach

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Why Important?

- **Hidden nature** of privacy invasions
- The **Power Imbalance**
- **Law lags technology** and business practices
- **Individual victims** don't have time or energy
- **Privacy Commissioners** have conflicting roles

Overview of Approaches



- Establishing rights
- Exercising rights
- Exposing violations (and holding violators accountable)
- Promoting privacy-friendly laws and policies

(1) Establishing Rights



- Legislative Advocacy
- Litigation
 - courts
 - admin tribunals, agencies
- Codes of Practice

Legislative Advocacy



- Entrench privacy rights in statutes
 - PIPEDA + provincial legislation
 - substantial similarity of provincial legislation
 - regulations
 - Telecom Act (subs.7(f), s.41)
 - Telemarketing and Spam (Bills C-37 and S-15)
 - Call for law requiring disclosure of security breaches

Legislative Advocacy



- Minimize legislative encroachment on privacy rights
 - Anti-terror laws (C-36)
 - Lawful Access proposals

Litigation



- Intervening in court cases
 - *BMG et al v. Doe* (CIPPIC)
 - *R. v. Tessling* (CCLA)
- Test cases
 - PIPEDA enforcement
 - *Englander*
 - Charter challenges

Litigation



- Initiating and Intervening in administrative proceedings
 - CRTC proceedings:
 - regulated terms of service (confidentiality)
 - telco data-sharing with affiliates
 - reverse directories
 - unlisted numbers
 - telemarketing rules
 - Caller ID regime

Codes of Practice



- Formal standards:
 - CSA Model Privacy Code (1996)
 - CAN/SCA-Q830-96
 - ISO data protection standard?
- Codes, Guidelines, Principles
 - OECD Data Protection Guidelines
 - Cross-sectoral and industry-specific



(2) Exercising Rights

- Being nice (but prepared to complain)
 - CRTC website policy
 - CIRA WHOIS policy
- Lodging complaints
 - under *PIPEDA*
 - under *Privacy Act*
- Following up on complaints
 - *Abika.com*; *MBNA*
- Litigation

(3) Exposing Violations



- **Publicity** (+ complaints and litigation)

....based on:

- **Proactive studies**

- consumer profiling research
- testing privacy policies
- “mystery shopping”

- **Incidents/practices that come to our attention**

- Abika.com

Promoting Privacy+ Policies



- Multi-stakeholder collaboration
 - CSA Code
 - Principles/Code of Practice for Consumer Protection in Electronic Commerce
 - Principles for Electronic Authentication
- Submissions
 - WHOIS policy (CIRA, ICANN)
 - Impact in Canada of *USA Patriot Act*
 - Lawful Access proposals

Promoting Privacy+ Policies



- Surveys of public opinion on key issues
 - PIAC survey re: business usage of consumer info
- Studies and reports
 - PIAC report on *PIPEDA* (2004)
- Campaigns
 - Canada: naming names, PIPEDA & health privacy
 - International: biometric passports, WHOIS policy
 - BC FIPA + unions → Outsourcing & *USA Patriot Act*



Lessons Learned

- importance of solid research to back up advocacy
- caution re: collaboration with adversaries
- no one right approach to advocacy
 - mix of collaborative/adversarial works well
 - need to address policy, legislation, jurisprudence, political landscape, public awareness
 - media is key (reaches public + decision-makers)
 - approach should vary according to target and environment



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