

James Plotkin

T 613-564-8271 | F 613-565-2087 | jplotkin@plaideurs.ca

ELECTRONIC MAIL

May 8, 2020

Mr. François Desrosiers – Registrar
Registry Office – Federal Court of Appeal
Thomas D'Arcy McGee Building
5th Floor – 90 Sparks Street
Ottawa, ON K1A 0H9

Re: Direction from the Court dated April 24, 2020 re. motions for leave to intervene
Court File No.: A-440-19
Our File No.: 11163-1865

Dear Mr. Desrosiers:

We are counsel for the Proposed Intervener, the Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC). We write with respect to the Court's direction dated April 24, 2020 ("the Direction"), addressing in part CIPPIC's Motion for Leave to Intervene in the above-referenced proceeding. Specifically, the Direction established a new timeline for interventions in this proceeding and outlined the Court's test for intervention.

CIPPIC sought to advance its intervention expeditiously to avoid any prejudice or delay. It therefore already filed its Motion Record prior to receiving the Direction. As noted in its Motion Record, CIPPIC has instructed itself on the Court's jurisprudence regarding interventions. It has taken steps to avoid any duplication that might arise between its own submissions and those of the Appellant or other known potential interveners.

In this regard, CIPPIC's proposed submissions present a different approach to assessing the legal matters the parties have raised. Our submissions particularly demonstrate a unique focal point to analyzing the central issues before the Court: the precisely articulated enforcement role(s) different types of Internet intermediaries play at law, which explicitly informed Parliament's approach in adopting the *Copyright Act* reforms at issue in this Appeal.¹ This lens and the legal principles accompanying it inform all of CIPPIC's proposed submissions, and will permit it to invoke a different body of jurisprudence while engaging with the central issues before the Court.

For example, while the Appellant raises principles of common carriage in its submissions, it does not deeply canvass the enforcement role envisioned by law for various Internet intermediaries.² Yet, Parliament explicitly adopted a cohesive and carefully calibrated intermediary enforcement regime into the *Copyright Act*, with specific roles for different entities based on common law and related legal

¹ CIPPIC, Motion Record, Motion for Leave to Intervene, February 3, 2020, Written Representations, para 14c.

² Appellant's Factum, March 13, 2020, paras 12-13 and 44-50.

principles. As CIPPIC's Motion Record reflects, it is well-placed to assist the Court as it addresses these legal questions.³

Finally, as noted in CIPPIC's Motion Record, it has coordinated with other known proposed interveners in order to avoid duplication and will continue to do so should leave be granted. In addition, CIPPIC undertakes to curtail elements of its submissions addressed in those of the British Columbia Civil Liberties Association or the Canadian Internet Registration Authority (the "Other Proposed Intervenors"), should one or both of them obtain leave to intervene.⁴

Please do not hesitate to contact us should you have any questions or concerns.

Yours very truly,

Caza Saikaley srl/LLP

**Samuelson-Glushko Canadian Internet
Policy & Public Interest Clinic**



James Plotkin
Counsel for the Proposed Intervener,
CIPPIC



Tamir Israel
Counsel for the Proposed Intervener,
CIPPIC

CC Colin Baxter (counsel for the appellant, Teksavvy Solutions Inc)
François Guay (counsel for the respondents, Bell Media Inc, Groupe TVA Inc, Rogers Media Inc)
Timothy M. Lowman (counsel for the respondent, Distributel Communications Limited)
Vincent de Grandpré (counsel for the respondent, Telus Communications, Inc.)
Emily Lapper and Gib van Ert (counsel for the proposed intervener, BCCLA)
Bram Abramson and Jeremy de Beer (co-counsel for the proposed intervener, CIRA)
Gavin MacKenzie and Brooke MacKenzie (counsel for the potential intervener, FIAPF)
Eric Mayzel and Casey Chisick (counsel for the potential interveners, Music Publishers Canada and the International Confederation of Music Publishers, Music Canada, and the International Federal of the Phonographic Industry)
Barry Sookman (counsel for the potential interveners, IPA, STM, AAP, CPC, and The Premier League)

³ CIPPIC, Motion Record, Motion for Leave to Intervene, February 3, 2020, Written Representations, para 3.

⁴ CIPPIC, Motion Record, Motion for Leave to Intervene, February 3, 2020, Affidavit of David A Fewer, para 17.