

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL OF APPEAL)**

B E T W E E N:

ROGERS COMMUNICATIONS INC

**APPELLANT
(Respondent)**

- and -

**VOLTAGE PICTURES, LLC, COBBLER NEVADA, LLC, PTG NEVADA, LLC, CLEAR
SKIES NEVADA LLC, GLACIER ENTERTAINMENT S.A.R.L. of LUXEMBURG,
GLACIER FILMS 1, LLC and FATHERS AND DAUGHTERS NEVADA, LLC**

**RESPONDENTS
(Appellants)**

- and -

**SAMUELSON-GLUSHKO CANADIAN INTERNET POLICY & PUBLIC INTEREST
CLINIC, and BELL CANADA INC, THE CANADIAN NETWORK OPERATORS
CONSORTIUM INC, COGECO INC, QUEBECOR MEDIA INC, THE SASKATCHEWAN
TELECOMMUNICATIONS HOLDING CORPORATION, SHAW COMMUNICATIONS
INC, TEKSAVVY SOLUTIONS INC, TELUS COMMUNICATIONS INC AND XPLORNET
COMMUNICATIONS INC**

INTERVENERS

**FACTUM OF THE INTERVENER, SAMUELSON-GLUSHKO
CANADIAN INTERNET POLICY & PUBLIC INTEREST CLINIC**

**Samuelson-Glushko Canadian Internet
Policy & Public Interest Clinic (CIPPIC)**

University of Ottawa, Faculty of Law,
Common Law Section
57 Louis Pasteur Street
Ottawa, ON, K1N 6N5

Jeremy de Beer
Bram Abramson

Tel: (613) 562-5800 x 2914
Fax: (613) 562-5417
Email: jdebeer@uottawa.ca

Counsel for the Intervener

**Samuelson-Glushko Canadian Internet
Policy & Public Interest Clinic (CIPPIC)**

University of Ottawa, Faculty of Law,
Common Law Section
57 Louis Pasteur Street
Ottawa, ON, K1N 6N5

Tamir Israel

Tel: (613) 562-5800 x 2914
Fax: (613) 562-5417
Email: tisrael@cippic.ca

Agent for the Intervener

TO: THE REGISTRAR

COPY TO: TORYS LLP
79 Wellington Street West
Suite 3000, Box 270, TD South Tower
Toronto, ON M5K 1N2

Andrew Bernstein
James Gotowiec

Tel: (416) 865-0040
Fax: (416) 865-7380
Email: abernstein@torys.com

Counsel for the Appellant, Rogers
Communications Inc.

AND TO: AIRD & BERLIS LLP
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON, M5J 2T9

Kenneth R. Clark
Paul V. McCallen
Patrick Copeland

Tel: (416) 865-4736
Fax: (416) 863-1515
Email: kclark@airdberlis.com

Counsel for the Respondent, Voltage
Pictures, LLC, et al

AND TO: FASKEN MARTINEAU
DUMOULIN LLP
1300-50 Metcalfe Street
Ottawa, ON, K1P 6L5

Gerald L. (Jay) Kerr-Wilson
Ariel Thomas
Christopher Ferguson

Tel: (613) 236-3882
Fax: (613) 230-6423
Email: jkerrwilson@fasken.com

Counsel for the Intervener, Bell Canada
Inc, et al

FASKEN MARTINEAU
DUMOULIN LLP
55 rue Metcalfe, Bureau 1300
Ottawa, ON, K1P 6L5

Sophie Arseneault

Tel: (613) 696-6904
Fax: (613) 230-6423
Email: sarseneault@fasken.com

Agent for the Appellant, Rogers
Communications Inc.

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3
Ottawa, ON, K1R 7Y6

Marie-France Major

Tel: (613) 695-8855 Ext: 102
Fax: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

Agent for the Respondent, Voltage
Pictures, LLC, et al

FASKEN MARTINEAU
DUMOULIN LLP
55 rue Metcalfe, Bureau 1300
Ottawa, ON, K1P 6L5

Gerald L. (Jay) Kerr-Wilson

Tel: (613) 236-3882
Fax: (613) 230-6423
Email: jkerrwilson@fasken.com

Agent for the Intervener, Bell Canada
Inc, et al

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Part I – OVERVIEW

1. Rights holders are entitled to enforce their copyrights but not by conflating distinct procedures. Parliament did not, with the *Copyright Modernization Act*, create a “notice-and-Norwich” scheme.
2. CIPPIC asks the Court, in interpreting notice-and-notice, to safeguard the procedural and substantive rights of Internet subscribers. Procedurally, Parliament intended that “Doe” defendants who receive robo-notices—unrepresented while courts consider disclosing identities associated with their actual or alleged Internet usage—be presumed innocent. Substantively, Parliament intended that personally identifiable information be handled in light of privacy rights’ quasi-constitutional status.
3. Parliament’s intended allocation of copyright enforcement costs is best understood in the context of:
 - A. The purpose of balancing rights:** Interpreting and applying enforcement-related aspects of copyright requires balancing the rights of multiple stakeholders. In this Appeal, copyright holders’ ability to enforce statutory rights must be balanced against the independent procedural and privacy rights of Internet subscribers, as well as the interests of Internet intermediaries.
 - B. Differences between Canadian and foreign schemes:** Notice-and-notice is intended to preserve the presumption of innocence undermined by the notice-and-takedown scheme in the United States. With notice-and-notice, Canada chose to deter infringement via awareness-raising rather than mass litigation against content consumers.
 - C. Problems with a prohibition on cost recovery:** The procedural and privacy rights of Internet subscribers would be at serious risk if intermediaries cannot recover the costs of safeguarding them. The suggestion to take technological shortcuts by automating the mass storage and transfer of personal information is a potential privacy disaster Parliament did not intend.
4. Courts should be especially concerned about innocent defendants inevitably caught in the dragnet of online copyright enforcement, though rights of due process and privacy are held even by defendants who did infringe copyright. The integrity of the process for disclosing personal information held by third parties depends on careful stewardship of sensitive data carried out by humans not computers.

Part II – POSITION ON APPELLANT’S QUESTION

5. CIPPIC supports the Appellant’s position that the notice-and-notice provisions of the *Copyright Act*¹ do not create a special category of *Norwich* orders in which third parties are not reimbursed for costs. CIPPIC takes no position on the ancillary issues of standard of review and the Appellant’s costs.

Part III – STATEMENT OF ARGUMENT

6. This Appeal is primarily about statutory interpretation. To find evidence of legislative intent, CIPPIC’s submissions focus on the purposes, effects, and other aspects of the “contextual matrix”.² Section A of CIPPIC’s submissions describes notice-and-notice’s purpose of balancing stakeholders’ rights. Section B describes the intent to differentiate Canadian and foreign schemes for online copyright enforcement. Section C explains how Parliament intended to facilitate copyright enforcement without risking Canadians’ procedural and privacy rights.

A. The purpose of notice-and-notice is to neutrally balance stakeholders’ rights.

7. Notice-and-notice is rooted in the principles of copyright generally, including balance and neutrality.

(i) Balance

8. Balance is the hallmark principle underpinning copyright law in Canada, affirmed often since *Théberge*.³ This Appeal requires the Court to balance rights, but differently than some previous copyright cases. The Court must balance copyright holders’ ability to enforce their rights with the rights of all Canadians to due process and privacy. In this context, copyright holders’ substantive rights are “purely statutory”,⁴ while Internet subscribers’ rights arise independently, not from copyright but from a combination of extrinsic statutory,⁵ common law,⁶ and constitutional⁷ sources.
9. While no Internet subscribers are parties in this Appeal, their rights cannot be ignored. Subscribers’

¹ *Copyright Act*, RSC 1985, c C-42, ss 41.25 – 41.27.

² *R v Safarzadeh-Markhali*, 2016 SCC 14 at paras 24-49.

³ *Théberge v Galerie d’Art du Petit Champlain inc*, 2002 SCC 34 at paras 30-31.

⁴ *Compo Co v Blue Crest Music Inc*, [1980] 1 SCR 357 at 373.

⁵ *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, s 7.

⁶ *BMG Canada Inc v Doe*, 2005 FCA 193, citing *Norwich Pharmacal Co v Customs and Excise Commissioners*, [1973] UKHL 6; and *Glaxo Welcome PLC v. Canada (Minister of National Revenue)*, [1998] 4 FC 439 (FCA).

⁷ *Douez v Facebook, Inc*, 2017 SCC 33.

rights to be balanced are not, however, the users' rights referred to by this Court⁸ when determining copyright protections and exceptions. Nobody argues in this Appeal that copyright holders' substantive rights are limited in scope, or that users have rights to infringe copyright anonymously.

10. The aim of preventing online copyright infringement is, of course, relevant. But it is crucial to be accurate about the facts Parliament considered in reforming the *Copyright Act*. The Respondents begin with allegations by the International Intellectual Property Alliance, a group that lobbies the United States Trade Representative to put foreign countries on a "watch list", that the 2012 amendments provide insufficient incentives for intermediaries to cooperate with rights holders, and that notice-and-notice has not changed consumer behaviour. Such statements from foreign industry groups are inaccurate or irrelevant or both, and certainly not indicative of Parliamentary intent. The Government's position is that "Canada does not recognize the 301 watch list process. It basically lacks reliable and objective analysis. It's driven entirely by U.S. industry."⁹
11. The Respondents argue that the purpose of the *Copyright Modernization Act*¹⁰ and "in particular the Notice and Notice Regime" was to implement "international treaty obligations."¹¹ In fact, Canada has no treaty obligations on the role of Internet service providers in online copyright enforcement. The reference to "international standards" in the Summary preceding the *Copyright Modernization Act* relates to Canada's obligations under the World Intellectual Property Organization's Internet Treaties¹² regarding, for example, technological protection measures.¹³ Notice-and-notice is part of a package of other reforms, such as a new "enabler" liability provision,¹⁴ to "update the rights and protections of copyright owners to better address the challenges and opportunities of the Internet".¹⁵

⁸ *CCH Canadian Ltd v Law Society of Upper Canada*, 2004 SCC 13 at paras 12-13.

⁹ Canada, Parliament, *Standing Committee on Public Safety and National Security*, 39th Parl, 1st Sess, No 35 (27 March 2007) at 1150 (Nancy Segal).

¹⁰ *Copyright Modernization Act*, SC 2012, c. 20, cited in Respondents' factum at para 7.

¹¹ Respondents' factum at paras 1, 15.

¹² *World Intellectual Property Organization Copyright Treaty*, 20 December 1996 (entered into force 6 March 2002); *World Intellectual Property Organization Performances and Phonograms Treaty*, 20 December 1996 (entered into force 20 May 2002).

¹³ *Copyright Act*, RSC 1985, c C-42, ss 41, 42.31.

¹⁴ *Copyright Act*, RSC 1985, c C-42, s 27(2.3).

¹⁵ *Copyright Modernization Act*, SC 2012, c. 20.

12. The objective stated in the Explanatory Note to the provisions' coming into force Order—"providing copyright owners with a tool to enforce their rights, while also respecting the interests and freedoms of users"¹⁶—only summarizes an extensive and crucial legislative history. To appreciate the balance Parliament struck, CIPPIC invites the Court to consider the policy analyses, committee hearings, and related proceedings around the equivalent provisions of four bills leading to statutory reform.
13. Canada's notice-and-notice scheme was in development since 2005, with no change in legislative intent through 2012. The Liberal-led government first put notice-and-notice in Bill C-60,¹⁷ which died when an election was called. The same provisions (plus one paragraph) were introduced in Bill C-61¹⁸, which also failed to pass for unrelated political reasons. The Conservative-led government's Bill-32¹⁹ reintroduced notice-and-notice, without even altering section numbers. After the next election, Bill C-11²⁰ again proposed verbatim provisions. A slight change to Bill C-11 in committee required forwarding notices "as soon as feasible" rather than "without delay", in order to give intermediaries suitable time to comply in the circumstances,²¹ which includes respecting due process and privacy.

(ii) Neutrality

14. The concept of neutrality is relevant to this Appeal in respect of both networks and technologies. Regarding network neutrality, neutral intermediaries are not legally responsible for content on their networks. Canadian law is consistent in this respect with copyright law in many jurisdictions, which "insulates providers (as carriers or hosts) from liability for third-party copyright infringement if they play a *passive-reactive* role."²² To the extent intermediaries are content-neutral, CIPPIC agrees with the Appellant about the effect of this Court's ruling in *CAIP*: "Parliament did not want copyright disputes between creators and users to be visited on the heads of Internet intermediaries".²³

¹⁶ Order re Copyright Modernization Act, PC 2014-675, SI/2014-58, (2014) C Gaz II, 2121-2123.

¹⁷ Bill C-60, An Act to amend the Copyright Act, 1st Sess, 38th Parl, 2005, cl 29.

¹⁸ Bill C-61, An Act to amend the Copyright Act, 2nd Sess, 39th Parl, 2008, cl 31.

¹⁹ Bill C-32, Copyright Modernization Act, 3rd Sess, 40th Parl, 2010, cl 47.

²⁰ Bill C-11, Copyright Modernization Act, 1st Sess, 41st Parl, 2011, cl 47 (as proposed).

²¹ Bill C-11, Copyright Modernization Act, SC 2012 c 20, cl 47 (as amended); Canada, Parliament, Legislative Committee on Bill C-11, 40th Parl, 3rd Sess, (13 March 2012) at 1035 (Robert DuPelle).

²² Jeremy de Beer and Christopher D. Clemmer, "Global Trends in Online Copyright Enforcement: A Non-Neutral Role for Network Intermediaries?", 49 *Jurimetrics J.* 375–409 (2009) at p 376.

²³ Society of Composers, Authors & Music Publishers of Canada v Canadian Assn of Internet Providers, 2004 SCC 45, at 131, cited in the Appellant's factum at paras 1, 83.

15. Regarding technological neutrality, courts should ensure a functionally equivalent balance between copyright and privacy in offline and online environments. There are two reasons the Respondents are wrong to imply that, because “internet technology has greatly improved in the last 14 years”,²⁴ intermediaries should have a new, non-neutral role in copyright enforcement.
16. First, the threats of technological advancement in recent decades are not only to copyright but also to other rights, particularly privacy. Surveillance of online behaviour such as website browsing, social media use, and Internet communication is now too common. The Internet makes informational privacy more vulnerable, and more important, than ever. Moreover, as this Court has affirmed regarding Internet subscribers’ identities and usage records: “The nature of the privacy interest does not depend on whether, in the particular case, privacy shelters legal or illegal activity. The analysis turns on the privacy of the area or the thing being searched and the impact of the search on its target”.²⁵
17. Second, online copyright enforcement has improved due to technological changes since early intermediary liability cases. For example, the widespread adoption of digital rights management systems coupled with legal prohibitions on their circumvention²⁶ has helped to reduce peer-to-peer file sharing and grow digital markets.²⁷ Section B further explains why Parliament chose to promote the growth of digital content markets with a more balanced approach than the American scheme of notice-and-takedown and mass litigation.

B. Parliament intended to avoid the problems of foreign enforcement practices.

18. Canada’s notice-and-notice scheme solves two specific problems with the *Digital Millennium Copyright Act* (i) the presumption of innocence not guilt and (ii) deterrence not facilitation of mass litigation.

(i) Presumption of innocence not guilt

19. Parliament intended to protect the rights of individual citizens rather than presume their guilt. Then-Minister of Canadian Heritage told the legislative committee considering proposed reforms:

Obviously the DMCA experience in the United States is something that we chose not to do as

²⁴ Respondents’ factum at para 24.

²⁵ *R v Spencer*, 2014 SCC 43 at para 36.

²⁶ *Copyright Act*, RSC 1985, c C-42, ss 41, 42(3.1).

²⁷ Sandvine, “2016 Global Internet Phenomena: Latin America and North America” (21 June 2016); Canada Media Fund, “Adjust Your Thinking: The New Realities of Competing in a Global Media Market” (November 2017) at 8.

a government. We chose not to go in that direction. ... We have proposed in the legislation notice and notice. We think that is pro-consumer and errs on the right of individual citizens rather than the presumption of guilt. We think that is the right thing to do.²⁸

20. While Canada was codifying the industry practice of notice-and-notice, it was generally known that unfounded notices of alleged infringement were commonplace; empirical data showed that over 30% of notices were defective.²⁹ The choice to presume Internet subscribers innocent has since proven sound, with “the broadest empirical analysis” revealing fundamental flaws in one in 25 notices.³⁰ The issue of “false positives” is not benign: “Copyright false positives inflict significant social harm in the form of increased litigation and transaction costs, distortions of licensing markets through rent-seeking behavior, increased piracy due to diminished public adherence with copyright law, and the systemic erosion of free speech rights and the public domain.”³¹
21. Parliament chose notice-and-notice because the problems inherent in any notice system are mitigated when the next step is not taking down content or commencing mass litigation, but rather forwarding the notice to deter further infringement. The problems would be exacerbated under a combined notice-and-*Norwich* scheme (especially an automated scheme with privacy-risking shortcuts, as the Respondent proposes), which explains why Parliament chose not to adopt that approach.

(ii) Deterring not facilitating mass litigation

22. The problems of presuming guilt and mass litigation are closely related under the United States’ scheme for online copyright enforcement. The notice-and-takedown provisions include an explicit mechanism to facilitate litigation by subpoenaing identities of alleged infringers from third parties.
23. Had Parliament intended to create a notice-and-*Norwich* scheme, it would have mirrored § 512(h) of

²⁸ Canada, Parliament, House of Commons Debates, 40th Parl, 3rd Sess, No 092 (2 November 2010) at 1150 (Hon James Moore) (emphasis added).

²⁹ Jennifer Urban & Laura Quilter, “Efficient Process or ‘Chilling Effects’? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act” (2006) 22 Santa Clara Computer & High Tech LJ 621 at 667.

³⁰ Jennifer M. Urban, Joe Karaganis & Brianna L. Schofield, “Notice and Takedown in Everyday Practice” (2017) UC Berkeley Public Law Research Paper No. 2755628 at 2, 13. See also Daniel Seng, “The State of the Discordant Union: An Empirical Analysis of DMCA Takedown Notices” (2014) 18:3 Virginia J of L & Tech 369.

³¹ Ben Depoorter & Robert Kirk Walker, “Copyright False Positives” (2013) 89:1 Notre Dame LR 319.

the *DMCA*, “Subpoena to Identify Infringer.”³² Under the express language of the *DMCA*, a rights holder may request a court to “issue a subpoena to a service provider for identification of an alleged infringer”. The service provider shall then “expeditiously disclose ... the information required”, *i.e.* “information sufficient to identify the alleged infringer”. The *DMCA* also describes explicitly the relationship between notices and other procedural rules: “the procedure for issuance and delivery of the subpoena, and the remedies for noncompliance with the subpoena, shall be governed to the greatest extent practicable by those provisions of the Federal Rules of Civil Procedure governing the issuance, service, and enforcement of a subpoena *duces tecum*.”³³

24. The *Copyright Modernization Act* includes nothing similar to indicate, even indirectly, that the notice-and-notice scheme should facilitate litigation against alleged infringers. To the contrary, the intent of the scheme is to deter infringement by putting alleged infringers on notice that they are not anonymous. The evidence considered by Parliament showed that notice-and-notice works.³⁴
25. Meanwhile, United States courts narrowed the applicability of the *DMCA* identity subpoena provisions. In *RIAA v Verizon*, the Court of Appeals for the District of Columbia ruled that § 512(h) does not apply to service providers acting as “mere conduits”, but only applies to service providers that host allegedly infringing content.³⁵ So, even under the United States’ scheme, which is less mindful than Canada’s of the balance between copyright holders’ and citizens’ rights, the usual reimbursement and other requirements for third-party discovery of connectivity providers apply.
26. In crafting Canada’s notice-and-notice system without an exemption from standard civil procedural rules of third-party discovery, Parliament was mindful of the adverse consequences of mass litigation. “Judges, scholars, and journalists alike”, it was said in one “copyright trolling” case, “have noted the recent trend—indeed, new business mode”.³⁶ In the words of another judge:

³² *Digital Millennium Copyright Act*, 17 USC § 512(h).

³³ *Digital Millennium Copyright Act*, 17 USC § 512(h).

³⁴ Canada, Parliament, *Legislative Committee on Bill C-32*, 40th Parl, 3rd Sess, (22 March 2011).

³⁵ *Recording Industry Association of America, Inc v Verizon Internet Services, Inc*, 351 F.3d 1229 (DC Cir 2003); see also Alice Kao, “*RIAA v Verizon: Applying the Subpoena Provision of the DMCA*,” 19 Berkeley Tech LJ 405 (2004).

³⁶ *Third Degree Films v Doe*, 286 FRD 188 at *189-191, *198-199 (D Mass 2012). See also Matthew Sag, “*Copyright Trolling, An Empirical Study*” (2014) 100 Iowa LR 1005 at 1015-1017, 1026; Sean B. Karunaratne, “*The Case against Combating BitTorrent Piracy through Mass John Doe Copyright Infringement Lawsuits*” (2012) 111 Mich LR 283 at 285, 303, 308.

[T]he plaintiffs have used the offices of the Court as an inexpensive means to gain the Doe defendants' personal information and coerce payment from them. The plaintiffs seemingly have no interest in actually litigating the cases, but rather simply have used the Court and its subpoena powers to obtain sufficient information to shake down the John Does.³⁷

Numerous courts across the United States have cited similar concerns about rights holders' efforts to twist procedural rules in the tens of thousands of file-sharing lawsuits against Doe defendants, both before and after Canada adopted its alternative notice-and-notice scheme.³⁸ Courts have also recognized that the need to protect defendants' rights and the integrity of the process "trumps [plaintiffs'] interest in maintaining low litigation costs",³⁹ and interpreted a range of procedural rules accordingly.

27. Mass disclosure of personal information to facilitate litigation is precisely what Canada sought to avoid with the notice-and-notice scheme. During legislative committee hearings, when the prospect of mass litigation was put directly to the President of the Canadian Association of Film Distributors and Exporters (involving one of the specific films underlying this Appeal, Voltage's *Hurt Locker*), he replied: "We're not interested in sweeping up the John Does."⁴⁰ The legislative records contain numerous similar exchanges showing that Parliamentarians intended to avoid the American approach of presuming guilt and promoting litigation when enshrining notice-and-notice into Canadian law.⁴¹

³⁷ *Raw Films Ltd v Does 1-32*, 2011 WL 6182025 at *3 (ED Va).

³⁸ *Arista Records LLC v Does 1-27*, 2008 WL 222283 at footnote 5 (D Maine); *MCGIP LLC v Does 1-149*, 2011 WL 4352110 at *4, footnote 5 (ND Cal); *SBO Pictures Inc v Does 1-3036*, 2011 WL 6002620 at *3-4 (ND Cal); *Pacific Century Int'l Ltd v Does 1-101*, 2011 WL 5117424 at *2-3 (ND Cal); *Third Degree Films v Doe*, 286 FRD 188 at *189-191, *198-199 (D Mass 2012); *In re BitTorrent Adult Film Copyright Infringement Cases*, 296 FRD 80 at *89-90 (ED NY 2012); *CineTel Films Inc v Does 1-1052*, 853 F Supp 2d 545 at *554 (D Md 2012); *Hard Drive Prods v Does 1-90*, 2012 WL 1094653 at *3, 7 (ND Cal), *Next Phase Distribution Inc v John Does 1-27*, 284 FRD 165 at *170 (SD NY 2012); *TCYK LLC v Does 1-87*, 2013 WL 5567772 (ND Ill).

³⁹ *K-Beech, Inc v John Does 1-41*, 2012 WL 773683 at *5 (SD Tex); *10 Grp v Does 1-435*, 2011 WL445043 at *6 (ND Cal).

⁴⁰ Canada, Parliament, Legislative Committee on Bill C-32, 40th Parl, 3rd Sess, (17 February 2011) at 1130 (Charlie Angus, Ted East).

⁴¹ Canada, Parliament, House of Commons Debates, 40th Parl, 3rd Sess, No 092 (2 November 2010) at 1130 (Charlie Angus); Canada, Parliament, House of Commons Debates, 40th Parl, 3rd Sess, No 092 (2 November 2010) at 1245 (Scott Simms); Canada, Parliament, House of Commons Debates, 40th Parl, 3rd Sess, No 092 (2 November 2010) at 1325 (Bill Siksay); Canada, Parliament, Legislative Committee on Bill C-32, 40th Parl, 3rd Sess, (22 March 2011) at 1135 (Charlie Angus, Suzanne Morin).

C. Notice-and-notice should safeguard not jeopardize online privacy rights.

28. Preventing intermediaries from recovering the costs of being careful before disclosing personal information would discourage the privacy safeguards that subscribers need. Moving from human review to machine-led processes for storing, retrieving, and transmitting personal information would compound the privacy problems that Parliament sought to minimize through notice-and-notice.

(i) Internet subscribers trust intermediaries as information fiduciaries.

29. Internet service providers have incredible power over subscribers. They are the gatekeepers of informational privacy on the Internet, with access to and control over personal information and private communications. The relationship of trust and confidence that makes subscribers' dependent on their service providers reflects the core notions underlying the fiduciary concept.⁴² The measures that Parliament intended service providers to take, or not take, reflect this relationship of trust, as well as the statutory obligations⁴³ to safeguard quasi-constitutional⁴⁴ privacy rights.

30. Intermediaries should not automatically collect or record the names and email addresses of individuals it has sent notices to. The *Act* expressly requires intermediaries to retain only "records that will allow the identity of the person ... to be determined",⁴⁵ not the person's identity directly. The Appellant and other Interveners may rightly argue that the distinction is efficient because the vast majority of notices will not lead to *Norwich* orders.

31. The distinction between identifiable and identified persons also safeguards privacy by not making intermediaries create and retain even more information that would be vulnerable to, for example, a data security breach. Court-imposed precautions in any one case cannot protect against the systemic vulnerabilities the Respondents wish to create by automatic identity retention and disclosure.

(ii) Delegating to machines to save time or money puts privacy at risk.

32. Canada already has a system resulting in millions of robo-notices sent each year. The notice system

⁴² Ian Kerr, "Personal relationships in the Year 2000: Me and My ISP" in *No Person Is an Island: Personal Relationships of Dependence and Independence* (Vancouver: University of British Columbia Press, 2002) 78-119 at p 100-110.

⁴³ *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5, s 7.

⁴⁴ *Douez v Facebook, Inc*, 2017 SCC 33.

⁴⁵ *Copyright Act*, RSC 1985, c C-42, para 41.26(1)(b).

“has evolved from a low-volume process based on human decision-making to a process dominated by automated systems capable of sending and processing massive numbers of requests.”⁴⁶ When implemented on a mass scale, trust is increasingly relinquished to machines over humans.⁴⁷

33. The consequences of erroneous robo-notices are significantly outweighed by the harms of mistaken disclosures of identities associated with Internet useage. The recipient of a clearly flawed robo-notice can simply ignore it if he or she is sure no wrong was committed. A mistaken identity disclosure associated with an inaccurate notice, on the other hand, means that sensitive personal information has been irreversibly put at risk. The stakes become even higher if the mistaken identity disclosure results in litigation. Internet subscribers named through a *Norwich* process face significant problems, ranging from legal costs to liability for infringement. That is why information must be verified manually; this crucial process cannot be entrusted entirely to machines. It takes more than two minutes to properly safeguard Internet subscribers’ procedural and privacy rights.
34. If intermediaries cannot recover the costs of safeguarding subscribers’ procedural and privacy rights during the *Norwich* process, common sense says two things will happen: They will take shortcuts, and/or they will raise prices. Neither is what Parliamented intended when enacting notice-and-notice. At the same time, a costless process for rights holders would create an incentive for mass *Norwich* requests associated with all notices that intermediaries forward. Parliament did not intend to create such a notice-and-*Norwich* scheme. This Court should not do so now.

Part IV – COSTS

35. The intervener does not seek costs and asks that no costs be awarded against it.

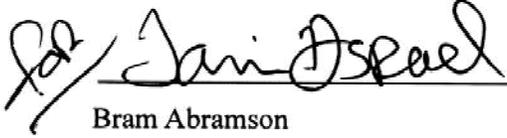
Part V – ORDER SOUGHT

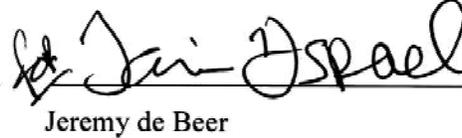
36. The intervener respectfully requests that its submissions be considered in resolving this appeal.

⁴⁶ Jennifer M. Urban, Joe Karaganis & Brianna L. Schofield, “Notice and Takedown in Everyday Practice” (2017) UC Berkeley Public Law Research Paper No. 2755628 at 87.

⁴⁷ Jason Millar and Ian Kerr “Delegation, Relinquishment and Responsibility: The Prospect of Robot Experts” in Ryan Calo, A Michael Froomkin, Ian Kerr, eds, *Robot Law* (Edward Elgar Press, 2014).

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 17th day of April, 2018.


Bram Abramson


Jeremy de Beer

Samuelson Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)
University of Ottawa, Faculty of Law, Common Law Section
57 Louis Pasteur Street
Ottawa, ON K1N 6N5

Tel: (613) 562-5800 x 2914

Fax: (613) 562-5417

Email: jdebeer@uottawa.ca

Counsel for the Intervener

Part VI – TABLE OF AUTHORITIES

No	Name	Para
CASES		
1.	<i>10 Grp v Does 1-435</i> , 2011 WL445043 (ND Cal), https://1.next.westlaw.com/Document/I55b4d0da351a11e088699d6fd571daba/View/FullText.html	26
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