

POLICY FORUM

Solutions for Canadian Digital Policy and Legislation

02 Laying the Groundwork: Defining Canada's Digital Policy

The Canadian Internet Society Policy Forum: Solutions for Canadian Digital Policy and Legislation

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Philip Palmer, Vice President, The Canadian Internet Society: A few years ago, I had the opportunity to reconnect with a former girlfriend of mine, and we had lunch together. We talked about old times. We talked about our new families and jobs, careers, etc., etc., and it was very pleasant. About three or four months later, I ran into my ex girlfriend's sister, and my sister, and my, her sister said to me, Oh, yes, you had lunch with Anne.

Has that happened? I said, yeah. What did she have to say about that? Oh, she said, you're still short.

So, I am short, and I intend to be brief. So as Frank outlined, the Policy Forum in June and this event are not the end, but rather the beginning of a process. The Canadian Internet Society has resolved to build on these experiences to create forums that bring together knowledge and expertise to offer government advice and how to tackle the challenges posed by the Internet and the knowledge economy that will confront any government of any political stripe.

In the few minutes available to me, I would like to address two issues that contribute to the failure of government to come to grips with the Internet and the knowledge economy. There are dozens of topics that are issues that I could single out, but I think that there are two that have posed particular obstacles to government policy over the last few years, and posed frustration for those of us who have attempted to understand or to help shape government policy.

The first is the culture of secrecy, and the second is legislative gamesmanship.

It's more than 40 years since the Access to Information Act came into effect. Over the years, the response times to access requests have lengthened, while an oversensitive bureaucracy has learned ever more adeptly to apply exemptions to prevent Canadians from learning what government knows and what government is doing.

I happen to know about this, because as a lawyer in the government, I contributed my learning and skills to that exercise. In parallel, the information environment in which we live has changed. So for instance, you look at the National Press Gallery in Parliament, and it is diminished. It's decimated, in fact.

So there are fewer people, professionals, able to watch for us. So for us to be able to fact Respond to government, contribute to government, contribute to our own governance. That gap has to be filled, and at the moment, there's a serious gap between what Canadians can know and what they must know.

In short, the culture of secrecy leads to a lack of accountability, both on the part of bureaucrats and of politicians, particularly ministers. A prime example of that, of course, is the ArriveCAN app. The Auditor General, with all of his or her powers, can't determine what happened, what it cost, who made the decisions, and also it's clear that somebody is lying to Parliament.

These are grievous sins in any democratic order but that culture of secrecy is impairing the ability of Canadians to hold the government to account. We also have this broad document of Privy Council secrecy that prevents even such routine matters as submissions to the Treasury Board from being public.

Why? Because they're secrets of the Queen's Privy Council for Canada. Sorry, King's Privy Council. Draft legislation is considered to be A secret of the Queen's Privy Council and this hobbles the ability of departments to, in fact, modify legislation in the drafting course. Consult with experts, consult with interest groups to ensure that the legislation that everybody wants is in fact, in position, be able to be adopted by parliament.

The deliberations of administrative tribunals are subject to deliberative secrecy. We don't know how the CRPC is making its decisions. There is no culture of dissent. There is no culture of accountability for the individual contributions to those decisions. I'm sorry. Okay. Justice Opinions. So the Department of Justice is the legal advisor to government.

We understand the need, in particular cases, for the need for solicitor client privilege, but really, should it apply to things like the constitutionality of legislation? Shouldn't that be something that is exposed to the public, open to debate, and permit an engagement on the basis of the legislative power that's being exercised?

And lastly, as a result of the decline in Public news organizations, lobbyists, have much more access to information than do news organizations and do citizens. The impact of this leads to distrust of government, disregard for expertise, and of course, where there are information gaps and knowledge gaps, the vacuum is filled with misinformation and disinformation.

The

second area I'd like to concentrate on is legislative gamesmanship. Consists of marrying privacy legislation with artificial so examples are marrying the privacy legislation with artificial intelligence legislation. The Two have no commonality. Marrying the online harms legislation with hate speech and the criminal code.

Yes, there are relations between the two, but one is complete code that needs to be examined, in its particular depth, for its particular characteristics, and its impact. And they're very different from the impact of having the Canadian Human Rights Commission look at various forms of hate speech, and the criminal code imposing penalties up to life imprisonment, per se, for offenses.

This gamesmanship has both stalled incredibly important legislation for Canadians, it's prevented, Parliamentary Committees from being able to properly study the legislation as such. And it's of course, frustrated those who are seeking to make submissions to Parliamentary Committees because there's only so much time, so much expertise to be brought to bear.

Distracts from focus scrutiny and it holds necessary legislation hostage to unpopular or underdeveloped legislation. Thank you very much. .

Hi, everybody. Thank you for coming. It's going to be an interesting afternoon, I hope. I have got seven minutes in which to explain the entire history of the Internet, which I will not do, and interest you in the policy issues that are before us. If you listen to Peter Thiel, we're stagnating.

Generally speaking, the progress of the early 20th century has stopped, and we are spending a lot of time not going forward. If you listen to Eric Schmidt, we're doing fine on both the atom side and the signal side. Now, Kiel will admit that in the terms of computer communications, we have made enormous, fast, rapid, transformative progress.

So, we make that progress because, first, the laws of physics allow it. The laws of physics do not allow flying cars on any great level, but they do allow for faster signal processes. And secondly, out of the genius of DARPA, or whatever it was the Internet Protocol was invented. Now, it's extremely important to realize the Internet Protocol is an engineering standard.

It's not a law. The law is not obliged to pay any attention to it. The law is, in fact, frequently ignores it. But out of the creation of the Internet Protocol, the Red Sea of things departed. And on one side we had Transport, and the other side we had applications. And applications didn't exist before the TCP/IP protocol was invented.

So we have this division of the waters between transport, which costs billions, and applications, which cost millions. And the entry into the applications, well, there's plenty of them, they're growing every day, and it's a season of fertile experimentation. And new markets, and new avenues, and new ways of doing things.

All this is perfectly obvious. But it's important to remember that the Internet is only an engineering standard, and that laws are not obliged to pay any attention to it. A particular example, which recently comes to mind, is our redoing of the Broadcasting Act, which had the effect of stamping each and every part of the current situation with the old model of the Broadcasting Act.

And what I mean by that is, simply speaking, a society can innovate by allowing innovation, or a society can stifle innovation By the carrying forward of obsolete forms of thinking. Now, obsolete forms of thinking are carried forward because people have an economic interest in doing so. And the balance between whether we're going to have innovation or stagnation is very frequently a very political and messy decision, messy situation.

And we hope that the example of the difficulties that the Online Streaming Act has gotten itself into will be an example of what not to follow. To stop trying to stamp the future with the assumptions of the past. And we hope, that some learning will occur. So, there's many areas in which the Internet Society can play.

Tim Denton, Chair, The Canadian Internet Society: Some battles we've won, some we've lost, some we will hope to win again. But it's important that if a society is to innovate, minds must be open to innovation. It's not just the laws of physics that determine the outcome. It's also whether the society can tolerate new ways of thinking, new ways of doing it, New social classes, new ways of getting things done.

And we on the Internet Society are very much in favor of the possibilities of innovation. We are concerned with what the innovation may take us, but we're mostly very concerned about the apparent inability to accept the degrees of changes that are being required of us in our decision makers. And our institutional arrangements are in many cases out of touch with where we need to go.

So this afternoon. I hope you will have an interesting and broad ranging discussion of the bunch of things where the possibilities of innovation are celebrated and responsible reactions to these innovations are contemplated. Thank you all very much.