

**Consultation on Proposals for Ensuring Appropriate Regulation of Artificial Intelligence
Submission to the Office of the Privacy Commissioner of Canada
Prepared by the Association of Canadian Publishers
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The Association of Canadian Publishers (ACP) represents 115 English-language book publishers from all ten provinces and Nunavut. Our members are independent businesses, owned and operated by Canadians. Along with our francophone counterparts, we publish 80% of the new books written by Canadian authors each year, contribute to local economies, and are a vital part of Canada’s cultural industries. We are known internationally for our creativity, entrepreneurship, and innovative approach to business, and for the high-quality books we publish. We are fully engaged in the digital marketplace and continue to experiment with and implement the use of new technologies to support the production, distribution, and marketing of the original content we publish.

ACP welcomes the opportunity to respond to the Office of the Privacy Commissioner’s suite of proposals for reforming the Personal Information Protection and Electronic Documents Act (PIPEDA) in a digital era involving artificial-intelligence (AI) systems. We acknowledge the work of the International Publishers’ Association Copyright Policy Working Group, whose submission to the World Intellectual Property Organization on the subject of AI informs this response.

Responsible innovation involving AI systems must take place in a regulatory environment that respects fundamental rights, including copyright, and creates the conditions for trust in the digital economy to flourish.

In addition to the right to privacy, we encourage the OPC and other government departments and agencies to consider the full range of human rights as a regulatory regime for AI is developed. For example, Article 27 of the UN Declaration of Human Rights protects both the right to access of content, but also the right to compensation for use of that content:

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

It is from this context—as creators and publishers of original content, and as rightsholders to that content—that we approach the question of AI.

International perspectives on AI and publishing

The international publishing industry has been an active contributor to deployment and development of AI based products, services and platforms and of machine learning technologies. Technologies that might be included under a concept of AI cover multiple areas in the publishing industry, such as machine generated content (e.g. books, snippets), editing services (e.g. data checking), automated peer-review services to facilitate human peer-reviewing, optimized search and delivery services (e.g. recommend content to readers, enhanced search features, cross-references for research reliability).

In the publishing industry, AI has been a topical issue, not only in the value chain (for example the integration of AI in production and distribution of published works), but also as the subject of industry-based research. Some of the questions relate to the ethics of AI, security, data privacy, transparency, and copyright.

AI has been the subject of policy instruments, public consultations and public research in many jurisdictions across the world. In October 2019, Gould Finch and Frankfurter Buchmesse published a report “The Future Impact of Artificial Intelligence on the Publishing Industry”, the outcome of six months of research based on more than 300 interviews with industry professionals. The paper focuses on assessing operational impacts of AI. The UK Publishers Association will be publishing preliminary conclusions of new research commissioned on AI, Machine Learning and the Future of Publishing in spring 2020. In the United States, the US Patents and Trademarks Office held a consultation during January 2020 on IP regulatory issues arising from AI, while the White House published a set of regulatory principles to govern AI development in the private sector in the context of the US administration’s American AI initiative. The United Kingdom’s consultation on the Online Harms White Paper last year, although not focused on AI specifically, mentions “The government takes both the protection of personal data and the right to privacy extremely seriously.” The European Commission has been working on AI through various communications and reports and released a white paper, “On Artificial Intelligence—A European Approach to Excellence and Trust,” in February 2020.

Other jurisdictions have launched (or are in the process of launching) national strategies on AI: India, Singapore and New Zealand, for example. Across the world, topics that are being prioritized in terms of public policy are security, ethics, privacy and human rights, in addition to aspects related with protecting and fostering business investments. AI developers in many jurisdictions argue that they need a copyright exception to facilitate machine learning, a contention that seems to us to be opportunistic rather than necessary.

Recommendations

In considering the implications of AI on the publishing industry, we offer the following recommendations:

- AI developers' use of copyright-protected works must be discoverable and compensable. In order to maintain high-level investments required for content production and delivery in the digital age, publishers must be able to recoup their investments, in part through the income generated by licensing. Any policy that would replace licensing with exceptions and limitations as a means to develop AI and machine learning would undermine the development of new markets and prevent future investments, in addition to distorting market competition, in particular if the growth of AI is achieved at the expense of degrading the protection and value of copyrighted content.
- Deepfakes might be an issue requiring urgent attention, but it must be noted that the predominant impacts in this area are on human rights, compliance with data privacy regulations and security. Prior to discussing ownership of rights in those cases, it is necessary to assess whether potential new content generated on that basis in fact originates from violations of human rights or data privacy regulations. If that is the case, it might be inappropriate to discuss copyright protection in such context.
- If AI development and production processes use copyrighted content without the necessary rights clearance or in violation of licensing terms and conditions, infringement of copyright must be established in order to avoid encouraging increased piracy and misuse of AI technologies, which ultimately would allow bad actors to achieve impunity and avoid enforcement laws. Existing national laws, based on international treaties, should already enable national authorities to determine copyright infringement and establish liability of beneficiaries of AI systems used to infringe rights. It is also important to take into account that the benefits of infringement for the infringer in this context could assume various forms, including monetary (traditional or crypto currencies), financial (e.g. increasing the value of stock market valued technologies and companies), commercial (directly or indirectly, whether there is a sale or a benefit via mechanisms such as advertisement in infringing websites) or of another kind (for example reputational value).
- Effective enforcement of intellectual property rights in the online environment is a crucial point of a resilient copyright framework that enables sustainable development of local creative industries. AI technologies can be deployed to benefit the effectiveness of online enforcement mechanisms, notably by facilitating notice-and-notice and site-blocking procedures, and



encouraging tech companies to increase efforts to actively prevent access to and distribution of infringing content by activating voluntary filtering mechanisms to identify infringing content and exclude bad actors abusing platforms' terms and conditions of use.

Conclusion

ACP applauds the OPC for recognizing the need for a rights-based approach to AI, and urges the Office and other government departments to consider copyright as new legislation and regulation are considered. This is critical as AI continues to evolve, to ensure that Canadian publishers can continue to take full advantage of the opportunities the digital marketplace presents, and to continue to invest in original content.

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