Active consultation: Amendments to the Copyright Act relating to generative artificial intelligence

October 27, 2023

On Oct. 12, 2023, the Federal Government (the Government) posted a consultation paper entitled "Consultation on Copyright in the Age of Generative Artificial Intelligence" (the Paper). The Federal Government is seeking feedback on the three issues raised in the Paper by no later than Dec. 4, 2023, using an online form. This consultation follows one launched in 2021 relating to A Modern Copyright Framework for Artificial Intelligence and the Internet of Things.

The Paper speaks to the shift in digital marketplaces with the widespread use by the public of generative artificial intelligence (AI) systems. Because of the nature of these systems, they are trained on large datasets of text, images or other data. Accordingly, a number of stakeholders have raised concerns. Some stakeholders are "concerned about the uncompensated use of copyright-protected works in the development of AI systems, the potential for AI-generated outputs to infringe existing copyright-protected works, and the lack of practical enforcement remedies for rights holders." The AI industry is said to be concerned about the uncertainty regarding the copyright framework as it relates to AI and concerns about the chilling of domestic investment and impact opportunities in Canada as a destination for AI model development and training. Thus, this consultation was launched, with the goal said to be to conduct fact-finding to inform copyright policy.

The Government has indicated it will be seeking to balance the need to support innovation and investment in AI, among other emerging technologies, with the need to support creative industries in Canada and the right to be sufficiently remunerated for the use of copyrighted materials.

The Paper provides questions relating to copyright policy grouped into three categories. These three categories are summarized in the Paper as follows:

1. Text and data mining (TDM) and the training of machine learning models, which involves the reproduction of large quantities of data and can include data taken from copyright-protected materials, and both the impact on and potential compensation for rights holders.

2. The generation, or assistance in the production, of creative outputs by AI systems and the associated attribution and determination of copyright protection on AI-generated content and AI-assisted content.
3. The use and commercialization of AI systems and liability for any infringement that occurs, including potential personal liability.

The consultation paper provides significant background on the previous stakeholder consultations from 2021, as well approaches in other jurisdictions to these questions in respect of each of these three categories.

Thus, the Government is seeking feedback in the online consultation form no later than Dec. 4, 2023. The form indicates that it will be seeking technical evidence as well as views on the three categories described. General comments and suggestions are also permitted. Comments received through the online form will be made publicly available following the close of consultation.

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