

## Government of Canada Launches Consultation on a Modern Copyright Framework for Online Intermediaries

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On April 14, 2021, the Minister of Innovation, Science and Economic Development and the Minister of Canadian Heritage announced the launch of a public consultation on Canada's copyright framework for online intermediaries. The wide-ranging consultation, anchored by a consultation paper entitled *A Consultation on a Modern Copyright Framework for Online Intermediaries*, will address a host of vital issues, including safe harbour protections for intermediaries, remuneration for the online use of copyright-protected content, and the enforcement tools available to combat online infringement. Feedback from interested parties will be accepted until **May 31, 2021**.

Canada's copyright framework was last modernized in 2012, when extensive changes were made to the *Copyright Act*. Among those reforms was a new regime that establishes liability, in limited circumstances, when online intermediaries infringe copyright or serve primarily to enable infringement by others. It also includes "safe harbour" provisions that excuse intermediaries from liability where they merely provide the technical means by which others infringe copyright.

Since that time, the distribution and use of copyright-protected content on the Internet has expanded and the services provided by online intermediaries have become more diverse. In some cases, intermediaries play more active roles in user activities involving copyright-protected content. As a result of these developments, the current framework has been the subject of ongoing debate.

Some rights holders have expressed concern that the current framework diminishes their remuneration for online uses of their content and impairs their enforcement efforts. Among other things, they have advocated for greater obligations on intermediaries to prevent or stop infringement and incentives to pay rights holders equitably for uses of their content on those platforms. Intermediaries, on the other hand, have argued that the current framework sufficiently protects online copyright content, promotes access to information and freedom of expression, and encourages advancements in online services and economic growth in Canada.

The public consultation paper articulates three underlying policy objectives that will guide reform: to protect and encourage the use of copyright-protected content online; to safeguard individual rights and freedoms in an open Internet; and to facilitate a flourishing digital market. It also identifies at least four areas of potential reform:

1. **Clarify intermediaries' safe harbour protections**, including how intermediaries' knowledge of

infringement and content-related activities affect their liability as well as their attendant obligations.

2. **Compel remuneration of rights holders through collective licensing** of their copyright-protected content on certain platforms.
3. **Increase transparency in rights holders' remuneration and online uses of their content.**
4. **Clarify or strengthen rights holders' enforcement tools against online infringement**, including by way of a statutory "website blocking" and "de-indexing" regime.

The potential reforms to Canada's copyright framework could have significant implications for intermediaries and rights holders alike. While the importance of the Internet, and of online intermediaries, to the dissemination of content is undeniable, effective tools to combat online piracy are also important to the ability of rights holders to protect their content and secure reasonable remuneration for uses of their works. As a result, the consultation announced this week is bound to attract feedback from a wide variety of stakeholders.

The Cassels team will be monitoring these developments closely and will provide further updates as the process plays out. In the meantime, if you have any questions about the issues raised by the consultation, or the consultation process itself, please reach out to Casey Chisick, Eric Mayzel, Jessica Zagar, or any member of our Intellectual Property Group for assistance.

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