



**Submission to the Government of Canada Consultation
(Innovation, Science and Economic Development Canada) : Enhancing
Trust in Artificial Intelligence Through Increased Transparency**

Transparency as an Essential Condition for Our Cultural Sovereignty

by the Coalition for the Diversity of Cultural Expressions

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About

The Coalition for the Diversity of Cultural Expressions (CDCE) brings together Canada's leading French- and English-speaking professional organizations in the cultural sector. It is composed of approximately 50 organizations that collectively represent the interests of more than 350,000 creators and cultural professionals and 3,000 businesses in the book, film, television, new media, music, performing arts and visual arts sectors. The CDCE speaks as a coalition, following consultation with its members.

Concerned both with the economic health of the cultural sector and the vitality of cultural creation, the CDCE works primarily to ensure that cultural goods and services are excluded from trade negotiations and that the diversity of cultural expressions is protected in the digital environment.

Introduction

The CDCE submits these comments as part of the Government of Canada's consultation entitled *Enhancing Trust in Artificial Intelligence Through Increased Transparency*.

The CDCE shares the vision set out by the Government of Canada in its National Artificial Intelligence (AI) Strategy, according to which "Canadian AI must support, reflect, and project Canadian culture, which includes our customs, our history, and our heritage." It also welcomes the recognition that "[b]uilding trustworthy and reliable AI needs a safety-first approach grounded in law".

For the CDCE, the development and deployment of artificial intelligence systems must be grounded in three fundamental pillars: (a) authorization, (b) remuneration, and (c) transparency (collectively, the "ART" principles). The present consultation, which focuses on transparency, provides an opportunity to clarify the conditions necessary for these principles to effectively contribute to trustworthy AI.

In the discussion document [*Enhancing Trust in Artificial Intelligence Through Increased Transparency*](#), on which this consultation is based, the Government adopts a broad understanding of transparency, which "refers to the availability of information about AI systems, such as when they are being used, how they work, and their capabilities and limitations." It further recognizes that transparency needs are varied and may "call for different kinds of notices,

disclosures, explanations, and recordkeeping, from different actors to different recipients, at different points in the AI lifecycle”.

This understanding of transparency is consistent with the CDCE’s concerns, while requiring further clarification to account for the specific realities of the cultural sector. For the CDCE, public trust in AI depends on the public’s ability to verify the provenance of content and understand how AI systems, particularly generative AI systems, operate. A lack of transparency undermines the public acceptance of AI and risks compromising the development of a responsible and sustainable ecosystem.

Trust in AI also depends on respect for the rights of rightsholders. In the cultural sector, transparency is an essential condition for the exercise of rights recognized under the *Copyright Act*. More specifically, transparency is essential to enable rightsholders to authorize the use of their works or other subject matter protected by copyright (“Copyrighted Content”), to negotiate remuneration or other compensation for the use of their Copyrighted Content, and to exercise legitimate remedies where such content has been used without authorization.

Against this backdrop, this submission sets out four positions on transparency:

1. As a general principle, transparency obligations relating to Copyrighted Content should apply to all AI systems, regardless of their level of risk;
2. Rightsholders must be informed as to whether their Copyrighted Content has been used by or for an AI system;
3. Transparency must make it possible to distinguish Copyrighted Content from content that is not protected by copyright; and
4. AI systems that influence the discoverability of Copyrighted Content must be transparent.

1. Transparency obligations relating to Copyrighted Content should apply to all AI systems, regardless of their level of risk

“Through this consultation, the Government is seeking to understand where transparency about AI systems and AI-generated content matters most to Canadians [...]” (Section 4. Conclusion). In particular, the Government welcomes views on the following cross-cutting questions:

- Given the areas discussed here, when is AI transparency most important, and are there any areas where action would be premature? Are there other areas that should be considered for action to enhance AI transparency?

- How should any measures account for the circumstances of small and medium-sized enterprises?

While some AI regulatory or legislative frameworks, including the previous C-27 Canadian bill and others adopted in foreign jurisdictions, provide for obligations to be adjusted according to the level of risk associated with AI systems, the CDCE recommends that transparency obligations relating to Copyrighted Content constitute a universal requirement. These obligations should apply to all AI systems developed, marketed or used in Canada, regardless of their level of risk. Even where an AI system is considered low-risk, it may have been trained on Copyrighted Content, contribute to the creation of competing content, or affect rightsholders' revenues. Accordingly, the CDCE does not consider action aimed at ensuring transparency to be premature solely because an AI system is considered to pose a low level of risk.

Similarly, while any measures should take into account the circumstances of small and medium-sized enterprises, the size of an organization should not constitute grounds for an exemption where that organization develops or operates AI systems that may affect rightsholders' rights, their remuneration, or the discoverability of their Copyrighted Content.

2. Rightsholders must be informed as to whether their Copyrighted Content has been used by or for an AI system

"In Canada, there are initiatives encouraging AI developers or deployers to publicly disclose information about their systems or risk management frameworks" (Issue 3.3. Information about AI Systems). However, the CDCE considers that, in the absence of binding regulatory requirements, these measures are insufficient in the current context. The Government is seeking stakeholder feedback on, among others, the following questions:

- What kind of information about AI do businesses need to adopt AI safely and responsibly? Do businesses currently have access to the information that they need? How can the Government best balance the need to increase transparency (including input transparency) against the need to protect confidential business information?
- Who in the AI value chain (developers, deployers, or others) is best placed to provide what information about AI systems, how they are created, and their capabilities and limitations?
- Are existing disclosure practices and legal frameworks sufficient to provide the information that users and other stakeholders need? If not, where do gaps remain and what actions (e.g., regulatory measures, guidance and codes of conduct, standards and

technical solutions, research and development, literacy initiatives, procurement requirements) do you think the Government should take?

The CDCE recommends establishing robust documentation requirements for AI system developers to enable rightsholders to determine whether their Copyrighted Content has been used at any stage of an AI system's lifecycle, including in the development, training, fine-tuning, or evaluation of an AI system. These requirements would, in particular, increase input transparency. Without access to this information, it is virtually impossible for rightsholders to negotiate licences, obtain appropriate remuneration or other compensation, or exercise the remedies available under the *Copyright Act*. The numerous copyright infringement proceedings brought against AI system developers, including in Canada, the United States, and the European Union, illustrate the extent of the alleged infringements and the need for rightsholders to have access to the information required to effectively exercise their rights.

In this context, the CDCE considers developers to be the actors in the AI value chain best placed to provide this information. To that end, they should be required to maintain detailed records identifying the Copyrighted Content used and the manner in which it was used. In particular, the CDCE recommends that developers maintain detailed information regarding Copyrighted Content used by or for their AI systems, including:

- the sources of the Copyrighted Content and associated metadata;
- the manner in which it was acquired;
- known or reasonably identifiable rightsholders;
- the categories of Copyrighted Content concerned;
- the uses made of the Copyrighted Content;
- the duration of its retention and use;
- the location of copies of the Copyrighted Content; and
- the legal basis relied upon for its acquisition and use.

These records should be accessible to rightsholders or their representatives, enabling them to determine whether their Copyrighted Content has been used and to exercise their rights accordingly. The records should be provided in a readable and usable format.

In this regard, the requirements introduced by Quebec's Law 25 with respect to the protection of personal information provide a relevant point of reference. Section 12.1 of the *Act respecting the protection of personal information in the private sector* provides, in particular, that where an organization uses personal information to render a decision based exclusively on automated

processing, it must inform the individual concerned accordingly. At the individual's request, the organization must also inform them of (1) the personal information used to render the decision, (2) the reasons and principal factors and parameters that led to the decision, and (3) their right to have the personal information used to render the decision corrected. These requirements build on the principles of transparency and access already established at the federal level under the *Personal Information Protection and Electronic Documents Act* (PIPEDA), while establishing more specific transparency obligations with respect to automated processing. The CDCE believes that a comparable approach should apply to AI and Copyrighted Content.

In sum, information should be made available in standardized, interoperable and machine-readable formats to facilitate its review and analysis by rights holders and their representatives. Vague or generic information would not satisfy the intended transparency objectives. Experience in the European Union demonstrates that a summary that lacks sufficient detail, is difficult to locate, or is provided in a non-standardized format does not enable rightsholders to effectively exercise their rights.

These requirements also respond more broadly to the need to determine whether existing disclosure practices and legal frameworks are sufficient to provide users and other stakeholders with the information they need. It is clear that existing mechanisms do not systematically provide rightsholders with the information necessary to determine whether their Copyrighted Content has been used by an AI system.

The proposed transparency obligations would not require the disclosure of source code, AI model parameters, or developers' legitimate trade secrets. Rather, their purpose would be to ensure access to sufficient information to enable the effective exercise of rights under the *Copyright Act*.

These transparency obligations must be accompanied by effective compliance mechanisms. Where a developer fails to maintain the required records or provide access to them, a rebuttable presumption should apply that Copyrighted Content was used. Such a presumption would help address the information asymmetry between developers and rightsholders and strengthen the effectiveness of transparency obligations. Otherwise, actors that fail to comply with these obligations could find themselves in a more advantageous position than those that do.

Finally, the CDCE reiterates its opposition to the introduction of any legislative exception that would permit text and data mining or the use of Copyrighted Content without the prior authorization of rightsholders. Such an exception would deprive rightsholders of control over the

use of their Copyrighted Content and undermine their ability to prevent unauthorized uses or to obtain remuneration or other compensation for such uses. Transparency obligations cannot serve as a substitute for authorization; rather, they must facilitate obtaining it.

3. Transparency must make it possible to distinguish Copyrighted Content from content that is not protected by copyright

“Canadians are encountering AI-generated content across a wide range of contexts. In some situations, the AI origin is visible or expected, but more often, it is not. Canadians encounter news reporting, product reviews, and audio-visual content across the internet, often without any indication of whether it was written by a person, generated by an AI system, or produced through some combination of both” (Issue 3.1. AI-Generated Content). The Government is considering a range of possible approaches to improve transparency about AI-generated content and is interested in receiving stakeholder feedback on, among others, the following questions:

- What would best help Canadians determine when content is AI-generated (e.g., invisible or visible watermarks, disclaimers, provenance metadata)?
- Do existing market practices, technical tools, and legal frameworks make it easy enough to know when content is AI-generated? If not, where do gaps remain and what actions (e.g., regulatory measures, guidance and codes of conduct, standards and technical solutions, research and development, literacy initiatives, procurement requirements) do you think the Government should take?

The CDCE considers that transparency measures must make it possible to distinguish Copyrighted Content from content that is not protected under the *Copyright Act*. This distinction is particularly important in the current context, where Copyrighted Content is increasingly distributed or commercialized through digital platforms. A lack of transparency regarding the use of such content in the development or operation of AI systems directly affects rightsholders’ ability to exercise their exclusive rights and obtain remuneration, both of which depend on the ability to identify and track the use of their works. The public must also be able to know when content has been generated by an AI system or when Copyrighted Content has been used in the process. Finally, transparency is essential to the proper functioning of collective management organizations, whose role is to collect and distribute royalties to rightsholders. Without access to reliable information about the use of Copyrighted Content by AI systems, these organizations cannot effectively fulfil their mandate to represent and remunerate creators.

The Canadian legal framework already provides a basis for addressing this issue through the concepts of originality and authorship. These concepts are grounded, in particular, in the exercise of skill and judgment, as defined by the Supreme Court of Canada in *CCH*, and, more specifically, in the existence of meaningful human control over the creative process. The CDCE does not consider it appropriate for the CDCE itself to define the precise threshold at which human intervention becomes sufficient for copyright protection to arise, nor does it consider that such a threshold should be determined by the Government. Given the diversity of artistic practices and creative processes, it would be difficult to establish a uniform threshold of AI use applicable across the cultural sector. AI may be used at different stages of the creative process depending on the discipline. The manner and degree of disclosure regarding content generated by an AI system should therefore be adaptable to sector-specific realities, in consultation with the sectors concerned. If this issue is not addressed through legislation or regulation, it would ultimately fall to the courts to interpret and apply the law. Nevertheless, the distinction between Copyrighted Content and AI-generated content that is not protected by copyright remains important, as it directly affects the exercise of rights and the authorization and remuneration mechanisms applicable to different actors in the cultural sector.

Digital watermarks, provenance metadata, and other technical mechanisms may be useful tools in this regard. However, the choice of technical means used to achieve transparency objectives should be left to the relevant actors within each creative sector or discipline. The CDCE further recognizes that sector-specific nuances may arise as to the most appropriate methods for identifying the involvement of AI systems in creative processes.

4. AI systems that influence the discoverability of Copyrighted Content must be transparent

The Government recognizes that “[k]nowing that what one sees online is mediated by a recommendation algorithm can also inform consumer behaviour” (Issue 3.2. AI Interaction). The Government is considering a range of possible approaches to improve transparency about AI interaction and is interested in receiving stakeholder feedback on, among others, the following questions:

- When and why is it most important to know that you are interacting with an AI system? Are there contexts where you don’t need to know that you’re interacting with AI?
- What factors make a disclosure of AI use meaningful and effective for the user?

The discussion document also addresses transparency regarding AI agents and notes that possible measures include “disclosure measures on when and how agentic AI is used; [and] the types of actions the deployed agentic AI systems are empowered to take” (Issue 3.5. AI Agents). In this context, the Government is also seeking feedback on the following questions:

- Are you concerned about the use of AI agents? In what contexts is it most important to know when an AI agent is in use? Why?
- Who should be responsible for disclosing the use of AI agents? What kinds of information should they be recording regarding the activities of AI agents, and what kinds of disclosures should they be making, and to whom?

The CDCE considers that transparency must also extend to systems that influence the discoverability of Copyrighted Content. As noted in the discussion document, “[...] AI shapes what people see and experience online, as with algorithms recommending content.” Knowing that content presented online is influenced by such a system can also affect user behaviour. Transparency regarding the role played by these systems is therefore an important issue for content discoverability.

Canada already recognizes the importance of the discoverability of cultural content within its legislative and regulatory framework. The *Online Streaming Act* amended the *Broadcasting Act* to bring online undertakings within its scope and to establish obligations relating to the promotion and discoverability of Canadian and French-language content. The CRTC’s regulatory policies developed under this framework seek, among other objectives, to support the discovery of Canadian content, including French-language and Indigenous content, on digital platforms.

Taking measures to enhance transparency in this area would complement and build upon these existing efforts.

The discovery of Copyrighted Content increasingly depends on systems that use recommendation algorithms, automated decision-making systems, and potentially AI agents capable of selecting, ranking, recommending, or summarizing content for users. These systems directly influence public access to Copyrighted Content and, consequently, the revenues and visibility of Canadian creators and cultural businesses.

The CDCE believes that companies should be transparent with users, rights holders and relevant stakeholders when their systems and services make recommendations, rankings or prioritization decisions as a result of algorithmic intervention. In addition, these individuals should have access

to an intelligible explanation of the main factors that led to the decision or recommendation. This approach is consistent with principles already recognized in relation to automated decision-making in the privacy context, including those reflected in Quebec's Law 25 (s. 110). Without requiring the disclosure of trade secrets or the source code of the systems concerned, it should be possible to provide meaningful information about the main parameters, relevant factors, and considerations that influenced the recommendation or ranking of content. Such transparency is essential to better understand the impact of algorithmic systems and AI agents on the discoverability of Copyrighted Content, on the diversity of cultural expressions, and on the ability of creators to reach their audiences.

Conclusion

Transparency is the foundation of a responsible AI ecosystem. It is essential both to supporting public trust in AI and to enabling rightsholders to effectively exercise their rights.

For the cultural sector, transparency is a prerequisite for authorizing uses, remunerating rightsholders, and effectively exercising the rights provided under the *Copyright Act*. In this context, the CDCE puts forward four fundamental positions: (1) transparency obligations relating to Copyrighted Content must apply to all AI systems, regardless of their level of risk; (2) rightsholders must know whether their Copyrighted Content has been used by or for an AI system; (3) transparency must make it possible to distinguish Copyrighted Content from content that is not protected by copyright; and (4) AI systems that influence the discoverability of Copyrighted Content must be transparent.

To implement these principles, Canada should adopt a transparency framework that includes:

1. Documentation and disclosure requirements concerning all Copyrighted Content accessed, as well as the associated metadata;
2. A rebuttable presumption where these requirements are not met;
3. Enhanced transparency regarding AI-generated content;
4. Disclosure requirements for recommendation systems, algorithmic systems, and AI agents that influence content discoverability; and
5. A right to know the main factors that led to a recommendation or automated decision affecting access to cultural works.

Finally, Canada should not “mechanically” transpose a model developed in another jurisdiction. The approaches adopted elsewhere respond to specific circumstances and are based on legislative frameworks that do not always have a Canadian equivalent. The particularities of Canada’s copyright regime, its two official languages, its bijural legal system, and the objectives specific to Canadian cultural policies, including the imperative of ensuring the discoverability of Canadian, French-language and Indigenous content, justify the development of a distinctly Canadian framework.

The European experience also demonstrates that poorly calibrated obligations do not enable rights holders to effectively exercise their rights. Canada has an opportunity to go further from the outset by establishing robust requirements supported by effective compliance mechanisms.

Such an approach would also be consistent with Canada’s longstanding role in protecting and promoting the diversity of cultural expressions and cultural sovereignty. The CDCE expects Canada to continue exercising this leadership in the development of its AI framework.