

QUESTIONNAIRE ON ARTIFICIAL INTELLIGENCE POLICIES

TELL US WHO YOU ARE

Country/Region	Canada
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NATIONAL AI STRATEGIES

1. Does your country have a national/regional AI strategy in place?

- No
 Yes
 Draft/proposed only
 Do not know

2. If so, does the AI strategy identified in Q1 consider IP?

- No
 Yes
 Draft/proposed only
 Do not know

3. Please provide details of the AI strategy identified in Q1 (name, short description, year, URL, responsible organization name and, if relevant, its relation to IP).

The [Pan-Canadian Artificial Intelligence Strategy](#) was released in 2017 and is implemented in partnership with the Canadian Institute for Advanced Research and three centres of excellence (the Alberta Machine Intelligence Institute (AMII) in Edmonton, the Vector Institute in Toronto, and the Montreal Institute for Learning Algorithms (Mila) in Montreal). The strategy aims to provide the support, resources, and talent for AI innovation and investment and to demonstrate global leadership on economic, ethical, policy and legal implications around advancement in AI technologies.

In addition to the Pan-Canadian AI Strategy, related strategic commitments in Canada include:

Canada is collaborating with other countries to promote discussion around AI technologies. As a G7 country, Canada shares the [Charlevoix common vision](#) for the future of artificial intelligence released in June 2018.

- Also in June 2018, Canada and France proposed the creation of an international study group – the [Global Partnership on AI \(GPAI\)](#) – that would be a global center for understanding and sharing research on AI issues and best practices.
- In 2018, the Government of Quebec released its [Strategy for the Development of Quebec’s Artificial Intelligence Ecosystem](#). As part of the strategy, the recommendations note that in order to “develop the Quebec AI sector, the issue of intellectual property needs to be carefully considered.”

4. Does your country have any measures/provisions in its IP framework that were specifically enacted for AI (an example would be a modification of copyright law for computer generated works)?

- No
 Yes
 Draft/proposed only
 Do not know

5. Please provide details of the relevant legislative measures/provisions identified in Q4 (name, section, short description, year and URL).

N/A

6. Is there any case law relevant to AI and IP in your country/region?

- No
 Yes
 Do not know

7. Please provide details of the decision(s) relating to Q6 (name, short description of subject matter, year and URL).

Courts in Canada have so far not rendered a decision on a case directly involving the use of AI. There are nonetheless a number of IP cases that could be relevant to AI and give guidance on how Canadian courts could approach novel questions raised by AI in future cases, including questions related to originality, authorship, joint authorship, and infringement. Notable cases include, but are not limited to the following:

- [Canadian Broadcasting Corp v SODRAC 2003 Inc, 2015 SCC 57, \[2015\] 3 SCR 615.](#)
- [Law Society of Upper Canada v CCH Canadian Limited, 2004 SCC13](#)
- [Gould Estate v Stoddart Publishing Co Ltd, 30 OR \(3d\) 520, 1998 CanLII 5513.](#)
- [Re Editors' Assn of Canada / Assoc canadienne des réviseurs Certification Order, 2002 CAPPRT 039.](#)
- [Century 21 Canada Limited Partnership v Rogers Communications Inc, 2011 BCSC 1196.](#)

There is also a case currently before the Quebec Superior Court (Amel Chamandy / Galerie NuEdge Fine Arts v. Adam Basanta, 500-17-104564-185) in which the plaintiffs are claiming damages for copyright and trademark infringement related to a project that uses artificial intelligence to automatically generate art images. Court documents are not readily available online and the decision is pending on this case.

EXAMINATION GUIDELINES

8. Has your country's IP office (or other IP registration body) amended its examination guidelines and procedures due to AI-related inventions or works?

- No
- Yes
- Draft/proposed only
- Do not know

9. Please provide details of the relevant guidelines and sections identified in Q8 (name, short description, year and URL)

N/A

DATA RIGHTS

10. Does your country/region have any legislative measures/provisions for database rights?

- No
- Yes - enacted law
- Draft/proposed law only
- Do not know

11. Please provide details of the relevant legislative measures/provisions identified in Q10 (name, short description, year and URL).

We interpret questions 10 and 11 to refer to *sui generis* protection of non-original databases that do not qualify for protection under copyright law or under trade secret law. Such protection of non-original databases was the subject of discussion at WIPO in the past (<https://www.wipo.int/copyright/en/activities/databases.html>). Please see answers to Q12 and Q13 below for more details.

12. Does your country recognize any rights or ownership in data?

- No
- Yes
- Draft/proposed only
- Do not know

13. Please provide details of the relevant legislative measures/provisions identified in Q12 (name, short description, year and URL).

There are several legal frameworks that apply to data and that would impact, depending on the context, on rights or ownership in data. Two examples are presented below.

Databases

Like in the case of other signatories of the *World Intellectual Property Organization Copyright Treaty* of 1996 and the *Agreement on Trade-Related Aspects of Intellectual Property Rights* of 1995, Canada's *Copyright Act* provides protection of original databases. Databases that meet the required criteria may also receive trade secret protection in Canada. No *sui generis* protection exists in Canada for non-original databases.

Personal data

In Canada, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), available at <https://laws-lois.justice.gc.ca/eng/acts/P-8.6/>, sets rules for the collection, use and disclosure of personal information by the private sector in the course of commercial activities. The Act, which came into force in 2001, is based on a set of 10 internationally recognized "fair information" principles, which includes a right of access, and the right to challenge compliance. The Minister of Innovation, Science and Industry is responsible for PIPEDA, while the Office of the Privacy Commissioner of Canada (OPC), an independent agent of Parliament, and the Federal courts, are responsible for its enforcement.

14. Does any AI strategy identified in Q1 or other strategy consider data and any creation of a *sui generis* right for data and/or databases?

- No
 Yes
 Draft/proposed only
 Do not know

15. Please provide details of the data strategy identified in Q14 (name, short description, year, URL and responsible organization name).

OTHER AI AND IP RELATED INFORMATION

16. Please provide details of any other related processes related to AI/data and IP undertaken in your county/region, for example, public consultation processes, guidance notes for legislative interpretation, policy guidance, communications, working groups, etc. (name, short description, year and URL).

Other AI/IP considerations

Recommendations to amend the Copyright Act

Further to amendments to the Copyright Act introduced in 2012, Canada's Copyright Act includes a requirement that Parliament review the Act every five years. The House of Commons Standing Committee on Industry, Science and Technology (INDU) was tasked with the latest review. In June 2019, INDU released a report containing 36 recommendations, two of which relate to AI:

- "Recommendation 14: That the Government of Canada consider amending the Copyright Act or introducing other legislation to provide clarity around the ownership of a computer-generated work."
- "Recommendation 23: That the Government of Canada introduce legislation to amend the Copyright Act to facilitate the use of a work or other subject-matter for the purpose of informational analysis."

More information about those recommendations can be found in INDU's report here: <https://www.ourcommons.ca/Committees/en/INDU/StudyActivity?studyActivityId=9897131>

The Government of Canada is currently studying these recommendations.

Manual of Patent Office Practice (MOPOP)

This manual consists of a set of practices as informed by CIPO's interpretation of the Patent Act, Patent Rules and jurisprudence. While not legally binding, it can be used to guide for patent claims. Chapter 22, updated in 2010 provides that a computer-implemented invention may be claimed as a method (art, process or method of manufacture), machine (generally, a device that relies on a computer for its operation), or product (an article of manufacture). It is not clear, however, how that might apply to AI specifically.

Other AI initiatives

While not directly related to IP, Canada has also developed other initiatives to prepare for AI's impacts on businesses, government processes and society. These might guide future work on IP as it relates to AI.

Advisory Council on Artificial Intelligence

In May 2019, the Government of Canada created an Advisory Council on Artificial Intelligence to advise the federal government on how best to build on Canada's AI strengths, identify opportunities to create economic growth that benefits all Canadians and ensure that AI advancements reflect Canadian values of human rights, transparency and openness.

<https://www.canada.ca/en/innovation-science-economic-development/news/2019/05/government-of-canada-creates-advisory-council-on-artificial-intelligence.html>

Directive on Automated Decision-Making

The Directive on Automated Decision-Making was released in April 2019 by the Government of Canada to guide federal governmental organisations using technology, including AI, to automate service decisions. The Directive provides a risk-based approach to ensuring the transparency, accountability, legality and fairness of automated decisions that affect Canadians. It imposes clear requirements for the use of decision-making algorithms and systems within the public service and requires mandatory compliance by April 2020.

<https://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=32592>

Digital Charter

In May 2019, the Government of Canada released a Digital Charter. The Charter proposes a principled approach to digital and data transformations, and considers AI among those transformations. For Canada, addressing digital and data transformation means looking at complex policy questions with no simple, one-size-fits-all response developed in isolation, with safeguarding trust and privacy at the core of any policy response.

Other Data Initiatives

The [Treasury Board Policy on Service and Digital](#) will take effect on April 1st 2020 .The Policy and supporting instruments serve as an integrated set of rules that articulate how Government of Canada organizations manage service delivery, information and data, information technology, and cyber security in the digital era. The Policy requires the heads of federal organizations to treat data as a strategic asset and ensure that departmental responsibilities and accountability structures are clearly defined for information and data.

YOUR COUNTRY'S CONTACT OFFICE FOR AI (IF ANY)

Organization	
Unit	
Website	
Phone	
E-mail	

Contact person	
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