

MEMO

To: Digital Trust & Safety Partnership (DTSP)

From: Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic (CIPPIC)

Date: March 14, 2023

Re: Consultation on Trust & Safety Glossary of Terms – Definition of Copyright

CIPPIC appreciates the opportunity to provide feedback on the first industry glossary of Trust & Safety terms, particularly on the proposed definition of copyright. [CIPPIC](#)—formally the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic—is a legal clinic based at the University of Ottawa’s Faculty of Law. Its mandate is to advocate for the public interest on matters arising at the intersection of law and technology.

While copyright law undoubtedly plays a critical role in protecting creators and their works, CIPPIC believes that any definition of copyright must also recognize and balance the interests of the broader public. Copyright is a statutory monopoly that serves to promote both the creation of and access to artistic, literary, musical, dramatic and other creative works. It does so by granting creators exclusive rights in their works as a reward for creativity and serving as an incentive for the creation and dissemination of new works.

DTSP definition of copyright	CIPPIC’s proposed changes
A type of intellectual property law that gives the owner of literary, artistic, musical, and other kinds of expressive work certain rights to authorize how that work can be used or copied. Use of a copyrighted work without the rightsholder’s permission (or without some other applicable legal basis) may constitute infringement, which can give rise to civil or criminal liability. Online services can be misused by users to infringe others’ copyrights, so many services work to discourage and mitigate such abuse. Depending on factual context and jurisdiction, an online service may also be legally liable for copyright infringement facilitated by that service.	A category of intellectual property law that gives the owners of creative works (e.g. literary, artistic, and musical works) certain rights to authorize how that work can be used or copied. Copyright seeks to strike a balance between the interests of creators in obtaining a just reward for their works, and the public interest in encouraging the creation, use, and dissemination of such works. Uses of copyrighted works without the owner’s permission may constitute copyright infringement, which can give rise to civil and criminal liability. Online services can be misused by users to infringe copyrights and by rightsholders to frustrate the lawful use of copyrighted materials, so many services work to discourage and mitigate such abuses. Depending on factual context and jurisdiction, an online service may also be legally liable for copyright infringement facilitated by that service.

In this regard, CIPPIC has several concerns with the proposed definition of copyright. Firstly, it seems to prioritize the interests of rightsholders over those of the public. While it is important to protect copyrighted works, copyright law should not be so restrictive as to stifle innovation and creativity, or prevent the public from accessing and using creative works in meaningful ways. CIPPIC believes that any discussion of copyright should take into account the important role that technology and online platforms play in promoting access to knowledge and creativity, and the need to balance the interests of rightsholders with those of users and the general public.

Secondly, CIPPIC is concerned that the current definition may contribute to a culture of over-enforcement and litigation around copyright issues, which can have a chilling effect on free expression. It is important to recognize that copyright is not an absolute right, and that limitations and exceptions to copyright are essential to promote innovation and creativity. CIPPIC believes that a balanced definition of copyright should not only recognize the rights of a copyright holder but also give due weight to their limited nature,

such as through the exception of fair dealing/fair use, which is not defined in the glossary. While the scope and application of exceptions such as fair dealing/fair use may vary depending on the jurisdiction, these exceptions play a crucial role in ensuring that copyright law does not unduly restrict the flow of information and ideas.

In conclusion, CIPPIC urges DTSP to reconsider the proposed definition of copyright in light of the broader public interest. We believe that any definition of copyright must balance the interests of rightsholders with those of the public and must be accompanied by an acknowledgement of its exceptions and limitations. We recommend adding language to the definition that reflects these concerns, and we would be happy to provide further input and guidance if needed.