



Bill C-86 Budgeting for Change: Copyright Part I - Proposed Amendments to the Notice and Notice Regime

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On October 29, Canada's federal government tabled a second budget implementation bill that included a number of provisions relating to intellectual property, including a few proposed amendments to the *Copyright Act*. Among the proposed amendments are certain content restrictions for the notice and notice regime, pursuant to which internet services providers (ISPs) forward notices of alleged infringement from rights holders (or their representatives) to internet subscribers. Bill C-86 also includes further amendments to the *Copyright Act* with respect to the Copyright Board, as well as provisions related to continued use for intellectual property and bankruptcy, so stay tuned for more information on the changes included in the omnibus budget bill.

Regarding the notice and notice regime, Bill C-86 sets out "Prohibited content" that may not be included in rights holders' claimed infringement notices, including (a) offers to settle, (b) demands for payment or personal information, or (c) hyperlinks to externally hosted offers to settle or demands for payment or personal information (and additional prohibited content may later be set by regulation). These proposed amendments to the notice and notice regime further provide that [ISPs' obligations](#) only arise in respect of claimed infringement notices that comply with the new content restrictions, including the obligations to forward notices of claimed infringement and retain records on the implicated subscribers. Additionally, the existing protections for providers of information location tools have been revised to ensure that they only apply with respect to compliant notices of claimed infringement.

These content restrictions have been crafted to address concerns related to the content of claimed infringement notices, and in particular rights holders' use of the notice and notice regime to forward aggressive demands to internet subscribers. Although notices of claimed infringement are not in and of themselves determinative that an internet subscriber has engaged in copyright infringement, consumers' rights activists had suggested that rights holders were drafting aggressive notices to exert undue pressure for settlement. For example, several such notices were shown to contain language suggesting that "[i]f this matter is not resolved by the date shown above, the original settlement offer will no longer be an option and any future resolution may require an increased payment from you." Many had raised concerns that consumers were being "bullied" into settling claims that had not been proven in court, and that this resulted in unjustified (and sometimes excessive) payments by consumers.

Leading up to Bill C-86, there have been calls for notice and notice content restrictions as part of the ongoing *Copyright Act* review, including by ISPs. In response to concerns over the content of claimed infringement notices, certain ISPs had previously taken steps to address such concerns by forwarding notices with a cover letter from the ISP to provide context for internet subscribers' rights and obligations under the notice and notice regime. The proposed changes included in Bill C-86 by the Federal government are consistent in principle with the decision in *Voltage Pictures LLC v. John Doe* (2014 FC 161), [where the Federal Court expressed concerns about the content of claimed infringement notices and required that follow up demand letters be approved by the Court](#). For example, a Court-approved form letter included language indicating that "[n]o Court has yet made a determination that [SUBSCRIBER or YOU] have infringed [the rights holder]'s copyright or are liable for damages."

Stay tuned for an update regarding other IP related amendments being proposed in Bill C-86, including those related to the Copyright Board of Canada.



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