

DEFENDING DIGNITY IN THE DAWN OF DEEPPAKES

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Introduction

On January 29, 2024, in an era dominated by digital connectivity and rapid technological advancements, British Columbia's [Intimate Images Protection Act](#) (Act) came into force.^{[1],[2]}

As discussed in our previous bulletin "[Navigating the Pixelated Landscape](#)," the Act introduces a legal framework to address the escalating concerns surrounding image misuse and the non-consensual sharing of intimate images. Of note, the Act provides for a simplified judicial process to combat the non-consensual sharing of intimate images. The Act not only addresses traditional privacy infringements but also incorporates measures to combat the rising threat of the misuse of deepfake technology.

The Growing Threat of Deepfakes

Deepfakes are manipulations of audio, video, and text content that can be deceptive, yet convincing, depictions of individuals. Fueled by artificial intelligence, machine learning, and ease of access, deepfake technology has emerged as a serious concern in recent years – especially since it can be easily misused in a harmful way. Although [legal recourse](#) in the common law is available to address the misuse of deepfake technology – including some Canadian provinces' recognition of the [tort of false light](#), and other [holistic recourse](#) – statutory law had, in general, remained a work in progress. This Act forms a part of Canada's evolving statutory laws that address, at least in part, misuses of deepfake technology, and provides complainants with a roadmap on how to seek legal recourse in situations where such complainants have been "deepfaked" in the context of intimacy.

Internet Intermediaries and Administrative Penalties

Internet intermediaries^[3] are not immune from this Act, and the Act's [Regulation](#) provides for administrative penalties against individuals, intermediaries, and other entities should such entities fail to comply with orders made under the legislation. In cases of non-compliance: (i) individuals may face a maximum penalty of \$500 per day, up to a total maximum of \$10,000;^[4] and (ii) internet intermediaries or other entities may face a maximum penalty of \$5,000 per day, up to a total maximum of \$100,000.^[5] These penalties are certainly intended to discourage the dissemination of non-consensual intimate images and deepfakes.

Key Aspects of the Intimate Images Protection Regulation

The Act's [Regulation](#) also authorizes minors, as young as 14 years of age, to apply to the Civil Resolution Tribunal (the "CRT") for relief.^[6] A minor who is 12 years of age or over may authorize another individual to apply to the CRT for relief on their behalf under the Act.^[7]

The Act's [Regulation](#) further includes parameters around:

- factors that a decision maker must consider in an application for expedited intimate image protection order including: (i) the potential for an expedited order to mitigate harm; (ii) the personal circumstances of the individual depicted in the intimate image; and (iii) the circumstances in which the individual is depicted in the intimate image;^[8]
- classes of individuals who may apply for relief;^[9]
- classes of individuals who may be authorized by a minor or adult on a victim's behalf
- the publication ban factors;^[10] and
- the date that the administrative penalty must be paid.^[11]

Conclusion

The Act is a welcomed development in British Columbia's laws surrounding digital privacy protection and combatting the misuse of AI technology such as deepfakes. How successful the Act is at limiting the risks posed by the misuse of technologies like deepfakes will play out in the next few years. However, the introduction of the Act demonstrates that our laws continue to adapt and respond to our ever changing social and legal landscape.

By: [Robert Piasentin](#), [Pablo Tseng](#), [Victoria Kolt](#) (Articling Student)

[1] SBC 2023, c 11.

[2] BC Gov News, "New services help people protect their intimate images" (January 2024), online: [BC Gov News](#).

[3] The Act defines an "internet intermediary" as "an organization that hosts or indexes third party content through an online platform." See *Supra*, note 1 at s 1.

[4] *Intimate Images Protection Regulation* BC Reg 293/2023, s 9(1)(a).

[5] *Ibid* at s 9(1)(b).

[6] *Ibid* at s 4.

[7] *Ibid* at s 5.

[8] *Ibid* at s 2.

[9] *Ibid* at s 3.

[10] *Ibid* at s 8

[11] *Ibid* at s 10.

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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