

Court File No. T-

FEDERAL COURT

B E T W E E N:

PRIVACY COMMISSIONER OF CANADA

Applicant

- and -

9219-1568 QUÉBEC INC. c.o.b. AYLO SERVICES (formerly known as ENTREPRISE MINDGEEK CANADA), AYLO FREESITES LTD. (formerly known as MG FREESITES LTD.), MG FREESITES II LTD., AYLO SOCIAL LTD. (formerly known as MG SOCIAL LTD.), AND AYLO HOLDINGS S.À.R.L. (formerly known as MINDGEEK S.À.R.L.)

Respondents

NOTICE OF APPLICATION

APPLICATION UNDER paragraph 15(a) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THE APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated: February 27, 2025

Issued by:

(Registry Officer)

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APPLICATION

THIS IS AN APPLICATION by the Privacy Commissioner of Canada (**Privacy Commissioner**) under paragraph 15(a) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (**PIPEDA** or **Act**) and further to the Privacy Commissioner's findings, as set out in his Report of Findings dated February 29, 2024, regarding a complaint concerning the personal information handling practices of the Respondents (**Final Report**).

THE APPLICANT MAKES APPLICATION FOR:

1. The Applicant seeks as follows:

- (a) A declaration that the Respondents have contravened section 6.1 and clause 4.3 of Schedule 1 to PIPEDA by failing to obtain express, meaningful, and valid consent directly from all Depicted Individuals (as defined below) for the collection, use, and disclosure of their personal information contained in Intimate Images (as defined below) uploaded to the Respondents' websites.
- (b) An order under paragraph 16(a) of PIPEDA requiring that the Respondents correct their practices to comply with Divisions 1 and 1.1 of the Act by implementing clear and specific measures to ensure that meaningful consent is obtained from all Depicted Individuals for the collection, use, and disclosure of each Intimate Image in which they appear and that is uploaded to the Respondents' websites by:
 - (i) implementing measures to obtain express, meaningful, and valid consent directly from each Depicted Individual, including by implementing robust measures that ensure that Depicted Individuals in the Intimate Images are in fact the same individuals who have provided their consent;
 - (ii) implementing measures to obtain the express, meaningful, and valid consent of each Depicted Individual for each Intimate Image in which they appear, before such content is collected, used, or disclosed by being rendered viewable on the Respondents' websites;

- (iii) ensuring that Depicted Individuals are informed of and understand the nature, purposes, and consequences of the collection, use, and disclosure of Intimate Images containing their personal information that is uploaded to the Respondents' websites; and
 - (iv) undertaking further measures as counsel may advise and as this Honourable Court deems just and appropriate.
- (c) Orders under section 16 of PIPEDA as follows:
 - (i) requiring the Respondents to provide particulars of the specific revisions, modifications, and amendments to be made to their practices to comply with the relief sought in paragraph 1(b) for the purposes of ensuring that such revisions, modifications, and amendments achieve compliance with Divisions 1 and 1.1 of PIPEDA;
 - (ii) requiring that the parties return before the Court for the purpose of seeking a fully-particularized formal order reflecting the specific revisions, modifications, and amendments to be made to achieve compliance with Divisions 1 and 1.1 of PIPEDA pursuant to paragraph 1(b) of this Application, and for the purposes of seeking the Court's further determination on any then-remaining dispute as to the sufficiency or necessity of any such particular revision, modification, or amendment;
- (d) An order requiring the Respondents to delete from their websites and servers all content for which express, meaningful, and valid consent has not been obtained directly from each Depicted Individual;
- (e) An order requiring the Respondents to cease collecting, using, or disclosing any Intimate Images for which express, meaningful, and valid consent has not been obtained directly from each Depicted Individual;

- (f) An order under paragraph 16(b) of PIPEDA requiring the Respondents to publish a notice, in a form this Court deems appropriate, of any action taken or proposed to be taken to correct its practices that are in contravention of PIPEDA;
- (g) An order under Rules 151 and 152 of the *Federal Courts Rules* permitting the parties to file certain documents confidentially in this application;
- (h) The Applicant's costs of this Application; and
- (i) Such other relief as counsel may request and as this Honourable Court may allow.

THE GROUNDS FOR THIS APPLICATION ARE:

A. The Applicant and PIPEDA

2. The Privacy Commissioner of Canada is an independent, impartial Agent of Parliament with the mandate to promote and protect the privacy rights of Canadians. The Privacy Commissioner has authority over the federal public sector, under the *Privacy Act*, R.S.C. 1985, c. P-21, and over private sector organizations such as the Respondents, under PIPEDA.

3. PIPEDA establishes rules that govern the collection, use, and disclosure of personal information by private sector organizations. These rules recognize both an individual's right to privacy with respect to their personal information, and the need for organizations to collect, use, and disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

4. PIPEDA generally requires an individual's knowledge and consent for the collection, use, and disclosure of their personal information. This consent is only valid if it is reasonable to expect that the individual would understand the nature, purpose, and consequences of the collection, use, or disclosure of their personal information.

5. The Privacy Commissioner's statutory mandate under PIPEDA includes investigating complaints alleging that an organization has contravened PIPEDA. After investigating, the Privacy Commissioner must prepare a report of findings setting out the Privacy Commissioner's findings and recommendations regarding the complaint. The report and recommendations are not legally

binding. Where the Privacy Commissioner finds a complaint is well-founded, as it is here, he may bring the matter before this Court with the consent of the Complainant.

B. The Respondents and the Pornhub website

6. The Respondents make up a global technology company—referred to in the Final Report as the MindGeek Companies—incorporated in various jurisdictions, including the province of Québec, but with its primary operations, consisting of approximately 1,000 employees and senior leadership, based in Montréal. MindGeek was rebranded as Aylo in or around August 2023.

7. Aylo owns, operates, and provides services to many of the world’s most popular pornographic websites, including Pornhub and Youporn. Pornhub is among the top ten most visited websites on the Internet. According to publicly available data, Pornhub was visited 5.25 billion times between September and November 2024. Aylo’s primary revenue-generating business is enabling individuals to access adult content—both free and by paid subscription. It generates additional revenue through advertising sales. In 2018, its annual revenue was estimated at more than \$450 million USD.

8. PIPEDA applies to Aylo’s global operations, which are headquartered in Canada.

9. The Respondents—referred to collectively as **Aylo**—include the following corporate entities:

- (a) *9219-1568 Québec Inc.* carries on business as *Aylo Services* and was formerly known as *Entreprise MindGeek Canada*. It is incorporated in Québec.
- (b) *Aylo Holdings S.à.r.l.*, formerly known as *MindGeek S.à.r.l.*, is incorporated in Luxembourg. It is the indirect parent company of the other named Aylo entities, including *Aylo Services*.
- (c) *Aylo Freesites Ltd.*, formerly known as *MG Freesites Ltd.*, is incorporated in Cyprus.
- (d) *MG Freesites II Ltd.*, is incorporated in Cyprus.

(e) *Aylo Social Ltd.*, formerly known as MG Social Ltd., is incorporated in Cyprus.

10. More than 50% of Aylo's total global workforce is located in Montréal. A number of its senior executives are based in Montréal, and the majority of the individuals identified by Aylo as those most appropriate to provide answers about Aylo's privacy practices during the course of the Privacy Commissioner's investigation, are also located in Montréal.

11. On or about March 16, 2023, Ethical Capital Partners, a private equity firm based in Ottawa, acquired MindGeek, soon after it rebranded as Aylo.

12. PIPEDA applies to the activities of private organizations that have a real and substantial connection with Canada. Aylo's operations have a real and substantial connection with Canada.

13. Aylo's Terms of Service for its websites, including Pornhub, apply to people in Canada and address consent to the collection, use, and disclosure of personal information and content takedown. Canadian-located users can visit Aylo websites, view and upload content to their websites, and employ the "takedown" mechanisms available for content on Aylo's websites.

14. As of February 2021, over 12.5% of Canadian adults had visited Aylo's websites and approximately 3.6 million Canadian-located users visited Pornhub every day. In April 2020, Canadian-located users made between 1.7 million and 148 million individual site visits to Aylo's top five most frequented websites. Between September and November 2023, Pornhub received 44 million unique visits from Canadian-located users. Canadian-located users represent 3.7% of all verified users uploading content to Pornhub, accounting for 5.67% of all active content on the website (equivalent to approximately 387,000 video uploads in 2019).

C. The Complaint and Investigation

15. On April 30, 2020, the Privacy Commissioner received a complaint from an Ontario resident, through the Complainant's counsel (**Complaint**). The Complaint set out that the Complainant had been pressured into making an intimate video with their partner (one they were assured would be kept private). However, in April 2015, the Complainant discovered that the video and other Intimate Images of them, along with identifiable personal information, had been published on various Aylo websites without their consent, causing them harm.

16. The Complaint raised concerns about the non-consensual posting of **Intimate Images**, meaning visual recordings (whether photos or videos) in which a person (**Depicted Individual**) is either nude, exposing intimate body parts, and/or engaged in explicit sexual activity, as well as any other personal information associated with these visual recordings.

17. The Complaint also detailed the harm that this non-consensual posting of the Complainant's Intimate Images had caused and set out various ways in which the Complainant claimed that Aylo was contravening PIPEDA. The Complainant asked the Privacy Commissioner to conduct a thorough investigation into the Respondents' personal information management practices.

18. The Privacy Commissioner commenced an investigation under PIPEDA, considering whether Aylo:

- (a) obtained valid, meaningful consent from individuals, including the Complainant, for the collection, use, and disclosure of Intimate Images on its websites;
- (b) provided individuals, including the Complainant, with an easily accessible, simple-to-use, and effective process to have their personal information removed from its websites; and,
- (c) was accountable for the personal information under its control.

19. The investigation focused on the type of user-uploaded content described in the Complaint, rather than content produced and uploaded by professional studios, which is managed differently by Aylo.

20. Between January 2021 and December 2022, the Privacy Commissioner conducted its investigation by requesting information and representations from Aylo, meeting with Aylo's representatives, and conducting virtual interviews with Aylo employees based in both Montréal and Cyprus.

D. The Privacy Commissioner’s Preliminary Report of Investigation and Aylo’s Attempted Injunction

21. In December 2022, the Privacy Commissioner provided Aylo with a Preliminary Report of Investigation, setting out the anticipated findings and recommendations regarding the Complaint. The Privacy Commissioner gave Aylo an opportunity to provide comments on the Preliminary Report.

22. Aylo disagreed with the recommendations set out and, after learning that the Privacy Commissioner intended to publish the Final Report, 9219-1568 Quebec Inc. and MG Freesites Ltd. commenced an application for judicial review challenging, among other things, the decision to make the Final Report public. They simultaneously filed a motion seeking to prevent the Privacy Commissioner from issuing and publishing the Final Report until the underlying judicial review application was determined.

23. On October 26, 2023, this Court dismissed the injunction motion. 9219-1568 Quebec Inc. and MG Freesites Ltd. appealed.

24. On February 29, 2024, the Federal Court of Appeal dismissed the appeal.

25. That same day, the Privacy Commissioner sent the Final Report to the Complainant and to the Respondents and made the Final Report public. Aylo subsequently discontinued its judicial review application.

26. Any application under sections 14 or 15 of PIPEDA, including for a hearing in respect of any matter referred to in such a final report, must be made within one year after the final report is sent to the parties. This Application falls within this timeline. The Complainant has consented to this Application (as required under paragraph 15(a) of the Act).

E. The Privacy Commissioner’s Final Report and Recommendations

27. In the Final Report, the Privacy Commissioner concluded that the Complaint against Aylo was well-founded and unresolved because, among other things, Aylo had failed to obtain express, meaningful, and valid consent for its collection, use, and disclosure of highly sensitive personal information—being Intimate Images and associated identifying information—directly from each

individual depicted in such content, including the Complainant. This failure contravenes section 6.1 and Principle 4.3 of Schedule 1 to PIPEDA. The Privacy Commissioner determined that changes to Aylo's upload process and requirements, implemented in 2020, had not remedied this contravention.

28. The Privacy Commissioner found that, in 2015, Aylo's consent model relied on uploaders to represent that they had obtained consent from each individual whose highly sensitive personal information was being shared on Aylo's websites. The Privacy Commissioner found that, by relying exclusively on the uploader to obtain consent, Aylo had failed to make reasonable efforts to ensure that Depicted Individuals knew the purposes for which their information would be used and disclosed on Aylo's websites.

29. Aylo did not purport to obtain consent directly from Depicted Individuals in content uploaded to its websites, apart from the uploader. Moreover, Aylo did not, as a general practice, verify that uploaders had in fact obtained the required consent from Depicted Individuals. Indeed, Aylo failed to provide any evidence confirming that such verifications ever took place.

30. In short, Aylo's privacy practices in 2015 were non-compliant with the Act. Their measures—including limited technological requirements to upload content, absence of verification of the uploader's identity, and reliance on human moderation to determine whether consent was obtained—were clearly insufficient to obtain express, meaningful, and valid consent.

31. Aylo's changes to its consent processes, implemented in 2020, failed to address this non-compliance. They still did not require that express consent be obtained directly from each Depicted Individual in content uploaded to Aylo's websites and continued to rely on the uploader to attest to consent having been obtained. For example, Pornhub nominally required uploaders—in situations where they did not themselves appear in content—to collect a piece of identification and consent forms from each Depicted Individual. However, uploaders regularly did not comply with these requirements. In such cases, content would remain visible to the public for up to two weeks.

32. Accordingly, the Privacy Commissioner concluded that in the majority of instances, there was no evidence to establish that all Depicted Individuals in the content in question had consented to their Intimate Images being collected, used, and disclosed. By continuing to rely solely on the

uploader to attest to consent, Aylo continued to fail to ensure that it had obtained valid and meaningful consent from all Depicted Individuals in content uploaded to its websites. Consequently, Aylo continued to be in contravention of section 6.1 and Principle 4.3 of PIPEDA.

33. The Privacy Commissioner also concluded that Aylo failed to provide individuals who had never consented to the upload of their personal information with an easily accessible, simple-to-use, and effective process for having content containing their personal information removed from its websites.

34. The Final Report outlined recommendations with a view to entering into an agreement that would bring Aylo into compliance with PIPEDA. No such compliance agreement has been reached.

35. While Aylo made further changes to its privacy practices and consent verification mechanisms during and after the Privacy Commissioner's investigation, its personal information practices continue to fail to ensure that express, meaningful, and valid consent is obtained directly from all Depicted Individuals, including for each piece of content in which they are depicted. Further, Aylo's websites continue to host Intimate Images that were uploaded before it updated its consent verification mechanisms. This older content does not meet the requirements set by Aylo's updated personal information handling practices, which also fail to ensure that express, meaningful, and valid consent is obtained directly from all Depicted Individuals.

36. Until Aylo corrects its practices to comply with PIPEDA, there is, and will continue to be, an ongoing risk that highly sensitive personal information in the form of Intimate Images will be collected, used, and disclosed by Aylo without an individual's knowledge and consent.

37. The Privacy Commissioner relies on the *Personal Information Protection and Electronic Documents Act*, the *Federal Courts Act*, and the *Federal Courts Rules*, as in force from time to time, and such other legislation as counsel may advise or this Honourable Court deems just.

38. Such further and other grounds as counsel may advise, and this Honourable Court may allow.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING DOCUMENTARY EVIDENCE

39. This application will be supported by:

- (a) The Affidavit of Julie Beaumont, to be affirmed; and
- (b) Such further and other materials as counsel may advise and this Honourable Court may allow.

February 27, 2025



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