



To: Digital Citizen Initiative
Department of Canadian Heritage
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From: Safe Harbour Outreach Project
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To Whom It May Concern in the Department of Canadian Heritage,

Safe Harbour Outreach Project (known as SHOP), a program of the St. John's Status of Women Council and Women's Centre, advocates for the rights of sex workers in Newfoundland and Labrador. As an organization concerned with the safety and dignity of sex workers in Canada, we are concerned about the government's proposed initiative regarding digital harms. We are not alone in these concerns¹.

Our community is deeply familiar with the kinds of harms that can be inflicted through the non-consensual production and distribution of sexual media or sexual abuse materials, or other forms of online harassment. We are also deeply familiar with the additional harms that are created when the proposed 'solutions' to these issues do not centre the knowledge and expertise of sex workers themselves. Several elements of the proposed framework are cause for extreme caution.

- The 24-hour response and take-down requirement based on user claims is unrealistic, has no existing precedent in online spaces, and is more onerous than what even most local law enforcement can respond to when reports of harassment or illegal online content get reported. This will encourage websites to simply ban people and accounts outright across broad categories of sexual speech. Combined with the requirement to engage in proactive monitoring, this will result in harmful censorship. Such censorship is not distributed evenly: both human and automated flagging and filtering systems are unable to detect truly harmful or illegal content with accuracy². Historically, these kinds of measures have disproportionately harmed sex workers³, 2SLGBTQ+ folks^{4,5}, sex educators⁶, and other marginalized communities⁷.
- Both the takedown and monitoring requirements are especially burdensome to smaller independent platforms who do not have the necessary resources to accomplish such strict moderation timelines. Any regulations that burden independent entities in this way encourage the establishment of oligopolies, and discourage the kind of autonomous working environments

¹ <https://techpolicy.press/five-big-problems-with-canadas-proposed-regulatory-framework-for-harmful-online-content/>

² <https://mitpress.mit.edu/books/nsfw>

³ <https://hackinghustling.org/posting-into-the-void-content-moderation/>

⁴ https://eu.boell.org/sites/default/files/2021-06/HBS-e-paper-state-platform-moderation-for-LGBTQI-200621_FINAL.pdf

⁵ <https://www.washingtonpost.com/technology/2019/08/14/youtube-discriminates-against-lgbt-content-by-unfairly-culling-it-suit-alleges/>

⁶ <https://www.theatlantic.com/health/archive/2015/03/when-social-media-censors-sex-education/385576/>

⁷ <https://www.scientificamerican.com/article/the-harm-that-data-do/>

that sex workers use to exercise more agency and self-determination in their careers - environments and strategies that are inherently about safety for individuals.

- The requirements to maintain information and records about those suspected of committing a violation and to alert law enforcement before it is deemed that an illegal act has genuinely occurred are also very alarming. This will lead to the mass reporting of many innocent people, especially innocent people who are already demonized and criminalized for their gender expression, race, sexuality, and real or imagined involvement in sex work. The result will be a mass chilling of free speech, major infringements on privacy, and the devastating disruption of many lives. In the words of Daphne Keller, director on Program on Platform Regulation at Stanford's Cyber Policy Center, and formerly the Director of Intermediary Liability at CIS: *"The human rights consequences of this privatized surveillance are sure to fall disproportionately on less powerful groups in society. We have every reason to expect people of color and other marginalized or vulnerable groups to face more suspicion, be reported to police more, and be mistreated more after that happens."*⁸ This is especially concerning given how the proposed framework extends extremely broad authority to the regulatory body without oversights in place to prevent these kinds of gross abuses of power.
- Finally, the provision that entire site ISPs may be blocked is very worrisome. This will enable discriminatory censorship of sites that are crucial for sex workers safety. Evidence demonstrates that limitations on access to online platforms in fact create the very conditions where people are more likely to be targeted for violence and exploitation⁹. For example, sex workers have faced increased violence and precarity since the removal of Backpage.com for supposedly harbouring harmful sex trafficking information¹⁰. This case was just deemed a mistrial precisely because prosecutors falsely and repeatedly suggested the site facilitated sex trafficking and child sexual abuse, rather than consensual adult sex work¹¹. Similar mischaracterizations of internet platforms have occurred¹² and will lead to more harms against sex workers, without accomplishing the goal of reducing sex trafficking and child sexual abuse^{13,14}.

Digital harms are a serious concern, but we must be extremely cautious to avoid generating new egregious and discriminatory harms through attempts to address that concern. The proposed Digital Harms framework has grave potential to hurt sex workers, 2SLGBTQ+ folks, BIPOC communities, and other marginalized populations. We implore the Canadian Government to reconsider these measures and to heed the experiences and expertise of these communities in drafting safe and effective alternatives.

Thank you for your consideration,

SHOP

⁸ <https://techpolicy.press/five-big-problems-with-canadas-proposed-regulatory-framework-for-harmful-online-content/>

⁹ <https://www.mdpi.com/2076-0760/10/2/58>

¹⁰ <https://hackinghustling.org/erased-the-impact-of-fosta-sesta-2020/>

¹¹ <https://reason.com/2021/09/14/biased-testimony-in-backpage-trial-triggers-more-calls-for-a-mistrial/>

¹² <https://www.thedailybeast.com/facebook-a-hotbed-of-child-sexual-abuse-material-with-203-million-reports-far-more-than-pornhub>

¹³ <https://www.businessinsider.com/fosta-sesta-anti-sex-trafficking-law-has-been-failure-opinion-2019-7>

¹⁴ <https://newrepublic.com/article/162823/sex-trafficking-sex-work-sesta-fosta>