

The Government's proposed approach to address harmful content online

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Introduction

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians in Canada. Established in 1964, the EFC provides a national forum for Canada's four million Evangelicals and a constructive voice for biblical principles in life and society.

Our approach to the issue of online harms is based on the biblical principles of respect for human life and dignity, justice, and care for those who are vulnerable. These principles are reflected in Canadian law and public policy.

While the government's consultation is expansive, our comments are limited to particular aspects of the discussion. We offer feedback on the proposals as they relate to child sexual abuse materials and the non-consensual distribution of intimate images. We also provide comments on online hate.

Sexually exploitive content online

We are grateful that the government is seeking to hold online platforms accountable for hosting and distributing child sexual abuse materials (CSAM) and for the non-consensual distribution of intimate images (NCDII).

It is evident that the current regime is not effectively addressing these online harms and government action is needed to reduce the harm from online sexual exploitation. It is also evident that platforms like Pornhub must not be left to self-regulate. It is essential that the government develop strict regulations and impose significant penalties for non-compliance.

Commercial pornography sites that knowingly profit from sexual abuse and exploitation must be held accountable.

As noted in this consultation's discussion guide and technical paper, children and youth face devastating, lifelong consequences when videos and images of their abuse and exploitation are streamed and distributed. The Canadian Centre for Child Protection surveyed international survivors of child sexual abuse whose abuse was recorded. Survivors indicated that the imagery impacted them in a different way than the initial abuse. As the report notes, "The information shared by the respondents to this survey makes it clear that the recording of abuse and its

distribution adds an extraordinary layer of trauma for a victim.”¹ Part of the impact survivors describe is that the distribution of images may never end. They feel powerless to stop the ongoing distribution.

In the last Parliament, the Ethics Committee heard from survivors who shared harrowing testimony of the online harms they had experienced. Their images were posted on Pornhub without their knowledge or consent and they fought a difficult battle to try to get the images taken down. The images were of the survivors as teens or young women, being sexually assaulted or recorded or uploaded without their consent. As NDP MP Charlie Angus described the committee proceedings, “We heard of criminal acts being profited from, being promoted, being exploited in a culture of indifference at the corporate level.”²

It is imperative that the onus not be on children and teens to monitor commercial pornography sites to ensure that depictions of their abuse and exploitation are not posted or, if discovered, to ensure they are swiftly removed. The onus must not be on victims of non-consensual uploads to identify the content and ensure it is removed. These sites must be responsible to ensure that the content they host and monetize is not child sexual abuse material, that the people depicted are not minors, and that there is consent for these images to be posted. Platforms must have mechanisms in place to ensure illegal content is never uploaded in the first place.

There are offences relating to CSAM and NCDII clearly set out in the *Criminal Code* but there is a need for provisions to be clarified and tightened to enable better enforcement, particularly in online spaces.

Definition of Online Communication Service

The technical paper suggests Online Communication Service (OCS) be defined as “a service that is accessible to persons in Canada, the primary purpose of which is to enable users of the service to communicate with other users of the service, over the internet.” An Online Communication Service Provider (OCSP) is described simply as a person who provides an OCS. In the discussion guide, Pornhub is listed as an example of an OCSP.

It is problematic to categorize online pornography platforms like Pornhub as Online Communication Services, or their parent companies as Online Communication Service Providers. This categorization does not accurately reflect the nature and purpose of these platforms. Pornography platforms are deliberately designed to encourage and profit from the consumption of another person’s sexuality. Their primary purpose is not to enable communication among users. Many digital platforms allow videos and images to be consumed as entertainment, and although CSAM, NCDII and sexual exploitation images can and do appear in their user-generated content, they don’t cater exclusively to such content.

¹ Canadian Centre for Child Protection, *Survivors Survey Full Report 2017*, p. 147, https://protectchildren.ca/pdfs/C3P_SurvivorsSurveyFullReport2017.pdf

² “House ethics committee releases report on Pornhub and similar platforms,” Press conference, CPAC, June 17, 2021, <https://www.youtube.com/watch?v=UsoTdZjtrQc>

In contrast, pornography platforms exist to facilitate and monetize the consumption of sexual images and content. And given that the product being consumed is sexuality, and primarily women's bodies, the potential for harm and abuse is significantly greater.

It is an industry that feeds on the user's need for constant variety of content, and much of the mainstream content of pornography platforms depicts aggressive and demeaning sexual activity, particularly towards women and racial minorities. It is often filmed sexual exploitation, such as rape, coercion and abuse, and it has a negative impact on the sexual behaviour and attitudes of adolescents. It is not a form of communication like the other services that are the focus of the proposed legislative and regulatory framework.

Module 1(A): 3(b) allows the Governor in Council to specify "a category of services that is to be included in the regulations, notwithstanding that it does not meet the definition of OCS, if the Governor in Council is satisfied that there is significant risk that harmful content is being communicated on the category of services"

We suggest that the legislative and regulatory framework specify that online pornography platforms are a category of online services in which there is significant risk that harmful content will be distributed and proliferate.

The technical paper refers to the *Criminal Code* offences, but its description of the related online harm mentions only lack of consent for the distribution of images and the inability to assess if consent to distribution of images was given. We suggest that the description of NCDII be expanded in the legislative and regulatory framework to clearly include images of exploitation. NCDII can include intimate images that were taken without the consent of the individual featured, as well as distributed without the consent of the individual featured. It can also include images of victims of sex trafficking who have no say in either the taking or sharing of the images.

Different online harms require different approaches

While we support the establishment of a legislative and regulatory framework to address the five listed online harms, we suggest that there are unique considerations to dealing with CSAM and NCDII.

While content that incites violence, terrorism and hate speech may be unlawful, CSAM itself is evidence of criminal activity that has occurred and that may be ongoing. With respect to NCDII, the content may be unlawful in its distribution only, or may also be evidence of criminal activity if the individual was filmed without their consent or is a victim of trafficking.

As such, requirements related to removing, reporting and preservation of information should be clearly tailored for these particular harms.

For example, while we support a requirement for OCSPs to be responsive to complaints and to make content that is determined to be harmful inaccessible within 24 hours after it has been

flagged, we note that with respect to CSAM and NCDII, these requirements are not sufficient. For victims of CSAM and NCDII, 24 hours allows their images to be viewed, downloaded and distributed millions of times.

While the proposed regulations are a vast improvement from the lack of recourse available to victims currently, they take effect after the damage is done. It is not only possible but essential to put in place proactive and preventative measures. Online pornography platforms must be required to verify the age and consent of every individual featured in every piece of content *before* it is posted.

We recommend this legislative and regulatory framework require online pornography platforms to verify the age and consent of those featured in content uploaded to their sites as a measure to strengthen the digital safety of Canadians and prevent significant online harms.

Further, we note that contrary to previous public descriptions of a mandatory requirement to remove content within 24 hours,³ the technical paper states that “an OCSP must take all reasonable measures ... to identify content that is communicated on its OCS and that is accessible to persons in Canada, and to *make that content inaccessible to persons in Canada ...*” (emphasis added)

Particularly with respect to CSAM and NCDII, it is not sufficient to simply require OCSPs to make the content inaccessible to Canadians. The legislative and regulatory framework should require OCSPs to take down and remove content flagged as CSAM or NCDII within 24 hours.

Exceptional recourse

Given the devastating consequences experienced by victims whose images have been distributed without their consent, including those who are victims of sexual exploitation, we strongly urge the government to include NCDII in the list of harmful content for which persistent non-compliance may result in blocking by the relevant Telecommunications Service Providers.

Modifying Canada’s existing legal framework

We support the amendment to the *Mandatory Reporting Act* to centralize reporting of CSAM to the RCMP’s National Child Exploitation Crime Centre (NCECC), and to ensure that it applies broadly to all types of Internet services.

Further, we support amending the *Mandatory Reporting Act* to require provision of relevant basic subscriber information such as name, address, telephone number and IP address, as well as other information and identifiers an OCSP may have available when making a report to the NCECC.

³ <https://ipolitics.ca/2021/07/29/ottawa-proposes-plan-to-regulate-social-media-content/>

Recommendations related to sexually exploitive content online

We support:

- the establishment of a Digital Safety Commissioner
- the proposed revisions to the *Mandatory Reporting Act*
- a requirement for annual reports on the content moderation process and the guidelines for prohibited content
- a 24-hour response to content that has been flagged as CSAM or NCDII
- significant financial penalties for failing to immediately remove, review and report to law enforcement content flagged as illegal or non-consensual.
- significant financial penalties for failing to immediately respond to individuals' reports of content in which they appear as a minor or that was posted without their consent
- the recourse to require telecommunications service providers to block access to an offending OCS in Canada for persistent non-compliance.

We recommend digital platforms be required to:

- establish effective means to verify the age and consent of each person appearing in content as a required step before it is uploaded or distributed
- remove content flagged as CSAM or NCDII within 24 hours of the content being flagged, rather than simply make the content inaccessible to Canadians
- develop a system to verify who is uploading content so there is a record for law enforcement if illegal content is uploaded.
- report to Canadian law enforcement content that indicates a serious risk of imminent harm and all suspected or confirmed instances of content which features child sexual abuse, non-consensual activity or which has been uploaded without the consent of the individual(s) depicted in the video.
- put in place meaningful third-party age verification to ensure that the consumers of content are adults.

We recommend the government:

- specify that online pornography platforms are a separate category for which there is significant risk of sharing and proliferation of harmful content.
- pursue criminal charges if platforms persist in hosting and allowing such content or allowing its re-uploading.
- not extend criminal immunity to platforms for content hosted before entering into compliance with the new regulations
- include non-consensual distribution of intimate images in the harmful content for which the "exceptional recourse" may be applied
- consider requiring platforms to provide financial compensation for victims, such as the revenue generated by the viewing of their images
- create an ombud to help victims and advocate on their behalf for the removal of child sexual abuse materials and intimate images distributed without consent

- continue to work closely with international partners to address online sexual exploitation, as it is a global issue that transcends borders and requires close cooperation.

Online hate

We are greatly concerned with the increase in violent attacks, both in Canada and globally, including those that target people in a place of worship. In many cases, such as the devastating attacks at the Tree of Life synagogue and the Christchurch mosques, these incidents have followed or been linked to the online promotion of hatred.

Government action is required to assist in addressing real-world harm that too often stems from the proliferation of this content online.

It is relevant to this discussion to note that online pornography platforms not only host CSAM and NCDII, but also host content that is hateful or racist toward identifiable groups, and that portrays violence against women as normative. Such content perpetuates harm against individuals, identifiable groups, and society as a whole. This content constitutes online hate and must also be addressed.

We support holding social media companies and online platforms accountable for knowingly hosting content that threatens, advocates or justifies violence on their platforms.

However, it is critical that content be assessed very carefully in light of the fundamental freedoms of belief, opinion and expression guaranteed in the *Charter of Rights and Freedoms*.

The right to believe, to express oneself and to disagree on issues is foundational to a true and vibrant democracy. We must respect and promote these fundamental freedoms, even when the opinions or beliefs expressed are unpopular or uncomfortable.

Canada is a multicultural, multi-faith society, with a diversity of beliefs and opinions. Our diversity means it is inevitable that we will disagree, sometimes deeply. It is important to recognize that dissent, disagreement and critique are not, in and of themselves, hatred.

To call disagreement or critique hatred compromises our ability to call out and respond to actual instances of hatred. When we call every objectionable or offensive expression hatred, we both minimize the seriousness of actual incidents of hate and diminish our ability to respond to and address them effectively.

It is important, then, to make a clear and careful distinction between hate directed at a person and strong disagreement with their views. In a free and democratic society, there must be robust freedom of speech. Tolerance and respect do not mean that our views or beliefs are free from evaluation or critique.

We must find ways to respect and promote fundamental freedoms including religion, conscience, thought, belief, opinion and expression, while drawing a clear and firm line at expressions of hate and the incitement of violence.

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