



Living in
Community

**Submission regarding the federal government's proposed approach
to address harmful content online**

From Living in Community Society

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Background

[Living in Community](#) (LIC) is a provincial non-profit organization based in Vancouver, British Columbia. Centering sex workers' rights, Living in Community convenes diverse stakeholders in order to: understand a range of experiences and perspectives; inform sex work-related policies and practices of governments, service providers, and community organizations; and provide education to support these goals. We focus on root causes of issues including colonization, capitalism, criminalization, racism, and discrimination that create systemic vulnerability for sex workers, and we seek to build understanding and common ground with other community members.

As an organization that works with diverse sex workers and sex worker-serving organizations across BC, we are concerned about several aspects of the government's proposal outlined in this consultation. If implemented, this legislation would infringe upon sex workers' rights and freedoms, creating additional barriers and hardships for an already-marginalized group of workers.

Under Bill C-36, the *Protection of Communities and Exploited Persons Act*, providing a sexual service and advertising on behalf of yourself to provide sexual services are decriminalized in Canada.¹ While we believe this legislation is problematic and leaves the sector still criminalized and stigmatized overall, it provides an important legal basis that sex workers have the right to work.

Though the government's proposed approach may be well-intentioned to address harmful content and behavior online, this legislation would have dangerous consequences for human rights. The proposed framework and regulations are far-reaching, extremely broad, and could sweep up lawful speech and content in ways that can be misused for censorship and surveillance.²

In particular, there are several concerning aspects of this proposal which we describe in more detail below:

1. **Proactive monitoring of content**
2. **24-hour takedown provision**
3. **Substantial financial penalties**
4. **Mandatory reporting to law enforcement**
5. **Sweeping regulatory powers**
6. **Pushing sex work into less safe environments**
7. **Increased urgency of these issues due to COVID-19**
8. **Concerning timeline of this consultation**

Concerns with this proposal

1. Proactive monitoring of content

This proposal would require "regulated entities to do whatever is reasonable and within their power to monitor for the regulated categories of harmful content on their services, including through the use of automated systems based on algorithms."³ Automated filters cannot tell the difference between content that is accurately illegal and that same content being re-used for news reporting, educating,

¹ Government of Canada, 2014. Bill C-36, *Protection of Communities and Exploited Persons Act*. <https://parl.ca/DocumentViewer/en/41-2/bill/C-36/royal-assent>

² Canadian Alliance for Sex Work Law Reform.

³ Government of Canada, 2021. Discussion Guide, "Have your say: The Government's proposed approach to address harmful content online." <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/discussion-guide.html>

or counter-speech.⁴ Automated filters also cannot tell the difference between an online clip of consenting adults performing their work or those forced into exploitative situations, and cannot reliably flag someone’s age. This means that legal speech and content relating to sex work may be swept up in an automated filter.

2. 24-hour takedown provision

In the framework, “regulated entities would be required to respond to the flagged content...within 24 hours of being flagged.”⁵ Such a timeline has been shown to incentivize platforms to err on the side of taking down lawful content to avoid risk and liability, as well as to include in their Terms of Service broad prohibitions on content that is legal.⁶ In addition to infringing upon the right to share legal content, this timeframe would be extremely onerous on smaller companies or individual content creators.

3. Substantial financial penalties

The framework proposes that, in some cases, penalties may be up to \$10 million or 3% of an entity’s gross global revenue, whichever is higher.⁷ As with the 24-hour takedown provision, such an overbearing financial risk would incentivize platforms and creators to avoid sharing legal content.

4. Mandatory reporting to law enforcement

The proposed framework considers including basic subscriber information (BSI), which includes a customer’s name, address, phone number, and billing information associated with the IP address, in the information that could be reported to law enforcement without first requiring judicial authorization.⁸ Sweeping reporting requirements like this lead to a high likelihood of ‘false positives’ whereby platforms and creators sharing legal content could be reported. Sex workers are already surveilled, harassed, and discriminated against by law enforcement, even though selling sex is legal under Canadian law, and should not be made even more vulnerable to law enforcement intervention in their legal work by giving law enforcement more information with no crime being committed.

5. Sweeping regulatory powers

The proposal introduces a number of new regulatory bodies as well as a Commissioner who, among other powers, would be able to “proactively inspect for compliance” and “require an OCSP [Online Communication Service Provider] to do any act or thing, or refrain from doing anything necessary to ensure compliance with any obligations imposed on the OCSP by or under the Act within the time specified in the order.”⁹ These vague and sweeping powers are cause for concern when coupled with the lack of judicial review needed in each case when we consider Canadians’ rights and freedoms guaranteed under the Charter.

Moreover, under this proposal the Commissioner would also have the ability to “apply to the Federal Court to seek an order to require Telecommunications Service Providers to implement a blocking or filtering mechanism to prevent access to all or part of a service in Canada.”¹⁰ This type of sweeping

⁴ Keller, D., 2021. “Five Big Problems with Canada’s Proposed Regulatory Framework for ‘Harmful Online Content.’” <https://techpolicy.press/five-big-problems-with-canadas-proposed-regulatory-framework-for-harmful-online-content/>

⁵ Government of Canada, 2021. Discussion Guide.

⁶ Keller, D., 2021.

⁷ Government of Canada, 2021. Discussion Guide.

⁸ Ibid

⁹ Ibid; Government of Canada, 2021. Technical Paper, ““Have your say: The Government’s proposed approach to address harmful content online.”” <https://www.canada.ca/en/canadian-heritage/campaigns/harmful-online-content/technical-paper.html>.

¹⁰ Government of Canada, 2021. Discussion Guide.

ISP blocking has been criticized by international human rights experts for its infringement on the right to freedom of expression.¹¹

6. Pushing sex work into less safe environments

Since the sex work sector is not fully decriminalized in Canada, what we have heard and experienced from among sex workers in our communities is that the sector remains unsafe. Sex workers are routinely surveilled and harassed by law enforcement who target clients of sex workers for communicating and purchasing sex, and street-based sex workers are forced to work in more clandestine and isolated areas in order to evade law enforcement. Sex workers are often rushed in deciding whether or not to take on a client because they cannot speak openly about what services are being offered, they must make decisions quickly to avoid detection, and it is difficult to find safe indoor spaces to work as these businesses are criminalized. While limitations remain, online platforms often offer sex workers more safety as they can screen clients and have a greater degree of control over their work environment and options.

We are concerned that this legislation would push sex work into less safe environments by limiting the internet as a safer avenue. With the high risk of 'false positives' being reported as well as the onerous financial penalties, sex workers may be pushed (back) into less safe forms of sex work, like street-based work.

7. Increased urgency of these issues due to COVID-19

COVID-19 has heightened the issues raised above. Many sex workers have experienced a significant or complete loss of income, have struggled to access community services because many frontline organizations have had to reduce their services and hours, and have been ineligible for government supports such as the CERB or EI. Additionally, many sex workers have pivoted to online work during COVID-19 to respect public health requirements and best practices against in-person contact.

By reducing the ability of sex workers to work online – one of the only safer options available for some sex workers – this bill would further entrench critical and systemic gaps in safety for sex workers.

8. Concerning timeline of this consultation

Finally, we draw your attention to the concerning timeline of this consultation. Launched in the summer – when many folks are enjoying a much-needed break, especially after a year and a half of pandemic lockdowns – and continuing through a federal election is an inadvisable time period to hold a public consultation. If implemented, this legislation would significantly impact not only sex workers but also internet users and creators of all kinds who may not be able to fully participate in this consultation at this time.

Conclusion

If implemented, we are concerned that this legislation would infringe upon sex workers' legal work, would have broad and overreaching implications for surveillance and human rights, and would lead to increased safety concerns for sex workers. We ask you to carefully review these considerations and revise this proposal.

¹¹ UN Special Rapporteur for Freedom of Opinion and Expression and the IACHR-OAS Special Rapporteur, Joint Declaration on Freedom of Expression. <https://perma.cc/8RVR-HQTJ>.