

Submission re: Bill S-210

Dear members of SECU,

My name is Alexis Hunt, and I'm writing to you today with grave concerns about Bill S-210, just yesterday referred to your Committee, and to urge you not to support passing the bill through Parliament in its current state.

I would like to first share a bit about my own journey so that you can understand why I am writing what I am. In 2016, came out to myself and the world as transgender and, by extension, a lesbian. Later that year, I left my job as a software developer at a mid-size Kitchener company to start at Google Canada in Kitchener, and worked there for five years before leaving to take some time to myself and pursue a longtime ambition of becoming a lawyer.

I say this to contextualize my personal background as a queer person who only found myself well into my adulthood at 24, as someone familiar with the tech industry primarily through the lens of one of its biggest players, and someone very interested in the law and the effects it has on the world.

Finding Ourselves

I want to clarify upfront that there are, undeniably, massive harms associated with inappropriate sexual content. Not just for young people, but for adults, too, who consume sexual content, there are many kinds of harm that the content can do. Unrealistic expectations, normalizing abuse, and self-image issues, to name a few.

However, sexual content is also a critical gateway for many of us to explore our queer experiences and our identities. Many of us come to understand our queer selves as we consume media in which we see ourselves. And as I'm sure many if not all of you are aware, sexual urges are powerful and drive us to do things that we would not otherwise do. In many cases, this is a bad thing, a danger. But for many young queer people, myself included, sexual urges drive us to break down our self-conceptions, push past our fears, and in doing so learn about ourselves. They also help us find community around shared interests, which can be invaluable when we aren't surrounded by queer role models in our lives.

I was not someone who knew from an early age that I was a girl. Growing up in Calgary, I did not begin to really experience those feelings strongly until puberty, but by then, many social anxieties, fears, and a lack of role models kept me from accepting them. By 18, I knew what a trans woman was, but convinced myself that I couldn't be one of them. This is far from an isolated story—in fact, it's such a common experience that there is an entire subgenre of transgender fiction devoted specifically to this kind of self-denial.

It took me over a decade from puberty, even with access to sexual materials online, to discover my truth as a trans woman. I sorely wish I had realised it much sooner. I will never get that decade back. I will never know the experience of going to high school, or through an undergraduate degree, as a girl. Having the social supports to figure out such simple things as clothing and makeup.

The changes to my body from pubertal testosterone are slow and painful to undo, where they can be undone at all. Had I realized my truth sooner, I could have acted sooner and avoided many problems. (And while I hope that you all are supportive of a teenager's right to consent to puberty suppression

treatments, even if they were not permitted until I turned 18, I didn't start hormone therapy until I was nearly 25, almost seven years later.)

And had I not had access to sexual content, not had a decade of fantasies to look back on and go "Oh...", it's all too easy to imagine that I might have taken an additional few years to find myself, lost more of my life when I wasn't living my true self, and undergone even further irreversible changes.

Queer Content is Sexual

Brief moment while I process that I'm about to make a very personal part of my life story part of public record... Wow, okay, I guess I'm doing this. Let's get on with it, then.

I think the obvious question in reply to the above is "Why does it have to be sexual content specifically? Surely there is other content that can fill that void?" Well, like I said above, sexual urges are more compelling. It's much easier for a teenage "boy" to succumb to peer pressure and dismiss a sappy romance as "gay" or "for girls", than to write off a deeper, more powerful urge. Sexual content is how we are forced to confront the inner assumptions we hold about ourselves, or at least be made aware of the contradictions. I believe that without sexual content to explore our queerness, many of us would never have truly found ourselves.

But beyond that, queer content on the Internet is *very* often sexual. It ranges, of course, from lighthearted romances that don't fade to black to compelling, artful erotica to outright rape porn. In traditional media, such as television, film, and publishing, there has over the past decades been a tendency away from sex and sexuality as part of general plots, replacing it with rarer but far more explicit gratuitous sex scenes in adult-targeted media. Queer media, largely excluded from traditional channels, hasn't gone the same way.

I don't pretend to know specific statistics. If I did, I would cite them. But I have found that when I read queer content online, compared to similar, non-queer stories, I've found it more likely to skew sexual. I've known many queer creators who use sexual content as a way of sharing or processing their own stories, and for whom the sexuality is inseparable from the rest of the story. All of this, we stand to lose.

We also stand to lose a valuable source of learning about practicing safe sex. Queer sex is very often kinky, in a way that I don't perceive cis, straight sex to be. I could easily be wrong, but I think it's partly because of what we have to work with and partly because you need a certain amount of momentum to break out of societal norms and experiment, and at that point why bother stopping?

Many folk learned, for instance, from a webcomic called Sunstone (<https://readcomiconline.li/Comic/Sunstone/TPB-1>). It's a kinky lesbian romance story, *very* sexually explicit, but it also delves into the practice of kinky sex, and is unironically one of the best resources for learning about how to do it safely because it isn't just a list of dos and don'ts, but a compelling story that works the lessons into the narrative to the point where you are eager to read them.

Ahem.

I do want to drill home one important thing: the kind of resource that Sunstone represents, a *relatable* lesson in how to practice sex safely, is of *paramount* importance for youth. It is not something that can wait until adulthood. I know from painful personal experience the cost of practicing kinky sex without the knowledge of how to do it safely, and we cannot delude

ourselves into believing that teenagers will not have sex, or that it will not be kinky. It will, and it will. They—queer or otherwise—need more of this kind of media, not less.

I hope, at this point, I've given you a clear picture of what I feel we have to lose, so let's now turn to bill S-210.

Collateral Damage

Let's be clear, this bill is primarily targeted at porn, at content whose primary purpose is arousal. It says as much in subsection 6(2):

(2) No organization shall be convicted of an offence under section 5 if the act that is alleged to constitute the offence has a legitimate purpose related to science, medicine, education or the arts.

and through the definition of "sexually explicit material" incorporated from the criminal code:

(5) In subsection (1), *sexually explicit material* means material that is not child pornography, as defined in subsection 163.1(1), and that is

- **(a)** a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - **(i)** that shows a person who is engaged in or is depicted as engaged in explicit sexual activity, or
 - **(ii)** the dominant characteristic of which is the depiction, for a sexual purpose, of a person's genital organs or anal region or, if the person is female, her breasts;
- **(b)** written material whose dominant characteristic is the description, for a sexual purpose, of explicit sexual activity with a person; or
- **(c)** an audio recording whose dominant characteristic is the description, presentation or representation, for a sexual purpose, of explicit sexual activity with a person.

Under these definitions, much of the tamer side of the repertoire of queer work would not be caught in the definition of the offence. We can still, in theory, have the good without the bad. Take Sunstone, for instance. It is undeniably a work of art, and it has an educational aspect to it as well. That's clearly enough to escape the scope of this law.

Romances with sex scenes, too, would be exempt. They wouldn't even need to argue that they have a legitimate artistic purpose: if the "dominant characteristic" isn't explicit sexual activity, then they don't fall into scope of the bill.

I would argue that these definitions are too narrow, and that queer youth—and all youth, really—should have access to a selection of masturbatory aids that promote safe, healthy sexual habits. It might be a hard sell. But like I said, they're going to do it. We cannot stop that. All we can do is try to guide them in the right direction.

The bigger problem, however, is that these exemptions are not going to matter in practice. It is not the way that the Internet works, not the way that websites work. If they are told by the Government of

Canada that they are showing unacceptable sexually explicit content to minors, and they need to stop or face legal proceedings, they are just going to ban *all* sexually explicit content in Canada, full stop.

You have to put yourself in the shoes of a website such as DeviantArt or Patreon or ScribbleHub, all general arts websites where lots of queer content, including explicit content, is shared widely to the world. Or Tumblr, or the social media network formerly known as Twitter. These are businesses that, although very popular in the queer community and beyond (or, in the case of TSMNFKATwitter, formerly popular) are all struggling to actually realise a profit. So they will look at this law and they will see three possible courses of action:

1. Do nothing, and be banned in Canada and possibly convicted of a criminal offense. This is obviously unacceptable.
2. Develop a filtering process to determine if sexually explicit content falls within the scope of S-210. This process would be a very expensive addition to the already overbearing workload of content moderation teams, and would need to be tailored specifically to Canada's law, so it could not be based on existing sexual content filters. Furthermore, if the government disagreed about the classification of the content, the government could institute legal proceedings possibly leading to a ban or criminal proceedings, and even if the company wins, the process would be very expensive.
3. Apply the law to all sexually explicit content, regardless of whether or not it falls within the definition in the Criminal code or the exemption set out in S-210.

I hope it is as clear to you as it is to me that there is only one viable option for these companies: all sexually explicit content needs to be behind ID verification; there is no alternative. So all of the good content, all of the content that is *important* to make available to youth, will be a victim of this law, and be blocked.

For smaller companies, many either cannot afford to implement ID verification for the small Canadian market, or are ethically unwilling to do so. Those companies will simply allow themselves to be blocked which will be bad for everyone.

And if you have any remaining skepticism, you need look no further than subsection 9 (5) of S-210:

(5) If the Federal Court determines that it is necessary to ensure that the sexually explicit material is not made available to young persons on the Internet in Canada, an order made under subsection (4) may have the effect of preventing persons in Canada from being able to access

- **(a)** material other than sexually explicit material made available by the organization that has been given notice under subsection 8(1); or
- **(b)** sexually explicit material made available by the organization that has been given notice under subsection 8(1) even if the person seeking to access the material is not a young person.

In plain English, this subsection says that *any* amount of collateral damage is acceptable, and it would be better to block a site altogether, for *all* content, than to risk a single young person accessing restricted material.

And I think the ISPs will likely articulate it better than I can in their briefs, but the idea that ISPs can block sexually explicit content but not other content. The technical capabilities simply do not exist. They will likely inform the court there is no option other than to restrict access to, or even block, all content, and then the court will duly read subsection 9 (5) and block the site altogether.

Do not believe otherwise.

ID Verification

I also don't think I need to write at length about the problems with ID verification, particularly the privacy problems. But I will emphasize a few salient points:

- If, as has been discussed, facial recognition is included in the suite of ID verification technology to ensure that the user is actually the person in the photograph, then queer people are at especially high risks. Trans people are known for changing our appearances, and if we get locked out by the system, what are we to do?
- Racial minorities will also face discrimination for the same reason. Facial recognition technology simply does not work as well for them because they are not represented among the people who develop it.
- ID verification is also a major cognitive barrier for people who are feeling very ashamed about accessing gay or trans content. I know I was not comfortable having my real name associated with it in any way whatsoever for years. So the barrier that you put in place around important content for youth will still be there for many once they turn 18.
- All the concerns about privacy are more than well-placed. Consider for a moment: what's the worst case scenario you can think of, when it comes to privacy handling for these sites? I promise you, the reality is *so much worse*. ID documents should *not* be passed around willy nilly, much less to *porn sites*.
- And ten times that amount of "no" for queer folk. Remember Ashley Madison and how it destroyed marriages? Now imagine the same thing with the list of people who watch gay porn on Brazzers, except now it leads to actual violence.
- *Both* the site with the sexual content and the site doing the ID verification need to be trusted with user data, which after five years in the industry, two of them in security, I *absolutely do not*. I *cannot* stress this enough. Google probably leads the industry on privacy and still falls short. If it were a regular Internet company, I would say *do not trust it*. But in porn, *everything is worse*. The sex industry cannot use most of the major credit card processors and ad networks and similar. Everything they have is worse and slammed together on a tight budget. While I mean them no disrespect for playing the hand they are dealt, they *absolutely* should not be trusted with this kind of sensitive data.
- Teenagers absolutely *will* figure out how to get around the blocks. They are smarter than you give them credit for. They *will* learn how to use VPNs so that they don't appear to be coming from Canada, to use AI generators to print fake IDs that fool the software, or to generate fake video of their parents to feed to the verifier. They will do whatever it takes to get access. And then they *will* share this with all their friends. The systems that exist to check ID are not nearly as foolproof as they would like you to think. Think back to your own youth. You know this is true.

Can It Be Fixed?

I will be honest: I don't think so. The bill is built around two core premises:

1. That blocking all sexually explicit content from minors is better for them than blocking none of it.
2. That the mechanisms available to restrict access to adults are safe, secure, and effective.

I firmly believe that neither of these things are true, and that mere amendments will not be enough to fix these fundamental flaws. I have to emphasize point 1: I believe that this bill will deal *more* damage to the very queer youth that it is supposed to help. This isn't just about adults; if it were, I would be much more okay with it.

If you do wish to proceed with this regardless, you must do everything in your power to ensure that sites do not feel that they have to block all sexually explicit content, including at a minimum:

1. The bill should be targeted only to sites that specifically deal in porn. It can be expanded later in the (unlikely, in my view) event that the law is considered successful.
2. It must be a defense that a company puts in good faith efforts to classify material as problematic or not.
 1. There must be strict requirements that the classification process not be discriminatory.
3. The government needs a way to settle disagreements over classification policies or practice without resort to criminal law or bans.
 1. It must be possible for an end user to contest a classification decision, if they believe it was discriminatory.
4. The bill must not contemplate that any amount of collateral damage is acceptable.
5. The bill must not assume that privacy requirements will be handled by regulation. There must be strict privacy limits in the bill itself so that we can understand what the privacy rules are before it is passed.
6. The law should have a five-year review clause.

I think the carrot will prove far more effective than the stick in the long run. I would rather see the effort and energy go to developing guidelines for classifying youth-friendly "adult" content, that can help youth explore their sexual identities and learn how to practice sex safely, trying to gently steer them away from more problematic content. It requires a potentially uncomfortable admission that teenagers are, by and large, sexual creatures, but the sooner we can admit that to ourselves as a society, the better.

Conclusion

One final thought: Given all that I've outlined above, do you *really* expect the bill to be held constitutional?

I may be "only" an incoming law student, but I'm well-read on the *Charter*, and let me put it this way: I sure hope my summer internship at law school isn't to defend it.

Thank you very much for your time reading my brief, and for all your hard work. Except for the partisan bickering you all get up to in front of the cameras. Please, for the love of all that's holy, stop that. It's embarrassing to everyone.

Please do not hesitate to reach out if you would like to hear more from me, whether that's privately as individuals or as a witness before your Committee.

Alexis Hunt

cc Mike Morrice, MP for Kitchener Centre

cc The Honourable Kamal Khera, Minister of Diversity, Inclusion, and Persons with Disabilities

cc Melissa Lantsman, Deputy Leader of the Official Opposition

cc Randall Garrison, NDP Critic for 2SLGBTQ+ Rights