



LEAF
FAEJ

WOMEN'S LEGAL
EDUCATION & ACTION FUND
FONDS D'ACTION ET D'ÉDUCATION
JURIDIQUE POUR LES FEMMES

May 29, 2024

Heath MacDonald, Chair
Committee Members
Standing Committee on Public Safety and National Security
House of Commons
Ottawa, ON K1A 0A6
heath.macdonald@parl.gc.ca / SECU@parl.gc.ca

Dear MP MacDonald and Standing Committee Members:

Re: Concerns about negative impacts of Bill S-210

I am writing to you on behalf of the Women's Legal Education and Action Fund (LEAF) with concerns regarding Bill S-210, "*An Act to restrict young persons' online access to sexually explicit material.*" Based on these concerns, we urge you **not** to pass Bill S-210. Instead, Parliamentarians should defer to the study of the proposed *Online Harms Act* contained in Bill C-63 to consider whether and how any age verification mechanisms should be integrated into Canadian law as a means to protect children online.

About LEAF

LEAF is a national, charitable, non-profit organization that works towards ensuring the law guarantees substantive equality for all women, girls, trans, and non-binary people. LEAF has developed expertise in the gendered and intersectional impact of technology-facilitated violence through intervening in landmark cases before the Supreme Court of Canada and making submissions to Parliament to highlight gender equity implications of online hate.

Context for Considering Age Verification Requirements

On the one hand, the internet provides ample avenues for community-building, civic engagement, and education, especially for members of marginalized groups who might not have access to the same opportunities offline.

On the other hand, the misogyny and gender-based violence that shape our physical realities have materialized online in new and evolving forms. Technology-facilitated gender-based violence—such as doxing, harassment, online hate, cyberstalking, non-consensual distribution of intimate images (NCDII) and sexual deepfakes—causes disproportionate harm to women, girls, trans, and non-binary people across Canada.

As a gender equality advocacy organization, we agree that it is crucial to facilitate safer online experiences for young Canadians, particularly young girls, trans, and non-binary people. Critically, however, any measures taken toward this goal must be proportionate, clearly defined, uphold human rights, and create a realistic expectation that they will be effective in achieving this goal. In its current form, Bill S-210 does not meet these criteria.

Numerous technology regulation and privacy rights experts have expressed concern with the Bill's insufficient privacy safeguards and overly broad scope.¹² We echo their concerns about how this age-verification system will violate Canadians' privacy rights and freedom of expression. Additionally, we are alarmed by the potential harms of the proposed legislation, detailed below, which will have disproportionate impacts based on gender and other forms of marginalization.

Preventing victims of technology-facilitated violence from taking safety measures

NCDII is one of the most prevalent forms of technology-facilitated gender-based violence. NCDII occurs when an individual's intimate or sexual images are circulated without their consent, often "with the purpose of shaming, stigmatizing or harming the victim."³ Between 2015 to 2022, police received reports that the intimate images of over 1700 young people in Canada were distributed non-consensually, although the actual number of victims is estimated to be even higher.⁴ 83% of the victims were girls.⁵

The amendments proposed by Bill S-210 would prevent victims of NCDII who are minors or who cannot otherwise use the age-verification technology from accessing webpages or platforms hosting their intimate images. The Bill's proposed measures would bar many victims from confirming if their image is posted, gathering evidence for legal recourse, and obtaining the URLs to make takedown requests.

Limiting marginalized communities' access to lawful online content

Acquiring and maintaining personal identification can be prohibitive for women, trans, and

¹ Open Media, "Letter to SECU from CSOs on S-21," January 29, 2024, https://openmedia.org/assets/CSO_S210Letter_Jan2924.pdf.

² Emily Laidlaw, "Online Age Verification is Crucial and Bill S-210 Gets It Wrong," University of Calgary Faculty of Law Blog, February 5, 2024, <https://ablawg.ca/2024/02/05/online-age-verification-is-crucial-and-bill-s-210-gets-it-wrong/>.

³ Dubravka Šimonović, Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, UNHRC, 38th Sess, UN Doc A/HRC/38/47 (2018) at 41.

⁴ Laura Savage, "Online child sexual exploitation: A statistical profile of police-reported incidents in Canada, 2014 to 2022," Statistics Canada, March 12, 2024, <https://www150.statcan.gc.ca/n1/pub/85-002-x/2024001/article/00003-eng.htm>.

⁵ Ibid.

non-binary people who are homeless or precariously housed, sex workers, migrants, and/or facing other systemic barriers.⁶ If an age-gate requires ID, adults without ID will be barred from viewing lawful content.

Silencing marginalized voices through over-moderation

The proposed legislation also puts queer-affirming expression, sex education, and art at increased risk of censorship online. Subsection 9(5) of Bill S-210 creates a last resort penalty of website blocking for website non-compliance. To steer clear of such an inordinate penalty, tech companies are likely to over-moderate content on their sites. 2SLGBTQIA+ community members will bear the brunt of this change: through sexual content moderation, queer and trans content is already disproportionately targeted, banned, restricted, and demonetized on social media platforms.⁷ As Ari Ezra Waldman writes: “Encoded in [algorithmic content moderation] technologies is the value-laden claim that queerness is sexual in a way that straightness is not.”⁸ This censorship will further restrict community members’ access to vital information and community, as well as exacerbate anti-2SLGBTQIA+ stigma, misinformation, and harassment. At a time when attacks on queer and trans rights are on the rise, queer and trans voices must be supported and uplifted, not silenced.

Considering the proposed legislation’s impacts on gender equality and privacy rights, **we recommend not passing Bill S-210 into law.** The harms of the proposed age-verification system clearly outweigh the benefits.

Rather, a holistic approach to online child safety should be explored through consideration of the *Online Harms Act* proposed in Bill C-63. By prioritizing the reporting and expedient removal of NCDII and other content that sexually victimizes children or revictimizes survivors, the proposed *Online Harms Act* takes a step in the right direction. Other tools should also complement the proposed *Online Harms Act* — for example, implementing age-appropriate, inclusive education on online pornography to build media literacy amongst young people, parents, and educators. In the Australian eSafety Commissioner’s 2023 report on a mandatory age verification mechanism, this type of education was a key recommendation to mitigate harms to children from online pornography.⁹

⁶ Chris Sanders, Kristin Burnett, Steven Lam, Mehdi Hassan, and Kelly Skinner, "You Need ID to Get ID": A Scoping Review of Personal Identification as a Barrier to and Facilitator of the Social Determinants of Health in North America. *Int J Environ Res Public Health*. 2020 Jun 13;17(12):4227. doi: 10.3390/ijerph17124227.

⁷ Ari Ezra Waldman, *Disorderly Content* (August 16, 2021). *Washington Law Review*, Vol. 97, 2022, <http://dx.doi.org/10.2139/ssrn.3906001>

⁸ *Ibid.*, 959.

⁹ eSafety Commissioner, “Roadmap for age verification and complementary measures to prevent and mitigate harms to children from online pornography,” [eSafety.gov.au](https://www.esafety.gov.au), March 2023, https://www.esafety.gov.au/sites/default/files/2023-08/Roadmap-for-age-verification_2.pdf?v=1716838193831

Thank you for your consideration of this submission.

Sincerely,

A handwritten signature in black ink that reads "Pam Hrick". The signature is written in a cursive, flowing style.

Pam Hrick
Executive Director & General Counsel
LEAF