

**Submission to the Standing Committee on Public Safety and National Security:
Bill S-210 An Act to restrict young persons' online access to sexually explicit material**

Canadian Alliance for
Sex Work Law Reform
Alliance Canadienne pour
la Réforme des Lois sur
le Travail du Sexe

Submitted by the Canadian Alliance for Sex Work Law Reform
May 2024

The Canadian Alliance for Sex Work Law Reform is made up of 23 sex worker rights groups, the majority of which are run by sex workers, serving thousands of sex workers across the country. Our members work to protect the rights and safety of people who sell or trade sex, including safety from labour exploitation and violence. We have extensive personal expertise mitigating interpersonal and state violence and labour exploitation, as well as knowing the impacts of criminalization and other punitive legislations and surveillance initiatives.

Our member groups and the communities we represent are uniquely qualified to speak to the failings of Bill S-210, given our experiences navigating punitive surveillance and regulation harms in legislative frameworks. In particular, we are accustomed to dissecting legislation that incorrectly uses the language of, “health”, “safety” and “protection” to further promote moral, political and legal practices. This Bill makes sweeping generalizations that conflate deliberately vague “sexually explicit” content with significant harms, such as those arising from substance use, mental health challenges, violence and harassment against marginalized communities, and broad public health and safety concerns. This approach and the Bill itself will result in increasingly punitive surveillance, policing, stigma and discrimination not only of sex workers but of all people in Canada.

Summary

In this brief, we warn of the serious dangers presented by Bill S-210 and offer solutions focused on comprehensive sexual health education and digital literacy initiatives, and emphasize the dangerous implications of “age verification” practices that compromise everyone’s privacy, including furthering the digital divide and access to information for marginalized communities. Young people *can* be supported to avoid exposure to harmful online material, but Bill S-210 is *ineffective in its stated purpose* and will cause immeasurable harm to young people, women, 2SLGBTQ+, and BIPOC communities and individuals.

Our brief highlights:

1. **Scope of definitions & surveillance is overly broad:** the definition of “internet service provider” includes anyone who hosts content, provides email services or provides access to anyone in the stage of the internet process – not just hosting websites. Further, the way that “sexually explicit” is defined will ensure the continued targeting of marginalized communities of 2SLGBTQ+ folks, women’s bodies and racialized bodies.

2. Hate and moral panic-based roots of Bill S-210:

- i) Paternalism and control of women’s bodies: Bill S-210 infantilizes women through a paternalistic approach and blames women for the very violence and brutality inflicted on them while locating the source of that violence as exposure to erotic/sexual content rather than the deeply embedded social, moral and cultural value-systems that fuel misogyny.
- ii) Conflation of experiences of women, youth, and children: The text of the Bill as presented, conflates the particular experiences of women, youth and children - all are to be protected from the purported “harm” of the existence of pornography. Yet, these are three distinct age groups with vastly different needs when it comes to sexual health and education.
- iii) Conflation of sexual exploitation and violence with sexuality and sex work: The Bill’s preamble makes bold, sweeping, and unsupported claims on pornography as both a form of inherent violence and a catalyst for gender-based violence, harassment and discrimination.
- iv) Protecting children as moral panic to pass bad law: an international analysis of age verification laws demonstrates no success in keeping sexually explicit material out of the hands of young people but does highlight an increase in de-platforming and silencing sex workers and 2SLGBTQ+ communities.

3. The specific problems with the Bill

- i) Age verification technology sets up enormous risks for privacy and surveillance
- ii) No consultation with sex workers took place in the creation of the Bill
- iii) Censorship of women, 2SLGBTQ+, sex workers, and racialized communities
- iv) Age verification is unlikely to keep young people from accessing sexually explicit material

4. Recommendations

- i) Say NO to Bill S-210
- ii) Do not use punitive law and prohibition to regulate the use of sexually explicit material or pornography
- iii) Promote consent through critical and inclusive educational campaigns
- iv) Teach digital and media literacy
- v) Consult sex workers on safety online
- vi) Consult young people on their digital safety and pornography concerns
- vii) Decriminalize sex work - Remove *Protection of Communities and Exploited Persons Act (PCEPA)*

Bill S-210 ignores the importance of comprehensive sexual health and wellness education, instead marking the alarming expansion of policing and surveillance technologies that will inevitably target

marginalized communities otherwise completely ignored by this legislation. As a result, Bill S-210 ultimately exacerbates the precise forms of hypersexualization and objectification that lead to intensified violence, harassment and discrimination already experienced by our communities. By vaguely signaling the expanded use of age-verification technologies, Bill S-210 ignores the discriminatory nature of both platform and device-based age-verification solutions.

Bill S-210 has far-reaching implications that will fundamentally change how the internet works for every person attempting to access information or services online in Canada.

Complete Brief:

1. Overly broad definitions make for a Bill with near-unlimited scope

Two definitions make this Bill overly broad and likely to do infinitely more harm than good to all internet users, including the very people this Bill purportedly seeks to protect: children, youth, and women. These definitions are of i) “sexually explicit” material; and ii) what constitutes an online service requiring age verification.

i) The Definition of “Sexually Explicit” Material

The Bill uses the definition of sexually explicit material as defined for the purpose of s. 171.1(1) of the Criminal Code (CC). This definition, provided at s. 171.1(5) CC, refers to photos, videos, audio, and written representations.

Language throughout 171.1(5) cites an undefined evaluative framework to determine what constitutes “sexually explicit material” that is highly subjective in nature and broad in scope, referencing a need to evaluate the “dominant characteristic”, “description”, “representation” and the intended “purpose” of content. Both the broad framing of what registers as sexually explicit in Bill S-210 and vague referencing to models of evaluation that consider the intention and characteristics of content, promote stereotypes and normative ideas about sex, sexuality and sexual expression, targeting already over-surveilled communities.

Further, section 171.1(5) which defines “sexually explicit”, specifically deals with offenses of making sexually explicit material available to a child for the purposes of sexually exploiting, abusing, kidnapping, or trafficking that child. Housing the definition here, without more clarification, highlights the extremist attitudes underpinning the Bill. Influencing organizations behind the Bill like the American College of Pediatricians (ACP), Fight the New Drug, and the National Centre on Sexual Exploitation (an anti-sex group formerly known as Morality in Media) conflate any communication, relation or expression of sex, sexuality and sexual expression outside of the limited framework of white, cis-gendered and heteronormative, relational dynamics as a social, moral and political threat to all people. Characterizing the expressions, relational dynamics, and behaviours of communities who do not subscribe to a very rigid concept of “normalcy” as a social problem, or as

“grooming,” furthers a deeply prejudicial, moral agenda.

Women’s Bodies as “Sexually Explicit” Material

Definitions of sexually explicit are far too broad concerning women’s bodies. Specifically, the breasts of any person that is read as being female are considered sexually explicit. There is no note that nipples must be visible, simply depiction of breasts. This vague description leaves room for vast interpretation and is incredibly dangerous.

Defining women's bodies as inherently sexually explicit not only projects blame onto women by promoting women to “cover up”, but it suggests women should be less expressive. These discourses have historically led to more targeted violence against women.

The Hypersexualization of Black, Indigenous and Racialized Women and Gender Non-Conforming Communities

We explicitly note the biased reading of hypersexuality onto women and gender non-conforming communities from Black and Indigenous Communities of Colour. In everyday life these communities are already hypersexualized, read as more inherently sexual than those read as cis-gendered, white, male-presenting or otherwise heteronormative representations of “normal” bodies. This is the case in both the context of interpersonal interactions and AI judgements.¹ The expansion of these logics through Bill S-210 and the resulting expansion of surveillance and security technologies in digital contexts will lead to an intensified policing of Black, Indigenous and racialized communities, LGBTQ2S+ communities, and other marginalized communities – many of whom seek community, connection, education and support in digital spaces. Content posted by those users will be highly and unevenly scrutinized and censored as sexually explicit.

Evidence demonstrates that abstinence education does not work. Young people who have been through abstinence-only sex education initiate sexual activity earlier in ways that are less safe, with higher rates of unplanned pregnancy.² Young people who do not receive comprehensive, critical, and inclusive forms of sexual health education and digital literacy curriculum are denied access to critical information on sexual health and wellness such as:

1. Safety and harm reduction principles that support navigating and understanding personal and interpersonal dynamics;

¹ Gianluca Mauro & Hilke Schellmann, “‘There is no standard’: investigation finds algorithms objectify women’s bodies” (8 February 2023), online: *The Guardian* <<https://www.theguardian.com/technology/2023/feb/08/biased-ai-algorithms-racy-women-bodies>>.

² Pamela K Kohler, Lisa E Manhard, & William E Fafferty, “Abstinence-only and comprehensive sex education and the initiation of sexual activity and teen pregnancy” (April 2008) 42:4 *Journal of Adolescent Health* 344, online: <<https://pubmed.ncbi.nlm.nih.gov/18346659/>>.

2. Best practices in navigating critical questions, concerns and well-rounded understanding of communication, boundary setting and the principles of enthusiastic, ongoing consent; and
3. Education on the clear and necessary distinctions between sex and sexual violence, including key information unpacking the logic of rape culture, victim-blaming, and body-shaming.

When legislative frameworks entrench social and moral attitudes that conflate all discussion, expression and representations of “sexuality” online, *everyone* is affected. The practical application means the denied access to critical information that dramatically improves our ability to understand, name and assert boundaries, understand sexual health, wellness and safety principles and locate the responsibility for sexual violence, harassment and abuse. Additionally, it closes the door to any acknowledgment of the key role that uneven power dynamics, misogyny, racism, homophobia and transphobia play in encouraging and escalating these forms of violence across our communities.

To this end, Bill S-210 encourages a culture around sex, sexuality and sexual expression that shames people for their curiosity; hypersexualizes and further polices marginalized communities; characterizes all expressions of sex, sexuality and sexual desire as “sin” not to be viewed, and; as a result, will ultimately lead to an increase in sexual violence, harassment, discrimination and abuse.

Sex workers have seen this before. Routinely, our communities have been targeted, scrutinized, policed and displaced due to legislative strategies that similarly sought to “protect”, “rescue”, and “save” (see *PCEPA*). Notably, queer and trans Black and Indigenous communities of colour (QT/BIPOC) in sex work have a lot of experience with this language. They have seen increased social and community-based policing – both on an interpersonal and collective level – along with heightened formal policing and surveillance strategies. The misinformation found in the preamble to Bill S-210, which conflates our bodies and existence to obscenity, public health and safety issues, and other devastating harms, including a threat to children and communities at large will only intensify this pressure, with severe lasting consequences.

ii. The definition of applicable online services

As it stands, Bill S-210 defines an “organization” as one that makes available sexually explicit material on the internet to a young person for commercial purposes.³ This would include, as the Age Verification Providers Association has outlined,⁴ any online service that could host user-generated content. This includes Pornhub and OnlyFans, and also Google, Twitter, Facebook, Instagram, Tik Tok, and anywhere that an image, text description, or audio could be posted. Bill S-210 broadly applies to anywhere on the internet where users can post content of any form.

³ S-210, *Protecting Young Persons from Exposure to Pornography Act*, 1st Sess, 44th Parl, 2023 at s 5 [S-210].

⁴ Age Verification Providers’ Association, “As the trade body for the providers of privacy-preserving age assurance technologies...” (19 December 2023), online: *LinkedIn* <https://www.linkedin.com/posts/age-verification-providers-association_the-most-dangerous-canadian-internet-bill-activity-7142826506703011841-Q_Z3?utm_source=share&utm_medium=member_desktop>.

2. Hate, Moral Panic, and Infantilizing Women as the Basis for S-210

The central problem with Bill S-210 begins with its foundational logic. Despite any stated pretense to “protect” children, young people and women, the Bill was primarily informed by anti-2SLGBTQ+ and anti-sex work individuals and organizations.

The Bill is rooted in a perspective that manufactures a sexual moral panic, implying that the solution to “protect” and “save” people is to hyper-police and surveil digital spaces, sexual expression and communities outside of white, cis-gendered heteronormative relational dynamics to return to “traditional” “family values.” The Bill characterizes women - specifically women from marginalized communities - both as victims and as responsible for violence enacted upon them. In this Bill, pornography has become a scapegoat for multiple social issues instead of providing comprehensive sexual health education and mental health supports.

i. Paternalism and control of women’s bodies

Senator Julie Miville-Dechêne openly quoted an American hate group, the American College of Pediatricians (“ACP”), in her introductory speech to the Senate on S-203, this Bill’s predecessor.⁵ The ACP, like many other organizations that have influenced the Bill, push a radical extremist agenda. They are indeed not the American Academy of Pediatrics, which is the legitimate professional association for pediatricians. A quick visit to the ACP’s website shows ACP’s principles are centered in binary understandings of gender, one-man one-woman marriage, anti-abortion, abstinence, and barring comprehensive sexuality education from schools.⁶

The line the Senator quoted from the ACP was: “Because of its harmfulness to children, pornography must never be used as a tool to teach children human sexuality.” While this may sound like a call for more comprehensive sex education, rather than leaving it to pornography to educate youth, understanding that the ACP considers homosexuality, trans people, and sex outside of heterosexual marriage to be pornographic, the quote takes on a different tone. Bill S-203’s speeches even featured comments about anal sex suggesting it would be “horrible” if a child found anal sex online. This narrative specifically demonizes certain kinds of sex and sexuality that are not limited to 2SLGBTQ+ communities but are often read that way.

Kansas has recently put forward an amendment to their age verification Bill that says the quiet part out loud: it defines any homosexual behaviour as pornographic.⁷ These are the same forces at play behind S-210.

⁵ “Bill S-203, An Act to restrict young persons’ online access to sexually explicit material”, 2nd reading, *Debates of the Senate*, 43-2, No 8 (3 November 2020) at 1530.

⁶ American College of Pediatricians, “About Us” (Accessed 19 May 2024), online: <<https://acpeds.org/about>>.

⁷ Samantha Cole, “Kansas is About to Pass the Most Extreme Age Verification Law Yet” (27 March 2024), online: *404 Media* <<https://www.404media.co/kansas-age-verification-porn/>>.

With a base in hate and oppression of 2SLGBTQ+ folks, women, and vulnerable young people, the fallout from the Bill's enactment will disproportionately affect those very same groups, especially individuals from racialized communities and those living in poverty.

ii) Conflation of experiences of women, youth, and children

In the Bill, adult women are considered as having the same need for protection as children. As a collective of sex worker organizations, we are critical of “protection” narratives. Specifically, we emphasize the way paternalistic attitudes like this are weaponized against Black and Indigenous communities of color, non-status, im/migrant and refugees, who - through expanded policing and surveillance - are threatened at a vastly different scale than non-racialized communities, while also routinely characterized as needing “rescue” and “saviorship”, denying these communities any meaningful agency or representation in social, political and legal discourses.

Our fears were confirmed when Senator Linda Frum quoted Louise Perry,⁸ an anti-abortion, anti-contraceptive, and traditional women's values-based public speaker and author who believes that violence against women happens because of their access to contraceptives.⁹ Again, the member groups in our Alliance are very familiar with this model of blaming and criminalizing women for any violence they encounter, in particular women and gender non-conforming communities navigating multiple forms of marginalization.

Entirely absent from the Bill is any note about male and trans viewers of pornography, other than of men as inevitable abusers egged on by their exposure to the “drug” of pornography. This focus on the inherent nature of male violence again shifts the blame for any violence women, trans, and gender nonconforming people encounter, because it's simply a man's nature to be violent. Tying these realities into the Bill's most fundamental logic by infantilizing (white) women and over-policing Black, Indigenous and racialized women's bodies – suggesting a further expansion of surveillance that will further police marginalized communities – subverts the critical role of comprehensive, critical and inclusive education-based interventions that emphasize consent, communication, health, and safety. We find this not only irresponsible but potentially incredibly dangerous.

iii) Conflation of sexual exploitation and violence with sexuality and sex work

The Bill's preamble makes bold, sweeping, and unsupported claims about pornography as both a form of inherent violence and a catalyst for gender-based violence, harassment and discrimination. Given that the Bill's study at Parliament appears to have been completely filibustered, experts who could speak to these unsubstantiated claims have not been able to refute them. Bill S-210 suppresses

⁸ “Bill S-203, An Act to restrict young persons' online access to sexually explicit material”, 2nd reading, *Debates of the Senate*, 43-2, No 11 (17 November 2020) at 1750.

⁹ Ralph Leonard, “The Bedevilmings of Sex: Louise Perry's 'The Case against the Sexual Revolution'”, *Areo* (3 June 2022), online: <<https://areomagazine.com/2022/06/03/the-bedevilmings-of-sex-louise-perrysthe-case-against-the-sexual-revolution/>>.

open, honest and critical discussion around sex, sexual health, wellness and expression.

Sex workers have routinely emphasized the importance of distinguishing between sexual exploitation and sex work. This is a moral framework rather than one based on evidence, and it obscures our capacity to name and have real exploitation recognized when definitions of it are overly broad. Moreover, the conflation of sex, sexual expression, sex work and “non-normative” sexual practices with “sexual exploitation”, completely ignores the realities of criminalization and repressive, morally-charged initiatives like Bill S-210, and in turn only contributes to the further marginalization, exploitation and violence faced by our communities.

Consent is integral to creating sexually explicit films or videos. Without consent this is abuse. These two things are distinct. Pornography is a protected expression under the Canadian *Charter of Rights and Freedoms*. The country’s leading case on pornography and obscenity highlights the broad range of opinions on what constitutes violence in pornography.¹⁰ That range of views is reflected in the journey of this Bill. While Senator Miville Dechêne quoted that 37% of pornography contained violence against women,¹¹ Member of Parliament Karen Vecchio later quoted that 87% of pornography contained violence against women.¹² Studies have shown a misunderstanding of consensual practices like BDSM have led to the 87% figure and that numbers are highly overstated to achieve moral goals rather than create evidence-based policy.¹³

The Bill positions “sexually explicit and obscene” as dangerous and unhealthy – similar to the way that *PCEPA* defined all sex work as violence without any evidence, despite much evidence to counter.

In section 4(b), the Bill declares that one of its purposes is to “protect Canadians — in particular, young persons and women — from the harmful effects of the exposure of young persons to sexually explicit material, including demeaning material and material depicting sexual violence.” If 87% of porn were demeaning and violent, losing the 13% that is not violent might be minimally impairing. But when using a figure like 2% from another study,¹⁴ losing access to 98% of a genre of film just to stamp out 2% is a gross constitutional violation.

¹⁰ R. v. Butler, 1992 CanLII 124 (SCC), [1992] 1 SCR 452 at 484, online: <<https://canlii.ca/t/1fsdj>>.

¹¹ Bill S-203, “An Act to restrict young persons’ online access to sexually explicit material”, 2nd reading, *Debates of the Senate*, 43-2, No 8 (3 November 2020) at 1540 (Julie Miville-Dechêne).

¹² Bill S-210, “Protecting Young Persons from Exposure to Pornography Act”, 2nd reading, *House of Commons*, 44-1, No 254 (23 November 2023) at 1735 (Karen Vecchio) [Vecchio S-210].

¹³ Michael Casteman, “How Much of Porn Depicts Violence Against Women?” (15 June 2016), online: *Psychology Today* <<https://www.psychologytoday.com/intl/blog/all-about-sex/201606/how-much-porn-depicts-violence-against-women>>.

¹⁴ *Ibid.*

Much of the underlying problem here is a mischaracterization of sex work as “commercial exploitation”. Our member groups fight daily against this oppressive and violent conflation that prevents respect for sex workers’ rights and protections.

iv) Protecting children as moral panic to pass bad law

We have seen the protection of children used as the basis for all kinds of bad lawmaking and censorship. The satanic panic of the 1970s-80s saw over 12,000 individuals charged for satanic ritual abuse - for which no evidence was ever found.¹⁵ Unfounded claims in Canadian literature were completely debunked, and evidence was found that children who had experienced sexual trauma experienced it at the hands of their loved ones or spiritual leaders. Yet again, society deflected blame to rock music and “satanism” - a way to police behaviour deemed unacceptable in polite society.

We’ve seen this pattern constantly over time, targeting anything from women’s access to ice cream parlours in the early 1900s,¹⁶ young people’s access to parks in the 1960s,¹⁷ video games in the 2000s, and now issues of “parental rights” and trans identities.¹⁸ The porn moral panic is deeply tied to troubling movements.

Abdicating responsibility around mental health and blaming it on sex on the internet is not the solution. The Bill positions drug use and mental health issues as stemming from the availability of sexually explicit content or porn. Instead, it lies in the critical absence of meaningful engagement with inclusive sexual health, wellness and education modules, and expanded conversations around sexuality - *not* the criminalization of human bodies.

We have significant privacy concerns that stem from both platform and device-based age verifications strategies that will deepen the digital divide by compromising access to the internet for poor, working class, non-status im/migrants and refugees, Queer and Trans, black and Indigenous People of Colour (QT/BIPOC) and other historically oppressed groups who are unable to meet the burden of proofs as well as compromising the privacy of personal data for everybody.

3. Specific Problems with the Bill

Despite vaguely referencing a forthcoming “prescribed age verification method” (6.1), Bill

¹⁵ Daniel Goleman, “Proof Lacking for Ritual Abuse by Satanists” (31 October 1994), online: *New York Times* <<https://www.nytimes.com/1994/10/31/us/proof-lacking-for-ritual-abuse-by-satanists.html>>.

¹⁶ *International Agreement for the Suppression of the White Slave Traffic* (18 May 1904), online (pdf): *United Nations* <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20VII/VII-8.en.pdf>>. See also: The Dirt on “White Slavery”: The Construction of Prostitution Narratives in Early Twentieth-Century American Newspapers Erin Gallagher-Cohoon (2013) 5:1 *Constellations* 36 at 38-40, online (pdf): <https://journals.scholarsportal.info/pdf/25620509/v05i0001/nfp_tdostnietan.xml_en>.

¹⁷ MessyNessy, “Mods vs Rockers in Brighton’s Battle of the Beach Chairs, 1964” (18 September 2018), online: <<https://www.messynessychic.com/2015/02/04/battle-of-the-beach-chairs-1964/>>.

¹⁸ Chris Pepin-Neff, “Anti-Trans Moral Panics Endanger All Young People” (19 May 2023), online: *Scientific American* <<https://www.scientificamerican.com/article/anti-trans-moral-panics-endanger-all-young-people/>>.

S-210 does not meaningfully expand on which age-verification methods services will be required or qualify. This makes personal data, data storage, retention, privacy and security practices that affect everyone, vulnerable to serious breaches.

The age verification technologies referenced by individual Senators emphasize private, third-party age verification services that collect sensitive data about the online habits, interests, sexual preferences and curiosities of people. Additionally, the sponsoring Senator has suggested that online services would be required to use *third-party* age verification services and not carry out the verification themselves.¹⁹ That is to say, Facebook or Google could not run their age verification service and must contract out to prescribed methods referenced vaguely throughout Subsections 6 and 11 of the Bill.

The way the market functions, online services that may (even inadvertently) host material defined as sexually explicit will have three choices:

1. The online service can enable age verification on their platforms and comply with the law. The financial costs are high and include:
 - The cost of third-party age verification services, factoring in per-verification per-user fee structures.
 - The cost of decreased traffic. Age verification presents a barrier to accessing online services. Users who don't wish to use age verification will avoid the service, decreasing overall traffic. Given that most online social media services rely on traffic for ad revenue (and thus make sexually explicit material "available commercially"), this will be a major consideration.
2. The online service may choose to increase content moderation to ensure that no sexually explicit material ends up on their service, avoiding the need to implement age verification. Historically this process is offloaded to AI filtering to navigate the sheer volume of content and avoid the high human labour costs of content moderation. The cost of AI moderation is still not zero, and moderation tends to view the bodies of women and gender non-conforming communities, Black and Indigenous communities of colour, LGBTQ2s+ communities and other representations outside of cis-gendered heteronormative standards of beauty as inherently sexual or explicit in nature.⁵⁰ Several Black and Indigenous scholars note significant limitations in the ability of mainstream AI tools- in particular biometric tools- to identify Black, Indigenous and racialized features as human.¹⁹ The expressions and identities of these communities will be heavily filtered if this option is pursued, as they already are.
3. Online services could exit the Canadian Market. They may simply crunch the numbers and decide that serving Canada with this law is not worth the cost of compliance.

¹⁹ Safiya Umoja Noble, *Algorithms of oppression: How search engines reinforce racism*, 1st Ed (New York, NYU Press, 2018).

The sensitive nature of this data, combined with the serious privacy concerns associated with current age verification technologies and references in Section 11 (2), implies that law enforcement will have direct access to this information. Considering the range of possibilities presented in the discussion this information includes, but may not be limited to:

1. Biometric Data such as users' facial scans and related audio/visual content;
2. Identity-based data such as government identification (ie, passports, drivers'licenses); and
3. User data such as credit cards, banking and other identifiable information that track user's activity across the internet.

Age verification technologies referred to in Bill S-210 present significant privacy violations for all users and embed well-established racist and sexist biases into their algorithms.

With this in mind, the Alliance outlines four major problem areas with Bill S-210:

- i) Age verification technology creates enormous risks for privacy and surveillance

There are no details on the privacy and security requirements of age verification technologies in Bill S-210. The Bill, instead, sweepingly declares in its preamble that age verification technologies are, "increasingly sophisticated and can now effectively ascertain the age of users without breaching their privacy rights." There is no evidence for this claim. In fact, France's age verification laws have been unenforceable because no age verification technology exists that does not violate the country's own privacy laws.²⁰

The United Kingdom took a prudent approach in their Online Harms-type legislation. While their *Digital Safety Act* requires age-appropriate design, the government has concluded that age verification technologies as they exist today, present far too high a risk to user privacy and security to be required.

Age verification as it exists today, collects highly sensitive personal and identifiable information, allowing it to exist indefinitely. Privacy and cybersecurity professionals know that the only safe data is no data at all. We have seen countless data breaches, from health care to credit score companies, and age verification companies will be no exception. Knowing that these companies will be keeping on file a record of every individual's sexual preferences is an absolutely unacceptable risk.

Only Fans already uses these technologies to track the ages of the creators. Age verification companies already declare that they work with border control and law enforcement, essentially creating a database of sex workers. Early research suggests that this has increased surveillance of sex

²⁰ CNIL, "Online age verification: balancing privacy and the protection of minors" (22 September 2022), online: <<https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>>.

workers, which will extend to clients of their services if age verification requirements go ahead. If clients are hesitant to provide screening information online when age verification could potentially track them, they will resort to services where sex workers may not be able to access supports or conduct screenings in a way that keeps them safe.

Safeguarding is important not just in the name of privacy of people who are often already afforded that privacy, but for marginalized communities whose privacy is a matter of life and death. This is an impossible task for age verification technology that has consistently demonstrated inherent bias against Black, Indigenous, and racialized communities, LGBTQ2S+ and gender non-conforming communities, “non-normative” representations of beauty, sexual health, expression and relations.

ii) No consultation with sex workers in creation of the Bill

Throughout consultation on Bill S-203 and now S-210, sex workers have not been meaningfully included. Sex workers are viewed as exploited, and not legitimate. Black and racialized sex workers are characterized as “threats”, while Asian and im/migrant sex workers are widely discriminated against and painted with racist characterizations of “voiceless”, and in need of “rescue” when organizing for their collective safety. This makes it even more important to hear from a diversity of sex workers when creating legislation that impacts on our lives. We have extensive experience with online safety, censorship, and surveillance and our knowledge is essential to the regulation of digital spaces.

The Bill ignores the evidence on the ways that criminalization impacts sex workers and how sex workers are targeted. Even the debates of the Bill are focused on pornography when the Bill’s reach is all sexually explicit material. The sex industry is used as a mechanism to promote the Bill in its entirety. Even if the sole concern of the Bill was pornography, MPs have not reached out to people who create content for the internet, and to sex workers who use the internet to create content and sell sex. Lawmakers need our perspective to prioritize safe environments, not create more harmful ones.

iii) Censorship of women, 2SLGBTQ+, sex workers, and racialized voices

While it is often claimed that age verification Bills target large websites, sex workers themselves stand to be censored. For instance, age verification technologies have been in place for several years in Germany - no adult website has successfully been blocked, but in the first months after heightened requirements were introduced, over 60 individual sex workers were blocked from access to Twitter.

Various internet service providers already refuse ads from sex workers. If Bill S-210 passes, this will worsen. Anyone advertising sexual services online will be impacted: visual images, written descriptions, and audio will be increasingly limited which decreases the capacity to communicate boundaries and consent openly and increases opportunities for harm. That harm includes being exposed to poverty and more harmful working conditions as options to work safely are extinguished.

Individual content creators will also be disproportionately affected. Enormous monopolies like Pornhub and OnlyFans can support the expenses presented by age verification technology, but it would bankrupt independent (“indie”) performers. The practical implication of this is no more independently-produced porn – which is an important way that sex workers increase autonomy and control in their lives.

For 2SLGBTQ+ folks, privacy issues are important to express and learn, particularly those who come from families who are violent or reject their children when they find out that they do not subscribe to a cis-heteronormative lifestyle. This feeds into the current anti-trans ideology sweeping through Canada. Accessible sexually explicit material is necessary. Communities need sexual education, imagery, and what would be considered sexually explicit material to be able to express themselves, especially in the context of anti-trans hate. This Bill will limit self-identification, the construction of community, and understanding consent and bodily autonomy.

- iv) Age verification is unlikely to keep young people from accessing sexually explicit material

Where age verification laws have passed, the use of Virtual Private Networks (VPNs) that hide a user’s physical location has surged.²¹

Research from France has demonstrated that young people are highly effective at using VPNs, and are actively doing so to circumvent age verification requirements. It also found that young people use non-indexed sharing methods like messaging and email platforms to share sexually explicit content.

4. Recommendations

Our recommendations are consent-based and community-driven solutions and relatively simple to implement that maintain safety for all.

- i) Say No to Bill S-210**

This Bill presents significant privacy concerns and infringements on the civil liberties of everyone. It is overbroad and captures any sexually explicit material, referencing vague and subjective language around what constitutes “legitimate” educational, scientific, artistic, or medical purposes leaving the door open to moral censorship of non-cisheteronormative sexuality.

Moreover, Section 9(5)(a) references an expansion of this application to include “material other than sexually explicit material...or (b) sexually explicit material made available by the organization...”

²¹ Mack DeGeurin, “Online porn restrictions are leading to a VPN boom” (3 April 2024), online: *Popular Science* <<https://www.popsoci.com/technology/vpn-boom/>>.

even if the person seeking to access the material is not a young person” if it is hosted on the same service.

Its constitutionality will be challenged, tying up important financial resources in the courts.

ii) Do not use punitive law and prohibition to regulate the use of sexually explicit material or pornography

Pornography is not intended to act as a replacement or stand-in for comprehensive, critical and inclusive sexual health, wellness and equity-driven models of education around sex, sexuality, sexual expression. Legislation like Bill S-210 leans on antiquated, morally-charged campaigns against “non-traditional” and “non-normative” forms of sex, sexuality, sexual expression and, through thinly coded language, the existence and expressions of marginalized communities, in ways that actively censor, restrict and shame vital communities, digital platforms, tools, and even physical spaces, out of existence. This framework robs young people and everyone else of the opportunity to access comprehensive education, community spaces and other vital sources of refuge from an intensifying climate of racism, homophobia, transphobia and other forms of discrimination.

Punitive law approaches create significant harm for young people and for everyone. Prohibition has never been successful with anything (ie., alcohol, anal sex, abortion). Prohibition and punitive regulation inevitably make working conditions, learning conditions and access to key physical and digital spaces less safe for everyone.

Further, pornography is a protected expression under the *Charter of Rights and Freedoms*. It is perfectly lawful for consenting adults to access and view it.

iii) Promote consent through critical and inclusive educational campaigns

Member groups of the Alliance firmly believe in education over carceral frameworks, and the critical importance of wide-spread, accessible educational interventions focusing on consent and the principles of anti-racism, anti-oppression, trauma-informed and harm reduction frameworks.

We need alternatives to legal responses to young people’s curiosity, viewing of and engagement with sexual material. Instead of implementing censorship programs that are unlikely to work and require significant moral and ethical violations of our civil liberties, Canada should invest in programs to support individuals and communities to better understand and engage with topics related to sexuality, nudity, bodily autonomy, and sexual behaviour.

It’s important to include supports that focus on supporting parents who want to talk with their children about sexuality and pornography comprehensively and inclusively. However, we also stress the importance of designing and implementing educational tools that young people without secure

family units, youth in care, and otherwise vulnerable youth can access and engage with. The input of youth and community organizations must be sought throughout any educational design process and reflect the issues that matter to them.

Sex should not be treated as immoral or punitive, but instead approached through the basis of exploration, compassion, and support.

iv) Teach digital and media literacy

The focus should be on self-determination and empowerment around how to use and access the internet, not on creating a watered-down and censored space for all to keep some information away from children.

The internet is a powerful tool, and one that many are accessing without sufficient digital or media literacy skills. Parental controls and protection of youth are important, but caution should be used to ensure that this language is not used as a scapegoat to filter out information that youth are entitled to access, including comprehensive sexual health information.

In the context of pornography, meta-analysis has demonstrated that viewers of pornography do not equate its content to realism.²² Conversation is key to understanding online content. If there is a real and meaningful desire to support, protect, and empower the most vulnerable and marginalized young people, it's not a question about getting nipples off the internet – it's about creating stronger, more comprehensive supports, services and strengthening access to information.

v) Consult sex workers on safety online

Sex workers have been using the internet to work and keep safe since its inception. We are well-versed in the language and practices of digital security and harm reduction and have been at the forefront of initiatives to forge safer communities online, protect ourselves and each other from the harms of criminalization, and navigate increasingly expansive forms of policing and surveillance from both the state and online services. For these reasons, we are an essential voice in this conversation.

vi) Consult young people on their digital safety and internet concerns

In interdisciplinary research from the University of Ottawa, girls and young women have expressed that they are nowhere near as concerned about access to pornography as they are about their digital

²² Mike Allen et al, "The role of educational briefings in mitigating effects of experimental exposure to violent sexually explicit material: A meta-analysis" (1996) 33:2 Journal of Sex Research 135 at 138, online: <<https://doi.org/10.1080/00224499609551825>>.

privacy.²³

Moving toward a system like that proposed in Bill S-210 is to tell girls and young women, particularly women and gender non-confirming communities navigating multiple forms of marginalization, that they don't know what is most important to them, or how to articulate the most pressing and apparent threats to their safety and security that are top of mind on a daily basis. This is exactly what it means to throw their actual concerns to the wayside under the misleading guise of "saviourship" and "rescue", robbing them of an opportunity to speak, organize and challenge these conditions.

vii) Decriminalize sex work - Remove PCEPA

Laws against sex work in Canada mischaracterize and define sex work as violence and harm to communities.

This same framing of sex work is used in Bill S-210, dramatically expanded to connect broader forms of sex, sexuality, sexual expression and "non-normative" identities, relational dynamics and existence to "exploitation", public health and safety concerns, drug use, mental health challenges and other complex social issues. This framework drives the idea that sexually explicit materials and pornography are sexually exploitative no matter their context. It is critical that we challenge and remove these tools of law enforcement so that definitions of exploitation are not overbroad and are limited to actual incidents of exploitation.

By placing the responsibility for true forms of physical and sexual violence on the shoulders, bodies and expressions of those who most experience it, we fail to address its roots. This shifts the focus away from those who perpetuate violence and the role of increasingly, racist, sexist, homophobic and transphobic sentiments that encourage violence against our communities.

²³ Jane Bailey and Valerie Steeves, "eGirls, eCitizens: Putting Technology and Policy into Dialogue with Girls' and Young Women's Voices" (Ottawa: University of Ottawa Press, 2015) at 40.