

Submission of Internet Archive Canada in Response to the Government's Proposed Approach to Address Harmful Content Online

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Submitted by:

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Internet Archive Canada is a not-for-profit digital library whose mission is to provide universal access to all knowledge. Over more than a decade of operations in Canada, Internet Archive Canada has digitized more than 650,000 books and other works, a great many of which are focused on specifically Canadian cultural heritage and historical government publications.¹ This work has been done with a dedicated staff of Canadians in partnership with more than 300 Canadian libraries and memory institutions (such as University of Toronto and Library and Archives Canada/ Bibliothèque et Archives Canada). Like a paper library, Internet Archive provides free access to much of these materials to researchers, historians, scholars, the print disabled, and the general public.²

While this proposal appears centered around large social media platforms, we have deep concerns about it, including its potential for broad application to libraries and small and not-for-profit organizations like ours. We believe that libraries and others like us have a role to play in creating and sustaining a better internet, with more digital public spaces and more access to good and trustworthy information online.³ Unfortunately, imposing newly burdensome and potentially overbroad regulatory regimes—even with the best of intentions—is likely to make the costs of participation in certain digital spaces too high for all but the largest commercial actors. The result will be further entrenchment of the largest foreign corporations in positions of dominance online.⁴ Should the government proceed with this proposal, it should carefully consider the extent to which it will make it even more difficult for truly Canadian spaces to survive and thrive online, leaving us with a worse information ecosystem overall.

1. Digital Public Spaces

As we understand it, the government's proposal would impose substantial costs, financial and otherwise, on any entity which is deemed to fall within the definition of an Online Communication Service. The definition could change by regulation at any time. This would make it a risky proposition to participate in online life in any way close to the definition of an OCS; with a change in definition, or even in interpretation, substantial

¹ <https://archive.org/details/toronto>

² Internet Archive Canada works with the Internet Archive (also a not-for-profit organization) to make these materials accessible to the general public in Canada and throughout the world.

³ See, e.g., <https://publicspaces.net/>; <https://culturalfoundation.eu/programmes/digital-european-public-spaces/>; <https://www.eff.org/deeplinks/2021/05/introducing-public-interest-internet>.

⁴ See <https://www.politico.eu/article/europe-data-protection-gdpr-general-data-protection-regulation-facebook-google/>

investments of time, energy, and other resources could evaporate. And for those clearly within the concept of an OCS—whatever that is deemed to be—the costs of automated systems, the technical and human resources required to implement twenty-four hour takedowns, and all the actual and possible associated requirements, would be extraordinarily high. How could these be met by small libraries, not-for-profits, or startups? How could any but the largest multinational corporations play a part in shaping the online world? Would that situation truly address the problems at hand?

It is also important to consider the broader global context. If new and different rules are to be adopted in jurisdictions around the world, the costs of complying with each of them will multiply. This is, one must assume, why provisions like Article 19.17 of the CUSMA have been proposed and agreed to by Canada and many others. Will others ignore treaty obligations and promulgate conflicting rules? Will Canada's adoption of unique, costly, and open-ended regulations—with potential application to broad swaths of actors and online speech—improve Canada's internet, or make it a hinterland?

2. The Information Ecosystem

Libraries have long been a cornerstone of a free and open society; indeed, “One of the Canadian Library Association's core beliefs is that the principles of intellectual freedom and unfettered universal access to information, through libraries, are key components of an open and democratic society.”⁵ We worry deeply about the effect this proposal could have on libraries and our information ecosystem overall.

Libraries must be able to play our traditional role in digital spaces, today and in the future, or we risk losing a cornerstone of our free and open society. More narrowly, we risk losing a corrective to disinformation and misinformation online. What effect will the threat of severe financial penalties, to say nothing of compliance costs, have on the development and maintenance of library collections online? What effect will this proposal have on our information ecosystem more broadly? This proposal—appearing, as far as we can tell, after private government discussions with big tech companies and others, but not with libraries like us—does not appear to have considered it.

3. Conclusion

Even laws put forward with the best of intentions, and directed in concept to the worst of the worst, can have dangerous consequences.⁶ If this proposal is not rejected outright, the government should take a step back, and engage in a thorough and truly open process of consideration and review, before taking drastic action.

⁵ <https://blogs.ifla.org/school-libraries/2016/02/28/canada-intellectual-freedom-award-to-teacher-librarians/>

⁶ <https://www.eff.org/deeplinks/2021/08/o-no-canada-fast-moving-proposal-creates-filtering-blocking-and-reporting-rules-1>