Technical Discussion Paper

Online Harms Legislation

Minister of Canadian Heritage

Minister of Public Safety and Emergency Preparedness

Minister of Justice and the Attorney General

Purpose

Share our vision for a safer, more inclusive online environment

Garner feedback on a technical, complex proposal

- Engage Canadians on a novel approach to regulating social media platforms
- Present a specific, detailed legislative direction
- Seek Canadians' views on the elements of the proposal

Use feedback to help design legislation to introduce in the Fall

Context

94% **of Canadian adults have an account on at least one social media platform**

Harmful content online – a serious and growing problem

1 in 5 Canadians have experienced some form of online hate

58%

of **women** in Canada have been **victims of violence online**

3x

Racialized Canadians are almost **three times** more likely to have experienced harmful behaviour online

1,106%

Increase in online child sexual exploitation reports received by the RCMP National Child Exploitation Crime Centre between 2014 to 2019

Context

Canadians want something to be done

60%

of Canadians think there should be **more regulation of online hate speech**

80%

of Canadians support requirements **to remove racist or hateful content within 24 hours**

There is a clear role for Government

- Efforts by social media platforms are inconsistent and not enough
- Like-minded countries have developed their own approaches

The Government has committed to act and has developed a proposal

Vision

Serve the public interest online

Support safe and inclusive digital expression

Provide additional tools to confront online harms

Proposal

Module 1

A new legislative and regulatory framework for social media

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Module 2

Modifying Canada's existing legal framework

Set new rules and define scope of new legislation

Create new regulatory bodies

Explore how to engage law enforcement & CSIS

Update Mandatory Reporting Act

Explore options to update CSIS Act

Module 1: A new legislative and regulatory framework for social media

Set new rules and define scope of new legislation

Set new rules for social media platforms

- Obligation to remove 5 categories of harmful content
- Harmful content to be removed within 24 hours of being flagged
- Transparency, reporting and preservation requirements
- Procedural fairness for users, victims, and advocacy groups
- Direct internet service providers (ISPs) to block access in Canada as a last resort with a court order, for platforms that persistently do not comply with orders to take down child sexual exploitation and terrorist content

Provide checks on platform decisions

- Provide an appeal mechanism for content moderation decisions by platforms
- Order the removal of harmful content when platforms get it wrong

Module 1: A new legislative and regulatory framework for social media

Set new rules and define scope of new legislation

Target **five** categories of harmful content, drawing on *Criminal Code*:

1. Hate speech
2. Child sexual exploitation content
3. Non-consensual sharing of intimate images
4. Incitement to violence content
5. Terrorist content

Module 1: A new legislative and regulatory framework for social media

Set new rules and define scope of new legislation

Legislation would apply to 'Online Communication Service Providers (OCSPs)

OCSPs:

Exemptions for private communications and telecommunications

Excluded:

Legislation would <u>not</u> apply to products and services that are not OCSPs

***Not* OCSPs:**

Module 1: A new legislative and regulatory framework for social media

Create new regulatory bodies

A new **Digital Safety Commission** of Canada supporting three new bodies:

1 Digital Safety Commissioner of Canada

- Oversee and enforce new rules
- Set norms and build a base of research for online safety

2 Digital Recourse Council of Canada

- Provide independent recourse through a digital tribunal system
- Make binding decisions on content removal

3 Advisory Board

- Provide expert advice and guidance to the Commissioner and the Recourse Council
- Bring expert, equity-deserving, and Indigenous interests to social media regulation

Module 1: A new legislative and regulatory framework for social media

Engaging law enforcement and CSIS

Set new preservation requirements:

- Require platforms to preserve potentially illegal content and content of national security concern falling within the five categories of harmful content
- Prevent platforms from deleting content and important identifying information that could be lawfully obtained (i.e. judicial authorizations) for use in future investigations

Explore 2 options to alert law enforcement and CSIS of certain forms of harmful content under the five categories

OPTION	*Scope of Content*	*Information sent by platforms*
Notify law enforcement where the content suggests an imminent risk of serious harm	Where there are reasonable grounds to suspect that there is an imminent risk of serious harm to any person or to property	The content itself plus any additional public-facing information as prescribed by the GiC regulations to law enforcement
Report prescribed content of criminal concern to law enforcement and content of national security concern to CSIS	Certain types of potentially criminal content and content of national security concern – thresholds and specific offences to be set through Governor-in-Council regulations	The content itself plus any additional public-facing information as prescribed by the GiC regulations to law enforcement and/or CSIS

Module 2: Modifying Canada's existing legal framework

Update and modernize the Mandatory Reporting Act

- Centralize and clarify the legal requirements for the mandatory reporting of child pornography offences
- Clarify the application and scope of the law, including requiring information to assist in promoting compliance with the Act
- Extend the legally required preservation period for information related to child pornography offences

Explore 2 options to require ISPs to report certain information in their mandatory reporting when a child pornography offence is clearly evident

OPTION	*What's included*
Require provision of **transmission data** in mandatory reports	IP address, date, time, type, origin, and destination associated with the material in question
Require provision of **Basic Subscriber Information** in mandatory reports	Transmission data + Customer name, address, phone number, billing information associated with the IP address

Module 2: Modifying Canada's existing legal framework

Explore amending the CSIS Act:

- Provide CSIS with a new judicial authorization for obtaining Basic Subscriber Information, akin to a law enforcement *Criminal Code* production order
- Enable CSIS to quickly identify perpetrators behind threats to national security in a rapidly-evolving online environment
- Could be used for investigating national security threats beyond terrorist content, including foreign interference and espionage
- Would be subject to checks and balances, including Ministerial oversight and possible review by the National Security and Intelligence Review Agency

Hate speech: Linkages with Bill C-36

New legislation is designed to synchronize with Bill C-36

Bill C-36: Amending the *Canadian Human Rights Act* and *Criminal Code*

- Provides for re-enactment of section 13 of the *Canadian Human Rights Act* (CHRA), making it a discriminatory practice to communicate hate speech online
- Section 13 would not apply to social media platforms regulated under online harms legislation

Online harms legislation would target hate speech on social media platforms

- Definition of hate speech to be aligned with definition in Bill C-36

Separate but complimentary tracks for addressing hate speech online

- Complaints against *social media platforms* → Digital Safety Commissioner
- Complaints against *individuals and websites* → CHRA

Seeking Input

The Government is publishing:

- Narrative description of proposal
- Technical discussion paper containing elements of a legislative proposal

Comments now open on these documents

- Comments open until September 25, 2021
- Send input to: pch.icn-dci.pch@canada.ca

What comes next: Fall 2021

- Use feedback to help design legislation