

BRIEF IN RESPONSE TO MOTION M-47

Examining the public health effects of the ease of access and viewing of online violent and degrading sexually explicit material on children, women and men.

**SUBMITTED TO THE STANDING COMMITTEE
OF HEALTH**

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Preface

My name is Stuart Duncan and I am the CEO of TEN Broadcasting (TEN). TEN is Canada's oldest and largest licensed adult broadcaster these past 18 years.

I am submitting this brief with respect to my background in adult television and from my intimate knowledge of the world wide adult industry spanning almost 30 years. Indeed, I am a pioneer and well known in the adult industry.

I have operated my businesses legally in every sense for the past 30 years and more than anyone, I know the challenges of the industry, the mechanics of the industry and I understand all aspects and genres in the industry. I understand past regulations, current regulations and want to help bring to light the effects of regulation on the industry and particularly, the failure of regulation in the industry.

My desire here is to inform the Standing Committee on Health so it appreciates from my perspective (as an expert in the adult industry) of what has been done in the Industry in Canada as well as outside Canada to a certain degree and to maybe glimpse what should or could be done.

An Adult Industry Perspective

Adult content in print media, video media, art, posters, recordings and culture has existed for many millennia. The rise of culture met with the rise of Law and jurisprudence surrounding regulation of all types of human social activity, commerce and industry.

Government Regulation of adult materials, content and of adult commerce and industry is pervasive, but it is safe to say regulation in the adult industry, as in all others, is increasing over time. Governments through their authority in law regulate and control and to a certain degree also scrutinize the adult industry, the materials created by it and also the distribution methods used. Ten for example is licensed by the CRTC to broadcast adult materials in Canada.

TEN became aware of Motion M-47 last winter. TEN considered what effect the Standing Committee of Health might have with regard to future regulations and laws and felt compelled to submit at least its own adult industry perspective as that of Canada's largest broadcast stakeholder as to what regulations TEN thinks would assist the government. TEN wants to detail now and in the future which ones TEN thinks need to be created and to also discuss what TEN thinks is not working and to make recommendations on what we think would benefit not only our industry but Canadians as a whole.

Considerations and Recommendations of TEN Broadcasting

Current State of Affairs and the Existing Law

Ten believes the existing Canadian Criminal code regulating the adult industry and the materials produced by it as pornographic are enough and do not need to be changed. They need to be enforced. They are being enforced. Canadian Criminal code enforcement of what is and what is not considered pornography and what is and what is not considered unlawful TEN thinks is complete, robust and sufficient.

However, TEN believes that current Canadian laws and regulations regarding the distribution of such materials and content on the Internet along with who can access it in Canada along with how it can be accessed in Canada is sorry lacking and exposing certain Canadians – namely children and minors - to potential harm.

In the current state of affairs, TEN argues there simply is no meaningful regulation of any Internet access, Internet distribution or Internet content internal or external to Canada by any Canadian authorities. The Government has taken a Laissez Faire attitude to regulating the Internet in general and government-policing agencies do not enforce any laws regulating adult Internet businesses or adult content websites in particular – rather, they regulate individuals caught through abuses of the existing criminal code violations as it relates to materials or active offenses. That is the extent of what is being done.

Internet Distribution

Virtually anyone with an Internet connection and a device capable of receiving content from the Internet has access to pornography over the Internet with no visible controls, regulation or policing from almost anywhere to almost anywhere on the planet.

Distribution of adult materials on the Internet is pervasive. Anyone capable of operating any internet device such as a game console, tablet, iPad, smart phone, smart TV or any personal computer apparatus can receive adult content regardless of age and even in some instances – even if it is not actively searched. For example, pornography can come from unexpected non-pornographic keywords searches or even from no active searches at all.

Companies involved in the distribution of adult materials both inside and outside Canada are beyond the current regulatory regime of the government when it comes to who may access and view or interact with any type of adult content .

One of the Internet's largest adult content providers of unregulated pervasive free pornographic content is Mindgeek. <https://en.wikipedia.org/wiki/MindGeek>. Mindgeek, although in name headquartered in Luxembourg, maintains executive offices and possibly its largest employee presence and base in Montreal where it maintains a very large and visible business and economic presence as well in Montreal, Quebec. The following list of pornographic websites (Global Alexa Ranks – see TABLE 1 below) in all probability establishes Mindgeek, with its executive offices in Montreal, as possibly the world's largest provider of unregulated pornographic web sites and the most prolific provider of internet content with no restriction on children or minors from Canada accessing pornographic materials . TEN does not submit that Mindgeek carries on any illegal activity because of a lack of regulation, but it is interesting to note that although being involved as a sponsor of ASACP (see TABLE 2 below), a quick visit to their website reveals Mindgeek has absolutely no restrictions on minors being capable of viewing pornography online. All they need is a device and Internet access. TEN suggests this is wrong. TEN believes companies like Mindgeek making content available online have a responsibility to keep this type of programming inaccessible to children and minors.

TABLE 1

Global Alexa ranks[\[edit\]](#)

Alexa rank ^[60] (25 February 2017)	Domain
48	pornhub.com
194	redtube.com
236	youporn.com
464	tube8.com
950	brazzers.com
1996	pornmd.com
2681	thumbzilla.com
3165	realitykings.com
4046	mydirtyhobby.com
6685	seancody.com
7010	men.com
7197	digitalplayground.com
7822	mofos.com
11786	babes.com
15770	gaytube.com
20100	twistys.com
129450	peeperz.com
165440	sextube.com
169348	porniq.com
248961	webcams.com

Age Verification, Age Controls and Child Protection

TEN cannot argue that adults should not be capable of ordering, viewing, or receiving adult materials. TEN believes that children (and those not of the age of majority in Canada as defined by current law) not be capable of ordering, viewing, or receiving adult materials legally and that it is the responsibility of the distributor to ensure this does not happen.

Clearly ASACP (TABLE 2) is nothing more than window dressing and provides nothing in the way of preventing materials being used by children on the Internet. In addition, ASACP receives funds from the pornographic industry to operate and should not be seen as being a serious answer or antidote to anything when it comes to preventing children from accessing adult materials over the Internet. It is an ineffective panacea that serves no real useful purpose in preventing children from accessing pornography online or anywhere else, except that in Ten's professional opinion it creates an illusion that someone somewhere is doing something to prevent this from actually happening when in actuality nothing is happening.

TEN Believes an active approach should be considered by Canadian regulatory authorities to prevent children and minors from accessing pornographic materials online over the Internet and that the existing laws in Canada should be used to enforce what is legal and what is not legal. If they don't exist they should be created, regulations should be created and they should be enforced.

Adult internet companies engaged in selling and giving away adult materials online should be held to commit and provide a means to somehow age verify and identify underage online users to prevent children and minors from accessing this content online at any time. TEN believes it is the government's right and believes that it falls well within the purview of the government to ensure these materials cannot just be joined without any user age verification. Age verification works. Age verification forces people to identify to receive materials legally and provide they are of an age of majority to do so. Age verification, along with all the other tools available to the government to regulate the Internet lawfully and legally are tools it has at its disposal and if so then it should craft laws to regulate properly who can legally gain access to such materials.

See TABLE 2 below.

TABLE 2

ASACP [\[edit\]](#)

Mindgeek has been a Platinum Sponsor of ASACP ([Association of Sites Advocating Child Protection](#)) since 2011.^[69] ASACP is an American non-profit organization that fights against child pornography and aims to enhance the effectiveness of parental content filtering technology through the provision of the RTA ("Restricted to Adults") label, which can be implemented by webmasters of adult sites.^[70]

Age verification in the UK [\[edit\]](#)

In May 2015, Mindgeek joined talks with the Digital Policy Alliance^[71] in light of a pledge by the Conservative Party (which won the 2015 general election in the UK) to obligate UK internet service providers to block access to hardcore pornographic websites that do not implement age restrictions by using verifiable age checks.^[72]

The Digital Policy Alliance is funded by digital technology companies, and informs members of parliament in the UK and the EU on policy issues that affect online and digital technologies.^[73] The DPA has a working group to create age verification methods that can be used to comply with the expected new laws.^{[74][75]}

When the change in law was first asked for by the UK video-on-demand co-regulator [ATVOD](#) in March 2014, Mindgeek said in a statement to the BBC: "The best solution lies in a multi-layered approach in which the parent assumes the central role."^[76]

Conclusion

TEN believes the government should develop the laws and take the means necessary to create an Internet where children and minors do not have access to pornographic materials online.

"Child pornography is not just children being depicted or preyed on in deviant pornographic situation. Child pornography is also children watching and having access to such content", and it should be a criminal offense for children to access pornographic materials online without having simple restrictive systems put in place to prevent children and minors from accessing this material either by design or accident. ([Stuart Duncan]).

Age verification through secure means and other processes like credit card identification are the key to preventing children from accessing pornography and being affected by adult materials.