

BRIEF SUBMISSION TO THE HOUSE COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS RE: PROTECTION OF PRIVACY AND REPUTATION ON PLATFORMS SUCH AS PORNHUB

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Sex Workers of Winnipeg Action Coalition (SWWAC) are deeply sympathetic to the harms encountered by Miss Fleites. Crimes motivated by power, control, and misogyny are particularly awful and traumatizing, especially when they are perpetrated by a formerly trusted romantic partner.

However, we are extremely concerned that PornHub, an adult website (and by extension, all publicly available social posting platforms), is being blamed for the crimes committed against Miss Fleites. While we are critical of the ways in which PornHub has done business with content creators, we cannot condone the suggestion that PornHub should be legally required to take photo ID in order to access the site. Federal law requiring identification to enter any website is a violation of privacy rights, and in this case, it is a privacy violation that directly endangers sex workers. As sex workers, we often have our professions used as ammunition to achieve societal change that ends up harming us. Thankfully, our voices are now being heard and acknowledged as some societies move toward harm reduction-informed policies and lawmaking<sup>1</sup>. This model of thinking is absolutely necessary in picking apart the various points of view put in front of you.

We, and our sister organizations the world over, have long pointed out the dangers of creating laws that push sex work underground<sup>2</sup>. If PornHub is required by law to take photo ID from visitors to their site, we worry that this is exactly what will happen. We feel that this is just another case where a victim's traumatizing experience is used to manipulate lawmakers and lobby groups into acting quickly and without consideration for how the lives of others will be affected by those decisions. We would like to point to the recent ruling in an Ontario court case known as Anwar<sup>3</sup>. The judge's ruling specifically pointed out that the crown witness' testimonies were highly based on emotional anecdotal experience, and that this was presented as the evidence to continue to criminalize sex workers. The idea seems to be that "if there is harm, there should be prohibition."

At this point, we want to make it abundantly clear that we, as an organization, have no affiliation with nor affinity for PornHub/MindGeek. Our members have been quoted publicly in the media against the economic harm brought to us by PornHub. Therefore, Michael Bowe's insinuation that any organization that speaks out against him is an ally of PornHub is intentionally misleading and meant to discredit organizations like ours before we can get a word in fairly. We ask that you dismiss this claim outright.

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<sup>1</sup> A decade of decriminalization: Abel, University of Otago, 2021. Sex work 'down under' but not underground [https://www.researchgate.net/publication/280445933\\_A\\_decade\\_of\\_decriminalization\\_Sex\\_work\\_'down\\_under'\\_but\\_not\\_underground](https://www.researchgate.net/publication/280445933_A_decade_of_decriminalization_Sex_work_'down_under'_but_not_underground)

<sup>2</sup> <sup>2</sup> A decade of decriminalization: Abel, University of Otago, 2021. Sex work 'down under' but not underground [https://www.researchgate.net/publication/280445933\\_A\\_decade\\_of\\_decriminalization\\_Sex\\_work\\_'down\\_under'\\_but\\_not\\_underground](https://www.researchgate.net/publication/280445933_A_decade_of_decriminalization_Sex_work_'down_under'_but_not_underground)

<sup>3</sup> Ontario Court of Justice: R. v. Anwar, 2020 ONCJ 103 <https://www.canlii.org/en/on/oncjd/doc/2020/2020oncj103/2020oncj103.html?autocompleteStr=r.%20v.%20anwar&autocompletePos=1>

Contrary to what Michael Bowe would have you believe, the advent of the internet as a tool for sex workers to conduct their business has saved lives<sup>4</sup>. However, the recent introduction of SESTA/FOSTA in the United States, which caused the takedown of [backpage.com](http://backpage.com) and Craigslist's Erotic Services, (and has influenced policies and procedures at virtually all other social media institutions such as Instagram, Facebook, and Reddit), has put sex workers in danger. The creation of these laws, said to be motivated by a desire to stop human trafficking (even though no concrete numbers have been provided on actual trafficking reduction), instead seems to have reversed the positive effect that online advertising had for women. When FOSTA/SESTA came into effect, statistics show that more women died in America - the reverse outcome of when sex workers were able to advertise online<sup>5</sup>. The studies cited in this paragraph outline with specificity the timelines and statistics of this correlation.

We want to be clear that many of those harmed by unsafe working conditions in sex work are young people, just like Miss Fleites. If we are to consider her story, we must also consider the lived experiences of young people who have ended up in sex work no matter what their stories are. Their lives are just as valuable as hers.

Requiring identification to utilize major social media platforms will only cause more harm. We understand that it is difficult to consider a harm greater than the one that Miss Fleites has endured, and we do want to thank her for coming forward courageously with her story. Calling out these horrific acts is an enormous part of our society coming to understand the pain that victims experience when their consent is violated. However, what we want to emphasize is how much more dangerous life for everyone becomes when we require photo ID in order to post on large public platforms.

With the introduction of FOSTA/SESTA in the United States, many sex workers had to go back to street based or outcall sex work, and generally move to employment situations that are more dangerous because they cannot screen clients to the same degree as they did when they could advertise online. Sex workers are afraid of being caught and arrested, and the fallout from that means not being able to access help if their safety is threatened. Our fear is that requiring ID to access certain websites will cause similar harms to sex workers in Canada.

Furthermore, if laws requiring ID to access certain websites are introduced, victims of revenge porn will have fewer avenues of accessing assistance and justice. People who choose to violate someone's consent by uploading images or video that they have not received permission to upload are committing a crime. If they realize they have to provide ID in order to upload the photo to a large website like Pornhub, they will simply find some other way to share it. Be it message boards, email chains, text groups, encrypted chats, or websites based in other countries with less oversight, they will find a way to share that content. These methods have almost no transparency, no takedown team, and therefore no way for a victim to achieve justice.

Canada already has anti-human trafficking laws and anti-child pornography laws that could address crimes related to revenge porn. What we want to emphasize is that these sorts of knee-jerk emotionally based arguments for stricter laws are almost always using a victim to

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<sup>4</sup> *The Effect of Online Erotic Services Advertising on Prostitution Markets, Pricing, and Murder*: Cunningham et al. 2017 [https://cear.gsu.edu/files/gravity\\_forms/45-9a8e751f713c799256f347c4aad2a49d/2017/04/Online-Erotic-Services-Advertising-and-Murder.pdf](https://cear.gsu.edu/files/gravity_forms/45-9a8e751f713c799256f347c4aad2a49d/2017/04/Online-Erotic-Services-Advertising-and-Murder.pdf)

<sup>5</sup> *Craigslist Reduced Violence Against Women*: Cunningham et al. 2019 <https://assets.documentcloud.org/documents/5720120/craigslistFOSTA.pdf>

achieve another kind of social change and advance a personal agenda. Michael Bowe, a former personal lawyer of President Trump, has claimed that he has no agenda, religious or otherwise, but we would like to point out that he is slated for speaking at anti-sex work conferences around North America. The goal of these anti-sex work advocates is to eliminate sex work, even though the evidence proves time and time again that prohibition always results in more deaths, more violence, more trafficking, and more harm.<sup>6</sup>

The concept of requiring websites that are based in certain countries to have visitors provide identification is incredibly problematic and a slippery slope into ID requirements for social media sites as well. We believe that the requirement of photo identification to post on Pornhub could easily translate into ID requirements for all social media websites that allow members of the public to upload material. In addition to Pornhub, Facebook, Twitter, Reddit, and essentially any website that allows public uploads can and is used for things like revenge porn and exploitation. Thus, Pornhub is not unique when it comes to the prevalence of visitors posting revenge porn. Our concern is that if a law is made requiring users uploading to Pornhub to provide identification, that law would be expanded to include *all* sites *like* Pornhub - which would essentially include all social media. We, as a sex worker action committee, have seen the same effect with SESTA/FOSTA, as mentioned above. We have watched as members of our community get kicked off of mainstream platforms and have to go underground, into places with fewer public eyes, less protection, and less safety.

Moreover, requiring identification to use social media is an incredible risk to individual privacy and freedom of expression for everyone. Providing identification to a private company poses a massive privacy risk in terms of identity theft and record keeping. When it comes to social media, requiring ID to access these sites poses an enormous threat to individual freedoms that cannot be underestimated. As citizens of Canada, we are able to speak our minds and express ourselves in any way that does not harm others. But we have to imagine the impact that any law we make today would have in the future when those in power might have less-than-honest intentions. Imagine a world in which a future government or police force is able to request the identification of someone that spoke out against injustice anonymously on social media.

We have already seen that police forces in Canada are teaming up with facial recognition services like Clearview AI<sup>7</sup> to be able to identify Canadians in public from their social media photos. We need to think ahead about the ramifications of putting legal names and address' from photo identification next to lawful criticism of government or police that is posted on social media. Or next to sex workers' advertisements posted on a website so that they can work safely. Although these laws would primarily impact marginalized communities like ours, every single person in Canada would be put at risk by this extreme violation of privacy.

Despite our criticisms of Pornhub, we fear that requiring identification for posting on their site would be an egregious violation of privacy and lead to policing everyone who uses social media, which will ultimately silence voices, cause harm, and cost lives. Please consider this as your committee moves forward, and feel free to follow up with us for any clarifying questions.

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<sup>6</sup> Amnesty International: Policy on State Obligations to Respect, Protect, and Fulfil the Human Rights of Sex Workers: 2016. <https://www.amnesty.org/en/documents/pol30/4062/2016/en/>

<sup>7</sup> *Joint investigation of Clearview AI, Inc. by the Office of the Privacy Commissioner of Canada, the Commission d'accès à l'information du Québec, the Information and Privacy Commissioner for British Columbia, and the Information Privacy Commissioner of Alberta: 2021* <https://www.priv.gc.ca/en/opc-actions-and-decisions/investigations/investigations-into-businesses/2021/pipeda-2021-001/>

Thank you for your time.