To:
Digital Citizen Initiative
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From:
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To the organizers, concerning the proposed Digital Citizen Initiative;

We appreciate the opportunity to share our expertise on the matter to inform the Government's proposal to establish a Digital Safety Commission. We are two researchers working at the intersections of sex worker regulations and digital governance. Maggie MacDonald is a SSHRC-funded doctoral researcher and PhD student at the University of Toronto's Faculty of Information with a specialization in Sexual Diversity Studies. Ms. MacDonald has published research on sex worker governance, deepfake porn, and on the digital methods used to study online platforms. Ms. Webber is a PhD Candidate in Community Health & Humanities at Memorial University of Newfoundland, studying occupational health and safety in the pornography industries. She holds degrees in Sexuality & Gender Studies, Public Health, and Medical Anthropology and has published in the areas of public health, pornography studies, and ethics. She also has over 15 years of experience as an online sex worker.

We share the government's concern regarding harmful online content and abuses. However, we believe that the proposed framework will not effectively address many of the named harms but will, in fact, exacerbate harm and increase violence against overlapping groups of people, including sex workers and labour organizers advocating for them, as well as content creators and social media users at large.

As we have discussed in our recently published article concerning Bill C-302, Part V of the Canadian criminal code already has strict laws governing the production and sharing of intimate images, and some of the broadest child sexual abuse material legislation in the world. In particular, Sections 162 and 163 already provide legal recourse for those who are recorded (filmed or photographed) as a minor, are recorded without their explicit consent, or have their images distributed without their explicit

consent. The introduction of a proactively regulatory approach risks harming the very same equity-deserving groups that this new framework seeks to help.

Some specific proposals of concern include proactive monitoring of content, the tight turnaround time for removal of suspect content paired with steep financial penalties, the obligation to contact law enforcement before it is clear a criminal act has taken place, the access to and retention of user information, and the possibility of blocking entire platforms.

When detection and removal requirements are unrealistic, this encourages a chilling effect among platforms and providers to simply blanket-prohibit a wide range of content, rather than tighten their own moderation standards around what is being posted. Both human and automated systems for [flagging content as unsafe](#) disproportionately impact [sex workers](#), [activists and organizers](#), [sexual health educators](#), [2SLGBTQ+people and the queer community at large](#), as well as other purportedly protected classes and communities who are [routinely technologically marginalized on the basis of race, sexuality, and gender presentation](#).

Given that content moderation has been proven to [disproportionately target marginalized populations](#)--indeed, the same populations this framework claims to protect--the requirement that regulated entities contact law enforcement over perceived infractions is extremely concerning for freedom of expression being stratified based on identity signifiers. Whatever the threshold for triggering such a reporting obligation, [history has shown that faced with similar legislation](#), regulated entities will err on the side of caution around sexual material of all stripes and proactively moderate their platforms in order to avoid steep penalties. This will result in the disproportionate criminal pursuit of already targeted and marginalized people, without requiring any actual criminal offence to take place. Regulation of user content [already targets non-normative sexualities and acts disproportionately](#) and has the potential for devastating consequences on the lives of Canadians who do not conform to whiteness, able-bodiedness, or normative gender presentation, such that POC, queer, disabled, and especially [sex-working Canadians will face the greatest burden of scrutiny](#) under the new measures. That the regulated entities would be required to retain data related to these potential cases could further produce innumerable privacy and confidentiality concerns for these populations. Finally, that the regulated entities could be required to block entire online communication platforms in Canada--platforms that many sex workers use to earn a safe living--raises a tumult of free speech and human rights concerns.

This is particularly concerning given that, while the majority of child sexual abuse materials (CSAM) are not found on pornography sites but on social media platforms like Facebook, pornsites are unfairly targeted as scapegoats to an immeasurably difficult social problem. Basing digital governance practices on unfounded claims or around media swells of moral panic will result in toothless policy as well as discriminatory frameworks. Primarily, such policy gravely harms those trying to earn a living by producing legal content for sale. When online avenues for sex work are so heavily regulated as to be rendered criminal by default, this pushes workers into other forms of sex work that are explicitly criminalized and therefore significantly more dangerous. The scapegoating of pornography provides a convenient target for public ire while neglecting social media platforms that circulate violence, misinformation and discriminatory content, and have been proven to house vastly greater quantities of CSAM than dedicated pornography sites.

We share the Government's concerns regarding the rise of white supremacist, fascist hate groups. However, we are concerned that the expansion of CSIS powers to monitor "Online Ideologically-Motivated Violent Extremist communities" will also result in context collapse that conflates those dangerous activities with sex workers, who are too frequently painted as ungovernable or amoral by antiporn and religious groups. If this framing holds without clear distinctions, it will be used to target any number of groups or associations around the 2SLGBTQ+ community and sexual subcultures, as well as workers and activist efforts around sex work who are exercising their democratic right to criticize government policy and practice.

There is a distressing trend among governments to consult primarily with groups that seek to conflate all manner of sex work with abuse and "human trafficking", and go on to develop prohibitive and ill-informed regulatory measures in response. These testimonies are not based on reliable research findings, or even meaningful consultation with industry players, and have led to mistrials in recent platform regulation. Canada has the benefit of getting to witness how similar legislative attempts to regulate online communication service providers have failed in the United States. We do not need to make the same mistakes, but have the opportunity to lead regulatory movements with evidence and consultation-based strategy. The United States Government Accountability Office recently published a report documenting the complete failure of FOSTA, the Fight Online Sex Trafficking Act of 2017. FOSTA was ostensibly intended to protect people from sexual exploitation by holding platform operators responsible for user-generated content facilitating sex trafficking. As a response, platforms instead adopted widespread censorship of all forms of sexual content, including advertising and other resources sex workers used to ensure their own safety while working. Even more potently, FOSTA has only been used a single time since its passage, and furthermore

the loss of cooperative online platforms and the migration of abusers to platforms hosted overseas has made it even more difficult for the government to pursue cases of sexual exploitation and human trafficking. The conflation of sex work and abuse fails to respect and protect the consensual choice of many individuals to earn a living through sex work, while also failing to address the actual sources of violence.

Luckily, there are a lot of sex workers and advocates, content creators, and digital rights activists [who have thought long and hard](#) about content moderation. Online sex workers in particular have long experienced having their content distributed without their consent, and having their completely consensual content unnecessarily flagged as otherwise, to be scrutinized and removed. Having knowledge of this dynamic of the system provides sex workers with a thorough and nuanced understanding of the strengths and limitations of various content moderation methods including consent paperwork and recordkeeping, identify verification, user-flagging and reporting, digital fingerprinting, DCMA takedowns, and so on. There is a wealth of sex worker knowledge available to adapt and structure these methods to the greatest benefit for all internet users, while avoiding potentially disastrous outcomes named above as well as privacy violations, stalking, and income loss, to name only a few.

When the 2013 Supreme Court decision, *Canada (AG) v. Bedford*, overturned the sections of Canada's criminal code related to prostitution, new regulatory measures (Protection of Communities and Exploited Persons Act) were introduced the following year, without sex worker consultation or consideration. These measures are egregiously hostile to sex workers and have made the landscape [even more dangerous to navigate](#). Legislation and policy drafted in this same spirit will remain volatile and lack rigour. We must not commit the same offence here. Sex workers and content creators must be centered in any decision-making process regarding online content moderation in order to avoid implementing yet another set of laws intended to help, but which put lives and livelihoods at stake once enacted.

We thank you for your time and consideration.
Sincerely,

Maggie MacDonald
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