
Standing Committee on Access to Information, Privacy and Ethics
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Study: Protection of Privacy and Reputation on Platforms such as Pornhub

Submission from: The Association for Reformed Political Action (ARPA) Canada

The December 4, 2020 New York Times exposé on the porn industry has brought a welcome level of concerned attention onto the website and business model of Pornhub and the Mindgeek corporation based in Montreal. Parliament needs to address the fact that these sites host videos of violent pornography, rape and pornographic videos featuring underage girls. More needs to be done by Parliament and law enforcement to ensure that the pornography industry stops exploiting vulnerable women.

We thank the members of this committee for the opportunity to provide written briefs. The issue of online exploitation is one of great concern to many Canadians, especially the victims of the pornography and sex-trafficking industries. ARPA Canada continues to express deep concern for the incredible lack of regulation in the creation and distribution of pornography in our country.

The harm to individuals

The story of Serena Fleites is just one example of many stories of young women who have been exploited through the nonconsensual release of intimate and degrading videos and photographs of them posted online – some of which depict criminal acts being committed against them. As Ms. Fleites expressed in her comments to this committee, she has experienced an incredible amount of pain and trauma as a result of both the posting of the footage without her consent and from the apparently unending process of having to repeatedly pursue online hosting organizations to remove the material.

Ms Fleites already finds the trauma from the incident with her former boyfriend and her school insufferable. To be forced to now see it replaying for millions of others to see, with no meaningful recourse, and with the opportunity for these videos to simply be uploaded time and time again by users, is appalling and simply unacceptable.

Systemic problems with the “tube” business model

Pornhub uses the “tube” model of video content and moderation. Unverified users can upload any content, from anywhere. The openness of this system is ripe for abuse – and Pornhub and similar businesses seem to thrive off this abuse. As the Times article pointed out, and as the committee witness Mr. Bowe explained, tags and search terms of the most offensive and illegal nature are used to bring users to the site and increase views on content. The terms are so horrific and degrading that we deliberated whether to actually print any here. We decided to do so in order that the true nature of what is being searched out and provided through pornographic “tube” platforms is known to this committee. The terms and titles demonstrate, in particular, an appalling appetite for underage rape and include such repulsive things as:



The existence of businesses in Canada that peddle violent and degrading pornography and videos depicting rape raises very serious concerns about destructive criminal behavior and the promotion of degrading views and treatment of women in our culture. Just as concerning is the lack of safeguards requiring that the production of this kind of content was consensual in the first place.

This type of business model denies victims a reasonable avenue of recourse in order to remove the offending content and punish the offender. The Pornhub business model thrives on amateur videos where content and consent are not easily verified. This includes content that portrays criminal behavior. Pornhub’s model is one that is easily abused, takes all responsibility off the uploader and the site hosts, and places the responsibility for removing criminal videos on the victims portrayed in the videos themselves to ensure that their pleas are heard, and the offending videos are deleted.

Criminal Code considerations

The Criminal Code contains two provisions that relate to Ms. Fleites case and many of the millions of other videos hosted on the Pornhub website.

Section 162 speaks to the particular issue of consent:

162.1 (1) Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image

did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct is guilty of an... offence.

It is clear that Pornhub has been reckless with regard to many of the videos available through their site and, particularly in the case of Ms. Fleites, either ignored pleas from the victims, or only responded to them after unacceptable delay. Consent of the individual being portrayed and the harm that was being inflicted on her was not a primary concern for the organization. This needs to be addressed.

Ms. Fleites was only 14 years old when videos of her began to appear on PornHub. Section 163 of the Criminal Code speaks directly to the criminality of child pornography:

163.1 (3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.

In light of these Criminal Code provisions, there are reasonable and probable grounds to suspect that criminal activity and content is being facilitated through the business practices of Pornhub, or was until the organization deleted some two-thirds of its video content in late 2020 after media and public pressure. Pornhub and other similar organizations are profiting from the exploitation of minors and the exploitation of vulnerable individuals. This must stop and past crimes must be prosecuted.

Social harm aspect

We cannot ignore the social harm caused by pornography. The Parliament of Canada, in its preamble to Bill C-36, understood the cost of having no laws addressing the “social harm caused by the objectification of the human body and the commodification of sexual activity” as well as its “disproportionate impact on women and children.” As Professor of Political Ethics Jean Bethke Elshtain wrote in an endorsement for the book *The Social Costs of Pornography*,

The point to be considered is this: What sort of community is this? Is it reasonably decent and kind? Is it a fit place for human habitation, especially for the young? What happens to the most vulnerable among us? How do we ill-dignify the human body, and how do we forestall such affronts?

Canada’s tolerance of Pornhub’s business practices and the access to our children that we give to these types of corporations has been nothing less than negligent. We are together, as a society, culpable for the social harms of degrading pornography. While all of society must play a role in finding our way forward, Parliament must take the lead in addressing violent and degrading pornography.

In consideration of the above, ARPA Canada recommends the following:

1. That this committee recommend that the House of Commons Standing Committee on Justice and Human Rights initiate a study on internet pornography and report on how the Criminal Code can and ought to be used:
 - a. To shift the onus of proving the legitimacy of any pornographic video away from the victim and onto both the pornography creator and the content host.
 - b. To address the need for any creator and content host to verify the consent of the individuals portrayed in the pornographic material before making any such material available for consumption. The criminal law may fully ban pornographic images or videos with an exception for licensed producers, where consent can be ascertained. This could possibly be modelled on some of the firearms regulations.
2. That this Committee recommend that the House of Commons Standing Committee on Canadian Heritage initiate a study on internet pornography and address the need for immediate legal recourse for victims to have pornographic content removed from the internet as quickly, effectively and painlessly as possible.
3. That this committee recommend to the Minister of Justice:
 - a. That pornography featuring violence and rape be criminally banned. The influence such degrading material has on the culture by developing misogynistic attitudes towards women and children must be given proper consideration. Furthermore, the difficulty of verifying consent in such videos necessitates a total ban. Any harms to freedom of expression resulting from a total ban of such videos and images are minimal (if they exist at all) and are greatly outweighed by the salutary effects of protecting vulnerable women and girls.
 - b. To initiate a taskforce to study and make recommendations on how to oppose through any means necessary the culture of pedophilia reflected in the titles or search items of pornographic videos, including anim  and other types of pornography that portray underage characters involved in pornographic material.
4. That this committee recommend to the RCMP that a criminal investigation be conducted into the business affairs of Mindgeek and Pornhub. Changed behaviour after media scrutiny does not absolve a corporation of criminal responsibility. Justice must be done.

All of which is respectfully submitted,

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