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news-20240227-TTA-20240227-70754428

Source name

Toronto Star (ON)

Source type

Press • Newspapers

Periodicity

Daily

Geographical coverage

Provincial

Origin

Toronto, Ontario, Canada

Tuesday, February 27, 2024

Toronto Star (ON)

• p. A1,A6

• 1371 words



Online bill puts focus on hate speech

Act would create three new bodies to oversee rules

Raisa Patel Toronto Star

OTTAWA - OTTAWA-The Liberal government has introduced its highly-contentious online harms bill, a sweeping piece of legislation that regulates the posting of dangerous content on the internet in a bid to protect children and other vulnerable Canadians.

The Online Harms Act, or Bill C-63, is seeing the light of day more than two years after Prime Minister Justin Trudeau's pledge to introduce it after the 2021 federal election.

It has sparked fierce debate through every stage of its development, which included years of extensive government consultations with social media giants, internet regulation experts, civil society groups and members of Indigenous, racialized and religious minority communities.

The process has been fraught with controversy from its earliest days over how Ottawa should best strike the balance between protecting its citizens and their right to express themselves freely.

"We join allies like the United Kingdom, France, Germany, Australia who have also legislated in this area. We will learn

from their experiences. We cannot tolerate anarchy on the internet," Justice Minister Arif Virani said late Monday.

"This work is just beginning. It is a long path ahead and I have no doubt there will be challenges."

Here's what you need to know about the legislation.

What kinds of harmful content is included in the bill?

There are seven categories laid out in the bill.

Three of them deal with protecting kids: content involving the sexual exploitation of a child (including content that re-victimizes a survivor of child abuse), content used to bully a child, and content that induces a child to harm themselves.

Another category is the sharing of intimate images on the internet without consent, which includes deepfakes, or digitally altered media that uses someone's likeness to depict them engaging in acts that did not actually happen.

Content that promotes hatred, content that incites violence, and content that in-

Prime Minister Justin Trudeau, shown Monday alongside Poland's Prime Minister Donald Tusk in Warsaw, first pledged to introduce the Online Harms Act, or Bill C-63, after the 2021 federal election. CZAREK SOKOLOWSKI THE ASSOCIATED PRESS

cites violent extremism or terrorism are the final three categories.

Disinformation - a controversial subject during the government's consultation process - was not addressed in the legislation.

What online platforms are going to fall under the regulations? Social media, livestreaming services and platforms where users upload adult content are included in the bill, as long as they have a certain number of users. That threshold is yet to be determined.

The goal is to capture the online platforms Canadians use the most, and to put the onus on those platforms to act responsibly: that is, reduce exposure to harmful content by minimizing risks, helping users and being transparent about their processes.

But there's a caveat: private and encrypted messaging services are scoped out

of the bill. That means that while posts on Facebook, Instagram and X could be regulated, direct or private messages on those platforms would not be.

Private messages on apps like WhatsApp also won't be subjected to regulations.

However, a Facebook group that allows an unlimited number of users to join doesn't count as private communications, so those groups would fall under the new rules.

Meta, Facebook and Instagram's parent company, said Monday the tech giant looked forward to "collaborating with lawmakers and industry peers" on the legislation, but underlined its belief that "people should be free to express themselves while also remaining safe" on the platform.

Emily Laidlaw, a Canada Research Chair in Cybersecurity Law at the University of Calgary, said the decision to exclude private communication channels makes sense - for now.

"I think that it will probably be viewed as unwelcome for some groups who've argued that for child protection, private messaging needed to clearly be included," said Laidlaw, who also sat on the government's expert panel tasked with shaping the bill.

Who's going to be overseeing all of this?

The Liberals say they will create three new bodies to oversee the new regime: a Digital Safety Commission, a safety ombudsperson and a Digital Safety Office.

The commission would be composed of five people who ensure online platforms

follow the rules and hold them accountable if they do not.

The commission would also have the ability to order the removal of content in certain cases.

Michael Geist, a Canada Research Chair in Internet and e-Commerce Law at the University of Ottawa, said the commission could potentially be vested with a "huge amount of powers" to regulate speech, scrub content from platforms, and levy steep fines against web giants.

"When you're starting from scratch with that, it's hard to have full public confidence in an entity," he said.

The ombudsperson, meanwhile, is meant to be an independent position that deals directly with Canadians exposed to content they believe is harmful. The person who holds the role would point users towards resources, outline their recourse options and offer recommendations to both social media platforms and the government on how to best ensure online safety.

Both the commission and the ombudsperson would be supported by the Digital Safety Office.

Does this mean social media companies have to delete harmful content? What happens if they don't? Only the most dangerous and egregious content - child sexual exploitation and the non-consensual sharing of intimate images - is subject to takedown rules.

Users who encounter content that falls under those two categories can report it to both the social media company and to the Digital Safety Commission. Both channels would screen for "frivolous" flags or complaints.

If flagged content is deemed legitimate, it needs to be wiped from the platform within 24 hours - a move that could be subjected to additional oversight and review. The concept sparked widespread criticism when it was first proposed by the government in 2021 as a measure that could unduly infringe on free speech if it were to apply to other categories of harm.

If the Digital Safety Commission decides that social media companies are not meeting their duty to act responsibly or remove certain content, they could face financial penalties.

The maximum penalty for a violation would be up to six per cent of a platform's global revenue, or \$10 million, whichever is greater. A repeated failure to comply with the regulations could lead to an offence, which carries a higher penalty of eight per cent of a platform's revenue or \$25 million, whichever is higher.

What laws does the government hope to change? Bill C-63 primarily proposes changes to both the Criminal Code and the Canadian Human Rights Act.

It would establish a new hate crime offence that would allow "penalties up to life imprisonment to denounce and deter this hateful conduct as a crime in itself, rather than as an aggravating factor to help determine an appropriate sentence."

The bill also seeks to raise the maximum punishments for four pre-existing hate propaganda offences. That includes raising the maximum punishment from 5 years to life imprisonment for advocating for genocide, and "from 2 years to 5 years for the others when prosecuted by way of indictment."

Among other changes, the legislation would also add a definition of "hatred" to the Criminal Code, consistent with Supreme Court of Canada jurisprudence.

The proposed updates to the Canadian Human Rights Act are aimed at ensuring victims have better options for recourse.

The changes would specify that posting hate speech online is a form of discrimination, allowing people to file complaints at the Canadian Human Rights Commission, and allow the Canadian Human Rights Tribunal to not only adjudicate disputes, but potentially order the poster of hate speech to remove content and compensate victims up to \$20,000.

The update would essentially revive Section 13 of the act, which was repealed under former prime minister Stephen Harper in 2013 and dealt with hateful content shared through online communications.

"I think that this is one of the most significant pieces of this legislation, that the ability for an ordinary person to use the Canadian Human Rights Act to protect him or herself against hate is back again," said Bernie Farber, the founding chair of the Canadian Anti-Hate Network and another member of Ottawa's expert panel.