TECHNATION^{CA}

Isabelle Mondou
Deputy Minister of Canadian Heritage
Department of Canadian Heritage

September 25, 2021

RE: Submission of TECHNATION to Canadian Heritage Regarding Online Harms Legislation

Deputy Minister Mondou,

Thank you for the opportunity to provide input into this consultation. Across the Canadian technology sector and our membership, there is agreement on the need to address digital safety. Our industry is already demonstrating leadership in the space and wants to support the Canadian government in achieving its policy objectives, based on robust experience creating and deploying content moderation systems globally. The regulation of the internet is an incredibly complex challenge, and the government should work with the tech sector to ensure new policies maintain freedom of expressions, protect marginalized communities and preserve due process while ensuring an operationally feasible regulatory regime. This regime must also keep Canada's longstanding commitment to net neutrality at its core, thereby maintaining and preserving a free and open internet.

We strongly believe that tackling illegal content online is a serious issue that will have long-lasting impacts on the way Canadians use the internet. We are supportive of the government's efforts to find ways to protect Canadians online, however, we are concerned that some aspects of the current proposal may have unintended negative impacts on access to valuable information and services, privacy and freedom of expression, and the innovation economy.

While traditionally TECHNATION would welcome the opportunity to provide these comments to the Department of Heritage, we raised concerns with both your officials and those at the Privy Council of the timing of these consultations, which took place during the federal general election. Given the subject of the consultations and alignment with political parties' election platforms, we also disagree that this consultation should have continued with a "Caretaker" government. Once a new Cabinet Minister is sworn in, we will be happy to provide further input.

As well, we do have other concerns on the process of these consultations. We believe that the consultation documents lack sufficient technical and policy details for industry members to understand the impacts of the proposed changes, risks, benefits and provide meaningful, detailed comments. The 8 week consultation period, done over the summer and as mentioned above, during an election, does not allow this important issue to generate the attention it deserves.

Commitment by our Members
As our members continue to iterate and strengthen approaches to meet evolving challenges surrounding online behaviours, our sector is moving with urgency, purpose and commitment to develop and enforce a range of policy, procedural, and product changes to help people feel safe, welcome, and to control their experience online. We support smart regulation with a focus on working with governments to ensure that regulation of the digital industry is practical, effective, feasible to implement, inclusive, and keeps certain core democratic values intact while promoting tech innovation.

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Delivering the highest safety standards requires investment, something that our members are committed to and have a track record of undertaking. TECHNATION's members have demonstrated this long-standing commitment to digital safety, as well as a history of working closely with governments, industry and civil society to identify and remove illegal and harmful online content. Many of our members have supported the *Voluntary Principles to Combat Online Child Sexual Exploitation and Abuse*, and are members of the *Technology Coalition* and *WeProtect Global Alliance*. In addition, TECHNATION members Facebook, Google, Microsoft and Twitter are founding members of the *Global Internet Forum to Counter Terrorism (GIFCT)* which works to counter terrorism and violent extremism online.

Principles-based Approach
We encourage the Canadian government to take a principles-based approach to digital safety in order to achieve a safe, inclusive and open online environment. Principles that should be considered include:

- Platforms are good faith actors who operate responsibly and in accordance with local laws.
- Respect the Charter of Rights and Freedoms (expression and due process)
- Respect net neutrality and maintain an open internet.
- Draw a clear line between illegal and harmful content.
- Consideration of global privacy regimes and obligations, including Mutual Legal Assistance Treaties (MLATs).
- Ensure clarity and transparency while respecting user privacy.
- Strive for global interoperability and policy harmonization.
- Policies should prioritize accuracy over speed in flagging and removing content.
- Recognize each platform and services are different and not conducive to a one-size fits all approach.

Our Concerns
While TECHNATION supports the intent of the government to enhance digital safety online, we are concerned with the current proposal and the potential impact it could have on freedom of expression and other fundamental human rights. Specifically, we recommend greater clarification and adjustment to address these main areas of concern:

- The scope of services to be covered: The Online Harms Proposal should focus only on the services that pose the greatest risk.

- The scope of content to be covered: The regulation of particular content, including the issuance of mandatory removal orders, should be limited to clearly defined categories of content that are illegal in Canada. Legal but potentially harmful content should remain subject to the content moderation procedures adopted by service providers, in accordance with their own terms of service and guidelines.

- The obligations on service providers: Service providers should not be required to proactively monitor user content, or report user data or content to law enforcement without proper judicial authorization or MLAT.

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- <u>The availability of safe harbour protections</u>: Service providers should have intermediary liability immunity to allow them to carry out good-faith content moderation and other actions to enhance digital safety. Safe harbour protections should apply equally to actions taken to comply with law, as well as "good Samaritan" voluntary measures.

- <u>The powers delegated to the Digital Safety Commissioner</u>: Powers delegated to the Digital Safety Commissioner (the "Commissioner") should be scaled back to better recognize the potential human rights impacts of decisions taken under digital safety legislation, to place limits on inspection and order-making powers, and provide greater transparency and oversight by Parliament. The powers should also be reflective of global trade norms and agreements, such as the CUSMA, as it relates to algorithms and source code provisions.

In addition to the broad concerns noted above the consultation lacks specific technical and policy elements required to fully respond to the impact of the proposal in order to respond accordingly. There are considerable technical challenges to take into account and industry engagement needed prior to the introduction of any new rules or regulations to combat online harms. We are pleased to see that the Government of Canada has begun this process, but note the importance of a whole of government approach to this issue and that all-sectors of industry are engaged in a meaningful way.

TECHNATION can organize a series of roundtables to discuss the technical elements and policy options. We would welcome the opportunity to collaborate with the Government of Canada on these.

Thank you for the opportunity to submit this commentary.

Nevin French
Vice-President, Policy

About TECHNATION
TECHNATION is the authoritative national voice for Canada's $230 billion information and communications technology (ICT) industry. Canada's 44,000 ICT firms directly and indirectly generate over 1.2 million jobs in Canada. The ICT industry in Canada also creates and supplies goods and services that contribute to a more productive, competitive, and innovative economy and society. Our membership ranges from large multinational platforms, to leading Canadian internet-service providers (ISP) to cutting edge domestic tech companies.

For over 60 years TECHNATION, formerly the Information Technology Association of Canada (ITAC), has been the industry-government nexus for technology prosperity in Canada. As a member-driven, not-for-profit, vendor-neutral TECHNATION unites Canada's technology sector, governments, and communities to enable technology prosperity from coast to coast. Our top ten largest companies collectively employ over 92,000 Canadians in every region of the country.