

Current Status:

On February 26, 2024, the Government of Canada introduced [Bill C-63](#) to create a new *Online Harms Act (OHA)*—a baseline standard for online platforms to keep Canadians safe and to hold them accountable for the content they host. The Act is currently in its second reading.

Summary:

The objective of this Act is to create stronger protections for minors online and to provide higher safeguards against online hate. It would apply to social media sites, "user-uploaded adult content" and "live streaming services" with a certain number of users — a threshold that would be spelled out in detail in coming the regulations. The Cabinet would have the power to target smaller services "when they pose a significant risk of harm."

Under the Act, a service is not a social media site if it does not enable a user to communicate content to the public nor does it apply to private messaging features on platforms. Under the OHA, social media services would be subject to three core duties:

- A duty to act responsibly.
- A duty to protect children; and
- A duty to make certain content inaccessible, specifically (1) content that sexually victimizes a child or revictimizes a survivor and (2) intimate images posted without consent.

The Details:

The Bill proposes changes to 1) the *Criminal Code*, 2) the *Canadian Human Rights Act (CHRA)*, and 3) *An Act respecting the mandatory reporting of internet child pornography by persons who provide an internet service*.

1. The Criminal Code would be amended to:
 - Create a hate crime offence of committing an offence under that Act or any other Act of Parliament that is motivated by hatred based on certain factors.
 - Create a recognizance to keep the peace relating to hate propaganda and hate crime offences.
 - Define "hatred" for the purposes of the new offence and the hate propaganda offences; and
 - Increase the maximum sentences for the hate propaganda offences.

2. The Canadian Human Rights Act would be amended to:
 - Provide that it is a discriminatory practice to communicate or cause to be communicated hate speech by means of the Internet or any other means of telecommunication in a context in which the hate speech is likely to foment detestation or vilification of an individual or group of individuals on the basis of a prohibited ground of discrimination.
 - Authorize the Canadian Human Rights Commission to deal with complaints alleging that discriminatory practice and authorizes the Canadian Human Rights Tribunal to inquire into such complaints and order remedies.
3. The *Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* would be amended to:
 - Clarify the types of Internet services covered by that Act.
 - Simplify the mandatory notification process set out in Section 3 by providing that all notifications be sent to a law enforcement body designated in the regulations.
 - Require that transmission data be provided with the mandatory notice in cases where the content is manifestly child pornography.
 - Extend the period of preservation of data related to an offence.
 - Extend the limitation period for the prosecution of an offence under that Act; and
 - Add certain regulation-making powers.

Enforcement & Fines

The Digital Safety Commission would have extensive enforcement powers to:

- Investigate complaints, summon persons to give evidence and produce records.
- Hold hearings in connections with complaints relating to the Act.
- Verify or prevent non-compliance by authorizing inspections (subject to statutory restrictions) enter any place where they have reasonable grounds to believe there is evidence to verify or prevent non-compliance.
- Make compliance orders requiring platforms to take, or refrain from taking, any measure to ensure compliance with the Act where the Commission has reasonable grounds to believe that the operator is contravening or has contravened the Act.
- The Commission may also require operators to pay administrative monetary penalties, with a maximum of not more than 6% of gross global revenue or \$10 million, whichever is greater. If an operator contravenes the Commission's orders or undertakings, there can be higher monetary penalties of up to 8% of gross global revenue or \$25 million, whichever is greater.

Implications for Digital Advertising Industry

- If an organization is not doing so already, they will be expected to reduce exposure to harmful content by "continuously" assessing risks, developing mitigation strategies, and providing tools for users to flag harmful content. Will need to identify any gaps between current processes and new expectations.
- There could also be gaps between proposed legislative requirements and other international obligations and practices.
- We will also want to review current data retention and destruction policies and user-facing policies and agreements (such as privacy policies or terms of service) for any required updates to reflect relevant practices.
- There are also operational questions around reporting times (flagged content is to be removed within 24 hours, based on a process of oversight and review), what services are covered and the implementation period which will need to be addressed in the regulations.

IAB Canada Position/ Next Steps

Some IAB Canada members will be impacted more significantly than others. IAB Canada has been having informal discussions. We will continue to monitor developments and may participate in government consultation as regulations are defined.