

BRIEF SUBMISSION TO THE HOUSE COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS RE: PROTECTION OF PRIVACY AND REPUTATION ON PLATFORMS SUCH AS PORNHUB

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*I will be using an informal tone in this brief. Much of this information is from personal and professional experience, with some citations to provide support.*

I was also a victim of a person who decided to spread our private sexual conduct on the internet. I was 19 at the time, which does make things a little different: my photos were not of a child, but of me as a 19 year old woman. That does not change the fact that I did not in any way consent to my partner putting them online.

I'm now 36 years old, which means that this happened 17 years ago, in 2004 - at least a year before PornHub even existed. Why is that important to note? Because the lawyer accompanying Miss Fleites, Michael Bowe, is making this case out to suggest that PornHub's existence is the root of revenge porn. I can assure you, as a living and breathing person, that it is not. Misogyny, power, sexual shame and stigma are the roots of revenge porn.

As I listened to Miss Fleites' witness statement, I was absolutely moved by the pain of it. I remembered my own experiences of seeing my face, my image, myself on a screen. I remember every comment. It was on an anonymous-posting board specifically for men posting photos of their ex-girlfriends/wives. The comments were horrendous. I understood her emotions completely, and can't imagine what it's like to go through that while still in high school. But I do want to note that I found two culprits in that moment in her story. First, the boyfriend who shared the video around in the first place. He committed a crime against her, and there was no note as to whether or not he was charged in any way (I understand he was a minor, but there are actions that can be taken), nor any of the other young men at the numerous schools. That brings me to the second culprit: shame. Shame kept Miss Fleites from speaking to her parents about the crime committed against her, out of fear *she would face even more repercussions*. Isn't that disgusting? That we have created a world in which people - specifically young women - are so ashamed of their sexualities that they are afraid to come forward even *when a crime is committed against them*.

At 19, when I found those images, I was devastated just like Miss Fleites. The comments. Oh God the comments. I can still see them to this day. However, unlike Miss Fleites, I wasn't able to head to the takedown request page. There was no 1-2 week delay, there was only *nothing*. My photos had been posted to an anonymous message board. No clear owner, no whois information (publicly accessible data on the owner of a website), no names, no profile pictures, nothing. This message board was created to be opaque and inaccessible, and sites like them are incredibly easy to create as a general user of the internet. Links to the content could easily be shared, so while the anonymous board wasn't as popular as PornHub is, the ability of anyone to share the link around to friends and other message boards was just as real.

Because there was no takedown service, I had no way to take the photos down except to seek justice from my abuser. I consulted a lawyer through an Employee Assistance Program, summoned all the courage in me, gathered a couple of friends for support, and called the ex-partner that had done this. It had to be him, because no one else was supposed to have those photos. I made it clear that I was ready and willing to take him to court under the Privacy Act of Manitoba. We didn't have specific revenge porn laws at the time, so this was going to be a bit of a tricky slog. I knew that going to court would be awful. My promiscuity was going to come

into play, every action I'd ever done would be under a magnifying glass. But in my heart, I knew that being a consensual sexual being is not a crime. I am not a crime. But someone violating my consent is a crime. Isn't that amazing? Isn't it stunning that when a young woman is a victim of a sex crime, if she chooses to seek justice, she must first confront that she will be victimized in an even grander way by going to court? Do you think that had a role to play in why Miss Fleites felt unsafe coming forward to anyone for help?

So I called him, I called him out, and he cried. He was suddenly as terrified as I had been, and the power had been flipped. His biggest worry was that his friends and parents and grandmother would find out what a bad person he is. And let's be honest, posting someone's intimate photos online without their consent is the crime here. This is the criminal. While the people who created an anonymous board *specifically* to shame girlfriends/ex-girlfriends are also heinous people, they're not the ones who posted the photos. He posted them. And, as much as I dislike Pornhub as a platform, the argument that Pornhub was specifically built as a means to share revenge porn is highly unlikely. And while it is absolutely true that their takedown services need more attention and a quicker response time, I plead with you to see what's actually going on here around censorship, freedom of expression on the internet, and personal privacy.

If Pornhub goes away in some fashion, that will not stop revenge porn. Mr. Bowe isn't an idiot, he knows this. In fact, it will make things even more dangerous and difficult to control. Remember that pre-Pornhub, I had no takedown service that I could access, however slow. I had no idea who ran the site. I had no recourse. *Zero.* *That* is the option we get when we make large websites require ID to post. We take a society with some people in it willing to commit a crime (revenge porn posters, for example) and we tell them they can't submit to the kind of sites that would even have takedown services. They will absolutely find other ways, and they are always less safe.

In response to the whole ordeal, I confronted in myself my own sexuality and the shame that someone else tried to apply to it. I created a website called Cherrysystems and provided a space for others (of all genders) to celebrate their bodies and be proud of their sexuality on their own terms. To take power and pride in themselves when sexuality is so often used as a weapon. Through this work, and my personal experience, I came to understand fully the shame that society puts on people who experience sexual violence. I pressed on, and am now a producer and director of adult film, specifically in what is called feminist/ethical porn.

I mention this because I have specific insight into the types of verification systems mentioned by both Pornhub's executives and by Mr. Bowe - specifically 2257 declarations. I distribute my films around the world on television and on the internet, which includes the United States - but more importantly, I use CCBill for my credit card processing, who are based in the United States. As such, I'm required to have 2257 declarations on all of my webpages and at the start of each video that I release.

As a background, 2257 forms require the legal names (past and present) as well as all performer/stage names of anyone that appears on screen, declaration of age, and two forms of ID to back that up. The paperwork is to be kept by a custodian of the records, and the declaration of compliance with 2257 terms must be published as mentioned above *with the physical address of where the records can be found.*

Seems all fine and good, but remember I mentioned that I make feminist/ethical porn. I started my own studio, as a victim of revenge porn, in my own way that felt empowering and positive. But banks won't touch you, won't give you a loan or often even allow you to have a bank account if they know what the business is doing - despite being completely legal. This isn't like

starting up a coffee shop and getting a small business loan. You become part of the wild wild financial west, and it is very stressful. As such, I didn't have much money to be throwing around. I initially had investor interest, but ditched them when they told me cringe-worthy things like "I don't want to see these kinds of glamour shots without seeing a hole", referring to their desire to have more hardcore work than I was producing at the time. They wanted creative control to make porn that conformed to their interests (which, fine, but that's not my vision). The money came with strings, so I did things on my own without investors.

If you don't have a separate studio or office because you can't afford one, and you can't afford to pay a lawyer to keep your documents, where do you keep them? What address do you put on your 2257? For many people, myself included, this meant publishing your *home address* on every single page of your website. I did it because I had to, and thankfully lived in apartments at the time that at least had a locked front door.

Years later, when I finally got an editing studio, I used that address instead. Unfortunately, it didn't have a locked front door, and that was when things started to get really scary. Multiple people (all men) wrote emails to my general contact address explaining that they were in my building trying to find me. I know people imagine a big fancy porn company, but it really was just me sitting in an artist's studio in a corner of an old warehouse using the area as an editing suite so I wouldn't be working at my kitchen table at home. I was almost always alone, and it became a terrifying experience. I called the police once when I received an email that someone was in the building and only received a follow up call two months later (really) that was more of the officer being curious about my work than concerned in any way. The officer said something along the lines of "well, you chose this line of work." I chose this line of work because I am working to create a society that treats victims of revenge porn, everyday folks, and all sex workers better - but doing so means I need to accept incredible personal risk with no assistance from police. Noted.

Imagine, if you will, if there was a person with bad intentions out there who wanted to physically find someone who performs online or produces films that require 2257 declaration. Most people operating legal, consensual adult video business on the internet are single people using platforms like OnlyFans, PornHub, or cam sites. We would be asking an already-marginalized population to publish their home addresses. Most people in the industry do not make a huge amount of money per month, and may not feel comfortable coming forward to a lawyer to use their address as their 2257 records location. Under strictly-enforced 2257 rules, that person uploading videos of themselves could be charged for not making their home address public.

The takeaway here is that 2257s do verify identities and ages, but their method of declaration is incredibly problematic and very much had the effect of silencing. I have attempted to help get other 2SLGBTQ\* and BIPOC adult sites off the ground, but they are all put off by the 2257 requirements of address of records. We are losing stories, we are losing experiences, we are losing voices. Opposition to my type of work would say that it's good that these films aren't being made. But there's more to it than that. With increasing censorship of sex education curriculums, 2SLGBTQ\* and POC folks (and especially at that intersection) are turning to porn more and more for their sex education<sup>1</sup> because we are failing them in the classroom. If we stamp out the small companies making anything but cis heteronormative content, we lose all access for people (18+) to access views of sexuality that represent them.

As an example, I've heard from many trans women viewers of my work that they had only ever seen trans women in adult material in a very typical "ashamed trans woman comes out to her

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<sup>1</sup> <https://link.springer.com/article/10.1007/s10508-014-0416-x>

cis male date that she has a penis” narrative. While some people can identify with this narrative, it is very much not the general narrative of all trans women at all. We need to keep access to new voices open, especially with poor quality sex education. Requiring already-marginalized voices to list their home addresses on 2257 forms absolutely silences those voices, from personal experience.

Opposition to my type of work would again say “good, we need fewer people making porn”, but the truth is that it will never ever stop. Regulating it more simply makes people go off the radar, where things are more out of view - just like SESTA/FOSTA in the US, which shut down sites like Backpage.com and Craigslist’s erotic services pages. What is important to note is a study from Baylor University in which it was found that when an individual city’s erotic services page was rolled out, female homicide rates noticeably dropped<sup>2</sup>. Rates of unprotected sex among those paying for it dropped. It was a net reduction in harm. Barrier laws like the ones that Mr. Bowe and the executives of Pornhub are suggesting cause more harm. Full stop.

The thing to separate is that while websites like Backpage and Craigslist are far from perfect, we can see from the study mentioned in footnote 2 that the benefits far outweighed the harms. I really do want you to think about the things they have prevented. Remember my revenge porn situation? If it had been on Pornhub, I could simply have put in a takedown request. I would have had that option. If we make it so those revenge porn posters need ID to post on major sites, they’ll post on other, smaller sites that are harder to track down. Just like in the era of alcohol prohibition, people still made booze and drank - and many went blind for it. Be aware of who you’re making blind, and how many of those people there are.

People in sex work are also not quick to trust lawyers and other figures to hold on to 2257s specifically because of the way we are treated institutionally. Remember I mentioned that it’s difficult or impossible to get a bank account if the bank knows what you’re doing for money (even if it’s fully legal). Companies like PayPal routinely shut down and confiscate all funds from people even suspected of using their service for adult activities.

The credit card processor I use (CCBill) is one of perhaps two credit card processors that will touch payment for pornographic content on the internet. I pay up to 18% and as low as 16% of each transaction to my website for the privilege (average non-adult businesses pay 2-5%), which is an important thing to note about the “benevolence” of Visa and Mastercard in allowing us to use their services. I’m very nervous even writing this, because the last time I wrote anything but glowing reviews, it was threatened that all payments on my site would be turned off. So that’s important to consider when we think about how these are truly the virtuous institutions that stepped in to make Pornhub accountable.

I want to state unambiguously that I am in no way an “ally” of Pornhub, as suggested by Mister Bowe in his witness statement on the first day of this committee’s hearings. That statement in itself made my blood boil. Understand that he said it to create and “us vs them” situation, and the reality is much much deeper than that. Do not let him paint any naysayers and whistleblowers as “allies of Pornhub.” That was insulting. I was further frustrated when Pornhub’s CEO and CTO made their statements suggesting that any poster to any public-facing internet forum be required to provide photo identification. This is terrifying.

I am now under the umbrella that we call sex work; I specifically made the jump into self-produced porn when I was 20. I realized that the photos of me on the in the revenge porn incident were indeed genuine, and at the time it was a consensual experience with no coercion.

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<sup>2</sup> [https://cear.gsu.edu/files/gravity\\_forms/45-9a8e751f713c799256f347c4aad2a49d/2017/04/Online-Erotic-Services-Advertising-and-Murder.pdf](https://cear.gsu.edu/files/gravity_forms/45-9a8e751f713c799256f347c4aad2a49d/2017/04/Online-Erotic-Services-Advertising-and-Murder.pdf)

The photos were taken and meant to be private, which is not a problem in any way. I was not ashamed of my sexuality and the fact that I do, indeed, have sex. The difference is when someone spreads that around on the internet, we're supposed to feel ashamed for having the world realize that we are, indeed, into sex. Sex is deemed shameful, and as a result being sexually open keeps people out of jobs, it gets professionals fired, it can ostracize a person. And yet sex is a normal, healthy part of a human being's life.

There is absolutely a reason that this team is going after Pornhub in such a big and grand way. Sadly, there are plenty of victims of revenge porn just like Miss Fleites, whose platforms of exploitation were Reddit, Facebook, Twitter, email chains, YouTube, TikTok, Instagram, or a host of anonymous boards - ANYWHERE that allows user uploads. I even get unsolicited dick pics in my LinkedIn inbox. But it's easy to go after porn. It's easy to publicly decry sex work because that's what you're "supposed" to do. It's not as easy to go after LinkedIn because sharing naked pictures there isn't the *purpose* of that platform. But do not fool yourselves into thinking those platforms aren't used for uploading explicit images - which means that all social media and sites with public uploading options would fall under identity requirement rules/laws if they were created.

And that's a problem: in Canada, we only just recently discovered that many of our police forces were using Clearview AI for facial recognition on our streets without the consent or knowledge of Canadians<sup>3</sup>. Think of the power you'd be giving to any number of organizations or governments by requiring photo ID for online posting access. Queer identities are still illegal in many countries in the world. Speaking out against your government is illegal in many countries in the world. What we do on the internet here matters everywhere. We can't require ID to post to a site like Twitter, because it will - intentionally or not - silence marginalized voices. It will suppress freedom of expression in Canada and the world 'round. Consensual sex workers could be identified, traced, and arrested (often in the name of human trafficking) for using online platforms that have been proven to save sex worker lives, as mentioned. And yet we'll still go on not punishing the real criminals - the people posting revenge porn and non-consensual acts. We'll still go on cutting sex education programs though we know that sexual knowledge correlates with lower rape-supportive beliefs<sup>4</sup>.

I am pointing all of this out because, as stated, I assume Mr. Bowe is a smart person. He probably knows that revenge porn won't end if Pornhub requires ID. So why does he actually want these sorts of laws? I want to be clear that this seems like a "good and moral people" vs "big bad porn company", but there's so much more to it than that. The truth is that the types of things both of these parties are suggesting will actively hurt a great many people even more than Miss Fleites hurts. I know it's very difficult to believe that, because her story is absolutely devastating. I am not reducing her pain; I share it and recognize it as even greater than what I went through - but that's exactly the point. Imagine an even more devastating story, because you could be writing that into law someday.

How much privacy does every Canadian have to give up in order to stop one bad act from happening on a certain platform, remembering that same act will absolutely happen elsewhere and have less access to takedown? Giving up that privacy will make things more dangerous for the general public, sex workers, and victims of sexual abuse.

Thank you for your time.

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<sup>3</sup> [https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/nr-c\\_200706/](https://www.priv.gc.ca/en/opc-news/news-and-announcements/2020/nr-c_200706/)

<sup>4</sup> <https://pubmed.ncbi.nlm.nih.gov/20432131/>