



COMMENTS: PRIVACY AND AGE ASSURANCE

August 23, 2024

LGBT Tech, a diverse team of experts from multiple backgrounds that belong to the LGBTQ+ community, submits these comments with the goal of providing guidance on how to protect the best interests of children through the work of the Office of the Privacy Commissioner of Canada (OPC). There are many situations where the data processing of children and adolescents requires greater attention. Canadian policymakers must strike the right balance between privacy, online safety and the preservation of vital online resources that are essential for fostering an inclusive digital space and empowering, rather than endangering, the well-being of Canadian youth.

Through empirical research, we at LGBT Tech develop programs and resources that support LGBTQ+ communities and engage with policymakers on the unique technology needs of LGBTQ+ individuals. Over the past decade, we have dedicated our work to protecting the personal data of LGBTQ+ children and adolescents who require greater attention.

For the 10.5% of Canadian youth who identify as 2SLGBTQ+, each with a diverse range of identities, experiences, and needs, online platforms provide a sanctuary to explore or express sexual orientation and/or gender identity, often away from the judgment or discrimination that they might face in their offline lives. LGBTQ+ youth face significantly higher rates of mental health challenges, and research [shows](#) that LGBTQ+ youth without access to affirming spaces or content are more likely to consider or attempt to commit suicide. Thus, hindrances to accessing supportive content could have profound consequences for this cohort. For that reason, requiring age verification could hinder LGBTQ+ children from accessing information that could be vital to their self-discovery and quite literally save lives.



We agree with OPC’s preliminary opinion that the use of age-assurance systems should be “restricted to situations that pose a high risk to the best interests of young people” and that such applications “must consider impacts on the privacy rights of both young persons and adult users”. Age-assurance systems should be a last resort policy, narrowly tailored and only when absolutely necessary to achieve a specific defined goal. Applying age-assurance systems deeper in a technology stack—such as at the internet service provider, device, or app store level—is overbroad, intrusive, and inappropriate.

Concerning the OPC’s preliminary provisions, we are concerned about ambiguous language, specifically language such as “best interests of young people.” While often posited as an attempt to shield youth from harmful content by legally requiring platforms to prioritize online minor safety, such language creates overbroad content moderation practices, allows legislative weaponization by anti-LGBTQ+ policymakers and fosters an overall hostile digital ecosystem for youth desperately in need of support.

Further, since the definition of “best interest” is subjective, these provisions can be very open to interpretation and weaponized to align with the agendas of anti-LGBTQ+ politicians or groups. Discriminatory ideologies are eager to exploit language like “best interest of this child” in digital and physical spaces alike, leading to the suppression of LGBTQ+ voices and resources. Inadvertently, legislation designed to safeguard children could become a tool for discrimination.

Additionally, requiring users to provide personal information and identity documents at too broad a level (i.e. website or app) can risk inadvertently disclosing one’s LGBTQ+ status to unsupportive family members or guardians. While there may be certain circumstances where proving one’s age might be necessary, such as ordering alcohol or tobacco products online for delivery, those instances are narrow. Age verification or age assurance mandates must be similarly narrow to be appropriate.



While some age assurance services and proponents claim a high level of accuracy is possible, empirical reporting on the matter has been mixed at best. For example, a recent [study](#) from the National Institute of Standards and Technology (NIST) in the United States that evaluated age estimation and verification software found that error rates were higher for females than males, less accurate when the user wears glasses and less accurate for racial minorities, among other problems.

We urge caution with governmental efforts that, often unintentionally, can put LGBTQ+ youth privacy at risk. This includes overbroad content-gating policies that disproportionately flag LGBTQ+ content, parental control requirements that strip youth of any autonomy online, and legislation that applies equally to all minors and fails to account for the varied needs of different age groups. Otherwise, regulation could force platforms to either hamstring their central functions or simply leave a jurisdiction entirely. The resulting loss of online community would be devastating to LGBTQ+ youth.

Finally, we strongly encourage the OPC to consider the specific equity issues that age assurance pose for LGBTQ+ youth. Such verification practices and legislation can be particularly harmful by disenfranchising users, risking their online privacy and adding unnecessary barriers to affirming content and supportive communities which can compound feelings of isolation, depression and anxiety. Age verification barriers have the potential to limit access to vital support networks, impacting the mental health and well-being of young individuals exploring their identities. As they currently stand, OPC's age verification provisions may pave the way for increased data collection, worsened user privacy, and lessened digital access for LGBTQ+ youth.

Additional resources we have published, or contributed to, on this topic include:

- <https://www.lgbttech.org/post/ctrl-alt-lgbt-lgbt-tech-releases-groundbreaking-survey-on-digital-lives-of-lgbtq-adults>
- <https://www.lgbttech.org/post/legislative-parental-consent-requirement>
- <https://www.lgbttech.org/post/best-interest-of-the-child-provisions>
- <https://www.lgbttech.org/post/the-dangers-of-age-verification-provisions>