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July 31, 2018

Dear Minister Freeland, Minister Ampuero, and Special Advisor Boissonnault:

We write this open letter to raise our concerns regarding the global online censorship of LGBTQ2+ content, for discussion at the [Equal Rights Coalition Global Conference](#) taking place August 5th to 7th, 2018, in Vancouver, British Columbia. Recent Citizen Lab [research](#) has documented the systematic censorship of LGBTQ2+ content in a number of countries with track records of human rights abuse, through the use of Internet filtering technology originating in Canada. This letter describes certain aspects of our research findings that bear on respect for LGBTQ2+ rights in Canada and abroad; considers the legal and policy implications of those findings; and proposes the development of particular norms to address censorship of LGBTQ2+ content online. We also presented our research findings and related concerns in a [letter to Mr. Boissonnault](#) dated May 3, 2018, to which he has not replied.

The Citizen Lab is an academic research laboratory based at the Munk School of Global Affairs and Public Policy, University of Toronto. As a Canadian organization, we have a strong interest in informing Canada-based discussions on LGBTQ2+ rights, particularly those led by the Governments of Canada and Chile as co-chairs of the Equal Rights Coalition (ERC), and that are intended to reflect Canada's [policy commitment](#) to “promoting LGBTQ2 equality, protecting LGBTQ2 rights, and addressing discrimination against LGBTQ2 communities.” We are encouraged that the ERC has in the past taken action to assist LGBTQ2+ individuals whose rights were threatened, for example, [calling on Russian authorities](#) to

investigate reports of human rights abuses by the security services against gay men in Chechnya. We urge the ERC to take concerted action now as well to address the issues outlined herein.

## **I. Citizen Lab research concerning LGBTQ2+ rights**

The first objective of the [ERC Global Conference](#) is “[b]uilding knowledge (on global trends, gaps, and best practices in advancing LGBTI human rights and inclusive development).” To that end, we wish to highlight findings of our recent research regarding the use of Internet filtering technology made in Canada to censor access to LGBTQ2+ content globally.

In our “[Planet Netsweeper](#)” report of April 2018, we documented how Internet filtering technology made by Canadian company Netsweeper, Inc., was being used to systematically censor content in ten countries of concern, in violation of international human rights law. Each of these countries — Afghanistan, Bahrain, India, Kuwait, Pakistan, Qatar, Somalia, Sudan, United Arab Emirates, and Yemen — faces significant human rights, public policy, insecurity, or corruption challenges, and/or a history of using Internet censorship to prevent access to content that is protected under international human rights frameworks. In addition to censoring content relating to religion, political belief, ethnicity, and health, our research demonstrates that in certain of these countries, Netsweeper’s technology is also used to censor expression and block access to information related to LGBTQ2+ issues. In some countries, this included blocking Google searches for LGBTQ2+-related keywords (such as Google searches for the words “gay” and “lesbian”), and several instances of miscategorization of non-pornographic LGBTQ2+ content as “pornography.” (A miscategorization occurs when a website is inaccurately assigned to a predefined filtering category, which would result in that site being blocked in certain filtering configurations. For example, if a site was not related in any way to pornography but was miscategorized as such, that site would be blocked in any Netsweeper installation that checked the pornography category when determining its filtering policy.)

We conducted both in-country network testing as well as a review of publicly available network measurement data from a 14-month period of network measurement and found that LGBTQ2+ related websites were seen blocked through the use of Netsweeper software in four countries: Afghanistan, India, Kuwait, and the United Arab Emirates. In total, we observed 359 instances of content blocks which affected the accessibility of 30 different LGBTQ2+ websites in these countries. (Data from Citizen Lab testing is available [here](#).) It is important to note that our testing relied on manual curation of URL testing lists. As a result, the URLs we observed as being blocked are not exhaustive, and there are likely many additional URLs that are categorized in this way that we did not test and therefore did not see in our results.

Additionally, Netsweeper maintains as part of its services a filtering category labeled “Alternative Lifestyles,” which any user can select to block wide swathes of content predesignated by Netsweeper as falling within such category. [Netsweeper documentation](#) describes the Alternative Lifestyles category as follows:

*This [Alternative Lifestyles category] includes sites that reference topics on habits or behaviors related to social relations, dress, expressions, or recreation that are important enough to significantly influence the lives of a sector of the population. It can include the full range of non-traditional sexual practices, interests and orientations. Some sites may contain graphic images or sexual material with no pornographic intent.*

Netsweeper’s Alternative Lifestyles category appears to serve little purpose beyond facilitating the blocking of non-pornographic LGBTQ2+ content, including the websites of civil rights and advocacy organizations, HIV/AIDS prevention organizations, and LGBTQ2+ media and cultural groups.

In order to determine the real world impact of the Alternative Lifestyles categorization, we investigated cases in public measurement data in which URLs that were blocked were categorized by Netsweeper software as "Alternative Lifestyles." We found evidence that this category was utilized on public networks in the United Arab Emirates, where our testing revealed that 21 websites were blocked through its application. Among these websites, the website of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), a civil society partner of the ERC, was blocked in 25 observed instances as a result of the Alternative Lifestyles categorization. Other websites blocked in this manner include websites of organizations such as Gay & Lesbian Alliance Against Defamation (GLAAD), and the Human Rights Campaign. Sites that provide health information were also included such as Gay Men’s Health Centre and the Transsexual Road Map. We also discovered blocked URLs that appear to be erroneously categorized as Alternative Lifestyles: Freeservers, which is a website that provides free web hosting for users, and the website of Caritas, which is a Catholic development organization.

In total, from February 2017 to July 2018, we found 257 instances where we observed a blockpage as a result of a user attempting to access in the United Arab Emirates one of the 21 websites we determined were categorized as Alternative Lifestyles. In all of these cases, the legitimate content of these sites was made unavailable to users. More information about the datasets and more detailed results of testing are available [here](#).

## II. Legal and policy implications

The use of Internet filtering technology, such as that produced by Netsweeper, to target LGBTQ2+ content implicates internationally protected rights to freedom of opinion and expression ([UDHR Art. 19](#), [ICCPR Art. 19](#)); the freedom to seek, receive and impart information and ideas of all kinds ([ICCPR Art. 19\(2\)](#)); and non-discrimination ([UDHR Art. 7](#), [ICCPR Art. 26](#)). None of the filtering practices that we documented in our report appear permissible under [ICCPR Art. 19\(3\)](#), which requires any state restriction on the right to freedom of expression be provided by law and necessary “for respect of the rights or reputations of others” or to protect national security, public order, public health, or morals; and that the restriction must be the least intrusive measure available to achieve the intended function, and proportionate when weighed against the consequences of limiting the right ([ICCPR Art. 19\(3\)](#), [Kaye, A/ HRC/32/38](#) at para 7).

States have a [legal obligation](#) to safeguard freedom of expression (as well as freedoms of association and peaceful assembly) for all LGBTQ2+ people, and “ensure that any restrictions on these rights are not discriminatory” ([UN OHCHR](#), p. 59). Additionally, as reflected in the [UN Guiding Principles on Business and Human Rights](#) (the “UN Guiding Principles”), states have a duty to “protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises” (Principle 1); and “should set out clearly the expectation that all business enterprises domiciled in their territory and/ or jurisdiction respect human rights throughout their operations” (Principle 2), including extraterritorially.

The [ERC has affirmed](#) that “rights and freedoms enshrined in international human rights law apply equally to lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.” ERC member states, including Canada, have committed “to consider measures needed to protect and advance [LGBTQ2+] rights, working in close engagement with all relevant stakeholders, including regional and multilateral organisations, civil society organisations, and the private sector.” As the Co-Chair of the ERC and host of this year’s Global Conference, it is particularly incumbent on the Canadian government to ensure its international legal obligations, [Charter](#) values, and policy commitments concerning the rights of LGBTQ2+ persons are reflected in its actions at home and on the world stage.

Yet the Canadian government has not addressed the significant impact of Canadian-supplied Internet filtering technology on the freedom of expression and access to information of LGBTQ2+ persons across the globe. As detailed in our “[Planet Netsweeper](#)” report, Canadian government entities have instead provided various forms of support to Waterloo, Ontario-based Netsweeper over the years. For example, Netsweeper has been a direct recipient of financial support from the National Research Council and a participant in government-organized trade missions. Additionally, in July 2016, Export Development Canada [provided a guarantee](#) for the Royal Bank of Canada’s financing of Netsweeper’s sale to Bahrain.

As the UN Working Group on Business and Human Rights has noted ([A/HRC/38/48](#)):

*States should require businesses to demonstrate an awareness of and commitment to the [UN] Guiding Principles [on Business and Human Rights] as a prerequisite for receiving State support and benefits relating to trade and export promotion. States should condition participation in trade missions, eligibility for trade advocacy and generalized export assistance on such commitments. Such forums and tools should be used to raise awareness of business-related human rights risks in the relevant contexts, with a particular emphasis on the risks faced by vulnerable groups and individuals. (para. 99)*

It is unclear whether Canadian government entities have conditioned any of their support to Netsweeper on company demonstration of human rights awareness or due diligence. Indeed, the Export Development Canada guarantee for financing of a Netsweeper sale to Bahrain, [where significant human rights concerns exist](#), would suggest no such conditions were in place. In response to the “Planet Netsweeper” report, a spokesperson for Global Affairs simply [stated](#) that Canada would “continue to engage with our partners on the review of this type of technology.” Unfortunately, the statement made no concrete commitment regarding the presence of Netsweeper technology in the identified countries. Further, the statement did not address past government support for Netsweeper, nor did it commit to advancing human rights due diligence or corporate social responsibility practices in this area.

Additionally, companies such as Netsweeper have an independent responsibility to respect internationally-recognized human rights ([UN Guiding Principles](#), Principles 11-12). As the UN Guiding Principles make clear:

*The responsibility to respect human rights requires that business enterprises:*

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. (Principle 13)*

The use of Netsweeper products and services has had significant adverse impacts on the freedom of expression of LGBTQ2+ persons and access to LGBTQ2+ information, as detailed above. It appears, however, that Netsweeper has not fulfilled its responsibility to respect human rights in the course of its activities: the company has no visible public policy commitment, due diligence processes, or remedial

measures in place regarding human rights (see [UN Guiding Principles](#) 15-24), despite [years of research and reporting](#) documenting the adverse human rights impacts associated with Netsweeper technology.

### **III. Proposals for international norms addressing online censorship of LGBTQ2+ content**

The Canadian government, and all member states of the Equal Rights Coalition, could do far more to protect the freedom of expression of LGBTQ2+ persons and global access to LGBTQ2+ content. As the third objective of the ERC Global Conference is “[b]uilding norms (that help to further advance LGBTI human rights and inclusive development through diplomacy and development coordination),” we encourage conference participants to consider normative measures that specifically address global online censorship of LGBTQ2+ content, and the role of private sector and government actors in countering that censorship.

Online censorship of LGBTQ2+ content is a fundamental barrier to the realization of the human rights of LGBTQ2+ persons. Such practice is in violation of international human rights law, as detailed above, and can have serious impacts on individuals and groups that already face persecution or discrimination in their societies (e.g., inability to access critical health information or support networks -- see [LGBT Technology Partnership, “Vision for Inclusion: An LGBT Broadband Future”](#)). As an example: if an individual was unable to reach ERC member Rainbow Railroad’s website because of network filtering, they wouldn’t be able to access the life-saving services they provide. Moreover, when access to LGBTQ2+ news, organizations, or cultural or other content is blocked, wider social acceptance of LGBTQ2+ communities and identities is stunted. Yet Internet filtering technology companies frequently provide some form of predefined filtering category that censors LGBTQ2+ content -- Netsweeper being just one example.

We recommend that the ERC Global Conference develop normative language to:

- **Condemn the online censorship of LGBTQ2+ content, which violates international human rights law, and recognize that Internet filtering technologies used to target LGBTQ2+ content have serious human rights impacts.**

The ERC should reiterate that international human rights law concerning freedom of expression and access to information protects LGBTQ2+ content, which should not be restricted on the basis of discriminatory notions of public order or morality. The ERC may draw on the [Yogyakarta Principles](#), “a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity.” The Yogyakarta Principles reflect that “Everyone has the right to freedom of opinion and expression, regardless of sexual orientation or gender identity” (Principle 19). Adherence to this principle requires states to:



*A. Take all necessary legislative, administrative and other measures to ensure full enjoyment of freedom of opinion and expression, while respecting the rights and freedoms of others, without discrimination on the basis of sexual orientation or gender identity, including the receipt and imparting of information and ideas concerning sexual orientation and gender identity, as well as related advocacy for legal rights, publication of materials, broadcasting, organisation of or participation in conferences, and dissemination of and access to safer-sex information;*

...

*D. Ensure that notions of public order, public morality, public health and public security are not employed to restrict, in a discriminatory manner, any exercise of freedom of opinion and expression that affirms diverse sexual orientations or gender identities;*

...

*F. Ensure that all persons, regardless of sexual orientation or gender identity, enjoy equal access to information and ideas, as well as to participation in public debate.*

Additionally, Principle 36 of the [Yogyakarta Principles plus 10](#) highlights the importance of information and communication technologies to the freedom of expression and other rights of LGBTQ2+ persons:

*Everyone is entitled to the same protection of rights online as they are offline. Everyone has the right to access and use information and communication technologies, including the internet, without violence, discrimination or other harm based on sexual orientation, gender identity, gender expression or sex characteristics. Secure digital communications, including the use of encryption, anonymity and pseudonymity tools are essential for the full realisation of human rights, in particular the rights to life, bodily and mental integrity, health, privacy, due process, freedom of opinion and expression, peaceful assembly and association.*

In fulfilling this right, States shall “[e]nsure the right of all individuals, without discrimination based on sexual orientation, gender identity, gender expression or sex characteristics, to seek, receive and impart information and ideas of all kinds, including those concerning sexual orientation, gender identity, gender expression and sex characteristics, through information and communication technologies.”

On this basis, the ERC should unequivocally condemn restrictions on the freedom of expression of LGBTQ2+ persons, and online censorship of LGBTQ2+ content. The ERC should emphasize the significant role played by Internet filtering technologies in facilitating that censorship, and the concrete human rights impacts that occur when such censorship takes place.



- **Commit states to taking specific and measurable action to prevent and address the censorship of LGBTQ2+ content, in line with international legal obligations and domestic law and policy.**

In fulfillment of their international legal obligations (including as reflected in the Yogyakarta Principles), as well as country-specific policies or laws to advance the human rights of LGBTQ2+ persons, ERC member states should express their commitment to undertake specific and measurable action to prevent and address the censorship of LGBTQ2+ content. As co-chair of the ERC and host of this year's conference, Canada must lead by example in calling for and undertaking such commitments, individually and collectively. State action could include:

- Emphasizing in international diplomacy the application of international human rights law to treatment of LGBTQ2+ content online.
- Creating independent, accessible human rights mechanisms to receive and address complaints concerning blocked LGBTQ2+ content.
- Conditioning state support and benefits to companies relating to trade or export promotion on companies' awareness of and commitment to human rights principles, as called for by the UN Working Group on Business and Human Rights.
- Developing, in consultation with civil society, human rights-based guidance to producers and exporters of Internet filtering technologies. Such guidance could highlight appropriate due diligence mechanisms, and identify human rights risks associated with certain exports and end users.
- Recognizing Internet filtering technology companies that have proactively engaged on human rights issues and pledged not to facilitate censorship of LGBTQ2+ content.
- Establishing procurement incentives (e.g., award of government contracts) to encourage companies to develop strong track records of human rights awareness and due diligence.

The ERC should commit to evaluate, on a yearly basis, member states' progress in preventing and addressing censorship of LGBTQ2+ content. To ensure transparency, the ERC should consider releasing annual reports detailing such member state action on the rights of LGBTQ2+ persons.



- **Affirm that Internet filtering technology providers have a responsibility to respect the human rights of LGBTQ2+ persons by ensuring their products and services do not facilitate censorship of LGBTQ2+ content, and to provide a remedy when such censorship occurs.**

The ERC should affirm the applicability of the UN Guiding Principles on Business and Human Rights to Internet filtering technology providers. The ERC should call on such companies, including Netsweeper, to ensure their products and services enable the freedom of expression and other rights of LGBTQ2+ persons rather than facilitate censorship of LGBTQ2+ content. The ERC could endorse “[Tackling Discrimination against Lesbian, Gay, Bi, Trans, & Intersex People: Standards of Conduct for Business](#),” published by the UN Office of the High Commissioner for Human Rights (OHCHR), as guidance for companies on these issues.

The ERC should emphasize that Internet filtering companies must take action to fulfill their responsibility to respect the human rights of LGBTQ2+ persons. Human rights policy commitments are a critical first step, followed by continuous efforts to undertake human rights due diligence. In particular, as the [OHCHR report](#) notes, “Where higher levels of human rights violations against LGBTI people have been documented, including in countries with discriminatory laws and practices, companies will need to undertake more extensive due diligence to ensure that they respect the rights of LGBTI people” (p. 5). Moreover, the ERC should call on Internet filtering companies to restrict exports to countries that censor LGBTQ2+ content as a matter of national law or policy, or in widespread practice on public networks.

We recognize that an Internet filtering company may be unable to prevent a client’s inclusion of LGBTQ2+ websites in its filtering database. At the same time, however, companies should not *facilitate* this process by offering pre-designated filtering categories for the capture of LGBTQ2+ content, or providing support to create such filtering policies. Simply put, the ERC should demand that Internet filtering companies adopt a “human rights-by-design” approach: employ features, configurations, and designs that make censorship of content protected under international human rights law, and other human rights violations, more difficult, rather than facilitating them. At a minimum, this would require Internet filtering companies to cease offering predefined “Alternative Lifestyle” or other filtering categories that capture LGBTQ2+ content. Additionally, the ERC should recommend that companies build rights-based language into their contracts that would explicitly state their products and services may not be used to filter LGBTQ2+ content on public networks.

Finally, the ERC should highlight the importance of access to remedy, and call on Internet filtering companies to establish operational-level grievance mechanisms for those adversely impacted by their products and services (UN Guiding Principles, Principle 29). Such mechanisms must reflect real



commitment to hearing and taking action on complaints regarding the blocking of LGBTQ2+ content protected under international human rights law.

We appreciate your consideration of these issues. Please feel free to contact us if we can provide further information or assistance.

Sincerely,

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