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Beyond *Paroline*: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad

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I. INTRODUCTION

January 22, 2014, was an historic day in the U.S. Supreme Court. It was the first day that a crime victim appeared in the Court through her own counsel in a criminal case filed by the government.¹ The case was *Paroline v. United States*, and the victim was “Amy,” a young woman whose child sex abuse images have become some of the most widely-distributed child pornography images on the Internet.² In the four years immediately prior to that clear, but frigid, day in Washington, D.C., law enforcement sent to the National Center for Missing and Exploited Children (“NCMEC”) more than 35,000 files involving images of Amy being sexually abused, increasing the total number of Amy’s sex abuse images processed by NCMEC to more than 70,000 since 2002.³ The images of Amy’s sexual abuse have been recovered by law enforcement in Denmark, Germany, Canada, New Zealand, and Australia,⁴ and NCMEC attributes the “dramatic increase” in the number of Amy’s sex abuse images being found to the fact that “child pornography is now a crime of international distribution.”⁵

The day after Amy appeared at the oral argument in *Paroline*, Ryan Loskarn, the former Chief of Staff of U.S. Senator Lamar Alexander, descended into the basement of his childhood

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¹ See Crime Victims’ Rights Act, 18 U.S.C. § 3771(d)(3) (2012) (providing that under the Crime Victims’ Rights Act, crime victims are entitled to seek appellate review of a denial of their rights under the act).

² Pema Levy, *Child Porn Victims Go to Court to Try to Make Collectors Pay*, NEWSWEEK (Jan. 22, 2014, 1:37 PM), <http://www.newsweek.com/child-porn-victims-go-court-try-make-collectors-pay-226812>. The phrase “child pornography” is used in this Article interchangeably with “child sexual abuse images.” Use of the latter phrase emerged to distinguish it from virtual child pornography where no actual child is used in the production of the images. See *Appropriate Terminology*, INTERPOL, <http://www.interpol.int/Crime-areas/Crimes-against-children/Appropriate-terminology> (last visited Feb. 1, 2015). Thus, “child sexual abuse images” refers specifically to child pornography in which an actual child is abused to produce the images. This is the child pornography this Article addresses because a child is harmed in the production of the child sexual abuse images and then continues to be harmed when the images are distributed and consumed. The term “images” is expansive and may include digital imagery, photographs, sketches, cartoons, movies, sound recordings, paintings, or any other depiction of the sexual abuse of a child regardless of media.

³ Brief for the National Center for Missing and Exploited Children as Amicus Curiae in Support of Respondent Amy Unknown at 11, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561). NCMEC explains in its amicus brief that “[t]he number of image or video files pertaining to ‘Amy’ represents separate instances in which her image or video files are seen and does not indicate the total number of unique or distinct files.” *Id.* at 11 n.5. NCMEC works in conjunction with federal and state law enforcement to collect a database of photos and files in order to identify and prosecute individuals involved in the child pornography industry.

⁴ *Id.* at 12.
⁵ *Id.* at 11.

home fifty-four miles north of the U.S. Supreme Court Building and hanged himself.⁶ The thirty-five-year-old was arrested the previous month for possession of child pornography with the intent to distribute as part of an international police investigation into child pornography called "Operation Spade."⁷ His suicide letter disclosed that he had been sexually abused as a child and was "drawn" to videos that resembled his own abuse.⁸

Loskarn was not the only rising political star who fell in the wake of Operation Spade. More than four thousand miles away, Sebastian Edathy resigned from the German parliament after Loskarn's suicide,⁹ citing health reasons. Three days later, Edathy's home and office were searched by authorities based on allegations of child pornography.¹⁰ The scandal rocked Chancellor Angela Merkel's negotiations to form a coalition government in Germany.¹¹ Edathy was a key member of the Social Democratic Party ("SPD") and was bound for a high-level position in the next German government.¹² He was not the only political casualty. Germany's interior minister, Hans-Peter Friedrich, leaked the information that Edathy was under investigation for buying child pornography to the head of the SPD, and Chancellor Merkel asked for Friedrich's resignation in the wake of the scandal.¹³

The lessons from Operation Spade are not primarily political. The multi-year investigation exemplifies the complexities of child pornography in the twenty-first century, including its exploding market, cross-border distribution, and the prominence of some perpetrators. The investigation itself began in 2010 in Toronto, Canada, with a single film company named Azov Films that operated openly and marketed itself as a producer and distributor of "naturist" films, primarily depicting boys engaged in sports and recreational scenes coming of age.¹⁴ The films marketed by Azov Films did not include explicit sexual acts and so they did not meet the standards for child pornography in some jurisdictions.¹⁵ Indeed, in the case of Edathy, he maintains that all of the material he purchased from Azov Films was "unambiguously legal" in Germany at the time because it did not contain sex acts; the raid on his home was criticized by Thomas Fischer, Chief Judge of the German Federal Court, in an editorial published in *Die Zeit*.¹⁶ By contrast, Loskarn, who also appeared on the Azov Films customer list, was reported to have a video of a young girl being raped in the woods.¹⁷

⁶ Ruth Marcus, *The Tragedy of Ryan Loskarn*, WASH. POST (Feb. 6, 2014), http://www.washingtonpost.com/opinions/ruth-marcus-the-tragedy-of-ryan-loskarn/2014/02/06/e75d3dfe-8f46-11e3-b227-12a45d109e03_story.html; John Bresnahan & Manu Raju, *Ryan Loskarn Believed to Have Committed Suicide*, POLITICO (Jan. 24, 2014, 11:41 AM), <http://www.politico.com/story/2014/01/ryan-loskarn-death-102565.html>.

⁷ Joe Sorensen, *Bucks County Man Indicted on Child Porn Charges Related to Videos from International Pedophile Ring*, TRENTONIAN (June 5, 2014, 8:11 PM), <http://www.trentonian.com/general-news/20140605/bucks-county-man-indicted-on-child-porn-charges-related-to-videos-from-international-pedophile-ring>.

⁸ Rebecca Shabad, *Loskarn's Mother Releases Open Letter He Wrote Before Committing Suicide*, HILL (Jan. 28, 2014, 11:44 AM), <http://thehill.com/blogs/blog-briefing-room/news/196635-loskarns-mother-releases-open-letter-he-wrote-before-committing>.

⁹ Alison Smale, *A Minister in Germany Steps Down Amid Uproar*, N.Y. TIMES (Feb. 14, 2014), http://www.nytimes.com/2014/02/15/world/europe/german-minister-who-divulged-investigation-resigns.html?_r=0.

¹⁰ *Id.*

¹¹ *Entangled: A Child-Porn Scandal Triggers the First Big Crisis in the Grand Coalition*, ECONOMIST (Feb. 22, 2014), <http://www.economist.com/news/europe/21596985-child-porn-scandal-triggers-first-big-crisis-grand-coalition-entangled>.

¹² *Id.*

¹³ *Id.*

¹⁴ Helen Davidson, *Child Abuse Investigation: 65 Arrested and Six Children Rescued in Australia*, GUARDIAN (Nov. 14, 2013), <http://www.theguardian.com/society/2013/nov/15/child-abuse-investigation-australia-arrests> (noting that Brian Way, the owner of Azov Films, claimed that because the films were marketed as naturist movies the films were legal in Canada and the United States).

¹⁵ For example, they were classified as Level One on the COPINE scale in the United Kingdom. *Statement on CEOP's Involvement in Toronto Police's Project Spade*, NAT'L CRIME AGENCY (Nov. 15, 2013), <http://nationalcrimeagency.gov.uk/news/258-statement-on-ceop-s-involvement-in-project-spade> (stating that Phil Gormley, a deputy director at the National Crime Agency in the United Kingdom, made the statement that the screen shots the agency received were considered Level One on the COPINE Scale).

¹⁶ See Vera Kern, *Edathy Pornography Affair: The Story So Far*, DEUTSCHE WELLE (Feb. 19, 2014), <http://www.dw.de/edathy-pornography-affair-the-story-so-far/a-17439048>; see also Thomas Fischer, *Bitte Entschuldigen Sie, Herr Edathy*, DIE ZEIT ONLINE

Loskarn and Edathy are just two of the more prominent customers of Azov Films. In all, the company had customers in over ninety-four countries.¹⁸ Following the web of relationships from that one company, Operation Spade has led to the arrest of almost 350 persons thus far, including clergymen, professors, and teachers across six continents.¹⁹ Nearly four hundred children were rescued from sexual abuse.²⁰ More than fifty countries have been involved, but each has its own laws defining child pornography with consequences in both the prosecution of offenders, as well as recovery for the victims.²¹ At the extreme, for example, are countries like Japan who, at the time of Operation Spade, had not criminalized the possession of child pornography.²²

In the case of Edathy, German prosecutors were faced with a “legal grey zone” because the definition of child pornography in Germany arguably did not include the images recovered.²³ German law requires child sexual abuse images to contain explicit sexual acts, such as sexual intercourse or acts close to the genital area.²⁴ A German criminal law expert explained, “pictures containing only nudity or pictures of a child taken secretly are not punishable.”²⁵ As a result, although Edathy’s political career may be ruined, his criminal prosecution is uncertain.²⁶

What about Edathy’s victims? The children in the images were mainly from poor villages in Romania.²⁷ In 2007, Marcus R., a German timber worker in Romania, began selling videos of naked children to Azov Films.²⁸ Prior to moving to Romania, Marcus R. had served a prison sentence in Germany for sexually abusing children, but he was able to reinvent himself in Romania as an active community member.²⁹ He taught local boys karate and bought them treats

(Mar. 6, 2014), <http://www.zeit.de/2014/10/staatsanwaltschaft-fall-edathy> (English translation can be found at <http://www.boychat.org/messages/1386543.htm>).

¹⁷ M.L. Nestel, *EXCLUSIVE – ‘He Didn’t Want to Cause Us Anymore Shame’: Father Reveals it was Family Babysitter who Molested Senate Aide who Killed Himself After Child Porn Bust and Blamed Abusive Past in Haunting Suicide Note*, DAILY MAIL (Jan. 31, 2014, 4:15 PM), <http://www.dailymail.co.uk/news/article-2549007/Father-Senate-aide-left-haunting-suicide-note-blaming-past-sex-abuse-child-porn-bust-reveals-son-molested-twice-familys-babysitter.html>. Loskarn was also participating in a child pornography peer-to-peer network file-sharing site called “Gnutella,” credited as being the source for the rape video.

¹⁸ Kern, *supra* note 16. The Canadian company came under examination as part of the Canadian government’s “Operation Spade,” a three-year investigation into a large child pornography operation that led to the rescue of 386 children and the arrest of 348 people. *Canada: Hundreds Arrested in Child Pornography Investigation*, N.Y. TIMES (Nov. 14, 2013), <http://www.nytimes.com/2013/11/15/world/americas/canada-hundreds-arrested-in-child-pornography-investigation.html?smid=pl-share> (“The investigation led to the arrest of 108 people in Canada, 76 in the United States and 164 in other countries during the investigation. Schoolteachers, doctors and actors were among those arrested.”).

¹⁹ David Osborne, *Hundreds Arrested as Canadian Police Smash Worldwide Paedophile Ring*, INDEPENDENT (Nov. 14, 2013), <http://www.independent.co.uk/news/world/americas/hundreds-arrested-as-canadian-police-smash-global-paedophile-ring-8940562.html>.

²⁰ *Id.*

²¹ *Hundreds Held Over Canada Child Porn*, BBC (Nov. 14, 2013, 1:24 PM), <http://www.bbc.com/news/world-us-canada-24944358>; ALISDAIR A. GILLESPIE, *CHILD PORNOGRAPHY: LAW AND POLICY* 339 (2011).

²² Jethro Mullen & Yoko Wakutsuki, *After Long Wait, Japan Moves to Ban Possession of Child Pornography*, CNN (June 9, 2014, 10:37 PM), <http://www.cnn.com/2014/06/06/world/asia/japan-child-pornography/index.html>. It was not until June 2014 that Japan finally criminalized possession of child pornography.

²³ Nastassja Stuedel, *Child Pornography’s Legal Grey Zone*, DEUTSCHE WELLE (Feb. 14, 2014), <http://www.dw.de/child-pornographys-legal-grey-zone/a-17434876>.

²⁴ STRAFGESETZBUCH [STGB] [PENAL CODE], Nov. 13, 1998, BGBL I at 3322, § 184b, 176(1) (Ger.); Stuedel, *supra* note 23.

²⁵ Stuedel, *supra* note 23.

²⁶ Evidence may also be a problem in this case. After searching Edathy’s home, prosecutors found “less than they expected, including signs that a hard disc may have been destroyed.” *Entangled: A Child-Porn Scandal Triggers the First Big Crisis in the Grand Coalition*, *supra* note 11. Edathy also reported his laptop stolen. *Id.*

²⁷ *Id.*

²⁸ Maximilian Popp, *Child Pornography: Victims of Exploitation Struggle to Forget*, SPIEGEL ONLINE INT’L (Feb. 26, 2014, 5:01 PM), <http://www.spiegel.de/international/europe/exploited-young-romanians-from-azov-films-videos-traumatized-a-955748.html>.

²⁹ *Id.*

like pizza and lemonade.³⁰ After gaining their trust, he took naked videos of them in the pool at his home.³¹

One of the children in the videos is named Adrian,³² a nineteen-year-old from Rasca, a town in northern Romania.³³ He was fourteen years old when Marcus R. took the videos.³⁴ Adrian remains traumatized because the videos of him and his friends have been sold; he speaks of how he cannot remove the “terrible” footage from his head.³⁵ His father describes Adrian as having been “such a happy child,” but now “he’s very withdrawn.”³⁶ After finding out about the videos, Adrian was so ashamed he was unable to leave his house for months.³⁷ Unfortunately, as tragic as Adrian’s exploitation is by individuals like Marcus R. and Edathy, it is neither unique nor extreme by today’s child pornography standards.

In 2011, U.S. officials penetrated a child pornography ring that engaged in “horrific” and “unspeakable” crimes involving the sexual exploitation of children, some of whom were infants.³⁸ This ring centered on a members-only online community called Dreamboard, which required prospective members to upload pornography of children under twelve years of age.³⁹ After being admitted to the community, participants had to continually upload child sexual abuse images, with greater access and higher statuses awarded based on their “level of commitment to the enterprise.”⁴⁰ Participants achieved the highest level of membership by producing their own child pornography, with particular benefits bestowed on members who caused the infants and children “obvious and . . . intentional pain.”⁴¹ One area of the site mandated that the victims were “in distress and crying.”⁴²

The child pornography ring was truly an international affair.⁴³ The global nature of the Internet meant that U.S. law enforcement arrested not only members from various states, but also required cooperation from foreign officials to arrest offenders in “Canada, Denmark, Ecuador, France, Germany, Hungary, Kenya, the Netherlands, the Philippines, Qatar, Serbia, Sweden, and Switzerland.”⁴⁴ The victims were similarly spread out across the globe, and law enforcement struggled to identify the children who were sexually abused in the production of these images.⁴⁵ U.S. Attorney General, Eric Holder, recognized the “nightmare” the community had created and the extensive damage to the lives of the victims.⁴⁶

Online communities like Dreamboard not only harm victims when members abuse

³⁰ *Id.*

³¹ *Id.*

³² Most victims of child pornography prefer pseudonyms, and the authors have taken every effort to ensure the privacy of victims is protected and referred to victims by their requested pseudonym. The Spiegel article is unclear whether “Adrian” is a pseudonym, but Maximilian Popp chose to preserve the victims’ anonymity by blurring out the faces in the pictures that accompany the article. *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ Terry Frieden, *72 Charged in Online Global Child Porn Ring*, CNN (Aug. 3, 2011, 7:57 PM), <http://www.cnn.com/2011/CRIME/08/03/us.child.porn.ring/>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ The rules of conduct for the website were printed in English, Russian, Japanese, and Spanish. Press Release, Dep’t of Justice Office of Pub. Affairs, Attorney General and DHS Secretary Announce Largest U.S. Prosecution of International Criminal Network Organized to Sexually Exploit Children (Aug. 3, 2011), available at <http://www.justice.gov/opa/pr/2011/August/11-ag-1001.html>.

⁴⁴ Frieden, *supra* note 38.

⁴⁵ Andrew Seidman, *72 Charged in Online Child Pornography Ring*, L.A. TIMES (Aug. 3, 2011), <http://articles.latimes.com/2011/aug/03/nation/la-na-child-porn-20110804>.

⁴⁶ Frieden, *supra* note 38.

children and produce child pornography, but also harm the children portrayed in the child sexual abuse images by distributing and possessing the images.⁴⁷ The sharing of the child sexual abuse images revictimizes children.⁴⁸ Many victims know that the images of their sexual abuse as children are being consumed by numerous, and often unknown, perpetrators and that this revictimization may continue for the rest of their lives due to the nature of the Internet. Amy Unknown, the child portrayed in the “Misty series,” one of the most widely-distributed and collected sets of child sexual abuse images, wrote about this problem in her victim impact statement.⁴⁹ She wrote:

Every day of my life I live in constant fear that someone will see my pictures and recognize me and that I will be humiliated all over again. It hurts me to know someone is looking at them—at me—when I was just a little girl being abused for the camera. . . . I want it all erased. I want it all stopped. But I am powerless to stop it just like I was powerless to stop my uncle. When they first discovered what my uncle did, I went to therapy and thought I was getting over this. I was very wrong. My full understanding of what happened to me has only gotten clearer as I have gotten older. My life and my feelings are worse now because the crime has never really stopped and will never really stop. It is hard to describe what it feels like to know that at any moment, anywhere, someone is looking at pictures of me as a little girl being abused by my uncle and is getting some kind of sick enjoyment from it. It’s like I am being abused over and over and over again.⁵⁰

Amy’s experience of revictimization is common among victims of child pornography. These victims have extensive and ongoing medical and psychological needs.⁵¹ In addition, the constant fear of recognition keeps many victims from being able to obtain education and employment.⁵² As a result, tangible support of victim restoration is imperative, both morally and legally.

⁴⁷ One of the first academic articles to study the role of Internet-based communities in the creation and perpetuation of child sex abuse and child sex abuse images was by Ethel Quayle and Max Taylor. Ethel Quayle & Max Taylor, *Child Pornography and The Internet: Perpetuating A Cycle Of Abuse*, 23 *DEVIANT BEHAV.: AN INTERDISC. J.* 331, 331 (2002).

⁴⁸ *New York v. Ferber*, 458 U.S. 747, 759–60 n.10 (1982) (“[P]ornography poses an even greater threat to the child victim than does sexual abuse or prostitution. Because the child’s actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place. A child who has posed for a camera must go through life knowing that the recording is circulating within the mass distribution system for child pornography.”).

In addition to revictimizing the children whose sexual abuse is portrayed in the images, the possession and distribution of child sexual abuse images “validates and normalizes the sexual exploitation of children, and fuels a market, thereby leading to further production of images.” Letter from Anne Gannon, Nat’l Coordinator for Child Exploitation Prevention and Interdiction, U.S. Dep’t of Justice, to Hon. Patti B. Saris, Chair, U.S. Sentencing Comm’n (Mar. 5, 2013) (on file with author) (citing H.R. Rep. No. 108-66, at 58–59 (2003)).

⁴⁹ Amy is the victim at the center of a recent case before the Supreme Court of the United States, *Paroline v. Amy Unknown and United States*. *Paroline v. United States*, 134 S. Ct. 1710 (2014). In *Paroline*, the Supreme Court interprets the Mandatory Restitution Statute, 18 U.S.C. § 2259 (2012), to determine child pornography victims’ ability to obtain restitution, which is used to provide restoration services to the victim such as psychological counseling, compensation for lost income, and medical expenses. *Id.* at 1760. Amy’s appearance represents a momentous day for crime victim advocates—for the first time in U.S. history, a victim argued as a party before the Supreme Court along with the defendant and Government. Brooke Adams, *Utah Law Professor to Make Case for Child-Porn Victims*, SALT LAKE TRIBUNE (Jan. 16, 2014, 12:50 PM), <http://www.sltrib.com/sltrib/mobile3/57400897-219/amy-restitution-court-child.html.csp>. Amy argues that once an individual meets the definition of victim in the Mandatory Restitution Statute, the individual is entitled to the full amount of her losses. The Court rejects this theory and holds that victims may only receive restitution for injuries directly caused by the defendant using a number of factors. See *infra* Part V for a more extensive discussion of the case.

⁵⁰ Joint Appendix vol. 1 at 60–61, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

⁵¹ See Part II.B for a discussion of the victims’ medical and psychological needs.

⁵² *Id.*

The stories of Adrian, Amy, and the unknown Dreamboard victims demonstrate the many facets of the growing, global, and increasingly grotesque sexual abuse of children through child pornography. This Article argues that the United States must act quickly to enhance its statutory framework for providing restoration to victims of child pornography in light of the U.S. Supreme Court's recent decision in *Paroline*.⁵³

Part II focuses on child pornography in the Internet age. In the past twenty years, technological innovations and the rise of the Internet have transformed child pornography into a problem that is transnational, borderless, and never-ending in its growth. It also means that any adequate framework for restoration must recognize the complexity of a global and robust child pornography market that is described as reaching "epidemic" proportions.⁵⁴ Part III describes U.S. jurisprudence concerning child pornography and restitution to victims. Part IV analyzes the international community's attempts to provide a framework ensuring victims' full psychological and physical recovery and social reintegration (we refer to these conditions collectively as "restoration" throughout this Article). Part IV examines in detail the relevant provisions of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography ("Optional Protocol"),⁵⁵ which the United States signed and ratified. The Optional Protocol, together with a number of other global efforts concerning the restoration of child pornography, provides the foundation for an evolving international norm that requires countries to provide victims with full restoration.

Part V argues that although the United States has provided leadership by creating an initial legal framework domestically and supporting the promulgation of international treaties and instruments, the current legal framework fails to provide meaningful and adequate compensation to victims, which is required under its treaty obligations. The recent decision of the U.S. Supreme Court in *Paroline* makes clear that victims cannot rely on the Mandatory Restitution Statute⁵⁶ to recover fully or quickly from most perpetrators.⁵⁷ Thus, Congress must pass new legislation. The new legal framework should recognize the complexity of the current global and growing child pornography market to ensure that all victims, both foreign and domestic, have access to the resources they need both to end their victimization and recover fully from perpetrators, regardless of where they are located. The new framework could include criminal laws (both domestic, international, and foreign) with effective restitution provisions, crime victims' funds, civil remedies, copyright protections, third-party liability, and access to government benefits. Private industry could also be engaged in the fight against child pornography to implement software that

⁵³ *Paroline*, 134 S. Ct. 1710.

⁵⁴ Marisol Bello & Yamiche Alcindor, *Police Chief, Rabbi Among 71 Nabbed in Child Porn Bust*, USA TODAY (May 21, 2014, 10:19 PM), <http://www.usatoday.com/story/news/nation/2014/05/21/child-porn-nyc-internet/9367471/>. A five-week federal investigation of child pornography based in the New York area in spring 2014 ("Operation Caireen") resulted in the arrests of seventy men and one woman, including two police officers, a rabbi, a registered nurse, a paramedic, and a Boy Scout den leader. According to James Hayes, the head of U.S. Immigration and Customs Enforcement's Homeland Security Investigation's New York office, "the sheer volume of confirmed and suspected instances of individuals engaging in the sexual exploitation of children . . . is shocking and the professional backgrounds of many of the defendants is troubling. We can no longer assume that the only people who would stoop to prey on children are unemployed drifters. Clearly, this criminal activity has reached epidemic proportions." *Id.* The investigation began in January 2014 when Brian Fanelli, the chief of the Mount Pleasant Police Department, was arrested and charged with possession of child pornography, followed by the arrest of Rabbi Samuel Waldman on March 5, 2014. Joseph Berger, *71 Are Accused in a Child Pornography Case, Officials Say*, N.Y. TIMES (May 21, 2014), http://www.nytimes.com/2014/05/22/nyregion/dozens-arrested-in-new-york-state-child-pornography-investigation.html?_r=0.

⁵⁵ United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *opened for signature* May 25, 2000, T.I.A.S. No. 13,095, 2171 U.N.T.S. 227 (entered into force Jan. 18, 2002; United States ratified Dec. 23, 2002) [hereinafter Optional Protocol].

⁵⁶ 18 U.S.C. § 2259 (2012).

⁵⁷ *Paroline*, 134 S. Ct. at 1722, 1728 (requiring that the offender proximately caused the harm and providing courts with factors to determine restitution).

would allow child sex abuse images to be quickly identified and immediately removed, so that the victimization does not continue in perpetuity and the individuals harmed by this horrific crime have the opportunity to recover once and for all.

Finally, Part VI briefly considers the insidious challenges, legal obligations, and moral imperative of restoring foreign victims. Due to the global nature of modern child pornography, and the increasing sexual exploitation of children in developing countries (which often have fewer resources for victims) by perpetrators in developed countries, it is critical that the global community create efficient and effective systems to allow victims of child pornography to access support for their restoration across borders.

II. THE RISE OF CHILD PORNOGRAPHY

Numerous civilized societies have condemned the sexual abuse of children as far back as the Byzantine Empire.⁵⁸ Individuals who had sex with free children in Ancient Rome were sentenced to death.⁵⁹ During this period, there was no way to capture actual images of the sexual abuse of a child except through one's memory and drawing or another manual recreation of the incident. However, this changed with the invention of the camera in 1839.⁶⁰ For the first time, a person could memorialize the sexual abuse of a child, and those images could be used to perpetuate the abuse.⁶¹ The technological limitations of cameras and the physical limitations on delivery methods, such as postal services and the need to seek an outside developer for physical film, significantly restricted the growth of the child pornography market for more than one hundred years.⁶² However, with the introduction of affordable, easy-to-use cameras in the mid-twentieth century, technological advances significantly expanded the child pornography market.⁶³ The rise of the Internet and digital technologies multiplied this growth.

A. A Child Pornography Pandemic in the Digital Age

In the late twentieth century, digital technologies and the widespread use of the Internet together facilitated an explosive growth in the child pornography market. Between 1996 and 2009, the number of individuals with Internet access increased from 100 million to 1.25 billion users and continues to rise.⁶⁴ As a result, it is impossible to quantify the actual volume of these images or the number of offenders possessing and distributing child pornography materials at any given time.⁶⁵ Before the rise of the digital age, child pornography could only be shared physically through the use of mailings or face-to-face encounters.⁶⁶ Accordingly, "child pornography was difficult to find, risky to produce, expensive to duplicate and required secure and private

⁵⁸ John Lascaratos & Effie Poulakou-Rebelakou, *Child Sexual Abuse: Historical Cases in the Byzantine Empire (324–1453 A.D.)*, 24 CHILD ABUSE & NEGLECT 1085, 1085 (2000).

⁵⁹ CHRISTIAN LAES, CHILDREN IN ANCIENT ROME 244 (2006). However, it is important to note that children who were slaves were not protected. *Id.*

⁶⁰ NAT'L RAPPOREUR ON TRAFFICKING IN HUMAN BEINGS, CHILD PORNOGRAPHY: FIRST REPORT OF THE DUTCH NATIONAL RAPPOREUR 33 (2011) [hereinafter DNR REPORT], available at http://www.dutchrapporteur.nl/Images/child-pornography_tcm64-426462.pdf.

⁶¹ *Id.* at 33–34.

⁶² U.S. SENTENCING COMM'N, REPORT TO CONGRESS: FEDERAL CHILD PORNOGRAPHY OFFENSES 5, 328 (2012), available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf; see DNR REPORT, *supra* note 60, at 33–34.

⁶³ DNR REPORT, *supra* note 60, at 34.

⁶⁴ Robert J. Edelman, *Exposure to Child Abuse Images as Part of One's Work: Possible Psychological Implications*, 21 J. FORENSIC PSYCHIATRY & PSYCHOL. 481, 481 (2010) (discussing the growth of the Internet).

⁶⁵ U.S. DEP'T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION 11 (2010), available at <http://www.justice.gov/psc/docs/natstrategyreport.pdf>.

⁶⁶ U.S. SENTENCING COMM'N, *supra* note 62, at 5, 328.

storage.”⁶⁷ Distribution has become far less risky and difficult with the Internet and is now a common component of child pornography offenses.⁶⁸

The Internet's current “global, decentralized and borderless” nature allows for a “potentially infinite and unbreakable communications complex” that law enforcement, thus far, is unable to break.⁶⁹ The United States alone has two hundred forty-five million Internet users.⁷⁰ Millions of individual users consume⁷¹ more than fifteen million child sexual abuse images in a market currently valued between three and twenty billion U.S. dollars annually.⁷² The child pornography market is one of the fastest growing businesses on the Internet.⁷³ Currently, 750,000 predators are online at any time.⁷⁴ Moreover, with the rapid proliferation of Internet usage, the child pornography market is projected to continue growing exponentially.⁷⁵

Along with the expansion of the Internet came the development of digital, remote, and wireless technologies.⁷⁶ Today, personal devices such as smartphones, tablets, digital recording devices, and hand-held digital cameras are increasingly affordable, convenient, and widespread, making the Internet even easier to access from almost any inhabited area.⁷⁷ Recent studies reported that by the end of 2013, there were 6.8 billion mobile subscriptions worldwide, which is nearly the Earth's population.⁷⁸ Additionally, in the past decade, Internet access has become more readily available. As of January 2014, fifty-eight percent of American adults own smartphones, which gives them access to the Internet from any location with cellular service.⁷⁹ Many smartphones contain security that prevents law enforcement from accessing data, making a smartphone an ideal medium for perpetrators.⁸⁰

Devices such as smartphones allow offenders to access child pornography images easily and on-the-go, as well as create and distribute the sex abuse images relatively simply and quickly from a technological perspective.⁸¹ Moreover, whereas historically child pornography was

⁶⁷ U.S. SENTENCING COMM'N, *supra* note 62, at 71.

⁶⁸ *Id.* According to the U.S. Department of Justice, “nearly two-thirds of all offenders distribute [sexual abuse] images to others.” Letter from Anne Gannon, *supra* note 48.

⁶⁹ YAMAN AKDENIZ, INTERNET CHILD PORNOGRAPHY AND THE LAW: NATIONAL AND INTERNATIONAL RESPONSES 2 (2008).

⁷⁰ CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2153rank.html>.

⁷¹ Many individuals who consume or possess child pornography also distribute child pornography. U.S. DEP'T OF JUSTICE, *supra* note 65, at 18. One reason is the ability to create “community” relationships and peer groups on the Internet. *Id.* Often these groups have initiation processes that require potential members to distribute new child pornography images to the existing members in order to join the group. *Id.*

⁷² Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography: Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, paras. 44, 80, Human Rights Council, U.N. Doc. A/HRC/12/23 (July 13, 2009) (by Najat M'jid Malla) [hereinafter U.N. Special Rapporteur Report].

⁷³ Press Release, Int'l Ctr. for Missing & Exploited Children, The Financial Coalition Against Child Pornography Adds Four Financial Services Leaders to its Roster (Nov. 1, 2006), available at http://www.icmec.org/missingkids/servlet/NewsEventServlet?LanguageCountry=en_X1&PagelD=2853.

⁷⁴ U.N. Special Rapporteur Report, *supra* note 72, para. 34.

⁷⁵ See Edelman, *supra* note 64, at 481 (discussing internet growth, and the potential for child abuse image distribution and its negative effect on investigators of child abuse images).

⁷⁶ See U.S. SENTENCING COMM'N, *supra* note 62, at 5.

⁷⁷ See *id.* at 5–6.

⁷⁸ INT'L TELECOMM. UNION, MEASURING THE INFORMATION SOCIETY 1 (2013), available at http://www.itu.int/en/ITU-D/Statistics/Documents/publications/mis2013/MIS2013_without_Annex_4.pdf.

⁷⁹ *Mobile Technology Fact Sheet*, PEW INTERNET (Jan. 14, 2014), <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/>; see DEBORAH MUIR, VIOLENCE AGAINST CHILDREN IN CYBERSPACE 11 (2005), available at http://www.ecpat.net/sites/default/files/Cyberspace_ENG_0.pdf.

⁸⁰ Craig Timberg & Greg Miller, *FBI Blasts Apple, Google for Locking Police Out of Phones*, WASH. POST (Sept. 25, 2014), http://www.washingtonpost.com/business/technology/2014/09/25/68c4e08e-4344-11e4-9a15-137aa0153527_story.html (noting that “Apple will become the phone of choice for the pedophile”).

⁸¹ ECPAT INT'L, THE USE OF INFORMATION AND COMMUNICATION TECHNOLOGIES IN CONNECTION WITH CASES OF CHILD-SEX

produced and then distributed at a later time, now a child's victimization can be viewed in real-time, and replayed again and again in the future.⁸² For example, a perpetrator in Europe can go online and instruct a Filipino child to perform sexually for him via a webcam in real time.⁸³ As the world's population has "gone mobile," advancements in storage capacities and Internet speeds have allowed offenders to store and share more child pornography images and videos than ever before.⁸⁴

Modern technology and the Internet have not only increased production of child pornography, but also allow offenders to access the images surreptitiously by using aliases, Wi-Fi locations, proxy servers, and peer-to-peer file sharing.⁸⁵ Peer-to-peer file sharing allows individuals to share their collections of child pornography anonymously on a global basis.⁸⁶ A recent study by U.S. law enforcement agencies found that more than 11.8 million unique international Internet Protocol ("IP") addresses engaged in peer-to-peer file sharing of child pornography between October 2008 and October 2009.⁸⁷ During that same period, more than 9.7 million unique IP addresses in the United States engaged in peer-to-peer file sharing of child sexual abuse images.⁸⁸

There are two distinct types of peer-to-peer file sharing: centralized sharing networks and decentralized sharing networks.⁸⁹ Centralized sharing networks connect their users' content to a central database in which all users can access the files through the main network.⁹⁰ When one user searches for child sexual abuse images, other users direct them to the correct location and the user who has the file available sends a copy to the interested user.⁹¹ Generally, child pornography offenders prefer decentralized sharing networks because a centralized sharing network involves multiple directing parties that law enforcement can track.⁹² Decentralized networks do not store users' file names and allow users to disconnect immediately and to share files without a centralized server.⁹³

In addition to peer-to-peer networks, some offenders utilize chat rooms to connect with potential victims, as well as to connect with other offenders. Offenders use chat rooms to "swap" child sexual abuse images with other offenders, treating the images as collectibles, which in turn, objectifies children.⁹⁴ These interactions help to provide offenders with access to secret chat rooms with more child sex abuse images and communal validation that their crimes are

TOURISM IN EAST AND SOUTHEAST ASIA 25 n.35 (2010), available at http://www.ecpat.net/sites/default/files/ecpat_journal_mar2010_final_0.pdf.

⁸² See CHILD EXPLOITATION & ONLINE PROTECTION CTR., THREAT ASSESSMENT OF CHILD SEXUAL EXPLOITATION AND ABUSE 80 (2013), available at http://ceop.police.uk/Documents/ceopdocs/CEOP_TACSEA2013_240613%20FINAL.pdf (explaining the use of live video streaming as a method of distributing child pornography).

⁸³ *Stop Webcam Child Sex Tourism*, TERRE DES HOMES INT'L FED'N (Nov. 4, 2013), <http://www.terredeshommes.org/webcam-child-sex-tourism/>.

⁸⁴ *Id.*; U.S. DEP'T OF JUSTICE, *supra* note 65, at 12.

⁸⁵ U.S. DEP'T JUSTICE, *supra* note 65, at 23.

⁸⁶ U.S. SENTENCING COMM'N, *supra* note 62, at 51 ("In 2011, it was estimated that [fifty-seven] percent of global Internet traffic was [peer-to-peer] traffic.")

⁸⁷ U.S. DEP'T OF JUSTICE, *supra* note 65, at 14.

⁸⁸ *Id.*

⁸⁹ U.S. GEN. ACCOUNTING OFFICE, GAO-03-537T, FILE SHARING PROGRAMS: CHILD PORNOGRAPHY IS READILY ACCESSIBLE OVER PEER-TO-PEER NETWORKS 15–16 (2003), available at <http://www.gao.gov/products/GAO-03-537T> (to view full text, follow "VIEW REPORT" hyperlink) (statement of Linda D. Koontz, Dir., Info. Mgmt. Issues).

⁹⁰ *See id.* at 16–17.

⁹¹ *Id.* at 16.

⁹² *See id.* at 15.

⁹³ See Matei Ripeanu et al., *Mapping the Gnutella Network: Properties of Large-Scale Peer-to-Peer Systems and Implications for System Design*, 3, <http://people.cs.uchicago.edu/~matei/PAPERS/ic.pdf> (last visited Feb. 1, 2015).

⁹⁴ See KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS 81 (Nat'l Ctr. for Missing & Exploited Children ed., 5th ed. 2010), available at http://www.missingkids.com/en_US/publications/NC70.pdf; Quayle & Taylor, *supra* note 47, at 331.

acceptable.⁹⁵ Like Dreamboard, many chat rooms encourage offenders to submit new images in order to join specific groups.⁹⁶ Often these groups consist of a hierarchy based on the number of images submitted to the group as a whole.⁹⁷ This, in turn, leads to the proliferation of abuse and, in some cases, has led to offenders who were previously “hands off” abusers to become “hands on” abusers.⁹⁸ Some users even abuse their own children to gain access to more restrictive groups.⁹⁹ Chat rooms provide offenders with a community of abusers who accept and reaffirm their addiction to the abuse of children by normalizing their behavior and encouraging desensitization to abuse materials.¹⁰⁰ Currently, there are nearly forty thousand active public chat rooms in which offenders seek to meet children and abuse potential victims.¹⁰¹

Offenders may also access illegal content through the “Deep Web,” a group of websites that remain hidden through a predetermined digital path, and thus, allow offenders access to illegal content, such as child pornography.¹⁰² These “disguised” websites will only display illegal content when accessed through this path and will display legal adult content if accessed through a different path.¹⁰³ Due to the ability of offenders to hide their identity and access this information in a more “risk-free” way, it is not surprising that there has been a significant rise in the proliferation of child pornography since the introduction of the Internet.¹⁰⁴

These technological innovations allow offenders to procure and distribute child sex abuse images worldwide. A 2012 report by the Internet Watch Foundation in the United Kingdom found that out of the 9477 reports of websites hosting child sexual abuse content outside of the United Kingdom, fifty-four percent were hosted in North America, thirty-seven percent were hosted in Europe, and eight percent were hosted in Asia.¹⁰⁵ In 2011, a transnational investigation resulted in the shutdown of a child pornography network, boylover.net, which hosted up to seventy thousand members worldwide.¹⁰⁶ The investigation was coordinated among thirteen different countries, including the United States, and resulted in the identification of 670 suspects, 184 arrests, and the safeguarding of 230 children.¹⁰⁷ The international nature of recent child pornography investigations affirms that technology is contributing to the rapid growth and globalization of the child pornography industry, compelling the need for a much more aggressive and coordinated global response.

B. Victimization Continues Indefinitely through the Internet

The transformation from tangible to digital child sexual abuse images has had a debilitating effect on victims. Digital child sexual abuse images are virtually impossible to permanently destroy because millions of unidentified perpetrators around the world can easily

⁹⁵ Quayle & Taylor, *supra* note 47, at 332.

⁹⁶ See *Child Exploitation & Obscenity Section*, U.S. DEP'T OF JUSTICE, <http://www.justice.gov/criminal/ceos/subjectareas/childporn.html> (last visited Feb. 1, 2015).

⁹⁷ U.S. SENTENCING COMM'N, *supra* note 62, at 96.

⁹⁸ See *id.* (noting that there is evidence that offenders produce new images and videos in order to gain access into child pornography communities).

⁹⁹ See *id.*

¹⁰⁰ *Id.* at 97.

¹⁰¹ MICHAEL SHIVELY ET AL., SURVEY OF PRACTITIONERS TO ASSESS THE LOCAL IMPACT OF TRANSNATIONAL CRIME, TASK ORDER FINAL REPORT 14 (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/217587.pdf>.

¹⁰² U.S. SENTENCING COMM'N, *supra* note 62, at 60 (noting several synonyms for the deep web); see INTERNET WATCH FOUND., ANNUAL AND CHARITY REPORT 17 (2012), available at <https://www.iwf.org.uk/assets/media/annual-reports/FINAL%20web-friendly%20IWF%202012%20Annual%20and%20Charity%20Report.pdf> (explaining predetermined path websites).

¹⁰³ *Id.*

¹⁰⁴ U.S. DEP'T OF JUSTICE, *supra* note 65, at 2.

¹⁰⁵ INTERNET WATCH FOUND., *supra* note 102, at 14.

¹⁰⁶ *More than 200 Children Identified and Rescued in Worldwide Police Operation*, EUROPOL (Mar. 16, 2011), <https://www.europol.europa.eu/content/more-200-children-identified-and-rescued-worldwide-police-operation>.

¹⁰⁷ *Id.*

store, copy, distribute, and consume the images.¹⁰⁸ Offenders who together perpetuate the distribution and possession of the victims' sexual abuse images all contribute to the indefinite victimization of child pornography victims.¹⁰⁹

As child pornography victims grow older, many come to realize that the images of their sexual abuse will continue to exist and be consumed for the remainder of their lives, and that they are largely powerless to end the abuse.¹¹⁰ This knowledge may haunt the victims for years because possessors and distributors will continue to consume, and possibly distribute, the images and recordings indefinitely.¹¹¹ In addition, the problem is taking on a new dimension as child sexual abuse images are becoming more violent and graphic as perpetrators demand younger victims, vaginal and anal penetration (sometimes with sex toys and foreign objects), rape, bestiality, defecation and urination, bondage, torture, and other sadistic behavior.¹¹²

A recent survey revealed that almost ninety-five percent of child pornography victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy.¹¹³ The continual victimization can take an extreme physical, psychological, and financial toll on the victim and the victim's family.¹¹⁴ Victims of child pornography may have difficulty maintaining jobs and relationships because of the fear that people they interact with have viewed the sexual abuse images and will recognize them.¹¹⁵ Victims are also more likely to suffer from alcoholism later in life with the severity of the child abuse correlating with the severity of alcohol abuse.¹¹⁶

Perpetrators use victims' sexual abuse images for the purpose of grooming other children in order to facilitate subsequent sexual abuse. Offenders will frequently share images with potential victims "to desensitize them to a degree that the child feels everyone is doing these things, and there is nothing wrong with taking these kinds of sexually graphic pictures."¹¹⁷ Viewing these images will often convince a child to engage in sexual activity, thereby increasing the child pornography market and the number of victims who need restoration services.¹¹⁸

The psychological damage that child pornography victims suffer is experienced across cultures. For example, German victims report feelings of shame, hate, disgust, loathing, fear,

¹⁰⁸ U.S. SENTENCING COMM'N, *supra* note 62, at 112; U.S. DEP'T OF JUSTICE, *supra* note 65, at 9, 23; DNR REPORT, *supra* note 60, at 75.

¹⁰⁹ See PHILIP JENKINS, BEYOND TOLERANCE: CHILD PORNOGRAPHY ON THE INTERNET 187–95 (2001) (describing the global community of offenders and policing efforts). Many child pornography market participants engage in all three market stages (creation, distribution, and possession), but even those who enter at one point collectively victimize the child. See U.N. Special Rapporteur Report, *supra* note 72, para. 42.

¹¹⁰ U.S. SENTENCING COMM'N, *supra* note 62, at 112; U.S. DEP'T OF JUSTICE, *supra* note 65, at 9; DNR REPORT, *supra* note 60, at 36, 50, 75–77.

¹¹¹ DNR REPORT, *supra* note 60, at 75. The U.S. Supreme Court has also recognized that victims are revictimized from the existence of their abuse images. See *infra* Part III.

¹¹² U.S. SENTENCING COMM'N, *supra* note 62, at 85, 90–92. In a recent survey, twenty-one percent of child pornography depicted violence such as bondage, rape, or torture. JANIS WOLAK ET AL., CHILD-PORNOGRAPHY POSSESSORS ARRESTED IN INTERNET-RELATED CRIMES: FINDINGS FROM THE NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY 5 (2005), available at <http://www.unh.edu/ccrc/pdf/jvq/CV81.pdf>. "Most of these involved images of children who were gagged, bound, blindfolded, or otherwise enduring sadistic sex." *Id.*

¹¹³ U.S. DEP'T OF JUSTICE, *supra* note 65, at D-12.

¹¹⁴ See U.S. SENTENCING COMM'N, *supra* note 62, at 112; see Julia von Weiler et al., *Care and Treatment of Child Victims of Child Pornographic Exploitation (CPE) in Germany*, 16 J. SEXUAL AGGRESSION 211, 218–19 (2010) (discussing the effects of abusive images on victims and their caretakers).

¹¹⁵ See U.S. SENTENCING COMM'N, *supra* note 62, at 113.

¹¹⁶ Joseph Nowinski, *Childhood Trauma and Adult Alcohol Abuse: Shedding Light on the Connection*, HUFFINGTON POST (Sept. 21, 2013, 5:12 AM), http://www.huffingtonpost.com/joseph-nowinski-phd/alcohol-abuse_b_3595743.html.

¹¹⁷ K. Jaishankar et al., *Pedophilia, Pornography, and Stalking: Analyzing Child Victimization on the Internet*, in CRIMES OF THE INTERNET 34 (Frank J. Schmalleger & Michael Pittaro eds., 2009).

¹¹⁸ See LANNING, *supra* note 94, at 90; U.S. SENTENCING COMM'N, *supra* note 62, at 113.

repression, guilt, and speechlessness.¹¹⁹ Victims in the United States have also reported feelings of depression, posttraumatic stress disorder, non-delusional paranoia, low self-esteem, withdrawal, and worthlessness.¹²⁰ The mere knowledge of the existence and circulation of the images of the victim's sexual abuse causes feelings of shame, humiliation, and powerlessness.¹²¹ Unfortunately, these feelings do not dissipate over time, but rather intensify due to feelings of deep despair, worthlessness, and helplessness.¹²² In the recent study of Filipino children, Westerners solicited the children to participate in live digital sexual abuse via the Internet ("webcam sex"), and the child victims demonstrated significantly higher rates of post-traumatic stress and feelings of low self-esteem, worthlessness, shame, guilt, and being contaminated.¹²³ The study found that the children's feelings were intensified after learning that the images of their sexual abuse may be available on the Internet indefinitely.¹²⁴

Compounding the problems that child pornography victims face, a recent survey among German victim assistance professionals found that even therapeutic professionals are ill-equipped to deal with the type of psychological damage suffered by child pornography victims.¹²⁵ Thus, it is difficult for victims to find effective therapeutic support.¹²⁶ The therapeutic professionals surveyed in a German study indicated that "working with victims of [child pornographic exploitation] is more complex than working with child sexual abuse victims."¹²⁷ The difference between child pornography victims' psychological harm and victims of other crimes is the permanent presence of the abuse material on the Internet.¹²⁸ These victims, thus, have "a higher susceptibility to post-traumatic stress disorder, depression, and psychoses."¹²⁹ Two-thirds of professionals working with child pornography victims reported that they themselves felt "deep feelings of helplessness" because the victims' sexual abuse images on the Internet are permanent.¹³⁰ Indeed, one-third of the professionals treating child pornography victims experienced thoughts such as, "in this situation healing becomes impossible."¹³¹

C. Technology Is Also a Solution to Reducing Victimization

Although technology has created unique and complex problems for victims and law enforcement, technology is also part of the solution. Technology is now being developed that can quickly identify child pornography and remove it from the Internet, thus reducing the number of pedophiles able to access the child pornography.¹³² Twitter, Facebook, Microsoft, and Google have already implemented software known as PhotoDNA that can quickly identify child

¹¹⁹ Von Weiler et al., *supra* note 114, at 214 (discussing how victims felt after the abuse they suffered).

¹²⁰ See U.S. SENTENCING COMM'N, *supra* note 62, at 112 n.44, 113.

¹²¹ TERRE DES HOMMES, FULLSCREEN ON VIEW: AN EXPLORATORY STUDY ON THE BACKGROUND AND PSYCHOSOCIAL CONSEQUENCES OF WEBCAM CHILD SEX TOURISM IN THE PHILIPPINES 13 (2013), available at <http://www.menschenhandelweb.nl/system/files/documents/25%20feb%202014/Rapport%20Fullscreen%20on%20View%20Terre%20des%20Hommes%202013.pdf>.

¹²² *Id.*

¹²³ *Id.* at 41, 43.

¹²⁴ See *id.*

¹²⁵ Von Weiler et al., *supra* note 114, at 218.

¹²⁶ See *id.* (discussing how counselors and therapists deal with the idea of permanence of the child abuse images online and how difficult it can be).

¹²⁷ *Id.* at 214 (discussing how it can be even more difficult to help victims of child pornographic exploitation than children that experienced sexual abuse).

¹²⁸ *Id.* at 217.

¹²⁹ *Id.* (discussing the different psychological disorders that child pornography victims suffer from and how they are more susceptible to these harms).

¹³⁰ *Id.* (discussing the helplessness that some professionals deal with while trying to help victims of child pornography victims).

¹³¹ *Id.* (discussing further the helplessness that some professionals deal with while trying to help victims of child pornography victims).

¹³² As discussed *supra* Part II.B, revictimization through the spread of images on the Internet is a major cause of victims' harm.

pornography, allowing the companies to report the possessor to authorities.¹³³ Microsoft and Dartmouth College developed PhotoDNA in 2009, which works by creating a “hash” or fingerprint¹³⁴ for each child pornography image in a database.¹³⁵ When PhotoDNA is used in computer systems such as Facebook, it can search the system for images that contain the hash and identify the child pornography.¹³⁶

Microsoft donated the system to NCMEC.¹³⁷ NCMEC is able to distribute updated hash information to the technology companies using PhotoDNA without providing images to the companies.¹³⁸ The International Centre for Missing and Exploited Children (“ICMEC”) has a similar system that can identify up to eighty-five percent of images seized on a hard drive, enabling law enforcement to focus its labor primarily on the remaining fifteen percent.¹³⁹ Google has also been using “hash” technology since 2008 to identify images that would not normally be identified.¹⁴⁰

Additional efforts are still needed to combat the vast amount of child pornography online. More webpages must be searched. For example, Google searches approximately fifteen billion pages, merely a fraction of the Internet.¹⁴¹ Google and other search engines are only able to report child pornography and block it from appearing in a search result.¹⁴² While this reduces the number of offenders, it does not permanently eradicate the child pornography, which law enforcement may use to identify and prosecute offenders.¹⁴³ Additionally, it is unknown how many sex abuse images are contained in the various databases because of the number of government entities around the globe maintaining these databases.¹⁴⁴ Thus, more collaboration between victims, law enforcement, private industry, NCMEC, and their international counterparts

¹³³ Charles Arthur, *Twitter to Introduce PhotoDNA System to Block Child Abuse Images*, THE GUARDIAN (July 22, 2013, 5:39 AM), <http://www.theguardian.com/technology/2013/jul/22/twitter-photodna-child-abuse>; see also *Our Continued Commitment to Combatting Child Exploitation Online*, GOOGLE OFFICIAL BLOG (June 15, 2013), <http://googleblog.blogspot.com/2013/06/our-continued-commitment-to-combating.html> (explaining the technology used by Google to combat child pornography).

¹³⁴ Zack Whittaker, *Microsoft Develops Image DNA Technology for Fighting Child Porn*, ZDNET BLOG (Dec. 17, 2009, 6:07 PM), <http://www.zdnet.com/blog/igeneration/microsoft-develops-image-dna-technology-for-fighting-child-porn/3655>. The hash resolves privacy concerns for victims by only providing companies a unique signature of the image that is reported to authorities. Authorities have access to the child pornography images and are able to determine who the victim is from the unique hash. The company does not receive the victim’s personal information. Adi Robertson, *Microsoft Gives PhotoDNA Matching Software to Police to Help Find Child Pornography*, THE VERGE (Mar. 20, 2012, 9:51 AM), <http://www.theverge.com/2012/3/20/2886999/microsoft-licensing-photodna-child-pornography-matching-software-police>.

¹³⁵ *PhotoDNA Press Materials are Now on the Microsoft Digital Crimes Unit Newsroom*, MICROSOFT, <https://www.microsoft.com/en-us/news/presskits/photodna/> (last visited Feb. 1, 2015); Robertson, *supra* note 134.

¹³⁶ Arthur, *supra* note 133.

¹³⁷ *PhotoDNA Press Materials are Now on the Microsoft Digital Crimes Unit Newsroom*, *supra* note 135.

¹³⁸ 18 U.S.C. § 2258C (2012) (requiring NCMEC to partner with technology companies to reduce the sharing of child pornography); *Voluntary Industry Initiatives*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, <https://secure.missingkids.com/Exploitation/Industry> (last visited Feb. 1, 2015). In addition to PhotoDNA, NCMEC has a URL initiative that reports child pornography websites to electronic service providers for takedown. *Id.* A Hash Value Sharing Initiative, similar to PhotoDNA, provides electronic service providers with “hash” values of the “worst of the worst” images. *Id.* In 2011, NCMEC reviewed 17.3 million images and videos of suspected child sexual abuse through both public and private efforts. *Our Continued Commitment to Combatting Child Exploitation Online*, *supra* note 133.

¹³⁹ Int’l Ctr. for Missing & Exploited Children, *Video Fingerprinting Technology Removes Child Pornography Online*, DFI NEWS (May 1, 2014, 3:25 PM), <http://www.dfi-news.com/news/2014/05/video-fingerprinting-technology-removes-child-pornography-online>.

¹⁴⁰ *Our Continued Commitment to Combatting Child Exploitation Online*, *supra* note 133.

¹⁴¹ Tim Worstall, *I’m Not Sure that Google’s New Child Pornography Database Is Going to Work*, FORBES (June 17, 2013, 6:06 AM), <http://www.forbes.com/sites/timworstall/2013/06/17/im-not-sure-that-googles-new-child-pornography-database-is-going-to-work/>.

¹⁴² *See id.*

¹⁴³ There is an argument to be made that victims should be given the absolute right to order their sex abuse images destroyed either before or after it comes into the control of law enforcement, but unfortunately, a discussion of that right is beyond the scope of this Article. At a minimum, victims should have the same right to access their sex abuse images as defendants.

¹⁴⁴ Arthur, *supra* note 133 (noting that a small portion of child pornography images are actually given a hash); see also Gillespie, *supra* note 21, at 295 (noting Interpol’s duty to coordinate the “many countries” with child pornography databases).

is needed to identify potential solutions to rein in the rapid proliferation of child pornography being witnessed in the digital era.

III. THE UNITED STATES FRAMEWORK FOR COMBATING CHILD PORNOGRAPHY

In responding to the unique challenges of child pornography, the United States has developed a framework for deterring the spread of child pornography by criminalizing the creation, distribution, and possession of child pornography. The framework also tries to provide methods for victims to receive compensation for restoration services. This Part will discuss the efforts in the United States, especially at the federal level, to combat the child pornography market and restore victims.

A. The United States Fails to Eliminate the Child Pornography Market

The Supreme Court of the United States first addressed the question of pornography as a First Amendment issue in 1969.¹⁴⁵ In *Stanley v. Georgia*, the U.S. Supreme Court held that American citizens have a First Amendment right to possess pornography in the home.¹⁴⁶ Unfortunately, the *Stanley* decision did not delineate any differences between adult pornography and child pornography.¹⁴⁷ In fact, until the mid-1970s, neither the courts nor the legislature prohibited the production of child pornography or provided any real tools to aid and assist victims of this damaging industry.¹⁴⁸ Instead, the courts relied on rape, incest, and child welfare statutes to hold individuals responsible for the sexual exploitation of children, which left prosecutors unable to prosecute many offenders.¹⁴⁹

Fortunately, the 1970s brought about the progression of social activism, including a demand for further protections of civil, women's, and victims' rights, among others.¹⁵⁰ Until this time, issues involving child pornography had not raised national concern, but with the rise of the victims' rights movement, the public began to demand remedies for crime victims, including victims of child pornography.¹⁵¹ This movement led Congress to enact the Protection of Children Against Sexual Exploitation Act of 1977, which criminalized the commercial production and distribution of any "sexually explicit" pornography that utilized an individual under the age of sixteen.¹⁵²

In 1982, the Supreme Court in *New York v. Ferber* held that individuals do not have a right to distribute child pornography.¹⁵³ The Court further found that the only way to combat the expanding market of child pornography was to "dry up the market for this material by imposing severe criminal penalties" on those promoting the images.¹⁵⁴ In doing so, the Supreme Court recognized the continuing harm inherent in child pornography.¹⁵⁵ In 1990, eight years after the

¹⁴⁵ *Stanley v. Georgia*, 394 U.S. 557 (1969).

¹⁴⁶ *Id.* at 568–69.

¹⁴⁷ *Id.* at 557.

¹⁴⁸ Annemarie J. Mazzone, *United States v. Knox: Protecting Children from Sexual Exploitation Through the Federal Child Pornography Laws*, 5 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 167, 174 (1994).

¹⁴⁹ *Id.*; Lisa S. Smith, *Private Possession of Child Pornography: Narrowing At-Home Privacy Rights*, 1991 ANN. SURV. AM. L. 1011, 1013 (1993).

¹⁵⁰ Katherine M. Giblin, *Click, Download, Causation: A Call for Uniformity and Fairness in Awarding Restitution to Those Victimized by Possessors of Child Pornography*, 60 CATH. U. L. REV. 1109, 1115 (2011).

¹⁵¹ *Id.* at 1115–16.

¹⁵² Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, 92 Stat. 7 (1977) (codified as amended at 18 U.S.C. § 2252 (1978)).

¹⁵³ *New York v. Ferber*, 458 U.S. 747 (1982).

¹⁵⁴ *Id.* at 760.

¹⁵⁵ *Id.* at 759 n.10 ("Because the child's actions are reduced to a recording, the pornography may haunt . . . [the child] in future years, long after the original misdeed took place.").

Ferber decision, the Court again recognized a victim's continuing harm when it upheld a law prohibiting the possession of child pornography in *Osborne v. Ohio*.¹⁵⁶ The Court found that the images represent a permanent record of the minor's initial sexual abuse and every time an offender views the image, the child is revictimized and suffers ongoing harm.¹⁵⁷ The Court also found that the images may be used to groom other children into thinking the depicted behaviors are normal, essentially using the images to normalize sex abuse in the mind of a potential victim.¹⁵⁸

Before *Osborne*, Congress enacted the Child Protection Act of 1984 to account for the weaknesses in the 1977 Act, which criminalized certain child pornography.¹⁵⁹ With this act, Congress acknowledged that:

- (1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;
- (2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and
- (3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society.¹⁶⁰

The Child Protection Act greatly improved upon the Protection of Children Against Sexual Exploitation Act of 1977 by eliminating the commercial purpose requirement and the obscenity requirement, increasing the age of a minor to eighteen years of age, and increasing penalties for offenders.¹⁶¹ States also began enacting laws to criminalize possession of child pornography, with nineteen states enacting legislation by 1990.¹⁶² Despite both state and federal governmental efforts to end the child pornography industry, the market and the number of victims continued to increase dramatically.¹⁶³ In response to the effects of changing technologies on the child pornography market, Congress enacted the Child Pornography Prevention Act ("CPPA") of 1996.¹⁶⁴ The Act specifically made it a crime to transmit child pornography through electronic means, marking Congress's first attempt at combating the child pornography market in the digital age.¹⁶⁵

¹⁵⁶ *Osborne v. Ohio*, 495 U.S. 103, 110–11 (1990).

¹⁵⁷ *Id.* at 111.

¹⁵⁸ *Id.* While the Court has recognized the future harm to children in both *Ferber* and *Osborne*, the Court struck down a law banning virtual child pornography in *Ashcroft v. Free Speech Coalition* because no "real" children were harmed. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 254 (2002). However, the Court affirmed its previous precedents of *Ferber* and *Osborne*. *Id.* In another case, the Sixth Circuit required a defendant to pay three hundred thousand dollars under Masha's law for possession of two "morphed" images that caused emotional distress to the children. *Doe v. Boland*, 698 F.3d 877, 879–81 (6th Cir. 2012). A morphed image is an image that has been digitally manipulated to look like a child. *Id.* The Supreme Court denied certiorari in the case. *Boland v. Doe*, 133 S. Ct. 2825, 2825 (2013).

¹⁵⁹ Child Protection Act of 1984, Pub. L. No. 98-292, 98 Stat. 204 (1984) (codified at 18 U.S.C. § 2252 (2012)).

¹⁶⁰ *Id.* at § 2.

¹⁶¹ *Id.* at §§ 3–5.

¹⁶² The states that enacted legislation by 1990 were: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Minnesota, Missouri, Nebraska, Nevada, Ohio, Oklahoma, South Dakota, Texas, Utah, Washington, and West Virginia. Smith, *supra* note 149, at 1021–22 n.106; see *Osborne*, 495 U.S. at 111 n.6.

¹⁶³ U.S. DEP'T OF JUSTICE, *supra* note 65, at 4 ("Between 1996 and 2007, there was a 2062 [percent] increase in child exploitation investigations throughout the FBI.")

¹⁶⁴ Child Pornography Prevention Act of 1996, Pub. L. No. 104-208, § 121, 110 Stat. 3009-26 (1996) (codified at 18 U.S.C. § 2251 (2012)).

¹⁶⁵ 18 U.S.C. § 2252A(a)(1) ("Any person who . . . knowingly mails, or transports or ships . . . interstate or foreign commerce by any means, including by computer, any child pornography . . .").

In 2003, Congress again responded to the increasingly global nature of child sexual crimes by enacting the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (“PROTECT Act”), which, *inter alia*, allows U.S. authorities to prosecute citizens of the United States when they sexually abuse children abroad.¹⁶⁶ The PROTECT Act also establishes minimum sentences for most child pornography offenses.¹⁶⁷ Although sentencing guidelines divide child pornography offenses into two categories, those involving production and those not involving production, the second category represents nearly 90 percent of all child pornography prosecutions.¹⁶⁸ The severity of these offenses differs dramatically. Production offenses carry a mandatory minimum sentence of fifteen years imprisonment, with a maximum of thirty years for a first offense.¹⁶⁹ Subsequent production offenses carry a minimum of twenty-five years and a maximum of fifty years.¹⁷⁰ Distribution offenses are subject to a minimum sentence of five years imprisonment with a maximum of twenty years for a first offense and a minimum fifteen years to a maximum of forty years if the offender has a prior sex offense conviction.¹⁷¹ A possession charge has no statutory minimum sentence if the offender has not been previously convicted with a sex crime and holds a maximum sentence of up to ten years imprisonment.¹⁷² If the possessor has previously been convicted, the minimum sentence is ten years and the maximum is twenty years.¹⁷³ The PROTECT Act has dramatically increased the average sentences of imprisonment and supervised release for offenders of child pornography offenses.¹⁷⁴ However, with increasing prison sentences, significant disparities have developed in sentencing guidelines, as offenders in different courts are being subjected to far harsher penalties than others.¹⁷⁵ Leading members of Congress expressed their deep concern over these downward departures from the sentencing guidelines for child pornography offenders, which conveyed the federal judiciary’s “fail[ure] to appreciate the severity of child pornography to the victims and to society at large.”¹⁷⁶

Despite legislative, law enforcement, and technological efforts, child pornography continued to be one of the fastest growing crimes in the United States, growing at a rate of 150 percent per year, with victims becoming increasingly younger.¹⁷⁷ Thus, Congress passed the

¹⁶⁶ Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003) (codified as amended at 18 U.S.C. § 2252) (applying U.S. criminal laws extraterritorially is necessary because many countries do not have adequate child pornography laws, including criminalization of child pornography); *see* DNR REPORT, *supra* note 60, at 54–55 (discussing various laws around that world that are inadequate to protect children).

¹⁶⁷ U.S. SENTENCING COMM’N, *supra* note 62, at i. The PROTECT Act was “in part, a response to the prevalence of downward departures and the general inadequacy of sentences in child pornography cases.” Letter from Anne Gannon, *supra* note 48.

¹⁶⁸ U.S. SENTENCING COMM’N, *supra* note 62, at iv. Child pornography in both categories has continued to increase. From 1994 to 2006, child pornography accounted for eighty-two percent of the growth in sexual exploitation cases referred to the U.S. Attorney’s Office. MARK MOTIVANS & TRACEY KYCKELHAHN, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS BULLETIN: FEDERAL PROSECUTION OF CHILD SEX EXPLOITATION OFFENDERS 2006 (2007), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/fpcseo06.pdf>.

¹⁶⁹ 18 U.S.C. § 2251(e) (2012).

¹⁷⁰ *Id.*

¹⁷¹ 18 U.S.C. § 2252(b)(1) (2012).

¹⁷² *Id.* § 2252(b)(2).

¹⁷³ *Id.*

¹⁷⁴ U.S. SENTENCING COMM’N, *supra* note 62, at x.

¹⁷⁵ *Id.* at xii. When offenders are released, they are subject to the Adam Walsh Protection and Safety Act, which created a national sex offender registry with three types of offenders, determined by the severity of their crimes. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 501(2)(D), 120 Stat. 587, 624 (2006).

¹⁷⁶ Letter from U.S. Sen. Charles E. Grassley, Ranking Member of the Judiciary Comm., U.S. Congressman Lamar Smith, Chairman, House Judiciary Comm., & U.S. Congressman F. James Sensenbrenner, Jr., Chairman, Subcomm. on Crime, Terrorism, and Homeland Security, to Hon. Patti B. Saris, Chairwoman, U.S. Sentencing Comm’n (Feb. 14, 2012) (on file with the author). “By far, the greatest percentage of downward departure sentences are for those possessing and producing child pornography—a startling [forty percent] variance rate in child pornography offenses since [the U.S. Supreme Court’s 2005 ruling] in *Booker*.” *Id.*

¹⁷⁷ *Id.*; U.S. SENTENCING COMM’N, 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbl. 11 (2012).

Child Protection Act of 2012, which raised the statutory maximum sentence (from ten to twenty years) for possession of child pornography that portrays prepubescent children or those younger than twelve years old.¹⁷⁸

As of 2014, the United States has created a comprehensive legal framework to prosecute offenders, with guidelines for longer prison sentences. However, most victims still receive no restitution or access to the resources they need to achieve the full physical and psychological recovery and social reintegration to which they are entitled.

B. Domestic Efforts to Provide Restoration Services to Child Pornography Victims

Despite the efforts of the United States to combat child pornography through a legal framework focused primarily on prosecution, the United States has failed to ensure that child pornography victims experience full physical and psychological recovery and social reintegration. For example, victims of child pornography possession do not have access to victims' funds in many states because the funds are limited to violent crimes.¹⁷⁹ As another example, prosecutors in many cases do not seek restitution, even though it is mandatory under 18 U.S.C. § 2259.¹⁸⁰ A further example is that civil remedies cases are expensive and difficult for victims to prosecute, especially when they do not have control of their own sex abuse images.¹⁸¹ Even when a child pornography victim is able to access a resource due to her victimization, she almost never receives the full amount of her losses.

In 1982, shortly after the *Ferber* decision, then-President Ronald Reagan compiled a Task Force on Victims of Crime to (1) address the ever-increasing victims' rights concerns and (2) research how legal reform could further aid victims of crime around the United States.¹⁸² In December 1982, the task force published a report suggesting that legislation should be enacted to "require restitution in all cases, unless the court provides specific reasons for failing to require it."¹⁸³ In that same year, partially in response to the Task Force report, Congress enacted the Victim and Witness Protection Act ("VWPA") of 1982.¹⁸⁴ The VWPA was enacted:

[T]o enhance and protect the necessary role of crime victims and witnesses in the criminal justice process; to ensure that the Federal Government does all that is possible within limits of available resources to assist victims and witnesses of crime without infringing on the constitutional rights of the defendant; and, to provide a model for legislation for State and local governments.¹⁸⁵

For the first time, restitution was no longer limited to the concept of unjust enrichment or the pure value of material goods taken by an offender. Instead, the VWPA allowed victims to recover damages for physical and psychological care, including emotional and mental damages from

¹⁷⁸ Child Protection Act of 2012, Pub. L. No. 112-206, § 2(b), 126 Stat. 1490 (2012); Letter from Anne Gannon, *supra* note 48 (recognizing that child pornography was "featuring more explicit and violent conduct involving younger children").

¹⁷⁹ See *infra* Part V.C for a discussion on victims' funds.

¹⁸⁰ See *infra* Part V.A for a discussion on improving mandatory restitution.

¹⁸¹ The question of who should control the victims' sex abuse images is a complex and difficult one. However, the attorney who represented the victim in *Paroline*, James R. Marsh, reports that the F.B.I. failed to respond to requests for access to her own images on the same terms and conditions as criminal defendants, so that she can prove the elements of a civil remedies case brought under § 2252 and to work with her to establish the chain of custody of those images. Interview with James R. Marsh, Attorney, Marsh Law Firm, in Portland, Or. (June 20, 2014).

¹⁸² LOIS HAIGHT HERRINGTON ET AL., PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME: FINAL REPORT DECEMBER 1982 ii (1982), available at <http://www.ovc.gov/publications/presdntstskforcrprt/87299.pdf>.

¹⁸³ *Id.* at 18.

¹⁸⁴ Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (1982) (codified at 18 U.S.C. § 3664 (2012)).

¹⁸⁵ *Id.* § 2(b).

criminal defendants.¹⁸⁶ Although the VWPA was the first attempt to compensate crime victims, it was limited by a discretionary prong, which directed judges to take into account the defendant's economic situation as well as the severity of the victim's harm when ordering restitution.¹⁸⁷ Accordingly, there was still much work to be done on behalf of the fight for victim recovery.

In 1984, Congress enacted the Victims of Crime Act ("VOCA").¹⁸⁸ The VOCA created the first victims' compensation fund, which federal criminal prosecutions subsidized through fines from offenders.¹⁸⁹ VOCA attempted to reimburse crime victims for expenses directly related to crimes by granting money to state-administered victims' assistance funds.¹⁹⁰ Every state now has a compensation program that can aid victims and their families, and only about thirty-five percent of the total revenue involved in these funds comes from federal government grants, mostly collected from offender fines, penalties, and forfeited bail bonds.¹⁹¹

Crime victims' funds are able to offer victims a limited amount of funding for a variety of expenses ranging from medical expenses to lost wages attributable to a physical injury resulting from a compensable crime.¹⁹² These funds provide some relief to a limited number of victims by distributing almost five hundred million dollars annually to more than two hundred thousand victims across the country.¹⁹³ Considering that there were nearly seven million victims of violent crime who were twelve years of age or older in 2012, it becomes clear that crime victim funds are vastly underutilized.¹⁹⁴ Indeed, there is currently a balance approaching eleven billion dollars in the Crime Victims Fund established by VOCA.¹⁹⁵ The funds appear to be underutilized and have administrative complexities that make it difficult for victims to receive compensation.¹⁹⁶

Access to crime victims' funds is especially challenging for victims of child pornography possession and distribution because they are not classified as "violent" crimes.¹⁹⁷ Additionally, while a number of funds agree to provide funding for the expenses incurred as a result of the possession or distribution of their sexual abuse images,¹⁹⁸ many states have not amended their statutory language, which limits fund eligibility to victims who suffer physical harm; thus, claims by victims of child pornography possession or distribution are often denied.¹⁹⁹ Victims' funds in their current form also fail to account for foreign victims of child pornography as well as U.S. citizens or residents who are victimized outside of the country or by foreign perpetrators.²⁰⁰ Even when child pornography victims meet the eligibility requirements and overcome the

¹⁸⁶ Courtney E. Lollar, *Child Pornography and the Restitution Revolution*, 103 J. CRIM. L. & CRIMINOLOGY 343, 352 (2013).

¹⁸⁷ 18 U.S.C. § 3663(a)(1)(B)(i) (2012).

¹⁸⁸ Victims Compensation and Assistance Act of 1984, Pub. L. No. 98-473, 98 Stat. 1837 (1984) (codified as amended at 42 U.S.C. § 10601 (2012)).

¹⁸⁹ *Id.*

¹⁹⁰ 42 U.S.C. § 10602 (2012).

¹⁹¹ 42 U.S.C. § 10601; *Crime Victim Compensation: An Overview*, NAT'L ASS'N OF CRIME VICTIM COMP. BDS., <http://www.nacvcb.org/index.asp?bid=14> (last visited Feb. 1, 2015).

¹⁹² 42 U.S.C. § 10602(b)(1).

¹⁹³ *Id.*; *Crime Victim Compensation: An Overview*, *supra* note 191.

¹⁹⁴ DOUGLAS N. EVANS, JOHN JAY COLL. OF CRIMINAL JUSTICE, COMPENSATING VICTIMS OF CRIME 1 (2014), available at http://www.justicefellowship.org/sites/default/files/Compensating%20Victims%20of%20Crime_John%20Jay_June%202014.pdf.

¹⁹⁵ *Id.* at 2.

¹⁹⁶ *Id.* at 1.

¹⁹⁷ *Id.*

¹⁹⁸ U.S. DEP'T OF JUSTICE, VISION 21: TRANSFORMING VICTIM SERVICES 21 (2013), available at http://ovc.ncjrs.gov/vision21/pdfs/Vision21_Report.pdf (noting that most states do not have specific policies on child pornography but most claim to compensate for the harm).

¹⁹⁹ *Id.* Oregon defines injury as "[a]ctual bodily harm and, with respect to a victim, includes pregnancy and mental or nervous shock." OR. REV. STAT. ANN. § 147.005(9) (West 2015). Because possession and distribution cause mental harm, victims should be compensated. However, in other states such as California, physical injury is required and a victim could only be compensated for the initial harm. CAL. GOV'T CODE § 13955(f) (West 2015).

²⁰⁰ EVANS, *supra* note 194, at 18.

administrative obstacles to receive compensation from one of these funds, the amounts often are insufficient to fully restore a victim. For example, the average state cap on these benefits is approximately twenty-five thousand dollars,²⁰¹ and the victim must agree to reimburse the crime victim's fund if she receives damages or restitution from the offender.²⁰² Accordingly, even after the enactment of VOCA, child pornography victims still are not obtaining meaningful recovery as a result of crime victims' funds.

The Federal Crime Victim Assistance Fund ("FVAF") is also available to aid crime victims in need of immediate assistance.²⁰³ This fund is intended as a last resort for victims and is used to cover costs such as transportation to criminal proceedings, emergency shelter, and crisis intervention.²⁰⁴ Although the proceeds of this fund provide emergency care for sexual assault victims, it does not provide funds for child pornography victims to receive long-term care. The FVAF is extremely limited and cannot be used to pay restitution to victims such as that of lost wages or health care. As a result, it does not effectively aid child pornography victims in obtaining the care and assistance that they require.

In 1994, Congress enacted the Violence Against Women Act ("VAWA"), which provided extensive protections, programs, and funding toward aiding victims of sexual and domestic assault, including children.²⁰⁵ VAWA was expansive and included various protections such as providing for the payment for testing and counseling for sexually transmitted diseases for sexual assault victims,²⁰⁶ establishing federal penalties for sex crimes,²⁰⁷ providing domestic violence victims the right to be heard at pre-release hearings of defendants,²⁰⁸ and forming various grant systems to provide education and support resources for domestic violence programs and victims.²⁰⁹ These remedies ranged anywhere from providing states with grants for nonprofit nongovernmental victim assistance programs to providing grants for lighting and security on public transportation systems and in public parks to combat violence against women.²¹⁰ VAWA symbolized "an essential step in forging a national consensus that our society will not tolerate violence against women"²¹¹ and was "intended to respond both to the underlying attitude that this violence is somehow less serious than other crime and to the resulting failure of our criminal justice system to address such violence."²¹²

Congress recognized the need to provide child pornography victims with adequate restitution by revisiting the discretionary grant of restitution they offered in the VWPA and enacting the Mandatory Victims Restitution Statute as part of VAWA.²¹³ The statute pushed past the limitations of the VWPA and made restitution mandatory for victims of certain federal crimes, regardless of the offender's ability to pay.²¹⁴ The statute also mandates that offenders at

²⁰¹ *Crime Victim Compensation: An Overview*, *supra* note 191.

²⁰² Amy Unknown's, one of the victims described in the introduction, restitution claim is \$3,408,404. Joint Appendix vol. 1 at 52, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561); EVANS, *supra* note 194, at 1.

²⁰³ *Office of the United States Attorneys: Services to Crime Victims*, U.S. DEP'T OF JUSTICE, http://www.justice.gov/usao/briefing_room/vw/services.html (last visited Feb. 1, 2015).

²⁰⁴ *Id.*

²⁰⁵ Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902, 1904 (codified at 18 U.S.C. § 2248 (2012)).

²⁰⁶ *Id.* §§ 40114, 40121, 40503.

²⁰⁷ *Id.* § 40112.

²⁰⁸ *Id.* § 40501.

²⁰⁹ *Id.* §§ 40121.

²¹⁰ *Id.* §§ 40131–40133.

²¹¹ S. REP. NO. 103-138, at 41 (1993).

²¹² *Id.* at 38.

²¹³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 2259, 108 Stat. 1796 (1994) (codified as amended at 18 U.S.C. § 2259 (2012)).

²¹⁴ 18 U.S.C. § 2259(b)(4)(B) (2012).

all points in the child pornography market (production, distribution, and possession) pay full restitution to child pornography victims and for victims to recover the full amount of victims' losses.²¹⁵ Losses include any costs that the victim incurs for:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.²¹⁶

During this same time period, Congress further expanded the principle of mandatory restitution by enacting the Mandatory Victims Restitution Act of 1996 ("MVRA"), a more general restitution act that provided restitution for victims of crimes that cause monetary losses, such as a loss of property, or for bodily injury to the victim.²¹⁷ Mandatory restitution was part of a comprehensive federal statutory framework that also included clear definitions and criminalizing participation at every stage of the child pornography market.²¹⁸

As part of this framework, the Crime Victims' Rights Act ("CVRA") was enacted in 2004 as part of the Justice for All Act.²¹⁹ The CVRA was revolutionary in the fight for victims' rights as it granted victims the ability to be present in court proceedings, the right to notice of when such proceedings were occurring, and the right to be heard at these public hearings.²²⁰ However, perhaps most importantly, the CVRA reflected language set forth in the MVRA and reemphasized that victims in federal criminal cases have the right to collect "full and timely restitution" from offenders.²²¹ However, the CVRA defines a victim as someone who is "directly and proximately harmed as a result of the commission of a federal offense," which is often very difficult for child pornography victims to prove.²²² Accordingly, although the CVRA was an important part of the victims' rights movements, child pornography victims still failed to obtain meaningful restitution with its enactment.

In addition to restitution, Congress provided civil recovery options by enacting the Child Abuse Victims' Rights Act in 1986 ("CAVRA").²²³ The Child Abuse Victims Rights Act allows a child pornography victim, who suffers personal injury from a violation of § 2251 (sexual exploitation of a child) or § 2252 (distribution or possession of child abuse images), to bring a civil cause of action to recover the actual damages he or she sustained, the cost of the suit, and reasonable attorney's fees.²²⁴ The CAVRA presumed damages of no less than fifty thousand dollars.²²⁵ Although this statute seemed like a promising option for victims, it remained largely unused, and the first reported case to use this statute was in 2001, fifteen years after its

²¹⁵ *Id.* § 2259(b)(1) ("[T]his section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court . . .").

²¹⁶ *Id.* § 2259(b)(3).

²¹⁷ Mandatory Victims Restitution Act of 1996, Pub. L. No. 104-132, § 204, 110 Stat. 1214 (1996) (codified as amended at 18 U.S.C. § 3663A (2012)).

²¹⁸ *See* 18 U.S.C. §§ 2251–2260 (2012).

²¹⁹ Scott Campbell, Stephanie Roper, Wendy Preston, Louarna Gillis, and Nila Lynn Crime Victims' Rights Act, Pub. L. No. 108-405, 118 Stat. 2260 (2004) (codified as amended at 18 U.S.C. § 3771 (2012)).

²²⁰ 18 U.S.C. § 3771(a)(1)–(8) (2012).

²²¹ *Id.* § 3771(a)(6).

²²² *Id.* § 3771(e).

²²³ Child Abuse Victims' Rights Act of 1986, Pub. L. No. 99-500, 100 Stat. 1783 (1987).

²²⁴ *Id.* § 703(a).

²²⁵ *Id.*

enactment.²²⁶ The law was further amended in 1998 to include a larger array of offenses ranging from child pornography, to sexual abuse of a minor, and the buying or selling of children.²²⁷

In 2006, Masha's Law, part of the Adam Walsh Child Protection and Safety Act of 2006, amended the civil recovery statute in the Child Abuse Victims' Rights Act.²²⁸ Masha's Law raised the minimum damages a victim would receive to \$150,000, rather than only \$50,000.²²⁹ Masha's Law also extended the previous law to allow adults, who were victims of sexual abuse as minors, to sue not only their original abusers, but also distributors and possessors of their sexual abuse images.²³⁰

In order for victims to recover under Masha's Law, the victim must first meet the statute of limitations.²³¹ Once the action accrues, there is a ten-year general statute of limitations.²³² However, if the person is under a legal disability, such as minority status, the statute of limitations is three years after the disability ends.²³³ The victim must then show that he or she was personally injured as a result of the defendant's violation of a federal child pornography statute.²³⁴ *Ferber* established many years ago that the act of child pornography causes personal injury to victims; accordingly, victims are usually able to meet the personal injury requirement.²³⁵

The plaintiff also must successfully prove, by a preponderance of the evidence, that the defendant violated a federal statute covered by the CAVRA.²³⁶ Since this is a civil remedy, a criminal conviction is not necessary.²³⁷ However, proving a violation may still be an extremely difficult task for some victims. Especially challenged are victims who (1) lack resources; (2) are unable to meet certain statutory requirements, such as proving that a defendant had knowledge that the victim was underage at the time of the act or proving that the photography depicts "sexually explicit conduct"; or (3) must prove that they were aware of the defendant's photographs and, as a result, suffered damages from the specific defendant's possession of these images.²³⁸ Even if the perpetrator has been criminally convicted, that does not necessarily have a preclusive effect on the civil claim since the conviction likely would not specify who the victims were portrayed in the sexual abuse images.²³⁹ This element is especially challenging for the vast majority of victims who do not have access to or control over their own sexual abuse images and who consequently would be unable to offer crucial evidence.²⁴⁰ Additionally, Masha's Law does not provide an avenue for foreign plaintiffs to sue domestic defendants in federal district courts

²²⁶ James R. Marsh, *Masha's Law: A Federal Civil Remedy for Child Pornography Victims*, 61 SYRACUSE L. REV. 459, 470 (2011).

²²⁷ *Id.*; see 18 U.S.C. §§ 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423 (2012).

²²⁸ Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, § 707(b), 120 Stat. 587, 650 (2006); Civil Remedy for Personal Injuries, 18 U.S.C. § 2255(a) (2012).

²²⁹ Adam Walsh Child Protection and Safety Act § 707(b)(2).

²³⁰ *Id.* § 707(b)(1).

²³¹ 18 U.S.C. § 2255(b).

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* § 2255(a).

²³⁵ See *New York v. Ferber*, 458 U.S. 747, 756–60 (1982).

²³⁶ 18 U.S.C. § 2255(a); Marsh, *supra* note 226, at 478.

²³⁷ 18 U.S.C. § 2255(a); Marsh, *supra* note 226, at 474.

²³⁸ Marsh, *supra* note 226, at 477–82 (citing *Tilton v. Playboy Entm't Grp., Inc.*, 554 F.3d 1371 (11th Cir. 2009)); *Lora v. Boland*, 2009 WL 2901306 (N.D. Ohio Sept. 1, 2009).

²³⁹ See U.S.C. § 2255(a); Marsh, *supra* note 226, at 474.

²⁴⁰ See Interview with James R. Marsh, *supra* note 181 (stating that without access by victims to such evidence, the civil recovery statute becomes meaningless).

when the conduct occurred abroad.²⁴¹ Accordingly, while some victims may utilize this statute, recovery is neither certain nor comprehensive.

Although it is clear that child pornography is illegal in the United States, the rights and remedies available to victims fail to ensure full psychological and physical recovery and social reintegration. Victims of child pornography are often unable to pay for the psychological care they need²⁴² and are left with few if any options to address their harms and achieve full restoration from the indefinite cycle of revictimization witnessed in the digital age, especially when one considers the globalization of this crime and its myriad of consequences.

IV. INTERNATIONAL LAW SUPPORTS VICTIM RESTORATION

The United States and the international community have long recognized the special care needed for children. In addition to domestic efforts, the United States has been an active participant in creating international law to protect children and combat child pornography. While providing victims with restoration through compensation is unlikely *jus cogens*,²⁴³ the United States has signed many treaties that mandate special protections to children generally, as well as to child pornography victims specifically. This Part will explore both international law binding on the United States, the United States' commitment to developing global solutions to compensate victims, and emerging international norms supporting the restoration of child pornography victims.

A. Early Developments in International Children Rights Law

In 1924, the League of Nations adopted the Geneva Declaration of the Rights of the Child, the first international instrument recognizing the inherent uniqueness of childhood, which gave rise to the need for special care and protection.²⁴⁴ Twenty-five years later, the United Nations 1959 Declaration of the Rights of the Child²⁴⁵ expanded on the original principles of the 1925 Geneva Declaration. The 1959 Declaration incorporated references to the United Nations Charter and the Universal Declaration of Human Rights,²⁴⁶ making clear that children are entitled to most previously recognized human rights in addition to rights due to their special status as children. The United States actively participated in the drafting of the 1959 Declaration.²⁴⁷

²⁴¹ A Thai victim brought suit against a U.S. citizen under Masha's Law for acts occurring in Thailand, however, the case was dismissed under the doctrine of forum non conveniens. *Boonma v. Bredimus*, No. CIV.A.3:05-CV-0684-D, 2005 WL 1831967, at *1 (N.D. Tex. July 29, 2005).

²⁴² See Emily Bazelon, *The Price of a Stolen Childhood*, N.Y. TIMES (Jan. 24, 2013), http://www.nytimes.com/2013/01/27/magazine/how-much-can-restitution-help-victims-of-child-pornography.html?pagewanted=all&_r=0 (noting that "[r]estitution has allowed Amy and Nicole, [two victims], to get the counseling they need").

²⁴³ *Jus cogens* is defined as "a mandatory or peremptory norm of general international law accepted and recognized by the international community as a norm from which no derogation is permitted." BLACK'S LAW DICTIONARY 876 (8th ed. 2004). What constitutes *jus cogens* is often debated. Examples of commonly accepted *jus cogens* are the prohibition of torture, genocide, and slavery. See *In re Estate of Ferdinand E. Marcos*, 978 F.2d 493, 500 (9th Cir. 1992); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 715-17 (9th Cir. 1992).

²⁴⁴ Geneva Declaration of the Rights of the Child, Sept. 26, 1924, League of Nations, O.J. Spec. Supp. 21 at 43 (1924) (stating expressly that children should be protected from "every form of exploitation").

²⁴⁵ United Nations Declaration of the Rights of the Child, G.A. Res. 1386 (XIV), GAOR 14th Sess., Supp. No. 16, U.N. Doc. A/4249 (Nov. 20, 1959) [hereinafter "Declaration of the Rights of the Child"] (asserting that "mankind owes to the child the best it has to give" and "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection . . .").

²⁴⁶ *Id.*; Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217 (III) (Dec. 10, 1948) (recognizing childhood is entitled to "special care and assistance").

²⁴⁷ GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 10 (1998).

The 1959 Declaration included ten principles, reaffirming the importance of children's rights contained in the 1924 declaration.²⁴⁸ Relevant to the discussion of child pornography is Principle 2, stating that children:

[S]hall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable [them] to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.²⁴⁹

Principle 9 further provides that children “shall be protected against all forms of neglect, cruelty and exploitation. [They] shall not be the subject of traffic, in any form.”²⁵⁰ As discussed above, victims suffer severe mental problems as a result of their victimization and continued victimization. The 1959 Declaration clearly states that children should be free from this sort of cruelty.²⁵¹

While the 1924 and 1959 Declarations recognized that children needed special protection, both were non-binding instruments.²⁵² The drafting of the first binding children's rights treaty, the United Nations Convention on the Rights on the Child (“CRC”),²⁵³ began in 1979, which was designated as the “International Year of the Child” by the international community.²⁵⁴ The drafting of the CRC involved more than seventy countries (including the United States) and spanned ten years.²⁵⁵

The CRC was introduced to the United Nations General Assembly in 1989, just four years after the first child pornography network was identified on the Internet.²⁵⁶ The General Assembly unanimously adopted the Convention on the Rights of the Child and broke records for the greatest number of signatories to a treaty on the day it opened for signature.²⁵⁷ Today, the CRC is the most widely-ratified human rights treaty in the world and sets universal standards for the protection of children for countries to strive towards and by which they agree to be measured.²⁵⁸ The only countries to not ratify the treaty are the United States and South Sudan.²⁵⁹

²⁴⁸ Geneva Declaration of the Rights of the Child, *supra* note 244; TREVOR BUCK, INTERNATIONAL CHILD LAW 89 (3d ed. 2014).

²⁴⁹ *Id.* at princ. 2.

²⁵⁰ *Id.* at princ. 9.

²⁵¹ *Id.*

²⁵² BUCK, *supra* note 248, at 89.

²⁵³ Question of a Convention on the Rights of the Child: Report of the Working Group, U.N. Comm'n on Hum. Rts., 35th Sess., Agenda Item 13, at 1, U.N. Doc. E/CN.4/L.1468 (1979).

²⁵⁴ BUCK, *supra* note 248, at 89.

²⁵⁵ Question of a Draft Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, as Well as Basic Measures Needed for Their Eradication: Report of the Working Group on Its Second Session, U.N. Comm'n on Hum. Rts., 52d Sess., at 3, U.N. Doc E/CN.4/1996/101 (Mar. 25, 1996) (noting the countries involved in drafting the Convention on the Rights of the Child); BUCK, *supra* note 248, at 89–90 (describing the ten-year span of enactment).

²⁵⁶ YAMAN AKDENIZ, INTERNET CHILD PORNOGRAPHY AND THE LAW: NATIONAL AND INTERNATIONAL RESPONSES 5 (2008).

²⁵⁷ Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 NEV. L. J. 966, 970 (2006); *see generally* Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁵⁸ *Convention on the Rights of the Child Ratification Status*, U.N. TREATY COLLECTION DATABASE, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (last visited Feb. 1, 2015); LUISA BLANCHFIELD, CONG. RESEARCH SERV., THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: BACKGROUND AND POLICY ISSUES I (2010), available at <http://fpc.state.gov/documents/organization/153279.pdf>.

²⁵⁹ *Convention on the Rights of the Child Ratification Status*, *supra* note 258. South Sudan's parliament has passed a law to ratify the Convention that is waiting for the President's signature. Jo Becker, *Dispatches: Will US Be Last to Endorse Child Rights Convention?*, HUMAN RIGHTS WATCH (Nov. 26, 2013), <http://www.hrw.org/news/2013/11/26/dispatches-will-us-be-last-endorse-child-rights-convention>; *Parliament Passes Bill to Ratify Child Rights Convention*, U.N. MISSION IN SOUTH SUDAN (Nov. 20, 2013), <http://reliefweb.int/report/south-sudan-republic/parliament-passes-bill-ratify-child-rights-convention>.

While the United States has not ratified the CRC, it signed the CRC on February 16, 1995,²⁶⁰ and was more active in the drafting of the CRC than any other government.²⁶¹ The United States proposed text or amendments for thirty-eight of the CRC's forty substantive articles, including several regarding exploitation, abuse, and the rehabilitation and reintegration of victims.²⁶² Despite the failure of the United States to ratify the CRC, the U.S. Supreme Court relied on the near universal ratification of the CRC in gauging the weight of international opinion affirming the Court's decision effectively banning the juvenile death penalty in *Roper v. Simmons*.²⁶³

The CRC requires that countries take all appropriate measures to promote physical and psychological restoration and social reintegration of a child victim of exploitation, abuse, or any other form of "cruel, inhuman or degrading treatment."²⁶⁴ Parties to the CRC must also take appropriate measures to "protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. . . ."²⁶⁵ While the CRC makes clear that parties are obligated to protect children from abuse (such as child pornography), the Optional Protocol, to which the United States is a party, focuses even more directly and specifically on the parties' obligations to eliminate child pornography and to ensure the full recovery and social reintegration of victims.

B. Multilateral Efforts to Provide Restoration to Victims

The Optional Protocol is the world's most comprehensive treaty to focus on the eradication of child pornography by banning the production, distribution, and possession of child abuse images, requiring parties to provide restorative services, and requiring parties to allow victims to receive compensation from their offenders.²⁶⁶ The Optional Protocol entered into force on January 18, 2002, and the United States ratified the treaty on December 23, 2002.²⁶⁷ As of today, 121 countries have signed the treaty, and 169 countries from all over the world have ratified the treaty.²⁶⁸

When the United States ratified the Optional Protocol, it became obligated as a state party to ensure that sexually exploited children, including child pornography victims, receive medical and psychological services for their full reintegration into society.²⁶⁹ In fact, the United States required no new legislation after it ratified the Optional Protocol, signaling that domestic law

²⁶⁰ *Convention on Rights of the Child Ratification Status*, *supra* note 258. Article 18 of Vienna Convention on the Law of Treaties requires a signatory of a treaty not to defeat the purpose of a treaty before ratification. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331. Similar to the CRC, the United States has signed but not ratified the Vienna Convention on the Law of Treaties. However, the U.S. Department of State has recognized many of its provisions as customary international law. Maria Frankowska, *The Vienna Convention on the Law of Treaties Before United States Courts*, 28 VA. J. INT'L L. 281, 298-307 (1988).

²⁶¹ See generally Office of the U.N. High Comm'r for Human Rights, *Legislative History of the Convention on the Rights of the Child*, U.N. Doc. HR/PUB/07/1 (2007); Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating A New World For Children*, 4 LOY. POVERTY L.J. 9, 12, 26-36 (1998).

²⁶² Q&A: *The Convention on the Rights of the Child*, HUMAN RIGHTS WATCH (Nov. 18, 2009), <http://www.hrw.org/news/2009/11/18/qa-convention-rights-child>.

²⁶³ See *Roper v. Simmons*, 543 U.S. 551, 575-77 (2005) (finding unconstitutional the imposition of the death penalty for juvenile offenders).

²⁶⁴ Convention on the Rights of the Child, *supra* note 257, at art. 39.

²⁶⁵ *Id.* at art. 19.

²⁶⁶ Optional Protocol, *supra* note 55.

²⁶⁷ *Id.*; *Status of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, U.N. TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-c&chapter=4&lang=en (last visited Feb. 1, 2015) [hereinafter *Status of the Optional Protocol*].

²⁶⁸ *Status of the Optional Protocol*, *supra* note 267. Nine countries (Cameroon, Fiji, Ghana, Ireland, Kenya, Liberia, Nauru, Solomon Islands, and Zambia) have signed the treaty but not ratified it. *Id.* Whether these countries are parties to the Optional Protocol and bound by its terms depends on whether their signatures were simple (requiring further state action such as ratification, acceptance, or approval) or definitive (requiring no further state action to bind the state to the treaty). UNITED NATIONS, TREATY HANDBOOK 5-6 (2012), available at <https://treaties.un.org/doc/source/publications/THB/English.pdf>. The Optional Protocol requires ratification, making signatures simple. Optional Protocol, *supra* note 55, at art. 13.

²⁶⁹ Optional Protocol, *supra* note 55, at art. 9(3).

provided the protections the treaty required.²⁷⁰ Therefore, U.S. domestic law²⁷¹ must comply with the Optional Protocol, which expressly requires that States Parties “ensure that all child victims have access to adequate procedures to seek . . . damages from those legally responsible.”²⁷² Moreover, the Optional Protocol requires that the United States, and other States Parties, ensure that victims of child pornography have access to procedures that are adequate and non-discriminatory.²⁷³

The United States has relied expressly and specifically on the Mandatory Restitution Statute²⁷⁴ to fulfill its treaty obligations under Article 9 of the Optional Protocol.²⁷⁵ The United States first cited the Mandatory Restitution Statute in 2007 in its initial report to the United Nations Committee on the Rights of the Child (“U.N. Committee”) regarding the United States’ implementation of the Optional Protocol domestically.²⁷⁶ The United States’ Initial Report explained that the Mandatory Restitution Statute provides “mandatory restitution for any offense involving the sexual exploitation of children.”²⁷⁷

After receiving the United States’ Initial Report on its compliance with the Optional Protocol, the U.N. Committee requested additional information, including data for the years 2005, 2006, and 2007 regarding “[t]he number of child victims provided with recovery assistance and compensation as indicated in Article 9, paragraphs 3 and 4 of the Protocol.”²⁷⁸ The United States’ response did not indicate that a single victim had received compensation from an offender under the Mandatory Restitution Statute or any other statute despite the fact that the Statute was the cornerstone of the United States’ statement of compliance with Article 9, paragraph 4.²⁷⁹ Instead, the United States indicated that some victims “may be eligible” for a variety of government programs such as Medicaid, Temporary Assistance for Needy Families (“TANF”), and Job Corps.²⁸⁰ In its Concluding Observations regarding the United States’ Initial Report, the U.N. Committee identified the United States as “one of the world’s largest producers, distributors and consumers of child pornography” and expressly encouraged the United States, inter alia, to “[i]mprove enforcement of the existing legislative framework on child pornography.”²⁸¹

In 2010, the United States submitted a periodic report on its compliance with the Optional Protocol and again cited the Mandatory Restitution Statute as providing “mandatory

²⁷⁰ INITIAL REPORT OF THE UNITED STATES OF AMERICA TO THE U.N. COMMITTEE ON THE RIGHTS OF THE CHILD CONCERNING THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY para. 3 (2007) [hereinafter INITIAL REPORT], available at <http://www.state.gov/documents/organization/84647.pdf>.

²⁷¹ Treaties are on “the same footing and made of like obligation, with an act of legislation.” *Whitney v. Robertson*, 124 U.S. 190, 194 (1888); *Medellin v. Texas*, 552 U.S. 491, 504–07 (2008). When a statute and treaty conflict, a court will give meaning to both, if it can, without violating the language of either. *Whitney*, 124 U.S. at 194 (noting that the treaty later in time must be self-executing). While the Optional Protocol is not self-executing (able to be implemented without domestic legislation), it is later in time and courts can arguably construe legislation to uphold the intent of the protocol.

²⁷² Optional Protocol, *supra* note 55, at art. 9(4) (emphasis added). Those “legally responsible” include offenders found guilty of child pornography possession, distribution, and creation. *Id.* at art. 3(1)(c).

²⁷³ *Id.* at art. 9(4).

²⁷⁴ 18 U.S.C. § 2259 (2012).

²⁷⁵ INITIAL REPORT, *supra* note 270, at para. 89.

²⁷⁶ *Id.* at para. 3.

²⁷⁷ *Id.* at para. 89.

²⁷⁸ U.N. Committee on the Rights of the Child, Lists of Issues to be Taken Up in Connection with the Consideration of the Initial Report of the United States of America, para. 1(c), U.N. Doc. CRC/C/OPSC/USA/Q/1 (Feb. 14, 2008), available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.OPSC.USA.Q.1.doc>.

²⁷⁹ U.N. Committee on the Rights of the Child, *United States Response to Lists of Issues to Be Taken Up in Connection with Consideration of the Initial Report of the United States of America*, paras. 8–10, U.N. Doc. CRC/C/OPOSC/USA/1/Add.1 (May 13, 2008), available at <http://2001-2009.state.gov/g/drl/rls/105435.htm>.

²⁸⁰ *Id.*

²⁸¹ U.N. Committee on the Rights of the Child, *Concluding Observations: United States of America*, para. 27, U.N. Doc. CRC/C/OPSC/USA/CO/1 (June 25, 2008).

restitution for child sexual exploitation and other abuse offenses.”²⁸² The United States explained in its 2010 report that restitution is mandatory and must include the “full amount of the victim’s losses”²⁸³ The United States cited no other statutory remedy supporting full restoration of child pornography victims.²⁸⁴

In 2012, the U.N. Committee again identified victim restoration (including compensation to victims) as an issue in response to the United States’ 2010 periodic report, and requested additional information.²⁸⁵ Specifically, the U.N. Committee asked the United States for an indication of the measures enacted to ensure that victims “are provided with appropriate assistance for their full social reintegration: physical, psychological, and psychosocial recovery, as well as compensation.”²⁸⁶ In its response, the United States again failed to identify even one specific measure that it is taking to ensure compensation to child pornography victims.²⁸⁷ Thus, in its Concluding Observations, the U.N. Committee expressed concern “about the growing availability of child pornography online, the use of ever younger children and the increase in the violence of images recorded” as well as the fact that sexually exploited children in the United States “still lack adequate . . . compensation.”²⁸⁸ The U.N. Committee also addressed the United States’ treaty obligations under Articles 8 and 9 of the Optional Protocol and claimed that the United States should seek “adequate remed[ies] and reparation[s]” through legal channels and other means.²⁸⁹

Other international treaties also evidence the rise of an international norm in the twentieth century recognizing that children have a right to special protections.²⁹⁰ Nations have gone further in developing international instruments that require States Parties to provide assistance for victims’ physical and psychological restoration.²⁹¹ The International Labour Organization (“ILO”) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention No. 182, requires parties to “provide the necessary and appropriate direct assistance for . . . their rehabilitation and social integration.”²⁹² In ratifying ILO Convention No. 182, the Senate did not specifically reference the Mandatory Restitution Statute, but recognized that the United States already criminalized child pornography and that

²⁸² U.S. DEP’T OF STATE, PERIODIC REPORT OF THE UNITED STATES OF AMERICA AND U.S. RESPONSE TO RECOMMENDATIONS IN COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008, para. 421 (Jan. 22, 2010), available at <http://www.state.gov/documents/organization/136023.pdf>.

²⁸³ *Id.* (quoting 18 U.S.C. § 2259(b)(3) (2012)).

²⁸⁴ *Id.*

²⁸⁵ U.N. Committee on the Rights of the Child, *List of Issues Concerning Additional and Updated Information Related to the Second Periodic Report of the United States of America*, para. 12, U.N. Doc. CRC/C/OPSC/USA/Q/2 (July 25, 2012), available at <http://www.state.gov/j/drl/rls/201651.htm>.

²⁸⁶ *Id.*

²⁸⁷ While the United States provides a list of services available to victims in its response, the list does not contain any method for victims to receive compensation, such as restitution, from those legally responsible. U.N. Committee on the Rights of the Child, *List of Issues Concerning Additional and Updated Information Related to the Consideration of the Second Report of the United States of America: Addendum Written Replies of the United States of America*, paras. 52–57 U.N. Doc. CRC/C/OPSC/USA/Q/2/Add.1 (Dec. 12, 2012), available at http://www.un.org/en/ga/search/view_doc.asp?symbol=CRC/C/OPSC/USA/Q/2/Add.1.

²⁸⁸ U.N. Committee on the Rights of the Child, *Concluding Observations on the Second Periodic Report of the United States of America*, paras. 27, 44, U.N. Doc. CRC/C/OPSC/USA/CO/2 (July 2, 2013), available at http://www2.ohchr.org/English/bodies/crc/docs/co/CRC_C_OPSC_USA_CO_2.doc.

²⁸⁹ *Id.* at para. 45.

²⁹⁰ International Covenant on Civil and Political Rights art. 24, Dec. 16, 1996, 999 U.N.T.S. 171 (United States ratified June 8, 1992) (noting a child’s right to “measures of protection” from state, society, and the child’s family).

²⁹¹ Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, art. 2, 3, 4(d), 4(g), U.N. Doc. A/RES/48/104 (Dec. 20, 1993), available at <http://www.un.org/documents/ga/res/48/a48r104.htm>; International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour art. 7(2)(b), June 17, 1999, 2133 U.N.T.S. 161 [hereinafter ILO Convention No. 182], available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182.

²⁹² ILO Convention No. 182, *supra* note 291, at art. 7(2)(b).

“U.S. law is sufficient in order for the United States to comply with the Convention.”²⁹³ In total, 179 countries have ratified the ILO Convention No. 182.²⁹⁴ Both the Optional Protocol and ILO Convention No. 182, along with others, convey an emerging international norm condemning child sexual abuse and child pornography, and compelling States Parties to develop laws to protect and care for children and support their restoration when harm occurs.

A series of World Congresses against Commercial Sexual Exploitation of Children also evidence the international community’s multilateral efforts to provide victims with restoration services. The First World Congress called on governments to provide recovery services to sexually exploited children.²⁹⁵ The Second World Congress recognized that the development of technology created more difficulties for victims and called on countries to help victims recover and reintegrate into society.²⁹⁶ At the conclusion of the Second World Congress, the United States pointed to the Optional Protocol as providing a “clear starting point” for the international elimination of sexual exploitation of children.²⁹⁷ Between the Second and Third World Congresses, the United States conducted a “mid-term review” on the commercial sexual exploitation of children in America in collaboration with three non-governmental agencies.²⁹⁸ A report from the mid-term review was submitted at the Third World Congress and found that the U.S. Congress and Executive Branch had “aggressively” confirmed their commitment to combating the sexual exploitation of children through legislative measures, including the recognition and protection of victims’ rights.²⁹⁹

The Council of Europe, an international organization including both European and non-European countries, has also formed treaties to protect children from child sexual abuse.³⁰⁰ The United States actively participated in the drafting of the Council of Europe’s Convention on Cybercrime, which requires states to adopt legislative and other measures necessary to criminalize possession of child pornography on data storage media.³⁰¹ The United States ratified the treaty in 2006 with no need for implementing legislation because the United States had complied with the Convention on Cybercrime’s provisions prior to the drafting of the convention.³⁰²

Four years later, the Lanzarote Convention, another Council of Europe convention, expanded on the Convention on Cybercrime to require States Parties to take all necessary measures to assist victims with their physical and psycho-social restoration through adopting a more protective approach towards victims.³⁰³ Although the United States has not ratified the

²⁹³ S. EXEC. REP. NO. 106-12, at 4 (1999), available at <http://www.gpo.gov/fdsys/pkg/CRPT-106erpt12/pdf/CRPT-106erpt12.pdf>.

²⁹⁴ *Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)*, INT’L LABOUR ORG., http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327 (last visited Feb. 1, 2015).

²⁹⁵ First World Congress Against Commercial Sexual Exploitation of Children, The Stockholm Declaration and Agenda for Action art. 5 (Aug. 31, 1996), available at http://www.ecpat.net/sites/default/files/stockholm_declaration_1996.pdf.

²⁹⁶ VITT MUNTARBORN, GENERAL RAPPOREUR’S REPORT FROM SECOND WORLD CONGRESS AGAINST CSEC (2001), available at www.childsrights.org/vbulletin5/filedata/fetch?id=1461.

²⁹⁷ UNITED NATIONS CHILDREN’S FUND, THE YOKOHAMA GLOBAL COMMITMENT 6 (2001), available at <http://www.unicef.org/events/yokohama/outcome.html>.

²⁹⁸ INITIAL REPORT, *supra* note 270, at para. 84.

²⁹⁹ SHARED HOPE INT’L ET AL., REPORT FROM THE U.S. MID-TERM REVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AMERICA pmb., add. III at 5 (2006), available at http://sharedhope.org/wp-content/uploads/PIC/US_MTR_of_CSEC.pdf.

³⁰⁰ BUCK, *supra* note 248, at 360.

³⁰¹ S. EXEC. REP. NO. 109-6, at 2 (2006); Convention on Cybercrime art. 9(1), Nov. 23, 2001, T.I.A.S. No. 13,174, C.E.T.S. No. 185, available at <http://conventions.coe.int/Treaty/en/Treaties/html/185.htm>.

³⁰² S. EXEC. REP. NO. 109-6, *supra* note 301, at 6; *Convention on Cybercrime Ratification Status*, COUNCIL OF EUROPE, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG> (last visited Feb. 14, 2015).

³⁰³ Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse art. 30(2), Oct. 25, 2007, C.E.T.S. No. 201 [hereinafter Lanzarote Convention], available at <http://conventions.coe.int/Treaty/EN/treaties/html/201.htm>.

Lanzarote Convention, it participated in the drafting of the treaty and has been a permanent observer of the Council of Europe since 1995.³⁰⁴ Moreover, the Lanzarote Convention is additional evidence of emerging international legal norms focused on criminalizing modern child pornography and providing for restoration of victims.

C. Regional Efforts to Protect and Support Victims of Child Pornography

Regionally, countries have also committed to protecting potential victims of child pornography and supporting their recovery when victimized. The European Union requires member states to punish the “acquisition or possession of child pornography” and “knowingly obtaining access.”³⁰⁵ Significantly, in accordance with the Optional Protocol, the CRC, and the Lanzarote Convention, the European Union requires member states to provide assistance, support, and protection to victims, taking into account the best interests of the child.³⁰⁶ Among other things, this includes ensuring that victims have access to free legal representation for “the purposes of claiming compensation.”³⁰⁷ Member states must also ensure that victims receive assistance and support before, during, and after the criminal proceedings.³⁰⁸ The European Union law also directs member states to ensure that victims of crime receive adequate protection, acknowledgement of their rights, and special assistance.³⁰⁹

The European Union has recently expanded the rights, support, protection, and compensation for victims of child pornography by implementing a new Directive that will take effect in 2015.³¹⁰ The new Directive instructs member states to protect victims from continuing victimization and ensures that victims receive “appropriate support to facilitate their recovery.”³¹¹ Victim support services must provide, at a minimum, emotional and psychological support services.³¹² Member states must ensure that victims also have the right to receive compensation from offenders through a judgment in criminal proceedings.³¹³ Member states are obliged to promote measures to “encourage offenders to provide adequate compensation to victims.”³¹⁴ The new Directive demonstrates the European Union’s evolving standards on crime victim standing, and when read in conjunction with Article 19 of Directive 2011/92/EU,³¹⁵ the new Directive advances the European Union’s goal to provide greater support to victims of child pornography.

African and Asian countries have also responded on a regional basis. In 1999, the African Charter on the Rights and Welfare of the Child entered into force, which requires states to ensure

³⁰⁴ COUNCIL OF EUROPE, ON OBSERVER STATUS FOR THE UNITED STATES OF AMERICA WITH THE COUNCIL OF EUROPE, COMM. OF MINISTERS RES. (95) 37 (1995), available at http://www.coe.int/t/der/docs/CMRes9537USA_en.pdf; COUNCIL OF EUROPE, EXPLANATORY REPORT: COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE para. 284 (2007), available at <http://conventions.coe.int/Treaty/EN/Reports/Html/201.htm>.

³⁰⁵ Framework Decision 2004/68/JHA art. 3(1)(d), 2003 O.J. (L13) 44, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:013:0044:0048:EN:PDF>; Directive 2011/92/EU, of the European Parliament and of the Council of 13 December 2011 on Combating the Sexual Abuse and Sexual Exploitation of Child and Child Pornography and Replacing Council Framework Decision 2004/68/JHA art. 5(2)–(3), 2011 O.J. (L 335) (1) [hereinafter Directive 2011/92/EU], available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN>.

³⁰⁶ Directive 2011/92/EU, *supra* note 305, at art. 18(1).

³⁰⁷ *Id.* at art. 20(2).

³⁰⁸ *Id.* at art. 19(1).

³⁰⁹ Framework Decision 2001/220/JHA, of 15 March 2001 on the Standing of Victims in Criminal Proceedings, 2001 O.J. (L082) 1, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF>.

³¹⁰ Directive 2012/29/EU, of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime and Replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L315) 57, available at <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32012L0029>.

³¹¹ *Id.* at pmb1. para. 9.

³¹² *Id.* at art. 9.

³¹³ *Id.* at art. 16(1).

³¹⁴ *Id.* at art. 16(2).

³¹⁵ Directive 2011/92/EU, *supra* note 305, at art. 19.

that children “enjoy the best attainable state of physical, mental and spiritual health.”³¹⁶ Parties to the treaty must also protect children from “all forms of torture, inhuman or degrading treatment,” which includes sexual abuse.³¹⁷ In fact, Article 27 specifically requires parties to protect children from sexual exploitation, including “the use of children in pornographic activities, performances and materials.”³¹⁸ In addition to preventing abuse, members must establish support and treatment for the victims of abuse when it does occur.³¹⁹

The South Asian Association for Regional Cooperation (“SAARC”), which includes eight member states and nine observer states, have also entered into regional efforts.³²⁰ The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia asks member states to reaffirm their commitment to the CRC, uphold the “best interest of the child,” and provide basic services to children.³²¹ While many of the countries have signed or ratified the Optional Protocol, the African convention and SAARC convention provide reaffirmation of the regions’ commitment to protecting children.

In sum, the United States has played an active role in developing an international legal framework that condemns child sexual abuse and the proliferation of child sexual abuse images. This framework also recognizes the harm done to victims and the need to provide for their restoration. In addition to multilateral efforts such as the Optional Protocol, regional efforts are underway to protect children from child pornography, signaling an international norm. The United States has previously identified the Mandatory Restitution Statute as its means of complying with international obligations. Unfortunately, the statute has been ineffective, and the domestic statutory framework for restoring victims must be expanded, reinforced, and effectively implemented.

V. ENSURING FULL RESTORATION OF VICTIMS BOTH AT HOME AND ABROAD

The United States has been a leader in efforts to combat child pornography worldwide, but its leadership falls short when it comes to restoring victims. In order to comply with its own treaty obligations and as a moral imperative because of the rising problem of child pornography, the United States must effectively ensure the full and adequate restoration of victims of child pornography. The United States has a number of options. For one, the United States already has a statutory framework for providing restoration to victims of child pornography through restitution—the Mandatory Restitution Statute.³²² The United States could amend this statute to achieve Congress’s original intent to provide full recovery to victims of child pornography. Additional options include expanding victim funds, supporting victims’ use of civil remedies and copyright protections, requiring the widespread implementation of child pornography identification software, providing victims with a variety of government benefits, and appointing attorneys or guardians ad litem to advocate for victims and guide them through a complex and discouraging justice system.

³¹⁶ African Charter on the Rights and Welfare of the Child art. 14(1), OAU Doc. CAB/LEG/24.9/49 (1990) (*entered into force* Nov. 29, 1999), available at <http://acerwc.org/the-african-charter-on-the-rights-and-welfare-of-the-child-acrwc/acrwc-en/>.

³¹⁷ *Id.* at art. 16(1).

³¹⁸ *Id.* at art. 27(1)(c).

³¹⁹ *Id.* at art. 16(2).

³²⁰ *Cooperation with Observers*, S. ASIAN ASS’N FOR REG’L COOP’N, <http://saarc-sec.org/Cooperation-with-Observers/13/> (last visited Feb. 1, 2015).

³²¹ S. ASIAN ASS’N FOR REG’L COOP’N, CONVENTION ON REGIONAL ARRANGEMENTS FOR THE PROMOTION OF CHILD WELFARE IN SOUTH ASIA 2 (2001), available at <http://www.saarc-sec.org/userfiles/conv-children.pdf>.

³²² 18 U.S.C. § 2259 (2012).

A. The Mandatory Restitution Statute

In Part III.B, the context for the development of the Mandatory Restitution Statute was discussed. In spite of convincing bipartisan support for the statute,³²³ and a strongly-worded title that begins with the word “mandatory,” prosecutors have failed to use the statute as a tool for providing restoration to victims of child pornography.³²⁴ In fact, it was a children’s rights lawyer, James R. Marsh, who first began utilizing the statute effectively.³²⁵ When Amy’s family hired him, Marsh initially thought of utilizing Masha’s Law, the civil recovery option, as a means of obtaining restoration for Amy.³²⁶ However, when *United States v. Hesketh*³²⁷ involved a wealthy offender with assets in foreign countries with strict banking secrecy laws, Marsh began to research criminal restitution—which places the burden on the federal government to collect, rather than the individual, and allows the government to utilize its powerful collection powers to levy assets, including the seizure of bank and retirement accounts.³²⁸

Marsh asked Amy to write a victim impact statement and hired a psychologist to examine her.³²⁹ Marsh also had economists calculate damages “that included counseling, diminished wages and lawyer fees.”³³⁰ The total was approximately \$3.4 million.³³¹ Afterwards, Marsh began emailing Amy’s filings to U.S. Attorneys—as of September 2012, “Amy had filed claims in 744 cases and had been identified in more than [1500].”³³² Courts varied in their responses to these petitions: some district courts rejected them, some awarded paltry sums, while others responded with significant awards.³³³ On appeal, the circuits split in their interpretations of the Mandatory Restitution Statute, with the Fifth Circuit holding that “the plain language of the statute dictates that a district court must award restitution for the full amount of those losses.”³³⁴ The offender in the case, Doyle Randall Paroline, appealed the decision and the circuit split led to the Supreme Court granting certiorari in June 2013 in *Paroline*.³³⁵

The briefing and oral argument in *Paroline* revealed a significant disagreement over the interpretation of the Mandatory Restitution Statute. The statute requires that a defendant, once convicted of production, distribution, or possession of child pornography, pay the “full amount of victim’s losses.”³³⁶ The statute defines the “full amount of victim’s losses,” as including:

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;

³²³ Fifty-four Democrats and seven Republicans voted to pass the Act in the Senate, 61-38. 140 CONG. REC. S12600 (1994). One hundred eighty-eight Democrats, forty-six Republicans, and one independent voted for the Act in the House, 235-195. 140 CONG. REC. H9005 (1994).

³²⁴ See Emily Bazelon, *supra* note 242.

³²⁵ *Id.*

³²⁶ Lorelei Laird, *Pricing Amy: Should Those Who Download Child Pornography Pay the Victims?*, ABA JOURNAL (Sept. 1, 2012, 10:30AM),

http://www.abajournal.com/magazine/article/pricing_amy_should_those_who_download_child_pornography_pay_the_victims/.

³²⁷ *United States v. Hesketh*, No. 3:08-CR-00165 (WWE) (D. Conn. Oct. 13, 2008).

³²⁸ Laird, *supra* note 326.

³²⁹ John Schwartz, *Child Pornography, and an Issue of Restitution*, N.Y. TIMES, Feb. 3, 2010, at A19.

³³⁰ *Id.*

³³¹ *Id.*

³³² Schwartz, *supra* note 329. Marsh said, “I’m able to leverage the power of the Internet to get restitution for a victim of the Internet.” *Id.*

³³³ The average restitution award is \$3000. Robert William Jacques, *Amy and Vicky’s Cause: Perils of the Federal Restitution Framework for Child Pornography Victims*, 45 GA. L. REV. 1167, 1189 (2011).

³³⁴ *In re Amy Unknown*, 701 F. 3d 749, 752 (5th Cir. 2012).

³³⁵ *Paroline v. United States*, 134 S. Ct. 1710 (2014).

³³⁶ 18 U.S.C. § 2259(b)(1) (2012).

- (D) lost income;
- (E) attorneys' fees, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a proximate result of the offense.³³⁷

The Supreme Court granted certiorari on the question: “What, if any, causal relationship or nexus between the defendant’s conduct and the victim’s harm or damages must the government or the victim establish in order to recover restitution under [the Mandatory Restitution Statute]?”³³⁸ In other words, does the proximate cause language in (F) modify (A)–(E) or only (F)? If only (F), then Paroline would be liable to the victim, Amy, for the full amount of her damages, \$3.4 million, even though he “only” possessed two of her sex abuse images. Not surprisingly, Paroline took the position that he owed no restitution to Amy,³³⁹ while she argued that Paroline owed her full restitution.³⁴⁰ The U.S. Solicitor General argued that the amount was somewhere in between, but could not offer a clear formula for determining the precise amount owed or how it would be determined on a consistent basis for all child pornography victims entitled to restitution under the statute.³⁴¹

At oral argument, the Justices appeared to be as divided as the parties. For example, Justice Scalia acknowledged that Paroline was obviously a “bad guy” but found it incredulous that Congress could have intended “to sock” Paroline with the full amount of Amy’s damages (\$3.4 million), while Justice Sotomayor appeared to defend full restitution to Amy, and Justice Ginsburg pressed the Government to offer a formula for restitution that could be applied consistently across child pornography cases.³⁴² Throughout oral argument, the complexities inherent in apportioning causation and liability for child pornography possession and distribution in the digital age, due to the continuing revictimization that is inherent in the perpetual proliferation of this crime on a global scale, seemed to place solutions out of the reach of some of the brightest minds in the United States.³⁴³

Thus, it was not surprising when the Court’s decision was issued on April 23, 2014, that it conveyed a divided Court, with Justices Ginsburg, Breyer, Alito, and Kagan joining Justice Kennedy in a majority opinion, Justices Scalia and Thomas joining Chief Justice Roberts in a dissent, and Justice Sotomayor entering a separate dissent.³⁴⁴ According to the majority, the restitution should be “reasonable” and “circumscribed,” neither “severe” nor “token” nor “minimal.”³⁴⁵ The majority acknowledged that child pornography victims were entitled to full restitution for their losses “someday,” but failed to provide a concrete formula to determine how

³³⁷ 18 U.S.C. § 2259(b)(3).

³³⁸ *Paroline v. United States*, 133 S. Ct. 2886 (2013) (granting certiorari).

³³⁹ See Brief for Petitioner at 66, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁴⁰ Brief for Respondent Amy Unknown at 6–7, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁴¹ See Brief for the United States at 40–49, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561); see Petitioner’s Reply Brief at 14–16, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁴² Transcript of Oral Argument at 21, 30, 36, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561). The Government stated that it would leave it up to district courts to determine methods of granting restitution to victims. One option was for courts to divide the number of people who have been ordered to pay restitution to Amy into the total harm—\$3.4 million. *Id.* at 23. Justice Ginsburg quickly pointed out a problem with this method, stating, “[i]t wouldn’t include the people who are not prosecuted and it wouldn’t include the people who in the future are prosecuted.” *Id.* at 24. Justice Kagan mentioned concerns with alternative approaches that seemed like “somebody just plucks an initial number out of the air.” *Id.* at 26. Justice Scalia expressed strong emotions about the Government attorney’s reference to district courts making calculations and then applying a “fudge factor” to round out the estimation. *Id.* at 32.

³⁴³ See Adam Liptak, *Justices Seem Stumped on Calculating Damages Over Child Pornography*, N.Y. TIMES (Jan. 22, 2014), <http://www.nytimes.com/2014/01/23/us/justices-struggle-to-determine-restitution-over-child-pornography.html>.

³⁴⁴ See *Paroline v. United States*, 134 S. Ct. 1710, 1716 (2014).

³⁴⁵ *Id.* at 1727.

to apportion full restitution, let alone when that day will come.³⁴⁶ Chief Justice Roberts wrote in his dissent that clearly, child pornography victims deserve restitution and that Congress intended for them to receive it, but unfortunately, the Mandatory Restitution Statute was so poorly drafted that it allowed no victim recovery, and Congress needed to “fix” the statute.³⁴⁷ In Justice Sotomayor’s dissent, she, too, suggested that Congress should consider revising the Mandatory Restitution Statute and offered concrete suggestions for doing so, such as including mandatory minimum restitution amounts similar to the \$150,000 minimum set in the Civil Remedy Statute.³⁴⁸ In the meanwhile, Justice Sotomayor opined that Amy was entitled to restitution from Paroline in the full amount of her losses (\$3.4 million).³⁴⁹

Although the Justices disagreed on the amount of restitution owed to Amy by Paroline, all nine Justices agreed that victims of child pornography are entitled to restitution from those who possess their sexual abuse images.³⁵⁰ The Court recognized that “every viewing of child pornography is a repetition of the victim’s abuse.”³⁵¹ According to the majority, one purpose of the Mandatory Restitution Statute is “to impress upon offenders that their conduct produces concrete and devastating harms for real, identifiable victims.”³⁵² One of the identifiable victims of Paroline’s crimes was not only in the Court that day, she was represented by counsel.³⁵³ It was the first time in the Court’s history that a crime victim was allowed to be represented by counsel in an appeal of a criminal case heard by the U.S. Supreme Court.³⁵⁴ It was especially fitting that the first crime victim was a child pornography victim, given that the growing number of victims affected by this rapidly expanding crime compels strong and effective legislative solutions to ensure their full restoration.

B. Post-Paroline Restitution Legislation

Paroline demonstrates that the Mandatory Restitution Statute presents complex questions about the statute’s workability and effectiveness. In response to these problems, Congress could create a new statutory framework that more clearly lays out how victims receive restoration. The statutory framework could clarify the language necessary for adequate restitution and incorporate and improve on other potential sources of support for victim restoration such as victims’ funds, civil remedies, copyright, government benefits, technological innovation, and victim advocacy.

A new statutory framework would have the ability to recognize the ways that child pornography has changed since the mid-nineties, when Congress enacted the Mandatory Restitution Statute. The rise in technology over the past twenty years is unprecedented, particularly with regard to the Internet and smartphones. This statutory framework would view restoration in light of the uniquely global nature of child pornography and the corresponding

³⁴⁶ *Id.* at 1729.

³⁴⁷ *Id.* at 1735.

³⁴⁸ *Id.* at 1744. The dissents of both Chief Justice Roberts and Justice Sotomayor were consistent with the position of both the U.S. Department of Justice and the U.S. Sentencing Commission, who had previously publicly stated that “improvements to the statutory restitution mechanism are warranted.” Letter from Anne Gannon, *supra* note 48; *see also* U.S. SENTENCING COMM’N, *supra* note 62, at 311–31 (discussing recommendations to Congress for statutory improvements).

³⁴⁹ *Paroline*, 134 S. Ct. at 1744.

³⁵⁰ *Id.* at 1722, 1730, 1735.

³⁵¹ *Id.* at 1727. Of course, this was a reiteration of the Court’s previous holdings in *New York v. Ferber*, 458 U.S. 747, 758 (1982), and *Osborne v. Ohio*, 495 U.S. 103, 111 (1990).

³⁵² *Paroline*, 134 S. Ct. at 1727.

³⁵³ Emily Bazelon, *How Much Does Doyle Paroline Owe?*, SLATE (Jan. 22, 2014, 5:01 PM), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/01/child_pornography_restitution_the_supreme_court_struggles_to_figure_out.html.

³⁵⁴ Paul Cassell, *I’m Hoping for a Victory for Crime Victims’ Rights Tomorrow Before the Supreme Court*, WASH. POST (Jan. 21, 2014), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/01/21/im-hoping-for-a-victory-for-crime-victims-rights-tomorrow-before-the-supreme-court/>.

difficulties to: (1) obtain restitution from defendants in foreign jurisdictions, and (2) identify the total number of offenders and, as a result, the full extent of a victim's harm. The new framework would also need to be flexible enough to accommodate rapidly changing technology and recognize that the harm to victims of child pornography will only grow as technology becomes increasingly sophisticated.

Two weeks after the U.S. Supreme Court issued its decision in *Paroline*, Congress responded with a new statutory framework that would update the Mandatory Restitution Statute. The Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014,³⁵⁵ was introduced on May 7, 2014, by Senator Orrin Hatch (R-UT)³⁵⁶ and twenty-one co-sponsors.³⁵⁷ The Act was referred to the Committee on the Judiciary on the same day.³⁵⁸ An identical bill, H.R. 4981, was introduced in the House of Representatives.³⁵⁹ Representative Matt Cartwright (D-PA) and eighty-eight co-sponsors introduced the House version.³⁶⁰

The Amy and Vicky Child Pornography Victim Restitution Improvement Act reaffirms Congress's previous findings that demand for child pornography continuously victimizes a child, causing victims to suffer throughout their lives.³⁶¹ Congress also recognizes that every perpetrator throughout the supply chain (producer, distributor, and possessor) plays a part in the victim's harm.³⁶² To remedy the harm to a victim, Congress intends to fully compensate the victim through an aggregate causation standard, while also recognizing any constitutional limits and protections for defendants.³⁶³

Under the revised act, a victim may recover: lifetime medical services related to physical, psychiatric, or psychological care; lifetime physical and occupational therapy or rehabilitation; necessary transportation, temporary housing, and child care expenses; lifetime lost income; and attorneys' fees, as well as other costs incurred.³⁶⁴ Further, other losses suffered by the victim are recoverable if those losses are a *proximate result of the offense*.³⁶⁵ The Act clearly states that the proximate cause is only required for other losses and not the statutorily-enumerated losses.

To determine the restitution amount, the court will decide the amount of the victim's losses and enter an order for that amount when one defendant harms the victim.³⁶⁶ When multiple defendants harm the victim, the court will enter a restitution order for the full amount of the victim's losses or an amount not less than a statutorily-enumerated amount.³⁶⁷ The statutorily-enumerated amounts are as follows: \$250,000 for production, \$150,000 for distribution, and

³⁵⁵ Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014, S. 2301, 113th Cong. (2014).

³⁵⁶ Senator Orrin Hatch was part of the 103rd Congress that considered the original legislation. In addition to introducing the Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014, Senator Hatch and a bipartisan group of Senators who were also part of the 103rd Congress, filed an amicus curiae brief in *Paroline*. Brief for United States Senators Orrin G. Hatch, Dianne Feinstein, Charles E. Grassley, Edward J. Markey, John McCain, Patty Murray, and Charles E. Schumer as Amici Curiae in Support of Amy Unknown at 1–2, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁵⁷ The Senators are a bipartisan group of twelve Republicans and nine Democrats. *Cosponsors: S.2301 — 113th Congress (2013-2014)*, LIBRARY OF CONG., <https://beta.congress.gov/bill/113th-congress/senate-bill/2301/cosponsors> (last visited Feb. 1, 2015).

³⁵⁸ 160 CONG. REC. S2796 (2014).

³⁵⁹ Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014, H.R. 4981, 113th Cong. (2014).

³⁶⁰ *Id.* The House version of the act includes fifty-eight Democrats and thirty Republicans. *Cosponsors: H.R.4981 — 113th Congress (2013-2014)*, LIBRARY OF CONG., <https://beta.congress.gov/bill/113th-congress/house-bill/4981/cosponsors> (last visited Feb. 1, 2015).

³⁶¹ Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014, S. 2301, 113th Cong. § 2 (2014).

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.* § 3.

³⁶⁵ *Id.* (emphasis added).

³⁶⁶ *Id.* § 3.

³⁶⁷ *Id.*

\$25,000 for possession.³⁶⁸ A victim is able to utilize joint and several liability to recover from multiple defendants.³⁶⁹ Defendants can also seek contribution from other defendants.³⁷⁰

Senator Pat Toomey (R-PA) introduced an alternative bill, the Justice for Amy Act of 2014, on May 15, 2014, in the wake of the U.S. Supreme Court decision in *Paroline*, and it was immediately referred to the Senate Judiciary Committee.³⁷¹ The bill would amend the Mandatory Restitution Statute and make restitution mandatory regardless of the defendant's economic circumstance or the victim's other sources of recovery (i.e., insurance).³⁷² In determining the victim's losses, courts would use aggregate causation principals.³⁷³ Multiple defendants would be jointly and severally liable.³⁷⁴ A defendant who pays more than his share could seek contribution from other defendants or subsequent offenders.³⁷⁵

The primary difference between the acts is the Justice for Amy Act does not include the statutorily-enumerated amounts that the Amy and Vicky Child Pornography Victim Restitution Improvement Act contains. The statutorily-enumerated amounts, \$250,000 for production, \$150,000 for distribution, and \$25,000 for possession, are similar to the civil recovery statute where damages are presumed to be at least \$150,000.³⁷⁶ While these statutory minimums will provide some assurances to victims who seek compensation, whichever approach is ultimately adopted will greatly improve access to restitution for victims.

At the conclusion of the 113th Congress, neither act had been enacted,³⁷⁷ which led the 114th Congress to reintroduce the Amy and Vicky Child Pornography Victim Restitution Improvement Act.³⁷⁸ On February 11, 2015, the Senate unanimously passed the act.³⁷⁹ The House referred the bill to the House Judiciary committee on February 12, 2015.³⁸⁰ With widespread bipartisan support in the Senate, hopefully the House of Representatives will act swiftly to improve the restitution system.

C. Victims' Funds

As discussed in Part III.B above, victims' funds could be an effective method of directing resources to support the restoration of victims of child pornography, but not in their current form. There are a number of positive aspects of crime victims' funds. For one, victims can access at least some of the funds they need to support their restoration relatively quickly, especially compared to restitution³⁸¹ or civil litigation. Funds do not require a showing of proximate cause between the defendant's harm and the victim's losses. Funds allow defendants to pay into the

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ Justice for Amy Act of 2014, S. 2344, 113th Cong. (2014).

³⁷² *Id.* § 2.

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ 18 U.S.C.A. § 2255 (West 2015); Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2014, S. 2301, 113th Cong. § 3 (2014).

³⁷⁷ *Major Actions: S.2301 — 113th Congress (2013-2014)*, LIBRARY OF CONG., <https://beta.congress.gov/bill/113th-congress/senate-bill/2301/actions> (last visited Feb. 1, 2015); *Major Actions: H.R. 4981 — 113th Congress (2013-2014)*, LIBRARY OF CONG., <https://www.congress.gov/bill/113th-congress/house-bill/4981/actions> (last visited Feb. 1, 2015); *Major Actions: S.2344 — 113th Congress (2013-2014)*, LIBRARY OF CONG., <https://www.congress.gov/bill/113th-congress/senate-bill/2344/actions> (last visited Feb. 1, 2015).

³⁷⁸ Amy and Vicky Child Pornography Victim Restitution Improvement Act of 2015, S. 295, H.R. 595, 114th Cong. (2015).

³⁷⁹ *Major Actions: S.295 — 114th Congress (2015-2016)*, LIBRARY OF CONG., <https://www.congress.gov/bill/114th-congress/senate-bill/295/actions> (last visited Feb. 14, 2015).

³⁸⁰ *Id.*

³⁸¹ Providing victims with immediate post-conviction relief through restitution is challenging. Since the passage of the MVRA, which provides restitution for victims of several crimes, federal criminal debt has increased to fifty billion in 2007 from six billion in 1996. Eighty percent of the increase is from uncollected restitution orders. Jacques, *supra* note 333, at 1195.

fund whether or not a victim is identified, meaning that offenders do not escape liability. These funds may also provide assistance to families of child pornography victims who also have expenses, such as for counseling.³⁸²

One enormous benefit of a victim compensation program rather than restitution would be the elimination of notification letters, which victims receive to determine whether to seek restitution.³⁸³ The notifications that victims like Amy and Vicky receive can be “unnerving and traumatic.”³⁸⁴ Much of the ongoing harm to victims of child pornography is from the knowledge that unknown perpetrators are deriving “sick enjoyment” from images of their child sexual abuse,³⁸⁵ and that these images will most likely never be removed from the Internet. The constant flow of notification letters can “exponentially and repetitively reactivate[.]” victims’ psychological harm.³⁸⁶ However, at this point, these notices are required for victims to receive restitution.³⁸⁷ A fund would allow victims to “opt-out of receiving notices yet still receive reimbursement for psychological and counseling services.”³⁸⁸

Currently, the majority of child pornography offenses are prosecuted at the state level,³⁸⁹ and the majority of the federal funds allocated to victims’ compensation are allocated to state victims’ compensation programs.³⁹⁰ Thus, it is critical that federal lawmakers make federal funding of state-administered victims’ funds contingent upon amending statutes and regulations to ensure that victims of child pornography possession and distribution are eligible for support from state-administered victims’ funds. Indeed, Congress recently recognized the need to make special funds available for child pornography victims. The Justice for Victims of Trafficking Act of 2014 authorizes the federal government to make grants to states for direct assistance to child pornography victims.³⁹¹ The Act passed the House of Representatives by a vote of 409 to 0 and is pending in the Senate.³⁹² While victims are likely to only receive a limited amount of funds, the additional sources might be able to compensate victims for losses attributed to possession and distribution and provide a method of compensation.

Meanwhile, Congress should consider the formation of a victims’ fund for child pornography victims that is administered at the federal level. The fund could also be supported with fines and penalties collected from offenders convicted of federal child pornography crimes. It could be accessible to victims regardless of their state of residence or the state of residence of the perpetrator or the location of the crime, which is increasingly difficult to specify with digital

³⁸² *Crime Victim Compensation: An Overview*, *supra* note 191; *see, e.g.*, TEX. CODE CRIM. PROC. ANN. art. 56.32 (West 2015).

³⁸³ U.S. SENTENCING COMM’N, *supra* note 62, at 115.

³⁸⁴ Jennifer A.L. Sheldon-Sherman, *Rethinking Restitution in Cases of Child Pornography Possession*, 17 LEWIS & CLARK L. REV. 215, 286 (2013).

³⁸⁵ *See* Amy’s victim statement. Joint Appendix vol. 1 at 60–61, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁸⁶ Sheldon-Sherman, *supra* note 384, at 286 (“Vicky’s psychologist, for example, reports that Vicky receives ‘thousands of notification letters telling her of new cases in which additional defendants have been caught downloading the images of her sexual abuse’ and her psychological harm is ‘exponentially and repetitively reactivated’ by the approximately two to ten letters she receives daily.”).

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ WENDY WALSH ET AL., PROSECUTION DILEMMAS AND CHALLENGES FOR CHILD PORNOGRAPHY CRIMES: THE THIRD NATIONAL JUVENILE ONLINE VICTIMIZATION STUDY (NJOV-3) 2 (Univ. of N.H., 2013).

³⁹⁰ *See* 42 U.S.C. § 10602(a)(1) (2012).

³⁹¹ Justice for Victims of Trafficking Act of 2014, H.R. 3530, 113th Cong. § 4(b) (2014).

³⁹² 160 CONG. REC. H4534–35 (2014); *H.R. 3530 - Justice for Victims of Trafficking Act of 2014*, LIBRARY OF CONG., <http://beta.congress.gov/bill/113th-congress/house-bill/3530> (last visited Feb. 1, 2015). When the 114th Congress convened, the bill was immediately reintroduced and passed in the House. It is now pending in the Senate. *H.R. 181 - Justice for Victims of Trafficking Act of 2015*, LIBRARY OF CONG., <https://www.congress.gov/bill/114th-congress/house-bill/181/actions> (last visited Feb. 14, 2015). The 2015 act is slightly different from the 2014 act but still contains a provision to provide grants for direct services to child pornography victims. Justice for Victims of Trafficking Act of 2015, H.R. 181, 114th Cong. § 3 (2015).

crimes. Indeed, child pornography victims could be permitted to access funding from the federal child pornography victims' fund even if the perpetrator is foreign or the crime is committed abroad. Moreover, foreign victims of child pornography offenders who are U.S. citizens should also be permitted to file claims with the fund to support their restoration. This would help overcome some of the jurisdictional and logistical issues that currently prevent child pornography victims from abroad from recovering restitution or damages from perpetrators in the United States, and would better address the changing nature of child pornography crimes, which tend to occur across multiple borders and jurisdictions.

Regardless of whether a victims' fund for child pornography victims would be administered at the state or federal level (or both), it is critical to address the many problems present with existing crime victims' funds.³⁹³ Victims' funds caps would need to be raised from their current average of approximately twenty-five thousand dollars.³⁹⁴ Moreover, victims should not have to reimburse the fund if the victim subsequently receives any restitution or civil damages related to the crime.³⁹⁵ Also, victims should be permitted to seek reimbursement for lost income.³⁹⁶ As over \$3 million out of the \$3.4 million pleaded in Amy's restitution claim accounted for lost wages,³⁹⁷ it is clear that lost wages are key to full restoration, which includes community reintegration. The funds also do not typically include attorneys' fees, and have an overall annual cap for total distributions.³⁹⁸ After that cap is reached, funds cannot be disbursed to victims.³⁹⁹ Finally, the funds fail to account for support of foreign victims and those harmed abroad,⁴⁰⁰ even though foreign children are increasingly victimized by U.S. perpetrators, and are also entitled to full restoration.

One should consider the psychological impact that a fine-based system supporting a crime victims' fund could have on both the victim and the perpetrator. In theory, the victim in a fine-based system would be the public rather than the individual, which may diminish "the rehabilitative psychological benefits of restitution, in terms of making a victim feel directly compensated by the person who aggrieved her"⁴⁰¹ Therefore, part of the sentencing and payment process should require defendants to realize that the children they exploited are real people to whom they have caused tangible harm. Many offenders do not connect their actions with harm to a living and breathing girl or boy who are like their own children, sisters, neighbors, or friends. This is a significant part of the process that should not be lost if the method of resources are directed through a fund rather than through restitution or civil recovery.

D. Civil Remedies for Child Pornography Victims

Masha's Law, a method for victims to bring civil causes of action, is another method of providing victims access to resources that support their restoration. Under 18 U.S.C. § 2255, "[o]nce a plaintiff has proven personal injury, they are entitled to recover the actual damages they sustain and the cost of the suit, including a reasonable attorney's fee. The statute sets a floor on

³⁹³ See generally U.S. DEP'T OF JUSTICE, *supra* note 198, at 21. Further, the Office for Victims of Crime conducted an informal poll of states that found most states compensated child pornography victims for losses incurred from distribution and possession but most victims do not file claims. *Id.*

³⁹⁴ *Crime Victim Compensation: An Overview*, *supra* note 191.

³⁹⁵ *Id.*

³⁹⁶ Sheldon-Sherman, *supra* note 384, at 287.

³⁹⁷ Joint Appendix vol. 1 at 52, *Paroline v. United States*, 134 S. Ct. 1710 (2014) (No. 12-8561).

³⁹⁸ *OVC Fact Sheet: Crime Victims Fund*, OFFICE FOR VICTIMS OF CRIME, <http://www.ovc.gov/pubs/crimevictimsfundfs/intro.html>

(last visited Feb. 1, 2015);

³⁹⁹ *Id.*; *Crime Victim Compensation: An Overview*, *supra* note 191.

⁴⁰⁰ U.S. DEP'T OF JUSTICE, *supra* note 198, at 21.

⁴⁰¹ Sheldon-Sherman, *supra* note 384, at 286–87.

‘actual damages’ of \$150,000, which is the minimum amount a plaintiff can be awarded.”⁴⁰² Courts have interpreted “personal injury” to include emotional harm and mental suffering.⁴⁰³

On its face, § 2255 is an excellent tool for victims of child pornography to have access to adequate damages. Even though the burden is on the plaintiff victim to prove “she suffered ‘personal injury’ as a result of the defendant’s predicate act,” cases like *Doe v. Boland* have shown this burden is not high.⁴⁰⁴ For victims who have the substantial time and resources required to pursue civil litigation, Masha’s Law is an option to be considered in addition to restitution and victims’ funds.

Unfortunately, when one considers the challenges of a civil suit under § 2255 more carefully, it becomes clear that these lawsuits present child pornography victims with a multitude of challenges. First, as with any form of civil litigation, it costs money to go through civil litigation and more money to pursue judgments. Even when defendants are wealthy, their funds may be sufficiently guarded so that plaintiffs bear the costs of going after judgments. There are also problems of judicial efficiency in pursuing civil litigation against defendants who are going through criminal trials. Courts must already hear the facts in a criminal case. There are questions about excessive costs to the public because of multiple hearings on the same issue. In these ways, restitution may be a better option. When one also considers the challenges that Amy’s attorney reports in trying to access the sexual abuse images on file with the Federal Bureau of Investigation (“F.B.I.”) and to establish chain of custody, both of which are necessary to prove her case, one starts to wonder if § 2255 provides any tangible relief to child pornography victims.⁴⁰⁵

Lastly, the civil recovery statute alone does not likely satisfy the United States’ obligations under the Optional Protocol. Article 9(4) of the Optional Protocol states, “States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.”⁴⁰⁶ While the United States has previously cited Masha’s Law as a means of complying with Article 9(4), the U.N. Committee has continuously questioned the United States’ fulfillment of this treaty provision.⁴⁰⁷

E. Victims Should Pursue Copyright Protections and Remedies

One of the most perverse and frustrating aspects of child pornography is that the victims do not own or control the images of their sexual abuse. Thus, in Amy’s case, her attorney had to negotiate with the uncle who raped her to transfer his copyright in Amy’s sex abuse images to her.⁴⁰⁸ Amy and her attorney then tried to register her copyright in those images with the U.S. Copyright Office.⁴⁰⁹ Registering a copyright in her sex abuse images would allow Amy to bring a

⁴⁰² 18 U.S.C § 2255 (2012); Marsh, *supra* note 226, at 496.

⁴⁰³ Marsh, *supra* note 226, at 494; *see Doe v. Boland*, 698 F.3d 877, 880–81 (6th Cir. 2012).

⁴⁰⁴ *Id.* In *Doe v. Boland*, an attorney who superimposed the faces of children onto pornographic images of adults was ordered to pay three hundred thousand dollars in damages to the children pictured, because of emotional distress suffered by the children. Even though the children were not harmed in the creation of the images, the court recognized the emotional harm to the children in the distribution of the pornographic images. *Id.*

⁴⁰⁵ *See* Interview with James R. Marsh, *supra* note 181. Of course, this problem could be partially solved if courts were to identify known victims as part of the criminal judgment, but would not address the problem as to victims who were subsequently identified.

⁴⁰⁶ Optional Protocol, *supra* note 55, at art. 9(4).

⁴⁰⁷ *See supra* Part IV.B.

⁴⁰⁸ Interview with James R. Marsh, *supra* note 181. An initial review of the literature suggests that this is a novel approach to victim recovery that has not been previously considered. We were unable to identify any cases or law review articles that address the question of whether child pornography victims can use copyright infringement claims as a method of recovery against their perpetrators. This recovery method should be more fully explored, especially in light of the challenges child pornography victims face in receiving prompt and adequate restitution under *Paroline v. United States*.

⁴⁰⁹ *Id.*

copyright infringement claim against anyone who published her sex abuse images after the registration of her copyright and seek statutory damages under 17 U.S.C. § 504.⁴¹⁰ However, although the Copyright Office agreed to waive the registration fees, the Office initially insisted that the images had to be submitted with the application.⁴¹¹ Neither Amy nor her uncle had the images since they had been confiscated by the F.B.I. The F.B.I. refused to provide Amy, her attorney, or the Copyright Office copies of the sex abuse images since to do so, they argued, would violate the Adam Walsh Child Protection and Safety Act.⁴¹² Amy's attorney was finally able to convince the Copyright Office to submit written descriptions of the sex abuse images instead to complete the registration.⁴¹³

The advantages for a child pornography victim like Amy to register a copyright to her sex abuse images is not limited to the ability to seek statutory damages for infringement. It also allows the victim to demand that Internet Service Providers ("ISPs") notify the infringer, take down the images, or lose the safe harbor protections of the Digital Millennium Copyright Act.⁴¹⁴ If the Internet Service Provider fails to do so, the provider may be liable for monetary damages.⁴¹⁵ Either way, the victim benefits by being able to gain more control over the distribution and posting of her sex abuse images online, as well as having another source of recovery for the funds needed to support her restoration and reintegration.

Indeed, legislators should consider automatically assigning copyright to all sex abuse images (and all derivative works) to the victim portrayed, so that the victim has control over the images and is able to utilize copyright protections to limit their distribution and to seek damages from both individuals and ISPs who play a role (actively or passively) in perpetuating her victimization.⁴¹⁶ In the meanwhile, child pornography victims, their attorneys, and the government should seek an assignment of the copyright to the victim in all of their sex abuse images in concert with the criminal or civil proceedings against child pornography producers.

F. The Role of Private Industry: Private Regulation, Vicarious Liability, and Technological Solutions

Given the significant role that commercial technology has played in the global expansion of the child pornography industry and the perpetuation of victimization due to the digitalization and rapid redistribution of child sex abuse images, it is critical for private industry to be actively engaged in the effort to curb child pornography and protect and restore victims. As discussed in

⁴¹⁰ *Id.*; 17 U.S.C. § 504 (2012).

⁴¹¹ Interview with James R. Marsh, *supra* note 181.

⁴¹² *Id.*; 42 U.S.C. § 16918 (2012). The Adam Walsh Act severely restricts access to child sex abuse images. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, 623 (2006). Although the initial intent of the restriction was to limit the alleged perpetrator's access to the images, the law has been interpreted by some government agencies to restrict access both by other government agencies and the victim herself. Interview with Andrew Oosterbaan, Jeffrey Zeeman, and Mi Yung Park, U.S. Dep't of Justice, Child Exploitation and Obscenity Section, in Washington, D.C. (Apr. 3, 2014); Interview with James R. Marsh, *supra* note 181.

⁴¹³ Interview with Andrew Oosterbaan, Jeffrey Zeeman, and Mi Yung Park, *supra* note 412.

⁴¹⁴ Digital Millennium Copyright Act, Pub. L. No. 105-304, § 512, 112 Stat. 2860, 2879 (1998).

⁴¹⁵ *Id.* § 202.

⁴¹⁶ Copyright as a remedy for victims of child pornography, revenge porn, and sexting should be considered in greater detail and more depth than space here allows, and the authors strongly encourage scholars, policymakers, and lawmakers to do so. Questions to be answered include when and how the copyright would vest (for example, the copyright could vest at the victim identification and notification stage), what is to be included as child sex abuse images subject to this automatic assignment (the federal definition of child pornography could be adopted), whether to waive notice requirements, registration, and fees, and whether the rights would be retroactive to the date of production. Of course, under normal circumstances, public policy would argue against the ability to hold copyright to child pornography but, under these circumstances, empowering victims to be able to actively pursue the take down of their images online, and to have increased access to monetary damages justifies a departure from this policy. Moreover, even if copyright could be held in child sex abuse images as a matter of public policy, the government could hold the copyright in trust for the victim, which would prevent perpetrators from owning the copyright, while still allowing victims to utilize copyright protections to control their images and seek damages when appropriate.

Part II.C above, Microsoft and Dartmouth College developed software that allows the rapid identification of child sex abuse images.⁴¹⁷ Twitter, Facebook, Google, and Microsoft have all implemented the software and are able to report identified images to the authorities.⁴¹⁸ More technology companies should utilize this software, as should the federal and all state and local governments.⁴¹⁹ All government contractors⁴²⁰ and entities receiving government funding should also be required to implement the software on their computers and systems as one of the conditions of receiving a government contract or funding. When one considers the reach of just this group—technology companies; federal, state, and local governments; government contractors; and government-funded entities—the distribution and consumption of child pornography would be substantially disrupted and likely reduced.

Moreover, lawmakers can incentivize private employers to implement similar software by creating employer liability for access of child pornography images on employers' computers by employees. Now that PhotoDNA is available to identify child sexual abuse images, it is time for lawmakers to revisit the safe harbor provisions of the Digital Millennium Copyright Act,⁴²¹ at least with respect to child pornography, since presumably now ISPs have the ability to identify the images quickly and efficiently. It is time for them to take a more active role in doing so.

G. Victims Should Seek and Receive Government Benefits Necessary to Support Their Restoration

The United States has an affirmative obligation as a party to the Optional Protocol to ensure that child pornography victims receive the services they need to become fully reintegrated into society.⁴²² In the reports filed by the United States with the U.N. Committee regarding the fulfillment of treaty obligations, the United States identified a variety of government programs that victims “may be eligible” for including Medicaid, TANF, and Job Corps, among others.⁴²³ If the United States is not going to provide victims access to efficient and effective remedies to support their recovery through restitution, civil remedies, and victims' funds, for example, the government's reliance on these programs to support victim recovery is that much more important. The restoration of all child pornography victims should be supported by categorical eligibility for a variety of government programs that provide or subsidize health care, nutrition, housing, education, and supplemental income. The United States should not limit eligibility for these and other support services to qualifications other than their status as a victim of child pornography.

H. Child Pornography Victims Should Seek Court Appointment of Attorneys or Guardians ad Litem to Assist Them

Federal law allows courts to appoint guardians ad litem to represent child victims and witnesses in federal criminal cases.⁴²⁴ However, an informal survey recently conducted by a law firm representing Amy suggests that courts almost never exercise this discretion in federal child

⁴¹⁷ *PhotoDNA Press Materials are Now on the Microsoft Digital Crimes Unit Newsroom*, *supra* note 135.

⁴¹⁸ *See supra* note 133 and accompanying text.

⁴¹⁹ Child pornography has been found on government computers, which could be more efficiently investigated with the use of technologies already available. *See, e.g., Defense Officials Investigated for Child Porn*, CNN (July 23, 2010, 2:37 PM), <http://www.cnn.com/2010/CRIME/07/23/pentagon.porn/>; Lori Handrahan, *To Catch Government Workers with Ties to Child Porn, Call the IRS*, FORBES (Sept. 19, 2012, 7:29 AM), <http://www.forbes.com/sites/85broads/2012/09/19/to-catch-government-workers-with-ties-to-child-porn-call-the-irs/>.

⁴²⁰ A Department of Defense contractor was charged with possessing child pornography on a government-issued computer. Mike Donoghue, *Defense Department Contractor from Colchester Faces Child-Porn Charges*, BURLINGTON FREE PRESS (Jan. 26, 2014, 12:00 AM), <http://www.burlingtonfreepress.com/story/news/2014/01/26/defense-department-contractor-from-colchester-faces-child-porn-charges/4922541/>.

⁴²¹ Digital Millennium Copyright Act, Pub. L. No. 105-304, § 512, 112 Stat. 2860, 2879 (1998).

⁴²² Optional Protocol, *supra* note 55, at art. 9(3); *see discussion supra* Part IV.B.

⁴²³ U.N. Committee on the Rights of the Child, *supra* note 279, at paras. 8–10.

⁴²⁴ 18 U.S.C. § 3509(h) (2012).

pornography cases.⁴²⁵ Of approximately 263 child pornography cases filed between 2000 and 2013, only three had a guardian ad litem appointed to represent the victim.⁴²⁶ In a fourth case, a Victim Witness Coordinator was noted on the record but did not appear to actively represent the victim.⁴²⁷ The complexity of the Supreme Court's decision in *Paroline*⁴²⁸ makes it more critical than ever for victims of child pornography to have sound legal advice and effective advocacy.

In one of the first child pornography restitution decisions issued after *Paroline*, the court noted "the difficulty of calculating an appropriate amount of restitution."⁴²⁹ In *United States v. Galan*, the Government sought restitution for two of the defendant's victims: \$3433 for "Cindy" and \$500 for "John Doe IV."⁴³⁰ Since *Paroline* failed to provide a reliable formula for calculating the amount of restitution owed to victims, in Cindy's case, the Government used the method of restitution endorsed by the Sixth Circuit in *United States v. Gamble*,⁴³¹ and pooled the losses incurred by Cindy after the date of the defendant's offense and then divided that amount by the number of standing restitution orders.⁴³² Based on the evidence submitted, the court found that Cindy was harmed by the defendant's trade in her sex abuse images, held that the *Gamble* method proposed by the government satisfied *Paroline*, and ordered restitution in the full amount sought (\$3433).⁴³³

However, the same court held that it could not order restitution in any amount for John Doe IV because the restitution submission on his behalf, which included both a previous restitution submission from 2008 and a recent letter from his adoptive mother that "evinces the extent of the trauma and torment caused by the continued trade in his images" and makes

⁴²⁵ Susannah Kahler, Marsh Law Firm, Preliminary Survey of Federal Child Pornography Production Cases Between 2000 and 2013 (Aug. 2013) (unpublished, on file with author).

⁴²⁶ *Id.* In *United States v. Duckey*, the Government moved for the appointment of a guardian ad litem "because the defendant is the father of the twelve-year-old victim." Motion to Appoint Guardian ad Litem at 2, *United States v. Duckey*, No. CR 07-869-PHX-FJM, 2008 WL 619145 (D. Ariz. July 24, 2007). According to the motion:

The defendant admitted to an FBI agent that he beat the victim, and the victim's step-mother was a witness to this beating and past beatings. The victim's biological mother is not a part of the victim's life at this point. The victim is in the care of State CPS, and the defendant is fighting to get custody back of the victim. In order to proceed with this case, the prosecutor is required to confer with the victim or the victim's representative concerning various matters such as any possible resolution. Normally the prosecutor would confer with the victim's parents as the victim's representative. In the case at hand that is not possible since one is the defendant and one is a witness to the abuse.

Id. The court granted the motion and a non-profit victims' rights legal services organization was appointed as guardian ad litem. The defendant was ultimately acquitted, but the record reflects that the guardian ad litem actively participated in the proceedings.

In *United States v. Hoggard*, the Government filed a motion requesting the appointment of a guardian ad litem for two minor victims. Since all of the documents are sealed, it is not clear why the Assistant U.S. Attorney asked for the appointment of a guardian ad litem in this case. *United States v. Hoggard*, No. 00-20035-RTD (W.D. Ark. Aug. 16, 2000). The case involved a prosecution under § 2251(b) (parent or guardian involved in the production of child pornography). A private attorney was appointed as guardian ad litem to represent the victim. Ultimately, the case was dismissed upon the Government's motion (the record suggests that the defendant was being prosecuted in a parallel state proceeding).

In the third case, *United States v. Lewis*, the court, on its own motion, ordered the parties to show why a guardian ad litem should not be appointed pursuant to § 3509(h) for four sex trafficking victims who were minors. *United States v. Lewis*, No. 09-00213-EGS (D.D.C. Sept. 1, 2010). The court appointed a private attorney to serve as a guardian ad litem for the victims primarily for the purpose of assisting the court in determining restitution. The record indicates that the guardian ad litem actively participated in the proceeding by, inter alia, securing expert witnesses and filing and responding to motions. The court ultimately ordered almost four million dollars in restitution.

⁴²⁷ Kahler, *supra* note 425. In *United States v. Boyd*, the Government filed a motion asking that the U.S. Attorney's Victim Witness Coordinator be provided with emailed notices in the case, but there was no indication in the record that the Victim Witness Coordinator was "representing" the victim. *United States v. Boyd*, No. 06-00464-DB (D. Utah July 14, 2006).

⁴²⁸ See, e.g., *Paroline v. United States*, 134 S. Ct. 1710, 1727-29 (2014) (determining the amount of restitution).

⁴²⁹ *United States v. Galan*, No. 11-60148-AA, 2014 WL 3474901, at *4 (D. Or. 2014).

⁴³⁰ *Id.* at *3.

⁴³¹ *United States v. Gamble*, 709 F.3d 541, 554 (6th Cir. 2013).

⁴³² *Galan*, 2014 WL 3474901, at *3.

⁴³³ *Id.* at *6.

“palpable” the “heartache and grief” experienced, did not provide an amount of losses incurred after the defendant’s offense nor provide a basis for calculating an amount of losses attributable to child pornography offenses.⁴³⁴ Thus, the court held that it “regrettably” could not honor the restitution request submitted on behalf of John Doe IV, “even in the amount of \$500.”⁴³⁵ The court explained its frustration with the current statutory framework:

Though the court has awarded restitution, the negligible amount and the piecemeal process under [the Mandatory Restitution Statute] can hardly be considered a victory for Cindy and other victims like her. The current statutory process for restitution does not fully compensate losses suffered by child pornography victims and may, in fact, dissuade victims from seeking restitution; the end result is hardly worth yet another reminder of their continued exploitation. The court cannot remedy this problem. Rather, it is up to Congress to develop a system to truly compensate child pornography victims for the losses they continue to suffer.⁴³⁶

The restitution opinion in *Galan* highlights the complicated analysis that courts must apply in light of *Paroline* (at least until Congress fixes the current statutory framework),⁴³⁷ and the need for victims to receive accurate and adequate guidance and support so that they can access the resources they need to fully recover.

Indeed, the United States, and other States Parties to the Optional Protocol, are expressly required to provide child pornography victims with support during criminal proceedings under Article 8, which states, “States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process.”⁴³⁸ Specifically, States Parties must inform victims of “their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases,”⁴³⁹ provide “appropriate support services to child victims throughout the legal process,”⁴⁴⁰ and “take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.”⁴⁴¹ Finally, the best interests of the child shall be a primary consideration in the treatment of child victims by the criminal justice system.⁴⁴²

⁴³⁴ *Id.* at *7–8.

⁴³⁵ *Id.* at *8.

⁴³⁶ *Id.*

⁴³⁷ Another opinion issued shortly after *Paroline*, echoes the frustrations conveyed by the *Galan* court. In *United States v. Crisostomi*, the court wrote:

For each of the victims, there are well-documented past and future medical and legal needs that can be considered for restitution. Nevertheless, even with the factors provided by the U.S. Supreme Court, this court has struggled in determining the proper level of restitution from Mr. Crisostomi. In this Court’s opinion, while some of the *Paroline* factors are determinable with some precision, a number of the factors are virtually unknown and unknowable, regardless of the detail available in the record. For example, how is a district judge to make a “reliable estimate of the broader number of offenses involved” when even the U.S. Supreme Court admits parenthetically that “most of whom will, of course, never be caught, or convicted?” It appears to this Court that some of the factors that the Supreme Court suggests be considered are at best difficult, and at worst impossible to calculate in this case as in most similar cases.

United States v. Crisostomi, No. 12-166-M, 2014 WL 3510215, *25–26 (D.R.I. July 16, 2014) (citation omitted).

⁴³⁸ Optional Protocol, *supra* note 55, at art. 8.

⁴³⁹ *Id.* at art. 8(1)(b).

⁴⁴⁰ *Id.* at art. 8(1)(d).

⁴⁴¹ *Id.* at art. 8(4).

⁴⁴² *Id.* at art. 8(3).

These provisions are in addition to those previously discussed in this Article including the United States' obligation to "take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery,"⁴⁴³ and to "ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible."⁴⁴⁴ In light of these obligations under the Optional Protocol, it is clear that victims of child pornography like John Doe IV in *Galan* need well-trained professional support and advocacy to guide them through today's complex restitution process and to direct them to other resources that can support their restoration such as victims' funds, civil remedies, copyright protections, government benefits, and more. Thus, federal courts routinely should be appointing guardians ad litem or attorneys to support child pornography victims under the law,⁴⁴⁵ and sufficient funding should be allocated specifically for that purpose.

VI. RESTORING FOREIGN VICTIMS

One of the most challenging and urgent aspects of victim restoration in the early twenty-first century is ensuring that foreign victims have meaningful access to the resources they need to support their full restoration. As one of the largest consumers of child pornography and a party to the Optional Protocol, the United States has a duty to ensure that victims from other countries are fully restored, at least from sexual exploitation by offenders who are citizens of or present in the United States (or its territories or aircraft or ships) or when the offenses were committed here.⁴⁴⁶ Although the Optional Protocol expressly distinguishes between those offenses that States Parties are obligated to establish jurisdiction over, it does not limit the population of victims whose restoration must be supported with equal access to adequate procedures to seek compensation from those legally responsible.⁴⁴⁷

Specifically, Article 4 provides that a State Party "shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State."⁴⁴⁸ States Parties also are required to "take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals."⁴⁴⁹ In other words, the Optional Protocol mandates that the United States work to establish jurisdiction if either (1) a child pornography offence is

⁴⁴³ *Id.* at art. 9(3).

⁴⁴⁴ *Id.* at art. 9(4).

⁴⁴⁵ 18 U.S.C. § 3509 (2012).

⁴⁴⁶ As discussed *supra* Part IV.B, Article 9(4) of the Optional Protocol states, "States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible." Optional Protocol, *supra* note 55, at art. 9(4). The language seems to imply that states parties have a duty to provide procedures for *all* child victims to receive compensation from those legally responsible. Further, Article 4(2) confers jurisdiction on states parties when the perpetrator is a national of the state, the perpetrator has his habitual residence in the territory, or the victim is a national of that state. *Id.* at art. 4(2). The broad scope of jurisdiction seems to imply that foreign victims are encompassed in "all child victims."

⁴⁴⁷ Optional Protocol, *supra* note 55, at art. 9(4).

⁴⁴⁸ *Id.* at art. 4(1) (emphasis added). The offenses referred to in Article 3, paragraph 1, expressly include "[p]roducing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2." *Id.* at art. 3(1)(c). Article 2 defines child pornography as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes." *Id.* at art. 2(c).

⁴⁴⁹ *Id.* at art. 4(3).

committed in the United States, its territories, or aircraft or ships registered in the United States, or (2) an alleged child pornography offender is simply present in U.S. territories.⁴⁵⁰ The only exception is if the alleged offender in the latter circumstance is being extradited for the offense, but only if the country to which the alleged offender is being extradited is also a state party to the Optional Protocol and the extradition is based on the fact that the alleged offender is a national of the receiving state.⁴⁵¹ When one considers the scope of child pornography offenses and offenders subject to the mandatory assertion of jurisdiction by the United States, the country's potential impact on child pornography crimes worldwide is profound.

However, there is more. In addition to the United States' mandatory assertion of jurisdiction over offenses and crimes under the circumstances described above, the Optional Protocol also allows the United States to work to establish jurisdiction over child pornography offenses without regard to where they occurred or where the alleged offender is if (1) the victim is a U.S. national, (2) the alleged offender is a U.S. national, or (3) the alleged offender makes the United States his or her habitual residence.⁴⁵² In summary, the United States either must or may try to establish jurisdiction over all alleged child pornography offenses committed: (1) against U.S. nationals (optional); (2) by U.S. nationals (optional);⁴⁵³ (3) by persons who make the United States their habitual residence (optional); (4) in the United States, its territories, or on board a ship or aircraft registered in the United States (mandatory); or (5) by an alleged offender who is present in the United States or its territories (subject to the extradition exception outlined above) (mandatory). This wide assertion of jurisdiction could be even greater if one were to recognize that child pornography offenses that are committed via ISPs based in the United States bring those offenses within the mandatory jurisdiction provision of Article 4, paragraph 1 of the Optional Protocol.⁴⁵⁴ In other words, it is arguable that the U.S. government is obligated to work to assert jurisdiction of a child pornography offense involving a Dutch national viewing the sexual abuse images of a Filipino child via an ISP based in the United States, even if neither the offender nor the victim has ever stepped foot in the United States physically. Such are the jurisdictional challenges of child pornography in the digital age.⁴⁵⁵ It becomes even more complex when one tries to define the "presence" of an alleged offender under Article 4, paragraph 3 committing a digital crime over an international network. Are we moving in a direction where a digital presence online will bring an offender or a victim under a country's jurisdiction without direct physical contact within the country's jurisdictional boundaries?

Even before these rapidly emerging questions are definitively answered, it is clear that the Optional Protocol obligates the United States to support the restoration of a significant number of child pornography victims both at home and abroad. At a minimum, it owes support to victims of offenses where the United States has (or should have) asserted jurisdiction. This support is owed to all victims of such offenses regardless of the victim's nationality or residence. In Article 8, it can be argued that the protections to victims are contextually limited to those

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.* at art. 4(2).

⁴⁵³ As noted in Part III.A, the PROTECT Act provides for extraterritorial prosecution of U.S. nationals. *See* Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21, 117 Stat. 650 (2003) (codified as amended at 18 U.S.C. § 2252 (2012)).

⁴⁵⁴ Optional Protocol, *supra* note 55, at art. 4(1).

⁴⁵⁵ Joel R. Reidenberg, *Technology and Internet Jurisdiction*, 153 U. PA. L. REV. 1951, 1954 (2005); Madeleine Mercedes Plasencia, *Internet Sexual Predators: Protecting Children in the Global Community*, 4 J. GENDER RACE & JUST. 15, 29-32 (2000). States Parties to the Optional Protocol should consider amending the treaty to more precisely define where a digital offense of child sexual exploitation is deemed to occur. A limited attempt was made to allow for recognition of overlapping jurisdictional authority in the Optional Protocol. Optional Protocol, *supra* note 55, at art. 5(4).

engaged in the criminal justice process, but Article 9 provides no explicit or implicit limitation on which victims are to be supported in “their full social reintegration and their full physical and psychological recovery.”⁴⁵⁶ Instead, States Parties are simply obligated to “take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences” in their full restoration.⁴⁵⁷ There is no limitation on victims. Moreover, Article 9, paragraph 4, expressly provides that States Parties “must ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, *without discrimination*, compensation for damages from those legally responsible.”⁴⁵⁸ In short, it is arguable that the United States, and all other States Parties to the Optional Protocol, is legally obligated to ensure that all victims of child pornography, regardless of nationality, residence, or location of offense or offender, are able to pursue compensation for the harms they have suffered.

One may interpret the legal obligations of the United States under the Optional Protocol several ways: (1) supports the restoration of only those victims harmed by those offenses that the United States actually gained jurisdiction over; or (2) expands the population to include those victims of offenses that the United States was mandated to try to assert jurisdiction of; or (3) further widens the population to include victims of those offenses that the United States had discretion to claim jurisdiction of; or (4) defines the population to its widest possible scope and asserts that the United States is obligated to support the restoration of all victims of child pornography around the world. Regardless, no one can dispute that within this population, even in its narrowest scope, is a group of victims who are foreign to the United States. The Optional Protocol is clear that the United States must ensure that they, too, have equal access to adequate procedures to seek compensation from those legally responsible.⁴⁵⁹

As outlined above, the United States' current statutory framework is failing domestic victims of child sex abuse and must be redesigned. During the process, it is critical for lawmakers to ensure that foreign victims will also have meaningful access to resources to support their recovery. As challenging and time- and resource-consuming as civil recovery is for domestic victims, it is not difficult to recognize that such lawsuits become virtually impossible for a village child in Guatemala, for example. Restitution is also clearly an empty process for most foreign children. If the Assistant U.S. Attorney working with John Doe IV and his adoptive mother in *Galan* was unable to prepare a restitution application that meets the standards of *Paroline*,⁴⁶⁰ then how is a rural child from Thailand expected to do so, especially when, as witnessed in most federal child pornography cases in recent years, the court fails to appoint a guardian ad litem?

With neither civil recovery nor restitution providing any meaningful access to adequate procedures to seek compensation for foreign victims, victims' funds become increasingly prominent as a possible solution. Unfortunately, most state-administered victims' funds currently require that the offense was committed in the state or the victim is a resident of the state in order for a claim to be approved.⁴⁶¹ When a perpetrator possesses or distributes foreign child pornography from his U.S. residence, the foreign victim should, at least, be able to recover some

⁴⁵⁶ Optional Protocol, *supra* note 55, at art. 9(3).

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.* at art. 9(4) (emphasis added).

⁴⁵⁹ *Id.*

⁴⁶⁰ *See supra* Part V.G.

⁴⁶¹ *See, e.g.*, OR. REV. STAT. ANN. § 147.015 (West 2015) (stating a person is eligible for compensation if defined as a victim); OR. REV. STAT. ANN. § 147.005(15) (West 2015) (defining victim as an Oregon resident or if the act occurred in the state). The requirement that the act occur in the state or the victim be a resident of the state is a mandate of using federal funds. 42 U.S.C. § 10602(b) (2012).

compensation from the victims' fund in the state where the perpetrator lives or where the offense was committed.⁴⁶²

Even when the law allows foreign victims to recover in the United States, many challenges are inherent. Child pornography distribution and possession offenders often live thousands of miles away from the victims and are never prosecuted. If a perpetrator were convicted, the cost to the victim in pursuing recovery in a foreign jurisdiction would be considerable, making recovery both impractical and unlikely. As discussed,⁴⁶³ victims' funds appear to be vastly underutilized by domestic victims; it is hard to envision foreign victims overcoming the administrative and other challenges that domestic victims have been unable to tackle, starting with the exclusion of certain child pornography offenses from eligibility in many state-administered victims' funds.

A coordinated global response focused on victim restoration may be the answer. Currently, no international body exists that distributes compensation to victims of child pornography. As child pornography continues to become more transnational, countries must consider how victims of one country can recover from perpetrators of another country in a fair and efficient method. There are a variety of models to consider.

States Parties to the Optional Protocol could task the U.N. Committee with hearing claims.⁴⁶⁴ This could be done as an expansion of the Optional Protocol to the Convention on the Rights of the Child on the Communications Procedure, which already allows for the filing of individual claims, but in a different context.⁴⁶⁵ Alternatively, the international community could create a new international court or hearing body (or amend the International Court of Justice's jurisdiction)⁴⁶⁶ to hear international child pornography claims from individual claimants. Another model would be an "International Victims Fund" modeled after the International Monetary Fund where countries would contribute to the fund on a pro rata basis according to the share of the child pornography offenses committed in their country or by their residents or nationals. Individual countries could collect their pro rata contributions to an international victims' fund from, for example, offenders' fines, penalties, forfeited bail bonds, and disgorged profits. Victims of child pornography could apply for a distribution from the fund regardless of the child's residence or nationality, the offender's residence or nationality, or the location of the offense.

Of course, the creation of an international victims' fund presents its own set of questions and challenges. For example, should all distributions be equal or should they be adjusted based upon the victims' local economy? A twenty-five thousand dollar distribution to a child in a rural village in India could have a significant transformative impact on a child and her family, and that impact could be positive or negative. Indeed, it could in fact, prevent the victim's rehabilitation and reintegration into her community, which would be contrary to the intent of the Optional Protocol. On the other hand, if distributions are made based on the victims' local economy, would that not create economic classes of victims that perpetuate and institutionalize discriminations

⁴⁶² However, as discussed above, determining the location of digital offenses is becoming increasingly complex. *See supra* Part II.A.

⁴⁶³ *See supra* Part III.B.

⁴⁶⁴ The U.N. Committee was established by the CRC and includes eighteen independent experts that monitor the implementation of the CRC and the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. Convention on the Rights of the Child, *supra* note 257, at art. 42–43; Optional Protocol, *supra* note 55, at art. 12. States Parties submit reports to the Committee on their implementation and the Committee may make recommendation on the state party's improved compliance. Convention on the Rights of the Child, *supra* note 257, at art. 44; Optional Protocol, *supra* note 55, at art. 12.

⁴⁶⁵ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, G.A. Res. 66/138, annex, U.N. Doc. A/RES/66/138, 66th Sess. (Jan. 27, 2012).

⁴⁶⁶ The International Court of Justice ("ICJ") is the primary court for disputes between U.N. member states. Currently the ICJ only has jurisdiction when a dispute is between states. Statute of the International Court of Justice art. 34(1), June 26, 1949, 59 Stat. 1031, 33 U.N.T.S. 993. If the ICJ were to hear claims by individuals, the ICJ statute would need to be amended.

that already exist within the global community? Should there be controls in place to ensure that fund distributions are being used for victim restoration or will it be paid to victims and their families without any conditions on how it is used? How can the international community ensure that the funds distributed are used for the benefit of the victim? If trusts are created for victims to ensure that the funds are used for their benefit, who would administer the trusts and oversee their integrity? How could an international fund avoid fostering “jackpot” mentality that might further incentivize the exploitation of vulnerable children? Would an international fund encourage and reward a victim mentality? Are there ways to create a fund that would foster and value victims’ resiliency and help them to view themselves as survivors? Is a “survivor mentality” possible in light of the continued victimization that is characteristic of child pornography in the digital age? These are just a few of the questions that should be considered as the United States and other States Parties to the Optional Protocol find ways to fulfill their legal obligations under Article 9 to support the full restoration of victims of child pornography in the digital age.

VII. CONCLUSION

Child pornography is rapidly spreading across the globe because of the rise of the Internet and other technologies. These technologies have compounded the harm caused to victims. No longer can a victim achieve full and lasting recovery after the initial sexual abuse ends. Today’s victims now face the possibility that they will be continually revictimized around the world as child pornography perpetrators view and distribute the sex abuse images of the original crimes. Victim restoration is as important as ever, but has become far more complex in an age of digitalization and increased globalization.

Although the United States provided leadership in creating a legal framework domestically and internationally to help combat child pornography and provide restoration to victims, the current framework is failing victims on a near-universal basis by not ensuring the recovery of victims. As all nine Justices of the U.S. Supreme Court made clear in *Paroline*, child pornography victims are entitled to restitution to support their restoration.⁴⁶⁷ The challenge is determining how, when, and in what amount. None of the current legal resources—the mandatory restitution statute, civil remedies, crime victim funds, or government benefits—provides child pornography victims with reliable access to resources that effectively support their full recovery and reintegration. It is time for the United States to adopt and implement effective legislation that supports the recovery of both domestic and foreign victims of child pornography and to ensure that they have meaningful access to the support and resources they need to fully recover from their abuse and exploitation.

⁴⁶⁷ *Paroline*, 134 S. Ct. at 1722, 1730, 1735.



CANADIAN CENTRE *for* CHILD PROTECTION®

Helping families. Protecting children.

SURVIVORS' SURVEY

EXECUTIVE SUMMARY 2017

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CANADIAN CENTRE for CHILD PROTECTION®
Helping families. Protecting children.

The **Canadian Centre for Child Protection Inc.** (Canadian Centre) is a charitable organization dedicated to the personal safety of all children. Our goal is to reduce the sexual abuse and exploitation of children, assist in the location of missing children and prevent child victimization. The Canadian Centre operates Cybertip.ca, Canada's tipline to report the online sexual abuse and exploitation of children, as well as other prevention and intervention services to assist the Canadian public.

Our mission is to:

REDUCE the incidence of missing and sexually exploited children

EDUCATE the public on child personal safety and sexual exploitation

ASSIST in the location of missing children

ADVOCATE for and increase awareness about issues related to missing and sexually exploited children

TO THE SURVIVORS OF CHILD SEXUAL ABUSE:

If you are a survivor of child sexual abuse, please know that our team is working very hard to make positive change happen for you and for future generations of survivors. We believe change is coming. It is important that we share with the public the reality of what we are seeing and hearing from survivors and what we are learning through our research and technical solutions. If you feel reading this information and our report might be difficult for you or if you find yourself feeling distressed after reading it, we encourage you to reach out to supports in your community. This could include personal supports (family and friends) or professional supports (therapists, psychologists, psychiatrists, local counselling and crisis response agencies). The online exploitation and abuse of children is a growing problem and the Canadian Centre for Child Protection is invested in finding solutions that will prevent this crime and provide protection and support to those impacted by it.

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Images used in this report are stock photos and have been obtained under license. The statistics, graphs and tables within this document are based on an analysis of information provided by 150 respondents on or before July 27, 2017. The survey was made available in four languages: English, French, Dutch and German. Data analysis was completed in-house by staff at the Canadian Centre for Child Protection Inc.

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CHILD SEXUAL ABUSE MATERIAL

For the past 15 years, the Canadian Centre for Child Protection Inc. (the “Canadian Centre”) has operated Cybertip.ca – Canada’s tipline to report the online sexual exploitation and abuse of children. Cybertip.ca has played an important role in protecting children in Canada. In addition to being the “front door” to the Canadian public for reporting concerns about the online sexual exploitation of children, Cybertip.ca works continuously to educate and inform the public that child sexual abuse and exploitation first begins in the offline world. The Canadian Centre, through its Cybertip.ca program, is in a unique position to collect and analyze data on the subject of online child sexual exploitation and in particular, the issue of child sexual abuse images that are circulated on the Internet. Since its inception in 2002, Cybertip.ca has received over 220,000 reports and is now averaging approximately 4,000 reports per month. Child sexual abuse images continue to be the most significant form of child exploitation reported to Cybertip.ca (98% of reports).

In the United States, the National Center for Missing and Exploited Children (NCMEC) serves as the national clearinghouse for child pornography reports. As of July 2017, NCMEC had received more than 21.7 million reports regarding child sexual exploitation. Currently, NCMEC’s CyberTipline averages approximately one million reports of child sexual exploitation each month. NCMEC also operates the U.S. Child Victim Identification Program and, as of July 2017, had reviewed more than 207 million images and videos of child sexual abuse material. Through NCMEC’s database, more than 13,200 child victims have been identified by law enforcement.ⁱ

While global efforts are being made to identify the children in child sexual abuse images/videos, the challenges are immense. Like other organizations working in this area, our agency is deeply concerned about the children being abused within this medium. Beyond the primary goal of removing children from abusive environments, there is much to be learned from identified children in sexual abuse content. These individuals not only shed light on the role of child abuse imagery in the abuse cycle, but they are also crucial witnesses to the ways in which offenders operate and connect with each other.

Over the past decade, the role of technology in facilitating sexual offences against children has evolved significantly, as has our understanding of sexual offending behaviour and the manifestation of these activities on the Internet. Like many other hotlines, Cybertip.ca has seen a marked increase in the number of reports over the past few years. The rise in reporting is related primarily to concerns involving child sexual abuse images and videos on the Internet.

While the Internet did not create the problem of child sexual abuse material, it does provide offenders with the unparalleled opportunity to access, possess, and trade child sexual abuse images and material, often anonymously. It also allows individuals to connect easily with offenders around the world who share similar sexual interests towards children. These connections not only facilitate the relentless sharing of pre-existing child sexual abuse material but can also provide a fertile network for the creation and distribution of new material.

We know through victim impact statements from adults who, as children, had their sexual abuse recorded, uploaded, and traded online, that the lack of control over the ongoing sharing of their abuse images and the public accessibility of those abuse images can be one of the most difficult aspects of the abuse to overcome.

Hotlines around the world are on the front line of witnessing the proliferation of visual and other materials that provide clear evidence of the sexual abuse of children taking place. Armed with this evidence, hotlines have the unique opportunity – and responsibility – to study and analyze the data received day in and day out in order to find ways to help bring relief to those who have been victimized.

OVERVIEW OF THE PROJECT

The Canadian Centre is a national charity dedicated to the personal safety of all children. Our goal is to reduce the incidence of missing and sexually exploited children while educating the Canadian public about ways to keep children safe. Through our role in operating Cybertip.ca, our agency has witnessed the growing proliferation of child sexual abuse material on the Internet.

“As a victim of this most horrific form of child sexual exploitation, I have felt alone, misunderstood and helpless. It is time for the world to understand child pornography and the unimaginable impacts it has on us, the victims. We need to find our voice to help those who wish to better understand and help us.” – Victim of child sexual abuse imagery

We are now seeing more and more victims of child sexual abuse whose abuse has been recorded reach adulthood. Information from these individuals offers a lens into the distinct challenges faced by victims of this crime. To better understand this aspect, the Canadian Centre launched an international survey in January 2016 for adult survivors whose child sexual abuse was recorded and that was, or may have been, distributed online. Since that time, we have had 150 survivors participate in the survey and contribute valuable details and information about their experience.

The goal of the survey is to learn about the experiences of this population, as well as to determine what policy, legislative, and therapeutic changes are required to respond to the needs of survivors. In order to achieve this goal, a working group of international experts was established.

INTERNATIONAL WORKING GROUP

An international working group comprised of experts on child sexual abuse was established so that its members might contribute knowledge and feedback toward the development of the survey questions and design, as well as to collaborate in crafting global recommendations based on the survey results. Co-chaired by Lianna McDonald, Executive Director of the Canadian Centre and Michelle DeLaune, Chief Operating Officer of the National Center for Missing and Exploited Children, the international working group included psychologists, psychiatrists, physicians, lawyers, clinicians, and child advocates. The initiative also benefited immensely from the participation of the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, Corinne Dettmeijer-Vermeulen.

“As child pornography victims grow older, many come to realize that the images of their sexual abuse will continue to exist and be consumed for the remainder of their lives, and that they are largely powerless to end the abuse. This knowledge may haunt the victims for years because possessors and distributors will continue to consume, and possibly distribute, the images and recordings indefinitely...A recent survey revealed that almost ninety-five per cent of child pornography victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy.”ⁱⁱ

In October 2016, the Canadian Centre prepared a summary of the surveys received up to that point (115) and welcomed members of the working group to Ottawa, Canada. A Summit was held to discuss the information shared and help develop global recommendations intended to assist the growing population of victims, with specific attention paid to those whose abuse was recorded and disseminated online. Other stakeholders such as crown prosecutors, law enforcement, and government representatives were also invited to contribute their expertise to the process.

INTERNATIONAL OBLIGATIONS

When considering the results of the survey and the applicability of each recommendation in a domestic context, the international commitments made to protect children from exploitation and abuse must be kept in mind. To date, over 170 nations have ratified the United Nations Convention on the Rights of the Child (“UNCRC”) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the “Optional Protocol”). The UNCRC is the most universally accepted human rights framework in the world and reflects the commitment of world nations to safeguarding the most vulnerable members of society. Article 34 emphasizes that signatory nations must take all appropriate national, bilateral and multilateral measures to prevent the sexual exploitation of children. Article 19 speaks to a child’s right to be protected from physical or psychological harm, neglect, abuse, or mistreatment. Article 39 goes further and commits all signatories to take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child if they are subjected to the harms in Article 19. This is reiterated in Article 9 of the Optional Protocol. The Optional Protocol also includes a commitment by each signatory to adopt appropriate measures to protect the rights and interests of child victims at all stages of the criminal justice process (Article 8), and ensure access to adequate procedures to seek compensation from those criminally responsible (Article 9, point 4).

It is imperative world nations recognize their obligations under international law and critically examine the ways in which they are meeting such obligations, particularly in light of the information shared through this survey. We can, and we must, do better.

ABOUT THIS REPORT AND THE SURVIVORS' SURVEY

Intended Purpose

The purpose of this report is to provide a summary of the data that has been received and analyzed to date. Given the importance of the issues raised by the survey, and the information shared by survivors so far, it has been decided that the online survey will remain open for the foreseeable future. The Canadian Centre wishes to ensure that all survivors who wish to contribute their voice to the data are able to do so.

Understanding the Data and its Presentation

The statistics, graphs and tables (the “Summary Data”) within this document are based on an analysis of the information provided by 150 victims in survey responses entered on or before July 27, 2017.

Percentages: All percentages are rounded up to the nearest percent and therefore may add up to over 100% due to rounding.

Numbers: Not all graphs or tables will be out of 150 because survey respondents were able to skip questions; not all respondents were eligible to answer all questions (some questions were only asked if a respondent answered ‘yes’ or ‘no’ to a previous question, for example); and the responses of some respondents did not fit the question that was asked.

Multiple responses: For some questions, the responses may have fit multiple categories and so the graph for such questions would not represent the number of respondents but instead represents the number of responses of each particular type. Such graphs are marked with the legend Multiple Responses per Respondent.

Sample quotes: The quotes from survivors have been reproduced verbatim to the fullest extent, but may have been edited for length, spelling or to remove information that may be personally identifying. Some text reproduced may also be from a translated version of the statement provided.

Response Type. Some questions required a simple yes or no response and some allowed respondents to choose one or more answers from a drop down list and such responses are presented in a simple graph fashion. For many of the questions, however, respondents were free to use their own words in response to the question. These narrative-type responses were reviewed to identify themes and similarities so that the information could be presented in a collective manner.

In the process of writing the preliminary report (released January 2017), it was noted that information shared by a survivor in response to one question was sometimes relevant to understand their response to, or to answer, a different question. In order to provide the most robust analysis possible, for the purpose of this report, a cross analysis of responses to various questions was performed to ensure all information shared by the survivor that was relevant to the question was reflected.

Surveys Included in Analysis

The 150 surveys that were selected for inclusion in the analysis were the surveys that contained enough salient information to permit meaningful analysis. By way of explanation:

1. Certain questions in the survey were mandatory – such as whether the respondent was over the age of 18, and whether the respondent had her/his child sexual abuse recorded. If the respondent indicated that s/he was under the age of 18, or did not have her/his sexual abuse recorded, s/he was not able to continue on with the survey, and those surveys were excluded from the analysis.
2. The survey was comprised of different question types. While some questions required only a yes/no response and some provided multiple choice options, the vast majority of questions allowed the respondent to answer the question in her/his own words and language. The surveys received that included responses only to some of the yes/no and/or multiple choice questions, with no narrative responses completed were excluded from the analysis.
3. As the survey was quite lengthy, it was recognized that respondents may not want or be able to complete the survey in one session. Thus, survey respondents were able to respond to as many questions as they wanted, then take a break and come back at a later time to continue the survey. Survey respondents were given 30 days to complete the survey once they had started. If a participant chose to return to complete additional questions, that participant was also able to edit and/or delete past responses if desired. The last question of the survey asked the respondent to click a button to “complete” the survey. All other surveys were deemed to be “incomplete.”
 - a. All of the surveys that were “complete” as of July 27, 2017 were included in the analysis, unless the survey had been excluded for the reason set forth in item 2 above, the information that was in the survey was unintelligible, or if the information did not appear to be authentic.
 - b. All surveys that were “incomplete” as of July 27, 2017 were assessed separately. Those that had been dormant for at least 30 days and that included salient details in response to at least some of the narrative-type questions, and that appeared to reflect an authentic attempt to complete the survey, were included in the 150 surveys available for analysis.

Limitations: The survey was administered online and it is assumed that the respondents who completed the surveys included in the analysis were truthful in the responses given. It is possible that an individual who did not meet the criteria completed the survey. It is also possible that a respondent completed the survey more than once. Due to the nature of the survey, researchers could not seek clarification of unclear responses provided by respondents and so some responses were not included in the analysis. In addition, while the survey was promoted directly by the Canadian Centre and by members of the International Working Group through various means, it is recognized that individuals who learned of the survey may have been those who were more likely to be currently engaged in some kind of victim's support or other network.

Survey Design and Administration

In creating the survey, the Canadian Centre consulted with a number of professionals who are experts in related fields, as well as victims who have been affected by this crime. Careful consideration was given to the way in which the survey was designed and carried out, including:

- Administering it online to increase anonymity and allowing victims to complete it at their own pace with the hope that the format would yield more information
- Dividing it into sections and providing participants with a brief description of the type of information covered in each area and reasons for why the information was being sought
- Allowing participants to skip sections as well as individual questions
- Encouraging participants to take breaks from completing the survey and allowing survivors to re-access their particular survey using a unique access code
- The number of questions that were restricted to a yes/no or multiple choice response were kept to a minimum, which allowed participants to share the information however they saw fit rather than having to try and reduce their experience to a set of pre-defined responses
- The survey was made available in four languages (English, Dutch, German and French).

In addition, there are two distinct pools of participants who participated in the survey. One pool is comprised of participants with whom the Canadian Centre and/or a member of the International Working Group had a direct relationship. Thus, it is known that the individuals in this pool met the survey criteria and had an identified support person in their lives (e.g., therapist, family member). The other pool of participants is comprised of individuals who would have learned of the survey in some other way (e.g., general media, online support network, etc.). This pool of participants was required to answer some additional verification questions to help ensure their experience met the criteria for the survey, but otherwise answered basically the same questions as the verified pool of participants.

Survey Versions

A preliminary report released January 17, 2017 was based on a previous version of the survey which was closed off on November 28, 2016. The preliminary report included information from 128 respondents. The Canadian Centre has been running the new version of the survey since November 28, 2016.

Organized Child Sexual Abuse Data

As we began to review and analyse the results of the surveys, a number of themes became immediately and undeniably apparent. While we fully recognize the limitations of a self-reported survey, the consistency of the accounts of abuse told by the survivors – accounts which spanned countries, continents, and language – could not be ignored. One troubling consistency was the prevalence among the spectrum of abuse experiences recounted by the survivors of what has been designated organized child sexual abuse.

For the purposes of creating consistent language and understanding, the term “organized child sexual abuse,” when used in this document, means abuse that involves a child or multiple children being subjected to sexual abuse by multiple offenders working together to commit the abuse.

Throughout the report, findings specific to the surveys meeting the working definition of “organized child sexual abuse” set out above are included. These findings are based on data collected from the responses of 49% of the total survey respondents who, as survivors of organized child sexual abuse, shared their similar and startlingly disturbing experiences.

WHAT WE LEARNED FROM SURVIVORS

As previously mentioned, the survivors who completed the survey shared a tremendous amount of information about their abuse experiences and the day-to-day struggles they face. Notably, there was a strikingly high degree of common responses and shared experiences despite the fact that survey respondents were located in several different countries, were able to respond to questions in their own words, and could provide as much or as little detail as they chose.

What follows are the key themes that need addressing and potential solutions, which became readily apparent from an in-depth review of the data:

1. Recording the sexual abuse of a child has a significant, lifelong impact on the victim.

The fact that images/videos of a child’s sexual abuse were created at all, as well as the fact that they may still be possessed by the abuser and be publicly available for others to access, has an enormously negative impact on the individual. The impact can persist into adulthood and may significantly reduce the ability of survivors to cope with day-to-day stressors, maintain healthy relationships, and reach their full potential in educational and occupational pursuits.

Nearly 70% of respondents indicated that they worry constantly about being recognized by someone who has seen images of their abuse (n=103). Thirty respondents (30%) reported being identified by a person who had viewed the child sexual abuse imagery.

By taking concrete steps to prevent new child sexual abuse material from becoming publicly available and curbing the public availability of images that have already been posted online, the ongoing harm to survivors and new victims can be reduced. Consideration should be given to adopting Project Arachnid as the global platform for quickly detecting and issuing notices to hosting providers that have an obligation to then immediately remove the material.ⁱⁱⁱ

My child sexual abuse imagery is out there for anyone to see, I will forever be taken advantage of. It's not something that will ever go away. Being the adult I am now, my photos are still out there, as long as the internet exists my photos will always be out there. Sites will be taken down but new ones are somehow being put back up. As far as I know there is just no way of permanently deleting those photos. There is no way I can finally be done with this abuse. I have to live my life guarded and can never fully trust anyone. My own father did this to me. A man placed in my life to protect me, not hurt me, abused me. And now thousands of other people continue to do the same." – Survivor, in response to the question "Please describe how the existence or distribution of child sexual abuse imagery impacts you differently from the hands-on abuse"

2. Most victims were abused from a young age, by a family member and for some, continuing into adulthood.

- For 56% of the survivors, the abuse began between age 0-4, and 53% of those respondents indicated that the abuse continued into adulthood.
- 58% of survivors reported having been abused by more than one person – some by multiple family members.
- 50% of the survivors abused by one person indicated that the abuser was a parent or extended family member, while 82% of the survivors who were abused by multiple offenders indicated that the primary abuser was a parent or extended family member.
- 36% of survivors indicated that the sexual abuse continued into adulthood (18+).

We need to improve education and training on the issue of child sexual abuse among professionals to empower them to recognize and respond appropriately. Those in a position to uncover abuse must better understand the dynamics of different abuse situations; how to recognize and respond to abuse committed within a family context; and about the impact of trauma and how it can present in the victim. Such training could have a significant impact on the ability of stakeholders to identify abusive situations and believe survivors when they come forward.

"Sometimes a story is too incredible, but unfortunately it can still be founded in truth. Try to search for that with the victim. I was SO scared when I talked to the police. To me there was truly nothing worse than the idea that I was accusing my own father. So strange. So horribly strange, because he'd done the most horrible things to me. but I was still so loyal.. Try to take that into account in your work as police." – Survivor, in response to the question "What do you want police to know?"

3. We should not rely on disclosure alone to stop child sexual abuse.

There are a multitude of reasons why a child may not talk about the sexual abuse that is happening to them, the most prominent arising out of the power imbalance between the offender and the victim. Survivors reported that threats or physical abuse were commonly used thus serving to silence victims and maintain their compliance. While many survivors did tell someone about the abuse at some point, many did not do so while the abuse was still happening or until they were adults. Even more concerning, for those who did disclose their experiences as a child and while the abuse was still happening, the abuse did not always stop. Survivors reported that sometimes this was

because what they were saying was not believed or because their abuser was able to manipulate perceptions, but sometimes it was because the individuals who should have protected them once told, did not. Previous research has established that child sexual abuse is difficult to prevent, detect, and interrupt given its secretive nature, the powerlessness of the victim, and that disclosure is an incredibly arduous process.ⁱⁱ Moreover, those children who are abused in a family or organized context may not have a safe person in their life that they can tell or who will take effective action to stop the abuse if they do tell. The survey also found that there were a significant number of victims who were threatened with terrifying promises of harm that were exceedingly violent in nature.

There is an urgent need to reframe how we are tackling this issue – current intervention responses are inadequate and the existing model that primarily depends on a child disclosing is not feasible, nor is it fair to the child who is experiencing the abuse. We need to strengthen the coordination and communication between all systems and entities that intersect with victims of child sexual abuse and online exploitation. This includes, but is not limited to, child welfare, schools, hotlines, therapists, police, industry, child-serving organizations and advocacy centres. Targeting and investing resources and training to assist police, child welfare, and other protective systems to more readily recognize situations of risk will enable these systems to do a better job of uncovering and intervening where warranted, thereby taking the unrealistic pressure off children to disclose in order to be protected.

When I confided in the first persons, they responded with incredulity, in the process, I didn't even come close to describing the entire dimension of the violence. I was not taken seriously and not protected. I didn't have any strength left to confide in anyone because I was so scared of being let down again. I was only able to make a new attempt when it became clear to me that I would die anyway and that it would be my only chance to survive.

- Survivor in response to the question "How was the hands-on child sexual abuse uncovered"

4. Many survivors reported multiple offenders and/or multiple children involved in their sexual abuse.

The Internet has provided an opportunity for offenders to connect and work together in an organized fashion to commit more and more extreme sex acts against children. The depraved and pervasive nature of the sexual abuse reported by many of the respondents was shocking. For example, 58% of survivors were abused by more than one offender, and 49% of survivors appeared to have been victims of 'organized sexual abuse'.

Organized Sexual Abuse

The term organized sexual abuse, when used in this document, means abuse that involves a child or multiple children being subjected to sexual abuse by multiple offenders working together to commit the abuse.

In order to remedy this situation and produce mechanisms for supportive and effective intervention, a greater understanding of the symptoms and mechanics of dissociation disorders and organized sexual abuse is required at all levels.

5. The unique needs of survivors of child sexual abuse imagery are not being adequately addressed.

Existing support services are not meeting the specialized needs of survivors. Not only is the victimization experienced by this population unique and complex, but the impacts of the abuse experience are long lasting and often lifelong. From what we have learned, not only do these survivors have incredible difficulty finding and financing the supports they need, but they require different levels and types of support at specific points throughout adulthood. Short-term and generic trauma counselling will not lead these survivors to an adequate place of recovery.

There is a necessity to develop comprehensive systems and remedies to properly recognize the rights and unique needs of victims whose abuse was recorded. Survivors would benefit from having accessible, knowledgeable therapists and attainable mechanisms for receiving financial compensation. Survivors must also be provided with the opportunity to have their voices heard within the criminal justice system (e.g., victim impact statements).

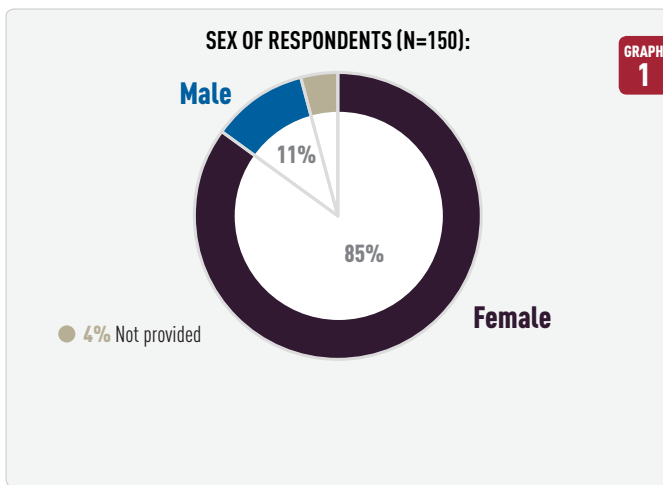


DEMOGRAPHICS

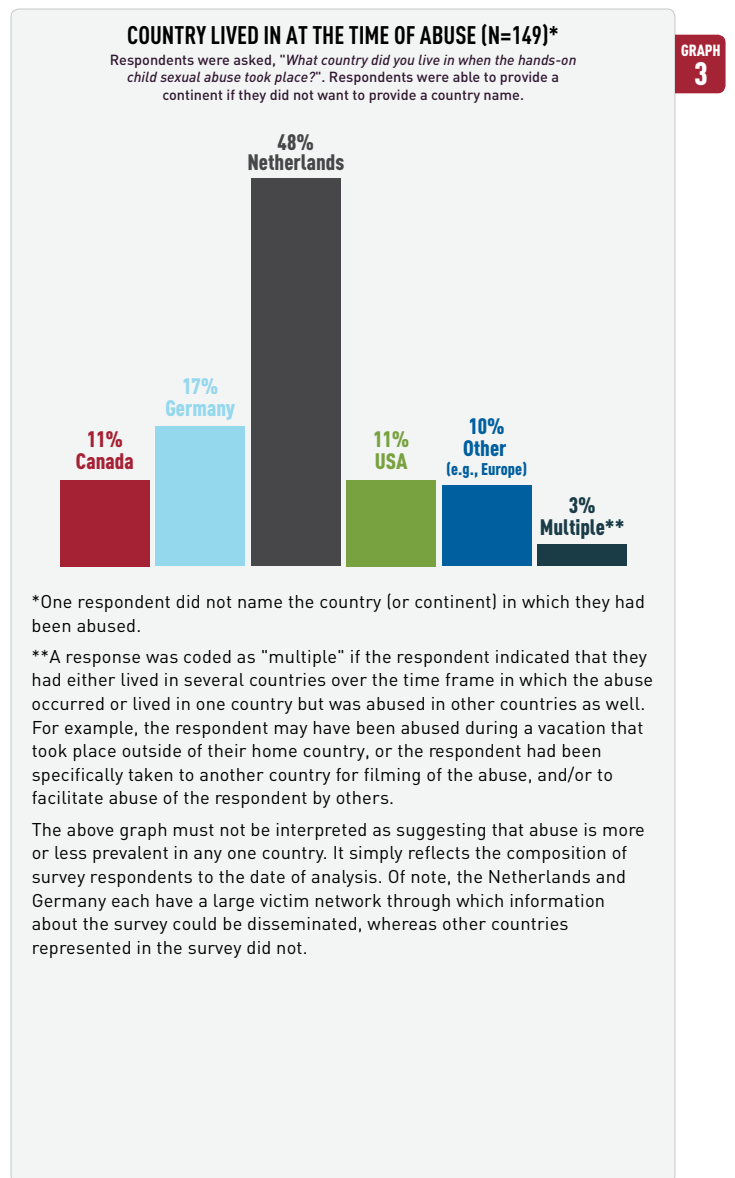
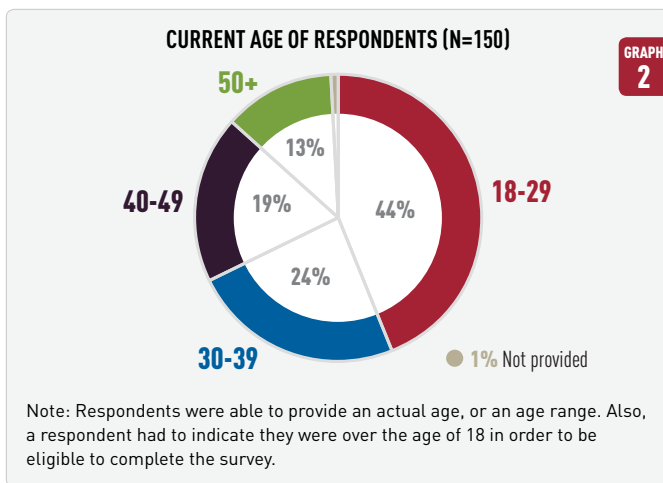
Similar to what hotlines around the world witness in addressing child sexual abuse material, the overwhelming majority of survey respondents were female (85%) — see Graph 1. This is consistent with international research studies examining rates of child sexual abuse.

For example, a 2009 review of 65 prevalent studies involving 22 countries showed 7.9% of men and 19.7% of women had experienced some form of child sexual abuse prior to the age of 18.ⁱⁱⁱ The 65 studies had a total of 37,904 male participants and 63,118 female participants.

Respondents also provided the country or continent lived in at the time of abuse — see Graph 3.



Close to 70% of the respondents were under the age of 40, with 44% being between 18-29 years of age — see Graph 2.

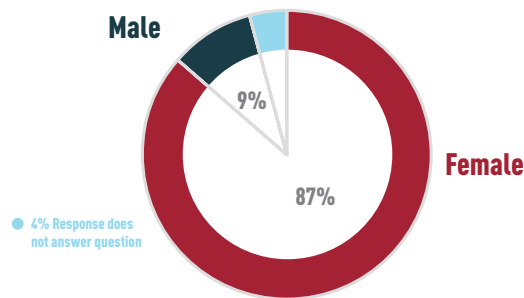


Organized child sexual abuse demographics

The limited published data on the subject of organized child sexual abuse point to the fact that, generally, girls comprise the primary targets in most cases of organized sexual abuse. This fact is consistent with our findings - the vast majority of respondents whose sexual abuse is categorized as organized were female (87%) — see Graph 4. The ages of the respondents reported at the time of the survey demonstrate an almost equal division with 28% between the ages of 18-29, 30% between 30-39, and 31% aged between 40-49. The remaining 11% of the respondents indicated their current age as 50 years or older — see Graph 5. The country or continent that the organized sexual abuse respondents lived in at the time of abuse was largely consistent with the overall respondent pool as reflected in Graph 3 — see the Survivors' Survey Full Report (2017) for more information.

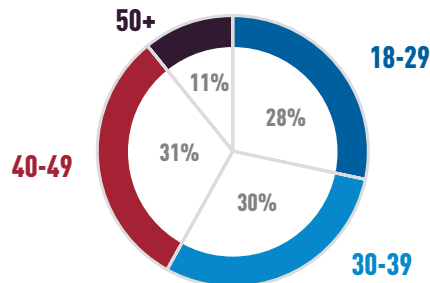
GRAPH 4

ORGANIZED SEXUAL ABUSE - SEX OF RESPONDENTS (N=74)



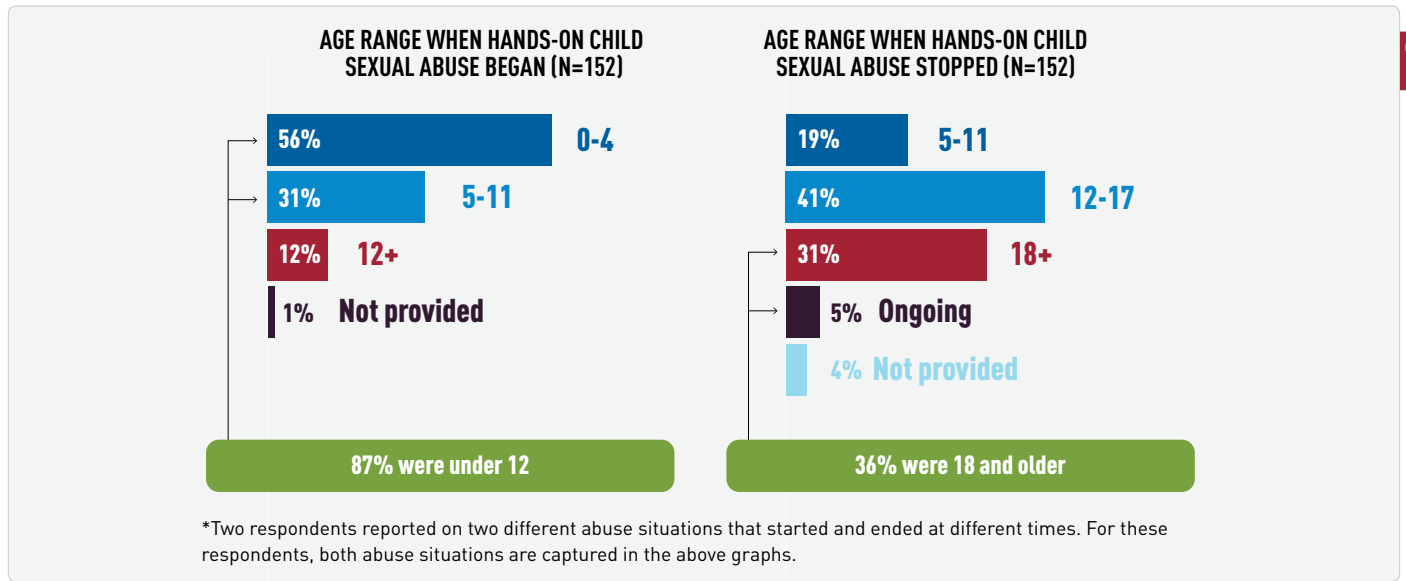
GRAPH 5

ORGANIZED SEXUAL ABUSE - CURRENT AGE OF RESPONDENT (N=74)

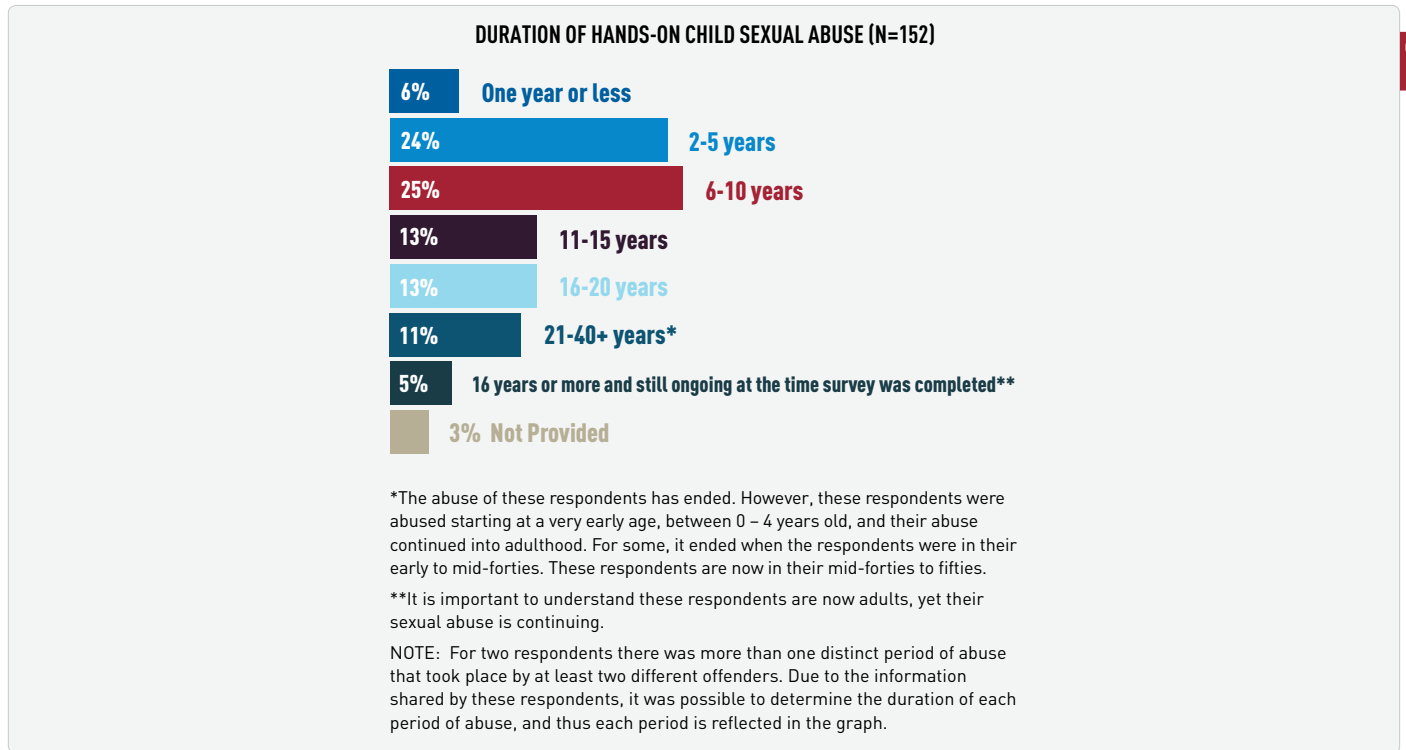


CIRCUMSTANCES OF ABUSE

This section summarizes the information received from respondents about the dynamics and circumstances of the sexual abuse (including the recording of sexual abuse) and highlights some disturbing data. 87% of the respondents were 11 years of age or younger when the hands-on abuse began and for 56% of the survivors, the abuse began before the age of 4 — see Graph 6. Deeply concerning was the duration of the abuse which, for many of the survivors (36%), continued into adulthood, with 42% having been abused for more than 10 years — see Graphs 6 and 7. The data also suggest that the younger the age at which the abuse commences, the greater the likelihood that the abuse carries on into adulthood — see Graph 8 — this is a pattern also seen in the cases of organized sexual abuse.



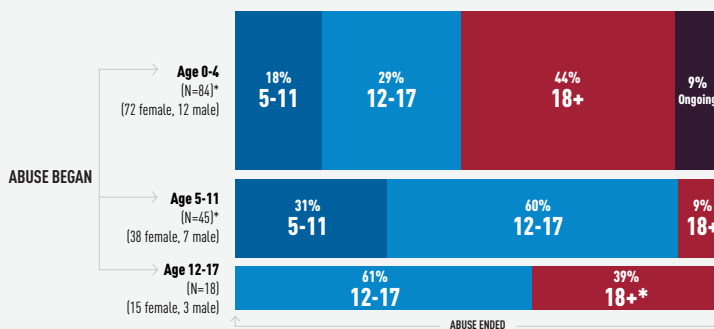
GRAPH 6



GRAPH 7

GRAPH 8

AGE RANGE WHEN ABUSE STARTED AND ENDED (N=147)



*Not all respondents provided a response to both the questions: *At what age did the hands-on child sexual abuse start (to the best of your recollection)?* and *At what age did the hands-on child sexual abuse stop (to the best of your recollection)?*. Therefore, the numbers in the above graph only represent respondents who answered both questions.

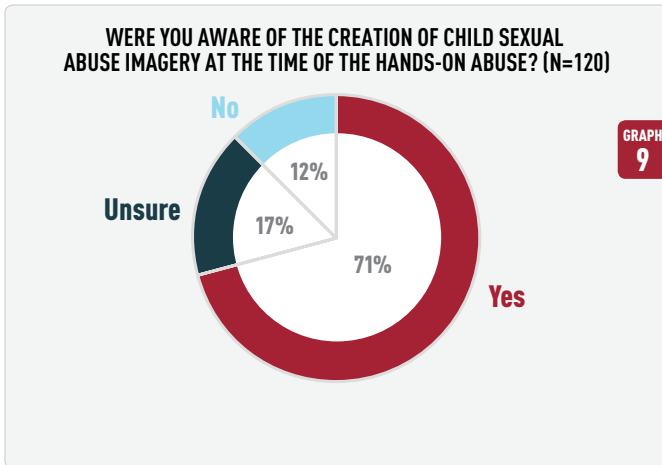
*Two respondents reported on two different abuse situations that started and ended at different times. For these respondents, both abuse situations are captured in the above graph.

The above graph provides information about the age range of respondents when their abuse started in comparison with when it ended. The first bar represents the 84 respondents who indicated that their abuse began between the ages of zero and four, the bar in the middle represents the 45 respondents who indicated that their abuse began between the ages of five and 11 and the last bar represents the 18 respondents who indicated that their abuse began between the ages of 12 and 17.

Notably, the duration of victimization was generally different for boys and girls. Salter states that in cases of organized sexual abuse, while the abuse of boys tends to stop in their early to mid-teens, the abuse of some girls is usually longer and may continue into adulthood.^{iv} Data gained from this survey (related to organized and non-organized scenarios) was consistent with Salter’s findings; survey respondents who are female indicated abuse which occurred earlier, was likely to extend into adulthood and thereby take place over far longer periods of time.

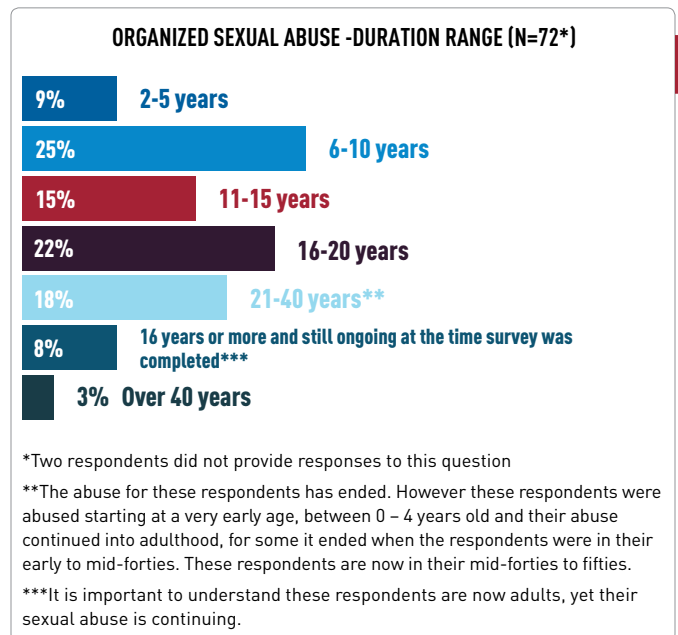
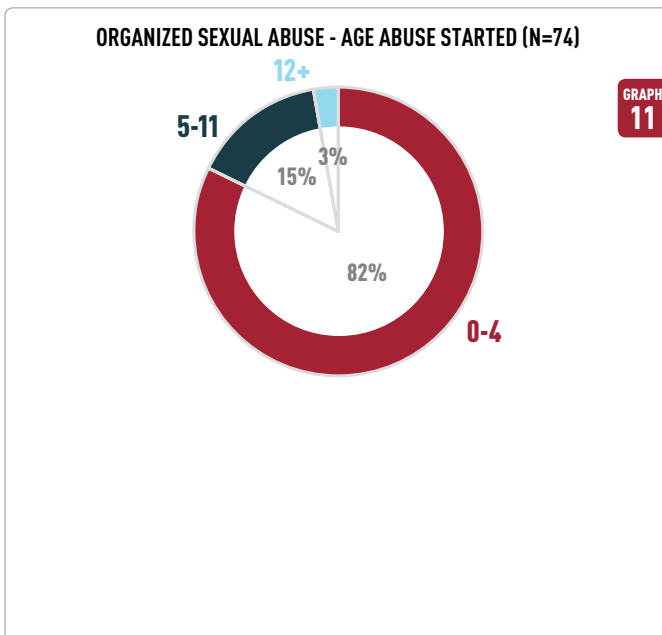
Child sexual abuse recordings

The survey specifically sought to better understand the prevalence of child sexual abuse being recorded by offenders (whether or not the recording was ever distributed) and what survivors may have understood at the time of recording. 71% of survey respondents indicated they knew the sexual abuse was being recorded at the time of the abuse, while 17% stated that they were unsure whether or not they knew that it was being recorded at the time they were being abused (n=120) — see Graph 9. Those who were unsure realized, once they got older, that recording had occurred. While many survivors were not told the reason for the recording of the abuse, what they were told or what they understood the general motivation for recording to be was: to silence and control the victim; for the offender’s personal use (sexual gratification); and for sharing with other offenders (n=69) — see Graph 10.



Organized sexual abuse circumstances

Analysis of the survey data revealed that survivors of organized sexual abuse (n= 74) typically experienced the abuse beginning at an earlier age which lasted longer in duration when compared to those whose abuse was not organized. 82% of respondents in the organized sexual abuse category were in the 0-4 age group when their abuse began — see Graph 11. Furthermore, a quarter of organized sexual abuse survivors endured victimization lasting between 6 to 10 years (n=72), followed closely by a duration of abuse spanning 16 to 20 years (22% of the respondents). Our shock at this finding was only equaled by the revelation of the complete abuse duration spectrum: at one end, the minimum duration of abuse suffered was between two and five years (9%), while at the other end, 21% had endured abuse lasting for a minimum of 21 years — see Graph 12.



OFFENDERS AND OFFENDING BEHAVIOUR

This section summarizes the information received from respondents about the individual (or individuals) who abused them as well as the dynamics of the abuse and their experiences.

Number and sex of offenders

A concerning number of respondents (58%) reported having had more than one person abusing them — see Graph 13. Respondents were not directly asked the sex of the offender(s) but where it was possible to determine the sex, it was predominantly males. A surprising number of respondents, particularly in the organized sexual abuse category, reported the involvement of females — see Graphs 14 and 28 — and the scope of their involvement ranged from tacit acceptance to active participation.

GRAPH 13

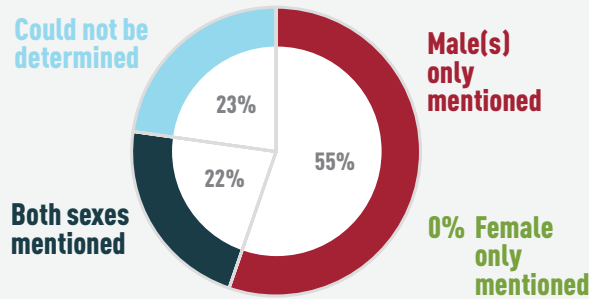
NUMBER OF OFFENDER(S) (N=150)



*"Unknown" includes respondents who did not respond to the questions about the offender(s) and those who did not provide sufficient information to determine whether or not the respondent had been abused by one or more offenders.

GRAPH 14

SEX OF OFFENDER* (N = 150)



Note: Respondents were not directly asked what the sex of the offender(s) was/were until the survey was updated in November 2016. For a total of 34 respondents it was not possible to determine the sex of the offender(s). If a female offender was mentioned, it was in conjunction with one or more male offenders. There were no respondents who indicated the abuse was carried out solely by female offender(s).

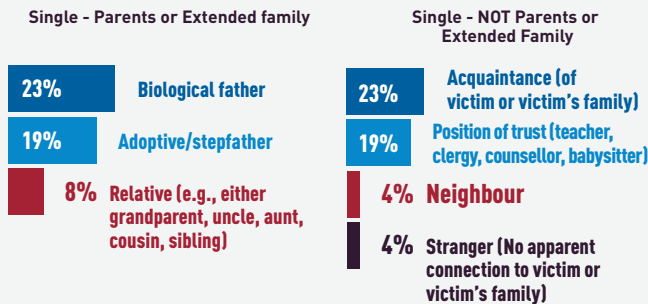
*For this graph, information about all offenders mentioned by a respondent was analyzed.

Child's relationship to offender

A significant number of offenders were parents or extended family members - 50% of "single" offenders (n=26) were classified as either a parent or an extended family member (42% of "single" offenders were parents, of which 100% were male) — see Graph 15. 82% of the primary offenders involved in the "multiple offender" scenarios (n=83) were also parents or extended family members (67% were parents and were predominantly, but not exclusively, male) — see Graph 16.

SINGLE OFFENDER: RELATIONSHIP OF THE OFFENDER TO THE VICTIM (N=26)

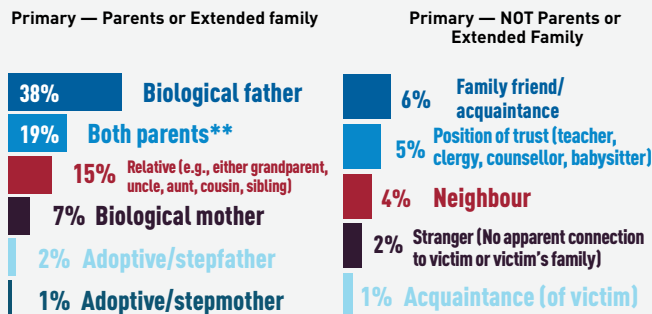
GRAPH
15



50% of the single offenders were a parent or part of the child's extended family.

MULTIPLE OFFENDERS: RELATIONSHIP OF PRIMARY OFFENDER TO THE VICTIM (EXCLUDES "OTHER")* (N=83)

GRAPH
16



*Not included in this graph are the relationship of victims who reported having had more than one abuser but at different times in their life (i.e., the abusers do not appear to have been known to each other or to have worked together to commit the abuse).

**Note: A response was coded as "both parents" if the respondent identified the offender(s) as "parents" and it was not apparent by the response, or other information shared by the respondent in the survey which parent was most involved / responsible for the abuse.

82% of the primary offenders who abused the child along with others were a parent or part of the child's extended family.

Gaining access and time alone

Gaining access and time alone with the child was not difficult, given that 64% of respondents (n=99) lived with an offender — see Graph 18 — and that offender was typically a parent or extended family member. Nearly three-quarters (74%) of the “secondary” offenders (i.e., other than the “single” or “primary” offender) gained access to the respondent (n=82) through a parent or extended family member — see Graph 19. When asked to describe how the offender was able to carry out the abuse, many respondents referred to their “single” or “primary” offender getting them alone or isolated, but equally as many simply referred to their relationship with the offender or their living arrangements (e.g. “He was my father. He always had access to me”) — see Graph 17.

GRAPH 17

TACTICS USED BY THE PRIMARY/SINGLE OFFENDER (N=100)

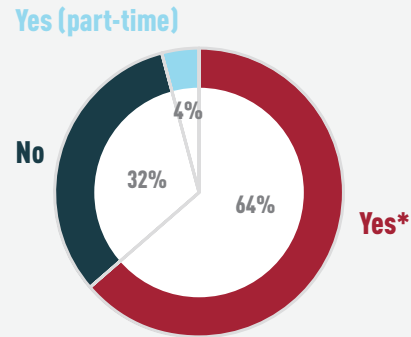
Multiple Responses per Respondent



Other tactics noted include abducting the victim (3%), drugging the victim e.g., “drugging with chloroform or something similar” (3%) and using a position of authority e.g., doctor (3%).

GRAPH 18

DID RESPONDENT LIVE WITH ONE OR MORE OFFENDER(S)? (N=99)



*92% of these respondents lived with a parent(s) who was involved in the sexual abuse of the child.

GRAPH 19

CONTEXT IN WHICH THE SECONDARY OFFENDER GAINED ACCESS TO THE VICTIM (N=82)

Multiple Responses per Respondent

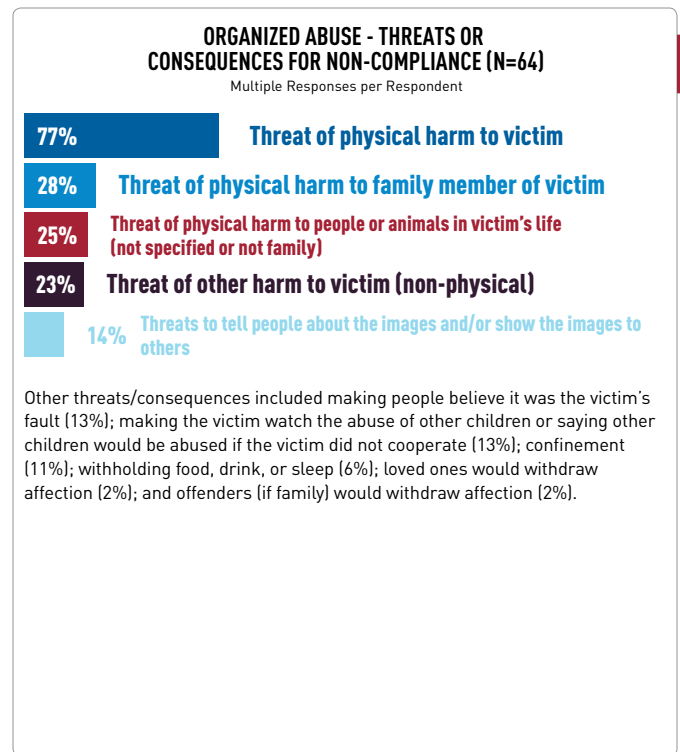
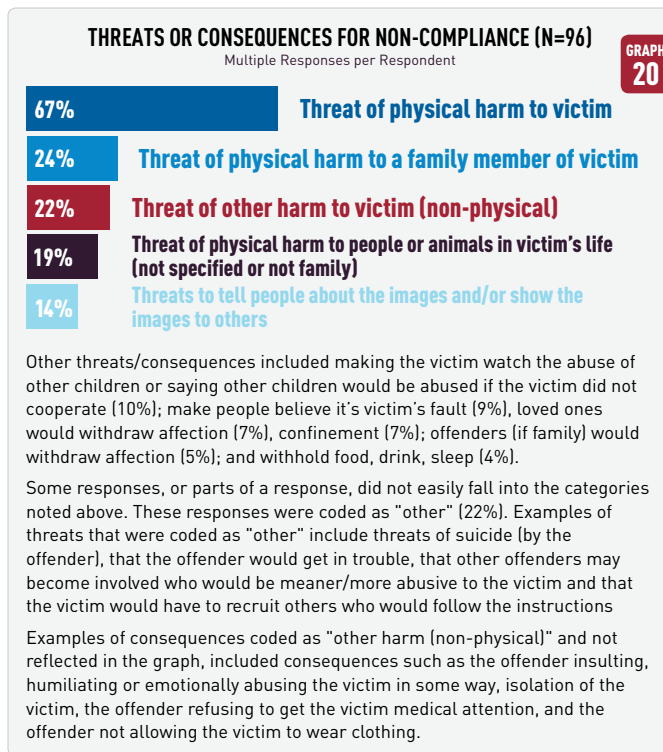


1. The majority (89%) of those arranging the abuse by secondary offenders were parents. For all but 3 respondents the parent/extended family member was part of an organized network of offenders.
2. Abuse occurred within an organized network of offenders, of which parents were not involved.

Every free moment (nobody’s around) was made use of; I was never safe. The perpetrator made me responsible for ensuring that we weren’t caught. I had to keep watch over the door of the room where it happened and keep an eye out for bystanders when it happened in the car. The perpetrator took more and more risks. In the end it seemed almost as if he wanted to get caught ... -Survivor, in response to the question “How did the offender involved in the hands-on child sexual abuse gain time and access alone with you?”.

Tactics and Threats

As with many victims of child sexual abuse, survivors (n=96) reported that threats were not uncommon and that offender(s) used a wide variety of tactics to control the victim and to keep them from disclosing the abuse. 67% of respondents were threatened with physical harm (including death) if they did not comply with the offender(s), while 24% indicated that the offender had threatened to harm a family member, and 19% mentioned threats to other people or animals in the victim's life (n=96). In cases of organized sexual abuse, these ratios were similar — see Graphs 20 and 21.



28% of the respondents who were threatened with physical harm (n=64) said their abuser either threatened to torture them, or did torture them. For those who reported being subjected to torture as a means of compliance, examples included electric shock, being dunked/held under water, and choking.

It is important to recognize that the threats of harm described above were communicated to and interpreted by children. Through that lens, one can readily appreciate why a child would have felt they had to comply, and consequently why it might be incredibly difficult for a child in such a position to come forward for help.

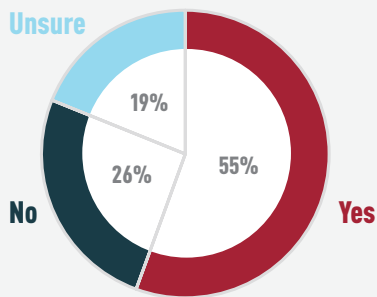
"He threatened to tell my family everything. He threatened to wreck my life. I'd no longer have any ground under my feet to exist. I'd be better off committing suicide myself before he got hold of me because that would be gruesome. I was to never tell about it ever – Survivor, in response to the question "Please describe any threats or consequences for not complying with the abuse/expectations"

Role of child sexual abuse imagery and adult pornography

Respondents also provided details about the ways in which images or videos were used in their abuse. For example, over 50% of the respondents reported being shown adult pornography — see Graph 22 — and over 40% reported being shown child pornography (n=117) — Graph 23 — each a commonly employed grooming technique.^v Respondents also shared how the images or videos of their own abuse were used by offenders and the sometimes manufactured nature of the abuse material (example, being required to pose or perform — see Graph 27). Nearly two-thirds (60%, n=87) of respondents reported being shown their own abuse images by the offender, and 57% of respondents (n=84) said that the offender had told them that others would be shown the abuse images, either because the images were being sold/traded, or as a threat intended to control the victim or maintain their silence — see Graphs 24, 25, 26 and 27).

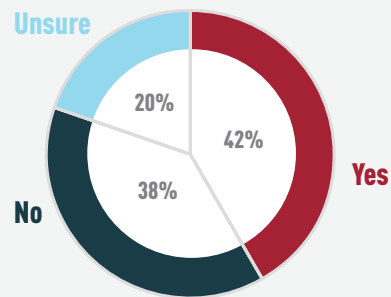
GRAPH 22

CHILD SHOWN ADULT PORNOGRAPHY BY AN OFFENDER (N=117)



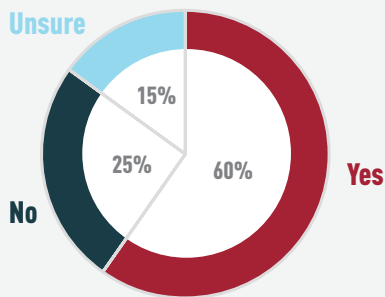
GRAPH 23

CHILD SHOWN CHILD PORNOGRAPHY BY AN OFFENDER (N=117)



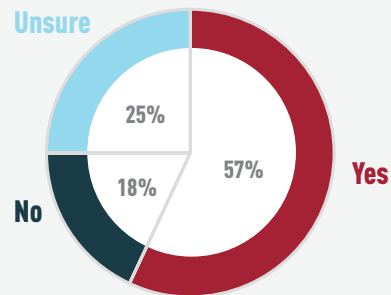
GRAPH 24

CHILD SHOWN RECORDINGS OF OWN ABUSE (N=87)



GRAPH 25

DID THE OFFENDER SAY THEY WOULD SHOW ANYONE ELSE THE CHILD SEXUAL ABUSE IMAGERY? (N=84)



I had to smile nicely and pretend I liked it just like those women in the movie because that was what the men who would get it wanted to see. ... I just had to deliver what was asked from me. And that was the reason I quite soon understood it was meant for other people. – Survivor, in response to the question “What were the circumstances in which the offender said they would show someone else the imagery”

WHAT WERE THE CIRCUMSTANCES IN WHICH THE OFFENDER SAID THEY WOULD SHOW SOMEONE ELSE THE IMAGERY? (N=35)

Multiple Responses per Respondent

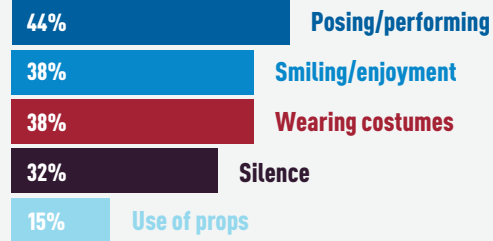


GRAPH 26

The balance of responses were coded as "other" (14%). Examples of responses coded as "other" include: to help find "friends" for the victim; because the victim was beautiful and others would pay to see the images; and to use the images to teach others what was expected.

EXAMPLES OF SPECIFIC THINGS INSTRUCTED TO DO (N=71)

Multiple Responses per Respondent



GRAPH 27

Responses not included in the graph above include making specific sounds (10%), scripting (10%), comply (e.g., told to follow instructions from other abusers/"clients") (10%), show pain/discomfort (8%) and "other" (10%). Examples of instructions/requirements coded as "other" include: eat a certain thing, read stories involving child sexual abuse, engage in rituals, hold up signs, not look at the offender(s) and engage in violence against other children.

Note: There were 29 respondents who indicated that yes, they were instructed/required to do specific things during the hands-on abuse, but these respondents did not provide any additional detail about the instruction and/or requirement and so they are not reflected in the above graph. Also, there were nine respondents who indicated there were no specific things they were instructed/required to do. Five of the nine stated that at times instructions were not necessary as restraints were used (e.g., being tied up, held down, etc.). Some mentioned being forced to perform sex acts against other children.

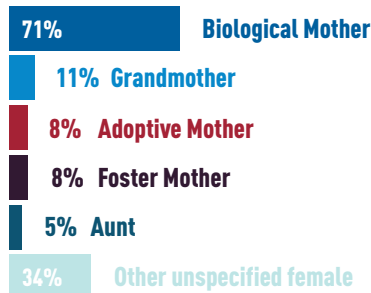
Offenders and offending behaviour in "organized sexual abuse"

By definition, all respondents who were included in the organized sexual abuse category had multiple offenders (n=74). In terms of the offender's sex and as alluded to earlier in the document, the role of the adult woman in the cases falling under the organized sexual abuse category was surprising. Responses that specifically referenced women involved in the abuse were examined to determine the woman's role. From this analysis, it was determined that 51% of the respondents whose abuse was categorized as organized had mentioned an adult woman having been involved, most often, the child's own mother — see Graph 28.

ORGANIZED SEXUAL ABUSE — ADULT FEMALE OFFENDERS (N=38)

Multiple Responses per Respondent

The categories of females named within the surveys in the context of offending (in some capacity) were:

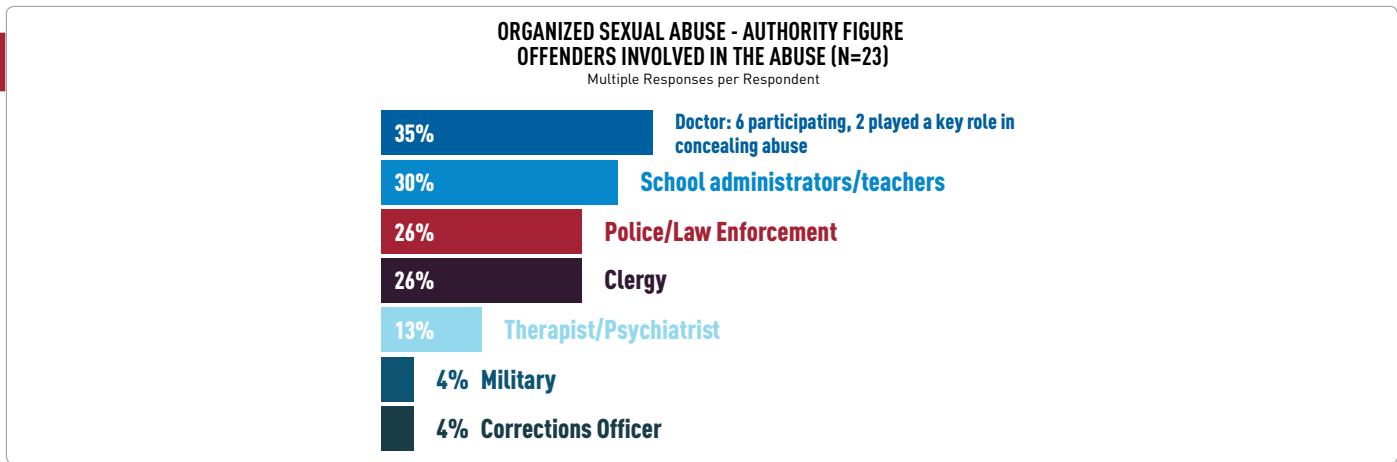


GRAPH 28

Both the father and the mother were perpetrators in 27% of these cases. In 100% of these instances the abuse began before the survivors were five years old and the duration of the abuse was shockingly protracted, with the majority of respondents having reported abuse lasting over 16 years (80%, n=20).

When examining offenders and their behaviour specifically in the instances of organized sexual abuse, 31% of those survivors described persons in authoritative occupations involved as perpetrators of their abuse, including members of law enforcement and the military, school personnel, doctors and therapists, as well as clergy— see Graph 29. When one considers that these perpetrators represent the societal institutions intended to protect and nurture citizens' mental, physical, and spiritual safety and well-being, it is clear that survivor's distrust in the people and the institutions they represent is not misplaced.

GRAPH 29



Respondents provided key information about the different ways in which the offenders in their experience had organized themselves to take advantage of and abuse them. The types of abuse which became apparent during analysis were consistent with the subcategories acknowledged by Salter of network, institutional, and familial organized sexual abuse.^{vi}

49% of the respondents (n=74) experienced abuse perpetrated by two or more family members, usually with the addition of outside persons (i.e., familial organized sexual abuse); 34% of respondents suffered abuse wherein no more than one family member was involved with outside persons (i.e., network organized sexual abuse with familial involvement); and the remaining 17% survived abuse by more than one person with no family members being involved or aware of the abuse (i.e., network organized sexual abuse with no familial involvement).

In 53% of the cases categorized as familial organized sexual abuse, the data revealed that the most common group of perpetrators were a father and mother together with other family members (e.g., step-father, foster father, grandfather, grandmother, uncle, aunt, etc.). Similarly, in the cases categorized as network organized sexual abuse with familial involvement, the most common family member involved in the abuse was a father (in 56% of the cases).

Familial organized sexual abuse represented the largest subcategory, accounting for 49% of all the organized sexual abuse reported by survey respondents (n=74). It is important to note that when considering this category in combination with network organized sexual abuse with familial involvement, a family member was involved in a total of 83% of the organized sexual abuse situations.

It is apparent, taking into account the significant child sexual abuse cases that have come to light in the past across Canada (such as Project Iceberg, and Project Jericho to name but a few) and internationally (Operation Hamlet, Operation Delego and Operation Dark Room), that too often there are very large numbers of children involved in organized exploitation. It is perhaps not surprising, therefore, to find that in addition to speaking of their own experience of abuse, 43% of the respondents indicated that other children were also subject to abuse by either the same perpetrators or other perpetrators in the organized group or network.

“There is nothing you can think of that does not exist. Even when some things sound unbelievable, they are true as a general rule. In my opinion, police officers should obtain basic knowledge of post-traumatic stress disorders during their training or a (an independent) trauma therapist should be present during hearings. Some things may sound strange and therefore seem implausible to police officers without knowledge of post-traumatic stress disorders. Many things can be categorized better with knowledge about the consequences.” – Survivor, in response to the question “What do you want police to know?”



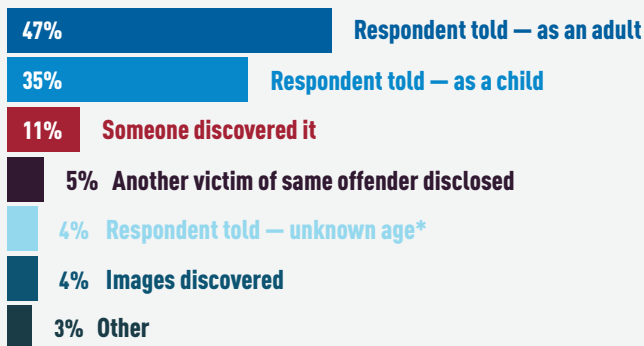
DISCLOSURE OR UNCOVERING ABUSE

The overwhelming majority of respondents (n=114) who provided information as to how their hands-on abuse had been uncovered reported that it was because they told someone about it — see Graph 30. Upon closer analysis it appeared that there were more respondents who had told someone about the abuse only after they became an adult, and not when they were still a child. Moreover, for nearly half (45%) of those who did tell someone (n=99), the abuse was no longer occurring at the time of disclosure — see Graphs 31, 32 and 34. Of those (n=26) who did tell someone about the sexual abuse when they were still a child, 62% continued to be abused — see Graph 33.

GRAPH 30

HOW WAS THE HANDS-ON CHILD SEXUAL ABUSE UNCOVERED? (N=114)

Multiple Responses per Respondent

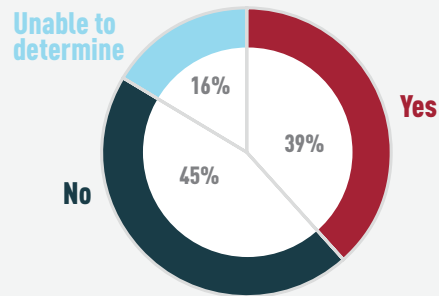


Two (of 114) respondents who provided a response to this question indicated that the hands-on abuse had not been uncovered.

Examples of responses coded as "other" include: the offender had communicated with another person online; when the victim gave birth to a child; and when the victim found images as an adult.

GRAPH 31

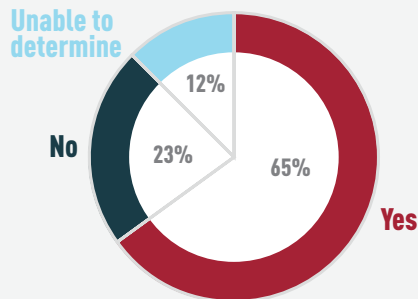
WAS ABUSE STILL HAPPENING WHEN THE RESPONDENT TOLD SOMEONE? (N=99)



*Note: There had been 5 respondents who said that they told someone about the abuse but their age at the time of telling could not be determined from their response. From the information analyzed for these respondents, it was determined that the abuse had ended for one of the 5 respondents. It was not possible to determine if abuse had ended for the other 4 respondents at the time of telling.

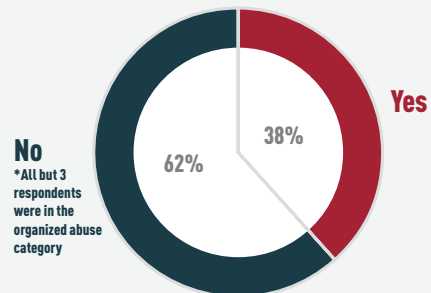
GRAPH 32

IF RESPONDENT WAS A CHILD AT THE TIME S/HE TOLD SOMEONE, WAS THE ABUSE STILL HAPPENING? (N=40)

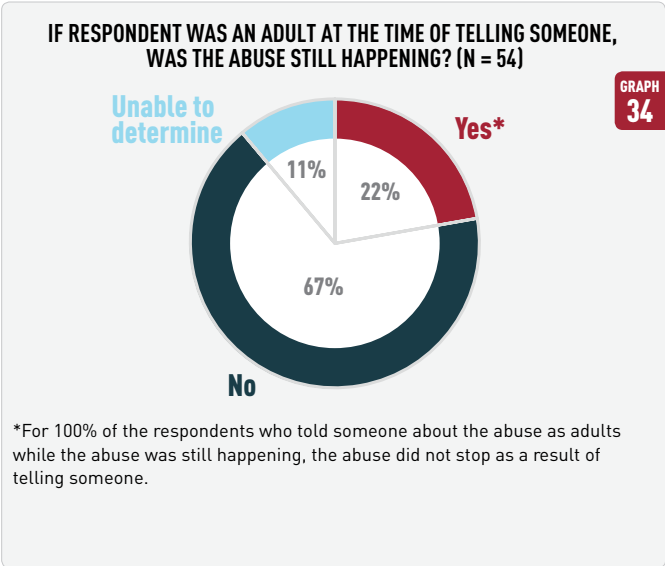


GRAPH 33

IF RESPONDENT WAS A CHILD AT THE TIME S/HE TOLD SOMEONE AND THE ABUSE WAS STILL HAPPENING, DID ABUSE STOP AFTER TELLING SOMEONE? (N=26)



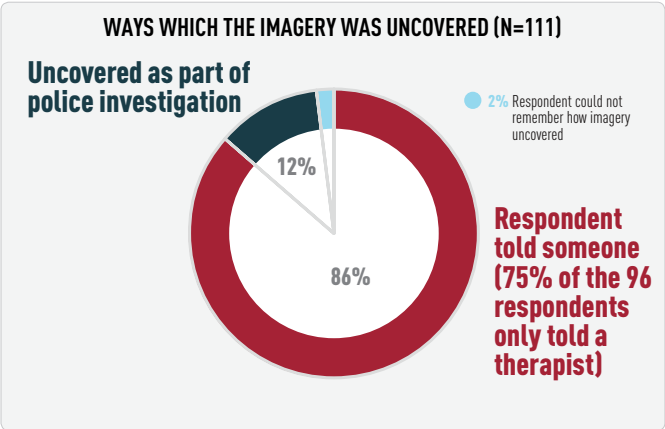
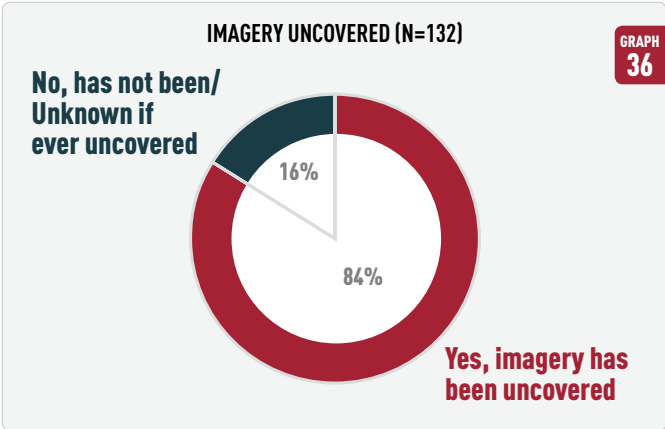
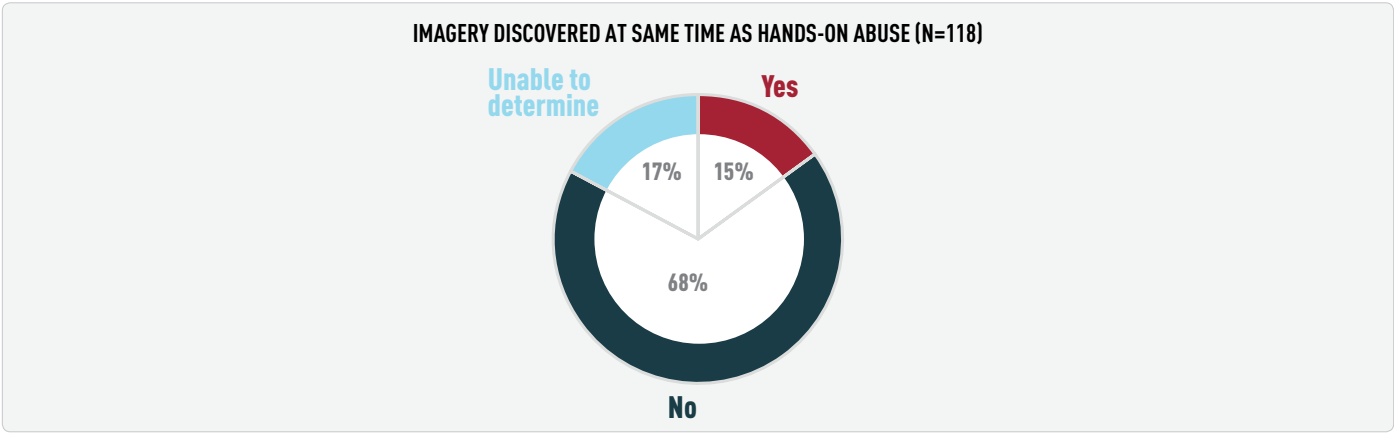
*All but 3 respondents were in the organized abuse category



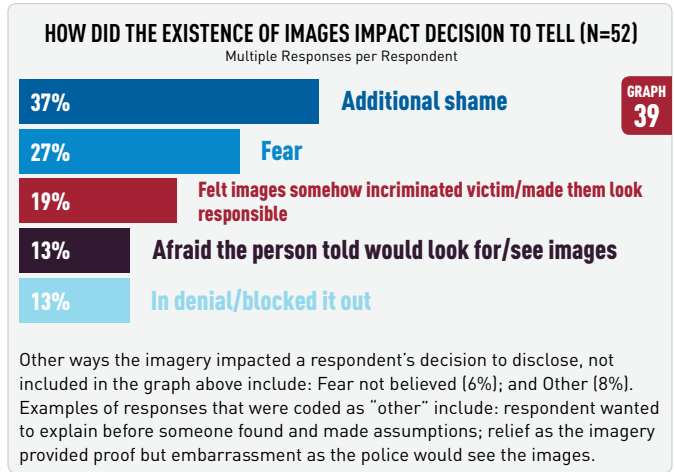
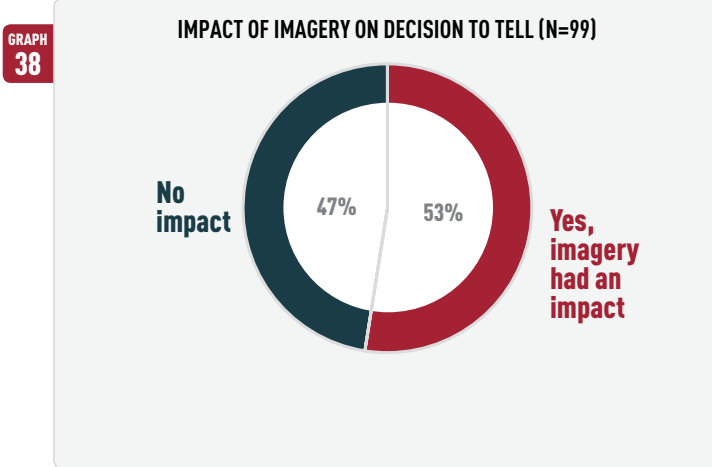
When asked who they first told about the abuse, of those that responded (n=115), close to 40% said they had told someone such as a friend or romantic partner (32% told their therapist). There were very few survivors who first told someone at school (3%) – a place where children spend the majority of their time.

The reality is that most respondents were residing with their abuser (such as a parent/guardian) which would have significantly impacted their ability to disclose the abuse, and to have action taken if they did tell. There were many respondents who repeatedly stated that telling was not an option as it would jeopardize their safety. A number of examples were provided by respondents that underscored the validity of these concerns.

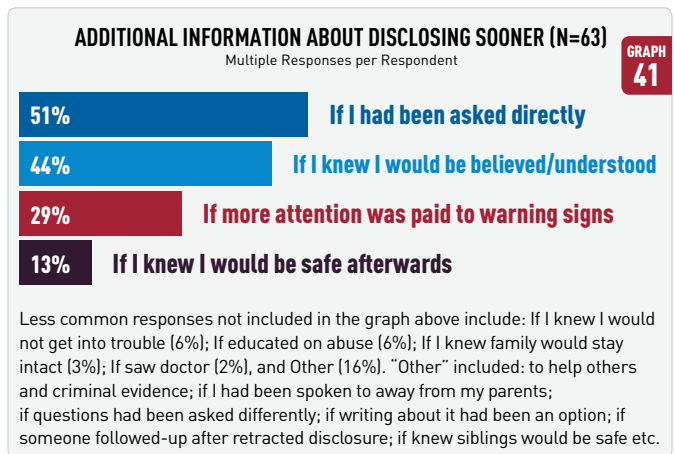
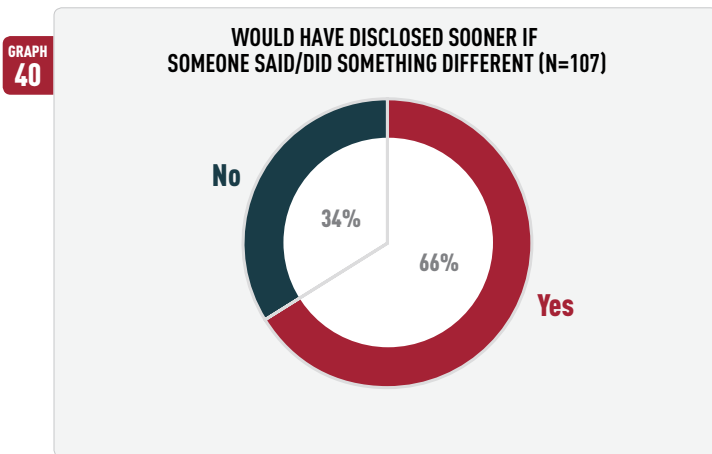
Most respondents (68%, n=118) indicated that the child abuse imagery was not uncovered at the time that the hands-on abuse was uncovered — see Graph 35. It was uncommon for respondents to disclose the existence of the imagery to someone other than a therapist — see Graph 37. For some, the imagery was discovered by the police or another person. 84% indicated that the imagery was uncovered at some point in their life — see Graph 36.



53% of respondents (n=99) reported that the existence of imagery impacted their decision to tell — see Graph 38. Of these respondents, a significant proportion stated that the imagery added feelings of further shame (on top of that engendered by the sexual abuse) and others said they feared what might happen to them if the imagery was uncovered, or felt the imagery incriminated them in some way (n=52) — see Graph 39.



Most concerning is that 66% of the respondents (n=107) indicated that they would have disclosed sooner if someone had said or done something different — see Graph 40. Of those who provided additional information about what may have made a difference (n=63), many noted that if they had been asked directly or knew they would have been believed, then they would have told someone about the sexual abuse — see Graph 41. A number of survivors mentioned that there was a greater need for education and awareness surrounding the issues of child sexual abuse and child sexual abuse imagery.



"If someone who I trusted had asked me straight forward about it while it was happening and especially if they told me I wouldn't be in trouble and that they would protect me." – Survivor, in response to the question "Provide information about a time you may have disclosed if someone had said or done something different"

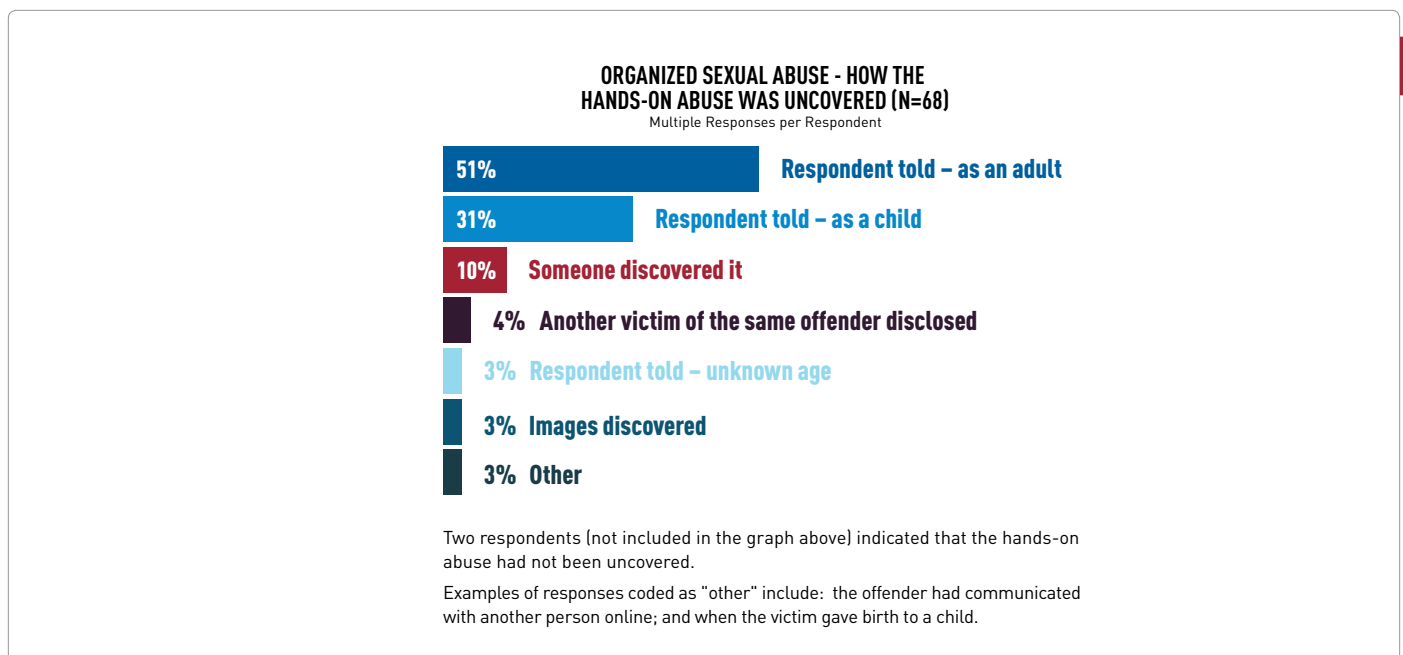
When I cautiously got up the nerve to mention that abuse had taken place, at no time whatsoever did anyone ask whether photo material was made. I thought it must be irrelevant ... or that maybe it happened to everybody. – Survivor, in response to the question "Provide information about a time you may have disclosed if someone had said or done something different"

Organized sexual abuse scenarios

The survivors of organized sexual abuse participating in the survey were faced with similar obstacles when deciding whether to disclose. There are a number of reasons outlined in the literature as to why survivors of organized sexual abuse are often hesitant to disclose (if they choose to do so at all). Some of these motives are driven by survivors' mental state (or perceptions thereof), while others are governed more by external factors relating to their relationship with the perpetrators. Some of the more common perpetrator strategies to inhibit or prevent disclosure include drugging children (to reduce and interfere with recall), threatening death or harm, reinforcing a relation of dependence with the perpetrator, and/or forcing children into sexual contact with other children (to engender a sense of guilt and complicity). Other factors which play a role in inhibiting disclosure and/or preventing survivors from seeking help include dissociation disorders and amnesia – both of which survivors may feel undermine their credibility in the eyes of those in a position to help.

Unfortunately, because of the horrifying and seemingly incredible nature of organized sexual abuse experiences, disbelief and skepticism remain common responses from those confronted with such accounts.^{vii} In fact, the literature indicates that survivors have said that the often hard to believe nature of the accounts is both intentionally cultivated and relied upon by the perpetrators to induce dissociative identity disorder and/or prevent disclosure among survivors.^{viii}

31% of the survivors of organized sexual abuse who found the courage to disclose did so as children, for two of these children the abuse had already ended at the time they disclosed. Unfortunately, however, 68% of those who disclosed as children (where the abuse was ongoing) were either not believed or were actively ignored in their disclosure, thereby allowing their abuse to continue — see Graph 42. When considered within the larger survey, all but three of the respondents who indicated that they told as children and the abuse continued after telling were a part of the organized child sexual abuse category. As addressed earlier, in addition to parents or other familial authority figures perpetrating the abuse, many of the organized abuse survivors indicated that they were abused by those who gained their authority by virtue of their profession, such as doctors, religious leaders, counsellors, school staff, or police — see Graph 29.



VICTIM IMPACT

While research has been completed on the impact of child sexual abuse experiences on a person throughout their life, limited work has been done to understand the effects of having that abuse recorded and potentially distributed online. Consistent with the conceptual framework created for the impact of child sexual abuse on children, responses provided by respondents in the survey demonstrated impacts from the four trauma causing factors: betrayal, powerlessness, stigmatization and traumatic sexualisation.^{ix} It is also clear from the information shared by respondents that the recording/distribution (and potential distribution) of the abuse is a compounding variable that adds an extraordinary layer of trauma for survivors. Keeping in mind that the survivors shared information primarily in their own words (i.e., not through yes/no or multiple choice answers), they were tragically consistent in their descriptions of the constant fear and vulnerability with which they live as a result of there being a permanent record of the abuse experience. As one survivor who reported having been stalked and harassed online aptly stated, “I’m justified in my paranoia.” These survivors have to live with the reality that their abuse has been immortalized in a recording and that others, including other abusers, have likely seen the material.

“I perceive the world as terribly unsafe. Very, very unsafe. I often feel like a hunted animal. It’s very clear that this is due to the existence of photo imagery, because that is specifically what also makes the outside world very dangerous. In the past if someone said they knew me from somewhere, then I would completely lose it inside. I find it difficult to be somewhere where there’s lots of people. I believe everybody thinks I’m dirty. I find men very scary and want nothing to do with anything relating to sexuality - it is taboo.” – Survivor, in response to the question “Please describe how the existence or distribution of child sexual abuse imagery impacts you differently from the hands-on abuse”

Respondents reported a wide range of repercussions stemming from both the hands-on abuse as well as the creation/distribution of child sexual abuse imagery. Survivors were asked how the imagery impacted them differently from the child sexual abuse itself. Those who responded (n=78) pointed to the permanence of the images and the fact that if the images are distributed, their circulation will never end (67%), as well as the powerlessness they felt about the imagery (35%) — see Graph 43. Moreover, nearly 70% indicated that they worry constantly about being recognized by someone who has seen images of their abuse (n=103) — see Graph 44. This worry is justified – thirty respondents (30%) reported being identified by a person who had viewed the child sexual abuse imagery (n=99) — see Graph 45. 87% of the respondents who shared information about how being identified from their imagery had impacted them (n=15) said that they experienced further trauma — see Graph 46. Moreover, twenty-three respondents said they had been specifically targeted by persons who had recognized them from the child sexual abuse imagery (n=28) — see Graph 47. Most of those who had been targeted (n=21) provided additional information, reporting having been re-victimized (e.g., assaulted, stalked or propositioned) (71%) or blackmailed (43%) by the persons who had identified them — see Graph 48.

HOW DOES THE IMAGERY IMPACT YOU DIFFERENTLY FROM HANDS-ON ABUSE (N=78)

Multiple Responses per Respondent

GRAPH 43

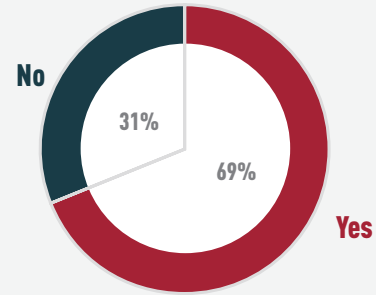


Note: Eight respondents provided responses indicating that the hands-on abuse was more impactful or there was no difference in the impact between the hands-on abuse and imagery.

Other impacts shared by respondents that are not reflected in the graph include: always feeling exposed (18%); hands on abuse has ended but not the distribution/hands on offender no longer a threat (17%); feeling less safe overall (15%); sickened by the knowledge that others are using the images for sexual purposes (13%); fear of being judged (12%); and other (13%). Examples coded as "other" include: anger, fear of harassment/blackmail, the images led to more hands-on abuse, and the feeling of being stuck at the age when the images were taken.

DO YOU WORRY ABOUT BEING RECOGNIZED BY SOMEONE WHO HAS SEEN IMAGES OF THE ABUSE (N=103)

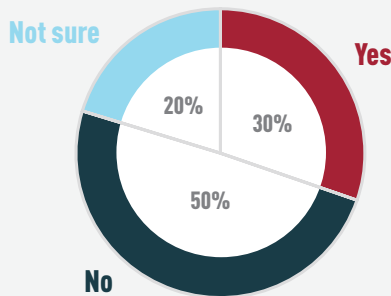
GRAPH 44



Respondents under 40 worry more about being identified by offenders who have seen child sexual abuse imagery of them (80%) than those 40 and over (50%).

HAVE YOU EVER BEEN IDENTIFIED ONLINE/IN PERSON BY SOMEONE WHO HAS SEEN IMAGERY OF YOUR ABUSE (N=99)

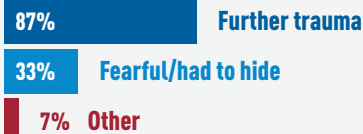
GRAPH 45



IMPACT OF BEING IDENTIFIED ONLINE/IN PERSON (N=15)

Multiple Responses per Respondent

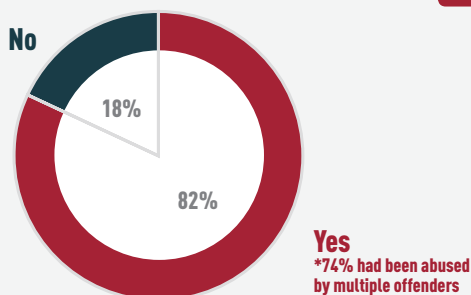
GRAPH 46



Note: Respondents were only asked about the impact of being identified. Specific details such as who had identified the respondent or how the respondent believed s/he had been identified were not requested.

HAVE YOU EVER BEEN TARGETED BY SOMEONE WHO HAS SEEN IMAGERY OF YOUR ABUSE (N=28)

GRAPH 47



IMPACT OF BEING TARGETED (N=21)

Multiple Responses per Respondent

GRAPH 48

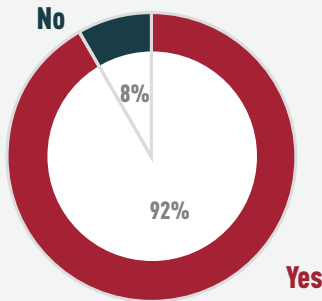


Note: Respondents were only asked about the impact of being targeted. Specific details such as who had targeted the respondent or the way in which the respondent was targeted were not requested.

In terms of how respondents were impacted in other ways by their experience and the existence of the imagery, a very high proportion indicated that their friendships are negatively affected (92%, n=99), as well as their romantic/sexual relationships (n=100) — see Graphs 49, 50 and 51. In fact, 58% of respondents reported having issues engaging in any form of sexual activity.

GRAPH 49

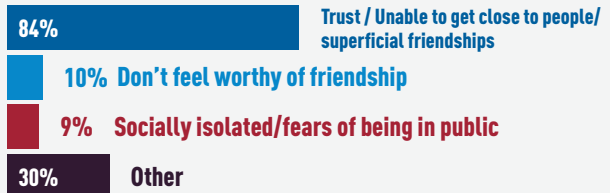
DO YOU BELIEVE YOUR ABUSE EXPERIENCE HAS IMPACTED YOUR FRIENDSHIPS (N=99)



GRAPH 50

NEGATIVE IMPACTS (FRIENDSHIPS) (N=88)*

Multiple Responses per Respondent



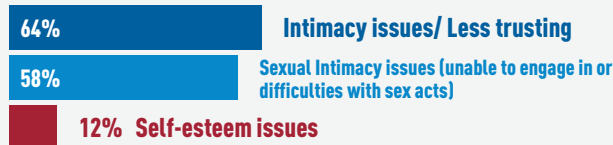
*Three respondents provided a "Yes" response but did not provide detail as to the impact on their friendships.

Examples of "other" include: the respondent recognizing that their demeanor and approach to friendships was different from others, having no friendships with males and general fears about the images.

GRAPH 51

EFFECT ON SEXUALITY AND SEXUAL RELATIONSHIPS (N=100)

Multiple Responses per Respondent



Impacts shared by respondents that are not reflected in the graph include:

Delayed engaging in emotional/sexual intimacy (5%); Uncomfortable with own body (5%); Hypersexualized (6%); Physical intimacy issues (non sexual) (3%); and other (10%). Examples of responses coded as other include: confused sexual orientation, difficulty establishing/maintaining sexual boundaries; not wanting partner to see any images of respondent as a child, fear that partner may see the images and want to reenact, and can't separate sexuality from abuse.

Note: 8% of respondents provided responses indicating that their feelings about sexuality were not affected by the imagery. For example, one respondent said "The imagery itself has not impact my relationships. The abuse as a whole has had profound impact."

Family life is affected as well - more than half of the respondents (55%, n=62) reported having either no or limited contact with family as an adult, which is not surprising given that many were abused by a family member — see Graph 52. Finally, many respondents felt their experience had negatively impacted their educational success (83%, n=99), such as making it more difficult to complete their education to the level desired — see Graph 53. Others have had issues gaining or maintaining employment (87%, n=97), in many instances due to psychological and physical problems associated with the abuse — see Graph 54. Finally, respondents reported a wide array of struggles resulting from their victimization, such as anxiety and sleeping difficulties (n=106) — see Graph 55.

I live fairly isolated, always afraid of being seen/recognized. There is no contact any more with the part of the family that were involved with this, so I only have half a family left. – Survivor, in response to the question "How has your abuse experience impacted your family life as an adult."

HOW HAS YOUR ABUSE EXPERIENCE IMPACTED YOUR FAMILY LIFE AS AN ADULT? (N=62)

GRAPH 52

Multiple Responses per Respondent



Note: Four respondents stated that their family members do not know about the sexual abuse or the sexual abuse imagery.

*68% of these respondents were abused by a family member.

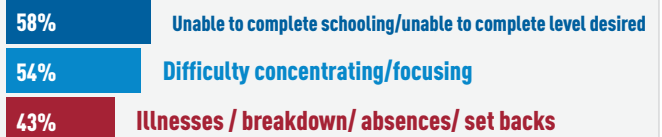
DO YOU BELIEVE YOUR ABUSE EXPERIENCE HAS IMPACTED YOUR EDUCATION/ACADEMIC SUCCESS (N=99)

GRAPH 53



NEGATIVE IMPACTS (EDUCATION/ACADEMIC SUCCESS) (N = 76)

Multiple Responses per Respondent



Less common impacts included: Fear/ difficulty with male teachers/ distrust of others (11%); and Difficulty with peers (5%).

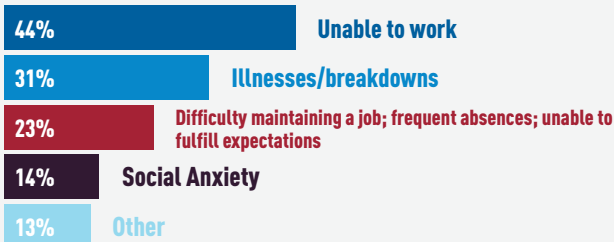
DO YOU BELIEVE YOUR ABUSE EXPERIENCE HAS IMPACTED YOUR EMPLOYMENT (N=97)

GRAPH 54



NEGATIVE IMPACTS (EMPLOYMENT) (N=84)

Multiple Responses per Respondent

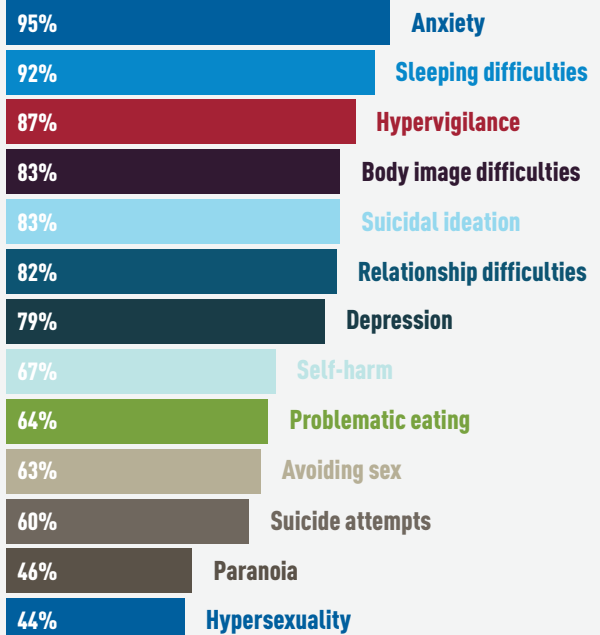


Other negative impacts reported included: fear of being recognized (7%), too few options due to lack of education/working below level (7%). Examples of responses coded as "other" include: safety concerns; possible triggers; little self-confidence; limit personal goals.

STRUGGLES AS A RESULT OF VICTIMIZATION EXPERIENCE (N=106)

GRAPH 55

Multiple Responses per Respondent



Other struggles reported include misuse of drugs (22%) and alcohol (35%) and Other (10%). Examples of responses coded as "other" include: aggressiveness, lethargy, and avoidance of others.

Impacts for survivors of “organized sexual abuse”

45% of survivors of organized sexual abuse indicated that they experienced absences/illnesses or breakdowns which interrupted their education (n=51), and 50% of these survivors expressed that they were unable to work (n=60).

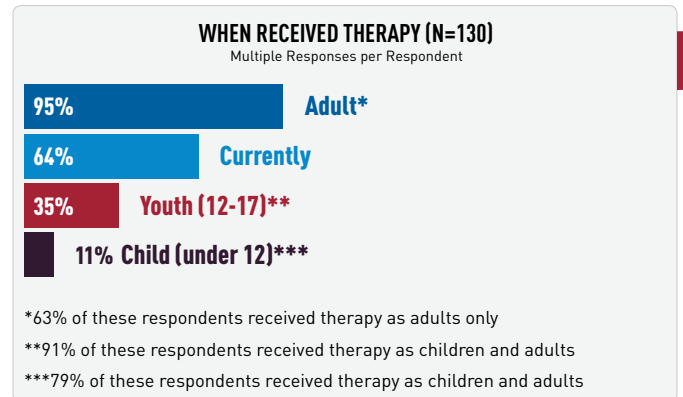
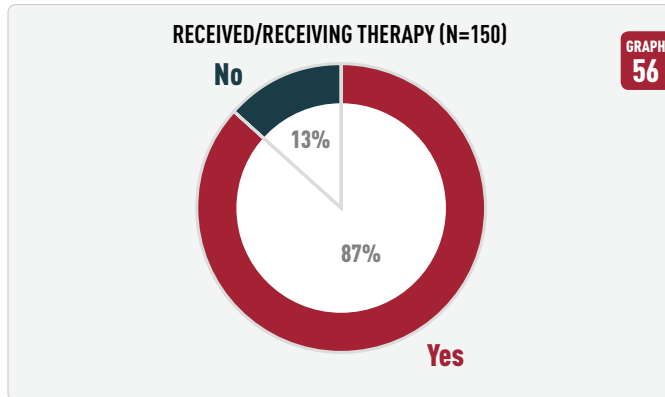
Pregnancy is another variable that is distinctly different from those experiencing organized versus non-organized sexual abuse. The original version of the survey did not ask about pregnancies, but the question was added to future versions as survivors were mentioning it. Even after the question was formally added to the survey, however, the only respondents who indicated they became pregnant were nine females, all of whom were survivors of organized sexual abuse.

As a result of their extreme and prolonged abuse, the literature indicates that survivors of organized sexual abuse frequently engage in lifelong struggles with trauma-related impacts and disorders. One theme that was readily apparent in the instances of organized sexual abuse reported by respondents was the prevalence of dissociative identity disorder (DID) – “a complex, chronic mental illness characterised by the presence of multiple, alternating self-states, personalities or identities”^x or associated dissociative disorders. DID is an extremely serious condition – one that may be intentionally induced by perpetrators in order to prevent disclosure among survivors – and estimates suggest that if undiagnosed or untreated, those afflicted have suicide rates which are several thousand times higher than average.^{xiii} 68% of the survey respondents in the category of organized sexual abuse, described receiving a diagnosis of DID or made reference to dissociative disorders or experiencing dissociation (n=74). This is not surprising considering that DID “develops as a response to chronic and overwhelming trauma exposure in childhood, including organized abuse.”^{xi}

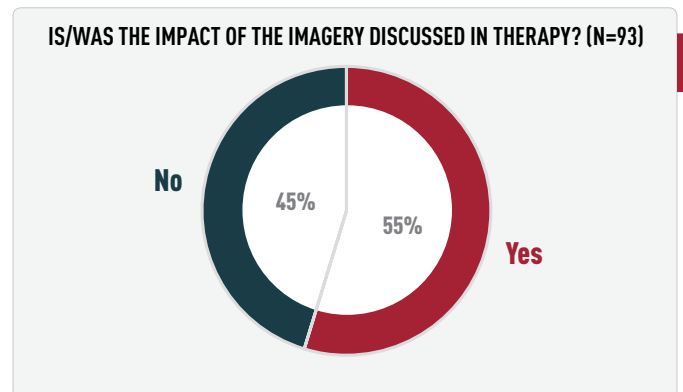
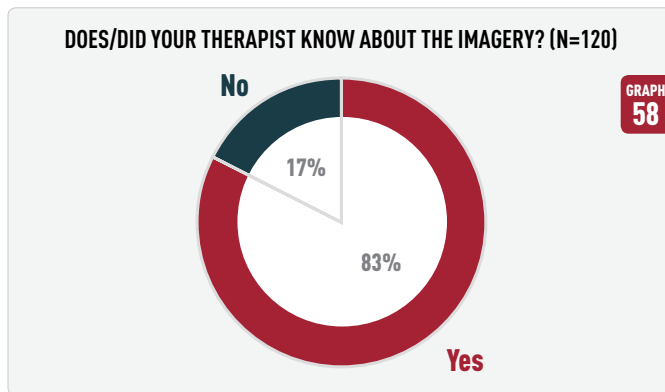


THERAPEUTIC AND MEDICAL

The questions in this section were designed to provide information about any experience the respondent may have had with various mental health professionals. Respondents reported a wide range of experiences: from very good interactions to difficulties with professionals who had little to no experience working with survivors of child sexual abuse and the complexities associated with the recording of such abuse and its distribution. Mental health professionals play an integral role for victims of child sexual abuse and the vast majority of respondents received some form of counselling (87%) of those, 64% were receiving therapy at the time of taking the survey — see Graphs 56 and 57.



While most respondents (83%) confirmed that their therapist was aware of the child sexual abuse imagery (n=120), over half reported that the impact of the imagery was not something that was discussed in therapy (n=93) — see Graphs 58 and 59.

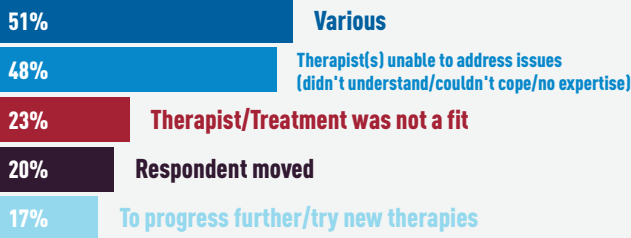


90% have seen more than one therapist, and of those, 71% changed therapists because the first therapist would not or could not meet their needs or was not addressing their issues in a manner that was helpful to them (n=110) — see Graph 60. While the vast majority of respondents (85%) believe that they will need ongoing therapeutic support, only 7% felt that they no longer need therapy (n=129) — see Graph 61. Respondents consistently described daily impediments and triggers; they reported how life events and changes impacted them and caused setbacks.

Having therapy has made me understand that I was the VICTIM (before I always felt this heavy burden that it was MY fault). ... I still have so much pain inside. But every session brings me clarity and I hope over time I will be able to live my life without fear. – Survivor, in response to the question “ Do you anticipate needing ongoing or future therapy as a result of this victimization?”

GRAPH 60

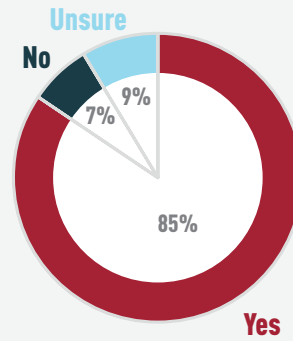
WHAT IS THE REASON FOR SEEING ANOTHER THERAPIST (N=110)
Multiple Responses per Respondent



Responses coded as "various" (51%) included: therapist no longer available (moved, retired, deceased, on leave, ill) (11%); respondent felt ready to stop therapy (5%); misdiagnosis (5%); therapist did not believe me (4%); transition to new system (in-patient vs out-patient, child vs adult, counselling avail through school or victim services ends) (6%); other individual (family, other professional) (4%); financial reasons (3%); couldn't cope/not ready to participate (3%); had felt ready to stop but experienced a trigger (3%) [examples of triggers: legal proceedings; medical intervention; contact with offender; pregnancy]; abuse by therapist (2%); therapist connected to offenders (2%); therapist was afraid of offenders (1%); and therapist would not treat victim until s/he reached age 18 (1%).

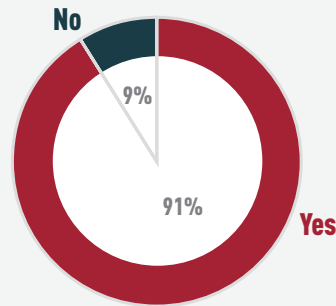
GRAPH 61

ANTICIPATE NEEDING ONGOING/FUTURE THERAPY (N=129)



GRAPH 62

PSYCHIATRIC DIAGNOSIS/DIAGNOSES LINKED TO IMAGERY (N=124)



GRAPH 63

WHAT WAS MOST HELPFUL ABOUT THERAPIST/THERAPY (N=106)
Multiple Responses per Respondent



Less common methods included: Use of EMDR (21%); Use of specific therapy (other than EMDR or trauma based) (25%); Went at victim pace/patient (21%); Use of trauma based therapy (18%); Establishing trust (in therapy relationship) (13%); Made safety a priority (8%); Other victims' support (8%); Writing (7%); Other (7%); Reliable / consistent (4%); and Hospital stay (3%).

Seven respondents stated that nothing had been particularly helpful up to the point of taking the survey.

GRAPH 64

WHAT WAS LEAST HELPFUL ABOUT THERAPIST/THERAPY (N=98)
Multiple Responses per Respondent

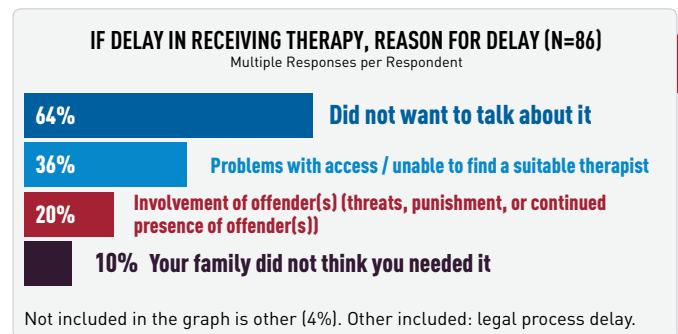
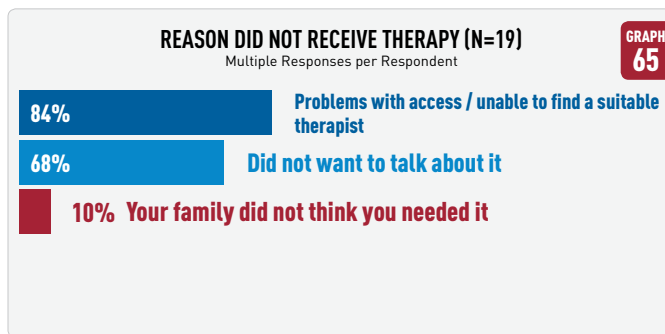


Less common methods included: Just not helpful (12%); Don't believe (9%); Ignored images/impact (8%); Blamed victim/judged (8%); Pushed pills (5%); Reinforced victim identity (7%); Cost/fear of therapy running out (4%); Inconsistent/unreliable access (4%); and Other (11%). Those categorized as "other" included: tried to be a friend, insensitive nature of therapist, urged to report to police, and informed parents.

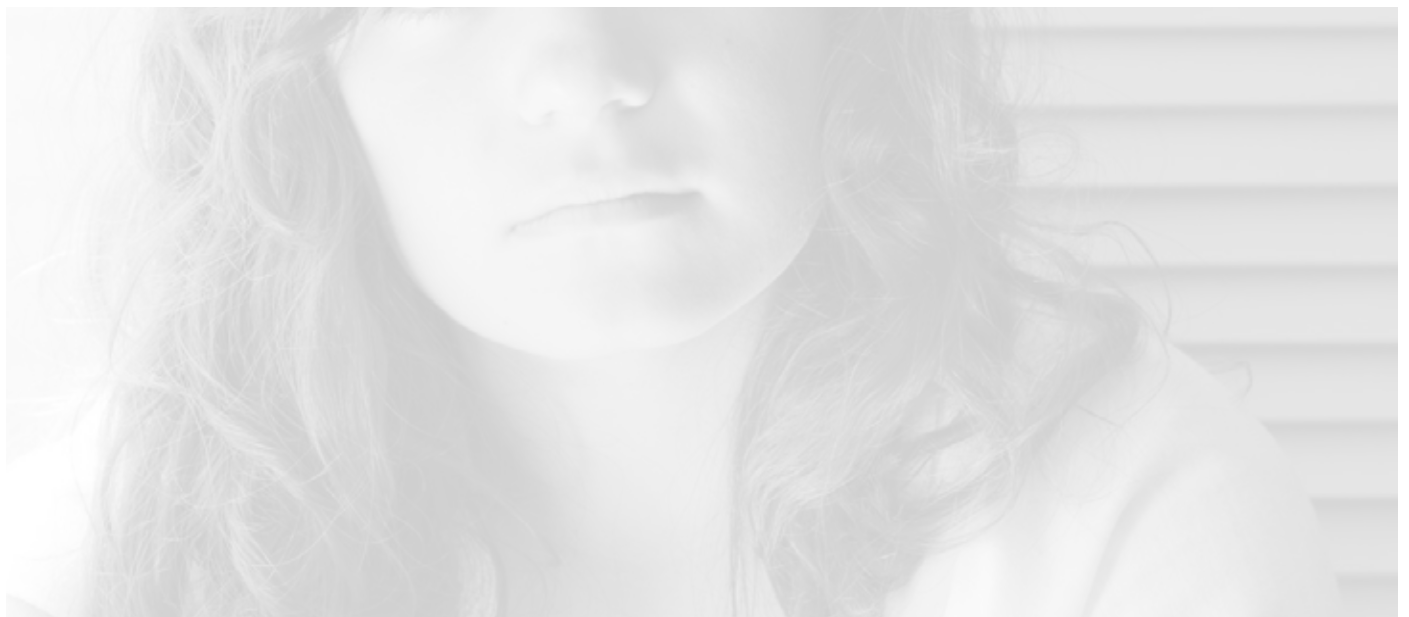
Yes. Memories and feelings of the past still affect me today like it was yesterday. The abuse broke up my family unit. I think about it when I see families together. I think about it when I see moms and daughters together that are the age of me and my mother and how our relationship could have been different if [the] abuse had not happened. I think about it at school, because school is taking me so much longer to finish and how much harder it is for me to succeed because of the court I went through and the PTSD I suffer with every day. I think about it when I see children and families because I still mourn for the loss of my family unit. I think about it when I have arguments with my husband because I have such a heightened flight or fight instinct that it gets hard to communicate my feelings. — Survivor, in response to the question "Do you anticipate needing ongoing or future therapy as a result of your victimization".

In discussing when therapy has been most helpful, there was acknowledgement that therapists need to be willing to try different approaches and to find strategies that work for the individual — see Graphs 63 and 64. 91% of respondents were provided with a diagnosis linked to their abuse experience (n=124) — see Graph 62. Trauma disorders and, in particular, dissociative identity disorders were very common. The respondents clearly articulated the complexity of their therapeutic requirements in significant detail. Not only were many of the participants provided with multiple diagnoses but most reported very similar symptoms and struggles, such as anxiety, depression and sleep issues — see Graph 55.

Of the survivors who had not yet received therapy, the most common reasons given were that they did not want to talk about the experience and/or that they could not find anyone they felt would understand — see Graph 65. For those who reported having delayed seeking therapy, the most common reason was that the survivor was not ready to discuss it, but also issues involving fear, and having difficulty finding and accessing suitable therapy — see Graph 66.



“Be aware that people are capable of doing extreme and atrocious things to one another, even if you would like to deny that. Not being believed is often as painful as the abuse itself.” – Survivor, in response to the question “What do you want therapist to know”

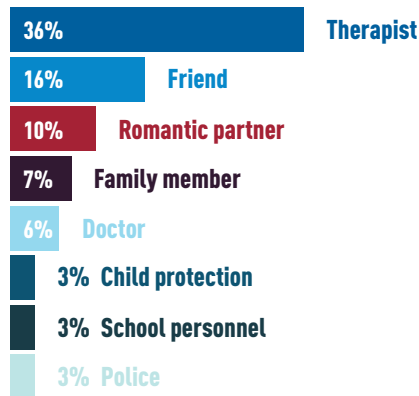


Organized sexual abuse

Therapists and counsellors can play a significant role in the recovery of organized sexual abuse survivors. For example, over one-third of these (n=67) indicated that their therapist was the first person they told about their hands-on abuse — see Graph 67. These survivors also highlighted the difficulty in connecting with a therapist who could meet their unique needs. When asked if they had seen more than one therapist/counsellor/treatment provider, most (93%) of these survivors said they had seen more than one service provider (n=66) — see Graph 68. Reasons for changing counsellors varied, but for more than half (51%) one of the reasons given was because the survivor felt their existing therapist was unable to help them (n=62) — see Graph 69.

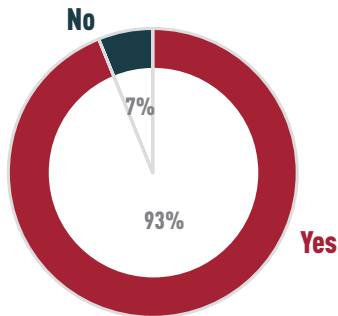
GRAPH 67

ORGANIZED SEXUAL ABUSE — WHO DID YOU TELL FIRST ABOUT THE CHILD SEXUAL ABUSE? (N=67)



GRAPH 68

ORGANIZED SEXUAL ABUSE — HAVE YOU SEEN MORE THAN ONE THERAPIST? (N=66)



ORGANIZED SEXUAL ABUSE — WHAT IS THE REASON FOR SEEING ANOTHER THERAPIST? (N=62)



GRAPH 69

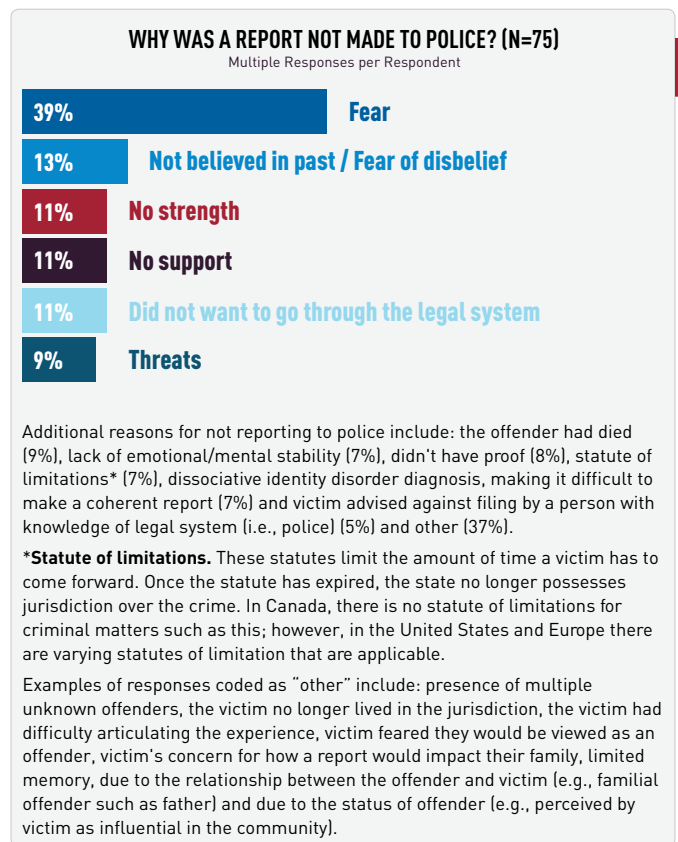
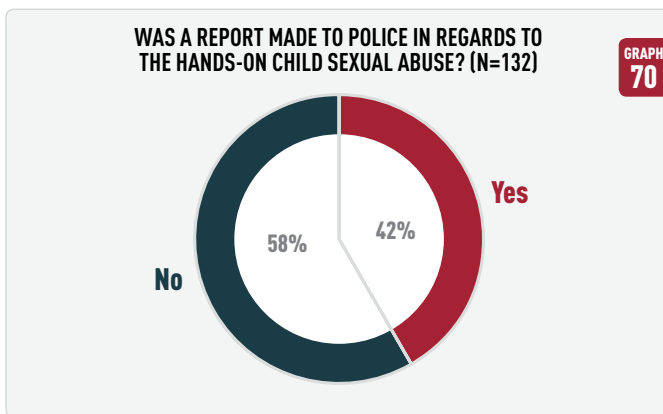
LEGAL

The questions in this section were designed to help us understand survivors' experiences with the legal system within their own country. The purpose was to improve the ways professionals working within the legal and child protection systems meet the needs of survivors.

Reports to police

58% of respondents (n=132) did not make a report to police regarding the hands-on sexual abuse they experienced as children — see Graph 70. The main reasons given for why survivors did not report included generalized fear of making a report, fear of not being believed, and because they had been threatened or felt they would not be supported if they did come forward (n=75) — see Graph 71.

Of interest, those respondents who had indicated they had been abused by more than one offender were less likely to have reported their abuse to police than respondents abused by one offender — see Graph 72.

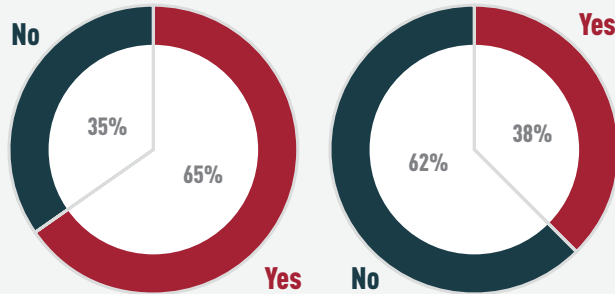


The chief perpetrator is my own father. To me it would be terribly difficult to report my own father to the police. In addition, my parents and the whole family deny it. That denial makes it even harder ... I'm not ready. – Survivor, in response to the question "Why was a report not made to police"

GRAPH 72

SINGLE OFFENDERS - WAS A REPORT MADE TO POLICE IN REGARDS TO THE HANDS-ON CHILD SEXUAL ABUSE? (N = 26)

MULTIPLE OFFENDERS (EXCLUDES OTHER*) - WAS A REPORT MADE TO POLICE IN REGARDS TO THE HANDS-ON CHILD SEXUAL ABUSE? (N=85)**



*Not included in the above graph is the police reporting data for those survivors who reported having had more than one offender but at different times in their life (i.e., the offenders do not appear to have been known to each other or to have worked together to commit the abuse).

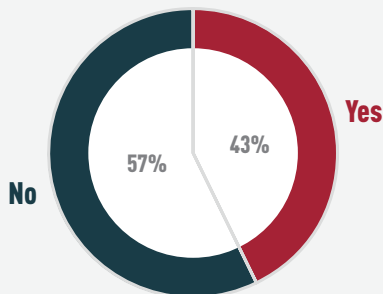
**Two respondents did not provide a response to the question, "Was a Report Made to Police in Regards to the Hands-on Child Sexual Abuse?".

Charges & Outcome

There was a small number of respondents who indicated that charges were laid against the person who abused them and created the abuse imagery — see Graph 73. Of those, 86% said that the charges laid included those related to images and over 80% resulted in a conviction — see Graph 75. For those respondents who indicated that charges were not laid (57%), their understanding of why charges were not pursued included (but were not limited to) not having enough evidence, statute of limitations, and the victim not being believed — see Graph 74. Survivors felt that their accounts were often discounted by professionals due to their limited capacity to accurately recount their experiences, especially within the confines of the criminal justice system.

GRAPH 73

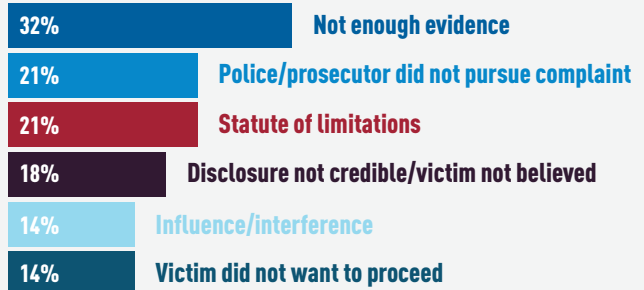
WERE CRIMINAL CHARGES FILED/LAID AGAINST THE OFFENDER(S) WHO COMMITTED THE HANDS-ON CHILD SEXUAL ABUSE AND CREATED IMAGES (N=49)



GRAPH 74

WHAT IS YOUR UNDERSTANDING OF WHY CHARGES WERE NOT FILED/LAID? (N= 28)

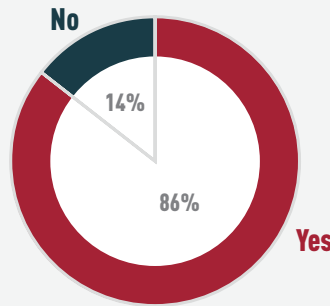
Multiple Responses per Respondent



Responses also included: Offender deceased (7%) and "other" (25%). Examples of responses coded as "other" include, improper storage of evidence, problematic evidence from victim (e.g., arising from dissociation by victim, gaps in memory or general problems of the victim in reporting the offence) and police thought it would be too dangerous for the victim if they moved forward.

Note: All respondents were eligible to answer this question including those who answered "no" to the question, *Were Criminal Charges Filed/Laid Against the Offender(s) who Committed the Hands-on Child Sexual Abuse and Created the Images of Your Abuse?*

WERE ANY OF THE CHARGES RELATED SPECIFICALLY TO THE CHILD SEXUAL ABUSE IMAGERY? (N=21)

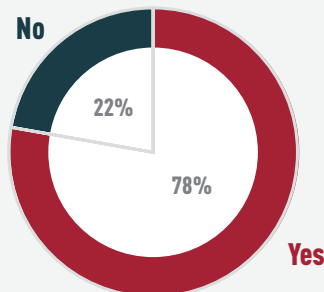


“The efforts of perpetrators to silence their accounts through threats and violence was in many ways perpetrated by institutionalized forces of disavowal and disbelief that actively undermined their efforts to seek care and support, and prevented them from finding justice for the crimes committed against them and witnessed by them,”^{xiv}

Victim Impact Statements & Restitution

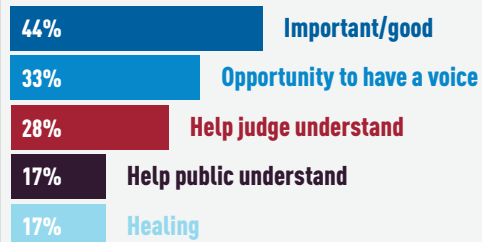
A victim of child sexual abuse imagery experiences victimization not only in respect to the abuse that is inflicted upon them, but also through the knowledge that a permanent record of the victimization has been created. Few survivors had provided a victim impact statement related to the imagery — see Graph 76. However, questions related to victim impact statements and other remedies were included in the survivors’ survey and a total of 36 participants responded to the question about the value of these statements – virtually all of which were favourable. Respondents felt these statements help give victims a voice, help to educate the judiciary and general public on the impact, and also helped the victim to heal — see Graph 77.

HAVE YOU PROVIDED A VICTIM IMPACT STATEMENT RELATED TO THE IMAGES OF YOUR ABUSE? (N=18)



WHAT VALUE DO YOU FEEL THERE IS IN VICTIM IMPACT STATEMENTS BEING USED IN SENTENCING? (N=36)

Multiple Responses per Respondent

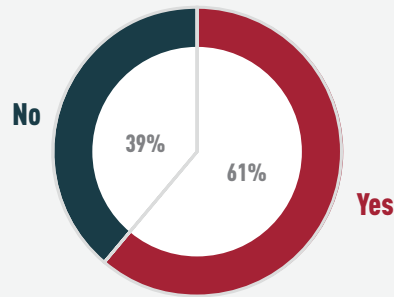


Examples not included in the graph above include help outcome of case (14%) and help offenders understand (3%). One respondent indicated that there was no value in victim impact statements; this response is not included in the percentages indicated in the table above.

As clearly noted in the victim impact section, the crimes associated with the creation and distribution of child sexual abuse material is uniquely characterized by the fact that victims continue to be repeatedly victimized in their present lives. Their lives are essentially thrown into a complete state of turmoil which can last for years, if not a lifetime. The reality is that the vast majority of the victims of child sexual abuse imagery typically do not have access to restitution or other means of financial compensation to support their ongoing therapeutic needs, and the respondents to the survey were no different. There were few survivors who answered the question in the survey related to restitution, and of those who did answer the question, nearly half had not received restitution — see Graph 78.

GRAPH 78

HAVE YOU RECEIVED ANY RESTITUTION (OR OTHER FINANCIAL COMPENSATION) AS AN OUTCOME OF ANY COURT PROCEEDINGS? (N=18)*



*All 18 respondents had reported the hands-on sexual abuse to police and charges had been laid against the offender (s) as a result of the report.



Organized sexual abuse

In addition to the perceived authoritative position of the offender and consequential reluctance to trust those in authority, there were a number of other barriers that survivors identified surrounding their decision whether to make a report to police. In total, 62% of the organized sexual abuse survivors did not make a report to police and the reasons they provided really speak to the difficulty in bringing this particular group forward to report. Not surprisingly, the data indicated that by far the most common reason for not reporting such abuse to authorities was fear (37%) — see Graph 79.

Among the ‘other’ responses, survivors described such things as limited recollection of the abuse or feeling unable to articulate their experiences, not feeling stable enough, that the incident took place too long ago, or they were unsure of the value of the report. In this category, survivors also mentioned a fear of being seen as the offender (referring to having been made to participate in the abuse or abuse others). According to the literature, this is a common strategy employed by perpetrators of organized abuse to inhibit disclosure and is an essential part of the indoctrination process.^{xii} Although in context such fear is certainly justified, it is crucial to remember that “what may appear, to an external observer, to be an adult’s ‘decision’ to participate in sexual activity (however unusual or sadistic) or to engage in some other risky behavior is in fact better understood as a coerced response underpinned by a history of abuse, fear and manipulation.”^{xiii} While the concept of ‘survivor’s guilt’ may go a long way toward explaining a survivor’s inability to either disclose or bring it to the attention of police, certainly in these cases, survivors “often harbor a genuine fear that, should they report their abuse to others, then they will also face criminal prosecution alongside those that abused them.”^{xiv}

I remember being humiliated when my abuser showed another child (whom I liked) photos of my torture (with ropes). I wanted to hide these images because of the shame, so disclosure would have been nearly impossible. Disclosure would implicate me in what I believed was a crime for which I was at least partially responsible.

– Survivor in response to the question “Please describe how the existence of images of your abuse impacted your decision to tell someone (if at all)”

The reasons outlined above are significant barriers to victims reporting their abuse and in no way should such fears or apprehensions be marginalized. Still, given the very real probability that several of the survey respondents are still being abused, and given the near certainty that other children are currently victims of multi-perpetrator sexual abuse, now more than ever, there is a real and tangible urgency “to raise the profile of organized abuse among those most likely to encounter sexual abuse cases.”^{xv} We hope, therefore, that both the courage in coming forward and the accounts provided by the respondents of our survey will help increase public awareness, encourage other survivors to disclose and seek help, and provide a measure of hope to both survivors and current victims. Ultimately, the challenge is how to integrate the data we have collected into policy and practice.^{xvi}



ORGANIZED SEXUAL ABUSE AND REPORTING

GRAPH 79

ORGANIZED SEXUAL ABUSE — WHY POLICE REPORTS WERE NOT MADE (N=46)

Multiple Responses per Respondent



ORGANIZED SEXUAL ABUSE — WHY CHARGES WERE NOT FILED/LAID (N=18)

Multiple Responses per Respondent



GRAPH 80

Despite the challenges and exposure involved, a significant minority of the survivors of organized sexual abuse (38%) did report their abuse to police. Of these, however, only in seven cases (28%) were criminal charges actually laid. As for the remaining 18 cases (72%), it appears that survivors and/or law enforcement officials often faced additional barriers in substantiating and/or in filing the charges, including not having enough evidence, exceeded statute of limitations, the perpetrator was deceased, police/prosecutors did not pursue survivor’s complaint, and, predictably, the survivor’s disclosure was not believed/seen as credible — see Graph 80. As alluded to already, descriptions of organized sexual abuse can strain credulity of people unfamiliar with the subject – authorities or otherwise – and even health professional and scholars in the field may still “experience the same initial sense of disbelief, for what they hear belies all concepts of normal human behaviour.”^{xvii} And that really is the point: perpetrators of organized sexual abuse count on survivors being met with skepticism and disbelief if they speak of their experiences.



CONCLUSION

Addressing the issue of child sexual abuse needs to become an international priority. All components, from the social aspects to the technological ones, must be considered when developing effective strategies and solutions. We know that more needs to be done to identify and support victims of child sexual abuse, to identify and prosecute offenders, and to reduce the availability of child sexual abuse material on the Internet. There is an urgent need to shift the way in which we view this problem. Child sexual abuse occurs in secrecy – in homes and communities around the world.

Due to the horrifying and seemingly incredible nature of child sexual abuse, disbelief and skepticism remain common responses from those confronted with disclosures of child sexual abuse. Perhaps it is easier to dismiss such accounts as made-up stories, coerced testimonies, or the result of mental health problems (as many professionals have done in the past), than to accept the possibility that some people are capable of inflicting unspeakable physical and mental trauma on children. Wanting something to be true because it is easier for one to accept or to comprehend, however, does not (and will not) change the fact that such people do exist and that child sexual abuse – and its capture in images and videos – is a reality experienced by too many children.

The Canadian Centre and the International Working Group would like to acknowledge the 150 survivors whose sexual abuse was recorded who came forward to share their unique experiences through the survey. Their collective voice of shared experiences has provided valuable insight into the daily struggles faced by this population and the significant impact that the creation and distribution of child sexual abuse images has on their lives. The critically important information from the survey points to the urgent need for countries around the world to confront and identify additional solutions that will effect meaningful change for survivors going forward. Advancing the knowledge of those working in sectors such as education, medicine, law enforcement, and the justice system is vital if we hope to find concrete ways to ensure children are better protected from sexual abuse and exploitation.

The purpose of this report is to provide a summary of the data that has been received and analyzed to date. Given the importance of the issues raised by the survey, the information shared by survivors so far, and to ensure that all survivors who wish to contribute their voice to the data are able to do so, the Canadian Centre has decided that the online survey will remain open for the foreseeable future. We are committed to learning from those victimized in this way and believe that the collective voice of survivors around the world is essential to effecting real change.

“Pictures/videos are supposed to capture the memories you want to relive again and again. As I look back at some of the photos from my childhood my only memory now is what I had to do to make that moment special, what other videos/photos were taken. If I must summarize it, it’s as if I never have real ‘freedom’, never uninhibited, never without fear. The result is that I never sleep well, that everything is complicated and that I can get stirred up by the stupidest things. If I’m somewhere and somebody looks at me, I’m always afraid that it’s because people know it, or recognize me.” – Survivor, in response to the question “How does the child sexual abuse imagery impact you differently from the abuse itself?”

ENDNOTES

ⁱ The data included that relates to the National Center for Missing and Exploited Children (NCMEC) were provided directly to the Canadian Centre by NCMEC on August 25, 2017. Permission has been granted to include these numbers in this report.

ⁱⁱ Binford et. al. indicates in *Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad* (2014)

ⁱⁱⁱ Project Arachnid is an automated system that crawls links on sites previously reported to Cybertip.ca that contained child sexual abuse material and detects where these images/videos are publicly available on the internet. If illegal content is detected, a notice is sent to the provider hosting the content requesting its removal.

^{iv} Collin-Vézina, D., De La Sablonnière-Griffin, M., Palmer, A. M., & Milne, L. (2015). A preliminary mapping of individual, relational, and social factors that impede disclosure of childhood sexual abuse. *Child Abuse & Neglect*, 43, 123-134.

^v Pereda, N., Guilera, G., Forns, M., & Gómez-Benito, J. (2009). The prevalence of child sexual abuse in community and student samples: A meta-analysis. *Clinical psychology review*, 29(4), 328-338.

^{vi} Salter, M. (2013). *Organised sexual abuse*. Routledge.

^{vii} Mcalinden, A. M. (2006). 'Setting'Em Up': Personal, Familial and Institutional Grooming in the Sexual Abuse of Children. *Social & Legal Studies*, 15(3), 339-362

^{viii} Salter 2013.

^{ix} Salter 2013.

^x Coleman, J. (1994). Presenting features in adult victims of Satanist ritual abuse. *Child Abuse Review*, 3(2), 83-92.; Salter, M., & Richters, J. (2012). Organised abuse: A neglected category of sexual abuse with significant lifetime mental healthcare sequelae. *Journal of Mental Health*, 21(5), 499-508; Salter 2013, 14.

^{xi} Finkelhor, D., & Browne, A. (1985). The traumatic impact of child sexual abuse: a conceptualization. *American Journal of orthopsychiatry*, 55(4), 530.

^{xii} Salter 2013, 71 n. 2.

^{xiii} Salter & Richters 2012, 504.

^{xiv} Salter 2013, 71 n. 2.

^{xv} Salter 2013, 102.

^{xvi} Coleman 1994.

^{xvii} Salter, M. (2017). Organized abuse in adulthood: survivor and professional perspectives. *Journal of Trauma & Dissociation*, 18(3), 441-453, 11.

^{xviii} Salter 2013, 174.

^{xix} Salter 2013, 175.

^{xx} Salter 2013.

^{xxi} Coleman 1994, 91.

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HOW WE ARE FAILING CHILDREN: CHANGING THE PARADIGM

*Framework for the Protection and Rights of Children
in the Removal of Child Sexual Abuse Images and
Harmful/Abusive Images of Children*



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TO THE SURVIVORS OF CHILD SEXUAL ABUSE:

One of the cornerstone commitments of the Canadian Centre for Child Protection is to better support survivors of child sexual abuse images and videos through advocacy and research in order to find solutions to what is a growing, global issue. With that in mind, it is important we share our findings with both the public and those who are in positions to effect change.

We acknowledge that the information in this document may be difficult to read. As you go through the report, allow yourself space to be aware of any strong emotions it stirs up in you. If the feelings get to be too much, take a break, reach out to supports in your circle, or do whatever else you might need to become centered again. It's important to pace yourself and to give yourself all the time you need.

A note about language and terms used in this document: Some people don't like to define their past and/or present experiences by labels and/or the label they give it may change over time. In this document we chose to use the term "survivor," but there is a wide spectrum of language that can range from "victim" to "thrifer" and even "warrior." Whatever word you choose (or if you choose no word at all), know that we understand human beings cannot be reduced to any single experience. We acknowledge this by standing with you and supporting you wherever you are in your journey.

If you wish, you may share any thoughts you have on this document or on your own personal experiences by contacting us at support@protectchildren.ca. You may also contribute information about your experience by completing the International Survivors' Survey at protectchildren.ca/survivors_survey.

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PHOENIX 11 ADVOCACY IMPACT STATEMENT

For a long time we were afraid. We were afraid of the dark, we were afraid of the unknown, we were afraid of our past and what it meant for our future. Alone, isolated, yet exposed to the world, we knew there were others like us out there, yet we were scared to confront their pain because of what they understood about our pain.

Last year we all took a bold step to overcome the fears about ourselves, to band together to become a force for change. To speak for all those who cannot speak for themselves. To make the invisible visible. To make the two dimensional three dimensions.

We are the Phoenix 11. Sexually abused as children, reduced to child sex abuse images, and stripped of our dignity and humanity, we have risen together as powerful young women who are retaking our identities and self-worth.

No longer content to live in the shadows, we are redefining what it means to be victims who were powerless to stop the relentless onslaught of the technology of abuse.

We are survivors of sexual torture, child rape, erotic photoshoots, pedophile sleepovers, elementary school sex shows, streaming BDSM, and twisted sexual desires whose digital images are trafficked worldwide to fulfill the endless needs of an evil perverted community which takes pleasure from our pain.

Now we are putting the world on notice that we will no longer be a silent suffering collage of young girls and boys whose nameless and often faceless images and videos circulate worldwide in the internet cesspool of humanity.

We are the Phoenix 11.

Hear our voice.

See our strength.

Answer our call.

We will not be stopped.

We will not be silent.

The Phoenix 11 is a group of 11 survivors whose child sexual abuse was recorded, and in the majority of cases, distributed online. This group has banded together as a powerful force to challenge the inadequate responses to the prevalence of child sexual abuse images on the internet.

PHOENIX¹¹

EXPERT PERSPECTIVES

“Child sexual abuse is a life changing adversity and an injury which research now reveals can manifest a harmful impact upon a child’s physical health, immunity, ability to learn, to grow, and mental well-being. Children with pre-existing health problems often have worsening of symptoms when they suffer this and other forms of abuse. Survivors tell us that the memorialization of child sexual abuse through the production of abusive images and videos and even worse, its distribution, constitutes a most egregious insult to an already severe injury. The rate of suicidal ideations is nearly twice as high for survivors of child sexual abuse images as compared to child sexual abuse without images. Eradication of this digital scourge against the successful recovery of children is within our reach and calls for action, child protection and justice.”

– Dr. Sharon Cooper, Developmental and Forensic Pediatrician and Adjunct Professor of Pediatrics, University of North Carolina at Chapel Hill School of Medicine.

“For far too long, victims and survivors of child sexual abuse imagery have been invisible in debates over internet regulation. The framework is the first policy document to place the rights and needs of victims at the centre of government and industry responses to the misuse of technology in the abuse of children. This is a powerful blueprint for a safer and more just internet.”

– Dr. Michael Salter, Associate Professor of Criminology, University of New South Wales

“From its earliest days, the internet has been weaponized against children around the world. From its earliest days, the technology sector has been negligent in ensuring that their platforms are not used to post child sexual abuse images. From its earliest days, the technology sector has profited while turning a blind eye to the horrific action of millions of their users around the world. This shameful behavior must end. We must reclaim our online communities and hold the technology sector responsible for their actions and lack of action. With the emphasis where it belongs, on the young victims, the Canadian Centre for Child Protection is taking the long needed steps to reframe the problem and the solution.”

– Dr. Hany Farid, Professor, University of California, Berkeley

“Once again the Canadian Centre for Child Protection has provided international leadership in putting the focus on survivors of child sexual abuse images, rather than perpetrators. For over 30 years, the world has had the *UN Convention on the Rights of the Child* available to try to reframe society’s most challenging problems by placing the child’s best interests at the centre. Here the Canadian Centre shows the power of the children’s rights paradigm to provide guidance to industry and government by reframing child sexual abuse images not from a criminal paradigm focused on the perpetrators’ acts, but holistically from the child’s rights to privacy, identity, to be protected from harm, as well as to full psychological recovery and social reintegration — all of which are violated when these images remain accessible on the internet.”

– Warren Binford, Professor of Law, Willamette University

“Child abuse images immortalise abuse and are all too easily accessed, resurfacing time and again and acting as a constant reminder to the victim, forcing them to undergo the trauma repeatedly. Years of failure by the tech industry and social media platforms to acknowledge and respond effectively to children who experience such suffering has only compounded the cost to individuals, communities and society. It is vital tech giants cooperate and stamp out this material before it spreads and causes lifelong suffering.”

– Peter Wanless, Chief Executive, NSPCC

“Every act of sexual abuse perpetrated against a child harms that child. Every act of sexual abuse perpetrated against a child which is recorded in a still or moving picture that finds its way on to the internet magnifies and can substantially expand the harm. To the damage caused by the abuse is added a gross loss of privacy and human dignity. The adult world in general and internet businesses in particular owe it to the injured child to curtail the further distribution of the child’s humiliation to the greatest extent possible, in the shortest time possible. The Canadian Centre’s Framework is a global blueprint for doing just that.”

– John Carr, Technical Adviser, ECPAT International

“Internet freedom cannot mean freedom from accountability while child sex abuse images circulate freely in a worldwide cesspool of exploitation. This groundbreaking framework is just that — the beginning of a sensible discussion about what must be done to ensure the rights and responsibilities of both technology providers and their most vulnerable digital citizens. It is long past the time that children are placed at the center of this discussion. The time is now, too many lives have already been sacrificed.”

– James R. Marsh, Chair of the Board of Directors, CHILD USA

“We are not going to prosecute our way out of the epidemic of child pornography on the internet. Industry — which has benefited so much from the unfettered flow of content — must take responsibility for protecting children from the posting of child sex abuse images on its platforms. This framework is the needed action plan with concrete steps for industry, government, and all who care about the safety of our children.”

– Carol Hepburn, Attorney, Savage Law Firm

“Child sexual abuse irreparably changes a person’s life; nothing will ever be as it could have been. The sexual abuse of children has also been fundamentally and permanently altered by digital media. The digital documentation and dissemination of this abusive act infinitely increases the suffering of survivors. There is a sense of urgency to act, as we can no longer leave the protection and dignity of affected children at the mercy of industry. As a global community we must firmly commit to prioritizing children, which, first and foremost, includes adopting common standards for effective and proactive digital child and youth protection, and supporting tools such as Project Arachnid.”

– Julia von Weiler, Psychologist, Innocence in Danger e.V. Germany

“Each victimized child, each abusive exploitative image on the internet, represents a failure of our adult obligation to children. Each instance is exacerbated further by our reluctance and unwillingness to remove those offending images when we find them. This framework provides clear imperatives to all who are concerned that some of our children are subject to systematic abuse and trauma which lasts a lifetime, which by now is an undisputable fact. This is a call to action to hold ourselves, our government and the technology industry to account.”

– Dr. John Wiens, Past Chair, Canadian Centre for Child Protection

FRAMEWORK FOR ACTION¹

It is evident that child sexual abuse imagery² and its growing availability on the internet is a social epidemic substantially impacting the lives of children/survivors and all those trying to protect them. We must reverse this dynamic and start approaching the removal of child sexual abuse images and harmful/abusive images³ of children from a protection and rights framework.

After 17 years of working in the space of online child sexual abuse and exploitation, the Canadian Centre for Child Protection (Canadian Centre) believes a new approach to the removal of child sexual abuse images and harmful/abusive images of children is urgently needed. In our organization, a major turning point came when we established Project Arachnid — a web platform designed to detect online child sexual abuse images proactively rather than waiting for the public to report them. The evidence made available by Project Arachnid prompted us to write this framework.

Project Arachnid brought to light the prevalence of images made prior to, and following, sexual abuse incidents; images that may not depict abuse or nudity, but are part of the sequence of the abuse images. Project Arachnid has also found images of physical child abuse and torture that are not overtly sexualized. As far as the Canadian Centre is aware, both categories of images do not fall under criminal definitions of child sexual abuse images in jurisdictions worldwide, and therefore, technology companies are not obliged to remove them. However, they are depictions of abuse and profoundly harmful to the children captured in those images.

As such, we are proposing a set of principles for action that a) prioritizes the best interests and protection of children, b) clarifies key roles and responsibilities, and c) ensures a coordinated, standardized, and effective response across jurisdictions.



Model in image and intended as illustrative.

MEANING OF CHILD:

For the purpose of this framework, a child means any person under the age of 18. In the context of child sexual abuse and harmful/abusive images/videos, if it is more likely than not that the person depicted is under 18, the material must be removed. Such removal will remain in place until the individual in the image or someone authorized to act on their behalf provides verifiable proof that the person is 18 OR OLDER.

¹ This document lays out a conceptual framework for the removal of child sexual abuse images and harmful/abusive images of children. The specific ways by which we operationalize this framework will be developed in the coming months.

² Within this framework, the term child sexual abuse images/imagery means those images or videos that fall within a criminal definition.

³ The term harmful/abusive images of children encompasses all images or videos associated with the abusive incident, nude or partially nude images or videos of children that have become publicly available and is used in a sexualized context or connected to sexual commentary. It also includes publicly available images or videos of children being physically abused, tortured or restrained.

I. THE BEST INTERESTS AND PROTECTION OF CHILDREN

By approaching the removal of child sexual abuse images and harmful/abusive images of children from a protection and rights framework, we are reaffirming the principle that every child is deserving of the rights to dignity, safety, privacy, freedom from harm, and security.

Removal of child sexual abuse images and harmful/abusive images/videos of children should be guided by the answer to the following questions: Would a reasonable person believe the image is of a child? Would a reasonable person believe the child within the image(s)/video(s) was being harmed due to the public availability of the material? If the answer to these questions is yes, immediate removal of the image(s)/video(s) should occur.

II. CLARIFICATION OF ROLES AND RESPONSIBILITIES

We suggest that key roles in this response should be understood in the following ways:

- **Governments** must take a leadership role and provide the overarching policy framework to ensure the best interests of children are at the forefront of any content removal strategy. Unlike the current fractured criminal law approach, the framework must account for the global reality of the internet. Governments should work together to establish the global criteria for determining if an image or video should be removed.
- **Trusted/verified hotlines**⁴ should be tasked with working with governments to determine the global criteria for removal and assessing any child sexual abuse and harmful/abusive images/videos for the purpose of issuing removal notices to industry. Hotlines should work with each other and with industry to ensure this material is promptly removed.
- **Industry**⁵ should remove images/videos expeditiously upon request from a trusted/verified hotline or other appropriate authorities.⁶ Industry should also be proactive, work together to develop and share compatible tools and data with each other and with trusted/verified hotlines.

Technology companies that do not directly provide services which allow for the creation, storage, or transmission of child sexual abuse and harmful/abusive images/videos of children may also be in a position to support the wider strategy. They can do this by withdrawing facilities or service from entities shown to be negligent or complicit in engaging in such behaviour.

⁴ Trusted/verified hotlines are vetted (under an agreement) to work within Project Arachnid and/or well-established hotlines with proven practices for assessing images/videos that are a part of the INHOPE network of hotlines.

⁵ In this report, industry is defined as a group of businesses that intersect with user-generated content by way of the internet. It is used as a broad sweeping term, encompassing large and small technology companies.

⁶ Images/videos should also be removed when the request originates from the child or the family of the child.

“We want to remind industry that these are real children in these photos that they receive notices for. We want people to stop thinking of this as a victimless crime and separate child abuse imagery from pornography. Pornography is consensual between two adults. [Child sexual abuse material] is never a choice for that child; it is abuse and we never agreed to have it shared. The continuous trading of our imagery is a constant burden on our lives. We want governments to stop protecting the rights of these predators over the rights of the innocent children they are destroying. We are demanding that ALL images associated with a child’s abuse be removed quickly. Because whether it is a smiling headshot, or a tearful action shot, I can tell you firsthand that the smile in the head shot is hiding just as many tears.”

– A member of the Phoenix 11

III. PRINCIPLES FOR ACTION

Every child has a moral and legal right to dignity, privacy, safety and security. In all cases, child sexual abuse images and harmful/abusive images of children will be assessed in accordance with the youngest child in the image/video, and those who have a role to play in the removal process (e.g., industry, hotlines) shall adhere to the following standards and guidelines:

1. All material recorded in the course of a sexually abusive scenario/incident⁷ involving a child victim (identified and unidentified) will be actioned and removed immediately by industry.

A set of images capturing an abusive incident will often include photos of the child that do not meet the legal definition of child sexual abuse material, but are part of the continuum of abuse. For example, a video recording of a toddler who ends up being sexually abused may begin with the child standing in a dress beside a bed. A still image of that child in her dress is created from the start of that video and is part of the continuum of abuse. Such images typically are used to advertise where to find additional images/videos involving child sexual abuse.

Another tactic sometimes used to circumvent laws is to place emojis or black boxes/lines over the child’s sexual organs or crop abusive images. For instance, offenders may create a separate image of the child’s face or feet from the abuse material. Under this principle, industry members are to take action and remove ALL images that are derived from illegal images/videos, not just the material meeting the legal definition of child sexual abuse images.

Model in image and intended as illustrative.

⁷ This includes incidents that appear to be self-generated.

- 2. Nude or partially nude images/videos* of children that have been made publicly available (typically stolen from unsecured social media accounts or surreptitiously taken images), AND are used in a sexualized context, will be actioned and removed immediately by industry.**

Stolen/reposted images are commonly found within forums and chatrooms used by those with a sexual interest in children. These are typically images/videos which have not been properly secured, or may have been posted innocently to social media or in an online photo album (often by parents/family members). This makes it possible for offenders to take the material and make it publicly available in a vastly different context, such as in the context of sexualized commentary or chats.⁸ Examples of these types of images include, but are not limited to, nude or partially nude images of children on the beach, at playgrounds, splash pads, babies on change tables, children urinating, and children nude/partially nude in what appears to be a home setting.

* Industry is to action and remove immediately, publicly available images of **clothed** children where the offender appears in an image to be masturbating to/ejaculating on a clothed child, or on an image of a clothed child, or the image is used in a sexualized context as with the nude/partially nude images.

- 3. Images/videos of a child being physically abused, tortured, or restrained will be actioned and removed immediately by industry.**

With or without a sexual context, with or without nudity or semi-nudity, images or videos of children being physically abused, tortured, or restrained constitute an egregious breach of a child's right to dignity and privacy. This material often involves elements of sadism and child torture; for example: children being hogtied and gagged; being handcuffed or chained; being caged; being burned; being beaten/whipped/hit.

SEXUAL MATURATION TRAINING:

To help accurately assess if a person in an image is a child, the Canadian Centre annually receives sexual maturation rate training, which includes child physical development training, from forensic pediatricians for its child protection analysts and senior management. This training is also provided to the hotlines that participate in classifying images within Project Arachnid.

⁸ Similar to principle one, with these images, offenders will sometimes use emojis or black boxes/lines to cover a child's sexual organs.

Current Responses to Removal Notices by Age of Child

The following chart provides an overview of the current responses from industry to removal notices issued through Project Arachnid.¹

	Image Category	VICTIM	CURRENT RESPONSE to Removal
PREPUBESCENT (0-8 yrs)	Child sexual abuse images	Identified and Unidentified	MOSTLY REMOVED: Exceptions include non-compliant operators that ignore notice requests for removal or providers that disagree with age assessments
	Child sexual abuse related images ²	Identified	UNKNOWN. Based on the reluctance of some industry members to remove obvious child sexual abuse images, Project Arachnid currently does not send removal notices to providers regarding child sexual abuse related images. However, it can be inferred child sexual abuse related images often remain online.
		Unidentified	UNKNOWN. Same as above.
	Other harmful/abusive images ³	Identified and Unidentified	UNKNOWN. Based on the reluctance of some industry members to remove obvious child sexual abuse images, Project Arachnid currently does not send removal notices to providers regarding other harmful/abusive images. However, it can be inferred, other harmful/abusive images of children often remain online.
PUBESCENT (9-12 yrs)	Child sexual abuse images	Identified and Unidentified	MOSTLY REMOVED: Exceptions include non-compliant operators that ignore notice requests for removal or providers that disagree with age assessments
	Child sexual abuse related images ²	Identified	UNKNOWN. See explanation in prepubescent section (child sexual abuse related images).
		Unidentified	UNKNOWN. Same as above.
	Other harmful/abusive images ³	Identified and Unidentified	UNKNOWN. See explanation in prepubescent section (other harmful/abusive images).
POST-PUBESCENT (13-17 yrs)	Child sexual abuse images	Identified	MOSTLY REMOVED: On occasion some providers push back
		Unidentified	OFTEN QUESTIONED AND NOT REMOVED
	Child sexual abuse related images ²	Identified	UNLIKELY. See explanation in prepubescent section (child sexual abuse related images). Also, given the overly cautious removal approach, it is highly unlikely any image of an unidentified post-pubescent child would be taken down.
	Other harmful/abusive images ³	Identified	UNLIKELY. See explanation in prepubescent section (other harmful/abusive images), and post-pubescent child sexual abuse related images.

For further information on how Project Arachnid will carry out removal notices on the various reports please see Appendix A: Frequently Asked Questions.

¹ As of December 2019

² Child sexual abuse related images: This includes still images/video frames/collages involving nudity, stages of undress, and/or clothed image associated to the sexual abuse of a child.

³ Other harmful/abusive images: This includes physical abuse images, stolen/reposted images of nudist material, and/or stolen/reposted nude/partially nude images used to sexualize children and images of clothed children that involve masturbation/ejaculate, and/or are otherwise sexualized.

BACKGROUND

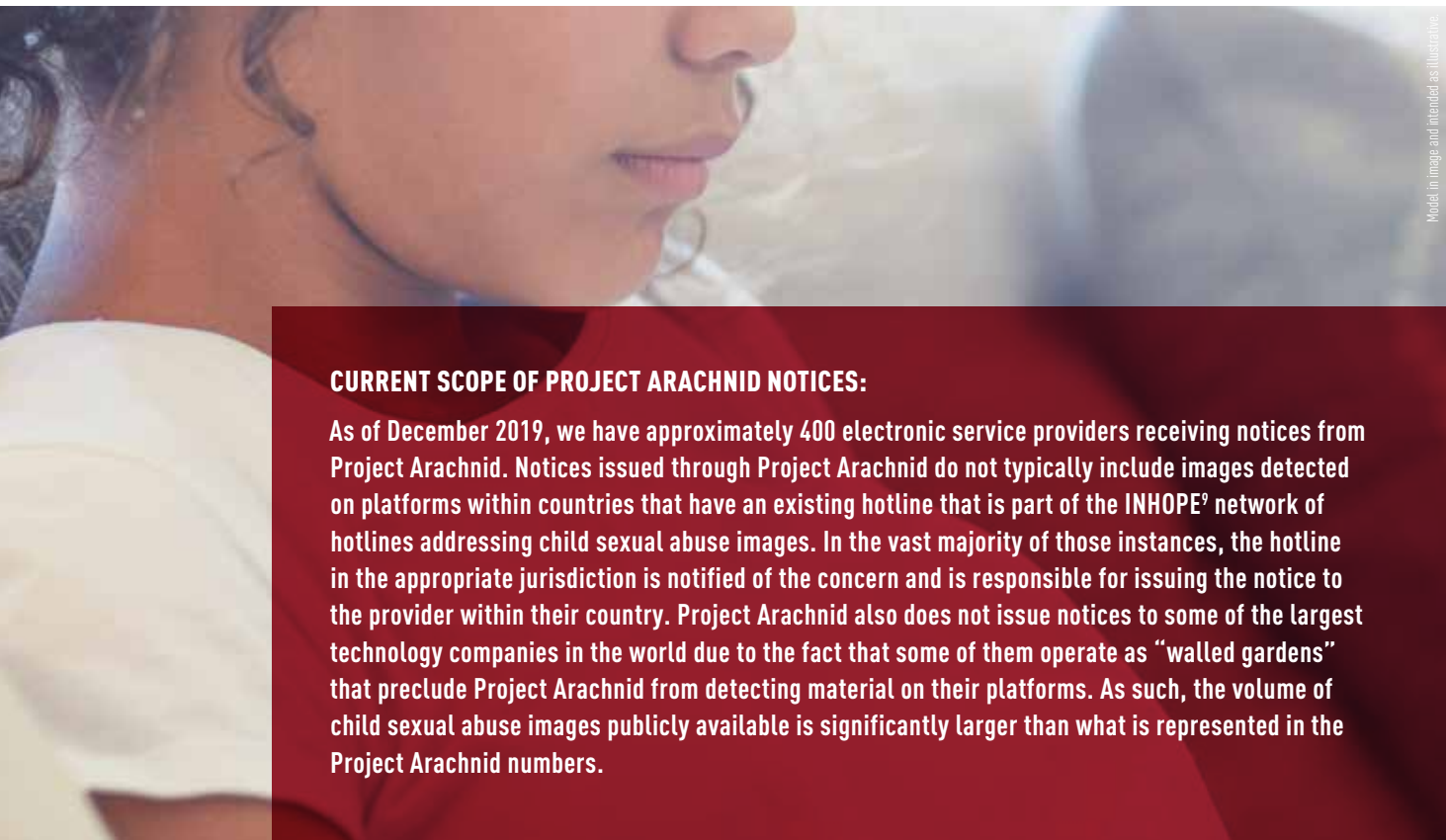
How We Are Failing Children: Changing the Paradigm is an urgent call to action for governments, industry, and hotlines around the world. The framework recognizes that children's interests and rights are transgressed by a range of abusive and harmful images that fall outside criminal definitions of child sexual abuse images, and the online protection of children requires significant clarification of roles and responsibilities in the removal of these images.

Current policies for the removal of child sexual abuse images have been focused on determining and removing material deemed illegal under criminal law. **In contrast, this framework is grounded in the best interests of the child, and the rights of children to dignity, privacy, and protection from harm.** The undeniable truth is the rights of a victimized child will be continually violated as long as images/videos of them being sexually harmed and abused are available on the internet.

Model image and intended as illustrative.

MEANING OF CHILD SEXUAL ABUSE IMAGES AND HARMFUL/ABUSIVE IMAGES:

Within this framework, the term child sexual abuse images means those images or videos that fall within a criminal definition. The term harmful/abusive images of children encompasses all images or videos associated with the abusive incident, nude or partially nude images or videos of children that have become publicly available and are used in a sexualized context or connected to sexual commentary. It also includes publicly available images or videos of children being physically abused, tortured or restrained.



CURRENT SCOPE OF PROJECT ARACHNID NOTICES:

As of December 2019, we have approximately 400 electronic service providers receiving notices from Project Arachnid. Notices issued through Project Arachnid do not typically include images detected on platforms within countries that have an existing hotline that is part of the INHOPE⁹ network of hotlines addressing child sexual abuse images. In the vast majority of those instances, the hotline in the appropriate jurisdiction is notified of the concern and is responsible for issuing the notice to the provider within their country. Project Arachnid also does not issue notices to some of the largest technology companies in the world due to the fact that some of them operate as “walled gardens” that preclude Project Arachnid from detecting material on their platforms. As such, the volume of child sexual abuse images publicly available is significantly larger than what is represented in the Project Arachnid numbers.

While operating Project Arachnid, we have become deeply concerned by the varying levels of commitment demonstrated by technology companies to safeguarding children. There have been a range of responses to notices issued by Project Arachnid and companies can occupy multiple categories — for example, we encounter companies that are both proactive as well as resistant. The spectrum of responses include:

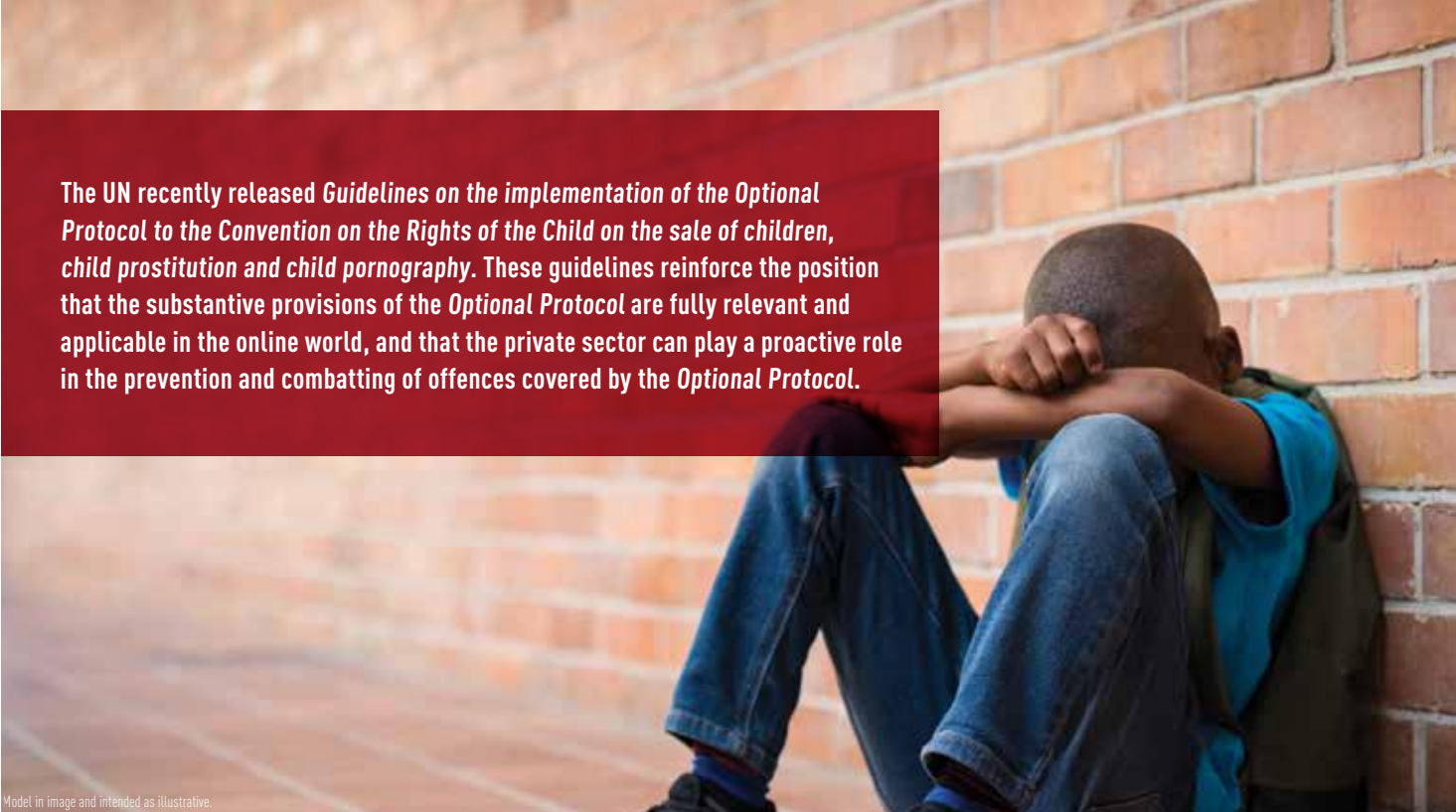
1. **Proactive:** Companies that actively seek to detect and prevent child sexual abuse imagery from being posted on their service. This typically involves the larger technology companies, but can include some smaller ones.
2. **Reactive:** Large and small companies that remove when notified, but do not actively seek to prevent child sexual abuse imagery on their service. Those that react to notices also have varying durations in removal time.
3. **Resistant:** Companies that debate/push back on removing the material, either not being satisfied that the image is a child or not agreeing that the image or video is illegal in nature.
4. **Non-compliant:** Companies that ignore take-down notifications or simply refuse to remove material that is clearly child sexual abuse imagery.
5. **Complicit:** Companies that knowingly allow child sexual abuse imagery on their services and may attempt to protect clients engaged in illegal activities.

⁹ INHOPE is an active and collaborative global network of hotlines dealing with illegal content online. It supports the network of hotlines in combatting online child sexual abuse material.

Some companies will act on a wider set of images that are clearly harmful even if they are not necessarily illegal, while others base their response solely on statutory obligation. There is a lack of transparency and accountability in the process of image removal, and industry has had extensive discretion and authority on decisions tied to the removal of these images.

While some of the large technology companies engage in proactive scanning/blocking of child sexual abuse images, smaller technology companies may not have the expertise or the budget to implement such a solution. These companies rely more on a reactive approach whereby they only act once they are informed that they are hosting child sexual abuse images. In our experience, some of the smaller, less reputable companies are entirely deficient in their response to this issue. In our work on Project Arachnid, we have encountered cases in which small companies are exploiting loopholes and jurisdictional differences to evade authorities and obscure their identity and location, thus not only routinely avoiding their obligations to remove child sexual abuse images, but in some instances providing the platform that facilitates and promotes the exchange of such material. Notably, these quasi-legal or potentially criminal operators receive internet, technical, and professional support from larger internet transit providers who are generally not in a position to know this is occurring through their services.

We are hopeful the paradigm shift called for in this report will result in the change necessary to curb and even reverse the growing number of children abused and harmed online. We have a global responsibility to children to make a distinctive impact in eradicating child sexual abuse images and harmful/abusive images of children on the internet. Through increased collaboration, new strategies, and a united resolve among stakeholders, we are determined to make this a reality.



The UN recently released *Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. These guidelines reinforce the position that the substantive provisions of the *Optional Protocol* are fully relevant and applicable in the online world, and that the private sector can play a proactive role in the prevention and combatting of offences covered by the *Optional Protocol*.

UNDERSTANDING THE SCOPE OF THE PROBLEM: Public Availability of Child Sexual Abuse Images

There have been countless research projects and studies attempting to quantify the volume of child sexual abuse images on the internet. As a result, there is more than enough evidence to confirm an abundance of images and videos of children being sexually abused is available worldwide.

Consider the international hotlines that have been inundated with processing reports concerning child sexual abuse images:

- The National Center for Missing and Exploited Children's (NCMEC's) CyberTipline, the largest hotline of its kind in the world, averages approximately one million reports of child sexual exploitation each month and has received, in total, more than 45 million¹⁰ reports. The majority of those reports involve electronic service providers reporting instances of suspected child sexual exploitation due to their proactive efforts.
- Over the last few years, the Canadian Centre's Cybertip.ca¹¹ hotline has moved from managing 4,000-5,000 reports/month from the public to processing approximately 100,000 reports/month as a result of Project Arachnid and the automated detection of suspected child sexual abuse images. In 2018, Cybertip.ca assessed double the amount of imagery it had in the previous 15 years combined.
- In early 2018, a joint report released by INTERPOL and ECPAT International¹² stated as of August 2017, the Internet Child Sexual Exploitation Database (ICSE) Database¹³ contained over one million unique individual images and videos and that, "it is widely acknowledged that many millions of child sexual abuse images are currently in online circulation."¹⁴

The number of images/videos, while devastatingly harmful and abusive in and of themselves, only captures a sliver of the harm experienced by victims/survivors of child sexual abuse. Many of these victims have been sexually abused over the course of several years and not every act of abuse is recorded. When we use static numbers to quantify this social epidemic, it in no way captures the full extent of the problem, and the overall abusive experiences of victims and survivors.

¹⁰ As of April 2019.

¹¹ Cybertip.ca is Canada's tipline for addressing the online sexual abuse and exploitation of children.

¹² EPCAT International and INTERPOL, (2018), *Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material*. Interpol, 2018.

¹³ Launched in 2009, ICSE is a tool for law enforcement to investigate child sexual abuse material in the form of images, videos and hashes.

¹⁴ EPCAT International and INTERPOL, (2018), *Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material*. Interpol, 2018. page 20, quoting: Carr, J., and Hilton, Z. (2011), "Combating child abuse images on the internet — international perspectives". In J. Davidson and P. Gottschalk, (Eds.), "Internet Child Abuse: Current Research and Policy", 52-78, Abingdon: Routledge.

Model in image and intended as illustrative.

“The sheer volume of child sexual abuse material online is almost inconceivable.”

– WePROTECT Global Alliance to End Child Sexual Exploitation Online¹⁵

Model in image and intended as illustrative.

The number of victims who have been identified and rescued is significantly less than the number of unidentified victims. For example, as of November 20, 2018, the NCMEC CyberTipline had reviewed 267 million images and videos, yet only 15,800 victims are reported as having been identified by law enforcement.¹⁶

Model in image and intended as illustrative.

The public would likely be surprised by the number of child sexual abuse images on the internet compared to the number of police investigations and/or prosecutions of the individuals responsible for the creation and dissemination of such content; especially when you factor in the activity within the Tor¹⁷ network.

¹⁵ The WePROTECT Global Alliance to End Child Sexual Exploitation Online is an international movement dedicated to national and global action to end the sexual exploitation of children online. Over 70 nations have signed on to the WePROTECT initiative, and it is led by a multi-stakeholder board, comprised of representatives from key countries, international and civil society organizations, and the technology industry.

¹⁶ Source: missingkids.org/theissues/sexualabuseimagery.

¹⁷ The Tor network allows users to remain anonymous with their online activity. Communication is encrypted and bounces through a network of relays run by volunteers around the globe.

Model in image and intended as illustrative.

“No child should have to endure the pain, the hardships, the loss of innocence or a normal life at the hands of an abuser and those who want take pleasure from the suffering of children.... The world needs to recognize that child sexual abuse and its imagery is not just a singular crime like a gunshot wound. The abuse may have occurred one time or a hundred times, but once that imagery is posted online the abuse is infinite and the mental scars created do not fade as easily as those made by stitches healing.”

– A member of the Phoenix 11



Model in image and intended as illustrative.

Hearing from Survivors

In 2016, our organization, along with NCMEC and other experts from around the globe, launched the International Survivors' Survey (Survivors' Survey)¹⁸ for adult survivors whose childhood sexual abuse was recorded and, in most cases, distributed online. Over the course of a year and a half, 150 survivors from around the world completed the survey and contributed invaluable insight into the unique historical and current challenges faced by survivors.

As the first generation of victims whose abuse has been/may have been posted or circulated online, these survivors provided critical information to identify gaps in the systems that respond to and support victims of this crime.

¹⁸ View the full results of the Canadian Centre for Child Protection's International Survivors' Survey at protectchildren.ca/surveyresults.

INTERNATIONAL SURVIVORS' SURVEY — PRIMARY FINDINGS

- 87% of the respondents were 11 years of age or younger when hands-on abuse began, and for 56% of the survivors, the abuse began before the age of four. Deeply concerning was the duration of the abuse, which for 36% of the survivors continued into adulthood.
- The majority of respondents to the Survivors' Survey identified a parent or family member as their abuser — 50% of those were abused by one person (n=26), and 82% of those abused by multiple individuals were abused by a parent or family member (n=83).
- Nearly 70% of respondents indicated they constantly worry about being recognized by someone who has seen images/videos of their abuse (n=103), and 30 respondents reported being identified by someone who has seen images/videos of their abuse.
- When asked how the existence of the images/videos impacted them differently from the child sexual abuse itself, survivors frequently spoke of the permanence of the images/videos and that if the material was distributed, their circulation will never end, which underscored the powerlessness they felt about the imagery/videos.

Survivors told us the recording of the abuse and its continued online availability created an additional layer of trauma which coloured every aspect of their lives. Simply knowing such recordings exist, and that individuals around the world are able to view and take pleasure from them, evokes a variety of emotions including fear, shame, and a pervading sense of powerlessness. As so eloquently expressed by one such survivor:

“I still believe these images can ruin my life. I will still feel ashamed of myself for a long time that so many people can look at them, even though the abuse is over. I can protect myself from being raped again, but there’s nothing I can do against these photos and videos being sold and stored.”¹⁹

The knowledge their sexual abuse images/videos may be or are publicly available has an enormously negative impact on survivors. The impact of ongoing circulation significantly reduces the ability of survivors to cope with day-to-day stressors, maintain healthy relationships, and reach their full potential in educational and occupational pursuits. By taking concrete steps to curb the public availability of child sexual abuse images, the ongoing harm to survivors can be reduced.²⁰

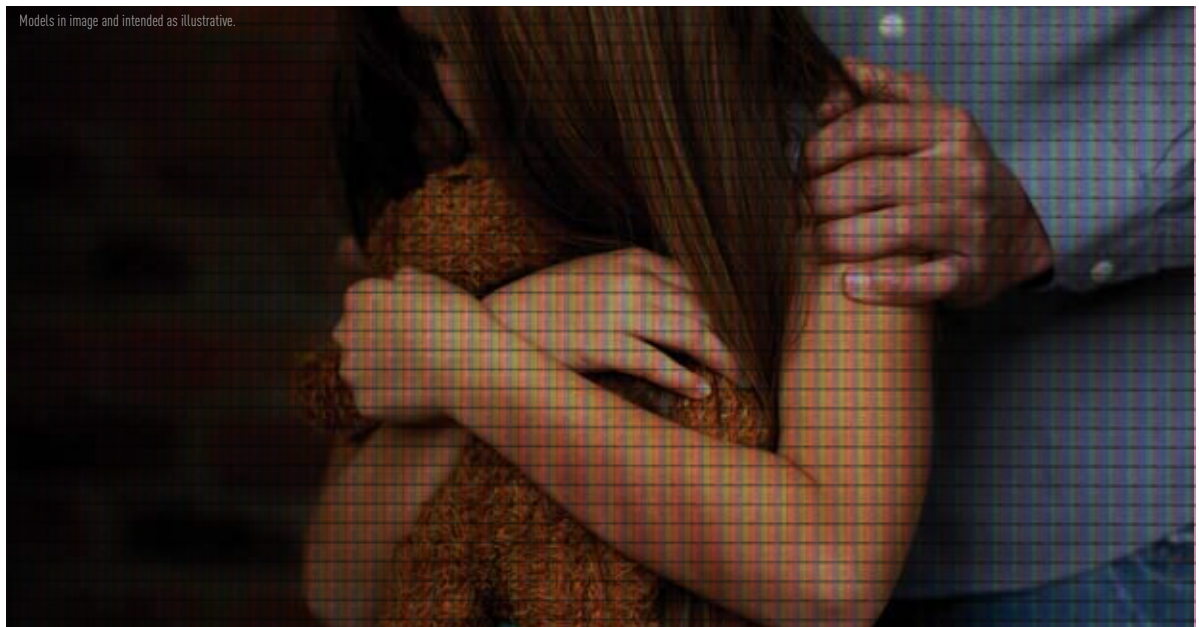
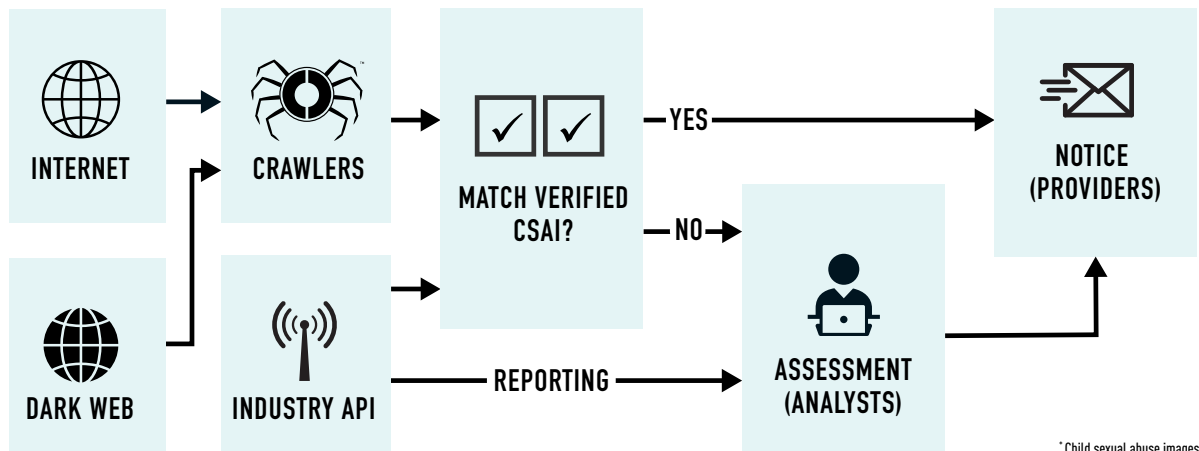
¹⁹ Canadian Centre for Child Protection Inc., (2017), *Survivors Survey, Full Report*. Page 149.

²⁰ Canadian Centre for Child Protection Inc., (2017), *Survivors Survey, Full Report*. Page 90.

Evidence Provided from Project Arachnid

In response to survivor concerns, in January 2017, the Canadian Centre launched Project Arachnid,²¹ a platform for reducing the online availability of child sexual abuse images on the internet. In addition to crawling functions, the system has evolved into a platform that includes tools for industry to address child sexual abuse images. These tools make it easier for companies to be proactive in removing child sexual abuse images on their services.

How Project Arachnid Works:*



²¹ Learn more at projectarachnid.ca.

Project Arachnid results as of December 2019:



Over 96 billion
images processed



Over 13 million suspected
images of child sexual abuse
triggered for analyst review



More than 4,200 victim
series²² detected



Almost 5 million notices
sent to industry



85% of the notices issued relate
to victims who are not known
to have been identified by police

In operating Project Arachnid, our agency has learned a significant amount about child sexual abuse images and abusive/harmful images of children. Cybertip.ca began archiving child sexual abuse images and harmful/abusive images of children in August 2017, which provided analysts with the much needed context surrounding victim series and the continuum of their abuse. Within a similar timeframe, our organization also received hash values²³ from NCMEC and began receiving hash values and other critical data sources from INTERPOL and the RCMP.

The important lessons gleaned from this pool of information are summarized below.

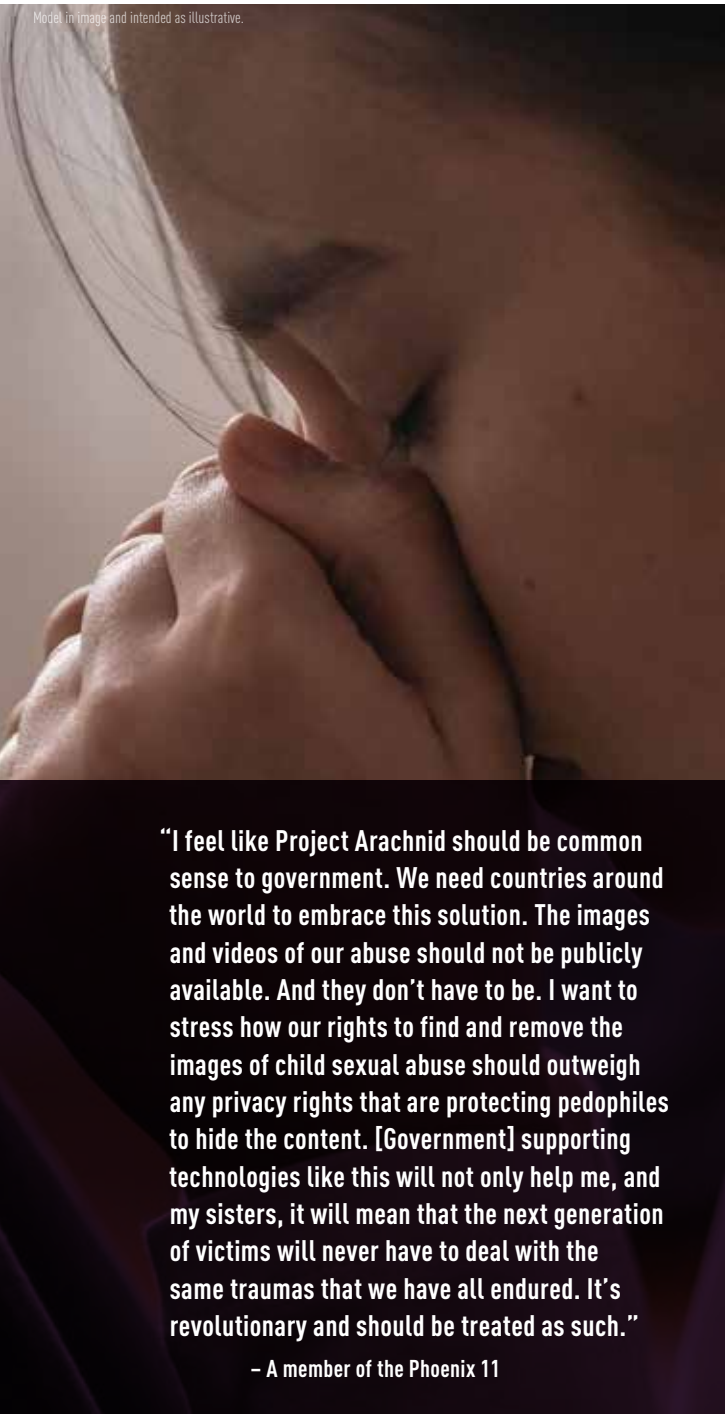
Context is Key

While industry assessment of what is, and is not, a child sexual abuse image is based on the characteristics of the image itself, context is key to determining whether an image is abusive and harmful. Within Project Arachnid, analysts are seeing a tremendous amount of historical content, some that has been available for decades, as well as other content tied to known victim series (identified or unidentified). Previously, without that sequential context, many images of known victims were not connected by hotlines with the more egregious images of those victims, and therefore, not prioritized for removal. Images can now be connected to a known incident of child sexual abuse because of what the child is wearing or the location. Such images would not have been correlated by hotlines or industry to known victim series prior to our archiving images/videos.

²² A victim series encompasses images/videos known to police that involve identified and unidentified child victims.

²³ A hash value is a numeric value of a fixed length, much like a fingerprint, that uniquely identifies data.

Model in image and intended as illustrative.



"I feel like Project Arachnid should be common sense to government. We need countries around the world to embrace this solution. The images and videos of our abuse should not be publicly available. And they don't have to be. I want to stress how our rights to find and remove the images of child sexual abuse should outweigh any privacy rights that are protecting pedophiles to hide the content. [Government] supporting technologies like this will not only help me, and my sisters, it will mean that the next generation of victims will never have to deal with the same traumas that we have all endured. It's revolutionary and should be treated as such."

– A member of the Phoenix 11

Legal Images Used to Further Victimize Children within Known Series

We also now observe how legal images/videos of a child are being openly misused by offenders to re-victimize children (survivors) within known series. For example, offenders will comment on a survivor's current whereabouts or post other identifying information, such as the school/university a survivor is attending, the name of the sports team a survivor is on, a survivor's community involvement, images involving a survivor's friends/acquaintances, etc. This information may be used to determine a survivor's whereabouts or utilized as a gateway to point towards the location of a complete set of images/videos associated with a survivor. There have been some extreme instances where offenders seek images of survivors, now as adults, with their families and comment on their desire to offend against the survivor's own children.

Safety Risks to Victims

In many of the recordings in circulation, whether they are child sexual abuse images or harmful/abusive images of children, the child is often fully visible and identifiable.²⁴ This visibility not only heightens the degree of the privacy violation, but also presents an obvious risk to the child's personal safety and psychological security, now and in the future. It means any person who knows the victim could possibly recognize them, and for someone who does not know the victim, they might be able to identify them in the future. Of even more concern, in some instances, the actual name of the child is posted along with the abusive imagery or the name of the child becomes known to the offending community through other means. Due to the ongoing availability of their child sexual abuse imagery, many of these children have had to change their name to avoid being identified and harmed by those who view them as sexual objects or commodities.²⁵

²⁴ This is in stark contrast to the offender who is either not visible in an identifiable way (e.g., face is blacked or blurred out, or cut off) or is not visible at all in the image/video, which in some instances can make it appear as though the image/video was created by the victim alone.

²⁵ Under the *United Nations Convention on the Rights of the Child*, a child has the right to preserve his or her identity and name. Yet once an offender has tied a child's real name to a child sexual abuse image or harmful/abusive image, not only is that child's safety and security at risk, the child's right to retain their identity and name is potentially violated.

Extracting Images from Video Content to Entice Offenders and Advertise New Content

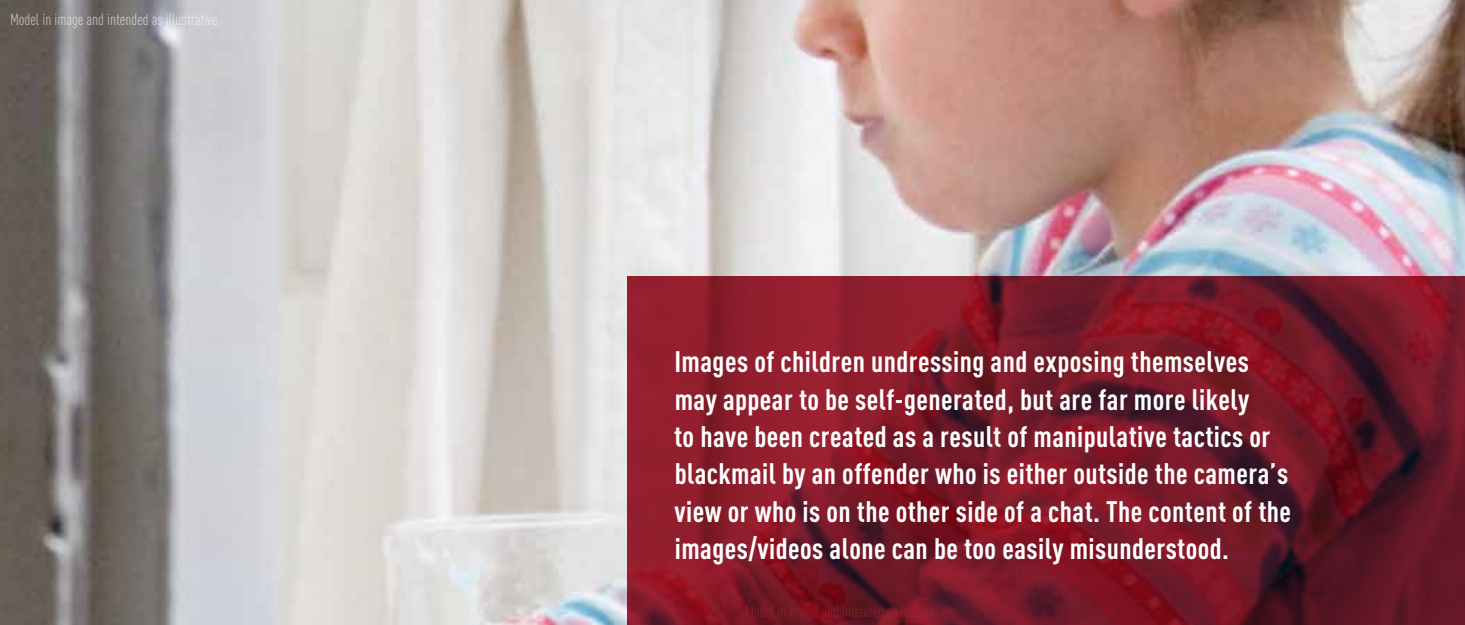
Still images — in some cases, thousands of them — are extracted from child sexual abuse videos to entice offenders to collect every still image associated with a video, to promote new content, and to draw attention to new victims. These images are also used by offenders to create new video files or collages of one or multiple victims connected to the most egregious aspects of the sexual assaults. This material is used by offenders to build their collections, as well as to leverage in trading with other offenders.

Additionally, it is not uncommon for offenders to create compilation video files made up of short clips from other complete videos of child sexual abuse. These are frequently used to show other offenders the extent of their collection or to promote their sexual preferences/interest in particular children or series. Since each compilation video file has a unique hash value that differs from the hash value associated with the original video(s), each one is a “new” file that must be separately reviewed and assessed before a notification can be sent for removal.

Young Children Manipulated by Offenders and Recorded Over Live Stream

Through Project Arachnid, we have seen an increase in the number of images/videos of children who appear to be between the ages of 8-12 years old undressing, exposing genitalia, and/or carrying out sexual acts over live streaming services/apps. In these live stream recordings, it appears that the children are manipulated or coerced into filming themselves in private spaces such as bedrooms or bathrooms. It is fairly common to see objects like toothbrushes, pencils, crayons, and sometimes hair brushes being inserted into a child’s vagina or anus. In many cases, recordings also involve other children who may be either peers or older or younger siblings. Offenders then share excerpts of these recordings, or share them in their entirety, with other offenders on chat sites, forums, and the dark web. When shared, the excerpt typically involves a still of the coerced sexual act. Sometimes we also see still images produced prior to or after the coerced sexual act, that do not contain the coerced sexual acts, as a way of “safely” advertising the availability of the full recording/content on other services.

Model in image and intended as illustrative.



Images of children undressing and exposing themselves may appear to be self-generated, but are far more likely to have been created as a result of manipulative tactics or blackmail by an offender who is either outside the camera’s view or who is on the other side of a chat. The content of the images/videos alone can be too easily misunderstood.



Model in image and intended as illustrative.

“We never knew that there was any hope for getting the images of our abuse taken down from the internet. We always thought it was another thing that we could not control. Now that we know that there are actually ways to do it, we want it all shut down. We don’t want any more children to have to deal with what we deal with if that can be fixed.”

– A member of the Phoenix 11

Stolen Pictures Commonplace in Pedophile Forums

Stolen pictures are commonly found by Project Arachnid within pedophile forums and chatrooms. The images may have been originally posted innocently, but are reposted and used in a way that sexualizes and harms children. The images are posted to pages/chats that include horrific text, comments, or graphics that add a sexual connotation to an otherwise innocent image of that child.

Offenders also take pictures of themselves ejaculating on these otherwise legal images of children that are posted on specific pages/chats. Safety risks to children are further elevated when, in many of these forums and chatrooms, offenders also claim to have access to the child in some capacity (e.g., child in the neighbourhood, relative).

Through Project Arachnid, we also see offenders posting and commenting on what appears to be self-generated intimate images or videos of tweens/teens. Whether or not the youth is aware of its circulation, these children are re-victimized every time their images are viewed, and may also face elevated safety risks depending upon what additional information is shared about them.

Images/Videos of Known Identified Victims Being Used to Groom New Victims

Through Project Arachnid, we have seen many images/videos where the offender is photographed/recorded showing the child they are grooming, or newly abusing, the images of sexual abuse of another known/identified victim/series. Offenders will use this tactic in an effort to introduce and normalize sexual contact and/or use it as an instructional guide on what the child should do and how the child should behave during the sexual abuse incident(s).

Large Volume of Adolescent Content on Adult Pornography Sites

As a result of receiving other data related to victims (e.g., victims identified by law enforcement), Cybertip.ca is now aware of a significant volume of child sexual abuse images that includes pubescent/post-pubescent victims. Particularly in the case of adolescent content, confirmation of the identity and age of a minor in an image/video provides the opportunity to issue notices requesting its removal. Project Arachnid regularly detects child sexual abuse images involving identified pubescent and post-pubescent children on adult pornography sites, which is unlawful and must be removed.

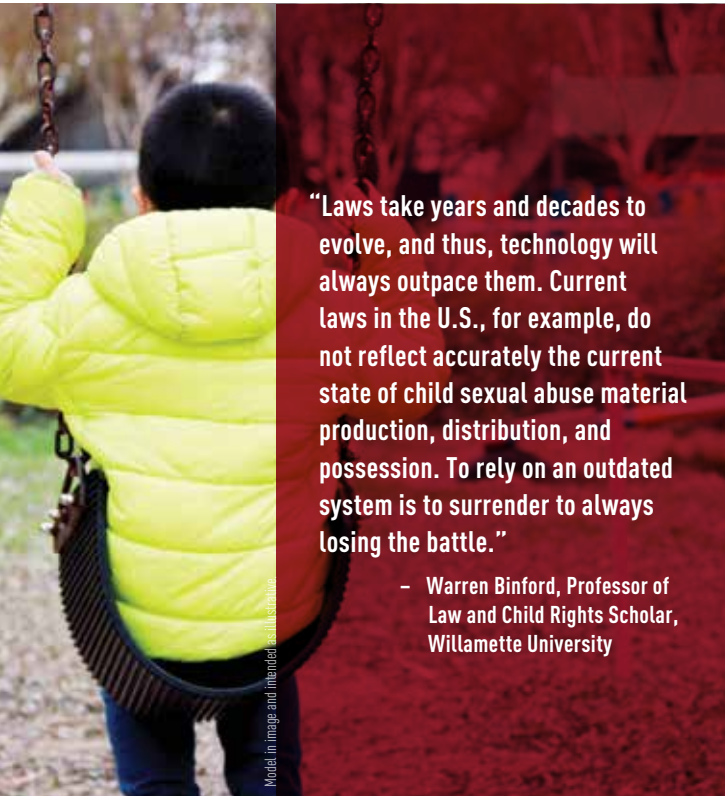
WHAT ARE THE PROBLEMS WITH CURRENT RESPONSES?

The overwhelming pace of technological progression, along with the significant online offender population, has resulted in a lack of cohesiveness in responses to child sexual abuse imagery around the globe. This problem includes a rigid adherence to criminal law definitions and the criminal standard of proof (beyond a reasonable doubt) to determine criterion for removal, inconsistent assessment processes, a failure to consider the ongoing harm to a child victim when content is not removed, a failure to connect the continuum of harm to child victim(s), and other risks to the safety and rights of children. The lack of a standardized response is also reflected in the inconsistency with which industry's terms of service are being applied. We are facing a serious challenge in finding ways to reverse the tide.



“We are hearing more and more examples of perpetrators of these crimes gaining privacy rights that ease their ability to continue to perpetrate, such as the recent announcement by [a popular platform] to implement end-to-end encryption in their messaging software, but what we are not hearing about are concrete plans regarding the protection and privacy of children whose images of sexual abuse are shared through this software. I am here to represent the millions of children that no one will ever hear about in the media or who will not be heard in a courtroom and ask that governments take the responsibility of protecting the rights and privacy of children into their hands and force industry to account for these rights as well. To stop a global epidemic we must address child sexual abuse imagery and its distribution as a committed and united front.”

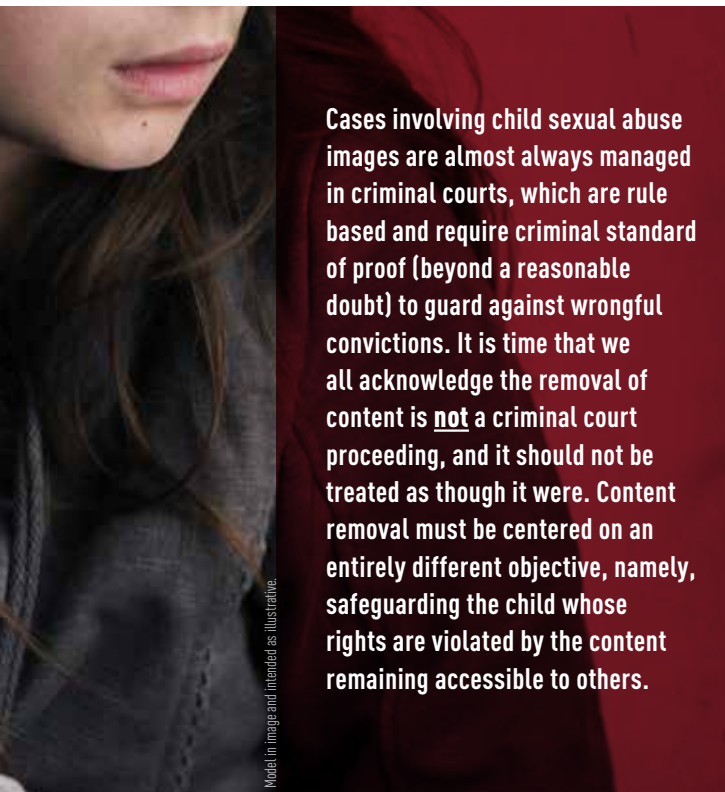
– A member of the Phoenix 11



“Laws take years and decades to evolve, and thus, technology will always outpace them. Current laws in the U.S., for example, do not reflect accurately the current state of child sexual abuse material production, distribution, and possession. To rely on an outdated system is to surrender to always losing the battle.”

– Warren Binford, Professor of Law and Child Rights Scholar, Willamette University

Model in image and intended as illustrative.



Cases involving child sexual abuse images are almost always managed in criminal courts, which are rule based and require criminal standard of proof (beyond a reasonable doubt) to guard against wrongful convictions. It is time that we all acknowledge the removal of content is not a criminal court proceeding, and it should not be treated as though it were. Content removal must be centered on an entirely different objective, namely, safeguarding the child whose rights are violated by the content remaining accessible to others.

Model in image and intended as illustrative.

Overly Reliant on Criminal Law Definitions and Criminal Standard of Proof to Address Removal

There are fundamental problems with using, in isolation, criminal law definitions of child sexual abuse images to determine what images/videos should be removed from public view. **These laws were intended only for use in a criminal court context and were drafted narrowly and with precision to support the imposition of very serious criminal law sanctions. When those same definitions are relied upon to determine what content needs to be removed, it means a significant proportion of harmful/abusive images of children remains online.**

Content moderation based upon narrow legal definitions does not serve the best interests of children/victims whose child sexual abuse images have been recorded and shared online. Far too many harmful and abusive images of children do not meet the criminal threshold in many jurisdictions. For example, within Project Arachnid, analysts frequently see close-up images of children with what appears to be semen on their face. We know these images are sometimes not removed by some within industry because they state they cannot verify the substance is semen when the images are seen in isolation. Essentially, they are asking, “Is it beyond a reasonable doubt that this is semen on the child’s face?” Instead, the appropriate question is, “In the context of this image, is it more likely than not that a person viewing the image would perceive that this is semen on the child’s face?” Criminal definitions do not contemplate or account for the wide range of harmful and abusive images that are widely available and are far too restrictive when used to make decisions about image removal. Further, it is inappropriate to require proof to a criminal standard, and to remove only that which is unquestionably illegal, when the objective of removal is not punitive — it is to protect victims of child sexual abuse images from further victimization and harm.

Inconsistent and Subjective Assessment Process Coupled with Lack of Training on Sexual Development

Over the last number of years, hotlines and industry have been the primary agents tasked with assessing content to determine whether it meets the threshold of illegal material for the purpose of removal. This process typically relies on conducting a developmental age assessment of the child in question, along with whether there appears to be any sexual activity or sexual purpose to the content. From our experience, this assessment process can be highly subjective, inconsistent, and is cautious to the point of absurdity in some instances.

As a result of inconsistencies in assessing a child's sexual maturation, hotlines may not issue notices to industry, industry may refuse to remove the image, or there may be reluctance to take it down without further verification the child in question is without a doubt under 18. Through notices generated by Project Arachnid, our organization is experiencing pushback from some large technology companies on requests to remove sexual abuse images associated with children we believe to be as young as 10-12 years of age.

When children are in the early stages of puberty and are unidentified, the images of their abuse are often not removed immediately. For some industry members, any signs of sexual maturation (e.g., axillary and pubic hair, breast buds, a curve in the hips) will result in an image not being removed in spite of having received a request for removal from a trusted/verified hotline. In these situations, removal only happens once industry receives some kind of age verification from law enforcement that the child is under 18, presumably to ensure adult pornography is not taken down.





ADULT FREEDOM OF EXPRESSION AND CHILD RIGHTS:

The impetus for the removal of child sexual abuse images and harmful/abusive images of children is grounded in the child's inherent right to dignity and their right to privacy. Removal should not be considered as being in competition with the right to freedom of expression. At an international level, freedom of expression is recognized to carry with it special duties and responsibilities under Article 19 of the International Covenant on Civil and Political Rights, in that such rights can be restricted, "for respect of the rights or reputation of others" and "for the protection of ... public health or morals." Child sexual abuse images that meet the threshold for illegality are categorically not protected forms of speech. Child sexual abuse imagery has no social value, and its public availability constitutes a clear and continuing violation of the rights of a vulnerable group that virtually all nations recognize is worthy of protection.

Early signs of sexual development dominate and unduly influence the assessment criteria and removal process, resulting in countless images/videos of children remaining online. The pace at which children sexually develop varies considerably and can also vary depending on ethnicity, so it is imperative that indicators beyond sexual development form part of the assessment. In many instances, it would be crystal clear to the average person that the individual in the image is still a child. Moreover, research suggests the stress of sexual abuse may trigger early pubertal development:²⁶

"In North America, the age of onset of puberty — as evidenced by the development of secondary sexual characteristics such as breast development, pubic and axillary (armpit) hair and growth of testicles and penis — occurs typically between the ages of 8 and 13 years in girls and 9 and 14 years in boys. (There has been noted a trend towards earlier age of onset of pubertal changes in developed countries. As well, racial differences even within North America exist for the onset of puberty). Pubertal development is often complete by the age of 17 years in girls and 18 years in boys, (although males may continue to show some continued increase in height, and facial hair after the age of 18). This suggests, however, that in images where only minor signs of puberty are evident, the children are well under the age of 18 years and almost certainly much younger."

– Dr. Debbie Lindsay, Forensic Pediatrician

The repercussions for children/survivors whose child sexual abuse is recorded and shared online is immense. Once a child sexual abuse image or video is made available in one online location, any delay in removal, or refusal to remove, permits others to save and share the material. Inaction perpetuates the ongoing traumatic cycle of abuse that survivors face day in and day out.

²⁶ 1.J Adol Health Care 1980 Sep;1(1):26-9. "Normal ages of pubertal events among American males and females," *Pediatrics*, October 2002, VOLUME 110 / ISSUE 4; Tiejian Wu, Pauline Mendola, Germaine M. Buck. "Ethnic Differences in the Presence of Secondary Sex Characteristics and Menarche Among US Girls: The Third National Health and Nutrition Examination Survey, 1988–1994." *Pediatrics*. 2002 Oct; 110(4):752-7.

Failure to Remove All Images in an Abuse Series

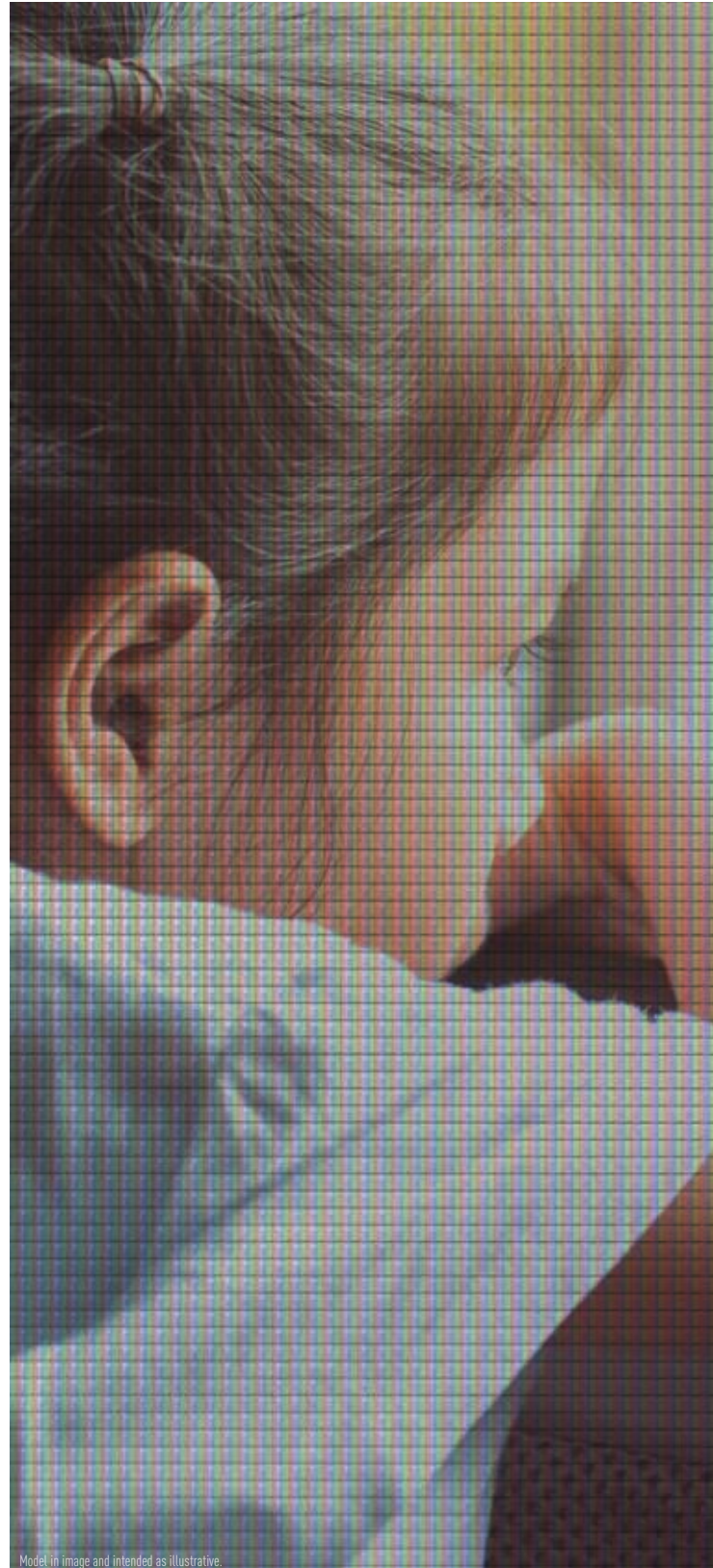
As previously mentioned, in a victim series of child sexual abuse images, numerous images are often associated with the abusive incident(s). It may start with still images that, to anyone other than an offender, seem innocuous (clothed and partially clothed), but then progress to the child being sexually abused. While it may be true that some of these images alone may not technically meet a criminal threshold, or neatly fit within the industry threshold for removal, they are a part of a continuum of abuse experienced by the child.

Additionally, there is a demand and interest for some offenders in collecting the full series, which includes seemingly harmless imagery as well as illegal imagery. Since the seemingly harmless imagery is not viewed as illegal, these images are being deliberately used by offenders, who likely anticipate they won't be removed, to point to and provide information about child victims, as well as to boast to other offenders about their in-depth knowledge of a specific series or victim(s). To our knowledge, these images are typically not being removed, despite being associated with a known series of images and being used to actively re-victimize children and advertise pathways to child sexual abuse imagery.

Failure to Address Long-Term Safety Risks for Survivors

Some of the more dangerous offenders even go so far as to maintain an interest in survivors over a longer period of time. Examples include offenders seeking out pictures of survivors, now as adults, and posting/commenting about the victim's historic abuse scenarios, as well as their current status, which can include legal pictures of survivors with current friends/partners, schools they attend, their children, etc. There is obvious ongoing harm to the survivor, as well as privacy and safety risks that extend beyond the survivor to include their families.

Offenders can and do try to locate survivors. This has meant some survivors choose to stay off the digital grid entirely, some participate only under a pseudonym, and others severely limit their online social engagement and public accessibility, even in their work life.



Model in image and intended as illustrative.

Physical Abuse Often Not Addressed

It is becoming increasingly common to see violent images/videos being made available online that involve the physical abuse of a child. Similar to child sexual abuse imagery, for this type of material to exist, a child must be physically abused. These images/videos are not re-enactments or parodies — they are actual, raw, physical assaults upon children. The physical abuse is extreme (slapping, punching or throwing the child) and sometimes includes elements of bondage (children who are tied/confined around their necks, arms, legs and/or ankles) or even physical torture. By the very nature of the content networks within which this type of content proliferates (in which users can easily share, like, and/or comment), the child depicted is continually and relentlessly exploited and degraded.

The ongoing availability of these images/videos is a repeated violation of the privacy of these children; it is dehumanizing and represents an assault on their dignity every time the material is viewed. The children within these recordings are commonly fully visible and possibly identifiable to anyone who may know them. This type of material can be used to fuel or incite harm to children by individuals who have an interest, sexual and non-sexual alike, in the degradation, pain, and torture of children. The accessibility and prevalence of this content can also contribute to normalizing and desensitizing the public, thus increasing the risk of violence to children. Images and videos of the physical abuse of children should be eradicated with haste in order to decrease demand for new content and distribution, as well as to eliminate the ongoing harm from the continued availability of this material.



Model in image and intended as illustrative.



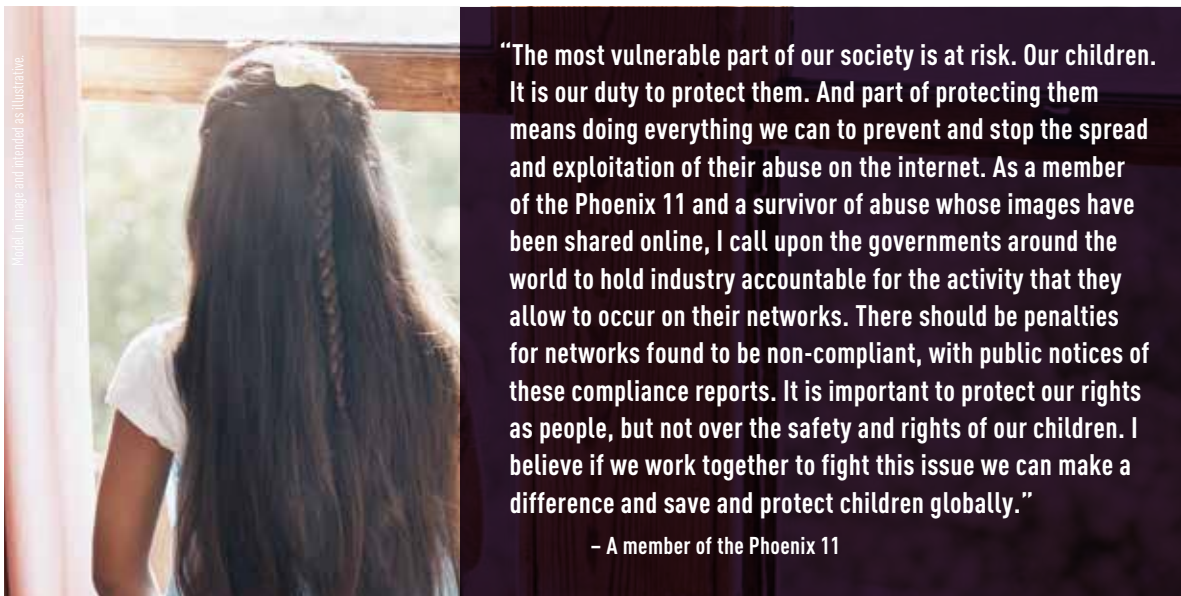
Model in image and intended as illustrative.

Within many of the technology companies' terms of service, it is common to see broad language used about what the platform does not permit. For example, infringement upon another person's rights, infringement upon another person's intellectual property, content depicting acts of physical harm, content depicting sexual exploitation or sexual assault, content depicting child exploitation, or child sexual abuse images. Therefore, industry have already given themselves the power to remove child sexual abuse images and harmful/abusive images of children by way of their own terms of service.

Arbitrary Application of Terms of Service by Industry

Today, there are thousands of companies in the world providing services that are misused through the uploading of child sexual abuse images and harmful/abusive images of children. Some within industry are taking active steps to reduce online child sexual abuse and exploitation, while others are only reactive, or worse, doing nothing at all to tackle this serious social epidemic — resulting in harmful, abusive, and illegal, content remaining accessible on their platforms for extended periods of time. Without a united approach to this global problem, child sexual abuse images, as well as harmful/abusive images of children will continue to fester and multiply online, fuelling networks of offenders.

Industry has been able to create their own rules in relation to the use of their service. The companies interpret and apply these rules without any real avenues for review or appeal by members of the public. Industry is operating independent of any meaningful oversight and this has inevitably resulted in arbitrary decisions associated with image removal.



Willingness to Provide Services to Non-Compliant Operators

In select cases, Project Arachnid has drawn our attention to websites (imageboards) hosting copious amounts of child sexual abuse images and harmful/abusive images of children, frequently made available through bulletproof hosting services.²⁷ Bulletproof hosting services provide their customers with protection from DDoS attacks and also help to hide the true location of the host. These features can be attractive to sites dedicated to child sexual abuse and other illegal activities, therefore many such sites utilize bulletproof providers. It has been our experience that many of these bulletproof providers ignore takedown notices. Experience has shown that getting images/videos taken down often requires contact with the upstream provider(s) of the bulletproof host before any action is taken. Some upstream providers take action when notified and others fail to act.

²⁷ Bulletproof hosting is a service provided by some domain hosting or web hosting firms that allows their customer considerable leniency in the kinds of material they may upload, make available, and distribute. This leniency has been taken advantage of by spammers and providers of online gambling or child sexual abuse images.



Model image and created as illustration

“Seeking to remove images before circulation or as soon as is feasible after circulation is the best way to restore a child back to a life worth living.”

- Dr. Sharon Cooper, Developmental and Forensic Pediatrician and Adjunct Professor of Pediatrics, University of North Carolina at Chapel Hill School of Medicine.

CONCLUSION

This framework is an urgent call to action for those in a position to make change happen for children. It is no longer an option to accept the status quo. We know too much about the ways in which children are being exploited and victimized online and we know we must change the path we are on. It is not enough to confine removal to what is clearly illegal. Adopting criteria that is focused on what is in the best interest of the victimized child, and for children in general, is required. Their dignity rights, their privacy rights, and their right to be safe and secure from harm must take precedence.

As we continue our fight against online child abuse, we cannot combat this complex problem without continued collaboration and an understanding of our shared responsibility. We have to continue to strive to do more to protect our children. They deserve nothing less.

“For the first time in those 20 years I now feel hopeful. I feel hopeful that people are fighting for me to be free of my abuse. To have the peace of mind of knowing that my abuse will one day be forgotten. Not so much forgotten by me, it will always be a part of me, but the public fact of my abuse — that can change.”

- A member of the Phoenix 11



Model image and created as illustration

In order to elicit change, awareness must be drawn to the issue of child sexual abuse images, its removal, and the profound impact it has on survivors. A compelling example is the series of articles recently released by *The New York Times* on the prevalence of child sexual abuse images, and industry's failure to address this rampant epidemic. Notably, the feature "Child Abusers Run Rampant as Tech Companies Look the Other Way"²⁸ provided much public discussion and even prompted a bipartisan group of U.S. Senators to draft a call to action letter to American industry.

In November 2019, the Canadian Centre launched a short survey for the public to weigh in on the responsibility industry bears in the removal of child sexual abuse images online. In just over three weeks, 2,000+ people completed the survey with these notable results:

- 83% felt a technology company who does not remove child sexual abuse imagery on its service companies should be criminally charged. Another 15% felt companies should be fined for failure to remove.
- 91% felt governments should pass laws that require technology companies to meet safety standards that include penalties for non-compliance.
- 94% felt that technology companies who are notified that stolen images of children are being reposted/shared in a sexual context on their services and platforms should be required by law to remove the stolen images.

Find the survey at: survey.c3p.ca/csam_survey

²⁸ Dance, Gabriel J.X., Keller, Michael H. "Child Abusers Run Rampant as Tech Companies Look the Other Way." *The New York Times*. November 9, 2019.

APPENDIX A: FREQUENTLY ASKED QUESTIONS

How we are Failing Children: Changing the Paradigm aims to transform the way we understand and respond to the serious, global epidemic of child sexual abuse images and harmful/abusive images of children on the internet. To date, this issue has been approached from the perspective of what is or is not “criminal” rather than tackling it based on what is in the best interests of children and what is needed to safeguard them from harm.

Removal has also hinged, for the most part, on the subjectivity of industry²⁹ who have had extensive authority on decisions tied to content removal, coupled with virtually no oversight or accountability.

While the framework raises critical awareness about offending behaviour online and the risks facing children, the undeniable truth is the rights of a victimized child will be continually violated as long as images/videos of them being sexually harmed/abused are available on the internet. This must change.

CONSIDERATIONS:

This document outlines some of the considerations and challenges the Canadian Centre for Child Protection (Canadian Centre) worked through in developing the framework and the paradigm shift needed to address the removal of child sexual abuse images and harmful/abusive images of children. The framework and its corresponding principles for action calls for a holistic approach that prioritizes every child’s right to security, dignity, privacy, and freedom from abuse.

How does this framework fit in with the right to freedom of expression?

- Freedom of expression is one’s right to express their own ideas freely without state interference and is an important right in any democratic political framework. However, it is generally accepted that one’s right to express themselves does not extend so far as to permit one to violate the rights of other people and cause them harm, particularly if the individual harmed is from a vulnerable group. Even the United States, which protects virtually all types of free speech, has found that child sexual abuse images which meet the criminal standard are not protected speech.³⁰
- Removing child sexual abuse images and harmful/abusive images of children is grounded in a recognition of children’s inherent rights to dignity, privacy, and security of the person. Removing images that have no intrinsic social value and constitute a clear and continuing violation of the rights of a child should not be considered being in competition with the right to freedom of expression.

²⁹ Industry is defined as a group of businesses that intersect with user-generated content by way of the internet. It is used as a broad term, encompassing the large and small technology companies.

³⁰ For example, see: *New York v. Ferber*, 458 U.S. 747 (1982) and *Osborne v. Ohio*, 495 U.S. 103 (1990). See also, Kathleen Anne Ruane, *Freedom of Speech and Press: Exceptions to the First Amendment*, (September 8, 2014), Congressional Research Service. Available online at: www.crs.gov.

While it makes sense that clearly illegal images of children are not protected by freedom of expression, the framework also requires removal of images that are not clearly illegal. Isn't this censorship?

- No. Removing harmful/abusive images of children that were created and are distributed without their consent is not censorship. Censorship is the removal or suppression of content that may be objectionable or offensive to some, whereas these images cause actual harm to actual children as a direct result of their public availability and, as such, go well beyond being merely objectionable or offensive. Moreover, many of these images clearly violate the legal rights of children, such as the right to dignity and privacy. Removal of such images is a recognition of the obligation that all adults, and society in general, have to protect vulnerable children from harm. That duty is recognized in numerous international instruments and it is reflected in laws directed towards the protection of children from abuse.³¹
- Adults do not have the unfettered right to violate the rights of children by posting and disseminating pictures that cause them harm. Nor does industry have the right to continue to permit such images to be publicly available online. A picture, in today's world, can cause untold damage to a child in a matter of minutes; damage that can be extremely difficult to undo. The intent of the framework is to highlight that reality and to underscore that the criminal law standard is not the right standard in the removal context.
- While adults certainly have the right to freedom of expression, children also have rights, and it is their rights that, to date, have not been accounted for in a serious way. The public nature of these images certainly violates the child's right to dignity and privacy, as well as the right to control the use of their likeness. There is no reason to believe the children in these images ever consented to their private humiliation being made publicly accessible to a global audience. The continued circulation of such imagery intrudes upon the child's right to be left alone and their right to control their own information and identity.
- The continuum of harm to the child is an important aspect of removal. The abused child is the focus of these images. While it may be true that some of these images, in isolation, may not technically meet a criminal threshold, or neatly fit within the industry threshold for removal, that does not take away from the fact they are a part of a continuum of abuse experienced by the child victim. These are not benign images devoid of context. The images are made publicly available on the internet to enhance the sexual response of the viewer in an environment dedicated to the sexual harm and abuse of children.

³¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. *The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the Optional Protocol)*, 25 May 2000, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCRC.aspx>, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 available at: <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

By removing these images are you not losing the opportunity to potentially identify a child victim or an offender?

- No. It is important to understand the volume and extent of child sexual abuse images and harmful/abusive images of children being made available online is almost impossible to contemplate. Allowing images/videos to languish online in the hopes that it may eventually lead to the rescue of that child is not reasonable or realistic. That said, it has been our experience the vast majority of child sexual abuse images made available and circulating on the public internet involve historic content. This means many of the images/videos Project Arachnid has encountered have been posted and shared online for numerous years and many of the children appearing in those images and videos are now likely adults.
- Moreover, unlike in the past, at least 33 countries³² currently have mandatory reporting legislation schemas that require service providers to report suspected child sexual abuse images on their networks. Those countries include the U.S., Canada, Australia, China, and France, among others. A notice request for removal in many countries may also trigger mandatory reporting to either law enforcement or a designated organization. This means if such images/videos are new as opposed to historic, the information is provided to those in a position to investigate and potentially rescue the child.
- Notice and takedown measures cannot be set in opposition to law enforcement efforts. Police around the world are inundated with files concerning child sexual exploitation and abuse; therefore, a variety of measures are required to tackle the mass volume of these images/videos circulating online. The images/videos made publicly available on the internet must be immediately removed upon detection to better protect the child whose rights are being violated by its continued public availability.

Seventy governments from around the world have signed onto a number of key pillars in the *WeProtect Global Alliance Model National Response*³³ for preventing and tackling child sexual exploitation and abuse. One of those pillars is advocating the use of notice and takedown procedures to stem the proliferation of child sexual abuse images online. The WeProtect Global Alliance has recognized the problem is out of control and must be addressed with a multitude of approaches.

- Robust notice and takedown measures align with the voices of survivors. Nearly 70% of the respondents to the Canadian Centre's International Survivors' Survey³⁴ indicated they constantly worry about being recognized by someone who has seen images/videos of their abuse (n=103).

³² International Centre for Missing and Exploited Children, *Child Sexual Abuse Material: Model Legislation & Global Review: 9th Edition*, 2018.

³³ Source: <https://www.weprotect.org/the-model-national-response/>

³⁴ Source: <https://protectchildren.ca/en/programs-and-initiatives/survivors-survey/>

What happens if an image is encountered that appears to have never been seen before by law enforcement?

- For notices issued through Project Arachnid, if the child sexual abuse image/video does not appear to match any of the hashes within the international law enforcement databases,³⁵ the image is securely sent to the RCMP to add to the national database and shared with Interpol for submission into the ICSE database.³⁶

How do you take a global approach to removal when there are varying legal definitions around the world regarding what constitutes child sexual abuse images?

- In many countries, if a person has child sexual abuse images in their possession, that person could be charged with and convicted of a criminal offence. For this reason, the definition of what is illegal is limited. **Criminal law definitions were intended only for use in a criminal court context and were drafted narrowly and with precision to support the imposition of very serious criminal law sanctions.** When those same definitions are relied upon to determine what needs to be **removed**, it means a significant proportion of harmful/abusive images of children remains online. This problem is compounded by some industry members erroneously applying a criminal standard of proof (beyond a reasonable doubt) to the assessment of these images. We witness the evidence of this through Project Arachnid.
- In our experience, the laws about what is and is not criminal are not well understood, and far too many harmful/abusive images of children are not being removed for fear of removing something that “might” be legal. Instead, industry applies a cautious, subjective and rigid approach to the assessment process. This means often it is only the most egregious images/videos that are removed from the internet. When the issue is removal, narrow interpretations of what is and is not criminal, and requiring proof to a criminal law standard, does not serve the best interests of children/victims whose child sexual abuse has been recorded and shared online. The focus when determining what is taken down must, therefore, shift to what is in the best interest of the victimized child.

³⁵ The Canadian Centre has received hashes from the National Center for Missing and Exploited Children, and receives hashes from the RCMP and Interpol (ICSE), and also utilizes hashes generated through its operation of Cybertip.ca.

³⁶ The ICSE database is an international image and video database maintained by Interpol that is used for intelligence and investigative purposes by specialized investigators. See: <https://www.interpol.int/Crime-areas/Crimes-against-children/Victim-identification>.

Why aren't the current measures good enough — especially when you consider that many of the large technology companies seem to be doing a lot to curb the issue of child sexual abuse images on their services?

- As a result of operating Project Arachnid and issuing notices to large, medium, and small members of industry, we are seeing varying responses to safeguarding children on the internet. Some are doing proactive detection, while others rely on their users to report abuse; some are strong at removal once notified, others enter into extensive debates or ignore notices all together; some will act on a wider subset of images that are clearly harmful even if they are not necessarily illegal, while others may base their response solely on statutory obligation. The issues raised in the framework are not blanket statements about all businesses that intersect with user-generated content, but rather speak to the challenges our organization is facing in getting child sexual abuse images removed — and the pressing need to also address those images that are harmful/abusive to children. What is abundantly clear is the current, fragmented efforts are failing children and there's an urgent need for more to be done to change this paradigm.
- Industry is currently blind to context which is critical when determining what should be removed. Industry generally assesses images/videos one at a time as opposed to in context with all the images/videos associated with a victim series. Industry does not know if a particular child has been identified and rescued by law enforcement. In short, industry narrowly assesses images based upon what is inside the four corners of the image. This approach results in a significant amount of child sexual abuse images and harmful/abusive images of children remaining on the internet. This is why the role of trusted/verified hotlines is crucial.
- This framework is about turning the removal debate on its head and focusing on the protection and rights of children. Content moderation based upon narrow legal definitions does not serve the best interests of children/victims whose child sexual abuse has been recorded and shared online, and far too many harmful and abusive images of children do not meet the criminal threshold in many jurisdictions. More can also be done within the confines of the terms of service defined by many industry members as it relates to sexual, abusive, or harmful images that do not meet criminal law definitions.

³⁷ A victim series encompasses images/videos known to police that involve identified and unidentified child victims.

What if industry is not interested in adopting the framework's Principles for Action?

- The purpose of the framework is to mobilize the global community and engage governments, industry, and hotlines around the world to change the present-day responses for addressing the epidemic of child sexual abuse images and harmful/abusive images of children on the internet.³⁸
- Industry plays a critical role in reducing the availability of child sexual abuse images and harmful/abusive images of children on the internet given the images/videos are uploaded to their services. They are in the best position to take down these images/videos and do not need to limit themselves to a criminal definition as removal is not about enforcing criminal law. Moreover, industry has a variety of tools at their disposal to address this issue, including applying their own terms of service, which are typically broad enough to remove images/videos that may not be illegal per se, but are of a sexual or exploitative nature.
- If industry is not interested in adopting the Principles for Action in the removal of child sexual abuse images and harmful/abusive images of children, governments must take a leadership role and provide the overarching policy framework to ensure the best interests of children are at the forefront of any content removal strategy. There is an urgent need for all of us (industry, governments, and hotlines) with key roles and responsibilities in the removal of this material to be working together.

The Principles for Action seem to place the same priority on the removal of nude images of children as it does on the most egregious of sexual assaults. Should we not be prioritizing the removal of images and videos where children are being sexually assaulted?

- The harm facing children cannot be measured or addressed by solely focusing on the worst of the worst. The Principles for Action are associated with a broad framework which focuses on doing what is in the best interest of children when considering their personal safety, security, and privacy, regardless of whether a particular nation has opted to “criminalize” the particular type of image in question.
- Within Project Arachnid, analysts encounter a wide range of imagery, some of which meets the threshold for a notice to providers. Through this process, we witness the multitude of ways in which offenders are promoting sexual interest in children. Offenders are interested in a broad spectrum of images/videos related to known child victim series and, as such, we see the posting of images/videos where children are fully clothed³⁹ and visible, all the way to the extreme sexual assaults. This framework takes a holistic approach at addressing removal from the perspective of what is in the best interest of children when considering their safety and privacy.

³⁸ Child sexual abuse material includes child pornography under a criminal definition, as well as other images and videos that are harmful to children.

³⁹ The full spectrum of harm includes legal picture of survivors as adults with partners, friends, children of their own, and the interest among offenders in continuing to stalk and seek them out online.

How would the framework be operationalized?

Through the assessment/verification process within Project Arachnid, trained analysts distinguish between images that are considered Interpol Baseline (worst of the worst) and those that are harmful/abusive images of children but might not meet a criminal threshold in all countries. When issuing a request for removal of the images, other information, such as whether that child has been identified by law enforcement, is also shared. Such information has proven to be critical in getting images removed that show children with signs of puberty, and images that do not depict an overt sexual act.

The projected plan is to augment the current notice process for child sexual abuse images with a second type of notice. The following outlines these two different notices for providers that receive removal requests:

1. Notices requesting the removal of child sexual abuse images/videos. The term child sexual abuse images include those that fall within a criminal definition (including the worst of the worst that would meet most countries' threshold for illegal images).

Note: Removal notices involving child sexual abuse images/videos may not trigger mandatory reporting in the countries that have this type of reporting regime.

2. Notices requesting the removal of harmful/abusive images of children. These include:
 - a. All material recorded in the course of a sexually abusive scenario/incident⁴⁰ involving a child victim (identified and unidentified)
 - b. Nude or partially nude images/videos of children that have been made publicly available (typically stolen from unsecured social media accounts or surreptitiously taken images), **AND** are used in a sexualized context. Publicly available images of clothed children where the offender appears in an image to be masturbating to/ejaculating on a **clothed** child, or on an image of a clothed child, or the image is used in a sexualized context as with the nude/partially nude images are also included.
 - c. Images/videos of children being physically abused, tortured or restrained

Note: Removal notices involving harmful/abusive images of children may not trigger a mandatory reporting requirement depending upon the country of jurisdiction.

This suggested framework is just that; it's a foundation of research, ideas, and broad suggestions from which to build a more detailed, solid structure that not only better safeguards children, but ensures all those that have a role to play in the protection of children can work together to do so.

If you have further questions regarding *How we are Failing Children: Changing the Paradigm*, Project Arachnid, or the Canadian Centre, please contact us at protectchildren.ca/contact

⁴⁰ This includes incidents that appear to be self-generated.

APPENDIX B

The United Nations Convention on the Rights of the Child (UNCRC)

An analysis of select provisions in relation to the issue of child sexual abuse images/videos on the internet

The *United Nations Convention on the Rights of the Child (UNCRC)* is an international instrument that reinforces the fact children are people with legal and human rights. It is the most widely ratified human rights treaty in the history of the world, with virtually every country having ratified it.⁴¹ Closely tied to the *UNCRC* is the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (the Optional Protocol)*, which, to date, has been ratified by over 175 countries, and signed by an additional nine countries. Both of these instruments reflect the international commitment to recognizing the inherent vulnerability of children and their need for special care and assistance.

The following tables contain an analysis of select provisions of the *UNCRC* and the *Optional Protocol* in relation to the issue of child sexual abuse imagery on the internet.

ARTICLE 3 – BEST INTERESTS OF THE CHILD	How this relates to victims of child sexual abuse images
<ol style="list-style-type: none"> <li data-bbox="191 1024 690 1220">1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. <li data-bbox="191 1245 690 1507">2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 	<ul style="list-style-type: none"> <li data-bbox="760 1024 1279 1255">• The best interests of the child has not been the primary consideration when dealing with the removal of child sexual abuse images. Important decisions about removal have been largely left in the hands of industry, and removal has been restricted to that which is clearly and unequivocally illegal. <li data-bbox="760 1281 1279 1407">• The protection and care that is necessary for victims of child sexual abuse images is for all images/videos connected to the abusive incident to be removed from the internet. <li data-bbox="760 1432 1279 1558">• States Parties must take legislative and administrative measures to manage this issue, particularly since “voluntary” removal strategies have failed to address it.

⁴¹ The notable exception being the United States of America, which has signed the treaty, but not yet ratified it.

<p>ARTICLE 8 — RIGHT TO IDENTITY</p> <ol style="list-style-type: none"> 1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. 2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Some victims of child sexual abuse images are forced to either legally change their name or conceal their true identity online because the person who abused them posted it online with their image, or the online community has found out who they are. • As long as imagery is publicly available, it is not possible for these victims to re-establish their identity. • The assistance and protection to be provided should include removal of the imagery and proactive efforts to remove the association of the child's name with the abusive imagery.
<p>ARTICLE 12 — RIGHT TO BE HEARD</p> <ol style="list-style-type: none"> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Whenever child sexual abuse images are publicly available, and/or an individual accesses, shares, or is found in possession of child sexual abuse images of a particular child, it is a matter that affects the child. • An extremely high number of individuals whose abuse is portrayed within child sexual abuse images are not in a position to object to the public availability of their material. In some cases this may be because they have not ever been identified by police, or they are still being abused, or it may be because they are not aware that the images are publicly available. Others may be aware the images are available, but are subject to control and coercion by their abuser such that they lack the capacity to request its removal, or they lack the resources and expertise to be able to tackle the issue on their own. Accordingly, the requesting hotline should be viewed as a proxy for the child(ren) since it is the hotlines that are tasked with assessment and issuing notices for removal. • In terms of court proceedings, the opportunity to be heard may be in the form of a victim impact statement where criminal proceedings are involved, or in a civil suit if the victim is able to obtain legal representation.

<p>ARTICLE 16 — RIGHT TO PRIVACY</p> <ol style="list-style-type: none"> 1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Many images/videos of child sexual abuse show the face of the victim and, in some instances, the child's name, location, age, and other identifying information. • Individuals in chatrooms and other public forums engage in discussion about the children in the images/videos, including providing information about the child's current location and content obtained from the child, a parent or a family member's social media profile. • The continued public availability of the child sexual abuse images results in repeated violations of the child's privacy, honour, and reputation. • The actions of individual members of the offending community also violate the child's privacy, honour, and reputation.
<p>ARTICLE 19 — PROTECTIVE MEASURES</p> <ol style="list-style-type: none"> 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • The children who appear in child sexual abuse images have all been subjected to some form of physical or mental violence, injury or abuse, maltreatment or exploitation. It is known that a significant proportion of these children were in the care of a parent/legal guardian or other caregiver at the time of the abuse. • Support for these victims includes removing the photos/videos that are publicly available since their ongoing availability serves to compound the harm from the original experience and creates a new harm due to the privacy violation and ongoing exploitation of the child. It also constitutes a new and continuing abuse at the hands of others.

<p>ARTICLE 32 — ECONOMIC EXPLOITATION</p> <p>1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.</p> <p>2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:</p> <ol style="list-style-type: none"> (a) Provide for a minimum age or minimum ages for admission to employment; (b) Provide for appropriate regulation of the hours and conditions of employment; (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Some of the individuals who create child sexual abuse images make it available to others at a cost. • Some of the individuals who create child sexual abuse images pay money or give gifts to the victim to further exploit the child.⁴² • Some of the networks upon which child sexual abuse images reside may make a profit based on the number of users, ad revenue, etc. While recognizing that no reputable networks would seek to profit from child sexual abuse images, not all networks are reputable. Moreover, regardless of whether or not a network is reputable, if certain users are using particular networks because they are able to share/view child sexual abuse images on such networks, or because by using such networks they can evade detection, the networks may, nonetheless, be making a profit from the child sexual abuse images, albeit indirectly.
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⁴² In addition to the above, it should be noted that Article 3(b) of the International Labour Organization’s (ILOs) *Worst Forms of Child Labour Convention, 1999 (No. 182)* identifies “the use, procuring or offering of a child for ... the production of pornography or pornographic performance” to be one of the worst forms of child labour. In addition, the ILOs Recommendation 190 (section 11) calls upon members to cooperate with international efforts aimed at prohibition and elimination of the worst forms of child labour as a matter of urgency by detecting and prosecuting those involved.

<p>ARTICLE 34 — PREVENTATIVE MEASURES</p> <p>States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:</p> <ul style="list-style-type: none"> (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Child sexual abuse images are created through the sexual abuse and exploitation of a child. • Some child sexual abuse images are created through prostitution. • “Pornographic performances and materials” is broader in scope than child pornography and arguably captures a much wider range of imagery than is currently “criminalized” (such as sexualized child modelling images, nudist images made public, and what is termed abusive/harmful images in this framework).
<p>ARTICLE 35 — PREVENT ABDUCTION, SALE AND TRAFFICKING OF CHILDREN</p> <p>States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.</p>	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • The public availability and sharing of child sexual abuse images is a form of trafficking – it is trafficking in child sexual abuse material. • Moreover, images of children who are being abused may be shared with others or used to “advertise” the child and the offender’s access to the child.
<p>ARTICLE 36 — PROTECTION FOR ALL OTHER FORMS OF EXPLOITATION</p> <p>States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child’s welfare.</p>	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • It is prejudicial to a child’s welfare to have their image traded and information about them discussed within chatrooms and forums focused on the sexual abuse and exploitation of children.

ARTICLE 39 — PSYCHOLOGICAL RECOVERY AND SOCIAL REINTEGRATION

States Parties shall take all appropriate measures to **promote physical and psychological recovery and social reintegration** of a child victim of any form of neglect, **exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment**; or armed conflicts. Such recovery and reintegration shall take place in **an environment which fosters the health, self-respect and dignity of the child.**

How this relates to victims of child sexual abuse images

- A child depicted in a child sexual abuse image is a child victim under Article 39 and, as such, is entitled to have “all appropriate measures” taken to promote their psychological recovery and social reintegration.
- What each individual victim may need to promote their physical and psychological recovery will no doubt vary, but what is universally needed by all child victims is for their child sexual abuse images, and harmful/abusive images, to be permanently removed from public view.
- Permanent removal is critical to creating an environment that fosters the health, self-respect, and dignity of the child.
- While permanent removal may not always be possible due to the actions of individual offenders, when such images become publicly available, expeditious removal is essential. Without expeditious removal, psychological recovery and social reintegration is made much more difficult given the continued exploitation of the child.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

<p>ARTICLE 2 – DEFINITIONS</p> <p>For the purposes of the present Protocol:</p> <p>...</p> <p>(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.</p>	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> The definition, particularly the latter part (representation of the sexual parts of a child for primarily sexual purposes), is far broader than the definition used in most criminal statutes, and it is absolutely broader than the definition applied by industry when considering removal.
<p>ARTICLE 3 – ACTS TO BE CRIMINALLY PROHIBITED</p> <p>1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:</p> <p>...</p> <p>(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.</p> <p>2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.</p>	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> This covers what needs to be criminalized at a minimum. The obligation is to ensure the acts are fully covered regardless of where the offence is committed, which implies that to the extent jurisdictional issues may be interfering with tackling these issues, nations must ensure these issues are resolved in order to fulfill their commitments under the <i>Optional Protocol</i>. Article 3, section 2 could be used to support the introduction of sanctions against industry members who arguably do participate in the activity in some circumstances (particularly where notifications are ignored), as well as those who may be complicit in the abuse of their services. This leads into the discussion under Article 4 below.

<p>Article 4 – ESTABLISHING JURISDICTION</p> <ol style="list-style-type: none"> 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State. 2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases: <ol style="list-style-type: none"> (a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory; (b) When the victim is a national of that State. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • Article 4, section 1 obligates that a State Party take measures to assert jurisdiction “when the offences are committed in its territory.” What is meant by “in its territory” is arguably quite broad when it comes to online offences. • Article 4, section 2 permits a State Party to assert jurisdiction in a given instance when either the offender or the victim is a national. • The mandatory obligation and optional power set out in this Article could arguably underpin a requirement for State Parties to assert jurisdiction more broadly than is presently the case. • International cooperation in the regulation of industry is also essential given that, to date, the jurisdictional complexities have hampered the ability of governments to regulate the online world in a way that takes into account the public interest and the best interests of the child.
<p>ARTICLE 6 – MUTUAL ASSISTANCE</p> <ol style="list-style-type: none"> 1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings. 2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law. 	<p>How this relates to victims of child sexual abuse images</p> <ul style="list-style-type: none"> • It is well known that police investigative efforts in relation to child sexual abuse images are often exceedingly difficult due to the inter-jurisdictional nature of the internet. • While formal treaties are in place to facilitate the sharing of information, in many instances the time and procedures required to utilize such treaties are ill-suited to the digital realm, resulting in critical evidence and information to prosecute offenders and identify and rescue victims being potentially unavailable when needed (e.g., network has already deleted the information, preservation request not able to be provided to the right entity in a timely manner), and certainly not available within a reasonable timeframe.

ARTICLE 9 — PREVENTATIVE LAWS, PROMOTE AWARENESS, ENSURE ASSISTANCE, COMPENSATORY REMEDIES, PROHIBIT DISSEMINATION

1. States Parties shall adopt or strengthen, implement and disseminate **laws, administrative measures, social policies and programmes to prevent** the offences referred to in the present Protocol. **Particular attention shall be given to protect children who are especially vulnerable to such practices.**
2. States Parties shall **promote awareness in the public at large, including children**, through information by all appropriate means, education and training, **about the preventive measures and harmful effects of the offences** referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of **ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.**
4. States Parties shall ensure that **all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.**
5. States Parties shall take appropriate measures aimed at effectively **prohibiting the production and dissemination of material advertising the offences described in the present Protocol.**

How this relates to victims of child sexual abuse images

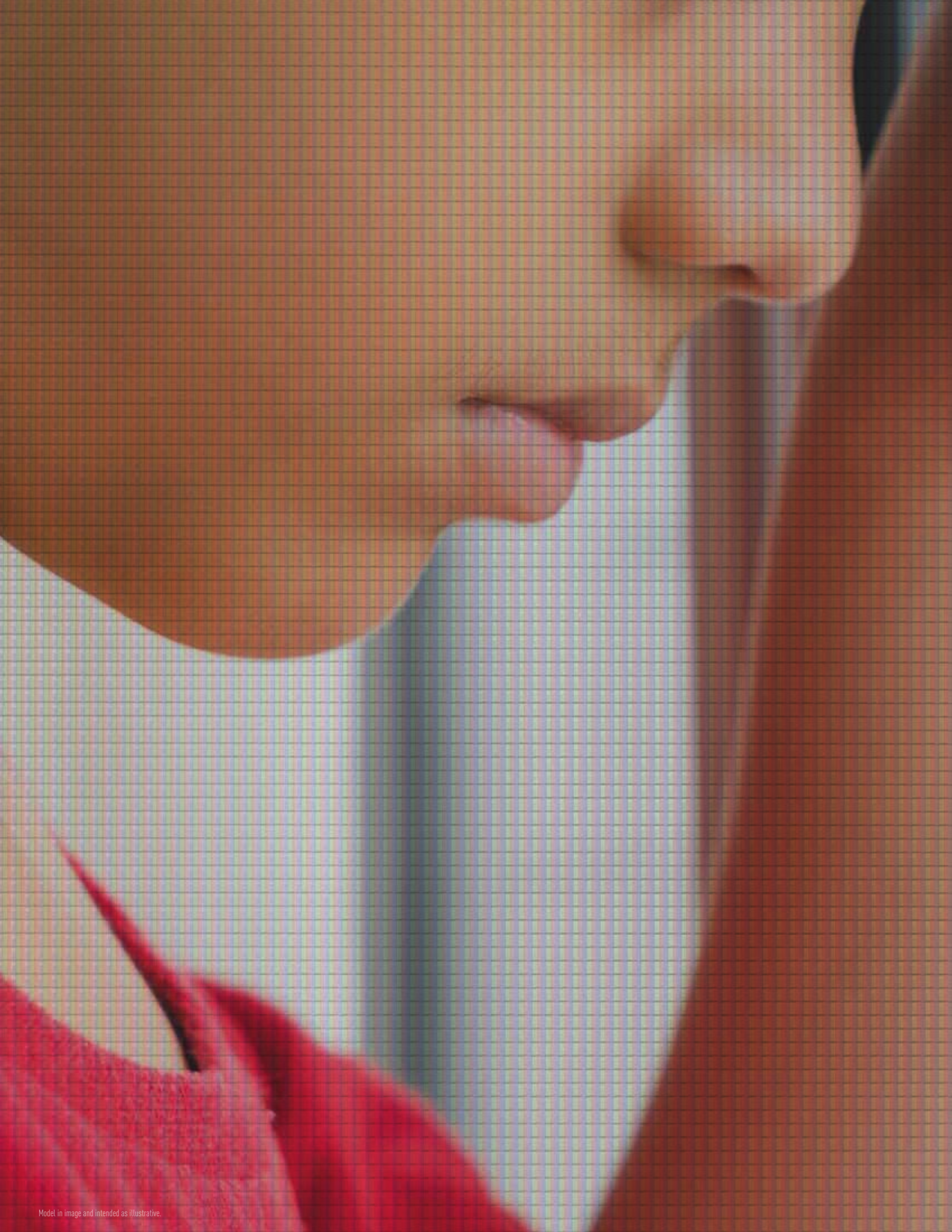
- Criminal offences are necessary to address and deter offending behaviour, but effective prevention and protection requires a more holistic approach that is focused on raising awareness about the long term impacts of child sexual abuse images on its victims, and identifying and assisting children who have been victimized or who are vulnerable to victimization.
- Children who are especially vulnerable include pre-verbal children, children with disabilities, children living in poverty or with individuals suffering from addictions or mental health issues, children not attending school, children in state care, Indigenous children, and female children.
- Full social reintegration and full physical and psychological recovery is what State Parties have committed to under the protocol. Yet full social reintegration and psychological recovery has proven to be very difficult for those whose child sexual abuse imagery remains publicly available. Victims try to move forward with their lives, but have said that they feel they are re-victimized each time images/videos of their abuse are viewed, possessed, or trafficked. It is, therefore, an essential component of full social reintegration and full psychological recovery that such imagery be removed from the internet.
- For victims of child sexual abuse images, those who are legally responsible include the person who created the image/video, all persons who subsequently access, keep, or traffick it, and all companies that allow the image/video to remain accessible to others after being informed of the nature of the image/video and its location. Presently, a victim's ability to seek compensation from parties other than the initial abuser are not well established in most countries.
- The laws presently in place may, in some countries, prohibit production and dissemination of material advertising the offences, but such laws are clearly not effective given the ease with which offenders are able to amass collections of child sexual abuse images.

ARTICLE 10 — INTERNATIONAL COOPERATION

1. States Parties shall take all necessary steps to **strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism.** States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.
2. States Parties shall promote **international cooperation** to assist child victims in their **physical and psychological recovery, social reintegration and repatriation.**
3. States Parties shall **promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children** to the sale of children, child prostitution, **child pornography** and child sex tourism.
4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

How this relates to victims of child sexual abuse images

- International cooperation to facilitate the prevention, detection, investigation, prosecution, and punishment of those responsible for child sexual abuse images is integral to protecting victims of child sexual abuse images. As noted above, however, these systems do not work as well as they could or should. If more State Parties assert jurisdiction over these matters as required and permitted by Article 4, existing gaps can be addressed.
- Full psychological recovery and full social reintegration is difficult to achieve for those victims whose child sexual abuse images remain online given the present reality of re-victimization that occurs each time the imagery is accessed, shared, or traded. For this reason, more must be done to reduce the public availability of this material, and all parties who can take action, must.
- For example, there are now examples coming to the attention of police in developed countries of offenders taking advantage of the high rates of poverty within underdeveloped countries to direct abuse that is live streamed. In addition, it is apparent that vulnerable women are targeted in order to gain access to children for the purpose of producing child sexual abuse images.





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PROJECT ARACHNID: ONLINE AVAILABILITY OF CHILD SEXUAL ABUSE MATERIAL



Project
Arachnid™

*An analysis of CSAM and harmful-abusive content
linked to certain electronic service providers*



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The Canadian Centre for Child Protection would like to thank the international child protection entities working collaboratively within Project Arachnid to scale up its capacity to globally reduce the availability of online child sexual abuse material.

For a full list of those classifying material in Project Arachnid, visit projectarachnid.ca

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EXECUTIVE SUMMARY

The Canadian Centre for Child Protection (C3P) is issuing this report to highlight how systemic failures of the technology industry and inaction by governments have severely hindered the fight against the proliferation of child sexual abuse material (CSAM) on the internet.

The purpose of this report is to arm governments with key information required to make decisions most likely to be effective in reducing the online availability and distribution of CSAM. The analysis points to a need for consistent enforceable standards that impose accountability requirements on electronic service providers (ESP).

As a survivor-centric organization, C3P has invested resources to build a specialized tool called Project Arachnid that detects CSAM by crawling the open web and issues removal notices to those we believe to have the most immediate control or custody of the media.

Project Arachnid's reach does not generally extend into commonly known social media platforms due to their semi-closed designs. The analysis presented in this report is based on a sub-section of the open web and is therefore a gross underestimation of the true extent of CSAM availability on the internet. As a result, this report highlights the vast networks of lesser-known ESPs that contribute to the problem, and not large mainstream technology companies.

The following are the key findings from the analysis spanning the period of 2018 to 2020:



ESPs worldwide.

Project Arachnid has detected and verified more than **5.4 million images** and has issued removal notices to more than **760**



victims (pre-pubescent).

Overall, images depicting older adolescents (post-pubescent) take **much longer** to be removed compared to images with younger



telecommunications company.

Nearly half (**48%**) of all media detections are linked to a file hosting service operated by one French



service provider.

Nearly half (**48%**) of all media Project Arachnid has issued a removal notice on, had previously been flagged to the



where to access CSAM on the clear web.

The vast majority (**97%**) of CSAM detected by Project Arachnid is physically hosted on the clear web. However, the dark web plays a disproportionately large role in directing individuals on



available to assess the content.

As of the writing of this report, C3P is facing a backlog of more than **32.8 million suspect media**¹ that have yet to be assessed. The rate at which Project Arachnid detects suspect media far outpaces the human resources



10 percent of actioned media took more than seven weeks (42 days) before becoming inaccessible.

Project Arachnid is an effective tool that has achieved a median content removal time of **less than 24 hours**. Alarming, however,

¹ Suspect media is derived only from websites that host known CSAM, and the term refers to any media that is reasonably suspected to be CSAM or harmful-abusive content but which has not been through the assessment process.

These findings, notably the high levels of image recidivism and the often long delays in removal times, suggest many ESPs are not deploying sufficient resources to eliminate, or at least limit, the presence of CSAM and harmful-abusive content.

Even the seemingly more positive results belie one of the core problems: While it is true many ESPs remove media within a day of notification, in the absence of any regulatory requirements, they have no commercial or legal interest in investing in measures to prevent the images from surfacing or re-surfacing in the first place. There are no consequences for inaction on the prevention side. This is laid bare by the correspondingly high image recidivism rates described in this report.

Many ESPs benefit from business models and practices that are currently backstopped by broad immunity protections in the U.S. They also benefit from a general air of uncertainty over jurisdictional issues, as well as deficient regulation in the digital space across the globe.

Given this backdrop, the following set of recommendations may assist governments in developing effective and consistent regulatory frameworks to address the issue:

	1. Enact and impose a duty of care , along with financial penalties for non-compliance or failure to fulfill a required duty of care;
	2. Impose certain legal duties on upstream electronic service providers and their downstream customers;
	3. Require automated, proactive content detection for platforms with user-generated content;
	4. Set standards for content that may not be criminal, but remains harmful-abusive to minors
	5. Mandate human content moderation standards ;
	6. Set requirements for proof of subject or participant consent and uploader verification;
	7. Establish platform design standards that reduce risk and promote safety;
	8. Establish standards for user-reporting mechanisms and content removal obligation.

There is a growing public consensus that a largely unfettered digital space void of any meaningful consequences for causing great harm to children is an issue that must be urgently addressed. This report is a road map for governments to develop policy and act in concert on the global and borderless fight against the exploitation of children.

ABOUT THE CANADIAN CENTRE FOR CHILD PROTECTION

The Canadian Centre for Child Protection Inc. (C3P) is a national charity dedicated to the personal safety of all children. C3P operates Cybertip.ca, Canada's tipline to report child sexual abuse and exploitation online, as well as provide other intervention, prevention and education services.

In January 2017, C3P established Project Arachnid — a web platform designed to detect known images of child sexual abuse material (CSAM) and issue removal notices to electronic service providers (ESPs) where possible.

C3P also supports survivors whose child sexual abuse was recorded and distributed online. Through our work with survivors, crucial contextual information about the nature of child sexual abuse is collected and shared with stakeholders committed to the safety and protection of children.



Work with survivor advocacy groups

In addition to our work with individual survivors, we work with several survivor advocacy groups:

The Phoenix 11

For over three years, C3P and the National Center for Missing and Exploited Children (NCMEC) have been working with the Phoenix 11, a group of survivors whose child sexual abuse was recorded, and in the majority of cases, distributed online. This group has banded together as a powerful force to challenge the inadequate response to the prevalence of CSAM.

The Chicago Males

C3P and NCMEC started working with a group of male survivors to learn about their experiences and better understand the unique social stigma males face around sexual abuse. This group is working together to advocate for much-needed change in addressing online child sexual abuse and supporting survivors.

The Aramid Collective

In 2020, C3P was introduced to a group of survivors who have been self-monitoring their own CSAM online and reporting to companies to get it removed. This group is using their knowledge and collective voice to help advocate for survivors and the urgent need to address the images and videos of sexual abuse that exist on many platforms.

Mothers of Child Sexual Abuse Material Survivors

To learn about the hardships families of survivors endure for years after the hands-on abuse has ended, C3P brought together a group of mothers whose children's sexual abuse was recorded and distributed online. We learned from moms there is an emotional continuum long after "the discovery" of the abuse that often includes loss of relationships, financial instability, and a constant worry about their child(ren)'s safety, to name only a few examples. Their insight is crucial to guiding the creation of support resources.

"For the longest time there was nothing to be done. It's on the internet, a lawless black hole of code. Now there is something to combat CSAM, and that solution is Project Arachnid." – A member of the Phoenix 11

INTRODUCTION

The purpose of this report is to provide all stakeholders — including governments and ESPs — with key information required to take effective action against the distribution and accessibility of CSAM on the internet.

CSAM perpetuates a cycle of victimization for children by stripping them of their personal safety and right to privacy, while inflicting great and lasting harm. Reducing the availability of this material must be a key pillar of child protection frameworks in our efforts to keep citizens safe.

We know that one of the keys to solving this problem is a deep understanding of the role that internet-based companies — especially those that accept user-generated content — play in facilitating access to and dissemination of abusive and illegal media.

The criminal nature of much of the material itself presents barriers from a research, public awareness and policy development perspective. Over time, these barriers have resulted in a limited understanding of the nature of the material, how it flourishes online and the manner in which it is distributed or accessed.

Primary sources of data are mostly held by ESPs who are privately run, and do not tend to proactively release meaningful information about the distribution, moderation and removal of the content hosted on their platforms. In jurisdictions where mandatory reporting requirements exist, figures reported by private companies are not independently verified and details about the reports are themselves limited.

This lack of transparency has prevented a true understanding of the scale of the threat, and impeded the development of legislative and regulatory responses, as well as remedies for victims and survivors.

Under these circumstances, developing sound evidence-based policies or regulation poses a real challenge. This report fills in some of the gaps using company-specific data on the accessibility of CSAM and harmful-abusive² material linked to certain platforms, all of which is independently collected by Project Arachnid. This report also offers a road map for governments seeking accountability on behalf of children through the responsible regulation of ESPs.

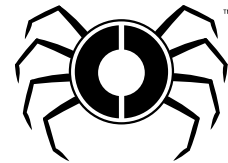
² For a full definition of harmful-abusive content, see page 10.



PROJECT ARACHNID: A TECHNOLOGY SOLUTION FOR DETECTING CSAM

Operated by C3P, Project Arachnid is an innovative tool to combat the growing proliferation of CSAM on the internet.

Launched in 2017, this victim-centred tool crawls the open web³ in search of images of CSAM. When CSAM or harmful-abusive content is detected, a removal request is sent to the ESP most likely to have the most immediate control or custody of the media. This automated process is triggered thousands of times per day.



Project
Arachnid™

How it works

Project Arachnid discovers CSAM by crawling specific publicly accessible URLs reported to Cybertip.ca, and also content located at URLs on the clear and dark web known to host this type of material. When media — which includes image, video and/or archive files — displayed at a URL are detected, the system compares its digital fingerprint against a database of fingerprints from previously verified media. If the system detects a match between digital fingerprints, a takedown notice is automatically sent to the content administrator or the hosting provider requesting its removal.

Once a notice is sent, Project Arachnid re-crawls the offending URL every 24 hours, triggering subsequent removal notices until the content is no longer detected. Processing tens of thousands of images per second, Project Arachnid detects content at a pace that far exceeds traditional methods of identifying and addressing this harmful material.

Digital fingerprint values contained in the repository of previously verified media originate primarily from image and video assessments from C3P analysts, teams of analysts working for other child protection tiplines and also from Canadian and international law enforcement.

Shield by Project Arachnid

In addition to actively seeking out harmful material on the clear web, Project Arachnid's platform also provides industry with a no-cost tool to assist with proactive detection of known CSAM.

Shield by Project Arachnid is a tool that allows either content administrators or hosting providers to proactively compare incoming or existing media on their service against Project Arachnid's list of digital fingerprints. This tool can be used as part of an ESP's overall content moderation strategy to improve upon and accelerate the detection and removal of CSAM or harmful-abusive content.

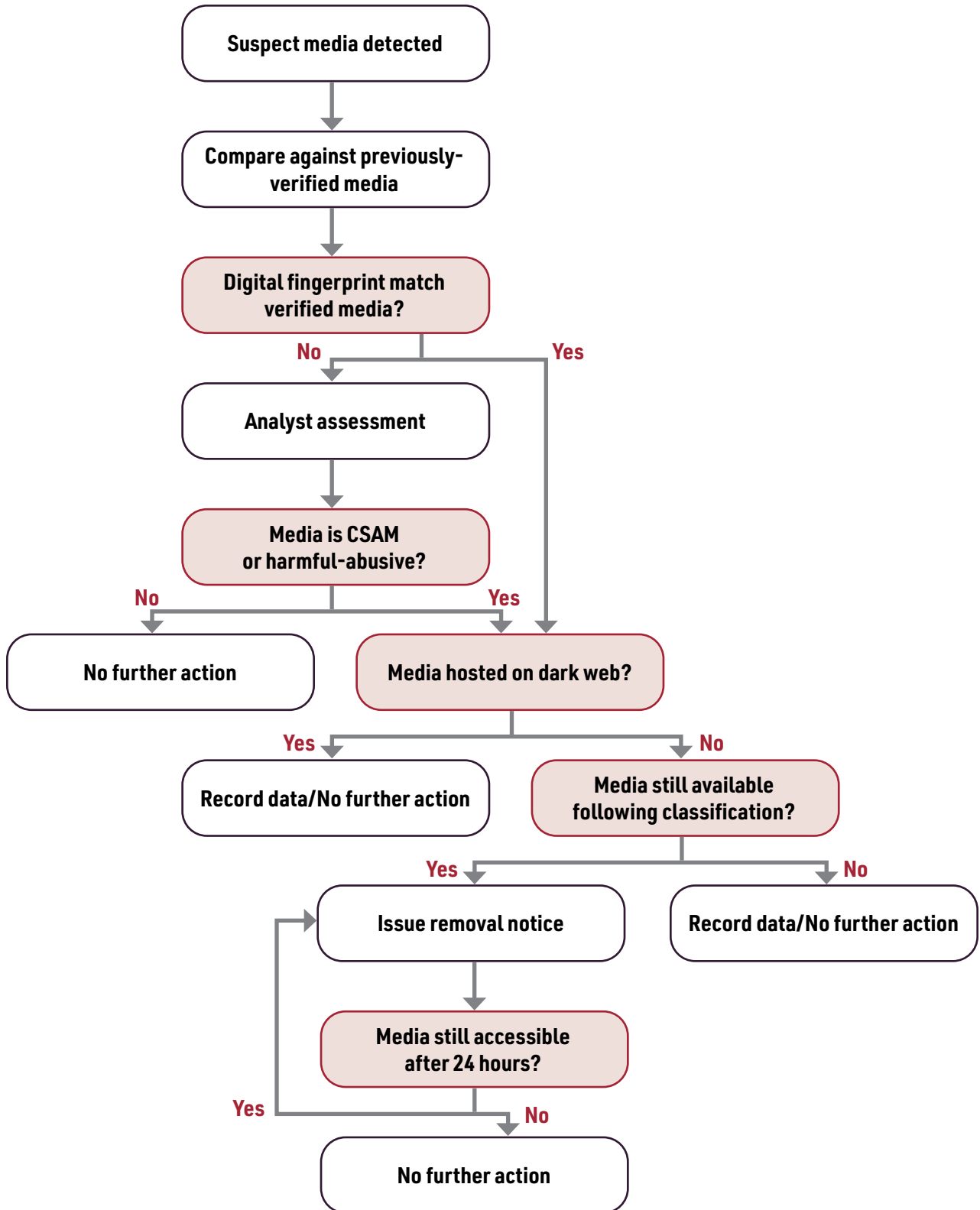
For more information on Project Arachnid, visit projectarachnid.ca



SHIELD
By Project Arachnid

³ The open web refers to the publicly accessible areas of the clear and dark web.

Project Arachnid in action



ILLEGAL AND HARMFUL-ABUSIVE CONTENT: A C3P FRAMEWORK

Traditionally, content removal strategies have focused primarily on material that is demonstrably illegal. Unfortunately, this narrow and restrictive approach does not reflect how children are being harmed online. As a result, a wide range of harmful-abusive material circulates with impunity since it does not visually appear to cross a criminal threshold, especially when viewed outside of the broader context of how the media was produced and distributed.

It is clear that confining removal activities solely to what is unarguably criminal has proven to be a short-sighted approach that has failed children worldwide. Informed through close work with survivors and by insight from operating Project Arachnid, C3P developed a child protection and rights framework in 2019 to address this significant gap. The framework establishes a new set of principles for action that places the best interest and protection of children at the forefront of content removal.

As a result of this framework, the scope of Cybertip.ca and Project Arachnid's activities have expanded over time to account for this historically overlooked content.

C3P's child protection and rights framework titled, *How we are Failing Children: Changing the Paradigm*, raises critical awareness about the ways industry has failed to effectively respond to the removal of CSAM online, along with proposing principles of action to put the protection and rights of children at the forefront.

Read the summary and full report at protectchildren.ca/framework.



CSAM and harmful-abusive content

C3P's content-removal and data collection initiatives focus on two core categories of material:

- 1 Images and videos that have been assessed to fall within a criminal definition;
- 2 Harmful-abusive images and videos of children that may not necessarily meet a criminal law threshold.

Harmful-abusive images of children that do not meet a criminal law threshold may nonetheless violate an ESP's terms of service. The images could also be so obviously harmful that no reputable company would host them, especially if they were answerable to any kind of standard or regulatory body.

For example, many platforms have policies surrounding the distribution of unauthorized images of minors, personal information (e.g., doxing) or copyrighted material, and also ban child grooming activities and harassment.

Throughout this report the term "harmful-abusive" refers to images or videos that may be associated with an abusive incident, contain partial nudity and have become publicly available or is being used in a sexualized context. It also includes publicly available images or videos of children being physically abused, tortured or restrained.

Common examples of media that fall within the harmful-abusive category include:

- An image of a child's face covered in what appears to be semen;
- Still images of the initial frames of a known sexual assault video where the child is still clothed or semi clothed that is taken during the progression of the sexual abuse. In isolation these may not necessarily meet a criminal law threshold, but they are part of a larger sequence of illegal material;
- Images of children or adolescents in bathing suits copied from social media accounts and distributed on websites dedicated to the sexualization of children;
- Sexualized content of children that includes images where there is a deliberate attempt to portray adult sexual positions or acts that suggest the sexual availability of the child. The child may be fully or partially clothed.
- Images or videos of a child being physically assaulted or tortured.

Where CSAM and harmful-abusive content is found

It is a common misconception that CSAM and harmful-abusive content are relegated solely to the dark web. In fact, the majority of illegal media detected by Project Arachnid hides in plain sight on the clear web on image/file hosting services, forums, content delivery networks, and also mainstream and fringe adult pornography sites.

The following table provides a general overview of the various areas within the digital ecosystem where Project Arachnid and Cybertip.ca analysts have encountered CSAM or harmful-abusive content.⁴

Category	Examples of services/platforms
Image hosting sites	Imgur [®] , ImageShack [™] , Flickr [®] , PostImage
File hosting sites	Megaupload, Dropbox [®] , WeTransfer [™] , dl.free.fr
Cloud service providers, virtual private servers, traditional web hosting	Amazon [®] AWS [™] , Microsoft [®] Azure [™] , Rackspace [®] , GoDaddy [®] , DreamHost [®]
Content delivery networks (CDN)	Cloudflare [®] , Fastly [®] , Akamai [®]
Dark web forums/chats	Sites primarily hosted as onion services on the Tor network.
Search engine results/cache	Google [®] , Bing [®] , Yahoo! [®] , Yandex [®]
Forums/chats/messaging	Reddit [®] , Twitch [®] , 4chan [™] , Discord [™] , WhatsApp [®] , Kik ^v
Adult pornography sites (fringe)	Specific fetish/interest, revenge pornography
Adult pornography sites (mainstream)	Pornhub [®] , XVIDEOS [™] , YouPorn [®]
Social media	Twitter [®] , Facebook [®] , Instagram [®] , Snapchat [®]

⁴ The examples are not exhaustive, and are included only to assist the reader in understanding the category listed.

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METHODOLOGY

Data collection

Project Arachnid detects suspected or known CSAM and harmful-abusive content in three ways:

- 1 Crawling publicly accessible URLs previously reported to Cybertip.ca;
- 2 Crawling publicly accessible URLs/media reported directly to Project Arachnid's API by participating industry members;
- 3 By crawling certain areas of the dark and clear web known to host CSAM.

When Project Arachnid detects suspected abuse material, the content is assessed and categorized by trained analysts with C3P or other contributing tiplines.

For each of these files, Project Arachnid stores the actual media file and key data points such as the date of detection and which entities were notified. These records form the primary source of data behind this report's analysis.

Image categories

For the purposes of this report, media is categorized in three simplified reporting categories derived from Project Arachnid's internal image assessment process.

Pre-pubescent CSAM

This category of media refers to content that likely meets a criminal definition of CSAM. It includes images where the depicted victim is pre-pubescent or is in the early stages of puberty.

Post-pubescent CSAM

This category of media refers to content that likely meets a criminal definition of CSAM. It includes images where the depicted victim's status as a child at the time the image was taken has been confirmed and the child is post-pubescent. This category includes media containing victims that are in the later stages of puberty.

Harmful-abusive

Harmful-abusive media are those that do not appear to meet a criminal law threshold across multiple jurisdictions, but may nonetheless violate an ESP's terms of service. These images may also violate the privacy or safety of a child, or be associated with CSAM. For more details refer to the description of C3P's framework (p. 10)

Key Transparency Measures

Volume of media detections, media targeted for removal and removal notices

Project Arachnid generates data that can be analyzed using several different measures. Quantifying the volume of the availability of material and removal notice activities are done in three ways:

Media detections

Media detections is the measure of the total accessibility of CSAM and harmful-abusive content detected by Project Arachnid. It represents all detections of images, videos and multimedia archive files within the areas of the internet Project Arachnid crawls. Throughout this report, the term “media detection” refers to media that has been reviewed by an analyst and constitutes either CSAM or harmful-abusive content.

A single media source may be embedded and displayed across several websites on the internet. Since each online location in which a child’s image is displayed is an independent violation of that child’s right to privacy and dignity, Project Arachnid considers each of these sightings to be a unique media detection. Media detections can also be thought of as individual sightings of the content across the web.

Media targeted for removal

Media targeted for removal represents all media detections that triggered the issuance of a removal notice to an ESP. For reasons explained later in the report, not all media detections can be targeted for removal.

Removal notices

Media targeted for removal may lead to the issuance of one or more removal notices to an ESP. Project Arachnid re-issues removal notices to an ESP every 24 hours, until the media is no longer detected.

Removal times

Removal time calculations are based on the interval of time in days between the issuance of a removal notice for a specific media at a specific URL to an ESP and the last date the specific media was detected by Project Arachnid at that same URL. Since the system re-crawls the actioned media every 24 hours following notification, the elapsed link uptime is accurate to within 24 hours. Media URLs that become inactive in less than 24 hours from the point of notification are rounded up to the day for the purposes of this report.

It is important to note that content may become inaccessible for several reasons, some of which may not necessarily be related to action taken by the targeted ESP or Project Arachnid’s removal notice.

Given the severity of harm to victims caused by the public display of even a single image or video, this report’s focus is primarily on the 90th percentile removal time. This measure represents the maximum time the majority (90%) of URLs remained live on the internet from the moment a removal notice is issued to the ESP.

Media recidivism

This measure represents the number of times an image or video on a specific ESP’s service that was previously the subject of a Project Arachnid removal is re-detected at a later date on the same service, but at a different URL. For the purposes of this measure, establishing the recidivist status of an image is based on the re-emergence of an identical SHA-1 hash value. SHA-1 values are cryptographic hash values (or digital fingerprints) derived from a media file and represent a unique digital fingerprint, distinguishing it from other images. Since SHA-1 matching requires an exact cryptographic match, images that are nearly identical or that are close derivatives are not considered matches under this measure.

When interpreting media recidivism rates in this report, it is important to note that the basis for establishing that a detected file is a recidivist image is based on C3P's original determination that the content in question is CSAM or harmful-abusive content. That original determination is based on a variety of factors that include whether the image or digital fingerprint of the image is within the databases of known CSAM used by Project Arachnid, as well as an independent visual assessment of the physical development and sexual maturation characteristics of the individual(s) in the image. It also includes other environmental cues depicted in the image and the context in which the image is detected.

When an ESP chooses not to remove an image upon C3P's request, the re-emergence of that image would not be viewed by the ESP as a recidivist event.

Limitations

While the data collected by Project Arachnid provides an unprecedented view into the nature and scale of the distribution of CSAM and harmful-abusive content, it is not without limitations.

The following are key notes about the data to ensure the conclusions of this report are kept within their appropriate context.

- 1 It is likely that in nearly all cases, ESP-specific figures throughout this report understate the true volume of CSAM and harmful-abusive content that could be associated with an ESP. For a single image or video to exist online, multiple service providers each play a separate and distinct role.

Since Project Arachnid is currently tooled to target the ESP most likely to take removal action, ESP-specific data captures only one actor in the chain for a specific actioned media. In future reports, C3P expects to adopt a more expansive approach to better represent the full extent to which ESPs are associated with CSAM and harmful-abusive content.

- 2 The data collected for any given ESP represents only what Project Arachnid encountered at specific point in time, based on reports from the public or crawl prioritization. It does not necessarily represent the totality of publicly accessible CSAM on an ESP's service. The volumes of image detections, or the trend of detections over time, on a specific service may not be representative of the total prevalence of CSAM or harmful-abusive content for an ESP.

The semi- or fully closed nature of many websites — especially social media or direct messaging platforms — make them largely inaccessible to Project Arachnid. Therefore, records held by Project Arachnid do not reflect the true extent of CSAM or abusive-harmful content on these ESP's services.

- 3 The volume of media detected for a given ESP is driven by a multitude of factors, such as tips from the public, the nature of the website and the nature of the content. For these reasons, exercise caution when comparing ESP-specific figures.
- 4 ESPs are not necessarily fixed legal entities, nor is it always clear which company is behind the operation of a particular service. ESPs may evolve, merge, split and re-brand over time. Data on platforms operated by related companies are not necessarily combined.

ANALYSIS AND DISCUSSION

Between 2018 and 2020, Project Arachnid's crawling activities have detected more than 5.4 million images or videos of verified CSAM or harmful-abusive (**Table 1.1**). This content was detected on the services of more than 760 electronic service providers operating across the globe.

Table 1.2 shows C3P analysts and international tipline contributors have collectively assessed more than 4.9 million individual images in the past three years. These assessments contribute to a constantly growing repository of hash values used to enhance future media detection.

As of the writing of this report, C3P is facing a backlog of more than 32.8 million suspect media that have yet to be assessed (**Table 1.2**). This is because the rate at which Project Arachnid detects suspect media far outpaces the human resources available to assess the content.

Over the three year period, 626,110 media detections were targeted for removal by Project Arachnid (**Table 1.1**). The significant discrepancy between media detections that were ultimately targeted for removal and the volume of suspect media is due to three factors:

- 1 Archive files that may contain collections of hundreds of images are often treated by Project Arachnid as a bulk removal initiative. This means a removal request may relate to several images but represent only a single record.
- 2 On many occasions issuing a removal notice was no longer required since the offending media was removed or was not accessible by the time it was reviewed. This is a consequence of the assessment backlog.
- 3 Some media were found on the dark web and therefore the identity of the ESP is unknown. No action beyond data collection can occur in these situations.

Table 1.1

At a glance: Project Arachnid activity				
	2018	2019	2020	Total
Verified media detected	1,411,203	2,494,316	1,511,194	5,416,713
Verified media targeted for removal	57,685	301,990	266,435	626,110
Removal notices sent	502,162	1,699,017	1,633,698	3,834,877

The term "verified media" refers to media that an analyst has assessed and evaluated as has been assessed by an analyst and evaluated as being either CSAM or harmful-abusive material.

Table 1.2

Suspect media and assessment backlog	
	Total
Total suspect media detected	37,854,878
Media awaiting assessment	32,899,122
Assessed media	4,955,756

The term "suspect media" refers to any media that is reasonably believed to be CSAM but which has not been through C3P's assessment process.

Verified media detections

Of the 5.4 million verified media detected by Project Arachnid between 2018 and 2020, 2.9 percent (n=158,950) were hosted directly on Tor onion services (a subset of the dark web) with the remaining 5.2 million hosted directly on the clear web (**Table 2.1**). This represents average daily detections of nearly 5,300 images or videos per day over the three-year period.

As illustrated in **Figure 1.1** there is no obvious trend in detection volumes over time. Project Arachnid's crawler is not fixed on a pre-determined set of websites. Rather it crawls areas of the web based on link referrals, public tips and many other factors. In addition, the nature of the type of websites or services that distribute CSAM is such that they may be short lived or frequently change hosting providers as they seek companies willing to tolerate the nature of their content.

In many cases, a single network of websites may generate incredibly high volumes of detections and suddenly go offline as a result of Project Arachnid's efforts or otherwise, causing a sudden drop in detections. For these reasons detection volumes — and by extension Project Arachnid's activities — may vary significantly over different time periods.

Table 2.1

Verified media detections, by web type				
Web type	2018	2019	2020	Total
Clear web	1,358,109	2,437,230	1,462,424	5,257,763
Tor	53,094	57,086	48,770	158,950

The term "Tor" refers to the largest network within the dark web.

Figure 1.1

Verified media detections, by web type

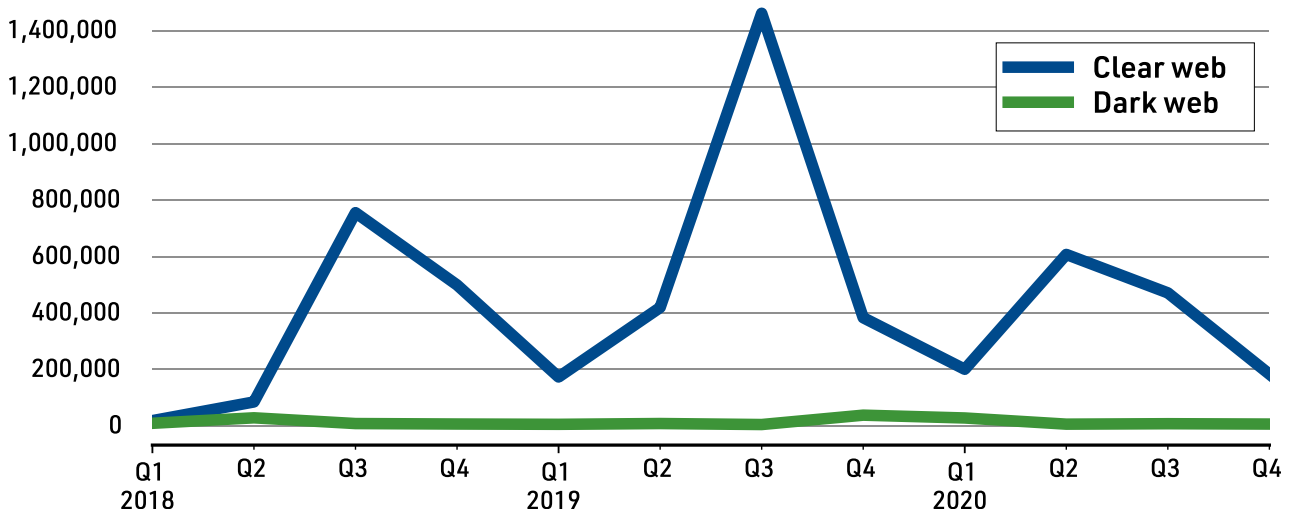


Table 2.2 shows that over the past three years, pre-pubescent CSAM (n=3,403,748) and harmful-abusive (n=1,892,792) have been the two most common image categories encountered by Project Arachnid.

Images or videos containing post-pubescent CSAM represents a small fraction of the overall verified media detections by Project Arachnid (n=120,173).

Table 2.2

Verified media detected, by image category				
Description	2018	2019	2020	Total
Pre-pubescent CSAM	738,378	1,792,639	872,731	3,403,748
Post-pubescent CSAM	27,996	51,432	40,745	120,173
Harmful-abusive	644,829	650,245	597,718	1,892,792

Sum of totals may not reflect totals shown in chart 2.1 due to exclusion of records that have been recategorized.



Discussion

The fundamental measure for capturing the scale of CSAM and harmful-abusive content availability seen by Project Arachnid is the volume of detected media on the internet.

As mentioned earlier in the report, Project Arachnid’s reach does not extend into all areas of the internet. As a result, figures provided in this report are certain to be a gross underestimation of the true extent of availability of this material on the internet. The high volumes of content mandatorily reported into NCMEC by large technology platforms, and that are generally not within the scope of Project Arachnid’s activities, supports this assertion.

Table 2.2 shows the vast majority of verified media that is CSAM does not depict images of post-pubescent children. This finding however is not representative of the reality of adolescent material on the internet.

Imagery depicting younger victims has historically been and continues to be prioritized in most interventions. From the perspective of law enforcement or categorization efforts, establishing whether an image meets a legal definition of CSAM is more likely to be plainly obvious when the victims involved are younger or pre-pubescent.

However, with post-pubescent victims there often exists a high level of uncertainty in the categorization decision. The need to acquire additional contextual information about the image invariably increases the complexity and resources required to make a final assessment. Consider the challenges in determining, based on visual cues alone, whether an adolescent with full sexual maturation characteristics is a minor or an adult.

This inherent challenge in image categorization with unidentified post-pubescent victims and the patchwork of legal standards related to CSAM across nations has over time skewed image categorizations toward younger victims.

For example, the International Child Sexual Exploitation (ICSE) image and video database, an intelligence tool managed by Interpol, established the “baseline”. The baseline is intended to be a catch-all image category that can be assumed to meet a criminal threshold across nearly all jurisdictions. It is described as, “an international standard to isolate the worst of child abuse materials.”

According to a 2018 report by Interpol and End Child Prostitution and Trafficking (ECPAT) baseline images must depict:⁵

- A real child (not an artificially created image);
- A prepubescent child (no sign or very first signs of puberty, appearing to be younger than 12 or 13 years old);
- A child involved in or witnessing sexual/abuse activities; and
- The media has a clear focus on the child’s sexual/anal area.

The net effect of this reality — databases containing the digital fingerprints of known CSAM are skewed heavily toward younger victims and towards media that is on the extreme end of the spectrum. Since most image detection technologies, including Project Arachnid, rely on these digital fingerprint repositories to uncover media on the internet, the nature of what is detected through automation reflects this bias toward extreme content of younger victims.

⁵ INTERPOL. (2018). *Towards a global indicator on unidentified victims in child sexual exploitation material: Technical report*. <https://www.ecpat.org/wp-content/uploads/2018/02/Technical-Report-TOWARDS-A-GLOBAL-INDICATOR-ON-UNIDENTIFIED-VICTIMS-IN-CHILD-SEXUAL-EXPLOITATION-MATERIAL.pdf>

In addition to this, many post-pubescent victims may feel shame or fear related to the creation, distribution and public display of images depicting their abuse or vulnerable moments. C3P Cybertip.ca analysts report when these victims do seek assistance, there is often a desire to avoid triggering a law enforcement or legal response out of continuing fear of the offender who created the images, as well as a strong desire to avoid drawing further attention to themselves.

For these reasons, there is no doubt media detected by Project Arachnid dramatically underrepresents the true scale of harm to adolescent victims.

How the dark web facilitates CSAM distribution

Based on Project Arachnid media detections (**Table 2.2**), the volume of content that is directly hosted or accessed on Tor is relatively small compared to the clear web. Without additional context, this finding may lead one to conclude the dark web has a limited role in the distribution of CSAM, when in fact the opposite is true.

Rather than being the place CSAM and harmful-abusive content is physically hosted, dark web networks such as Tor, are often the conduit for directing individuals to the presence of the material on the clear web. Entire communities, emboldened by the anonymity the Tor network affords, congregate within forums where information related to CSAM and other clandestine activities are discussed. Topics often include: where and how to access illegal media, child grooming and abuse tutorials/manuals, encryption, cyber security and evidence destruction strategies.

This relationship between the clear and dark web is important to understand when crafting regulation or for ESPs adopting proactive measures.

Tor, accessible only through specialized browsers, anonymizes the web traffic between a user and the website they are visiting. The process through which traffic is anonymized and encrypted, however, comes at a cost — substantially slower page loading and media download speeds.

For these reasons, those interested in distributing large multimedia collections often choose to upload their content on archive or image hosting services on the clear web, where download speeds are much faster.

Typically, distributors of this material will upload an encrypted, password-protected archive file that may contain hundreds of images or videos onto a free file hosting service that collects limited to no data about its users. Once uploaded, the distributor will then turn to forums on the dark web and provide members with access to the direct download link and password for the archive file.

Content distributed in this fashion accounts for the largest volume of verified media detected by Project Arachnid. As noted earlier in this report, Project Arachnid's reach on the dark web is currently limited to Tor, and so the distribution characteristics of other dark web networks may be different.



Media targeted for removal

Between 2018 and 2020, Project Arachnid’s removal notices targeted, on average, 571 images or videos per day. A large increase in media targeted for removal in late 2019 relates to a single ESP — free image hosting provider [Imagevenue.com](https://www.imagevenue.com) — whose service was being used by hundreds of third-party websites to host CSAM.

Many of the domain names used by these websites contained words that were indicative of child sexual exploitation, including “teen”, “cuties”, and references to the term “jailbait.” This particular grouping of sites were uncovered and crawled by Project Arachnid, leading to a sudden surge in records tied to [Imagevenue.com](https://www.imagevenue.com), the service that provided image hosting for the content.

As noted earlier in this report, the number of removal efforts initiated by Project Arachnid shown in Table 3.1 do not correspond with the actual volume of images being targeted in practice due to the existence of file archives that may contain thousands of images.

For the purposes of this report, ESP-specific information presented in Table 3.2 is provided for those with 5,000 or more media or files that have triggered the issuance of one or more removal notices. However, for technical reasons, records related to one ESP in particular — French telecommunications company *Free* — is tracked differently by Project Arachnid and is therefore not reflected in Table 3.2.

Project Arachnid records for the time period of this report show *Free*, which operates the file hosting website dl.free.fr, hosted at least 18,000 archive files, collectively containing nearly 1.1 million media files of apparent CSAM or harmful-abusive content. Project Arachnid has detected access points to these archives files across many areas of the internet, representing more than 2.7 million media detections. This report provides details related to [Free.fr](https://www.free.fr) in a standalone case study (See p. 42).

The vast majority of ESPs that have received removal notices from Project Arachnid have been image hosting providers or file hosting services. **Table 3.2** shows the following ESPs have had the greatest volume of media detections targeted for removal:

- **Imagevenue.com:** A domain whose registrant contact information shows the website is based in the Czech Republic, and which operates an image hosting service, but uses hosting provider services for its user-generated content (n=144,000);
- **Serverel:** A U.S.-based company offering hosting service on its own server infrastructure (n=72,412).
- **CloudFlare:** A U.S.-based company offering content delivery network (CDN) services linked to several other ESPs that have many intersections with Project Arachnid (n=49,183).
- **Incrediserve LTD:** A Netherlands-based company that provides hosting services (n=39,400).
- **Trichan forums:** A now defunct network of what appeared to be centrally controlled forums that allowed users to directly host content on its website. Many of the companies providing hosting services to the Trichan forums are reflected in Project Arachnid's records. The figures provided in **Table 3.2** below (n=34,157) under represents the true scale of content on these forums, as repeated non-responses to removal notices led to the adoption of an alternative removal strategy which impacted the record management process.
- **NFOrce Entertainment B.V.:** A Netherlands-based company offering hosting service on its own server infrastructure (n=23,211).

Table 3.3 reveals that for nearly all the ESPs highlighted in this report, pre-pubescent CSAM is the most commonly actioned type of material by Project Arachnid. The only exception as seen in **Table 3.4** is Serverel which has mostly received removal notices related to post-pubescent CSAM (n=66,824).

A review of the removal notices for Serverel to determine possible reasons for this irregular pattern suggests that many websites using its services are ephemeral adult content websites that host post-pubescent material among legal adult content. Project Arachnid has detected at least 1,200 unique websites displaying these images using Serverel's hosting services.

Table 3.1

Media targeted for removal			
2018	2019	2020	Total
57,685	301,990	266,435	626,110

Archive files containing several images recorded as single entry in table.

Table 3.2

Media targeted for removal, by ESP (Includes only ESPs with 5000+ flagged media detection)					
ESP name	Service type	2018	2019	2020	Total
Imagevenue	Content administrator	6,214	76,579	61,099	143,892
Serverel	Hosting service	826	9,121	62,465	72,412
CloudFlare	Content delivery network	3,117	36,604	9,462	49,183
Incrediserve LTD	Hosting service	15,861	19,353	4,186	39,400
Trichan	Content administrator	7,092	27,065	0	34,157
NFOrce Entertainment B.V.	Hosting service	789	14,481	7,941	23,211
ImgOutlet.com	Content administrator	0	10,182	8,400	18,582
ImgView.net	Content administrator	96	6,509	4,035	10,640
FranTech Solutions	Hosting service	54	688	8,987	9,729
ImgDew.com	Content administrator	0	5,618	3,574	9,192
Host Sailor	Hosting service	117	6,845	1,778	8,740
ColoCrossing	Hosting service	1,369	5,309	1,131	7,809
ALFA TELECOM s.r.o.	Hosting service	501	6,909	62	7,472
DataWeb Global Group B.V.	Hosting service	598	2,740	3,765	7,103
ImgMaze.com	Content administrator	0	4,541	2,300	6,841
Liteserver Holding B.V.	Hosting service	2	4,125	2,639	6,766
ImageBam	Content administrator	42	2,363	3,934	6,339
OVHcloud	Hosting service	3,104	1,873	1,304	6,281

Records related to the ESP Free not reflected in table.

See case study on page 42 for details on this ESP.

Table 3.3**Media targeted for removal, by image category**

Image category	2018	2019	2020	Total
Pre-pubescent CSAM	51,700	282,500	188,486	522,686
Post-pubescent CSAM	2,581	11,842	68,607	83,030
Harmful-abusive	1,171	2,163	7,208	10,542

Figures do not reflect full contents of archive files containing multiple images.

Table 3.4

Media targeted for removal, by image category, by ESP (Includes only ESPs with 5000+ flagged media detection)			
ESP name	Pre-pubescent CSAM	Post-pubescent CSAM	Harmful-abusive
Imagevenue	142,449	236	550
CloudFlare	46,033	1273	446
Incrediserve LTD	37,589	118	779
Trichan	32,215	49	624
NFOrce Entertainment B.V.	23,066	66	58
ImgOutlet.com	18,534	15	28
ImgView.net	10,549	30	32
ImgDew.com	9,139	22	28
Host Sailor	8,689	11	22
FranTech Solutions	7,893	24	1,753
ColoCrossing	7,573	7	57
ALFA TELECOM s.r.o.	7,406	51	13
ImgMaze.com	6,782	33	24
Liteserver Holding B.V.	6,748	0	17
ImageBam	6,189	10	105
OVHcloud	5,543	383	126
Serverel	4,529	66,824	3
DataWeb Global Group B.V.	2,583	4,151	25

Records related to the ESP Free not reflected in table.

See case study on page 42 for details on this ESP.

Removal notices

Between 2018 and 2020, Project Arachnid sent nearly 3,500 removal notices every day. **Table 4.1** shows that over the course of three years, over 3.8 million removal notices were issued to ESPs.

Project Arachnid's system is designed to re-issue removal notices every 24 hours until the media is no longer detectable at the targeted URL. As such, the volume of removal notices issued to an ESP is directly correlated to both the number of images or videos targeted for removal and the length of time the content remains accessible.

A significant rise in removal notices issued in early 2019 relates to a concerted effort to have thousands of images taken down from a now-defunct network of online forums dedicated to child exploitation known as the Trichans. A case study later in the report provides greater insight into this specific initiative (See p. 44).

Broken down by image categorization type, **Table 4.2** shows pre-pubescent CSAM (n=2,986,280) is the most common image category actioned by Project Arachnid. However, the volume of removal notices related to post-pubescent CSAM (n=737,718) is significantly greater than what might be expected given the relatively low volumes of detections shown in **Table 2.2**. This indicates post-pubescent CSAM requires the issuance of a much greater number of removal notices, and consequently, longer timeframes before the media becomes inaccessible.

Table 4.2 shows removal notices related to images classified as harmful-abusive saw a sharp increase in 2020 (n=88,825). This timing coincided with the release of C3P's child protection and rights framework (See p. 9) which led to an expansion of the scope of media triggering removal notices.

Table 4.1

Removal notices issued				
	2018	2019	2020	Total
	502,162	1,699,017	1,633,698	3,834,877

Figures include initial and, when required due to non-removal, follow up removal notices to ESPs.

Table 4.2

Removal notices issued, by image category				
Image category	2018	2019	2020	Total
Pre-pubescent CSAM	482,399	1,633,212	870,669	2,986,280
Post-pubescent CSAM	9,934	40,000	687,784	737,718
Harmful-abusive	6,589	12,512	69,724	88,825

Sum of totals may not reflect totals shown in chart 4.1 due to exclusion of records that have been recategorized.

Table 4.3

Removal notices issued, by image category, by ESP <i>(Includes only ESPs with 5000+ flagged media detection)</i>			
ESP name	Pre-pubescent CSAM	Post-pubescent CSAM	Harmful-abusive
Trichan	733,927	776	7704
Incrediserve LTD	381,498	641	4,696
NFOrce Entertainment B.V.	217,068	1,623	525
CloudFlare	170,923	9,646	1,158
Imagevenue	168,448	291	645
ColoCrossing	165,709	170	1,249
FranTech Solutions	94,707	877	15,047
Liteserver Holding B.V.	52,189	0	88
Serverel	44,662	637,631	3
ImgOutlet.com	34,830	34	41
OVHcloud	31,245	2,818	305
Host Sailor	24,768	42	23
ImgView.net	23,693	63	54
ImgDew.com	21,535	41	70
ALFA TELECOM s.r.o.	17,142	133	149
ImgMaze.com	16,257	65	61
ImageBam	6,565	10	105
DataWeb Global Group B.V.	3,778	11,017	26

Records related to the ESP Free not reflected in table.

See case study on page 42 for details on this ESP.

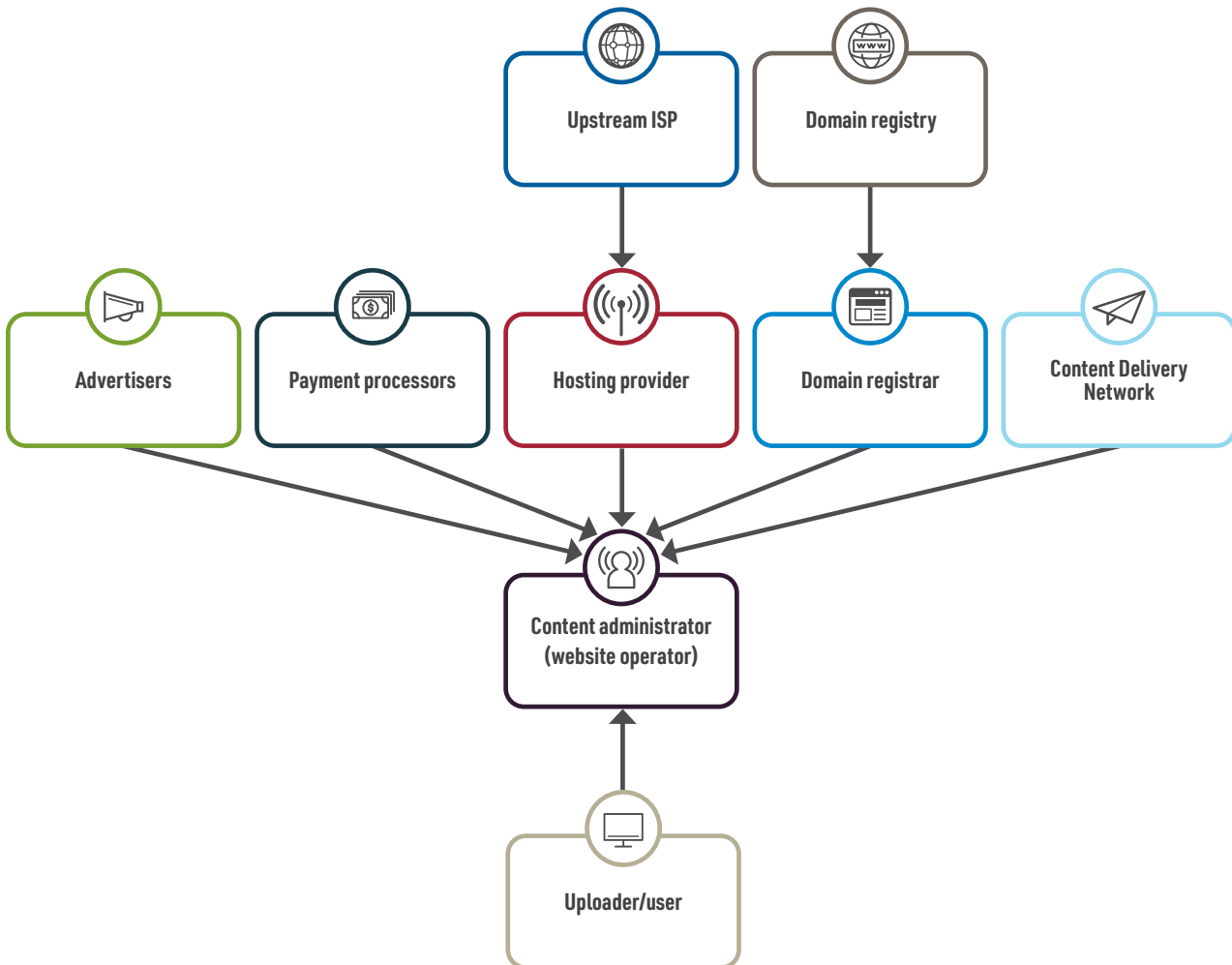
Discussion

While this report highlights the intersections key ESPs have had with CSAM and harmful-abusive content, it must be noted that relying on the presented data alone does not paint a complete picture of the role each ESP’s activities play in enabling access to harmful content.

Removal notices issued by Project Arachnid generally target a specific ESP based on a combination of factors. Evaluations based on which ESP possesses the most immediate control over the targeted media, responsiveness to removal notices and the availability of contact information help guide where notices are ultimately sent. The ESP-specific figures in this report reflect those entities to which notices are sent, which is not reflective of the broader chain of ESPs associated with facilitating the public display of each detected image or video.

Figure 2.0 illustrates a crucial point: The existence of a single image or video on the internet, ultimately requires a coordinated series of services by a number of companies, all of which generally have some ability to mitigate or stop the proliferation of CSAM or harmful-abusive content on specific services.

Figure 2.0



As an illustrative example, the following are common steps required of an individual intent on creating a website that may be dedicated to the sexualization of children.

- 1 An individual must register a domain name with a domain name registrar. The domain name registrar is authorized to sell domains by a domain registry.
- 2 Once the individual has secured a domain name, they must then find a means to upload and make their material available on the internet. This requires the services of a hosting provider. Hosting providers may own or rent physical servers or lease space on another company's servers, potentially spanning many jurisdictions. These ESPs generally have the technical and/or legal ability to shut down any website or a particular server on its services, and are generally able to impose specific and legally binding terms of service on their customers.
- 3 The individual may make use of a content delivery network service (CDN). These services provide website visitors with faster loading times by relaying a mirrored (cached) version of the site to servers distributed around the globe, effectively reducing the distance data must travel. These services appeal to website administrators providing access to CSAM or harmful-abusive content for another key reason: CDNs typically mask the identity of the website administrator and hosting providers.
- 4 The individual may also make use of a virtual private network service (VPN) to mask their origin IP address from their hosting provider during the course of their activities.
- 5 To monetize these efforts the individual may also make use of payment services such as major credit card companies, or other online payment systems. In addition, the content administrator may promote their content in hopes of securing advertising revenues.

Exerting control over the entire digital ecosystem described above are the upstream internet service providers and Tier 1 networks which are effectively the backbone of the internet. Even the largest technology companies are reliant on these companies for their platforms to be accessible globally to users.

Surges in actionable media for certain ESPs

As observed in the data, Project Arachnid removal activities aimed at certain ESPs occasionally surge upward. As noted earlier in the report, detection volumes ebb and flow — sometimes dramatically — depending on the time period. It is important to note that the nature of the activities of a hosting provider’s customers (i.e., content administrators) can greatly influence the volume of removal notices they received.

Table 4.3 shows two ESPs in particular, Imagevenue.com and Serverel, received a significant volume of removal notices from Project Arachnid in 2019 and 2020. These volumes were driven in large part by networks of third-party websites that were widely distributing media hosted on their services.

This misuse of file hosting services by third-party actors underscores how important it is for these services to be vigilant and invest in tools to block the uploading of undesirable content and to invest in adequate human moderation resources.

Another key consideration that may impact the volume of Project Arachnid media detection for any given ESP is whether they allow user-generated content to be uploaded and accessed via dark web networks.

Certain ESPs — including some specifically highlighted in this report — allow anonymous users to upload and access content on their platforms from the Tor network. Failing to adopt network security measures to block this type of suspect traffic means users can exploit an ESP’s platform for CSAM distribution, especially those whose services require no account or fees.

Server locations of media targeted for removal

The distribution of CSAM and harmful-abusive content is a global issue. The decentralized nature of internet services means that ESPs can have physical or digital footprints across many locations.

Server location information reported by Project Arachnid is based on data available through the services of Maxmind Inc., which reports a 99.8 percent accuracy rate at a country level.⁶

Table 5.1 shows that between 2018 and 2020 nearly 49 percent of removal notices issued by Project Arachnid went to ESPs whose media of concern was hosted on servers located in the Netherlands. The U.S. was second with nearly 33 percent, followed by Canada at 4.7 percent of removal notices.

Table 5.2 shows the top three ESPs (by removal notice volume) for each server location. This table provides insight into which ESPs are making use of server infrastructure, either through direct ownership or through leased space.

Table 5.1

Removal notices issued, by location of server hosting media (Top 15 countries shown)					
GeoIP location	2018	2019	2020	Total	Percent
Netherlands	370,040	1,040,057	468,323	1,878,420	48.8%
United States	54,748	406,420	805,589	1,266,757	32.9%
Canada	15,405	89,059	76,363	180,827	4.7%
Russia	14,204	32,287	51,167	97,658	2.5%
France	15,957	28,021	33,670	77,648	2.0%
Seychelles	5,316	7,797	49,384	62,497	1.6%
Ukraine	10,331	22,834	15,404	48,569	1.3%
Latvia	2	2,329	43,810	46,141	1.2%
Belize	1,273	28,509	4,796	34,578	0.9%
Hong Kong	0	3,984	21,447	25,431	0.7%
Germany	771	4,683	9,890	15,344	0.4%
United Kingdom	2,148	2,279	5,606	10,033	0.3%
South Africa	11	4,126	5,415	9,552	0.2%
New Zealand	332	2,443	5,368	8,143	0.2%
Estonia	91	262	7,569	7,922	0.2%

Server geolocation based on information provide by Maxmind Inc., a cyber-intelligence service.

Percent figures based on all countries, including those not displayed in table.

⁶ For more information on Maxmind Inc.'s accuracy rate, visit www.maxmind.com/en/geoip2-country-database.

Table 5.2

Removal notices based on server location, top 3 ESPs by country					
GeolP country	ESP name	Removal notices	GeolP country	ESP name	Removal notices
United States	Serverel	616,911	Latvia	Telia Latvija SIA	39,204
United States	CloudFlare	183,766	Latvia	FastPic	3,130
United States	ColoCrossing	167,641	Latvia	Telenet Ltd	1,970
United Kingdom	JPG4.NET	3,081	Hong Kong	Amarutu Technology Ltd	21,630
United Kingdom	OVHcloud	1,816	Hong Kong	Tele Asia	3,391
United Kingdom	Trichan	655	Hong Kong	I-Services Network Solution Limited	257
Ukraine	TOV ITT	10,329	Germany	TerraTransit AG	4,616
Ukraine	PE Brezhnev Daniil	9,130	Germany	Koddos/Amarutu Technology Ltd. 2	2,502
Ukraine	ALFA TELECOM s.r.o.	5,996	Germany	imgsrc.ru	1,970
South Africa	Zappie Host LLC	8,742	France	Free.fr	25,551
South Africa	Afrihost	810	France	OVHcloud	25,428
Seychelles	IP Volume	33,957	France	Dedibox SAS	19,428
Seychelles	Incrediserve LTD	26,728	Estonia	Xemu	7,124
Seychelles	Novogara LTD	1,614	Estonia	Estro Web Services Private Limited	312
Russia	imgsrc.ru	17,999	Estonia	GmhostGrupp OU	192
Russia	ALFA TELECOM s.r.o.	11,118	Canada	Imagevenue	169,756
Russia	VDSINA Hosting	5,972	Canada	OVHcloud	6,949
New Zealand	Zappie Host LLC	8,047	Canada	Gayboystube	2,380
New Zealand	Spark New Zealand	96	Belize	Trichan	21,603
Netherlands	Trichan	717,722	Belize	TerraTransit AG	12,077
Netherlands	Incrediserve LTD	362,519	Belize	Koddos/Amarutu Technology Ltd. 2	855
Netherlands	NFOrce Entertainment B.V.	218,907			

Table does not necessarily reflect where an ESP's operations are based; rather it shows where the servers in use by the ESP are physically located.



Discussion

This report is not intended to provide an examination of jurisdictional issues related to cyber enforcement. However, there is value from a public policy perspective in understanding where content is being physically hosted globally — especially for countries with mandatory reporting requirements for ESPs.

An often cited obstacle by justice and law enforcement officials is the ambiguity over questions of jurisdiction when dealing with internet companies and their activities.

A useful and well-publicized example for illustrating the challenges of establishing whether an organization is subject to a country's laws is the case of adult content website **PornHub.com** and its parent company **MindGeek®**.

The parent company has a significant physical footprint in Montréal, Canada with approximately 1,000 employees working out of an office building. And while the company also has offices in Cyprus, England, Romania and the U.S., it claims to consider itself headquartered in Luxembourg where it is legally registered.⁷

However, based on the geolocation information tied to media detected by Project Arachnid, PornHub's content is mostly hosted on U.S.-based servers.

For this one company, jurisdictional arguments could be made for enforcing laws in some or all of Canada, Cyprus, England, Romania, the U.S. and Luxembourg. This underscores the importance for policymakers to establish clear parameters surrounding jurisdictional issues related to ESPs. This is a fundamental prerequisite for the creation of enforceable regulation in the digital space.

⁷ MindGeek. (2021, June 2). *MindGeek*. <https://www.mindgeek.com/>

Protection of Privacy and Reputation on Platforms such as Pornhub, House of Commons Canada Standing Committee on Access to Information, Privacy and Ethics, 43rd Parliament, 2nd Session, Meeting 19. (2021). <http://www.ourcommons.ca/DocumentViewer/en/43-2/ETHI/meeting-19/evidence>

Content removal times

Defined as the total elapsed time from the moment of notification to when the targeted media is no longer accessible, content removal time is a crucial measure from a victim-centric perspective.

When considering the results presented in this section, it is important to recognize the calculated removal times presented in this report are based on when a notification was issued to an ESP. In reality, the media being targeted for removal were visible on the internet for an unknown amount of time prior to detection by Project Arachnid. So while the removal time upon notification is known to Project Arachnid, only the ESP knows how long the media were accessible on the internet.

Table 6.1 shows that over the three-year period studied in this report, from the moment a removal notice was issued, 50 percent of media targeted was no longer available the following day. While the median (50th percentile) removal time is 24 hours, the 90th percentile removal time globally was 42 days. Said otherwise, 10 percent of media targeted for removal over the past three years took seven weeks or longer from the point of notification before being removed from the internet. This is a core area of concern.

Significantly slower removal times in 2018 as shown in **Table 6.1** are believed to be the result of a few factors. At the time, Project Arachnid was in its early days of operation and the many challenges and strategies involved in successfully pursuing CSAM removal were not fully appreciated. In addition, Project Arachnid initially issued a portion of its removal notices to ESPs through intermediary regional-specific organizations. A move toward a direct-notice model in 2019 has proven to be a much more efficient and effective process.

However it must be noted that while removal times are down significantly since 2018, they have recently worsened with the 90th percentile removal time increasing from 26 days in 2019 to 38 days in 2020 (**Table 6.1**).

This increase in removal times is in part explained by the fact that 2020 saw an increase in post-pubescent CSAM images being targeted for removal (**Table 3.3**), a category with generally longer removal times compared to pre-pubescent CSAM and harmful-abusive content (**Table 6.2**).

The 90th percentile removal time for pre-pubescent CSAM is 40 days, while post-pubescent CSAM and harmful-abusive media is 56 days and 37 days respectively (**Table 6.2**).

Table 6.3 highlights major differences in removal times across ESPs. Certain ESPs whose platforms host significant amounts of CSAM have been largely unresponsive to removal efforts. The Trichan forums were highly unresponsive to removal requests which drove up the removal times (90th percentile = 138 days). However, when core hosting providers began withdrawing their services for the site, removal times plummeted as the content rapidly became inaccessible.

Table 6.3 also shows certain ESPs have relatively faster removal times. For some, this may be explained by an automated internal mechanism for processing Project Arachnid removal notices to hasten removal times.

Table 6.1**Removal times, all media targeted for removal**

	2018	2019	2020	All years
50 th percentile (median)	5 days	1 day	1 day	1 day
90 th percentile	161 days	26 days	38 days	42 days

Calculation includes elapsed time related to removal efforts initiated during the report period, but not yet concluded by Dec. 31, 2020.
Media is deemed removed when media is no longer accessible at the targeted URL.

Table 6.2**Removal times, by image category**

Image category	50 th percentile (Median)	90 th percentile
Pre-pubescent CSAM	1 day	40 days
Post-pubescent CSAM	2 days	56 days
Harmful-abusive	1 day	37 days

Calculation includes elapsed time related to removal efforts initiated during the report period, but not yet concluded by Dec. 31, 2020.
Media is deemed removed when media is no longer accessible at the targeted URL.

Table 6.3

Removal times, by ESP		
ESP name	50th percentile (Median)	90th percentile
Trichan	1 day	138 days
ColoCrossing	27 days	127 days
NFOrce Entertainment B.V.	8 days	70 days
Serverel	6 days	60 days
Incrediserve LTD	3 days	53 days
Liteserver Holding B.V.	1 day	43 days
FranTech Solutions	13 days	40 days
CloudFlare	1 day	27 days
OVHcloud	3 days	23 days
Host Sailor	1 day	15 days
ImgView.net	2 days	6 days
ImgMaze.com	2 days	6 days
ImgDew.com	2 days	6 days
ImgOutlet.com	2 days	4 days
ALFA TELECOM s.r.o.	1 day	4 days
DataWeb Global Group B.V.	1 day	2 days
Imagevenue	1 day	1 day
ImageBam	1 day	1 day

Calculation includes elapsed time related to removal efforts initiated during the report period, but not yet concluded by Dec. 31, 2020.
Media is deemed removed when media is no longer accessible at the targeted URL.



Discussion

In C3P's discussions with survivors we've learned that the recording of their child sexual abuse and its continued online availability creates an additional layer of trauma which colours every aspect of their lives. Simply knowing such material exist, and that individuals around the world are able to view and take pleasure from them their suffering, evokes a variety of emotions including fear, shame and a pervading sense of powerlessness. This is the fundamental reason why the prompt removal of harmful content is so critical.

The median removal time for content targeted by Project Arachnid is 24 hours. This finding, however, must be considered in the broader context of the problem. In isolation, this statistic is encouraging as it suggests Project Arachnid is an effective tool for achieving relatively prompt image removals for a significant portion of targeted media. However, it belies a core problem in this space: Many ESPs remove media within a day of notification, but in the absence of any regulatory requirements, they have no commercial or legal interest in investing in measures to prevent the images from surfacing or re-surfacing in the first place. There are no consequences for inaction on the prevention side. This is laid bare by the correspondingly high image recidivism rates reported later in the report.

The primary objective for ESPs ought to be to prevent these images from being uploaded onto their service in the first place. However, when this fails, the use of proactive media detection technology can assist with the prompt removal or blocking of previously known material.

That said, this report is especially focused on drawing attention to much longer removal delays highlighted with the 90th percentile removal times. The victims depicted in images that experience longer delays see greater levels of victimization.

The primary objective for ESPs ought to be to prevent these images from being uploaded onto their service in the first place. However, when this fails, the use of proactive media detection technology can assist with the prompt removal or blocking of previously known material.

Proactive	Companies that actively seek to detect and prevent CSAM from being posted on their service. This typically involves the larger technology companies but can include some smaller ones.
Reactive	Large and small companies that remove CSAM when notified but do not actively seek to prevent it on their service. Those that react to notices also have varying durations in removal time.
Resistant	Companies that debate/push back on removing material, either not being satisfied the image is of a child or not agreeing the image or video is illegal in nature.
Non-compliant	Companies that ignore takedown notifications or simply refuse to remove material that is clearly CSAM .
Complicit	Companies that knowingly allow CSAM on their services and may attempt to protect clients engaged in illegal activities.

Many inferences about changes in ESP behaviour can be made based on the trends observed in the data held by Project Arachnid. Improvements in media removal times are a key indicator for identifying companies that may have adopted a more proactive approach to online harm reduction.

Delays for post-pubescent media removal

As shown in **Table 6.2**, much longer delays in removal occur with post-pubescent CSAM in comparison to pre-pubescent CSAM.

Reasons for these longer delays may be explained by factors such as:

- A perception that post-pubescent CSAM is less serious, and therefore is not prioritized for removal;
- ESPs contesting the assertions the media in question constitutes CSAM;
- ESPs focused on the visual cues of the imagery alone may lack the context surrounding the potentially illegal nature of the media and therefore not be quick to remove.

For illustrative purposes, consider the following event experienced by C3P:

An ESP contested the accuracy of certain image categorizations via a series of email communications. Images of a nude 15-year-old girl were assessed by C3P analysts and linked to a known victim.

The ESP representative indicated they believed C3P's age assessments were incorrect as other online information suggested she was an adult. It had to be pointed out that while she may be an adult at the time the removal notices were issued, the images in question were taken years earlier when she was a minor.

The images were all subsequently removed, though one took nine days. This example underscores the senseless reality of operating in this space. In light of the existing media assessment backlog discussed earlier in this report, these types of one-off interactions with ESPs are a constant drain on limited resources and cause removal delays that are damaging to victims/survivors.

Media recidivism

Unlike evaluating removal times, which is a measure of an ESP's after-the-fact responsiveness to the presence of problematic content, media recidivism provides insight into the preventative measures (or lack thereof) employed by companies.

Forty-one percent (41%) of the 761 ESPs that have received at least one removal notice from Project Arachnid over the period covered by this report have had at least one image or video re-emerge on their service after it had been previously flagged for removal.

Table 7.1 shows that between 2018 and 2020, 48 percent of all media targeted for removal had been previously detected on the respective ESP's service. This same table shows recidivism rates have generally increased over the past three years. **Table 7.1** shows recidivism rates more than doubled from 20.7 percent in 2018 to 54.9 percent in 2020.

It is important to note that the calculated recidivism rates in this report are not necessarily comparable across ESPs since many factors influence the rate. For example, certain websites may be dominated by users who produce CSAM and are therefore more likely to upload previously unknown content, while the user base of other sites may re-upload the same content repeatedly. Under this scenario, the website with users who tend to post previously unknown content would result in a lower recidivism rate, since each media detection by Project Arachnid is more likely to be new material.

For example, an established website that has received many removal notices over the past years would yield a higher recidivism rate than a new website with the exact same media. This is because when Project Arachnid crawls the media on the new website, most removal notices would relate to previously undetected content for that ESP.

Table 7.2 reveals that recidivism rates are significantly higher for post-pubescent CSAM (73.1%) compared to pre-pubescent CSAM (46%) and harmful-abusive content (18%). This suggests that ESPs are more likely to have significantly delayed acting upon (or even ignored) previous Project Arachnid removal requests related to post-pubescent CSAM and/or have been less likely to add the digital fingerprints of this image category to their internal pool of banned images, assuming they actively maintain one to begin with.

Table 7.1

Recidivism rate, all media subject to removal request			
	Recidivist media	All media	Recidivism rate
2018	11,258	54,448	20.7%
2019	103,987	211,470	49.2%
2020	100,464	183,152	54.9%
All years	215,709	449,070	48.0%

Recidivism is established based on matching SHA-1 cryptographic hashes.

Table 7.2

Recidivism rate, by image category				
Image category	2018	2019	2020	All years
Pre-pubescent CSAM	21.7%	49.4%	50.1%	46.0%
Post-pubescent CSAM	23.8%	64.0%	77.4%	73.1%
Harmful-abusive	7.2%	14.1%	21.1%	18.0%

Recidivism is established based on matching SHA-1 cryptographic hashes.

It should also be noted that certain ESPs, while physically hosting the content on their servers, may not necessarily have a view into the material itself. A hosting provider whose customer offers an encrypted service, for example, might not be able to access or view the media itself. Under these circumstances, proactive media detection by the hosting provider is not possible.

Table 7.3 shows ESPs such as Czech Republic-based ALFA Telecom s.r.o., Serverel, Imagevenue and Netherlands-based LiteServer Holding B.V. had calculated recidivism rates exceeding 86 percent. In practice, this indicates these services have repeatedly hosted images that have been flagged multiple times by Project Arachnid.

Table 7.3

Recidivism rate for all media subject to removal notice, by ESP	
ESP name	Percent recidivism, all years
ALFA TELECOM s.r.o.	93.6%
Serverel	93.5%
Imagevenue	87.5%
Liteserver Holding B.V.	86.4%
Host Sailor	68.6%
FranTech Solutions	65.3%
CloudFlare	48.6%
ColoCrossing	35.5%
Incrediserve LTD	34.0%
Trichan	26.2%
OVHcloud	11.4%
DataWeb Global Group B.V.	11.4%
NFOrce Entertainment B.V.	5.9%
ImgDew.com	5.8%
ImgView.net	5.3%
ImgOutlet.com	4.9%
ImgMaze.com	4.5%
ImageBam	3.2%

Recidivism is established based on matching SHA-1 cryptographic hashes.



Discussion

Digital fingerprint comparisons are the main method for automatically detecting offending media, though not all ESPs use them. When a platform user uploads content onto an ESP's system, these automated technologies compare the unique digital fingerprint of the media to databanks of fingerprints that relate to previously identified CSAM or harmful-abusive media. If a match is found, the content is either blocked or removed. While this process is highly effective at curbing the distribution of known imagery, it cannot prevent newly created content from being uploaded.

If deployed properly, content administrators that employ digital fingerprint comparison technology and do not offer a fully encrypted service should see a limited amount of previously removed media re-emerging on their service.

Unfortunately, a large number of companies do not appear to be using these basic tools, with nearly 41 percent of ESPs having at least one recidivist image detected by Project Arachnid on the basis of a SHA-1 hash value match.

As noted in the previous section, some ESPs may physically be in possession of content on their servers but not necessarily have the ability to view or directly detect media that is managed by their customer. Under these circumstances, certain hosting providers have told C3P that proactive detection is not technically possible, and therefore they cannot prevent repeat media from re-emerging on their servers using this approach.

It is C3P's view that while certain technical limitations do exist, such as those described above, nothing prevents ESPs from adopting contract-based solutions that impose legal requirements on their customers as a condition of service. Such requirements could include a requirement that customers use specified media detection technologies, block file uploads from the dark web, maintain certain levels of human moderation and remove media within a specified time from detection or notification.

These types of practical solutions are described in greater detail later in the report as part of a list of recommendations.

SHA-1 vs. PhotoDNA image matching

A SHA-1 image match is a match based on a unique digital cryptographic hash value. This means the digital file, down to the binary level, exactly matches another image. Any modification to the image or to the file's underlying metadata will result in a different SHA-1 hash value, and therefore no longer match with the previous version of the image. Examples of modifications to an image that yield different SHA-1 hash values include:

- Modifications to the colour;
- Resizing the image;
- Saving in a different file format;
- Modifying the metadata (i.e., Exif data);
- Removing or adding a single pixel;
- Taking a screenshot of an existing image.

In practice, many images detected by Project Arachnid are slight derivatives of previously verified images, but the differences may be imperceptible to the human eye. Despite being visually the same image, their unique digital SHA-1 fingerprints are different for reasons explained above.

In order to match these non-identical images, approximate image matching technology can be used such as Microsoft's PhotoDNA algorithm, a popular tool used in this space. While Project Arachnid does use PhotoDNA as part of its operations, image recidivism in this report is tied to exact SHA-1 matches, and does not take into account variants of what appear visually as the same image. This means that in practice, the recidivism rates presented in this report are likely to be very conservative figures.

Post-pubescent recidivism

As noted in **Table 8.2**, post-pubescent CSAM has significantly higher recidivism rates when compared to pre-pubescent CSAM and harmful-abusive content.

Some of the same factors discussed earlier regarding possible reasons why this class of media experiences longer removal times may also be driving the higher rate of recidivism. It is also important to note that in addition to the preventative actions that can be taken by an ESP, image recidivism rates are also driven in part by the nature of the content uploaded by an ESP's user base. For example, a review of a collection of newly produced content would yield relatively low recidivism rates compared to a collection of popularly traded historical media.

Unlike pre-pubescent CSAM, post-pubescent CSAM is often found intermixed with adult pornography or on otherwise popular platforms with large user bases that permit adult pornography (such as Twitter). This may indicate individuals uploading post-pubescent media are satisfied the apparent age of the individual depicted in the images is uncertain enough to provide plausible deniability should they be questioned. It may also indicate a lack of understanding about what constitutes CSAM and the consequences of distributing this type of imagery.

Combined, these factors may lead to a perception by content administrators and users that the uploading (and future re-uploading) of post-pubescent CSAM is a relatively low-risk endeavour.

Building upon the above points, in the absence of information suggesting that certain sexual images depict minors, website administrators may opt to ignore removal notices and to not add flagged images of post-pubescent victims to their banned media lists.

This resulting attitude toward post-pubescent CSAM could explain in part higher volumes of image recidivism for this category.



CASE STUDY: **French telecommunications company Free: Project Arachnid's largest source of detected CSAM**

Over the past three years, Project Arachnid has issued removal notices to more than 760 ESPs. The records gathered as a result of those interactions clearly demonstrate certain ESPs directly or indirectly contribute in more significant ways to the distribution of CSAM and harmful-abusive content on the internet.

Project Arachnid records on actionable media detections, moreover, point to a single ESP whose service has been used for hosting and sharing a very significant volume of CSAM and harmful-abusive content: French telecommunications giant Free, owned by the Paris-based parent company Iliad Group.

From 2018 to 2020, Project Arachnid detected more than 18,000 archive files, collectively containing nearly 1.1 million image or video files of apparent CSAM or harmful-abusive content. These were, or in some cases continue to be, hosted directly on Free's public file hosting service.

In many cases, Project Arachnid's web crawler has detected links to these archived files across many areas of both the clear web and Tor sites. Given these many access points to the media archives, the total known availability of CSAM and harmful-abusive images or videos on Free's hosting service is more than 2.7 million media detections.

Past controversy over Free's hosting service

The file hosting service – found at the address dl.free.fr – came under fire in October 2007 when France's then-Minister of Culture singled out the company, alleging they were failing to take adequate steps to curb the illegal distribution of copyrighted material.

In an official statement, the minister expressed concerns over recent changes made to the company's file sharing service that permitted, "users to anonymously upload large volumes of pirated material on dl.free.fr."⁸

The statement also asked that then-Chief Executive Officer of parent company Iliad Group make use of Free's "undisputed technical mastery" to enforce existing laws by either highly restricting the use of the file hosting service or by outright deleting it.

The minister's statement also reiterated the details of a recent court decision that required Free to block access to 14 binary newsgroups, a type of decentralized online community forum often used for sharing media between users. This came after several groups of rights holders voiced their concerns over the service. Ultimately the French government went as far as to threaten to withhold the company's 3G license application over the file hosting service.

8 Ministère de la Culture. (2007, October 12). *Christine Albanel demande à Free de lutter plus activement contre le piratage*. <http://www2.culture.gouv.fr/culture/actualites/communiq/albanel/free07.html>

Details of the hosting service

Cached versions of the company's free file hosting web page can be found as far back as early 2006, around the time the service was experimentally launched.⁹

The file hosting service offered through the company's website appears to be popular among individuals intent on distributing large volumes of media anonymously, with discussions on dark web forums recommending Free's file hosting service for CSAM distribution.

Possible reasons behind the service's popularity include:

- The service requires no account, registration, contact information or payment to upload content and generate a link to the media that can then be shared with anyone, anywhere;
- Despite the minimalist design of the service, it provides a very generous file size limit, allowing for large media collections to be uploaded and distributed;
- An uploader can password protect an archive file, meaning only a recipient with knowledge of the password can access the media. These links and passwords are often found on the dark web.

Of note is the fact that the specific web page users access to upload content on Free's service is outdated and has not been graphically updated since 2008.¹⁰ In addition, the company's main site uses secure hypertext transfer protocol (HTTPS) – a standard in modern websites, but the image hosting portal uses the outdated unsecured hypertext transfer protocol (HTTP).

In addition, as of May 18, 2021, when on the file hosting service web page, the link provided to users for reporting "illicit content" leads to a default 404 error page, meaning the requested web page does not exist.

This all suggests the company has not prioritized or given this service much consideration in recent years.

How Free's file hosting service is misused for CSAM distribution

Individuals intent on distributing CSAM and harmful-abusive content have taken advantage of Free's hosting service to anonymously store media online, and then disseminate the direct download link on forums across the internet.

Based on Project Arachnid's crawling records, a significant number of **dl.free.fr** download links are detected on Tor-based discussion forums where an unknown number of anonymous users are able to view the direct download links and passwords required to unlock and access the content.

Rather than viewing content ephemerally embedded on a web page, users must download the media, generating new copies of the files on their local computers. In this context, even if the media hosted at the source is eventually removed, several other privately held copies are likely to exist and may very well re-emerge at a later date on the internet.

Communications with Free representatives

Beginning in 2018, C3P began corresponding directly with company officials, providing them with lists of direct links to the file archives containing CSAM being hosted on their system.

Project Arachnid has continued to detect and issue notices on newly uncovered CSAM and harmful-abusive media to the company. As of May 18, 2021, nearly 3,000 archives for which removal notices were issued between 2018 and 2020 (inclusively) were still publicly accessible, according to Project Arachnid records.

9 Free. (2006). *Conditions d'utilisation du nouveau service experimental* <http://dl.free.fr>. <https://web.archive.org/web/20060126211229/http://dl.free.fr/>

10 Free. (2008). *Service d'envoi de fichiers* <http://dl.free.fr> <https://web.archive.org/web/20081106103820/http://www.dl.free.fr/>



CASE STUDY: **Project Arachnid Trichan imageboard campaign**

Another prominent host of CSAM encountered by Project Arachnid was a collection of internet forums known as the Trichan imageboards. The now-defunct forums were primarily dedicated to the sexual exploitation of children and had been in operation for at least seven years, largely hosted out of the Netherlands.

First encounter

In March 2019, Project Arachnid encountered a sharp rise in detected media on these forums. The sudden surge in volume was such that C3P's internal technology experts had to retool the crawler to manage the flow of data being detected.

As the system began issuing takedown notices, it quickly became apparent the owner of the Trichan sites was generally not prepared to take action. Despite repeated emails to the websites' contact addresses, the vast majority of actioned media persisted on the site. Eventually, notices sent by email simply bounced back as undelivered.

Despite issuing numerous unsuccessful requests for removal, Project Arachnid continued to gather records on detected CSAM on the website. Internally, C3P analysts began assessing the images and concluded that, based on a sample of 51,917 images, it was likely that nearly 34 percent of images on the website were CSAM, with the remainder being possible CSAM and harmful-abusive images.

Armed with this data, and in light of the fact the Trichan administrator essentially ignored Project Arachnid notifications, C3P approached the service's upstream service providers in an attempt to have the content removal requests acted upon.

Initially, this approach was met with a great deal of resistance. Some ESPs further up the chain suggested C3P redirect its removal notices to the Netherlands-based hotline. After much back and forth with the Trichan upstream service providers, some of the providers took action to null-route (block) the IP addresses of the Trichan sites.

Over the subsequent weeks, the Trichan forums repeatedly changed hosting providers. With each change, C3P would engage with the new host and present them with data regarding the nature of the content hosted within the Trichan forums.

Deploying evasive techniques

Eventually, the websites went offline for a period of about three months. However, when the forums later resurfaced, it was quickly determined that the Trichans appeared to be employing new techniques to disrupt the automated detection of CSAM on their service.

The technique involved automatically injecting “noise” into the images by randomly offsetting pixels in ways that are imperceptible to the human eye. The forums were then set to cycle through modified versions of the same image when a new website visitor loaded the content.

This tactic made Project Arachnid comparisons of hash values against libraries of previously actioned hash values more challenging. However, with the use of approximate image matching technology such as Microsoft’s PhotoDNA algorithm, Project Arachnid successfully continued to identify images and issue removal notices.



These two images look identical to the human eye, but they represent two completely different digital signatures. The red blotches represent collections of pixels that have been slightly offset from one image to the next.

Once again, C3P communicated with the latest hosting provider, and the website was taken offline thereafter. Seemingly out of options for finding a new hosting provider that would tolerate the nature of their content, the Trichan site administrator eventually capitulated. In an announcement posted on their homepage a site moderator bemoaned the relentless efforts to have their content removed before stating the site would be shutting down permanently:

“It’s been a wonderful seven years and we would’ve loved to go for another seven, but antis are hunting us to death with unprecedented zeal, and after being shut down more than two dozen times and serving more than 100,000 brothers from all over the world daily we don’t have the finances go on any longer.”

Over approximately two and a half years, Project Arachnid detected more than 1.5 million verified media on the Trichan forums.





Discussion

This case study highlights the real-world barriers faced by organizations that operate in the CSAM removal space. It also foreshadows the many challenges governments seeking to introduce a regulatory framework for internet-based content will inevitably encounter.

As noted in a recent study¹¹ focused on the Trichan campaign, the forums' continued operation was made possible by a hierarchy of internet companies, some of which were unaware of the CSAM, and others of which were seemingly unconcerned by the fact their clients made CSAM publicly available.

The resistance of certain upstream ESPs to take action, even when presented with evidence of rampant CSAM problems on a client's service, is a key issue policymakers must address.

C3P was ultimately successful in its efforts to have the CSAM removed by contacting the upstream service providers of the Trichan forums. As Salter and Richardson (2021) note, this intervention highlights the effectiveness of focusing on power relations between ESPs and coordinating with influential nodes within the overall digital network.

The data collected by Project Arachnid enables C3P to largely map out the relationships between the higher and lower order ESPs and how the actions and inactions of these parties can directly affect the existence of CSAM and harmful-abusive content on the internet.

This case study highlights that, "providers of internet transit and other key services are revealed to be routinely entering into commercial arrangements with service providers and clients involved in abuse material."¹² And while these commercial arrangements are central to the distribution of CSAM on the internet, Salter and Richardson's report notes there exists no legal obligation for ESPs to deny service to a customer engaging in these abusive and possibly illegal activities.

11 Salter, M., & Richardson, L. (2021). The Trichan takedown: Lessons in the governance and regulation of child sexual abuse material. *Policy & Internet*, 13(2). Advance online publication. <https://doi.org/10.1002/poi3.256>

12 Salter, M., & Richardson, L. (2021). The Trichan takedown: Lessons in the governance and regulation of child sexual abuse material. *Policy & Internet*, 13(2). Advance online publication. <https://doi.org/10.1002/poi3.256>

RECOMMENDATIONS

The analysis contained in this report highlights several key issues that warrant close attention and immediate action by both ESPs and policymakers.

The findings also suggest that relying upon ESPs to voluntarily invest adequate resources in content moderation and adopting a vision that prioritizes the safety and privacy of children is simply not working.

Other signs of failures in this space are the lack of comprehensive reporting requirements across jurisdictions, the patchwork of moderation measures employed by companies and the deluge of victims and survivors coming forward about their struggles to have their abusive material removed.

Over the course of its content removal operations, C3P has gathered significant information through survivor surveys, processing tips from the public and the operation of Project Arachnid that highlights weaknesses of wholly inadequate regulatory environments. This real-world insight puts our organization in a unique position to provide recommendations on a regulatory response that will have the best possible outcomes for children.

The following list of recommendations are rooted in C3P's extensive experience in reducing the availability of CSAM and harmful-abusive content on the internet. Policymakers should view these as critical components in the development of effective regulation of ESPs as it relates to the online protection of children.



RECOMMENDATION 1:
Enact and impose a duty of care, along with financial penalties for non-compliance or failure to fulfill a required duty of care

ESPs that do not comply with regulatory requirements or fail to prioritize the safety of children online must face financial penalties, proportionate to the level of harm.

Penalties should factor in, at minimum:

- The volume of content;
- The number of users who viewed the media;
- The number of times the content was re-published (i.e., shared);
- Delays in removal time;
- The severity of the content;
- Number, ages and visibility of victims depicted in the content.

In addition, once notified of problematic content, upstream ESPs must be held financially accountable for media distributed by their downstream clients who may be in violation of regulatory requirements.

RECOMMENDATION 2: Impose certain legal duties on upstream electronic service providers and their downstream customers

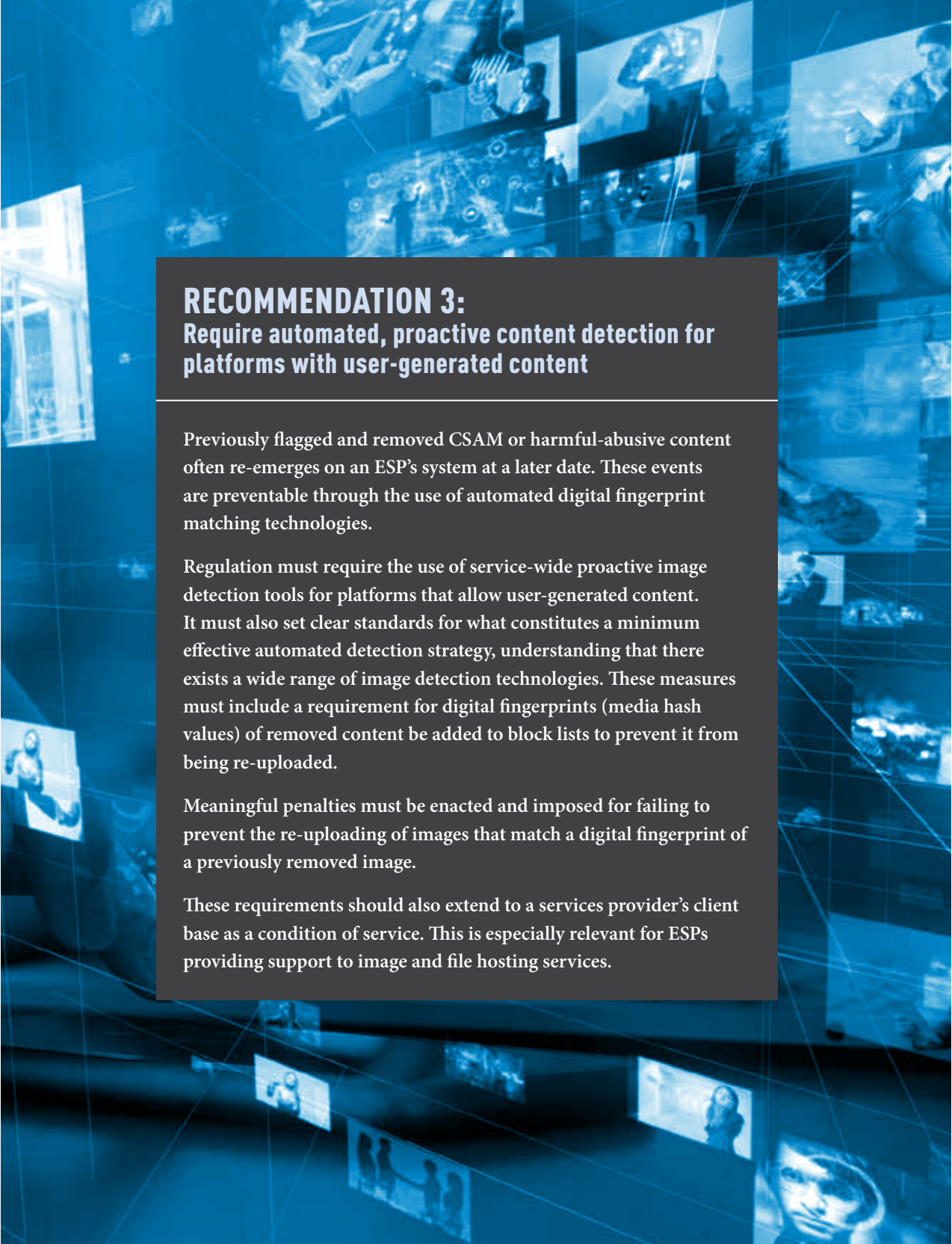
The operations of the internet traverse multiple jurisdictions and there are little to no coordinated regulatory or legislative requirements for internet based companies. Instead, the digital ecosystem is primarily structured through a myriad of complex and interrelated contracts made between various entities, each of which may be in different legal jurisdictions and have different tolerance levels for illegal content.

All of the companies bound by these contractual arrangements are necessary to make content ultimately accessible to an end user. As a result, to address a particular problem, every entity within the system must be bound by enforceable contractual terms that address the problem and also be required to impose and enforce similar contractual terms against its own customers. If any entity in the chain is not bound by such terms, or is not willing or able to enforce its own terms against its customers, that gap can be exploited thereby enabling the problem to flourish.

Similar to the way in which many nations have adopted legislative and regulatory control to ensure consumer protection in the areas of insurance, sale of goods and privacy issues, so too must they establish a framework to manage what the internet has become. Legislative and regulatory requirements that set out minimum base standards that are non-negotiable must be enacted. Each and every provider in the chain must be legally obligated to adhere to those base standards within their own operations, and to impose those same standards on their customers. Each ESP must be capable of being linked to at least one real person and nations must put an end to the endless legal loopholes that have enabled companies to evade legal liability for the harm they are facilitating by coordinating rules across jurisdictions.

The rules must apply, at a minimum, to those that provide image or file hosting services and include at least the following elements:

- Prescribed definitions and removal requirements for CSAM and harmful-abusive content;
- Required accountability measures to be taken by the provider in the event of illegal or harmful-abusive content being hosted by the customer of the provider;
- Significant and meaningful liability/penalties for any provider that fails to take certain actions when its customer violates the removal requirements.



RECOMMENDATION 3: Require automated, proactive content detection for platforms with user-generated content

Previously flagged and removed CSAM or harmful-abusive content often re-emerges on an ESP's system at a later date. These events are preventable through the use of automated digital fingerprint matching technologies.

Regulation must require the use of service-wide proactive image detection tools for platforms that allow user-generated content. It must also set clear standards for what constitutes a minimum effective automated detection strategy, understanding that there exists a wide range of image detection technologies. These measures must include a requirement for digital fingerprints (media hash values) of removed content be added to block lists to prevent it from being re-uploaded.

Meaningful penalties must be enacted and imposed for failing to prevent the re-uploading of images that match a digital fingerprint of a previously removed image.

These requirements should also extend to a services provider's client base as a condition of service. This is especially relevant for ESPs providing support to image and file hosting services.

RECOMMENDATION 4: **Set standards for content that may not be criminal, but remains harmful-abusive to minors**

There are fundamental problems with using, in isolation, criminal law definitions of child sexual abuse images to determine what images/videos should be removed from public view. When those restrictive definitions form the basis of a regulatory framework, a significant proportion of images that are harmful-abusive to children are left to propagate online.

Some examples of harmful-abusive content that may not meet a criminal law definition of CSAM in all jurisdictions:

- A series of images, some of which were taken prior to or after the act of abuse was recorded;
- Images of children in bathing suits distributed on forums dedicated to sexualizing children;
- Images of children urinating;
- Imagery depicting clothed or semi-clothed children in provocative poses, sometimes inaccurately labelled as “child modelling”;
- Images of children being physically assaulted or tortured;
- Information related to grooming and/or abuse tactics;
- Written content describing or advocating/counselling child sexual abuse;
- Sexual commentary related to an image or video of a child;
- Releasing of personal information about a child.

Regulation must clearly define and capture this type of material and include it under the definition of CSAM or child abuse as part of any broader child protection regulatory framework or initiative.

RECOMMENDATION 5: Mandate human content moderation standards

Automated proactive detection relies on comparing incoming media to databanks of previously removed content. This technology is therefore ineffective against newly created or previously unknown content, since there are no comparative images against which a match can be made.


Human moderation is therefore a critical component of a platform's defenses against CSAM and harmful-abusive content when user-generated content is accepted.

Regulation must establish a clear set of expectations related to:

- The proper supervision of content moderation teams;
- Frequent moderator training, including education related to sexual maturation assessment;
- Standards for staffing levels given a service's incoming content volume.

Regulation must also establish requirements that all user-generated content on platforms that allow pornography or nudity as part of their terms of service be manually reviewed prior to publication.

Critically, moderation practices must correspond with overall regulatory framework definitions of CSAM and harmful-abusive content.



RECOMMENDATION 6: Set requirements for proof of subject or participant consent and uploader verification

Platforms that lack moderation and allow content uploaded by anonymous users are often exploited for the distribution of CSAM and harmful-abusive content over time.

ESPs that allow user-generated content — especially those that focus on, or partially cater to, adult pornographic content and nudity — are at greater risk of intersecting with CSAM and harmful-abusive material.

A regulatory framework related to user verification and consent must:

- Set clear standards for verification requirements for content uploaders that are appropriate given the risk level of the site;
- Define what constitutes verification and set storage, access and disclosure requirements for those verification records;
- In the case of pornographic or sensitive content, set clear requirements for establishing the age of the subjects appearing in the image or video;
- In the case of pornographic or sensitive content, set clear requirements for establishing that all subjects consented to the recorded acts and also consent to the distribution of the content.

RECOMMENDATION 7: **Establish platform design standards that reduce risk and promote safety**

In addition to proactive and reactive moderation measures, platforms must further reduce the prevalence of CSAM or harmful-abusive content by cultivating an environment that discourages users from exploiting their service for this purpose.

Regulation should establish requirements for:

- Prohibiting user-generated content where the uploader originates from an IP address associated with a Tor exit node, VPN service or other IP concealment techniques;
- Blocking search terms and forum/chat names that are associated with CSAM or harmful-abusive content;
- Removing or suspending accounts that distribute or access CSAM or harmful-abusive content;
- Segregating children and adults in the digital space by design. When not feasible, additional rules and protections must be implemented;
- Requiring platforms to provide an easily accessible and responsive mechanism for users to contact content administrators for lodging complaints;
- Measures, such as user age verification, for preventing children from accessing adult or mature content.

RECOMMENDATION 8: **Establish standards for user-reporting mechanisms and content removal obligations**

Moderation practices may not always successfully detect CSAM or harmful-abusive content. For this reason, ESPs must have user interfaces designed to facilitate content reporting and complaint submissions, paired with specific removal requirements.

Regulation should establish clear standards that include:

- A requirement that all content types (e.g., images, videos, users, web pages, comments, posts, etc.) be directly reportable;
- Clear and unambiguous issue-specific reporting categories — including for CSAM — to ensure higher-risk content can be prioritized for review;
- Specifically in the case of reported CSAM or harmful-abusive images, a requirement that flagged content be automatically suspended/made unavailable until it can be assessed, rather than allowing the media to remain online pending review;
- Prescribed assessment and removal times for content upon receiving a complaint;
- Record retention requirements related to the image, uploader, communications with the complainant and any actions taken related to complaints;
- Mandatory reporting of actioned content to a specified authority or tipline, including transparency requirements about removal/non-removal decisions.

CONCLUSION

Many internet companies are failing to prioritize the safety and privacy of children online. A digital ecosystem enabled by jurisdictional uncertainty, along with a lack of clear regulation or transparency, has significantly contributed to the proliferation of CSAM and harmful-abusive content on the internet.

The findings contained in this report, which is based on three years of data collected by Project Arachnid, analyzed details on 5.4 million images or videos of CSAM and harmful-abusive content related to more than 760 ESPs.

The report established there exist high levels of image recidivism and often long delays in removal times for many internet companies. This suggests many ESPs are not deploying sufficient resources to ensure their platforms are free of, or dramatically limit, the presence of CSAM and harmful-abusive content on their services.

Other key insights discussed in this report include:

- The role the dark web plays in facilitating access to CSAM on the clear web;
- How a relative few ESPs can have a significant impact on the availability of CSAM on the internet;
- Why statistics related to adolescent victims dramatically underrepresent the true scale of harm they experience;
- The central role lesser-known ESPs play in making CSAM and harmful-abusive content available on the internet;
- The importance of considering the broader chain of ESPs that facilitate the availability of CSAM on the internet.

The report strongly suggests expecting industry to voluntarily invest in resources to prevent the spread of CSAM and harmful-abusive content has been a failure. It points to a pressing need for consistent, enforceable and global standards that impose accountability requirements on ESPs.

Flowing from the findings, a set of eight key evidence-based recommendations are presented for governments seeking to reduce the availability and distribution of CSAM on the internet, and to adopt measures that prioritize the safety of children.

This report is both a road map and an opportunity to properly extend the duty of care we owe to children in the online world.



APPENDIX

Glossary of terms

Assessed media

A term describing media that has been assessed by an analyst. Assessed media is not necessarily CSAM or abusive-harmful content.

Child/children

Any person under the age of 18.

Content

Refers to any media.

Content delivery network (CDN)

Refers to a network of servers that are geographically dispersed to enable faster web performance by locating copies of web content closer to users. These services typically mask details of the underlying hosting provider information for a website making use of CDN services.

Clear web

The clear web (sometimes referred to as the “Clearnet”) refers to the publicly accessible internet whose web pages are largely indexed on search engines.

Content administrator

Refers to websites or web-based services. With the exception of large-scale ESPs, most content administrators do not own or operate their own physical servers. Websites that provide individual file hosting services typically fall under this category.

Dark web

A catch-all term to refer to the series of networks not viewable using a standard web browser. These networks, which include Tor, are generally configured to encrypt internet traffic and provide anonymity and privacy for users.

Detections

Refers to the discovery, or “sightings”, of media on the internet by Project Arachnid. Detections serve to measure the availability of media. A single hosted image that is embedded (and therefore visible) on several websites would result in multiple media detections if encountered by Project Arachnid’s crawl.

Electronic Service Provider (ESP)

A catch-all term to reference any entity that provides a service in the digital space, including content delivery networks, hosting providers, cloud service providers, content/website administrators, internet service providers, etc.

Exif data

Exchangeable image file format (Exif) is a standard that defines specific information (metadata) related to an image or other media captured by a digital camera. This can include, but is not limited to, information on the creation date, the image aspect ratio, the resolution, the location the image was taken.

Harmful-abusive

An image category that refers to images depicting children that does not appear to meet a criminal law threshold across multiple jurisdictions, but may nonetheless violate an ESP's terms of service. These images may also violate the privacy or safety of a child, or be associated with CSAM. For more details refer to the description of C3Ps framework (p. 10).

Hash value

A digital fingerprint (or signature) that uniquely identifies a computer file. Hash values are derived by computer algorithms.

Hosting provider

Refers to a business that provides the technologies and services needed for a website or web page to be accessible and viewable on the internet. Websites are hosted (or stored) on servers operated by hosting providers.

Media

Refers to all content types processed by Project Arachnid. Typically, this refers to images, videos and/or archive files (that contain images or videos).

Minor

Any person under the age of 18.

PhotoDNA

PhotoDNA is an image comparison technology used for detecting matches between modified versions of the same image or images with similar features. It is sometimes referred to as “fuzzy matching” or “perceptual hashing”. The technology was developed by Microsoft in partnership with Dartmouth College.

Post-pubescent CSAM

An image category that refers to content that likely meets a criminal definition of CSAM. It includes images where the depicted victim's age has been confirmed and is post-pubescent. This category also includes media containing victims that are in the later stages of puberty.

Pre-pubescent CSAM

An image category that refers to content that likely meets a criminal definition of CSAM. It includes images where the depicted victim is pre-pubescent or is in the early stages of puberty.

Removal notice

The process by which C3P's Project Arachnid notifies an ESP of the presence of CSAM or harmful-abusive content on their servers and requests the removal of the media in question.

SHA-1

Stands for “Secure Hashing Algorithm”. It is a specific cryptographic hash value assigned to media processed by Project Arachnid to assign a unique digital signature to content using a computer algorithm.

Suspect media

Refers to any media that is reasonably believed to be CSAM, but has not been through the assessment process.

The Onion Router (Tor)

Tor, short for “The Onion Router”, is an open source privacy network that permits users to browse the web anonymously. Tor is generally considered a subset of what is commonly referred to as the dark web.

URL

Short for “universal resource locator”, a URL refers to the direct path address to a web page or media on the internet.

Verified media

A term describing media that an analyst assessed and evaluated as being either CSAM or harmful-abusive content.

Virtual private network (VPN)

A private network in which two end points create a single, private connection, or tunnel, while using a larger network infrastructure such as the internet or wide area network. Several ESPs offer commercial VPN services for users.

List of acronyms

C3P: Canadian Centre for Child Protection

CSAM: Child sexual abuse material

ECPAT: End Child Prostitution and Trafficking

ESP: Electronic service provider

Exif: Exchangeable image file format

HTTP: Hypertext transfer protocol

HTTPS: Hypertext transfer protocol – secure

Interpol: International Criminal Police Organization

NCMEC: National Center for Missing & Exploited Children (U.S.)

SHA1: Secure Hash Algorithm 1

Tor: The Onion Router


URL: Uniform Resource Locator

VPN: Virtual private network






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