



**Date:** November 18, 2022

**To:** The Special Rapporteur at the Office of the United Nations High Commissioner for Human Rights

This document is provided in response to the call for input on the subject of reparation for child victims and survivors of sale and sexual exploitation.

## About the Canadian Centre for Child Protection (“C3P”)

C3P is a national Canadian charity. We operate Cybertip.ca, Canada’s national tipline for reporting the online sexual exploitation of children, and Project Arachnid, an innovative, victim-centric set of tools to combat the growing proliferation of child sexual abuse material (“CSAM”)<sup>1</sup> on the internet. C3P has developed an in-depth, multi-disciplinary perspective on the issue of technology-facilitated child sexual abuse, and is a direct witness to the ways in which technology has been weaponized and used to sexually abuse and exploit children worldwide.

## Executive Summary

It is the position of C3P that reparations for survivors<sup>2</sup> of online child sexual exploitation, which includes child sexual abuse material (“CSAM”), sex trafficking<sup>3</sup> and commercial sexual exploitation of children<sup>4</sup> must be considered separately from reparations for child exploitation that does not have an online component. Offences facilitated and perpetrated online are committed on a scale and at a pace that was previously unimaginable, and can cause immeasurable harm to victims and survivors not only at the time of the first offence, but well into the future.

This submission is primarily focused on the needs of CSAM survivors. It is critical to understand that a CSAM survivor’s experiences does not end when the sexual abuse ends. These survivors must live with the knowledge that a permanent record of their abuse has been created, and may be shared with others at any time. This adds an additional layer of trauma for the victim that is repeated each time the CSAM is shared. Survivors are powerless to stop the spread, and suffer from debilitating fear and a complete lack of control about who has or may see their CSAM. These survivors have psychological, financial and physical needs that can extend far into adulthood given that their abuse is not truly over. Therapeutic needs are potentially lifelong.

There is an urgent need to curb the proliferation of CSAM online. The implementation of globally integrated laws to address this epidemic is long overdue. Such laws must mandate timely and efficient detection, removal, and reporting obligations, and be premised on best interest of the child principles. As stated by Dr. Sharon Cooper, a world renowned forensic pediatrician, “seeking to remove images before

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<sup>1</sup> The legal term used in most jurisdictions is child pornography.

<sup>2</sup> We use the word survivors to refer to child victims and now adult victims of CSAM and other forms of online child sexual exploitation (including commercial sexual exploitation and sex trafficking).

<sup>3</sup> Refers to the human trafficking of persons under 18 for the purpose of sexual exploitation.

<sup>4</sup> Refers to the exploitative use of children in prostitution within the meaning of Article 34 of the United Nations *Convention on the Rights of the Child*.



circulation or as soon as is feasible after circulation is the best way to restore a child back to a life worth living.”<sup>5</sup>

In addition, each country must establish mechanisms to ensure offenders who perpetuate online abuses contribute to funds set up to benefit victims directly, no matter where they reside, given the worldwide nature of the problem. Moreover, mechanisms to ensure a survivors’ right to participate in matters that affect them (such as, for example, being able to seek restitution or submit a victim impact statement) must be put in place.

Finally, collaboration with civil society, hotlines, and industry members<sup>6</sup> is crucial to achieving each and every one of the above goals. What is abundantly clear is the current, fragmented efforts are failing children and there is an urgent need for more to be done to change this paradigm.

## Detailed comments with recommendations

### 1. What are the current needs of survivors to redress and reparation both in conflict and non-conflict settings?

C3P’s operation of Cybertip.ca, Project Arachnid, and its leadership role in relation to the International Survivors’ Survey<sup>7</sup> put us in direct contact with victims and survivors of CSAM from multiple countries. This taught us that victims and families do not have effective support services tailored to their unique needs.

To illustrate, a 2014 research article focused on the needs of CSAM victims reported that:

*almost ninety-five percent of child pornography victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy. The continual victimization can take an extreme physical, psychological, and financial toll on the victim and the victim’s family. 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. 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.*<sup>8</sup>

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<sup>5</sup> Canadian Centre for Child Protection, “How We Are Failing Children: Changing the Paradigm” (2019), online: Protect Children <[https://www.protectchildren.ca/pdfs/C3P\\_ChildRightsFramework\\_en.pdf](https://www.protectchildren.ca/pdfs/C3P_ChildRightsFramework_en.pdf)> at 30 quoting the words of Dr. Sharon Cooper, Developmental and Forensic Pediatrician and Adjunct Professor of Pediatrics, University of North Carolina at Chapel Hill School of Medicine.

<sup>6</sup> 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.

<sup>7</sup> Canadian Centre for Child Protection, “Survivors’ Survey Executive Summary 2017”, online: Protect Children <[https://www.protectchildren.ca/pdfs/C3P\\_SurvivorsSurveyExecutiveSummary2017\\_en.pdf](https://www.protectchildren.ca/pdfs/C3P_SurvivorsSurveyExecutiveSummary2017_en.pdf)>; Canadian Centre for Child Protection, “Survivors’ Survey Full Report 2017”, online: Protect Children <[https://www.protectchildren.ca/pdfs/C3P\\_SurvivorsSurveyFullReport2017.pdf](https://www.protectchildren.ca/pdfs/C3P_SurvivorsSurveyFullReport2017.pdf)>.

<sup>8</sup> Warren Binford *et al.*, “Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad” (August 16, 2014) 35 *Child. Legal Rts. J.* 117 (2015) at 127 [Beyond Paroline].



Thereafter, in 2016, C3P launched the International Survivors' Survey for adult survivors whose child sexual abuse was recorded and that was, or may have been distributed online.<sup>9</sup> The goal of the International Survivors' Survey was 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. The survey results firmly establish that CSAM survivors are impacted across their lifespan.

### Therapeutic, Medical and Financial Supports

To cite some information from the International Survivors' Survey referenced above:

- 87% of respondents indicated that they had received therapy (13% had not received therapy at the time of completing the survey).
- 85% of respondents anticipated needing future therapy.
- 91% of respondents had a medical diagnosis linked to their abuse experience. These medical diagnoses included trauma and stressor, dissociative, depressive and anxiety disorders.
- 84% percent of the respondents noted a lack of access to therapy as one reason for not receiving therapy.

Even when survivors have access to therapy, several respondents said they stopped because they felt their therapist could not meet their needs or they did not feel understood by their therapist. In particular, many cited their therapist not being equipped to talk about the CSAM itself, and the fears and anxieties that arose from its ongoing circulation.

Related to the above, most financial support systems are generic and are insufficient for the long-term financial needs (e.g., therapy, loss of work or educational opportunities etc.) of survivors of CSAM, sex trafficking and commercial sexual exploitation. A recent Independent Inquiry into Child Sexual Abuse out of the UK echoes this, highlighting the emotional and practical difficulties survivors face when claiming compensation, in addition to "the trauma they had already suffered as children".<sup>10</sup>

**Our view is that there is an imperative need for long-term government funded therapeutic programs for survivors. From our experience working directly with survivors, government-funded supports are typically limited, short-term and generic. This is wholly inadequate for CSAM survivors.** The care and treatment of survivors must be trauma-informed, holistic, and should take into account the technological components of sexual exploitation in today's age. States should review the World Health Organization (WHO) clinical guidelines<sup>11</sup> to identify improvements to the current treatment of survivors of CSAM, commercial sexual exploitation and sex trafficking.<sup>12</sup>

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<sup>9</sup> See also National Centre for Missing & Exploited Children, "Captured on Film: Survivors of Child Sex Abuse Material Are Stuck in a Unique Cycle of Trauma" (2019), online: Missing Kids <<https://www.missingkids.org/content/dam/missingkids/pdfs/Captured%20on%20Film.pdf>>, esp. at 24-27.

<sup>10</sup> Independent Inquiry on Child Sexual Abuse, "Accountability and reparations: Investigation report" (2019), online: IICSA <<https://www.iicsa.org.uk/reports-recommendations/publications/investigation/accountability-reparations>>.

<sup>11</sup> World Health Organization, "Responding to Children and Adolescents who have been Sexually Abused" (2017) online: WHO <<https://www.who.int/publications/i/item/9789241550147>>. The guideline is intended to provide "evidence-based recommendations for quality clinical care for children and adolescents who have, or may have, been subjected to sexual abuse, in order to mitigate the negative health consequences and improve their well-being."

<sup>12</sup> Appropriate supports at all levels is critical. For example, those who have experienced commercial sex exploitation or sex trafficking sometimes die by suicide. For example, see *R. v. Ackman*, 2016 MBQB 109, wherein two victims



## Removal of CSAM

Globally, there is a pressing need for timely and comprehensive removal of CSAM and abusive/harmful material.<sup>13</sup> In early 2018, a joint report released by INTERPOL and ECPAT International<sup>14</sup> stated that the Internet Child Sexual Exploitation (“ICSE”) Database<sup>15</sup> contained over one million unique individual images and videos and that the volume processed by international law enforcement and other competent agencies numbered in the tens of millions. The National Center for Missing and Exploited Children’s CyberTipline, the largest hotline of its kind in the world, indicated it received 29,397,681 million reports in 2021, up from 21.7 million reports in 2020.<sup>16</sup> As of November 1, 2022, over 17 million notices requesting removal of known CSAM have been issued through Project Arachnid.<sup>17</sup>

## Safety

The removal of CSAM online also plays a central role in mitigating safety risks for survivors. There is a subset of offenders who, in addition to collecting CSAM, also have an interest in information about CSAM victims. For example, there are anonymous online forums focused on discussing where a survivor may be now, what school or university they attend, the sports team to which they belong, and which may post present day images of the victim or non-CSAM images, as well as information and images of their family, friends and acquaintances. Moreover, the non-illegal imagery of victims is often deliberately used by offenders to point to CSAM and provide context to the information they are posting, as well as to boast to other offenders about their in-depth knowledge of a specific survivor. Such content is difficult to detect and can be complicated to remove, as understanding its impact requires a deeper understanding and review of the content in question.

2. What are the gaps and challenges within the ambit of the international human rights and humanitarian law, in terms of both the existing framework and the implementation status to address to the needs of the child victims and survivors? What measures can be taken to overcome these gaps?

## Lack of Internet Regulation

A fundamental gap in the current legal framework is the lack of transparency and accountability for online platforms in terms of the content they host, the content moderation decisions they make, and the design features of their products. While many countries do mandate the reporting of CSAM to a centralized

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died by suicide after speaking to justice officials. One victim was 14/15 at the time of death, the other was 16/17 at the time of death.

<sup>13</sup> The term abusive/harmful material encompasses all images, videos, audio and written material associated with the abusive incident. It includes 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. In certain States, some aspects of the above may be included under the criminal definition of child pornography.

<sup>14</sup> ECPAT International and INTERPOL, *Towards a Global Indicator on Unidentified Victims in Child Sexual Exploitation Material* (Interpol, 2018) at 7.

<sup>15</sup> Launched in 2009, ICSE is a tool and database for law enforcement to investigate child sexual abuse material in the form of images, videos and hashes. See: <<https://www.interpol.int/en/Crimes/Crimes-against-children/International-Child-Sexual-Exploitation-database>>.

<sup>16</sup> National Centre for Missing & Exploited Children, “Our Impact”, online: Missing Kids <<https://www.missingkids.org/content/ncmec/en/ourwork/impact.html>>.

<sup>17</sup> Canadian Centre for Child Protection, “Project Arachnid”, online: Protect Children <<https://projectarachnid.ca/en/>>. Numbers are updated monthly.



body, online platforms have not been held accountable to their users or the public for the irreparable damage that occurs when CSAM and other harmful content is posted and not promptly removed. There is no way of knowing, for example, how many children contact a social media platform seeking to have CSAM of themselves removed or how long it takes to remove the content (if it is removed at all). This opacity prevents policy makers from understanding the extent of harm occurring online, and the role of online platforms in amplifying that harm. Platforms are not even mandated to do the bare minimum to prevent the upload of **known** CSAM that has been circulating for years, even though the tools to do so have been freely available for years.

#### Criminal Law Frameworks Alone are Insufficient to Protect Children

States criminally define what constitutes CSAM and other sexual offences related to children. These definitions are then used as the benchmark for both the reporting and the removal of CSAM online, even though the content that can be harmful to survivors is broader than what is illegal. By operating Project Arachnid and issuing notices requesting the removal of CSAM, we have seen how some platforms refuse to consider the broader interests of children when making removal decisions, preferring to focus strictly on criminal law definitions which are narrow and were designed for a criminal law purpose, not from a child protection lens.

### 3. Who are the duty bearers to define, implement and provide the reparation to child victims and survivors? How do we identify and delineate the roles of state, non-state and individual actors to ensure that reparation reach the child victims and survivors?

The duty bearers are governments, law enforcement, industry and civil society.

#### Governments and Law Enforcement

States have a responsibility to protect their citizens, and a responsibility to ensure those who suffer abuse are able to recover. Most States are also signatories to international instruments such as the United Nations *Convention on the Rights of the Child*<sup>18</sup> (“UNCRC”) and the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*,<sup>19</sup> each of which impose specific obligations on States to provide reparations and remedies to assist survivors. A core principle of the UNCRC is that in all actions related to children, the best interests of children must be a primary consideration, therefore States must take a leadership role in ensuring the best interests of children are at the forefront of any reparation strategy. This includes prioritizing the removal of CSAM and abusive/harmful material and developing the framework to hold industry accountable.

States should ensure their laws enable survivors to obtain and recover restitution. They should also ensure survivors have the ability to provide victim impact statements in any criminal prosecution involving content that depicts them, not just involving the original abuser, but all subsequent possessors and distributors. This will require law enforcement to play a key role in identifying whether CSAM in the possession of a particular offender depicts an identified survivor who is entitled to such redress.

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<sup>18</sup> *Convention on the Rights of the Child*, 20 November 1989, 3 UNTS 1577 (entered into force 2 September 1990).

<sup>19</sup> *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, 25 May 2000, A/RES/54/263 (entered into force 18 January 2002).



Law enforcement should actively participate in adding to national and international CSAM databases<sup>20</sup> to ensure timely detection, assessment and removal of CSAM that is distributed online. Policy makers should develop secure processes to that end.

#### Industry

Industry has been able to create their own rules in relation to the use of their service. Industry members interpret and apply these rules as they see fit and operate independent of any meaningful oversight. This has resulted in arbitrary decisions associated with image removal and inconsistent detection and removal of CSAM.

Industry must be required to remove CSAM and should also be required to remove abusive/harmful material expeditiously upon request.<sup>21</sup> Industry should also be proactive, and work with trusted/verified hotlines<sup>22</sup> to share compatible tools and data to detect and remove CSAM online. Any accountability measures must include a requirement that industry members that violate the law or regulatory framework pay restitution or other fines, and that such payments are used to benefit victims directly.

#### Civil Society

States should assign specific government departments with the task of working with trusted/verified hotlines to determine the global criteria for detection and removal of CSAM and abusive/harmful material. Policy frameworks developed by States should also foster collaboration with trusted/verified hotlines, industry and law enforcement to ensure CSAM and abusive/harmful material is promptly and consistently processed and removed.

## 4. In what forms should the reparation be provided, how should they be assessed?

All States should provide survivors with reparations in the form of:

1. Mandatory detection, reporting and removal of CSAM and abusive/harmful material;
2. Mandatory submission of CSAM (whether believed to be distributed or not) to domestic, regional and international databases by law enforcement authorities, and sharing of hash values of such material to entities focused on CSAM removal;
3. Providing survivors' with the option to be notified by authorities when their CSAM is found in an offender's collection;
4. Domestic and international victim funds, with government benefits programs for survivors;
5. Financial and institutional support for survivors' use of civil remedies, including survivors' use of copyright and privacy protections; and
6. Appointing officials, guardians and specific legal aid resources to advocate for survivors and provide legal assistance.<sup>23</sup>

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<sup>20</sup> For e.g., the ICSE database. See *supra* note 15.

<sup>21</sup> Images/videos should also be removed when the request originates from the child or the family of the child.

<sup>22</sup> Trusted/verified hotlines should be vetted under an agreement and/or constitute well-established hotlines with proven practices for assessing images/videos such as those that are a part of the INHOPE network of hotlines.

<sup>23</sup> For contextual research on some of these points, see *Beyond Paroline*, *supra* note 8, at 145-162.



Global integration of the above is essential. As stated in *Beyond Paroline*, “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.”<sup>24</sup>

#### 5. What measures are put in place to hear and understand how child victims and survivors would perceive meaningful reparation?

Survivor-specific surveys and consultations with government departments are important tools to hear and understand the needs and views of survivors. These tools must take into account survivors’ needs for anonymity.

#### 6. What role do civil society organisations and victims’ groups play in devising, consulting and developing various reparation measures and programmes?

Trusted/verified hotlines and child advocacy centres are often in direct contact with survivors and their families, and have a wealth of experience and knowledge that can inform policy makers. Trusted/verified hotlines in particular can play a significant role in the detection and removal of CSAM.

Trusted/verified hotlines and victims’ groups can offer insight to assist States in creating and administering victim funds that provide survivors with financial support that is responsive to their unique needs. The administration of these funds should be handled by trusted and independent entities separated from government, industry and law enforcement.

#### 7. What are the good practices initiated by the stakeholders, and what remaining areas of intervention need to be introduced and/or improved?

Project Arachnid is an innovative tool that is victim-centred and leverages technology and a dedicated cohort of trained analysts to reduce the proliferation of CSAM on a global scale. It utilizes highly accurate hashing technology, and is exceedingly more efficient at detecting CSAM and facilitating its removal than manual methods.

On the legal side, the *Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018*<sup>25</sup>, in the United States is a positive step forward for reparations. This act modifies procedures for determining the amount of mandatory restitution for cases involving CSAM, making it easier and less traumatic for survivors.

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<sup>24</sup> *Ibid.*, at 161.

<sup>25</sup> *Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018*, tit 18 S.2152 (2018).





8. How can States and other stakeholders deliver more effectively with respect to amplifying the effective implementation of meaningful reparation to child victims and survivors? Within the purview of international cooperation, what specific measures should be taken based on the existing structures. What is needed for a more coordinated response by the States/other international actors to provide reparation to child victims and survivors?

Given the global scope of online child sexual exploitation and its inter-jurisdictional ramifications there is a need for collaboration through policy and integrated systems for assistance to victims. States need to implement meaningful laws and regulations that enable the effective and timely procurement of evidence. Establishing Mutual Legal Assistance Treaties<sup>26</sup> and modernizing those treaties to be more responsive and timely in the digital age is essential.

## Conclusion

It is no longer an option to accept the status quo. We know too much about the ways in which children are being relentlessly exploited and victimized online, and how the inaction by States and industry have prevented survivors' access to meaningful reparation. Critically, the failure to address CSAM removal over the last few decades has amplified the suffering of countless victims across multiple jurisdictions and must be addressed.

Moreover, it is not enough to confine removal to material that is clearly illegal. The best interest of the child, and their rights to dignity, privacy, and to be safe and secure from harm must take precedence. This complex problem demands continued collaboration and meaningful action. Children deserve nothing less.

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<sup>26</sup> For example: *Treaty Between the Government of Canada and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters*, Canada and United States, 18 March 1985, E101638 - CTS 1990 No.19 (entered into force January 24, 1990).