

Briefing and Recommendations:
Protection of Privacy and Reputation on Platforms such as Pornhub
House of Commons Standing Committee on Access to Information, Privacy and Ethics

Introduction

Collective Shout (www.collectiveshout.org) welcomes the opportunity to provide a brief to assist the Committee in its examination of the conduct of MindGeek - the Canadian-based parent company of Pornhub - including allegations of facilitating and distributing Child Sexual Abuse Material (CSAM), non-consensual sexual activity, non-consensually shared images (image-based abuse or IBA) and content created using victims of sex trafficking.

Collective Shout is a grassroots campaigning movement challenging the objectification of women and sexualisation of girls. We target corporations, advertisers, marketers and media which exploit the bodies of women and girls to sell products and services and campaign to change their behaviour. More broadly we engage in issues relating to other forms of sexual exploitation, including the inter-connected industries of pornography, prostitution and trafficking as well as the growing market in the sale of children for Live Distant Child Abuse.

We work with our global partners including those who have led the campaign to bring MindGeek to account, and our research¹ has confirmed what our partners have reported: that Mindgeek, has enabled and profited from illegal content - child sexual abuse material, sex trafficking, rape, and image-based abuse - uploaded, streamed and widely distributed across its platforms.

We commend the Committee for its investigation of MindGeek and efforts to hold its executives accountable for facilitating and profiting from sexual abuse and exploitation.

Pornhub Investigations

We began documenting the abuse and torture of women and girls in Pornhub content in 2016.² In 2018, our Movement Director Melinda Tankard Reist wrote in a piece for the ABC:

*Pornhub is both a repository and disseminator of hate propaganda. It hosts evidence of crimes against women for men to enjoy. Popular videos depict brutal sexual violence against women. Sadistic titles revel in women's inability to stop the violent assaults carried out against them. The most violent have views in the millions. Many titles are centred around the sexual abuse and rape of teen and underage girls. Men are fantasising about raping young girls with impunity while government, children charities and advocacy groups try to tackle an epidemic of child sexual abuse.*³

In December 2019, following our submission to the Inquiry into Age Verification for Online Wagering and Online Pornography, we brought Pornhub's unethical activities to the attention of

¹ See Collective Shout (February 2020). Pornhub commits crimes against women and girls.

https://www.collectiveshout.org/pornhub_commits_crimes_against_women_and_girls and Collective Shout (June 2020) Racist and antisemitic: Pornhub is a hate group. https://www.collectiveshout.org/pornhub_is_a_hate_group

² Rawlinson, J (March 28, 2016). "It feels like a slap in the face" - Survivors speak out about Pornhub and Christie Mack's porn themed 'domestic violence' campaign. *Collective Shout*, https://www.collectiveshout.org/_it_feels_like_a_slap_in_the_face_survivors_speak_out_about_pornhub_and_christie_mack_s

³ Tankard Reist, M (July 3, 2018). Never Again? Addressing Sexual Violence Must Include Pornography. *ABC Religion and Ethics*, <https://www.abc.net.au/religion/never-again-addressing-sexual-violence-must-include-pornography/10094568>

the Australian Federal Government. At the inquiry hearing, Campaigns Manager Melinda Liszewski told the Committee:

[Pornhub] is one of the top five favourite sites of boys aged 11 to 16. Common themes on this website include incest; rape; abduction; refugee porn; hidden camera footage of women and girls showering, dressing and using the toilet; footage of trafficking victims; and coercing and restraining women into painful sex acts. We know that Pornhub hosts footage of crimes against women and girls. Recently a mother located her 15-year-old daughter, missing for a year, when she found 60 videos of her on Pornhub; that's how they were able to locate her and make an arrest.⁴

Ms Liszewski shared video titles and descriptions she had documented to inform the Committee on content children were exposed to on the platform:

'Blackmailed schoolgirl' is a video which has a man fondling a young girl's breasts, seen from the viewpoint of a hidden camera. That video will be on the front page of Pornhub at any given time. Another video is 'Indian virgin teen'. The porn industry claims that videos like this are staged, but, based on the blood in this video, I believe this to be a rape. In the video 'Black slave girl brutalised', a young, distressed African woman is trapped in a vice and penetrated orally, anally and vaginally. Another title is 'She hates anal but she will learn to like it'. This is a common theme across pornography and on Pornhub - coercing women into sex acts that they find painful and humiliating. We know that this is impacting young people who are visiting websites like this. Finally—and I don't know why I'm surprised anymore—'Aboriginal sluts' is the title of another video. Teen porn is a very popular search. Whenever statistics about Pornhub come up, teen porn is very popular. It shows women and girls depicted as underage—or they may in fact be underage.⁵

In our February 2020 submission to the Australian Government's Online Safety Legislative Reform, we wrote:

Pornhub must be called to account for aiding and profiting from sex trafficking and rape and its crimes against women and girls. Under the proposed ancillary service provider notice scheme, Pornhub could be delisted and deranked, which would be a small start to decreasing their power and influence. Even better would be to require Australian ISPs to block the offending site. Ultimately, Pornhub should be shut down and its executives called to account.⁶

For a broader analysis of the international pornography industry see *Big Porn Inc: Exposing the harms of the global pornography industry* edited by Melinda Tankard Reist and Caroline Norma.⁷

Evidence of MindGeek complicity in distributing and profiting from rape, torture, trafficking, non-consensual and child sexual abuse content

Over a two-hour period, February 5, 2021, MindGeek CEO Feras Antoon, Chief Operating Officer David Marmorstein Tassillo, and Vice President Corey Urman were made to provide details on the company's reporting procedures, safeguarding technology, moderation of content,

⁴ Tankard Reist, M and Liszewski, M (December 6, 2019). Evidence given to Standing Committee on Social Policy and Legal Affairs for Inquiry into Age verification for online pornography and online wagering. <https://parlinfo.aph.gov.au/parlinfo/search/display/display.w3p;db=COMMITTEES:id=committees%2Fcommrep%2F4cd19a9f-be18-4d9d-b70b-c4c04386701f%2F0011;query=ld%3A%22committees%2Fcommrep%2F4cd19a9f-be18-4d9d-b70b-c4c04386701f%2F0010%22>.

⁵ Ibid.

⁶ Collective Shout (February 2020). Submission on Online Safety Legislative Reform, made to the Department of Communication and the Arts. https://www.collectiveshout.org/online_safety_legislation_reform

⁷ Tankard Reist, M and Norma, C (2011). *Big Porn Inc: Exposing the harms of the global pornography industry*. Spinifex Press, North Melbourne.

and structure.⁸ In the words of Committee member, MP Charlie Angus, MindGeek showed “a staggering level of recklessness” and “complete disregard for matters concerning reported criminal behaviour.”

When asked how MindGeek employees moderate and report illegal content, Antoon stated “every single piece of content is viewed by our human moderators” and reports of child sexual abuse were “immediately made to NCMEC” (National Center for Missing and Exploited Children). MP Jag Sahota asked, “[W]ith 2.8 hours worth of content being uploaded every minute (*according to Pornhub’s own report*), how is it possible that even if every employee was dedicated to content moderation, that they would be able to review 1260 hours worth of content?”

Even with 1800 employees, as per MindGeek’s statement, it is impossible to maintain that every single piece of content is viewed by human moderators. Further on in the hearing, it was revealed that Pornhub’s own terms of service state “we *sometimes* [italics ours] review content submitted or contributed by users,” discrediting MindGeek’s testimony.

Referring to NCMEC’s evidence, Traffickinghub campaign director Laila Mickelwait highlighted Pornhub’s failure to report CSAM to appropriate bodies:

*NCMEC testified Pornhub reported ZERO instances of child sexual abuse material from 2008-2020 but AFTER the N[ew] Y[ork] Times exposed them and credit cards pulled away they suddenly started reporting and had over 13,000 instances of child abuse in only a fraction of 2020.*⁹

Executive Director of the Canadian Centre for Child Protection Lianna McDonald told the Committee:

*Arachnid has detected and confirmed instances of what we believe to be CSAM on their platform at least 193 times in the past 3 years. These citations include 66 images of prepubescent CSAM involving very young children. 74 images of indicative CSAM, meaning that the child in the image appears pubescent roughly between the ages of 11 - 14... We do not believe that the above numbers are representative of the scope and scale of this problem.*¹⁰

In his testimony, Michael Bowe, attorney for Serena Fleites, from law firm Brown Rudnick, correctly observed: “You’re dealing with a rogue company..Its behaviour here is completely out of bounds, it’s just in a different universe of the way even bad mainstream corporate citizens work.”¹¹

As a result of global attention focussed on MindGeek’s unethical and (allegedly) criminal behaviours, there are now at least five class action lawsuits against the company, on behalf of abused children (Montreal, Alabama, and California), sex trafficking victims (California), and women secretly filmed (South Carolina).¹² In a media statement referring to the Californian class action, plaintiffs’ attorney from law firm Susman Godfrey stated:

This lawsuit aims to hold MindGeek responsible for the abhorrent and illegal business tactics that it continues to employ across PornHub and its other websites... MindGeek has prioritized

⁸ See this link for the video recording of the hearings:

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210205/-1/34697?Language=English&Stream=Video>

⁹ Mickelwait, L (February 25, 2021). <https://twitter.com/LailaMickelwait/status/1364700890762993667>

¹⁰ McDonald, L (February 22, 2021). Twitter. https://twitter.com/mike_salter/status/1363984923577606145. Evidence given at Canadian Parliamentary Hearings, Monday 22 Feb 2021, Meeting No. 21 ETHI - Standing Committee on Access to Information, Privacy and Ethics.

<https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-1/34824?Language=English&Stream=Video>

¹¹ House of Commons (February 1, 2021). Evidence given to Standing Committee on Access to Information, Privacy, and Ethics. No. 018. <https://www.ourcommons.ca/Content/Committee/432/ETHI/Evidence/FV11078599/ETHIFV18>

¹² Mickelwait, L (February 23, 2021). Twitter. <https://twitter.com/LailaMickelwait/status/1364345240258301957>

*profit over the safety and welfare of minors. These individuals are victims of sex trafficking and child pornography, they want to see an end to these harmful practices, and they deserve to be compensated for the damage MindGeek has caused.*¹³

Tech and e-commerce giants must stop sexual exploitation and abuse of children on platforms

The dissemination of online sexual exploitation and abuse of children extends beyond Pornhub, though it is often interconnected - CSAM on social media platforms can end up on Pornhub and vice versa. It is facilitated by popular search engines, social media platforms, and e-commerce platforms. These mega corporations have been free to host and facilitate distribution of illegal child sexual abuse and exploitation material with impunity.

According to data recently shared by the Australian Centre to Counter Child Exploitation (ACCCE), we are in the grip of a global child sexual exploitation epidemic. There has been a massive leap in the sharing of child sexual exploitation material.¹⁴

Melinda Tankard Reist wrote about pay per view child abuse and rape in 2017 for the ABC, drawing on research by International Justice Mission and Anti-Slavery Australia.¹⁵ We have also highlighted the shocking practice in a number of submissions including to the Inquiry into the NSW Modern Slavery Act 2018 and Associated Matters.¹⁶

In our global collaborative #WakeUpInstagram campaign,¹⁷ we documented the widespread and routine sexualisation of children, primarily underage girls, on the Facebook-owned platform. Our evidence included male predators using Instagram's 'live' posts to engage with minors and live masturbate in front of them.¹⁸

In partnership with NCOSE (USA) and Defend Dignity (Canada), we have called on Instagram to cease hosting child groomers, predators and paedophile networks.¹⁹ We also support a campaign highlighting widespread CSAM on Twitter.²⁰

Following our participation in the ACCCE annual child safety stakeholder workshop in September 2020, we announced our support for the *Voluntary Principles to Counter Online Child Sexual*

¹³ Susman Godfrey (February 23, 2021). Press Release. *Lawdragon*, <https://www.lawdragon.com/2021/02/23/susman-godfrey-files-class-action/>

¹⁴ For example, 21,000 child sexual exploitation images had been referred to ACCCE, compared to 14,000 last year. The average number of images seized has skyrocketed. According to the AFP, in the early to mid-2000s, offenders averaged about 1000 images; these days it is 10,000 to 80,000 images and videos. Double the number of child abuse files have been shared since the start of the COVID-19 pandemic. Kennedy, L (September 10, 2020). "Australians should be outraged by this offending." *Collective Shout*, https://www.collectiveshout.org/national_child_protection_week See also Tankard Reist, M (April 13, 2014). The dark world of paedophilia exposed. *Sydney Morning Herald*, <https://www.smh.com.au/opinion/the-dark-world-of-paedophilia-exposed-20140413-zqu8v.html>

¹⁵ Tankard Reist, M (July 6, 2017). Why are Australian telcos and ISPs enabling a child sexual abuse pandemic? *ABC Religion and Ethics*, <https://www.abc.net.au/religion/why-are-australian-telcos-and-isps-enabling-a-child-sexual-abuse/10095644>

¹⁶ Collective Shout (August 3, 2018). Submission to Senate Legal and Constitutional Affairs Committee Inquiry into Modern Slavery Bill 2018, no. 57 at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery/Submissions

¹⁷ Alison, C (November 22, 2019). Help Wake Up Instagram to Child Exploitation! *Collective Shout*, https://www.collectiveshout.org/help_wake_up_instagram_to_child_exploitation

¹⁸ Kennedy, L (March 17, 2020). School girl's Instagram 'live' post becomes sex predator webcam. *Collective Shout*, https://www.collectiveshout.org/schoolgirl_instagram_live_post_sex_predator_webcam

¹⁹ See details about this campaign here: <https://www.collectiveshout.org/instagram>

²⁰ National Center on Sexual Exploitation (January 20, 2021). NCOSE Law Center Hits Twitter with Groundbreaking Sex Trafficking Lawsuit. <https://endsexualexploitation.org/articles/ncose-law-center-hits-twitter-with-groundbreaking-sex-trafficking-lawsuit/>

Exploitation and Abuse. The 11 Principles aim to drive collective action from industry to combat online child sexual exploitation.²¹

We also support the Department of Home Affairs²² and Office of the eSafety Commissioner²³ in their opposition to end-to-end encryption (E2EE) across Facebook-owned messaging services.

We have also successfully lobbied to have child sex abuse dolls and replica child body parts removed from e-commerce platform Alibaba and are currently campaigning against these and related incest and child abuse-themed products on Etsy.²⁴ Caitlin Roper, Collective Shout campaigner and global authority on child sex abuse dolls, has researched how child sex abuse dolls contribute to real-life offending.²⁵

We note Canada and Australia's leading role in the inter-Government global Five Eyes security alliance which includes action to address child sexual exploitation.²⁶ NCMEC President and CEO John F. Clark stated in his evidence that the Five Eyes alliance members were seen as "good examples... that have strong laws" regarding the reporting of CSAM.²⁷

Even greater global collaboration will be necessary to hold these powerful corporations to account for selling, distributing and profiting from child sexual abuse and exploitation material.

Recommendations

1. MindGeek be held liable for hosting and disseminating content featuring the filmed sexual abuse of children, non-consensual sex acts, image-based abuse and victims of sex trafficking

We note Canada's obligations under the Convention on the Rights of the Child: Article 34 requires that 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: (a) The inducement or coercion of a child to engage in any unlawful sexual activity". The Committee's hearings and related evidence show MindGeek has been profiting from the sexual exploitation and abuse of children and is in violation of international law as well as Canadian laws.

We refer Committee members to the submission of colleagues at the National Center to End Sexual Exploitation (NCOSE) and support their call to consider MindGeek's actions and omissions with reference to international legal norms against slavery and torture.²⁸

²¹ Kennedy, L (October 29, 2020). Collective Shout supports Voluntary Principles to counter online child sexual exploitation and abuse. *Collective Shout*, https://www.collectiveshout.org/11_principles

²² Ibid.

²³ See our submission to the United Nations Committee on the Rights of the Child: Children's rights in the digital environment https://www.collectiveshout.org/un_sub_children_digital_rights and our submission to Online Safety Legislative Reform https://www.collectiveshout.org/online_safety_legislation_reform

²⁴ Roper, C (2020). For more information about these campaigns, see https://www.collectiveshout.org/child_sex_abuse_dolls_faqs

²⁵ Roper, C (January 9, 2020). "Better a robot than a real child": The spurious logic used to justify child sex dolls. *ABC Religion and Ethics*, <https://www.abc.net.au/religion/spurious-logic-used-to-justify-child-sex-dolls/11856284>

²⁶ Liszewski, M (August 12, 2019). Five Eyes intelligence demands tech giants provide access to encrypted content to catch child sex offenders. *Collective Shout*, https://www.collectiveshout.org/five_eyes_intelligence_tech_giants_provide_access_encryption

²⁷ House of Commons (February 22, 2021). Evidence given to Standing Committee on Access to Information, Privacy, and Ethics. No. 021. https://parl.vu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-1/34824?language=English&Stream=V_ideo.

²⁸ National Center to End Sexual Exploitation (February 19, 2021). Brief Submission to Standing Committee on Access to Information, Privacy, and Ethics, 43rd Parliament, 2nd Session.

Because Pornhub has monetized pornographic content through advertisements and premium subscriptions, it is facilitating and profiting from commercial sex acts. Any content involving minors is per se sex trafficking. Non-consensually produced pornographic content is also legally a form of sex trafficking. This includes all filmed rape, as well as any content involving force, fraud, abuse of power or vulnerability, or any other coercion—whether from an external trafficker or through MindGeek-owned studios, Modelhub program, or Content Partner.

We back the NCOSE Law Center recommendation to reject the defences of MindGeek-hosted content as “fantasy” based on 1. MindGeek’s failure to verify consent; 2. Content involves real torture of real women and girls; 3. Under international law, consent is not a defence of torture.²⁹

2. Prohibit the production and hosting of pornography featuring violence, torture and rape

MindGeek-hosted content violates international legal norms against torture. Meghan Donevan, of Talita in Sweden, writes:

Article 5 of the Declaration of Human Rights gives every person the “freedom from torture or other cruel, inhuman or degrading treatment.” This right is absolute; there are no exceptions, regardless of whether the victim consented to what was done to them or not. A woman having her “face flushed in the toilet” directly after a man’s penis is shoved violently down her throat is the quintessence of inhumane, degrading and humiliating treatment. Gagging or suffocating, in some cases to the point of passing out, while a man holds a woman’s nose and violently thrusts his penis into her mouth; while her head is pushed underwater in a toilet bowl; while a man grips her around the neck, restricting her breathing. These are all torturous, sadomasochistic acts which can result in immediate and/or long-term psychological and physical injury. Were they to occur in any other context than pornography, those inflicting the torture would be brought to stand trial.³⁰

The influence of this degrading and dehumanising material on the development of misogynistic attitudes must be given proper consideration. In his submission to the 2016 Australian Senate inquiry into harms of pornography to children, Dr Michael Flood described pornography as “sexist education” and “rape training” for boys.³¹ As Abigail Bray writes in *Misogyny Re-loaded*, porn and rape culture means “inhabiting paradoxical space where the rape and murder of women is prohibited but everywhere eroticised and the object of laughter.”³²

Movement Director Melinda Tankard Reist wrote in the ABC piece cited earlier:

Cultural norms are taught through pornography. When boys learn early to enjoy, take pleasure in, laugh at, and get off on torture and humiliation videos, when they are fed a diet of rape porn and racist sexual abuse, does the avalanche of violence against women come as a surprise?

²⁹Ibid.

³⁰ Donevan, M (2019). Out of sight, out of mind - Insights into the Swedish pornography industry. *Talita*. p 63. www.talita.se

³¹ Flood, M (2016). Submission 250, Senate Environment and Communications References Committee, Inquiry into Harm being done to Australian children through access to pornography on the Internet, p. 4. <https://www.aph.gov.au/DocumentStore.ashx?id=1966f277-6267-4398-a8a6-7be9f97358a8&subId=410413>

³² Bray, A (2013). *Misogyny Re-Loaded*. *Spinifex Press*, North Melbourne.

3. Take measures to prohibit the eroticisation and normalisation of child sexual abuse and exploitation, incest and paedophilia through all forms of pornography, including anime, manga, and related material featuring children

The global pornography industry, mostly prominently Pornhub, has turned the realistic depiction of child grooming, molestation and rape into commercial entertainment. UK research scientist and activist James Evans wrote recently for our blog:³³

Most people flinch at the idea of minors being abused. And yet, all over the internet, right under our noses, there are commercially manufactured, completely legal movies depicting these same criminal, abusive scenarios. Very young looking women...are dressed and made to act like minors. They are made to wear their hair in pigtails, like little girls. They are surrounded by plush toys and decor normally associated with early childhood. They are made to talk like children.

The young women are always in a vulnerable position in relation to the men in the scene. They are (step) daughters, schoolgirls, hitchhikers, babysitters, a daughter's friend. The men in these scenarios even use the same language that real life abusers use: "Don't tell Mommy or Daddy" or "This is our little secret". This is the world of 'teen' porn, one of the most widely consumed genres of porn online.

The porn industry has turned the realistic depiction of child grooming, molestation and rape into entertainment – and governments and regulatory bodies have allowed it. No one who cared about the welfare of children could argue that it is acceptable for men to reinforce their sexual arousal to girls in scenarios that would be considered illegal and abusive in real life.

We also addressed CSAM in the form of manga/anime in our submission to the Review of Australian Classification Regulation, recommending an urgent investigation into the Classification Board's assigning of M or MA15+ ratings to anime and manga genres featuring Child Sexual Abuse Material contrary to Australian law.³⁴

4. Update relevant laws to hold corporates including big tech and e-commerce platforms accountable for facilitating distribution of child sexual exploitation material and take measures to block Facebook's plans for end-to-end encryption

As part of our ongoing campaign against Live Distant Child Abuse (LDCA), we have strongly opposed end-to-end encryption (E2EE).³⁵ In 2020 we made a submission to the United Nations' consultation on the Committee on the Rights of the Child's *Draft General Comment on children's rights in relation to the digital environment*³⁶ in which we stated our objections to Facebook's plan to roll out E2EE across all its messaging services - a move which leading governments and child safety organisations believe will prevent detection of predatory activity and child abuse.

³³ Evans, J (1 February 2021). We need to talk about 'teen' porn. *Collective Shout*, https://www.collectiveshout.org/we_need_to_talk_about_teen_porn

³⁴ Collective Shout (2020). Submission to the Review of Australian Classification Regulation. https://d3n8a8pro7vhmx.cloudfront.net/collectiveshout/pages/3311/attachments/original/1583331025/Collective_Shout_submission_review_classifications_system.pdf?1583331025

³⁵ Collective Shout urged government to address the matter of telecommunications companies facilitating live distant child sexual abuse in our 2019 submission to the Inquiry into the Modern Slavery Act 2018 and related matters. *Parliament of New South Wales*, <https://www.parliament.nsw.gov.au/lcdocs/submissions/66119/0039%20Collective%20Shout.pdf>

³⁶ Collective Shout (2020). Submission to Draft General Comment No. 25 (202x): Children's rights in relation to the digital environment. https://d3n8a8pro7vhmx.cloudfront.net/collectiveshout/pages/7128/attachments/original/1606279465/CollectiveShout_20201112_UN_Sub.pdf?1606279465

We said the move to E2EE would violate Facebook's commitment to the *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse* and expressed our support for efforts to block rollout until adequate measures were taken to ensure children were not placed at greater risk of harm. By introducing E2EE, Facebook may lose the ability to report 70% of the cases it currently sends to NCMEC because it will no longer have access to users' conversations.³⁷

The Office of the eSafety Commissioner also expressed objection to E2EE in its submission to the same UN Inquiry.³⁸

While encryption is a powerful tool for privacy, it also can assist in serious harms by hiding or exacerbating criminal activities, including online child sexual abuse. Encryption requires detailed consideration to minimise the potential for harm across communication channels, and to ensure there is a balance between security, privacy and safety.

We agree with the position of the Australian Federal Government expressed in its submission:³⁹

Australia strongly affirms the importance of children's privacy, and also recognises the importance of keeping children safe online and protected from harm... encryption is being increasingly exploited by terrorists, sexual predators and other criminals to conceal illicit activities that are harmful to children. End to end encryption can erode the ability of companies to detect and report harmful and illegal conduct and content on their platforms and significantly impedes law enforcement agencies in their ability to investigate and prosecute serious crimes, including serious crimes against children.

In light of this, Australia does not support the position set out in the draft General Comment that end to end encryption should be encouraged by States. Such a 'privacy protection' focus does not sufficiently take into account the abuse and crime that occurs online, and the vulnerability of children online in particular, as targets for predators and grooming groups who may use end to end encryption and other technology to carry out and conceal their illegal and harmful activities (whether that be to incite violence, abuse of children, non-consensual sharing of intimate images or otherwise). We would ask the Committee to carefully consider the impacts of its draft recommendation in paragraph 72 in light of the role that governments and technology companies play in protecting children online and preventing the sharing of child sexual abuse material.

This month, UK man David Wilson was jailed for 25 years after admitting to 96 sex offences against boys aged 4 to 14. The 36-year-old targeted more than 5,000 boys, grooming and soliciting them for child sexual exploitation material. Rob Jones, Director of Threat Leadership for the National Crime Agency, warned:

Facebook's plans (for E2EE) are a disaster for child safety and law enforcement and mean the very many other David Wilsons out there will not be caught. Their plans will create a haven for child sex offenders to congregate to target children.⁴⁰

³⁷ Brookes, J (2019). Update: Dutton tells Facebook to 'pick a side' on child exploitation, demands halt to encryption plans. *Which-50*, <https://which-50.com/dutton-demands-facebook-halt-encryption-plans/>

³⁸ eSafety Commissioner (2020). End-to-end encryption trends and challenges — position statement. Available at <https://www.esafety.gov.au/about-us/tech-trends-and-challenges/end-end-encryption-position-statement>

³⁹ Commonwealth of Australia (2020). Submission of the Australian Government to the Advanced Version of the Committee on the Rights of the Child's Draft General Comment on children's rights in relation to the digital environment. <https://www.ohchr.org/FN/HRBodies/CRC/Pages/GCChildrensRightsRelationDigitalEnvironment.aspx>

⁴⁰ The Guardian (February 11, 2021). Facebook under fire over encryption plans as man is jailed for abusing 52 children: Police say they would not have caught David Wilson, who admitted 96 offences, if Facebook end-to-end encryption was in place. <https://www.theguardian.com/uk-news/2021/feb/10/man-who-posed-as-girl-online-jailed-for-abusing-51-children>

The Canadian Government, along with all state parties, should condemn Facebook's planned rollout of E2EE in the strongest possible terms.

5. Implement Age Verification globally

We recommend Canada consult with States Parties to examine best practice approaches to regulating the pornography industry including age verification to protect children from exposure to pornography.

In our November 2019 submission to the *Inquiry into Age Verification for online wagering and online pornography* we urged the House of Representatives Standing Committee on Social Policy and Legal Affairs to consider an age verification system as part of a multi-pronged approach to restrict children's access to online pornography and the multi-billion dollar global porn industry's unfettered access to children. Given the very serious consequences of childhood-exposure to pornography, we urge this Committee to consider the recommendations made in our submission⁴¹ for application in its own jurisdictions.

6. Strengthen measures to address non-consensual image sharing/image-based abuse

In our recent response to the *Online Safety Exposure Draft Bill*⁴² we urged the Federal Government to introduce stronger measures to combat image-based abuse⁴³ including:

i. A two-hour takedown notice period⁴⁴ rather than the proposed 24-hour period

This proposal is under consideration in the U.S. We believe this to be a more appropriate response, given the devastating impact of image-based abuse. Any delay in takedown affords greater opportunity for wider sharing, causing even more trauma to the victim. Online and social media platforms have the resources to do this.

ii. Investment in technological solutions to combat uploading of image-based abuse content

The fact that it is so easy to upload image-based abuse content is a serious problem. We recommended that the Government invest in technological solutions to address this, for example technology which would enable individuals uploading image-based abuse material to be identified and blocked from uploading further material.

iii. Victim-focused evidence collection

We recommended the use of trauma-informed evidence collection and interviewing techniques for victims. We understand it is common for victims to experience shame through the process of reporting and evidence collection, as well as being asked to hand over their images to proceed with charges.

⁴¹ Collective Shout (2019). Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs Inquiry into Age Verification for Online Wagering and Online Pornography. https://d3n8a8pro7vhmx.cloudfront.net/collectiveshout/pages/3258/attachments/original/1575331635/Age_Verification_Submission.pdf

⁴² Consultation closed February 14, 2021, publication pending.

⁴³ Advice provided by Laura Bloomer, CEO of Backed Technologies, providing data and legal knowledge to provide support to victims of image-based abuse/leaked content and create more accountability and convictions for offenders.

⁴⁴ As per proposed US legislation. See Merkley, J. (2020). A BILL To prevent the uploading of pornographic images to online platforms without the consent of the individuals in the images. <https://www.merkley.senate.gov/imo/media/doc/Stop%20Internet%20Sexual%20Exploitation%20Act%20Text1.pdf>

iii. Improved redress measures for victims

Dedicated and specially trained police departments would be a positive step forward in obtaining justice for victims and preventing further offending.

Civil liability is an important way to get convictions and achieve redress for victims. When victims have recourse through civil courts, the standard of proof will be lower, allowing a less invasive and traumatic process for the victim. Being able to identify uploaders will involve user ID verification, age and consent verification, and personal civil liability for users and porn platforms.

iv. Improved support for victims

We recommended the establishment of a 24-hour hotline for victims to obtain support.

In light of the evidence provided to the Committee regarding the degree of non-consensual image sharing on Pornhub's platform, we urge this Committee to consider the above recommendations for application in its own jurisdictions.

7. Expand education programs on the negative impact of pornography in shaping attitudes and behaviours, contributing to sexual harassment and coercion, and on consent and respectful relationships

In our submission to the Australian Government's age verification inquiry (2019),⁴⁵ we cited global research demonstrating the harmful effects of sexually explicit material on children who are exposed to it in the absence of effective protections such as age verification and mandatory filtering at source. In 2016 the Australian Institute for Family Studies summarised evidence on the impact of children's exposure to pornography:⁴⁶

reinforce harmful gender stereotypes; contribute to young people forming unhealthy and sexist views of women and sex; contribute to condoning violence against women; be associated with sexually coercive behaviour by young men; normalise sexual violence; contribute to unrealistic understandings of sex and sexuality; shape social norms around sex; lead to young people feeling as though they should engage in the sexual behaviour frequently displayed in pornography, including violent acts; be associated with pressure being put on girls to share naked images of themselves online; influence young people's self-concept and body image; and be linked to problematic sexual behaviour and sexual abuse among children and adolescents.

We therefore recommend increased focus on education centred on unpacking the harmful impacts of pornography on a young person, how explicit sexual imagery and messaging shapes attitudes and behaviours, an emphasis on how to resist coerced and unwanted sexual activity and protect boundaries, and the critical importance of respectful relationships.

While education is essential, States Parties must act to regulate the global pornography industry to ameliorate harm to the most vulnerable which education alone cannot achieve.

February 26, 2021

⁴⁵ Ibid.

⁴⁶ Monica Campo (May 4, 2016). Children and young people's exposure to pornography. <https://aifs.gov.au/cfca/2016/05/04/children-and-young-peoples-exposure-pornography>. See also: Tankard Reist M (March 13, 2016). Growing up in Pornland: Australian girls have had it with porn-conditioned boys. *Feminist Current*, <https://www.feministcurrent.com/2016/03/13/growing-up-pornland-australian-girls/>, Tankard Reist M (July 6, 2016). Early sexualisation and pornography exposure: the detrimental impacts on children. Australian Childhood Foundation, *Prosody* blog, <https://professionals.childhood.org.au/prosody/2016/07/melinda-tankard-reist/> and Our Watch (2020). Pornography, Young People, and Preventing Violence Against Women. <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/11/20022415/Pornography-young-people-preventing-violence.pdf>