

**Submission to the Standing Committee on Access to Information, Privacy and Ethics  
Protection of Privacy and Reputation on Platforms such as Pornhub**

February 25, 2021

We are grateful to the Ethics Committee for undertaking this important study, and for the opportunity to offer input.

**Introduction.**

Commercial pornography sites that knowingly profit from sexual abuse and exploitation, like Pornhub, must be held accountable.

Children and youth face devastating, lifelong consequences when videos and images of their abuse and exploitation are streamed and distributed. The Canadian Centre for Child Protection surveyed international survivors of child sexual abuse whose abuse was recorded. Survivors indicated that the imagery impacted them in a different way than the initial abuse. As the report notes, “The information shared by the respondents to this survey makes it clear that the recording of abuse and its distribution adds an extraordinary layer of trauma for a victim.”<sup>1</sup> Part of the impact survivors describe is that the distribution of images may never end. They feel powerless to stop their ongoing distribution.

It is imperative that the onus not be on children and teens to monitor commercial pornography sites to ensure that depictions of their abuse and exploitation are not posted or, if discovered, to ensure they are swiftly removed. The onus must not be on victims of non-consensual uploads to identify the content and ensure it is removed. These sites must be responsible to ensure that the content they host and profit from is not child sexual abuse material, that the people depicted in uploaded content are not minors, and that they consent to their image being posted. Platforms must have mechanisms in place to ensure illegal content is never uploaded in the first place.

**Self-regulation has not worked.**

MindGeek has demonstrated it is unwilling or unable to self-regulate its commercial pornography sites, at least until there are serious consequences for their financial bottom line. Pornhub, which has been the most popular free site online for more than a decade, updated

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<sup>1</sup> Canadian Centre for Child Protection, *Survivors Survey Full Report 2017*, p. 147, [https://protectchildren.ca/pdfs/C3P\\_SurvivorsSurveyFullReport2017.pdf](https://protectchildren.ca/pdfs/C3P_SurvivorsSurveyFullReport2017.pdf)

their policies only recently, in December 2020<sup>2</sup> and February 2021,<sup>3</sup> in response to intense public scrutiny.

MindGeek's brief to this committee states, "MindGeek has a zero-tolerance policy for non-consensual and child sexual abuse material (CSAM). It is contrary to our values, to the expectations of our employees and partners, and to our business." However, this zero-tolerance policy took effect only in December 2020, following the exposé in the *New York Times*<sup>4</sup> and the subsequent suspension of service by VISA, Mastercard<sup>5</sup> and Discover.

After the NYT article and suspension of activity by credit card companies, Pornhub deleted millions of videos, dropping from 13.5 million to 4.7 million overnight.<sup>6</sup>

Prior to December 2020, Pornhub's own recommended in-site search terms referenced young age, abuse and lack of consent, such as "abused teen" or "drunk teen." While certain search terms and categories such as "drunk" have now been disabled on the site, these changes have only occurred over the last few months and weeks in the face of intense public scrutiny.

MindGeek told this Committee that each upload is verified by a human moderator before it is posted.<sup>7</sup> Pornhub's year in review indicates that they uploaded 2.8 hours' worth of new content every minute in 2019, for a total of 1.36 million hours or 169 years.<sup>8</sup> How many human moderators do they have on staff to review this content before it is uploaded? How are they able to give this content adequate screening? This is clearly an inadequate process, as was made evident in testimony before this Committee.<sup>9</sup>

Even Pornhub's so-called "verified" model program has failed to prevent abuse. A missing 15-year-old from Florida was found in 58 videos uploaded to Pornhub by her trafficker.<sup>10</sup> On its Twitter account, Pornhub said they had "verified" the teen and that she was in their model program. These tweets were later deleted but have been cached elsewhere.<sup>11</sup>

Under Canadian law, it is an offence to knowingly distribute an intimate image without consent: "Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or *being reckless as to whether or not that person gave their consent*

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<sup>2</sup> <https://www.pornhub.com/press/show?id=2132>

<sup>3</sup> <https://www.pornhub.com/press/show?id=2172>

<sup>4</sup> <https://www.nytimes.com/2020/12/04/opinion/sunday/pornhub-rape-trafficking.html>

<sup>5</sup> <https://www.cbc.ca/news/canada/montreal/mastercard-ends-card-use-on-pornhub-1.5836289>

<sup>6</sup> <https://www.cbc.ca/news/business/pornhub-users-uploads-1.5840802>

<sup>7</sup> <https://www.ourcommons.ca/DocumentViewer/en/43-2/ETHI/meeting-19/evidence>

<sup>8</sup> <https://www.pornhub.com/insights/2019-year-in-review>

<sup>9</sup> <https://www.ourcommons.ca/DocumentViewer/en/43-2/ETHI/meeting-18/evidence>;

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

<sup>10</sup> <https://nypost.com/2019/10/24/mom-finds-missing-teen-girl-by-spotting-her-on-pornhub/>

<sup>11</sup> <https://twitter.com/LailaMickelwait/status/1227003417983213568/photo/1>

to that conduct...”(emphasis added).<sup>12</sup> Could a process that depends solely on the person uploading exploitive content to verify that each person depicted has given consent, without any other evidence or verification required, be considered reckless?

An explanation of Canadian cybersecurity laws states, “With the crime of illegal distribution of intimate images, there is a reverse onus of proof in the law, which means that the person accused of distributing the image(s) bears the onus to establish that they did indeed have reasonable grounds to believe that consent to share the image(s) was given. If the accused was unable to prove that they had reasonable grounds to believe that consent had been given, they can be found criminally responsible and face harsh criminal penalties and a criminal record as a result.”<sup>13</sup>

Police-reported Canadian data indicate 1,972 incidents of non-consensual distribution of intimate images reported in 2019, which is a 31% increase from 2018.<sup>14</sup> How many of these images have been posted to commercial pornography sites such as Pornhub?

The Canadian Centre for Child Protection described the victims coming to organizations like theirs for help to get their images taken down or reported as a “tsunami” of victims.<sup>15</sup> How many Canadian women and teens don’t yet know their images have been posted without their knowledge or consent, or who to approach for help if they do? It is our view that the gripping testimony the Committee has heard from individuals whose images have been uploaded to Pornhub without their consent are representative of significant numbers of other women, who have been unwilling or unable to testify to their exploitation.

Further, survivors like Serena Fleites and others who have initiated class action lawsuits against the company indicate that when exploitive content is identified, Pornhub has ignored requests from victims to remove content until they were threatened with legal action or faced financial consequences.<sup>16</sup> Research by Traffickinghub has found numerous instances of Pornhub ignoring comments from users flagging content as obviously or likely illegal.

Pornhub is designed in a way that enables and facilitates illegal content. It is plainly inadequate to rely on the answer of the person posting child sexual abuse material about whether those images depict consenting adults. Further, it is evident that the human content moderators and automated systems are not effectively screening out exploitive and illegal content.

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<sup>12</sup> <https://laws-lois.justice.gc.ca/eng/acts/C-46/section-162.1.html>

<sup>13</sup> <https://www.itworldcanada.com/blog/understanding-canadian-cybersecurity-laws-peer-to-peer-privacy-protection-intrusion-upon-seclusion-and-the-protection-of-intimate-images-article-6/437022>

<sup>14</sup> <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=3510017701&pickMembers%5B0%5D=1.1&pickMembers%5B1%5D=2.257&cubeTimeFrame.startYear=2015&cubeTimeFrame.endYear=2019&referencePeriods=20150101%2C20190101>

<sup>15</sup> <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-/1/34824?Language=English&Stream=Video>

<sup>16</sup> [https://globalnews.ca/news/7565362/class-action-lawsuit-quebec-pornhub-mindgeek/;](https://globalnews.ca/news/7565362/class-action-lawsuit-quebec-pornhub-mindgeek/)  
[https://endsexualexploitation.org/wp-content/uploads/Doe-v.-MindGeek\\_Complaint.pdf;](https://endsexualexploitation.org/wp-content/uploads/Doe-v.-MindGeek_Complaint.pdf)

Even with Pornhub's recently updated policies, there remain no reliable compliance measures in place. Without these, any recent commitments cannot be sufficient. Platforms like Pornhub must be required to verify, ensure and keep records of confirmation of age, consent in production and consent to upload.

Platforms like Pornhub must not be left to self-regulate. It is essential that the government develop strict regulations and impose significant penalties for non-compliance.

**The platform does not host only consensual adult content.**

In testimony before this Committee, MindGeek executives described their platforms, including Pornhub, as "consensual adult entertainment," with viewers over 18 years of age.<sup>17</sup>

However, this is an industry that is harming children and youth both in front of and behind the screen.

Pornhub's year in review summaries include terms like "teen" in the top search terms of the year. Although certain search terms have been removed (e.g., 14 year old, incest, rape, drunk), there are still hundreds of thousands of results for searches like girl, teen, stepdaughter, force, torture and so on.<sup>18</sup>

We are aware of numerous instances of material uploaded to Pornhub featuring the abuse and rape of minors.<sup>19</sup> But "teen" and "stepdaughter" remain among the most popular categories, arguably in violation of Canada's child pornography laws.

The *Criminal Code* defines child pornography as a representation "that shows a person who is or *is depicted as* being under the age of eighteen years" (emphasis added).<sup>20</sup> While not all content that appears with tags such as 'young,' 'teen,' 'schoolgirl' features minors, the presentation of those videos as such is a violation of Canada's child pornography laws. Further, the Canadian Centre for Child Protection and the National Centre for Missing and Exploited Children both testified before this Committee on February 22, 2021, that they only began receiving reports of child sexual abuse material from Pornhub in the latter part of 2020, which was around the time the *NY Times* story was released and Pornhub changed its' policies under intense public scrutiny.<sup>21</sup> The RCMP witnesses to the Committee indicated they did not have record of Pornhub reporting CSAM directly to them; they have only recently received

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<sup>17</sup> <https://www.ourcommons.ca/DocumentViewer/en/43-2/ETHI/meeting-19/evidence>

<sup>18</sup> As of February 10, 2021, the search term stepdaughter on Pornhub yields over 2400 results, with descriptions including words like "Scared stepdaughter" and "handcuffed stepdaughter".

<sup>19</sup> <https://www.bbc.com/news/stories-51391981>; <https://www.newsweek.com/florida-man-arrested-after-58-porn-videos-photos-link-him-missing-underage-teen-girl-1467413>;

<sup>20</sup> <https://laws-lois.justice.gc.ca/eng/acts/c-46/section-163.1.html>

<sup>21</sup> <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-/1/34824?Language=English&Stream=Video>

reports that were sent to the National Centre for Missing and Exploited Children and were forwarded to them.<sup>22</sup>

This suggests that until very recently, Pornhub and possibly other platforms owned and operated by MindGeek may not have been in compliance with Canada's law on mandatory reporting of child sexual abuse materials.<sup>23</sup>

Survivor testimony, complaints and legal challenges point to criminal content hosted by Pornhub that includes:

- Videos of trafficking victims
- Child sexual abuse
- Rape/sexual assault
- Revenge porn
- Non-consensual recording (“spycam” content) and uploads

Pornhub also hosts content that is hateful or racist toward identifiable groups, and that portrays violence against women as normative. Such content perpetuates harm against individuals, identifiable groups, and society as a whole. This content must be addressed.

### **Pornhub's viewers are not only consenting adults.**

Although Pornhub's annual review only reports on the number of viewers over 18 years of age, significant numbers of young people are consuming pornography online. Research commissioned by the British Board of Film Classification found that children and teens are watching and coming across pornography at early ages.<sup>24</sup> It found more than half of 11–13 year-olds (51%) had viewed pornography, with some as young as seven or eight years of age, rising to 66% of 14–15 year-olds. The 2019 research also reported that over 60% of 11–13 year-olds first viewing of pornography was accidental. Youth are easily able to access free sites that do not any meaningful age verification in place, like Pornhub.

Further, there are examples of Pornhub appearing to directly target a young audience. A meme created and shared on social media by Pornhub around the release of Disney Plus' immensely popular *Star Wars: The Mandalorian* featured a wide-eyed baby Yoda with the Pornhub logo reflected in his eyes and the words “10 seconds after my parents leave the house.”<sup>25</sup> Some of the searches for movie and TV characters on Pornhub in 2019 were for characters from the movies *The Incredibles* (6.9 million searches) and *Toy Story* (3.5 million searches), as well as many other movies popular among youth audiences, with top searches for the Avengers and DC characters.<sup>26</sup>

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<sup>22</sup> <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-/1/34824?Language=English&Stream=Video>

<sup>23</sup> <https://laws-lois.justice.gc.ca/eng/acts/l-20.7/page-1.html>

<sup>24</sup> <https://www.bbfc.co.uk/about-us/news/children-see-pornography-as-young-as-seven-new-report-finds>

<sup>25</sup> <https://endsexualexploitation.org/articles/porn-industry-normalizes-children-using-porn-with-baby-yoda-meme/>

<sup>26</sup> <https://www.pornhub.com/insights/2019-year-in-review#celebrity>

As Lianna McDonald of the Canadian Centre for Child Protection told this Committee, children are harmed by the ease with which they can access graphic and violent pornographic content.<sup>27</sup>

Commercial pornography sites like Pornhub should be required to put in place meaningful third-party age verification to ensure users are adults, in order to protect underage viewers without compromising consumer privacy.

### **Data Collection.**

MindGeek makes money from advertising, paid premium subscriptions, the harvesting and sale of user data and their “verified” modelHub program, where so-called verified models can directly monetize content and Pornhub takes a percentage of the money earned.

Pornhub reveals a glimpse of the extensive data collected from their consumers in its annual report: who is visiting the site, by age and gender, how long they are staying on the site, what they are searching for and watching, on what kind of device and with what operating system and browser, what time they are watching and from what geographic location. It even breaks out the version level of the operating system. The 2019 Year in Review factored in the effect of cold weather temperatures on porn viewing in some areas.<sup>28</sup> Pornhub has not yet released the 2020 Year in Review which is expected to reflect a spike in uploads and viewing hours as a result of restrictions on outside activities, as well as Pornhub’s targeted promotion during the pandemic.

This is just the data that is released publicly. The level of detail and technological sophistication points to Pornhub’s ability to collect records on the age and consent of those depicted in content hosted on their site and an ability to track videos flagged for having abusive or illegal content, should it choose to do so. Pornhub has the revenue to develop the data collection and record-keeping capacity that is required. What it requires is motivation to do so.

### **Accountability is needed across platforms.**

Pornhub has hundreds of content partners. One partner, Girls do Porn, was successfully sued for deceptive and fraudulent practice by 22 women it had exploited.<sup>29</sup> Another partner is Chaturbate, a webcam site of nudity and sexual activity known to be used to exchange child sexual abuse material.<sup>30</sup> It is important to understand Pornhub’s relationship – financial and otherwise – with these content partners.

Pornhub is the flagship in a network of online sites owned and operated by MindGeek. It is one of the most popular, but it is not the only site. The scrutiny must be faced not only by Pornhub

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<sup>27</sup> <https://parlvu.parl.gc.ca/Harmony/en/PowerBrowser/PowerBrowserV2/20210222/-/1/34824?Language=English&Stream=Video>

<sup>28</sup> <https://www.pornhub.com/insights/2019-year-in-review>

<sup>29</sup> <https://sanfordheisler.com/case/girlsdoporn-com-lawsuit/>

<sup>30</sup> <https://www.naplesnews.com/story/news/crime/2018/05/30/ccso-east-naples-man-transmitted-child-pornography/656331002/>; <https://wqow.com/2019/07/05/eau-claire-man-faces-child-pornography-charges/>

but by all sites owned and operated by MindGeek, as well as other commercial pornography sites that are not owned by MindGeek.

Further, we suggest the Committee investigate the impact of Pornhub's presence on the dark web, where a cryptocurrency enabled site would not face the financial pressure by major credit card companies to ensure it is not hosting illegal content.

### **Conclusion.**

We commend the Committee for undertaking this critical investigation. Survivors and advocates around the world are watching the Committee's work closely. We are deeply grateful for the good work thus far and urge the Committee to act on the testimony they have heard.

The RCMP described the dramatic increase in reports of online child sexual exploitation to their National Child Exploitation Crime Centre in recent years. Stephen White told this Committee, "In 2019, the Centre received 102,927 requests for assistance, an increase of 68% since 2018 and an overall increase 1,106% increase since 2014." The exponential growth in exploitation is a crisis that requires our urgent attention.

Online platforms must be required to ensure they are not hosting and monetizing content that violates Canadian law and victimizes Canadians. Where there are violations of Canadian laws on child pornography, mandatory reporting of child sexual abuse images, sex trafficking and the non-consensual uploading of intimate images or video, platforms *must* be held accountable.

And there must be justice for those whose images of abuse have been uploaded, viewed over and over and monetized by MindGeek, as well as for those whose images were uploaded without consent.

### **Recommendations**

We recommend commercial pornography sites such as Pornhub be required to:

- establish mechanisms to review, immediately remove, and report to law enforcement content that is obviously or likely illegal
- prioritize and immediately respond to individuals' reports of content in which they appear as a minor or that has been posted without consent
- establish effective means to verify the age and consent of each person appearing in videos as a required step before videos are uploaded to the site
- develop a system to verify who is uploading content so there is a record for law enforcement if illegal content is uploaded.
- report to Canadian law enforcement all suspected or confirmed instances of content which features child sexual abuse, non-consensual activity or which has been uploaded without the consent of the individual(s) depicted in the video.
- put in place meaningful third-party age verification to ensure that the consumers of content are adults.

- permanently remove the option of downloading videos from commercial pornography sites.

We recommend further study and investigation of the serious and disturbing issues raised in this study, such as:

- requesting from the RCMP a description of the process and evidence required to investigate content hosted on a commercial pornography site, as well as a description of the jurisdictional challenges and fiscal requirements to carry out these kinds of investigations, and make recommendations accordingly.
- asking the Justice Committee to study the role of online platforms in hosting and facilitating the distribution of criminal content such as child sexual abuse material and non-consensual images, the barriers to reporting such content, the need for oversight and whether there are gaps in Canadian legislation or funding that make enforcement difficult
- commissioning a taskforce, inquiry or parliamentary committee to study the prevalence of sexual violence against minors and contributing factors, including the role of online platforms in hosting and facilitating the distribution of child sexual abuse materials and images that are distributed without consent.

Finally, we recommend the government:

- encourage the RCMP to conduct a full criminal investigation into MindGeek's compliance with Canadian law, including the *Mandatory Reporting of Internet Child Pornography Act*<sup>31</sup> and *Criminal Code* provisions on child pornography and the non-consensual distribution of intimate images
- establish meaningful penalties, such as:
  - Significant financial penalties for failing to immediately remove, review and report to law enforcement content flagged as illegal or non-consensual.
  - Significant financial penalties for failing to immediately respond to individuals' reports of content in which they appear as a minor or that was posted without their consent
  - Criminal charges if the site persists in hosting and allowing such content or allowing its re-uploading.
- consider requiring platforms to provide financial compensation for victims, such as the revenue generated by the viewing of their images
- create an ombud or commissioner role to help victims and advocate on their behalf for the removal of child sexual abuse materials and intimate images distributed without consent.

The Evangelical Fellowship of Canada (EFC) is the national association of evangelical Christians in Canada. Established in 1964, the EFC provides a national forum for Canada's four million Evangelicals and a constructive voice for biblical principles in life and society.

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<sup>31</sup> <https://laws-lois.justice.gc.ca/eng/acts/l-20.7/page-1.html>



Our approach to this issue is based on the biblical principles of respect for human life and dignity, justice, and care for those who are vulnerable. We note that these principles are also reflected in Canadian law and public policy.