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ENSURING THE PROTECTION OF PRIVACY AND REPUTATION ON PLATFORMS SUCH AS PORNHUB

**Report of the Standing Committee on Access to
Information, Privacy and Ethics**

Chris Warkentin, Chair

**JUNE 2021
43rd PARLIAMENT, 2nd SESSION**

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Chair**

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NOTICE TO READER

Reports from committee presented to the House of Commons

Presenting a report to the House is the way a committee makes public its findings and recommendations on a particular topic. Substantive reports on a subject-matter study usually contain a synopsis of the testimony heard, the recommendations made by the committee, as well as the reasons for those recommendations.

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has the honour to present its

THIRD REPORT

Pursuant to its mandate under Standing Order 108(3)(h), the committee has studied the Protection of Privacy and Reputation on Platforms such as Pornhub and has agreed to report the following:

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SUMMARY

Recent reports regarding the presence of child sexual abuse material (CSAM) and other non-consensual content on the adult platform Pornhub led the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) to undertake a study on the protection of privacy and reputation on online platforms such as Pornhub. This study gave the Committee a window into the world of adult websites and how their content moderation practices have failed to protect the privacy and reputation of individuals online.

The Committee heard harrowing accounts from survivors who had had images and videos of themselves uploaded to the Pornhub website without their consent. Some were minors. Some were adults. All encountered difficulties in having those images and videos taken down. The Committee also heard from the executives of MindGeek and Pornhub, who told the Committee that they have appropriate practices in place and are constantly striving to improve these measures.

Child protection organizations provided a dire outlook on the situation relating to CSAM, providing alarming statistics on the number of reports they receive each year. Experts, academics, and support organizations offered solutions to prevent CSAM and other non-consensual content from being uploaded to platforms such as Pornhub. Others talked about the challenges associated with the removal of online non-consensual content and the different levels of the Internet.

Law enforcement and federal ministers discussed their efforts to combat the proliferation of CSAM and other illegal material online. They also described the robustness of criminal legislation in Canada. These officials emphasized the many challenges in tackling crimes committed online considering the technology used and the fact that the Internet transcends national borders.

Finally, many other interested parties brought forward pleas to hold platforms such as Pornhub accountable for alleged violations of rights that are protected by laws or guaranteed by the *Canadian Charter of Rights and Freedoms* or international conventions and protocols. Some argued for restrained access to pornography due to its alleged harmful effects. Witnesses working in the sex industry told the Committee that more legislation and regulations on online adult platforms would erode their health, safety and livelihood.

Accounting for these many different perspectives, the Committee offers recommendations that could alleviate some of problems this study has highlighted.

LIST OF RECOMMENDATIONS

As a result of their deliberations committees may make recommendations which they include in their reports for the consideration of the House of Commons or the Government. Recommendations related to this study are listed below.

Recommendation 1 concerning liability

That the Government of Canada explore means to hold online platforms liable for any failure to prevent the upload of, or ensure the timely deletion of child sexual abuse material, content depicting non-consensual activity, and any other content uploaded without the knowledge or consent of all parties, including enacting a duty of care, along with financial penalties for non-compliance or failure to fulfil a required duty of care..... 45

Recommendation 2 concerning the duty to verify age and consent

That the Government of Canada mandate that content-hosting platforms operating in Canada require affirmation from all persons depicted in pornographic content, before it can be uploaded, that they are 18 years old or older and that they consent to its distribution, and that it consult with the Privacy Commissioner of Canada with respect to the implementation of such obligation..... 45

Recommendation 3 concerning consultation

That the Government of Canada consult with survivors, child advocacy centres, victim support agencies, law enforcement, web platforms and sex workers prior to enacting any legislation or regulations relating to the protection of privacy and reputation on online platforms. 45

Recommendation 4 concerning section 3 of the Mandatory Reporting Act

That the Government of Canada, in collaboration with the provinces, amend section 3 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* to make the National Child Exploitation Coordination Centre the designated law enforcement agency for the purpose of reporting under that section and that it ensure that the National Child Exploitation Coordination Centre has the resources it needs to investigate the increased referrals of child sexual abuse materials..... 45

Recommendation 5 concerning reporting obligations

That the Government of Canada invest resources to ensure the compliance of access providers, content providers and Internet content hosting services with their reporting obligations under *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* through education and awareness initiatives. 45

Recommendation 6 concerning section 11 of the Mandatory Reporting Act

That the Government of Canada consider amending section 11 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* to extend the period of time to commence prosecution for an offence under this Act. 46

Recommendation 7 regarding compliance under the Mandatory Reporting Act

That the Government of Canada call upon the Royal Canadian Mounted Police and other police services to ensure the compliance of Internet service providers, as defined in *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, with their reporting obligations under that Act, and that compliance be absolute with no means for providers to opt out. 46

Recommendation 8 concerning requirements for uploaders of content

That the Government of Canada set requirements for uploaders of content to provide proof of valid consent of all persons depicted and that the new regulations include penalties severe enough to act as an effective deterrent. 46

Recommendation 9 regarding pornographic content and age verification

That the Government of Canada develop clear regulations that require Internet service providers, as defined in *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, to utilize a robust process for age verification of all individuals in uploaded pornographic content, including content generated by individuals, studios or contract partners..... 46

Recommendation 10 concerning proactive enforcement of Canadian laws

That the Government of Canada proactively enforce all Canadian laws regarding child sexual abuse material and the posting of non-consensual material and that in particular, it enforce section 3 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* by requiring all Internet service providers, as defined in the Act, to report child sexual abuse material directly to an officer, constable or other person employed for the preservation and maintenance of the public peace. 46

Recommendation 11 concerning accessible mechanisms for the removal of online content

That the Government of Canada develop accessible mechanisms that ensure that Canadians victimized by the posting of an image or video online without their consent on sites like Pornhub have the right to have that content removed immediately and to be given the benefit of the doubt with respect to the non-consensual nature of the content, and that the Government of Canada provide all the necessary resources required to put in place these accessible mechanisms. 47

Recommendation 12 concerning a potential new pattern of sexual violence

That the Government of Canada work with key stakeholder groups such as Canadian sexual assault centres, women’s rights organizations and representatives from LGBTQ2 communities to determine if the posting of non-consensual material depicting sexual violence on sites like Pornhub is reflective of, and contributing to, a new pattern of sexual violence, and that it report its findings, including recommendations for further action, to Parliament. 47

Recommendation 13 concerning the accountability of websites regarding the downloading and re-uploading of pornographic content

That the Government of Canada hold accountable websites that allow the downloading and re-uploading of pornographic content that erases the identity of the source material, thereby preventing authorities from assessing those accountable for the material. 47

Recommendation 14 concerning a new legal framework to impose certain obligations on Internet service providers hosting pornographic content

That the Government of Canada create a legal framework that would compel Internet service providers that host pornographic content to:

- **implement and use available tools to combat the flagrant and relentless re-uploading of illegal content;**
- **hire, train and effectively supervise staff to carry out moderation and content removal tasks at an appropriate scale;**
- **maintain detailed records of user reports and responses that can be audited by authorities;**
- **be legally accountable for content moderation and removal decisions and the harm to individuals that results when efforts are inadequate; and**
- **build in and design features that prioritize the best interests and privacy rights of children and vulnerable adults. 48**



ENSURING THE PROTECTION OF PRIVACY AND REPUTATION ON PLATFORMS SUCH AS PORNHUB

INTRODUCTION

On 11 December 2020, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (the Committee) began a study on the protection of privacy and reputation on platforms such as Pornhub.¹ Following the first two meetings, in which it heard from one survivor and the executives from Pornhub and its parent company, Entreprise MindGeek Canada (MindGeek), the Committee decided to hold more meetings.²

The Committee further inquired into how platforms such as Pornhub should be held accountable for the non-consensual content and child sexual abuse material (CSAM) they host online. In this report, non-consensual content refers to either or both: content that was produced or uploaded without the knowledge and/or consent of all persons depicted, and content depicting non-consensual sexual activity.

In all, the Committee devoted 7 public meetings to this study, during which it heard from 40 witnesses. It also received 50 briefs.

This report summarizes witness testimony and highlights recommendations made by the Committee.

CHAPTER 1: CONTEXT AND PURPOSE OF THE STUDY

A New Study

In December 2020, *The New York Times* published an op-ed about the adult website Pornhub. The article reported that images or videos of underage individuals could be found on that platform and sounded the alarm on the content moderation practices of

1 House of Commons Standing Committee on Access to Information, Privacy and Ethics (ETHI), *Minutes of Proceedings*, 2nd Session, 43rd Parliament, 11 December 2020.

2 ETHI, *Minutes of Proceedings*, 2nd Session, 43rd Parliament, 19 February 2021.



Pornhub and its parent company, MindGeek.³ Pornhub is MindGeek’s “flagship” adult hosting and streaming website, featuring content uploaded by users, models, and studios.⁴

Considering the content of the article and the fact that Pornhub has an office in a Canadian city (Montreal) with 1,000 employees, Members of the Committee invited survivors to share their experiences of having their images or videos uploaded to Pornhub’s platform and their efforts in trying to have this content taken down.⁵ It also invited executives of Pornhub and MindGeek to hear about their privacy and safety practices.

After hearing from a survivor and the Pornhub and MindGeek executives, the Committee expanded its study to hear testimony from additional survivors and child protection organizations, the federal government and law enforcement, support organizations, sex workers and other interested parties. The Committee also received multiple briefs.

Purpose of the Study

The goal of the Committee in conducting this study was in no way to challenge the legality of pornography involving consenting adults or to negatively impact sex workers. It is unusual for this Committee to study matters involving criminal law. However, in this case, it is impossible to look at issues surrounding the protection of the privacy and reputation of children and adults who have not consented to images or videos of themselves being uploaded to online platforms such as Pornhub in isolation of criminal provisions that relate to that type of content. The legal context is explained in the section below.

The Committee recognizes that there are different perspectives concerning the regulation of online adult platforms and pornography and that some are diametrically opposed. The Committee felt it was important to hear from differing perspectives to

3 Nicholas Kristof, “[The Children of Pornhub](#),” *The New York Times*, 4 December 2020. The article focused on Pornhub but it also denounced the presence of child abuse on mainstream sites like Twitter, Reddit, and Facebook.

4 “Models” are individuals (and if applicable, their co-performers) who upload and earn revenue from their own online content. ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 5 February 2021, 1300 (Feras Antoon, Chief Executive Officer, Entreprise MindGeek Canada [MindGeek]).

5 *Ibid.*, 1310.

better inform its recommendations to government concerning the protection of privacy and reputation of individuals on online content-hosting platforms.

Legal Context

It is legal in Canada to produce and distribute pornography. However, the *Criminal Code* prohibits the distribution of images or videos involving children or other non-consensual content.

For example, under the *Criminal Code*, it is an offence to record or distribute images or videos of a person who is nude, exposing their private parts or engaged in sexual activity, if that person had a reasonable expectation of privacy. It is also an offence to distribute an intimate image of a person where the distributor knows that the person did not consent to the distribution or is reckless as to whether consent was obtained.⁶ The *Criminal Code* specifically makes it an offence to make, distribute, possess or access child pornography.⁷ The definition of child pornography in the *Criminal Code* is among the world's broadest.⁸

In addition to the provisions of the *Criminal Code*, Parliament adopted in 2011 *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* (the Mandatory Reporting Act). Section 2 of that Act requires that Internet service providers (ISPs)—which includes access providers, content providers and Internet content hosting services—that become aware of an Internet Protocol address (IP address) or a Uniform Resource Locator (URL) where child pornography may be available to the public must report the IP address or URL to the Canadian Centre for Child Protection (C3P). The C3P is the designated organization under the *Internet Child Pornography Reporting Regulations*, but an ISP may also meet its reporting obligations under section 2 by complying with the child pornography reporting laws of another province or foreign jurisdiction.⁹

Further, section 3 of the Mandatory Reporting Act provides that if an ISP has reasonable grounds to believe that its service is being used to commit a child pornography offence,

6 *Criminal Code*, s. 162.

7 *Ibid.*, s. 163.

8 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 22 February 2021, 1325 (Normand Wong, Senior Counsel, Criminal Law Policy Section, Department of Justice).

9 *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* [Mandatory Reporting Act], S.C. 2011, c. 4, s. 2.; ETHI, *Evidence*, 43rd Parliament, 2nd Session, 12 April 2021, 1110, 1145 and 1150 (Hon. David Lametti, Minister of Justice).



it must “notify an officer, constable or other person employed for the preservation and maintenance of the public peace” as soon as possible.¹⁰

The *Personal Information and Electronic Documents Act* (PIPEDA) regulates the collection, use and disclosure of personal information by private-sector organizations in the course of a commercial activity. It applies in all provinces that have not adopted substantially similar legislation and to all businesses that fall under federal jurisdiction. Under PIPEDA, organizations can collect, use or disclose personal information “only for purposes that a reasonable person would consider are appropriate in the circumstances” (section 5(3)). Consent is only valid “if it is reasonable to expect that an individual to whom the organization’s activities are directed would understand the nature, purpose and consequences of the collection, use or disclosure of the personal information to which they are consenting” (section 6.1). The Privacy Commissioner of Canada has indicated that his office is investigating whether Pornhub and MindGeek have breached the privacy rights of Canadian citizens.¹¹

CHAPTER 2: PROTECTION OF PRIVACY AND REPUTATION ON ADULT CONTENT AND OTHER ONLINE PLATFORMS

Part I: Testimony Heard by the Committee

Survivors Depicted in Content Uploaded on Pornhub and other Online Platforms Without their Consent

The Committee heard evidence or received briefs from five survivors depicted in images or videos that were uploaded to adult sites, including Pornhub, without their consent. The survivors shared their experiences of trying to have that content removed. The Committee wishes to thank those who agreed to share their stories and applauds the courage and poise they demonstrated. In sharing their experiences, the Committee hopes their voices will encourage and inspire others to come forward.

Three witnesses told the Committee that their then-partners shared intimate pictures and/or videos of them on Pornhub without their knowledge or permission. At age 14, Serena Fleites’ then-boyfriend pressured her to send him an intimate video, which he

10 Mandatory Reporting Act, ss. 3 and 9; [Internet Child Pornography Reporting Regulations](#), ss. 10–12.

11 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 10 May 2021, 1130 (Daniel Therrien, Privacy Commissioner, Office of the Privacy Commissioner of Canada).

shared with peers and was uploaded to Pornhub.¹² Witness 1, who testified anonymously, discovered that her then-husband had uploaded photos he had taken of her to Pornhub and other pornography sites.¹³ She later learned that a video had been uploaded that depicted her asleep, possibly under the influence of sleeping pills.¹⁴ Another survivor, Victoria Galy, also discovered many non-consensual videos made by her then-boyfriend on Pornhub that showed her asleep, in an intoxicated state or filmed by a hidden camera.¹⁵

Witness 2, who testified anonymously, discovered that pictures and videos of her at age 15 were on Pornhub and other platforms, having been uploaded by an unknown man who extorted her and other girls.¹⁶ That content was also used to create online profiles using Witness 2's images to deceive people into thinking they were chatting with her.¹⁷ Rose Kalemba, a survivor who wrote to the Committee, explained that she was raped at age 14 and that her attackers posted the video of her rape on Pornhub.¹⁸

These survivors shared the trauma of having abusive images of them uploaded online without their knowledge or consent—many of which depicted activities undertaken or recorded without their consent, or both. Some explained how the upload of their images revictimized them; it allowed pornography sites to profit from their violation and allowed viewers to take pleasure in, comment on, download and re-upload that experience.¹⁹ In addition, most survivors spoke of having their identifying information posted online, being bullied, harassed, or followed in person by their abusers and other people who had seen them online.²⁰ Many explained that they had developed mental

12 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1230 (Serena Fleites, As an individual).

13 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1445 (Witness 1, As an individual).

14 Ibid.

15 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435 (Victoria Galy, As an individual).

16 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1450 (Witness 2, As an individual).

17 Ibid.

18 Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.

19 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435–1440 (Victoria Galy), 1445 (Witness 1) and 1445 (Witness 2); Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.

20 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1440 (Victoria Galy) and 1450 (Witness 2); Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.



and physical illnesses that prevented them from functioning in their daily lives, and most had considered or attempted suicide.²¹

MindGeek and Pornhub

Protective Measures

Feras Antoon, Chief Executive Officer of MindGeek and David Tassillo, Chief Operating Officer of MindGeek, told the Committee that MindGeek was committed to protecting users and the public from CSAM and non-consensual material. Mr. Antoon argued that MindGeek's measures were introduced earlier and are more extensive than other adult and non-adult websites.²² He added that when users are exposed to CSAM, they are likely to stop using the site—thus lowering advertising revenues, which represent about half of MindGeek's revenues.²³ Mr. Tassillo estimated that MindGeek spent roughly \$10 million on safety measures in 2020.²⁴

On 8 December 2020, Pornhub announced new measures to improve safety and eliminate illegal content and to continue to improve existing measures. The new measures included removing an estimated 9 to 10 million videos from Pornhub pending their verification, and removing the website's download button except for paid downloads of content from verified models.²⁵ MindGeek told the Committee about additional processes in place to moderate, track, prevent the upload of, and block searches for CSAM and non-consensual content on their websites. Pornhub's key processes (introduced both before and after 8 December 2020) include:

- requiring government-issued photo identification (ID) from users and studios uploading content, introducing a new ID verification process, and

21 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 1 February 2021 (Serena Fleites), 1305; ETHI, *Evidence*, 43rd Parliament, 2nd Session, 19 February 2021, 1435 (Victoria Galy) and 1450 (Witness 2); Rose Kalemba, *Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*, 9 March 2021.

22 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 5 February 2021, 1350 (Feras Antoon) and 1310–1315 (David Tassillo, Chief Operating Officer, MindGeek).

23 *Ibid.*, 1300 and 1305 (Feras Antoon).

24 *Ibid.*, 1410 (David Tassillo).

25 *Ibid.*, 1300 (Feras Antoon) and 1410, 1445 (David Tassillo); MindGeek, *Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Platforms such as Pornhub*, 2 February 2021.

requiring the primary performer of verified model content to attest that all persons depicted freely consented and are over 18;

- automatically preventing content from being uploaded or reuploaded if it fails CSAM hash, fingerprint and/or predictive artificial intelligence software checks;²⁶
- having human moderators view “every single piece of content” and providing them training to identify and remove CSAM and non-consensual material;
- maintaining a growing list of thousands of banned search terms violating the terms of service and showing error pages if users are directed to Pornhub from search engines using those terms; and
- allowing users to flag content for MindGeek’s review (with an estimated average removal time of under six hours), allowing users and non-registered visitors to fill out a take-down request form to immediately disable CSAM and non-consensual material, and allowing non-profit Trusted Flagger partners to identify content for immediate disabling by a moderator.²⁷

In addition, MindGeek retained an independent law firm to review and make recommendations on its moderation processes, and has begun acting on those recommendations.²⁸ MindGeek is also collaborating with the United Kingdom-based Lucy Faithfull Foundation to implement messages on its websites to deter searches for CSAM.²⁹

26 In a digital fingerprint context, hash functions can assign a unique identifier to a file (e.g., a video), which allows others to recognize that file without seeing private information associated with it.

27 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 5 February 2021, 1305, 1310, 1325, 1355, 1405 and 1450 (Feras Antoon) and 1315, 1325 (David Tassillo); MindGeek, *Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Platforms such as Pornhub*, 2 February 2021.

28 MindGeek, *Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Platforms such as Pornhub*, 2 February 2021.

29 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 5 February 2021, 1355 (David Tassillo); Lucy Faithfull Foundation, *Protecting children by deterring online sexual offending*, Brief Submitted to ETHI, 22 February 2021.



Criticism of MindGeek's Practices

Several witnesses told the Committee about failures in MindGeek's ability and willingness to identify, prevent the (re)upload of, or remove CSAM or non-consensual content. Some survivors asserted that MindGeek was aware the content was on its platforms and the company should have acted sooner to prevent and remove it, noting that MindGeek only took action when large companies stopped doing business with it in December 2020.³⁰ Mr. Tassillo disagreed, explaining that there had been a "constant evolution" of measures and that MindGeek had simply stepped up the promotion of its measures around that time.³¹

Every survivor who testified described the difficulty of having Pornhub remove content despite warnings that it was non-consensual. Some stated that Pornhub was slow to respond or never responded to removal requests, including through its flagging and reporting tools.³² In response to removal requests from Ms. Fleites, Pornhub repeatedly asked for photo ID to prove her identity and age.³³ For their part, MindGeek executives stated that asking for photo ID for removal was against its policies.³⁴

Pornhub told another survivor that it would only remove her content if she sent a copyright takedown notice since other models had submitted "clearly edited" photos to claim her videos as their own.³⁵ Pornhub told yet another survivor that she would need to provide a link to the video and upload it to a third-party site, despite it being illegal for her or Pornhub to possess the video since it constituted child pornography.³⁶

In many cases, the survivors told the Committee that Pornhub only removed their content in response to legal threats, police reports or indications that the victim was

30 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1310 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1445, 1520 (Witness 2).

31 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 5 February 2021, 1315 (David Tassillo).

32 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435–1440 (Victoria Galy) and 1520 (Witness 2); Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.

33 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305, 1315 and 1325 (Serena Fleites).

34 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 5 February 2021, 1315 (Feras Antoon) and 1320 (David Tassillo).

35 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435 and 1440 (Victoria Galy).

36 *Ibid.*, 1520 (Witness 2).

considering suicide.³⁷ Some videos garnered hundreds of thousands or millions of views before being removed.³⁸ Even after MindGeek disabled unverified content in December 2020, the survivors faced difficulties removing the same content—or traces of it—from the Internet, including from MindGeek’s sites. One witness explained that MindGeek shares links of Pornhub’s videos to its other websites “as a cheap way of adding content to those sites” and, as indicated above, until December 2020, Pornhub allowed users to download and re-upload content to other sites.³⁹ Some survivors stated that even if their content was removed from Pornhub, it was re-uploaded shortly afterward.⁴⁰

In the case of Witness 1, MindGeek sent a Google link and told her to remove her own content, but Google told her it would be unable to remove the content until the web host had removed it.⁴¹ Moreover, some witnesses explained that once MindGeek disables a video, other related information such as the thumbnail images, tags, title and username associated with the video remain online.⁴² Pornhub told Witness 1 it could not remove the content that was shared on other sites, despite advertising this service to its paid models.⁴³

In addition, Ms. Galy stated that Pornhub created obstacles to her taking legal action, including requiring her to serve the lawsuit in Cyprus.⁴⁴ However, Michael Bowe, a United States (U.S.) lawyer with Brown Rudnick LLP who represents some of the survivors, maintained that MindGeek is subject to legal claims in the U.S. and Canada.⁴⁵

37 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435–1440 (Victoria Galy) and 1455 (Witness 2); Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.

38 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1435–1440 (Victoria Galy) and 1450 (Witness 2); Rose Kalemba, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021.

39 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1445 (Witness 1).

40 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1305 (Serena Fleites); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1445 (Witness 1) and 1445 (Witness 2).

41 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1455 (Witness 1).

42 Ibid., 1450 (Witness 1); ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 1 February 2021, 1255 (Michael Bowe, Lawyer, Brown Rudnick LLP, As an individual).

43 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1450 (Witness 1).

44 Ibid., 1440 (Victoria Galy).

45 ETHI, [Evidence](#), 43rd Parliament, 2nd Session, 19 February 2021, 1530 (Michael Bowe).



He told the Committee that the corporate structure of MindGeek is the quintessential model for avoiding accountability, transparency and liability.⁴⁶

Ms. Galy argued that Pornhub’s training materials for models risk supporting potential perpetrators of sexual crimes since they encourage the use of virtual private networks and editing software. They also promote “toys” that can disguise a perpetrator’s identity; in Ms. Galy’s case, law enforcement officials did not believe her then-partner was in the videos because he used one such toy to mask the fact that he was circumcised.⁴⁷

Experts and support organizations also shared their criticisms of MindGeek’s practices. Megan Walker, the Executive Director of the London Abused Women’s Centre (LAWC), stated that Pornhub has facilitated the distribution and the uploading of videos of minors being sexually exploited and assaulted and that as a result, “non-consenting adults and trafficked women have been raped and tortured for the world to see.”⁴⁸ Thus, she asserted that Pornhub has caused lifelong trauma for millions of women.⁴⁹

In Ms. Walker’s view, Pornhub is likely aware of the link between the kinds of videos that are being uploaded to Pornhub and the ongoing abuse of women victims of male violence.⁵⁰ She indicated that titles of videos referring to torture and teenagers remain on the platform.⁵¹

Both Ms. Walker and Laila Mickelwait, a sex trafficking expert, questioned the statement by MindGeek that “every single piece of content is viewed by our human moderators.”⁵² Ms. Mickelwait told the Committee that according to her knowledge, Pornhub only has a few human moderators looking at content being uploaded on all of MindGeek’s tube sites each day.⁵³ She also told the Committee that whistle-blower moderators have told

46 Ibid., 1700.

47 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 19 February 2021, 1440 (Victoria Galy).

48 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 19 February 2020, 1600 (Megan Walker, Executive Director, London Abused Women Center).

49 Ibid.

50 Ibid., 1635 and 1640.

51 Ibid., 1600.

52 Ibid., 1600 (Megan Walker) and 1555 (Laila Mickelwait, Sex Trafficking Expert, Founder of Traffickinghub Movement, As an individual).

53 Ibid., 1555 and 1615 (Laila Mickelwait).

her they were unaware of the National Center for Missing and Exploited Children (NCMEC) prior to 2020.⁵⁴

Ms. Mickelwait highlighted a series of cases of survivors who, as underage individuals, had their images or videos uploaded to Pornhub without their consent and who had difficulty getting the platform to remove them.⁵⁵ She also provided the Committee with many examples of video titles containing terms associated with underaged persons, non-consensual sexual activity, voyeurism and extreme racism that were found on Pornhub prior to the disabling of millions of videos in December 2020.⁵⁶ She further provided examples of cases where videos that were clearly of underage individuals were not taken down by Pornhub despite, for example, reports to the platform and comments suggesting that the person depicted was underage.⁵⁷

Ms. Mickelwait noted that recent changes to Pornhub's terms and conditions are not satisfactory. She argued that it was insufficient to only verify the identity of the uploader while the identity and the consent of the people in the videos are unchecked. In her view, there should be measures in place requiring companies to verify identities and to confirm the consent of people depicted in content prior uploads, and harsh penalties for failing to do so.⁵⁸ She added that MindGeek's fingerprinting software for preventing the (re)upload of illegal content does not always work and can be circumvented by making small edits.⁵⁹

For her part, Ms. Walker recommended that Parliament end the self-regulation of the pornography industry (including MindGeek and its affiliated and subsidiary companies) through legislation. She suggested that a third party be retained to verify age and consent on MindGeek's platforms. She also recommended legislation prohibiting credit card companies servicing MindGeek companies and the pornography industry until age and consent is verified by a third party. Finally, she recommended a forensic audit and

54 Ibid., 1700 and 1705.

55 Ibid., 1545, 1550 and 1555.

56 Ibid., 1550.

57 Ibid., 1640.

58 Pornhub's Terms of Service provide that by uploading content, the uploader must affirm that "You... own the rights to use the Content on the Website and that the Content does not infringe on the rights (including intellectual property rights) of a third party and, that you [the uploader] have obtained the consent and release for every individual appearing in your Content, including the right for you to use and upload the Content on the Website". MindGeek, *Written Submission to ETHI: Study of Protection of Privacy and Reputation on Platforms such as Pornhub* [NO HYPERLINK AVAILABLE]; ETHI, *Evidence*, 2nd Session, 43rd Parliament, 19 February 2021, 1625 and 1650 (Laila Mickelwait).

59 Ibid., 1655.



criminal investigation into the finances and ownership of MindGeek’s companies by the Canada Revenue Agency to determine whether they are compliant with relevant Canadian and international tax and disclosure laws, and other laws and regulations.⁶⁰

MindGeek’s Response to Criticism

MindGeek responded to several criticisms of its safety measures. Mr. Tassillo explained that MindGeek had fixed technical issues that allowed non-consensual content to bypass various MindGeek software.⁶¹ Recognizing that its existing fingerprinting software did not always prevent (re)uploads of problematic material, MindGeek created its own fingerprinting software, SafeGuard. It planned to implement SafeGuard for all videos uploaded to Pornhub in February 2021 and to offer it for free to other non-adult content platforms such as Facebook, YouTube and Reddit.⁶² In addition, Mr. Tassillo explained that MindGeek was working with a new provider to leverage user comments that raise concerns.⁶³

When asked how moderators could review the equivalent of 160 hours of content uploaded to Pornhub each hour, Mr. Tassillo suggested that U.S. requirements for studios to make release forms and identification available allow for faster verification of the content, and that solo content from verified models can be “flipped through” more quickly.⁶⁴ In response to a news article concerning two content formatters who were advised not to report problematic content to law authorities, Mr. Antoon called the article “non-factual” and reiterated that it is not formatters’ role to report content to the police.⁶⁵

When asked why some content posted through the Modelhub program depicted underage individuals, Mr. Tassillo explained that those models had provided identification confirming their age was over 18, which MindGeek believed was legally issued.⁶⁶ In addition, Mr. Antoon explained that Google searches for illegal content could bring up Pornhub in its results because user searches are indexed to Pornhub by Google,

60 Ibid., 1605 (Megan Walker).

61 ETHI, *Evidence*, 43rd Parliament, 2nd Session, 5 February 2021, 1440 (David Tassillo).

62 Ibid., 1305 (Feras Antoon) and 1325 (David Tassillo).

63 Ibid., 1410 (David Tassillo).

64 Ibid., 1400 (Feras Antoon).

65 Ibid., 1440.

66 Ibid., 1430 (David Tassillo).

regardless of whether that content is on the site.⁶⁷ MindGeek reiterated its commitment to combat CSAM and non-consensual material in subsequent correspondence to the Committee.

Child Protection Organizations

The Canadian Centre for Child Protection and its United States Counterpart's Role in Combatting Online Sexual Exploitation of Children

The C3P is a charity dedicated to the personal safety of children. It operates Cybertip.ca, the tip line for reporting the online sexual exploitation of children. The tip line receives on average, over 3,000 public reports of potential CSAM per month.⁶⁸ To help combat the proliferation of such material, the C3P created Project Arachnid (PA), a tool that detects known CSAM to quickly identify and trigger its removal. As of 1 June 2021, PA had processed more than 127 billion images, which have led to 7.5 million takedown notices to providers around the globe.⁶⁹

Recently, the C3P published a report assessing the ability of users to report CSAM on well-known platforms, including MindGeek. It noted the difficulty in finding the term “CSAM” or its long form “child sexual abuse material” on these platforms. In fact, C3P noticed tactics to discourage CSAM reporting on some platforms. The C3P indicated that it is likely that companies use these tactics to keep the reporting numbers low so it does not reflect poorly on the company.⁷⁰ In a brief submitted to the Committee, C3P highlighted the following:

C3P is aware of a significant volume of CSAM that includes pubescent/post-pubescent victims that is available on adult sites... Project Arachnid regularly detects child sexual abuse material involving identified pubescent and post-

67 Ibid., 1405 (Feras Antoon).

68 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2021, 1110 (Lianna McDonald, Executive Director, Canadian Centre for Child Protection).

69 Ibid., 1110 (Lianna McDonald) and 1140 (Lloyd Richardson, Director, Information Technology, Canadian Centre for Child Protection); Canadian Centre for Child Protection, *Project Arachnid*.

70 Ibid., 1135 (Lianna McDonald); Canadian Centre for Child Protection, *Reviewing Child Sexual Abuse Material Reporting Functions on Popular Platforms*.



pubescent children on adult pornography sites, which is unlawful and must be removed.⁷¹

The C3P explained that when companies use a “trusted flaggers” program, it means that they will pay more attention to notices sent by child protection charities than by members of the public. According to the C3P, this is typical across most tech companies, including MindGeek. The C3P noted that it is often easier to upload content on these platforms than to have it removed. It did note, however, in its report, that MindGeek fared well compared to some other big technology companies.⁷²

NCMEC operates the CyberTipline in the U.S., which is a tool for both members of the public and Electronic Service Providers (ESPs) to report CSAM. In recent years, the number of reports received annually has increased significantly. In 2019, NCMEC received 16.9 million reports to the CyberTipline. In 2020, it received 21 million reports of international and domestic online child sexual abuse.⁷³ According to NCMEC, trends in recent years include: “a tremendous increase in sexual abuse videos reported to NCMEC, reports of increasingly graphic and violent sexual abuse images, and videos of infants and young children.”⁷⁴

Like the C3P, NCMEC is a non-investigatory agency. NCMEC provides reports of apparent CSAM material directly to U.S. law enforcement on a regular basis.⁷⁵ U.S. law requires ESPs based in that country to report apparent CSAM to NCMEC’s CyberTipline. However, some non-U.S. ESPs have chosen to voluntarily register with NCMEC.⁷⁶

The C3P stated that there is a complete absence of meaningful regulation to stop the proliferation of CSAM and non-consensual material online.⁷⁷ It is of the view that the lack of Internet regulation, and the reliance on tech companies—who may value profit over the welfare of children—to moderate content “has allowed CSAM to fester in the

71 Canadian Centre for Child Protection, *Brief Submitted to the House of Commons Standing Committee on Access to Information, Privacy and Ethics: Study on the Protection of Privacy and Reputation on Platforms Such as Pornhub*, 22 February 2021.

72 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2021, 1135 (Lloyd Richardson).

73 *Ibid.*, 1125 (John F. Clark, President and Chief Executive Officer, National Center for Missing & Exploited Children).

74 *Ibid.*

75 *Ibid.*, 1200.

76 *Ibid.*, 1125.

77 *Ibid.*, 1110, 1115 (Lianna McDonald).

digital space.”⁷⁸ The C3P further noted that a “tsunami of these victims who either want to get their illegal material down or are having a difficult time reporting” are coming to them for help.⁷⁹ The C3P recommended a global coordinated response and clear laws that would require tech companies to:

- implement tools to combat the re-uploading of illegal content;
- hire trained and effectively supervised staff to carry out moderation and content removal tasks at scale;
- keep detailed records of user reports and responses that can be audited;
- be accountable for moderation and removal decisions and the harm that flows to individuals when companies fail in this capacity; and
- build in, by design, features that prioritize the best interests and rights of children.⁸⁰

The C3P also noted a lack of oversight of whether companies are appropriately reporting illegal content.⁸¹

Both the C3P and NCMEC agreed that many mainstream and less popular websites are also used to host, access, store, trade and download CSAM. These include social media, messaging services, video and photo sharing platforms, dating sites, gaming platforms and email systems.⁸² NCMEC noted that it is working with technology companies who are devoting significant time and money on measures to combat CSAM. These measures include well-trained human moderators; sophisticated technology to detect, report and prevent content from being posted; easily accessible ways for users to report content; and immediate removal of content reported as CSAM. Other companies, however, fail to adopt basic safeguards.⁸³

78 Ibid., 1115.

79 Ibid., 1135.

80 Ibid., 1115.

81 Ibid., 1220.

82 Ibid., 1115 (Lianna McDonald) and 1125 (John F. Clark).

83 Ibid., 1125, 1145 (John F. Clark).



NCMEC emphasized the need to give the benefit of the doubt to the child, parent or lawyer asking for the removal of an image or video and to block the recirculation of CSAM once it has been removed.⁸⁴

Both the C3P and NCMEC recognized the global nature of the issue and the need for international cooperation.⁸⁵ The C3P mentioned the *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse* (Voluntary Principles) adopted by the Five Eyes (Australia, Canada, New Zealand, the U.K. and the U.S.).⁸⁶ It also indicated that Australia has done impressive work in this space.⁸⁷ NCMEC stated that the Five Eyes countries generally have good laws and strong enforcement.⁸⁸

Interaction Between Child Protection Organizations and MindGeek or Pornhub

The C3P told the Committee that MindGeek had recently reached out to see how they could report to them but confirmed that the company had never submitted reports to the C3P.⁸⁹ In the last three years, PA has detected and confirmed instances of what was believed to be CSAM on MindGeek's platforms at least 193 times. According to the C3P, this likely does not represent the full scope and scale of the problem, considering that PA only detects obvious CSAM of very young children or identified teenagers. It questioned MindGeek's testimony that moderators manually review all content that is uploaded to their services.⁹⁰

NCMEC told the Committee that MindGeek voluntarily registered in March 2020 to report CSAM found on several of its websites, including Pornhub, to the CyberTipline. However, NCMEC clarified that contrary to what Pornhub had claimed in its testimony before the Committee, "Pornhub has registered to voluntarily report instances of child

84 Ibid., 1125.

85 Ibid., 1150 (Lianna McDonald and John F. Clarke).

86 The Five Eyes is an intelligence alliance composed of Australia, Canada, New Zealand, the United Kingdom, and the United States. ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2021, 1150 (Lianna McDonald); Public Safety Canada, *Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse*.

87 Australia has adopted the *Enhancing Safety Online Act* in 2015 and created a new e-safety Commissioner to oversee the administration of this Act; ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2021, 1220 (Liana McDonald).

88 Ibid., 1210 (John F. Clarke).

89 Ibid., 1155 and 1215 (Lloyd Richardson).

90 Ibid., 1110 (Lianna McDonald).

sexual abuse material on its website to NCMEC. This does not create a partnership between NCMEC and Pornhub”.⁹¹

NCMEC indicated that between April and December 2020, it received over 13,000 reports related to CSAM submitted by Pornhub. MindGeek later informed NCMEC that 9,000 of those reports were duplicates, although NCMEC was not able to verify that claim. The Royal Canadian Mounted Police (RCMP)’s National Child Exploitation Crime Centre (NCECC) now receives monthly summaries from NCMEC regarding MindGeek.⁹² After the appearance of MindGeek’s CEO at Committee on 5 February 2021, MindGeek signed an agreement with NCMEC to gain access to NCMEC’s hash-sharing databases. The databases contain CSAM and sexually exploitive content that has been tagged and shared by NCMEC with other non-profits and ESPs to detect and remove content.⁹³

In addition, NCMEC told the Committee that in the past year, several survivors had reached out for help with removing sexual abusive content of themselves as children on Pornhub. Many indicated they had contacted Pornhub asking for the removal of the content, without success. In some instances, survivors faced strong reluctance on the part of Pornhub to take down material. However, when NCMEC contacts Pornhub, the content is removed.⁹⁴

Law Enforcement and Federal Government

Federal Funding and the National Strategy for the Protection of Children from Sexual Exploitation

The RCMP participates in the National Strategy for the Protection of Children from Sexual Exploitation (national strategy) with Public Safety Canada, the C3P, and the Department of Justice. Efforts under the national strategy are categorized under four broad pillars: prevention and awareness; pursuit, disruption, and prosecution; protection; and partnerships, research and strategic support.⁹⁵

91 Ibid., 1125 (John F. Clarke).

92 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 12 April 2021, 1240 (André Boileau, Officer in Charge, National Child Exploitation Coordination Centre, Royal Canadian Mounted Police).

93 Ibid., 1130.

94 Ibid., 1130 and 1155.

95 The Government of Canada announced the national strategy in 2004. Public Safety Canada, *Child Sexual Exploitation on the Internet*, [A Strategy to Combat Online Sexual Exploitation \(CSE\)](#).



The Hon. Bill Blair, Minister of Public Safety and Emergency Preparedness, noted that the national strategy is backed by ongoing annual funding of \$18 million, some of which supports Cybertip.ca and the investigative capacity of the NCECC. In addition, in Budget 2019, \$22.2 million was invested over three years of which \$15 million aims to enhance the capacity of ICE units in municipal and provincial police services across Canada. Investments will also help the government work with the digital industry to find new ways to combat the sexual exploitation of children online.⁹⁶ Minister Blair also indicated that additional funding for the RCMP to respond appropriately to child exploitation and human trafficking concerns was recently approved by Parliament.⁹⁷

The RCMP acknowledged that it received new funding from the government adding new resources for the NCECC and the Internet Child Exploitation units (ICE unit) across the country. ICE units are integrated units made up of the RCMP and other local police services.⁹⁸

Investigations by Law Enforcement and the National Child Exploitation Crime Centre

The NCECC is the “national law enforcement arm of the national strategy.”⁹⁹ It functions as the central point for investigations related to online sexual exploitation of children in Canada and international investigations involving Canadian victims, Canadian offenders or Canadian companies hosting child sexual exploitation material.¹⁰⁰ It provides a number of critical services to law enforcement, including

immediately responding to a child at risk; coordinating investigative files with police of jurisdiction across Canada and internationally; identifying and rescuing victims; conducting specialized investigations; gathering, analyzing and generating intelligence in support of operations; engaging in operational research; and developing and implementing technical solutions.¹⁰¹

96 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 12 April 2021, 1105 and 1120 (Bill Blair, Minister of Public Safety and Emergency Preparedness).

97 Ibid., 1115.

98 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2020, 1255 (Stephen White, Deputy Commissioner, Royal Canadian Mounted Police).

99 Ibid., 1240.

100 Ibid.

101 Ibid.

In recent years, the RCMP observed a surge in online child sexual exploitation reports. In 2019, the number of requests for assistance grew by 1,106% since 2014.¹⁰² The RCMP explained that most reports of online child sexual exploitation that the NCECC receives come from NCMEC in the U.S. It explained that if ISPs and hosting platforms have a presence in the U.S., they can disclose to the American entity as well.¹⁰³

Brenda Lucki, Commissioner of the RCMP, confirmed that COVID-19 has heightened the risk to children online.¹⁰⁴ She indicated that in 2019, 11,376 investigational packages relating to online child sexual exploitation were sent to law enforcement agencies and jurisdictions within Canada and abroad and 63,000 reports were forwarded to law enforcement, primarily internationally, as investigative leads. In addition, 362 Canadian victims were identified and uploaded to the International Criminal Police Organization (INTERPOL) sexual exploitation database in 2019.¹⁰⁵

Commissioner Lucki confirmed that the RCMP had a discussion with MindGeek in 2018 during which the company asked for support regarding automated software to assist in the detection of online sexual exploitation. The RCMP directed the company to the NCECC, which was able to direct them to a third party for software.¹⁰⁶

Commissioner Lucki confirmed that NCMEC provides monthly reports to the RCMP relating to MindGeek, acknowledging that “it’s kind of a non-traditional way that it is being done, but the bottom line is that we are getting the reports.”¹⁰⁷ The officer in charge of NCECC explained that the NCECC had communications with both NCMEC and MindGeek and that in order to prevent duplication of reporting, the NCECC was able to get monthly summaries.¹⁰⁸

102 Ibid.

103 Section 9 of the Mandatory Reporting Act provides that a person who has “reported information in compliance with an obligation to report child pornography under the laws of a province or a foreign jurisdiction is deemed to have complied with” their duty to report an Internet address to the C3P where child pornography may be available in section 2 of the Act. There is no deemed compliance provision for section 3 of the Mandatory Reporting Act: the duty to notify law enforcement if there are reasonable grounds to believe that an Internet service has been used to commit a child pornography offence. Ibid., 1300.

104 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 12 April 2021, 1215 (Brenda Lucki, Commissioner of the Royal Canadian Mounted Police).

105 Ibid., 1225 and 1245.

106 Ibid., 1235.

107 Ibid.

108 Ibid., 1240 (André Boileau).



The RCMP told the Committee it had received referrals of 120 reports from NCMEC concerning MindGeek since June 2020. Of the 120 reports, 25 involved child sexual exploitation and were forwarded to other police agencies across Canada; 93 were determined to fall outside of the *Criminal Code* definition of the alleged offence; and the remaining reports were still being evaluated as of 22 February 2021. Each situation is assessed to determine if there is enough evidence to proceed with charges.¹⁰⁹ For the videos that did not meet the definition of child pornography, the vast majority were cases considered to be “age-difficult media,” meaning the RCMP could not definitely ascertain whether the individual was under the age of 18.¹¹⁰ The RCMP confirmed that it had not received CSAM reports from MindGeek until they arrived through NCMEC in 2020.¹¹¹

Commissioner Lucki told the Committee that with respect to Pornhub and MindGeek, “the call for a criminal investigation is under review.”¹¹² She added that if the information leads the RCMP to launch an investigation, it will be launched, and if the investigation gives the RCMP evidence to lay charges, they will be laid and made public.¹¹³

Commissioner Lucki encouraged any person whose image has been uploaded to a platform without their consent to reach out to law enforcement. A Committee member raised the account of a survivor who approached the RCMP regarding a video on Pornhub but faced multiple questions regarding whether or not the video was really non-consensual. She was told by the RCMP to contact the police where Pornhub is located. In response, Commissioner Lucki responded that she would “never suggest to any law enforcement that a survivor should not be bringing their case forward” and that “the revictimization of survivors is totally unacceptable. It is not acceptable by any means. Victims of online child exploitation should really reach out to their local law enforcement agency to file the complaint.”¹¹⁴

109 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 22 February 2021, 1250, 1305 and 1315 (Marie-Claude Arseneault, Chief Superintendent, Royal Canadian Mounted Police).

110 Ibid., 1315 (Marie-Claude Arseneault and Normand Wong).

111 Ibid., 1310 (Stephen White and Marie-Claude Arseneault).

112 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 12 April 2021, 1215 (Commissioner Lucki).

113 Ibid., 1220.

114 Ibid., 1235 and 1305.

Challenges Relating to Online Sexual Exploitation Investigations

The RCMP highlighted the complexity of cases of online child sexual exploitation due to advances in technology that allows offenders to conduct their criminal activities away from law enforcement agencies, such as encryption or the Dark Web. Other issues render these cases complex, such as the failure by platforms to retain data; the amount and speed at which content can be posted and distributed; and the ability for users to download online content, which can lead to the proliferation of that content on multiple platforms.¹¹⁵ The RCMP also indicated that law enforcement should get access to data up front and more urgently including basic subscriber information.¹¹⁶ Commissioner Lucki stated that having subscriber information would be helpful in assessing compliance with the Mandatory Reporting Act.¹¹⁷

The RCMP noted that the multi-jurisdictional nature of online child sexual exploitation create additional complexities for law enforcement. For example, an online platform registered in Canada may maintain its servers abroad, limiting the effect of a Canadian warrant. A global company with presence in Canada is likely to host content abroad, making jurisdiction difficult to determine.¹¹⁸ Commissioner Lucki added:

It's very difficult for the RCMP to monitor and ascertain compliance with the Mandatory Reporting Act, particularly in the cases where the companies have a complex international structure and the data is stored in multiple jurisdictions. Those services flow through the Internet and transcend international borders.¹¹⁹

Minister Blair also raised the jurisdictional challenges.¹²⁰ The Honourable David Lametti, Minister of Justice, noted that telecommunications networks and services transcend international borders, while the police enforcement authority is generally limited to their domestic jurisdiction. He reminded the Committee that both the Canadian *Criminal Code* and the Mandatory Reporting Act only cover domestic situations and that the investigation and prosecution of criminal offences largely fall to provinces and territories.¹²¹

115 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2020, 1240 and 1255 (Stephen White)

116 Ibid., 1305.

117 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1230 (Commissioner Lucki).

118 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2020, 1245 (Stephen White).

119 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1225 (Commissioner Lucki).

120 Ibid., 1105 (Minister Blair).

121 Ibid., 1110, 1140, 1145 and 1200 (Minister Lametti).



For example, the RCMP noted that while part of MindGeek is based in Montreal, it may be incorporated elsewhere and its servers could be located elsewhere as well.¹²² The CEO of MindGeek explained that the company is headquartered in Luxembourg and that MindGeek Europe owns the intellectual property of all products and platforms, including Pornhub. MindGeek’s Canadian subsidiary, based in Montreal, supplies services to the European entities.¹²³ Minister Lametti did not take position as to whether MindGeek qualifies as a Canadian company, noting that there are different opinions and that he was not in a position to comment on the details of any potential case.¹²⁴

To mitigate some of the jurisdictional challenges, the RCMP works with partners at the municipal, provincial, and international levels, as well as with non-governmental organizations (NGOs). The RCMP is currently the Chair of the Virtual Global Taskforce, an international alliance of law enforcement, NGOs and industry partners dedicated to the protection of children from online sexual exploitation and other transnational child sex offences. The taskforce is engaged in global intelligence and data sharing.¹²⁵

Canada is also involved in the negotiation of a second protocol to the Budapest Convention, the only international convention covering cybercrime relating to transborder access to data.¹²⁶ According to Minister Lametti, mutual legal assistance treaties in criminal matters between Canada and other countries are helpful to request and obtain international assistance in criminal matters but they were not designed for the Internet age. Canada is actively working with its international partners to address these issues.¹²⁷

Minister Blair told the Committee that Fives Eyes ministerial meetings in recent years have focused on online child sexual exploitation and the implementation of principles to guide industry efforts to combat online crimes.¹²⁸ Commissioner Lucki explained that the Voluntary Principles adopted by the Five Eyes are “intended to provide a consistent and

122 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2020, 1310 (Stephen White).

123 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 5 February 2021, 1310 and 1350 (Feras Antoon).

124 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, *Ibid.*, 1135, 1145, 1205 (Minister Lametti).

125 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2021, 1245 (Stephen White) and 1320 (Marie-Claude Arseneault); ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1210 (Minister Blair) and 1245 (Commissioner Lucki).

126 Council of Europe, [Convention on Cybercrime](#) (Budapest Convention); ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2021, 1325 (Normand Wong); ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1115 (Minister Lametti).

127 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1115 (Minister Lametti).

128 *Ibid.*, 1210 (Minister Blair).

high-level framework for industry actors to review safety processes and respond to risks facing users.”¹²⁹ Minister Blair also pointed out that Canada is part of the WeProtect Global Alliance, a movement dedicated to national and global action to end online sexual exploitation of children.¹³⁰

The RCMP also engages with private sector partners to discuss existing legislation, including the Mandatory Reporting Act.¹³¹ However, it was not aware of any RCMP engagement with MindGeek for that purpose.¹³² Commissioner Lucki mentioned that the NCECC works to achieve voluntary compliance from the industry.¹³³ The RCMP also noted that services providers operating in Canada deal with content that goes beyond online child sexual exploitation and include other illegal content such as non-consensual content.¹³⁴

Finally, the RCMP acknowledged that due to the high volume of complaints it receives, it often reacts to matters relating to CSAM rather than acting proactively to prevent them. However, it does have a proactive model in place that allows the identification of victims and the conduct of certain specialized investigations.¹³⁵ Minister Blair indicated that government is taking steps to increase awareness of online sexual exploitation and how to report it, and to reduce the stigma associated with reporting such exploitation.¹³⁶

Relevant Legislation and Regulations

Minister Lametti told the Committee that Canada’s criminal legislation prohibits child pornography, but also other behaviours aimed at facilitating the commission of a sexual offence against a minor. It prohibits voyeurism and the non-consensual distribution of intimate images. Other offences of general application such as criminal harassment and human trafficking may also apply depending on the circumstances. Where CSAM or

129 Ibid., 1300 (Commissioner Lucki).

130 Ibid., 1210 (Minister Blair).

131 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2021, 1305 and 1310 (Stephen White).

132 Ibid.

133 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1220 and 1230 (Commissioner Lucki).

134 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2021, 1305 and 1310 (Stephen White).

135 Ibid., 1300 (Marie-Claude Arseneault).

136 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 12 April 2021, 1105 and 1150 (Minister Blair).



other criminal content is available from a server located in Canada, Courts are authorized to order its removal.¹³⁷

The RCMP recommended making the NCECC the designated law enforcement agency for the purpose of reporting under section 3 of the Mandatory Reporting Act. Currently the provision allows reporting to any law enforcement across the country. Naming the NCECC in section 3 would concentrate reports to one organization and assist in addressing duplication or conflict. The NCECC would then be able to disseminate the information more quickly to the police of jurisdiction.¹³⁸

Minister Blair also noted that the government of Canada intends to introduce legislation that would create, among other things, a new regulator to ensure online platforms remove harmful content, including depictions of child sexual exploitation and non-consensual images.¹³⁹ With respect to the upcoming legislation, Minister Lametti said that the government is exploring ways of making ISPs more responsible in terms of mandatory reporting; making mandatory reporting more robust; and protecting information “in a more robust manner, for example, to help law enforcement agencies and prosecutors build and maintain evidentiary cases.”¹⁴⁰

Steven Guilbeault, Minister of Heritage, confirmed that along with the Minister of Public Safety and Emergency Preparedness and the Minister of Justice, he is working on a bill that will address online harms, namely by creating a new regulator to ensure the takedown of illegal content within 24 hours.¹⁴¹ According to Minister Guilbeault, the goal is to create an entire new ecosystem to help Canada deal with online harms, in which the new regulator is but one component.¹⁴² Addressing online harms was one of the priorities outlined by the Prime Minister of Canada in Minister Guilbeault’s December 2019 mandate letter.¹⁴³

137 Ibid., 1110 (Minister Lametti).

138 Ibid., 1255 (André Boileau).

139 Ibid., 1105 (Minister Blair).

140 Ibid., 1125 (Minister Lametti).

141 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 7 June 2021, 1105, 1110, 1115 and 1140 (Hon. Steven Guilbeault, minister of Canadian Heritage).

142 Ibid., 1150.

143 Mr. Guilbeault identified five categories of online harms that the new legislation would address: sexual exploitation of children, incitement to violence, incitement to terrorism, non-consensual sharing of intimate images and hate speech. Ibid., 1105.

Mr. Guilbeault told the Committee he could not discuss details of the upcoming bill, considering it has not been tabled. However, he said that in recent months, he and his office have engaged with 140 stakeholders, had 7 roundtable discussions, and discussed with indigenous groups, provincial and municipal elected officials and international partners to begin to develop an approach relating to online harms.¹⁴⁴

Minister Guilbeault mentioned cooperation between Canada, Australia, Finland, France and Germany as part of the Working Group on Diversity of Content Online, a multi-stakeholder working group with like-minded countries, civil society, and the private sector.¹⁴⁵ In addition, Mr. Guilbeault emphasized the need for increased digital literacy and mentioned the Digital Citizen Initiative, a federal initiative which aims to “support democracy and social cohesion in Canada by building citizen resilience against online disinformation and building partnerships to support a healthy information ecosystem.”¹⁴⁶

Academics, Experts, Support Organizations and Other Interested Parties

Liability of Platforms such as Pornhub for Hosted Content

The Friends of Canadian Broadcasting argued that under longstanding common law, platforms like Pornhub and Facebook are already liable for the user-generated content they promote if they know about it in advance and publish it, or if they are made aware of it after it is published and fail to remove it.¹⁴⁷ Mr. Daniel Bernhard, the Executive Director of the organization, noted that contrary to the U.S., where section 230 of the *Communications Decency Act* (CDA) explicitly provides that platforms are not liable for user-generated content they distribute, such a provision does not exist in Canadian legislation.¹⁴⁸ Further, he noted that section 230 of the CDA contains an exception for CSAM.¹⁴⁹

144 Ibid., 1105; Office of the Prime Minister, [Minister of Canadian Heritage Mandate Letter](#).

145 Ibid.; Government of Canada, [Diversity of Content Online](#).

146 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 7 June 2021, 1120 (Minister Guilbeault); Government of Canada, [Online disinformation](#).

147 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 22 February 2020, 1120 (Daniel Bernhard, Executive Director, Friends of Canadian Broadcasting).

148 Ibid., 1140.

149 Ibid., 1200.



Mr. Bernhard argued that there is a difference between hosting content and actively recommending it through algorithms.¹⁵⁰ In his view, the problem is that Canadian law is not being applied.¹⁵¹ He noted that Canadian Broadcasting Corporation (CBC), CTV Television Network (CTV) and other similar Canadian media organizations have to make sure that their content, advertising, and third-party contributed content are lawful. Otherwise they are jointly liable. He sees no reason “why [Canadian law] shouldn't apply in the case of Pornhub, Facebook, Amazon or any other provider that is recommending and facilitating illegal behaviour through its service.”¹⁵² He indicated that cases before courts are needed to create jurisprudence on this topic. He suggested that the government empower an organization like the C3P to use government resources to escalate cases before the courts, giving them the weight of a case brought by a government-backed entity.¹⁵³

Asked about other countries taking the issue of online harms seriously, Mr. Bernhard mentioned the illegal hate speech legislation in Germany, with potential fines of up to \$50 million euros for failure to remove obviously illegal content. He added that the United Kingdom is considering imposing personal liability not just for companies, but also their executives.¹⁵⁴

Corporate Compliance

Francis Fortin, an assistant professor at the School of Criminology of the Université de Montréal and a researcher at the International Centre for Comparative Criminology, argued that content providers must be held accountable. He noted that some platforms already deploy initiatives for the identification of illegal images, such as digital signatures or electronic fingerprinting. In his view, platforms should be required to block content that has previously been deemed illegal by, amongst other things, looking at the existing illegal content database.¹⁵⁵

150 Ibid., 1145.

151 Ibid., 1155.

152 Ibid., 1205.

153 Ibid., 1225.

154 The German law Mr. Bernhard is referring to is the Network Enforcement Act, also known as the NetzDG law. The United Kingdom has published a [white paper](#) on online harms. In May 2021, the U.K. [published](#) its draft Online Safety Bill. Ibid., 1210.

155 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 19 February 2021, 1535 and 1655 (Francis Fortin, Associate Professor, School of Criminology, Université de Montréal, As an individual).

Mr. Fortin noted that reporting requirements are a means to ensure corporate compliance, but efforts are required to educate web giants on the importance of such reporting. He suggested that ensuring knowledge and validation of the identities of individuals who spread content online would decrease the risks associated with illegal content.¹⁵⁶ He also raised the idea of issuing an operating licence to companies that wish to operate a content-hosting platform in Canada.¹⁵⁷

Removal of Material and Onus

Mr. Fortin argued that the swift removal of content would prevent re-victimization but that Canada should not open “Pandora's box by allowing people to remove [other] unfavourable information.”¹⁵⁸ He indicated that “it may be appropriate for companies to immediately suspend access to the content once it has been confirmed that there are reasonable grounds for doing so,” before guilt is established.¹⁵⁹

Mr. Fortin noted that while Canada has a series of legal measures to facilitate the removal of child pornography online, the law is more vague with respect to adults, who can sometimes be directed by the RCMP to file a civil rather than criminal complaint, putting the burden on those individuals to bring the case forward.¹⁶⁰

With respect to criminal complaints, Ms. Walker noted that the reliance on victim testimony in the criminal justice system for a conviction to occur is problematic, considering the hesitancy with which victims come forward. She also argued that delays in the court system should be resolved.¹⁶¹

Victim Support

Mr. Fortin suggested the creation of a victim liaison, who could help and guide victims of online exploitation. This liaison would deal with the different platforms such as Pornhub on behalf of the victim.¹⁶² The liaison could work in parallel with the police. The liaison would manage the incident while the police would conduct the criminal investigation.

156 *Ibid.*, 1535.

157 *Ibid.*, 1540.

158 *Ibid.*, 1630 and 1645.

159 *Ibid.*, 1540.

160 *Ibid.*, 1535.

161 *Ibid.*, 1650 (Megan Walker)

162 *Ibid.*, 1540 (Francis Fortin).



Mr. Fortin also suggested the creation of a special victims' task force composed of police and liaison workers.¹⁶³

Mr. Fortin further noted that sexual exploitation of children online is difficult to measure, and that researchers should have easier access to data so that a body of evidence can be built to effectively inform public policy.¹⁶⁴

For her part, Ms. Walker recommended making robust funding to support all victims available.¹⁶⁵ For example, she explained that funding for the LAWC is often temporary and from various levels of government. The LAWC needs core funding because it cannot appropriately manage and plan its programming for trafficked women and girls without a commitment from all levels of government that the funding will continue.¹⁶⁶

In terms of the people the LAWC helps, Ms. Walker told the Committee that in 2020, 143 women reported to the LAWC that technology was used in their assault and 64 reported that pornography was prevalent in their relationship. One of the women served by the LAWC described her experience with Pornhub as “soul destroying.”¹⁶⁷ Ms. Walker indicated that victims of pornography who are not able to have their pictures or images removed commonly tell the LAWC of their shame and oftentimes have suicidal thoughts.¹⁶⁸

Impact on Sex Workers and the Sex Industry

All witnesses defending the rights of sex workers highlighted the need to decriminalize sex work and argued that more repressive regulations, legislation, or policies would be harmful to sex workers and their ability to work safely.¹⁶⁹

The Canadian Alliance for Sex Work Law Reform (the CASWLF) told the Committee that sex workers, especially marginalized sex workers, should always be meaningfully consulted about legislation or government policies that may have an impact on them

163 Ibid.

164 Ibid., 1545.

165 Ibid., 1605 (Megan Walker).

166 Ibid., 1620.

167 Ibid., 1600.

168 Ibid.

169 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 19 April 2021, 1100 (Melissa Lukings, J.D. candidate, University of New Brunswick, As an individual), 1115, 1145 (Jennifer Clamen, National Coordinator, Canadian Alliance for Sex Work Law Reform) and 1130 (Sandra Wesley, Executive Director, Stella, l'amie de Mamie).

such as those that may regulate online sex work or online pornography. In their view, sex workers must be treated like experts on the impacts of laws related to sex work.¹⁷⁰ Jennifer Clamen, the Executive Director of the CASWLF, emphasized that: sex work is not inherently immoral, harmful or a public nuisance; sex work does not inherently damage the physical or mental health of those who do it; sex workers are perfectly fit members of society who are able to testify at committees; and stigma towards sex work exists and leads to bad policy.¹⁷¹

Stella, l'amie de Maimie (Stella), an organization by and for sex workers, emphasized that more repressive measures would harm or even kill sex workers and warned against efforts to eradicate the sex industry. Sandra Wesley, the Executive Director of Stella, explained major needs that sex workers have. They need income; policy that takes away sex workers' source of income is not helpful. They need security and privacy; policy that involves disclosure of legal names exposes sex workers to violence. They need dignity; government should recognize their work and its value.¹⁷²

Non-Consensual Content on the Surface Web, Deep Web and Dark Web

Some witnesses explained how features of the different levels of the Internet affected the upload, removal and regulation of CSAM and non-consensual content. Charles DeBarber, Senior Privacy Analyst, and Arash Habibi Lashkari, Assistant Professor at the Faculty of Computer Science of the University of New Brunswick, explained that, in contrast to indexed websites available via search engines on the Surface Web, the Deep Web contains non-indexed websites and comprises roughly 90% of the Internet. The Dark Web (also called the Dark Net) is the encrypted part of the Deep Web available only through specialized software.¹⁷³

Mr. Lashkari explained that it is possible to identify a user on the Dark Web, including the type of software they are using and for what purpose (e.g., if they are uploading or downloading content, if they are using audio or video calling). However, that information is only obtainable from a user's device and not from the Internet.¹⁷⁴ While ISPs may be able to monitor who uses secure connections, they cannot determine what is being

170 Ibid., 1105 and 1110 (Jennifer Clamen).

171 Ibid., 1110 and 1140.

172 Ibid., 1120, 1125, 1130 and 1155 (Sandra Wesley).

173 ETHI, *Evidence*, 2nd Session, 43rd Parliament, 7 June 2021, 1215 (Arash Habibi Lashkari, Professor, University of New Brunswick) and 1200 (Charles DeBarber, Senior Privacy Analyst, As an individual).

174 Ibid., 1220, 1240 (Arash Habibi Lashkari)



accessed via those connections.¹⁷⁵ Mr. DeBarber added that each level of the Internet is neither “good” nor “bad”; for example, the Dark Web may be used to avoid censorship where free speech is limited.¹⁷⁶

Based on his experience helping victims remove non-consensual content from the Internet, Mr. DeBarber estimated that 73.5% of non-consensual pornography was on the Surface Web, 23.2% was on the Deep Web and 3.3% was on the Dark Web.¹⁷⁷ He added that Dark Web content is often “highly illegal” (e.g., spy-cam videos and videos depicting bestiality). Mr. DeBarber shared some factors that make online non-consensual content removal more difficult:

- his average client has 400 to 1,200 pieces of content online that need to be removed;
- web platforms’ non-consensual content takedown avenues are often more complicated and time-consuming than U.S. copyright takedown avenues available under the *Digital Millennium Copyright Act*, even if a unique takedown notice must be issued for each piece of content under the latter system;
- a professional removal process requires time, money and technical expertise, and victims may lack access to professionals and/or legal tools; and
- video upload sites with pornography use search engine optimization to “flood search engines with their content,” causing it to go viral faster.¹⁷⁸

To protect victims and the intellectual property of sex workers, Mr. DeBarber suggested prohibiting the use of “web crawlers” (which are web bots designed to index the Internet through systematic searches, also called “spiderbots”) on all user-upload websites unless uploaders have been verified.¹⁷⁹ He also recommended that websites

175 Ibid., 1240.

176 Ibid., 1200 (Charles DeBarber).

177 Ibid., 1200–1205

178 Ibid., 1205

179 Ibid., 1210

have de-listing policies for victims whose names were published without their consent.¹⁸⁰

Melissa Lukings, a Juris Doctor candidate who has lived experience, noted that by preventing content from being hosted on safer websites, for example by preventing sex workers from advertising their services online or removing payment options like credit cards, adult content is relegated to the Dark Web and leads people to resort to non-traceable means of payments such as cryptocurrency.¹⁸¹ To avoid relegating illegal content to the Dark Web and to protect sex workers, she recommended against additional regulation and against “over-broad and ambiguous” legislation concerning online content.¹⁸²

Ms. Lukings suggested that content-hosting companies, rather than those depicted, should be liable for having controls and security measures in place to ensure that images or videos posted depict consensual activity.¹⁸³ She suggested that existing criminal, corporate and privacy laws—if properly enforced, and with stronger fines—would be sufficient to ensure that websites do not host illegal content.¹⁸⁴ In her view, the federal government’s proposed new regulator to combat online harms is unnecessary because it would duplicate the Privacy Commissioner’s work while imposing unnecessary regulation.¹⁸⁵

180 Ibid.

181 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 19 April 2021, 1145 (Melissa Lukings).

182 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 7 June 2021, 1220 (Melissa Lukings).

183 ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 19 April 2021, 1205 (Melissa Lukings).

184 Section 28 of the *Personal Information Protection and Electronic Documents Act* (PIPEDA) provides that an organization that knowingly contravenes one of four specific provisions or obstructs the Privacy commissioner of Canada (Commissioner) in the investigation of a complaint or the conducting of an audit is guilty of an offence and is liable to a fine. Such fine requires prosecution and conviction (summary conviction or indictment) at the discretion of the Attorney General of Canada. Contravention of sections 5 to 7 of PIPEDA does not constitute an offence for the purpose of s. 28. Bill C-11, An Act to enact the Consumer Privacy Protection Act and the Personal Information and Data Protection Tribunal Act and to make consequential and related amendments to other Acts, also limits the application of s. 125, which provides for fines. However, if Bill C-11 is adopted, in addition to fines, penalties could be imposed by a new Personal Information and Data Protection Tribunal if the Commissioner finds that an organization has contravened certain specific provisions of the new Consumer Privacy Protection Act and recommends that a penalty be imposed by the Tribunal, or if the Tribunal determines that imposing a penalty is appropriate. Of note, Alberta, British-Columbia and Québec have adopted “substantially similar” legislation. In these provinces, PIPEDA does not apply with respect to the collection, use or disclosure of personal information that occurs within that province. ETHI, [Evidence](#), 2nd Session, 43rd Parliament, 7 June 2021, 1225 (Melissa Lukings).

185 Ibid., 1255.



Part 2: Written Submissions Received by the Committee

This study generated substantial interest from individuals and organizations across the country and internationally, many of whom sent the Committee written briefs. The Committee wishes to thank all those who submitted material. These submissions enriched the Committee’s discussion surrounding the protection of privacy and reputation online.

The Committee received briefs arguing that MindGeek and other pornography site host content that violates domestic and international human rights laws. One organization describes how pornography websites allow viewers to violate the privacy rights of sex workers and survivors of exploitation alike. It contends that pornography websites, including Pornhub, have failed to prevent privacy breaches, doxing (the intentional public release of a person’s private information), and the unauthorized download and re-upload of monetized content.¹⁸⁶ Another organization describes how the lack of controls on MindGeek’s user-upload model fail to protect the privacy of the individuals depicted in content.¹⁸⁷

In addition, many organizations urge the government to protect people—especially women, children and survivors of sexual exploitation—according to their rights as enshrined in the *Canadian Charter of Rights and Freedoms*, United Nations conventions,

186 Prostitution Research and Education, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 9 March 2021.

187 Association for Reformed Political Action Canada, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 19 February 2021.

and other international conventions, protocols or statutes. Some suggested strengthening Canadian laws further.¹⁸⁸

Many individuals and organizations argue that pornography companies should not be trusted to self-regulate, often maintaining that the companies profit from CSAM, recordings of criminal activity, sexual exploitation and other illegal or unethical content.¹⁸⁹ Some describe the challenges of moderating, removing or preventing the

188 Association for Reformed Political Action Canada, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 19 February 2021; Canadians4Action, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 22 February 2021; Christian Legal Fellowship, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 19 May 2020; Collective of 104 Survivors, 525 Non-Government Organizations from 65 countries, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 26 February 2021; Collective Shout, [Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021; Connecting to Protect, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 22 February 2021; Global South & Migrant Women, [On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021; Michelle Abel, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; National Center on Sexual Exploitation, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 9 March 2021; National Council of Women of Canada, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 19 February 2021; REAL Women of Canada, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; Wired Human, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 10 March 2021.

189 Association for Reformed Political Action Canada, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 19 February 2021; Children’s Charities’ Coalition on Internet Safety, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 19 February 2021; Collective Shout, [Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021; Connecting to Protect, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 22 February 2021; Culture Reframed, [Solving the Public Health Crisis of the Digital Age](#), Brief Submitted to ETHI, 25 February 2021; David Long, [Principles of Regulation for the Pornographic Industry in Canada](#), Brief Submitted to ETHI, 22 February 2021; DEFEND, [Brief Submitted to ETHI: study of Protection of Privacy and Reputation on Platforms such as Pornhub](#), 3 June 2021; Global South & Migrant Women, [On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2020; Pierre Beauregard, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 5 February 2021; REAL Women of Canada, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; Rose Dufour, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 25 February 2021; Stop ExploitationHub, [Protect Women by Enforcing Specific Ongoing Consent](#), Brief Submitted to ETHI, 19 February 2021; Tabitha Wright, [Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub](#), 1 March 2021; Youth Wellbeing Project, [Brief presented by Liz Walker of Youth Wellbeing Project](#), Brief Submitted to ETHI, 19 February 2021.



upload of banned content.¹⁹⁰ However, one individual explains that Pornhub and other adult websites have incentives to remove CSAM and non-consensual content, and that these companies may welcome regulation in fields such as age verification to ensure all websites operate on a level playing field.¹⁹¹

Several organizations and individuals from Canada and other countries wrote to the Committee about the harmful effects of pornography. Taken together, they suggest that a combination of Canada's legal framework, a lack of corporate responsibility, parents' unpreparedness to address pornography, children's unpreparedness to use the Internet appropriately, and other socio-cultural elements have perpetuated online sexual exploitation and allowed children to access pornography.¹⁹²

Many argue that the production and/or viewing of pornography perpetuates unhealthy social and cultural norms, including but not limited to sexual objectification, exploitation and violence, particularly against women and girls; racism; and the sexualization of

190 Citizens of Alberta for Positive Community Standards, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 25 February 2021; Collective Shout, [*Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub*](#), Brief Submitted to ETHI, 19 March 2021; Global South & Migrant Women, [*On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub*](#), Brief Submitted to ETHI, 19 March 2020; Kaska First Nation and Liard Aboriginal Women's Society, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 12 April 2021; Murray Perkins, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 February 2021; Stop ExploitationHub, [*Protect Women by Enforcing Specific Ongoing Consent*](#), Brief Submitted to ETHI, 19 February 2021.

191 Murray Perkins, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 February 2021.

192 Canadians4Action, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 22 February 2021; Children's Charities' Coalition on Internet Safety, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 February 2021; Collective of 104 Survivors, 525 Non-Government Organizations from 65 countries, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 26 February 2021; Evangelical Fellowship of Canada, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 March 2021; Global South & Migrant Women, [*On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub*](#), Brief Submitted to ETHI, 19 March 2020; Internet Sense First, [*Brief Submitted to the Ethics Committee Re Pornhub / MindGeek*](#), Brief Submitted to ETHI, 12 February 2021; Kaska First Nation and Liard Aboriginal Women's Society, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 12 April 2021; Parents Aware, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 2 March 2021; Pierre Beauregard, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 5 February 2021; Michelle Abel, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 9 March 2021; Wired Human, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 10 March 2021.

children.¹⁹³ Some organizations describe the links between viewers’ (especially children’s) consumption of pornography and their psychological health and development, including their behaviour, the development of their brains and emotions, and the prevalence of mental and sexual disorders.¹⁹⁴ A group of advocates condemned the abuse and exploitation of vulnerable girls and women by the sex trade, and the fact that such content is hosted on platforms such as those owned by MindGeek to satisfy a demand.¹⁹⁵

193 Canadians Concerned About Violence in Entertainment, [Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub](#), 9 February 2021; Citizens of Alberta for Positive Community Standards, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 25 February 2021; Collective Shout, [Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021; Culture Reframed, [Solving the Public Health Crisis of the Digital Age](#), Brief Submitted to ETHI, 25 February 2021; Defend Dignity, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 19 March 2021; Evangelical Fellowship of Canada, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 19 March 2021; Global South & Migrant Women, [On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2020; Michelle Abel, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; National Center on Sexual Exploitation, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; Parents Aware, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 2 March 2021; Persons Against Non-State Torture, [Eliminate Demand, It Drives “Pornographic Victimization and Corruption: A Brief](#), Brief Submitted to ETHI, 11 February 2021; Prostitution Research and Education, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; REAL Women of Canada, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; Rose Dufour, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 25 February 2021; Stop au porno, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 22 March 2021; Vancouver Rape Relief and Women’s Shelter, [Pornography Harms Women: Vancouver Rape Relief’s Submission to Standing Committee on Access to Information, Privacy and Ethics](#), 19 February 2021; Wired Human, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 10 March 2021; Youth Wellbeing Project, [Brief presented by Liz Walker of Youth Wellbeing Project](#), Brief Submitted to ETHI, 19 February 2021.

194 Collective Shout, [Briefing and Recommendations: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021; Connecting to Protect, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 22 February 2021; Michelle Abel, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 9 March 2021; Wired Human, [Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub](#), 10 March 2021; Your Brain on Porn, [Can Mindgeek explain its collaboration with libelous Twitter account “@BrainOnPorn”?](#), Brief Submitted to ETHI, 22 March 2021; Youth Wellbeing Project, [Brief presented by Liz Walker of Youth Wellbeing Project](#), Brief Submitted to ETHI, 19 February 2021.

195 Global South & Migrant Women, [On the Case: Protection of Privacy and Reputation on Platforms such as Pornhub](#), Brief Submitted to ETHI, 19 March 2021.



Various organizations suggest that survivors, especially children, whose sexual exploitation was recorded or whose images were shared without their consent may experience added trauma.¹⁹⁶ Others explain that pornography can be a tool for abusers to groom children for sexual exploitation and/or entry into sex work.¹⁹⁷ Some individuals and organizations describe the gaps—which COVID-19 has worsened—in the specialized health, psychological and services required to support survivors who have been sexually exploited online.¹⁹⁸

Organizations and individuals advocating for the rights of those working in the sex industry noted that the criminalization of online work and pornography and punitive and restrictive regulations on sex workers could create risks for them. These restrictions could reduce workers' health and safety, for example by pushing this type of work underground. Some requirements, like photo identification to access websites such as Pornhub, may also endanger sex workers and drive CSAM and non-consensual content to platforms that are less transparent and have no takedown services (e.g. message boards, email chains or encrypted chats). Stricter regulations may also affect sex workers' livelihood since many of them benefit from digital work environments. Some asserted that the Committee's focus on CSAM and non-consensual content on

196 Association for Reformed Political Action Canada, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 February 2021; Children First Society, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 8 February 2021; Christian Legal Fellowship, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 May 2021; Evangelical Fellowship of Canada, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 March 2021.

197 Culture Reframed, [*Solving the Public Health Crisis of the Digital Age*](#), Brief Submitted to ETHI, 25 February 2021; Defend Dignity, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 19 March 2021; Father's Heart Healing Ministries, [*Brief Submitted to ETHI: Study of Protection of Privacy an Reputation on Online Platforms such as Pornhub*](#), 22 February 2021; Prostitution Research and Education, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 9 March 2021.

198 Caroline Pugh-Roberts, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 22 February 2021; Internet Sense First, [*Brief Submitted to the Ethics Committee Re Pornhub / MindGeek*](#), Brief Submitted to ETHI, 12 February 2021.

pornography sites obscures the extent of the problem on other online platforms and stigmatizes sex workers.¹⁹⁹

Others argued that MindGeek’s quasi-monopoly in the pornography industry is detrimental to the financial well-being of sex workers and porn creators. Other financial challenges, including the fact that major credit card companies refuse to process payment relating to adult content, can also impede their ability to gain income. As a result, people working in the sex industry believe they should be involved in any discussion relating to government policies affecting online pornography—such as the regulation of online adult content platforms.²⁰⁰

However, some organizations argued that sex work concerns in this study were not relevant to the study’s scope and that the inclusion even “undermine[d]” the Committee’s efforts to protect survivors whose content was posted online without their consent.²⁰¹

Committee Observations and Recommendations

The Committee is deeply concerned that online platforms such as Pornhub have failed to protect the privacy and reputation of individuals depicted in content uploaded without their knowledge or consent. It finds it disheartening that these companies have not taken sufficient measures to prevent the (re)upload or timely removal of CSAM and non-

199 Amber Haze, [*Brief Submitted to the House of Commons Standing Committee on Access to Information, Privacy and Ethics: Study on the Protection of Privacy and Reputation on Platforms Such as Pornhub*](#), 10 March 2021; Adult Industry Laborers and Artists Association, [*Brief Submitted to the House of Commons Standing Committee on Access to Information, Privacy and Ethics: Study on the Protection of Privacy and Reputation on Platforms Such as Pornhub*](#), 19 April 2021; Centre for Gender and Sexual Health Equity and West Coast LEAF Association, [*Impacts of criminalization and punitive regulation of online sex work and pornography: The need for sex worker’s voices*](#), Brief Submitted to ETHI, 7 April 2021; Citizens of Alberta for Positive Community Standards, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 25 February 2021; David Long, [*Principles of Regulation for the Pornographic Industry in Canada*](#), Brief Submitted to ETHI, 22 February 2021; Free Speech Coalition, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 20 April 2021; Kate Sinclair, [*Written Brief Submitted to the House of Commons Standing Committee on Access to Information, Privacy and Ethics: Study on the Protection of Privacy and Reputation on Platforms Such as Pornhub*](#), 1 March 2021; Sex Workers of Winnipeg Action Coalition, [*Written Brief Submitted to the House of Commons Standing Committee on Access to Information, Privacy and Ethics: Study on the Protection of Privacy and Reputation on Platforms Such as Pornhub*](#), 9 March 2021.

200 Ibid.

201 Global Activists Against Violations by Pornhub, [*Amended Letter from April 19th, 2021: Global Activists Against Violations by Pornhub*](#), Brief Submitted to ETHI, 6 May 2021; Haley McNamara, [*Brief Submitted to ETHI: Study of Protection of Privacy and Reputation on Online Platforms such as Pornhub*](#), 25 May 2021.



consensual content. It is horrified by the harms inflicted upon survivors who were depicted in content uploaded without their knowledge or consent.

The Committee is of the view that the onus to protect individuals depicted in CSAM and non-consensual content from violations of their privacy and reputation online should lie with the platforms hosting that content. Canadians' privacy rights and by extension, their safety and dignity, should outweigh any profit motives that such platforms may have.

The Committee received several documents from MindGeek describing its procedures to protect privacy and reputation online. The Committee recognizes, as law enforcement has indicated, that in certain circumstances, it can be difficult to determine with certainty whether pornographic content is CSAM. It also understands that MindGeek's community safety measures are more advanced than many other content-hosting platforms, but notes that many such measures were only adopted following the withdrawal of major credit card corporations from its operations. In addition, the Committee is alarmed at the apparent lack of stringency that MindGeek applies to its moderation practices. The Committee is of the view that content-hosting platforms have a duty to exercise a high degree of caution when determining whether content meets legal standards for pornography, including but not limited to the age and consent of all persons depicted.

The Committee believes that the federal government must take action to protect Canadians' privacy and reputation online without adopting measures that would put sex workers at risk.

The Committee once again thanks the survivors who have shared their stories. It recognizes the significant psychological and social burdens that survivors may face when sharing traumatic experiences. It also extends its appreciation to the experts who advised Committee members on best practices to avoid revictimizing survivors of trauma. In cases where survivors provide evidence to parliamentary committees, parliamentarians must take additional measures to ensure that these individuals are not re-victimized by the process. The Committee therefore encourages the House of Commons and the Senate to establish specific guidelines for Committees to help parliamentarians better navigate committee meetings that involve survivors, and ensure that appropriate resources and support are made available to these witnesses if they require them.

Taking into consideration the testimony heard and the written submissions received, the Committee makes the following recommendations.

Recommendation 1 concerning liability

That the Government of Canada explore means to hold online platforms liable for any failure to prevent the upload of, or ensure the timely deletion of child sexual abuse material, content depicting non-consensual activity, and any other content uploaded without the knowledge or consent of all parties, including enacting a duty of care, along with financial penalties for non-compliance or failure to fulfil a required duty of care.

Recommendation 2 concerning the duty to verify age and consent

That the Government of Canada mandate that content-hosting platforms operating in Canada require affirmation from all persons depicted in pornographic content, before it can be uploaded, that they are 18 years old or older and that they consent to its distribution, and that it consult with the Privacy Commissioner of Canada with respect to the implementation of such obligation.

Recommendation 3 concerning consultation

That the Government of Canada consult with survivors, child advocacy centres, victim support agencies, law enforcement, web platforms and sex workers prior to enacting any legislation or regulations relating to the protection of privacy and reputation on online platforms.

Recommendation 4 concerning section 3 of the Mandatory Reporting Act

That the Government of Canada, in collaboration with the provinces, amend section 3 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* to make the National Child Exploitation Coordination Centre the designated law enforcement agency for the purpose of reporting under that section and that it ensure that the National Child Exploitation Coordination Centre has the resources it needs to investigate the increased referrals of child sexual abuse materials.

Recommendation 5 concerning reporting obligations

That the Government of Canada invest resources to ensure the compliance of access providers, content providers and Internet content hosting services with their reporting obligations under *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* through education and awareness initiatives.



Recommendation 6 concerning section 11 of the Mandatory Reporting Act

That the Government of Canada consider amending section 11 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* to extend the period of time to commence prosecution for an offence under this Act.

Recommendation 7 regarding compliance under the Mandatory Reporting Act

That the Government of Canada call upon the Royal Canadian Mounted Police and other police services to ensure the compliance of Internet service providers, as defined in *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, with their reporting obligations under that Act, and that compliance be absolute with no means for providers to opt out.

Recommendation 8 concerning requirements for uploaders of content

That the Government of Canada set requirements for uploaders of content to provide proof of valid consent of all persons depicted and that the new regulations include penalties severe enough to act as an effective deterrent.

Recommendation 9 regarding pornographic content and age verification

That the Government of Canada develop clear regulations that require Internet service providers, as defined in *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service*, to utilize a robust process for age verification of all individuals in uploaded pornographic content, including content generated by individuals, studios or contract partners.

Recommendation 10 concerning proactive enforcement of Canadian laws

That the Government of Canada proactively enforce all Canadian laws regarding child sexual abuse material and the posting of non-consensual material and that in particular, it enforce section 3 of *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service* by requiring all Internet service providers, as defined in the Act, to report child sexual abuse material directly to an officer, constable or other person employed for the preservation and maintenance of the public peace.

Recommendation 11 concerning accessible mechanisms for the removal of online content

That the Government of Canada develop accessible mechanisms that ensure that Canadians victimized by the posting of an image or video online without their consent on sites like Pornhub have the right to have that content removed immediately and to be given the benefit of the doubt with respect to the non-consensual nature of the content, and that the Government of Canada provide all the necessary resources required to put in place these accessible mechanisms.

Recommendation 12 concerning a potential new pattern of sexual violence

That the Government of Canada work with key stakeholder groups such as Canadian sexual assault centres, women's rights organizations and representatives from LGBTQ2 communities to determine if the posting of non-consensual material depicting sexual violence on sites like Pornhub is reflective of, and contributing to, a new pattern of sexual violence, and that it report its findings, including recommendations for further action, to Parliament.

Recommendation 13 concerning the accountability of websites regarding the downloading and re-uploading of pornographic content

That the Government of Canada hold accountable websites that allow the downloading and re-uploading of pornographic content that erases the identity of the source material, thereby preventing authorities from assessing those accountable for the material.

Recommendation 14 concerning a new legal framework to impose certain obligations on Internet service providers hosting pornographic content

That the Government of Canada create a legal framework that would compel Internet service providers that host pornographic content to:

- implement and use available tools to combat the flagrant and relentless re-uploading of illegal content;**
- hire, train and effectively supervise staff to carry out moderation and content removal tasks at an appropriate scale;**
- maintain detailed records of user reports and responses that can be audited by authorities;**



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- **be legally accountable for content moderation and removal decisions and the harm to individuals that results when efforts are inadequate; and**
- **build in and design features that prioritize the best interests and privacy rights of children and vulnerable adults.**

APPENDIX A LIST OF WITNESSES

The following table lists the witnesses who appeared before the committee at its meetings related to this report. Transcripts of all public meetings related to this report are available on the committee’s [web page for this study](#).

Organizations and Individuals	Date	Meeting
<p>As an individual</p> <p>Michael Bowe, Lawyer Brown Rudnick LLP</p> <p>Serena Fleites</p>	2021/02/01	18
<p>Vancouver Rape Relief and Women's Shelter</p> <p>Hilla Kerner, Coordinator</p>	2021/02/01	18
<p>Entreprise MindGeek Canada</p> <p>Feras Antoon, Chief Executive Officer</p> <p>David Tassillo, Chief Operating Officer</p> <p>Corey Urman, Vice-President Product Management, Video Sharing Platform</p>	2021/02/05	19
<p>As an individual</p> <p>Witness-Témoin 1</p> <p>Witness-Témoin 2</p> <p>Michael Bowe, Lawyer Brown Rudnick LLP</p> <p>Francis Fortin, Associate Professor School of Criminology, Université de Montréal</p> <p>Victoria Galy</p> <p>Laila Mickelwait, Sex Trafficking Expert, Founder of Traffickinghub Movement</p>	2021/02/19	20
<p>London Abused Women's Centre</p> <p>Megan Walker, Executive Director</p>	2021/02/19	20

Organizations and Individuals	Date	Meeting
Canadian Centre for Child Protection Lianna McDonald, Executive Director Lloyd Richardson, Director Information Technology	2021/02/22	21
Department of Justice Normand Wong, Senior Counsel Criminal Law Policy Section	2021/02/22	21
Friends of Canadian Broadcasting Daniel Bernhard, Executive Director	2021/02/22	21
National Center for Missing & Exploited Children John F. Clark, President and Chief Executive Officer	2021/02/22	21
Royal Canadian Mounted Police C/Supt Marie-Claude Arseneault Paul Boudreau, Executive Director Technical Operations, Specialized Policing Services D/Cmmr Stephen White, Deputy Commissioner Specialized Policing Services	2021/02/22	21
Department of Justice Hon. David Lametti, P.C., M.P., Minister of Justice Robert Brookfield, Deputy Assistant Deputy Minister François Daigle, Associate Deputy Minister Normand Wong, Senior Counsel Criminal Law Policy Section	2021/04/12	29
Department of Public Safety and Emergency Preparedness Hon. Bill Blair, P.C., M.P., Minister of Public Safety and Emergency Preparedness Talal Dakalbab, Assistant Deputy Minister Community Safety and Countering Crime Rob Stewart, Deputy Minister	2021/04/12	29

Organizations and Individuals	Date	Meeting
<p>Royal Canadian Mounted Police</p> <p>André Boileau, Officer in Charge National Child Exploitation Coordination Centre</p> <p>Brenda Lucki, Commissioner</p> <p>C/Supt Sorab Rupa, Director General National Criminal Operations, Contract and Indigenous Policing</p>	2021/04/12	29
<p>As an individual</p> <p>Melissa Lukings, Juris Doctor Candidate Faculty of Law, University of New Brunswick</p>	2021/04/19	31
<p>Canadian Alliance for Sex Work Law Reform</p> <p>Jennifer Clamen, National Coordinator</p>	2021/04/19	31
<p>Stella, l'amie de Maimie</p> <p>Sandra Wesley, Executive Director</p>	2021/04/19	31
<p>Department of Canadian Heritage</p> <p>Hon. Steven Guilbeault, P.C., M.P., Minister of Canadian Heritage</p> <p>Joëlle Montminy, Senior Assistant Deputy Minister Cultural Affairs</p> <p>Pierre-Marc Perreault, Acting Director Digital Citizen Initiative</p>	2021/06/07	38
<p>As an individual</p> <p>Charles DeBarber, Senior Privacy Analyst</p> <p>Arash Habibi Lashkari, Assistant Professor, Faculty of Computer Science, University of New Brunswick and Research Coordinator, Canadian Institute for Cybersecurity</p> <p>Melissa Lukings, Juris Doctor Candidate Faculty of Law, University of New Brunswick</p>	2021/06/07	38

APPENDIX B LIST OF BRIEFS

The following is an alphabetical list of organizations and individuals who submitted briefs to the committee related to this report. For more information, please consult the committee's [web page for this study](#).

1000 Möjligheter

Abel, Michelle

Beauregard, Pierre

Clark, John F

Dufour, Rose

Haze, Amber

Kalembe, Rose

Long, David

Perkins, Murray

Pugh-Roberts, Caroline

Sinclair, Kate

Wright, Tabitha

Abriendo Caminos

Adult Industry Laborers and Artists Association

Alika Kinan Fundación

Apne Aap International, Inc.

Asociación La Sur

Association for Reformed Political Action Canada

Associazione Iroko Onlus

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Breaking Free

Canadian Centre for Child Protection

Canadians Concerned About Violence in Entertainment

Canadians4Action

Centre for Gender and Sexual Health Equity
Children First Society
Childrens Charities Coalition on Internet Safety
Christian Legal Fellowship
Citizens of Alberta for Positive Community Standards
Coalition Against Trafficking in Women – Latin America and the Caribbean
Coletiva TIME
Collective of 104 Survivors, 525 Non-Government Organisations from 65 countries
Collective Shout
Comisión para la investigación de malos tratos a mujeres
Connecting to Protect
Corporación Anne Frank
Culture Reframed
Defend
Defend Dignity
Ehuleak-CIMTM Navarra
Embrace Dignity
Entreprise MindGeek Canada
European Network of Migrant Women
Father's Heart Healing Ministries
Feminism Pakistan
Fin de la Esclavitud
Fondation Scelles
Free Speech Coalition
Global Activists Against Violations by Pornhub
Inmujeres Mexico
Internet Sense First
Iroko Charity Nigeria
KAFA (enough) Violence & Exploitation
Kaska First Nation

Klaipeda Social and Psychological Support Center
Lavender Patch
Liard Aboriginal Women's Society
Lobby Europeo de Mujeres en España
London Abused Women's Centre
Lucy Faithfull Foundation
National Center on Sexual Exploitation
National Council of Women of Canada
Parents Aware
Persons Against Non-State Torture
Plataforma Navarra por la Abolicion
Prostitution Research and Education
REAL Women of Canada
Rescue Freedom International
Sex Workers of Winnipeg Action Coalition
SISTERS – für den Ausstieg aus der Prostitution! e.V
SOLWODI
Stop au porno
Stop ExploitationHub
Talita
The Evangelical Fellowship of Canada
The Filipina Women's Association of Quebec (PINAY)
Vancouver Rape Relief and Women's Shelter
West Coast LEAF Association
Wired Human
Women's Human Rights Campaign - Argentina
Women's Human Rights Campaign - India
Women's Human Rights Campaign Brasil
Your Brain On Porn
Youth Wellbeing Project

REQUEST FOR GOVERNMENT RESPONSE

Pursuant to Standing Order 109, the committee requests that the government table a comprehensive response to this Report.

A copy of the relevant *Minutes of Proceedings* ([Meetings Nos. 18 to 21, 29, 31, and 38 to 40](#)) is tabled.

Respectfully submitted,

Chris Warkentin
Chair

