

TESTIMONY

OF

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Before the

U.S. SENTENCING COMMISSION

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“Federal Child Pornography Offenses”

Madame Chairwoman and Commissioners, thank you for inviting the National Center for Missing & Exploited Children (“NCMEC”) to testify about the issue of federal child pornography offenses.

NCMEC was pleased to provide testimony to the Commission in 2009 on the 25<sup>th</sup> anniversary of the passage of the Sentencing Reform Act of 1984. I am honored to appear before you today to bring attention to the victims of child pornography.

As you know, NCMEC is a not-for-profit corporation, authorized by Congress and working in partnership with the Department of Justice. NCMEC is a public-private partnership and for 27 years has served as the national resource center and clearinghouse on missing and exploited children.<sup>1</sup>

One of our key programs is the CyberTipline, the national clearinghouse for crimes against children on the Internet. It is operated in partnership with federal, state and local law enforcement. It receives reports in eight categories of crimes against children.<sup>2</sup> The vast majority of these reports are regarding the possession, manufacture and distribution of apparent child pornography.

These reports are made by the public, as well as by Electronic Service Providers (“ESP”) who are required by law to report apparent child pornography to law enforcement via the CyberTipline.<sup>3</sup> The leads are reviewed by NCMEC analysts and referred to the appropriate law enforcement agency. To date, NCMEC has received and processed over 1.3 million CyberTipline reports of which 1.2 million relate to apparent child pornography. ESPs have reported to the CyberTipline more than 9.8 million images/videos of apparent child pornography.

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<sup>1</sup> See 42 U.S.C. §5773. NCMEC is authorized by federal statute to perform 19 specific operational functions.

<sup>2</sup> The CyberTipline receives reports in the following categories of crimes against children: possession, manufacture, and distribution of child pornography; online enticement of children for sexual acts; child prostitution; sex tourism involving children; extrafamilial child sexual molestation; unsolicited obscene material sent to a child; misleading domain names; and misleading words or digital images on the Internet. See U.S.C. §5773(b)(1)(P) and [www.cybertipline.com](http://www.cybertipline.com).

<sup>3</sup> See 18 U.S.C. §2258A.

Another of our key programs, the Child Victim Identification Program (“CVIP”), was created in 2002. CVIP has a dual mission: (1) to assist federal and state law enforcement agencies and prosecutors by determining which seized images depict identified child victims; and (2) to assist law enforcement in locating unidentified child victims so they can be rescued from abusive situations.

CVIP was created because NCMEC analysts were repeatedly seeing images of the same child victims and began keeping track of which victims had been rescued by law enforcement and were no longer in abusive situations. This project took on added significance after the Supreme Court held that if a real child was not used to produce an image then it is protected speech.<sup>4</sup>

CVIP analysts assist law enforcement by reviewing collections of child pornography seized from offenders to determine which images contain child victims previously identified by law enforcement. Local and federal law enforcement officers can submit copies of seized child pornography images to federal law enforcement agents co-located at NCMEC headquarters.<sup>5</sup> Combining our proprietary software and visual reviews by CVIP analysts, image files containing identified child victims are listed in a report provided to the submitting law enforcement agency. The report acts as a pointer system, containing detailed information about the law enforcement officers who identified each child victim. These officers can then provide evidence of the child’s identity for use in court. To date, NCMEC has reviewed 62 million seized images at the request of law enforcement.

### **What is child pornography?**

As the Commission knows, child pornography images are evidence of the criminal sexual victimization of a child. These images are viewed, collected, and traded among offenders for their personal sexual gratification.

Collectors often try to get each image available in a particular child victim’s “series” and often refer to them by the series name. A “series” might consist of ten images or hundreds of images. However, not all images in a series depict the same conduct. For example, a series

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<sup>4</sup> *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

<sup>5</sup> Many successful investigations and prosecutions proceed without CVIP’s assistance.

might be comprised of images depicting the penetration of a child as well as images of the same child, fully clothed. In addition, a series may be comprised of a single child victim or multiple child victims. While the series names are not always the victims' names, NCMEC does not publicly disclose series names in order to protect the child victims' privacy.

Today I'd like to share some data from NCMEC's CVIP program. Because of our specific role assisting law enforcement, NCMEC analysts review an enormous amount of child pornography. As a result, we're uniquely situated to provide a snapshot of what the problem of child pornography looks like from our perspective.

Law enforcement is doing a remarkable job of investigating these cases and identifying and rescuing these child victims. In fact, as of December 31, 2011, law enforcement has identified 4,103 child victims. In 2010, law enforcement agencies submitted nearly 14.2 million images and videos to CVIP. In 2011, they submitted more than 22 million images and videos. This increase can partially be attributed to more law enforcement agencies becoming aware of the CVIP resources available to them. However, this increase may also be due to high-speed Internet access and digital storage capacity, which has made it easier for child pornography possessors to collect a large volume of illegal material.

### **Data from NCMEC's Child Victim Identification Program**

A look at some of the images frequently submitted provides useful information about the kinds of material that these offenders are trading. Of the identified victims whose images were frequently submitted by law enforcement, about half of the victims are boys (43%) and half are girls (57%). Seventy-six percent of these images depict the abuse of prepubescent children, of which 10% are infants and toddlers; and 24% depict pubescent children. To clarify, we use the term "prepubescent" to describe any child who does not show signs of sexual maturation. The term "pubescent" is used to describe children who show signs of sexual maturation – often these are middle or high school-age children.

From the inception of the CVIP program, there has always been a percentage of images submitted by law enforcement which depict infants and toddlers. This suggests that there has always been a demand for pornographic images of very young children. This demand fuels the production of these images. These victims are often pre-verbal and therefore more

isolated from the outside world. As a result, there may be fewer opportunities for their abuse to be detected. For this reason, CVIP continues to receive many seized images of infants and toddlers who have not yet been identified. Unidentified child victims are not included in our data.<sup>6</sup>

The most frequently submitted images of identified victims in the last five years reveals the kind of sexual abuse most often depicted in the images:

- 84% of the series contained images depicting oral copulation;
- 76% of the series contained images depicting anal and/or vaginal penetration;
- 52% of the series contained images depicting the use of foreign objects or sexual devices;
- 44% of the series contained images depicting bondage and/or sado-masochism;
- 20% of the series contained images depicting urination and/or defecation; and
- 4% of the series contained images depicting bestiality.<sup>7</sup>

Please note: this data should not be applied to individual offenders' collections – it is a reflection of the types of sexual abuse seen in popularly traded series.

Although law enforcement has identified 4,103 victims of child pornography, we know that there are many more unidentified victims who have not yet been rescued from their abusive situations. Until these children are identified by law enforcement, they will continue to be at risk of being sexually exploited.

Most child pornography victims are abused by someone they know. These offenders have legitimate access to the children they are abusing; they are people these children should have been able to trust. Of the child victims who have been identified by law enforcement, 79% were victimized by an adult they knew and trusted – a parent/guardian (22%), another relative (10%), or a family friend (47%).<sup>8</sup>

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<sup>6</sup> Because unidentified child victims have not yet been located and identified by law enforcement, their ages are unknown.

<sup>7</sup> Data from January 1, 2007 – December 31, 2011. The percentages do not add up to 100% because some series contain images depicting conduct in multiple categories.

<sup>8</sup> NCMEC data as of December 31, 2011.

Notably, a small but growing percentage of identified victims produced the sexually explicit images themselves (so-called “sexting” cases). According to current NCMEC data, these images are not as frequently found in seized collections; however, the frequency with which they are being submitted to CVIP is increasing. Regardless of how often their images are collected, the child victims depicted nonetheless sustain harm and damaging consequences, suffering shame and public embarrassment.

### **Harm to Child Victims**

Congress, the Supreme Court, issue experts, and this Commission have all recognized the extreme harm inflicted upon victims of child pornography. Child victims suffer at the hands of the offender who sexually abused them. This harm is compounded when the abuser memorializes the abuse by taking photos and then distributing them on the Internet where additional offenders use them for their personal viewing pleasure. Child victims also suffer knowing that offenders may use images of their abuse to entice or manipulate other children into sexually abusive acts. Congress has addressed each of these distinct harms, criminalizing the production, distribution, possession, receipt and viewing of child pornography.

Child victims may experience depression, withdrawal, anger, feelings of guilt and responsibility for the abuse as well as feelings of betrayal, a sense of powerlessness, worthlessness, and low self-esteem. It is impossible to calculate how many times a child’s pornographic image may be possessed and distributed online. Each and every time such an image is viewed, traded, printed, or downloaded, the child in that image is re-victimized.

As one child victim, now an adult, said in a victim impact statement to the court, “When I was told how many people have viewed these images and videos I thought my pulse would stop. Thinking about all those sick perverts viewing my body being ravished and hurt like that makes me feel like I was raped by each and every one of them.”<sup>9</sup>

How are offenders able to view these illegal images and videos? Recent technological advances such as smartphones, thumb drives and cloud computing have made it easier for offenders to collect and store child pornography. Other technological tools such as anonymizers and encryption have enhanced offenders’ ability to evade detection by law

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<sup>9</sup> United States v. Ward, 2:06-mj-00878 (E.D. Pa. 2009).

enforcement. The size of an offender's collection is not necessarily a mere reflection of these technological advances. It also suggests an active participation in the child pornography market – a market in which the demand for images fuels the ongoing, abhorrent sexual victimization of children.

## **Conclusion**

NCMEC is proud of the services we provide to federal, state, and local law enforcement. We will continue to work with these agencies in their efforts to investigate and prosecute these cases and identify and rescue child victims. However, there are many more child victims of sexual abuse who have not yet been rescued and still suffer at the hands of their abusers. Because child pornography victims often do not disclose their abuse, they are relying on law enforcement to identify and rescue them.

Today, I have discussed NCMEC data in an empirical way, but we can never forget that the victims depicted in child pornography are real children and the images are evidence of their sexual abuse. Once law enforcement identifies a child victim, they learn the child's story. They learn that these child victims are in our communities. They may play on your child's baseball team, dance in your child's ballet class, or sit next to your child on the school bus.

We will continue to work with law enforcement to ensure that all child victims get the help and justice they deserve.