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ETERNAL LOLITA:
EVOLVING FORMS OF CHILD PORNOGRAPHY LEGISLATION IN A
CONTEMPORARY DIGITAL ERA

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Abstract

With expansion of the Internet and its evolving technology, child sexual abuse material has become a pressing human rights issue that remains unaddressed by the United States government. A lack of will to engage with the private sector and to recognize the economic market for child pornography within the United States has left children exposed to significant emotional and physical harm without the adequate legal protections on their human rights. This paper will not only provide an understanding of the current legal systems at play within the United States on the production, distribution, and possession of child sexual abuse material, but will also develop a more comprehensive definition of what constitutes child pornography, involving the recognition of the role of the Internet and social media in facilitating harm against children, that must be employed to best protect children and their human rights. A supplemental study will also be done to best address the scope of such an issue on a global and the urgency that is required by the United States as one of the leading hosts of child sexual abuse material. The following analysis of the current child pornography crisis will supply the framework for best understanding and defining the child pornography crisis, by centering victims' voices and developing more comprehensive legislation on the part of the United States government.

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I. Introduction

Children, defined nationally and internationally as any human being below the age of eighteen, have come to be understood by the international human rights community as a group deserving special safeguards and care. As such, the Universal Declaration on Human Rights (UDHR), the Convention on the Rights of the Child (CRC), and various other bodies of human rights legislation all attempt to assert and reassert the obligation on the part of States to protect children from threats to their human rights.¹ Yet, despite the recognition on the part of the international human rights community for the need to protect children and their human rights, there continues to be a lack of will and urgency on the part of many State governments, including that of the United States, to appropriately confront and challenge human rights violations against children in their countries. In particular, the production, distribution, and possession of child sexual abuse material (CSAM) remains unaddressed and pervasive within online spaces and seeks to normalize adult sexual proclivity towards children, who are, by law, unable to consent.

The CRC, adopted into international law in 1989, makes overt the obligations of the State to establish stronger legislation to prevent child sexual abuse and exploitation, including particular emphasis within Articles 19(1) and 34 on protecting children from sexual abuse and from coercive tactics that trap children into engaging in prostitution and pornographic activities for sale,² And yet, CSAM prevalence online, child sexual exploitation (CSE), and the economic market³ for illicit sexual material of children has grown exponentially, and remains a widespread international human rights crisis. The cause of this is particularly due to the emergence and

¹ Deepa Salian and Sofia Khatun, "Legal Framework on Child Pornography: A Perspective," in *Digital Forensic Science*, ed. B Suresh Kumar Shetty and Pavanchand Shetty H (IntechOpen, 2020): 7, <https://doi.org/10.5772/intechopen.92716>.

² Ibid.,7.

³ Agus Raharjo, "Cyber Child Pornography Law and Technology Problems in Its Law Enforcement," in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (Atlantis Press, 2017): 122, <https://doi.org/10.2991/iclj-17.2018.26>.

accessibility of the Internet marketplace and the further technological advances⁴ that encrypt information providing criminals with the ability for greater anonymity to commit crimes without being caught.

Despite the international consensus that CSAM is a violation of children's human rights, the Internet compounds the growth and prevalence of CSAM on popular web platforms like social media sites and legal pornography websites. The Internet landscape, in which the legality or criminalization of CSAM has become chaotic, has complicated the ways that States develop clear legislation to uphold children's rights. This is particularly evident within the United States for three reasons: legislative history surrounding CSAM as a human rights issue remains inconsistent and rely on an outdated legal framework for the criminalization of sexual abuse violations against children, the complication of free speech as a human right that can question the criminality of pornography, and the lack of the development of specific ways to protect children's rights as human rights.

There remains a lack of urgency on the part of the United States government to join with and reinforce the confirmation of international human rights documents and their concerns for protecting rights for all humans.⁵ This can be seen especially when human rights violations occur that question the individual's right to privacy. While this seeming unwillingness is groundless in the context of achieving human rights for all human beings, there remains a hesitance on the part of the United States government to both trust international human rights law and to allow this law the authority to interfere with how crimes among the United States private sector are legally addressed to acknowledge the human rights violations.

⁴ Sayid Muhammad Rifiki Noval et al., "THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING," *Russian Law Journal* 11, no. 5 (2023): 1, <https://doi.org/10.52783/rj.v11i5s.891>.

⁵ "Frequently Asked Questions on the Convention on the Rights of the Child," UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions>.

It is in conjunction with such apathy on the part of the United States government to proactively and directly address human rights violations, that the Internet has flourished into a hub for illegal pornographic activity. The availability and growth of CSAM and the outgrowth of children's rights violations remain virtually unaddressed within United States legislation. This continues to remain a human rights crisis due to a hesitancy on the part of the United States government to engage with children's rights as human rights in ways that meddle or interfere with the family unit as a whole, placing the intact family unit above anything else. To address this issue would require the United States government to not only become more involved with the boundaries and rights of privacy of the "family," but to also recognize that the current legal system that addresses children's human rights, including the child's right to be free of sexual exploitation through the production of CSAM, are inadequate. The current legal system has not remained in line with or ahead of the socio-economic and cultural shifts caused by the evolution of the Internet and its accessibility as an environment that can allow human rights to be compromised.

The Internet has provided greater global accessibility for CSAM criminal activity within the United States private sector, and grants greater communication pathways and anonymity for the criminals who commit human rights violations. In order to best address the online CSAM human rights crisis, there requires a greater acknowledgment, by the United States government, that its current legislative system does not sufficiently address the expansive, blooming online consumer culture that thrives in a capitalistic economic market. Discourse that adequately addresses this expansion will prove useful in developing a more comprehensive legal framework for the regulation of the Internet that provides a breeding ground and vehicle for the sexual abuse and exploitation of children. Legislature that ignores the fact that material that shows children

being exploited and sexually abused is on the Internet, also ignores the fact that this material encourages a sexualized cultural mindset that desensitizes consumers to explicit acts of human rights violations against children.

This paper will provide deeper analysis of CSAM as an international human rights crisis by reconciling how the expansive, unregulated nature of the Internet facilitates CSAM demands that the leadership of the United States government to develop contemporary legislation that appropriately addresses the proliferation of CSAM and engages in the international law discourse. There will be emphasis on how CSAM contributes to the sexual dehumanization of children, and how its excessive availability in an online capitalist market has shifted and eroded societal recognition and understanding of sexual norms, and how this highlights the urgency for the United States to establish realistic legal human rights protections, including those of children.

Turning to existing documents within the landscape for which CSAM is defined nationally and internationally and can be prosecuted as a crime, this paper will define the scope of the crisis in how CSAM has developed and evolved in an Internet-dependent society in the United States and abroad. Here, one will see that both national and international legal approaches also lack greater emphasis on the social harms of CSAM on victims, and thus demands that legislation be evaluated and reevaluated to best prevent current and future victims of online CSAM and provide definitive guidelines for prosecution. This paper will show how by-product pornography and its proliferation influences sub-cultures like pedophiles in child sexual exploitation, and is a further indication that the general national and international crisis continues to thrive and widen without severe penalty. The implications of this can also show how the traditional perception of the child and sexuality is skewed within a consumer economic market that is driven by online social interactions. Finally, this paper will also review how United States

agencies enlist the use of public reporting of potential and confirmed CSAM incidents to first capture criminals, and then to house data to discover CSAM online trends and understand how trends are impacted by societal events like the Covid pandemic, the implementation of stricter Internet oversight, or more definitive legislation. These trends not only advance arguments that the persistence and prevalence of CSAM is promoted because of the normalization of online sexual solicitation, but also uncover the essential need for specificity in guidelines when penalizing criminals. This all, each and together, confirms absolute demand for more inclusive legislation and action on the part of the United States government.

II. The Child Pornography Problem in the United States

Despite the United State government's claims of being a champion of freedom and human rights, the circulation and creation of CSAM and physical child sexual abuse highlight the outdated and ineffectual federal legislation and the limits of law enforcement agencies across the country who are ill-equipped to properly address the harms associated with CSAM due to a lack of specificity in prosecutorial guidelines. The United States has a long judicial history of attempting to respond to the human rights issue of child pornography, particularly in relation to the developing use of the Internet in facilitating CSAM. Yet, as reported by The National Center for Missing and Exploited Children (NCMEC) CyberTipline, online CSE is not declining, despite further governmental action and a growing awareness of the issue.⁶ In the year 2022, the CyberTipline received over 32 million reports containing more than 88 million images, videos, and other content relating to and regarding child sexual exploitation online.⁷ This number has

⁶ Olivia Cullen et al., "Our Laws Have Not Caught up with the Technology": Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States," *Laws* 9, no. 4 (2020): 2, <https://doi.org/10.3390/laws9040028>.

⁷ NCMEC, "2022 Annual Report" (National Center for Missing & Exploited Children, 2023): 15.

only increased in 2023, with 36.2 million reports of suspected child sexual exploitation online, containing more than 105 million images, videos, and other files containing inappropriate content concerning CSE.⁸ The CyberTipline has also seen an increase of more than 300% between the years 2021 and 2023 in reports of online enticement of children by adults.⁹ These alarming trends remain unaffected by social isolation, as the COVID-19 pandemic did little in preventing the rising rates of CSAM online. INTERPOL, in highlighting the dependency of the Internet during pandemic confinement measures, saw increasing rates of online activity related to CSAM including the general consumption of such content, the use of peer-to-peer networks (P2P) for sharing CSAM, the use of live streaming platforms for promoting CSAM, and the use of messaging, social media, and gaming platforms for facilitating crimes of sexual abuse against children.¹⁰ Ultimately, the United States remains one of the leading countries for hosting online CSAM, overtaking the Netherlands, and now accounting for 30% of the global total of CSAM websites hosted.¹¹ It is imperative to note an increasing trend in the depiction of younger children in more graphic sexual situations, involving sadism and bestiality, with 67% of material displaying prepubescent children.¹²

In addition to the staggering amount of reports received by the CyberTipline, one recognizes that these statistics likely account for a mere fraction of cases of CSAM and CSE online, and do not account for pedophiles who engage in sexual interactions with children and

⁸ NCMEC, “2023: Our Impact” (National Center for Missing & Exploited Children, 2024): 14.

⁹ *Ibid.*, 15.

¹⁰ Interpol, “Threats and Trends: Child Sexual Abuse and Exploitation, COVID-19 Impact.” (International Criminal Police Organization, September 2020): 4.

¹¹ Rhiannon Williams, “The US Now Hosts More Child Sexual Abuse Material Online Than Any Other Country,” *MIT Technology Review*, May 11, 2022, <https://www.technologyreview.com/2022/04/26/1051282/the-us-now-hosts-more-child-sexual-abuse-material-online-than-any-other-country/>.

¹² “Child Sexual Abuse Material (CSAM),” Thorn, September 27, 2024, <https://www.thorn.org/research/child-sexual-abuse-material-csam/>.

share explicit images of children among larger, more self-protected communities of pedophiles.¹³ While law enforcement and legislators recognize the increase in child sexual abuse in relation to the creation and distribution of CSAM, it is difficult to properly understand the scope of the problem, due in part to the fact that victims of CSAM production often do not disclose such abuse until adulthood.¹⁴ Fear of consequences resulting from the admission that such material exists and the subsequent shame associated with CSAM are the most frequent reasons why a victim may not disclose their abuse to law enforcement.¹⁵ Victims, especially if they make claims years after the abuse occurred, also may not be seen as “credible” sources by law enforcement; this is often due to inadequate sensitivity training and/or differing state laws regarding statutes of limitation to report crimes and further complicates how CSAM criminals are caught¹⁶

The most significant reason for underreporting of online CSAM, though, can be attributed to internet service providers (ISPs) and the inability of the United States government to hold ISPs legally accountable to adequately recognize inappropriate activity and properly report and remove said material from the platforms they own. Under Section 2252A of Title 18 of United States Code, ISPs are mandated to report known or suspected cases of CSE or CSAM to NCMEC’s CyberTipline, yet despite being legally required to report cases of CSAM, ISPs are not mandated to actively look for CSAM.¹⁷ Since web platforms can accumulate billions of user uploads in a single day, ISPs purportedly struggle to catch instances of CSAM, especially if they fail to allocate staff and resources to provide proper oversight for CSAM. ISPs rely heavily on the assorted and nonexpert reports of users and moderators to identify CSAM for removal.¹⁸ ISPs

¹³ Olivia Cullen et al., “‘Our Laws Have Not Caught up with the Technology’: Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States,” *Laws* 9, no. 4 (2020): 3, <https://doi.org/10.3390/laws9040028>.

¹⁴ *Ibid.*, 3.

¹⁵ *Ibid.*, 4.

¹⁶ *Ibid.*, 3.

¹⁷ *Ibid.*, 3.

¹⁸ *Ibid.*, 13.

also face an uphill battle in adequately reporting CSAM to law enforcement and NCMEC due to rapidly evolving technology of the Internet and the use of virtual private networks (VPNs), that use encryption techniques in messaging apps, peer-to-peer sharing networks (P2P), and Tor (Dark Web), by pedophiles and others to conceal their identity and activity online.¹⁹

Facing the CSAM epidemic, especially from the United States government, a country hosting 30% of the global problem, comes with many complexities in working around national and international laws. From differing definitions of CSAM crimes, to the consideration of American constitutional rights, to the American notion of the family unit as the core of its values system, to the global reception of Internet communication, the solutions are labyrinthine.

**a. The Expansion of Child Pornography Demands Multiple Legislative Actions
Treating Multiple Constituencies**

Despite a growing recognition of CSAM as a human rights crisis that demands to be addressed, there has been little consensus on how best to define the crisis within United States legislation. Discourse on properly defining CSAM within legislation in order to appropriately address both the perpetrators of CSAM and those who are victims to such a crime, often coincides with questions surrounding what are free speech rights,²⁰ despite federal criminalization of obscene material, like CSAM.²¹ Attempting to criminalize CSAM under current United States legislation and policy must therefore be considered through the lens of constitutionally protected rights, especially in determining the definitions and limitations of CSAM. However, in the wake of emerging and evolving technology and the widespread use of information and communication technology (ICT), the crisis of CSAM can no longer be

¹⁹ Ibid., 3.

²⁰ Carissa Byrne Hessick, "Setting Definitional Limits for the Child Pornography Exception," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 57, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

²¹ Ibid., 59.

confronted with linear, outdated definitions. Introducing ICT into discussions surrounding CSAM not only changes how laws are created for offenders to be punished, but also must address how CSAM has been bred and cultivated on platforms beyond physical media, thus posing greater significant and long-lasting harm to victims when the media cannot be destroyed.

ICT allows for easy and free downloading of CSAM in large quantities²² while also providing expansive space for individuals to interact and share media, all with little detection and regulation.²³ Thus, CSAM and CSE can no longer be considered as isolated crimes undertaken by vast, organized crime rings, but rather as crimes that occurring within the private home that allows individuals to engage with explicit material, far removed from the physical crime of CSAM creator who has directly engaged in child sexual abuse.²⁴ The accessibility of ICT means that anyone can access CSAM and connect with like-minded, larger, anonymous communities that promote and encourage CSE, from the privacy of their home and with little detection from law enforcement. Unless law enforcement can enter the private home, or contain the user's online movements, defining the criminal action is nearly impossible.

While current research suggests that online offenders of CSAM are most likely to be Caucasian, young, unemployed, to have greater rates of sexual deviancy, and likely have their own histories of child physical and sexual abuse,²⁵ there is no longer one universal definition of who is an offender of CSE and CSAM crimes. The typical offender profile also differs between the online surfer and then downloader/owner/distributor of explicit material and the perpetrators

²² Agus Raharjo, "Cyber Child Pornography Law and Technology Problems in Its Law Enforcement," in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (Atlantis Press, 2017): 124, <https://doi.org/10.2991/iclj-17.2018.26>.

²³ Chad Steel, "Web-Based Child Pornography: Quantification and Qualification of Demand," *IJDCF* 1 (January 1, 2009): 66.

²⁴ Wendy Walsh, Melissa Wells, and Janis Wolak, "Challenges in Investigations and Prosecutions of Child Pornography Crimes," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 215, <http://www.jstor.org/stable/j.ctt1gk08jr.12>.

²⁵ *Ibid.*, 221.

of the actual physical sexual abuse against children.²⁶ The two criminals cannot be reconciled under one law, as the criminality between possessors of CSAM and producers of CSAM, forces legislation to redefine crimes of CSAM that better distinguish between producers and possessors. Doing so brings forth compelling questions about possession of CSAM as a crime and the harmful effects of downstream users of child pornography in continuing to view CSAM.²⁷

Acknowledging a greater need to redefine and expand upon the variety of the crimes that surround CSAM, especially in relation to what it means to be a producer of CSAM versus a possessor of CSAM, is the direct result of the constantly evolving nature of a technology-driven society, available in the private home, with great anonymity. This has also led to the creation and proliferation of new categories of CSAM; while historically CSAM has been understood as the depiction of actual physical child sexual abuse crimes that have occurred,²⁸ the accessibility and evolving nature of ICT has now allowed for CSAM to be produced without the actual physical abuse of a child. While “rape-type material,”²⁹ is the most explicit portrayal of CSE and is the most common breed of CSAM, the growing use and development of artificial intelligence (AI) computer software has allowed for the production, distribution, and possession of virtual images that do not actually portray real children in real situations of CSE. Yet, this is not simply the use of an avatar; often these virtually simulated or morphed images employ the innocent images of children found online, which are then superimposed onto images or videos of a sexual nature.³⁰

²⁶ Audrey Rogers, “The Dignitary Harm of Child Pornography—From Producers to Possessors,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 165, <http://www.jstor.org/stable/j.ctt1gk08jr.10>.

²⁷ *Ibid.*, 174.

²⁸ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 911, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

²⁹ Peter J. King, “No Plaything: Ethical Issues Concerning Child-Pornography,” *Ethical Theory and Moral Practice* 11, no. 3 (June 1, 2008): 331, <https://doi.org/10.1007/s10677-007-9095-1>.

³⁰ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 911, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

Thus, while it may seem like these are real children either in the nude or engaging in sexual acts, they are in fact, not real and not involving any actual physical harm in the creation of this CSAM.

This does not mean, however, that despite no actual physical harm, that there is no actual crime. There is evidence that children whose likeness or features are used in morphed and AI-generated images face significant psychological and psychosocial harms³¹ once learning that these images exist and circulate the Internet with no regulations. It is therefore vital, especially in the creation and adoption of law and policy on CSAM, to expand upon the legal definitions in order to include all possible scenarios of criminal use of images and content found on the Internet.

Recognizing the never-ending technological invention of multiple ways for which CSAM is produced, distributed, and possessed allows for a greater understanding of how CSAM must be held to strict definitions and legal guidelines, and thus provide law enforcement with a spectrum of ways to respond to crimes of CSAM is, and how best to protect and aid victims. Beyond the most well-known understanding of CSAM as “rape-type material,” and the emerging discourse on the individual and societal harms that exists from morphed and AI-generated images of child sexual abuse, there is also the growth of voyeuristic use of nude images of children for sexual gratification. Such material, referred to as “nudity-type material,” and “pin-up-material,”³² while not always sexually explicit, often involve the portrayal of nude or scantily-clad children, usually smiling on camera. Similar to morphed and virtually simulated child pornography, where images are often removed from the actual physical act of child sexual abuse, they continue to pose

³¹ Ibid., 912.

³² Peter J. King, “No Plaything: Ethical Issues Concerning Child-Pornography,” *Ethical Theory and Moral Practice* 11, no. 3 (June 1, 2008): 330, <https://doi.org/10.1007/s10677-007-9095-1>.

significant harm³³ for victims whose bodies are sexualized and objectified by pedophiles without their consent. It is therefore just as important for discourse and legislation to acknowledge the social harm that can occur in response to growing online communities of pedophiles who troll, collect, and share innocent images of children. Legislation must consider the variety of contemporary CSAM and the tactics employed by online communities in facilitating the concept of child sexuality and the child body as a source for adult pleasure. These poached innocent online images of children, often on parent or family social media pages are often utilized by members of online pedophilic communities to normalize, reinforce, and validate their sexual urges towards children.

While much legislation in the United States has attempted to adequately define CSAM, there is still a greater need to acknowledge and establish a framework that treats the array and severity of CSAM crimes online, especially in how perpetrators engage with children and their bodies and further the desensitization and normalization of children as sexual beings with agency and consent. Because the physical harm associated with CSAM that explicitly portray the physical act of child sexual abuse are more easily understood and recognized as criminal by legislators and law enforcement, it can be that much more difficult to properly define the crime that may arise when a pedophile may be engaging with and sharing nonsexual nude images of a child or a simulated image of a child engaging in sexual intercourse. Due to the nature of these images, where children in the nude are often smiling, there is a belief that these children enjoy being on camera and are happy to expose themselves to viewers. Therefore, while “nudity-type-material” and “pin-up-material,” may not seem to cause explicit physical harm in its creation, these images are often used within online pedophilic communities as a grooming tactic to present to other children with the idea that engaging in sexual acts with adults is fun and

³³ Ibid., 331.

safe.³⁴ Teaching children that having their nude photography taken is an appropriate action for a stranger to engage in, can lead to further sexual exploitation online and an even greater risk of a child being sexually abused offline.³⁵ The CSAM Internet mill continues to thrive, transform, and modify with variety and innovation that continues to evade definition and subsequent criminal prosecution.

The prevalence of CSAM online, especially in understanding the ways in which such material has evolved and expanded to meet the growing online population, must also take into consideration the ways in which parents, innocently or not, can endanger their children in the facilitation of CSAM. Despite the theoretical agreement on CSAM as it relates to the abuse of children for purposes of sexual gratification, there is little consensus on how to treat the role of parents in perpetrating sexual abuse against their own children. Consequently, the Internet has provided opportunities for such abuses to not only be captured on camera, but also to be used as actual currency in online spaces for the financial benefit of the parents. Much discourse on the role parents play in facilitating CSAM is limited to discussions on child sex trafficking and the use of children in online “pimping” schemes engaged in by parents of low-income families.³⁶ Yet, the use of the Internet for financial and social gain has allowed for growing spaces in which parents of all economic classes can monetize sexual abuse of their children in the production and distribution of CSAM. The commercialization of child sexuality is particularly evident among social media platforms that allow for advertising and marketing towards a multitude of audiences.

³⁴ Ethel Quayle and Max Taylor, “Paedophiles, Pornography and the Internet: Assessment Issues,” *The British Journal of Social Work* 32, no. 7 (2002): 866.

³⁵ Audrey Rogers, “The Dignitary Harm of Child Pornography—From Producers to Possessors,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 171, <http://www.jstor.org/stable/j.ctt1gk08jr.10>.

³⁶ Michael Salter and Tim Wong, “Parental Production of Child Sexual Abuse Material: A Critical Review,” *Trauma, Violence, & Abuse* 25, no. 3 (2024): 1832, <https://doi.org/10.1177/15248380231195891>.

Definitions evade instances when parents use children as marketing tools for financial gain.³⁷ While these children's accounts are often targeted towards other children through the marketing of children's clothing and are usually run by the parents themselves, one only has to look in the comments on these posts to recognize the true audience. Young girls, posing in bikinis and scantily-clad clothing have become extremely popular visual advertisements for commercial success, and yet have garnered large audiences of adult male fans who find sexual gratification in looking at these images and who leave a plethora of inappropriate comments underneath these posts. Instead of reporting such behavior, it has been seen that the site creators have learned to monetize perverse responses, by continuing to pose their children in very little clothing and developing subscription services for men to spend more money and time with these children.³⁸ Such evidence continues to point toward the growing evolution of the normalization of the child's body for sexual gratification, that is also commercialized for economic purposes to support the family.

Yet, parents who facilitate child sexual abuse and exploitation in producing and distributing CSAM may not necessarily be engaging in such a crime solely for financial success, but rather for social gain among circles of like-minded adults who gain sexual gratification from such images. This is especially evident in research that highlights data pointing toward the fact that parents are seen to facilitate physical sexual abuse against children and the production and distribution of CSAM across all economic strata, with particular emphasis on the engagement and production of such material by biological fathers and step-fathers coming from wealthy backgrounds.³⁹ Male parents who sexually abuse children in their homes for the purposes of

³⁷ Jennifer Valentino-DeVries and Michael H. Keller, "A Marketplace of Girl Influencers Managed by Moms and Stalked by Men," *New York Times*, February 25, 2024, <https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html>.

³⁸ *Ibid.*

³⁹ Michael Salter and Tim Wong, "Parental Production of Child Sexual Abuse Material: A Critical Review," *Trauma, Violence, & Abuse* 25, no. 3 (2024): 1834, <https://doi.org/10.1177/15248380231195891>.

capturing such abuse and uploading it to online spaces are ultimately more likely to be doing so not for economic reasons, but rather as a means of generating social capital⁴⁰ among pedophilic communities. This is further emphasized by the prevalence of “pin-up-material” and “nudity-type-material” online, wherein children are depicted oftentimes as smiling while being exposed sexually to the camera. Fathers will often produce such types of CSAM for purposes of proving their intent and seriousness within these online communities and to gain praise and acceptance⁴¹ from like-minded individuals, validating their sexual attraction towards children.

While it must be acknowledged that parents can become perpetrators of child sexual abuse against their children for the purposes of producing and distributing CSAM, this provides immense difficulties within legislation that attempts to criminalize the production, distribution, and possession of CSAM. Identifying parents as purposeful and criminal offenders using CSAM requires a more intrusive investigation and more sensitive case-by-case handling, especially in relation to the protection of the child and their human rights. Prosecuting parents who sexually abuse their children for purposes of producing and distributing CSAM is complicated because the victims will have to reconcile their abuse with the betrayal they feel towards their parents, but also due to the fact that removing children from their families may cause greater trauma.⁴² The importance of the family unit is both internationally and nationally recognized,⁴³ and yet in the best interests of protecting children and their human rights, the government may have to intervene when such rights are proven to be threatened. Training and resources need to be more

⁴⁰ Sayid Muhammad Rifiki Noval et al., “THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING,” *Russian Law Journal* 11, no. 5 (2023): 11, <https://doi.org/10.52783/rlj.v11i5s.891>.

⁴¹ Ethel Quayle and Max Taylor, “Paedophiles, Pornography and the Internet: Assessment Issues,” *The British Journal of Social Work* 32, no. 7 (2002): 867.

⁴² Michael Salter and Tim Wong, *Production and Distribution of Child Sexual Abuse Material by Parental Figures*, Australian Institute of Criminology, 2021: 15, <https://doi.org/10.52922/ti04916>.

⁴³ UN General Assembly, Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3, 20 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815>

adequately provided for law enforcement and child protective services in engaging with situations where a child may have to be removed from their family unit, as such situations require greater emotional care.

Developing a legal system to address CSAM must focus on the physical, psychological, and social harms associated with CSAM is a particular point of contention within discourse on CSAM legislation. The extensive nature of CSAM has challenged legislators, especially, who are unable to define the scope of the American human rights issue by properly defining the severity of CSAM as a crime and to establish appropriate governmental methods⁴⁴ for protecting children from sexual abuse and exploitation through CSAM. Defining the related harms of CSAM is a particularly divisive topic, since it can be significantly difficult to prove harm if the material does not explicitly portray physical child sexual abuse or exploitation. Since “rape-type-material” requires the physical coercive act of sexual abuse and exploitation of children, the physical and psychological harms associated with such a crime are often more easily detectable by law enforcement, heightening the severity of the crime. Children who are sexually coerced into performing sexual acts for the means of producing, distributing, and possessing CSAM, often incur physical injuries, such as genital bruising and soreness, cuts, lacerations, anal irritation, urinary infections, and sexually transmitted diseases.⁴⁵ Other physical harms associated with child sexual abuse and exploitation in the creation of CSAM include headaches, loss of appetite or stomachaches, and short vomiting spells.⁴⁶ In understanding the severity of CSAM as a crime, it is also important to recognize that the production of “rape-type-material” can also manifest a

⁴⁴ Carissa Byrne Hessick, “Setting Definitional Limits for the Child Pornography Exception,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 67, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

⁴⁵ Audrey Rogers, “The Dignitary Harm of Child Pornography—From Producers to Possessors,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 170, <http://www.jstor.org/stable/j.ctt1gk08jr.10>.

⁴⁶ *Ibid.*, 173.

multitude of long-lasting psychological harms for these children. Children who are sexually abused and exploited may suffer from depression, anxiety, post-traumatic stress disorder, anger and related mood swings, withdrawal, low self esteem, feelings of worthlessness, and further feelings towards acting in self-destructive behavior.⁴⁷

While legislation has placed a heavy emphasis on the extensive and severe harms associated with CSAM portrayals of physical sexual abuse, there is an ignorance of the psychosocial harms victims may face in having their likeness used in the creation of morphed sexual images or in the distribution of “nudity-type-material” and “pin-up-material” portraying their bodies without their consent for purposes of sexual gratification. It must be stressed that despite the lack of physical abuse, many victims who become aware that they were either exploited during the creation of images displaying their nudity or that images of their nude bodies are circulating online pedophilic communities will suffer immense and long-lasting victimization⁴⁸ in knowing they are unable to prevent the continued use and circulation of these images. Victims of CSAM must live with feelings of helplessness, hopelessness, fear, anxiety, and humiliation in knowing these depictions of their sexual exploitation will continue to circulate, threatening their human dignity and right to privacy, causing societal and generational impact.⁴⁹

Appropriately responding to the ongoing human rights issue of CSAM, particularly the circulation of child pornography on the global Internet, must first require an internationally and nationally accepted definition of what constitutes CSAM in its many iterations, across all distinctions and degrees. Combatting CSAM and protecting current and future victims of child sexual abuse and exploitation can no longer be adequately employ outdated and limited

⁴⁷ Ibid., 170.

⁴⁸ Ibid., 175.

⁴⁹ Ibid., 173.

definitions of CSAM that do not properly engage with all forms of CSAM and its significant and longlasting harms.

If the United States were to sufficiently enact legislation and law enforcement in the criminalization of CSAM as a national human rights issue, policymakers and legislators must come to terms with the fact that the CSAM on the Internet today presents a complex and pervasive problem that engages with a larger issue of media dependence that is kept alive with capitalist investment in children and their role as sexual beings that in turn normalizes behavior to perpetuate a cycle of creation, distribution, and possession of CSAM. It therefore must be stressed both within the accepted theoretical definition of CSAM and subsequent legislation, that it is not just the creation of CSAM that is harmful, but it is also in the global, international circulation of such media that must be addressed when attempting to protect children from human rights violations.⁵⁰ Vital to legislative success will be the definition of CSAM and continuing to discuss its persistence as a human rights issue in relation to ICT that bolsters the circular nature of online consumption patterns.

b. American Legislation: Landmark Decisions in the United States' Quest to Define CSAM and Human Rights

Despite the United States government's long legal history of attempting to curb the production, distribution, and possession of CSAM, the existing legislation and Supreme Court rulings regarding CSAM and child sexual exploitation are both outdated in their definitions and understandings of the contemporary issue of the Internet's, and evident increasing rates are reported by NCMEC. While the First Amendment of the United States Constitution protects most forms of free speech, child pornography is not protected under the understanding of free

⁵⁰ Carissa Byrne Hessick, "Setting Definitional Limits for the Child Pornography Exception," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 72, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

speech and is considered obscene and illegal material.⁵¹ Attempting to reconcile First Amendment rights with the attempt to criminalize CSAM has forced legislators and law enforcement to balance protections of free speech rights under the First Amendment while also defining what is “obscene” and subject to prosecution. Freedom of speech arguments that present a more nuanced definition of obscene and illegal material has eventually led to several landmark Supreme Court decisions.

The Supreme Court’s decision in the 1987 case, *New York v. Ferber* provides the framework for better elaboration on CSAM as a category of speech not protected under the First Amendment. *Ferber*, in such a case presented the argument that possessing and selling voyeuristic material depicting two young boys masturbating did not fall under the definition of “obscene” since the films in question did not portray child sexual abuse, and therefore there is no direct harm to constitute such material as “obscene.”⁵² Such arguments by *Ferber* will continue to be brought forth within discourse on CSAM, as the Supreme Court attempts to rectify understandings of child pornography’s inherent harms and the need to categorize and define the severity associated with creation versus circulation. Yet, the resulting Supreme Court decision recognized that child pornography, no matter how “obscene,” holds inherent harms in both the creation of the material *and* in the circulation of material, as it poses significant threats to the safety of children and the protection of their rights to human dignity and privacy. The Court, in defending their decision, frames the harms associated with CSAM in relation to the “intrinsic relationship” between the distribution of CSAM and CSE and further child sexual abuse.⁵³

⁵¹ Olivia Cullen et al., “Our Laws Have Not Caught up with the Technology’: Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States,” *Laws* 9, no. 4 (2020): 2, <https://doi.org/10.3390/laws9040028>.

⁵² Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 914, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

⁵³ Audrey Rogers, “The Dignitary Harm of Child Pornography—From Producers to Possessors,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 170, <http://www.jstor.org/stable/j.ctt1gk08jr.10>.

Despite the lack of physical child abuse depicted, the creation is still the sexual exploitation of a child who is either unaware of their role in the material or who is coerced into performing on camera. But it is, as emphasized by the Court, just as great of a threat, if not more of a threat, to children to actively circulate and distribute CSAM, as it not only causes emotional distress⁵⁴ for victims of CSAM who are unable to prevent the future use of their images without their consent, but also provides for an economic motive⁵⁵ for the further production of CSAM, posing a greater risk for more child sexual abuse. It is therefore, the contention of the Supreme Court, that there needs to be greater awareness of the fact that circulation of CSAM is not protected under the First Amendment due to its associated harms and that the only effective way to end the creation of child pornography and its related child sexual abuse, is to put a stop to the distribution network and the community for which CSAM circulates.⁵⁶

Reaffirming their decision from 1987, the Supreme Court decision in *Osborne v. Ohio* (1990) continues to emphasize the inherent risks associated with the creation *and* the circulation of CSAM and the greater need to protect the rights of children above the protection of certain free speech rights. The Court employed the precedent ruling in *Ferber* to reassert that creation and circulation of CSAM pose inherent harm to children, that the criminalization of possession will directly result in a decrease in cases relating to CSAM,⁵⁷ and that further additional grounds for legislation on criminalizing CSAM are needed.⁵⁸ Once again, the Court put particular

⁵⁴ Carissa Byrne Hessick, “Setting Definitional Limits for the Child Pornography Exception,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 67, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

⁵⁵ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 914, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

⁵⁶ *Ibid.*, 915.

⁵⁷ Carissa Byrne Hessick, “Setting Definitional Limits for the Child Pornography Exception,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 67, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

⁵⁸ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 915, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

emphasis on the harms of circulation in its lasting depictions of CSE, but also identified another associated harm believed to play a significant role in the continued existence of CSAM and further child sexual abuse: possession.⁵⁹ Possession of CSAM as understood by law enforcement, only further promotes an economic market for the production and distribution of CSAM and the use of such materials in future CSE.⁶⁰ While the notion of possession as a driving force for a CSAM economic market disregards the fact that pedophiles are often compelled to create, distribute, and possess CSAM for either personal gain or for social status among pedophilic communities,⁶¹ possession is still often categorized as a crime of the same severity as creation and circulation within the United States due to reports that CSAM possessors pose a significant risk in engaging in physical child sexual abuse and the understanding that pedophiles often use CSAM to further exploit and groom children.⁶²

Yet, despite the assertion on the part of the judicial system to categorize possession of CSAM as a crime deserving of severe penalties,⁶³ fast advancing and evolving technology, including the emergence of the Internet as a source of information and communication, makes it significantly harder to define and prosecute possessors of CSAM. File sharing, online discussion boards, and peer-to-peer networks⁶⁴ have blurred existing definitions of what it means to produce, distribute, and possess CSAM and have made it increasingly difficult for law enforcement to keep up with how quickly pedophiles are adapting to new technology.

⁵⁹ *Ibid.*, 915.

⁶⁰ Carissa Byrne Hessick, "Setting Definitional Limits for the Child Pornography Exception," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 61, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

⁶¹ Ethel Quayle and Max Taylor, "Paedophiles, Pornography and the Internet: Assessment Issues," *The British Journal of Social Work* 32, no. 7 (2002): 866.

⁶² *Ibid.*, 867.

⁶³ Audrey Rogers, "The Dignitary Harm of Child Pornography—From Producers to Possessors," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 170, <http://www.jstor.org/stable/j.ctt1gk08jr.10>.

⁶⁴ *Ibid.*, 169.

“Possessing” CSAM can no longer be defined as the physical act of holding onto materials, as peer-to-peer networks now allow offenders to easily download and possess copies of CSAM directly within their home, while the original remains available on the Internet for further downloading. This poses difficulties for law enforcement in prosecuting possessors of CSAM, as offenders argue that there is a need for a more gradient approach that differentiates between “receiving,” “possessing,” and “distributing.” These complications are often resolved by law enforcement developing a case on the differences between receipt count and possession count.⁶⁵

In response to the risks inherent in new adaptive technology, Congress adopted the Child Pornography Prevention Act of 1996 (CPPA), which expanded upon the definitions of child pornography to include any visual depiction, including any photography, film, video, picture, or computer or computer-generated image of picture that is of, or appears to be of a minor engaging in sexually explicit conduct, or any sexually explicit images that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that such an images depicts a minor engaging in sexually explicit conduct.⁶⁶ The Act faced immense scrutiny, though, by the Free Speech Coalition who were concerned that the CPPA inadvertently barred citizens from their rights to free speech under the First Amendment.⁶⁷ The subsequent Supreme Court case, *Ashcroft v. Free Speech Coalition* (2002) attempted to reconcile these conflicting interests. Yet, while the Supreme Court upheld the creation and circulation of CSAM as significantly harmful, it not only refuted precedent cases that emphasized the severity of circulation, but also rejected the proposed addition of possession as a harm set forth in the Court’s decision in *Osborne v. Ohio*.

⁶⁵ Ibid., 168.

⁶⁶ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 916, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

⁶⁷ Ibid., 917.

This emphasis on creation of CSAM disputes earlier understandings of CSAM as a crime by limiting the kind of material for which one can be prosecuted for producing, distributing, and possessing. The CPPA's criminalization of images depicting adults that may look like children⁶⁸ was the main reason for which free speech activists, and subsequently the Supreme Court in their decision, believe that the legal definition of child pornography should only include any sexually explicit depiction of real children or any sexually explicit image created through the sexual exploitation and abuse of children.⁶⁹

In this case, the new proposed definition views the physical harms associated with CSAM creation to be significantly more severe than those psychological and psychosocial harms as a result of creation and circulation, shifting how law enforcement prosecutes offenders and engages with victims. Resulting in this Supreme Court decision was both the removal of the CPPA and the subsequent downgrade of punishment of private possession crimes. Despite these assertions by the Supreme Court in their decision, victim testimony provides compelling evidence that there *is* a need to address these psychological and psychosocial harms that arise in the continued circulation of CSAM. One survivor of CSAM describes the immense shame in knowing the images of their child abuse remains on the Internet for anyone to see, with the worry that "when [their] friends are on the internet they are going to come across [their] pictures."⁷⁰ They go on to emphasize the crippling fear they feel in knowing these images continue to circulate online, feeling as if their life is "on hold for that day and [they are] frozen in time waiting,"⁷¹ constantly feeling anxiety over knowing those in their life may come across these images memorializing their abuse. Another survivor, one whose childhood images were

⁶⁸ Ibid., 918.

⁶⁹ Ibid., 918.

⁷⁰ "Amy's Story: My Uncle & Me," Child Rescue Coalition, April 22, 2022, <https://childrescuecoalition.org/educations/amys-story-my-uncle-me/>.

⁷¹ Ibid.

converted into pornography through AI technology, has expressed feelings of “nausea, fear, and overwhelming discomfort and distrust,”⁷² in knowing a stranger has used their childhood images for purposes of sexual gratification and that there is nothing they can do to remove such images from the Internet completely.

Thus, while the Supreme Court, in 2002, may have believed morphed images did not produce severe enough harms to constitute a more expansive definition of CSAM,⁷³ it was only one year later, in 2003, that the PROTECT Act was adopted. This act is especially significant as it reinstates within the legal definition of CSAM the understanding that morphed images depicting a child engaged in sexually explicit conduct are considered illegal material, while also criminalizing the *solicitation* of CSAM.⁷⁴ It is evident that despite at least fifty years of legislative action in the United States regarding CSAM, there continues to be very little agreement over how best to define and legally address this human rights crisis. While the Court continues to reassert that it is in the State’s best interest to prevent harm to children during and after the creation of CSAM, the lack of a comprehensive definition of CSAM and a history of contradictory court decisions exhibits the tension between human rights and American rights. A negative conclusion is that law enforcement struggles to manage the legality of CSAM, and has an ineffective strategic model for catching and prosecuting offenders, while victims suffer without effective aid to receive pertinent support systems.

Without solid legislation of CSAM within the United States the current model for attempting to combat crime remains ineffective in response to the growing issue of cybercrime,

⁷² “Charlotte Child Pornography Case Shows ‘unsettling’ Reach of AI Imagery,” FBI, April 29, 2024, <https://www.fbi.gov/news/stories/charlotte-child-sexual-abuse-material-case-shows-unsettling-reach-of-ai-generated-imagery>.

⁷³ Carissa Byrne Hessick, “Setting Definitional Limits for the Child Pornography Exception,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 62, <http://www.jstor.org/stable/j.ctt1gk08jr.6>.

⁷⁴ Stacey Steinberg, “Changing Faces: Morphed Child Pornography Images and the First Amendment,” *Emory Law Journal* 68, no. 5 (2019): 920, <https://scholarlycommons.law.emory.edu/elj/vol68/iss5/3>.

like the production, distribution, and possession of CSAM on the Internet. Assumptions about traditional CSAM crime⁷⁵—that is, having limited scope, scale, space, and time—do not effectively translate when faced with cybercrime, which is often transnational and vastly larger in scale than localized crime.⁷⁶ Law enforcement must constantly adapt what understanding they do have of CSAM as a cybercrime, when definitions of CSAM within legislation are inconsistent and vary by state. While evidence plays a crucial role in prosecuting possession and production of CSAM crimes,⁷⁷ without a comprehensive definition of what constitutes CSAM, law enforcement must first prove that the images they allege are in fact CSAM, that the children depicted are not actually adults, are young enough for certain laws within a state to apply, or that they are graphic enough to be considered “obscene.”⁷⁸

Expert witness testimonies from medical professionals, centralized databases (United States Immigration and Customs Enforcement's National Child Victim Identification System and the NCMEC Child Victim Identification program),⁷⁹ and the Internet Crimes Against Children Task Force,⁸⁰ may provide additional information, such as the identification of pubertal development of a missing child, that may help prosecutors in being able to determine whether the images within the case are of actual children. While these resources may be helpful in presenting a case in which a child has been sexually abused or exploited for the purposes of producing and

⁷⁵ Agus Raharjo, “Cyber Child Pornography Law and Technology Problems in Its Law Enforcement,” in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim Countries: Experiences and Challenges (ICLJ 2017)* (Atlantis Press, 2017): 124, <https://doi.org/10.2991/iclj-17.2018.26>.

⁷⁶ *Ibid.*, 125.

⁷⁷ Wendy Walsh, Melissa Wells, and Janis Wolak, “Challenges in Investigations and Prosecutions of Child Pornography Crimes,” in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 222, <http://www.jstor.org/stable/j.ctt1gk08jr.12>.

⁷⁸ *Ibid.*, 221.

⁷⁹ *Ibid.*, 222.

⁸⁰ *Ibid.*, 221.

distributing CSAM, the guidelines for prosecution remain hazy, especially in relation to the victim and their trauma.

In the global world of the Internet that facilitates CSAM crimes, United States law enforcement has had to rapidly modify their techniques for catching and prosecuting offenders. Rather than relying on ISPs to report alleged CSAM, law enforcement has taken a proactive approach by tracing IP addresses, posing as traders, and monitoring P2P networks.⁸¹ Becoming expert in searching online offenders is particularly important on the part of state and federal law enforcement since ISPs typically prioritize user privacy rights and are unwilling to engage with law enforcement unless a warrant can be sought and furnished.⁸² A consistent argument is that due to a lack of priority, funding, and a definitive understanding of what CSAM is, the United States is falling behind in tracking emerging cases of technology- facilitated CSAM. Prosecutors report a multitude of problems as it concerns technological advances including problems with computer forensics,⁸³ issues with identifying new apps, softwares, and programs,⁸⁴ and difficulty in tracking and identifying devices that hold CSAM due to smaller hardware, large storage capacities, and encryption techniques.⁸⁵ State legislation, without concrete definitions that differentiate between crimes of creation and circulation versus possession, in conjunction with technological complexities, undermines law enforcement's ability to adequately prosecute offenders. Offenders may argue that they unwillingly or unknowingly downloaded CSAM either

⁸¹ Ibid., 218.

⁸² Olivia Cullen et al., "'Our Laws Have Not Caught up with the Technology': Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States," *Laws* 9, no. 4 (2020): 7, <https://doi.org/10.3390/laws9040028>.

⁸³ Wendy Walsh, Melissa Wells, and Janis Wolak, "Challenges in Investigations and Prosecutions of Child Pornography Crimes," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 224, <http://www.jstor.org/stable/j.ctt1gk08jr.12>.

⁸⁴ Olivia Cullen et al., "'Our Laws Have Not Caught up with the Technology': Understanding Challenges and Facilitators in Investigating and Prosecuting Child Sexual Abuse Materials in the United States," *Laws* 9, no. 4 (2020): 6, <https://doi.org/10.3390/laws9040028>.

⁸⁵ Ibid., 6.

through a virus or through the actions of another person using their computer.⁸⁶ Computer forensics proves to be the most effective way to combat such arguments, yet manpower to increase timeliness, funding to increase resources, funding for training, funding for advanced laboratory equipment, and technicians⁸⁷ can make such prosecutions hard to establish, especially in combating the immense amount of CSAM being reported.

Indecisive legislation and an inability to develop a multifaceted and adaptable definition of CSAM as a human rights issue, in addition to a lack of action on the part of the government to provide effective training, resources, and funding for law enforcement in actively combatting CSAM on the ground, means that the United States remains one of leading hosts for the production, distribution, and possession of CSAM.

With rates of CSAM increasing every year from the United States, the international community has sought out United States administration's support in no longer treating CSAM with ambiguous or conflicting legal positions and legislature, especially since technology has allowed offenders in the United States to transcend national borders and prey on children, sharing images on a global scale. CSAM legislature in the United States that fights between federal and state courts has led to the absolute demand for comprehensive nation-wide legislation that aligns and collaborates with international human rights legislation. This collaboration must also be in place to confront the proliferation of global CSAM as the Internet remains a universal space where children in every country, especially those facing poverty and humanitarian crises, remain a vulnerable population.

⁸⁶ Wendy Walsh, Melissa Wells, and Janis Wolak, "Challenges in Investigations and Prosecutions of Child Pornography Crimes," in *Refining Child Pornography Law*, ed. Carissa Byrne Hessick, Crime, Language, and Social Consequences (University of Michigan Press, 2016): 225, <http://www.jstor.org/stable/j.ctt1gk08jr.12>.

⁸⁷ *Ibid.*, 231.

III. Reporting and Removing CSAM: When NGOs are Left With Limited Legal Guidelines in Facing the CSAM Epidemic

That the United States is a leader in the production and dissemination of CSAM is unsurprising, in that unfettered access and freedom on the internet is practically protected across the nation. What is regrettable is the fact that the United States has not led the rest of the international community to develop a working definition for CSAM as a crime, or to engage with other nations to stem further proliferation of CSAM, or to be more proactive in punishing CSAM producers. In spite of the United States government's reluctance to join and perhaps lead the international mission to harness CSAM material, there are notable instances where global non-profit organizations, with or without United States funding, have attempted to develop a cogent approach to CSAM creation and dissemination both domestically and internationally, and have sought ways to help law enforcement nab criminals. To explore how grassroots, non-profit global organizations have grown and challenged the pervasive problem of CSAM, it is increasingly obvious that their mission assists the national and international community in two ways: by becoming a receptacle of public reports of CSAM that can then be reported to law enforcement, and they collect data as evidentiary support of the growth and decline of CSAM global trends. Two global organizations that have been collecting data for the last decade on the generation of CSAM and show that CSAM continues to trend upwards, thereby proving that the obvious lack of cohesive CSAM regulations, along with the United States' reticence to join forces with international courts, only exacerbates proliferation.

Addressing the global prevalence of online child sexual abuse material poses significant challenges due to substantial gaps within existing theoretical and legislative frameworks regarding the contemporary understanding and definition of CSAM vis-a-vis how such material

is produced, distributed, and possessed in an emerging complex technological space. The continued hesitancy to address the limitations caused by incomplete and outdated laws has not only left United States law enforcement without the adequate guidelines for prosecuting cases of CSAM, but another significant disadvantage is the inconsistent data that limits how we can better understand social trends relating to Internet usage, norms surrounding childhood and sexuality, and the persisting existence of criminal material online. Data gaps naturally occur within this discussion due to the sensitive nature of child sexual abuse and the potentially triggering effect for victims. Therefore, not only is there little existing data to analyze, but there are numerous community safety concerns that impact an attempt to study these crimes in the United States. This study will conduct a comparative data analysis of information provided by two established global online CSAM hotlines that have reported collected annual data to the public. There is one established hotline in the United States, founded through NCMEC; however, there is no published data collected that can be used for comparison sake in this discussion. Online hotlines rely upon the general, generic, aggregate public understanding of CSAM and provide a space in which individuals can report actual or potential CSAM while using the Internet.

Despite Congressional funding for and national recognition of its work, the nonprofit organization NCMEC and its Annual CyberTipline Reports cannot be included here due to a lack of comprehensive, complete, and accessible data before the year 2020. The study will instead analyze data provided by partners of NCMEC through annual reports of the Internet Watch Foundation (IWF) and the InHope Association of Internet Hotline Providers, who both have established online hotlines for individuals to report suspected or confirmed CSAM. These organizations discussed here in this comparison were chosen based on their trustworthy reputation across the online audience and within global legal communities for having the most

comprehensive reporting systems that are publicly accessible. The IWF receives funding from private membership and donation opportunities for those dedicated to the removal of CSAM, including partnership opportunities for technology companies, while also receiving large funding from the European Union. InHope, in partnership with NCMEC, also receives funding through partnership opportunities, especially from large technology companies like Amazon.com, Inc, while also working in tandem with NGOs depending on the region in which a hotline has been established.

IWF is an internationally-registered nonprofit organization committed to providing resources alongside an Internet Hotline for reporting, recognizing, and removing child sexual abuse materials online.⁸⁸ While the IWF directly seeks out CSAM through a specialized team of front-line analysts and image classification assessors,⁸⁹ the IWF's online hotline provides the global public with the ability to report links and websites that may contain CSAM for experts to assess, report, and remove. Similarly, InHope is an international nonprofit organization dedicated to supporting the establishment of hotlines across the globe for reporting CSAM and providing resources for victims. InHope directly works with public reporting of CSAM online to identify, assess, and remove illegal material and provides annual reports addressing public interaction with and reporting of such images.

Data provided by the IWF and InHope will be organized and analyzed between 2018-2023, in order to gain a better understanding of CSAM increases or decreases on the Internet, thus impacting reporting outcomes before COVID-19 (2018-2019), during COVID-19 (2020-2021), and after COVID-19 (2022-2023) This set of years was chosen particularly due to how the Coronavirus caused a mass shift to Internet-dependency during quarantine periods and

⁸⁸ "Who We Are," Eliminating Child Sexual Abuse Online – Internet Watch Foundation, <https://www.iwf.org.uk/about-us/who-we-are/>.

⁸⁹ Ibid.

to detect how self-isolation may or may not have impacted the behavior of CSAM proliferation. In the case of InHope, the data of 2017 will be included due to changes made internally within the organization on collecting and presenting their information that are better understood from the onset.

While the data engages with CSAM on a global level, the information provides insight into the vast scope of the problem and highlights the negligence on the part of the United States government and emphasizes CSAM as a dire human rights issue in a country that remains one of the leading hosts for such content. Despite some variations between annual reports and the presentation of the information between organizations, the data provided by IWF and InHope in total public reporting, confirmed CSAM, and total unique URLs, images, and videos, will be utilized throughout this study to gauge the extent of the pervasiveness of CSAM online and how a lack of urgency within the United States government to address the proliferation of CSAM remains unjustified in spite of such distressing trends reported through the public.

a. Troubling CSAM Trends for Legal Consideration

1. Internet Watch Foundation

The Internet Watch Foundation (IWF) actively seeks out, assesses, reports, and removes CSAM through their own team of specialists, while also providing the public with Internet hotline availability for reporting suspected or confirmed CSAM images, videos, URLs, and webpages. The IWF then compiles their data for publication in their Annual Reports, where they not only attempt to capture the extent of the global human rights issue of CSAM and its trends, but also provide for a more granulated portrait of their data, including but not limited to, the classification of severity and uniqueness of the material, the organization of data based on age

and sex, the development of a global map of where reporting and hosting occurs, and the constant adaptation and presentation of data on new and evolving forms of CSAM as they emerge online. There is, despite the comprehensive nature of the IWF's Annual Reports on CSAM hotline and research data, only certain points of data will be used here due to the evolving nature of not just how CSAM is defined, but also in how the organization has classified and organized their data based on such rapid changes.

The IWF has consistently seen an increase⁹⁰ in the total number of reports of CSAM they receive through their organization between the years of 2018 and 2023. As noted, it is important to understand that the total number of reports of CSAM not only includes public reporting through the IWF Internet hotline, but also the active searches done by the IWF team. The IWF attempts to take such information into consideration when analyzing their data trends on CSAM. While IWF recognizes that their cybertechnology has advanced in its ability to assess, confirm, and remove CSAM online which may serve to explain the increase in total reports made by the organization, anecdotal evidence provided by the IWF team rejects that argument. Based on the technological expertise of the IWF and through their own analysis of reporting trends, there is evidence of a significant increase in the number of reports received by the IWF in relation to supposed and/or confirmed CSAM. Such trends are further proven true when one looks at the data provided by the IWF on the total number of confirmed CSAM cases. The total number of confirmed images or videos of CSAM reported through the IWF has also steadily increased⁹¹ over the six year time frame, further emphasizing arguments in favor of anecdotal evidence on the expansive nature of CSAM online.

⁹⁰ See Appendix A, Figure 1.

⁹¹ See Appendix A, Figure 1.

When it comes to the total number of reports of CSAM submitted by the public as they may encounter material online, there is a more interesting trend that can be observed. There was, in particular, an anomalous spike⁹² in the number of reports made by the public in the year 2020, which can likely be attributed to a noticeable increase in Internet usage during the quarantine regulations of the COVID-19 pandemic. The global COVID-19 pandemic and subsequent mass quarantining responses lasting on average between the months of March and July 2020, ultimately provided for a greater reliance on the Internet,⁹³ not just for communication but for engaging in daily activities, including work, school, and shopping. A greater reliance on the Internet for communication during a time of social distancing and isolation ultimately allowed for ample time to explore the expansiveness of the Internet, which in turn, provided for greater instances in which one may inadvertently come across CSAM, finding the need to make a report to the IWF online hotline. While the total number of reports made by the public then decreases in the year 2021, this accounts for 2021 as a time of gradual return to in-person social interactions, and that between the years 2021-2023, there was a return to the steadily increasing trends of CSAM reporting.⁹⁴

Furthermore, the IWF consistently provides information and analysis on site-type reporting and what it means with respect to the global CSAM human rights issue. It is particularly important to note that according to compiled data provided by the IWF, the total number of confirmed reports of CSAM, the total number of reports including unique domains hosting CSAM, and the total number of reported URLs categorized by the IWF as free-to-use (websites requiring no payment to create an account and to post content) all increased between

⁹² See Appendix A, Figure 1.

⁹³ Colleen McClain et al., "The Internet and the Pandemic," *Pew Research*, October 1, 2021: 4.

⁹⁴ See Appendix A, Figure 1.

the years 2018-2023.⁹⁵ In conjunction with the total number of confirmed reports made by the public, this data provides for a concerning trend that not only are people continuously being exposed to an increasingly prevalent number of CSAM on free web platforms, but they are also being exposed to growing numbers of unique CSAM, reflecting another concern for how the demand for more unique CSAM has allowed for further rates of CSE in efforts to produce new content for consumption.

2. InHope

While the Internet Watch Foundation engages with CSAM directly through their specialized analytical team and through their public reporting hotline, the InHope Association of Internet Hotline Providers exclusively collects and presents their data from their publicly-accessible global hotlines for reporting CSAM. The data provided by InHope within their Annual Reports is informed by reports received directly from the public, which should be taken into account when attempting to understand how often individuals may come across an image or video and feel compelled to report it to an InHope hotline. Similarly to IWF, InHope endeavors to address the evolving nature of CSAM, which is reflected in the varying presentation of their Annual Reports. InHope, as a non-profit organization, faced huge personnel challenges during COVID-19, forcing them to not only limit their staff of in-person hotline analysts, but limited their ability to access secure and protected hotline rooms with the specific computer technology and security protocols for adequately analyzing CSAM. In adapting to such challenges, the organization has shifted how they evaluate and display their data within their Annual Reports, starting in the year 2020. Therefore, this data will be presented as two comparative data sets (2017-2019 and 2020-2023), with the addition of an extra year (2017), in order to properly account changes in how data has been classified while continuing to attempt to

⁹⁵ See Appendix A, Figure 2.

understand the emerging trends relating to CSAM pre-COVID-19, during COVID-19, and post-COVID-19.

Despite the ways in which InHope has had to adapt their data collection and analysis process, the trends presented by InHope display continuously increasing human rights issues, similarly to the concerns addressed by IWF. Between 2017 and 2019 both the total number of reports made by the public and received by InHope and the total number of illegal content confirmed as CSAM through analysis both increased over that time.⁹⁶ Such trends are alarming when one considers that the total number of reports made by the public is significantly less than the total number of confirmed images or videos containing CSAM, reflecting the growing concern voiced by experts who find multiple images and videos of varying CSAM hosted within one domain, webpage host, or URL.

In comparison to the data collected prior to the COVID-19 pandemic, data is ultimately influenced by the previously mentioned limitations faced by the organization, as a whole. Despite the fact that there was an increase in the total number of public reports made to InHope hotlines during the COVID-19 pandemic, which reflects similar trends to those provided by the IWF, there is a significant decrease in the percentage of new content assessed by hotline analysts, resulting in a lower total number of confirmed CSAM within reporting. This does not necessarily mean that there were fewer cases of confirmed CSAM, globally, but rather the InHope team during the pandemic may not have had the adequate manpower to fully engage with the total number of reports submitted to the organization.

In relation to the data collected for the years 2017-2019, which attempts to capture CSAM trends prior to and during the COVID-19 pandemic, data engaging with reports on CSAM post-COVID-19 provides insight into online engagement, Internet usage, and the

⁹⁶ See Appendix A, Figure 3.

prevalence of CSAM in a post-quarantine society, dependent on the Internet in ways completely different prior to the pandemic. For instance, InHope saw a significant drop in the total number of public reports made in 2022, although experts attribute it to a wide-scale decrease in global Internet usage that year.⁹⁷ Yet, despite this decrease in the total number of public reports made, the total percentage of new content assessed and the total number of confirmed reports of new CSAM assessed by InHope hotline analysts both continued to increase throughout 2020-2023.⁹⁸ This reflects an alarming trend that sees that regardless of how often one uses the Internet, the rates in which one may inadvertently come across CSAM and the rates in which CSAM is being produced and distributed online continue to increase by the year. Thus, not only are people more likely to be exposed to inappropriate and illegal content online, but if the production of CSAM is also continuing to increase, this then indicates greater incidence of physical child sexual exploitation and abuse for the purposes of producing CSAM.

b. Greater Political and Legal Implications of CSAM Online Trends

January 2024 saw the CEO of Meta Platforms, Inc., Mark Zuckerberg questioned during a United States congressional hearing on the social harms on the Internet faced by children and the role of social media platforms in providing the sufficient censorship and adequate community guidelines for protecting children from sexual exploitation and abuse online.⁹⁹ Zuckerberg's tech conglomerate Meta is host to popular social media platforms like Facebook and Instagram, with the latter specifically coming under fire for continuing to allow, and oftentimes promoting, media and interactions that threaten the physical and emotional wellbeing of children. A month later,

⁹⁷ See Appendix A, Figure 4.

⁹⁸ See Appendix A, Figure 4.

⁹⁹ Dara Kerr, "'You Have Blood on Your Hands,' Senator Tells Mark Zuckerberg for Failing Kids Online," *NPR*, January 31, 2024, <https://www.npr.org/2024/01/31/1228062503/mark-zuckerberg-linda-yaccarino-tech-ceos-washington-kids-safety/>.

February 2024, saw the release of an investigative report done by the New York Times¹⁰⁰ on the continued use of Instagram as a platform for child sexual exploitation and abuse, often cited with material created for economic incentive. Spring 2024 saw a rise in discourse addressing the rising streaming platform, Kick, whose lax community guidelines have allowed adult men to not only promote and display pornography to a majority child audience, but to engage directly in inappropriate communication with children in the solicitation of sexual favors from minors.¹⁰¹ In September 2024, Snap Inc., the company behind Snapchat, became the latest social media company to have a lawsuit filed against them for continuing to allow and promote child sexual exploitation and abuse on their platform, including sex trafficking.¹⁰²

While previous analysis in this paper make it appear as if the public is not only becoming more aware of child sexual exploitation and abuse materials on the Internet, but also actively reporting the material as they see it, the relentless and profuse availability of CSAM online is just one aspect of the greater issue of child sexual exploitation and abuse online. The data, while allowing for a greater understanding of how often the public may come across CSAM online and feel the need to report such content, does not reveal the full scope of the crisis. Hotlines are a vital tool for reporting and removing CSAM online, but these resources are not always properly understood by the public, resulting in discrepancies between the reported data and the actual extent of the issue online. AI-generated content, for example, can make it difficult for the public to differentiate between illegal material and pornographic material of adults engaging in sex,

¹⁰⁰ Jennifer Valentino-DeVries and Michael H. Keller, “A Marketplace of Girl Influencers Managed by Moms and Stalked by Men,” *New York Times*, February 25, 2024, <https://www.nytimes.com/2024/02/22/us/instagram-child-influencers.html>.

¹⁰¹ Patrick Begley, “‘A Playground for Degenerates’: The Dark Corners of an Australian Streaming Giant,” *The Sydney Morning Herald*, May 2, 2024, <https://www.smh.com.au/national/a-playground-for-degenerates-the-dark-corners-of-an-australian-streaming-giant-20240425-p5fmk4.html>.

¹⁰² Gabby Miller, “Snapchat Is a ‘Breeding Ground’ for Child Predators, According to New Mexico Lawsuit,” *Tech Policy Press*, September 5, 2024, <https://www.techpolicy.press/snapchat-is-a-breeding-ground-for-child-predators-according-to-new-mexico-lawsuit/>.

which may allow for hesitation in reporting. Also, individuals may not even realize that CSAM hotlines exist, and therefore find themselves either scrolling past such content or submitting a report through the website itself, but is often ignored by the website, since social media website platforms are not likely to remove content that is reported citing the rights of the poster.

Thus, while the comparative data analysis provides the framework for deeper understanding of the context of CSAM online, particularly in gaining perspective on the scope of the issue and how often people may inadvertently come across such content online, such data must also be considered in relation to the role of social media platforms in cultivating cultural and social norms on sexuality. Not only are people more often exposed to CSAM today, but as data suggests, the scope goes beyond a single image or video. The data also reveals how CSAM promotes inappropriate interactions between children and adults, risking the further outgrowth of child sexual exploitation and abuse, and a greater chance of CSAM production. While data shows increasing trends on the prevalence of CSAM on the Internet, the data can also be applied to the greater theoretical concern that culture shifts that normalize how children's bodies and child sexuality are regarded. The matter is further complicated when social media websites help users benefit economically from greater social interaction with children using their platforms.

The United States cultural shift to normalize the pervasive availability of Internet CSAM is supported by the continued lack of urgency of and increasing profitability for mega sized social media companies, despite vocal concerns of parents, legislators, and theorists. A hesitancy of the government to provide the tech industry with comprehensive censorship rules and community guidelines in the effort to better protect children from sexual exploitation and abuse online, displays how United States capitalism is engaged more in furthering its own economic profit rather than address the implicit threats of CSAM to the public, the community, and the

physical and emotional safety of children. This ultimately reflects a greater United States cultural and social shift in how its children, their bodies, and their sexuality are now facets in facilitating corporate and individual financial success online.

Social media websites like Instagram, Kick, and Snapchat only serve to financially gain when individuals and companies actively engage with each other, and it has become clear in recent years that children, who often have unaccompanied and unlimited access to the Internet, are an economically viable audience for social media platforms to target. Recognizing that children unknowingly help to facilitate social interactions on these platforms where software is built with the intention of promoting communication and interaction online, in conjunction with a greater curiosity in sexuality, has ultimately created the perfect breeding ground in which these social media platforms have begun to both market sex to children *and* to market child sexuality to adults. In the wake of promoting economic prosperity, there has been a subsequent normalization of not just sexuality and pornography as accepted forms of communication for public consumption, but of how children and their bodies have essentially been utilized by the public as both a marketing tool and as an audience to be targeted by sexual advertising.

IV. A Growing Digital Space for Human Rights Violations

a. Global Perspective: Online Child Pornography as an International Human Rights Crisis

With an understanding of international human rights law alongside the CRC, a need for specific legal frameworks became necessary to that directly address child sexual exploitation and child sexual abuse, either for purposes of prostitution or for the production and distribution of CSAM. The ensuing document, the Optional Protocol on the Sale of Children, Child Prostitution,

and Child Pornography,¹⁰³ was adopted in 2002 within the global human rights community as the framework for States on addressing child sexual abuse as it is shared in a marketplace environment. In response to the Internet's growth and role in the prevalence of CSAM, other legal avenues have also been taken, including the First World Congress Against the Commercial Sexual Exploitation of Children in 1996¹⁰⁴ and the 1999 International Conference on the Combating of Child Pornography on the Internet.¹⁰⁵

¹⁰³ Deepa Salian and Sofia Khatun, "Legal Framework on Child Pornography: A Perspective," in *Digital Forensic Science*, ed. B Suresh Kumar Shetty and Pavanchand Shetty H (IntechOpen, 2020): 3, <https://doi.org/10.5772/intechopen.92716>.

¹⁰⁴ Sayid Muhammad Rifiki Noval et al., "THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING," *Russian Law Journal* 11, no. 5 (2023): 11, <https://doi.org/10.52783/rlj.v11i5s.891>.

¹⁰⁵ *Ibid.*, 8.

In agreement over a need to protect the human rights of children, 196 countries have ratified and are legally bound by the CRC.¹⁰⁶ Yet, despite such a large number of States deeming the CRC vital, the United States continues to refuse ratification, despite it ratifying and signing the Optional Protocol that directly engages with the issue of CSAM.¹⁰⁷ There is a hesitance of the United States government to become actively involved in the international fight against CSAM, and especially to become legally bound by international law through the ratification of human rights conventions. It may suggest that there is an underlying belief that the United States' internal legislation is significantly more advanced than international law in protecting human rights. Or, the lack of solidarity on the part of the United States to engage with the international community in enforcing these documents could stem from beliefs of American essentialism and its governmental refusal to tangle with the constitutional rights of the private sector, protected by powerful conservative political lobbyists. The refusal of the United States to ratify the CRC, despite witnessing the despair that comes from human rights violations towards children, including becoming one of the largest hosts for CSAM, ultimately proves counterintuitive to the United States' declaration of freedom and progressiveness.

¹⁰⁶ "Frequently Asked Questions on the Convention on the Rights of the Child," UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions>.

¹⁰⁷ "The Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography," U.S. Department of State Archive, December 24, 2002, <https://2001-2009.state.gov/r/pa/prs/ps/2002/16216.htm>.

And still, statistics provided by the International Criminal Police Organization (INTERPOL) on global child sexual abuse and exploitation, emphasize that despite numbers pointing towards a trend in which victims of CSAM are majority female (64.8%) and white (76.6%), these numbers do not encompass the entirety of affected populations, especially within third world countries or countries suffering from humanitarian crises, where data collection may be more difficult to acquire.¹⁰⁸ Employing a cross-sector framework is essential on an international level, as the Internet allows for transnational communication and the ability to target victims across the globe. Human trafficking, voyeuristic web-cam services, and sex tourism, all present human rights issues which, as crimes, have grown due to becoming increasingly more accessible through the Internet. Human trafficking of children through online communications, while not explicitly the same as CSAM, can often result in the production of pornographic materials, as reports via the United Nations Office on Drugs notes that 70% of women and girls who are trafficked are done so for the purpose of sexual exploitation.¹⁰⁹

While trafficking of girls and women has been a human rights issue, the use of the Internet has shifted how men are selling women and children. Platforms like Facebook have been utilized by men in countries like Indonesia to advertise child brides as if they were commercial objects rather than human beings.¹¹⁰ Sexual exploitation of children as a viable economic market can also be seen within the sex tourism industry, popularized by countries like Thailand, Indonesia, Kenya, Philippines, and the Netherlands, where national economies have a significant stake in the success of such markets.

¹⁰⁸ Interpol, "Towards Global Indicator: On Unidentified Victims in Child Sexual Exploitation Material," Summary Report (International Criminal Police Organization, February 2018): 3.

¹⁰⁹ Sayid Muhammad Rifiki Noval et al., "THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING," *Russian Law Journal* 11, no. 5 (2023): 2, <https://doi.org/10.52783/rlj.v11i5s.891>.

¹¹⁰ *Ibid.*, 11.

The Office of the High Commissioner for Human Rights estimates that around 2 million children¹¹¹ are globally commodified in the sex tourist industry, while Caucasian adult men are the most common demographic engaging in the purchase of sex. The normalization of child sexual exploitation and abuse through the sex tourism industry further promotes and reinforces a culture wherein children are commodified as commercial sexual objects, shifting how adults perceive and understand children and their capacity as sexual beings. The same can be said about the growing online pornography industry that employs web-cam services to livestream sexual crimes against children, directly to viewers as they are happening. Child pornography rings exist across the United States, with one of the largest rings originally operating out of Texas in conjunction with human trafficking operations in Russia and Indonesia, all facilitated by online communications.¹¹² For example, adults are able to purchase subscriptions to live streams and are able to engage directly with the actions occurring on stream through donations and chat services, demonstrating how the economic benefits of child sexual abuse and exploitations further reinforce a culture that sees children as commercial sexual objects for adult sexual gratification.

Widespread criminalization, while seemingly effective, may inadvertently cause deeper and more secretive reactions from communities where certain forms of child abuse, like child marriage, are culturally accepted and promoted; criminalization may lead to adverse responses by locals, including moving operations underground, which can make it difficult for law enforcement to properly act on the scope of the problem. Policing crimes relating to CSAM also proves difficult on an international scale where multiple jurisdictions with differing laws and cultural norms are involved, and complicate the prosecution of offenders.¹¹³

¹¹¹ Rowland Atkinson, "From Edge Work to Death Drive: The Pursuit of Pleasure and Denial of Harm in a Leisure Society," in *Deviant Leisure: Criminological Perspectives on Leisure and Harm*, ed. Thomas Raymen and Oliver Smith (Cham: Springer International Publishing, 2019): 235, https://doi.org/10.1007/978-3-030-17736-2_10.

¹¹² *Ibid.*, 235.

¹¹³ Agus Raharjo, "Cyber Child Pornography Law and Technology Problems in Its Law Enforcement," in *Proceedings of 1st International Conference of Law and Justice - Good Governance and Human Rights in Muslim*

Across the globe, the market in which children and CSAM are sold continues to exponentially grow due to demand. While legislation, both internationally and nationally, remains concerned with combatting and criminalizing online avenues for which CSAM is promoted, there remains a lack of discourse on *why* there is a persisting demand for these explicit portrayals of CSE. While stereotypes surrounding third world countries remain the basis for arguments as to why CSAM continues to be such a prevalent issue, that does not account for why the United States remains one of the largest hosts for CSAM. This negates the argument that “developing” countries and their cultures are solely responsible for the CSAM human rights crises. There demands a larger discussion on the role of the Internet as a transnational facilitator of human rights violations.

b. Selling Child Sexuality in a New Economic Marketplace

To truly grasp the extent of the CSAM problem, including the economic gains associated with the distribution of CSAM online, there is a greater need to address the role of the Internet that has established few boundaries among online communities from across the globe. The intangible and elusive nature of the Internet allows for people to engage with each other beyond the physical limitations of the law, and that skews the morality of the engagement. A lack of legal boundaries controlling Internet usage and the ways in which people interact with each other on web platforms remains problematic because individuals act with free reign on the Internet in ways they are unable to act in the physical world.

The accessibility of the Internet has not only allowed for unregulated pornographic material to be distributed and available to the average user, but has also made such content free for viewing on pornographic web platforms or easily purchased behind paywalls through

Countries: Experiences and Challenges (ICLJ 2017) (Atlantis Press, 2017): 127,
<https://doi.org/10.2991/iclj-17.2018.26>.

subscription services. Web platforms such as Pornhub, xHamster, and xVideos¹¹⁴ contain millions of user-uploaded videos in a variety of categories and caters to an audience with an expanse of fetish content, including content advertising nonconsensual sexual activities and portrayals of young women¹¹⁵ engaging in rough sexual intercourse. Pornhub, alone, carries over 100,000 videos relating to the search terms “girls under 18” or “14,”¹¹⁶ highlighting a growing market for the sale and distribution of content that exclusively advertises the concept of sexually exploiting young girls, regardless of if these women may just look young and are actually consenting adults. The expansive catalog of videos to choose at one’s leisure, has ultimately created a thriving practical economic market which in turn has produced a \$97 billion industry.¹¹⁷ Society’s reliance on the Internet as a facilitator of human connection has provided for a “pornification” of culture.

As the demand for sexual content online increases, so too does the supply. As the production of pornographic content increases to meet growing and evolving societal demands, there has, in turn, been a growing mainstream acceptance for the circulation and viewing of pornographic content online at the risk of being exposed to pornographic content, regardless of one’s intent for being on the Internet. Concurrently, there is celebration in the evolving pornographic industry that promotes freedom of expression and safe sexual practices, the normalization of pornography within the daily lives of individuals may inadvertently support human rights violations that occur within the industry.

¹¹⁴ Sayid Muhammad Rifiki Noval et al., “THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING,” *Russian Law Journal* 11, no. 5 (2023): 3, <https://doi.org/10.52783/rlj.v11i5s.891>.

¹¹⁵ Rowland Atkinson, “From Edge Work to Death Drive: The Pursuit of Pleasure and Denial of Harm in a Leisure Society,” in *Deviant Leisure: Criminological Perspectives on Leisure and Harm*, ed. Thomas Raymen and Oliver Smith (Cham: Springer International Publishing, 2019): 218, https://doi.org/10.1007/978-3-030-17736-2_10.

¹¹⁶ Sayid Muhammad Rifiki Noval et al., “THE FUSION OF BLOCKCHAIN, PORNOGRAPHY AND HUMAN TRAFFICKING IN A GLOBAL DIGITAL DRAGNET THAT FORMS THE ONLINE CHILD SEX TRAFFICKING,” *Russian Law Journal* 11, no. 5 (2023): 9, <https://doi.org/10.52783/rlj.v11i5s.891>.

¹¹⁷ *Ibid.*, 3.

It is evident that, to understand the CSAM human rights crisis within the United States—to even attempt to address the problem through legislation—there first must be a recognition that the socio-cultural frameworks we have become accustomed to *must* include the Internet and its larger role in influencing human behavior. There remains a fundamental gap within discourse in attempting to understand how the Internet has effectively transformed how society, culture, and economics operate. The Internet as an economic hub for commercial sexual intercourse has ultimately played an active role in determining the normalization of certain forms of media within society, and leaves the function of such a new technological avenue in promoting and reinforcing certain societal beliefs. It is only recognizing the Internet's fundamental role within the formation of culture and its greater effects on human behavior, that there than may be a better way for effectively addressing the continuously growing market for child sexual abuse material. The protection of human rights, especially children's rights, given how Internet material can be moved and shared, presents myriad daunting legislative challenges to combat current and emerging human rights violations.

V. Conclusion

National and international child sexual abuse material, while central to human rights discourse, has become more complex with the advent of the Internet in facilitating and promoting CSAM. CSAM must be understood in relation to the United States' online capitalistic market that rests on increasing social engagement and consumerism on the Internet. Despite the global consensus that there must be explicit protection of children's rights, including their rights to bodily autonomy and freedom from abuse and exploitation, the current discourse on Internet CSAM does not reflect the societal and technical granularity required to provide

adequate protections. In particular, theoretical discourse on CSAM and its inherent promotion of sexual abuse and exploitation of children becomes daily outdated in its reflection on the rapidly evolving nature of the Internet, and has found itself mired by problems with defining the problem within existing legislative frameworks, while also addressing the social systems and norms that have arisen in response to a greater dependence on the Internet allowing the United States to become a leader in this new industry.

It is evident that the current United States legislation meant to protect children's rights is confusing, especially when it comes to defining the problem in a comprehensive manner that also does not infringe upon constitutional rights, like freedom of speech. For the United States government to take a leading position to address the CSAM crisis in the international community, there first must be a recognition that a contemporary, realistic definition of the issue that sees the Internet in not just facilitating CSAM, but encouraging a cultural shift in how people interact with each other online. This will require the United States to engage the private sector and address the transnational nature of the Internet, that also relies on freedom of speech rights protected under the Constitution, and yet provides a breeding ground for individuals to engage in and promote criminal activity against children anonymously and with few risks of legal consequences.

Demand for CSAM online is no longer limited to the more marginalized, perverse consumers of online media, but rather the CSAM crisis has crawled across the globe and through the Internet, finding home in some of the most popular social media platforms used by entire families and communities to share information and to communicate with each other. Developing a definitive set of legislation definitions that incites the balance between the protection of

children and the protection of free speech, and considers a theoretical approach to the emerging online culture that has allowed for such content to flourish is necessary.

Adequately addressing online CSAM will require greater reflection on the United States' financial dependence on the Internet has also allowed for the facilitation of criminal activity that targets vulnerable groups—children. It is only with the acknowledgment of the Internet and its role in feeding a growing online consumer culture, and the greater reliance on an online economic market based on sex, alongside its willingness to join the global discourse on the human rights crisis and CSAM, that subsequent legislative tactics can then adequately address the human rights crisis facing communities both in the United States and across the globe.

Appendix A

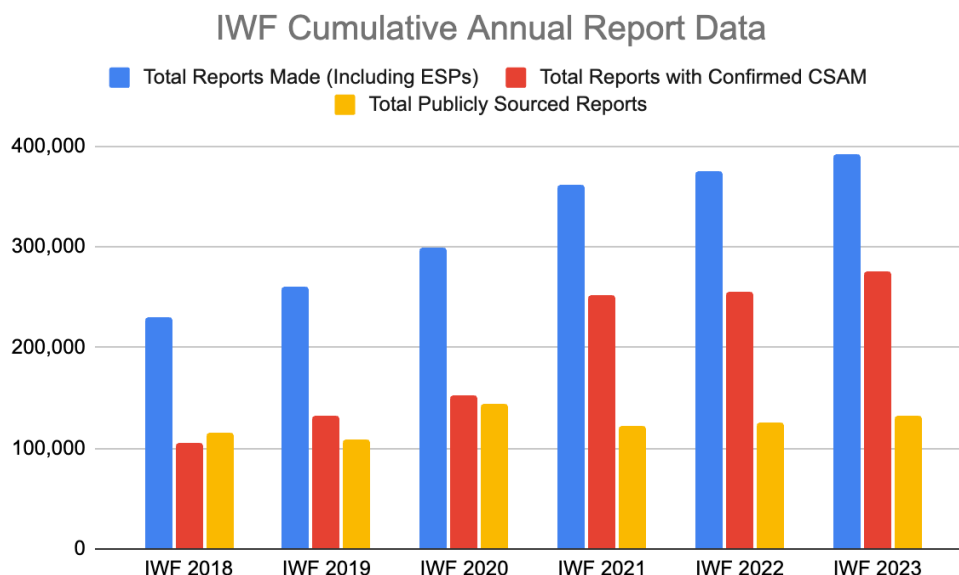


Figure 1. IWF Provided Cumulative Reporting Data

IWF Unique Reporting Cumulative Data

	2018	2019	2020	2021	2022	2023
Total Public Reports	114,735	108,773	144,070	122,418	126,334	132,710
Total Unique Domains Hosting CSAM	3,899	4,956	5,590	4,614	5,416	5,856
Total URLs Categorized as Free-to-Use	99,900 URLs (95%)	125,570 URLs (95%)	144,877 URLs (94%)	241,500 URLs (96%)	228,927 URLs (90%)	268,122 URLs (97%)

Figure 2. IWF Provided Data on Unique Reporting

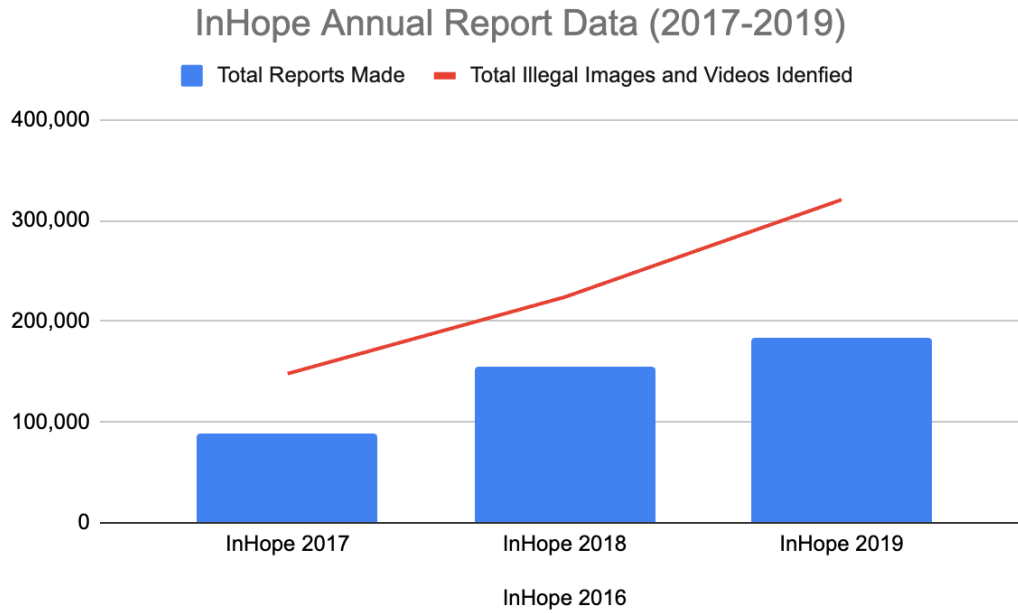


Figure 3. InHope Annual Report Data from 2017-2019

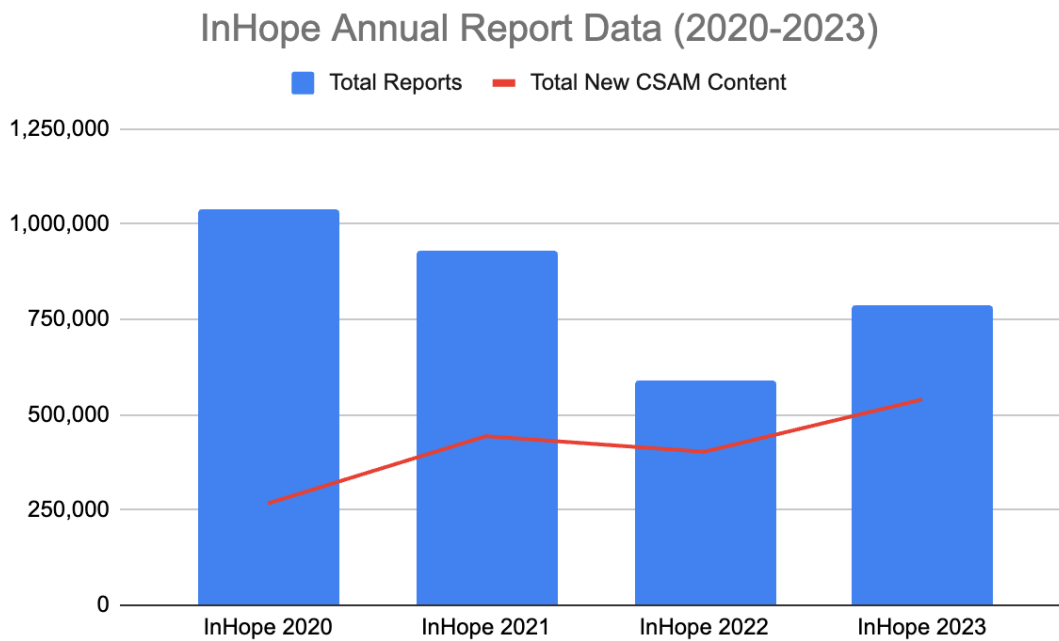


Figure 4. InHope Annual Report Data from 2020-2023

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