

Submission of REAL Women of Canada

To

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

REAL Women of Canada is a non-partisan, non-denominational women's organization, federally incorporated in 1983. The members of REAL Women of Canada come from all walks of life and from differing economic, social, cultural and religious backgrounds. We are united by our concern for the family, the basic unit of society.

As a national organization of women, we are, frankly, scandalized that pornography is so freely available in Canada on the Internet. These pornography sites portray child sexual abuse, rape, sex trafficking, revenge pornography, spycam videos of women, and other non-consensual material. The repeated use of this material on pornographic sites has driven the women who are subjects of these humiliating videos (over which they have no control) to despair, substance abuse, and suicide.

The producers and distributors of this offensive material are not held accountable for this Internet exploitation of women and children. Instead, these pornography sites have become an unrestricted "free for all", or a wild west, where virtually any sexual behaviour is freely available at the mere click of button.

The pornography sites are operated through an adult entertainment conglomerate, MindGeek, with long hydra-like arms, which controls over 100 different pornographic sites on the Internet.

MindGeek is the mastermind behind these sites, which, although registered in Luxembourg for tax reasons, operates in Montreal, where it has approximately 1000 employees, and a total of 1800 employees worldwide. MindGeek, in short, is the titan of the pornography industry since it controls huge volumes of this industry.

Included in MindGeek's stable of porn sites is Pornhub. Pornhub is a Canadian Internet pornography site which came into existence in 2007 and is the most popular pornography site in the world. It receives an average of 3.5 billion visits a month. Pornhub rakes in money from almost 3 million advertising impressions a day. It is for good reason, however, that the Pornhub site has been blocked in China, Russia, Philippines, and India.

On December 4, 2020, the New York Times exposed Pornhub videos on child sexual abuse, revenge pornography, and rape. The article included accounts of women who said they were depicted in videos posted without their consent. Shortly after the New York Times article was published, Mastercard banned the use of its service on Pornhub, as did Visa which suspended its use across all MindGeek properties. As a result of this suspension, and the resulting loss of profits, Pornhub banned uploads from non-verified users and removed millions of videos that had been uploaded by such accounts over the years. Pornhub claims it will also introduce a new user verification process and grow its teams of moderators to audit its site.

Representatives of Pornhub's owner, MindGeek, appeared as witnesses before this committee on February 5, 2021. They also asserted that MindGeek had made and will be making future elaborate changes in its operation in order to control the material on its sites.

MindGeek and Pornhub are both wildly profitable business enterprises and their assertion that they are moderating their product on the site is illusory, or gaslighting, rather than a reality. It is ludicrous to assume that these for-profit sites are willingly reducing their profits. The evidence contrary to this is the vast amount and type of pornography available today. It is proof that the owners and operators of these sites are not restricting pornographic material, notwithstanding statements to the contrary.

Further evidence of this failure to act responsibly is the testimony submitted to this committee by witness Serena Fleites on February 1, 2021. She was a victim of Pornhub as a video of her was published without consent. She made several attempts to have the video removed, but Pornhub created road blocks to prevent this, such as requiring extensive identification and photos verifying that she was the individual in the video and proof that the use of the video was non-consensual. After several weeks delay, Pornhub finally deleted the offensive video, but it was quickly reposted. Victims should not be required to protect themselves on pornography sites. They must be protected instead by legislation and regulation and must be compensated for improper use of their images.

It is appalling that MindGeek is making millions of dollars by exploiting women and children. It is imperative that restrictions and heavy penalties be placed on these operations. The current business model is unacceptable. Restrictions must be made for those who produce, distribute or transmit pornographic material.

There are provisions in the *Criminal Code* prohibiting adult and child pornography. The *Child Protection Act* provides for increased mandatory minimum penalties and maximum penalties for this abuse as follows:

- S. 162.1(1) of the *Criminal Code*

“Everyone who knowingly publishes, distributes, transmits, sells, makes available or advertises an intimate image of a person knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct, is guilty

(a) of an indictable offence and liable to imprisonment for a term of not more than five years; or

(b) of an offence punishable on summary conviction.”

- S.163.1 of the *Criminal Code*

“(1) In this section, *child pornography* means

(a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,

(i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or

(ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years;

(b) any written material, visual representation or audio recording that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offence under this Act;

(c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act; or

(d) any audio recording that has as its dominant characteristic the description, presentation or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years that would be an offence under this Act.

(2) Every person who makes, prints, publishes or possesses for the purpose of publication any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.

(3) Every person who transmits, makes available, distributes, sells, advertises, imports, exports or possesses for the purpose of transmission, making available, distribution, sale, advertising or exportation any child pornography is guilty of an indictable offence and liable to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year.”

The above *Criminal Code* provision prohibiting child pornography was challenged on constitutional grounds in *R. vs. Sharpe* [2001] 1 SCR 45. Significantly, however, in that case the Supreme Court of Canada held that although the legislation infringed s. 2 of the Charter of Rights (freedom of opinion, speech, and expression) it was constitutional because child pornography is inherently harmful to children and society.

Significantly, the Court wrote in exceptions to the prohibition of child pornography:

1. Writing or drawings of sexually explicit depictions of children providing they were not distributed, and
2. Videos or photographs of lawful sexual activity providing they are for private use only and not distributed.

Notably, in regard to the second exception, Chief Justice McLachlin stated that this was necessary and should be allowed because:

Two adolescents [over 14 years of age – the age of consent at the time] might arguably deepen a loving and respectful relationship through erotic pictures of themselves engaged in sexual activity.

(The age of consent was subsequently raised to 16 years of age.)

Videos of adolescents' sexual activity with each other, therefore, may be legal, but only if used for private purposes and cannot be distributed. This prohibition is being ignored on pornographic sites today.

- *Child Protection Act* Chapter 23 (2015) provides for increased mandatory minimum penalties and maximum penalties for certain sexual offences against children and increased maximum penalties for violations of prohibition orders, probation orders, and peace bonds.

Recommendations

1. Videotapes, photographs, pornographic writing, and magazines must be monitored by way of specialized units within local and provincial police as well as by the RCMP. These special units must be enlarged in order to deal with the great increase that has occurred in regard to Internet pornography today.
2. Legislation and regulation must be implemented to require that pornographic material be available on the Internet only if it is backed by verification including the written consent of the parties involved, their identity, and age. Failure to comply with these requirements should lead to stringent penalties.
3. The anonymity of the posters must be eliminated. Those posting videos on pornographic sites must be required to provide the verification of their identity, age, address, and the consent of those participating in the videos by way of government-issued documentation and/or social security number that must be confirmed before access is permitted to the site. If such information is in conflict

with privacy laws, then the latter should be amended to accommodate this requirement because of the serious implications of posting such material.

4. Download buttons should be removed from pornography sites.

One of the features of some pornography sites that differentiates them from other sites that host user-generated content is the ability to download videos to private computers. This means that even if an offensive video is removed from the site, the video may still be viewed by those who have downloaded the video and uploaded it elsewhere. Therefore, even if pornography sites' video scanning processes prevent the downloaded video from being reuploaded to their own sites, it would not prevent the video from being uploaded to other video sharing sites. Consequently, the removal of the download button would not entirely prevent videos from being downloaded or otherwise retransmitted elsewhere because of freely available software that would enable this. It would nevertheless act as a deterrent and reduce the potential damage from non-consensual video uploads.

5. The voluntary suspension by Visa and Mastercard on Pornhub purchases should be mandatory for all credit cards, secure payment applications, such as PayPal, and banks. This will not eliminate the purchase of pornography because individuals will turn to other currencies, such as Bitcoin, but it would at least serve as a deterrent.
6. Pornographic sites must be required to pay compensation to those whose images were used on the site without their consent. This would ensure that the sites would carefully verify the identity and consent of the individual before posting the video.

Summary

Pornography has become nothing less than virtual rape, child abuse, and sexual assault. It is the profit motive that makes these despicable depictions available on pornographic sites. They must be regulated and controlled to protect individuals, families, and society.