

Royal Canadian Mounted Police
Commissioner



Gendarmerie royale du Canada
Commissaire

Guided by Integrity, Honesty, Professionalism, Compassion, Respect and Accountability

Les valeurs de la GRC reposent sur l'intégrité, l'honnêteté,
le professionnalisme, la compassion, le respect et la responsabilisation

APR 13 2021

Mr. Arnold Viersen, M.P.
Peace River–Westlock
House of Commons
Ottawa, Ontario K1A 0A6

Dear Mr. Viersen and co-signatories:

The Royal Canadian Mounted Police (RCMP) appreciates the efforts made by members of Parliament and senators, as well as survivors and survivor advocates, toward addressing sexual exploitation and abuse.

I would like to begin by thanking and commending every survivor who has come forward. This takes enormous courage and the RCMP wholeheartedly supports survivors of sexual abuse, exploitation and other forms of violence. We recognize these heinous crimes inflict grave and enduring trauma on survivors, which is made immeasurably worse as this material proliferates on the internet and social media. The RCMP urges all survivors to come forward and seek the assistance of their local police service.

The RCMP is firmly committed to investigating sexual exploitation and abuse to the fullest extent of the law. When these crimes are committed over the internet, such as online child sexual exploitation and non-consensual distribution of intimate images, it introduces jurisdictional challenges, as victims, evidence, and company infrastructure span the globe, beyond the reach of Canadian legislation. The RCMP works diligently with its partners at the municipal, provincial, territorial, federal and international levels, as well as with non-governmental organizations and industry, to identify victims and bring to justice the individuals who commit these egregious crimes.

MindGeek/Pornhub

The call for a criminal investigation into MindGeek or Pornhub is with the RCMP for review and any further required action. An investigation could be initiated if a company fails to comply with its legal obligations, such as reporting illegal material, respecting take-down obligations, or cooperating with law enforcement when legally required. There must be sufficient grounds to

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pursue an investigation into a suspected offence and charges can only be laid when there are grounds to do so. We generally would not confirm or deny if an investigation is underway unless criminal charges are laid. It would therefore be inappropriate for us to provide any more comments on this matter at this time.

Human Trafficking

Canada has comprehensive laws to combat human trafficking under the *Criminal Code*, which prohibits trafficking in persons, as well as other exploitative conduct related to human trafficking. The *Criminal Code* contains six specific human trafficking offences, including trafficking in persons, materially benefitting from human trafficking, and withholding or destroying documents for the purpose of facilitating this crime. Each of these offences also has a section for victims under 18 years of age.

The RCMP National Human Trafficking Section centrally facilitates the RCMP's effort, by supporting all Canadian law enforcement, in countering human trafficking through awareness, education and community outreach, as well as building and enhancing partnerships, supporting operations, and advancing operational policy and internal/external reporting. The RCMP remains committed to supporting national and local efforts to effectively combat human trafficking by investigating, disrupting and bringing perpetrators to justice.

Sexual Assault Investigations

The RCMP created an Advisory Committee for Sexual Assault Investigations, which includes RCMP employees from across the country. This committee serves as an open forum to share information on best practices, as well as to discuss challenges and concerns with respect to sexual assault investigations.

All divisions where the RCMP is the police of jurisdiction have committed to forming Sexual Assault Investigations Review Committees. Establishing these committees will allow the RCMP to work collaboratively with victim advocates and other experts in order to strengthen the RCMP's response to sexual assault crimes, improve the quality of investigations, and enhance public trust.

In support of Canada's Strategy to Prevent and Address Gender-Based Violence, the RCMP has developed and provided access to several tools, resources, and courses to help all RCMP employees improve their knowledge, skills, and practices with sexual violence investigations. These trauma-informed training materials are available to investigators to ensure all survivors receive the same level of service from the RCMP, no matter the jurisdiction, and to ensure the perpetrators are held accountable.

Child Exploitation

The RCMP's National Child Exploitation Crime Centre (NCECC) is the law enforcement arm of the National Strategy for the Protection of Children from Sexual Exploitation on the internet and is the national point of contact for investigations of online child sexual exploitation and other forms of transnational child sexual offences. The NCECC works closely with domestic and international law enforcement partners to carry out their investigations and to serve takedown notices to Canadian, American and international companies, when jurisdiction can be ascertained.

With respect to child pornography offences, Canadian companies have reporting and notification obligations under *An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet Service* (commonly referred to as the *Mandatory Reporting Act*). This legislation requires that Canadian internet service providers report to the Canadian Centre for Child Protection known internet addresses where child pornography may be publicly available. Further, companies are required to notify police and safeguard evidence if they believe that a child pornography offence has been or is being committed using their internet service. The Act also recognizes that a person can be in compliance with their reporting obligations if they report under the laws of a provincial or foreign jurisdiction.

There is similar reporting legislation in the United States, with reports provided to the National Center for Missing and Exploited Children (NCMEC). The RCMP receives reports from NCMEC when there is a nexus to Canada. Between June 14, 2020, and March 25, 2021, the RCMP NCECC received 130 reports related to Pornhub through NCMEC. Of these reports, 30 have been referred to local police of jurisdiction. For the remaining 100 reports, there was insufficient evidence to support an investigation. For instance, in many cases, the material was considered "age-difficult media," meaning it cannot definitively be ascertained whether the individual is under the age of 18, and therefore did not meet the definition of child pornography as per the *Criminal Code*.

One key element that must be determined in the case of suspected child pornography offences is the age of the victim. When the identity of the victim is unknown, investigators must utilize the sexual maturation stages to assist in establishing age, based on the child sexual exploitation material. If the age of the victim can be established, and the other elements of the offence have been met (i.e., for a sexual purpose), police have enough grounds to proceed with an

investigation. These key elements are crucial, and are legally required, in order to secure judicial authorization for a production order or search warrant to seek additional evidence. If these elements of the offence are not met, police do not have the legal grounds to pursue an investigation and the case is deemed unactionable unless additional information becomes available.

In 2019, just over 100,000 reports of suspected cases of online child sexual exploitation were received at the RCMP's NCECC. Every report is assessed upon intake and is prioritized based on a number of factors, such as if the age of the victim can be clearly determined, indications that a child is at immediate risk, or other time-sensitive considerations. The NCECC has units dedicated specifically to identifying victims, removing them from harm, and targeting high-risk offenders. Reports are further actioned and referred to police of jurisdiction, within Canada or internationally, when the information received points to a child pornography offence being committed. The RCMP works closely with police services across Canada and abroad by providing expertise to assist investigations when the RCMP is not the police of jurisdiction.

The RCMP's NCECC also works with companies that have a requirement to report child pornography to their police of jurisdiction. Assistance is provided in areas such as sharing best practices for tools to help in the detection of online child sexual exploitation material and discussing mechanisms for reporting.

Mandatory Reporting

I would like to take this opportunity to offer considerations around a statement within your letter. Within the letter, you note that *"Canada has strong laws to combat this type of horrific exploitation such as Criminal Code sections 162.1, 163.1 and an Act Respecting the Mandatory Reporting of Internet Child Pornography by Persons Who Provide an Internet Service. However, these laws can only protect vulnerable individuals through robust investigation and application by law enforcement."* While Canada's *Criminal Code* provides a very robust definition of child pornography, I would like to highlight gaps, challenges and opportunities within other legislation, specifically the *Mandatory Reporting Act*, for improvement to better protect children.

The internet and online crimes have evolved since the *Mandatory Reporting Act* came into force in 2011. The RCMP has been actively working with federal partners to address existing legislative gaps. This includes examining the scope and entities subject to the Act, powers for monitoring compliance, information

that must be included in reports, and increased data preservation requirements. The RCMP strongly advocates for reforms to the *Mandatory Reporting Act* to better protect children from harm and better support law enforcement in the investigation of these crimes.

Challenges

Police agencies enforce Canadian laws to the greatest extent that these laws can be applied, based on available evidence. Law enforcement faces significant jurisdictional challenges regarding global companies, which can be registered abroad with content hosted outside of Canada. Services that flow through the internet transcend international borders, while law enforcement jurisdiction is limited to its sovereign nation. Governments and law enforcement agencies around the world face serious challenges accessing digital evidence. Canada continues to work tirelessly with all of our policing partners, domestic and international, to facilitate cooperation in the investigation and prosecution of these crimes. Despite these challenges, there have been many successful investigations as a result of international collaboration, which is key to combatting these crimes. In addition, there have been many investigations where companies have also collaborated with law enforcement to remove online child sexual exploitation from their platform during the course of an investigation.

In addition to high volumes of reports, online child sexual exploitation cases have become increasingly complex. Technological advancements, such as encryption, the dark web, and anonymity tools have made it significantly easier for offenders to operate undetected by law enforcement. Investigations relating to online platforms also raise a host of other issues relating to the internet, such as lack of data retention by platforms, the volume and speed at which content can be posted and disseminated, and the ability for users to download the hosted material. As content is successfully removed from one platform, it can quite easily be uploaded to the same platform or other websites, which results in ongoing re-victimization and a proliferation of child sexual exploitation material across a multitude of platforms. It is well-known that offenders safeguard material on personal devices or through cloud services. Further, while rapid advances with technology can also be harnessed to support law enforcement investigations, it has also led to an increasing gap between the lawful authority of police to collect digital evidence and their capability to do so.

Although Pornhub is the focus of your letter, there are countless other online companies with complex global structures hosting illegal content on their platforms. This is a growing, global problem of horrific proportions. While the RCMP is challenged to keep pace with demand due to both the volume of reports and the complexity of online child sexual exploitation cases, every day RCMP employees demonstrate relentless dedication—willingly risking their own health and wellness by viewing this abhorrent material in order to protect children. We are steadfastly committed to protecting children, investigating crimes of sexual abuse and exploitation to the fullest extent possible, disrupting these crimes, and bringing offenders to justice. We also strongly support the Canadian Centre for Child Protection's work to support survivors and we will continue to do all we can to support their work.

Standing Committee on Access to Information, Privacy, and Ethics

During my appearance at the Standing Committee on Access to Information, Privacy, and Ethics on April 12, 2021, I committed to providing the Committee with the recommendations from a briefing note I received in December 2020 entitled "*New York Times Article "The Children of Pornhub"/ Article du New York Times «Les enfants de Pornhub»*". While I cannot share all of the recommendations due to Cabinet confidence, I can tell you that I received the following recommendations:

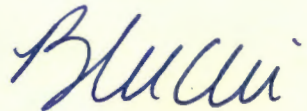
- Pursue amendments to the *Mandatory Reporting Act* in consultation with the Department of Justice;
- Continue to engage in partnership and outreach with private Industry; and
- Address RCMP capacity gaps by dedicating more resources for investigations, operational support, and technology.

I also committed to provide the Committee in writing with additional information that was also requested today. We will forward this additional information as soon as it is prepared. I thank the Committee for their dedication to this critically important matter.

To conclude, I would like reiterate the RCMP's enduring support for survivors and the importance of reporting any instance of sexual exploitation and abuse to the police of jurisdiction, through **Cybertip.ca** or the Canadian Human Trafficking Hotline. In the absence of regulatory entities for the internet, with the victims' cooperation, law enforcement can advocate for the removal of

abusive material on the internet. We also strongly encourage anyone who becomes aware of sexual exploitation and abuse material to report it and provide as much information as possible to their local police service, **Cybertip.ca** or the Canadian Human Trafficking Hotline.

Kindest regards,



Brenda Lucki
Commissioner

c.c.: The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada

The Honourable Bill Blair, P.C., C.O.M., M.P.
Minister of Public Safety and Emergency Preparedness

The Honourable David Lametti, P.C., Q.C., M.P.
Minister of Justice and Attorney General of Canada

The Honourable Maryam Monsef, P.C., M.P.
Minister for Women and Gender Equality and Rural Economic Development

The Honourable Steven Guilbeault, P.C., M.P.
Minister of Canadian Heritage

Deputy Commissioner Stephen White
Specialized Policing Services, RCMP