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REPRESENTING AND FIGHTING FOR VICTIMS  
AND SURVIVORS OF SEXUAL ABUSE NATIONWIDE

## **CHILD PORNOGRAPHY INITIATIVE**

### **- MASHA'S LAW -**

## **A NOTE FROM JEFF:**

Through our work with survivors of sexual abuse, we have come in contact with child pornography in a number of ways. Some like Fr. Michael McGrath in St. Louis, filmed children performing sex acts as an extension of the sexual abuse that he perpetrated. Others like Fr. Harry Monroe in Indianapolis, used sexually explicit images of children in grooming and manipulation of children to normalize the sexual behavior. Clearly, the production and consumption of child pornography by pedophiles directly relates to and even intensifies their sexual misconduct with children. Given the state of technology and the related trends in child abuse, no child protection effort can be complete without embracing child pornography. That is why we are launching a child pornography initiative – to protect children.



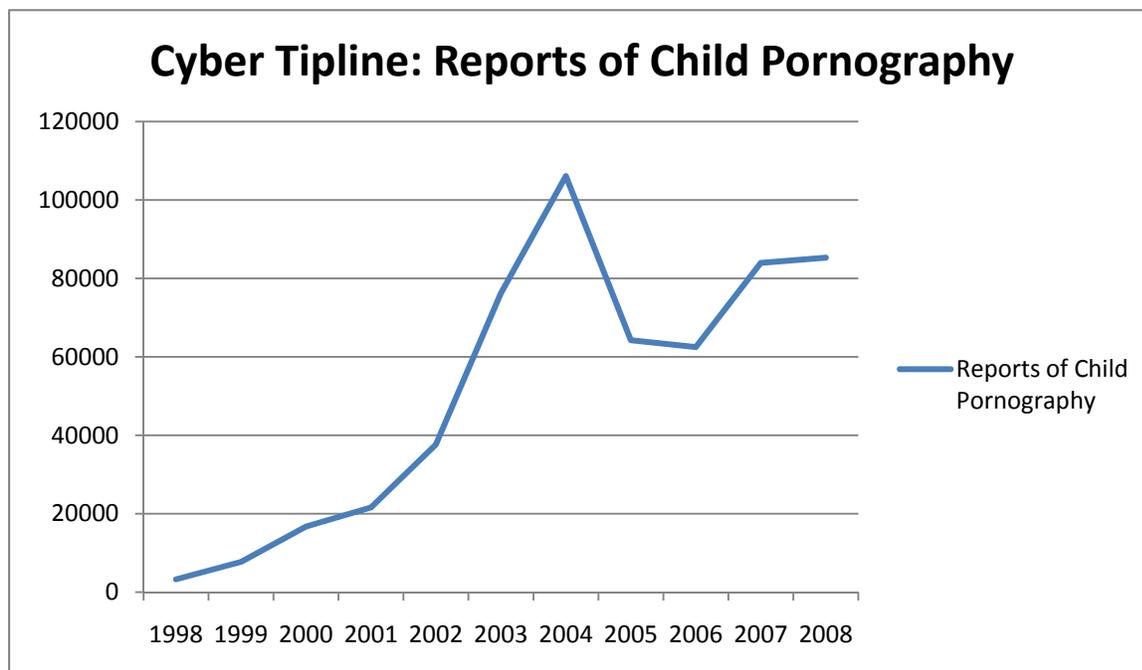
Jeff Anderson

## EXECUTIVE SUMMARY

- Child pornography is a multi-billion industry and among the fastest growing criminal segments on the internet. From 1997 through 2003, the number of child pornographic images on the internet has increased by 1500% and 20% of all pornography traded over the internet was child pornography.
- The United States Department of Justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone
- There is a significant disparity between the 80,000 plus reports of child pornography and the approximately 1,400 federal prosecutions for child pornography. Obviously, the vast majority of child pornography crimes are not being prosecuted.
- Because of this disparity and criminal justice restitution remedies are ill suited to helping victims get the help that they need to recover, Congress, in 2006, passed what is known as “Masha’s Law” that created a civil claim for child pornography victims allowing the victim to file a civil lawsuit in federal district court against anyone who produced, distributed or possessed any sexually explicit images of him or her. The victim can recover actual damages of no less than \$150,000 along with attorneys’ fees and costs of the suit.

## **THE CHILD PORNOGRAPHY PROBLEM**

Child pornography is a horrific and growing problem. According to the National Center for Missing and Exploited Children (“NCMEC”), child pornography is a multi-billion industry and among the fastest growing criminal segments on the internet.<sup>i</sup> New technology such as inexpensive digital cameras combined with internet distribution has given pornography producers, distributors and consumers the power of numbers. From 1997 through 2003, the number of child pornographic images on the internet has increased by 1500% and 20% of all pornography traded over the internet was child pornography.<sup>ii</sup> The NCMEC’s CyberTipline received 21,603 reports of child pornography in 2001 which skyrocketed to 106,176 in 2004 and a total of 593,963 reports from 1998 through April 2009.<sup>iii</sup>



Source: National Center for Missing & Exploited Children Cyber Tipline Annual Report

The United States Department of Justice estimates that pornographers have recorded the abuse of more than one million children in the United States alone.<sup>iv</sup> The growth areas of child pornography are in younger victims and greater brutality and the number of images depicting violent abuse has risen fourfold since 2003.<sup>v</sup> Younger and younger children are being depicted in violent images involving bondage, rape and even torture.<sup>vi</sup>

Child pornography is growing, in part, because it is profitable. Organized crime is involved in the production and distribution of child pornography.<sup>vii</sup> In one of the most famous child pornography cases, known as the Falcon case, federal investigators found their way to child pornography web site that charged between \$49.95 to \$79.95 per month for access.<sup>viii</sup> Instead of going directly after the web-site operators, the federal investigators pursued the internet billing company that kept them in business.<sup>ix</sup> The electronic records of 100,000 transactions gave investigators the credit card and other identifying data that could be tracked back to the subscribers.<sup>x</sup> Doing the math, that is anywhere from \$5,000,000 to \$7,000,000 per month from one website alone.

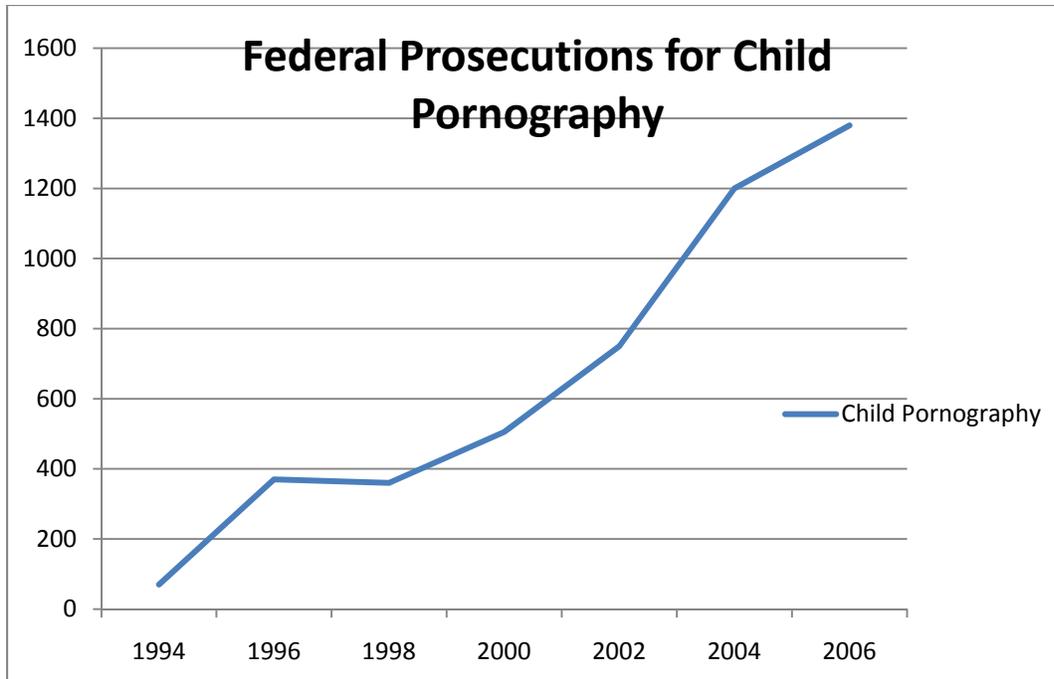
Not surprisingly, there is a relationship between consumption of child pornography and sexual abuse of children. The National District Attorneys Association of America have taken a clear position that there is a correlation between consumers of child pornography and those who sexually abuse children. "Perpetrators should be pursued with vigilance, based on the assumption that where

there is child pornography there is child abuse.”<sup>xi</sup> According to the Mayo Clinic, 30% to 80% of individuals who viewed child pornography and 76% of individuals who were arrested for internet child pornography had molested a child.<sup>xii</sup>

### **HOW WE INTEND TO REDUCE CONSUMPTION OF CHILD PORNOGRAPHY**

The simple answer is FEAR. If the chances of getting caught and BEING publicly exposed as a consumer of child pornography increase, there will be some consumers who will not continue to consume child pornography. The goal of this initiative is to reduce the consumption of child pornography. Reduced demand will result in reduced production of child pornography. Thus, fewer children will be victimized in order to produce child pornography.

Although law enforcement officials are doing an excellent job of pursuing child pornographers and their consumers, there are simply not enough law enforcement resources to go around. According to Robert Flores, administrator of the Department of Justice Office of Juvenile Justice and Delinquency Prevention, “The problem is that as law enforcement increases the number of cases, it’s increasing in a linear fashion, whereas the problem is exploding in an exponential way.”<sup>xiii</sup> The most recent available Department of Justice statistics reveal that federal child pornography cases prosecuted each year are increasing, but not at the same pace and the child pornography industry: 1998 – 428 cases prosecuted, 1999 – 510 cases prosecuted, 2000 – 562 cases prosecuted, 2001 - 627 cases prosecuted, 2003 – 692 cases prosecuted.<sup>xiv</sup> In 2006, 1390 cases of child pornography were prosecuted.<sup>xv</sup>



Source: Bureau of Justice Statistics Special Report

Clearly, the Department of Justice has made child pornography prosecutions a priority, but these numbers pale in comparison to the millions of existing child images on the internet and the hundreds of new child images being added each day.

### **CIVIL LITIGATION TO CLOSE THE GAP**

Obviously there is a clear need and opportunity for the private bar to bridge the gap between what law enforcement can prosecute and the actual number of child pornography producers, distributors and consumers. Accordingly, in July 2006, a federal statute went into effect called “Masha’s Law” that provides a civil remedy for those victims of child pornography. 18 U.S.C.A § 2255 provides, among other things, the right of any person who is a victim of child pornography to file a civil suit. This statute provides that the victim of child pornography has a federal cause of action against any person who produced, distributed, or even possessed

any visual depiction of the child victim engaging in sexually explicit conduct. <sup>xvi</sup>

The case must be brought in United States District Court. <sup>xvii</sup> The victim can recover actual damages of no less than \$150,000 along with attorneys' fees and costs of the suit. <sup>xviii</sup>

It is noteworthy that bringing a civil lawsuit under 18 U.S.C. § 2255 does not require the defendant be criminally convicted of child pornography. In Smith v. Husband, <sup>xix</sup> the District Court ruled that an evaluation of § 2255 and its legislative history reveals that §2255 was intended to provide a remedy for victims without requiring a criminal conviction. Accordingly, the plaintiff also gets the benefits of a civil cause of action in that he or she must only prove a violation of §2255 by a preponderance of the evidence. <sup>xx</sup> It appears to follow that a plaintiff would also have access to all of the civil discovery provisions as well, such as depositions, document production and subpoena powers.

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<sup>i</sup> National Center for Missing & Exploited Children, "Child Porn Among Fastest Growing Internet Businesses" August 18, 2005.

<sup>ii</sup> Id.

<sup>iii</sup> Id.; [http://www.missingkids.com/en\\_US/documents/CyberTiplineFactSheet.pdf](http://www.missingkids.com/en_US/documents/CyberTiplineFactSheet.pdf)

<sup>iv</sup> Levesque, Roger, *Sexual Abuse of Children: A Human Rights Perspective* (1999) Indiana University. P 65.

<sup>v</sup> "The Child Porn Pipeline: Part Three: A child victim's story of betrayal and despair," The Buffalo News, <http://www.buffalonews.com/339/story/184849.html>

<sup>vi</sup> National Center for Missing & Exploited Children, "Child Porn Among Fastest Growing Internet Businesses" August 18, 2005.

<sup>vii</sup> Remarks of Arnold I. Burns Before the Florida Law Enforcement Committee on Obscenity, Organized Crime and Child Pornography, December 3, 1987, National Institute of Justice, NCJ 109133

<sup>viii</sup> "Technology and the Fight Against Child Porn", *Information Week*, February 14, 2005.

<sup>ix</sup> Id.

<sup>x</sup> Id.

<sup>xi</sup> "From Fantasy to Reality: The Link Between Viewing Child Pornography and Molesting Children", *Child Sexual Exploitation Update*, Volume 1, Number 3, 2004, National District Attorney's Association.

<sup>xii</sup> A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues, *Mayo Clinic Proceedings*, April 2007 82(4):457-471

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- <sup>xiii</sup> “Technology and the Fight Against Child Porn”, *Information Week*, February 14, 2005.
- <sup>xiv</sup> United States General Accounting Office “Combating Child Pornography,” November 2002.
- <sup>xv</sup> Bureau of Justice Statistics Special Report, “Federal Prosecution of Child Sex Exploitation Offenders, 2006,” December 2007, NCJ 219412.
- <sup>xvi</sup> 18 U.S.C. § 2255; 18 U.S.C. § 2252.
- <sup>xvii</sup> 18 U.S.C. § 2255.
- <sup>xviii</sup> *Id.*
- <sup>xix</sup> 376 F. Supp.2d 603, 612 (E.D. Va. 2005),
- <sup>xx</sup> *Id.*