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Representative Michael Weissman, Chair of House Judiciary Committee
200 E Colfax
RM 307
Denver, CO 80203

January 31, 2020

Dear Representative Weissman,

HB 20-1120 – Enforcement Of Sexual Exploitation Of A Child

I am writing on behalf of Prostasia Foundation, a child protection organization formed by a group of experts, activists, and survivors of child sexual abuse (CSA), to promote an evidence-based approach to CSA prevention. As such, our interest is in ensuring that HB 20-1120 will be both effective and constitutionally sound. In its current form, we have concerns that the bill's language about "possession" of sexually exploitative material may be drafted in broader terms than intended.

The bill defines a person to be "in possession" of digital material if they have "the power to access, transmit, modify, save, copy, print, or otherwise control" such material. According to the Internet Watch Foundation (IWF), 82% of sexually exploitative material reported to that charity in 2018 was accessed online from a general-purpose image hosting website.¹ By its nature, everybody who uses the Internet has the power to access material from such a website. Because the bill does not require that any overt steps be taken to exercise that power, the definition is so broad that it becomes meaningless.

Even if the definition is read more narrowly to include only those who have the power to "modify" digital material, this remains broad enough to include many people who may have no knowledge of the illicit nature of the material in question. Another finding made by the IWF was that one in three illicit sexual images of children are uploaded by children themselves to major social media and chat websites and apps. Although it is certainly important to provide incentives to these

¹ Internet Watch Foundation 2018 Annual Report, available at <https://www.iwf.org.uk/report/2018-annual-report>.

Internet companies to locate and remove these such, the language of the bill would criminalize those who have the power to do so, which cannot be its intent.

We recommend that the definition of “possession” should be removed from the bill, or alternatively that it should be harmonized with federal law which criminalizes the “production, distribution, importation, reception, or possession” of illicit images. This narrower definition has not created any impediment to the prosecution of offenders who access images online, because a temporary copy of the images is made on the defendant’s computer when the image is displayed on the screen, even if that image is never downloaded as a file.

On a separate matter, we note that the Sexual Exploitation of Children Grant Program created by the bill would allocate funds raised towards the investigation and prosecution of computer-facilitated sex crimes. We invite you to consider allocating funds towards the *prevention* of such crimes. The total lifetime economic burden of child sexual abuse in the United States has been estimated at about \$9.3 billion. Experts in child sexual abuse prevention, such as Elizabeth J. Letourneau, Ph.D., of the Moore Center for the Prevention of Child Sexual Abuse at the John Hopkins Bloomberg School of Public Health, argue that this burden could be reduced by interventions to steer would-be offenders away from offending.² However currently almost no government funds are allocated towards such interventions. The grant program established by the bill could, we believe, make a much bigger difference if it helped to fund prevention programs, rather than only the investigation and prosecution of existing offences.

We appreciate your commitment to addressing the terrible problem of online child sexual exploitation. Our comments are intended to help point out shortcomings in the current text of HB 20-1120 that would, we believe, inhibit it from achieving its objectives. We would be happy to discuss our suggestions with you in more detail if that would be helpful.

Yours sincerely,



Jeremy Malcolm
Executive Director

cc: Representative Terri Carver
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² Elizabeth Letourneau. “We spend billions after child sexual abuse happens and nothing to prevent it.” *The Hill*, Sept 11 2019, available at <https://thehill.com/opinion/healthcare/460915-we-spend-billions-after-child-sexual-abuse-happens-and-nothing-to-prevent>.