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**Children's Charities' Coalition on Internet Safety
10 Great Queen Street, London WC2B 5DG**

Independent Inquiry into Child Sexual Abuse
PO Box 72289
London SW1P 9LF

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Criminal compensation and the civil justice system

The current provisions governing victims' rights to compensation under the English criminal injuries compensation scheme and the remedies available in civil courts are not well-suited to the position of individuals who have been sexually abused as children where images of the abuse have been distributed over the internet and are then found in the illegal possession of third parties not connected with the original acts of abuse. Fresh, explicit and specific legislative provisions are required.

IICSA will be aware of the decision of the US Supreme Court in the leading case of *Amy v Paroline* (12-856, 23/04/2014) and the legislation on which it was based - 18.U.S.C. § 2259(a). Amy had been sexually abused when she was a child. Mr Paroline was not involved in the original acts of abuse, nor did he have any other connection with Amy. However, Paroline did later download images of Amy being sexually abused and he was later convicted of possessing those images.

As is required under US law Amy was notified of Paroline's conviction. She brought suit against him. The US Court of Appeals (5th Circuit) held that Paroline was liable to pay damages to Amy. The Supreme Court upheld their substantive decision but referred the case back in respect of determining the quantum. Legislation (the Amy and Vicky Act) is currently

making good progress in the US Congress to remedy some of the process oriented anomalies highlighted in the case.

CHIS strongly approves of the core principle the US legislation and Paroline illustrates. The deterrent value of establishing such a regime within English and UK-wide jurisprudence could be substantial. Not only would potential offenders then know that if they engage with child abuse images they run the risk of prosecution or of receiving a caution, they would also know a financial order could be made against them which may put their assets at risk.

In addition the psychiatric or therapeutic value of obtaining compensation from offenders may have a lasting, positive effect on victims. Child abuse image related offences are largely secretive crimes whose victims can feel an overwhelming sense of powerlessness, isolation, and shame at their humiliation being displayed on such a large scale and public manner. Thus the ability of victims to hold perpetrators accountable in this way provides a measure of control over their victimization and exploitation which is otherwise completely unavailable to them.

With increases in the level of automation in processing child abuse images the measure here proposed would not introduce an undue additional burden on law enforcement in terms of notification requirements to victims or their legal representatives.

The sort of financial orders envisaged might cover an element of compensation to the victim but also make a contribution to the cost of any necessary therapy or on-going support the victim might need. Furthermore:

1. In keeping with now established practice in respect of extra territoriality and modern slavery offences it will be important to ensure courts are able to make a financial order in respect of any child depicted in an indecent image, irrespective of the child's current domicile or citizenship or their domicile or citizenship at the time the offences depicted in the images were committed or discovered. There should be no time-based bar for crimes of this type nor in relation to making compensation claims in respect of them.

2. It may be appropriate to consider a higher or different level of financial order where an individual is convicted not only of possessing a child abuse image but also of further distributing it to other people.
3. In individual cases it could be contrary to the child's best interests for her or him, in effect, to be reminded of the fact that images of their abuse are circulating and being viewed and downloaded. A victim therefore should always have the right, following legal and other advice, to opt out of the suggested new arrangements or be excluded from them, although it is not hard to imagine how a child could be isolated from such knowledge, at least to some degree, by the notices being sent only to the child's legal representatives. A mechanism for determining whether or not the child should be made the subject of a financial order would need to be established but, in principle, the right to compensation should otherwise be automatic.
4. Specific provisions may also be needed to deal with cases where the person found in possession of a child abuse image is themselves a minor. This may be of particular importance where there is evidence the image was generated in the context of a pre-existing age appropriate peer relationship where both individuals are under the age of 18 and the image was generated and shared consensually.
5. A financial order could do two things: compensate the child for such harm as may be quantifiable and make a contribution to the cost of any necessary therapy or on-going support an individual victim might need.
6. However, to some degree there is an element of randomness attaching to the likelihood of any given individual's images being discovered in the unlawful possession of a third-party. Equally even where images are discovered and an individual in illegal possession of them is identified, for a great many reasons it may not always be the case that a prosecution will follow.

7. At the same time there are many children who are sexually abused and need therapeutic or other forms of support where images were never produced or circulated on the internet. Might there therefore be some perceived unfairness attaching to certain victims receiving support for their therapeutic needs while others are not “simply” because the perpetrator didn’t produce images which later turned up in the illegal possession of a third party who was successfully prosecuted? The answer might be for any compensation orders made against someone convicted of unlawful possession to consist of two elements: part which goes to the injured individual and part which goes into a pool to fund the provision of support services to all child victims of sexual abuse.

8. Special consideration will need to be given to cases where a third party is found in illegal possession of an image which could properly be called “self-produced”. The fact of illegal possession does not change but it may be that some adjustments ought to be made to the compensation element.

9. With increases in the level of automation in processing child abuse images the measure here proposed would not introduce an undue additional burden on law enforcement in terms of notification requirements to victims or their legal representatives.

Yours sincerely,

John Carr OBE

Secretary, Children’s Charities’ Coalition on Internet Safety