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April 17, 2023

The Honorable Brian Maienschein  
Chair, Assembly Judiciary Committee  
Honorable Committee Members  
1020 N Street, Room 104  
Sacramento, CA 95814

### **Re: SUPPORT AND CO-SPONSORSHIP OF AB 1394 (WICKS) AS AMENDED**

Dear Chair and Honorable Committee Members:

Consider, please, this one illustrative story underscoring the need for AB 1394:

In March 2022, a college professor described in WIRED magazine how her searching for “Facebook groups with names including 10, 11, or 12” concerning “the 10th, 11th, or 12th wards of the city of Pittsburgh” *instead served up to her dozens of “groups targeting children of those ages” with “over 81,000 members” openly soliciting children for sexual exploitation.* One 9,000-member group appearing in the search results was named “Buscando novi@ de 9,10,11,12,13 años”—i.e., “[l]ooking for a 9-year-old girlfriend.”

It gets worse. When the professor “used Facebook’s on-platform system” to report this group, an “automated response came back” stating “[t]he group had been reviewed and did not violate any ‘specific community standards.’” And despite (or because of) her reporting this group, along with others, *Facebook’s AI algorithms caused “new child sexualization groups” to be “recommended to [her] as ‘Groups You May Like.’*<sup>1</sup>”

The Children’s Advocacy Institute at the University of San Diego School of Law, which for 30 years has worked to improve the well-being of children in California through regulatory, legislative, and judicial advocacy, is pleased to co-sponsor AB 1394. As the basis of its co-sponsorship with Common Sense Media, the Institute endorses these observations of the President and CEO National Center for Missing & Exploited Children, presented to Congress this past February:

<sup>1</sup> Lara Putnam, *Facebook Has a Child Predation Problem*, WIRED (Mar. 13, 2022), available at <https://www.wired.com/story/facebook-has-a-child-predation-problem/>

It is no longer feasible to rely solely on online platforms to adopt voluntary measures, especially given their near complete immunity for activity on their sites, or to hope that they will design their platforms to avoid precipitating dangers to children from sexual exploitation, enticement, and revictimization. ... *If the United States is going to commit to protecting children online, legislation is our only path forward to update current laws, regulate the design of online platforms to require child safety measures, create meaningful transparency in efforts to combat online child sexual exploitation, and provide new remedies for survivors.*<sup>2</sup>

## **I. CHILD SEXUAL EXPLOITATION: A WINDOW INTO ANOTHER, HORRIFYING WORLD WHERE OUR MOST VULNERABLE CHILDREN ARE TARGETED.**

The average age of child sex trafficking victims is 13–14.<sup>3</sup> These are not children passing for being 18-plus years of age. To our collective shame, in the U.S., 60% of domestic child trafficking victims have a history in the child welfare system.<sup>4</sup>

Keeping these children away from their exploiters is a life-and-death matter for them as “*the average life expectancy of an exploited child is a shockingly short time: seven years.*” Homicide and HIV/AIDS account for a majority of the deaths.”<sup>5</sup>

Girls of color are especially at-risk. “According to the FBI, 57.5% of all juvenile prostitution arrests are Black children” And, “[c]ompared to their racial counterparts, Black girls are more likely to be trafficked at a younger age.”<sup>6</sup> The data are shocking:

The hyper-sexuality of young women of color has also deeply affected the way the law responds to crimes against their bodies. A 2017 study by Georgetown Law’s Center on Poverty and Inequality found that adults view Black girls as less innocent and more adult-like than their white peers. Black girls are also viewed as in need of less nurturing, less protection, less comfort and are more independent and know more about adult topics like sex. **These attitudes and stereotypes make them more vulnerable to trafficking and less likely to be identified or seen as victims.** Data can be found across the country of a large majority of “solicitation” arrests are of young women of color where they only make a small demographic of the entire population. According to Right4Girls, “Black children account for 57% of all juvenile prostitution arrests — more than any other racial group.”<sup>7</sup>

<sup>2</sup> [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at pp. 1–2 (emphasis added).

<sup>3</sup> *Facts & Figures, YOUTH UNDERGROUND*, <https://youth-underground.com/facts-figures/> (last visited Nov. 19, 2022).

<sup>4</sup> *Child Sex Trafficking*, CHILDREN’S RIGHTS, <https://www.childrensrights.org/newsroom/fact-sheets/child-sex-trafficking/#:~:text=The%20average%20age%20of%20child%20sex%20trafficking%20victims%20is%2015,were%20sexually%20abused%20as%20children> (last visited March 17, 2022).

<sup>5</sup> Kate Walker, *Ending The Commercial Sexual Exploitation of Children: A Call For Multi-System Collaboration in California*, CALIFORNIA CHILD WELFARE COUNCIL (2013) at 15, <https://www.chhs.ca.gov/wp-content/uploads/2017/06/Committees/California-Child-Welfare-Council/Council-Information-Reports/Ending-CSEC-A-Call-for-Multi-System-Collaboration-in-CA-February-2013.pdf>.

<sup>6</sup> <https://www.cbcfinc.org/wp-content/uploads/2020/05/SexTraffickingReport3.pdf>.

<sup>7</sup> <https://www.endslaverynow.org/blog/articles/intersections-of-human-trafficking> (emphasis supplied).

So, too, are our queer youth uniquely at-risk. “Nearly 1 in 3 LGBTQ+ minors (32%) reported an online sexual encounter with someone they believed to be over 18, ten percentage points higher than their non-LGBTQ+ peers (22%).”<sup>8</sup>

Child sexual abuse (including trafficking) takes a terrible toll on a child’s overall health, increasing the risk not only for the expected depression, anxiety, substance abuse, post-traumatic stress disorder, and suicidal ideation but also for enduring diseases like high blood pressure and other chronic illness.<sup>9</sup>

Part of the reason for the endurance of their trauma is that for survivors, the abuse never really ends because, “[o]nce an image [of their abuse] is on the Internet, they are irretrievable and can continue to circulate forever.” The child is re-victimized as the images are viewed again and again.<sup>10</sup>

This is made worse because criminals often purposefully produce material where children are seen smiling, leading survivors to worry that others will assume their enjoyment or implicate them in the abuse. Survivors report that perhaps the most difficult part of their re-victimization is a victims’ knowledge that their images may be used to groom future victims as a way to normalize the abusive behavior.<sup>11</sup>

It is challenging in a public document to describe how horrifying these videos and images can be.

Most members of the public will never see [child sexual abuse material] ... The images and videos that are reported are not merely sexually suggestive or older teenagers who “look young.” **This content depicts crime scene activity. Children — including those who are too young to call for help — are raped, abused, and exploited in this imagery.** The abuse is documented in images and videos and distributed repeatedly through thousands of search engines; social media; photo-sharing, file-sharing, and email services; and gaming and messenger apps. Children are physically and sexually abused each time an image or video is made. They are revictimized every time a sexually abusive image or video in which they are depicted is traded online and a new predator takes personal gratification in their anguish or uses the imagery to entice another child into sexual abuse.<sup>12</sup>

<sup>8</sup> [https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats\\_2021-Full-Report.pdf](https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf) at p. 11.

<sup>9</sup> See CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL, DIVISION OF VIOLENCE PREVENTION, PREVENTING SEXUAL VIOLENCE (last reviewed by the CDC on Jan. 17, 2020), available at [https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html](https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fviolenceprevention%2Fsexualviolence%2Fconsequences.html). The paradigm shift from tangible to digital CSAM has exacerbated these effects. Von Weiler, J., Haardt-Becker, A., & Schulte,

S. Care and treatment of child victims of child pornographic exploitation (CPE) in Germany, 16 J. OF SEXUAL AGGRESSION 211, 216 (2010).

<sup>10</sup> <https://www.justice.gov/criminal-ceos/child-pornography> Sadly, these feelings usually persist and even intensify over time over time. U.S. DEP’T OF JUSTICE, THE NATIONAL STRATEGY FOR CHILD EXPLOITATION AND PREVENTION AND INTERDICTION, 11 at D-12 (2010), available at <http://www.justice.gov/psc/docs/natstrategyreport.pdf> (finding that almost ninety-five percent of CSAM victims suffer lifelong psychological damage and may never overcome the harm, even after lifelong therapy). The problem has taken on a new dimension as CSAM involves increasingly younger victims and is becoming more violent and graphic over time.

<sup>11</sup> PALMER, T. & STACEY, L., JUST ONE CLICK: SEXUAL ABUSE OF CHILDREN AND YOUNG PEOPLE THROUGH THE INTERNET AND MOBILE PHONE TECHNOLOGY (Barkingside, UK: Barnardo’s, 2013); *United States v. Williams* (11th Cir.2006) 444 F.3d 1286, 1290 (“Our concern is not confined to the immediate abuse of the children depicted in these images but is also to enlargement of the market and the universe of this deviant conduct that, in turn, results in more exploitation and abuse of children.”).

<sup>12</sup> [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at pp. 2–3 (emphasis added).

## **II. THE PROBLEM OF SEXUAL EXPLOITATION OF CHILDREN IS A CALIFORNIA PROBLEM.**

California is a big part of the problem. According to the Los Angeles County Department of Public Health, “[Commercial sexual exploitation of minors, abbreviated CSEC] is a rampant and fast-growing problem: Three of the nation’s 13 high-intensity child prostitution areas as identified by the FBI are located in California: Los Angeles, San Francisco and San Diego metropolitan areas.”<sup>13</sup> Unfortunately, the actual rate at which children are trafficked is underreported, so the full extent to which California’s and the nation’s children are under threat of this emotional trauma and physical violation is unknown.

The National Human Trafficking Resource Center Hotline received the highest number of reports on cases or victims of human trafficking from California.<sup>14</sup>

## **III. SOCIAL MEDIA PLATFORMS FACILITATE UNLAWFUL SEXUAL EXPLOITATION OF CHILDREN — AND THEY KNOW IT. CASE STUDIES OF FACEBOOK AND TIKTOK.**

“So, where is child sex trafficking happening? You might suspect a dark alley, the local swimming pool, or even a shopping mall parking lot. The most alarming news is a child can be trafficked right in the comfort of their own home.

“**I think the biggest risk is through social media,**” said Michael Syrax, FBI Special Agent, Violent Crimes Against Children Division.

‘Some of these children are recruited through Facebook, Instagram, and other social media outlets, much in the same way that a person would interact with them in real life,’ Syrax said.<sup>15</sup>

Data supports the opinion of FBI Agent Syrax. During the time that, for example, Instagram went from one million users to one billion, there has been “**a 9,000% jump in abuse images** online, according to the U.S. National Center for Missing and Exploited Children, a nonprofit, and COVID-19 lockdowns saw a surge in reports about online child sexual abuse.”<sup>16</sup>

Fully one-quarter of 9-to 17-year-olds report having had an online sexually explicit interaction with someone they believed to be an adult.<sup>17</sup>

### **A. FACEBOOK.**

Unsurprisingly given the example offered at the beginning of this letter, Facebook has known about traffickers ambitiously and openly using its products since at least 2018, leaked documents

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<sup>13</sup> *Commercial Sexual Exploitation of Children and Youth Fact Sheet*, L.A. CNTY. DEP’T OF MENTAL HEALTH (2014), [http://file.lacounty.gov/SDSInter/dmh/211312\\_2014\\_DMH\\_CSEC\\_Fact\\_Sheet\\_FINAL.pdf](http://file.lacounty.gov/SDSInter/dmh/211312_2014_DMH_CSEC_Fact_Sheet_FINAL.pdf).

<sup>14</sup> <https://htcourts.org/california/>.

<sup>15</sup> <https://www.wtnh.com/news/child-sex-trafficking-reality/children-of-color-at-a-higher-risk-of-child-sex-trafficking/> (emphasis added).

<sup>16</sup> <https://www.reuters.com/legal/litigation/can-an-eu-law-save-children-harmful-content-online-2022-07-12/>.

<sup>17</sup> *Responding to Online Threats: Minors’ Perspectives on Disclosing, Reporting, and Blocking*, THORN (May 2021), [https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats\\_2021-Full-Report.pdf](https://info.thorn.org/hubfs/Research/Responding%20to%20Online%20Threats_2021-Full-Report.pdf), at 18.

show. It got so bad that in 2019, Apple threatened to pull Facebook and Instagram’s access to the App Store, a platform the social media giant relies on to reach hundreds of millions of users yearly.<sup>18</sup> A CNN report stated that: “A report distributed internally [within Facebook] in January 2020 found that **‘our platform enables all three stages of the human exploitation lifecycle (recruitment, facilitation, exploitation) via complex real-world networks[.]’**”<sup>19</sup>

Facebook has faced other recent controversies of child sexual exploitation, including:

- ***Facebook being sued in a Texas court for facilitating sex trafficking of minors;***<sup>20</sup>
- ***Instagram being linked to “rampant sex trafficking, child sexual abuse grooming, as well as adult fetishization of young girls...,” “sexually graphic comments on minor’s photos,” and allowing strangers to “direct message minors”;***<sup>21</sup> and
- Pedophiles “sharing Dropbox links to child porn via Instagram[.]”<sup>22</sup>

In June 2020, the U.S. Department of State published its Trafficking in Persons Report (June 2020, 20th Ed.).<sup>76</sup> The report notes how “[t]he media reported in 2018 that trafficking gangs increasingly used social media sites, particularly Facebook, to buy and sell women and girls for sex and labor exploitation.” *Id.* at 269.

On June 8, 2021, the Human Trafficking Institute published its 2020 Federal Human Trafficking Report. The report provided numerous statistics concerning human trafficking in the United States and internationally. One of the “key takeaways from 2020” was that 59% of online victim recruitment (and 65% of child victim recruitment) in active sex trafficking cases occurred on the Facebook and Instagram social media platforms:

Although traffickers in 2020 active cases recruited their victims from a variety of physical locations, the internet was the most common (41%, 244) location for recruitment, as has been the case every year since 2013. In 2020, 59% (78) of online victim recruitment in active sex trafficking cases occurred on Facebook, making [Facebook] by far the most frequently referenced website or app in public sources connected with these prosecutions, which was also true in 2019.

Surprisingly, despite Facebook’s reputation as a less popular platform among teenagers, it was a more common platform for recruiting child victims than adult victims in 2020 active sex trafficking cases. In fact, 65% (68) of child victims recruited on social media were recruited through Facebook compared to just 36% (10) of adults.<sup>23</sup>

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<sup>18</sup> Clare Duffy, *Facebook Has Known It Has a Human Trafficking Problem For Years. It Still Hasn’t Fully Fixed It*, CNN (Oct. 25, 2021), <https://www.cnn.com/2021/10/25/tech/facebook-instagram-app-store-ban-human-trafficking#:~:text=A%20report%20distributed%20internally%20in,accounts%20to%20help%20with%20detection.>

<sup>19</sup> *Id.* (emphasis added).

<sup>20</sup> <https://www.nytimes.com/2019/12/03/technology/facebook-lawsuit-section-230.html>.

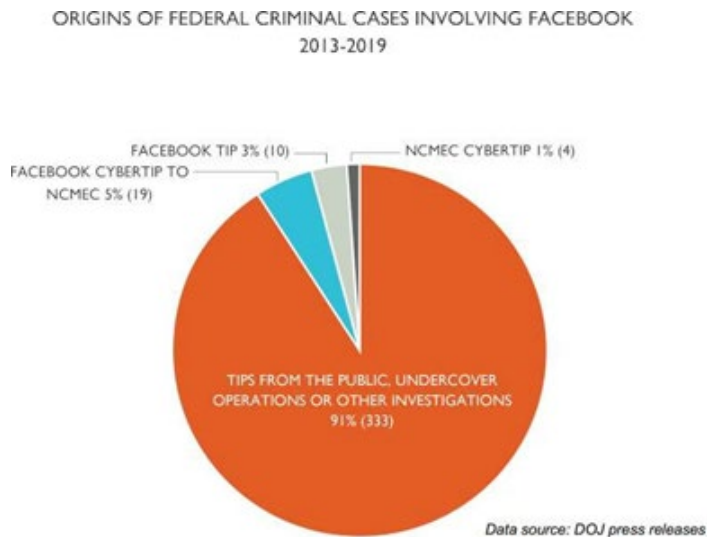
<sup>21</sup> <https://endsexualexploitation.org/articles/statement-instagram-is-predators-paradise-says-international-group-of-human-rights-ngos/>; <https://endsexualexploitation.org/articles/senate-hearing-uncovers-sexploitation-in-apps-and-social-media/>

<sup>22</sup> <https://www.dailymail.co.uk/news/article-6574015/How-pedophiles-using-Instagram-secret-portal-apparent-network-child-porn.html>

<sup>23</sup> <https://traffickinginstitute.org/wp-content/uploads/2022/01/2020-Federal-Human-Trafficking-Report-Low-Res.pdf>, at p. 44. (Emphasis added)

Not only does Facebook enable child sex trafficking and exploitation, *it fails to devote the necessary resources to reporting such conduct on its platform to law enforcement.*

In March of 2020, the Tech Transparency Project (“TTP”) published an analysis that found hundreds of U.S. cases in which suspected pedophiles used Facebook to groom minors and trade images of their sexual abuse.<sup>24</sup> Most tellingly for this bill, the report further concluded that Facebook’s systems are failing to do the minimum things needed to reduce such abuse. ***In the vast majority of the criminal cases of child sex trafficking and exploitation involving Facebook, Facebook was not the source of the tip off to law enforcement about such heinous crimes occurring on its own platform, on its own supposed watch.. In fact, “[o]nly 9% of the criminsl involving child sex crimes through Facebook cases were initiated because Facebook or the National Center for Missing and Exploited Children (which receives cyber tips from Facebook) reported them to authorities.***



## B. TIKTOK.

Similarly, multiple investigative reports have documented how TikTok permits users to urge children to commit sexual or sexualized acts. For example, in 2022:

A *Forbes* review of hundreds of recent TikTok livestreams reveals how viewers regularly use the comments to urge young girls to perform acts that appear to toe the line of child pornography — rewarding those who oblige with TikTok gifts, which can be redeemed for money, or off-platform payments to Venmo, PayPal or Cash App accounts that users list in their TikTok profiles.

It’s “the digital equivalent of going down the street to a strip club filled with 15-year-olds,” says Leah Plunkett, an assistant dean at Harvard Law School and faculty associate at Harvard’s Berkman Klein Center for Internet & Society, focused on youth and media. Imagine a local joint putting a bunch of minors on a stage before

<sup>24</sup> <https://www.techtransparencyproject.org/articles/sexual-exploitation-children-facebook>.

a live adult audience that is actively giving them money to perform whatever G, PG or PG-13 activities they request, she said. “That is sexual exploitation. But that’s exactly what TikTok is doing here.”<sup>25</sup>

“Clearly, what once was improbable [about sex trafficking of children] has been made possible through social media.”<sup>26</sup>

An astonishing 65% of underage sex trafficking victims recruited online in active criminal sex trafficking cases in 2020 were recruited through Facebook, while 14% were recruited through Instagram, and 8% were recruited through Snapchat.<sup>27</sup> Since 2000, traffickers have recruited 55% of sex trafficking victims online, usually through social media platforms.<sup>28</sup>

#### **IV. SOCIAL MEDIA PLATFORMS MAKE IT DIFFICULT FOR SURVIVORS TO REMOVE UNLAWFUL IMAGES AND VIDEOS OF THEIR EXPLOITATION.**

A 2020 report by the Canadian Centre for Child Protection revealed that social media companies design their products in a way that makes reporting and removing images and videos portraying their exploitation difficult, if not impossible, for survivors. As one survivor told the Center, “I spend hours every day searching for my own content, reporting thousands of accounts and posts sharing CSAM. When platforms don’t actively look for or prevent this content from being uploaded, the burden falls on me to have these images removed.”<sup>29</sup>

#### **V. AB 1394 (WICKS).**

It is self-evident that unless social media platforms devote far more of their resources to the morally compelled but unprofitable task of preventing their spaces from being used by those seeking to exploit children sexually, we will never successfully reduce the sexual exploitation of children. This need to establish legal minimum requirements is especially true and urgent during a time when the largest platform is laying off tens of thousands of workers to increase its profits.<sup>30</sup>

To that end, AB 1394 has two parts.

#### ***Part One: Prevention. Motivating Platforms To Do Far More By Clarifying Their Accountability When They “Facilitate, Aid, Or Abet” Child Sex Trafficking Or Exploitation.***

Part one amends current law (Civil Code section 3345.1) that already permits survivors of child sexual exploitation to sue in civil court those who have exploited or trafficked them. The bill

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<sup>25</sup> Alexandra S. Levine, *How TikTok Live Became ‘A Strip Club Filled With 15-Year-Olds’*, FORBES, (Apr. 27, 2022), at <https://www.forbes.com/sites/alexandralevine/2022/04/27/how-tiktok-live-became-a-strip-club-filled-with-15-year-olds/?sh=75efad7b62d7>.

<sup>26</sup> *How Sex Traffickers Use Social Media to Contact, Recruit, And Sell Children*, FIGHT THE NEW DRUG (Aug. 11, 2021), <https://fightthenewdrug.org/how-sex-traffickers-use-social-media-to-contact-recruit-and-sell-children-for-sex/>.

<sup>27</sup> *Id.*

<sup>28</sup> <https://traffickinginstitute.org/wp-content/uploads/2022/09/2021-Federal-Human-Trafficking-Report-WEB-1.pdf>, at p. 4.

<sup>29</sup> Canadian Centre for Child Protection, *Reviewing Child Sexual Abuse Material Reporting Functions on Popular Platforms*, [https://protectchildren.ca/pdfs/C3P\\_ReviewingCSAMMaterialReporting\\_en.pdf](https://protectchildren.ca/pdfs/C3P_ReviewingCSAMMaterialReporting_en.pdf).

<sup>30</sup> <https://techcrunch.com/2023/03/14/meta-to-cut-another-10000-jobs-zuckerberg-says/>.

logically extends such liability to when a platform “knowingly, recklessly, or negligently facilitated, aided, or abetted” the child sexual exploitation.

These words are defined. According to the bill, facilitated, aided, or abetted” means platforms being a “*substantial factor in causing minor users to be victims of commercial sexual exploitation*”. This parallels platforms’ current liability for their unlawful conduct under federal law, including for sex trafficking, which attaches to them when they are “directly involved” or “actively participating” in unlawful conduct.<sup>31</sup>

If a platform does not act in ways that “facilitate, aid, or abet” the sexual exploitation of children, they are not liable under this part of the bill at all.

NOTE: Platforms have been heard to complain about the supposed ambiguity of “substantial factor” but have offered no amendments to it. Nor have they explained why they can and currently do profitably thrive under federal case law forbidding them from being “directly involved” and “actively participating” – neither phrase is defined -- in lawbreaking but could not under the California version of those phrases; namely, being “substantial factor” in child sex trafficking or exploitation.

Penalties range from \$1,000,000 for each act of exploitation to a maximum of \$5 million, appropriate for vast corporations that actively or directly facilitate the sexual exploitation of children.

This part of the bill is a harm prevention measure that seeks to impose a downside financial consequence for a platform that is directly involved in or actively participating in the sexual exploitation of children.<sup>32</sup> It also aims to offer survivors harmed by some of the wealthiest corporations in the world a pathway to obtaining the money needed to pay for their ongoing treatment and their suffering when and if those platforms were a “substantial factor” in causing their trauma.

### ***Part Two: Remediation And Preventing A Never Ending Trauma***

Where part one of the bill is about ensuring certain vast corporations have a financial reason aggressively to prevent their platforms from being used to facilitate sexual trafficking and exploitation of children, the second part of the bill is about helping survivors deal with the consequences of their exploitation when platforms fail to help them.

Thus, the second part of the bill requires platforms, when notified by a survivor, to render images or videos of children who have been sexually exploited permanently invisible<sup>33</sup>, helping survivors

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<sup>31</sup> See, for example, *Fair Hous. Council of San Fernando Valley v. Roomates.com*, 521 F.3d 1157, 1172 (9th Cir. 2008) which held that when a platform is “directly involved with developing and enforcing” an unlawful scheme, Section 230 of the Communications Decency Act does not bar such a claim. Being an “active participant” in unlawful content is likewise excluded websites from Section 230 immunity. See, *Jane Does, No. 1-6 v. Reddit*, Slip Op., at p. 655 (9th Cir. 2022), at <https://cdn.ca9.uscourts.gov/datastore/opinions/2022/10/24/21-56293.pdf>.

<sup>32</sup> For example, to give an idea of the cost involved, in 2020, Facebook announced a \$100 million investment over three years to support organizations fighting online child exploitation and abuse. Sounds like a lot ... until you do the math. \$100 million over 3 years is \$33 million per year. as of 2021, Facebook's annual revenue was approximately \$86 billion. To calculate the exact percentage, we can divide \$33 million by \$86 billion and multiply by 100: \$33 million / \$86 billion is approximately 0.038% of its annual revenue devoted to addressing children that are being sexually exploited by their own products. **That is the same as someone earning \$100,000 a year spending \$38; not a hearty investment.**

<sup>33</sup> Current law offers consumers the right to have information about them, including images and videos, deleted (Civil Code section 1798.105) but not made invisible. If information is deleted the platform can't detect its re-posting. That deletion is different than the requirement to make

to reduce their lifelong fear of repeated exploitation. The bill requires the platforms to honor the survivor's request within a month's time — remember, these images and videos depict crimes against children and should never be posted in the first place — or face civil penalties of up to \$250,000 per violation. The reason for this part of the bill is documented by the 2020 Canadian Centre for Child Protection report already cited above and heartbreaking personal stories such as this one:

Graphic sexually abusive images and videos depicting two female children from ages 5–12 years old and 16–17 years old being abused by 2 adult offenders have been identified in content seized by law enforcement from over 8,000 offenders. This abuse originally occurred 21–24 years ago. The younger child has been approached in public by strangers who recognized her from the sexually abusive material, which predators have posted to the dark web with the child's real name and photos of the child as an adult.<sup>34</sup>

Moreover, platforms “are not required to engage in efforts to combat revictimization, and currently there is no civil recourse for survivors when [platforms] refuse to engage in these efforts.”<sup>35</sup>

The bill seeks to ensure that survivors seeking to remove images and videos documenting their abuse – these are images of a crime – are treated with a bare minimum of respect, especially given the heinousness of what is portrayed. Quoting the analysis from the Privacy Committee:

“This bill establishes a comprehensive process for users to report material that they reasonably believe to be (i) CSAM, (ii) in which the users themselves are depicted as identifiable minors, and (iii) displayed, stored, or hosted on a social media platform. Following a report, a platform would have 30 days (with a potential extension to 60 days, if required by factors beyond the platform's control) to verify whether the material is CSAM, and if it is, block it from appearing on the platform.” That analysis also highlights some features of this part of the bill:

- “Social media platforms would only be required to block the specific CSAM reported by users.”
- “Social media platforms must acknowledge user reports and keep reporting users updated on the progress of their requests.”
- “Social media platforms can use a third-party service to collect CSAM reports, and thereby avoid incurring liability that might arise from coming into possession of CSAM, particularly CSAM that is not already present on their systems.”
- “Social media platforms would retain the ability to pursue users who make fraudulent reports.”
- “Standalone services that provide end-to-end encryption for direct messages are exempted from the bill's requirements.”

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unlawful content invisible is affirmed by the fact that Legislative Counsel did not key this bill as an amendment to the CPRA which enacted section 1798.105.

<sup>34</sup> [https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20\(2-14-23\)%20\(final\).pdf](https://www.missingkids.org/content/dam/missingkids/pdfs/Senate%20Judiciary%20Hearing%20-%20NCMEC%20Written%20Testimony%20(2-14-23)%20(final).pdf), at p.14.

<sup>35</sup> *Id.* at p. 3.

### ***AB 1394's Penalties:***

Consider, please, the example at the outset of this letter. How much is enough financially to motivate corporations earning billions in profits annually to do far more than they are now to stop facilitating -- let us be blunt, child rape -- openly being offered on their products?

Beginning in February of next year, a platform that fails to remove unlawful content in the European Union can face a maximum fine of up to **6% of its annual gross income**.<sup>36</sup> By this measure, the penalties in AB 1349 imposed on a platform if *it “knowingly, recklessly, or negligently” facilitates, aids or abets the crime of commercial sexual exploitation of a mere child* are modest (between \$1 million and % million per violation) and needed to compel such giant corporations to comply.

How big do financial disincentives need to be when dealing with companies of such vast size? *When the FTC fined Facebook a record \$5 billion, its stock rose the next day and the fine was described as a “joke.”*<sup>37</sup>

Likewise with the penalties proposed for a platform's failure to remove horrifying images and videos upon a survivor's request: \$250,000 for each failure to heed the survivor's plea. Given that what is being asked to be removed shows crimes being committed and should not be visible anyway under any barely adequate system, these fines are modest.

Such fines are also preceded in far less compelling circumstances. For example, Business & Professions Code section 5116.2 permits the Board of Accountancy, which also in part regulates vast corporations (the “Big Four” Accounting firms), to assess a penalty of up \$1 million for a first violation and not more than \$5 million for subsequent violations.<sup>38</sup> Surely, motivating compliance to prevent children from being sexually exploited and prevent them, if exploited, from being victimized is not less worthy.

### **VI. CONCLUSION.**

Unless platforms devote far more time and resources to preventing and fixing the child sexual exploitation they are facilitating in the first place, children will continue to be sexually exploited in ever-increasing numbers. Please support these children and survivors by supporting AB 1394.

Sincerely,



Ed Howard  
Senior Counsel, Children's Advocacy Institute

CC: Hon. Buffy Wicks

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<sup>36</sup> <https://www.reuters.com/legal/litigation/can-an-eu-law-save-children-harmful-content-online-2022-07-12/>.

<sup>37</sup> <https://www.theverge.com/2019/7/12/20692524/facebook-five-billion-ftc-fine-embarrassing-joke>.

<sup>38</sup> Likewise, Business & Professions Code section 16755 imposes a maximum penalty of \$1 million for corporations that conspire against free trade. Other examples of fines up to \$1 million are found in the Labor, Financial, and Health & Safety Codes, to name a few.