

In The  
**Supreme Court of the United States**

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DOYLE RANDALL PAROLINE,

*Petitioner,*

v.

AMY UNKNOWN and UNITED STATES,

*Respondents.*

—◆—

**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Fifth Circuit**

—◆—

**AMICUS BRIEF OF THE AMERICAN  
PROFESSIONAL SOCIETY ON THE  
ABUSE OF CHILDREN IN SUPPORT  
OF RESPONDENT AMY UNKNOWN**

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**INTEREST OF *AMICUS* AMERICAN  
PROFESSIONAL SOCIETY ON  
THE ABUSE OF CHILDREN<sup>1</sup>**

The American Professional Society on the Abuse of Children (“APSAC”) is the leading national organization supporting professionals who serve children and families affected by child maltreatment and violence, including child sex abuse and child pornography. As a multidisciplinary group of professionals, APSAC achieves its mission in a number of ways, most notably through expert training and educational activities, policy leadership and collaboration, and consultation that emphasizes theoretically sound, evidence-based principles. With more than 26 years of existence and a central role in the development of professional guidelines addressing child abuse and neglect, APSAC is well-qualified to help inform this

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<sup>1</sup> On September 3, 2013, Counsel for Respondent, Amy, filed a consent to the filing of *amicus curiae* briefs, in support of either party or of neither party. On September 6, 2013, Counsel for Respondent, Wright, filed a consent to the filing of *amicus curiae* briefs, in support of either party or of neither party. On September 6, 2013, Counsel for Respondent, United States, filed a consent to the filing of *amicus curiae* briefs, in support of either party or of neither party. On September 6, 2013, Counsel for Petitioner, Paroline, filed a consent to the filing of *amicus curiae* briefs, in support of either party or of neither party. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No persons other than the Amici or their counsel made a monetary contribution to this brief’s preparation or submission.

Court about the current nature of child pornography and the harm it causes its victims. APSAC is submitting this *amicus* brief in this case to assist the Court in understanding the most recent science documenting the nature and harm done to victims by the market in child pornography and all of its participants.



## **SUMMARY OF ARGUMENT**

To understand how to interpret the Mandatory Restitution for Sexual Exploitation of Children Act, 18 U.S.C. § 2259 (2012), which is the focus of this case, it is necessary to comprehend the nature of the harm inflicted by child pornography. This *amicus* brief documents the following essential facts to aid this Court in understanding the phenomenon of child pornography and its actual effects.

First, from the perspective of the victim whose image appears in child pornography, there is no meaningful difference between the creator, the viewers, or the distributors of pornographic images. They are all participants in a marketplace of child pornography, as this Court acknowledged in *New York v. Ferber*, 458 U.S. 747, 753 (1982), all of whose participants inflict pain and suffering on the victims. Second, even when a child is not sexually assaulted or abused in the creation of the pornography, the memorialization, distribution, and viewing of the pornographic images inflict harm, which is multiplied once the images are uploaded to the Internet. When the

child is sexually assaulted or abused, the distribution of the pornography compounds the victim's psychological injuries. Third, child pornography is not simply an end-product, but also a tool to groom potential victims and, therefore, victims suffer even more knowing that their images are being used to harm other children. Finally, victims of child pornography typically experience lifelong negative and exacerbated effects.



### ARGUMENT

Over thirty years ago, in *New York v. Ferber*, 458 U.S. 747 (1982), this Court addressed the following question: “To prevent the abuse of children who are made to engage in sexual conduct for commercial purposes, could the New York State Legislature, consistent with the First Amendment, prohibit the dissemination of material which shows children engaged in sexual conduct, regardless of whether such material is obscene?” *Id.* at 753. The Court’s answer was an unequivocal, “Yes.” Most important for purposes of this *amicus* brief, the decision turned on the facts of child pornography known at the time, with the majority explaining the need to stop pornography as follows:

The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children in at least two ways. First, the materials produced are a permanent record of the children’s participation and the harm to

the child is exacerbated by their circulation. **Second, the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled.** Indeed, there is no serious contention that the legislature was unjustified in believing that it is difficult, if not impossible, to halt the exploitation of children by pursuing only those who produce the photographs and movies. While the production of pornographic materials is a low profile, clandestine industry, the need to market the resulting products requires a visible apparatus of distribution. The most expeditious, if not the only practical, method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product. *Id.* at 759-60 (emphasis added; footnotes omitted).

The statute at issue in this case, the Mandatory Restitution for Sexual Exploitation of Children Act, 18 U.S.C. § 2259 (2012) (“Mandatory Restitution Act”), was enacted, in part, to fulfill the goal of drying up the market for this material by imposing severe penalties on those selling, viewing, transmitting, and distributing the material. Mandatory Restitution Act, 18 U.S.C. § 2251 (2012).

Since *Ferber* was decided decades ago, technology has dramatically progressed to the benefit of the pornography market and to the detriment of child sex



abuse victims, as Amy's experience illustrates so well. The science regarding the impact of child sex abuse also has progressed. The purpose of this brief is to provide, on behalf of the leading professional association dedicated to the issue of child abuse, the best scientific understanding today of how the marketplace in child pornography and child pornography itself harms its victims.

It is not only that a child is sexually assaulted or abused as part of its production that makes child pornography so damaging, but also the fact that detailed and graphic images of the child's sexual assault or abuse are made available to millions across the globe. Respondent's Br. at 5. Once those images are released, it is impossible to recapture them. Each person who views the images inflicts fresh damage to the victim. Thus, as this Court first noted in *Ferber*, and as technology has reinforced, it is the marketplace of exchange in these images that is the social evil, and every participant in the market, whether producer, distributor, possessor, or viewer, inflicts serious damage on the subject of the images, whether or not the child is sexually assaulted or abused as part of the creation of the images.

The harm is multiplied by the very size of the global marketplace. As this Court noted in *Ferber*, it is necessary to destroy the market in order to protect children from child sex abuse. This is an extraordinary challenge, because of the global character of the market, which has far surpassed the era of still photographs and films. Now, the Web is the marketplace,

which means every corner of the world can participate. While there is some progress in terms of policing child pornography in the western world, “large areas of the world make virtually no pretense at combating underage sex or child pornography.” Philip Jenkins, *Beyond Tolerance: Child Pornography on the Internet* 195 (2001).

APSAC recently devised a statement on the properly understood relationship between child pornography and the protection of children. American Professional Society on the Abuse of Children, APSAC Statement on the Harm to Child Pornography Victims (Oct. 18, 2013), *available at* <http://www.apsac.org/assets/documents/apsac%20statement%20on%20harm%20to%20child%20pornography%20victims%2010.29.13.pdf>. This brief tracks the statement and provides further elaboration to assist this Court in understanding the state of the science on child sex abuse, child pornography, and their effects on the child subjects of pornography.

**I. For the Victim, the Sexual Abuse, Its Memorialization, Distribution, and Viewing Are Psychologically Intertwined with and Compound the Impact of the Abuse**

The memorialization, distribution, and viewing of child pornography add on to the harm already done as part of the child sex abuse and assault that are often the subject of the pornography. As the Department of Justice has explained:

. . . knowing that all copies of child pornography images can never be retrieved compounds the victimization. The shame suffered by the children is intensified by the fact that the sexual abuse was captured in images easily available for others to see and revictimizes the children by using those images for sexual gratification. Unlike children who suffer from abuse without the production of images of that abuse, these children struggle to find closure and may be more prone to feelings of helplessness and lack of control, given that the images cannot be retrieved and are available for others to see in perpetuity. They experience anxiety as a result of the perpetual fear of humiliation that they will be recognized from the images.

U.S. DEPT OF JUSTICE: THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS 9 (Aug. 2010).

Even when a child is not sexually assaulted or abused to make the images, once he or she learns of the images and their distribution, the pornography is experienced as “abusive and harmful.” RICHARD WORTLEY & STEPHEN SMALLBONE, INTERNET CHILD PORNOGRAPHY: CAUSES, INVESTIGATION, AND PREVENTION 77 (Graeme R. Newman, ed. 2012). They typically feel shame, embarrassment, anxiety regarding who will view the images, a lack of control over their images, and concern that they may meet someone who has viewed the images. *Id.* The victims “developed a general sense of ‘unsafeness [sic], feeling

sexualized, and feeling victimized' because they did not know who may now be viewing their images and because they understood that some may use the images for sexual purposes . . . [I]magine how a stranger may use their image for sexual gratification is likely to be deeply disturbing." *Id.* at 77-78.

The Internet establishes easy, widespread, and worldwide access to sexual images; therefore, victims may never be certain of viewers' identities. *Id.* Many of these victims thus fear that not only stranger-viewers will subsequently recognize them, but also those viewers who know the victims. *Id.* As a result, there are laws in many jurisdictions that ban media identification of sexual abuse victims. *Id.* These laws recognize that the mere knowledge that a child was sexually abused is inherently harmful. *Id.* See also Chris Atkinson & David Newton, *Online Behaviours of Adolescents: Victims, Perpetrators and Web 2.0*, 16:1 JOURNAL OF SEXUAL AGGRESSION 107, 109 (2010).

The effects are often long-term. Respondent's Br. at 5-6. For example, not only is the original victimization damaging, but ongoing fears throughout a victim's life can exist. "One account given . . . by a victim of abuse images talked of feeling fearful every time the mail arrived, overwhelmed with anxiety that the photographs would be in the post and that her mother would see them." ETHEL QUAYLE ET AL., CHILD PORNOGRAPHY AND SEXUAL EXPLOITATION OF CHILDREN ONLINE 49 (2008).

## II. Pornography Is Not Only an End-Product, But Also a Common Element of Grooming

It is common for pedophiles to use pornography to groom their next victims. ETHEL QUAYLE ET AL., CHILD PORNOGRAPHY AND SEXUAL EXPLOITATION OF CHILDREN ONLINE 24-25, 48 (2008); Chris Atkinson & David Newton, *Online Behaviours of Adolescents: Victims, Perpetrators and Web 2.0*, 16:1 JOURNAL OF SEXUAL AGGRESSION 107, 109 (2010). As the Department of Justice has documented:

Grooming usually involves normalizing sexualized behavior in the offender-child relationship by introducing increasingly intimate physical contact by the offender toward the victim, very gradually sexualizing the contact, and sometimes using child pornography to break down the child's barriers. This gradual process and the relationship of trust and authority that the offender usually holds over the child, along with the child's immaturity and subservience, serves to break down the child's resistance. These children have a difficult time understanding what is happening to them and why and have very little control over their circumstances.

U.S. DEP'T OF JUSTICE: THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION: A REPORT TO CONGRESS 21 (Aug. 2010); *see also id.* at 31 ("predators gradually introduce child pornography into their seduction methodology. As instructions for desired behaviors, children are shown suggestive images, nudity is introduced, and then actual sexual

abuse is carried out. Gradually the idea of sex between adults and children is normalized.”) (internal citation omitted).<sup>2</sup>

### **III. Child Sex Victims Typically Experience Long-Term Harm and Need Lifelong Care**

Child pornography often involves contact sexual abuse. There is empirical data that indicates an association between sexual abuse victimization and grave short and long-term outcomes. RICHARD WORTLEY & STEPHEN SMALLBONE, *INTERNET CHILD PORNOGRAPHY* 72 (2012) (internal citations omitted). In comparison with those who were not sexually abused, victims were found to experience greater “anxiety and depression, somatic complaints, social withdrawal, anger, and aggressive and sexual behavior problems.” *Id.* Hundreds of other studies have established that child sex victims are at higher risk for and often suffer from health problems such as depression, alcoholism, illicit drug use, unintended pregnancies, and sexually transmitted diseases. CENTERS FOR DISEASE CONTROL AND PREVENTION, *ADVERSE CHILDHOOD EXPERIENCES (ACE) Study: Major Findings* (1997)

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<sup>2</sup> In addition, “the child may often consider images that seem very normal, portraying the child with clothes on but taken by the abuser, as equally or even more disturbing, since these images will form part of the entire abusive process and possibly remind the child of how the perpetrator has violated and built trust and rapport with the child.” ETHEL QUAYLE ET AL., *CHILD PORNOGRAPHY AND SEXUAL EXPLOITATION OF CHILDREN ONLINE* 49 (2008).

available at <http://www.cdc.gov/ace/findings.htm> (last updated Jan. 18, 2013). For example, a recent study found that the severity of the child abuse often correlates with the severity of the subsequent alcohol abuse. See Joseph Nowinski, Ph.D., *Childhood Trauma and Adult Alcohol Abuse: Shedding Light on the Connection*, THE HUFFINGTON POST (July 22, 2013, 10:01 AM), [http://www.huffingtonpost.com/joseph-nowinski-phd/alcohol-abuse\\_b\\_3595743.html](http://www.huffingtonpost.com/joseph-nowinski-phd/alcohol-abuse_b_3595743.html).

Furthermore, these victims also experienced greater levels of anxiety, depression, and anger, and were more likely to act “impulsively” as a response to these emotions. *Id.* This impulsiveness could take the form of abusing alcohol “as a means of coping with or anesthetizing” those feelings. *Id.* Additionally, another study found a “direct neural mechanism, via alteration of the brain’s fear circuitry . . . [where] maltreatment [led] to anxiety and depressive symptoms by late adolescence.” Ryan J. Herringa, et al., *Childhood maltreatment is associated with altered fear circuitry and increased internalizing symptoms by late adolescence*, PNAS EARLY EDITION 1, 6 (Oct. 2013), available at <http://www.pnas.org/content/early/2013/10/30/1310766110.full.pdf+html>. In addition, “[a]mong the more troubling long-term outcomes of sexual abuse, particularly for female victims, is an increased risk of further sexual victimization later in life – often in apparently unrelated circumstances . . . In one study, women who had experienced sexual abuse as a child were twice as likely as previously nonvictimized women to be raped.” WORTLEY & SMALLBONE at 73.

#### **IV. Child Pornography Victims Experience Exacerbated Negative Effects**

A subject of child pornography, whether sexually abused or not in the process, can suffer serious negative effects. Respondent's Br. at 5-6. As discussed above, after being abused, child victims "may feel grief, guilt and fear." *ETHEL QUAYLE ET AL., CHILD PORNOGRAPHY AND SEXUAL EXPLOITATION OF CHILDREN ONLINE* 44 (2008) (internal citations omitted). As a result, the subject's behavior may reflect an "inability to trust, cognitive confusion, lack of mastery and control, repressed anger and hostility, blurred boundaries and role confusion, pseudo-maturity and failure to complete development tasks, depression and poor social skills." *Id.* These negative effects, however, are not limited to situations in which a child was sexually assaulted or abused. Even in "non abusive" situations, when a child's image appears in pornography and learns about the images, the subject will likely suffer from shame, embarrassment, anxiety, and even a feeling that they have an overall loss of control. *RICHARD WORTLEY & STEPHEN SMALLBONE, INTERNET CHILD PORNOGRAPHY* 77 (2012). *See also* Respondent's Br. at 6. The harm of child pornography extends beyond the particular subject as the behavioral effects of the abuse not only affect the child, but also further complicate problems in the victim's home. *WORTLEY & SMALLBONE* at 77.

The pornography's depiction of the child being sexually assaulted or abused (whether or not the child was physically assaulted or abused as part of



the production) creates an ongoing fear that is virtually impossible to quell, because the images cannot be controlled. Each time the image is viewed is experienced as a fresh assault by the victim. Respondent's Br. at 6. Thus, child pornography victims typically feel helpless to protect themselves from the harm arising from the distribution and viewing of the images. Upon learning that their images have been disseminated over the Internet and viewed by others, these victims feel "impotent because they will have had no control over the disclosure process – they have not been able to choose when to disclose, what to disclose, how to disclose and to whom they want to disclose." *Id.* at 51. Because victims cannot identify exactly how many and who these viewers may be, they develop a "general feeling of unsafeness [sic] and feeling sexualized." Marcella Mary Leonard, *The Impact of Being a Victim of Internet Offending*, 16:2 JOURNAL OF SEXUAL AGGRESSION 249, 252-53 (2010). The knowledge that strangers will view these images and "convince themselves that the victim is either smiling at them or that they are enjoying the sexual act" further multiplies the victimization. *Id.* Furthermore, the "thoughts of unknown individuals gaining and performing sexual gratification" to the victims' images causes these victims to undergo re-victimization. *Id.* For the child, the issue is still in present tense, and it may be impossible for them to identify a point in time at which their abuse ended. See Leonard at 253; WORTLEY & SMALLBONE at 78-79. This is particularly problematic from a recovery standpoint, as it prevents the victim from knowing

that the abuse is a thing of the past. Often times, this can cause a victim to regress to a point of “sickening anticipation,” which is the psychotherapeutic term used to describe “the sick feeling in the pit of their stomachs that victims have to live with when their trauma is happening.” See WORTLEY & SMALLBONE at 78-79; Leonard at 254.

Not knowing who may view, or who has viewed the images of them magnifies the victims’ developed sense of unsafeness. WORTLEY & SMALLBONE at 77-78. Unfortunately, as children mature, they will be more likely to understand that adults are using such images for sexual gratification, thereby compounding their victimization. *Id.* Understanding that the pictures are still in use for sexual gratification makes it almost impossible for the victim to fully recover and, therefore, creates the new need for ongoing therapy and care over the course of their lives, particularly at times of stress. Consequently, counselors for Internet victims often fear that younger children will eventually develop a “new experience of loss of control, powerlessness, helplessness, shame and fear.” *Id.*

As victims begin to “grasp permanence, they [are] burdened even further, and [feel] a loss of control, powerlessness, helplessness, shame and fear,” which further makes it difficult for them to obtain closure. Julia von Weiler, et al., *Care of Treatment of Child Victims of Child Pornographic Exploitation in Germany*, 16:2 JOURNAL OF SEXUAL AGGRESSION 211, 218 (2010). Unfortunately, the worldwide grasp of the Internet further memorializes the child’s abuse. While a

child's natural environment may already be a host of anxiety, their fear that strangers will view the images extends not only to people that they see regularly, but also to those in even the most distant locations, indeed, anyone with whom they come into contact. Consequently, the child is "unable to think of the world as a safe place, because no matter where they are they could meet someone who is looking at pictures of them." Leonard at 253. In fact, the mere mention of the Internet can trigger a victim's recollection of the abuse. *Id.* In a technological age, it is impossible for one to not be constantly accessing, or reminded of, the World Wide Web. What may seem like a mere statement to one person, could act as a trigger of re-victimization for a child of abuse. Thus, not only the creation, but also the distribution, sharing, and viewing of child pornography, causes serious harm to the victims. Respondent's Br. at 5-6. Sadly, victims may live lives of "sickening anticipation." Leonard at 254.

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## CONCLUSION

Those like the Respondents in this case have suffered serious harm that is distinct from and additional to the harm of initial child sex abuse that leads to child pornography. It is APSAC's hope that this brief has assisted this Court with understanding the legitimate need of pornography subjects for restitution from pornography market participants. For child pornography victims, a distinction between creators

and distributors and viewers is a false distinction. They are all part of the marketplace that endangers children generally and can continue to harm victims throughout their adulthood.

Respectfully submitted,

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