

OKLAHOMA CITY UNIVERSITY LAW REVIEW

VOLUME 49

SUMMER 2025

NUMBER 3

MANUSCRIPT

PIXELATED HARM: AN ANALYSIS OF THE IMPACT OF AI-GENERATED IMAGES ON CSAM CRIMINALIZATION AND CHILD SAFETY

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Introduction

The innovation and convenience of generative artificial intelligence (AI) have led to rapid adoption. Recent studies concluded that the adoption rates of generative AI outpaced the adoption of both PCs and the internet.¹ Creating grocery lists on Alexa, asking Siri for the answer to a question, checking Waze for the most efficient traffic route, and checking the grammar of a sentence with Grammarly are just a few examples of how individuals use AI in everyday life. But like most tools, AI advancements raise important questions about how the technology could be used for nefarious reasons. Consider how deepfake images of Pope Francis dressed

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1. *The Rapid Adoption of Generative AI*, THE PROJECT ON WORKFORCE (Sept. 18, 2024), <https://www.pw.hks.harvard.edu/post/the-rapid-adoption-of-generative-ai> [<https://perma.cc/L8EW-NWLT>].

in a Balenciaga puffer jacket and President Trump resisting arrest “took the internet by storm” in 2023.² The potential spread of misinformation from realistic images can result in lively discussions or cause significant harm.

New dimensions have evolved between the intersection of technology and crimes against children requiring innovative options to solve the problem. AI advancements have introduced new challenges in regulating digital exploitation of children—highlighting a need for updated legal structures that adapt to rapidly evolving technology. This paper will explore the background surrounding AI-generated child exploitation material, examine the current landscape of legislative efforts to address the issue, and identify key areas where further action is required to fully protect children from emerging digital threats.

I. Background and History

A. What is CSAM?

Child Sexual Abuse Material (CSAM) is “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”³ The term *child pornography* currently appears in and is used in federal statutes to refer to “any visual depiction of sexually explicit conduct involving a person less than 18 years old.”⁴ However, the more accurate trend since 2016 is to use the terminology *Child Sexual Abuse Material* (CSAM) because CSAM “better reflects the abuse that is depicted in the images and videos and the resulting trauma to the child.”⁵

2. Shannon Thaler, *AI-Generated Nude Images of Girls at NJ High School Trigger Police Probe: 'I am Terrified'*, N.Y. POST (Nov. 2, 2023, 9:12 a.m. ET), <https://nypost.com/2023/11/02/news/ai-generated-nudes-of-girls-at-nj-high-school-trigger-police-probe/> [<https://perma.cc/S8LE-YDL4>].

3. BRACKET FOUND., *Generative AI a New Threat for Online Child Sexual Exploitation and Abuse*, UNITED NATIONS INTERREGIONAL CRIME & JUST. RSCH INST. 6 (2024), <https://unicri.it/sites/default/files/2024-09/Generative-AI-New-Threat-Online-Child-Abuse.pdf> [<https://perma.cc/PQ44-7X9S>] (footnote omitted).

4. U.S. DEP'T OF JUST., *CHILD SEXUAL ABUSE MATERIAL 1* (2023), https://www.justice.gov/d9/2023-06/child_sexual_abuse_material_2.pdf [<https://perma.cc/LWT4-WHGB>].

5. *Id.*

Child “abuse, rape, molestation, and/or exploitation” are inherent in every CSAM image.⁶ The production and distribution of CSAM permanently victimize children with the prospect of re-victimization occurring for life.⁷ Worldwide,⁸ one in eight children “have been victims of non-consensual taking, sharing and exposure to sexual images and video in the past year – equating to more than 300 million children.”⁹ Recent reports show that CSAM has “grown exponentially . . . from 3,000 reports in 1998 to more than 1,000,000 in 2014 and 18,400,000 in 2018.”¹⁰ This unfathomable growth has seen a continued development since the widespread adoption of AI use.

B. The Intersection of AI and CSAM

While generative AI programs have existed for years, AI use did not become commonplace until “2022 with the release of OpenAI’s ChatGPT.”¹¹ Current generative AI models—such as ChatGPT—are *large language models* that attempt to predict the next word in a prompt based on large quantities of loaded datasets of information.¹² But generative AI is not limited to text creation and “can create images and even videos through the sequencing of random pixels.”¹³ Regardless of whether the prompt is requesting the generation of text or images, the datasets loaded into the program limit the generative AI models’ responses.¹⁴ Therefore, generative AI lacks the ability to manufacture a response outside its training and cannot create independently of those datasets.¹⁵

As the internet and technology continue to evolve, so do the mechanisms for exploiting children—yielding more sophisticated predators. “Generative AI has created new ways in which online

6. *Id.*

7. *Id.*

8. While the issues raised in this paper are a present on a global level, this paper will focus on legal and legislative options in the United States.

9. Andy Gregory, *Prioritise Children’s Online Safety at Election to Tackle ‘Hidden Pandemic’ of Sexual Abuse, Experts Urge*, THE INDEPENDENT (June 2, 2024, 6:36 EDT), <https://www.the-independent.com/news/uk/politics/sexual-abuse-children-online-safety-childlight-b2552670.html> [<https://perma.cc/2TCZ-LEGQ>].

10. PROTECT Act of 2024, S.3718, 118th Cong. (2024).

11. BRACKET FOUND., *supra* note 3, at 8.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

exploitation and abuse can occur and has exacerbated existing harm.”¹⁶ CSAM that is “manipulated or created using generative AI” is referred to as AI-generated CSAM.¹⁷ The National Center for Missing and Exploited Children (NCMEC) acts as a clearinghouse to determine if CSAM images consist of real existing children or are AI-generated. NCMEC operates the CyberTipline and the Child Victim Identification Program (CVIP) to combat CSAM.¹⁸ “Of the approximately 36 million . . . reports of online child exploitation and abuse to the U.S. regulator in 2023, 4,700 included verified AI-generated CSAM.”¹⁹

AI-generated CSAM victimizes children in a variety of ways. AI-generated CSAM includes: (1) text to chat; (2) text to text; (3) text to image; and (4) image to image.²⁰ Because of the limitations of large language AI models, there are only two ways for CSAM to be generated by AI: (1) the loaded dataset included adult pornography and information on how to extrapolate CSAM from the explicit adult images; or (2) the loaded dataset included CSAM.²¹ Either way, the training datasets from developers are essential in the AI’s ability to generate CSAM.²² Using as few as two innocuous images, AI models can transform innocent images of children into explicit images.²³

Additionally, AI-generated CSAM can manipulate real images to generate realistic fake images. Deepfakes, a subset of generative AI, are engineered versions of loaded images. These deepfakes often use a person’s likeness and AI technology to generate a convincingly photorealistic image.²⁴ Peers victimizing peers with AI technology is a growing trend.²⁵ For example, a New Jersey high school gained media attention in 2023 when female high school students were victimized by male students creating and sharing nude AI-generated images.²⁶ The New Jersey high school boys used benign pictures of the females to create AI-

16. *Id.* at 15.

17. *Id.* at 6.

18. *Addressing Real Harm Done by Deepfakes: Hearing Before the H. Subcomm. on Cybersecurity, Info. Tech., & Gov’t Innovation of the H. Comm. on Oversight & Accountability*, 118th Cong. 1 (2024) (statement of John Shehan).

19. BRACKET FOUND., *supra* note 3, at 14 (footnote omitted).

20. Shehan, *supra* note 18, at 3.

21. BRACKET FOUND., *supra* note 3, at 9.

22. *Id.*

23. *Id.* at 11.

24. *Id.* at 6.

25. U.S. DEP’T OF JUST., *CHILD SEXUAL ABUSE MATERIAL 2* (2023).

26. Thaler, *supra* note 2.

generated pornographic images.²⁷ “Up to 95 percent of all internet deepfake videos depict” the publication of non-consensual intimate imagery (NCII).²⁸ The vast majority of deepfake NCII online targets women and girls.²⁹ “The spread of these images—possibly in perpetuity if allowed to remain online—is having a profoundly traumatic impact on victims.”³⁰

C. Legal History

The constitutional protection of free speech is not an absolute right, absent restrictions. Instead, “[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.”³¹ One of the acknowledged non-protected classes of speech is obscene speech.³² This distinction underscores the balance courts must maintain between preserving fundamental freedoms and regulating content deemed to be devoid of societal value.

The need to regulate explicit content often overlaps with the legal boundaries of free expression. In 1973, the United States Supreme Court established the test to determine if material is obscene in *Miller v. California*.³³ Based on community standards, the three-part test evaluates if the content, taken as a whole, pertains to prurient interest, the offensiveness of the content, and whether the material lacks other social value.³⁴ The *Miller* test asks:

- (a) whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; . . . (b) whether the work depicts or describes, in a patently offensive way,

27. *Id.*

28. Press Release, Sen. Cruz Leads Colleagues in Unveiling Landmark Bill to Protect Victims of Deepfake Revenge Porn, U.S. SENATE COMM. ON COM., SCI., & TRANSP. (June 18, 2024), <https://www.commerce.senate.gov/2024/6/sen-cruz-leads-colleagues-in-unveiling-landmark-bill-to-protect-victims-of-deepfake-revenge-porn> [https://perma.cc/Q67D-YTZJ].

29. *Id.*

30. *Id.*

31. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942) (footnote omitted).

32. *Id.* at 572.

33. *Miller v. California*, 413 U.S. 15, 21 (1973).

34. *Id.*

sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.³⁵

This delineation by the Court between protected non-obscene speech and non-protected obscene speech underscores a responsibility to potentially evaluate material based on societal standards as those change.

Additionally, child pornography is provided less constitutional protection than other obscene materials. In *New York v. Ferber*, the United States Supreme Court clarified that even if material failed to be classified as obscene under the *Miller* test, material could still be regulated if it was child pornography because there is "greater leeway in the regulation of pornographic depictions of children."³⁶ The Court approved of legislation that prohibited the distribution of child pornography without requiring that the material also be obscene.³⁷ The Court reasoned that: (1) there is a "compelling" state interest in protecting the welfare of children; (2) the "distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children"; (3) the sale of child pornography provides economic incentives for illegal activity; (4) there is little to no value in material that depicts "children engaged in lewd sexual conduct"; and (5) classifying child pornography as an unprotected class of speech was not "incompatible" with the Court's previous decisions.³⁸ The Court's justification and reasoning highlight that child pornography is inherently harmful.

Furthermore, the private possession, not just distribution, of child pornography could be criminalized.³⁹ In *Osborne v. Ohio*, the United States Supreme Court reasoned that the Ohio state law that prohibited the possession and viewing of child pornography⁴⁰ did not "rely on a paternalistic interest."⁴¹ Instead, the aim of the law was to "destroy a market for the exploitative use of children."⁴² This interest, the Court opined, is undoubtedly a compelling state interest.⁴³ The Court also found

35. *Id.* at 24 (citation omitted).

36. *New York v. Ferber*, 458 U.S. 747, 756 (1982).

37. *Id.* at 749.

38. *Id.* at 756-57, 761-63, 795.

39. *Osborne v. Ohio*, 495 U.S. 103, 111 (1990).

40. *Id.* at 108.

41. *Id.* at 109.

42. *Id.*

43. *Id.*

it reasonable that penalizing the possession of child pornography would “decrease the production of child pornography.”⁴⁴

The jurisprudence battle surrounding this category of unprotected speech continued in *Ashcroft v. Free Speech Coalition*. The United States Supreme Court found the Child Pornography Prevention Act of 1996 (CPPA) to be overbroad and therefore unconstitutional.⁴⁵ The CPPA “extend[ed] the federal prohibition against child pornography to sexually explicit images that appear to depict minors but were produced without using any real children.”⁴⁶ The Court held that the CPPA infringed on an individual’s First Amendment rights.⁴⁷ By striking down the CPPA, the Court arguably opened the door to allow material that exploits and endangers children. Limiting the definition of child pornography to images of real children, the *Ashcroft* decision prioritized freedom of speech over measures designed to shield children from harm.

Appellate courts have further debated and expanded the requirements of a CSAM conviction. For example, in *United States v. Hilton*, the First Circuit vacated a conviction of possession of child pornography under the CPPA.⁴⁸ The court held that the government must prove as an element of the crime that the material contains images of real children—even if the defendant does not raise the issue himself.⁴⁹ Furthermore, the Second Circuit found that creating images by superimposing images of a minor’s head onto an adult nude body engaged in sexually explicit conduct was not protected speech in *United States v. Hotaling*.⁵⁰ Inconsistent evidentiary standards and fluctuating CSAM definitions nationwide create challenges for securing convictions and challenges in challenging convictions on appeal.

D. Federal Legislative Response

With these rulings in mind, Congress has attempted to thwart CSAM while adhering to the protections of the First Amendment. The first legislation Congress passed was the Protection of Children Against Sexual Exploitation Act of 1977 (PCSEA), which was “[i]n response to a storm

44. *Id.*

45. *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 258 (2002).

46. *Id.* at 239.

47. *Id.* at 244.

48. *United States v. Hilton*, 386 F.3d 13, 14 (1st Cir. 2004).

49. *Id.* at 14-15.

50. *United States v. Hotaling*, 634 F.3d 725, 728 (2d Cir. 2011).

of media attention that put the issue of child pornography on the national agenda.”⁵¹ This initial legislation was followed by acts in 1984, 1986, 1990, 1996, and 1998 that attempted to “close loopholes” that “criminals had found to exploit.”⁵²

Subsequently, Congress passed the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act (PROTECT Act) in 2003. The PROTECT Act is made up of 18 U.S.C. § 2252, 18 U.S.C. § 2252A, and 18 U.S.C. § 2256.⁵³ These statutes prohibit the creation, distribution, and possession of child pornography.⁵⁴ Child pornography is defined in “Section 2256 of Title 18, United States Code . . . as any visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age).”⁵⁵ The Code further clarifies that “[v]isual depiction[s] include photographs, videos, digital or computer generated images indistinguishable from an actual minor, and images created, adapted, or modified, but appear to depict an identifiable, actual minor.”⁵⁶ The PROTECT Act incorporates the *Miller* obscenity test into § 2252A by separating the prohibitions pertaining to images of real existing children and the prohibitions pertaining to generated images of children.⁵⁷ Restricted images must either be an “*obscene* visual depiction of a minor engaging in sexually explicit conduct” or “a visual depiction of an *actual* minor engaging in sexually explicit conduct.”⁵⁸

E. Adoption of State Laws

One of the major shortcomings of the federal PROTECT Act is that it does not apply to state crimes—creating a need for individualized state

51. Artemus Ward, *Protection of Children Against Sexual Exploitation Act of 1977 (1977)*, FREE SPEECH CTR. (July 5, 2024), <https://www.mtsu.edu/first-amendment/article/1088/protection-of-children-againstsexual-exploitation-act-of-1977> [https://perma.cc/ZA32-PLAK].

52. Aara Ramesh, *The 2003 PROTECT Act And Safeguarding Children from Sexual Exploitation*, BIOMETRICA (Oct. 28, 2021), <https://www.biometrica.com/the-2003-protect-act-and-safeguarding-children-from-sexual-exploitation/> [https://perma.cc/E9R8-WE7F].

53. 18 U.S.C. §§ 2252, 2252A, 2256.

54. *Id.*

55. *Citizen's Guide to U.S. Federal Law on Child Pornography*, U.S. DEP'T OF JUST. (Aug. 11, 2023), <https://www.justice.gov/criminal/criminal-ceos/citizens-guide-us-federal-law-child-pornography> [https://perma.cc/8MNU-VY3M].

56. *Id.*

57. 18 U.S.C. § 2252A.

58. *Id.* (emphasis added).

statutes to address AI-generated CSAM. Generally, CSAM prosecution is handled on the state court level unless the offense crosses state lines. “Incidents of explicit AI-generated deepfakes of children have rapidly cropped up in recent years, leading to a charge among several states to pass laws to protect against them.”⁵⁹ States “have passed a flurry of legislation to ensure local prosecutors can bring charges under state laws for AI-generated ‘deepfakes’ and other sexually explicit images of kids.”⁶⁰ Laws that criminalize AI-generated CSAM have been enacted by thirty-seven⁶¹ states—with more than half of those states passing the legislation in 2024.⁶² State laws vary in description, application, and criminalization.

Some state legislation mirrors federal legislation. For example, Oklahoma enacted House Bill 3642 in April 2024, which amended Oklahoma’s obscenity and child pornography laws. Similar to the PROTECT Act, the new legislation contains clarifying language to include a prohibition of AI-generated child pornography as long as that “visual depiction is obscene.”⁶³ By aligning its modifications to the current federal regulations, Oklahoma expanded its protections of children while adhering to the requirements set forth in *Ashcroft*.

However, some state legislation seems to surpass current federal legislation. In September 2024, California joined the fight with the passing of legislation that “closed a legal loophole around AI-generated imagery of child sexual abuse and made it clear child pornography is illegal even if it’s AI-generated.”⁶⁴ Previous California laws required district attorneys to prove images were of real children before prosecution.⁶⁵ This new

59. Safia Samee Ali, *What State Laws Protect Kids Against AI-Generated Deepfakes?* FOX59 NEWS (Dec. 1, 2024, 11:34 AM EST), <https://fox59.com/news/national-world/what-state-laws-protect-kids-against-ai-generated-deepfakes/>.

60. *Id.*

61. Current states with laws prohibiting AI-generated CSAM are Alabama, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. See *State Laws Criminalizing AI-Generated or Computer-Edited Child Sexual Abuse Material (CSAM)*, ENOUGH ABUSE, <https://enoughabuse.org/get-vocal/laws-by-state/state-laws-criminalizing-ai-generated-or-computer-edited-child-sexual-abuse-material-csam/> [https://perma.cc/JJ7H-7GVJ].

62. *Id.*

63. OKLA. STAT. tit. 21, § 1024.1(A)(3) (2024).

64. Ali, *supra* note 59.

65. *Id.*

legislation eliminates the requirement to prove the involvement of actual children—treating AI-generated CSAM with the same severity as traditional child pornography. This shift reflects a recognition of the expanding dangers posed by advancements in technology and a need to take proactive legislative measures.

While individual states are working to develop laws addressing AI-generated CSAM, there is still much to be done.

II. The Fight Continues: Ongoing Concerns

Harm caused by AI-generated CSAM is not a future problem to be dealt with later. Instead, swift action is essential. To contend with the growth of AI-generated CSAM, a multi-pronged approach is necessary that would include passing additional legislation, addressing ethical obligations, and leveraging educational options.

A. Proposed Legislation

Tension remains between preserving freedom of speech and fostering innovation while safeguarding children. And legislators must wrestle with how to “future-proof” any potential legislation.⁶⁶ However, the presence of actual existing children in AI-generated CSAM should not be viewed as a determinative fact of whether a substantial issue exists. Since technology will continue to outpace legislation, laws are necessary for effective criminal prosecution.

In 2023, the National Association of Attorneys General authored a letter to leaders in the Senate and House of Representatives urging action to be taken to address AI-generated CSAM.⁶⁷ Recognizing that AI-generated CSAM images are void of existing children and are not always deepfakes, the call to action emphasized that all AI-generated CSAM creates a significant issue.⁶⁸ The letter notes that AI-generated CSAM images “support the growth of the child exploitation market by

66. BRACKET FOUND., *supra* note 3, at 29.

67. Letter from Nat’l Ass’n of Att’ys Gen., to President Murray; Speaker McCarthy; and Leaders Schumer, McConnell, Scalise, & Jeffries (Sept. 5, 2023), <https://www.naag.org/wp-content/uploads/2023/09/54-State-AGs-Urge-Study-of-AI-and-Harmful-Impacts-on-Children.pdf> [<https://perma.cc/D8NW-TYAB>].

68. *Id.*

normalizing child abuse and stoking the appetites of those who seek to sexualize children.”⁶⁹

Various proposed pieces of legislation focus on requiring websites to remove an image after it has been posted. Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks (TAKE IT DOWN) Act is a proposed Senate bill with bipartisan support that would “protect and empower victims of non-consensual intimate image abuse.”⁷⁰ The TAKE IT DOWN Act “would criminalize the publication of non-consensual intimate imagery (NCII), including AI-generated NCII (or ‘deepfake pornography’), and require social media and similar websites to have in place procedures to remove such content upon notification from a victim.”⁷¹ In an attempt to honor free speech protections, “[t]he bill is narrowly tailored to criminalize knowingly publishing NCII without chilling lawful speech.”⁷² Authors of the bill believe that it “conforms to current first amendment jurisprudence by requiring that computer-generated NCII meet a ‘reasonable person’ test for appearing to realistically depict an individual.”⁷³

Additionally, Senator Mike Lee from Utah has introduced the PROTECT Act of 2024.⁷⁴ The PROTECT Act of 2024 proposes that pornography sites require individuals uploading content to verify consent.⁷⁵ The bill would also require websites to remove nonconsensual images within seventy-two hours.⁷⁶ Failure to remove the images would result in daily fines of \$10,000 per image.⁷⁷ If enacted, the PROTECT Act of 2024 would impose stricter accountability on content platforms and set a new standard for online safety and responsibility.

The House of Representatives also has recently introduced legislation to combat AI-generated CSAM.⁷⁸ Congressman Nick Langworthy from

69. *Id.* (footnote omitted).

70. Press Release, *supra* note 28.

71. *Id.*

72. *Id.*

73. *Id.*

74. PROTECT Act of 2024, S.3718, 118th Cong. (2024).

75. *Id.*

76. *Id.*

77. *Id.*

78. Press Release, Congressman Nick Langworthy, Congressman Langworthy Introduces Legislation to Combat the Use of Artificial Intelligence to Create Child Sexual Abuse Material (Apr. 16, 2024), <https://langworthy.house.gov/media/press-releases/congressman-langworthy-introduces-legislation-combat-use-artificial> [<https://perma.cc/Y2CW-C3CC>].

New York introduced HR 8005, the Child Exploitation and Artificial Intelligence Expert Commission Act of 2024, which would establish a Commission that would “investigate and make recommendations on solutions to improve the ability of a law enforcement agency to prevent, detect, and prosecute child exploitation crimes committed using artificial intelligence.”⁷⁹ The Commission would assist law enforcement agencies on the federal and local levels.⁸⁰ These new laws will better address the emerging issues surrounding the harms of AI-generated CSAM.

B. Ethical Considerations

While proponents of maintaining the standard from *Ashcroft*—requiring images to be of real existing children—might argue that AI-generated images are a victimless crime because the images do not depict real children, this argument is shortsighted. In January 2025, the Supreme Court of the United States heard oral arguments surrounding the constitutionality of a Texas law requiring age verification to access pornography websites.⁸¹ During oral arguments, Justice Thomas seemed to suggest that the Court’s decisions from twenty years ago might not be the correct present standard because those decisions were made in a “world of dial-up Internet” access and “we’re in an entirely different world” now.⁸² Lawmakers are faced with the hardship of attempting to keep pace with the rapid changes to AI technology.

First, the distinction between CSAM and AI-generated CSAM is almost obsolete. The Court’s categorization of child pornography as unprotected speech should extend to AI-generated images as well. AI-generated CSAM—even when “no physical abuse occurs during their creation—has significant psychological and long-term impacts on the children depicted.”⁸³ The mere use of a child’s likeness in an abusive context is harmful to victims even when the abuse is not physical. Generating images in AI also creates an illusion of consent that does not

79. Child Exploitation and Artificial Intelligence Expert Commission Act, H.R. 8005, 118th Cong. (2024).

80. *Id.*

81. Amy Howe, *Supreme Court Divided on Texas Age-Verification Law for Porn Sites*, SCOTUSBLOG (Jan. 15, 2025, 3:05 PM), <https://www.scotusblog.com/2025/01/supremecourt-divided-on-texas-age-verification-law-for-porn-sites/> [https://perma.cc/5Z4M-DJN5].

82. *Id.*

83. ENOUGH ABUSE, *supra* note 61.

exist when dealing with minors. This distorted perception of reality normalizes behaviors that are devoid of social value. There is at least a risk that AI-generated CSAM creates and fuels a market for exploiting children.

Second, as AI-generated CSAM becomes indistinguishable from traditional CSAM, the impending concern becomes that AI-generated CSAM will be a “pathway” to “in-person contact with child victims by perpetrators to engage in physical sexual abuse.”⁸⁴ Current research indicates that thirty-seven percent of CSAM viewers “eventually seek contact with children.”⁸⁵ Although expanded research is necessary, continuing with the *Ashcroft* requirements creates a loophole with potentially dire impacts to children.⁸⁶ Additionally, lingering effects of AI-generated images are only one part of the risk since AI is being used to groom and target child victims.⁸⁷ Generative AI is being leveraged by predators to create realistic chat conversations that exploit children.⁸⁸ For example, online adult predators are creating explicit images of children using AI and then using those generated images to coerce and pressure children into providing real content or money.⁸⁹

Third, threats and concerns will continue as generative AI becomes even more pervasive. An increase in the amount of material will lead to an increase in the number of reported cases, which will require diligence from legislatures and investigators. “CyberTipline, the first defense against CSAM on the internet, already struggles to handle the high volume of calls it receives.”⁹⁰ And the increase of AI-generated CSAM will only exacerbate the problem.⁹¹ Former Senator Joe Manchin from West Virginia explained that “[a]s artificial intelligence continues to evolve, we have a responsibility in Congress to combat the threats that grow alongside

84. BRACKET FOUND., *supra* note 3, at 20.

85. *Id.*

86. *Id.*

87. *The Growing Concerns of Generative AI and Child Sexual Exploitation*, NCMEC BLOG (Dec. 13, 2024), <https://www.missingkids.org/blog/2024/the-growing-concerns-of-generative-ai-and-child-sexual-exploitation> [<https://perma.cc/CQ6Q-HMYU>].

88. *Id.*

89. *Id.*

90. Emilia David, *Tip Line that Guards Against Child Sexual Abuse Images May Struggle Against AI*, THE VERGE (Apr. 22, 2024, 12:30 AM CDT), <https://www.theverge.com/2024/4/22/24137204/stanford-report-national-center-for-missing-and-exploited-children-ai-images> [<https://perma.cc/H76Z-PQVG>].

91. *Id.*

of it, which includes holding individuals accountable for non-consensual, intimate images they post online.”⁹²

Finally, requiring investigators to determine if the CSAM image is AI-generated unduly burdens the investigators by slowing down the process.⁹³ The longer an investigator must spend on an image, the larger the psychological impact on the investigator.⁹⁴ Prolonged exposure to CSAM by investigators may produce physical and emotional reactions similar to post-traumatic stress disorder.⁹⁵ The negligible difference between CSAM images of real children and AI-generated CSAM images raises ethical questions about forcing investigators to dedicate additional time to determine if the images contain real children.

C. Education and Cooperation

Legislation alone will not solve the issue—education is required.⁹⁶ Education programs need to focus on empowering children so that they can identify and report incidents of CSAM.⁹⁷ The education model should include information to help safeguard children from CSAM without using fear-based tactics and should begin well before adolescence.⁹⁸ Services, such as NetSmartz, provide free age-appropriate information and resources with the goal of keeping children safe on the internet.⁹⁹ Teachers, administrators, parents, law enforcement, and children all need to receive updated training to ensure accurate information is disseminated.¹⁰⁰

Furthermore, cooperation from social media companies is necessary to impede the explosion of AI-generated CSAM distribution. The abundance of AI-generated CSAM is no longer housed exclusively on the dark web but instead can be found on mainstream social media

92. Press Release, *supra* note 28.

93. BRACKET FOUND., *supra* note 3, at 36.

94. *Id.* at 31.

95. Laura Sanchez et al., *A Practitioner Survey Exploring the Value of Forensic Tools, AI, Filtering, & Safer Presentation for Investigating Child Sexual Abuse Material (CSAM)*, 29 DIGIT. INVESTIG. S124-S142 (2024), <https://www.sciencedirect.com/science/article/pii/S1742287619301549>.

96. Ali, *supra* note 59.

97. U.S. DEP'T OF JUST., *supra* note 4, at 12.

98. *Id.* at 12-13.

99. See generally NETSMARTZ, <https://www.missingkids.org/netsmartz/home> [<https://perma.cc/P8CS-3TFR>].

100. U.S. DEP'T OF JUST., *supra* note 4, at 11.

platforms.¹⁰¹ However, online platforms—such as Facebook, YouTube, and Instagram—cannot be held criminally or civilly responsible for content posted by third-party users due to § 230 of the 1996 Communications Decency Act.¹⁰² This lack of accountability can lead to a decreased incentive for social media platforms to proactively remove and report CSAM posted on their sites. This liability shield will likely be invoked by platforms hosting AI-generated images on their sites. Additionally, this limits the available remedies for CSAM victims.¹⁰³ Organizations such as Tech Coalition work with technology industry leaders to end the exploitation of children online.¹⁰⁴ Partnerships between law enforcement and public outreach will be better for everyone to combat this ongoing problem.

Conclusion

In conclusion, safeguards surrounding children are integral to our society. Courts and legislation cannot continue to operate behind the technology curve. While AI-generated CSAM may not result in direct physical abuse, the lasting damage is no less real. Treating AI-generated CSAM differently from traditional CSAM creates an adverse narrative that undermines legitimate efforts to protect children from exploitation. AI-generated CSAM normalizes socially baseless behavior. It is crucial that legal frameworks recognize the equal harm in all CSAM—regardless of whether it is AI-generated.

101. BRACKET FOUND., *supra* note 3, at 17.

102. 47 U.S.C. § 230.

103. U.S. DEP'T OF JUST., *supra* note 4, at 9.

104. See generally TECH COALITION, <https://www.technologycoalition.org/> [<https://perma.cc/29YF-EAPR>].

