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Ferdinand Grapperhaus
Ministerie van Justitie en Veiligheid
Turfmarkt 147
2511 DP Den Haag
The Netherlands

August 6, 2020

Dear Minister Grapperhaus,

Criminalization of preparatory acts with a view to committing child sexual abuse

Prostasia Foundation is a child protection organization that promotes evidence-based policymaking that respects the fundamental human rights of all. We support the intent behind proposed Article 240c, which aims to limit the circulation of information that can be used by perpetrators of child sexual abuse. However, we cannot support the substance of this measure, due to its potential for chilling legitimate speech about sex, including content related to sex education and harm reduction. Furthermore, we believe that there are much more effective ways to address the harmful behaviors at issue, and that this measure may be a distraction from those evidence-based interventions.

Our biggest problem with this measure is that as drafted, it would impact on legitimate speech. The age of consent in the Netherlands is 16. However, it is a fact of life that younger teenagers do have sex with each other. Since the age of criminal responsibility in the Netherlands is 12 years of age, technically there are 12-15 year old teens whose youthful sexual experimentation is unlawful. Even so, prosecuting them for this would be extremely harmful, and preventing them from exploring their sexuality with peers is an impossibility. Instead, our responsibility as a society is to take a harm reduction approach, which includes providing these young teens with accurate sexual health information.

Proposed Article 240c would criminalize providing young teens with such information. The provision would make it a criminal offense for an adult, or even a peer, to impart to a young teenager the knowledge and skills that they need to safely explore their sexuality with someone of their own age. This may include information about safer sex practices, consent, and bodily autonomy. Although it may not be the intent of the law, the effect of Article 240c will be to place parents, caregivers, teachers, and sex educators at risk of prosecution simply for trying to keep young teens safe from sexual harm.

To reiterate, the intent of this provision is good. However, there are much better ways to address the problem of child sexual exploitation that do not place excessive reliance on the criminal law. Many

adults who frequent online forums for those with a sexual interest in children can be dissuaded from pursuing that interest in a harmful way. The "Stop it Now NL" program operated by the Expertisebureau Online Kindermisbruik (EOKM) provides one good example of such interventions—though much more is needed. In Sweden, for example, the Priotab project at Sweden's Karolinska Institute is engaging directly with participants on dark web forums, to encourage them to undergo therapy that can steer them away from the road to abuse—and this is having some success.

Censorship is a viable method for preventing the circulation of actual images of child abuse. But when it comes to text, context is much more important. We do not believe that there is any safe way for a law to criminalize the discussion of child sexual abuse in compliance with international human rights norms. Any attempt to do so is certain to impact on legitimate, protected speech. Instead, we encourage the Ministry to investigate other avenues for addressing this pressing social problem, with an emphasis on social interventions that can help prevent people from choosing to abuse children in the first place.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Prostasia Foundation