Restitution for Child Pornography Victims

James R. Marsh
Marsh Law Firm
www.marshlaw.us
www.childlaw.us
Today’s Presenter: James R. Marsh

A graduate of the University of Michigan Law School and its acclaimed Child Advocacy Law Clinic, Mr. Marsh represents victims of child trafficking, child sex abuse, online child sexual exploitation, and child pornography.

Mr. Marsh is an experienced trial attorney and frequent commentator and author on legal issues affecting children. He founded the nationally recognized Children’s Law Center in Washington, DC and currently serves as co-chair of its emeritus board. He now leads the Marsh Law Firm in New York City which is one of the nation's premier law firms representing sexually abused children.
Background

- Masha Allen (2005) – first high profile victim
- Masha’s Law (18 U.S.C. 2255) – federal civil remedy for victims
- Three federal statutes:
  - 18 U.S.C. 2259 Mandatory Restitution
  - 18 U.S.C. 3509 Child Victims’ Rights (privacy)
Masha Allen

- In 1998, a Russian orphan girl named Mariya Nikolaevna Yashenkova (also known as Masha Allen) was targeted by a sophisticated child pedophile network.
- Masha was adopted internationally at age five by a single American man named Matthew Mancuso who raped and sexually abused her for six years.
- Throughout this period, Mancuso memorialized his ongoing exploitation of Masha by producing hundreds of child sex abuse images which he distributed on the Internet to other pedophiles.

Angeli Series
Crime Victims’ Rights Act of 2004

- Federal “Crime Victims’ Bill of Rights”
- The right to timely notice of offenses and court proceedings
- The right to be reasonably heard at court proceedings (victim impact statements)
- The right to confer with the attorney for the government
- The right to full and timely restitution
Restitution Basics — 18 U.S.C. 2259

- “Victim” is the person harmed as a result of the commission of a child pornography crime
- Restitution is mandatory
- Victim is entitled to the “full amount” of their losses
- Pecuniary losses—not pain and suffering or emotional damages
Pecuniary Losses

- Medical, psychiatric and psychological services
- Physical, occupational therapy or rehabilitation
- Transportation, housing and child care expenses
- Lost income
- Attorneys' fees and costs
- Any other losses suffered by the victim as a *proximate result* of the offense
Victims Seeking Restitution

- Victims
  - Amy
  - Vicky
  - Andy

- Nothing unusual about these victims - the girl or boy next door
- Each was aware they were being photographed
- They looked and seemed like normal children
The Circuit Decisions

- 11 of 12 circuits have ruled on restitution
- Great variance between the circuit decisions
- Same victims / same facts before every circuit
- Government concession on proximate cause complicates the victims' position
- There is a non-reviewable circuit split
- Supreme Court recently agreed to consider and resolve the issue (*Paroline* case)
The Circuit Decisions

**Paroline (Fifth Circuit)**
- First major case
- Possession of two images
- Four years, three decisions, including one en banc (all 15 judges)
- Victim won 10 to 5
- Full amount of restitution must be awarded
- Proximate cause is not the standard; victim must prove harm

**Kennedy (Ninth Circuit)**
- Proximate cause required
- Causal connection required
- Participation in the audience is not enough to establish liability statute is flawed, no restitution is likely, Congress must fix

**Kearney (First Circuit)**
- Former Supreme Court Justice Souter
- Proximate cause conceded by the government
- Reasonably foreseeable standard
- All for one and one for all; defendant cannot separate himself

**Laraneta (Seventh Circuit)**
- Proximate cause required
- We really don't know what proximate cause means
- The real issue is not proximate cause but “what the defendant caused”
- For possessor the court must allocate losses
- For distributor joint and several liability is appropriate
Supreme Court Grants Cert in *Paroline*

- Cert Granted on June 27, 2013
- “What, if any, casual relationship or nexus between the defendant's conduct and the victim's harm or damages must the government or the victim establish in order to recover restitution under 18 U.S.C. § 2259.”
- Oral argument January 22, 2014
- Decision likely in May or June 2014
Key Takeaway Points

- Rapidly evolving legal landscape
- New and poorly understood victimology
- Law enforcement must take the lead in:
  - Identifying victims
  - Referring victims to appropriate resources
  - Locating and preserving financial assets
  - Documenting financial and victim impact
Further Information

- United States Supreme Court case: http://bit.ly/USSCdocs
- ChildLaw Blog http://www.childlaw.us
- Marsh Law Firm http://www.marshlaw.us
- Pinterest http://www.pinterest.com/childlaw
- Twitter https://twitter.com/marshlawfirm
- Facebook http://www.facebook.com/marshlawfirm
Any Questions?

🌟 Phone: 212-372-3030
🌟 Email: jamesmarsh@marshlaw.us
🌟 www.marshlaw.us
🌟 www.childlaw.us