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EXHIBIT 33

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STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, EX REL,
RAUL TORREZ, ATTORNEY GENERAL,
Plaintiff,
V. No. D-101-CV-2023-02838
META PLATFORMS, INC.;
INSTAGRAM, LLC;
META PAYMENTS, INC.; and
META PLATFORMS TECHNOLOGIES, LLC,
Defendants.

Confidential - Pursuant to Protective Order

VIDEO-RECORDED DEPOSITION OF FALLON McNULTY
ON BEHALF OF NATIONAL CENTER FOR MISSING &
EXPLOITED CHILDREN

Thursday, July 3, 2025
8:32 AM EST

JOB NO.: 7403114
DENISE DOBNER VICKERY, CRR, RMR

1 other end has visibility into what that is.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

7 Q. In NCMEC's experience and based on
8 your own personal observations, is end-to-end
9 encryption protective or dangerous to child
10 safety on social media platforms?

11 MR. CHAPUT: Object to the
12 form.

13 THE WITNESS: NCMEC has
14 multiple concerns about the
15 implementation of end-to-end encryption
16 if a platform is not also implementing
17 child safety measures.

18 BY MS. SINGER:

19 Q. Okay. And can you explain why
20 NCMEC has concerns about implementing end-to-end
21 encryption without child safety measures?

22 A. Uh-huh. So if end-to-end
23 encryption is implemented and that visibility
24 into content or interactions that are occurring
25 is taken away, that doesn't mean that that abuse

1 stops occurring.

2 And so potentially the loss of
3 reports that could be coming in to the
4 CyberTipline which are related to the exchange
5 of child sexual abuse material, interactions of
6 sextortion or online enticement, or other forms
7 of child sexual exploitation, that now nobody
8 has visibility into.

9 MS. SINGER: Okay. We're
10 going to turn to another document.
11 Exhibit 15.

12 (Document marked for
13 identification as Exhibit 15.)

14 BY MS. SINGER:

15 Q. All right. Exhibit 15 is a Meta
16 internal PowerPoint titled "End-to-end
17 Encryption Consequences," and I will represent
18 for the record it's dated 12/20/2018.

19 I take it you've never seen this
20 document, Ms. McNulty?

21 A. Just in preparation for today.

22 Q. Okay. And slide 11, if you go to
23 Bates number 362.

24 Are you there?

25 A. Yes.

1 Exhibit 16. About a third down the page,
2 Ms. Davis writes:

3 "NCMEC reports will drop
4 dramatically, these are reported to Congress,
5 there will be policymaker follow up."

6 Have I read that correctly?

7 A. Yes.

8 Q. "The quality and value of our
9 reports to NCMEC will drop dramatically,

10

11 Was that a concern that -- that
12 NCMEC had at the time that Meta announced
13 end-to-end encryption?

14 A. Yes.

15 Q. We will turn to the volume issue
16 later, but has there been a change in the depth
17 or detail of reports that NCMEC has received
18 from Meta since end-to-end encryption was
19 implemented?

20 MR. CHAPUT: Object to form.

21 THE WITNESS: Yes.

22 BY MS. SINGER:

23 Q. And what is that change?

24 A. NCMEC has observed in reports
25 received from Facebook that stem from Messenger,

1 which we understand to now be reliant on user
2 reporting, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED].

6 Q. And what is the consequence of
7 getting [REDACTED]
8 than NCMEC received before end-to-end
9 encryption?

10 A. Having that limited information
11 can make it [REDACTED]

12 [REDACTED].

13 Q. And has that loss of visibility,
14 right, that loss of information, had an impact
15 on NCMEC's and law enforcement's ability to help
16 protect children?

17 MR. CHAPUT: Object to form.

18 THE WITNESS: NCMEC still
19 makes all of those reports available to
20 law enforcement for their independent
21 review. We have heard that anecdotal
22 feedback that [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED].

1 smiley face.

2 Have I read that correctly?

3 A. Yes.

4 Q. Okay. So you referenced this a
5 minute ago, Ms. McNulty, but did NCMEC raise its
6 concerns about end-to-end encryption to Meta?

7 A. Yes.

8 Q. How and to whom did NCMEC raise
9 those concerns?

10 A. There would have been numerous
11 meetings and conversations at different
12 operational levels, at a leadership level, when
13 NCMEC was first made aware of Meta's plans to
14 implement end-to-end encryption, the impact that
15 would have both in the quality of reports and
16 the volume of reports that Meta was able to
17 make.

18 Q. To your knowledge, to NCMEC's
19 knowledge and yours personally, did other
20 organizations and individuals express concern
21 about Meta's implementation of end-to-end
22 encryption?

23 A. Yes, there would have been a
24 number of NGOs that expressed that concern.

25 Q. As well as law enforcement? Was

1 Do you see that?

2 A. Yes.

3 Q. And it says:

4 "IIC Tier 1: We will upset reports
5 to children, aiming for a 10X -- or 10 times --
6 volume increase, and focus on correctly
7 actioning and escalating these reports following
8 the don't miss a thing or (DMA T) playbook."

9 Do you see that?

10 A. Yes, I do.

11 Q. In NCMEC's opinion, are user
12 reports an adequate substitute for scanning
13 messages and images that are now encrypted?

14 MR. CHAPUT: Object to the
15 form.

16 THE WITNESS: No. They are
17 only one facet of child safety for a
18 platform, but it can't be the only thing
19 that a platform relies on.

20 BY MS. SINGER:

21 Q. Okay. In NCMEC's experience, are
22 children likely to report their own
23 victimization to a platform?

24 A. Based on NCMEC's information, no,
25 the majority of the time children are choosing

1 not to report.

2 Q. And does NCMEC have an
3 understanding of why that is?

4 A. Several years ago, NCMEC conducted
5 a survey of minors who had accesses -- accessed
6 our public reporting form, and some of the
7 reasons that minors chose not to report was a
8 belief that nothing would come of the report.
9 So why bother. That minors wanted the
10 interaction to stop, but they didn't want to
11 necessarily get law enforcement or their parents
12 involved, or that they were not aware
13 necessarily of what the outcome would be.

14 Q. Okay. And for all of those
15 reasons, does NCMEC have an understanding that
16 user reports from children isn't going to fully
17 take the place of scanning images and messages?

18 MR. CHAPUT: Object to the
19 form.

20 THE WITNESS: Yes, that is our
21 understanding. Also, being reliant on
22 children to report is not going to catch
23 any of the harm where two adults are
24 communicating with one another.

25 BY MS. SINGER:

1 calls for a legal conclusion in with
2 respect to what platforms' reporting
3 obligations are.

4 MS. SINGER: Okay.

5 BY MS. SINGER:

6 Q. If we -- without conceding the
7 objection, Ms. McNulty, is it NCMEC's factual
8 observation that Meta is leaving cases of child
9 exploitation undetected and unreported?

10 A. Yes.

11 Q. Okay. And then if you look at the
12 next half page, Ms. DeLaune goes on to explain
13 the contributing factors to the 7 million drop
14 in reported incidents; is that correct?

15 A. Yes.

16 Q. Okay. And can you explain to the
17 jury the other explanations that NCMEC
18 considered accounted for the 7 million drop in
19 reports?

20 A. Yes. In researching the decline
21 in reports from 2023 to 2024, NCMEC identified
22 -- identified three main factors that we believe
23 played into that decline.

24 The first was conversations with
25 Meta about a handful of images that had

1 decline?

2 A. Yes. The most significant factor
3 when comparing volume from 2023 to 2024 was a
4 decline in the number of reports that we
5 received from Facebook.

6 Q. And by Facebook you also mean
7 Meta; is that right? Or Facebook specifically?

8 A. So Meta certainly. We really
9 narrowed down into the reporting volume for
10 Facebook specifically.

11 Q. Okay. And to what did -- did
12 NCMEC come to an understanding of the reason
13 behind the decline in reporting from Meta and
14 Facebook?

15 A. So we were aware that Meta had
16 announced in December 2023 their plans to
17 continue moving forward with end-to-end
18 encryption across Facebook Messenger. To
19 NCMEC's understanding, that work was completed
20 in June of 2024.

21 And when we look at the totality
22 of reports received in calendar year 2024, we
23 saw approximately 6.9 million less reports than
24 we had seen from Facebook in calendar year 2023.

25 Q. And does that represent a decline

1 A. So potential meme is a designation
2 that's used to categorize content. It could be
3 child sexual abuse material or exploitative
4 material that is often shared out of poor
5 comedic effect and generally in a viral fashion.

6 Q. Okay. And why does NCMEC separate
7 out meme content?

8 A. So we separate out meme content
9 because this is content, again, that is seen
10 over and over again in which companies may have
11 an obligation to be reporting in to the
12 CyberTipline, but generally when looking at the
13 totality of the incident, there may not be a
14 malicious factor in sharing the content, and so
15 those are images or reports that we would be
16 referring as informational to law enforcement.

17 Q. Got it.

18

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1 MS. SINGER: So I'm sorry.
2 You're right. Let me ask that question
3 again. Math always confounds me.

4 BY MS. SINGER:

5 Q. Of the 31.6 or 7 million images,
6 videos and other content reported by Meta to
7 NCMEC, Meta had reviewed 285,604 of them?

8 A. Yes, that's how I read this chart.

9 MS. SINGER: Okay. Okay.
10 Let's turn to the bar charts we were
11 talking about a minute ago at Bates
12 number 130.

13 So we've also rendered those
14 as separate demonstratives, which are
15 Exhibits 27B and 27C.

16 (Document marked for
17 identification as Exhibit 27B.)

18 (Document marked for
19 identification as Exhibit 27C.)

20 BY MS. SINGER:

21 Q. And if you can take a look at
22 those.

23 So can you explain -- let's start
24 with 27B, which is File Visibility.

25 First of all, does this accurately

1 what NCMEC has conveyed to Meta in those
2 communications?

3 A. There would have been multiple
4 conversations over the years about the
5 difficulties with incoming reports in which
6 those fields had not been indicated, as well as
7 downstream impact to law enforcement.

8 This is specially centered around
9 Meta's reporting at the time of the previous
10 documents that we looked at and years prior
11 because of the prevalence of that informational
12 type imagery. So potential meme content, viral
13 content that was being submitted within
14 CyberTipline reports by Meta's platforms that
15 were not otherwise properly annotated and were
16 not visible to NCMEC.

17 Q. And what is the impact of the
18 manner in which Meta was reporting those
19 improperly annotated and unactionable reports to
20 NCMEC?

21 A. The ultimate result in many of
22 those reports is that they were referred to law
23 enforcement as actionable, and so agencies would
24 be receiving a high volume of reports that then
25 they were not able to action based on the

1 contents of which.

2 Q. And was that consequence also
3 communicated to Meta?

4 A. Yes.

5 MS. SINGER: Okay. Let's turn
6 to Exhibit 28 and Exhibit 28 is
7 NCMEC_003100.

8 (Document marked for
9 identification as Exhibit 28.)

10 BY MS. SINGER:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. What is it?

14 A. This is an e-mail from Jason [REDACTED]
15 at Meta to myself which was sent on December 11,
16 2023.

17 Q. Was this e-mail exchange prepared
18 in the regular course of NCMEC's business and
19 within the scope of your position as director of
20 the CyberTipline?

21 A. So I was in receipt of this
22 e-mail. I did not prepare it.

23 Q. Okay. Does it -- was it your
24 regular practice at NCMEC to communicate with
25 platforms, including Meta, about this kind of

1 BY MS. SINGER:

2 Q. Did NCMEC and you, as the director
3 of the Tipline, observe that Meta frequently
4 reported CyberTips that were weeks or months
5 old?

6 A. Yes, I believe that is actually
7 outlined in one of the previous documents we
8 just looked at.

9 Q. And if Meta -- separate issue. We
10 can put this aside.

11 If Meta deletes or fails to
12 preserve an offender's accounts after those
13 accounts have been reported to NCMEC, does that
14 also make it harder for NCMEC and law
15 enforcement to investigate those tips and
16 safeguard the kids involved?

17 MR. CHAPUT: Object to the
18 form.

19 THE WITNESS: I would just
20 clarify. Not necessarily for NCMEC
21 because we wouldn't be investigating any
22 information that came to us.

23 BY MS. SINGER:

24 Q. Okay.

25 A. But for law enforcement, yes, we

1 children who have been sexually abused on Meta's
2 platforms?

3 A. Yes.

4 Q. Over the course of your work at
5 NCMEC, have you noticed a change in the
6 frequency or nature of child sexual exploitation
7 through Facebook, Instagram, and WhatsApp?

8 A. Yes.

9 MR. CHAPUT: Object to the
10 form.

11 BY MS. SINGER:

12 Q. What have you observed?

13 A. Most notably with reports stemming
14 from Facebook, we have observed a decrease in
15 both the volume and the quality of the contents
16 included within those reports.

17 Q. Okay. And that's attributed to
18 the end-to-end encryption issue we talked about,
19 correct?

20 A. That is NCMEC's understanding.

21 Q. Okay. And that relates to
22 reporting but does NCMEC -- actually, withdrawn.
23 To NCMEC's knowledge, based on
24 your knowledge and experience personally as
25 well, is CSAM still distributed on Meta's

1 reports, they would have needed to secure a
2 search warrant; is that correct?

3 A. That's not how I would
4 characterize it. There is additional context
5 within that.

6 One of the complaints that we
7 heard most frequently in law enforcement
8 feedback related to Facebook and Instagram
9 reports especially was the prevalence of files
10 included within those reports that were not
11 viewable, had not been indicated that they were
12 reviewed by the company or publicly available,
13 that contained meme or viral imagery or other
14 non-pertinent imagery that had not been
15 annotated as such by Meta.

16 Q. So I understand that that is one
17 of the complaints you heard most frequently.

18 Did every single ICAC that asked
19 to stop receiving certain reports from Meta
20 express that that was the reason for their
21 decision?

22 A. One of the largest reasons at the
23 time would have been around concerns of the
24 validity of reports based on the compromised
25 account incidents that we had discussed