

Court To Decide On Child Porn Victim Restitution

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WASHINGTON (AP) — A woman whose childhood rapes by her uncle were captured on camera and widely traded on the Internet wants the Supreme Court to make it easier for victims of child pornography to collect money from people who view the brutal images on their computers.

The case being argued at the Supreme Court on Wednesday involves a Texas man who pleaded guilty to having images of children engaged in sex acts on his computer. Doyle Randall Paroline is appealing an order holding him responsible for the full amount of losses, nearly \$3.4 million, suffered by the woman known as Amy. Of the several hundred incriminating images on Paroline's computer, just two were of Amy.

Advocates for child pornography victims say that holding defendants liable for the entire amount of losses better reflects the ongoing harm that victims suffer each time someone views the images online. The threat of a large financial judgment, coupled with a prison term, also might deter some people from looking at the images in the first place, the advocates say.

"The threat that a person in the child pornography market may well bear the entire cost of the harm done to the victim, even if they are a 'minor player,' is likely to be a large deterrent, especially when the harm done typically runs into the millions for a victim's lifetime of care," said Marci Hamilton, a law professor at Yeshiva University. Hamilton wrote a brief in the case on behalf of the American Professional Society on the Abuse of Children.

The money is intended to cover the cost of her psychological care, lost income and attorneys' fees.

Thirty-four states, dozens of victims' rights and child advocacy groups, local prosecutors and members of Congress are urging the court to uphold the ruling against Paroline by the New Orleans-

based 5th U.S. Circuit Court of Appeals.

No one has intervened on Paroline's behalf. But his lawyer, Stanley Schneider of Houston, said in court papers that there is no link between the restitution ordered by the appeals court and Paroline's conduct.

"An award of \$3.4 million against an individual for possessing two images of child pornography is punitive and grossly disproportionate," Schneider said. The \$3.4 million estimate on the damages to the victim was calculated by a psychologist working for James Marsh, an attorney for Amy.

The Obama administration is trying to steer a middle course. Solicitor General Donald Verrilli Jr. said the government agrees with Amy that her injury comes from the widespread viewing on the Internet of the assaults by her uncle.

"The real question is whether ... a court must impose all of Amy's aggregate losses on each defendant. On that issue, Amy and the government take different views," Verrilli told the court.

The administration said the correct answer is greater than zero and less than the entire amount and said trial judges should make the determination.

The issue centers on the interpretation of the federal law granting restitution to victims of sex crimes, including child pornography.

Regardless of the outcome of the court case, Congress could change the law. The U.S. Sentencing Commission recommended that lawmakers consider doing just that to eliminate confusion among federal judges about the right way to calculate restitution.

Amy's lawyers estimate that tens of thousands of people worldwide have collected and viewed Amy's images.

Since 2005, there have been about 2,000 prosecutions in federal court that, like Paroline's, included images of the rapes, for which Amy's uncle spent about 10 years in prison and paid a few thousand dollars for counseling sessions for Amy.

Marsh devised the idea of pursuing the people who were convicted

of possessing Amy's images, among other child pornography. He identified a provision of the 1994 Violence Against Women Act directing judges to order defendants to pay victims the "full amount" of their losses.

The psychologist employed by Marsh to tally the losses began filing claims on Amy's behalf after she received notices from the Justice Department, under a separate law passed in 2004, telling her of people who had been arrested with her images on their computers.

Courts so far have awarded restitution in 182 cases and Amy has collected \$1.6 million. Of that total, \$1.2 million came from one man.

Typically, the court-ordered awards and the amounts collected have been much smaller, as little as \$50 in one case, according to Justice Department records. Many judges have ordered no payments at all, Marsh said.

The restitution law does not allow Amy to receive more than the lifetime estimate of her losses, Marsh said. But until the 5th Circuit ruling, Marsh said, "She has been forced to go around the country endlessly seeking out defendants with assets. It's endless, and it takes a toll on the victim."

If upheld, the ruling would change the equation. Courts would not have to determine exactly how much harm any one defendant caused Amy. Instead, all defendants would be liable for the entire outstanding amount, raising the possibility that a few well-heeled people among those convicted might contribute most, if not all, of the remaining restitution.

Marsh said such an outcome would be just, and wealthy defendants could fight among themselves about who should pay what. "It's really about shifting the burden from the innocent victim to the people who are responsible," Marsh said.

The case is *Paroline v. Amy Unknown and U.S.*, 12-8561.