

Child Pornography: MODEL LEGISLATION & GLOBAL REVIEW

2012 ♦ 7TH EDITION

*A publication of
The Koons Family Institute on International Law & Policy,
an initiative of the*



International Centre
FOR MISSING & EXPLOITED CHILDREN

Child Pornography:
Model Legislation & Global Review

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Seventh Edition

This project was initially funded in part through Grant Number S-INLEC-04-GR-0015 of the U.S. Department of State. ICMEC remains grateful for this funding.

The project is currently supported in part by "The Woods" Charitable Foundation (A Ware Family Foundation).

The opinions, findings, conclusions, and recommendations expressed herein are those of the author and do not necessarily reflect those of the U.S. Department of State, "The Woods" Charitable Foundation, or any other donor.

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The International Centre for Missing & Exploited Children (ICMEC) is leading a global movement to protect children from sexual abuse, exploitation and abduction. ICMEC's work brings promise to children and families by: establishing global resources to find missing children and prevent child sexual exploitation; promoting the creation of national operational centers based on a public-private partnership model; building an international network to disseminate images of and information about missing children; providing training to law enforcement, prosecutors, judges, legal professionals, non-governmental organizations, and government officials; advocating and proposing changes in laws, treaties, and systems to protect children worldwide; conducting international expert conferences to build awareness, encourage and increase cooperation and collaboration between and among countries; and leading global coalitions to eradicate child pornography from the Internet and to attack child sexual abuse as a public health epidemic.

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TABLE OF CONTENTS

Foreword	Page i
Acknowledgements	Page ii
Executive Summary	Page iii
Model Legislation	Page 1
<i>Definitions</i>	Page 1
<i>Offenses</i>	Page 2
<i>Mandatory Reporting</i>	Page 4
<i>Data Retention and Preservation</i>	Page 5
<i>Sanctions and Sentencing</i>	Page 7
International Law	Page 9
<i>Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography</i>	Page 10
<i>Convention on Cybercrime</i>	Page 10
<i>Convention on the Protection of Children Against Sexual Exploitation and Abuse</i>	Page 11
<i>EU Directive on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography</i>	Page 12
Implementation	Page 14
Global Legislative Review	Page 15
<i>Afghanistan – Angola</i>	Page 15
<i>Antigua & Barbuda – Bahrain</i>	Page 16
<i>Bangladesh – Bosnia-Herzegovina</i>	Page 17
<i>Botswana – Burundi</i>	Page 18
<i>Cambodia – Chile</i>	Page 19
<i>China – Congo</i>	Page 20
<i>Costa Rica – Denmark</i>	Page 21
<i>Djibouti – Ethiopia</i>	Page 22
<i>Fiji – Greece</i>	Page 23
<i>Grenada – Honduras</i>	Page 24
<i>Hungary – Israel</i>	Page 25
<i>Italy – Laos</i>	Page 26
<i>Latvia – Liechtenstein</i>	Page 27
<i>Lithuania – Marshall Islands</i>	Page 28
<i>Mauritania – Montenegro</i>	Page 29
<i>Morocco – Nepal</i>	Page 30
<i>Netherlands – Palau</i>	Page 31
<i>Panama – Philippines</i>	Page 32
<i>Poland – Qatar</i>	Page 33
<i>Romania – Sao Tome & Principe</i>	Page 34
<i>Saudi Arabia – Solomon Islands</i>	Page 35
<i>Somalia – Swaziland</i>	Page 36
<i>Sweden – Syria</i>	Page 37
<i>Tajikistan – Turkey</i>	Page 38
<i>Turkmenistan – United States</i>	Page 39
<i>Uruguay – Zimbabwe</i>	Page 40
Conclusion	Page 41

FOREWORD

The lives of children exploited through child pornography are forever altered, not only by the molestation, but by the permanent record of the exploitation. Once sexual exploitation takes place, the molester may document these encounters on film or video. This documentation can then become the “ammunition” needed to blackmail the child into further submission, which is necessary to continue the relationship and maintain secrecy. These documented images also allow molesters to “relive” their sexual fantasies.

A greater number of child molesters are now using computer technology to organize, maintain, and increase the size of their child pornography collections. Personally-manufactured illegal images of children are especially valuable on the Internet, and oftentimes molesters will trade images of their own sexual exploits. When these images reach cyberspace, they are irretrievable and can continue to circulate forever; thus, the child is revictimized as the images are viewed again and again.

The Internet has created an exciting, new world of information and communication for anyone with access to online services. While this technology offers unparalleled opportunities for children and adults to learn about the universe in which we live, it has also had an immeasurable impact on the sexual exploitation of children, specifically through the distribution of sexually exploitive images of children. The development, increasing accessibility, and use of home-computer technology have revolutionized the distribution of these images by increasing the ease of possession and dissemination and decreasing the cost of production and distribution, especially across international borders.

No country is immune from this form of child sexual exploitation, and it will take a concerted effort from governments, law enforcement, and civil society to ensure that the world’s children are protected.

It is important to note that the legislative review accompanying our model legislation is not about criticism, but rather about assessing the current state and awareness of the problem and learning from one another’s experiences. Additionally, a lack of legislation specific to child pornography does not mean that other forms of child sexual exploitation and child abuse are not criminalized.

Realizing the importance of taking into consideration varying cultural, religious, socio-economic, and political norms, our model legislation resembles more of a menu of concepts that can be applied in all countries throughout the world, as opposed to actual statutory language.

Since we first published this report in April 2006, there have been legislative changes in 100 countries and we have seen movement in many others. Nonetheless, there remains much more to be done. We encourage continued action on the part of national governments and we applaud the efforts of the international community to address the global scope and impact of child pornography through various international legal instruments, three of which are highlighted in the “International Law” section of this report.

We remain optimistic that our research, report, and recommendations will increase global understanding and concern, and will ultimately enable governments around the world to adopt and enact much needed legislation to protect the most innocent victims from the most heinous of crimes.



*Ernie Allen, President and Chief Executive Officer
International Centre for Missing & Exploited Children*

ACKNOWLEDGEMENTS

We wish to thank the following organizations and individuals for their outstanding assistance and guidance with researching national legislation relevant to child pornography:

- ❖ INTERPOL;
- ❖ the Microsoft Corporation;
- ❖ Ambassadors and staff of Embassies and Consulates in the United States;
- ❖ Ambassadors and staff of Permanent Missions to the United Nations in New York;
- ❖ the global law firm of Orrick, Herrington & Sutcliffe LLP;
- ❖ non-governmental and charity organizations committed to child protection throughout the world;
- ❖ various law enforcement agencies, officers, and attorneys around the world who answered our requests for assistance;
- ❖ the staff of the National Center for Missing & Exploited Children;
- ❖ the law firm of LeClair Ryan;
- ❖ the staff of the International Centre for Missing & Exploited Children, in particular: Jessica Sarra, *Former Executive Director*; Sandra S. Marchenko, *Director, The Koons Family Institute on International Law & Policy*; Eliza Harrell, *Program Coordinator, The Koons Family Institute on International Law & Policy*; Katia Dantas, *Policy Director for Latin America & the Caribbean*; Bénédicte André, *Legal Intern*; Nina Antony, *Legal Intern*; Laura Aradi, *Legal Fellow*; Alli Assiter, *Legal Intern*; Jeongmin Hong, *Research Fellow*; Madeleine MacNeil, *Legal Intern*; Rita Maxwell, *Legal Fellow* and the many other legal interns and volunteers who have supported this project.

We also wish to thank “The Woods” Charitable Foundation for its generous support of this project; the Foundation has been a true leader in the global movement to protect children.

Points of view and opinions presented in this publication are those of the International Centre for Missing & Exploited Children and do not necessarily represent the official position or policies of the other organizations and individuals who assisted with or funded the research.

EXECUTIVE SUMMARY

Since this report was first released by the International Centre for Missing & Exploited Children (ICMEC) in April 2006, ICMEC has continued to update its research into the child pornography legislation currently in place in the nations of the world to gain a better understanding of existing legislation and to gauge where the issue stands on national political agendas.¹ In particular, we are looking to see if national legislation: (1) exists with specific regard to child pornography; (2) provides a definition of child pornography; (3) criminalizes computer-facilitated offenses; (4) criminalizes the knowing possession of child pornography, regardless of the intent to distribute; and (5) requires Internet Service Providers (ISPs)² to report suspected child pornography to law enforcement or to some other mandated agency.

In the summer of 2009, ICMEC conducted a thorough update of our research on existing child pornography legislation, expanding our review beyond the 187 Interpol member countries to include 196 countries. Our work included independent research as well as direct contact with Embassies in Washington, D.C. to ensure the accuracy of the report.

A new review of the 196 countries began in the Spring of 2011. The process remained much the same; reviewing the existing legislation of each country in search of laws specifically focused on child pornography offenses and verifying the information through the Embassies in Washington, D.C., U.N. Permanent Missions in New York, and in-country law enforcement contacts. However, the 7th edition report also contains several new sections including expanded information on online grooming, information on the new EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography, a review of data retention and preservation policies, and a discussion of implementation.

Results

The 1st edition, published in 2006, returned shocking results:

- ❖ only **27** had legislation sufficient to combat child pornography offenses (**5** countries met all of the criteria set forth above and **22** countries met all but the last criteria, pertaining to ISP reporting); and
- ❖ **95** Countries had no legislation at all that specifically addresses child pornography.

Of the remaining **62** Countries that did have legislation specifically addressing child pornography:

- ❖ **54** Countries did not define child pornography in national legislation;
- ❖ **27** Countries did not provide for computer-facilitated offenses; and
- ❖ **41** Countries did not criminalize possession of child pornography, regardless of the intent to distribute.

The 6th edition, published in late 2010, revealed progress. Of the 196 countries reviewed:

- ❖ **45** Countries had legislation sufficient to combat child pornography offenses (**8** countries met all of the criteria set forth above and **37** countries met all but the last criteria, pertaining to ISP reporting); and
- ❖ **89** Countries still had no legislation at all that specifically addresses child pornography.

¹ The First through Fifth Editions of this report focused solely on Interpol member countries. The Sixth Edition was expanded to include 196 countries around the world.

² For purposes of this report, the term Internet Service Provider (ISP) includes electronic communication service providers and remote computing service providers.

Of the remaining 62 countries that did have legislation specifically addressing child pornography:

- ❖ 52 did not define child pornography in national legislation;
- ❖ 18 did not provide for computer-facilitated offenses; and
- ❖ 33 did not criminalize the knowing possession of child pornography, regardless of the intent to distribute.

Forward movement continues to be visible in this edition, though much remains to be done. Our updated research shows that of the 196 countries reviewed:

- ❖ 69 Countries have legislation sufficient to combat child pornography offenses (11 countries met all of the criteria set forth above and 58 countries meet all but the last criteria, pertaining to ISP reporting); and
- ❖ 53 Countries still have no legislation at all that specifically addresses child pornography.

Of the remaining 74 countries that do have legislation specifically addressing child pornography:

- ❖ 60 do not define child pornography in national legislation;
- ❖ 21 do not provide for computer-facilitated offenses; and
- ❖ 47 do not criminalize the knowing possession of child pornography, regardless of the intent to distribute.

Defining “Child Pornography”

While the term “child pornography” implies conventional pornography with child subjects, and does not aptly describe the true nature and extent of sexually exploitive images of child victims, use of this term throughout the report should not be taken to imply that children “consented” to any sexual acts depicted in any images.³ The term is retained because it is the expression most readily recognized by the public at large, at this point in time, to describe this form of child sexual exploitation.⁴ It should be noted that there has been recent movement globally towards use of the term “child abuse material” (CAM).

For purposes of this report, “child pornography” includes, but is not limited to, “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,”⁵ as well as the use of a child to create such a representation.

Methodology

Research into national child pornography legislation began in November 2004. Primary sources of information included: LexisNexis; a survey of member countries previously conducted by Interpol regarding national child sexual exploitation legislation; government submissions to the U.N. Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography in conjunction with a U.N. report on child pornography on the Internet; and direct contact with in-country non-governmental organizations (NGOs), law enforcement agencies and officers, and attorneys.

Once the relevant information was assembled, legal analysis was conducted, and the preliminary results were compiled. In January 2006, letters were sent to the attention of Ambassadors of the Interpol member

³ Janis Wolak et al., *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings from the National Juvenile Online Victimization Study* vii, n.1 (Nat’l Ctr. for Missing & Exploited Children ed., 2005) [hereinafter *Child-Pornography Possessors*].

⁴ *Id.*

⁵ *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, G.A. Res. 54/263, Annex II, U.N. Doc. A/54/49, Vol. III, art. 2, para. c, entered into force Jan. 18, 2002 [hereafter *Optional Protocol*].

country Embassies in Washington, D.C.; if no Embassy listing was available, a letter was sent to the Ambassador at the Permanent Mission to the United Nations in New York City. All letters consisted of a summary of the model legislation project as well as country-specific results. Ambassadors were asked to verify our research and provide us with corrected information by a certain date, if such was necessary.

In the Spring of 2011, we once again began researching and analyzing legislation for all of the 196 countries. In July and September 2012, the letter campaign was repeated in order to ensure that the Seventh Edition had the most up-to-date information possible.

Topics Addressed

Fundamental topics addressed in the model legislation portion of this report include:

- (1) Defining “child” for the purposes of child pornography as anyone under the age of 18, regardless of the age of sexual consent;
- (2) Defining “child pornography,” and ensuring that the definition includes computer- and Internet-specific terminology;
- (3) Creating offenses specific to child pornography in the national penal code, including criminalizing the knowing possession of child pornography, regardless of one’s intent to distribute, and including provisions specific to knowingly downloading or knowingly viewing images on the Internet;
- (4) Ensuring criminal penalties for parents or legal guardians who acquiesce to their child’s participation in child pornography;
- (5) Penalizing those who make known to others where to find child pornography;
- (6) Including grooming provisions;
- (7) Punishing attempt crimes;
- (8) Establishing mandatory reporting requirements for healthcare and social service professionals, teachers, law enforcement officers, photo developers, information technology (IT) professionals, ISPs, credit card companies, and banks;
- (9) Creating data retention and preservation policies/provisions;
- (10) Addressing the criminal liability of children involved in pornography; and
- (11) Enhancing penalties for repeat offenders, organized crime participants, and other aggravating factors to be considered upon sentencing.

MODEL LEGISLATION

A comprehensive legislative strategy that is aimed at combating child pornography and that allows law enforcement to aggressively investigate and prosecute offenders must extend beyond the criminalization of certain actions by child sex offenders. While such is of obvious importance, of equal value are *inter alia*: adequately defining the terminology that is used in national penal codes; legislating corporate social responsibility; enhancing sanctions; forfeiting assets; and strengthening sentencing provisions.

The model legislation component of this publication is broken down into five parts:

- (1) Definitions;
- (2) Offenses;
- (3) Mandatory Reporting;
- (4) Data Retention and Preservation; and
- (5) Sanctions and Sentencing.

DEFINITIONS

Define “child,” for the purposes of child pornography, as “anyone under the age of 18,” regardless of the age of sexual consent.

The legal age at which a person can consent to sexual activity varies from country to country, a challenging obstacle to the consistent and harmonized protection of children from sexual exploitation on the international level. While a person under the age of 18 may be able to freely consent to sexual relations, such an individual is not legally able to consent to any form of sexual exploitation, including child pornography.

Moreover, in circumstances that require “dual criminality” – when a crime committed abroad must also be a crime in an offender’s home country in order for the offender to be prosecuted in his/her home country – agreement on a common age for what is a “child” is crucial. Any discrepancy could prevent a child sex offender from being prosecuted.

For these reasons, “child,” for purposes of child pornography legislation, should be defined as “anyone under the age of 18 years.”

Define “child pornography” and include computer- and Internet-specific terminology.

So that there can be no question in the mind of the offender or on the part of law enforcement, a judge, or the jury, child pornography should be adequately defined in national legislation. The definition should include, at a minimum, the visual representation or depiction of a child engaged in a (real or simulated) sexual display, act, or performance. Additionally, there may be words or phrases within the definition of “child pornography” that require explanation as well. For example, terms such as “simulated sexual conduct,” “sexually explicit conduct,” “lewd and lascivious exhibition of the genitals,” and “sexual display, act, or performance,” are all deserving of definitions.

Moreover, it is imperative that, with the advent of the Internet and new technology, mention be made of all the forms child pornography can take including, but not limited to, film, DVD, CD-ROM, diskette, CD-R, and other electronic media; of all the ways child pornography can be distributed, including via the Internet; and of all the ways child pornography can be possessed, including by simply knowingly viewing an image on the Internet or by knowingly downloading an image to one’s computer.

Incorporate child pornography offenses into the penal code.

Mere labor legislation that bans the worst forms of child labor, including child pornography, without detailing specific criminal offenses, criminal sanctions, and criminal punishments is not enough. The same is true for national legislation that defines “sexual exploitation” to include child pornography (usually in the child protection code) but, once again, does not enumerate criminal offenses or specify criminal penalties. While such provisions are positive first steps in recognizing child pornography as an evil that affects child welfare, child pornography is a crime and must be recognized as such. Child pornography represents nothing less than the memorialization of the sexual degradation/molestation/abuse/assault of a child.

Further, countries in which there is a general ban on pornography, regardless of whether the individuals being depicted are adults or children, are not considered to have “legislation specific to child pornography,” for purposes of this report, unless there is also a sentencing enhancement in the national legislation that increases penalties for those who commit pornography offenses against children. A sentencing enhancement for child victims makes the necessary distinction between adult and child pornography.

Criminalize the knowing possession of child pornography, regardless of the intent to distribute.

Every image of child pornography that is acquired encourages the further growth of this illicit industry, from “custom” child pornography – the sale of images of child rape created to order for the consumer – to “real time” child pornography, where subscribers pay to watch the streamed online rape of children as it occurs.⁶

Victims portrayed in the images are getting younger and younger and the images are becoming more graphic and more violent. The Internet Watch Foundation (IWF) in the United Kingdom reported that, out of all reports of child pornography received by IWF in 2009, 72% of the victims appeared to be children 10 years of age or younger, 23% were 6 years of age or younger, and 3% were 2 years of age or younger.⁷ According to the 2011 annual report of IWF, the number of victims that appeared to be under the age of 10 years rose to 74%.⁸ Moreover, IWF reported an increase in the percentage of the most horrific sexual abuse images of children online, from 7% in 2003 to 29% in 2006, demonstrating a growing demand for more severe images of abuse.⁹ This disturbing trend continues, as IWF reported that 67% of the images from 2011 depicted the rape or torture of a child.¹⁰

⁶ Andrew Vachss, *Let's Fight This Terrible Crime Against Our Children*, PARADE, Feb. 19, 2006, at http://www.vachss.com/av_dispatches/parade_021906.html (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

⁷ Internet Watch Foundation, *2009 Annual and Charity Report* 18, at http://www.iwf.org.uk/assets/media/annual-reports/IWF_2009_Annual_and_Charity_Report.pdf (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children) [hereafter *IWF 2009*].

⁸ Internet Watch Foundation, *2011 Annual and Charity Report* 12, at <http://www.iwf.org.uk/accountability/annual-reports/2011-annual-report> (last visited Feb. 11, 2013) (on file with the International Centre for Missing & Exploited Children) [hereafter *IWF 2011*].

⁹ Internet Watch Foundation, *2006 Annual and Charity Report* 19, at http://www.enough.org/objects/20070412_iwf_annual_report_2006_web.pdf (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

¹⁰ *IWF 2011*, *supra* note 8, at 14.

Similar findings are also confirmed by an earlier study out of the United States, which demonstrates that 83% of arrested child pornography possessors had images of children 6 to 12 years old; 39% had images of children 3 to 5 years old; and 19% had images of infants and toddlers under age 3.¹¹ 92% of those arrested had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; and 21% had child pornography depicting violence such as rape, bondage, and torture.¹² Most of these images involved children who were gagged, bound, blindfolded, or otherwise suffering sadistic sexual acts.¹³ The same study also showed that 40% of arrested child pornography possessors were “dual offenders,” who sexually victimized children and possessed child pornography,¹⁴ suggesting there may be a correlation between the knowing simple possession of child pornography and committing sexual abuse upon a child.

Criminalizing the knowing possession of child pornography may not only curb industry growth but also prevent further incidents of sexual abuse.

Criminalize knowingly downloading or knowingly viewing child pornography images on the Internet and using the Internet to distribute child pornography.

Offenders use the Internet to view, download, distribute, acquire, and trade child pornography on a daily basis. Therefore, as stated earlier, it is imperative that specific mention be made, in some way, of computer or Internet technology being used to make, view, possess, or distribute child pornography, or in some other way commit a child pornography offense.

Note that there is a difference between viewing an image on the Internet and downloading an image from the Internet. Both knowingly viewing and knowingly downloading should be criminalized as separate and distinct offenses.

Penalize those who make known to others where to find child pornography.

Offering information on where to find child pornography by providing a website address, for example, should be criminalized. An individual who assists in the commission of a crime (*i.e.*, knowingly possessing or knowingly downloading child pornography) through offering advice or taking actions that facilitate knowingly possessing or knowingly downloading illegal content should be penalized.

Criminalize the actions of parents or legal guardians who acquiesce to their child's participation in child pornography.

Similar to aiding and abetting in the commission of a crime, a parent or legal guardian who acquiesces to his/her child's participation in pornography is supporting and taking actions towards the commission of multiple crimes: rape, sexual exploitation, sexual assault, sexual abuse, and the manufacture of child pornography, all of which are being committed against his/her own child.

There can be no transfer of consent from the parent or guardian to the child to participate in child pornography. Just as a parent or guardian cannot lawfully consent to a child driving a motor vehicle underage, neither can a parent or guardian consent on behalf of a child to the child's participation in child pornography.

¹¹ *Child-Pornography Possessors*, *supra* note 3, at 4.

¹² *Id.* at 5.

¹³ *Id.*

¹⁴ *Id.* at viii.

Turning one's child over to the pornography industry, whether or not for monetary profit, is the ultimate betrayal and violation of trust, parental duty, and responsibility. The child's health and overall welfare are endangered, and such exposure to abuse and ill-treatment cannot go unpunished.

Grooming offenses must be criminalized.

Grooming represents the initial actions taken by a child sex offender to "socialize" or "prepare" the child for a sexual relationship. There are generally two forms of grooming: online enticement and distributing or showing pornography (adult or child) to a child.

Online enticement of a child for sexual acts occurs when a child sex offender uses the Internet to lure, invite, or persuade the child to meet for sexual acts. Child sex offenders use a variety of means such as e-mail, social networking sites, instant messaging, bulletin boards, and chat rooms to gain a child's trust and then arrange a face-to-face meeting.

Once the relationship is developed, child sex offenders will show pornography (adult or child) to a child in order to lower his/her inhibitions, to "normalize" what is not normal, and to instruct the child in sexual activities.

Data on the extent of online grooming is difficult to compile due to the lack of a universal understanding of the term. It is clear from studies, however, that children on the Internet in a wide range of countries and regions frequently speak to strangers and give out personal information, which can be the first steps in initiating a grooming relationship.¹⁵ Grooming relationships can have a personal sexual intent or commercial exploitation intent and thus often precede the creation or distribution of child pornography.

The enactment of online grooming or online enticement legislation may help to identify latent child sex offenders and preclude later victimization and exploitation of children.

Punish attempt crimes.

The rationale behind criminalizing an attempt to harm a child is to punish an individual who has demonstrated an inclination to commit such a crime without having to wait for the completion of the crime (*i.e.*, the victimization of a child). Punishing attempt crimes can serve as an early warning to an offender, who is put on notice from his/her first misstep that even incomplete crimes against children will not be tolerated.

MANDATORY REPORTING

Require healthcare and social services professionals, teachers, law enforcement officers, photo developers, IT professionals, ISPs, credit card companies, and banks to report suspected child pornography to law enforcement or another agency.

There are three classes of individuals and organizations that should be required to report suspected child pornography activities and offenses to law enforcement or another mandated agency:

- (1) individuals who, in their everyday, professional capacity, come into contact with children and owe a certain duty of care to those children;
- (2) individuals who, in their everyday, professional capacity, do not come into contact with children, but may potentially be exposed to child pornography as a result of their job responsibilities; and

¹⁵ Trent Toone, *Kids revealing too much online, study says*, Deseret News, Feb. 6, 2011, at <http://www.deseretnews.com/article/705366050/Kids-revealing-too-much-online-study-says.html?pg=all> (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

- (3) organizations or corporations whose services are being used to proliferate child pornography activities and who, as a result, should exercise a certain amount of industry responsibility/corporate citizenship/corporate social responsibility in their day-to-day business operations.

The first group is rather self-explanatory. Members include, but are not necessarily limited to healthcare and social services professionals, teachers, school counselors, and law enforcement officers. Based on daily interactions with children, these individuals may develop well-founded suspicions about potential child victims.

The second group is comprised primarily of photo developers and IT professionals, who may accidentally discover child pornography images while processing film, repairing a computer that has been brought in, or servicing a company computer in an employee's office. This class of individuals should not be required to search for the illegal material, but rather only to report it to the appropriate authorities if found.

Finally, the last group consists mostly of ISPs, credit card companies, and banks. In many circumstances, law enforcement would never know about many child pornography offenses if ISPs did not report them (either voluntarily or under legal obligation). Given the heavy traffic in child pornography over the Internet, ISPs are in an almost ideal position to report suspected child pornography offenses to law enforcement. A "notice and takedown" requirement should be enacted within national legislation, and consideration should be given to statutory protections that would allow ISPs to fully and effectively report child pornography, including the transmission of images, to law enforcement or another designated agency.

With regards to members of the financial industry, the ability to use credit cards and other payment methods to purchase child pornography has made it easier than ever to obtain child pornography; moreover, distribution over the Internet has facilitated instant access by thousands and possibly millions of individuals throughout the world. Financial companies must be vigilant and they should be required to proactively look for and report child pornography transactions to law enforcement or another mandated agency.

DATA RETENTION AND PRESERVATION

Require ISPs to develop and implement data retention and data preservation provisions.

Due to the prominent role the Internet plays in the distribution of child pornography, law enforcement has turned much of its efforts to targeting and identifying those who distribute, purchase, possess and view it online. In order to effectively conduct investigations in these cases, they regularly need access to Internet user data but too often find it has been deleted, making it more difficult or even impossible to find the perpetrator. Standardized guidelines for data retention and data preservation are uncommon and vary widely by country, industry and type of data. Fortunately, individual ISPs generally have the ability and technological capacity to retain and preserve their users' data in order to make it available for the purposes of criminal prosecution.

In this context, there are two types of data: content-based and non-content based. **Content-based data** includes information such as the text of users' emails – the "message" that was delivered by a communication, or the contents of a file such as an image or film.¹⁶ Content-based data is often excluded from retention and preservation policies in order to protect user privacy, though this may be overcome

¹⁶ Orin Kerr, *Applying the Fourth Amendment to the Internet: A General Approach*, 62 Stan. L. Rev. 1005, 1030 (2010) (on file with the International Centre for Missing & Exploited Children).

by a warrant.¹⁷ **Non-content based data**, on the other hand, includes **subscriber information** (data that helps identify the subscriber) as well as **traffic data** on the route, time, date, duration, destination and source of a communication.¹⁸ Access to non-content based user data is critical because it can provide law enforcement with the information needed to determine the identity of those who have been illegally accessing these sites without gathering unnecessary data, or invading the privacy of other users.¹⁹ **Data retention** refers to retaining certain data for all users (i.e. IP address, date, time and time zone for calls made and emails sent, full email address, etc.) for a set period of time. While **data preservation** refers to preserving specific data of an identified user who is currently under investigation by law enforcement in order to prevent loss or modification of that data for a specific period of time.²⁰ In order for data to be preserved for the purposes of criminal prosecution, it must have first been retained by the ISP.

Insufficient data retention by ISPs is one of the most significant barriers to identifying and locating suspects in online child pornography cases. According to the International Association of Chiefs of Police, “the failure of the Internet access provider industry to retain subscriber information and source or destination information for any uniform, predictable, reasonable period has resulted in the absence of data, which has become a significant hindrance and even an obstacle in certain investigations.”²¹ Not only is data retention important, but so is adequate and consistent data preservation. Once an investigation is underway, and a potential suspect has been identified, their user data may serve as primary evidence in the criminal prosecution against them. Insufficient data preservation can preclude conviction and prevent child victims from receiving some measure of justice.

There is growing international awareness of the importance of developing sufficient data retention and preservation policies. These policies must be consistent across providers in terms of type of data retained and preserved, for how long it must be retained and preserved, and for what purpose it must be supplied to law enforcement.

The Council of Europe *Convention on Cybercrime*, adopted in 2001, incorporates recommendations for data preservation measures.²² In 2006, the European Parliament and Council of the European Union issued a *Directive focused on the retention of non-content based data*. The Directive required all 27 Member States to adopt a standard set of data retention policies. It was issued with the goal of ensuring that data would be available for the purposes of preventing, investigating, detecting and prosecuting serious crimes when needed.²³ The Directive sets out recommendations for the best practices in developing a regulatory

¹⁷ *Applying the Fourth Amendment to the Internet: A General Approach*, *supra* note 16, at 1022.

¹⁸ European Commission Directorate General for Home Affairs, *Evidence of Potential Impacts of Options for Revising the Data Retention Directive: Current approaches to data preservation in the EU and in third countries* 4 (Nov. 2012) (on file with the International Centre for Missing & Exploited Children).

¹⁹ *But see* Christopher Parsons, *Lawful Access and Data Preservation/Retention: Present Practices, Ongoing Harm, and Future Canadian Policies*, 21 (2012) (describing the increasingly blurred distinction between content based and non-content based data) (on file with the International Centre for Missing & Exploited Children).

²⁰ Department of Justice of Canada, *Lawful Access FAQ* 4 (2005) (on file with the International Centre for Missing & Exploited Children).

²¹ Jason Weinstein, *Data Retention as a Tool for Investigating Internet Child Pornography and other Internet Crimes* 3 (Jan. 25, 2011) (on file with the International Centre for Missing & Exploited Children).

²² For additional information on the *Convention on Cybercrime*, see the **International Law** section of this report.

²³ *EU Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communication services or of public communications networks*, Article 1 (Mar. 15, 2006), at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0024:en:HTML> (last visited Feb. 20, 2013) (on file with the International Centre for Missing & Exploited Children).

framework for data retention. The European Commission conducted an evaluation of the Directive in 2011 and reported the results to the European Parliament and the Council of the European Union.²⁴ The report identified numerous ways in which retained data had been useful in criminal investigations and prosecutions and highlighted the need for sufficiently long periods of data retention. The research showed that for 2008-2009, 20 EU Member States had received an average of 148,000 requests annually for access to retained telecommunications data – 90% of those data were less than 6 months old at the time of request by law enforcement – suggesting that even a limited retention period would be helpful to law enforcement.²⁵

Effective data retention and preservation frameworks will harmonize provisions and obligations while recognizing that ISPs have differing capabilities, technologies and resources available. At a minimum, good practice for data retention and preservation should include: ensuring that ISPs have a process in place for the prompt response to subpoenas or law enforcement requests for data; promoting the retention of subscriber information and traffic data for a minimum of 6 months; requiring that data is retained in a way in which law enforcement has sufficient information to identify the service provider and the path through which a communication was transmitted; requiring that data should be retained in a way which protects the privacy and security of users and ensures that it is only provided to authorized individuals for legitimate purposes; obliging ISPs to respond to preservation orders for data as soon as practicable; and requiring that requested data be preserved for no less than 90 days. Furthermore, increased communication and cooperation between law enforcement organizations and ISPs should be encouraged and supported.

SANCTIONS AND SENTENCING

Address the criminal liability of children involved in pornography.

There should be no criminal liability for children involved in pornography, and such should be clearly stated in national legislation. Regardless of whether a child is a compliant victim or a non-cooperative witness, the fact remains that he/she is a **child victim**.

Criminal liability must focus on the adult offender, who is responsible for the exploitation of the child, and on the crimes he/she committed against that child.

Legal provisions should be enacted that would allow for protections of the child victim as a witness in any judicial proceedings that may occur, including permitting closed-circuit testimony in certain circumstances and establishing guidelines for the presence of victim advocates in the courtroom.

Enhance penalties for repeat offenders, organized crime participants, and other factors that may be considered upon sentencing.

All violations of enacted child pornography legislation should carry strict sentences that will be enforced, thereby guaranteeing a true deterrent effect.²⁶ Mere fines and misdemeanor classifications are not enough.

²⁴ Report from the European Commission to the Council and the European Parliament: Evaluation report on the Data Retention Directive (Directive 2006/24/EC) 22 (Apr. 18, 2011), at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0225:FIN:en:PDF> (last visited Feb. 28, 2013) (on file with the International Centre for Missing & Exploited Children).

²⁵ Cecilia Malmström, Member of the European Commission responsible for Home Affairs, *Taking on the Data Retention Directive*, SPEECH/10/723 European Commission conference in Brussels (Dec. 3, 2010), at http://europa.eu/rapid/press-release_SPEECH-10-723_en.htm (last visited Feb. 28, 2013) (on file with the International Centre for Missing & Exploited Children).

²⁶ Eva J. Klain, *Prostitution of Children and Child-Sex Tourism: An Analysis of Domestic and International Responses* 47 (Nat'l Ctr. for Missing & Exploited Children ed., 1999) [hereinafter *Prostitution of Children and Child-Sex Tourism*].

Sentencing provisions should take into account aggravating factors and enhancements.²⁷ Aggravating factors may include the number of images manufactured/produced/distributed/possessed; the severity of the offender's existing criminal record; the sexual violence toward the children (including rape, torture, and bondage) being depicted in the images that were manufactured/produced/distributed/possessed; and any potential threat or risk the offender may pose to the community upon release.

Media outlets from across the world have reported that organized criminals²⁸ and terrorists²⁹ are increasingly moving into child pornography to generate revenue to support their activities.³⁰ Several reasons explain this trend: children are plentiful and easily accessible; child pornography is easy and inexpensive to produce; there is a huge consumer market for it; it is enormously profitable; and there is virtually no risk, far less than weapons and drugs. A sentencing enhancement for organized crime activity could either have a deterrent effect or could disrupt the flow of the organization should an offender actually be sentenced to time in prison.

Assets must be forfeited.

Convicted defendants should be subject to forfeiture provisions that allow for the confiscation of property, proceeds, or assets that resulted from child pornography activities.³¹ Confiscated funds could, in turn, be used to support programs for formerly sexually exploited children, children at risk of being sexually exploited, and child victims who are in need of special care.³²

²⁷ *Prostitution of Children and Child-Sex Tourism*, *supra* note 26.

²⁸ European Commission, *Child Sexual Abuse*, Jun. 12, 2012, at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/child-sexual-abuse/index_en.htm (last visited Feb. 12, 2013) (on file with the International Centre for Missing & Exploited Children).

²⁹ Richard Kerbaj and Dominic Kennedy, *Link Between Child Porn and Muslim Terrorists Discovered in Police Raids*, TIMES ONLINE, Oct. 7, 2008 (on file with the International Centre for Missing & Exploited Children) [hereafter *Child Porn and Terrorists*].

³⁰ Sergey Stefanov, *Russia Fights Child Porn and Terrorism on the Internet*, PRAVDA, Dec. 4, 2002, at <http://english.pravda.ru/hotspots/terror/04-12-2002/1620-porn-0/> (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children); *see also Child Porn and Terrorists*, *supra* note 29.

³¹ *Prostitution of Children and Child-Sex Tourism*, *supra* note 26, at 47.

³² *Id.*

Child pornography is a multi-jurisdictional problem to which a global approach must be applied. Successfully combating child pornography and child exploitation on a global scale requires uniform legislation; laws that vary from country to country serve to weaken the stance against child sexual exploitation and allow child predators to concentrate efforts in countries where they know they are best able to exploit children. A holistic and uniform approach is the most effective means of combating the sexual exploitation of children because it allows for consistency in criminalization and punishment, it raises public awareness of the problem, it increases services available to assist victims, and it improves overall law enforcement efforts at the national and international levels. Complying with international legal standards is an initial step in addressing child pornography, to be followed by national implementing legislation and the creation of a national legislative scheme to combat child pornography.

There are three main international legal instruments that address child pornography: the Optional Protocol to the (U.N.) Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography³³; the Council of Europe's Convention on Cybercrime³⁴; and the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.³⁵ All three are effective tools for combating the sexual exploitation and abuse of children because they contain specific definitions of offenses as well as provisions requiring punishment for criminalized behavior, allowing for more effective prosecution of perpetrators. The Optional Protocol and the Convention on the Protection of Children also serve as comprehensive examples of legal mechanisms that require governments to implement and provide for services to assist child victims and their families.

In addition to these three international legal instruments, the European Union has adopted a Directive on combating the sexual abuse and sexual exploitation of children and child pornography. All EU Member States are required to come into compliance with the Directive by the end of 2013. In comparison with the Council of Europe's Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Directive establishes more explicit guidelines for criminal legislation regarding sexual abuse and exploitation of children. In particular, the Directive provides recommendations for terms of imprisonment for certain offenses; it describes measures for treatment of offenders; and contains provisions on supporting and protecting child victims with a focus on the best interests of the child.³⁶

³³ *Optional Protocol*, *supra* note 5.

³⁴ *Convention on Cybercrime (CETS 185)*, Nov. 23, 2001, at <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm> entered into force Jul. 1, 2004 (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

³⁵ *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)*, Oct. 25, 2007, at <http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm> entered into force Jul. 1, 2010 (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

³⁶ *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA*, Articles 18-20 (Dec. 13, 2011), at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF> (last visited Feb. 12, 2013) (on file with the International Centre for Missing & Exploited Children).

OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

While the Convention on the Rights of the Child³⁷ (CRC) aims to ensure a broad range of human rights for children – including civil, cultural, economic, political, and social rights³⁸ – there are Articles within the CRC and an Optional Protocol to the CRC that address child sexual exploitation. Article 34 of the CRC clearly states that preventive measures should be taken to address the sexual exploitation of children:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent...[t]he exploitative use of children in pornographic performances and materials.

The CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol) entered into force on 18 January 2002. Specific to child pornography:

- ❖ Article 2(c) defines “child pornography” as “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.”
- ❖ Article 3(1) requires States Parties to criminalize child pornography, whether committed domestically or transnationally, on an individual or organized basis.
- ❖ Article 3(1)(c) requires States Parties to criminalize simple possession regardless of the intent to distribute.
- ❖ Article 3(4) addresses the liability of legal persons and encourages each State Party to establish such liability for offenses specific to child pornography. This article reflects the notion that a comprehensive approach requires industry involvement.
- ❖ Article 10(1) addresses the need for international cooperation. As mentioned above, child pornography is readily distributed across borders; without international cooperation, many offenders may evade apprehension.

CONVENTION ON CYBERCRIME

Developments in technology have enabled cyber-criminals to be located in different jurisdictions (*i.e.*, countries) from the victims who are affected by their criminal behavior. As a result, the Council of Europe established the *Convention on Cybercrime* (Cybercrime Convention) with the hope of implementing a cooperative and uniform approach to the prosecution of cybercrime. The Cybercrime Convention is open for signature by the Council of Europe member States and the non-member States that have participated in its elaboration, and for accession by other non-member States. Currently, 39 countries (35 member

³⁷ *Convention on the Rights of the Child*, G.A. Res. 44/25, 61st plen. mtg., U.N. Doc. A / RES / 44 / 25 (Nov. 20, 1989), entered into force Sep. 2, 1992.

³⁸ See UNICEF, *Convention on the Rights of the Child*, at <http://www.unicef.org/crc/> (last visited Feb. 26, 2013) (on file with the International Centre for Missing & Exploited Children).

States and 4 non-member States) have ratified the Cybercrime Convention, and 10 other countries (8 member States and 2 non-member States) have signed, but not ratified, the Cybercrime Convention.³⁹

Pertinent to the area of child sexual exploitation is Title 3 of the Cybercrime Convention, entitled “Content-Related Offenses.” Specifically, Article 9 of Title 3 deals with offenses related to child pornography:

- ❖ Article 9(1) recommends each State Party make it a criminal offense to: produce child pornography for the purpose of its distribution through a computer system; offer or make available child pornography through a computer system; distribute or transmit child pornography through a computer system; procure child pornography through a computer system for oneself or for another person; and possess child pornography in a computer system or on a computer-data storage medium.
- ❖ Article 9(2) recommends “child pornography” be defined to include “pornographic material that visually depicts...a minor engaged in sexually explicit conduct[,],...a person appearing to be a minor engaged in sexually explicit conduct[, or]...realistic images representing a minor engaged in sexually explicit conduct.”
- ❖ Article 9(3) states that the term “‘minor’ shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.”
- ❖ Article 11 requires States Parties to enact legislation necessary to address attempt crimes as well as aiding and abetting.
- ❖ Article 13(1) mandates States Parties adopt legislative measures to ensure that criminalized offenses “are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.”
- ❖ Article 12 (1) addresses corporate liability.
- ❖ Article 23 addresses the issue of international cooperation.

CONVENTION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE

The Council of Europe’s *Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (Child Protection Convention) focuses on ensuring the best interests of children through prevention of abuse and exploitation, protection and assistance for victims, punishment of perpetrators, and promotion of national and international law enforcement cooperation. The Child Protection Convention was opened for signature on 25 October 2007, and entered into force on 1 July 2010. The Child Protection Convention is open for signature by member States, non-member States that have participated in the Convention’s elaboration, and by the European Community, and for accession by other non-member States. Currently,

³⁹ See Convention on Cybercrime (CETS 185): Chart of Signatures and Ratifications, at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG> (last visited Mar. 1, 2013) (on file with the International Centre for Missing & Exploited Children).

24 member States have ratified the Child Protection Convention, and 21 other member States have signed, but not ratified, the Child Protection Convention.⁴⁰ With regard to child pornography:

- ❖ Article 20(1) requires States Parties to criminalize: producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography; and knowingly obtaining access, through information and communication technologies, to child pornography.
- ❖ Article 20(2) defines “child pornography” as “any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.”
- ❖ Article 21(1) recommends States Parties adopt legislation criminalizing the activities of those who recruit or coerce a child into participating in child pornography or knowingly attend performances involving child pornography.
- ❖ Article 24 addresses attempt crimes as well as aiding and abetting.
- ❖ Article 26(1) addresses the issue of corporate responsibility.
- ❖ Article 38(1) addresses the issue of international cooperation.

EU DIRECTIVE ON COMBATING THE SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN AND CHILD PORNOGRAPHY

On 13 December 2011, the European Parliament and the Council of the European Union adopted the *Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA*.⁴¹ The Directive improves and updates the 2010 Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Directive harmonizes and increases the penalties for a number of criminal offences such as child sexual abuse, sexual exploitation, child pornography, and grooming. It describes measures that may be taken to identify and treat those who could become offenders or recidivists. In addition, measures are included to prevent offenders from exercising a professional activity involving regular contact with children. The Directive further introduces provisions to protect the child victim during investigations and legal proceedings.

The Directive entered into force upon adoption and Member States must bring into force the laws, regulations, and administrative provisions necessary to comply with the Directive by 18 December 2013.

With regard to the text of the Directive itself, child pornography is addressed in the following articles:

- ❖ Article 2(c) defines “child pornography” as “(i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; (ii) any depiction of the sexual organs of a child for primarily sexual purposes; (iii) any material that visually depicts any person appearing to be a child

⁴⁰ See Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201): Chart of Signatures and Ratifications, at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG> (last visited Mar. 1, 2013) (on file with the International Centre for Missing & Exploited Children).

⁴¹ EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography, *supra* note 36.

engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes.”

- ❖ Article 2(e) defines “pornographic performance” as “a live exhibition aimed at an audience, including by means of information and communication technology, of: (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes.”
- ❖ Article 4, paragraphs 2-4, states that “Member States shall take the necessary measures to ensure” that the following intentional conduct is punished: causing or recruiting a child to participate in pornographic performances; profiting from or otherwise exploiting a child for such purposes; coercing or forcing a child to participate in pornographic performances; threatening a child for such purposes; or knowingly attending pornographic performances involving the participation of a child.
- ❖ Article 5, paragraphs 2-6, states that “Member States shall take the necessary measures to ensure” that the following intentional conduct is punished: acquiring or possessing child pornography; knowingly obtaining access to child pornography by means of information and communication technology; distributing, disseminating or transmitting child pornography; offering, supplying or making available child pornography; and producing child pornography.
- ❖ Article 6, paragraph 2, states that “Member States shall take the necessary measures to ensure” that the following intentional conduct is punished: the solicitation of a child, through the use of information and communication technology, by an adult seeking to acquire pornography depicting the child.
- ❖ Article 7 addresses attempt crimes as well as incitement and aiding and abetting.
- ❖ Article 9 describes aggravating circumstances for sentencing purposes.
- ❖ Article 15 provides recommendations regarding the investigation and prosecution of offenses.
- ❖ Article 25 describes measures which should be taken regarding websites that contain or disseminate child pornography.

IMPLEMENTATION

There has been significant legislative change over the last 10 years as more countries develop laws to protect children from sexual abuse and exploitation with a focus on child pornography. Even with the slow but steady improvement, the question remains whether countries that have legislation are in fact enforcing those laws. To ensure that children around the world are completely protected, drafting and then passing legislation is not enough. There must be comprehensive, cross-sectoral efforts to implement and enforce those laws in order for them to truly be a useful tool for fighting child victimization.

Enforcement is a straightforward concept wherein the civil and criminal penalties for certain actions articulated in the law are upheld in/through action (i.e. arrests, prosecutions, sentencing, etc.). However, implementation – viewed broadly – goes well beyond simply ensuring that each component of the law is integrated into the legal system of a country. Genuine efforts to address the issue of child protection must be more expansive and thorough. But this also means that effectively assessing the status of countries' implementation processes can be very difficult, particularly as many countries either do not possess/collect data and/or information is not widely available.

In general, implementation can be viewed along a spectrum – at one end, countries with new legislation just beginning to develop tools and programs to support it, and at the other, countries with extensive legislation that possess the resources and capacity to introduce progressively innovative and diverse initiatives. From our initial review of this issue, it appears that most countries fall somewhere in the middle: some legislation in place, slowly increasing awareness, and demonstrating the desire and willingness to do more.

It is also evident that a comprehensive approach must incorporate both **preventive** and **protective** elements. Examples of best practices which encompass protective and preventive approaches are:

- ❖ Improved legislative tools;
- ❖ Formalized legal processes including arrests, prosecutions and convictions;
- ❖ Monitoring and reporting mechanisms;
- ❖ Services for victims and perpetrators;
- ❖ National Strategy Plans;⁴²
- ❖ Training and education programs;
- ❖ Public awareness campaigns;
- ❖ Corporate Social Responsibility programs; and
- ❖ Research and data collection.

Regardless of the nature of the program, it is crucial that countries foster public-private partnerships, and cross-border and cross-sectoral collaboration. This alliance amongst stakeholders helps to maximize resources, avoid duplication of efforts, facilitate the exchange of information, and aid in the swift identification of child victims and the perpetrators who harm them. Of course, all of these efforts must be tailored to a country's political, cultural, religious, and economic dynamics, while taking into account unique factors in their history and development. When well-aligned, these can serve as important motivators for a country to frame child protection as a national priority and drive legislation towards effective and lasting implementation.

⁴² A National Strategy Plan provides a comprehensive, long-term blueprint for a country that seeks to prioritize a particular issue, such as child protection or sexual exploitation, on its political, social and legislative agendas. It can be a very valuable tool for helping relevant stakeholders to understand the scope of the issue and to establish cohesive policies, procedures, standards, mechanisms, technologies, and other resources to address it.

GLOBAL LEGISLATIVE REVIEW

✘ = No
 ✓ = Yes

<u>Country</u>	<u>Legislation Specific to Child Pornography</u> ⁴³	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u> ⁴⁴	<u>Simple Possession</u> ⁴⁵	<u>ISP Reporting</u> ⁴⁶
Afghanistan	✘	✘	✘	✘	✘
Albania	✓	✘	✓	✘	✘
Algeria	✘	✘	✘	✘	✘
Andorra	✓	✘	✓ ⁴⁷	✘	✘
Angola	✘	✘	✘	✘	✘

⁴³ For the purposes of this report, we were looking for specific laws that proscribe and/or penalize child pornography offenses. Mere labor legislation that simply bans the “worst forms of child labor,” among which is child pornography, is not considered “legislation specific to child pornography.”

Further, countries in which there is a general ban on pornography, regardless of whether the individuals being depicted are adults or children, are not considered to have “legislation specific to child pornography,” unless there is a sentencing enhancement provided for offenses committed against a child victim.

⁴⁴ In order to qualify as a computer-facilitated offense, we were looking for specific mention of a computer, computer system, Internet, or similar language (even if such mention is of a “computer image” or something similar in the definition of “child pornography”). In cases where other language is used in national legislation, an explanatory footnote is provided.

⁴⁵ “Simple possession,” for the purposes of this report, refers to knowing possession regardless of the intent to distribute.

⁴⁶ While some countries may have general reporting laws (*i.e.*, anyone with knowledge of any crime must report the crime to the appropriate authorities), only those countries that specifically require ISPs to report suspected child pornography to law enforcement (or another mandated agency) are included as having ISP reporting laws. Note that there are also provisions in some national laws (mostly within the European Union) that limit ISP liability as long as an ISP removes illegal content once it learns of its presence; however, such legislation is not included in this section.

⁴⁷ Article 155 of the Nouveau Code Penal of Andorra criminalizes “produc[ing], sell[ing], distribut[ing], disseminat[ing], exhibit[ing], **by any means**, pornographic material where images of minors...appear.” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Antigua & Barbuda	✗	✗	✗	✗	✗
Argentina	✓	✓	✓	✗	✗
Armenia	✓	✗	✓	✗ ⁴⁸	✗
Aruba	✓	✓	✓	✓	✗
Australia	✓	✓	✓	✓	✓
Austria	✓	✓	✓ ⁴⁹	✓	✗ ⁵⁰
Azerbaijan	✓	✓	✗	✓	✗
Bahamas	✓	✓	✓	✓	✗
Bahrain	✗	✗	✗	✗	✗

⁴⁸ Article 263 of the Armenia Penal Code criminalizes possession of child pornography only when “keeping/saving them into computer system or in any computer data storage system”.

⁴⁹ Section 207a(1)(3) of the Austrian Penal Code criminalizes “mak[ing] available in **any other manner**...a pornographic depiction of a minor.” *Emphasis added.*

⁵⁰ The Austrian legislation foresees the need of mandatory deletion of child pornography on the Internet on basis of paragraph 16 of the E-Commerce Law, paragraph 26 of the Austrian criminal code and paragraph 110 of the Austrian code of criminal procedure. Paragraph 16 of the E-Commerce Law obligates host providers, as soon as they have knowledge about unlawful content, to immediately delete said content and to block the access to said content respectively... For private persons there is no obligation to notify the police, therefore, internet service providers are not obligated to notify law enforcement or other institutions in case of suspicion of child pornography. Letter from Thomas Stölzl, Counselor, Embassy of Austria, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Sep. 4, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Bangladesh	✓	✗	✗	✗	✗
Barbados	✓	✓	✓	✓	✗
Belarus	✓	✗	✓	✗	✗
Belgium	✓	✓	✓ ⁵¹	✓	✓
Belize	✓	✗	✗	✗	✗
Benin	✗	✗	✗	✗	✗
Bhutan	✓	✓	✓ ⁵²	✗	✗
Bolivia	✓	✓	✓ ⁵³	✓	✗
Bosnia-Herzegovina	✓	✗	✓ ⁵⁴	✓	✗

⁵¹ Article 383bis of the Belgian Penal Code, as amended on 1 April 2001, criminalizes, *inter alia*, the dissemination of child pornography, thereby including dissemination via computers. Letter from Jan Luykx, Deputy Chief of Mission, Embassy of Belgium, Washington, D.C., to Ernie Allen, President and CEO, International Centre for Missing & Exploited Children (Feb. 24, 2006) (on file with the International Centre for Missing & Exploited Children).

⁵² According to Article 225(b) of the Penal Code of Bhutan, "[a] defendant shall be guilty of the offense of pedophilia if the defendant...sells, manufactures, distributes, or **otherwise deals** in material that contains any depiction of a child engaged in sexual contact." *Emphasis added.*

⁵³ Article 281(a) of Law 3325 Trata y Trafico de Personas y Otros Delitos Relacionados de Bolivia states that "whoever by himself or through a third person, **by any means**, promotes, produces, displays, markets or distributes pornographic materials, or promotes obscene performances that involve children or adolescents will be punished with imprisonment of three (3) to six (6) years." *Emphasis added.*

⁵⁴ Articles 189 and 211 of the Penal Code of Bosnia-Herzegovina reference "**other pornographic materials**" in addition to photographs and audio-visual tapes. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Botswana	✓	✓	✓	✓	✗
Brazil	✓	✓	✓	✓	✗ ⁵⁵
Brunei	✓	✓	✓	✓	✗ ⁵⁶
Bulgaria	✓	✗	✓ ⁵⁷	✓	✗
Burkina Faso	✗	✗	✗	✗	✗
Burundi	✓	✗	✗	✗	✗

⁵⁵ The Children and Adolescents’ Act criminally punishes those who provide means or services to disseminate photos or images of child pornography. Criminal punishment is required if those who provide means or services fail to interrupt the access to said photos or images upon being informed by the enforcement agencies that their means or services are being used to disseminate child pornography. In short, ISPs can be brought to justice if they disseminate child pornography and do not cooperate with enforcement agencies. Letter from Alexandre Ghisleni, Embassy of Brazil, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (May 13, 2009) (on file with the International Centre for Missing & Exploited Children).

⁵⁶ While there is no mandatory reporting requirement specific to ISPs, under the laws of Brunei all ISPs and Internet Content Providers (ICPs) licensed under the Broadcasting (Class License) Notification of 2001 must comply with the Code of Practice set forth in the Broadcasting Act (Cap 181). ISPs and ICPs are required to satisfy the Minister responsible for broadcasting matters that they have taken responsible steps to fulfill this requirement. Under the Broadcasting Act, such Minister has the power to impose sanctions. Content that should not be allowed includes, *inter alia*, that which depicts or propagates pedophilia.

The Licensee must remove or prohibit the broadcast of the whole or any part of a program included in its service if the Minister informs the Licensee that the broadcast of the whole or part of the program is contrary to a Code of Practice applicable to the Licensee, or if the program is against the public’s interest, public order, or national harmony, or offends against good taste or decency.

The Licensee must also assist the Minister responsible for broadcasting matters in the investigation into any breach of its license or any alleged violation of any law committed by the Licensee or any other person; and shall also produce such information, records, documents, data, or other materials as may be required by the Minister for the purposes of the investigation. E-mail from Salmaya Salleh, Second Secretary, Embassy of Brunei, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Mar. 21, 2006) (on file with the International Centre for Missing & Exploited Children).

⁵⁷ Article 159(3) of the Bulgarian Penal Code, when read in conjunction with Article 159(1), criminalizes, *inter alia*, “otherwise circulat[ing] works with a [child] pornography content.” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Cambodia	✓	✓	✓	✗	✗
Cameroon	✓	✓	✓	✓	✗
Canada	✓	✓	✓	✓	✓
Cape Verde	✓	✗	✗	✗	✗
Central African Republic	✗	✗	✗	✗	✗
Chad	✗	✗	✗	✗	✗
Chile	✓	✓	✓	✓	✗

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
China ⁵⁸	✓ ⁵⁹	✗	✓ ⁶⁰	✗	✓ ⁶¹
Colombia	✓	✓	✓	✓	✓
Comoros	✗	✗	✗	✗	✗
Congo	✗	✗	✗	✗	✗

⁵⁸ Child pornography legislation in Hong Kong differs from that in China. Legislation in Hong Kong:

- defines child pornography;
- criminalizes computer-facilitated offenses; and
- criminalizes simple possession of child pornography.

Taiwan has legislation specific to child pornography but has not yet fulfilled the remaining four criteria.

Macau has no legislation specific to child pornography offenses.

⁵⁹ Article 367 stipulates the definition of "obscene articles", i.e., sex-propagating books, periodicals, films, video- and audio-tapes, pictures and other obscene articles which concretely describe sexual acts or openly publicize sex. Given that the above provisions in the Criminal Law of China include child pornography, there is no separate law or definition exclusively on child pornography. That said, it is important to note that child pornography is covered by China's criminal legislation and relevant crimes are subject to severe punishment. Letter from HU Binchen, Police Counselor, Police Liaison Office, Embassy of the People's Republic of China, Washington D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Sep. 4, 2012) (on file with the International Centre for Missing & Exploited Children).

⁶⁰ The 2004 Interpretation by the Supreme People's Court and the Supreme People's Protectorate applies to computer-facilitated offenses. E-mail from Chen Feng, Police Liaison Officer, Embassy of the People's Republic of China, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Mar. 17, 2006) (on file with the International Centre for Missing & Exploited Children).

⁶¹ China's legislation explicitly stipulates the obligation of Internet Service Providers (ISP) to report obscene pictures, child pornography and other harmful information. For example, Article 7 of the *Decision of the Standing Committee of the People's Republic of China on Preserving Computer Network Security* provides that, any unit that engages in computer network business shall conduct activities in accordance with the law and, when it discovers illegal or criminal acts or harmful information in the computer network, shall take measures to suspend transmission of harmful information and report the matter to relevant authorities without delay. Article 20 of the *Implementation Measures Relating to the Temporary Provisions for the Management of Computer Information Network in China that Take Part in International Internetworks* stipulates that, if any ISP discovers harmful pernicious information including pornographic materials, it shall promptly report to the competent authorities, and effective measures shall be taken to prevent proliferation of the information. Letter from HU Binchen, Police Counselor, Embassy of the People's Republic of China, Washington D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Sep. 4, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Costa Rica	✓	✓	✓ ⁶²	✓	✗
Côte d'Ivoire	✗	✗	✗	✗	✗
Croatia	✓	✗	✓	✓	✗
Cuba	✓	✗	✗	✗	✗
Cyprus	✓	✓	✓	✓	✗
Czech Republic	✓	✗	✓	✓	✗
Democratic Republic of Congo	✓	✓	✓ ⁶³	✗	✗
Denmark	✓	✓	✓ ⁶⁴	✓	✗ ⁶⁵

⁶² Article 174 of the Costa Rican Penal Code imposes a penalty on those who "produce, disseminate, distribute, trade, or possess **by any means**...pornographic materials." *Emphasis added.*

⁶³ Section 174M of the Penal Code of the Democratic Republic of Congo criminalizes "representations **by any means whatsoever**" of child pornography. *Emphasis added.*

⁶⁴ Section 235 of the Danish Criminal Code criminalizes, *inter alia*, dissemination and possession of "**other**...visual reproductions" of pornographic materials concerning children under the age of 18. *Emphasis added.*

⁶⁵ There is currently no Danish legislation that requires ISPs to report suspected child pornography to the Danish authorities. However, the Department of Justice has since 2005 implemented a model based on voluntary agreements and close cooperation with a majority of internet distributors to prevent access to a material of child pornographic nature via the internet. This effort is operationalized through so-called 'net-filters', which are established based on specific agreements between the authorities and the individual internet distributors. These agreements enable the Danish authorities to forward suspicious web addresses to the distributors and request that access to them is blocked. E-mail from Kristine Sorgenfri Hansen, Intern, Royal Danish Embassy, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 30, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Djibouti	✓	✗	✓ ⁶⁶	✗	✗
Dominica	✗	✗	✗	✗	✗
Dominican Republic	✓	✓	✓	✓	✗
Ecuador	✓	✓	✓	✗	✗ ⁶⁷
Egypt	✓	✗	✓	✓	✗
El Salvador	✓	✓	✓	✓	✗
Equatorial Guinea	✗	✗	✗	✗	✗
Eritrea	✗	✗	✗	✗	✗
Estonia	✓	✓	✓ ⁶⁸	✓	✓
Ethiopia	✗	✗	✗	✗	✗

⁶⁶ Article 463(1) of the Penal Code of Djibouti criminalizes “the distribution, set[ting], sav[ing] or send[ing] of the image of a minor when the image is pornographic in nature...” including such images “broadcast by any means whatsoever...” *Emphasis added.*

⁶⁷ Article 72 of the Code of Children and Adolescents of Ecuador requires that “People who, because of their profession or position, have knowledge of a fact/event that has characteristics of maltreatment, abuse, sexual exploitation, trafficking or the loss of a child victim, must report it within 24 hours after having this knowledge, to whatever competent prosecutor’s office, judicial authority or administrative body, is the entity that upholds fundamental human rights.”

⁶⁸ Articles 177 and 178 of the Estonian Penal Code criminalize using a minor in “other works” or using “any other manner” to manufacture, store, hand over, display, or make available child pornography. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Fiji	✓	✗	✗	✗	✗
Finland	✓	✓	✓ ⁶⁹	✓	✗
France	✓	✓	✓	✓	✓
Gabon	✗	✗	✗	✗	✗
Gambia, The	✓	✗	✗	✗	✗
Georgia	✓	✓	✓ ⁷⁰	✓	✗
Germany	✓	✓	✓	✓	✗ ⁷¹
Ghana	✗	✗	✗	✗	✗
Greece	✓	✓	✓ ⁷²	✓	✗

⁶⁹ Chapter 17, Section 18 of the Finnish Criminal Act criminalizes “any person who...**otherwise** distributes obscene pictures or visual recordings depicting children.” *Emphasis added.*

⁷⁰ The Note in Article 255 of the Criminal Code of Georgia specifies that “video or audio material produced **in any manner**, involving a minor or a person appearing to be a minor involved in sexually explicit, simulated or computer generated sexual scenes,...shall be considered as pornographic material.” *Emphasis added.*

⁷¹ Pursuant to the Telemedia Act, service providers are under no obligation to be proactive by monitoring the information transmitted or saved by them, or by searching for facts that indicate illegal activity. However, there are obligations in place for host providers to remove illegal content once it is discovered. It is assumed that usually, if child/juvenile pornography is discovered on the internet the ISPs will involve the competent law-enforcement agencies. Furthermore, Germany has well established mechanisms of self-regulation, the aim of which is for such content to be deleted from the Internet forthwith. Letter from Perdita Kröger, Federal Ministry of Justice, Berlin, Germany, to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Dec. 20, 2011) (on file with the International Centre for Missing & Exploited Children).

⁷² Article 348a of the Greek Penal Code criminalizes various child pornography offenses, including possession, purchase, transfer, and sale of child pornography “**in any way.**” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Grenada	✗	✗	✗	✗	✗
Guatemala	✓	✗	✓ ⁷³	✓	✗
Guinea	✗	✗	✗	✗	✗
Guinea Bissau	✗	✗	✗	✗	✗
Guyana	✗	✗	✗	✗	✗
Haiti	✗	✗	✗	✗	✗
Holy See	✓	✗	✓ ⁷⁴	✓	✗ ⁷⁵
Honduras	✓	✓	✓	✓	✗

⁷³ Article 194 of the Penal Code of Guatemala criminalizes “Any person who, **by whatever form or through whatever mechanism**, produces, makes or enhances pornographic material that contains the image or voice (actual or simulated) of one or of various minors....” *Emphasis added.*

⁷⁴ Canon Law of the Holy See criminalizes “the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, **by whatever means or using whatever technology.**” *Emphasis added.*

⁷⁵ The Holy See has no Internet Service Provider external to it and the navigation from the internal provider has filters which impede not only access to any sites related to child pornography, but also on line distribution of pornographic material. Given that the Holy See’s website is institutional, only those issues which are inherent to its mission...can be found there. Letter from Archbishop Pietro Sambi, Apostolic Nuncio, Apostolic Nunciature, United States of America, to Ernie Allen, President and CEO, International Centre for Missing & Exploited Children (Jun. 5, 2006) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Hungary	✓	✓	✓ ⁷⁶	✓	✗ ⁷⁷
Iceland	✓	✗	✓ ⁷⁸	✓	✗
India	✓	✓	✓	✓	✓
Indonesia	✓	✗	✓ ⁷⁹	✓	✗
Iran	✗	✗	✗	✗	✗
Iraq	✗	✗	✗	✗	✗
Ireland	✓	✓	✓	✓	✗
Israel	✓	✓	✓	✓	✗

⁷⁶ Under Section 195/A(3) of the Hungarian Criminal Code, a person making, distributing, or trading pornographic pictures of a minor by video, film, photograph, or “by any other means,” or making such pictures available to the public, commits a felony. Further, according to a recent decision of the Hungarian Appellate Court (Nr. BH 133/2005), the reference to “any other means” and “making available to the public” includes distribution through the Internet. Letter from Viktor Szederkényi, Deputy Chief of Mission, Embassy of the Republic of Hungary, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Feb. 6, 2006) (on file with the International Centre for Missing & Exploited Children).

⁷⁷ The National Media and Information Communications Authority (NMHH) recently launched an Internet Hotline service which is a platform to report illegal or fraudulent activities, including pedophilia, online harassment, and child pornography. If NMHH receives such notification and the content is indeed illegal, the NMHH requires the service provider or the editor of the website to remove said content. Email from Anna Stumpf, Political Officer, Congressional Affairs, Embassy of the Republic of Hungary, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 17, 2012) (on file with the International Centre for Missing & Exploited Children).

⁷⁸ Article 210 of the Penal Code of Iceland criminalizes the “possession of photographs, films, or **comparable items** depicting children in a sexual or obscene manner.” *Emphasis added.*

⁷⁹ Article 1 of the Indonesian Anti-Pornography Law criminalizes pornography created “through **any media or mode of communication.**” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Italy	✓	✓	✓	✓	✓
Jamaica	✓	✓	✓	✓	✗
Japan	✓	✓	✓	✗	✗
Jordan	✓	✓	✓	✓	✗
Kazakhstan	✓	✗	✓ ⁸⁰	✗	✗
Kenya	✓	✗	✓ ⁸¹	✗	✗
Kiribati	✗	✗	✗	✗	✗
Kosovo	✓	✓	✓	✓	✗
Kuwait	✗	✗	✗	✗	✗
Kyrgyzstan	✓	✓	✗	✗	✗
Laos	✓	✗	✓	✗	✗

⁸⁰ Article 273 of the Penal Code of Kazakhstan criminalizes the manufacture, distribution, advertisement of and trade in “pornographic materials or objects, as well as ... printed publications, films or videos, pictures or **other items of a pornographic nature.**” Article 273-1 specifically addresses “pornographic images of minors.” *Emphasis added.*

⁸¹ Section 16(1)(aa) of the Kenyan Sexual Offenses Act imposes sanctions on anyone who “sells, lets to hire, distributes, publicly exhibits, or **in any manner**” child pornography. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Latvia	✓	✓	✓ ⁸²	✓	✗ ⁸³
Lebanon	✗	✗	✗	✗	✗
Lesotho	✗	✗	✗	✗	✗
Liberia	✓	✗	✓ ⁸⁴	✓	✗
Libya	✗	✗	✗	✗	✗
Liechtenstein	✓	✓	✓	✓	✗ ⁸⁵

⁸² Article 166(2) of the Criminal Law of Latvia criminalizes “the importation, production, public demonstration, advertising, or **other distribution** of such pornographic...materials as relate or portray the sexual abuse of children.” *Emphasis added.*

⁸³ Regarding to the responsibility of Internet Service Providers to report suspected child pornography to law enforcement or to some other mandated agency the Ministry of Justice informs that the Article 369 of the Criminal Procedure Law provides that non-governmental organisations or any natural person or legal person which has not directly suffered may submit information indicating the committing of a possible criminal offence to an investigating institution, Prosecutor’s Office, or court. Additionally the Ministry of Justice would like to inform that the Article 315 of the Criminal Law provides criminal liability for failing to inform, where it is known with certainty that preparation for or commission of a serious or especially serious crime is taking place...Involvement of underaged persons in the production of pornographic or erotic materials is an especially serious crime. Letter from L. Medin, Deputy Secretary State, Ministry of Justice of the Republic of Latvia, Washington, D.C. to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Nov. 21, 2012) (on file with the International Centre for Missing & Exploited Children).

⁸⁴ Article 18.16 of the Penal Code of Liberia (Children’s Law 2011) criminalizes storing, keeping or distributing “**in any form or manner**...any content of indecent images of any child or depicting any form of illegal sexual activity against a child.” *Emphasis added.*

⁸⁵ While there is no specific mention of ISP reporting in the Penal Code of Liechtenstein, the Children & Youth Act, in force since February 1, 2009, stipulates a notification requirement that applies to anyone learning of the endangerment of the welfare of a child or young person (Art. 20 Children & Youth Act). Also it is worth mentioning that Liechtenstein has a cooperative agreement with the Swiss Cybercrime Coordination Unit CYCO; a special unit of the Swiss Federal Police. According to that agreement, CYCO is in charge of monitoring also Liechtenstein’s range of IP numbers. Letter from Claudia Fritsche, Ambassador, Embassy of Liechtenstein, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Jan. 19, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Lithuania	✓	✗	✗	✓	✗
Luxembourg	✓	✗	✓ ⁸⁶	✓	✗
Macedonia	✓	✓	✓ ⁸⁷	✓	✗
Madagascar	✓	✓	✓ ⁸⁸	✓	✗
Malawi	✓	✓	✓	✓	✗
Malaysia	✓	✗	✗	✗	✗
Maldives	✗	✗	✗	✗	✗
Mali	✓	✗	✗	✗	✗
Malta	✓	✓	✓	✓	✗
Marshall Islands	✗	✗	✗	✗	✗

⁸⁶ Article 383 of the Penal Code of Luxembourg criminalizes not only the manufacture and possession (for trade, distribution, or public display) of “writings, printings, images, photographs, films, or **other objects** of a pornographic nature,” but also the commission of a variety of other child pornography offenses in “**any way.**” *Emphasis added.*

⁸⁷ Article 193(3) of the Macedonian Penal Code criminalizes the abuse of a “juvenile” in the “production of audio-visual, pictures or **other objects** with a pornographic content.” *Emphasis added.*

⁸⁸ Article 346 of the Penal Code of Madagascar criminalizes the use of “**any means**” to disseminate child pornography. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Mauritania	✓	✗	✓	✓	✗
Mauritius	✓	✗	✓	✗	✓
Mexico	✓	✓	✓	✓	✗
Micronesia	✗	✗	✗	✗	✗
Moldova	✓	✓	✓	✓	✗
Monaco	✓	✓	✓	✓	✗
Mongolia	✓	✗	✗	✗	✗
Montenegro	✓	✗	✓ ⁸⁹	✓	✗ ⁹⁰

⁸⁹ Article 211(2) of the Penal Code of Montenegro criminalizes “exploit[ing] a child for the production of pictures, audio-visual, or other objects of pornographic content.” Article 211(3) criminalizes procuring, selling, showing...in electronic or some other manner mak[ing] available pictures, audio-visual or other objects of pornographic content portraying a minor. *Emphasis added.*

⁹⁰ Montenegrin law does not require ISPs to report suspected child pornography to law enforcement agencies but relation between ISPs and law enforcement is regulated with some Protocol of understanding and supporting, not by law. Email from Marija Petrovic, Charge d’ Affaires a.i., First Secretary, Embassy of Montenegro, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 27, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Morocco	✓	✓	✓ ⁹¹	✓	✗ ⁹²
Mozambique	✗	✗	✗	✗	✗
Myanmar	✓	✗	✓	✗	✗
Namibia	✗	✗	✗	✗	✗
Nauru	✗	✗	✗	✗	✗
Nepal	✓	✗	✗ ⁹³	✗	✗

⁹¹ Article 503.2 of the Penal Code of Morocco (Amended in 2003 by Law No. 24-03) criminalizes “caus[ing], incit[ing] or facilitat[ing] the exploitation of children under the age of eighteen in pornography of any kind, **by whatever means**, of a real, simulated or perceived sexual act or of any representation of the sexual organ of a child for sexual purposes.” *Emphasis added.*

⁹² While in Morocco there is no explicit provision on the legal responsibility of Internet Service Providers to report child pornography sites to the police, or of web hosts or telephone operators to share details of abusers, Morocco has taken some very strong steps to combat child pornography. I would like to turn your attention to the following:

- Article 17 of Law n°24-96 concerning post and telecommunications states that commercial exploitation of value-added services – the list of which is set by regulation upon proposal of the National Agency of Telecommunications Regulation (ANRT) – can be provided freely by any physical or moral person after filing a declaration of intention to open the service. This declaration should contain the following information: a) opening terms of service; b) the geographical coverage; c) access conditions; d) nature of the services provided; e) rates to be charged to users;
- Article 18 of the same law states that “...without prejudice to the criminal sanctions, if it appears, following the provision of the service mentioned in the declaration, that it affects the security or the public order or is contrary to moral and ethics, the competent authorities may immediately cancel the declaration.”

E-mail from Hichame Dahane, Political Counselor, Embassy of the Kingdom of Morocco, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Sep. 1, 2012) (on file with the International Centre for Missing & Exploited Children).

⁹³ While not specific to child pornography, Section 47 of the Electronic Transaction Ordinance of 2004 of Nepal does prohibit publishing or displaying on computers, the Internet, or other electronic media, materials that are prohibited by law to be published or displayed because they are against public morality and decency.

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Netherlands	✓	✓	✓	✓	✗ ⁹⁴
New Zealand	✓	✓	✓	✓	✗ ⁹⁵
Nicaragua	✓	✓	✓	✓	✗
Niger	✗	✗	✗	✗	✗
Nigeria	✓	✗	✗	✗	✗
North Korea	✗	✗	✗	✗	✗
Norway	✓	✓	✓	✓	✗
Oman	✓	✗	✓	✓	✗
Pakistan	✗	✗	✗	✗	✗
Palau	✗	✗	✗	✗	✗

⁹⁴ While there is no legal or contractual obligation for ISPs to report suspected child pornography to law enforcement, Netherlands-based ISPs do have a practice of reporting their findings of child pornography immediately to law enforcement and the ISPs remove the content from the concerned website. Further, on the request of law enforcement, ISPs hand over their logs concerning the website(s) under suspicion. E-mails from Richard Gerding, Counselor for Police and Judicial Affairs, Royal Embassy of the Netherlands, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Feb. 8, 2006) (on file with the International Centre for Missing & Exploited Children).

⁹⁵ New Zealand does not mandate ISPs to report suspected child pornography; however, in cooperation with ISPs, the Department of Internal Affairs is in the process of implementing a website filtering system, the Digital Child Exploitation Filtering System, to block access to known websites containing child sexual abuse images. While participation by ISPs is voluntary, the Department fully anticipates that most ISPs will join the initiative and that the vast majority of New Zealand Internet users will be subject to the Digital Child Exploitation Filtering System. Letter from His Excellency Roy Ferguson, Ambassador, Embassy of New Zealand, Washington, D.C., to Maura Harty, Former Senior Policy Director, International Centre for Missing & Exploited Children (Dec. 11, 2009) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>"Child Pornography" Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Panama	✓	✓	✓	✓	✗ ⁹⁶
Papua New Guinea	✓	✓	✓ ⁹⁷	✓	✗
Paraguay	✓	✓	✓ ⁹⁸	✓	✗ ⁹⁹
Peru	✓	✗	✓	✓	✗
Philippines	✓	✓	✓	✓	✓

⁹⁶ While there is no mandatory reporting requirement specific to ISPs, Article 231-I of the Panamanian Penal Code establishes that if anyone who has knowledge of the use of minors in pornography or sexual activities, whether the person obtained such information by means of his/her duties, job, business, profession, or by any other means, fails to report it to the authorities, he/she will be sent to prison for this omission. If the commission of the crime (child pornography or sexual activity) cannot be proved after the report, the person who reported it will be exempted of any liability with regards to his/her report to the authorities. E-mail from Isabel Fernández, Embassy of Panama, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Apr. 12, 2006) (on file with the International Centre for Missing & Exploited Children).

⁹⁷ Section 299 of the Criminal Code Act 1974 of Papua New Guinea defines child pornography as "any photographic, film, video or **other visual representation**" and criminalizes "a person who uses a child for the production of child pornography." *Emphasis added.*

⁹⁸ Article 1 of Paraguayan Law Number 2.861/06 imposes sanctions on "whoever, **by any means**, produces, or reproduces" child pornography. *Emphasis added.*

⁹⁹ Although ISPs are not specifically mentioned, Article 7 of Paraguayan Law Number 2.861/06 states that anyone who witnesses child pornography offenses is required to "report these offenses immediately to the Police or the Public Minister, provide, if held, the data for the location, seizure, and eventual destruction of the image, and for the identification, apprehension and punishment of the perpetrators. Anyone who fails to fulfill these obligations shall be sentenced to deprivation of liberty for up to three years or with a fine."

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Poland	✓	✗ ¹⁰⁰	✓ ¹⁰¹	✓	✗ ¹⁰²
Portugal	✓	✗	✓ ¹⁰³	✓	✗
Qatar	✓	✗	✓ ¹⁰⁴	✗	✗

¹⁰⁰ Interpretation of the term “child pornography” is based on the case law and a legal doctrine (e.g. a judgment of the Supreme Court of 23 November 2010, ref. IV KK 173/10; M. Mozgawa (edit.) M. Budyn-Kulik, Mr. Kozłowska-Kalisz, M. Kulik, Criminal Code: Reference, ed. Oficyna 2010). Letter from Maciej Pisarski, Charge d’affaires, Embassy of the Republic of Poland, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 29, 2012) (on file with the International Centre for Missing & Exploited Children).

¹⁰¹ Although the Polish Penal Code does not explicitly criminalize computer-facilitated offenses, Article 202 has been used in Poland to monitor and eliminate websites with content deemed to be child pornography indicating that this Article is used to combat both print and online child pornography. Government of the Republic of Poland, *Report on Counteracting Violence against Children in Poland* 5-6 (May 25, 2005), at <http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/poland.pdf> (last visited Feb. 25, 2013) (on file with the International Centre for Missing & Exploited Children).

¹⁰² Internet Service Providers (ISPs) are not obliged to monitor the data which are transmitted, stored or made available by these entities (article 15 of the *Act of 18 July, 2002 on Providing Services by Electronic Means*). It means ISPs are not required to verify if the data comply with the law. However, in case of having been informed or having received a message on unlawful nature of data or activity related to it, it immediately makes the access of the data impossible (article 14 of the abovementioned Act). Letter from Maciej Pisarski, Charge d’affaires, Embassy of the Republic of Poland, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 29, 2012) (on file with the International Centre for Missing & Exploited Children).

¹⁰³ It can be inferred from Article 172 of the Portuguese Penal Law that the expression “by any means” allows a Prosecutor to view information and communication technologies as a means to commit the crime of circulating images, sounds, or movies clearly showing minors younger than 14 years old engaged in sexual acts. Letter from Pedro Catarino, Ambassador, Embassy of Portugal, Washington, D.C., to Ernie Allen, President and CEO, International Centre for Missing & Exploited Children (Feb. 22, 2006) (on file with the International Centre for Missing & Exploited Children).

¹⁰⁴ Article 292 of the Penal Code of Qatar refers to “producing, importing, exporting, possessing or transporting for the purposes of exploitation, distribution or sale of books, publications, or any other written materials, pictures, photographs, films, symbols, or **other items** which offend public decency or public morals” if a child under the age of 16 is exploited for those purposes. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Romania	✓	✓	✓	✓	✗ ¹⁰⁵
Russia	✓	✗	✓	✗	✗
Rwanda	✓	✗	✓ ¹⁰⁶	✗	✗
St. Kitts & Nevis	✓	✓	✓ ¹⁰⁷	✗	✗
St. Lucia	✗	✗	✗	✗	✗
St. Vincent & the Grenadines	✓	✓	✓	✓	✗
Samoa	✗	✗	✗	✗	✗
San Marino	✓	✓	✓	✗	✗
Sao Tome & Principe	✗	✗	✗	✗	✗

¹⁰⁵ There is no particular piece of legislation in Romania that requires ISPs to report suspected child pornography; however, there are several laws that require ISPs to report all suspected illegal activities to public authorities. Reports are given to the Ministry of Communications and Information Society, which can then decide what judicial steps need to be taken. Letter from Serban Brebenel, Third Secretary, Embassy of Romania, Washington, D.C., to Sandra Marchenko, Director, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Dec. 4, 2009) (on file with the International Centre for Missing & Exploited Children).

¹⁰⁶ Article 229 of N° 01/2012/OL of 02/05/2012 Organic Law instituting the Penal Code of Rwanda criminalizes “Any person who records a picture or the voice of a child or disseminates it **in any way** for pornographic purposes.” *Emphasis added.*

¹⁰⁷ Article 2 of the Trafficking in Persons Prevention Act of St. Kitts and Nevis criminalizes “the audio or visual depiction of sexually explicit conduct involving a child whether made or produced by electronic, mechanical **or other means....**” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Saudi Arabia	✓	✗	✓	✗	✗
Senegal	✓	✓	✓	✓	✗
Serbia	✓	✗	✓ ¹⁰⁸	✓	✗
Seychelles	✓	✗	✓	✓	✗
Sierra Leone	✓	✓	✓ ¹⁰⁹	✓	✗
Singapore	✓	✗	✓	✗	✗
Slovak Republic	✓	✓	✓ ¹¹⁰	✓	✗
Slovenia	✓	✗	✓ ¹¹¹	✓	✗
Solomon Islands	✗	✗	✗	✗	✗

¹⁰⁸ Article 111a of the Serbian Penal Code criminalizes making a “photograph, film, or **some other picture**” of a minor for the purpose of making an item of pornographic content. Additionally, Article 185 criminalizes using a minor for producing “pictures, audio-visual, or **other items** of pornography content.” *Emphasis added.*

¹⁰⁹ Section 1 of the Sexual Offences Act of Sierra Leone states that “child pornography” means – any photograph, film, video or **other visual representation** that shows a person who is or who is depicted as being under the age of 18 and is engaged in or is depicted as engaged in sexual activity.” It further criminalizes anyone who “makes, produces, distributes, transmits, prints or publishes child pornography.” *Emphasis added.*

¹¹⁰ Section 369 of Act No. 300/2005 Coll. Criminal Code of the Slovak Republic criminalizes “disseminat[ing], transport[ing], procur[ing], mak[ing] accessible or **otherwise put[ting] into distribution** child pornography.” *Emphasis added.*

¹¹¹ Article 187(2) of the Penal Code of Slovenia criminalizes the abuse of a minor “to produce pictures, audio-visual, or **other items** of a pornographic nature”; Article 187(3) criminalizes the actions of anyone who “produces, distributes, sells, imports, exports, ... or supplies [pornographic material depicting minors] **in any other way**, or who possesses such material with the intention of producing, distributing, selling, importing, exporting, or supplying it **in any other way.**” *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Somalia	✗	✗	✗	✗	✗
South Africa	✓	✓	✓	✓	✓
South Korea	✓	✓	✓	✓	✗ ¹¹²
South Sudan	✓	✗	✗	✗	✗
Spain	✓	✗	✓ ¹¹³	✓	✗
Sri Lanka	✓	✗	✗	✓	✓
Sudan	✓	✗	✗	✓	✗
Suriname	✓	✗	✓	✓	✗
Swaziland	✗	✗	✗	✗	✗

¹¹² Korean legislation does not require ISPs to report suspected child pornography to law enforcement or to some other mandated agency. Recently the Korean National Assembly, however, amended "The Act on the protection of children and juveniles from sexual abuse" and added some provisions that require ISPs to take measures in order to find the child pornography on its network. And these amendments also require ISPs to erase and delete the child pornography immediately after the ISP finds it. Moreover, the ISP has to set up technical measures in order to prevent and stop the transmission or dissemination the child pornography. Email from Yun Kyu Park, Counselor, Broadcasting & Telecommunications, Embassy of the Republic of Korea, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Aug. 30, 2012) (on file with the International Centre for Missing & Exploited Children).

¹¹³ Article 189(1)(a) of the Spanish Penal Code criminalizes using a minor "to prepare **any type** of pornography material"; Article 189(1)(b) criminalizes producing, selling, distributing, displaying, or facilitating the production, sale, dissemination, or exhibition, of "**any type**" of child pornography by "**any means**"; and Article 189(7) repeats the "**any type**" and "**any means**" language previously used. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Sweden	✓	✓ ¹¹⁴	✓ ¹¹⁵	✓	✗ ¹¹⁶
Switzerland	✓	✓	✓	✓	✗ ¹¹⁷
Syria	✗	✗	✗	✗	✗

¹¹⁴ The definition for child pornography is articulated in the Preparatory Work and is referred to and applied by the courts in practice.

In Chapter 16, Section 10a, of the Criminal Code there is a definition of the word *child*. There is no legal definition of *child pornography* in the legislation. Nevertheless, there are statements in the preparatory works to the effect that an image is to be regarded as pornographic when it, without any scientific or artistic values, depicts a sexual motif in an unconcealed and offensive way. Email from Magdalena Wikstrand Danelius, Legal Adviser, Division for Criminal Law, Ministry of Justice of Sweden, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Nov. 18, 2011) (on file with the International Centre for Missing & Exploited Children).

Government Bill 1997/98: 43 Freedom of the Press Ordinance and Speech Constitution scopes - pornography issue, etc. p. 56 “The image should, according to common use of language and general values, be pornographic in its content for it to be considered criminal in court....By pornographic, according to the statement of grounds in this section, the image under investigation should not have scientific or artistic value. The image is clearly intended to arouse a sexual reaction (Bill 1970:125 P. 79 f.). It is not required that the image depicts a child engaged in sexual conduct in order for it to be covered by the law. The criminal area, which regulates whether an image is considered to be pornographic, also includes images which in any other way portray one or several children in a way that is likely to appeal to an individual’s sex drive.”(translation)

¹¹⁵ Swedish criminal legislation is, in principle, formulated so that it will apply regardless of technical prerequisites. The criminalization of child pornography is no exception and, accordingly, Chapter 16, Section 10a, of the Swedish Penal Code extends to computer-facilitated offenses. Letter from Anette Nilsson, First Secretary, Embassy of Sweden, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Feb. 23, 2006) (on file with the International Centre for Missing & Exploited Children).

¹¹⁶ In 1998, Sweden enacted the Bulletin Board System (BBS) Liability Act (1998:112), which aims to prevent the spread of child pornography by obligating BBS providers to supervise BBS content. BBS providers are also obligated to remove or in some other way prevent the dissemination of messages with a criminal content, including those with child pornography. Letter from Anette Nilsson, First Secretary, Embassy of Sweden, Washington, D.C., to Jessica Sarra, Former Executive Director, International Centre for Missing & Exploited Children (Feb. 23, 2006) (on file with the International Centre for Missing & Exploited Children).

¹¹⁷ ISPs do not have a legal obligation to monitor and report suspected child pornography; however, Switzerland has created a special entity – the Cybercrime Coordination Unit Switzerland (CYCO) – where persons can report suspicious Internet subject matter. The Coordination Unit cooperates closely with ISP’s and may, on a case to case basis, ask them to take appropriate measures to block respectively delete certain content. CYCO also actively searches for criminal subject matter on the Internet and is responsible for in-depth analysis of cybercrime. It is possible for the public to report child pornography cases to CYCO. Today about 80% of ISPs in Switzerland have agreements with CYCO. Letter from Urs Ziswiler, Ambassador, Embassy of Switzerland, Washington, D.C., to Maura Harty, Former Senior Policy Director, International Centre for Missing & Exploited Children (Jan. 22, 2010) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Tajikistan	✗	✗	✗	✗	✗
Tanzania	✓	✗	✗	✗	✗
Thailand	✓	✗	✓	✗	✗
Timor Leste	✓	✓	✓ ¹¹⁸	✓	✗
Togo	✓	✓	✓ ¹¹⁹	✗	✗
Tonga	✓	✓	✓	✓	✗
Trinidad & Tobago	✓	✓	✓	✓	✗
Tunisia	✓	✗	✓ ¹²⁰	✗	✗
Turkey	✓	✗	✓	✓	✗

¹¹⁸ Article 176 (1) of the Penal Code of Timor Leste criminalizes “Any person who, for predominantly sexual purposes, uses, exposes or represents a minor aged less than 17 years performing any sexual activity, whether real or stimulated, **or by any other means**, exhibits the sexual activity or sexual organs of a minor. *Emphasis added.*”

¹¹⁹ Article 392 of the Law No. 2007-017 of 6 July 2007 constituting the Children’s Code of Togo states that “child pornography means, any representation, **by any means whatsoever**, of a child engaged in explicit sexual activities, real or simulated, or any representation of the sexual parts of a child, for primarily sexual purposes. *Emphasis added.*”

¹²⁰ Article 234 of the Tunisian Penal Code criminalizes, *inter alia*, the use of “**any** visual recordings or photographs” depicting pornographic images of children. *Emphasis added.*

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Turkmenistan	✗	✗	✗	✗	✗
Tuvalu	✗	✗	✗	✗	✗
Uganda	✓	✓	✓	✓	✗
Ukraine	✓	✓	✓	✗	✗
United Arab Emirates	✓	✓	✓	✓	✗
United Kingdom ¹²¹	✓	✓	✓	✓	✗ ¹²²
United States	✓	✓	✓	✓	✓

¹²¹ For the purposes of this report, the United Kingdom includes England and Wales.

¹²² The United Kingdom does not explicitly state that ISPs must report suspected child abuse images to law enforcement or to some mandated agency; however, ISPs may be held liable for third party content if it hosts or caches content on its servers and possession may possibly occur in the jurisdiction where the server is located. In the United Kingdom, possession is an offense and as such ISPs will report suspected child abuse material to law enforcement once they are aware of it. Letter from Nick Lewis, Counselor, Embassy of Great Britain, Washington, D.C., to Maura Harty, Former Senior Policy Director, International Centre for Missing & Exploited Children (Dec. 16, 2009) (on file with the International Centre for Missing & Exploited Children).

I can confirm that child pornography in the United Kingdom is covered by the Protection of Children Act 1978, which makes it illegal to take, make, distribute, show or possess an indecent photograph or pseudo-photograph of someone under the age of 18. In the context of digital media, saving an indecent image to a computer's hard drive is considered "making" the image, as it causes a copy to exist which did not exist before. This law is in force in England, Wales and Northern Ireland....The prohibition of content on the Internet, that is potentially illegal under this law by British internet service providers, is however self-regulatory, coordinate by the non-profit charity Internet Watch Foundation (who has partnerships with many major ISPs in the country). The IWF operates in informal partnership with the police, government, public and Internet service providers. Letter from James Eke, Foreign Policy and Security Group, British Embassy, Washington, D.C., to Eliza Harrell, Program Coordinator, The Koons Family Institute on International Law & Policy, International Centre for Missing & Exploited Children (Jul. 31, 2012) (on file with the International Centre for Missing & Exploited Children).

<u>Country</u>	<u>Legislation Specific to Child Pornography</u>	<u>“Child Pornography” Defined</u>	<u>Computer-Facilitated Offenses</u>	<u>Simple Possession</u>	<u>ISP Reporting</u>
Uruguay	✓	✓	✓ ¹²³	✗	✗
Uzbekistan	✗	✗	✗	✗	✗
Vanuatu	✓	✓	✓	✓	✗
Venezuela	✓	✓	✓	✗	✗
Vietnam	✓	✗	✗	✗	✗
Yemen	✗	✗	✗	✗	✗
Zambia	✓	✗	✗	✗	✗
Zimbabwe	✗	✗	✗	✗	✗

¹²³ Law 17.815 of the Oriental Republic of Uruguay criminalizes certain child pornography offenses regardless of how they are committed (*i.e.*, Article 1: “in any way makes or produces child pornography”; Article 2: “**in any way** facilitates the commercialization, diffusion, exhibition, storage, or acquisition of child pornography”). *Emphasis added.*

CONCLUSION

Over the past seven years, ICMEC's research regarding the status of child pornography legislation around the world has demonstrated that slow and steady progress is being made. Various international legal instruments are in place, which have helped raise awareness and attach new urgency to this cause. It remains clear, however, that more countries need to take action now if we are to secure a safer future for the world's children. While combating child pornography at home and abroad is a daunting task, harmonization of laws is essential in order to effectively address this growing, international phenomenon.



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