

**IF THIS IS THE GLOBAL COMMUNITY, WE
MUST BE ON THE BAD SIDE OF TOWN:
INTERNATIONAL POLICING OF CHILD
PORNOGRAPHY ON THE INTERNET**

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I. INTRODUCTION

This Comment discusses child pornography as it exists on the Internet and the global battle by nations against its proliferation. It addresses the development and mechanics of how child pornography began appearing on the Internet. The remainder of the Comment discusses various nations' and international organizations' attempts to stop or at least control child pornography through legislative and law enforcement policies. Other alternative solutions such as international registries of names are also considered. The theme throughout this Comment is what an incredibly arduous battle that is developing, when one takes into account that curtailing child pornography on the Internet involves the policing of citizens with widely differing domestic laws, cultures, and social mores on a worldwide scale.

In the summer of 1996, a U.S. federal grand jury indicted thirteen individuals from the United States, and three from Australia, Canada, and Finland were charged with orchestrating and participating in an on-line molestation of ten-year-old girls.¹ The defendants took part in real-time photo shoots where they typed messages requesting photos of the girls in certain poses, while one member shot photos with a digital camera and transmitted the photos back to the

1. See *Guilty Plea for Cyberporn Suspect*, UPI, Sept. 6, 1996, available in LEXIS, News Library, Upst94 File [hereinafter *Guilty*]; *Police Found Abuse Being Broadcast Live*, IRISH TIMES, Sept. 7, 1996, available in LEXIS, World Library, Txtlne File [hereinafter *Police*].

group.² The defendants were members of the “Orchid Club,” a private, on-line child pornography group that shared sexually explicit images and videos of girls as young as five.³ To be a member of the Orchid Club, members had to know the password to access photos and on-line chat sessions.⁴ Initiation to the club required a potential member to describe a personal sexual experience with a child.⁵

At any given time, there are, on average, around one million sexually explicit pictures of children on the Internet.⁶ In just one week in December of 1995, 5,651 messages about child pornography⁷ were posted on just 4 electronic bulletin boards.⁸ Included in these messages were over eight hundred graphic pictures of adults or teenagers engaged in sexual activity with children between eight and ten years of age.⁹

These statistics and the perverse meld of crime, technology, and subculture evidenced by the Orchid Club were hardly contemplated by the nations that ratified the United Nations 1989 Convention on the Rights of the Child (UNCRC).¹⁰ The UNCRC, which as of April 15, 1996, was

2. See *Police*, *supra* note 1. After the molestation, members “allegedly asked that the camera be aimed at the girl’s pubic area, and then inquired about traveling to Monterey, California to molest her themselves.” See *Guilty*, *supra* note 1.

3. See *Police*, *supra* note 1; see also *Guilty*, *supra* note 1.

4. See *Guilty*, *supra* note 1.

5. See *Police*, *supra* note 1.

6. See John Henley, *The Observer Campaign to Clean up the Internet: Hackers Called in as Cybercops to Drive Out Porn*, *OBSERVER*, Sept. 1, 1996, available in 1996 WL 12065705.

7. Child pornography is defined, in a behavioral context, as the “sexually explicit reproduction of a child’s image, voice, or handwriting—including sexually explicit photographs, negatives, slides, magazines, movies, videotapes, audiotapes, and handwritten notes. In essence, it is the permanent record of the sexual abuse of a child.” KENNETH V. LANNING, *NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS* 17 (1986).

8. See Henley, *supra* note 6.

9. See *id.*

10. Convention on the Rights of the Child, Nov. 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989), 28 I.L.M. 1448 [hereinafter UNCRC] (entered into force Sept. 2, 1990). The UNCRC was not sufficient to address violence against children via the Internet. Cf. Thomas Sancton, *Preying on the Young: All Over the World, Boys and Girls are Abused in a Vicious Sex Trade Now Abetted by Computer Network: What Can We Do to Fight the Scourge?*, *TIME*, Sept. 2, 1992, at 22. For a more detailed analysis of the UNCRC and related subsequent developments, see Margaret A. Healy, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?*, 18 *FORDHAM INT’L L.J.* 1852 (1995) (concluding that international law after passage of the UNCRC inadequately protects children from sexual exploitation).

ratified by 187 countries,¹¹ provides basic international guidelines for the protection of children from sexual exploitation via child pornography.¹² Cited by experts as a “watershed document,”¹³ Article 34 of the UNCRC provides:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse . . . [and] take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; [and] (c) The exploitative use of children in pornographic performances and materials.¹⁴

The UNCRC’s implementation mechanism states that the governments of all the nations who have ratified the UNCRC are obligated to take every measure possible, whether individually or in conjunction with other governments, to prevent child pornography within their borders.¹⁵ Thus, if these governments fail to enforce their own laws against child pornography, they are in violation of the UNCRC.¹⁶

The UNCRC is the first legally binding international agreement that protects children from sexual exploitation.¹⁷ It contains key provisions against all forms of sexual abuse and exploitation, and calls for various legal, administrative, and social measures to protect children.¹⁸ This Comment will show that the UNCRC’s effectiveness may be muted by its

11. See Muireann O’Brian, *World Congress Against Commercial Sexual Exploitation of Children: The International Legal Framework and Current National Legislative and Enforcement Responses* ¶ 1.5 (visited Nov. 5, 1997) <<http://193.135.156.14/webpub/csechome/2156.htm>>.

12. See generally Margaret Healy, *World Congress Against Commercial Sexual Exploitation of Children, Child Pornography: An International Perspective* ¶ 1 (visited Nov. 5, 1997) <<http://193.135.156.14/webpub/csechome/215e.htm>> (discussing uses of child pornography and its ramifications on victims, offenders, and potential offenders).

13. See Sancton, *supra* note 10.

14. UNCRC, *supra* note 10, art. 34.

15. See *id.* arts. 43–45.

16. See *id.*

17. See *Child Sexual Exploitation in Developing Countries*, 44 REV. INT’L COMM’N JURISTS 42 (1990). A number of international documents, such as the 1959 U.N. Declaration on the Rights of the Child, have dealt with the issue of sexual exploitation, but the Convention is the first to have actual legal effect in that it lays out terms to which signatories are technically obligated to abide. See *id.* at 47.

18. See *id.*

fragmented implementation, conflicting laws among the nations that have adopted it, and the onset of advanced computer technology which provides easy and inexpensive access to child pornography. The rapid evolution of technology in conjunction with a strong consumer market is making appropriate legislative answers to this trend increasingly difficult. The Internet is exceptional in that it has no land boundaries and no internal regulation. It is a worldwide service, and postings of information can be anonymous. As a result, law enforcement in the international community is unable to keep pace.¹⁹

Many nations have introduced legislation dealing with computer child pornography, as current laws do not address prohibited material found on the Internet.²⁰ The impetus for new legislation stems from public interest non-governmental organizations (NGOs) coupled with investigations and arrests involving the creation, distribution, and possession of child pornography on the Internet.²¹

In August 1996, 1,879 participants from 119 nations attended the World Congress Against Commercial Sexual Exploitation of Children in Stockholm, Sweden.²² The primary aim of the Congress was to announce an "Agenda for Action" to identify and address programs, legislation, and policies of different nations to combat the sexual exploitation of children.²³ The main items on the Agenda for the Congress were to address the exchange of child pornography on the Internet,²⁴ to ensure that the promises set forth by the nations who ratified the UNCRC are enforced, and to ensure that the UNCRC keeps pace with technology.²⁵

19. See O'Briain, *supra* note 11, pt. II, ¶ 1.2.

20. See *id.*

21. See *id.* pt. I.

22. See Vitit Muntarbhorn, *World Congress Against Commercial Sexual Exploitation of Children, Final Congress Report* (visited Nov. 5, 1997) <<http://193.135.156.14/webpub/csechome/22ca.htm>> [hereinafter Congress Report].

23. See *id.*

24. See Adrian Bridge, *The World Takes a First Step to Halt Abuse of Its Children*, INDEP. (London), Aug. 28, 1996, available in 1996 WL 10956523; see also Bernard Meixner, *126 Countries to Stockholm to Fight Sexual Exploitation of Children*, AGENCE FRANCE PRESSE, Aug. 26, 1996, available in 1996 WL 3912704.

25. See Muntarbhorn, *supra* note 22.

II. BACKGROUND

Traditionally, child pornography was produced and distributed in the form of photographs and magazines.²⁶ Photographs and film were usually commercially processed, thus employees in processing shops could provide tips to authorities about sexually explicit material involving children.²⁷ Distribution required the mail or the use of clandestine distribution networks.²⁸ With the development of home video technology in the mid-1980s, commercial film processing was no longer necessary.²⁹ Inexpensive camcorders allow pedophiles³⁰ to produce amateur child pornography videos in their own homes, with little risk of discovery by informants or authorities.³¹ Moreover, these videos can be produced almost anywhere. For example, inventive German marketers sell an amateur video depicting the mass rape of female children produced during the Bosnian war.³²

The 1990s saw the emergence of perhaps the most important exchange medium for child pornography—the Internet, with an estimated thirty million users.³³ The result has been an alarming expansion of the child pornography industry.³⁴ Child pornography was nearly stamped out as a cottage industry in the United States in the 1980s, but has

26. See ATT'Y GEN. COMM'N ON PORNOGRAPHY, FINAL REPORT (1986), *reprinted in* FINAL REPORT OF THE ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY 67 (1986) [hereinafter FINAL REPORT].

27. See *World Congress Against Commercial Sexual Exploitation of Children: Backgrounder 2: Child Pornography* (visited Nov. 5, 1997) <<http://193.135.156.14/webpub/csechome/2266.htm>> [hereinafter *Backgrounder*].

28. See FINAL REPORT, *supra* note 26.

29. See *Backgrounder*, *supra* note 27.

30. Pedophiles are the major producers, distributors, and consumers of child pornography. See *Child Pornography Prevention: Hearings before the Sen. Jud. Comm. on S. 1237, The Child Pornography Prevention Act of 1995*, June 4, 1996, (testimony of Jeffrey J. Dupilka, Postal Inspection Serv.), available in 1996 WL 293000 [hereinafter Dupilka]. Pedophilia is a psychiatric diagnosis, not a legal term. See LANNING, *supra* note 7, at 2. It generally means one having a sexual attraction toward prepubertal or pubertal children. See *id.* at 1.

31. See *Backgrounder*, *supra* note 27, at 2.

32. See Sancton, *supra* note 10. This video is the most expensive tape on the German market, priced at more than US\$8,000. See *id.*

33. See *Spotlight on World Paedophile Network*, TIMES, Aug. 21, 1996, at 10.

34. See Sancton, *supra* note 10. In addition, pedophiles use computers to carry on conversations with other pedophiles and children. See *id.* Law enforcement attempts to seize this data to identify other pedophiles. See *id.*

resurged in the 1990s due to unregulated news groups, chat rooms, and commercial on-line services.³⁵

III. HOW AND WHY CHILD PORNOGRAPHY IS ON THE INTERNET

According to the NGO Norwegian Save the Children, pedophiles use the Internet for three main applications:

[E]lectronic shops where customers [can] browse through a catalogue of pornographic images and download their choice by giving their credit card number; private paedophile networks where abusers swap stories, pictures and details on how to find children; and electronic "chat groups" where pornography can be exchanged more or less anonymously.³⁶

There are numerous reasons for the profusion of child pornography on the Internet and computer bulletin boards.

A. *Ease of Access, Production, and Distribution in a Global Market*

Child pornography is a global industry.³⁷ Most European child pornography originates in England.³⁸ Germany is also considered a major producer.³⁹ The Netherlands and the United Kingdom are distribution centers, and the United States is the largest consumer market.⁴⁰ As North American and European nations pass legislation to crack down on child pornography, South East Asia has taken over much of the production and distribution.⁴¹ Hungary and the Czech

35. See Mark Clayton, "Off-Line" Hazards Lie In Web's Links, Lures, CHRISTIAN SCI. MONITOR, Aug. 29, 1996, at 10.

36. Henley, *supra* note 6.

37. See, e.g., Pia Ohlin, *Technology Inflicts Added Trauma on Child Porn Victims: Experts*, AGENCE FRANCE PRESSE, Aug. 30, 1996, available in 1996 WL 3915365 (attributing the global proliferation of child pornography to low priced home video cameras and computer technology). Child pornography is distributed as part of a widespread network among countries with links between producers and consumers of pornography. See *id.*

38. See *European Child Porn Material Originating in England: Interpol*, AGENCE FRANCE PRESSE, Jan. 20, 1995, available in 1995 WL 7749241.

39. See *World Congress Against Commercial Sexual Exploitation of Children, Pornography* ¶ 4 (visited Nov. 5, 1997) <<http://193.135.156.14/webpub/csechome/2186.htm>> [hereinafter *Pornography*].

40. See *id.* The U.S. annual market for child pornography was one billion dollars in 1980. See *id.*

41. See *id.*

Republic represent new, emerging markets.⁴² Amsterdam and Manila are pedophile “hubs” for the circulation of child pornography worldwide.⁴³ The rapid advance of technology has opened new, global doors for the users, producers, and distributors of child pornography. As noted by the President of the Children’s Court in Bobigny, France: “Pedophiles exploit the Internet with no precautions, exchanging names and addresses in plain sight of everyone, taking advantage of an obvious legal void. Who is the proprietor of the Internet? Who is legally responsible?”⁴⁴

1. Access

If one has access to a computer and a modem, one has access to child pornography.⁴⁵ Before computers, consumers and distributors of child pornography had to actually know each other to trade or exchange material.⁴⁶ They had to be privy to underground networks that exchanged photographs or videos through the mail or in person or had to obtain foreign magazines that contained child pornography.⁴⁷ Contrast the 1970s and 1980s to a scene from 1995: a U.S. citizen is arrested for the possession of a picture of an underage girl having sex with an adult man, obtained by dialing in to the bulletin board BAMSE, originating out of Aalborg, Denmark.⁴⁸ Subscribers to bulletin boards, like the BAMSE bulletin board, are able to download Graphic Interchange Format (GIF) files through their computer modems, allowing them to view and print the files.⁴⁹

42. See Benedicte Manier, *Paedophiles Thrive Thanks to a Well-Organised Market*, AGENCE FRANCE PRESSE, Aug. 23, 1996, available in 1996 WL 3911721; see also Adrian Bridge, *Sex Trade Moguls Thrive by the Blue Danube*, INDEP., July 21, 1996, available in LEXIS, World Library, Txtlne File (explaining that Hungary produces more than 10% of Europe’s pornography).

43. See Douglas Thompson & James McKillop, *Evil Which Can Slip Through the Net*, HERALD (Glasgow), Aug. 20, 1996, at 13, available in LEXIS, World Library, Gherld File.

44. Sancton, *supra* note 10.

45. See HEALY, *supra* note 12, at 5.

46. See *Child Pornography Prevention: Hearings before the Sen. Jud. Comm. on S. 1237, The Child Pornography Prevention Act of 1995*, June 4, 1996, available in 1996 WL 292983 [hereinafter Di Gregory] (testimony of Kevin Di Gregory, Dept. of Justice).

47. See, e.g., FINAL REPORT, *supra* note 26, at 67.

48. See Paul Shukovsky, *Trial Opens in Imported Computer Porn Case*, SEATTLE POST-INTELLIGENCER, July 26, 1995, available in 1995 WL 4318785 (noting that BAMES, the Danish word for “teddy bear,” is a bulletin board depicting child pornography often involving adult men, women, and animals).

49. See *United States v. Kimbrough*, 69 F.3d 723, 726 (5th Cir. 1995) (Garza, J., concurring in part, dissenting in part).

U.S. law enforcement agencies have found bulletin boards carrying child pornography in the United States, Canada, Mexico, Sweden, Finland, Italy, Thailand, the Netherlands, and Japan.⁵⁰ These bulletin boards found on the Internet provide a “powerful, worldwide medium for the exchange of pornographic materials. . . . With the Internet, the pornography appears instantly: in 10 minutes you have all the photos you want.”⁵¹

2. *Production*

Photographic images from pictures or books can be input into a computer using scanners, devices that convert images into digital form that may be saved as files on a hard disk.⁵² A high quality “flatbed” scanner provides high resolution, high detail, quality images, and can scan large items such as books.⁵³ Handheld scanners, although possibly providing lesser quality, can be obtained for as little as US\$149.00.⁵⁴

Other means for inputting images into a computer include peripherals, such as a video-capture device that captures a still image from a television, a video camera, or a VCR, and the image is saved in a form that can be used in any document that can include graphics.⁵⁵ For live action, a compact digital video camera is available that records full color video and sound.⁵⁶ Most computers today are equipped with both microphones and speakers. This technology even further enhances the production and distribution of home videos.⁵⁷

3. *Distribution*

Computer technology has revolutionized the distribution methods of child pornography.⁵⁸ Material can now be

50. See Shukovsky, *supra* note 48.

51. Sancton, *supra* note 10 (quoting Jean-Pierre Rosenczveig, President of the Children’s Court in Bobigny, France).

52. See Jon Pepper, *Family Scanners Get the Picture*, FAMILYPC, Jan. 1996, at 104 (illustrating that once scanned, digital images can be loaded in common paint or desktop publishing programs).

53. See *id.* (noting that flatbed scanners, which resemble photocopiers, provide higher resolution and thus more detail).

54. See *id.* at 110.

55. See *id.* at 116.

56. See *id.*

57. See UN: *Governments Must Show Political Will to Eradicate Child Labour, Third Committee Is Told (PART 2)*, M2 Presswire, Nov. 13, 1996, available in 1996 WL 14653363.

58. See *id.*

exchanged on small floppy disks or by way of the Internet rather than through the mail or personal contact.⁵⁹ Further, unlike reproducing real photographs, the quality of the image, since it is in digital form, does not deteriorate. Images produced in the 1960s through the early 1980s are duplicated by computers and are distributed “to an audience, the size of which pedophiles could not have envisioned ten or twenty years ago.”⁶⁰ Further, the Internet provides the capability to “mass market child pornography with little or no overhead.”⁶¹ Along with a new, larger audience, mass marketing has created consumer demand for child pornography that did not exist prior to the advent of distribution on the Internet.⁶² In the true spirit of a global economy, the demand is being met by producers in the Pacific Rim, Mexico, and South America.⁶³

B. Anonymity

Pedophiles and child pornographers have traditionally used mail to traffic in material because of the anonymity it provides.⁶⁴ Yet the Internet allows even more anonymity. Neither licenses nor registration are required to establish bulletin boards that are used for the sole purpose of exchanging sexual interests in children, or for communicating by computer about those subjects.⁶⁵ Commercial on-line Internet service providers (ISP) use adults to monitor on-line discussions and to be on the lookout for sexually abusive situations, but newsgroups and chat groups with the prefix “alt” usually have no such regulation.⁶⁶ Users of bulletin boards and the Internet can reroute e-mail and graphic images through multiple nations

59. *Cf.* Dupilka, *supra* note 30 (noting that while computer technology has replaced much traditional correspondence, there is still heavy reliance on the postal system to distribute video tapes and computer disks).

60. Di Gregory, *supra* note 46.

61. *Id.*

62. *Cf.* Dupilka, *supra* note 30 (detailing the decline in availability of child pornography in the United States in the last decade, and the recent resurgence due to increasingly sophisticated technology and global communication).

63. *See* Di Gregory, *supra* note 46.

64. *See* Dupilka, *supra* note 30 (noting that within a “cloak of anonymity” a pedophile may amass great quantities of child pornography as well as validate their behavior with other pedophiles).

65. *See* Healy, *supra* note 12, at 7.

66. *See* Clayton, *supra* note 35 (clarifying that these monitors are looking for potential abusers, not potential victims). The “alt” designation indicates an alternative, unofficial newsgroup. *See* JOHN R. LEVINE & CAROL BAROUDI, *THE INTERNET FOR DUMMIES* 375 (2d ed. 1994).

so that the origination of the file is undetectable.⁶⁷ According to Don Huycke, Program Manager and Senior Special Agent, U.S. Customs Child Pornography Enforcement Program, “[T]he Internet is presenting huge enforcement problems because people can anonymously join news groups carrying pornography.”⁶⁸

Users and distributors can also use anonymous remailers.⁶⁹ The source address is removed from incoming messages, and the remailer’s address is assigned using an anonymous identification code number.⁷⁰ The message is then forwarded to its final destination.⁷¹ Replies to the anonymous messages are encoded in the same manner, and the responder is also anonymous.⁷² Finland contains most of the remailers used by pedophiles.⁷³

C. Limited Ability of Detection by Authorities Due to Encryption

Encryption techniques “vastly reduce the chances of detection.”⁷⁴ By using a mathematical function and a “key,” encryption transforms a message into another message.⁷⁵ Unauthorized users cannot access files or messages unless they have the key.⁷⁶ The two main types of encryption are “private key” and “public key” systems.⁷⁷ The same password encrypts and decrypts the message in a private key system.⁷⁸ Public key encryption uses a public key to encrypt a message and a private key to decrypt a message.⁷⁹ The public key is published and may be held in escrow.⁸⁰ Private encryption is

67. See Healy, *supra* note 12, at 6. For example, one could route a message from the United States, through other countries, and then back to the United States to avoid detection. See *id.*

68. Shukovsky, *supra* note 48.

69. See LEVINE & BAROUDI, *supra* note 66, at 200.

70. See Healy, *supra* note 12, at 6. However, use of these remailers may restrict access to directories allowing anonymous users. See LEVINE & BAROUDI, *supra* note 66, at 200.

71. See Healy, *supra* note 12, at 6.

72. See *id.*

73. See *id.*

74. Sancton, *supra* note 10.

75. See Simpson L. Garfinkel, *Data Encryption a Vital Step in Keeping Data Secrets Safe*, COMPUTERWORLD, Nov. 12, 1990, at 133.

76. See *id.*

77. See *id.* Another type of encryption, “secret key,” involves use of the same key by the sender and receiver. See Jackson Bond, *Encryption Basics*, COMPUTER SHOPPER, Nov. 1996, at C6.

78. See Garfinkel, *supra* note 75.

79. See *id.*; see also Bond, *supra* note 77.

80. See Bond, *supra* note 77.

the method child pornographers use to transmit pornographic images of minors over the Internet.⁸¹ Encryption techniques make the Internet a “popular conduit” for child pornography, as it greatly diminishes the chances of detection by law enforcement.⁸²

D. Further Ramifications of the Globalization of Child Pornography via the Internet

1. Creation of New Consumers of Child Pornography

The production and consumption of child pornography can only grow, not lessen, with the advent of today’s global technology. The Internet is creating a new population of producers and consumers, and this population represents individuals who may not be pedophiles, but are bored with the myriad of adult pornography found on the Internet and are interested in more grotesque material.⁸³ Further, while the profitability of child pornography may be lessened,⁸⁴ the increasing ease of access to child pornography “may be building an appetite among pedophiles that could lead to more children being molested and a wider market and profit for the child pornographer.”⁸⁵ In his June 1996 testimony before the U.S. Congress, the Deputy Assistant Attorney General of the Justice Department stated: “Additionally, the ability to mass market child pornography with little or no overhead to huge populations has created an environment where pressures for new material exist. This demand, unfortunately, is being met by new material from sources which include the Pacific Rim, Mexico, and South America.”⁸⁶

81. *Encryption Legislation, Hearings Before the Comm. on Commerce, Science, and Transp. Regarding Impact of Encryption on Law Enforcement and Pub. Safety*, 104th Cong. 9 (1996) (statement of Louis J. Freeh, Dir., FBI). Director Freeh advocates the production of public key escrow encryption products that would permit law enforcement to “protect the American public from the tyranny of crime and terrorism.” *Id.* at 14. Conventional encryption prevents law enforcement agencies from conducting searches and seizures of computers and files, and, consequently, from intercepting criminal communications. *See id.*

82. *See* Sancton, *supra* note 10.

83. *See* Healy, *supra* note 12, at 4.

84. Although some bulletin boards featuring child pornography charge access fees, most information found on the Internet is free. *See* Clayton, *supra* note 35.

85. *Id.*

86. Di Gregory, *supra* note 46.

2. Computer-Generated Child Pornography

An insidious technological development in child pornography is the creation of computer-generated, sexually explicit images of children. Computer-generated pornography, or “morphing,”⁸⁷ is banned in the United Kingdom,⁸⁸ Canada,⁸⁹ and with the recent passing of legislation, the United States.⁹⁰ While the legal and constitutional ramifications of this issue are beyond the scope of this Comment,⁹¹ computer-generated child

87. See *Child Pornography Prevention: Hearings before the Sen. Jud. Comm. on S. 1237, The Child Pornography Prevention Act of 1995*, June 4, 1996 (statement of Bruce Taylor, Pres. Nat'l Law Center for Children and Fams.), available in 1996 WL 305888.

Manipulated and computer generated imagery of children engaged in indecent acts involves a process known as “morphing.” The pornographer scans a photographic image of the head of a child into a computer. These images are pulled from magazines and store catalogs where young children are used as models for the advertising of many benign products. Then, an indecent image from an adult magazine is scanned into the same computer. The graphics software of the computer allows a pornographer to combine the two images placing the innocent image of the child’s face and head on to the pornographic picture of the adult body. The software is sophisticated and allows the operator to remove pubic hair, shrink the size of genitals, breasts and/or other body parts, adjust skin tones, and otherwise manipulate the images to create a very convincing piece of child pornography.

Id.

88. Criminal Justice Act, 1988, ch. 33, § 160, *as amended by* Criminal Justice and Public Order Act, 1994, ch. 33, § 84. The Protection of Children Act, 1978, ch. 37, § 7, *as amended by* Criminal Justice and Public Order Act, 1994, ch. 33, § 84(3)(c) defines a “pseudo-photograph” as “an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.”

89. Section 163.1(2) of the Criminal Code of Canada makes every person guilty of an offense who makes, prints, publishes, or possesses for the purpose of publication any child pornography. See Criminal Code, R.S.C., ch. 46 (1993), § 163.1(1) (Can.). Section 163.1(1) defines child pornography as:

- (a) a photographic film, video or other visual representation, whether or not it was made by electronic or mechanical means,
 - (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaging in explicit sexual activity, or
 - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years. . . .

R.S.C. ch. 46, § 163.1.

90. See *infra* notes 136–58 (discussing the effects of recent legislative amendments on the regulation of child pornography in the United States).

91. For a discussion of the constitutionality of laws prohibiting computer-generated child pornography created without the use of an actual child, see

pornography represents a great challenge to international efforts to stop the sexual exploitation of children.

IV. HOW THE INTERNATIONAL COMMUNITY IS RESPONDING TO THE ENFORCEMENT CHALLENGES PRESENTED BY THE INTERNET

A. *Legislative Responses of Canada, the United Kingdom, Sweden, Singapore, Germany, the United States, and Australia*

While many nations have laws prohibiting either the possession, distribution, or exchange of child pornography, only a handful have gone on the counter-offensive against child pornography on the Internet.

1. *Canada*

Canada has the dubious distinction of being the home to possibly one of the largest seizures of computer files of child pornography in North America.⁹² This seizure may justify a criticized 1993 amendment to Canada's criminal code that provides for the creation of a set of child pornography offenses separate from the existing obscenity defenses.⁹³ It covers any visual depictions of persons under the age of eighteen involved in explicit sexual acts, the depiction of a "sexual organ" or "anal region" of a person under eighteen, or any written or visual presentation that "advocates or counsels" sexual activity with a person under the age of eighteen.⁹⁴ This legislation marks a distinction from prior

David B. Johnson, *Why the Possession of Computer-Generated Child Pornography Can Be Constitutionally Prohibited*, 4 ALB. L.J. SCI. & TECH. 311 (1994) (discussing the technology behind computer-generated child pornography, and concluding that laws limiting possession of such images would be constitutional under the First Amendment).

92. See Sandy McLean, *Ontario Police Seize Child Porn Files*, UPI, Nov. 4, 1996, available in LEXIS, World Library, UPI File. Ontario police seized over 20,000 computer child pornography files on October 3, 1996, and arrested and charged Trevor Davis in connection with their possession, importation, and distribution. See *id.* The files were believed to be linked to a child pornography ring in San Jose, California. See *id.*

93. See ch. 46, 1993 S.C., formerly Act C-128, 3d Sess., 34th Parl. 1991-92-93. This amendment was criticized due to the speed with which it was passed, as no time was allotted for public commentary or discussion, and also on the grounds that it was too broad and too vague. See Brian R. Blugerman, *Beyond Obscenity: Canada's New Child Pornography Law*, 11 ENT. & SPORTS LAW. 3, 5 (1994).

94. See Criminal Code, R.S.C., ch. 46 (1993), § 163.1(1) (Can.). This amendment was criticized because no time was allotted for public commentary or discussion, and because it was considered overbroad and vague in light of

Canadian law, where only distribution was illegal.⁹⁵ As a result of the Criminal Code amendment, the production, printing, publishing, distribution, circulation, or possession of child pornography is illegal.⁹⁶

Because ninety percent of Canada's child pornography is imported, Canadian Customs controls much of the child pornography viewed by Canadians.⁹⁷ So perhaps a law that prohibited only distribution was perceived as ineffective in the campaign against child pornography within Canada's borders.

2. *The United Kingdom*

The United Kingdom has amended current law and adapted existing legislation to address child pornography on the Internet. The 1978 Protection of Children Act was amended by the Criminal Justice and Public Order Act of 1994 to make it an offense for someone to be in possession of an "indecent photograph" of a child, which includes "data stored on a computer disc or by other electronic means which is capable of conversion into a photograph."⁹⁸ The 1994 law also criminalized "pseudo-photographs," defined as an "image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph."⁹⁹ This portion of the amendment was the result of instances where children's heads were put onto pornographic images of adult bodies, leaving officials unable to prosecute because the images were not photographs as defined under the prior act.¹⁰⁰ In April of 1996, The Sexual Offences (Conspiracy and Incitement) Act of 1996 (Conspiracy and Incitement Act) made putting child pornography on the Internet punishable

existing provisions in the Criminal Code regulating obscenity. *See also* Blugerman, *supra* note 93, at 5. Many believed that the broad language would have a "chilling effect" on non-prohibited expression. *See id.*

95. *See* Criminal Code, R.S.C., ch. 46, § 163.1(1).

96. *See id.* § 163.1.

97. *See* Valerie Forney, *See No Evil: Canadian Law Professor Kathy Mahoney's War Against Pornography*, CHATELAINE, June 1996, available in LEXIS, News Library, Asapii File; *see also* Blugerman, *supra* note 93, at 4.

98. Protection of Children Act, ch. 37, (1978), § 7(4), *substituted by* Criminal Justice and Public Order Act, ch. 33, (1994), § 84(3)(b).

99. *Id.* § 7(7).

100. *See* Protection of Children Act, ch.37, (1978), § 7(2) (defining an indecent photograph as including "an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film); *see also* Yaman Akdeniz, *Regulation of Child Pornography on the Internet* (visited Nov. 5, 1997) <<http://www.leeds.ac.uk/law/pgs/yaman/child.htm>>.

in the United Kingdom.¹⁰¹ It also bans any incitement of underage sex made via the Internet or other forms of electronic communication deemed to take place in the United Kingdom.¹⁰²

United Kingdom legislation has been successful, as recent cases show.¹⁰³ The most striking example is a three-year prison sentence handed down for the use of a computer network to distribute child pornography.¹⁰⁴ The criminal appellate court upheld the ruling of the trial judge, who commented that the sentence could have incited sexual abuse of the innocent and that the sentence would deter others.¹⁰⁵ This was the longest sentence ever given a perpetrator for inciting acts of sexual abuse of children on the Internet.¹⁰⁶ The trial judge held that images stored on a computer disk were photographs and thus punishable under the 1978 Protection of Children Act.¹⁰⁷ The defendant's counsel tried to remove this type of Internet-related activity from the scope of the law on the grounds that an image stored on a hard disk could not be classified as a "photograph," and thus could not be covered by current legislation.¹⁰⁸ The trial judges rejected this position and established a United Kingdom precedent that a pornographic computer image was, by law, equivalent to a photograph.¹⁰⁹ The Lord Justices on the Court of Appeal concurred, stating that the disk "contain[ed] data, not visible to the eye, which [could] be converted . . . into a print which exactly reproduce[d] the original photograph from which it was

101. See *UK: MPs Approve Internet Sex Offenders Bill*, REUTER TEXTLINE COMPUTING, Apr. 25, 1996, available in LEXIS, World Library, Txtline File [hereinafter *MPs Approve*].

102. See Akdeniz, *supra* note 100; see also *MPs Approve*, *supra* note 101. However, while child pornography on the Internet is now punishable, this does not eliminate the difficulty of enforcement. See *id.*

103. See, e.g., *R. v. Fellows*, 2 All E.R. 548 (1997). In *Fellows*, convictions were upheld for the possession and distribution of indecent photographs of a child. See *id.* at 548–49. The photographs in question were distributed on the Internet and stored and displayed on a computer. See *id.* at 550; see also Akdeniz, *supra* note 100 (discussing various cases prosecuted under United Kingdom legislation).

104. See *Fellows*, 2 All E.R. at 549.

105. See *id.* at 559; see also Akdeniz, *supra* note 100. Arnold was jailed for six months for supplying Fellows with child pornography. See *id.*

106. See Akdeniz, *supra* note 100.

107. See *Fellows*, 2 All E.R. at 557.

108. See *id.* at 548; see also *Sex, Lies, and Cyberspace*, NEW MEDIA AGE, Aug. 1, 1996, available in LEXIS, World Library, Curnws File.

109. See Akdeniz, *supra* note 100.

derived.”¹¹⁰ The Court found no restriction on the form of a “copy of an indecent photograph” with the 1978 Act and the data represented the original photograph, in another form.¹¹¹

3. Sweden

In 1994 the Swedish government instituted the Information Technology Committee (ITC).¹¹² The ITC proposed legislation that would require the provider of a database, such as bulletin board systems or the Internet, to remove material that is illegal under Swedish law.¹¹³ However, the effect of enforcing this proposal on the distribution of child pornography is questionable. Ironically, the nation that hosted the first World Congress Against Commercial Sexual Exploitation of Children has no law prohibiting the possession of child pornography in any form.¹¹⁴

The Swedish Parliament, in 1994, considered an amendment to the Swedish constitution that would make the possession of child pornography illegal.¹¹⁵ A parliamentary constitutional committee, established to study changes to the constitution, voted against passage of the bill.¹¹⁶ The ITC was to submit a report to Parliament in June of 1996, but delayed the report until late 1996.¹¹⁷ The delay was attributable to debate whether a ban on child pornography presents any

110. *Fellows*, 2 All E.R. at 557. The court was faced with whether statutory law should be expanded to address unanticipated developments in technology when the law was enacted. *See id.* The court found that the definition in section 7(5), “any form of video recording,” did not limit the definition of photograph under section 7(2) of the Child Protection Act of 1978. *Id.*

111. *Id.*

112. *See Ministry of Justice, Electronic Documents in Administrative Procedures, Business Life and Bulletin Board Systems, Summary of Report by IT-Committee*, March 1996, reprinted in *A Swedish Proposal for a Law About Computer-Mediated Communication* (visited Nov. 5, 1997) <<http://www.dsv.su.se/~jpalme/SOU-1996-40-eng.html>> (noting problems with enforcement of child pornography on the Internet and suggesting the practical solution of software packages designed to regulate the Internet).

113. *See id.*

114. *See Abigail Schmelz, Child Porn Still Problem in Sweden, Experts Say*, REUTERS WORLD SERV., Jan. 7, 1996. The legality of the possession of child pornography is a result of a constitutional law protecting free speech. *See id.* This protection of child pornography may indirectly encourage pedophiles. *See id.*

115. *See Justice Minister Calls for Ban on Possession of Child Pornography*, AGENCE FRANCE PRESSE, Aug. 17, 1996, available in 1996 WL 3908291 [hereinafter *Justice Minister*].

116. *See id.*

117. *See id.*

infringement upon the Swedish constitutional clauses that guarantee freedom of expression and freedom of the press.¹¹⁸

Pressure on Swedish lawmakers to agree to a constitutional amendment banning child pornography has been applied from all fronts from the Queen of Sweden¹¹⁹ to the Swedish Justice Minister,¹²⁰ to reports released to the Swedish press stating that pornography seized by police that had been produced in Sweden in the last four to five years featured ten Swedish children.¹²¹ The Parliament has been criticized as being “out of step with the rest of the western world”¹²² and being “weak in the face of the controversial issue” of the proposed amendment to ban the possession of child pornography.¹²³

4. Singapore

Singapore has no law that prohibits owning pornography for personal consumption unless it is in the form of a film, a publication banned by the government, or there is intent to distribute or exhibit it.¹²⁴ Yet a 1996 arrest of a Singapore man indicates that Singapore law is very effective in the fight against child pornography.¹²⁵ He downloaded seventy-six live action child pornography videos from the Internet, each about thirty seconds to two minutes in length; but as each

118. *See id.*

119. Calling for immediate implementation of new legislation banning possession of child pornography, Queen Sylvia of Sweden commented on behalf of the “defenseless” victims of child pornography after watching films seized by Swedish police: “They are the worst I’ve ever seen. It is torture of the worst kind. . . . I wonder if it is not the MP’s duty to see these films. I appeal to them to do so.” *Queen Sylvia Criticizes MPs in Fight Against Child Pornography*, AGENCE FRANCE PRESSE, July 23, 1996, available in 1996 WL 3892799.

120. *See Justice Minister, supra* note 115.

121. *See* Belinda Goldsmith, *Swedish Porn Raid Renews Calls for New Law*, REUTERS WORLD SERV., Aug. 12, 1992, available in LEXIS, World Library, Txtline File.

122. *Id.*

123. *Justice Minister, supra* note 115.

124. *See* Ng Chern Ann, *Net Paedophilia an Issue to be Addressed*, STRAITS TIMES (Singapore), Sept. 28, 1996, available in LEXIS, Asiapc Library, Strait File (discussing the operation of Singapore Penal Code section 292(a) and certain materials prohibited thereunder). Banned publications include Penthouse, Playboy, and Salmon Rushdie’s *Satanic Verses*. *See id.*

125. *See id.* Lai Cheo Chuen was convicted for the possession of obscene films and a banned publication. *See id.* While Singapore’s law would not punish one in possession of a large collection of obscure pornography, possession of one banned publication would result in a conviction under section 292(a). *See id.*

image is considered a "film" under Singapore law, he was charged with seventy-six counts of possession.¹²⁶

In Singapore all local ISPs must route their traffic through one of three official government computers called proxy servers.¹²⁷ These computers block all access to government-banned sites and screen all requests by users.¹²⁸ In enforcing government bans on sites, authorities focus on content compromising morals, political stability, and religious concerns.¹²⁹ The effectiveness of the system is limited, however, as one only has to dial a server outside of Singapore to escape government oversight.¹³⁰

5. Germany

Germany is attacking child pornography on two fronts. A German Internet Content Task Force (ICTF) is under consideration that would have the power to block access to prohibited material or prevent entire newsgroups from German access.¹³¹ It would also lend technical support to German law enforcement agencies.¹³²

The Child Commission of the German Bundestag¹³³ has proposed legislation that addresses the distribution of child pornography on the Internet.¹³⁴ The Commission's goals are to promote rapid coordination of international law, regulate the mandatory storage of ISP for criminal prosecution purposes, and amend section 184 of the German criminal code to make computer-generated child pornography a criminal offense.¹³⁵

126. *See id.*

127. *See* Michael Richardson, *Singapore Seeks to Assure Users on Internet Curbs*, INT'L HERALD TRIB., Oct. 14, 1996, available in LEXIS, Europe Library, IHT File.

128. *See id.*

129. *See id.*

130. *See id.*

131. *See* Sylvia Dennis, *German Cyberspace Legislation Due This Year*, NEWSBYTES, June 25, 1996, available in LEXIS, News Library, Asapii File.

132. *See id.*

133. The German Bundestag is the lower house of the parliament of Germany. *See* POLITICAL HANDBOOK OF THE WORLD 201 (Arthur S. Banks & William Overstreet eds., 53rd. ed., McGraw-Hill Book Co. 1981) (1927). It passes all legislation and ratifies treaties. *See id.*

134. *See* Frankfurter Allgemeine Zeitung, *Fight Against Child Pornography* (visited Nov. 5, 1997) <http://www.uni-konstanz.de/~dierk/censorship/News/kp_130296.html>.

135. *See id.*

6. *The United States*

The United States has been the bellwether for other nations regarding child pornography legislation. In 1977 the U.S. Congress enacted the Protection of Children Against Sexual Exploitation Act that categorically prohibited the production of any “sexually explicit” material using a child under age sixteen, if such material is destined for, or has already traveled in interstate commerce.¹³⁶ But the emphasis on this law was on the commercial exchange of child pornography; the bartering or giving away of material was not prohibited, even if sent through the U.S. mail.¹³⁷ The Child Protection Act of 1984 added teeth to the 1977 Act by eliminating the commercial transaction requirement¹³⁸ and changing the definition of a minor from a person under age sixteen to eighteen.¹³⁹ As clarified in the Supreme Court decision in *New York v. Ferber*,¹⁴⁰ the Act of 1984 also eliminated the obscenity test put forth by the U.S. Supreme Court under *Miller v. California*.¹⁴¹

In November of 1986 Congress enacted the Child Sexual Abuse and Pornography Act of 1986 and amended the two

136. Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, § 2252(a), 92 Stat. 7, 7-8 (1980) (current version at 18 U.S.C. § 2252 (1994)).

137. See FINAL REPORT, *supra* note 26, at 133.

138. See Child Protection Act of 1984, Pub. L. No. 98-292, § 4, 98 Stat. 204, 204-05 (1986) (current version at 18 U.S.C. § 2252 (1994)).

139. See *id.*, § 4, 98 Stat. at 204-05.

140. *New York v. Ferber*, 458 U.S. 747 (1982).

141. *Miller v. California*, 413 U.S. 15, 24 (1973). In *Miller*, the Court held that pornography, deemed obscene via application of contemporary community standards, does not enjoy First Amendment protection. See *id.* at 36. The *Miller* Court set forth the following test for determining obscenity:

The basic guidelines for the trier of fact must be: (a) whether “the average person applying contemporary community standards” would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Id. at 24 (citations omitted). In *Ferber*, the Court found that the prevention of the exploitation and abuse of children is a compelling government objective, the distribution of child pornography is intrinsically related to the sexual abuse of children, the advertising and selling of child pornography encourages illegal activities, the value of child pornography is minimal, and that it is consistent with prior precedent to allow a category of speech to remain unprotected by the First Amendment. See *Ferber*, 458 U.S. at 755-65. To summarize, the Court found that the *Miller* obscenity standard did not apply to child pornography because child pornography is per se obscene. See *id.*

previous acts by, among other provisions, banning the production and use of advertisements for child pornography.¹⁴²

As a result of a recommendation from the Attorney General's Commission on Pornography,¹⁴³ Congress enacted the Child Protection and Obscenity Enforcement Act of 1988.¹⁴⁴ This Act makes it unlawful to use a computer to transmit advertisements for, or visual depictions of, child pornography.¹⁴⁵ However, this amendment had an inherent weakness: It could not keep up with the pace of computer technology.¹⁴⁶

On September 30, 1996 the Child Pornography Prevention Act was signed into law by President Clinton.¹⁴⁷ This Act defines for the first time a federal statutory definition of child pornography.¹⁴⁸ The Act is significant in

142. Child Sexual Abuse and Pornography Act of 1986, Pub. L. No. 99-628, § 2, 100 Stat. 3510, 3510-11 (1989) (current version at 18 U.S.C. § 2251(c) (1994)).

143. See John C. Scheller, *PC Peep Show: Computers, Privacy and Child Pornography*, 27 J. MARSHALL L. REV. 989, 1008 (1994).

144. Child Protection and Obscenity Enforcement Act of 1988, Pub. L. No. 100-690, §§ 7511-13, 102 Stat. 4485, 4485-87 (1990) (current version at 18 U.S.C. §§ 2251(c), 2252(a), 2256, 2251A (1994)).

145. See 18 U.S.C. § 2252(a)(1)-(2).

146. Weaknesses in this amendment include limiting language that did not effectively regulate the actual transmission of child pornography via computer. See Scheller, *supra* note 143, at 1009-10. It did not prohibit the establishment of a Bulletin Board Service (BBS) for the purpose of exchanging child pornography, and it did not eliminate the probable cause requirement for law enforcement officials for the interception of BBS transmissions. See *id.* at 1010.

147. See *U.S. Anti-Child Porn Law Under Fire*, TORONTO STAR, Jan. 29, 1997, available in 1997 WL 3818836.

148. See Child Pornography Prevention Act of 1996, Pub. L. No. 104-208 1996 U.S.C.A.N. (110 Stat.) 26, 28 (to be codified at 18 U.S.C. § 2256) defines "child pornography" as:

any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where—

- (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
- (B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;
- (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or
- (D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct. . . .

that it defines “computer” or “computer-generated image[s] or picture[s]” of minors engaged in sexually explicit conduct as child pornography.¹⁴⁹ It also sets mandatory prison sentences at up to thirty years for the receipt, distribution, or reproduction through interstate commerce or the mails of child pornography.¹⁵⁰ It does not, however, “propose new or expanded restrictions or regulations regarding the Internet.”¹⁵¹

7. *Australia*

In Australia, State and Territory laws are inconsistent in their treatment of child pornography.¹⁵² In response to this inconsistency, and to criticism of the weaknesses of current anti-pornography laws,¹⁵³ the Attorney General has proposed a national legislative scheme that bans the possession of child pornography—the Crimes (Child Pornography) Amendment Bill.¹⁵⁴ As a message to “people who are using the information superhighway to get out this deeply offensive material,” the new legislation includes computer images found on the Internet.¹⁵⁵

Australia is on the attack in other fronts as well. In 1995 an Australian parliamentary committee found no evidence of commercial production of child pornography in Australia.¹⁵⁶ Still, in response to the knowledge that pedophiles often use computer networks to communicate with each other, the committee recommended that the Australian government

149. *Id.*

150. *See id.* § 2252A(b)(1).

151. *Child Pornography Prevention: Hearings before the Sen. Jud. Comm. on S. 1237, The Child Pornography Prevention Act of 1995*, June 4, 1996 (statement of Sen. Orrin Hatch, Chairman, Sen. Jud. Comm). Presumably, Senator Hatch was referring to the Communications Decency Act of 1996, the purpose of which was to restrict access by minors to “patently offensive [material] as measured by contemporary community standards” via an “interactive computer service.” 47 U.S.C.A. § 223(d) (West Supp. 1997). Portions of the Communications Decency Act were held to be unconstitutional in *Reno v. ACLU*, 117 S. Ct. 2329, 2351 (1997).

152. *See Healy, supra* note 12, at 13–14.

153. The NSW Crimes Act and the Indecent Articles and Classified Publications Act require proof that child pornography has been published before one can be charged with a crime. *See Michael Sharp, Carr Moves to Ban Child Pornography*, SYDNEY MORNING HERALD, May 22, 1995, available in LEXIS, World Library, Txtlne File.

154. *See id.*

155. *Id.*

156. *See Australia: Australian Inquiry Urges Tough Action on Child Sex*, REUTER NEWS SERV., Nov. 20, 1995, available in LEXIS, World Library, Txtlne File [hereinafter *Australia*].

establish a hot line on the Internet to report instances of child pornography found on computers.¹⁵⁷

B. Other International Cooperative Responses

While individual nations who find child pornography a danger to their citizens attempt to battle it within their borders, certain international organizations and commercial enterprises have recognized a need for the pooling and integration of each nation's resources. To this end, international law enforcement and human rights organizations, along with commercial enterprises, have started to wage the war on child pornography on larger, more comprehensive fronts. Because of a rising public concern over various child sex abuses, many countries have constricted their criminal codes to avert pedophile-related crimes.¹⁵⁸ Local police forces work to enforce their country's laws as well as cooperate internationally with nongovernmental groups and international law enforcement agencies to pool and integrate resources to more actively wage war on child pornography.¹⁵⁹

1. Interpol

Interpol¹⁶⁰ has played an active role in the battle against all forms of sexual exploitation of children.¹⁶¹ It has been active in promoting the detection and conviction of criminals.¹⁶² In 1992 Interpol established the "standing working party" on offenses against minors.¹⁶³ This group includes thirty countries, and its primary purpose is to aid the investigation of child sex crimes through the exchange of expertise and information among members and to increase international cooperation in such efforts.¹⁶⁴ It has called on

157. *See id.*

158. *See, e.g., supra* notes 131-51 and accompanying text (discussing recent changes to German and U.S. legislation addressing child pornography on the Internet).

159. *See* Cameron W. Barr, *World's Police Share Tips in New Assault on Sex Trade*, CHRISTIAN SCI. MONITOR, Sept. 6, 1996, at 10.

160. *Interpol* is an acronym for the International Criminal Police Organization. *See* Neil King, Jr., *As Criminals Increasingly Go Global Interpol Believes It Has a Role to Play*, WALL ST. J., Sept. 2, 1997. It is a worldwide clearinghouse for police information serving 177 member nations. *See id.*

161. *See Children Fight Losing Battle Against Sex Abuse in Eastern Europe*, AGENCE FRANCE PRESSE, May 13, 1997, available in 1997 WL 2113867.

162. *See* King, *supra* note 160.

163. *See* Barr, *supra* note 159.

164. *See id.*

various countries to criminalize the possession of child pornography.¹⁶⁵

While the Internet provides substantial anonymity for pedophiles, law enforcement groups such as Interpol have found that coordinated efforts such as networking have allowed some progress towards targeting offenders.¹⁶⁶ For example, in 1996 a Singapore man was fined for possession of computer child pornography that he had downloaded from the Internet.¹⁶⁷ His arrest is attributable to Interpol's investigation of a child pornography distribution ring on the Internet that had sites in Pretoria, Hong Kong, London, and Germany.¹⁶⁸ After receiving information from Interpol that this man was involved in the distribution ring, Singapore police obtained the man's identity from his ISP and monitored his Internet connections prior to his arrest.¹⁶⁹ The monitoring of Internet connections is possible because each time a user logs on to the Internet, the user is tagged with a number, called an IP address, that is recorded every time the user visits a site.¹⁷⁰

2. *Self-Censorship by Commercial Providers of the Internet*

The only intervention point for law enforcement is through ISP's who can refuse to sell space to anyone they know is providing child sex materials.¹⁷¹ Yet one only need enter the word "censorship" when conducting an Internet search to learn that government regulation of the Internet is a hotly debated issue.¹⁷² What lawmaker in any nation wants to be the first to sponsor government censorship of the free flow of ideas and information that the Internet provides? Thus, nations have used a myriad of approaches to persuade ISPs to regulate themselves on a "voluntary" basis.

165. See Andy Pollak, *State Urged to Act to Curb Child Sex Abuse*, IRISH TIMES, Sept. 27, 1996, available in LEXIS, World Library, Txtlne File.

166. See Barr, *supra* note 159.

167. See Ann, *supra* note 124.

168. See Adeline Goh & Alison de Souza, *Interpol Tip-off and How They Homed In on Him*, STRAITS TIMES (Singapore), Sept. 26, 1996, available in LEXIS, Asiapc Library, Strait File.

169. See *id.*

170. See *id.*

171. See *Prodigy Blocks Child Porn*, INFO. & INTERACTIVE SERVS. REP., Aug. 1, 1997, available in 1997 WL 10454172 (stating that Prodigy Inc. has refused to provide server access to newsgroups believed to distribute child porn).

172. On January 27, 1997 the author entered the word "censorship" at the Internet site www.infoseek.com. The search resulted in 54,289 hits.

In Great Britain, Scotland Yard has taken a very proactive stance in promoting a form of voluntary censorship of ISPs.¹⁷³ The agency listed 133 newsgroups containing offensive articles, information, and graphics and told the ISPs that by allowing these pages to be published, they could be held legally responsible.¹⁷⁴ The ISPs were notified by letter of the specific newsgroups to be removed.¹⁷⁵ Titles of newsgroups that were to be eliminated included "alt.binaries.erotic.children" and "alt.sex.paedophilia.girls."¹⁷⁶

In Germany, Bavarian police conducted an investigation of newsgroups concerning violations of German child pornography laws.¹⁷⁷ After pressure from German prosecutors, CompuServe temporarily blocked user access to at least two hundred sex related newsgroups.¹⁷⁸ The ban ended in February 1996, but five newsgroups that contained child pornography remain blocked.¹⁷⁹ CompuServe subsequently adopted an individual control system by providing its subscribers with software that could be employed to selectively block any material the user might find offensive.¹⁸⁰

In June 1996 the German legislature proposed regulations that free ISPs from responsibility to proactively police their systems for material illegal in Germany, such as child pornography or neo-Nazi propaganda.¹⁸¹ Criminal liability will only arise if the ISPs were aware of the material

173. See Robert Uhlig, "Safety Net" on Internet Will Catch Child Porn, DAILY TELEGRAPH (London), Sept. 23, 1996, available in 1996 WL 3980233.

174. See John Minson, *No Time For a New Law. Current Obscenity Laws Are No Way to Control the Net. Or Are They?* John Minson Joined Heated Debate This Week on Censorship Online, GUARDIAN, Sept. 12, 1996, available in 1996 WL 4043542.

175. See *id.*

176. See Nick Fielding, *Internet Porn Pedlars Caught in Police Web; "Probe These Sick Videos,"* MAIL ON SUNDAY (London), Aug. 25, 1996, available in LEXIS, News Library, Ttxtnws File.

177. See James Langton, *German Court Ruling Chills Internet Sex: Providers May Be Held Responsible for Content,* OTTOWA CITIZEN, Apr. 20, 1997, available in 1997 WL 4247348.

178. See Peter H. Lewis, *CompuServe to End Ban on Internet Sex Materials,* 8 COMPUTER UNDERGROUND DIG. 4, 16, Feb. 14, 1996 <<http://www.filelibrary.com:8080/cgi-bin/registered/download/Multi-Platform/q/43/cud828.zip>> (offering a compressed file containing the article).

179. See *id.*

180. See *id.*

181. See Dennis, *supra* note 131.

but did not block access or shut down these newsgroups.¹⁸² The German government appears to have taken a “hands off” position, allowing ISPs to regulate services on their own.¹⁸³

Instead of asking ISPs to censor or regulate themselves, some nations have set up “hot lines” where users report the sending of child pornography over the Internet to an ISP.¹⁸⁴ The sender is then warned that if such material is transmitted again he or she will be reported to the police.¹⁸⁵ In Holland “it has practically eradicated porn over the Internet.”¹⁸⁶ Belgium has recently set up a reporting system, and one is under consideration in the United Kingdom.¹⁸⁷

The hot line system has been criticized, however, for being essentially ineffective if it is not implemented internationally.¹⁸⁸ As one observer noted, “Until there’s a global standard enforced by the police and backed by all ISPs across the international barriers, you’ll never find a solution.”¹⁸⁹

3. *Law Enforcement Operations Against Child Pornography on the Internet*

In nations where child pornography is criminalized, law enforcement is the primary tool used to combat the production and distribution of illegal materials.¹⁹⁰ U.S. agencies, in cooperation with Interpol and other nations’ law enforcement officials, enjoy definite success in their attempts to stop child pornography.¹⁹¹ Most operations, due to the international aspects and needed legal and technical expertise, involve the cooperation of departments such as U.S. Customs and their international counterparts.¹⁹²

182. *See id.*

183. *See, e.g., id.* (noting the German research and technology minister’s perceived lack of need for Internet specific legislation due to current German laws prohibiting distribution).

184. *See* Sharon Smith, *UK: Internet-Pornography-To Protect or Serve?*, COMPUTER WKLY., Oct. 3, 1996, available in LEXIS, Market Library, Promt File.

185. *See id.*

186. *Id.*

187. *See id.*

188. *See id.*

189. *Id.*

190. *See* discussion *supra* Part IV.A.

191. *See* FY 97 Treasury, *Postal Service Appropriations: Appropriation Hearings with the U.S. Customs Service, Hearings Before the Senate Committee on Appropriations*, Apr. 17, 1996, available in 1996 WL 188748 [hereinafter *Weise*] (statement of George J. Weise, Comm’r Customs Service).

192. *See id.*

The first investigation by a U.S. agency that targeted the use of computers to traffic in child pornography was conducted by the U.S. Customs Service (USCS) in 1992.¹⁹³ In Operation LONGARM, agents identified a BBS based in Denmark that transmitted child pornography to the United States and sixteen other nations.¹⁹⁴ The investigation resulted in at least twenty-five convictions.¹⁹⁵

An investigation called Innocent Images, the largest effort to date, was conducted by the U.S. Justice Department's Child Exploitation and Obscenity Section and the Federal Bureau of Investigation (FBI).¹⁹⁶ The operation's targets were suspected pedophiles and individuals using America Online, one of the United States largest commercial Internet providers.¹⁹⁷ It resulted in more than twenty convictions.¹⁹⁸ One of those arrested was a Red Cross volunteer who operated a counseling center for teenage alcoholics: He stated he started collecting child pornography on the Internet when he was "lonely and he realized through therapy that he had been abused by his mother as a child."¹⁹⁹

A New York man arrested in Innocent Images has been sentenced to five years in prison, three years probation, and six months of house arrest after his release from prison.²⁰⁰ Further, he is prohibited from associating with minors and cannot use a computer for any purpose that is not job related.²⁰¹ He originally agreed to a prison sentence of thirty-three months, but this was extended by a U.S. District Judge after considering his previous pedophile convictions, and that during the Innocent Images operation he had transmitted photographs of children under twelve engaged in sadistic sexual activities.²⁰²

193. *See id.*

194. *See id.*

195. *See id.* In the three years subsequent to Operation LONGARM, customs has made 156 arrests, 121 indictments, 160 convictions, and over 200 seizures from investigations of electronic and other forms of child pornography. *See id.*

196. *See* Jeri Rowe, *Man Gets Jail, Fine in Child Porn Case*, GREENSBORO NEWS & REC., Mar. 22, 1996, available in 1996 WL 5762189; *see also* Di Gregory, *supra* note 46.

197. *See* Rowe, *supra* note 196.

198. *See* Di Gregory, *supra* note 46.

199. Rowe, *supra* note 196.

200. *See* Akdeniz, *supra* note 100.

201. *See id.*

202. *See id.*

4. Non-Governmental Organizations (NGOs)

A NGO is any international actor that is not a government organization.²⁰³ They may exist for humanitarian, commercial, or political reasons, among others.²⁰⁴ Humanitarian NGOs are private organizations whose goal is to relieve human suffering, alleviate poverty, or provide basic social services.²⁰⁵

The use of high technology to spread child pornography through the “information superhighway” is opening a new battlefield for activists waging battle against the sexual abuse of children.²⁰⁶ Over fifty NGOs participated in the World Congress, and they were the “driving force” behind it.²⁰⁷ Their role was a critical one, as NGO members have seen for themselves the harm caused by the sexual exploitation of children.²⁰⁸ A statement by Interpol indicated that NGOs were not originally to be participants in the Congress, until the NGOs discovered a pedophile ring in Belgium²⁰⁹ that kidnapped two eight-year-old girls and then starved them to death.²¹⁰ They had been used for child prostitution and for the production of child pornography.²¹¹ When the Swedish government requested international cooperation to break up the international pedophile ring, the harsh reality of the terror of the sexual exploitation of children put “much-needed pressure on governments to act.”²¹² In a speech at the World Congress, European Union

203. See Paula Rhodes & Eileen McCarthy-Arnolds, *Expanding NGO Participation in International Decision Making*, in *WORLD DEBT AND THE HUMAN CONDITION* 153, 157–58 (Ved P. Nanda et al. eds., 1993).

204. See *id.* at 158.

205. See *id.*

206. See Ohlin, *supra* note 37.

207. See Pia Ohlin, *Phillipine Organisation Rescuing Kids from Sexual Exploitation*, AGENCE FRANCE PRESSE, Aug. 26, 1996, available in 1996 WL 12134228.

208. See *id.*; see also Rhodes & McCarthy-Arnolds, *supra* note 203, at 158 (suggesting that the “grass roots” operations of NGOs make its membership uniquely capable of facilitating exchange between people and policy-makers).

209. See *Interpol Reacts at MEP's Remarks on Children Offences*, REUTER EUR. COMM. REP., Oct. 10, 1996, available in LEXIS, World Library, Eurcom File [hereinafter *Interpol*].

210. See James Walsh, *Crimes Against Children*, TIME INT'L, Sept. 2, 1996, available in 1996 WL 10668673 (detailing the discovery, investigation, and eventual capture of the girls' abductors).

211. See *id.*

212. Pia Ohlin, *Sexual Exploitation of Children to be Tackled in Stockholm*, AGENCE FRANCE PRESSE, Aug. 27, 1996, available in 1996 WL 3913990; see also Akdeniz, *supra* note 100, at 14 (noting the appeal of the Belgian government through Stefaan De Clerck, Justice Minister, for international cooperation in

Commissioner Anita Gradin stated: "It is to a large extent due to the work of NGOs that politicians no longer can turn a blind eye and that the issues [are] now firmly on the political agenda."²¹³

The Swedish RÄdda Barnen, or Swedish Save the Children,²¹⁴ is a NGO that co-hosted the World Congress in Stockholm.²¹⁵ When two parties blocked a Swedish constitutional amendment that would prohibit the possession of child pornography, they "did everything possible in this battle but did not quite succeed" in getting such an amendment passed.²¹⁶ RÄdda Barnen has grounds to be optimistic, however, because a new Parliamentary Commission of Inquiry was established to reconsider the constitutional amendment.²¹⁷

Norwegian Save the Children has taken a more technological track in its fight against child pornography. Realizing that censorship of the Internet is "unrealistic and undesirable," the group has established an international "cybercop" unit to detect and find pedophiles and child pornographers on the Internet.²¹⁸

This unit, composed of fifteen expert computer hackers, is designed to work with child welfare organizations, national law enforcement agencies, and Interpol.²¹⁹ It will search the Internet for pedophiles and, in addition, maintain a "tip-off line" where users of the Internet can report child pornography or information about pedophiles to the e-mail address "children@risk.sn.no."²²⁰ One of the goals of the unit is to heighten awareness among Internet users and create a "kind of community watch."²²¹

efforts to fight child pornography in response to the death of the two kidnapped girls).

213. Anita Gradin, *Extracts of Gradin Speech at Child Exploitation Congress*, REUTER EUR. COMM. REP., Aug. 28, 1996, available in LEXIS, World Library, Reuec File.

214. Save the Children is a NGO with a presence in more than 50 countries. See Save the Children, *Taking a Lead on Children's Rights* (visited Nov. 5, 1997) <http://www.oneworld.org/scf/scf_info.html>. Save the Children's main focus is on ending poverty, suffering, and discrimination among children through emergency relief programs and long-term development programs. See *id.*

215. See Lennart Lindgren, *The World Congress—An Important Turning Point* (visited Nov. 5, 1997) <<http://www.rb.se/Worldcongress/lennled.htm>>.

216. *Id.*; see also *supra* notes 112–23.

217. See *id.*

218. Henley, *supra* note 6.

219. See *id.*

220. See *id.*

221. *Id.*

Another major NGO player in the World Congress was End Child Prostitution in Asian Tourism (ECPAT). This organization was founded in Thailand in 1990, and its focus is primarily on combating child sex tourism.²²² Child sex tourism occurs when individuals travel from developed to underdeveloped nations to purchase sex from minors.²²³ Since 1990 ECPAT has grown to a global network of over 250 groups in the international community with a mission to eliminate the exploitation of children through prostitution, pornography, and the trafficking of children for sexual purposes.²²⁴ In January 1996 ECPAT hosted a three-day child prostitution conference in Bangkok, Thailand in anticipation of the World Congress.²²⁵

5. *World Congress Against the Commercial Sexual Exploitation of Children*

The World Congress was held in Stockholm, Sweden, from August 27 to August 31, 1996.²²⁶ It was the first international attempt to coordinate international cooperation on transnational issues and to bring together international decision-makers.²²⁷ The primary purpose of the World Congress was to draw international attention to the problems of the sexual exploitation of children, and to promote the development of national policies and programs to combat all forms of exploitation in the specific contexts in which they occur.²²⁸ Concentrating on the areas of child prostitution, child pornography, and sexual trafficking in children, it was the end result of a “process of global mobilization” against

222. See *End Child Prostitution in Asian Tourism* (visited Nov. 11, 1997) <<http://www.globalpassage.com/ecpat/home.html#welcome>>.

223. See Cameron W. Barr, *The Child Sex Trade: Battling a Scourge*, CHRISTIAN SCI. MONITOR, Aug. 22, 1996, at 10.

224. See Akdeniz, *supra* note 100.

225. See *Pedophiles More Organised Than Police, Say Experts*, AGENCE FRANCE PRESSE, Jan. 20, 1996, available in LEXIS, World Library, Afp File.

226. See Congress Report, *supra* note 22, at 1.

227. See Pia Ohlin, *Concrete Measures Needed to Fight Child Sex Trade*, AGENCE FRANCE PRESSE, Aug. 31, 1996, available in LEXIS, World Library, Afp File.

228. See Congress Report, *supra* note 22, at 2–3. The Declaration and Agenda for Action of the World Congress call for allocating high priority and resources to the sexual exploitation of children, criminalizing child sex crimes both local and foreign, enforcing such laws and encouraging cooperation between law enforcement authorities, increasing public awareness of the responsibility of others to protect children from sexual exploitation, and involving children in preventative efforts. See *id.*

the commercial, sexual exploitation of children.²²⁹ This process was the result of efforts by ECPAT that began in 1994, when ECPAT proposed the World Congress.²³⁰ Along with ECPAT as a driving force, the World Congress was supported by the Swedish government and the United Nations Children's Fund (UNICEF).²³¹ The World Congress was preceded by six regional consultations that provided direct inputs for the World Congress.²³² Ultimately, 1,879 participants from 119 countries attended.²³³ Participants included government representatives, NGOs, inter-governmental organizations, individuals, and youth from eight countries.²³⁴

A draft Declaration and Agenda for Action prepared by the World Congress was circulated worldwide prior to the event.²³⁵ The Agenda for Action calls for the full implementation of the UNCRC by U.N. State Parties, including reporting requirements under existing guidelines to the Committee on the Rights of the Child.²³⁶ It provides for the follow-up of its implementation through other U.N. mechanisms and organizations.²³⁷ The text is not treaty or law, but expectations are that the Declaration will have a significant impact as a result of a high level of international involvement and commitment.²³⁸ The Declaration, signed by, among others, Nobel peace prize winners Mikhail Gorbachev and Archbishop Desmond Tutu,²³⁹ has been labeled a "document of compromise," a "commitment to do more,"²⁴⁰

229. *Id.* at 1.

230. *See id.*

231. *See* Kevin Costelloe, *Child Porn is "Slavery," Queen Says*, HOUS. CHRON., Sept. 1, 1996, at 27A.

232. *See Child Sex Meeting Opens in Bangkok*, AGENCE FRANCE PRESSE, Apr. 2, 1996, available in LEXIS, World Library, Afp File. Meetings were held in Bangkok, Nicosia, Pretoria, Brasilia, Abidjan, and Strasbourg. *See id.*

233. *See* Muntarbhorn, *supra* note 22, at 1.

234. *See id.*

235. *See id.*

236. *See id.*

237. *See id.* Examples of such organizations and mechanisms include the U.N. Commission on Human Rights and the related Special Rapporteur on the Sale of Children. *See id.*

238. *See* Meixner, *supra* note 24.

239. *See Nobel Laureates Urge Action to Stop Child Sex Exploitation*, AGENCE FRANCE PRESSE, Aug. 31, 1996, available in 1996 WL 12129508.

240. Pia Ohlin, AGENCE FRANCE PRESSE, Aug. 28, 1996, available in 1996 WL 3914891 (quoting Tom Tscherning, General Secretary of the Swedish Host Committee of the World Congress Against Commercial Sexual Exploitation of Children).

and a “plan of action” serving as “a guidance or blueprint to move forward.”²⁴¹

Yet the World Congress and its Declaration are not without detractors. Columbia and Cuba endorsed the Declaration, but expressed reservations.²⁴² Cuba believed the Declaration did not address the “fundamental causes” of child sexual exploitation, such as “economic globalisation, ultra-conservative politics, and the fact that poor families do not have enough resources.”²⁴³ African NGOs voiced complaints that the real issue was a financial one, and that the lack of monetary resources had not been discussed.²⁴⁴ Even though NGOs sponsored and organized the Congress, several Asian and Latin American NGOs believed that the voices of NGOs were not heard and that they felt isolated from the proceedings.²⁴⁵ Other NGO delegates felt the Declaration was “weak” and would amount to only “empty promises.”²⁴⁶ A Costa Rican NGO representative expressed frustration over the fact that she could not make commitments on behalf of her government, which was not represented at the Congress.²⁴⁷ Youth groups in attendance felt they could not trust the government representatives, and many of such representatives refused to speak with the children’s groups.²⁴⁸ The London *Guardian* said delegates spent a “week horrifying each other with ever more harrowing tales of perversion and abuse of minors,” described the World Congress as a “consciousness-raising exercise,” and expressed doubts as to whether the meeting would “make a significant difference.”²⁴⁹

Despite criticism of the effectiveness of the World Congress, real action is taking place. In September of 1996, UNICEF and ECPAT joined together to urge the European Union Justice Ministers to provide a “coordinated response” to the World Congress.²⁵⁰ The meeting, held in Dublin, Ireland, was also used to urge Ireland to pass legislation that

241. *Id.* (quoting Carol Bellamy, Executive Director of UNICEF).

242. *See id.*

243. *Id.*

244. *See* Pia Ohlin, *Hope, Concern and Disappointment Over Child Sex Exploitation Congress*, AGENCE FRANCE PRESSE, Aug. 31, 1996, available in 1996 WL 12129507.

245. *See id.*

246. *Id.*

247. *See id.*

248. *See id.*

249. *World View: Overview: August 24–August 30*, GUARDIAN, Aug. 31, 1996, available in 1996 WL 4041774.

250. Pollak, *supra* note 165.

would criminalize the possession of child pornography.²⁵¹ This meeting was in the true spirit of international cooperation, and meetings must be held like this in all regions of the world to make the goals of the World Congress come to fruition.

C. Other Proposed Solutions

Laws in Europe are far from uniform²⁵² and efforts to tighten or change them have met with mixed success. The possession of child pornography is a crime in Britain, the United States, and Germany, but not in at least twenty-six other nations,²⁵³ including Ireland,²⁵⁴ Hungary,²⁵⁵ South Africa,²⁵⁶ and France.²⁵⁷ Many victims of child pornography come from Asian nations, which generally have fewer restrictions on the production, distribution, or possession of child pornography than many European countries, Australia, or the United States.²⁵⁸ While the UNCRC has been ratified almost universally, implementation is not so universal.²⁵⁹ Inadequate laws and lax law enforcement, in conjunction with corruption and collusion, render the UNCRC somewhat ineffective.²⁶⁰

1. Registries

European Union member states and Interpol consider pedophile registries to be a potential solution.²⁶¹ London's Obscene Publication Squad stores information on four thousand known or suspected individuals who record their

251. See *id.*

252. See Healy, *supra* note 12, at 10–11.

253. See Costelloe, *supra* note 231.

254. Cf. Pollak, *supra* note 165 (noting that Ireland should follow other countries in criminalizing the possession of child pornography).

255. See Bridge, *supra* note 42 (noting that Hungary does not even criminalize the production of child pornography).

256. See Costelloe, *supra* note 231.

257. See Angeline Oyog, *Children: European Child Protection Groups Demand State Action*, INTER PRESS SERV., Aug. 25, 1996, available in LEXIS, World Library, Inpres File (noting the efforts of groups in France to make the possession of child pornography a crime).

258. See Johanna Son, *Children: New Tools Needed to Fight Transnational Sex Trade*, INTER PRESS SERV., Apr. 20, 1995, available in LEXIS, World Library, Inpres File.

259. See Healy, *supra* note 10, at 1923.

260. See *id.* at 1870–71.

261. See David Fletcher, *Welfare Net Fails Child Porn Victims*, DAILY TELEGRAPH, Feb. 16, 1996, at 3, available in LEXIS, World Library, Txtlne File.

abuse of children on film.²⁶² Some British activists have proposed a national register containing the names of convicted pedophiles to be used by employers of people who work with children.²⁶³ Some activists have gone so far as to suggest a registry of suspected pedophiles, placing children's civil liberties above those of potential abusers.²⁶⁴

2. *Extraterritorial Jurisdiction*

Although its context has primarily been applied against child sex tourism, the concept of extraterritorial jurisdiction also has applications to child pornography on the Internet.²⁶⁵ The Internet, by its very nature, is global in scope. Increasing incidents of child pornography on the Internet, and the increasing networking activity of pedophiles, has placed pressure on concerned nations to propose and implement the extraterritorial application of their own criminal laws to punish their nationals who engage in criminal activity abroad.²⁶⁶

As most countries outlaw child prostitution, extraterritorial jurisdiction is a good tactic. For example, when one of Australia's citizens goes on a child sex tour of Thailand, he can be punished when he gets home. But most nations have very disparate definitions of a "crime" as it relates to child pornography.²⁶⁷ And some nations, such as Sweden, require "double criminality" before they will exercise extraterritorial jurisdiction.²⁶⁸ For example, if a Swedish national solicits sex from a fifteen-year-old in Hungary, where such activity is legal,²⁶⁹ he will not be punished in Sweden. Therefore, until all concerned nations establish a

262. See Stephen McGinty, *On the Edge of Darkness*, HERALD (Glasgow), Oct. 9, 1995, at 16, available in LEXIS, World Library, Gherld File; see also *EP Committee Calls for EU Protection of Children*, REUTER EUR. COMM. REP., Oct. 1, 1996, available in LEXIS, Europe Library, Reuec File (noting the inadequacy of England's child pornography laws and problems with their enforcement).

263. See Barry Hugill, *Paedophilia Is Not the Preserve of a Few Sick Individuals. It's a Billion Dollar Business*, GUARDIAN, Aug. 25, 1996, at 19, available in LEXIS, World Library, Txtlne File.

264. See *id.*

265. See Healy, *supra* note 10, at 1857 (discussing the extraterritorial criminal jurisdiction exercised over sex tourism).

266. See *supra* text accompanying notes 190-202.

267. See *Australia*, *supra* note 156.

268. SWEDEN PENAL CODE, ch. 2, § 2 ("[T]he first paragraph shall not apply if the act is not punishable under the law at the place it was committed.").

269. See Jon Henley, *Child Prostitution in a Post-Communist Boom*, GUARDIAN, Aug. 31, 1996, available in 1996 WL 4041582. In Hungary the age of sexual consent is 14 and prostitution was legalized in 1993. See *id.*

commonality as to what constitutes a child pornography crime, extraterritorial jurisdiction presents a limited solution.²⁷⁰ The concept of extraterritorial jurisdiction is made even more complicated by the jurisdictional problems presented by the Internet. It is a global system that does not fit into any one nation's legislative scheme. How is a citizen, with an account with an Amsterdam service provider to access child pornography which is illegal in the United States, but not in the Netherlands, prosecutable? Under U.S. law or the Netherlands law? Furthermore, great evidentiary challenges are involved. Procuring witnesses to testify, establishing ages of children, and adapting to cultural and language differences as well as basic fact finding or information gathering in a nation foreign to one's own present large, possibly insurmountable, hurdles.²⁷¹

3. Draft Optional Protocol

In 1993, at the Vienna World Conference on Human Rights, the U.N. Commission on Human Rights called for a working group to prepare a draft optional protocol to the UNCRC that would make the sexual exploitation of children an international criminal offense.²⁷² Such a draft optional protocol makes the sale of children, child prostitution, and child pornography offenses subject to universal criminal jurisdiction,²⁷³ meaning that all member states, regardless of the nationality of the alleged criminal or the location of the offense, would have jurisdiction over the crime.²⁷⁴ Because the sexual exploitation of children is a crime that offends the entire international community, it is categorized as *delict jure gentium* (crime by the law of nations), empowering every state with the right to arrest, convict, and punish offenders in its own courts.²⁷⁵ This could boost a nation's ability to pursue offenders even if it does not have laws against child sexual exploitation or extradition treaties with other nations.

Not all member nations have embraced the idea of a draft optional protocol.²⁷⁶ When it was proposed, questions were

270. Cf. Healy, *supra* note 12, at 1 (noting the varying treatment of child pornography among nations based on differing cultural, sexual, social, and religious traditions).

271. See Healy, *supra* note 10, at 1919.

272. See Son, *supra* note 258.

273. See *id.*

274. See *id.*

275. See *id.*

276. See John R. Crook, *The Fifty-First Session of the U.N. Commission on Human Rights*, 90 AM. J. INT'L L. 126, 131 (1996).

raised as to whether an additional protocol was necessary, considering the broad provisions of the UNCRC that already obligate nations to prohibit child pornography and other child sex crimes.²⁷⁷ Despite reservations, when the United Kingdom called for a vote for a resolution to prepare the draft optional protocol, it passed forty-two to zero.²⁷⁸ Ostensibly, member nations feel that they can never do too much to stop the sexual exploitation of children.²⁷⁹

4. *Europol*

Europol is a police information exchange organized in The Hague in 1993.²⁸⁰ Approximately sixty European Union (EU) law enforcement agencies use it for the collection and analysis of data on specific crimes, including pedophile activity.²⁸¹ Yet some nations want to use Europol for assistance with bureaucratic functions, such as obtaining evidence from other nations.²⁸² Rather than Interpol, some EU nations are looking to Europol as a tool for fighting child pornography.²⁸³ This is due to the perception that Interpol “involves too many countries where the ethics of law enforcement officials are questionable.”²⁸⁴ As of late 1996, Europol had no position or mandate on the sexual exploitation of children, and thus was not invited to be a participant in the World Congress.²⁸⁵

The establishment of Europol as a law enforcement tool may hurt, more than help, advances in the challenge to eliminate child pornography due to competition for law enforcement resources.²⁸⁶ In a definite spirit of non-cooperation in the battle against child sexual abuse, an October 1996 press release from Interpol stated:

Although Interpol cannot fail to be pleased by the interest now being shown by a growing number of international organisations in this painful subject,

277. *See id.*

278. *See id.*

279. However, the United States was among 11 abstaining nations. *See id.*

280. *See* Shailagh Murray, *A Broader Scope for Europol?*, WALL ST. J. EUR., Sept. 3, 1996, available in 1996 WL-WJSE 10749943.

281. *See id.*

282. *See id.*

283. *See id.*

284. *Id.*

285. *See id.*

286. *See, e.g., id.* (noting that EU member states apply their resources within their own counties, and even then competition among regions for law enforcement resources persists).

it must point out that the databases on children and sex offenders which the European institutions plan to set up in Europol cover only 15 countries, whereas all professionals involved . . . repeatedly point out that all regions of the world are affected.

Interpol has all the structures and computer technology needed to search for criminals internationally. However, it is only fair to note that despite the undoubted goodwill of its leaders, Europol does not have the right to record nominal data in its databases.²⁸⁷

V. CONCLUSION

Making laws is not the same as enforcing them. While sufficient anti-child pornography laws exist in many nations, enforcement is weak.²⁸⁸ Furthermore, policing a global operation like the Internet involves policing citizens from countries with widely differing domestic laws, cultures, and social mores. Although these obstacles appear insurmountable, it must be remembered that child pornography is a substantive and compelling problem on international, national, and local levels, and it is not a harmless crime.²⁸⁹ When pedophiles freely exchange

287. *Interpol*, *supra* note 209.

288. See Pia Ohlin, *United Call to End Sexual Exploitation of Children*, AGENCE FRANCE PRESSE, Aug. 27, 1996, available in LEXIS, World Library, Afp File.

289. The wickedness that child pornography presents, in the opinion of one commentator, is as follows:

Encouraging, forcing or fooling children (often with the use of drugs) to pose for pornographic photographs, or take part in pornographic videos, is demeaning and designed to take away a child's dignity and self respect. It reduces the value of the child's body to nothing, teaching the child that the body is for sale and has no other value. It can consequently often be a first step on the road to prostitution

[C]hild pornography involves coercion and violence. Not only are these sometimes part of the "story line" of a video or photo shoot, they are regularly inflicted on the unwilling child to secure submission and cooperation. Some exploiters satisfy their sexual fantasies by producing child pornography, or "playing a part" in shoots themselves.

Pornography, *supra* note 39. As stated in *United States v. Wiegand*:

Human dignity is offended by the pornographer. American law does not protect all human dignity; legally, an adult can consent to its diminishment. When a child is made the target of the pornographer-photographer, the [law] will not suffer the insult to the human spirit, that the child should be treated as a thing.

experiences and pictures, this reinforces their behavior and encourages the real, physical abuse of children “off-line.”²⁹⁰ Many commercial Internet providers have forums, newsgroups, and chat lines established specifically for children’s interests. Due to the complete anonymity the Internet provides, an innocent child in an “I like dogs” chat group cannot know that he or she is talking to an adult pedophile. Once an electronic relationship is established, the conversation will be moved into a private, one-on-one chat room where the pedophile will inquire as to the child’s weaknesses: Are you mad at your parents? Do you like to look at dirty pictures? A pedophile may then send pornographic pictures to the child, in hopes of getting the child to lower his or her inhibitions, or to indicate that this material is “okay.”²⁹¹ This may be followed up with a request that the pedophile and child actually meet. At that point the child is at a real risk for sexual abuse. A study completed in the 1980s reported that fifty-three percent of child molesters reported deliberately viewing child pornography in preparation for molestation, and that heterosexual child molesters with more than three victims were significantly more likely to use sexually explicit materials to instigate their crime than were other sexual offenders.²⁹²

So how does one answer the President of the Children’s Court in Bobigny, France, when he asks: “Who is the proprietor of the Internet? Who is legally responsible?”²⁹³ One can only answer with more questions. Is it the one who scans an actual photo into the computer? The ISP systems operator? The producer of the material? The person who downloads it for his own personal use, and sends it on to

United States v. Wiegand, 812 F.2d 1239, 1245 (9th Cir.), *cert. denied*, 484 U.S. 586 (1987).

290. See Clayton, *supra* note 35.

291. See Cherian George, *World Must Move Together Against Child Porn*, STRAITS TIMES (Singapore), Oct. 4, 1996, available in LEXIS, World Library, Strait File.

Child abusers . . . use pornographic pictures to lower a child’s inhibitions. They show pictures of other children having sex to encourage their reluctant victims to participate, and to teach them what to do.

Pictures of the victim being abused are also used to blackmail the child into complicity. The child is forced into silence and continued participation by the threat of showing the pictures to parents or friends.

Id.

292. See William L. Marshall, *Use of Sexually Explicit Stimuli by Rapists, Child Molesters, and Nonoffenders*, 25 J. SEX. RES. 267, 279–80, 282–83 (1988).

293. Sancton, *supra* note 10.

another user? What happens when a U.S. citizen uses the Internet in Sweden, and transmits an image of child pornography that is legal in Sweden to an Internet user in the United States, where possession is illegal? Can the United States apply extraterritorial jurisdiction to the U.S. citizen? And if it can, does it want to, considering the prohibitive costs of an international investigation and prosecution? If the Draft Optional Protocol is to be ratified by all nations, whose law would be the touchstone—the nation with the most liberal laws or the most conservative laws? Yet with all these questions and seemingly insurmountable hurdles, the World Congress and subsequent related meetings give a reason for optimism among concerned nations. It indicates a true resolve among the participating nations, NGOs, and law enforcement agencies to battle child pornography and its harmful effects on a truly international level. Perhaps modern technology, such as video links via satellite could be used in cases for presenting evidence and statements by witnesses. Or, for purposes of trying child sex-related crimes, new evidentiary procedures could be established via cooperation between the European, Asian, and American nations. Human rights advocates who are concerned with the democracies of nations and the political prosecutions of individuals could include child sex exploitation in their agendas.

The legal and procedural barriers to battling child pornography on the Internet are vexing, to say the least; but a more fundamental element to success must be achieved. As long as the international legislative environment mirrors the international political environment, and unless a nation and its people give priority to the protection of children, no law, no matter how exacting, will protect the children. The determination to protect children must exist before any legal mechanism or implementation will be effective.

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