Child Pornography:

Model Legislation & Global Review

2010 ◆ 6th Edition

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FOR MISSING & EXPLOITED CHILDREN

Child Pornography:
Model Legislation & Global Review

Sixth Edition

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About Us

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

The Koons Family Institute on International Law & Policy (The Koons Family Institute) is the in-house research arm of ICMEC. The Koons Family Institute conducts and commissions original research into the status of child sexual exploitation and child protection legislation around the world and collaborates with other partners in the field to identify and measure threats to children and ways ICMEC can advocate change to help make children safer. The Koons Family Institute works to combat child abduction and child sexual exploitation on multiple fronts: by creating replicable legal tools, building international coalitions, bringing together great thinkers and opinion leaders, and creating best practices on training and the use of technology.

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Table of Contents

Foreword

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

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

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

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

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

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

Since we first published this report in April 2006, there have been legislative changes in several countries – including Brazil, Costa Rica, the Czech Republic, Egypt, India, Moldova, and Portugal – and we have seen movement in many others. Nonetheless, there remains much more to be done. We encourage continued action on the part of national governments and we applaud the efforts of the international community to address the global scope and impact of child pornography through various international legal instruments, three of which are highlighted in the "International Law" section of this report.

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

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

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

Executive Summary

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

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

Sadly, our end results continue to shock. Of the 196 countries reviewed:

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

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

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

Defining "Child Pornography"

While the term "child pornography" implies conventional pornography with child subjects, and does not aptly describe the true nature and extent of sexually exploitive images of child victims, use of this term throughout the report should not be taken to imply that children "consented" to any sexual acts depicted in any images.[2] The term is retained because it is the expression most readily recognized by the public at large, at this point in time, to describe this form of child sexual exploitation.[3]

For purposes of this report, "child pornography" includes, but is not limited to, "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of

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

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

[3] *Id.*

the sexual parts of a child for primarily sexual purposes,"[4] as well as the use of a child to create such a representation.

Methodology

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

Once the relevant information was assembled, legal analysis was conducted, and the preliminary results were compiled. In January 2006, letters were sent to the attention of Ambassadors of the Interpol member country Embassies in Washington, D.C.; if no Embassy listing was available, a letter was sent to the Ambassador at the Permanent Mission to the United Nations in New York City. All letters consisted of a summary of the model legislation project as well as country-specific results. Ambassadors were asked to verify our research and provide us with corrected information by a certain date, if such was necessary.

In April 2009 and again in November of 2009, this letter campaign was repeated in order to ensure that the Sixth Edition had the most up-to-date information possible. These letters made the respective Embassy and/or Permanent Mission aware that another edition of this publication would soon be forthcoming. Similar to the letters sent in 2006, Embassies were asked to verify our research and provide us with corrected information by a certain date. Additionally, extensive legal research and analysis was conducted on the child pornography legislation existing in each of the 196 countries referred to in this report.

Topics Addressed

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

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

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

Model Legislation

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

The model legislation component of this publication is broken down into four parts:
(1) Definitions;
(2) Offenses;
(3) Mandatory Reporting; and
(4) Sanctions and Sentencing.

Definitions

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

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

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

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

Define "child pornography" and include computer- and Internet-specific terminology.

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

Moreover, it is imperative that, with the advent of the Internet and new technology, mention be made of all the forms child pornography can take including, but not limited to, film, DVD, CD-ROM, diskette, CD-R, and other electronic media; of all the ways child pornography can be distributed, including via

Internet; and of all the ways child pornography can be possessed, including by simply knowingly viewing an image on the Internet or by knowingly downloading an image to one's computer.

OFFENSES

Incorporate child pornography offenses into the penal code.

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

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

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

Every image of child pornography that is acquired encourages the further growth of this illicit industry, from "custom" child pornography – the sale of images of child rape created to order for the consumer – to "real time" child pornography, where subscribers pay to watch the streamed online rape of children as it occurs.[5]

Victims portrayed in the images are getting younger and younger and the images are becoming more graphic and more violent. The Internet Watch Foundation (IWF) in the United Kingdom reported that, out of all reports of child pornography received by IWF in 2009, 72% of the victims appeared to be children 10 years of age or younger, 23% were 6 years of age or younger, and 3% were 2 years of age or younger.[6] Moreover, in 2006, IWF reported an increase in the percentage of the most horrific sexual abuse images of children online, from 7% in 2003 to 29% in 2006, demonstrating a growing demand for more severe images of abuse.[7] This trend continues, as IWF reported that 44% of the images from 2009 depicted the rape or torture of a child.[8]

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[5] Andrew Vachss, *Let's Fight This Terrible Crime Against Our Children*, PARADE, Feb. 19, 2006, *at* http://www.parade.com/articles/editions/2006/edition_02-19-2006/Andrew_Vachss (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

[6] Internet Watch Foundation, *2009 Annual and Charity Report* 18, *at* http://www.iwf.org.uk/documents/20100511_iwf_2009_annual_and_charity_report.pdf (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children) [hereafter *IWF 2009*].

[7] Internet Watch Foundation, *Annual and Charity Report 2006* 19, *at* http://www.iwf.org.uk/documents/20070412_iwf_annual_report_2006_(web).pdf (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

[8] *IWF 2009*, *supra* note 6, at 14.

Similar findings are also confirmed by an earlier study out of the United States, which demonstrates that 83% of arrested child pornography possessors had images of children 6 to 12 years old; 39% had images of children 3 to 5 years old; and 19% had images of infants and toddlers under age 3.[9] 92% of those arrested had images of minors focusing on genitals or showing explicit sexual activity; 80% had pictures showing the sexual penetration of a child, including oral sex; and 21% had child pornography depicting violence such as rape, bondage, and torture.[10] Most of these images involved children who were gagged, bound, blindfolded, or otherwise suffering sadistic sexual acts.[11] The same study also showed that 40% of arrested child pornography possessors were "dual offenders," who sexually victimized children and possessed child pornography,[12] suggesting there may be a correlation between the knowing simple possession of child pornography and committing sexual abuse upon a child.

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

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

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

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

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

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

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

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

There can be no transfer of consent from the parent or guardian to the child to participate in child pornography. Just as a parent or guardian cannot lawfully consent to a child driving a motor vehicle

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9 *Child-Pornography Possessors*, *supra* note 2, at 4.

10 *Id*. at 5.

11 *Id*.

12 *Id*. at viii.

underage, neither can a parent or guardian consent on behalf of a child to the child's participation in child pornography.

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

Grooming offenses must be criminalized.

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

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

Child sex offenders will show pornography (adult or child) to a child in order to lower his/her inhibitions, to "normalize" what is not normal, and to instruct the child in sexual activities.[13]

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

Punish attempt crimes.

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

MANDATORY REPORTING

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

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

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

[13] Kim-Kwang Raymond Choo, *Online Child Grooming: A Literature Review on the Misuse of Social Networking Sites for Grooming Children for Sexual Offences* 7-8 (103 AIC Reports, 2009), *at* http://www.aic.gov.au/documents/3/C/1/%7B3C162CF7-94B1-4203-8C57-79F827168DD8%7Drpp103.pdf (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

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

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

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

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

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

SANCTIONS AND SENTENCING

Address the criminal liability of children involved in pornography.

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

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

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

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

All violations of enacted child pornography legislation should carry strict sentences that will be enforced, thereby guaranteeing a true deterrent effect.[14] Mere fines and misdemeanor classifications are not enough.

Sentencing provisions should take into account aggravating factors and enhancements.[15] Aggravating factors may include the number of images manufactured/produced/distributed/possessed; the severity of the offender's existing criminal record; the sexual violence toward the children (including rape, torture, and bondage) being depicted in the images that were manufactured/produced/distributed/possessed; and any potential threat or risk the offender may pose to the community upon release.

Media outlets from across the world have reported that organized criminals[16] and terrorists[17] are increasingly moving into child pornography to generate revenue to support their activities.[18] Several reasons explain this trend: children are plentiful and easily accessible; child pornography is easy and inexpensive to produce; there is a huge consumer market for it; it is enormously profitable; and there is virtually no risk, far less than weapons and drugs. A sentencing enhancement for organized crime activity could either have a deterrent effect or could disrupt the flow of the organization should an offender actually be sentenced to time in prison.

Assets must be forfeited.

Convicted defendants should be subject to forfeiture provisions that allow for the confiscation of property, proceeds, or assets that resulted from child pornography activities.[19] Confiscated funds could, in turn, be used to support programs for formerly sexually exploited children, children at risk of being sexually exploited, and child victims who are in need of special care.[20]

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

[15] *Id*.

[16] *AM with Tony Eastley: Old Style Yakuza Regret Child Pornography Push* (The Australian Broadcasting Corporation radio broadcast, Oct. 20, 2009), *at* http://www.abc.net.au/am/content/2009/s2718553.htm (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

[17] Richard Kerbaj and Dominic Kennedy, *Link Between Child Porn and Muslim Terrorists Discovered in Police Raids*, TIMES ONLINE, Oct. 7, 2008, *at* http://www.timesonline.co.uk/tol/news/uk/crime/article4959002.ece (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children) [hereafter *Child Porn and Terrorists*].

[18] Sergey Stefanov, *Russia Fights Child Porn and Terrorism on the Internet*, PRAVDA, Dec. 4, 2002, *at* http://english.pravda.ru/main/2002/12/04/40373.html (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children); *see also Child Porn and Terrorists*, *supra* note 17.

[19] *Prostitution of Children and Child-Sex Tourism*, *supra* note 14, at 47.

[20] *Id*.

International Law

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

There are three main international legal instruments that address child pornography: the Optional Protocol to the (U.N.) Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography[21]; the Council of Europe Convention on Cybercrime[22]; and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.[23] All three are effective tools for combating the sexual exploitation and abuse of children because they contain specific definitions of offenses as well as provisions requiring punishment for criminalized behavior, allowing for more effective prosecution of perpetrators. The Optional Protocol and the Convention on the Protection of Children also serve as comprehensive examples of legal mechanisms that require governments to implement and provide for services to assist child victims and their families.

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

While the Convention on the Rights of the Child[24] (CRC) aims to ensure a broad range of human rights for children – including civil, cultural, economic, political, and social rights[25] – there are Articles within the CRC and an Optional Protocol to the CRC that address child sexual exploitation. Article 34 of the CRC clearly states that preventive measures should be taken to address the sexual exploitation of children:

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21 *Optional Protocol*, *supra* note 4.

22 *Council of Europe Convention on Cybercrime*, Nov. 23, 2001, *at* http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

23 *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, Oct. 25, 2007, *at* http://conventions.coe.int/Treaty/EN/treaties/Html/201.htm (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

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

25 *See* UNICEF, Convention on the Rights of the Child, *at* http://www.unicef.org/crc/ (last visited Jun. 28, 2010) (on file with the International Centre for Missing & Exploited Children).

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

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

- Article 2(c) defines "child pornography" as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."

- Article 3(1) requires States Parties to criminalize child pornography, whether committed domestically or transnationally, on an individual or organized basis.

- Article 3(1)(c) requires States Parties to criminalize simple possession regardless of the intent to distribute.

- Article 3(4) addresses the liability of legal persons and encourages each State Party to establish such liability for offenses specific to child pornography. This article reflects the notion that a comprehensive approach requires industry involvement.

- Article 10(1) addresses the need for international cooperation. As mentioned above, child pornography is readily distributed across borders; without international cooperation, many offenders may evade apprehension.

CONVENTION ON CYBERCRIME

Developments in technology have enabled cyber-criminals to be located in different jurisdictions (*i.e.*, countries) from the victims who are affected by their criminal behavior. As a result, the Council of Europe established the Convention on Cybercrime (Cybercrime Convention) with the hope of implementing a cooperative and uniform approach to the prosecution of cybercrime. The Cybercrime Convention is open for signature by the Council of Europe member States and the non-member States that have participated in its elaboration, and for accession by other non-member States. Currently, 30 countries (29 member States and 1 non-member State) have ratified the Cybercrime Convention, and 16 other countries (13 member States and 3 non-member States) have signed, but not ratified, the Cybercrime Convention.[26]

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

- Article 9(1) recommends each State Party make it a criminal offense to: produce child pornography for the purpose of its distribution through a computer system; offer or make available child pornography through a computer system; distribute or transmit child pornography through a

[26] *See* Council of Europe Convention on Cybercrime (CETS 185): Chart of Signatures and Ratifications, *at* http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG (last visited Aug. 9, 2010) (on file with the International Centre for Missing & Exploited Children).

computer system; procure child pornography through a computer system for oneself or for another person; and possess child pornography in a computer system or on a computer-data storage medium.

- Article 9(2) recommends "child pornography" be defined to include "pornographic material that visually depicts…a minor engaged in sexually explicit conduct[,]…a person appearing to be a minor engaged in sexually explicit conduct[, or]…realistic images representing a minor engaged in sexually explicit conduct."

- Article 9(3) states that the term "'minor' shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years."

- Article 11 requires States Parties to enact legislation necessary to address attempt crimes as well as aiding and abetting.

- Article 13(1) mandates States Parties adopt legislative measures to ensure that criminalized offenses "are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty."

- Article 12 (1) addresses corporate liability.

- Article 23 addresses the issue of international cooperation.

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

The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Child Protection Convention) is the most recent international legal instrument aimed at combating child sexual exploitation, including child pornography. The Child Protection Convention focuses on ensuring the best interests of children through prevention of abuse and exploitation, protection and assistance for victims, punishment of perpetrators, and promotion of national and international law enforcement cooperation. The Child Protection Convention was opened for signature on 25 October 2007, and entered into force on 1 July 2010. The Child Protection Convention is open for signature by member States, non-member States that have participated in the Convention's elaboration, and by the European Community, and for accession by other non-member States. Currently, 7 member States have ratified the Child Protection Convention, and 32 other member States have signed, but not ratified, the Child Protection Convention.[27] With regard to child pornography:

- Article 20(1) requires States Parties to criminalize: producing child pornography; offering or making available child pornography; distributing or transmitting child pornography; procuring child pornography for oneself or for another person; possessing child pornography; and knowingly obtaining access, through information and communication technologies, to child pornography.

[27] *See* Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201): Chart of Signatures and Ratifications, *at* http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=8&DF=28/06/2010&CL =ENG (last visited Aug. 9, 2010) (on file with the International Centre for Missing & Exploited Children).

- Article 20(2) defines "child pornography" as "any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes."

- Article 21(1) recommends States Parties adopt legislation criminalizing the activities of those who recruit or coerce a child into participating in child pornography or knowingly attend performances involving child pornography.

- Article 24 addresses attempt crimes as well as aiding and abetting.

- Article 26(1) addresses the issue of corporate responsibility.

- Article 38(1) addresses the issue of international cooperation.

Global Legislative Review

✗ = No
✓ = Yes

Country	Legislation Specific to Child Pornography[28]	"Child Pornography" Defined	Computer-Facilitated Offenses[29]	Simple Possession[30]	ISP Reporting[31]
Afghanistan	✗	✗	✗	✗	✗
Albania	✗	✗	✗	✗	✗
Algeria	✗	✗	✗	✗	✗
Andorra	✓	✗	✗	✗	✗
Angola	✗	✗	✗	✗	✗

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

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

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

[30] "Simple possession," for the purposes of this report, refers to knowing possession regardless of the intent to distribute.

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Antigua & Barbuda	✗	✗	✗	✗	✗
Argentina	✓	✓	✓	✗	✗
Armenia	✓	✗	✓	✗	✗
Aruba	✓	✗	✓	✓	✗
Australia	✓	✓	✓	✓	✓
Austria	✓	✓	✓[32]	✓	✗
Azerbaijan	✗	✗	✗	✗	✗
Bahamas	✗	✗	✗	✗	✗
Bahrain	✗	✗	✗	✗	✗
Bangladesh	✗	✗	✗	✗	✗
Barbados	✓	✓	✓	✓	✗

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Belarus	✓	✗	✗	✗	✗
Belgium	✓	✓	✓[33]	✓	✓
Belize	✗	✗	✗	✗	✗
Benin	✗	✗	✗	✗	✗
Bhutan	✓	✗	✓[34]	✗	✗
Bolivia	✗	✗	✗	✗	✗
Bosnia-Herzegovina	✓	✗	✓[35]	✓	✗
Botswana	✓	✓	✓	✓	✗

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

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

[35] Articles 189 and 211 of the Penal Code of Bosnia-Herzegovina reference "other pornographic materials" in addition to photographs and audio-visual tapes.

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Brazil	✓	✓	✓	✓	✗ [36]
Brunei	✓	✗	✓	✗	✗ [37]
Bulgaria	✓	✗	✓ [38]	✓	✗
Burkina Faso	✗	✗	✗	✗	✗
Burundi	✗	✗	✗	✗	✗

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

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

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

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

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Cambodia	✓	✓	✓	✗	✗
Cameroon	✗	✗	✗	✗	✗
Canada	✓	✓	✓	✓	✗ [39]
Cape Verde	✓	✗	✗	✗	✗
Central African Republic	✗	✗	✗	✗	✗
Chad	✗	✗	✗	✗	✗
Chile	✓	✓	✓	✓	✗

[39] In December 2009, Bill C-58: Child Protection Act (Online Sexual Exploitation) was introduced before the Canadian Parliament and is currently being debated. This Act would mandate the reporting of suspected child pornography by ISPs and outlines punishment for those ISPs failing to report.

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
China	✓[40]	✗	✓[41]	✗	✗
Colombia	✓	✓	✓	✓	✓
Comoros	✗	✗	✗	✗	✗
Congo	✗	✗	✗	✗	✗
Costa Rica	✓	✓	✓[42]	✓	✗
Côte d'Ivoire	✗	✗	✗	✗	✗
Croatia	✓	✗	✓	✓	✗

[40] While China does not have any specific child pornography legislation, there is a general prohibition on obscene and pornographic materials in the Criminal Code. In 2004, with the aim of better protecting minors, the Supreme People's Court and the Supreme People's Protectorate promulgated an "Interpretation on Several Issues Regarding the Implementation of Laws in Dealing with Criminal Cases Involving the Production, Duplication, Publication, Sale, and Dissemination of Pornographic Electronic Information Using Internet, Mobile Communications Terminals, Radio Stations." Article 6 of this Interpretation explicitly stipulates that "whoever disseminates, duplicates, publishes, or sells pornographic electronic information that depicts sexual behaviors of adolescents under the age of 18, or provides direct linkage on an Internet server or websites owned, managed, or used by him-/herself, to the electronic information with the knowledge that such information depicts sexual behaviors of adolescents under the age of 18, shall be severely punished in accordance with Article 363 of the Criminal Law regulating the punishment of crimes of production, duplication, publication, sale, and dissemination of pornographic materials, or Article 364 regulating the punishment of crimes of dissemination of pornographic materials with serious circumstances." E-mail from Chen Feng, Police Liaison Officer, Embassy of the People's Republic of China, Washington, D.C., to Jessica Sarra, Director of Global Operations, International Centre for Missing & Exploited Children (Mar. 17, 2006) (on file with the International Centre for Missing & Exploited Children).

[41] The 2004 Interpretation by the Supreme People's Court and the Supreme People's Protectorate applies to computer-facilitated offenses.

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Cuba	✗	✗	✗	✗	✗
Cyprus	✓	✓	✓	✓	✗
Czech Republic	✓	✗	✓	✓	✗[43]
Democratic Republic of Congo	✓	✓	✓[44]	✗	✗
Denmark	✓	✓	✓[45]	✓	✗
Djibouti	✗	✗	✗	✗	✗
Dominica	✗	✗	✗	✗	✗
Dominican Republic	✓	✓	✓	✓	✗

[43] While there is no ISP-reporting requirement in Czech law, the Czech National Plan on the Fight Against Commercial Sexual Exploitation of Children names the Ministry of Transportation and Communications and the Ministry of the Interior as the national agencies charged with specifying the statutory obligation of Internet providers included in the Telecommunications Act (No. 151/2000) to file the necessary data on illegal websites and to hand them over to Czech law enforcement. The expected result of this measure is to secure "evidentiary facts against those who spread child pornography on the Internet." Goal 1.4 of the *Updated National Plan on the Fight against Commercial Sexual Exploitation of Children*, *at* http://aplikace.mvcr.cz/archiv2008/prevence/priority/kszd/en_tab.html (last visited Jul. 12, 2010) (on file with the International Centre for Missing & Exploited Children).

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

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Ecuador	✓	✗	✗	✗	✗
Egypt	✓	✗	✓	✓	✗
El Salvador	✓	✓	✓	✓	✗
Equatorial Guinea	✗	✗	✗	✗	✗
Eritrea	✗	✗	✗	✗	✗
Estonia	✓	✗	✓[46]	✓	✗
Ethiopia	✗	✗	✗	✗	✗
Fiji	✗	✗	✗	✗	✗
Finland	✓	✓	✓[47]	✓	✗
France	✓	✓	✓	✓	✓
Gabon	✗	✗	✗	✗	✗

[46] Articles 177 and 178 of the Estonian Penal Code criminalize using a minor in "other works" or using "any other manner" to manufacture, store, hand over, display, or make available child pornography.

[47] Chapter 17, Section 18 of the Finnish Criminal Act criminalizes "any person who…**otherwise** distributes obscene pictures or visual recordings depicting children." *Emphasis added.*

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Gambia	✓	✗	✗	✗	✗
Georgia	✓	✓	✗	✗	✗
Germany	✓	✓	✓	✓	✗[48]
Ghana	✗	✗	✗	✗	✗
Greece	✓	✓	✓[49]	✓	✗
Grenada	✗	✗	✗	✗	✗
Guatemala	✓	✗	✓	✓	✗
Guinea	✗	✗	✗	✗	✗
Guinea Bissau	✗	✗	✗	✗	✗
Guyana	✗	✗	✗	✗	✗

[48] While in German law there is no explicit obligation for an ISP to report to law enforcement or another mandated agency, in most cases ISPs will file reports with law enforcement. It is a punishable offense for an ISP that knows of child pornographic material on its websites to not delete the illegal content. Factors considered include whether it was possible and reasonable for the ISP to detect the data and to delete or block it, as there are many ISPs in Germany that offer large storage capacities for commercial purposes. E-mail from Klaus Hermann, Counselor/Police Liaison, Embassy of Germany, Washington, D.C., to Jessica Sarra, Director of Global Operations, International Centre for Missing & Exploited Children (Feb. 9, 2006) (on file with the International Centre for Missing & Exploited Children).

[49] Article 348a of the Greek Penal Code criminalizes various child pornography offenses, including possession, purchase, transfer, and sale of child pornography "in any way."

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Haiti	✗	✗	✗	✗	✗
Holy See	✓	✗	✓	✓	✗ [50]
Honduras	✓	✗	✓	✓	✗
Hungary	✓	✓	✓ [51]	✓	✗
Iceland	✓	✗	✓ [52]	✓	✗
India	✓	✗	✓	✓	✗
Indonesia	✓	✓	✓ [53]	✓	✗

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

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

[52] Article 210 of the Penal Code of Iceland criminalizes the "possession of photographs, films, or **comparable items** depicting children in a sexual or obscene manner." *Emphasis added*.

[53] Article 1 of the Indonesian Anti-Pornography Law defines and criminalizes pornography created "though **any** media or mode of communication." *Emphasis added.*

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Iran	✗	✗	✗	✗	✗
Iraq	✗	✗	✗	✗	✗
Ireland	✓	✓	✓	✓	✗
Israel	✓	✓	✓	✓	✗
Italy	✓	✓	✓	✓	✓
Jamaica	✓	✓	✓	✓	✗
Japan	✓	✓	✓	✗	✗
Jordan	✗	✗	✗	✗	✗
Kazakhstan	✓	✗	✗	✗	✗
Kenya	✓	✗	✓[54]	✗	✗
Kiribati	✗	✗	✗	✗	✗
Kosovo	✓	✗	✗	✓	✗

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Kuwait	✗	✗	✗	✗	✗
Kyrgyzstan	✓	✗	✗	✗	✗
Laos	✓	✗	✓	✗	✗
Latvia	✓	✓	✓[55]	✓	✗
Lebanon	✗	✗	✗	✗	✗
Lesotho	✗	✗	✗	✗	✗
Liberia	✗	✗	✗	✗	✗
Libya	✗	✗	✗	✗	✗
Liechtenstein	✓	✗	✓	✓	✗[56]
Lithuania	✓	✗	✗	✓	✗

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

[56] While there is no specific mention of ISP reporting in the Penal Code of Liechtenstein, in the draft of the new Children and Youth Act, a reporting requirement is foreseen that would apply to "anyone learning of the endangerment of the welfare of a child or young person." E-mail from Claudia Fritsche, Ambassador, Embassy of Liechtenstein, Washington, D.C., to Jessica Sarra, Director of Global Operations, International Centre for Missing & Exploited Children (Feb. 7, 2006) (on file with the International Centre for Missing & Exploited Children).

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Luxembourg	✓	✗	✓[57]	✓	✗
Macedonia	✓	✗	✓[58]	✗	✗
Madagascar	✓	✗	✓[59]	✗	✗
Malawi	✗	✗	✗	✗	✗
Malaysia	✗	✗	✗	✗	✗
Maldives	✗	✗	✗	✗	✗
Mali	✓	✗	✗	✗	✗
Malta	✓	✗	✓	✓	✗
Marshall Islands	✗	✗	✗	✗	✗
Mauritania	✗	✗	✗	✗	✗

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

[58] Article 193(3) of the Macedonian Penal Code criminalizes the abuse of a "juvenile" in the "production of…**other objects** with a pornography content." *Emphasis added*.

[59] Article 346 of the Penal Code of Madagascar criminalizes the use of "any means" to disseminate child pornography.

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Mauritius	✓	✗	✓	✗	✗
Mexico	✓	✓	✓	✓	✗
Micronesia	✗	✗	✗	✗	✗
Moldova	✓	✓	✓	✓	✗
Monaco	✓	✓	✓	✓	✗
Mongolia	✗	✗	✗	✗	✗
Montenegro	✓	✗	✓[60]	✗	✗
Morocco	✓	✗	✗	✓	✗
Mozambique	✗	✗	✗	✗	✗
Myanmar	✓	✓	✓	✗	✗
Namibia	✗	✗	✗	✗	✗

[60] Article 211(2) of the Penal Code of Montenegro criminalizes "exploit[ing] a child for the production of pictures, audio-visual, or **other items** of pornographic content." *Emphasis added*.

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Nauru	✗	✗	✗	✗	✗
Nepal	✓	✗	✗[61]	✗	✗
Netherlands	✓	✓	✓	✓	✗[62]
Netherlands Antilles[63]	✗	✗	✗	✗	✗
New Zealand	✓	✓	✓	✓	✗[64]
Nicaragua	✓	✓	✓	✓	✗

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

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

[63] The Netherlands Antilles consists of five islands in the Caribbean Sea: Bonaire, Curacao, Saba, Sint Eustatius, and Sint Maarten. The Netherlands Antilles is set to dissolve on 10 October 2010; some of the islands will become Dutch municipalities and others will become independent countries within the Kingdom of the Netherlands.

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Niger	✗	✗	✗	✗	✗
Nigeria	✗	✗	✗	✗	✗
North Korea	✗	✗	✗	✗	✗
Norway	✓	✓	✓	✓	✗
Oman	✗	✗	✗	✗	✗
Pakistan	✗	✗	✗	✗	✗
Palau	✗	✗	✗	✗	✗
Panama	✓	✓	✓	✓	✗ [65]
Papua New Guinea	✓	✓	✗	✓	✗

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Paraguay	✓	✓	✓[66]	✓	✗[67]
Peru	✓	✗	✓	✓	✗
Philippines	✓	✓	✓	✓	✓
Poland	✓	✗	✓[68]	✓	✗
Portugal	✓	✗	✓[69]	✓	✗
Qatar	✓	✗	✓[70]	✗	✗

[66] Article 1 of Paraguayan Law Number 2861/06 imposes sanctions on "whoever, **by any means**, produces, or reproduces" child pornography. *Emphasis added.*

[67] Although ISPs are not specifically mentioned, Article 7 of Paraguayan Law Number 3861/06 states that anyone who witnesses child pornography offenses is required to "report these offenses immediately to the Police or the Public Minister, provide, if held, the data for the location, seizure, and eventual destruction of the image, and for the identification, apprehension and punishment of the perpetrators. Anyone who fails to fulfill these obligations shall be sentenced to deprivation of liberty for up to three years or with a fine."

[68] Although the Polish Penal Code does not explicitly criminalize computer-facilitated offenses, Article 202 has been used in Poland to monitor and eliminate websites with content deemed to be child pornography indicating that this Article is used to combat both print and online child pornography. Government of the Republic of Poland, *Report on Counteracting Violence against Children in Poland* 5-6 (May 25, 2005), *at* http://www2.ohchr.org/english/bodies/CRC/docs/study/responses/poland.pdf (last visited Jul. 9, 2010) (on file with the International Centre for Missing & Exploited Children).

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

[70] Article 292 of the Penal Code of Qatar specifically mentions "books, publications, **other written materials**, pictures, photographs, films, symbols, or **other items**." *Emphasis added*.

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Romania	✓	✓	✓	✓	✗[71]
Russia	✓	✗	✗	✗	✗
Rwanda	✗	✗	✗	✗	✗
St. Kitts & Nevis	✗	✗	✗	✗	✗
St. Lucia	✗	✗	✗	✗	✗
St. Vincent & the Grenadines	✗	✗	✗	✗	✗
Samoa	✗	✗	✗	✗	✗
San Marino	✓	✓	✓	✗	✗
Sao Tome & Principe	✗	✗	✗	✗	✗
Saudi Arabia	✗	✗	✗	✗	✗

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Senegal	✗	✗	✗	✗	✗
Serbia	✓	✗	✓[72]	✗	✗
Seychelles	✓	✗	✓	✓	✗
Sierra Leone	✗	✗	✗	✗	✗
Singapore	✗	✗	✗	✗	✗
Slovak Republic	✓	✓	✓	✓	✗
Slovenia	✓	✗	✓[73]	✓	✗
Solomon Islands	✗	✗	✗	✗	✗
Somalia	✗	✗	✗	✗	✗
South Africa	✓	✓	✓	✓	✓

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

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
South Korea	✓	✓	✓	✓	✗
Spain	✓	✗	✓[74]	✓	✗
Sri Lanka	✓	✗	✗	✓	✗
Sudan	✗	✗	✗	✗	✗
Suriname	✓	✗	✓	✓	✗
Swaziland	✗	✗	✗	✗	✗
Sweden	✓	✗	✓[75]	✓	✗[76]

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

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

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Switzerland	✓	✓	✓	✓	✗[77]
Syria	✗	✗	✗	✗	✗
Tajikistan	✓	✗	✗	✗	✗
Tanzania	✗	✗	✗	✗	✗
Thailand	✗	✗	✗	✗	✗
Timor Leste	✗	✗	✗	✗	✗
Togo	✗	✗	✗	✗	✗
Tonga	✓	✓	✓	✓	✗
Trinidad & Tobago	✗	✗	✗	✗	✗
Tunisia	✓	✗	✓[78]	✗	✗

[77] ISPs do not have a legal obligation to monitor and report suspected child pornography; however, Switzerland has created a special entity – the Cybercrime Coordination Unit Switzerland (CYCO) – where persons can report suspicious Internet subject matter. CYCO also actively searches for criminal subject matter on the Internet and is responsible for in-depth analysis of cybercrime. It is possible for the public to report child pornography cases to CYCO. Today about 80% of ISPs in Switzerland have agreements with CYCO. Letter from Urs Ziswiler, Ambassador, Embassy of Switzerland, Washington, D.C., to Maura Harty, Senior Policy Director, International Centre for Missing & Exploited Children (Jan. 22, 2010) (on file with the International Centre for Missing & Exploited Children).

[78] Article 234 of the Tunisian Penal Code criminalizes, *inter alia*, the use of "**any** visual recordings or photographs" depicting pornographic images of children. *Emphasis added.*

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Turkey	✓	✗	✗	✓	✗
Turkmenistan	✗	✗	✗	✗	✗
Tuvalu	✗	✗	✗	✗	✗
Uganda	✗	✗	✗	✗	✗
Ukraine	✓	✓	✓	✓	✗
United Arab Emirates	✗	✗	✗	✗	✗
United Kingdom[79]	✓	✓	✓	✓	✗[80]
United States	✓	✓	✓	✓	✓
Uruguay	✓	✓	✓[81]	✗	✗

[79] For the purposes of this report, the United Kingdom includes England and Wales.

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

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

Country	Legislation Specific to Child Pornography	"Child Pornography" Defined	Computer-Facilitated Offenses	Simple Possession	ISP Reporting
Uzbekistan	✗	✗	✗	✗	✗
Vanuatu	✓	✓	✓	✓	✗
Venezuela	✓	✓	✓	✗	✗
Vietnam	✗	✗	✗	✗	✗
Yemen	✗	✗	✗	✗	✗
Zambia	✗	✗	✗	✗	✗
Zimbabwe	✗	✗	✗	✗	✗

Conclusion

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

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