

## **ISSUES MANDATED BY THE THIRD ANNUAL MEETING - CHILD PORNOGRAPHY AND THE INTERNET**

### **SUMMARY**

The Third Annual Meeting of the Asia-Pacific Forum identified child pornography on the Internet as an area where the law was simply not keeping up with technology. Forum members considered that there was a need to look into this issue and suggested that the Secretariat focus its work on child sexual exploitation on the problem of child pornography on the Internet.

The availability of child pornography on the internet is an abuse of the rights of the child. It has been an issue of concern for a variety of international, inter-governmental and non-governmental organisations throughout the 1990s, but it has become a more widely held concern, and a matter of greater public interest, in the last few years as Internet usage has grown and children's rights groups have developed campaigns to combat the problem.

According to ECPAT (End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes ) and Interpol, the extent of child pornography on the Internet is extensive and it is inextricably linked with a number of other forms of sexual exploitation of children. Interpol's Assistant Director has said that "the Internet is well on the way of becoming the most significant factor in child sexual exploitation, and the principal means for exchanging child pornography".<sup>1</sup>

There are measures already in place to combat the problem which range from legislation and criminalisation of Internet activity through to content classification, content filtering, community education, hotlines, codes of conduct and action plans.

For those national governments which have tried to address the problem through legislative or policy measures, the imperative to act has usually come from public concern in the wake of media reports relating to the availability of child pornography on the Internet or the arrest and prosecution of individuals charged with child sex offences. Typically, government action has resulted in some degree of controversy and has elicited conflicting responses from Internet users, the general public and special interest and industry groups. This is due in part to the unique nature of the Internet which poses significant technical and policy difficulties for would-be regulators but is also, in large part, due to differing assessments about the balance that has to be struck between protecting the rights of the child and the rights of freedom of expression and privacy. Although condemnation of child pornography and associated forms of child sexual exploitation is universal, there is by no means a consensus on the best way in which to deal with the problem.

The purpose of this paper is to

- (a) highlight some of the key conceptual and practical issues arising from the availability of child pornography on the Internet
- (b) survey current activity to address the problem and
- (c) draw some conclusions about possible action by the Forum and Forum members.

### **INTRODUCTION**

The reference for this background paper highlighted the gap between the law and technology. On the face of it, the problem of child pornography on the Internet seems a straight forward matter of extending existing legal sanctions against child pornography to cover a new medium – it is a case of suppressing the availability of offensive material on the Internet and dealing with those who create, disseminate or possess it. However, the experience of countries which have attempted to regulate Internet content has shown that long-standing debates about censorship

are re-kindled and that the opponents of Internet regulation argue strongly that any attempt at regulation will be futile.

It is worth considering the main arguments which have featured in these debates because they do have a bearing on the appropriateness and effectiveness of the countermeasures used to combat child pornography on the Internet. Moreover, because of the practical and symbolic importance being attached to the Internet as the vanguard of the “digital age”, anybody contemplating any action that impinges on the content or availability of the Internet will be confronted with questions about the desirability and practicality of their intentions.

## **KEY ISSUES**

### ***The best interests of the child***

The principle of the “best interests of the child” is the most appropriate starting point from which this Forum should begin its considerations. It is the principle that underpins the Convention on the Rights of the Child (CROC), which has been ratified by all countries except for the United States and Somalia. CROC, therefore, is as universal in its scope and reach as the Internet.

CROC has a number of provisions which governments need to pay close attention to in relation to child pornography on the Internet:

#### *Article 17*

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, State Parties shall:

(...)

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provision of articles 13 and 18.<sup>2</sup>

#### *Article 19*

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

#### *Article 32*

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

#### *Article 34*

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:

- (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;
- (c) The exploitative use of children in pornographic performances and materials.

It is very important to take CROC as a point of departure because one of the key points of contention that arises in relation to regulating Internet content is about the threat it may pose to freedom of expression and to the right to privacy. When one Parliament of a Forum Member country recently held a public inquiry in relation to a Bill to regulate Internet content, most opponents of the Bill argued that it violated the right to freedom of expression and a number of submissions from industry groups and individuals quoted (selectively) Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>3</sup> However, not one submission referred to CROC and to the very clear child protection obligations which it sets out.

### ***The nature of the problem***

To a large extent, the dilemmas posed for legislators and policy makers trying to address child pornography on the Internet arise due to the unique characteristics of the Internet itself. The very qualities that make the Internet such a powerful and universal tool also make it an ideal medium for transmitting child pornography quickly, easily, cheaply and anonymously. The multi-faceted nature of the Internet also means that the availability of child pornography poses, simultaneously, a range of problems for a range of actual or potential users.

Moreover, many of the arguments made against calls for action to combat child pornography on the Internet rely on claims that the Internet is, by design, a medium that can *not* be regulated. That is, that both as a matter of empirical fact and as a matter of principle it is not possible to regulate what is available on the Internet.

Therefore, debates about combating child pornography on the Internet tend to come down to three fundamental questions:

1. Whether to regulate?
2. Is effective regulation technically feasible?
3. How to regulate?

### **Whether to regulate?**

Opposition to child pornography is universal. However, not all those who condemn child pornography agree that legislation to control its availability on the Internet is desirable or even necessary. Therefore the threshold question in this debate becomes whether or not to regulate.

The primary conceptual, or in-principle, objection that is raised against efforts to remove child pornography from the Internet centres on the desirability of such action. This argument claims that any regulation of Internet content is censorship and that it is, therefore, an attack on freedom of expression. If anything, debates over censorship of the Internet are more intense because Internet culture has been defined by the popular belief that it is was designed to be beyond regulation and the constraints imposed on traditional media. The Internet has in many ways become the embodiment of the ideology of globalisation. As a technology and a social/cultural phenomenon, it has been embraced because it promises to make obsolete the limitations which attach to traditional ways of creating, disseminating and exchanging ideas and information.

Human rights activists, in fact, have been among the many groups that have benefited immensely from the Internet's ability to by-pass repressive laws and intrusive security apparatuses and to transcend political borders. Clearly, the right to freedom of expression argument has merit and Article 19 of the UDHR and the ICCPR backs it up. However, Article 19, paragraph 3 of the ICCPR sets some limitations:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

This limitation on the right to freedom of expression raises a much broader question of Internet content that goes beyond just child pornography. In the narrow context of child pornography, the balance which must be struck between competing rights is most obviously between the rights set out in the Article 19 of the ICCPR and the Convention on the Rights of the Child. However, there are other issues like hate speech, racial vilification, defamation and incitement to violence

(including things like bomb-making recipes) that are all justifiable areas of concern and deserving of attention. Consequently, efforts to implement Internet content controls have shown that there are diverse groups within the general population that have specific (and perhaps not always complementary) interests in regulating Internet content.

Another aspect of this threshold question relates to the necessity of Internet controls. This revolves around the question of just how widespread and easily accessible child pornography really is. According to Interpol and ECPAT, the amount of material and the frequency with which it is used is alarming. Proponents of content regulation cite examples where children doing research for school projects get access to child pornography while using common search engines to look for innocuous information. Opponents of content regulation claim that those who use or maintain child pornography and, in particular, paedophile sites have a strong interest in *not* being detected because they are illegal and so anybody who wants access to child pornography must actively seek it out.

These conflicting claims reflect conflicting views of Internet content more broadly. According to one US-based company which sells filtering software (see below), 70% of material downloaded from the Internet is from X-rated sites. On the other hand, the Australian Broadcasting Authority Taskforce on children and on-line content concluded that the overwhelming bulk of content available on the Internet is either beneficial or harmless in nature. These two claims may not, in fact, be contradictory as one is specifically about downloaded material and comes from a company with specific commercial interests. Nevertheless, they do illustrate widely divergent perceptions of the on-line environment.

The argument also raises another issue, that of distinguishing legal “adult” content from illegal content. This “definitional” problem is inevitably raised in discussions about child pornography. Providers of adult (R-rated) material which is legally available in print or broadcast media contend that attempts to regulate Internet content will place restrictions on what adults are legally entitled to gain access to. Another aspect of this issue arises for law enforcement agencies which have reported problems in policing child pornography and paedophile activity on the Internet because digital technology makes it easy to alter images and hard to prove conclusively that what is presented as child pornography actually involved the use of children.<sup>4</sup>

While there is no internationally accepted definition, Interpol has provided the following:

Visual pornography is the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material.

Audio pornography is the use of any audio devices using a child’s voice, real or simulated, intended for the sexual gratification of the user, and involves the production, distribution and/or use of such material.

A whole cluster of arguments against regulating Internet content is based on a variety of claims that in some way relate to the specific qualities of the Internet.

- *It’s futile:* Usually the second key objection to regulation of the Internet rests on the argument that even if it is considered desirable, any efforts to regulate it will be futile. However proponents of content regulation use the counter-argument that, because child pornography on the Internet is inextricably linked to other manifestations of child sexual exploitation, even if counter-measures can only ever be partially successful they have to be employed – to do nothing is unacceptable. This argument rests in particular on the conclusion that, unlike traditional media, the Internet is particularly suitable for using child pornography as a “training manual” to entice children, desensitise them to lower their inhibitions and draw them into paedophile networks and activities.

- *It's already illegal:* This objection to Internet-specific regulation is based on the contention that what is illegal offline remains illegal online, that is child pornography is already outlawed by existing legislation covering offensive, obscene or harmful material and what is needed is better enforcement of those laws, including better resourcing of law enforcement agencies specifically in the area of child protection. According to this argument, the harm caused by legislation and regulation far outweighs any possible positive impact. The potency of this anti-regulation argument is greatly strengthened by the commercial possibilities which the Internet is now starting to realise. Internet industry groups in particular argue that attempts at Internet regulation in Singapore and Malaysia were abandoned when it became evident that e-commerce and e-business were being impeded. Unfortunately, the existing situation with legislation is very uneven and even where individual countries have adequate legal codes the lack of harmonisation across borders often renders the law useless (see below).
- *Borders are irrelevant:* The basis of this argument is that it is pointless for individual countries to legislate over Internet content because that content is either located in, or else easily shifted to, foreign jurisdictions. In addressing this issue the situation in the United States is of particular importance. A "Communications Decency Act" was struck down by the United States Supreme Court on the grounds that it infringed the constitutional guarantee of free speech. The US plays a central role in the Internet in terms of infrastructure and content. How the US acts in relation to Internet content will remain a decisive factor. It is also worth noting that the US has not ratified CROC and that it is unlikely to do so in the foreseeable future.
- *Don't regulate, educate:* This argument goes to concerns about protecting children who use the Internet from harmful content (as distinct from the issue of criminal behaviour on the part of producers, distributors and users of child pornography). Opponents of legislation to regulate Internet content argue that it undermines, or rather marginalises, the role of parents, guardians and teachers/supervisors (in educational or institutional settings). According to this argument, safe Internet surfing will never be possible and to suggest otherwise is to give concerned adults a false sense of security. Just as responsible adults ensure that children are kept out of harmful situations in real space, they should be responsible for ensuring that children do not enter harmful areas in cyber-space. For this approach to work, adults need to become at least as computer-literate as the children in their care and so education aimed at both adults and children warning them of the dangers on the Internet is required. Of course, supporters of content regulation argue that the two approaches are complementary and it is not a question of either one or the other.
- *Collateral damage:* Because of the way the Internet actually operates, regulatory measures tend to focus on those players in the system that are the broker between the creators and the consumers of content – the Internet Service Providers (ISPs). This group also includes universities, libraries and a range of other institutions and individuals who have voiced strong concerns about proposed legislation which would put the onus on them to monitor and remove banned material from web sites which they operate.

### **Is effective regulation technically feasible?**

The "*it's futile*" objection to Internet content regulation rests on claims that, in any contest between those who would block undesirable content and those who want to transmit, store or use it, the technological advantage will always lie with the latter. As will be seen below, there are already many filtering technologies designed to screen out undesirable content and so protect children from being exposed to harmful material. However, the technical challenges to regulating Internet content need to be addressed to maximise the effectiveness of attempts at regulation.

The Internet is unlike print, radio or television. It is a diverse bundle of technologies of which the World Wide Web is just the most widely known and most easily used. Although less convenient

(that is, less user-friendly) there is a plethora of other channels through which undesirable content such as child pornography can be transmitted including file transfer (ftp), newsgroups, the Usenet (a networked collection of newsgroups), Gopher servers, Bulletin Boards Service (BBS), video streams, Virtual Private Networks (VPNs – which employ encryption) and IRC (Internet Relay Chat) channels (also known as chat-rooms).

As well as its capacity to host diverse technologies and multiple channels, the Internet is unique in that it enables one-to-one, one-to-many and many-to-many modes of communication. On the Internet, every user can be a publisher and every user can communicate with any or all other users. This is one of the most powerful and beneficial features of the Internet. However, it is one of the most serious impediments to content regulation.

Although estimates of the actual Internet usage are difficult to assess, it is worth quoting a few figures. According to the Computer Industry Almanac, one Internet Service Provider (America On-line, AOL) alone has 17 million members of whom 2.5 million are children. AOL members send 56 million e-mails each day, send and receive 432 million “instant messages” and request more than 2.6 billion Web Uniform Resource Locators (URLs) daily. In 1996 the European Union estimated that the Internet reached some 60 million users in 160 countries and the number of users doubled each year. Estimates by the US Commerce Department indicate a doubling of Internet traffic every 80 to 90 days.

In addition to the diffuse and anarchic nature of the Internet, its other defining characteristic is the rapid pace of change of the technologies involved. The Internet not only makes it possible for every user to be a publisher. It also creates the world’s biggest laboratory for software development. In the short period since the Internet has moved from being the preserve of the defence establishment and academics, it has penetrated all facets of private and public life. With “convergence”, the ubiquitous nature of the Internet will be further extended and entrenched and the remaining barriers to the transmission of information will be further eroded. This means that the problem for would-be regulators of Internet content becomes one of keeping up with constant change. Legislators and those trying to apply the law are in fact dealing with a moving target.

In April 1999 Australia’s scientific and research organisation, the Commonwealth Scientific and Industrial Research Organisation (CSIRO), prepared a report on the *Technical Aspects of Blocking Internet Content*. That report concluded that blocking undesirable Internet content by filtering at Internet Service Providers (ISPs) is technically feasible but that this was conditional on a number of key factors, including significant investment in technology, the cooperation of all Internet Service Providers and the implementation of quite severe restrictions on Internet access. The report also warned that effective filtering may mean considerable increased costs for providing Internet access. The report met with mixed reactions and has received heavy criticism particularly from Internet industry groups and members of the information technology industry.

### **How to regulate?**

Much of the heat in the debates surrounding regulation of Internet content arises from the meaning which different interest groups assign to “regulation”. The nub of the conflict, however, is whether to use Internet-specific legislation which criminalises certain activity and which establishes independent regulatory mechanisms.

Internet industry groups (just like any other industry group faced with the prospect of outside regulation) and those concerned about restrictions on freedom of expression see regulation as a heavy-handed response which will impose unnecessary costs and hardships without meaningfully addressing the problem. Industry groups in particular argue that regulation mistakenly targets Internet Service Providers and that the focus should be on the producers not the distributors of undesirable content. Libraries, universities and other institutions or individuals who host web-sites are concerned by regulatory schemes which put the onus on them to vet all the material which appears on their sites. They argue that they are in exactly the same position as traditional

postal services. That is, just as practical and privacy considerations prevent postal service providers from knowing what is in normal mail, there are legitimate practical and privacy considerations preventing Internet Service Providers and Web-page providers from scrutinising the content of material available through their services.

Proponents of regulation of Internet content argue that a serious problem exists, that it is an actual violation of children's rights and that community and international human rights standards demand an appropriate response. Just as print, radio, film and broadcast media are regulated in terms of content and its availability, so to should online content.

The preferred solutions put forward by different interest groups can be summarised as follows:

#### No regulation

Rather than implement new Internet-specific regulatory mechanisms

- enforce existing laws
- support the development of voluntary codes of conduct
- establish hotlines to enable people to report instances of illegal material or conduct
- support community education to promote awareness of safe Internet use.

#### Self-regulation

Establishing a system which

- encourages responsible behaviour among Internet Service Providers, Web page developers and programmers through peer review and voluntary industry codes on content classification
- supports the voluntary development and use of filtering technologies
- gives to parents/guardians and other responsible adults the key role in protecting children from harmful content
- provides an industry-based complaints handling mechanism
- supports measures to develop international agreements governing on-line content.

Critics of self-regulation claim it is designed to protect industry interests, excludes consumers and puts the content regulation process into the hands of private corporations.

#### Full regulation

This includes all or most of the measures listed above as well as

- the establishment of an independent on-line content regulatory authority
- a licensing system for Internet Service Providers
- uniform legislation on the production and classification of Internet content
- criminalising child sexual exploitation which is carried out via the Internet
- the development of a technical standards and accreditation scheme for filtering technologies
- mandatory codes of conduct.

In addition to the regulatory response, children's rights groups have drawn attention to the need to provide appropriate services to assist children who have been the victims of abuse as a result of Internet-based content or activity.

### **CURRENT RESPONSES TO THE PROBLEM**

Despite the controversy over whether to regulate or not and the contradictory evidence regarding the technical feasibility of regulation, there is significant activity taking place to make the Internet

a safer environment for children and law enforcement agencies have had success in arresting producers and users of child pornography.

### International Conferences and Seminars

International and inter-governmental organisations have already developed a significant body of material about Internet content, especially as it relates to protecting children from harmful content. There has been a number of significant conferences and seminars bringing together international experts and interested groups. These have considered universal principles for developing legal frameworks for cyberspace activities and have included national authorities with responsibilities in the area of broadcasting and content classification. They have enabled participants from diverse countries to consider broader issues including ways of ensuring Internet content reflects local and community values and promotes cultural diversity.

Some of the more important meetings which have taken place include:

- World Congress Against Commercial Sexual Exploitation of Children, Stockholm, 1996
- White House Meeting on Internet Parental Empowerment Tools, July 1997
- OECD Ad hoc Meeting on approaches to content and conduct on the Internet, July 1997
- The Internet On-line Summit: Focus on Children, Washington DC, December 1997
- “The Use of the Internet within the Context of Sexual Exploitation of Children”, Strasbourg, Council of Europe, April 1998 (a follow-up to the Stockholm World Congress)
- Child Pornography on the Internet – Experts Meeting, Lyon France, 28-29 May 1998
- UNESCO Asia-Pacific Regional Experts Meeting, Seoul, September 1998
- UNESCO Experts Meeting on Cyberspace Law, Monte Carlo, September/October 1998
- UNESCO Workshop on Child Pornography and Paedophilia on the Internet, Paris, January 1999
- Asia-Pacific Internet Conference, Bali Indonesia, March 1999
- International Seminar on “Sexual Abuse and Exploitation of Children: a health and criminal justice perspective”, Durham, United Kingdom, 28 February – 6 March 1999
- Expert Conference on a European System for Content Rating, Brussels, 18-19 May 1999.

In late September/early October 1999 the International Network of Experts on Content Self-regulation (an initiative of the Bertelsmann Foundation) will host the “International Internet Content Summit” which will consider industry codes of conduct, self-rating and filtering mechanisms, hotlines and law enforcement issues.

## Studies

There is a very large body of written material on the specific topic of child pornography on the Internet as well as the broader issue of illegal and harmful Internet content. The 1996 Stockholm World Congress and the various UNESCO conferences in particular have resulted in a wealth of material, including research and presentations by conference participants. As with the previous section, this is not presented as a comprehensive review. Rather, it provides a useful starting point for more extensive reading about the issues.

The Australian Broadcasting Authority has been active in this field and has prepared a number of reports dealing with international and national aspects of the problem of online content.

- report of investigation into the content of online information and entertainment services, including services on the Internet, June 1996
- report commissioned by UNESCO, *The Internet and some international regulatory issues relating to content, a pilot comparative study of Australia, Malaysia, Singapore and the United Kingdom*, October 1997
- report of the *Children and Content Online Taskforce*, June 1998
- interim report of second investigation into the content of online information and entertainment services, including services on the Internet, July 1998
- final report of second investigation into the content of online information and entertainment services, including services on the Internet, December 1998.

The European Union, through a variety of its institutions, has been investigating the problems associated with illegal and harmful on line content since the mid-1990s. Some of its reports include

- *Illegal and harmful content on the Internet*, Communication by the European Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, October 1996
- Green Paper on the Protection of Minors and Human Dignity in Audiovisual and Information Services, October 1996
- Interim Report of the Working Party on Illegal and Harmful Content on the Internet, July 1997.

The OECD has also been active, although with a particular focus on the commercial aspects of the Internet. However, its ICCP Committee has done some work in relation to undesirable content and conduct on the Internet. In February 1997 it agreed to undertake a study aimed at reviewing the existing legislation and practices of member countries concerning Internet content.

- Secretariat report on content and conduct on the Internet.

The Australian Commonwealth Scientific and Industrial Research Organisation (CSIRO) prepared a report for the Australian National Office of the Information Economy

- Technical Aspects of Blocking Internet Content, April 1999.

The Australian Parliament, through its Senate Select Committee on Information Technologies, recently carried out a public inquiry into the Government's Broadcasting Services Amendment (Online Services) Bill. Its report, which includes 104 submissions made by industry groups, information technology experts, government agencies, church and community groups and individuals as well as transcripts of four public hearings, is publicly available

- Report of the Senate Select Committee on Information Technologies into the Broadcasting Services Amendment (Online services) Bill 1999, May 1999.

The Australian Institute of Criminology publishes 'Trends and Issues' papers in crime and criminal justice

- Paper No. 97 Paedophile Internet Activity, November 1998 (<http://www.aic.gov.au>).

### Websites

The Internet hosts a multitude of useful and informative websites and it is not possible here to do more than provide some key addresses. The following sites are listed as information sources. Websites specifically related to law enforcement, hotlines or other specific activities are listed under the relevant heading in the subsequent sections.

<http://www.ecpat.net/ecpat1/index2.html> - ECPAT's home page for child pornography on the Internet. ECPAT is an international non-governmental community-based organisation formed to end child prostitution, child pornography and the trafficking of children for sexual purposes. It takes its mandate from the 1996 Agenda for Action approved by 122 governments at the World Congress against the Commercial Sexual Exploitation of Children, held in Stockholm, Sweden in August 1996.

<http://www.crin.ch/> - Child Rights Information Network (CRIN) provides a gateway to a large number of organisations and their publications on children's rights

<http://www.unicef.org/> - The United Nations Children's Fund (UNICEF) is a key UN agency for children's rights

<http://www.unhchr.ch/> - Office of the United Nations High Commissioner for Human Rights provides access to all UN human rights documentation including the UN Committee on the Rights of the Child, reports of UN special rapporteurs and meetings (Commission on Human Rights etc)

<http://www.unicef-icdc.org/> - The Innocenti Centre for Child Development is a specialist children's rights research centre

<http://www.childhub.ch/dcif/focalpoint.html> - Focal Point on Sexual Exploitation of Children (NGO Group for the Convention on the Rights of the Child and Defence for Children International)

<http://www.ispcan.org> – International Society for the Prevention of Child Abuse and Neglect

<http://www.oecd.org/dst/sti/it/secur/act/selfreg-links.html> – OECD Forum on Internet content self-regulation is an excellent directory of websites covering filtering software, Internet access control standards and rating systems, codes of conduct, educational resources, initiatives by OECD member countries, regional and international initiatives and books

<http://www2.echo.lu/home.html> – the Information Market Europe worldwide web server operated by the European Commission's Directorate-General for Telecommunications gives access to the EU Action Plan.

### Filtering Technologies

A range of software products have been available since around 1995 and others are being developed, to filter out or block specific Internet content. This software (referred to as a "client-side" solution) puts users or, in the case of children, their parents, guardians or teachers in

control of what material they wish to block from their computer screens. The software is available online or can be purchased. More and more Internet Service Providers provide online filtering as part of their Internet access packages.

Filters work in three ways:

- by using a “blacklist” of sites known to contain undesirable content which can be updated and configured either centrally or by the user
- by using keywords or phrases to block either requests for or the receipt of undesirable content
- by using a “whitelist” of acceptable sites, limiting Internet access to only those sites.

Assessments of the effectiveness of filtering software vary considerably. However it seems to be generally agreed that filters are relatively easy to circumvent and can even be completely turned off by computer-literate children. The “blacklist” type filters have been criticised for being cumbersome, quickly becoming outdated (since websites are so mobile they can be closed, renamed or transferred very quickly and easily) and ineffective against encrypted material. Some critics even charge that the system has harmful consequences because the blacklists themselves become a commodity.

The keyword/phrase-based systems have been criticised for their hit-and-miss approach and for their tendency to block access to many neutral or beneficial sites. For example, it has been shown that some widely available software blocks access to sites which provide information, support or counselling on safe sex, HIV-AIDs, drug addiction, sexuality or certain medical conditions (like breast cancer). Because much of the currently available software is from the USA, concern has also been expressed that these filtering techniques are too culturally specific and promote a certain world view.

More sophisticated technology uses combinations of key words, images, network profiles and related sites to provide real-time searches and filtering of Internet content.

### Portals

The whitelist approach has evolved into a group of products generally known as “opt in” solutions which offer separate and specialised “family” Internet access. These rely on search engines that can discriminate between desirable and undesirable sites and deliver specified thematic content to user groups. The idea behind these is to create safe “Intranet” sites which cater to the specific needs and interests of different user groups. Subscribers to these services get access to a “parallel” Internet which has the same range of features (websites, e-mail, games, chat rooms etc) but where the content is carefully selected and access to the actual Internet is blocked. Because the Intranet is only accessible through an Internet Service Provider and is not PC-based, it cannot be disabled by children in the way that filtering software can.

Companies such as Microsoft and America Online are working on “Portals” which give Web surfers control over what information is delivered to their computers. Netscape is working on the “Open Directory Project” which will employ a directory that informs search engines of where specified (e.g. child safe) content can be found on the Internet. Yahoo!igans! is a child-specific search engine.

KAHOOTZ and Kidz.net are some examples of child-safe and, in the case of KAHOOTZ, commercial-free sites. KAHOOTZ, established in April 1998, is a joint venture between computer multinational Hewlett-Packard, the telecommunications carrier ‘Telstra’ and the Australian Children’s TV Foundation. Kidz.net is available free to schools and libraries and has a licensing service which enables Internet Service Providers to offer the product to their subscribers.

### Content Classification Systems

PICS (Platform for Internet Content Selection) was developed in the mid-1990s by a non-governmental cross-industry group known as the World Wide Web Consortium (W3C) which has offices in the USA, France and Japan and brings together industry, technology, trade and public interest group representatives.

PICS makes it possible to label things like websites or home pages with a rating that informs users of the nature of the content. These labels can be attached by the person who creates or is responsible for the content (self-rating) or by a third party.

PICS currently supports 3 well-established, independent rating systems which describe the levels of sex, nudity, violence and coarse language. The Recreational Software Advisory Council labelling scheme for the Internet (RSACi) is probably the best known of the rating systems. Supporters of the systems claim that PICS-formatted labels cover 30% of the web-browser market and Internet Explorer 3.0 was the first browser to support PICS. As of June 1998 75000 websites had established a rating with RSACi.

The Internet Content Rating Alliance (ICRA) was formed in 1998 through an agreement between the Internet Watch Foundation (IWF), the German Internet service provider association (eco) and the Recreational Software Advisory Council. Its mission statement is "to develop an internationally acceptable rating system which provides Internet users world-wide with the choice to limit access to content they consider harmful, especially to children".

ICRA has a Reference Group (previously the International Working Group on Content Rating) which is active in the International Network of Experts on Content Self-Regulation. The Network's mission is to facilitate the development of an integrated system of approaches to dealing with harmful and illegal content on the Internet through self-regulation, in particular by focussing on industry codes of conduct, self-rating and filtering mechanisms, hotlines and law enforcement.

### Action Plans

On 25 January 1999 the European Parliament adopted a Multiannual Community Action Plan promoting safer use of the Internet by combating illegal and harmful content on global networks (Decision No. 276/1999/EC). The Action Plan has the objective of promoting safer use of the Internet and of encouraging, at the European level, an environment favourable to the development of the Internet industry. It comprises the following elements:

- promotion of industry self-regulation and content-monitoring schemes (for example, dealing with content such as child pornography or content which incites hatred on grounds of race, sex, religion, nationality or ethnic origin)
- encouraging industry to provide filtering tools and rating systems which allow parents or teachers to select content appropriate for children in their care while allowing adults to decide what legal content they wish to access and take account of linguistic and cultural diversity
- increasing awareness of services provided by industry among users, in particular parents, teachers and children, so that they can better understand and take advantage of the opportunities of the Internet
- support actions such as assessment of legal implications
- activities fostering international cooperation in the areas enumerated above.

The Action Plan covers a period of four years from 1 January 1999 to 31 December 2002 and has a budget of ECU 25 million.

Participation in the Action Plan by legal entities established in non-EU countries and by international organisations is possible, but without financial support by the Community.

UNESCO adopted an action plan and a declaration to combat child pornography on the Internet following the Expert Meeting held in Paris in January 1999. UNESCO's action plan has two main areas of focus: (i) research, awareness and prevention; and (ii) law and regulation. The action plan calls for the establishment of a task force or expert committee that draws together representatives from all the main sectors concerned with the problem.

ECPAT has agreed to undertake a two year program which will focus on the challenge of protecting children in the computer age, in particular

- investigating developments in child pornography, especially the effect of computer technologies
- examining the laws and methods of law enforcement which need to keep in step with the developments in technology
- addressing the tension between the rights of the individual and the need to protect children from those who would abuse them
- understanding the extent of the problem as it affects children
- seeking international solutions to this global issue.

In 1997 national ECPAT groups and other NGOs held national and regional consultations to explore the situation of child pornography around the world. These events have been taken place in New Zealand, Sweden (with the participation of Denmark and Norway), Australia, USA, Canada and Taiwan.

#### Community Education

For most parents above a certain age, their children know far more about the Internet than they do. This makes the problem of supervising Internet use and protecting children from harmful content quite difficult. Even for computer-literate parents there is problem of being aware of actual harmful content or activities because of the sheer volume of material which the Internet contains. It is widely recognised, therefore, that community education is central to the development of an Internet culture which maximises utility and safety. These programs are addressed to other responsible adults, including teachers and others with guardianship or supervisory responsibilities. Community education is considered especially important if self-regulation is to work effectively.

- Project OPEN (Online Public Education Network <http://www.isa.net/project-open>) has developed a brochure entitled "How to get the most out of going online".
- The American Library Association has developed a "Librarians' guide to Cyberspace" for parents and children.
- Young Media Australia has developed a "Cyber Safety Guide".
- The Australian Families Guide to the Internet was launched in November 1998 and has been advertised by way of inserts in magazines and by direct mailing. It is located on the Australian Broadcasting Authority's web server.

#### Law Enforcement

In late 1998 a coordinated police operation involving law enforcement agencies from 14 countries led to the arrest of some 200 suspected paedophiles and the discovery of a large volume of child pornography. The Head of Strategic and Specialist Intelligence Branch of the UK's National Criminal Intelligence Service has said that while there is evidence that organised crime is involved in adult pornography, the same is not generally true with regard to child pornography. However, according to ECPAT and Interpol, organised networks operate in the trafficking of children for sexual exploitation and there is evidence of organised paedophile activity. International co-ordination and co-operation is the key to effective law enforcement action in this area.

Both international and national law enforcement agencies are already active in tackling child pornography on the Internet and associated forms of child sexual exploitation. In 1992 Interpol (the International Criminal Police Organisation) created the Interpol Standing Working Party on Offenses against Minors, a unique platform for law enforcement agencies to enforce child protection laws through international cooperation. In 1996 the Interpol General Assembly adopted a resolution designed to motivate member countries towards adoption of specific legislation against any form of child pornography. Interpol has established very close working relationships with ECPAT. For example, the two organisations convened a meeting on Child Pornography on the Internet which brought together 58 experts from 19 countries on May 28-29 1998 at Interpol headquarters in Lyon, France.

The US Customs Service runs an International Child Pornography Investigation and Coordination Centre and has a US Customs Child Pornography Program. The Customs Service works closely with the National Centre for Missing and Exploited Children, provides a phone hotline and offers cash rewards for certain information concerning the violation of Customs Laws. In June 1997 the Customs Service hosted an International Child Pornography Training Workshop in New Orleans to enable law enforcement agencies to share experiences and plan strategies to combat child pornography. It is worth noting here that US law allows American courts to prosecute citizens from other countries who produce child pornography abroad with the intention of selling it in the United States. The Federal Bureau of Investigation also investigates reports of child pornography in the United States.

In Australia the New South Wales Police Service has a Child Exploitation Internet Unit which operates from the Child Protection Enforcement Agency. The Unit has demonstrated that the Internet can be a very effective way of uncovering paedophile activity and other forms of child sexual exploitation.

Law enforcement agencies in Australia, Austria, Belgium, Brazil, Canada, Denmark, Germany, Hong Kong, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, South Africa and the United Kingdom have units that respond to reports of child pornography.

### Codes of Conduct

There has been substantial activity on developing draft codes of conduct in various countries to try to address issues of concern about online content and activity. However, the problem here has been the very fact that so many different codes are being drafted and the lack of co-ordination or quality control. Even within national boundaries it has proved difficult to get consistency across different state jurisdictions or cooperation among different industry groups.

The greater concern about industry codes relates to their effectiveness. Industry groups have pursued the development of codes of conduct on the basis that they are voluntary and operate within a self-regulatory framework. This has left many non-industry groups concerned about child pornography unconvinced and they have continued to call for more rigorous standards with appropriate enforcement and monitoring machinery to be developed instead.

### Hotlines

Telephone or e-mail services have been established in quite a few countries to enable individuals to notify authorities of the existence of child pornography or other forms of child sexual exploitation. These hotlines have been established by children's protection groups, law enforcement agencies, concerned individuals and industry bodies. Some hotlines provide mechanisms for removing content from offending sites or tracing illegal activity. Some of the hotlines include

- Pedowatch (<http://pedowatch.org/links.html>)

- Internet Watch Foundation (<http://www.iwf.org.uk>)
- National Centre for Missing and Exploited Children (<http://www.missingkids.org>)
- Movement Against Paedophilia on the Internet (MAPI)
- UNESCO International Clearing House on Children and Violence on the Screen.

### Online Content Legislation

This is the most contentious area of Internet content regulation. At the most general level CROC provides an international legal framework which can be used as a reference point for the development of regional and national legal codes. The draft Optional Protocol to CROC relating to child sexual exploitation, which is being drafted by an inter-governmental working group of the UN Commission on Human Rights, will extend the jurisprudence in this area.

Legal measures to deal with child pornography on the Internet are very patchy, which is not surprising given that legal codes to deal with child sexual exploitation generally are so varied. Most countries, however, have some legislation which provides a mechanism for policing the production, distribution and possession of offensive material, including child pornography. These laws can usually be applied to the online environment. Some countries have decided that existing laws are inadequate and have enacted specific legislation to regulate online content.

ECPAT and the International Tribunal for Children's Rights have made extensive recommendations relating to the legal issues that need to be addressed in relation to child pornography on the Internet. Some of the key issues are:

- Who is legally liable for material placed on a bulletin board system and on-line service or on the Internet?
- Where pornography is transmitted by computer and the sending jurisdiction has a lower legal standard than the receiving jurisdiction, which should prevail?
- How can extra-territorial legal issues be resolved?
- Should the global network be dominated by the strictest standard or the most lax?
- Should consenting adults be able to engage in e-mail interactive conversations, since the same conversations might not be criminalised if they were face to face, on the telephone, or transmitted through the post?
- If child pornography is made without using a child, should it be identified as illegal?

In terms of specific legal responses, the following have been put forward by ECPAT:

- ensure that national, federal and state laws in every country criminalise the production, distribution, communication, importation, exportation and possession of child pornography via the Internet
- find ways to clarify the age of protection for children and minors and agree on common definitions of what constitutes child pornography
- find ways to increase police and judicial cooperation, both in relation to enforcement and in relation to technical assistance
- provide increased training in computer technology for law enforcement officers and additional resources
- request the appropriate UN mechanism to draft model legislation against child pornography which could assist countries whose legislation is currently inadequate
- request the UN Committee on the Rights of the Child to pursue the question of adequate legal controls against child pornography when governments present their country reports under the Convention on the Rights of the Child.

### **CONCLUSION**

This paper was intended to be a brief overview of the major issues surrounding child pornography on the Internet. If nothing else, it has demonstrated that child pornography is one element of a serious, widespread and complex set of problems that, through the agency of the Internet, have developed a more pernicious and widespread character. Child pornography clearly demands a serious and concerted response in its own right but it would be counterproductive to see it as an isolated issue.

Despite the challenges which have been touched on in this paper, there is a clear legal and moral imperative for the Forum and its member institutions to take action. The preceding sections contain a multitude of possibilities for action by the Forum and its member institutions. However, bearing in mind the resources available and the fact that much activity is already underway, the following specific suggestions for action are put to the Forum and its members for their consideration and adoption:

1. *The Forum and member institutions should acquire and maintain the information and legal and technical expertise necessary to understand the nature and extent of the problem*
2. *Forum member institutions should share information on their own direct involvement in combating child pornography on the Internet*
3. *The Forum and member institutions should play a role in public debate and input into government policies on this issue, drawing on this paper and other sources, as appropriate*
4. *The Forum should use its regional network to assist in the formulation of a regional response to the problem*
5. *The Forum should explore possibilities for cooperative action through the EU Plan of Action, the UNESCO Plan of Action and the activities of other key networks, notably ECPAT*
6. *The question of the effective national legislative models and regional enforcement mechanisms should be referred to the Forum's Advisory Council of Jurists for their examination and report back to Forum Members*
7. *The Forum should consider ways in which it may assist the work of relevant United Nations bodies working in the area of child sexual exploitation.*

## ENDNOTES

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<sup>1</sup> Presentation to conference on “The use of the Internet within the Context of Sexual Exploitation of Children”, Strasbourg, 28-29 April 1998.

<sup>2</sup> Article 13 recognises the right of the child to “seek, receive and impart information and ideas of all kinds...Subject to certain restrictions”. Article 18 recognises the principle that “both parents have common responsibilities for the upbringing and development of the child”.

<sup>3</sup> Article 19 of the UDHR: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Article 19 of the ICCPR: “1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

<sup>4</sup> The Council of Europe Recommendation 1371 (1998) on Abuse and Neglect of Children calls upon member states to standardise legal definitions of paedophile offences and pornography as well as to remove the distinction between private possession and trading of pornographic material.