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Council of Europe Measures for the Protection of Children Against Online Sexual Exploitation and Abuse

Submitted by: Council of Europe



**APEC-OECD Joint Symposium on Initiatives
Among Member Economies Promoting Safer
Internet Environment for Children**

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Policy frameworks promoting a safer Internet for children (Singapore, 15 April 2009)

Council of Europe measures for the protection of children against
online sexual exploitation and abuse

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Sexual exploitation and sexual abuse of children plague

- among the worst forms of violence against children
- produce long-term physical, psychological and social harm to victims
- occurs in various forms: incest, pornography, prostitution, human trade and sexual aggression



Council of Europe approach

1. How can countries criminalise child abuse related to information and communication technologies?

2. What is the responsibility or liability of service providers for child abuse materials that are made available through their systems?

International instruments on child protection

- ▶ *Convention for the Protection of Human Rights and Fundamental Freedoms (1950)*
- ▶ *United Nations Convention on the Rights of the Child (1989)*
- ▶ *Revised European Social Charter (1996)*
- ▶ *European Convention on the Exercise of Children's Rights (1996)*
- ▶ *International Labour Organization's: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*
- ▶ *United Nations' Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (2000)*
- ▶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000)*
- ▶ *Council of the European Union Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA)*
- ▶ *Council of Europe Convention on Cybercrime (2001)*
- ▶ *Council of the European Union Framework Decision on combating trafficking in human beings (2002/629/JHA)*
- ▶ *Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA)*
- ▶ *Council of Europe Convention on Action against trafficking in Human Beings (2005)*
- ▶ *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)*

Provisions addressing criminalization of **sexual exploitation of children on Internet**

- **Convention on Cybercrime, Budapest, 23.11.2001**

▶ **Article 9 – Offences related to child pornography**

- **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.10.2007**

▶ **Article 23 – Solicitation of children for sexual purposes**

▶ **Article 18 a) – Sexual abuse**

▶ **Article 20 a) f) – Offences concerning child pornography**

Convention on Cybercrime (2001)

Article 9 of the Convention: child pornography

- 1 Establish as criminal offences when committed intentionally and without right, the following conduct:
 - a. *producing child pornography for the purpose of its distribution through a computer system;*
 - b. *offering or making available child pornography through a computer system*
 - c. *distributing or transmitting child pornography through a computer system;*
 - d. *procuring child pornography through a computer system for oneself or for another person;*
 - e. *possessing child pornography in a computer system or on a computer-data storage medium.*
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EXPLANATORY REPORT

- *'production of child porn for the purpose of distribution' through a computer system*
- *'offering' of child porn through a computer* → *soliciting others to obtain child porn*
- *'making available'* → *placing of child porn on line for the use of others (e.g. creating child porn sites, creation/compilation of hyperlinks to child porn sites)*
- *'distribution' of child porn through a computer system* → *the active dissemination of the material*
- *'transmitting' child porn* → *sending child porn through a computer system to another person*
- *'procuring for oneself or for another'* → *actively obtaining child porn (e.g. downloading)*
- *'possession' of child porn in a computer system or on a data carrier (diskette, CD-Rom etc)*



Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)

- ✓ preventive and protective measures;
- ✓ assistance to child victims and their families;
- ✓ intervention programmes or measures for child sex offenders;
- ✓ criminal offences, including several entirely new offences, such as child grooming;
- ✓ child-friendly procedures for investigation and prosecution;
- ✓ recording and storing of data on convicted sex offenders;
- ✓ international co-operation;
- ✓ a monitoring mechanism.



European Union: Key messages

- need to incorporate improvements of the COE Convention;
- need to criminalise new forms of offences using IT;
- need to eliminate obstacles to investigation and prosecution in cross-border cases;
- need to ensure comprehensive protection of victims, in particular in investigation and criminal proceedings;
- need to prevent offences through intervention programmes and treatment;
- offenders in one country are effective in all Member States.



Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)

Article 23 – Solicitation of children for sexual purposes

Each Party shall take the necessary legislative or other measures to criminalise the **intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.**

Article 18 – Sexual abuse

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

- a **engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;**

Article 20 – Offences concerning child pornography

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:

- a **producing child pornography;**
- f **knowingly obtaining access, through information and communication technologies, to child pornography.**

Article 18 (2):

For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.



Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

EXPLANATORY REPORT

Article 20 - Offences concerning child pornography →	<ul style="list-style-type: none"> - inspired by the Article 9 of CC - not restricted to child pornography committed by the use of a computer system - a new element is introduced by paragraph 1 f:
Article 20 (1) : f. knowingly obtaining access, through information and communication technologies, to child pornography →	<ul style="list-style-type: none"> - criminalization of the access to child pornography sites without downloading (cannot be identified under the offence of procuring or possession in some jurisdictions); - required the intent to enter a site where child pornography is available and knowing that such images can be found there
Article 23 - Solicitation of children for sexual purposes →	<ul style="list-style-type: none"> - introduces a new offence regarding the solicitation of children for sexual purposes ("grooming") criminalising the intentional "proposal of an adult to meet a child who has not reached a certain age for the purpose of committing the offences established in accordance with Article 18 paragraph 1 a (engaging in sexual activities) or Article 20 paragraph 1 (producing child pornography)



what offences have been addressed by the different countries:

Individual types of offences addressed								
Convention on Cybercrime					Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse			
Countries	Producing child porn for the purpose of its distribution through a computer system	Offering or making available child porn through a computer system	Distributing or transmitting child porn through a computer system	Procuring child porn through a computer system for oneself or for another person	Possessing child porn in a computer system or on a computer-data storage medium	Knowingly obtaining access, through information and communication technology, to child porn	Intentional proposal, through information and communication technologies, of an adult to meet a child for the purpose of engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities	Intentional proposal, through information and communication technologies, of an adult to meet a child for the purpose of producing child porn



Gaps identified in the European legislation:

- Do not cover all acts required to be criminalized (Albania, Armenia, Estonia, Lithuania, Montenegro, Serbia, FYROM)
- Do not specifically address computer systems as a mean to commit the offence (Albania, Estonia, Germany, Kosovo, Lithuania, Portugal, Slovakia, FYROM, Turkey)
- Criminalize only children exposure to pornographic materials/shows/representations (Croatia), which is distinct from the production, dissemination and possession of child pornographic materials
- A general wording is used in order to cover some acts (Bulgaria: *"in any other way circulates"*; Estonia: *"makes available in any other manner"*; Serbia: *"otherwise makes available"*)
- It is not criminalized the act of producing child pornography, but the act of using a child to produce such material (Montenegro, Serbia, Slovakia, FYROM, Turkey)
- Possession of such material is not covered (Albania, Armenia, Croatia, Montenegro, Serbia, FYROM)
- A limiting or unclear constituent element provided (Armenia: *"forcing minors"*; Albania: *"in minors' premises"*; FYROM: *"abuses a juvenile"*; Ukraine: *"compelling minors to participate"*)
- Relevant provisions not attached or translation is not available (Austria, Czech Republic, Hungary, Moldova)

The process to implement the new acts introduced by CPC (25/10/2007) has just started



Definition of "child pornography"

- ▶ **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography-Article 2(c):**
 - ▶ **Child pornography** means 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
- ▶ **The Council of EU Framework Decision 2004/68 of 22 December 2003 on combating the sexual exploitation of children and child pornography:**
 - ▶ **Child pornography** shall mean pornographic material that visually depicts or represents:
 - (i) a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child; or
 - ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i); or
 - (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned in (i)



Definitions

Council of Europe
Convention on
Cybercrime (2001)



Article 9 – Offences related to child pornography
For the purpose of paragraph 1 above, the term “**child pornography**” shall include pornographic material that visually depicts:
a a minor engaged in sexually explicit conduct;
b a person appearing to be a minor engaged in sexually explicit conduct;
c realistic images representing a minor engaged in sexually explicit conduct.

Council of Europe
Convention on the
Protection of Children
against Sexual
Exploitation and Sexual
Abuse (2007)



Article 20 – Offences concerning child pornography

2. For the purpose of the present article, the term “**child pornography**” shall mean 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.



country’s definition of “child pornography”, vis-à-vis the framework provided by CC and CPC:

Countries	Countries’ legal provisions determine that “child pornography” comprises pornographic material that visually depicts:			
	Convention on Cybercrime		Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	
	A minor engaged in sexually explicit conduct:	A person appearing to be a minor engaged in sexually explicit conduct:	Realistic images representing a minor engaged in sexually explicit conduct:	Any depiction of a child’s sexual organs for primarily sexual purposes.



General remarks:

•The definitions for the terms “child pornography” and/or “minor” not provided (Albania, Armenia, Bulgaria, Croatia, Estonia, Germany, Lithuania, Slovakia, Turkey, Ukraine)

•Provisions refer to:

- *pornographic materials in minors’ premises* (Albania)
- *items of pornographic nature* (Armenia)
- *pornographic situation* (Estonia)
- *objects of pornographic character* (Montenegro)
- *other pornographic records* (Portugal)
- *obscene written or audio-visual materials* (Turkey)

• Germany: “*pornographic writings involving children that reproduce an actual or true to life event*”

• Lithuania: “*advertises objects of a pornographic nature which represent a child or simulate a child*”. A person appearing to be a minor? Realistic images representing a minor ?

“minor”, “child”

Council of Europe
Convention on
Cybercrime (2001)



Article 9 – Offences related to child pornography

For the purpose of paragraph 2 above, 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.

Council of Europe
Convention on the
Protection of Children
against Sexual
Exploitation and Sexual
Abuse (2007)



Article 3 – Definitions

For the purposes of this Convention:
a “child” shall mean any person under the age of 18 years;

RESERVATIONS

CC: Article 9 of the Convention: child pornography

4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

CPC: Article 20 – Offences concerning child pornography

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:

- consisting exclusively of simulated representations or realistic images of a non-existent child;
- involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.



Project on Cybercrime

www.coe.int/cybercrime

Obligations of Internet Service Providers with regard to child pornography: legal issues




Obligations of Internet Service Providers with regard to child pornography: legal issues

How far ISP have the obligation to prevent crimes or support investigations ?


- Hindering users from accessing websites with child pornography
- Preventing the upload of child pornography images
- Preserving traffic data to be able to identify offenders that are making child pornography available or download such material
- Stronger support of LEAs in identifying locations where child pornography is stored.

How far the failure of the ISP to act in accordance with its obligations leads to consequences and what these consequences are?

- administrative fines and contractual penalties
 - criminal liability and the loss of the license to operate the service
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Obligations of Internet Service Providers with regard to child pornography: legal issues

What instruments to establish obligations of ISP?

- law
 - contracts and other voluntary agreements
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The Convention on Cybercrime

Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA

Opened for signature in Budapest in November 2001

In force since July 2004

Total number of signatures not followed by ratifications:	22
Total number of ratifications/accessions:	24

- Signed by Canada, Japan, South Africa, ratified by USA
- Costa Rica, the Dominican Republic, Mexico, Philippines have been invited to accede
- Legislative amendments adopted or underway in many other countries and accession to the Convention under consideration

= **Major global trend towards better cybercrime legislation**

▶ = **Convention provides a global standard**

CONCLUSIONS

Establish a comprehensive legislation to contribute effectively to the common goal of protecting children against sexual exploitation and sexual abuse and of providing assistance to victims

Implementing the international legal framework



Council of Europe conventions – tools for harmonization of relevant criminal law provisions

Approaches to the obligations of service providers for materials on their systems vary between countries

Solutions are currently discussed in different countries and some experience is available, but this is work in progress.

Coordinated efforts among countries, organizations and stakeholders

*THANK YOU FOR YOUR
ATTENTION*

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