ADDRESSING THE GAP IN INTERNATIONAL INSTRUMENTS GOVERNING INTERNET CHILD PORNOGRAPHY

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I. INTRODUCTION

The advent of the Internet has dramatically and irreversibly changed the way in which members of society interact, producing both positive and negative effects. One of the more pernicious effects of the Internet is that it has given rise to a readily accessible, inexpensive, and ubiquitous source of pornography. One of the most dangerous, and certainly more alarming effects of this explosion in Internet access, is the availability and dissemination of child pornography. This comment will analyze the current state of national and interna-

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1 See YAMAN AKDENIZ, INTERNET CHILD PORNOGRAPHY AND THE LAW: NATIONAL AND INTERNATIONAL RESPONSES 1 (2008) (“The availability and distribution of child pornography through the Internet has become a social concern for society since the mid-1990s when pedophiles started using this medium to share sexually explicit content.”).

2 INTERNET PORNOGRAPHY STATISTICS, http://commcns.org/14kbaCv (last visited Apr. 13, 2013); see Jerry Ropelato, Internet Pornography Statistics, TOPTEN REVIEWS, http://commcns.org/1cvK54a (last visited Apr. 13, 2013) (“According to compiled numbers from respected news and research organizations, every second $3,075.64 is being spent on pornography. Every second 28,258 Internet users are viewing pornography. In that same second 372 Internet users are typing adult search terms into search engines. Every 39 minutes a new pornographic video is being created in the U.S.”).

3 See KEY STATISTICAL HIGHLIGHTS: ITU DATA RELEASE JUNE 2012, http://commcns.org/15MkBNf (last visited Apr. 13, 2013) (“The percentage of individuals using the Internet continues to grow worldwide and by end 2011 2.3 billion people were online.”).

4 See Richard A. Posner, Foreword to VIRGINIA M. KENDALL & T. MARKUS FUNK, CHILD EXPLOITATION AND TRAFFICKING, at xvii (2012). As Posner reflected:

The greatest impact of the electronic revolution on sexual crime has been on child pornography. The production, distribution, and consumption of such pornography must have been uncommon offenses before the advent of the Internet; the logistics were complicated, and the risk of detection of pornography sent through the mail must have been high. Just difficulty in identifying other pedophiles must have been a formidable
ional legislative efforts and argue that a single, harmonized, and universally-recognized instrument must be implemented to aggressively and effectively combat the spread of child pornography. Included in this analysis are the detrimental social effects that result from child pornography, such as child mental abuse, human trafficking, and various other human rights abuses. A single, global standard for identifying, measuring, and prosecuting online child pornography and its corollary must be adopted as a standard of international law.

Part II of this Article will examine the emergence and scope of the problem, including a review of how different countries and global regions address online child pornography. Part III will discuss the current major international instruments governing child pornography that are widely adopted among nations. Part IV will examine how a single, unifying, and implementable convention could be proposed, by whom, and with what effect.


5 See NATIONAL STRATEGY, supra note 4, at app. D-12 (reporting findings that 95 percent of respondents to a National Drug Intelligence Center survey reported that children suffer "lifelong psychological damage and may never overcome" the trauma of being a victim); see also Jennifer Rothman, Note, Getting What They Are Owed: Restitution Fees for Victims of Child Pornography, 17 Cardozo J.L. & Gender 333, 333 (2011) (anecdotally describing a child pornography victim's posttraumatic stress disorder caused by the knowledge that images of her abuse were widely circulating on the Internet); id. at 337 ("Children who are sexually abused can suffer from a range of psychological and behavioral problems including depression, anxiety, guilt, fear and withdrawal.") (footnote omitted).


7 See, e.g., ROGER J. R. LEVESQUE, SEXUAL ABUSE OF CHILDREN: A HUMAN RIGHTS PERSPECTIVE 12-13 (1999) ("[T]he international human rights movement also focuses on the need to recognize and respect the centrality of every individual in every family and every society. The movement further aims to re-image the important role played by community and family life in fostering individual protection and fulfillment.").

8 See INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, at iii (6th ed. 2010), available at http://commcns.org/16zWKz4 (highlighting that only forty-five countries have "legislation sufficient to combat child pornography offenses").
II. THE EMERGENCE AND SCOPE OF THE PROBLEM

A. The Current Landscape

The advent of the Internet forever changed the landscape of where, when, and how pornography is made available to the public. Those wishing to access pornography have a readily available forum in the privacy of the home while utilizing the perceived anonymity of the Internet. Such access removes the risk of public disclosure, as the purchase of a tangible medium, such as magazines or DVDs, is no longer required. In fact, child molesters are increasingly relying on computer technology “to organize, maintain, and increase the size of their child pornography collections.” Additionally, with easier and wider distribution through the Internet, increased financial profits provide further incentives for producers. Therefore, the Internet fortifies one member of the pedophilic community—the consumer—while giving rise to another—the child.

See Erin I. Kunze, Comment, Sex Trafficking via the Internet: How International Agreements Address the Problem and Fail to Go Far Enough, 10 J. HIGH TECH. L. 241, 249-253 (2010) (discussing how Internet pornography revenues have surpassed those of cable, exotic dance clubs, and magazines, as well as led to a thriving online-prostitution industry).

See Amy Adler, Introduction, All Porn All the Time, 31 N.Y.U. REV. L. & SOC. CHANGE 695, 695-96 (2007) (“Pornography is so commonplace that for many it is merely an annoyance—more spam to clear out of our email inboxes each morning. . . . The rise of the [I]nternet and the development of other new technologies, such as digital cameras, [I]nternet relay chats, and peer-to-peer networking, have changed the playing field. These innovations have dramatically lowered the cost of production and distribution for pornography while, at the same time, making it easier for producers and distributors to avoid detection.”).

See Posner, supra note 4, at xvii.

CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, supra note 8, at i.

See Press Release, Int’l Ctr. for Missing & Exploited Children, The Financial Coalition Against Child Pornography Adds Four Financial Services Leaders to Its Roster (Nov. 1, 2006), available at http://commcns.org/13GHdNa (“Child pornography has become a multi-billion dollar commercial enterprise and is among the fastest growing business on the Internet.”); see also Testimony of Ernie Allen Before the Institute of Medicine Committee on Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN (Jan. 4, 2012), http://commcns.org/15bf24E (describing a husband-and-wife operation in Texas that was charging its 70,000 customers $29.95 per month at the time of their arrest); cf. CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, supra note 8, at i (“Personally-manufactured illegal images of children are especially valuable on the Internet, and oftentimes molesters will trade images of their own sexual exploits.”); KENNETH V. LANNING, CHILD MOLESTERS: A BEHAVIORAL ANALYSIS FOR PROFESSIONALS INVESTIGATING THE SEXUAL EXPLOITATION OF CHILDREN 91 (5th ed. 2010), available at http://commcns.org/18aSgy0 (“As profits increase and risks decrease with the use of the Internet there clearly is growing profit-motivated, child-pornography activity.”).

See KENNETH V. LANNING, supra note 13, at 19 (defining “pedophilic” according to certain diagnostic criteria: “fantasies, urges, or behaviors that are recurrent, intense, and sexually arousing and all of which involve prepubescent children, generally age 13 or
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In the context of a global marketplace, the problem of Internet child pornography has magnified the varied ways in which different countries define the term "child pornography," along with the various legal frameworks used to stem such abusive practices. Part of this disparity can be attributed to the wide spectrum of historical and sociological traditions that nation states practice, including different approaches to political systemization, organization, and structure. Further, many nations, especially younger countries, still have nascent methodologies for navigating the complex intersection of domestic and international laws. Finally, the practice of comity and traditional conflict of law questions arise, adding to the already complex and irregular practice in the area of international agreement, particularly in the context of Internet regulation, safety, and enforcement.

15 See, e.g., id. at 63 (discussing child sex rings and the distribution of child pornography) (citing ANN W. BURGESS, CHILD PORNOGRAPHY AND SEX RINGS (1984)).

16 See William R. Graham, Jr., Comment, Uncovering and Eliminating Child Pornography Rings on the Internet: Issues Regarding and Avenues Facilitating Law Enforcement's Access to 'Wonderland', 2000 L. REV. M.S.U.-D.C.L. 457, 471 (noting that Asian countries, for example, "have been largely reluctant to institute the same types of anti-pornography laws as other parts of the world.").

17 Id. at 471-472 (discussing Japan, where it was legal to produce and distribute child pornography until 1999, when the law was amended and it became only legal for an individual to possess and recreationally distribute such material).


19 See generally S. Prakash Sinha, New Nations and the International Custom, 9 WM. & MARY L. REV. 788 (1968) ("New states have emerged in Asia and Africa as part of the existing international system. They inject new interests, new conditions, and a new structure of social relations in this system. From their perspectives of the nature of law governing this system, they seek formulation of certain new rules of international law.").

20 See ANTHONY AUST, HANDBOOK OF INTERNATIONAL LAW 11 (2d ed. 2010) (explaining that "rules of comity" are simply "rules of politeness, convenience and goodwill," without the force of law; however, some may ultimately become legally-binding).

21 See id. at 1 (defining conflict of laws as "the body of rules of the domestic law of a State that is applicable when a legal issue contains a foreign element, and it has to be decided whether a domestic rule should apply foreign law or relinquish jurisdiction to a foreign court.").

22 AKDENIZ, supra note 4, at 2 ("The global, decentralized and borderless nature of the Internet creates a potentially infinite and unbreakable communications complex which cannot be readily bounded by one national government or even several or many acting concert. The decentralized nature of the Internet moreover means that there is no unique solution for effective regulation at a national level.").
B. Defining the Problem

The way in which a country approaches the problem of child pornography and child sexual exploitation can demonstrate how different countries view the currently available remedies to combat online child pornography. The underlying problem in defining child pornography is its ambiguous terminology and definitional scope. Many countries fail to recognize a cognizable standard of measurement or definition of the term "child," which makes producing a neutral standard to gauge Internet child pornography difficult.

The Convention on the Rights of the Child, for example, identifies a child as a human being under the age of eighteen. This definition, however, is not universal. Milestones such as the legal voting age, the legal drinking age, and the legal driving age offer traditional indicators of how a nation views the age at which its youth attains the rights of an adult. Some countries view the age of a child as an irrelevant factor when assessing participation in activities commonly associated with adulthood. Newer research among sociologists and psychologists suggests that cognitive development using traditional markers of adulthood are at odds, and that true adulthood does not manifest until a person is above the age of twenty-five. Close scrutiny of these many notions

23 For example, the age at which an individual is presumed to be able to consent to sexual activity—essentially defining who is a child—varies from country to country, creating a potential stumbling block right at the outset of any effort to combat child pornography.

24 See id. (providing that the term "child pornography" should include, at a minimum, "the visual representation or depiction of a child engaged in (real or simulated) sexual display, act, or performance;" however, each of these elements merits further explanation).

25 Id. As the report notes:

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. Moreover, in circumstances that require "dual criminality"—when a crime committed abroad must also be a crime in the 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.


27 See, e.g., J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403-04 (2011) ("[T]he legal disqualifications placed on children as a class—e.g., limitations on their ability to alienate property, enter a binding contract enforceable against them, and marry without parental consent—exhibit the settled understanding that the differentiating characteristics of youth are universal.").

28 See, e.g., Ali al-Ahmed, Why Is No One Protecting Saudi Arabia's Child Brides?, THE GUARDIAN (Nov. 8, 2011), http://commcnns.org/1cNdntO ("Atgaa, 10, and her sister Reemya, 8, are about to be married to men in their 60s. Atgaa will be her husband's fourth wife. Many readers might be shocked at this news. How can it be legal? The answer is that Saudi Arabia has no minimum age for marriage, and it is perfectly legal to marry even an hour-old child.").

29 See, e.g., Jeffrey Jensen Arnett, Emerging Adulthood: A Theory of Development from
of "adulthood" is a worthwhile effort when developing methods to combat Internet child pornography, especially in an age where children are exposed to the digital world at increasingly younger ages.30

Adulthood and actual age are separate issues that need to be distinguished when gauging at what point a State implies that a child understands the distinction between right and wrong, including the legal ramifications of engaging in illicit behavior. The first of these is measuring comparisons in the legal age of consent among different nations.31 Vital information can be ascertained in how a society recognizes sexually based crimes aimed at children through an analysis of how that country defines the age when a person is permitted to engage in consensual sex.32 Age of consent in various countries ranges from as low as thirteen years of age33 to as high as twenty-one years of age.34 A few countries define consent as legal only if married,35 while a large proportion of countries simply refrain from specifying a statutorily implemented age of consent, preferring instead to merge implied consent in line with the statutorily permissible age of marriage.36

the Late Teens Through the Twenties, 55 AM. PSYCHOLOGIST 469, 469-470 (2000) ("In this article, I propose a new theory of development from the late teens through the twenties, with a focus on ages [eighteen to twenty-five]. I argue that this period, emerging adulthood, is neither adolescence nor young adulthood but is theoretically and empirically distinct from them both. . . . Like adolescence, emerging adulthood is a period of the life course that is culturally constructed, not universal and immutable.").

30 See CHILD PORNOGRAPHY: MODEL LEGISLATION & GLOBAL REVIEW, supra note 8, at i ("The Internet has created an exciting, new world of information and communication. . . . for children and adults to learn about the universe in which we live. . . . The development, increasing accessibility, and use of home-computer technology have revolutionized the distribution of [pornographic] images by increasing the ease of possession and dissemination and decreasing the cost of production and distribution, especially across international borders.").


33 KEIHO [KEIHO] [PEN. C.] 1907, art. 177 (Japan) ("A person who, through assault or intimidation, forcibly commits sexual intercourse with a female of not less than thirteen years of age commits the crime of rape and shall be punished by imprisonment with work for a definite term of not less than [three] years. The same shall apply to a person who commits sexual intercourse with a female under thirteen years of age.").

34 See, e.g., Worldwide Ages of Consent, supra note 31 (identifying Cameroon's age of consent as twenty-one years of age).

35 Thereby affecting a double gap in statutory provisions in cases where no legal age of marriage is enacted. See, e.g., Why Is No One Protecting Saudi Arabia's Child Brides?, supra note 28.

36 See, e.g., Human Rights Watch World Report 2001: Yemen, HUMAN RIGHTS WATCH, http://commcns.org/13mq8ok (last visited Apr. 13, 2013) (discussing how cultural conservatives did away with the rarely enforced age of consent at fifteen and instead substituted the age of nine, which was viewed as the age at which puberty begins, as adequate for marital
While the age of consent varies in range among different countries, no country recognized by the United Nations extends the age of consent below the age of thirteen.\textsuperscript{37} It should be noted, however, that some countries' age of consent laws clearly allow for—absent specific statutory limitations—legal instances of hebephilia (sexual interest in eleven to fourteen year olds) and ephebophilia (sexual interest in fifteen to nineteen year olds).\textsuperscript{38} By recognizing that a child below the age of thirteen can never legally consent, an inference appears whereby a commonly recognized standard of natural law defines pre-pubescent adolescence.\textsuperscript{39} Concurrently, there appears a commonly held—though not universally accepted—standard acknowledging that children under thirteen lack the moral acuity and mental capacity to consent.\textsuperscript{40} Implementing an international rule that adopts the position that it is never permissible for children under thirteen to be the subject of others' sexual gratification—especially adults—seems less complex when viewed through this lens.

A second useful lens for comparing how States assess the moral and cognitive competency of a child is by examining statutes and practices permitting serious punishments for juvenile crimes.\textsuperscript{41} The competence required to understand consequences of homicidal behavior correlates with punishment schemes implying free will, choice, reason, and consent to action.\textsuperscript{42} A recent United States Supreme Court case, \textit{Miller v. Alabama}, held that the Eighth Amendment to the U.S. Constitution\textsuperscript{43} prohibits a sentencing scheme that requires life in prison without the possibility of parole for juvenile homicide offenders.\textsuperscript{44}

\begin{itemize}
\item \textsuperscript{37} \textit{I.e.}, children under the age of thirteen.
\item \textsuperscript{38} \textit{See} LANNING, \textit{supra} note 13, at 19-20 (explaining that although the terms “hebephilia”—interest in eleven to fourteen year olds—and “ephebophilia”—interest in fifteen to nineteen year olds—are used far less often, even by mental-health professionals, they are increasingly used in forensic evaluations by defendants “attempting to minimize their sexual behavior with teenagers”).
\item \textsuperscript{39} \textit{See}, e.g., \textit{BLACK'S LAW DICTIONARY} 1127 (9th ed. 2009) (defining natural law as “[a] philosophical system of legal and moral principles purportedly deriving from a universalized conception of human nature or divine justice rather than from legislative or judicial action; moral law embodied in principles of right and wrong”).
\item \textsuperscript{40} \textit{See}, e.g., Children’s Online Privacy Protection Act, 15 U.S.C. § 6501(1) (2006) (defining “child” as “an individual under the age of 13”). That being said, the term “child” is defined differently in various other sections of the U.S. Code. \textit{See}, e.g., 20 U.S.C. § 7182(1) (2006) (defining “children” as “individuals who have not attained the age of 18.”).
\item \textsuperscript{41} \textit{See} MICHELE DEITCH ET AL., \textit{FROM TIME OUT TO HARD TIME: YOUNG CHILDREN IN THE ADULT CRIMINAL JUSTICE SYSTEM}, at xiv (2009), available at http://commcns.org/14HwxXP (comparing among nations the practice of allowing “pre-adolescent children to be treated as adults for criminal justice purposes”).
\item \textsuperscript{43} U.S. CONST. amend. VIII (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”).
\item \textsuperscript{44} \textit{Miller v. Alabama}, 132 S. Ct. 2455, 2460 (2012).
\end{itemize}
This decision affirmed in part that full competence in a child is not developed, even by age eighteen.  

There is a global lack of consensus on how best to prevent and reduce the incidence of Internet child pornography. This is due, in part, to the rich variance in how countries define a child, both legally and sociologically. Moreover, identifying the child’s legal position in society through, for example, laws governing the age of consent to indulge in sexual activity, can also be widely variable. Any new instrument for combating Internet child pornography must include an examination of the age at which countries, for the purposes of accepting and enforcing international obligations, would be willing to identify when legal protection from Internet child pornography and the harms associated with its production would be assented to and implemented.

C. The Depth of the Problem

The spread of online child pornography has been difficult to measure. One reason is that there is no governing body in place to police such activity. Researchers must rely on data collected from prosecutions of child pornography-related offenses involving online technologies. The number of reported incidents, as well as the increased prosecution rates of child pornography related offenses involving online technologies, tends to indicate that an online child pornography epidemic exists. This is the case both in the United States and

45 See Arnett, supra note 29, at 476 (proposing a new theory of “emerging adulthood” that begins at age eighteen and lasts through age twenty-five, and is distinctive because young people in this age group do not yet have adult responsibilities or see themselves as adults).


47 See Worldwide Ages of Consent, supra note 31; see also Age of Consent Laws, supra note 32. Note that marriage could be considered a substitute for age of consent. Human Rights Watch World Report 2001: Yemen, supra note 36.


49 AKDENIZ, supra note 1, at 6 (“The increase in prosecutions and convictions involving child pornography since the mid-1990s is related to the exponential growth of Internet access from homes, and the availability and circulation of child pornography over the Internet.”).

50 Cf. Posner, supra note 4, at xviii (“Sex crimes are greatly underreported.”).

To illustrate, the United States Federal Bureau of Investigation ("FBI") made more than 10,000 child pornography-based arrests between 1996 and 2011. The number of cases prosecuted by the Department of Justice rose forty percent between 2006 and 2012, resulting in roughly 9,000 cases; in 2009 alone, 2,315 suspects were indicted. According to the Internet Watch Foundation ("IWF"), incidence rates across the globe posit similar findings. In 2010 alone, the IWF's hotline for reporting potentially illegal online content received 48,702 reports, a 27.6 percent increase from the previous year. That same year, IWF took action against 16,739 disparate web pages that contained content related to child sexual abuse, an 89 percent increase from the year prior.

One barrier to attaining verifiable and accurate rates of Internet child pornography is the mass of countries, classified as developing nations, with limited or no reporting infrastructure for ascertaining even basic rates of Internet usage, let alone capabilities to identify online sexual offenders. This creates statistical anomalies and a lack of concrete information as to the true extent of

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52 See Innocenti Research Centre, UNICEF, Child Safety Online: Global Challenges and Strategies 1 (2011), available at http://commcns.org/19fQqNu ("It is estimated that the number of child abuse images on the Internet runs into the millions and the number of individual children depicted is probably in the tens of thousands" (citing John Carr & Zöe Hilton, Children's Charities' Coal. on Internet Safety, Digital Manifesto 29 (2009)); see also Victoria Baines, ECPAT International, Online Child Sexual Abuse: The Law Enforcement Response 5 (2008), available at http://commcns.org/1bs1SGF (explaining that the "explosion in Internet accessibility" has presented unprecedented availability of child pornography and opportunity to share material and to contact children).

53 See Paul Elias, Child Porn Prosecutions Soaring in U.S., Denver Post (Feb. 6, 2011, 1:00 AM), http://commcns.org/16fmlJP. The years 1996 to 2011 offer a range that is in line with a massive surge in Internet usage and availability.

54 See id.; see also National Strategy, supra note 4, at 5, 11 (noting that the National Center for Missing & Exploited Children’s Child Victim Identification Program has seen a 432 percent increase in child pornography submitted for victim identification between 2005 and 2009).


56 Id.

57 Id. Such action includes a “notice and takedown” system to remove content based in the United Kingdom and reporting mechanisms to law enforcement, Internet service providers, and Internet search providers if the content is located outside of the United Kingdom. Id. at 2.

58 See ITU Statshot, Int’l Telecom. Union, http://commcns.org/1eH5NyY (last visited Apr. 13, 2013) (noting that while penetration rates have increased, they are still significantly less than the usage rates in developed nations: "In the year 2000, Internet user penetration was under 1% in 72 economies. Ten years later, there were just 6 economies with Internet user penetration under 1%. Internet user penetration in the developing world as a whole reached 21% in 2010.")
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III. CURRENT INSTRUMENTS GOVERNING CHILD PORNOGRAPHY

Many Nation-States have bolstered their respective legislative or statutory codes to aggressively prosecute and punish those involved in the production, selling, sharing, and acquisition of child pornography. Despite these efforts, there are gaps in these laws that impede efforts to contain this international problem.61

A. International Instruments

There are currently five widely accepted international instruments which address the issue of Internet child pornography: (1) the Convention on the Rights of the Child; (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; (3) the U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons; (4) the Council of Europe Convention on Cybercrime; and (5) the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse.

1. Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child ("UNCRC")62 serves as the backbone of international covenants respecting the various human rights of children as a matter of international law.63 The UNCRC has been rati-

59 See id.
61 Internet Pornography Not a Crime in Most Countries, PROGRESS REP. (Int'l Ctr. For Missing & Exploited Children, Alexandria, Va.), Summer 2006, at 1, available at http://commens.org/167XHO (providing that ninety-five Interpol member countries have no laws addressing child pornography).
63 See LEVESQUE, supra note 7, at 21 (describing the Convention as "the most detailed and comprehensive human rights treaty in force").
fied by 193 countries. Although the United States has signed and was even active in drafting the treaty, it remains one of only a handful of countries that has not yet ratified the UNCRC.

One overarching and fundamental criticism of the UNCRC, as it relates to Internet child pornography, is the fact that Internet child pornography was not a recognized problem during the Convention's formation in 1989. Additionally, while some provisions of the convention could be seen to relate to the issue of Internet child pornography, the purpose of the convention is targeted at fundamentally different areas related to children's rights and protections. The instrument is also shouldered with idealistic and overly ambitious prose that would be hard to categorize in legal terms, “[r]ecogni[zing] that the child... should grow up in a family environment, in an atmosphere of happiness, love and understanding.”

As previously noted, a large number of countries do not recognize eighteen as the age of adulthood. This can be for legal, sociological, or historical reasons; however, Article One of the UNCRC categorically defines a child as a person below the age of eighteen. This definition has created tension and discord from the onset of the convention's implementation. Further, it fails to recognize the countries that do not interpret eighteen as the accepted age of adulthood. In addition to the dangerous ambiguity afforded by some of the language of the convention, its enforcement apparatus is toothless:

The committee, for example, has rightly criticized various parties' lack of national

65 See LEVESQUE, supra note 7, at 20-21 (“[C]ritics maintain that ratification would open the United States to unprecedented foreign influence and radically transform the United States' approach to children and family issues by bestowing numerous positive rights and children's freedoms, particularly regarding abortion, education, and discipline.”).
67 See Convention on the Rights of the Child, supra note 26, pmbl.; see also KENDALL & FUNK, supra note 4, at 130 (“If there is one truism when it comes to international efforts to combat child sexual abuse, it is that the most moving preamble or carefully crafted law will eventually fail if it is not conceived in light of those social, cultural, legal, and economic realities that facilitate the ongoing abuse.”).
69 AKDENIZ, supra note 1, at 210 (“In the absence of a harmonized definition of persons to be considered children, definitional variations will be witnessed in terms of what sort of content could be regarded as child pornography within different jurisdictions. . . . [T]his could, for example, hinder cross-border law enforcement operations if similar definitions are not used”).
70 Convention on the Rights of the Child, supra note 26, at arts. 43-45 (establishing the Committee on the Rights of the Child (“UNCRC Committee” or “Committee”) and its mission).
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criminal legislation proscribing all forms of child sexual abuse, including over the Internet, and the absence of a minimum age of consent of eighteen. . . . Of course, because the committee has no power of enforcement, it can only make recommendations.71

Despite these criticisms, the UNCRC does remain an incredibly important instrument, if only for the proposition that it shows that countries can work together effectively to recognize some basic human rights for children.72


The Convention includes an Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.73 In 2000, the United Nations adopted the Optional Protocol to the UNCRC because it was concerned about the new dangers posed to children by the emergence of the Internet.74 The Optional Protocol specifically identifies the issue of child pornography as one of its clearest imperatives:

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry.75

The Optional Protocol is the "lead universal treaty specifically addressing the sexual exploitation of children."76 While it remains an optional protocol, its efficacy and reach is limited. Nonetheless, it sets out a comprehensive, sophisticated, and powerful blueprint for future instruments drafted for the purpose of covering Internet child pornography and its associated problems. The Optional Protocol contains a provision for extra-territorial enforcement of child sexual offenses.77 This is a crucial component of the protocol, and one that moves the

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71 KENDALL & FUNK, supra note 4, at 133.
72 See LEVESQUE, supra note 7, at 21.
74 AKDENIZ, supra note 1, at 212 ("Concerns regarding child pornography and its availability and distribution through the Internet at the UN level led to the drafting of an Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography . . . .").
76 KENDALL & FUNK, supra note 4, at 133.
77 See id. at 135-136.

The Optional Protocol, in pushing for extraterritorial jurisdiction for child sexual exploitation offenses, joins the legal vanguard by recognizing the importance of a state being able to criminally prosecute the acts of its citizens or residents who abuse children outside of that nation . . . . [t]he Optional Protocol rather strictly confines the ability of abusers to escape prosecution, and, in doing so, recognizes the pervasively transnational nature of this specific species of criminality.
protocol away from a simple expression of good faith on the part of States, to an effective vehicle for offense enforcement.\textsuperscript{78}

In terms of scope and content, the Protocol effectively 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."\textsuperscript{79} Its deficiencies lie in its enforcement,\textsuperscript{80} with adherence being contingent upon a particular country fully adopting and enforcing its provisions. The Optional Protocol also carries the burden of being intrinsically linked to its parent Convention, the UNCRC, along with the problems already outlined in that instrument.\textsuperscript{81}


The U.N. Protocol to Prevent, Suppress, and Punish Trafficking in Persons\textsuperscript{82} was developed to combat the emerging and dangerous threats posed by international human trafficking.\textsuperscript{83} Although the United Nations assigned the U.N. Office on Drugs and Crime ("UNODC") to implement the protocol, the United States delegated this responsibility to the U.S. Department of State, Office to Combat and Monitor Trafficking in Persons.\textsuperscript{84} That office annually produces the Trafficking in Persons Report ("TIP")\textsuperscript{85} to identify and classify countries that are either actively or passively working to implement effective judicial and enforcement solutions to human trafficking.\textsuperscript{86}

While providing many of the symbolic and ideological provisions necessary for combating Internet child pornography, the Protocol does not specifically address the problem in detail.\textsuperscript{87} The Protocol does not address the key catalyst

\textsuperscript{78} See id.


\textsuperscript{80} KENDALL & FUNK, supra note 4, at 133.

\textsuperscript{81} See id. at 131, 133.

\textsuperscript{82} Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, annex II pmbl. U.N. Doc. A/RES/55/25 (Jan. 8, 2001) ("[E]ffective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking . . . .")

\textsuperscript{83} Kunze, supra note 9, at 270 ("[T]he protocol] recognizes that international effort is necessary to combat commercial sex trafficking").


\textsuperscript{86} Id.

\textsuperscript{87} Kunze, supra note 9, at 270 (noting that at its most basic, the Protocol simply "re-
for child exploitation: the Internet.\textsuperscript{88} However, the Protocol is notable for its strength in addressing human trafficking, and further considerations will likely fold technological considerations into its adoption.\textsuperscript{89} The Protocol to Prevent, Suppress, and Punish Trafficking in Persons will invariably remain relevant and pertinent as a supporting structure of future agreements combating Internet child pornography. Notably, it will regularly comment on and influence approaches to navigating the complex intersection of human trafficking and child pornography production and dissemination.\textsuperscript{90}

4. Council of Europe Convention on Cybercrime\textsuperscript{91}

The Council of Europe Convention on Cybercrime (2001) is one of the first instruments to harmonize standards for various facets of Internet crime, fraud, abuse, and illegality.\textsuperscript{92} The Convention is a more contemporary instrument that can be both flexibly and universally applied among nations, making it an attractive instrument to both law enforcement and criminal judicial officers alike.\textsuperscript{93} Article 9 of the convention is dedicated in full to "offences related to child pornography."\textsuperscript{94}

The Convention on Cybercrime creates a balance that can be applied to

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\item \textsuperscript{88} Id. at 271-272 (noting that the Protocol "does not also reach other uses of technology in facilitating sex trafficking, such as offering or advertising a trafficking victim's sexual servitude online, disseminating sex tourism information online and receiving payments for services resulting from exploitation via the Internet"); but cf. Kelly E. Hyland, \textit{The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children}, 8 HUM. RTS. BRIEF 30 (2001) ("[T]he increased involvement of organized crime in trafficking created a global law enforcement concern that can only be addressed in a global context.").
\item \textsuperscript{89} See \textit{KENDALL & FUNK}, supra note 4, at 139 ("The Protocol can well be considered the most important contemporary instrument dealing specifically with the complex issues of trafficking due to its comprehensive and liberal interpretation of trafficking").
\item \textsuperscript{90} See Hyland, supra note 88, at 38 ("The Protocol is a significant law enforcement accomplishment. It marks the development of a comprehensive definition of trafficking in persons and offers an effective framework for combating it through prevention, law enforcement, protection, and repatriation").
\item \textsuperscript{91} Convention on Cybercrime, Nov. 23, 2001, E.T.S. No. 185.
\item \textsuperscript{92} See Dina I. Oddis, \textit{Combating Child Pornography on the Internet: The Council of Europe's Convention on Cybercrime}, 16 TEMP. INT'L & COMP. L.J. 477, 505 (2002) ("As the first legally binding international instrument to establish universal standards regarding the criminalization of computerized child pornography, the Cybercrime Convention takes an important step toward containing this offense on a global scale").
\item \textsuperscript{93} Convention on Cybercrime, supra note 91 (The Council of Europe encourages unity in its goal of combating child sexual exploitation); \textit{AKDENIZ}, supra note 1, at 206 (noting, after comprehensive discussion, that "[t]he Council of Europe has taken the protection of children against sexual exploitation very seriously").
\item \textsuperscript{94} Convention on Cybercrime, supra note 91, at art. 9.
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many countries. On the one hand, the Convention contains some of the most accurate and detailed language defining Internet child pornography. On the other, the flexibility of its language means that the central provisions of the instrument can be widely adopted among different States. The convention acknowledges universally accepted definitions of Internet child pornography and encourages signatory nations to seamlessly incorporate them into statutory schemes that discourage child pornography. The Convention is also notable for its detailed categorization of Internet child pornography and its use of unambiguous terminology.

There are, of course, critics of the Convention on Cybercrime. One of the principle concerns with the Convention is its inability to respond rapidly to Internet advancements. Others see jurisdictional problems associated with the Convention. Some commentators believe that the Convention does not go far enough in enumerating "content-related computer offenses' and, as such, does not enjoy the exclusive attention that the severity and egregious ramifications of its perpetrations warrants."

Despite these concerns, the Convention on Cybercrime should not be viewed as a failure in any sense. It stands largely apart from other international instruments covering aspects of Internet child pornography because it has formulated a new and comprehensive instrument to govern the criminalization, prosecution, and overall reduction of Internet child pornography. The Convention represents the acknowledgment by a wide spectrum of nations that Internet child pornography is a serious and universal problem. A future instrument

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95 See, e.g. Amalie M. Weber, The Council of Europe's Convention on Cybercrime, 18 BERKELEY TECH. L.J. 425, 435 (2003) ("The United States Departments of Justice, State, and Commerce ... played a big role in the negotiations of both the plenary sessions and drafting of the treaty. As a result, the central provisions of the Convention are consistent with the existing framework of U.S. law and procedures.").

96 See Oddis, supra note 92, at 513 ("The provisions and measures adopted by the Convention that are specifically aimed at criminalizing and sanctioning electronic child pornography are groundbreaking. They provide the first solid legal framework for proscribing and punishing a real crime committed in a virtual jurisdiction at each step in the chain, from production to possession.").

97 Paul Rosenzweig, Making Good Cybersecurity Law and Policy: How Can We Get Tasty Sausage? 8 I/S: J. L. & POL’Y FOR INFO. SOC’Y 388, 399 (2012) ("The Treaty would be far more effective had it adopted more rapid response mechanisms that work in real-time. The technology for such an effort is readily available in the current interconnected environment.").

98 Weber, supra note 95, at 443 ("The Convention on Cybercrime does not resolve the extraterritorial jurisdictional issue because it ultimately fails to articulate a common set of crimes.").


100 Id. at 501-02, 512; see YAMAN AKDENIZ, AN ADVOCACY HANDBOOK FOR THE NON GOVERNMENTAL ORGANIZATIONS: THE COUNCIL OF EUROPE’S CYBER-CRIME CONVENTION 2001 AND THE ADDITIONAL PROTOCOL ON THE CRIMINALISATION OF ACTS OF A RACIST OR XEN-
focusing on Internet child pornography should carefully study the enactment strategies and topical priorities identified by the Council of Europe.

5. Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse

The Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (2007) updates some of the provisions of the Convention on Cybercrime, although it is recognized as distinct and separate from its treaty cousin. The Convention squarely addresses child pornography in its preamble. In particular, it notes that child pornography constitutes sexual abuse. The Convention addresses sexual tourism—an area uncovered by previous instruments—and is currently recognized as the universal standard. Notably, the Convention sought to harmonize the “best practices” of the member States.

The Convention is limited in several respects. In particular, it fails to address victim resources in the wake of child sexual exploitation. It does not encompass a range of basic victim needs, including “housing, food, and education.” Another deficiency of the Convention is its lack of global adoption; it is currently only widely adopted among European nations.

Finally, the Convention does not address a newly emerging consideration in the field of prosecuting online viewing of child pornography: whether viewing...

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103 Id.
104 Cf. Convention on Cybercrime, supra note 91.
105 Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, supra note 101, pmbl. (observing that the sexual exploitation of children, in particular child pornography and prostitution, and all forms of sexual abuse of children, including acts which are committed abroad, are destructive to children’s health and psycho-social development”).
107 See id. (“Its comprehensive program incorporates some of the best practices of both Sending and Destination States, and adds new, innovative enforcement and assistance provisions.”).
108 Id.
without downloading child pornography can be criminalized. In the United States, this issue has been under recent consideration. In *New York v. Kent*, the State appellate court held that evidence of a defendant’s temporary Internet files containing evidence of child pornography could be used for conviction. This particular dimension of criminal classification for such actions will need to be investigated and benchmarked in order to arrive at a universal position on temporary Internet cache files. This resolution would include a separate determination on whether viewing illegal images without downloading them should constitute a sexual crime.

**B. Relevant Legal Developments in the United States**

The United States, Canada, and the United Kingdom, provide for some of the most all-encompassing statutes that identify and prosecute child pornography and its panoply of online forms. The statutes governing Internet child pornography, especially in the United States, provide a tight and focused blueprint on how to effectively construct robust and effective laws regulating the use, production, distribution, and collection of Internet child pornography. In effect, the statutes build a consensus for a global instrument that can reinforce

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111 David Pendle, *New York v. Kent: Using Temporary Internet Files to Prove Possession of Child Pornography*, NAT’L CENT. FOR PROSECUTION OF CHILD ABUSE UPDATE EXPRESS (Nat’l District Atty’s Ass’n, Alexandria, Va.), Sept. 2010, at 1, available at http://commcns.org/17vlOU6 (“[T]emporary Internet files that show a defendant intentionally viewed child pornography on the Internet could support convictions for possession and promotion of child pornography, even though the images were not downloaded or otherwise manipulated by the defendant”).

112 See, e.g., Francis S. Monterosso, *Protecting the Children: Challenges That Result in, and Consequences Resulting from, Inconsistent Prosecution of Child Pornography Cases in A Technical World*, 16 RICH. J.L. & TECH. 1, 14 (2010) (“While some American courts convict child pornography defendants when law enforcement agents seize their computers and discover child pornography in the Temporary Internet Files or Internet Cache of the computer’s hard drive, other courts require the defendant to download the illegal material in order to convict”).


domestic efforts. Other areas to consider are Federal initiatives designed to address child pornography (in full or in part) and relevant case law affecting the current legal analysis of Internet child pornography.

1. National Strategy for Child Exploitation Prevention and Interdiction

The "National Strategy" grew out of the 2008 PROTECT ACT, which requires the Department of Justice to formulate and implement a National Strategy that improves the Internet Crimes Against Children Task Force and increases law enforcement's ability to combat child exploitation. The stated objective of this National Strategy is "to prevent child sexual exploitation from occurring in the first place."

The National Strategy also calls for dramatic efforts and integrated solutions across the various Department of Justice offices handling child pornography and Internet child pornography directives. One of these efforts calls for individual offices and investigations to be folded into each other and integrated as a unified effort. The implementation of these strategies and a multi-layered, collaborative intelligence operation, coupled with open evidence sharing are crucial to combatting Internet child pornography at its source. Equally important is successful law enforcement prosecution, both on a domestic and international level.

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117 NATIONAL STRATEGY, supra note 4, at I.

118 Id.

119 See id. at 137.

This work includes better coordination among all the nation’s investigators, better training for investigators and prosecutors, advancing law enforcement’s technological capabilities to stay one step ahead of the exploiters, and better research to help us understand the abusers of our children in order to make more informed decisions on deterrence, incarceration, and sex offender monitoring.

120 See Press Release, U.S. Dep’t of Justice, supra note 115 (“The department will create a national database to allow federal, state, tribal, local and international law enforcement partners to deconflict their cases with each other, engage in undercover operations from a portal facilitated or hosted by the database, share information and intelligence and conduct analysis on dangerous offenders and future threats and trends.”).

121 OFFICE OF THE ATT’Y GEN., U.S. DEP’T OF JUSTICE, ANNUAL REPORT, FY01PERFORMANCE REPORT/FY02 REVISED FINAL PERFORMANCE PLAN/FY03 PERFORMANCE PLAN, STRATEGIC GOAL TWO: ENFORCE CRIMINAL LAWS 61, available at http://commcns.org/18w1gOd.

122 See Press Release, U.S. Dep’t of Justice, supra note 115 (“international law enforcement partners”) [emphasis omitted].
2. Ashcroft v. Free Speech Coalition and Interpreting “Simulated Images”

One particularly disturbing element of Internet child pornography is the question of how to classify simulated or pseudo pornographic images. In Ashcroft v. Free Speech Coalition, the Court changed the standard established in New York v. Ferber by arguing in part that no children were harmed in the production of the images. The Court noted that statutes enforcing the protection of children from child pornography did not cover simulated images of children. This argument runs counter to the argument that is made by many other countries, including Australia and the United Kingdom, that simulated images are in the same rank as actual images.

The danger in not recognizing the harm of simulated images is demonstrated in Japan, where the Japanese legislature has consistently held back on legislating the profitable and popular “Lolicon” sub-culture of pornography. This

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123 See Ashcroft v. Free Speech Coal., 535 U.S. 234, 267 (2002) (Rehnquist, C.J., dissenting) (noting a concern that permitting simulated images of what could statutorily be deemed child pornography set a dangerous precedent, “Congress has a compelling interest in ensuring the ability to enforce prohibitions of actual child pornography, and we should defer to its findings that rapidly advancing technology soon will make it all but impossible to do so.”).

124 New York v. Ferber, 458 U.S. 747, 756-57, 763 (1982) (noting that a state’s interest in “safeguarding the physical and psychological wellbeing of a minor is ‘compelling,’” and that child pornography is material outside the protections of the First Amendment).

125 See Ashcroft, 535 U.S. at 256 (“[T]he defendant can demonstrate no children were harmed in producing the images, yet the affirmative defense would not bar the prosecution. For this reason, the affirmative defense cannot save the statute, for it leaves unprotected a substantial amount of speech not tied to the Government’s interest in distinguishing images produced using real children from virtual ones.”).

126 See id. at 258 (holding that, under a First Amendment analysis, “§§ 2256(8)(B) and 2256(8)(D) are overbroad and unconstitutional!”).

127 Many countries are not legally bound to interpret free speech in the same manner as the First Amendment, but nevertheless, employ extremely strong—often constitutional—protections involving freedom of speech and freedom of expression.

128 See Bellinda Kontominas, Simpsons Cartoon Rip-Off Is Child Porn: Judge, SYDNEY MORNING HERALD (Dec. 8, 2008, 11:50 AM), http://commcns.org/lcDl6Mq (“A Supreme Court judge has ruled that an internet cartoon, in which child characters resembling those from The Simpsons engage in sexual acts, is child pornography. The main issue of the case was whether a fictional cartoon character could ‘depict’ a ‘person’ under law.”).

129 See Jerome Taylor, Graphic Artists Condemn Plans to Ban Erotic Comics, INDEPENDENT (Mar. 23, 2009), http://commcns.org/IcORFHh (“This week Parliament will discuss a new Bill which will make it a criminal offence to possess cartoons depicting certain forms of child abuse. If the Coroners and Justice Bill remains unaltered it will make it illegal to own any picture of children participating in sexual activities”); cf id. (“The Bill currently going through Parliament is closely modeled [sic] on a similar piece of Australian legislation which has caused numerous controversies . . . . an Australian man was convicted of possessing child pornography because he downloaded six images of characters from The Simpsons performing sex acts on each other . . . .”).

130 See SARAH D. GOODE, UNDERSTANDING AND ADDRESSING ADULT SEXUAL ATTRACTION TO CHILDREN 28 (Routledge 2009) (“In [Japanese] manga or anime, the term ‘Lolita
type of pornography contains simulated images that depict vulgar and explicit representations of underage children (typically girls) engaging in sexual and violent acts. The Japanese legislature highlighted the marked delineation between simulated images and actual images. In addressing this type of inconsistency, the United Nations noted the difficulties that underlie the treatment of pseudo-images portraying child pornography.

Forming an international consensus on the distinction between virtual and actual child pornography will prove vexing to drafters of a universal Internet child pornography instrument. Categorizing whether simulated images rise to the level of harm in which an actual victim was abused will require an analysis of the scope of free speech and the price that must be paid for imposing limitations on the freedom of creativity. On the one hand, it is argued that absent an actual live victim, no offense exists. On the other hand, some countries adhere to a stricter policy, finding that, if what is virtual were in fact real, that image would constitute Internet child pornography and be subject to criminalization. This interpretive conflict will need to reach a compromise or consensus approach in order to produce an acceptable global standard for interpreting the role of virtual child pornography.

IV. HARMONIZATION EFFORTS

Two phenomena emerge from the immense task of regulating Internet child pornography. First, there is an array of instruments that address how to decrease the availability of Internet child pornography while simultaneously en-

complex’ is generally shortened to ‘lolicom’, ‘lolicon’, ‘lolikon’ or other transliterations from the Japanese such as ‘rorikon . . .’. Some sites dealing with lolicon or shotacon are clearly dealing in pornographic imagery featuring extremely graphic representations of children engaged in sexual acts.”).

131 Goode, supra note 130, at 28.
132 Through non-enforcement of this type of pornography. Cf. Keihō [Keihō] [PEN. C.] 1907, art. 177 (Japan).
133 See Akdeniz, supra note 1, at 211 (noting that the UN rapporteur indicated that “due to globalization and the advancement of new technologies, some specific problems could arise in relation to the treatment of pseudo images, in which images may be created ‘without the use of actual children’”).
135 See Bernstein, supra note 134, at 428 (“Digital child pornography simply does not implicate the interests of real children and, therefore, while offensive, absent some compelling reason, cannot be used to infringe upon our First Amendment rights.”).
136 Including, for example, the United Kingdom and Australia. See Kontominas, supra note 128; see also Taylor, supra note 129.
137 See Kontominas, supra note 128; see also Taylor, supra note 129.
forcing the punishment of offenders. Second, despite the instruments available, a glaring gap exists between national efforts to address the issues. Determining an appropriate global vehicle for an all-encompassing and, most importantly, effective instrument will be the first step in eliminating the exploitation of children on the Internet.

A unified, aggressive, and flexible instrument will have several benefits. First, it will call attention to the epidemic of Internet child pornography that currently affects countless victims across the globe. Second, it will put pressure on countries that place inadequate emphasis on offender prosecution to amend both their legal and enforcement strategies. Third, recognition of the interconnected offenses that surround Internet child pornography can also greatly reduce these crimes via strong enforcement provisions of the new instrument. Finally, although current instruments do aim, in varying degrees and with varying efficacy, to combat Internet child pornography, no instrument currently exists to unilaterally tackle Internet child pornography in its entirety.

Stronger nation states, principally the United States and members of the Council of Europe, would have to shoulder the brunt of proposal and implementation efforts. It is clear from the existing landscape that the United Nations has made admirable efforts in this field, especially with the distribution of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Yet, despite good intentions, U.N. efforts have come up short in a number of critical areas, such as in keeping up to date with emerging technologies, creating ease of domestic adoption, and inducing signatory participation. Additionally, the duality of a “carrot and stick” approach to persuade as many nations as possible to participate in Treaty implementation is limited. The United Nations lacks the financial and political resources to suitably pressure its member states to tackle certain potentially unpopular Treaties. Moreover, member cohesion and, to a certain extent, self-preservation, further constrain the United Nations desire to take its members head on. Indeed, the uni-

138 See NATIONAL STRATEGY, supra note 4, at 3; see also TRAFFICKING IN PERSONS REPORT, supra note 6, at 9; see also LEVESQUE, supra note 7, at 12-13.

139 See CHILD SAFETY ONLINE: GLOBAL CHALLENGES AND STRATEGIES, supra note 52, at 10.


142 See Convention on the Rights of the Child, supra note 26; see also KENDALL & FUNK, supra note 4, at 130.

143 See Fredette, supra note 105, at 43 (“Future multi-national instruments should either secure the membership of all Destination States, or adopt provisions to coordinate economic sanctions against the remaining outliers.”).

versal spirit of the United Nations is one of self-determination. The Council of Europe, acting in collaboration with the United States, would prove a far more persuasive vehicle for proposing, rallying support for, and universally adopting, an Internet child pornography instrument.

A. What Is Being Proposed?

The Council of Europe Convention on Cybercrime remains the most potent, comprehensive, and effective blueprint for a new instrument to specifically address Internet child pornography. Though the Convention on Cybercrime does go a long way in combating Internet child pornography, it is not the most effective or persuasive instrument. Other instruments regulating Internet child pornography also provide useful blueprints for formulating a new instrument. They also suggest some of the avoidable pitfalls when trying to draft a globally adoptable and enforceable Treaty—a feat some would say is impossible or, at best, incredibly difficult. Simply starting fresh when drafting a new instrument will not be the most economical of approaches; piecemeal inclusion of the better components of existing treaties will likely yield the best results.

It will be necessary to determine at the outset of instrument planning whether to view Internet child pornography as a purely human rights issue, a purely criminal issue, or a combination of the two. Taking a criminal approach focuses heavily on the illegality of Internet child pornography as it relates to producers and merchants, who may be exclusively engaged in the enterprise for commercial gain. A criminalization approach, then, runs counter to a basic tenet of the human rights approach: that offenders suffering from a psychologi-

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145 See U.N. Charter art. 1, para. 2 ("To develop friendly relations among nations based on respect for the principle of equal rights and self-determination . . . .").

146 See Oddis, supra note 92, at 513 ("The provisions and measures adopted by the Convention that are specifically aimed at criminalizing and sanctioning electronic child pornography are groundbreaking. They provide the first solid legal framework for proscribing and punishing a real crime committed in a virtual jurisdiction at each step in the chain, from production to possession.").

147 See Weber, supra note 95, at 443; see also Oddis, supra note 92, at 512-13.


149 See INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, WORLD HEALTH ORG., http://commcns.org/14zXsHQ (last visited Apr. 13, 2013) (noting that many of the provisions of the 1948 Universal Declaration on Human Rights were adopted and transplanted into the International Covenant on Civil and Political Rights (ICCPR) (drafted 1954) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (drafted 1954)).

150 See TRAFFICKING IN PERSONS REPORT, supra note 6, at 9 ("Human trafficking appears in many guises. It might take the form of compelled commercial sexual exploitation, the prostitution of minors, debt bondage, or forced labor.").
cal disorder require treatment, not incarceration.\textsuperscript{151} Focusing on the human rights aspect of Internet child pornography makes victim protection a priority over criminal prosecution.\textsuperscript{152} Providing a instrument that blends both criminal law and human rights approaches to enforcement will ensure its applicability and hopeful adoption among a diverse range of countries.

B. Developing Priorities: New Technologies and Global Threats

The problem of Internet child pornography does not exist in a vacuum. It is a global, regional, and local issue that cuts across a multitude of other human rights issues, legal structures, and social dimensions.\textsuperscript{153} Internet child pornography, then, must be viewed in the context of other global issues now confronting the international community. A remedy in one area does not solve the underlying problem in another. Thus, holistic and inter-disciplinary efforts must be made in a simultaneous fashion in order to deter the ongoing ramifications created by Internet child pornography.\textsuperscript{154}

1. Human Trafficking

While the oppression of girls and its intersection with sexual exploitation is not a new development, it has taken on a more immediate and prescient nature in the digital and globalized age.\textsuperscript{155} Human trafficking has taken on an especially urgent tone as the breakup of the former Soviet Union catalyzed into existence the specter of East European organized crime syndicates. The explosion


\textsuperscript{152} See U.S. Dep't of Justice, Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses 5 (1999), available at http://commcns.org/16cV18 ("The criminal justice system is not designed to accommodate the special developmental needs of children. Many police officers, attorneys, judges, and other criminal justice professionals find it difficult to work with children. Many children find the criminal justice system intimidating . . . providing weak testimony and contributing less information than needed to make or win the case.").

\textsuperscript{153} National Strategy, supra note 4 ("The child victims are first sexually assaulted in order to produce the vile, and often violent images. They are then victimized again when these images of their sexual assault are traded over the Internet in massive numbers by like-minded people across the globe."); see Trafficking in Persons Report, supra note 6; see also Levesque, supra note 7, at 12-13.


\textsuperscript{155} For a comprehensive overview of the problem, including real life documentation from a variety of different countries, see Nicholas D. Kristof & Sheryl WuDunn, Half the Sky: Turning Oppression into Opportunity for Women (Vintage Books 1st ed., 2010) (2009).
of immigration to Western Europe as a whole has exacerbated the problem of human trafficking. As a result, it has fueled an industry that combines two of the most exploitable functions of economic depravity: a highly populated market with depreciated employment opportunities coupled with a stagnant economy.\textsuperscript{156} Sexual exploitation has marginalized the option of the promise of a new life and the conduit to security and wealth in more developed nations.\textsuperscript{157} Even so, human trafficking is not just a problem for developed economies. A large proportion of human trafficking takes place in developing nations, where often some of the most brutal forms of exploitation occur.\textsuperscript{158} The legal apparatus regulating this phenomenon is fairly new, with offenders who traffic in women and children often skirting international jurisdictions or simply evading law enforcement and criminal litigation.\textsuperscript{159}

2. The Emergence of “Cloud” Computing

The “cloud,” a system of storing information in cyber-space with unlimited access through different devices, is a relatively recent development.\textsuperscript{160} Legislators and legal analysts are positing how content stored in virtual space can be litigated—say, for the purposes of evidentiary discovery—and enforced as a matter of jurisdiction.\textsuperscript{161} In essence, who controls the “cloud?” With this new vehicle available to Internet child pornographers, both producers and consumers, it will be imperative for legislation to keep up with and address this versatile, yet potential safe zone.\textsuperscript{162} Trends in jurisdictional analyses and the regulatory scope related to illegal content stored on cloud systems will also warrant close attention.

\begin{itemize}
  \item \textsuperscript{157} Id. at 3-5.
  \item \textsuperscript{158} KRISTOF & WUDUNN, supra note 155, at xv.
  \item \textsuperscript{159} Id. at 33 (noting that bribery is a common tool in avoiding criminal enforcement).
  \item \textsuperscript{161} Electronic Discovery & Records Management, Tip of the Month: Cloud Computing and Data Privacy, MAYER BROWN, Dec. 2012, at 1-2, available at http://commcns.org/13BsHCT.
  \item \textsuperscript{162} Audrey Rogers, From Peer-to-Peer Networks to Cloud Computing: How Technology is Redefining Child Pornography Laws, 22 (Feb. 16, 2012) (Pace Law Sch.), available at http://commcns.org/1d8UVf.

The online sexual exploitation of minors is intrinsically linked to economic indicators of national wealth and economic standing. However, because of the omnipotent presence of the Internet, both developing and developed nations prove to be alluring and opportunistic safe vehicles for the illegal production and dissemination of child pornography. As a billion-plus dollar "cottage industry," Internet child pornography continues to grow at an alarming rate.

V. CONCLUSION

The explosion of internet use in an ever-expanding globalized world will continue to have both unimagined positive social, economic, and human consequences in congruence with the negative side-effects associated with crime facilitation in a digital age. Crimes against the individual enabled by the commercial transaction of illegal, nefarious, and intentionally cruel images of children must be curbed, with the obvious, yet somewhat unrealistic, goal of complete eradication. While countries must operate within their own legal framework, the dissemination of Internet child pornography and the various illicit activities that are catalyzed by the production, distribution, and collection of child pornography must be recognized as an international problem, subject to the tenets of international law. A single, effective, clear, and legally binding rule of law must be established, and aggressive promotion by leading nation states pursued, to end the debilitating, degrading, and long-lasting effects that online child pornography perpetrates against child victims.

165 Levesque, supra note 7, at 65 ("The American government identifies child pornography as one of the world's largest cottage industries. The Department of Justice estimates the market to range between $2 billion and $3 billion a year").