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Lesli C. Esposito

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REGULATING THE INTERNET: THE NEW BATTLE AGAINST CHILD PORNOGRAPHY

Lesli C. Esposito*

I. INTRODUCTION

As an international system, the Internet has caused a surge in the production and distribution of child pornography. The Internet is quickly becoming the primary medium for pornography transmission; it is considered the “absolute best hunting ground (for a) pedophile,” and “the most efficient pornography distribution engine ever conceived.” Child pornography is particularly rampant on the Internet because pedophiles can transmit and download an illegal picture anonymously from a source which is virtually unregulated and thereby evade law enforcement. Chat rooms and the World Wide Web allow anonymous transmission of photographs, images, and live videos virtually instantaneously. Also, pedophiles can now easily access child pornography from other countries, because for practical purposes, national boundaries do not exist in cyberspace.

Because child pornography is illegal, or an “underground” industry, it is impossible to determine the number of children involved in its production. However, government and law enforcement officials estimate the revenue of the child pornography industry to range anywhere from several million to a billion dollars a year. While such statistics are diffi-

* B.A., Boston College, 1995; J.D. candidate, Case Western Reserve University School of Law, 1998. The author would like to thank Professor Robert Lawry for his advice with the drafting of this Note.


4 See Clayton, supra note 1.

5 See id.; see also T.R. Bruce, Internet and Legal Information, in THE ELECTRONIC SUPERHIGHWAY, THE SHAPE OF TECHNOLOGY AND LAW TO COME, 59 (Ejan MacKay et al. eds., 1995). Chat rooms and the World Wide Web are two types of services utilized through the Internet and described in Section III A of this Note.

6 See Frezza, supra note 3.

cult to verify, it is clear that child pornography is a large, profitable industry and the Internet continues to spur increased growth in the field. This situation has led many governments to undertake efforts to regulate the Internet, but the majority of these current efforts are failing. This Note will first discuss the definition of child pornography, then examine the nature of the Internet. Next, it will outline and critique the current regulation efforts of countries, regions, and organizations around the globe. This Note will conclude by proposing a set of characteristics necessary for a successful plan to regulate child pornography on the Internet.

II. CHILD PORNOGRAPHY

Trafficking in children is considered the third most lucrative illegal trade in the world, following only the sale of illegal drugs and weapons. Child pornography is considered the sexual exploitation of children. Sexual exploitation of children has been defined as "the use of children to meet the sexual needs of others, at the expense of the child's emotional and physical needs." Examples include child prostitution, pornography, and general sexual abuse. Child prostitution and child pornography are often linked together, forming a chain of exploitation.

Pornography includes representation of any degrading sexual practice for the purposes of pleasure or profit. Thus, child pornography is any such material depicting minors (in most countries, children under eighteen years of age). Child pornography exists in many forms, including videos, films, still pictures, and even comics. Girls and boys of all ag-

8 See id. Because child pornography is an underground industry, it is difficult to determine its exact range and reach. Id.
12 See id.
13 See id. (however, sexual abuse is distinguished from sexual exploitation in that exploitation conveys commercial connection).
14 See id. Frequently, the children involved in child prostitution are the same children exploited in child pornography. See id.
15 See id., at 276 (involving commercial activities).
17 See REPORT OF THE EUROPEAN COMMITTEE ON CRIME PROBLEMS, SEXUAL
es under eighteen, even infants, are used for the production of child pornography around the world. It is the young age of the victims and the graphic details that make child pornography so appalling.

Currently, the "greatest single obstacle to the fight against child pornography is that too few people ever see it." While definitions are helpful and informative, they fail to adequately convey the content of child pornography. In order to understand why something must be done about the distribution of child pornography over the Internet, one must understand the content of these materials. The names alone shed light on the content of many child porn magazines: *Bambina Sex, Boys International, Incestuous Love, Finger*, and *Lolita* are some of the tamer titles. The titles of most child pornography videos are more graphic. Child pornographic pictures and videos usually depict acts of sexual intercourse, sodomy, cunnilingus, and fellatio between children and between a child and an adult. Under these examples, it is easy to understand how child pornography harms the child and destroys the idea of "childhood." Now, through the Internet, child pornography has become an international industry, because these materials can instantaneously be transmitted to virtually anyone anywhere in the world.

Child pornography is an international industry that must be attacked aggressively by all countries in order to be abolished. Collaboration between nations is necessary to protect children. We live in a "global situation where it is meaningful to speak in terms of universal norms and standards." Because the Internet allows the virtually unregulated transmission of such materials across national borders, the source and destination of child pornography are no longer necessarily within the same country. Thus, in order to attack all aspects of the child porn industry, regulation must be international. If universal standards and

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20 See id. at 311.

21 See id. at 307 (providing a list of child pornography video titles).

22 See, e.g., id. at 46-47 (the acts listed have been gathered from the multiple, graphic descriptions of materials stated by Mr. Tate).

23 See George, *supra* note 18.


26 See id. at 74.

27 See id.
norms regarding the treatment of child pornography are established and widely adopted, countries will have to abide by those principles or suffer international criticism. Such standards must be clear enough to provide a minimum basis for governments, yet offer the flexibility required for international norms to be successful.

A. The Harms Caused By Child Pornography

Child pornography is frequently considered criminal not in itself, but because it depicts criminal acts such as abuse. Therefore, most child pornography laws seek to destroy the market for such materials because their production requires the abuse of children. While the sexual abuse of the child depicted is arguably the worst harm caused by child pornography, it is not the only harm. In actuality, child pornography causes many harms through its use by pedophiles as a tool to destroy children's inhibitions, teach the performance of sexual acts, and threaten or blackmail children, thereby furthering actual abuse. Children do not have to be used in child pornography to be harmed by it. The exchange of child pornography among pedophiles also results in great harm because it reinforces their behavior and encourages further sexual encounters. Realizing that these are the effects of child pornography, it is

30 See George, supra note 18.
32 The Child Pornography Prevention Act, 1995 (amended 1996): Hearings on S.1237 Before the Senate Committee on the Judiciary, 104th Cong. 63, 87-101 (1996) (testimony of Bruce A. Taylor, President and Chief Counsel of the National Law Center for Children and Families) [hereinafter Taylor]; The Child Pornography Prevention Act, 1995 (amended 1996): Hearings on S.1237 Before the Senate Committee on the Judiciary, 104th Cong., 2nd Sess., 18 (1996)(statement of Kevin V. DiGregory, Deputy Assistant Attorney General, Criminal Division, Department of Justice) [hereinafter DiGregory]; see also George, supra note 18 (discussing how child pornography laws are being changed to encompass pornography which does not actually use children, but instead uses computer graphics); see also Van Buuren, supra note 11, at 278.
33 See Taylor, supra note 32; DiGregory, supra note 32, at 18; see also George, supra note 18 (discussing the World Congress Against Commercial Sexual Exploitation of Children findings on the harms of child pornography).
34 See Taylor, supra note 32, at 87, 91, 99; DiGregory, supra note 32, at 18; see also George, supra note 18.
35 See Taylor, supra note 32, at 89-92; DiGregory, supra note 32, at 18; see also Clayton, supra note 1.
understandable why many believe that "[c]ommon sense and decency should be enough to tell any society that it should not tolerate child pornography." It's arguable why many believe that "[c]ommon sense and decency should be enough to tell any society that it should not tolerate child pornography." Children are seen as a popular cause and there is very little debate over the general definition of child pornography or its prohibition.

The problems arise over the specifics of such prohibition. For example, if a country believes that the only harm caused is the sexual abuse depicted in the material, then it would not criminalize computer-generated images and drawings depicting child sexual abuse which do not involve real children. However, such simulated materials still reinforce the behavior of pedophiles and encourage child sexual abuse, and may be used to lower children's inhibitions and teach children what to do. Because of these additional harms, many people argue that all child pornography, regardless of whether real children were involved in the production, should be illegal. Countries must agree on the harms caused by child pornography in order to establish universal standards.

B. Reactions to the Child Pornography Industry

There have been many attempts in the past to create international doctrines establishing universal standards that address child pornography. With the sudden growth in child pornography in the 1970s, the idea of drafting a treaty regarding the specific rights of children was agreed upon in the United Nations. Incorporating ideas from human rights treaties, the United Nations began drafting the U.N. Convention on the Rights of the Child (the Convention) to commemorate 1979 as the Year of the Child. The Convention was adopted unanimously in 1989.

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36 See George, supra note 18.
38 See U.K.: Internet-Pornography-To Protect or Serve?, COMPUTER WKLY., Oct. 3, 1996, available in LEXIS, NEWS Library, REUTER File; see also VAN BUEREN, supra note 11, at 276 (providing almost universal concurrence on outlining child pornography); see Rosenberg, supra note 31 at 150.
39 See Clayton, supra note 1; George, supra note 18.
40 See Congress Against Child Sex Opens Today In Stockholm, Jakarta Post, Aug. 27, 1996, available in WESTLAW, ALLNEWS Database.
42 See George, supra note 18.
43 See Hammarberg, supra note 37, at 61 (discussing the history of international laws protecting children).
44 See VAN BUEREN, supra note 11, at 275.
by the United Nations General Assembly. It addresses specific issues of child abuse and sexual exploitation, including child pornography.

The United Nations is not the only international organization to address the issues of children throughout the world. Save the Children is dedicated to international children’s rights and has played a pivotal role in assisting the United Nations in drafting the Convention. Similarly, UNICEF (the United Nations Children’s Fund), is a multinational organization concerned with the social and cultural rights of children. In addition to the efforts of these and other smaller organizations, there have been several recent world and regional conferences specifically addressing the issue of sexual exploitation of children, with an emphasis on child pornography.

III. THE INTERNET

In order to regulate child pornography on the Internet, it is important to understand the structure of the Internet. This entails studying the history of the Internet, its new role, and learning the vocabulary related to the use of the Internet. Computers have become the most important medium for the transfer of information because of the international scope of the Internet. The Internet allows for worldwide communication and information exchange and cheap, instant, and confidential distribution of data. This international aspect is the most important and influential facet of the Internet. It is also the transnational nature of the

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47 See INTERNATIONAL DOCUMENTS ON CHILDREN, supra note 41, at 399.
48 See VAN BUEREN, supra note 11, at 405 (explaining that UNICEF is concerned with economic, social, and cultural rights of children, not civic and political rights); see also PETER R. BAEHR & LEON GORDENKER, THE UNITED NATIONS IN THE 1990s 32-33 (1994).
49 See generally George, supra note 18 (explaining that the World Congress Against Commercial Sexual Exploitation of Children took note of the multiple negative effects of child pornography).
50 See George, supra note 18.
51 See American Civil Liberties Union v. Reno, 929 F. Supp. 824 (1996); see also U.K.: Internet-Pornography-To Protect or Serve?, supra note 42.
52 See Guy Basque, Introduction to the Internet, in THE ELECTRONIC SUPERHIGHWAY: THE SHAPE OF LAW AND TECHNOLOGY TO COME (Ejan MacKay et al. eds., 1995).
53 See George, supra note 18.
54 See Rosenberg, supra note 31, at 149.
REGULATING THE INTERNET

Internet that has caused a resurgence in child pornography.\footnote{See Clayton, supra note 1.}

A. Using the Internet

The majority of people who use the Internet access it through an Independent Service Provider (ISP).\footnote{See Basque, supra note 52, at 11.} ISPs are services such as CompuServe and America OnLine that connect individual computers through regional networks to an international arena, the Internet.\footnote{See id.} The Internet can also be accessed through numerous academic, government, and military networks.\footnote{See David Connett et al., The Observer Campaign to Clean Up the Internet, The Observer, Sept. 1, 1996, available in WESTLAW, WL 12065706, ALLNEWS Database.} On the Internet a person can communicate through a number of methods. The most popular means include: one computer to one computer; one computer to multiple computers; message databases; real time communications (Internet relay chat in "chat rooms"); real time remote computer utilization; and remote information retrieval (the World Wide Web).\footnote{See American Civil Liberties Union v. Reno, 929 F. Supp. 824, 834 (1996); see also Clayton, supra note 1.} Internet relay chat (chat rooms) and the World Wide Web (the Web) have the capability of relaying digitized still pictures and live video\footnote{See Clayton, supra note 1; see also Bruce, supra note 5, at 59.} and therefore have the capacity to carry and transfer images of child pornography.

The Web was started by the European Particle Physics Laboratory in Switzerland "as a way to organize information for the researchers."\footnote{See Daniel P. Dern, The Internet Guide for New Users 323 (1994).} The Web created connections between individual documents and other information collections so that the user could access multiple resources through the same connection.\footnote{See id. at 323-24.} One of the founders of the Web described it as "a wide-area hypermedia information retrieval initiative aiming to give universal access to a large universe of documents."\footnote{See id. at 323.} In simpler terms, the Web provides you with both documents and links, links which bring you to an infinite number of other documents and resources.\footnote{See id. at 324.} One of the goals of the Web is to let people use those links to "search, traverse, and use" information at multiple sites and in multiple forms through one connection.\footnote{See id. at 324.}
Chat rooms are a means of real-time communication on the Internet. Chat rooms are fairly self-explanatory: information is sent from a computer and received by any other source which has accessed the chat room within a matter of seconds, thereby making it possible to have conversations. Chat rooms usually do not charge for their access and are often "homebrewed," meaning that they are sites which are created by someone within their home, through their personal computer, and are maintained and operated as such. Chat rooms are a popular Internet tool which may be accessed by users on computers throughout the world. They are grouped into "channels" based on their topic so that the user may access the chat room covering the topic which they wish to discuss.

Cyberspace is the term for the general decentralized global arena of this growing industry of computer communications. It is estimated that over thirty million people currently access cyberspace. While over half of the networks used to access cyberspace are in the United States, the growth rate of Internet users is greater outside the United States, indicating the Internet's international expansion. At its conception, the Internet was not intended to be the multipurpose, global system that it is today. Mechanisms for regulating the medium were not originally installed, because the need for regulation was not necessary, nor was it foreseen.

B. The History of the Internet

The Internet began in the mid-sixties when the Advanced Research Project Agency (ARPA) set up a computer telecommunications network which connected (via phone lines) the computers of university researchers and military suppliers working on defense contracts. This network

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66 See id. at 136, 510.
67 See id. at 450.
68 See id. at 467 (discussing Internet archives as primary motivation of many users).
69 See id. at 510-11 (allowing users to form channels to discuss topics in which they want to participate).
71 See John Browning, How We Could Tighten the Net, DAILY TEL. (London), Oct. 24, 1996, available in WL 3988046 (stating that approximately two-thirds of those individuals who access the Net are male, and half are under the age of 35).
72 See MacKay et al., supra note 5, at 30; see also Carter Alexander, Europe Slowly Warming to the Internet, UPSIDE, Nov. 1996, available in LEXIS, World Library, ALLWIN File (noting that the growth rate in European Internet use was expected to pass that of the United States by year-end 1996).
73 See MacKay et al., supra note 5, at 7-8, 181 ("a network is the establishment of
allowed them to communicate, exchange data, and coordinate their efforts. While this limited communication was the main goal of the network, the system was designed to permit unlimited expansion and be independent of supervision by any type of control center. This design allowed the system to spread to most major American universities during the seventies, where it was used by faculty members for research.

In 1984 the system, known as ARPNET, was taken over by the National Science Foundation, which supervised its extensive expansion. However, it was not until the late 1980s that the system evolved into an international network. With diminished international tensions in 1988, NSFNet (ARPNET as renamed by the National Science Foundation) began to connect with various foreign networks. With this expansion overseas, the demands of corporations and private individuals increased on the network because the uses of the network subsequently multiplied. In order to meet these demands, a second network called ANS was developed by IBM, MCI, and Merit, Inc., and the creation of more networks soon followed. As more networks appeared and connected with each other, uses for the system expanded. It is this “network of networks” that today is known as the Internet. The Internet is a network of connections between networks with no central location. That is what makes the system difficult to control and regulate.

connections between the various terminals of all those who wish to enter into communications . . . they allow correspondents to be connected”).

74 See id.
75 See id. at 8.
76 See id. at 9.
77 See id.
78 See id.
79 See id.
80 See id. at 10.
81 See id.
83 See Joseph G. LaTessa, Internet Gambling and the Regulation of the Internet, 29 ARK. BUS. & ECON. REV. 11 (1996); see also Berkman, supra note 82, at A18; Matthew McAllester, Censorship on the Net, NEWSDAY, Nov. 3, 1996, at A61.
84 See McAllester, supra note 83, at A61.
IV. NATIONAL EFFORTS FOR INTERNET REGULATION

A. American Efforts

American companies have led the way in Internet technology. While in many aspects that has been beneficial to America, it has also resulted in a strong resurgence in child pornography, after it had been virtually stamped out in the early 1980s. Because America has led the way thus far, and is the pioneer of the Internet, many other countries are watching the United States closely to see how it regulates the Internet.

Child pornography has never been protected by the First Amendment in the United States. In 1982, a common law test was established for child pornography: "[d]oes the material depict minors engaging in sexual activity?" If minors are involved, it is not protected by any free speech argument.


Prior to September 30, 1996, the federal statute (18 U.S.C. 2252) governing child pornography provided that "anyone who knowingly ships, distributes, or receives . . . 'by any means including [a] computer,' or knowingly possesses, three or more copies of, any visual depiction of sexually explicit conduct produced by means involving the use of a minor engaging in such conduct, is guilty of a felony punishable by up to ten years in prison . . . and fines." This statute outlaws child pornography, including the distribution of same via a computer. However, one concern was the requirement that the production of such material requires the "use of a minor." By requiring the use of a minor, the statute only recognizes the harm of the sexual abuse to the child depicted and fails to recognize the wider affects of child pornography, such as encouraging the sexual abuse to the child depicted and fails to recognize the wider affects of child pornography, such as encouraging

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83 See Alexander, supra note 72; see also Clapes, supra note 16, at 1-7.
84 See Clayton, supra note 1.
85 See Glaister, supra note 2, at 2.
89 Id.
92 Id.
pedophilia and its use as a tool to seduce children.\(^\text{94}\)

Convening on January 3, 1996, Congress amended the statute by enacting the “Child Pornography Prevention Act of 1996.\(^\text{95}\) Incorporated into the Omnibus Act of 1996, the Child Pornography Prevention Act of 1996 recognizes a broader range of child pornography’s harms and addresses computer generated child pornography, which does not harm real children in its production.\(^\text{96}\) Congress formally recognized that child pornography “is often used as part of a method of seducing other children into sexual activity,” encourages child sexual abuse, and is a model for sexual behavior.\(^\text{97}\) By recognizing these harms, Congress stated that there are other harms then merely those done to the child in the production of the material. In response to these concerns, the Child Pornography Prevention Act of 1996 incorporates computer-generated images and other materials that do not depict actual acts of sexual abuse into the definition of child pornography.\(^\text{98}\) The act amends 18 U.S.C. 2252 by eliminating the requirement of the “use of a minor.”\(^\text{99}\) Congress stated that computer-generated images are “indistinguishable to the unsuspecting viewer” from pornographic materials depicting real children and real acts.\(^\text{100}\) Therefore, such images cause the same harms. This sweeping move by Congress strengthened America’s child pornography laws by incorporating all forms of child pornography.

2. The Communications Decency Act

In the early part of 1996, President Clinton signed the Communications Decency Act (CDA) into law as part of the Telecommunications Act of 1996.\(^\text{101}\) The CDA is a section of the Telecommunications Act that aims to control certain “obscene,” “indecent,” and “patently offensive” material on the Internet.\(^\text{102}\) The CDA makes it illegal to create, solicit,
or transmit using a telecommunications device, any obscene, lewd, lascivious, filthy, or indecent communication. The CDA was struck down as unconstitutional shortly after ratification, by two panels of three federal judges. The Department of Justice appealed the case to the Supreme Court, where the court found the act to be unconstitutional.

However, the "victory" declaring the Communications Decency Act unconstitutional is irrelevant with regard to child pornography. Senator Patrick Leahy, an opponent of the CDA, stated that he hopes people do not consider this a victory for child pornographers. The Supreme Court struck down a law, the CDA, which made it a crime to supply indecent material to minors. The court did not legalize child pornography; this decision does not affect bans on obscene material. This decision does not legalize the distribution of child pornography through the Internet, it merely establishes that Internet regulation cannot infringe upon the constitutional rights of adults. Unfortunately, while the court is willing to strike down suggested enforcement measures for Internet regulation, the justices fail to suggest alternative, less-restrictive methods for regulation.

B. International Efforts

Interpol, the international police agency, states that over 30,000 pedophiles are involved in organized child pornography rings in Europe, which began forming through the Internet. In Europe, countries have been attempting to establish their own individual standards and policies for regulating the Internet. Countries are taking individual action because of the increasing concern over child pornography on the Internet. European concern was heightened by a recent case in Belgium which horrified

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104 See Wouters, supra note 101; see also Berkman, supra note 82, at A1 (the CDA was overturned by a three-member panel of federal judges in Philadelphia and one in New York).
106 See Clapes, supra note 16, at 7 (arguing that child pornography has no First Amendment protection).
108 See id.
109 See id. (prohibition remains on material found to be obscene).
111 See id.
112 See Child Abuse Sounding Alarms Across Europe, supra note 9, at A26.
people throughout Europe. The case involved Marc Dutroux, a part-time builder who lived off of profits from selling child pornography over the Internet.

Twelve arrests have been made in relation to an international child sex and pornography ring led by Dutroux which was responsible for multiple child abductions, murders, and appalling sexual abuse. Dutroux recently led police to a secret dungeon under his house where he was holding two twelve-year-old girls who had been imprisoned there for ten weeks. The girls were malnourished and had been repeatedly sexually abused. Upon further investigation, police discovered the bodies of four other young girls on Dutroux’s property and over 300 videotapes of child pornography. Because pedophile rings like the one headed by Dutroux have such strong ties to the Internet, many countries have launched efforts to halt the distribution of child pornography on the Internet. However, these countries are encountering numerous difficulties because Internet regulation is unexplored territory. Thus far, regulating child pornography on the Internet has been a virtual “hit or miss” process.

In response to the Dutroux incident, Belgium established a site on the Web for complaints about child pornography. Similarly, the Netherlands established a telephone hotline and a Web site for complaints about child pornography. Because of the generally liberal laws in the Netherlands, many people were surprised by these actions. The Dutch

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113 See id.
114 See id. (describing how Dutroux abducted young girls, allowing some to die, and selling others into sexual slavery).
115 See 12th Person Arrested in Belgian Child Sexual Abuse Case, IRISH TIMES, Sept. 25, 1996, at Cl; see also Child Abuse Sounding Alarms Across Europe, supra note 9 (describing a chronology of Dutroux’s offenses).
116 See Child Abuse Sounding Alarms Across Europe, supra note 9.
117 See id.
118 See id. (two girls had died of starvation while Dutroux was serving a jail term for theft, and two were found on one of Dutroux’s properties after being missing for a year).
119 See id.; see also 12th Person Arrested in Belgian Child Sexual Abuse Case, supra note 115.
121 See id.; see also Dutch Clamp Down On Internet Child Porn, COMPUTERGRAM INT’L, June 25, 1995 (discussing statements by the Netherlands’ Justice Minister regarding the web site).
122 See Dutch Clamp Down On Internet Child Porn, supra note 121 (an example of the surprise is Computerjoam International and author, Information Access Company).
system relays complaints to the provider, who is asked to remove the material containing child pornography. If the provider fails to do so the police are notified. The goal of this system is to eradicate completely on-line child pornography originating in the Netherlands. However, while commercial production and distribution of child pornography is illegal in the Netherlands, possession of such material remains within the law. Because the Netherlands is a major source of child pornography, its Internet regulation efforts are encouraging, but its laws regarding child pornography are clearly still too liberal.

1. Strict Policy Approaches

In contrast, China has taken strong measures to regulate the Internet within its borders, requiring all ISPs and Internet users to register with authorities. Additionally, the Ministry of Posts and Telecommunications has established a government service provider which all Internet users are required to use, thereby allowing the government to censor everything that goes in and out of the country through the Internet. Vietnam and Saudi Arabia have adopted similar approaches, controlling access through a single Internet network controlled by the government and Singapore controls access through three such government-run service providers. Burma has taken the strongest measures by outlawing the use of the Internet and making ownership of an unregistered computer with networking capabilities illegal.

2. Liberal Policy Approaches

Other countries are making less progress with regulation. In Spain, the possession of child pornography is not illegal. Police in Spain...
were forced to confiscate over 4,000 computer files of child pornography which were to be distributed over the Internet on other technicalities, because possession of child pornography is not a crime in and of itself. Similarly, possession of child pornography is legal in Sweden. Sweden, with extremely liberal laws, is the alleged European capitol of child pornography because its liberal laws have made it impossible to outlaw child pornography. However, the Swedish government does recognize the harm of child pornography, as illustrated by their recent sponsorship of the World Congress Against Commercial Sexual Exploitation of Children conference which was organized by the Swedish government and held in Sweden.

3. Moderate Policy Approaches

Germany and Britain have arguably done the most to establish standards and methods of Internet regulation within their borders without going to extremes. Germany recently set up a regulatory agency and passed new telecommunications laws that require service providers to build "back doors" into their systems so that state officials can better monitor the Internet. Germany is also trying to establish a law that relieves service providers of liability for distributing child pornography unless they know of the material. Under this principle, German officials forced CompuServe to bar access to its 4.3 million subscribers world-wide to 200 sex-related newsgroups because they violated child pornography laws. German officials notified CompuServe of the violations, and because of the technical setup of the system, CompuServe was able to ban all subscribers from the newsgroups. Unfortunately, CompuServe eventually restored access to all but five of the 200

132 See id.
133 See Moseley, supra note 10 (stating that "Sweden's liberal laws on freedom of expression, similar to the U.S. First Amendment guarantees, have made it impossible so far to outlaw possession of child pornography").
134 See id.
135 See Conference Aim is End to Child-Sex, Industry, DES MOINES REG., Aug. 28, 1996, at 8A.
136 See Grossman, supra note 120; see also Browning, supra note 71 (subsequently, Germany was able to ban one service provider because it promotes terrorism); Wouters, supra note 101 (Germany has also banned Nazi propaganda).
138 See Martin, supra note 128; see also MacKay et al., supra note 5.
139 See Martin, supra note 128; see also McAllester, supra note 83, at A62.
sites.  

Britain's desire to establish Internet regulation policies was fueled by the fact that in 1996, approximately forty-seven percent of British homes with personal computers were OnLine.  

Britain feels a sense of urgency and is focusing its new proposals for regulating the Internet on child pornography.  

The Department of Trade and Industry, Scotland Yard, and Internet access providers recently joined together to create SafetyNet.  

SafetyNet consists of a hotline where the public and commercial organizations can notify officials of illegal material OnLine.  

If the information originated in the United Kingdom, the ISP is notified and is forced to remove the material or face criminal charges.  

The British government has also recently established an Inter-Departmental Group on Obscenity to investigate child pornography, and the Criminal Justice and Public Order Act of 1994 increased the punishment for possession of indecent photographs of children by adding a potential six-month jail sentence to the fine of GBP 5,000.  

These methods of regulation are possible because of Britain's strong laws governing child pornography.  

British laws recognize all of the harms caused by child pornography and, therefore, include computer-generated images in their coverage.  

V. TRANSNATIONAL EFFORTS FOR INTERNET REGULATION  

Globally, it is evident that many countries are establishing national standards with regard to child pornography and are attempting to apply those standards to the Internet in an effort to regulate the medium.  

However, the Internet allows child pornography to take on a new, international aspect by facilitating its worldwide production and transmission.  

Therefore, in order to regulate all aspects of the industry, standards must

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140 Id.  
141 See Glaister, supra note 2, at 1.  
142 See id., at 2; see also M2 PRESSWIRE, Internet Safety-net to Tackle Child Porn, Sept. 25, 1996, available in LEXIS, News Library, ALLWLD File.  
144 See Uhlig, supra note 143.  
145 See id.; see also Arthur, supra note 143, at 6.  
146 See M2 PRESSWIRE, supra note 142.  
147 See id.  
148 See id.; see also George, supra note 18.  
149 See Alexander, supra note 72.
be global or pedophiles will simply continue to turn to other countries through the Internet to access materials which are illegal in their own nation.

A. European Regional Efforts

The majority of European countries have begun to establish individual policies for regulating child pornography on the Internet and have seen the need for wider, broader, regional policies which are not limited by national borders. Many of the above-mentioned countries have advocated implementing a European cultural policy for children in response to child pornography. The states believe the European Convention on Human Rights provides the basis for a joint regulatory approach. Thus, the executive body of the European Union is attempting to establish certain standards for the European community, requesting Member States to work together to create minimum criteria for banning child pornography. The European Union Commission also advocates the use of filtering software and rating systems and wants nations to strengthen their domestic laws to better enable international cooperation. While most of their efforts thus far have been regional, the European Union Commission has begun to argue and act for an international effort. The European Union Commission recently announced plans for an international conference on the issue of child pornography on the Internet and called for a working meeting of G7 countries to draft an international convention. The

151 See Audiovisual Policy, supra note 150; see also Opinion of the Economic and Social Committee on European Cultural Policy for Children, 1996 O.J. (C153) 27, 27, 34.
153 See Murray et al., supra note 152.
154 See E.U. Commission Steps Up, supra note 152.
155 See Commission Joins Campaign, supra note 152 (stating that the United States, Canada, Japan, France, Italy, Germany, and the United Kingdom comprise the G7 coun-
European Union Commission also recently advocated an international convention with a larger, international body such as the United Nations.  

B. United Nations

The international, global police network, Interpol, has attempted to increase its efforts in policing child pornography on the Internet, but such actions are difficult without uniform international standards. While individual governments have failed to take the initiative to form such standards, the infrastructures of international organizations are already designed to perform exactly those functions. The structures of international organizations provide an apparatus for creating issue platforms because they offer a forum for discussion and debate.

The United Nations occupies a central position among international organizations. "[A]ll governments in the world consider it important to belong to the United Nations" and view the United Nations as a source of international cooperation. With 184 members, twenty intergovernmental agencies, and a respected history in regulating and protecting human rights on a global scale, the United Nations is the most logical place to turn for guidance and organization of an international movement to eradicate child pornography from the Internet. In fact, the United Nations has a long history of addressing the rights of children.

The issue of children's rights predates the United Nations, with protection of children against exploitation first appearing on the international scene in the 1920s. The Declaration on the Rights of the Child, signed in 1924, states that children should be protected from exploitation. However, children still had little protection until after World

\[\text{\footnotesize tries).}\]
\[\text{\footnotesize 156 See \textit{id}.}\]
\[\text{\footnotesize 157 See George, \textit{supra} note 18.}\]
\[\text{\footnotesize 158 See \textsc{Henry J. Steiner et al.}, \textsc{Transnational Legal Problems} 299 (1994).}\]
\[\text{\footnotesize 159 See \textsc{Baehr, \textit{supra} note 48, at 158.}\}
\[\text{\footnotesize 160 See \textsc{Jalil Kasto, \textit{The United Nations: A Global Organization} 89-90 (1995).}\}
\[\text{\footnotesize 161 See \textsc{Baehr, \textit{supra} note 48, at 32-33. UNICEF, the United Nations Children's Fund, is one of those intergovernmental agencies. It is considered a veteran among sources of assistance and has the support and attention of both U.N. member and nonmember governments. UNICEF also has an excellent reputation, being known as alert and well-structured. It was originally established by the General Assembly of the United Nations after World War II to provide supplies and direct relief to child survivors of the war. As those duties became less pressing, UNICEF expanded its interests to take on broader cultural and social efforts. \textit{Id.} at 32-33, 136-37.}\]
\[\text{\footnotesize 162 See \textsc{Van Buuren, \textit{supra} note 11, at 275.}\}
\[\text{\footnotesize 163 See \textit{id.} (Children were to be protected from exploitation, but sexual exploitation}
War II, when discussion began about establishing international norms protecting human rights. While children were not specifically mentioned for protection during these debates, certain fundamental human rights applied to them as well. In 1959, the Declaration of the Rights of the Child was updated by the United Nations to prohibit the exploitation of children in any form, but still not specifically mentioning sexual exploitation.

1. The U.N. Convention of the Rights of the Child

The idea of drafting a binding rather than non-binding treaty on the rights of children arose in the United Nations in the late 1970s because of the belief that existing human rights treaties did not meet the special needs of children. An evolution in attitudes and perceptions of children’s rights had occurred as a result of the actions of an international human rights movement. The Convention of the Rights of the Child (the Convention) was drafted over a ten-year period with the participation of over forty countries and was eventually unanimously adopted by the General Assembly on November 20, 1989 and entered into force on September 2, 1990. The Convention establishes a universal definition of children’s rights as part of international law and specifically addresses child pornography. The realization of these rights was, and is, expected to "create a just and equitable national and international ethos for children." The first step in realizing these rights is the universal, international ratification of the Convention. Currently, 187 states’ Parties have signed and ratified the Convention. An international human rights

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is not expressly cited in the Declaration). This Declaration was through the League of Nations. See INTERNATIONAL DOCUMENTS ON CHILDREN, supra note 41, at 3.

164 See VAN BUEREN, supra note 11, at 275.
165 See id, at 275.
166 See Hammarberg, supra note 37, at 61.
169 See Gooneskere, supra note 25, at 77.
treaty has never come to force so quickly before, with ratification by so many countries in such a short time.

Articles 2 and 4 of the Convention specify that states, upon signing the Convention, must take legislative, administrative, and other measures necessary to ensure implementation of the Convention. Once signed and ratified, state Parties are required to “ensure” the rights in the convention to each child, meaning that they must take whatever measures are necessary (including positive action) to allow children to enjoy their rights.

Articles 1, 3, and 34 of the Convention deal most directly with the issue of child pornography. Article 1 establishes that “a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” The United States, in sole opposition to the final draft of this amendment, argued that the age should be lowered to fifteen, but due to lack of support, the definition remained at eighteen years of age. Therefore, the official international definition of child includes anyone under the age of eighteen, with limited exceptions.

Article 3 establishes that in all actions concerning children, “the best interests of the child shall be a primary consideration.” There was great debate during drafting over whether a child’s interests should be “a” or “the” primary consideration. The original proposal used “the,” but

Emirates. Id. A treaty is not binding upon a state until that state has agreed to be bound by it. According to the Vienna Convention on the Law of Treaties a state is required to amend its national law in order to fulfill its international obligations under the treaty, thereby signing and ratifying the treaty. See VAN BUEREN, supra note 11, at 380-81.


See Hammarberg, supra note 37, at 62.

See Convention on the Rights of the Child, supra note 45, at 167-68; see also VAN BUEREN, supra note 11, at 391 (explaining that Article 2 sets out the result to be achieved, while Article 4 focuses on the manner in which the result is to be achieved).

See VAN BUEREN, supra note 11, at 391.


Id. at 167.

See Cantwell, supra note 167, at 26-27.


See id.

Shannon Detrick, Compilation of the “Travaux Préparatoires,” in THE UNITED
the proposal by the United States of "a" was the version with enough support to pass and therefore, "a" is used in the Convention. This seemingly small change lowers the value and importance of a child's interests, by making those interests one of many equal considerations instead of the foremost consideration.

Article 34 requires all state Parties to "take all appropriate national, bilateral and multilateral measures to prevent: . . . (c) The exploitative use of children in pornographic performances and materials." While several variations were proposed, there was no major debate over the prohibition of child pornography. Therefore, the forty countries involved in drafting the Convention and the 187 countries who signed and ratified the Convention, agreed to assume the responsibility of preventing child pornography.

The Convention is one of the most important human rights instruments ever adopted. The Convention "embodies a whole new philosophy which will influence current and future developments relating to children; it is the first international treaty to place a comprehensive obligation on states to protect children from all forms of sexual exploitation, specifically abuse, a type of exploitation never previously singled out. Many countries would prefer to ignore sexual exploitation, pretending it does not exist, but the Convention forces states to focus on the issue. The Convention is ground-breaking because it places children's issues in an international context and in the global spotlight. Most importantly, the Convention has established and codified a universal definition of children's rights as part of international law. One would likely draw the conclusion that the United Nations, under the guidelines of the Convention, would be leading a successful international effort against child pornography. While the Convention has the most potential

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181 See Convention on the Rights of the Child, supra note 45, at 167; see also Detrick, supra note 180, at 131-40.
183 See Detrick, supra note 180, at 429-37.
185 See Asquith & Hill, supra note 178, at 13.
186 See VAN BUIEREN, supra note 11, at 276.
187 See id. at 277 (proving valuable as a response to the limitations of the Convention).
188 See Asquith & Hill, supra note 178, at 13.
189 See Hammarberg, supra note 37, at 71.
for success out of all of the laws and efforts implemented by various countries, it is only a starting point.

VI. REGULATING CHILD PORNOGRAPHY ON THE INTERNET

The Convention is the best starting point for the regulation of child pornography on the Internet because it attacks the problem on an international level. Child pornography is still rampant on the Internet despite the numerous efforts of so many countries because all of those efforts deal with the problem on a national level. The Convention lays solid ground work for a united, international movement, but it falls short in many areas. A successful effort to regulate child pornography on the Internet must do three things: 1) establish universal standards which are adopted into law by every country, 2) mandate enforcement of those standards on a national level, and 3) create a mechanism for global monitoring of national enforcement and a means of global enforcement.

The first step in regulating child pornography on the Internet is to establish a set of universal standards. If each country is enforcing the same standards it will no longer be possible for pedophiles to obtain materials by turning to other countries where child pornography is more readily tolerated. The United Nations attempted to do this when it drafted and adopted the Convention on the Rights of the Child, which was intended to "place[d] before the world community a set of standards that represents a uniform rights strategy." The Convention was successful to a degree in creating a set of standards, but it failed to address the Internet specifically and the standards created could be considered too vague. While creating universal standards is arguable the most important step in regulating child pornography, it is also probably the most difficult because a set of standards will have no practical effect if they are not established as law in every country.

Ratification of the U.N. Convention does not automatically make the standards set forth part of that country's national laws. However, in Article 27 of the Vienna Convention on the Law of Treaties, national laws may not be used to supersede an international convention if that convention specifies that a state is required to amend its national law in order to fulfill the obligations of the convention. Therefore, if the U.N. Convention incorporated an amendment that required ratifying countries to incorporate the standards set forth into their national law, countries would then be bound by such standards. However, if the

\footnote{See Goonesekene, supra note 25, at 77.}
\footnote{See id. at 78.}
\footnote{See VAN BUEREN, supra note 11, at 381.}
standards set forth in the Convention conflict with the national laws of a country, that country would most likely refrain from signing the Convention. Standards must, therefore, be created which are strong enough to have an effect, yet general enough to be adopted into law in every country.

Several countries have very liberal laws in general, which make it difficult to outlaw even child pornography.\(^{193}\) Many of these countries have been able to outlaw the production of child pornography, but not the possession of such material.\(^{194}\) Therefore, the first step in creating universal standards which can be adopted by all countries might be to create standards which address production, but not possession, of child pornography, with the goal of eventually raising the standards to include possession of those materials.

Following the establishment and adoption of universal standards regarding child pornography, the second step for eradicating this industry is the enforcement, detection, and prosecution of offenses. This could best be handled on an individual national basis, with each nation responsible for policing its citizens. As mentioned previously, many countries have established, and are continuing to update, methods for enforcing their national laws with regard to the Internet.\(^{195}\) By maintaining enforcement on a national level, it allows countries to utilize their own methods in regulating the Internet. Countries have the freedom (within the boundaries of the adopted standards) to impose their own penalties. However, this is currently proving unsuccessful because many countries are lax in their enforcement procedures. Therefore, it is necessary to establish a third step of creating a global system for monitoring national enforcement.

While "there is no international court which can sanction... violations against the Convention,"\(^{196}\) several articles in the Convention create a system to monitor the efforts of ratifying countries.\(^{197}\) The Convention establishes a committee of ten people\(^{198}\) to monitor the conduct of ratifying countries. Elections are held every two years for half of the committee at a time with each member being elected to a four-year term.\(^{199}\) Elections are held at a special meeting in the U.N. headquarters.

\(^{193}\) See infra Sections IV B, B2

\(^{194}\) See infra Section IV, B2

\(^{195}\) See infra Section IV.

\(^{196}\) See Hammarberg, supra note 37, at 68; see also VAN BUEREN, supra note 11, at 397-98 (stating that the International Court of Justice does not have jurisdiction over the application and interpretation of the Convention).

\(^{197}\) See Goonesekene, supra note 25, at 78.

\(^{198}\) See VAN BUEREN, supra note 11, at 389.

\(^{199}\) See Hammarberg, supra note 37, at 69.
and each party to the Convention has a vote.\textsuperscript{200}

Countries which have ratified the Convention have to submit a report to the committee within two years of ratification, and then continuing every five years, on the implementation of the Convention within the nation.\textsuperscript{201} The committee reviews each country's report and makes a subsequent report to the U.N. General Assembly every two years on its observations.\textsuperscript{202} This procedure "breaks new ground for a global human rights treaty because it adopts a single method of monitoring."\textsuperscript{203} However, the main goal of these reports is to enable the United Nations to assist countries in their efforts to comply with the Convention, not to punish countries for violations;\textsuperscript{204} compliance with the Convention is ultimately voluntary.\textsuperscript{205} Currently, the system lacks the sufficient legal means to punish countries for failing to comply with the Convention. The Convention needs strong backing and support by a body which is in a position to apply pressure to ratifying countries to implement the standards set forth in the Convention.

Unfortunately, it is becoming clear that while general consensus is in support of the Convention, issues concerning the rights of children and specifically child pornography are not primary on anyone's agenda. At this point, no country has stepped forward to take the lead in the movement of enforcing the regulation of child pornography on the Internet. The United Nations, which has created High Commissioners for various areas in the past,\textsuperscript{206} could take the lead in enforcing the Convention by creating a High Commissioner for Children. Such a figure within the General Assembly of the United Nations would be able to rally strong support for the Convention and ultimately create a network of strong pressure from various countries, the United Nations, and other international organizations. This network would in turn force ratifying countries to comply with the standards of the Convention.

The characteristics necessary for a successful plan to regulate child pornography on the Internet are clearly interdependent. Universal stan-

\begin{itemize}
\item \textsuperscript{200} See id.
\item \textsuperscript{201} See id.
\item \textsuperscript{202} See id.
\item \textsuperscript{203} See VAN BUEREN, supra note 11, at 392.
\item \textsuperscript{206} See KASTO, supra note 160.
\end{itemize}
standards are necessary to regulate the Internet, but those standards are useless if they are not enforced. Logistically, enforcement would best be handled first on a national level. However, there must be an international structure to monitor national efforts in order to ensure that those efforts are in fact sincere. In turn, such an international structure must have the authority and means to enforce its recommendations or its purpose is defeated. Clearly, the U.N. Convention on the Rights of the Child has the greatest potential for successfully regulating child pornography on the Internet. However, the Convention must strengthen both the standards it puts forth and its means for enforcement. With sufficient international support, perhaps headed by a High Commissioner on Children, substantial steps may finally be taken to regulate child pornography on the Internet.