



The Crime of Child Pornography: European Legislative and Police Cooperation Initiatives

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International and European Public Law

Master Thesis

Tilburg University, 2013

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Chapter I. Introduction and methodology

a) Introduction of the crime

Records of cases describing illegal contact with children have not been discovered and criticized just recently. Such cases have existed before. The process of development of child pornography has been traced back to 1960's when the crime started to be produced mainly in magazines and films. In 1970's child pornography was acknowledged as an unimaginable threat to children and was criminalized in some countries like England.¹ Nowadays it is obvious that the illegal practices from the past have been developed and continued by transferring the old images along with the new ones to a digital bearer, uploaded and sent from one computer to another, from one country to another via the internet.² Broadly, the crime of child pornography can be described as any records of sexual activity with children. Those can be photographs, video, written materials or sound files. However, sometimes photographs can be taken independently, and sometimes they can be extracted from video clips or movies. Notwithstanding, the graphic content of the pictures not always shows explicit sexual conduct with children and the collectors may avoid prosecution and conviction. This is dictated by the severity of the content and is further elaborated in the first chapter of the thesis. However, it is clear that production, possession of child pornography and its dissemination for commercial purposes all constitute child abuse and exploitation.

In my opinion, however, criminalizing child pornography materials has a preventive function as well in case access to such materials provokes further child abuse and exploitation.

It cannot be argued that child pornography has been considered a tremendous problem which nowadays is getting more and more difficult to track. Computers, internet, emails, external storage devices have facilitated the pornography makers to grow in number and hide effectively from the law enforcement agencies. Technology advancement and the proliferation of private computers have made it easy for the offenders to do criminal activities and still hide in the dark.³ Children need access to all new technologies by which to develop their abilities and knowledge. But taking into account the presence of innovative methods for exposure of

¹ Ost S., *Child Pornography and Sexual Grooming: Legal and Social Responses*, Cambridge University Press, 2009, p. 25

² *Ibid.*, p.26

³ *Ibid.*

personal information and data makes them open to injure and difficult to protect from being involved in an irreversible situation such as to become victims of child pornography.

b) Purpose of the research and methodology

The purpose of the thesis is to give an answer to the central research question which is “in what ways do the new European legislation and international police cooperation help combat the proliferation, production and possession of child pornography”. All the information and findings in this thesis are based on desk research, aiming to give answers to the following sub-questions in order to understand in detail the central research question:

- a) What is the current International and European legislation on child pornography?
- b) What new initiatives does the European Union take in order to facilitate the minimization of the crime and to support the legislative measures?
- c) What law enforcement mechanisms does the European Law Enforcement agency (Europol) has at its disposal in accordance to this particular crime?
- d) What operations against child pornography have been conducted?
- e) What is the outcome of the operations?
- f) What are the most common obstacles for the teams during joint operations against child pornography offenders and how were they handled?

The United Nation Convention on the Rights of the Child (CRC) and its Optional Protocol on Sale of Children, Child Prostitution and Child Pornography (OPCRC), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), the Council of Europe Convention on Cybercrime and the newly established European Directive 2011/92/EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography (the Directive) are the major legal documents used as a basis for examining the above questions. Further, police cooperation initiatives on a European level for combating child pornography offenders are explored and explained. Whether those are successful and what challenges they face are assessed by the outcomes.

The first chapter of the thesis introduces the victims of the crime – children. The chapter explores the maximum age for a child to fall under the protection of the above-mentioned document. The chapter also looks at the legal threshold at European level and disparities in national legislations as well as at the difficulties of establishing children’s age from the pornographic materials.

The second chapter explores the different types of child pornography materials and how they are dealt with in the current legislative framework. The chapter also looks at the latest EU Directive 2011/92/EU which aims at closing the loopholes of its predecessors.

The last part of the thesis covers the European and international cooperation of the police forces against child pornography producers, possessors, and distributors. It more closely looks at Europol and its mandate on this particular crime, data exchange techniques, and participation in Joint Investigation Teams with its partners against child abusers. I also examine the difficulties the agency faces.

Chapter II. Categorization of child pornography images and legal introduction of the object of the crime - children

Child pornography (or abusive) images are not just illegal pictures transferred among adults or a group of people. For a long time child pornography has been considered an extremely problematic legal phenomenon which gravely infringes on children's rights⁴. It is a crime of exploitation of children for sexual and commercial purposes; sometimes it constitutes distribution of illegal images which can irreversibly harm children's body or mind.⁵ In today's world the crime of child pornography brings even more devastating consequences because of the free use, dissemination of data and information through the Internet which makes it easier and cheaper for the criminals to commit crimes. Although child pornography is not a new phenomenon, an internationally accepted and legally exhaustive definition has not been adopted yet. There are some international minimal standards which can constitute a solid legal basis for such an act to be punished and its doer to be criminally responsible.⁶ But is this enough?

In the following pages the crime of child pornography in accordance to the major European and International legal documents will be described.

a) Categorization of child pornography images (non-legal definitions)

In 2002 a grading scale of the seriousness of child pornography images was established in the University College Cork. It has been used not only to categorize the level of seriousness of online material, but also to specify what the level of judge's final ruling should be.⁷ The chart was established in the United Kingdom and was based on a ten-point scale aiming at facilitating the police and law enforcement cooperation to assess the graveness of the offence. The COPINE scale (Combating Paedophile Information Networks in Europe) is the most widely accepted and scholarly discussed way of child pornography measurement.⁸ However, the weak points about the COPINE are that it applies only to child pornography

⁴ Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, 13 December 2011, retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

⁵ Combating "child abuse images" through committed, transversal and internationally coordinated action, report of the Social, Health and Family Affairs Committee, 2011

⁶ The legal ground is going to be thoroughly elaborated in the second chapter of the thesis.

⁷ Laws, D., O'Donohue, W., Sexual Deviance: Theory, Assessment and Treatment, The Guilford Press, 2008

⁸ Hannah L. Merdian, Jo Thakker, Nick Wilson & Doug Boer (2013): Assessing the internal structure of the COPINE scale, Psychology, Crime & Law, 19:1, p. 3

images (excluding the other known materials like pornographic text or audio files) and it is not proved accurate due to the lack of studies on its actual applicability.⁹

COPINE Scale¹⁰

1	Indicative	Pictures of normally dressed children and/or teenagers in daily-life situations (for example, kids playing, school pictures). These pictures could be from catalogues, commercials, family albums, or brochures.
2	Nudist	Pictures of children and/or teenagers in daily-life situations where it is normal to be naked, or in underwear or swimwear. This could be on the beach or in a bathtub. These pictures could be from catalogues, commercials, family albums, or brochures.
3	Erotica	Pictures of children and/or teenagers in daily-life situations where it is normal to be naked, or in underwear or swimwear. This could be on the beach or in a bathtub. These pictures were taken without the child and/or teenager knowing it.
4	Posing	Pictures where the child and/or adolescent knowingly pose for the camera but the picture is not 'sexy' on its own.
5	Erotic Posing	Pictures where the child and/or adolescent knowingly pose for the camera, in order to be 'sexy'. For example, they might pretend to be model, a film star, or a pornography actor/actress.
6	Explicit Erotic Posing	emphasizing genital areas, regardless if clothed or naked;
7	Explicit Sexual Activity	touching, mutual or self-masturbating, oral sex and intercourse by child, no adult involved;
8	Assault	children as subject of sexual assault including digital touching, involving an adult;
9	Gross Assault	grossly obscene pictures of sexual assault, involving penetrative sex, masturbation or oral sex;
10	Sadistic/Bestiality	(a) Pictures of children and/or adolescents where they experience pain. For example, the child/ adolescent might be tied, bound, beaten, or whipped. (b) animal involved in sexual relation;

At the same time the Sentencing Advisory Panel (SAP) after a request by the Court of Appeal, both in the United Kingdom, established a similar grading system under the case *R v Oliver (No 1) [2002] 1 Cr App R (S)* where SAP and the Court divided the child pornography images into five categories and allowed for sentencing guidelines based on a new scale.¹¹ Surprisingly, the SAP scale reflected only the gravest photograph expression of child abuse and has been criticized that their scale was established to show only the levels of severity but

⁹ Hannah L. Merdian , Jo Thakker , Nick Wilson & Doug Boer (2013): Assessing the internal structure of the COPINE scale, *Psychology, Crime & Law*, 19:1, p. 6

¹⁰ Ibid.

¹¹ Case Law from the Crown Prosecution Service; can be seen at: http://www.cps.gov.uk/legal/h_to_k/indecent_photographs_of_children/

not as the original COPINE idea - to show the danger of the different content in pornographic images.¹² For instance as opposed to the COPINE scale the SAP reflected only five points:

№	SAP	COPINE
1	Images depicting nudity or explicit erotic posing with no sexual activity	Nudist; Erotica; Posing; Erotic posing; Explicit erotic posing;
2	Sexual activity between children, not involving an adult	7 COPINE
3	Non – penetrative sexual activity between an adult and a child	8 CPOINE
4	Penetrative sexual activity between a child and adult	9 COPINE
5	Sadism or Bestiality	10 COPINE

However, in the case *R v Oliver (No 1) [2002] 1 Cr App R (S)* the Court of Appeal excluded the simple “nudist, erotic and posing” pictures stating that the nakedness does not constitute pornography.¹³

The crimes listed in the COPINE scales are with an ascending severity. Some researchers and police authorities tend to exclude the first three to five points considering them not relevant and hardly constituting an offence.¹⁴ But sometimes the innocent pictures of children who cheerfully pose for a family photo may also become victims of abuse. This issue is addressed by the creation of morphed and computer generated images which are further explained in the second chapter.

An attitude such as materializing sexual abuse can have a grave devastating and degrading impact on a child’s mental and physical health and development. Generally, child pornography constitutes and can be defined as a depiction or creation of (real) images and other materials of children involved in sexual activities and fall within a type of sexual exploitation and abuse. The way Catherine Williams defines “at its worst, child pornography is the portrayal of the sexual assault of a child or children and is proof of a serious crime”¹⁵

¹² Howitt D., Sheldon K., *Sex Offenders and the Internet*, 2007, p. 36

¹³ Akdeniz Y., *Internet Child Pornography and the Law*, 2008

¹⁴ Prioritizing the serious offences by the police makes it easier for them to deal with the serious crimes. *Typology of Child Pornography Offending*, Tony Krone, Australian Institute of Criminology, 2004

¹⁵ Katherine S. Williams (2004): *Child Pornography Law: Does it Protect Children?*, *Journal of Social Welfare and Family Law*, 26:3, 245-261

b) The object of the crime - who is considered a child?

Many authors who discuss and research the crime of child pornography start their analysis with clarifying who actually falls within the scope of protection of the International legal documents. Article 1, of the *United Nations Convention on the Rights of the Child (1989, UNCRC)*, respectively its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPCRC), state that every person under the age of eighteen years should be considered a “child” and should be protected. But the Convention also gives the member states the right to decide whether the age in their national legislation should be lower.

In 1999 in Geneva the parties of the International Labor Organization wrote the Convention on Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labor, where child pornography also falls under its scope. The parties have agreed that “the use, procuring or offering” a child to be used or involved in pornographic activities is one of the worst forms of child labor, where a child is an individual under the age of 18.¹⁶

The Council of Europe Convention on Cybercrime, signed in Budapest (2001) and entered into force in 2004, has the aim to support and guide states to establish a corresponding national legislation and to facilitate the cooperation among them in the fight against cybercrimes where the online dissemination of child abusive images is also covered. According to article 9(c) of the Convention 18 years is the age under which a person is considered a child. The contracting parties are given the right to make reservations about the age by deciding whether to lower it to 16 (but not less) if necessary.¹⁷ For instance, such a reservation has been declared by Switzerland which lowers the age thresholds for child pornography materials to 16 years. The Lanzarote Convention, on the other hand, defines a child as any person under the age of 18 years and does not allow reservations to be made.

The recently adopted *Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography* (European Directive), replacing Council Framework Decision 2004/68/JHA, also gives the age of 18 years to be the age of majority. But it clarifies and allows member states to decide on a national level what the age of engagement of a child in sexual activities should be.¹⁸

¹⁶ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst forms of Child Labor, 1999, Geneva

¹⁷ Council of Europe Convention on Cybercrime (2001), article 9, paragraph 3

¹⁸ European Directive 2011/92/EU, article 2 (a)(b)

Notwithstanding, with some level of discretion all of the above mentioned legal documents have agreed on one and the same age.¹⁹ However, the age of 18 years has been considered to be vague and inappropriate in many situations as well as it may jeopardize investigations and case solving procedures. This approach is related to the confusion derived from the international legal definition of a child. In many countries there are children who at the age of their legal maturity have already had a sexual contact. So it would be more appropriate if there is a difference and a clear distinction between the age at which the sexual intercourse is legally allowed and under which the sexual relation is considered a crime.

As Gillespie reflects in his work *Legal definitions of child pornography* (2010), the lack of correspondence in the different national legislations, both in the age of sexual consent and the illegal age of a child appearing in abusive materials, may be a serious obstacle for the law enforcement to combat child pornography and the ambiguity in the legislation should be reduced to a minimum.²⁰ He constructs his argument on the citation of Jenkins²¹ who states that the law, courts and law enforcement agencies cannot treat a seven - year old and seventeen - year old children equally just because many people nowadays have already experienced sexual intercourse consensually before turning 18. Even though most of the European member states and those of Council of Europe have harmonized the illegal age of a child appearing in pornographic materials to be under 18, the age of sexual consent still varies considerably within the European Union. For instance, in Spain the age of sexual consent is 13 years; Hungary – 14; Czech Republic – 15; Belgium - 16.²² Gillespie states that this disparity is a result of the strong opposition of the countries to acknowledge the necessity that the age of representation of sexual abuse should be different from the age of sexual consent. Unfortunately, such distinctions would encourage offenders to travel to countries where the age threshold is lower and thus escape prosecution for committing a crime as would be considered in their own countries.

The difficulty in the interpretation as well as in the application of the already established laws with regards to the former remark (treating differently sexual consent and abuse) can also be sensed in cases of adolescents who personally make and possess child pornography or take photographs of their peers.²³ Lanzarote Convention refers to this issue by

¹⁹ Cybercrime Convention and Lanzarote Convention take more cautious approach

²⁰ Alisdair Gillespie (2010): *Legal definitions of child pornography*, Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice, 16:1

²¹ Jenkins, P. (2001). *Beyond Tolerance: Child Pornography on the Internet*. New York: New York University Press

²² Protecting Children Against Sexual Violence, The Criminal Law Benchmark of the Budapest and Lanzarote Convention, 4 December 2012

²³ *Ibid*, p. 4

allowing member states to decide whether to apply the law on children who consensually have taken or possess pornographic material of other minors.²⁴ The latest European Directive also gives a wide margin of appreciation to the member states when it comes to deciding whether to raise that problem in their national laws. Cultural, religious and social differences in the development of member states are seen as the major obstacle for the legislator to incorporate the clause in the Directive.²⁵

I believe that reaching an international or at least regional (European) agreement on a certain age, both of sexual consent and appearance in pornographic materials, is an extremely controversial topic and should not be left unresolved for two reasons. Firstly, the illegal content may lead to further criminal offences. For example, the possession of such materials may lead to further bullying or illegal dissemination of pictures, videos, or creation of other materials in the cyber space and would inevitably result in further exploitation and victimization of the depicted individuals. Secondly, the difference in the age threshold may cause a huge difficulty in cases that require double criminality (a crime committed abroad should also be a crime in the offender's home country as a requirement the offender to face prosecution in their home country) and would result in prevention of a criminal to face prosecution.

An additional point needs to be made on the difficulty for establishing what the actual age of a child appearing in pornographic material is. Neither the European, nor the International experts on child pornography have found an effective and uncompromised mechanism for finding the real age of children appearing in photographs or movies. Such obstacles can seriously hinder investigation proceedings as well as court decisions. Judges often ask for a forensic and medical opinion of what age the child appearing in visual pornographic material is, the law also implies that the object should be an individual under the age of 18, or at least to look like a child. However in the period from 2002 to 2007 the European Union funded a project aiming to prove that there is a link between the age of a child appearing in pornographic images and its facial metric proportions. The pilot study used over 2000 images of 353 female and 20 male German, Italian and Lithuanian children from ages respectively "89 6-year old, 99 10-year olds, 85 14-year old and 100 18-year old".²⁶ The study used the method of comparison of different indices of the children's facial proportions taken both from pictures and real children. Even though the facial measurements for forensic

²⁴ Lanzerote Convention, article 20(3)

²⁵ EU Directive 2011/92/EU, point 20

²⁶ Cattaneo C., Obertova Z., Ratnayake M., et al. (2012), Can facial proportions taken from images be of use for ageing in cases of suspected child pornography?, A pilot Study, *International Journal of Legal Medicine* (2012) 126:139–144

purposes of children appearing in pornographic images have not been studied until recently, the pilot study shows some positive results. For instance, many facial indices from frontal and lateral photographs of children were satisfactory correlated to the same parameters of living children. Another positive result of the study was that some photo indices of child's face were narrowly linked with age. However, the accuracy of this method of age estimation needs to be more thoroughly observed and in order its reliability and practical usage to be confirmed further study need to be conducted.

Chapter III. Definitions of child pornography and challenges to the law

In order to facilitate the development of this chapter, a proper definition of the term “child pornography” needs to be constructed. Due to many cultural, social or moral factors some states seem not to take into account the necessity to incorporate in their national legislation an internationally harmonized definition of child pornography.²⁷ Many state actors and political organizations have agreed that the adoption of an internationally harmonized definition will be of great significance not only for the easier investigation procedures, but one legally exhaustive definition will improve and facilitate the international cooperation to combat the production and proliferation of abusive materials of children to a great extent. Some politicians, supervisory bodies and law enforcement agencies (for example Europol and Interpol) prefer the term “commercial sexual exploitation” of children instead of child pornography, the latter being more appropriate for adult movies.²⁸ Susan Edwards even defines the term “child pornography” to be an oxymoron for the same reason that a child should not be related to pornographic materials.²⁹ In this paper both terms will be used depending on the terminology of the documents discussed.

The rest of thesis will explore the international and European standards with regards to child pornography and to estimate the influence they have in the sphere of international cooperation and law enforcement mechanisms.

a) United Nation Convention on the Rights of the Child

The United Nations Convention on the rights of the Child is a legally binding document and according to its signatories children should be protected from “all forms of sexual exploitation and sexual abuse,” where child pornography is also included.³⁰ The convention does not give a definition of child pornography but article 34 refers to a list of activities that should be incorporated in states’ criminal legislation with regards to it:

- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative use of children in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performances and materials.

²⁷ Protecting Children Against Sexual Violence, The Criminal Law Benchmark of the Budapest and Lanzarote Convention, 4 December 2012

²⁸ Child Protection: *A Handbook for Parliamentarians* (No 7), 2004

²⁹ Susan S. M. Edwards (2000): Prosecuting 'child pornography': Possession and taking of indecent photographs of children, *Journal of Social Welfare and Family Law*, 22:1, 1-21

³⁰ Convention on the Rights of the Child, art. 34, par. c

Article 19 of the UN Convention clarifies that children should be protected by the national legislation from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.³¹ Having in mind the broad definition of child pornography materials stated in the beginning of the paper, a sexual abuse in most cases involves physical or mental violence. Additionally, a depiction and dissemination of such abuse certainly would harm a child’s mental and physical health.

General Comment №13 *on the Rights of the Child to Freedom from all Forms of Violence* of the Committee of the Rights of the Child supports the obligation that the violence on children should be strictly prohibited and safeguarded by appropriate legislative measures by the member states.³² The term *violence* in the latter document overlaps with the prohibited actions towards children as stated in article 19 of the CRC. But still the absence of additional clarification on terminology may mislead the states’ legislative power to adopt the law accordingly. The vagueness and the ambiguity not only in this particular Convention but in any other document may bring negative results in the fight against child pornography.

In that sense, the Committee of the Rights of the Child sees the scope of the framework of article 19 of the CRC to be further elaborated and to find its relevance in the Optional protocol on sale of Children, Child Prostitution and Child Pornography. It also calls for respect, protection and closer cooperation between states and non-governmental organizations in the battle for children’s “dignity, physical and psychological integrity and to equal protection”.³³

The provisions incorporated in General Comment 13 indicate that the violence against children facilitated by information and communication technologies (ICT) should also be internationally recognized and treated accordingly. The risks mentioned in the document are:

- “Production of visual and audio child abusive images and distributed by internet or other devices;
- In the forms of spam or harmful advertisements “aggressive, violent, hateful, biased, racist, pornographic, unwelcome and/or misleading” content with participation of children can be uploaded online.”³⁴

³¹ Convention on the Rights of the Child, article 19, par. 1

³² General Comment 13 (2011), paragraph 2

³³ Ibid., par. 7

³⁴ Ibid., par. 31 (e)

b) Optional Protocol of the Convention on the rights of the child

The protocol entered into force in 2002 and is now a binding document and a guiding line for member states to adapt their legislations on child pornography issues accordingly.³⁵

The protocol gives a definition of the crime 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*”³⁶. In that train of thoughts it should be specified that materials having medical, scientific or artistic application do not constitute a crime.³⁷

Notwithstanding, it should be stated that the protocol still does not make strict clarification of the different types of child pornography. For example, the language used in article 2 is very broad and even vague, but on the other hand it does not pose any limitations on what child pornography materials should include.³⁸ In that sense Interpol further facilitates the interpretation of the definition by clarifying that child pornography is “any visual depiction involving the use of a minor engaging in sexually explicit conduct”.³⁹ Such depiction may include “photographs, film, video, pictures or computer-generated images or pictures, whether made or produced by electronic, mechanical, or other means”. From this additional clarification Gillespie distinguishes and comments on three categories of sexual representation – visual, audio and written – which should be of great help for the law enforcement authorities if respectively incorporated into the international legislation.

- *Visual*

Photographs, technologically manipulated images, drawings and cartoons are the most common subdivisions in the category of visual sexual representation of children. What is implied in Gillespie’s work “*Legal definitions of child pornography*” is that the law has been rather static when it comes to elaborating on the complex nature of the visual representation of child sexual abuse because it can be easily manipulated.⁴⁰ The legal documents hardly touch upon the issue of technologically created images where no real child has been

³⁵ UNICEF, http://www.unicef.org/crc/index_30204.html

³⁶ Optional Protocol, art. 2, c

³⁷ Handbook for Parliamentarians, on Lanzarote Convention, 2011

³⁸ Alisdair Gillespie (2010): Legal definitions of child pornography, Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice, 16:1, p. 24

³⁹ Ibid.

⁴⁰ Ibid.

involved.⁴¹ The question which arises here is whether and to what extent the images, where no real child is involved, should be considered child pornography and prosecuted. The challenge for the law in such situations is whether the material is a static picture with the participation of a real child, pseudo-photograph, or manipulated picture taken from a movie.

The development of information and communication technologies have considerably changed the perception that photographs are the only form of visual depiction.⁴² Computer generated images, which include drawings, cartoons and paintings, differ from the so called pseudo (or morphed) images.

- *Morphed images (pseudo-photographs)*

The so called pseudo-photographs comprise picture or collage of pictures adjusted and manipulated by a computer device.⁴³ The pseudo images may be observed in two ways and expressly constitute exploitation of a child. The first scenario includes a manipulated picture of the body of an adult so it looks like a child; and the second one – the head of a child from one picture to be put on the body of an adult on another picture as if the child is posing in an outrageous manner. This way the law has been challenged by whether to criminalize these actions where no child has been involved in an explicit sexual conduct and no harm was done. Even technologically manipulated sexual images of children where a real child has not been involved directly can be harmful in an indirect way with their destructive and humiliating attitude towards the most vulnerable societal group – children. Furthermore, such images show a “recognizable” picture of a child posing in a sexual manner or having sexual activity which makes the material exploitative. According to Taylor et al., pseudo-images that do not actually show real child to be suffering or being abused “represent [a] form of victimization, and should be treated as such”.⁴⁴

I believe the use of morphed images in child pornography should be criminalized because they depict the idea of abuse of children and may spur further offence. Using similar reasoning morphed images have been criminalized in Canada, United States and Great Britain as the makers of such material may give courage to pedophiles to start exploiting real children.⁴⁵ As Gillespie notes, these forms of sexual representation of children have always

⁴¹ Marie Eneman, Alisdair A. Gillespie and Bernd Carsten Stahl, *Criminalizing Fantasies: the Regulation of Virtual Child Pornography*, 2009

⁴² *Ibid.*, p.4

⁴³ Alisdair Gillespie, *Indecent Images of Children: The ever Changing Law*, *Child Abuse Review* Vol. 14: 430-443 (2005)

⁴⁴ Taylor, Max; Holland, Gemma; Quayle, Ethel, *Typology of Paedophile Picture Collections*, 74 *Police J.* 97 2001

⁴⁵ *Child Protection: A Handbook for Parliamentarians* (No 7), 2004

caused difficulties for the international legislation to decide whether the pseudo-images “should be criminalized and, if so, what the justification for such an approach is”.⁴⁶

- *Virtual child pornography*

Virtual representation of indecent images with participation of children are entirely computer generated images (CGI) and visualize an unreal, non-existing child. The absence of exploitation differentiate the morphed images from the virtual.⁴⁷ The CGI have not been entirely incorporated in the international legislation except in the OPCRC which states that representation of child pornography “by whatever means” is illegal. This means that it should include virtual representation as well. The Convention on Cybercrime and Lanzarote Convention on the other hand gives the right to the contracting parties to decide whether to criminalize fictitious materials.

Nevertheless, computer generated images are also considered harmful because they may be used by the offenders for grooming. A groomer is a person who engages in online relationship with children by sending them pornography materials and reassuring them it is something normal.⁴⁸ It has been argued whether it would be better to criminalize grooming instead of the CGI. However, Eneman et al. argue that criminalizing the possession of CGI is likely to break the chain of illegal dissemination, circulation and thus its use for grooming, whereas only criminalizing grooming would fail to do so.⁴⁹ On the other hand, the authors express the possibility that virtual child pornography can also be used to manipulate children to think that participating in such activities is a good thing which certainly may result in harm or abuse of the minors and may definitely affect their understanding of sexual contact. In 2008 the Parramatta Local Court in Australia convicted a criminal who was in possession of cartoon images embodying sexual activities between individuals under the age of 16. What is interesting about this case is that the Magistrates concluded that the imaginary or fictitious images may in fact represent real person and thus be harmful.⁵⁰

From another point of view, CGI are observed as burden for the law enforcement agencies because it takes a lot of time for the investigators to prove whether the child on the

⁴⁶ Alisdair Gillespie (2010): Legal definitions of child pornography, *Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice*, 16:1

⁴⁷ Marie Eneman, Alisdair A. Gillespie and Bernd Carsten Stahl, *Criminalizing Fantasies: the Regulation of Virtual Child Pornography*, 2009

⁴⁸ Wortley, R., Smallbone, S., *Child Pornography on the Internet, Problem-Oriented Guides for Police*, Published 2006, last updated May, 2012; can be found at: <http://www.cops.usdoj.gov/Publications/e04062000.pdf>

⁴⁹ *Ibid.*, p. 6; Yaman Akdeniz, *Internet Child Pornography and the Law: National and International Responses*, 2008, p. 5

⁵⁰ *McEwen v Simmons & Anor* [2008] NSWSC 1292, 2008

image is real or not.⁵¹ The difficulty arises because of the sophisticated software the offenders use when they create CGI.

Another relevant obstacle for criminalization of virtual child pornography is the assumption that it confronts with articles 8 and 10 of the European Convention of Human Rights, which cover right to respect for private and family life, home and correspondence and freedom of expression, respectively (further explained in the third chapter). However, the European Court of Human Rights (ECtHR) stated that articles 8 and 10 are qualified rights and can be overturned by a justifiable limitation such as protection of children.⁵²

What is interesting and at the same time unfortunate to see in the International and European legislation is that “it is the image, not the suffering of the child, which is important”.⁵³ This conclusion is made by Katherine Williams who discusses the important factors for the British court of appeal when it comes to judging child pornography materials. What is taken into consideration by the court when cases of illegal visual representation of children have been judged is “the nature of the material and the nature or extent of the offenders’ involvement”.⁵⁴ The first aspect, the nature of the material, aimed at considering the suffering of the child. However, Williams implies that there is not a strong focus on the physical and mental suffering of a child due to the fact that the law is more concentrated on the images than the child. She further explains that the court may try to assess the suffering of the child by estimating the offender’s involvement but what if the criminal only possess virtual child pornography images?

From all this, one can conclude that actually they are not harmful to the child and do not deserve much attention. I also suppose that these images may only come from somebody’s fantasies, but on the other hand, such images may depict the idea of abuse over a child disguised as an artistic expression. The last possibility convinces me that the CGI in fact can be dangerous and harmful to children and instigate further offences. Hence, by criminalizing the production, possession and proliferation of CGI would result in preventing further offences as well as states will fulfil their duty to protect the best interest of the child by not tolerating the creation of even unreal child sexual abusive images.

⁵¹ Yaman Akdeniz, *Internet Child Pornography and the Law: National and International Responses*, 2008, p. 7

⁵² *R v Smethurst* [2002] 1 Cr App R 6

⁵³ Katherine S. Williams (2004): *Child Pornography Law: Does it Protect Children?*, *Journal of Social Welfare and Family Law*, 26:3.

⁵⁴ *Ibid*

- *Audio and written materials*

Another representation of child pornography can be seen in audio materials. The weakness of the law is found in the impossibility of the legislator to decide which audio files can be dangerous and respectively criminalized and which cannot, due to the fact that again it can hardly be determined if the sound shows a real sexually abused child or it is just a manipulated file for sexual gratification.⁵⁵

Criminalizing pornographic text is a somewhat contentious issue for international law and enforcement. Gillespie suggests that a picture of a little girl lying on a bed in her underwear usually would not be considered child pornography, although this falls within level 1 COPINE framework. But if on the same picture there was a (manipulated) text “Little [name] shortly before I raped her” then the picture would become more illustrative.⁵⁶ The objective element in the example expresses that the text has only made the picture obscene and can only be a creation of the mind. But the subjective approach should warn the legislator about the attitude of the writer towards children.

According to the Optional Protocol’s interpretation of representation, “a child engaged in real or simulated explicit sexual activities...or any representation of the sexual parts of a child for primarily sexual purposes” and when the child of the picture is with clothes and does not indicate any sexual provocation, then with a text on the picture or not, it cannot be called child pornography and should not be prosecuted.⁵⁷ As mentioned above and once again concluded - legislation dealing with materials of child sexual abuse as well as the work of the law enforcement agencies tend to pay more attention on the visual representation and whether or not it “explicitly” shows abuse but the focus on the real danger for children is declined.

Further, the Optional Protocol lists certain acts to be criminalized by the member states’ national laws. These acts should be used as a minimum point: “producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes of child pornography”.⁵⁸ Production means the creation of child pornography materials. Personal cameras, electronic recording devices are the basic methods used either by professionals or amateurs to records child abuse. The distribution involves dissemination of child pornography materials among pedophile rings or organized crime groups either for profit or not.

⁵⁵ Alisdair Gillespie (2010): Legal definitions of child pornography, *Journal of Sexual Aggression: An international, interdisciplinary forum for research, theory and practice*, 16:1

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Optional Protocol on Sale of Children, Child Prostitution and Child Pornography, art. 3(c)

Distribution through the Internet is represented by uploading materials on websites or sent by emails, peer-to-peer networks⁵⁹, chat rooms, etc.⁶⁰

OPCRC implies that states need to harmonize their national legislation and procedures of investigation in accordance to the needs of the victims. Available information on what their rights are, witness programs, institutional support need to be popularized.⁶¹ During the 16th session of the Human Rights Council, recommendations for the protection of the best interest of the child were given which means that in order for these interests to be safeguarded a better and more comprehensive definition should be established. Among other things, the suggestion for adoption of policies which draw the path to the duties of the responsible organs, institutions and professionals in the field are also stated.⁶² Additionally a special training for people working with victims of child pornography should be conducted.⁶³

Exposing a single criminal group profiting from child pornography can give us an explicit picture of the dimension of such crime. For example, in 2011 the European Police Agency (Europol) destroyed a child pornography ring under the operation “Icarus”. From the findings of this operation one of the suspects had the holdings of 29 terabytes of data (around 9000 hours of high-quality video), confiscated by the police.⁶⁴ Bearing in mind such statistics and knowledge of how fast and without facing borders these movies have been disseminated, the question whether to establish the law covering only the objective, visible aspect of this crime against children, should not be discussed.

Additionally to this protocol, the United Nations General Assembly has also agreed on and established a third optional protocol in 2011. The Optional Protocol on Communications Procedures gives the right of children to submit individual complains in case of rights infringement under the Convention on the Rights of the Child and its protocol.⁶⁵ The third protocol has recently been open for signatures and will enter into force when ten UN member states make deposit for ratification or accession.

⁵⁹ A network in which each computer is an equal partner and all work cooperatively together. All computers in the network have a common file-sharing program (e.g., KaZaA, Morpheus, Limewire), allowing users to connect directly to each other's hard drive to search for and exchange files (Wortley, R., Smallbone, S., Child Pornography on the Internet, <http://www.cops.usdoj.gov/Publications/e04062000.pdf>)

⁶⁰ Wortley, R., Smallbone, S., Child Pornography on the Internet, Problem-Oriented Guides for Police, Published 2006, last updated May, 2012; can be found at: <http://www.cops.usdoj.gov/Publications/e04062000.pdf>

⁶¹ Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, Human Rights Council 16th Session, 7 March 2011

⁶² Ibid., 2011, paragraph 112 a

⁶³ Ibid., paragraph 112 a, Section C – Recommendations

⁶⁴ Joint action in 22 European counties against online child sexual abuse in the internet, EUROPOL press release: <https://www.europol.europa.eu/content/press/joint-action-22-european-countries-against-online-child-sexual-abuse-material-internet>

⁶⁵ Committee on the Rights of the Childs, Monitoring children's rights, <http://www2.ohchr.org/english/bodies/crc/>

c) Cybercrime convention

The Council of Europe's Convention on Cybercrime aims at protecting children when they appear in depicted images representing a "minor engaged in sexually explicit conduct" by not clarifying any additional options. According to the explanatory report, however, a 'sexually explicit conduct' includes "at least real or simulated among other things sexual intercourse, between minors, or between an adult and a minor, of the same or opposite sex" which transferred into a picture, video or other material clearly points to child pornography.⁶⁶ It becomes clearer that both real and technologically simulated images are considered. Further, in the explanations three types of materials are considered to be illegal: depiction of sexual abuse of a real child; pornographic images of a minor appearing to be a child; and images which do not involve a real child – which means to be entirely computer generated.⁶⁷ These provisions fortunately tend to consider also the subjective approach of such images and the pseudo-pornographic images. They not only refer to the obvious obscenity of the materials but also to some extent cover the intention of the producer as well as the danger of further risk for a child to be harmed or involved in such practices. However, other forms of representations (written and audio) are not considered.

Additionally, article 9(4) of the Cybercrime Convention gives state parties the right to decide whether to criminalize pseudo - pornographic images. This provision is in contrast with the above statements since it is clearly explained that such computer generated materials may still bring harm. The level of discretion left to member states seems like a step backward. Children should be protected at a maximum level and such holes in the law may give the offenders free space to advance in the illegal practices and to avoid criminal responsibility.

The Cybercrime Convention is considered a global guideline for cybercrimes and gives a strong framework for prosecuting such offences. Section IX advises member states on how to modernize their criminal law by adding provisions that cover use of computer systems for disseminating illegal content.⁶⁸ According to the explanatory report on Cybercrime Convention, most of the countries have already criminalized the "traditional production and physical distribution" of child pornography which means that national legislators should further implement prosecution of cybercrimes in accordance with the Council of Europe Convention.

⁶⁶ Convention on Cybercrime Explanatory report, point 100 (ETS No. 185)

⁶⁷ Ibid., point 101

⁶⁸ Ibid., point 93

The distribution of child pornography is forbidden under article 9(1(a)) of the Convention. It implies that paedophiles share online their fantasies, practices and thus will encourage the support and development of criminal networks for exploitation of children. Additionally, art. 9(1(b)) outlaws the act of “offering” of child pornography. According to the Council of Europe explanatory report, “offering” is defined as the use of pornographic websites or just providing the materials through the online networks. Criminalizing this act has the aim to hamper the dissemination of the content. The “transmission” of child pornography is almost the same but here the offender sends the content from one personal computer to another through sophisticated server allowing the personal exchange of information (peer-to-peer networks). According to Williams, the Cybercrime Convention “makes the activity a crime without even defining it”⁶⁹. She also refers to the explanatory report by clarifying the weak points in the convention to be seen as act of omission. The reason behind this is the core principle of the convention – bring harmonization of the member states’ law in the sphere of cybercrimes for smoother and more effective cooperation among law enforcement agencies against child sexual exploitation and abuse. She expressly emphasizes that “without defining crime, it is not possible to ensure co-operation”.⁷⁰

The pornographic materials as referred to in article 9(2) entail obscene and “inconsistent with the public morals or similarly corrupt” materials.⁷¹ Along with the United Nations Optional Protocol which only expresses its concerns about the easier invention and proliferation of child pornography through the Internet, the Cybercrime Convention explicitly governs the Internet space as a place of exchange, storage and dissemination of illegal content with children. However, both documents introduce the importance of mutual assistance and cooperation in the fight against child pornography offenders⁷² but still are observed and criticized for their vagueness and missing definitions.

d) Lanzarote convention

Raising concern about the quick growth of cases on sexual exploitation of children, the Council of Europe member states have established a legal framework to be used as their focal point in the fight against the crime of child pornography.

⁶⁹ Katherine S. Williams (2004): Child Pornography Law: Does it Protect Children?, Journal of Social Welfare and Family Law, 26:3, p. 254

⁷⁰ Ibid.

⁷¹ Convention on Cybercrime, point 142

⁷² Optional Protocol on Sale of Children, Child Prostitution and Child Pornography, article 10; Cybercrime Convention, articles 25-27

In 2007 in Lanzarote, Spain, the Council of Europe adopted the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, 2007). The purposes of the document are:

- “Prevent and combat sexual exploitation and sexual abuse of children;
- Protect the rights of child victims of sexual exploitation and sexual abuse;
- Promote national and international co-operation against sexual exploitation and sexual abuse of children”⁷³, where child pornography is also included.

Here child pornography is defined as: „any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes”.⁷⁴ As Yvonne Jewkes has implied in her Handbook of Internet Crime, the document is restricted to the visual representation but does not require an involvement of a real child to be proved⁷⁵ which means that fictitious images also fall under the scope of the Convention. But on the other hand, the Convention allows member states to decide whether to criminalize them or not. What is also important to mention here is that the Lanzarote Convention does not explicitly criminalize the possession or production of child pornography by children who have reached the age of consent only when the materials are for their own use and with their consent.⁷⁶

However, it urges state parties to criminalize the following activities under the national legislations: production of child pornography; making child pornography available; distribution and transmission; procuring child pornography for personal use or others’; possession; knowingly accessing child pornography through communication technologies.⁷⁷ The latter is an innovation in the child pornography criminalization since no other document in the field has specified that the consciously accessing illegal images should be penalized. Here the parties are once again given the right to choose whether to criminalize the existence of materials with the appearance of non-existing child.⁷⁸

The Lanzarote Convention also criminalizes materials of sexual activities with a child where:

*use is made of coercion, force or threats; or

*abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or

⁷³ Lanzarote Convention, article 1

⁷⁴ Ibid., article 20(2)

⁷⁵ Jewkes, Y., Yar, M., *Handbook of Internet Crime*, William Publishing 2010, page 350

⁷⁶ Lanzarote Convention, article 20(3)

⁷⁷ Ibid., article 20

⁷⁸ Ibid., article 20(3)

*abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.”⁷⁹

In order to achieve better results, they have also established a specific monitoring mechanism.⁸⁰ The effective implementation of the Convention needs to be supported by appropriate supervision, thus establishing a Committee of the Parties. The Committee is composed of agents of the states whose main tasks are to collect, share and analyze “information, experiences and good practice between States to improve their policies for preventing and combating sexual exploitation and abuse of children”.⁸¹ The education and practical preparation of staff who works with children victims of child pornography is required and as also introduced in the 2002 OPCRC.

Under Chapter VI on Substantive Criminal Law of the Convention definitions of sexual abuse are given. Article 18(1(a)(b)) states that the high contracting parties should establish a national legislation criminalizing offences which are related to sexual engagement with a child, which has not reached sexual maturity. The sexual activities which have to be criminalized are restricted to the use of force, threat and coercion. If the child has been misled by an authority, a person they trust or have influence on them, that person also needs to be held accountable. Another condition under which the crime should be punished is vulnerability. The article imposes that if manipulation over a child has been proven in the time of physical or mental disability, and then there should be corresponding provisions which criminalize the offence. Additionally, the Convention involves the private sector and media in the protection and support of children; it introduces the international jurisdiction of the document by holding accountable crimes committed internationally which also support the importance of police and judicial cooperation of the parties.⁸²

⁷⁹ Ibid. art. 18(1)

⁸⁰ Ibid, art. 1(2)

⁸¹ Lanzarote Convention, Explanatory report, 12 July 2007

⁸² Ibid., articles 9 and 25

Chapter IV. European Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography

a) *Framework Decision 2004/68/JHA*

The legal documents introduced so far were established by the Council of Europe and United Nations organizations. The European Union also does a lot to protect its children by introducing new laws and stricter penalties. Until 2011 the main legal document protecting children from sexual abuse and exploitation within the European Union was *the Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography*⁸³ which defines the crime of child pornography as any pornographic material that visually depicts or represents:

- (i) “a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child;
- (ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i);
- (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned in (i)”⁸⁴

Coercion or recruiting children for prostitution or engaging into sexual activities with other minors are offences which the Framework Decision requires the member states to criminalize. The penalty should involve imprisonment for at least one to three years.⁸⁵ Additionally, in the case of aggravating circumstances the length of imprisonment can be increased to five to ten.⁸⁶ Aggravating circumstances are coercing a child into prostitution or pornographic performances; profiting from exploiting a child; serious violence and harm caused to the child; deliberate and reckless endanger of the life of the victim; offence committed within a criminal organization.

This framework also covers production, acquisition or possession, distribution, dissemination or transmission of child pornography; the supplying or availability. However, under the Framework Decision there are some exceptions which include when the person visualized in the materials has reached the age of 18 and when the images of the children who

⁸³ Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography; can be found at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:013:0044:0048:EN:PDF>

⁸⁴ Ibid., article 1

⁸⁵ Ibid., article 2 and 5

⁸⁶ Ibid., article 5, paragraph 2

has reached the age of consent has previously agreed for production and possession of the materials⁸⁷.

Unfortunately, the Framework Decision did not prove to be very successful in the fight against child abuse and pornography due to the requirement of proof of “explicit sexual conduct” but not abuse as well as the fact that the Framework Decision did not have direct effect. This means that its provision, if not entirely incorporated in the national legislation, cannot be directly invoked before national courts. The fact that the framework decision did not have a direct effect on the member states’ legislation as well as any sanctions would be imposed on the failure of the member states to comply with its provisions, made the framework decision as a legal tool quite unreliable. Additionally, the differences in the definitions of a child, child pornography, or age of sexual consent; the lack of established law against possession and distribution of child pornography in some member states, or the lack of correspondence in the national penal codes additionally hampered the protection of children under the Framework Decision.⁸⁸

However, with the entry into force of the Treaty of Lisbon some changes were introduced in the sphere of criminal matters within the European Union. Framework decisions have been replaced by directives under article 82 and 83 of the Treaty of the Functioning of the European Union. Art 82(1) states that judicial cooperation in criminal matter within the European Union should be based on the principal of mutual recognitions of judgments and judicial decision. Hence, approximation of law and regulations is required. The second paragraph further elaborates that to facilitate the cooperation in criminal matter, the European Parliament and the Council may establish minimum rules by means of directive. It means that definitions of offences and levels of criminal sanctions will be found under one document. Additionally, directives should harmonize definitions of criminal offences and respectively their sanctions.⁸⁹ Under article 288 TFEU, the adopted directives are binding and directly applicable in all member states. Which means that, unless not clear and unconditional, their provisions will be in force in national law, even if it has not been implemented on time or in a correct way by member states.

In a procedural aspect, in contrast with the unanimous voting for the adoption of framework decisions, the directives will be adopted by co-decisions and majority voting of

⁸⁷ Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography, art. 3, par. 2

⁸⁸ Kierkegaard, S., To Block or not to block – European Child Porno Law in Question, p. 4; retrieved from: <http://www.sciencedirect.com/science/article/pii/S0267364911001506>

⁸⁹ Treaty of the Functioning of the European Union, article 83(2)

the European Parliament and the Council.⁹⁰ However, in case a member state recognizes a threat to its criminal justice system seen in the text of a draft directive, it can pull an emergency break and propose the draft to the Council for additional discussion.

b) Directive 2011/92/EU

In order to combat the crime of child pornography, the European Union works with the Council of Europe and the United Nations to develop strong legal documents to deal with the problem. In 2011, the Parliament and Council adopted a new directive to fight and impose stronger criminal punishments on the offenders for this contemporary crime – *Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography* (the Directive) which replaces the Council Framework Decision 2004/86/JHA. The difference in the recently adopted Directive from the Framework Decision lies in the more severe penalties and the broader scope of offences, it also ensure disqualification for conviction.⁹¹

Through the Directive, the Council of the EU and the Parliament have emphasized on stricter rules on criminal and procedural law within the member states which should protect the best interest of children in accordance with article 24 of the Charter of Fundamental Rights of the European Union. The penal guidelines are increased in order to be “proportionate, effective and dissuasive”.⁹² According to Sylvia Kierkegaard⁹³ the improved and increased penal obligations have the purpose to avoid criminals to go to another European country where the sentence of a committed criminal offence would be lower.⁹⁴

i. Child Pornography

The Directive gives a straight definition of child pornography which has been improved in accordance to the OPCRC and Council of Europe Convention on the Protection

⁹⁰ Peci, I., *The Impact of the Treaty of Lisbon on European Criminal Law*, 2010

⁹¹ Miettien, S., *Criminal Law and the policy of the European Union*, Routledge 2013

⁹² Kierkegaard, S., *To Block or not to block – European Child Porno Law in Question*, p. 4; retrieved from: <http://www.sciencedirect.com/science/article/pii/S0267364911001506>; also can be found in point 12 of the Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography

⁹³ Law School, Southampton University UK & President, International Association of IT Lawyers, Denmark

⁹⁴ Kierkegaard, S., *To Block or not to block – European Child Porno Law in Question*, p. 5; retrieved from: <http://www.sciencedirect.com/science/article/pii/S0267364911001506>

of Children against Sexual Exploitation and Sexual Abuse.⁹⁵ According to article 2(c) of the Directive child pornography is “*any material that visually depicts a child engaged in real or simulated sexually explicit conduct; any depiction of the sexual organs of a child for primarily sexual purposes; any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes*”.

The term “pornographic performance” means “live exhibition aimed at an audience, including by means of information and communication technology, of: (i) a child engaged in real or simulated sexually explicit conduct; or (ii) the sexual organs of a child for primarily sexual purposes”. By introducing a clearer and detailed definition and minimum rules for the offences falling under its scope, the Directive aims at stronger protection of the victims and more effective prevention of this crime.

The acquisition or possession of child pornography or knowingly obtaining access, by means of information and communication technology of indecent materials with children, is now punishable by a maximum term of imprisonment of 1 year.⁹⁶ In this aspect, having the direct effect of the Directive and the fact that the all the member states will have harmonized definitions and penalties with regards to child pornography, child sexual abuse and exploitation, the Directive should definitely give positive results in the prosecution phase because now criminals would be restricted to travel to countries where these acts are not criminalized.

However, the Directive excludes cases where people did not intend to enter a website with child porn or just did not know about the existence of such images there.⁹⁷ For instance, in *R v Smith; R v Jayson [2003] 1 Cr App R 13*, the Court of Appeal declared that “a person is not guilty of an offence of “making” or “being in possession” of an indecent pseudo-photograph contained in an e-mail attachment if before he opens the attachment he is unaware that it contains or is likely to contain an indecent image”.⁹⁸ But on the other hand, Kierkegaard implies, it would be convenient for the criminals to claim that they did not “know the age of the victim to avoid prosecution” or that they accidentally entered a web site

⁹⁵ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, point 5

⁹⁶ Ibid., article 5(2)(3)

⁹⁷ Ibid., point 18

⁹⁸ *Smith, R. v [2002] EWCA Crim 683 (07 March 2002)*, p. 15, available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2002/683.html>

with such content.⁹⁹ The Directive safeguards this possibility by stating that a recurrence of the offence and the presence of payment for obtaining access to illegal materials would proof the intentional nature of the criminal.¹⁰⁰

The distribution, offering, dissemination, transmission, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least 2 years while the production of illegal materials involving children should be punishable for at least 3 years of imprisonment.¹⁰¹ A certain level of discretion is left to the member states to decide whether to apply the Directive in cases where the child appearing in the materials is already 18 years at the time of depiction. Additional loophole is introduced in article 5(8) which allows member states to decide whether to impose a penalty on a person who has produced or possessed a pornographic material for his/her own use provided that there is no risk for further dissemination.

For medical, scientific or similar purposes the states parties are allowed to provide a defense with regards to conduct related to pornographic material. Additionally, such materials used by national authorities to conduct criminal proceedings or to prevent, detect or investigate crimes are also allowed.¹⁰²

The newly incorporated offence in the Directive in accordance to the Lanzarote Convention is “grooming”. If it has been proven that an adult has solicited a child (below the age of consent under national law) for sexual purposes by means of information technologies or without using the Internet, then this crime should be punishable by maximum of at least 2 years of imprisonment.¹⁰³ Under article 7, instigating, aiding and abetting a child to commit any of the offences should also constitute a crime.

Similar to the Framework Decision, the Directive also provides increased penalties for cases with aggravating circumstances. Such circumstances are explained in article 9 of the Directive and constitute the following:

- The offence was committed against a child in a particularly vulnerable situation (mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity);
- The offence was committed by a member of the child’s family, a person cohabiting with the child or a person who has abused a recognized position of trust or authority;

⁹⁹ Kierkegaard, S., To Block or not to block – European Child Porno Law in Question, p. 7

¹⁰⁰ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, point 18

¹⁰¹ Ibid., article 5, par. 4, 5 and 6

¹⁰² Ibid., point 17

¹⁰³ Ibid., point 19

- The offence was committed by several persons acting together;
- The offence was committed within the framework of a criminal organization (under Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organized crime);
- Previous conviction of offences of the same nature;
- Deliberate or reckless menace for the life of the child;
- Serious violence or serious harm caused to the child.

The newest legal instrument also requires convicted offenders to be restricted from regular contact with children when exercising their professional activities.¹⁰⁴ During voluntary activities or before taking a working position involving children, the employments should request a conviction request for the applicant.¹⁰⁵

ii. Blocking websites

When it comes to child pornographic materials and the easy online copying and speedy dissemination, the Directive provides for measures against websites which contain or circulate such content. These are included in article 25 and advise member states to remove web pages with child abusive images hosted within their territories as well as outside their borders. In her paper “*To Block or not to block – European Child Porno Law in Question*”, Kierkegaard comments on this provision that it does not supersede prosecution of offenders or the removing of the content. This article, more or less, provides for transparent and adequately safeguarded procedure. This means that the restriction or blocking of a website should be proportionate and limited to what is necessary and the users should be informed about the restriction.¹⁰⁶

On the other hand, she explains that the initial proposal of the Commission was that the member states were obligated to remove the illegal websites but the compromised text of the Directive removes the obligatory character of the provision replacing it with a voluntary one. This fact, among others, makes the Directive to some extent unreliable and vague since the member states should only “endeavour to obtain the removal of such pages hosted outside

¹⁰⁴ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, article 10(1)

¹⁰⁵ *Ibid.*, article 10, par. 2

¹⁰⁶ Kierkegaard, S., *To Block or not to block – European Child Porno Law in Question*, p. 5

of their territory”¹⁰⁷ One of the reasons behind this compromise was related to the fundamental freedoms of private life and freedom of expression. As mentioned earlier in the thesis (see p. 19) article 8 of the ECHR states that “everyone has a right to respect for his private and family life, his home and his correspondence”, in accordance with law and “necessary in a democratic society”. If the states were bound to block the sites with child pornography it would mean that the computer systems, access to websites should be monitored and confiscation of internet data without authorization could occur.¹⁰⁸ The challenge with article 10 of the ECHR is that with compulsory blocking of websites people may not be allowed to access some websites or to upload information freely. However the advocates of the obligatory blocking of websites by the member states argue that the freedom of expression should not conflict with the right of children to be protected by all means.¹⁰⁹ Freedom of expression as well as respect for private life require states to refrain from interfering with these rights. However, it is the duty of the court system to review the details of each individual case and decide whether it is justified to curtail freedom of expression in order to protect children and prevent their abuse. In cases where evidence of harm or possible harm to children exists, protecting them should supersede freedom of expression and right to private life. Of course, it is the courts and legislature to provide the necessary framework to prevent abuse of such rights.

Kierkegaard also implies that the porn industry, lobbyist and law enforcement have hidden interests to loosen the legislation which once again prove that the provision in the Directive is vague and unreliable. She further explains that making the blocking of the websites containing child pornography voluntary is a huge step back in that fight against the offenders. According to her, this would not only hamper the investigation procedures but also would have a negative impact on the protection of the best interest of the children.¹¹⁰ For example blocking a website takes a lot of time within Europe, but most of the websites with child pornography are hosted in the United States which can take months to obtain notification for removing. Having the same argument, an independent researcher of the Internet Watch Foundation argues that blocking a website may not be the best solution

¹⁰⁷ Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, article 25

¹⁰⁸ Dr. Weixiao Wei, Online Child Sexual Abuse Content: The Development of a Comprehensive, Transferable International Internet Notice and Takedown System, 2010, available at: <https://www.iwf.org.uk/resources/independent-report>

¹⁰⁹ Ibid., p. 83

¹¹⁰ Kierkegaard, S., To Block or not to block – European Child Porno Law in Question, p. 10

because it will cut the traffic chain and the real contributors for the maintenance of the content may not be revealed and the identification and protection of children might be jeopardized.¹¹¹

iii. Sexual Abuse

As mentioned earlier, child pornography sometimes constitutes a depiction of sexual abuse of children and using that for financial gain falls under the crime of exploitation of children. That is why child pornography, as codified in the Directive, has been criminalized by more substantive criminal penalties and supported by article 3 with the maximum penalties with regards to child sexual abuse offences where:

<i>Sexual abuse is:</i>	<i>And is punishable by maximum terms of imprisonment of at least:</i>
Causing a child to witness sexual activities, not necessarily taking part in it;	1 year
Causing a child to witness sexual abuse, not necessarily taking part in it	2 years
Engaging in sexual activity with a child;	5 years
Engaging in sexual activities with a child, where abuse is made of a recognized position of trust, authority or influence over the child if it is below the age of consent; and in cases of abuse with the presence of mental or physical disability of the child;	8 years (3 years if the child is over the age of consent under national legislation)
An offender who has coerced, forced or threatened a child under the age of consent (into national legislation) into sexual activities (even with a third party);	10 years (5 years if over the age of consent)

iv. Sexual Exploitation

Article 4 of the Directive criminalizes the intentional conduct of the offence of sexual exploitation of children and the respective penalties for the offenders.

<i>Where Sexual exploitation is:</i>	<i>And is punishable by maximum terms of imprisonment of at least:</i>
Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes	5 years (2 if over the age of consent under national legislation)

¹¹¹ Dr. Weixiao Wei, Online Child Sexual Abuse Content: The Development of a Comprehensive, Transferable International Internet Notice and Takedown System, 2010, p. 84; available at: <https://www.iwf.org.uk/resources/independent-report>

Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes;	8 years (5 if above the age of consent under national legislation);
Knowingly attending pornographic performances involving the participation of a child;	2 years (1 if above the age of sexual consent);
Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes;	8 years (5 if above the age of consent under national legislation);
Coercing or forcing a child into child prostitution, or threatening a child for such purposes;	10 years (5 years if above the age of sexual consent);
Engaging in sexual activities with a child, where recourse is made to child prostitution;	5 years (2 if above the age of consent under national legislation);

At a first glance the provisions in the Directive are broad and exhaustive but in places the language is soft and not obligatory. However, it focuses not only on the visual representation but also requires the law enforcement authorities to analyze child audiovisual recordings transmitted or manipulated by information and communication technologies. It covers the “explicit” conduct as well as fictitious and pseudo-images may be considered. Even though the Directive should be a revised version of the anti-child pornography legal documents discussed so far including the weak points and loopholes the academics and critiques discuss, it still focuses only on the objective aspect of the crime.

Chapter V. Law enforcement cooperation against child pornography offences

a) Legal ground

On an international level all of the above discussed conventions, a protocol and a directive refer to the significant necessity of international cooperation for the most effective fight against child pornography offenders.

The optional Protocol on the sale of children, child prostitution and child pornography expressly brings the matter of the cross-border dimension of the dissemination, proliferation and possession of child pornography which needs a strong international cooperation (article 10 OPCRC). The major purpose of establishment of the Cybercrime Convention has been to enhance and support the cooperation and uniform the procedures of combating cybercrimes where child pornography also falls under the scope. Article 23 of that convention addresses the vital role of international cooperation against the crimes underlined in it. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse straightly requests the contracting parties through international cooperation and assistance to protect and prevent sexual exploitation of children to the widest extend possible (article 38). The EU Directive calls for increased cooperation with third countries in the fights against criminals who travel outside the Union for the purpose of sex tourism. The Directive also aims at fostering the establishment of bilateral or multilateral treaties on mutual assistance, extradition or a transfer of the proceedings, between the member states, international organization and third countries.¹¹²

Unfortunately, the national law enforcement authorities and specified agencies (Europol, Interpol) face many obstacles which may seriously impede and jeopardize investigation procedures and criminal proceedings against child pornography offenders. Some of the challenges have been discussed more than 10 years ago and surprisingly are still relevant today when international cooperation against child pornography is considered. Such challenges are caused by different global jurisdictions between countries, incompatibility in the legislations, various interpretations of definitions, lack of trained professionals, etc.¹¹³

¹¹² Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, p. 29, 46, and 47

¹¹³ Yvonne Jewkes & Carol Andrews (2005): Policing the filth: The problems of investigating online child pornography in England and Wales, *Policing and Society: An International Journal of Research and Policy*, 15:1, p. 45; Online Child Sexual

In 2011 the Internet Watch Foundation processed 12.752 reports which included information on websites with child pornography content. From those 66 were hosted in the United Kingdom. The statistics drawn from the reports showed that the pictures and videos from the websites visualized victims at the age of 10 years or younger (74%); “sexual activity between adults and children including the rape and sexual torture of the children (67%)”.¹¹⁴ The geographical location of the videos and images showing grave exploitation of children were traced to be hosted in North America: 6,341 (49%); Europe (including Russia): 5,522 (43%); Asia: 1,096 (8%); South America: 5 (<1%); Australasia: 1 (<1%) Africa: 1 (<1%)¹¹⁵. How are these materials within the European countries and outside the borders of the continent fought with and what obstacles are present will be examined in the following paragraphs.

b) Introduction on the establishment of the European Police Office

i. History

A political platform for negotiations on the establishment of a European police body was set up under the guidance of the treaty of Maastricht (1992), article K1.¹¹⁶ In 1997 the Treaty of Amsterdam amended the previous treaty by creating the “Area of Freedom Security and Justice”. It called for stronger police cooperation in criminal matter within the Union. However, the treaty of Amsterdam also incorporated the Schengen agreements abolishing the Union’s territorial borders. Hence, the globalization processes within the European Union at that time additionally called for more centralized institution to facilitate the police cooperation and coordination between law enforcing agencies in the sphere of transnational crimes and offences. This necessity was also incorporated in article 87 of the Treaty of the Functioning of the European Union which states that the European member states need mutual police cooperation to “collect, store, process, analyze and exchange relevant information; [to use] common investigative techniques in relation to the detection of serious forms of organized crime”.¹¹⁷

Abuse: The Law Enforcement Response, 2008; The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, 2008

¹¹⁴ Internet Watch Foundation, 2011 Annual Report, available at: <http://www.iwf.org.uk/assets/media/annual-reports/annual%20med%20res.pdf>

¹¹⁵ Ibid.

¹¹⁶ Mitsilegas, V., EU Criminal Law. Portland 2009, Hart Publishing, p. 163

¹¹⁷ Treaty of the Functioning of the European Union, Article 87

ii. The Founding of Europol

Consequently, the Convention on the Establishment of the European Police Office was signed in 1995 and due to procedural difficulties it entered into force in 1999 after the ratification by all the members of the European Union according to the three pillar structure requirement. The mandate of Europol incorporated in the convention included the additional crimes of “child abuse, terrorism and forgery of money”.¹¹⁸ The work and legal status of Europol has been formalized by Council Decision 2009/371/JHA establishing the European Police Office (Europol Decision).¹¹⁹

The changes brought by the Europol Decision give the agency a complete legal and contractual capacity in accordance with the Union’s law.¹²⁰ Its objectives are to support, assist and reinforce the cooperation among European member states in the fight against “organized crimes, terrorism and other forms of serious crime”¹²¹. The initial competences of Europol were limited to international organized crimes but now with the Europol Decision it also deals with “serious crimes”¹²² which coincide with the offences incorporated in the European Arrest Warrant that abolishes the principle of double criminality.¹²³

iii. Aims of Europol and mandate on child pornography

The aims of the European Police Office in the fight against child sexual exploitation, constantly cooperating with member states, are:

- Easier and faster identification of child offenders;
- Revealing strategies and way of work of criminal networks striving at destroying these organizations;
- Discontinuance of exploitation of victims. As explained in the first chapter the new European Directive requires the victims of child pornography to be helped and assisted accordingly. This principle is also incorporated in the main initiatives and purposes of the work of Europol;

¹¹⁸ <https://www.europol.europa.eu/content/page/first-years>

¹¹⁹ Also incorporated in article 88 TFEU

¹²⁰ Decision 2009/371/JHA of the establishment of the European Police Office, article 2(1)(2)

¹²¹ *Ibid.*, article 3

¹²² Chalmers, D., Davies, G., Monti, G., *European Union Law*, Cambridge University Press, Second Edition (2010), p. 627

¹²³ *Ibid.*

- To operate closer via Europol liaison officer networks for better operational and strategic support by meetings for information exchange on current investigations and reinforcement of mutual work with law enforcement authorities;¹²⁴

One of the offences on which Europol is mandated for is to collect and analyze data on “Trafficking of human beings”. According to the annex of the Europol Decision trafficking of human beings includes among other things “sexual exploitation, the production, sale or distribution of child pornography material.”¹²⁵ Under the Europol competences also fall crimes which can be conducted or facilitated with the use of computers. Hence, one of the main tasks of Europol implemented in article 5 (2) of Europol Decision is to “provide support to Member States in their tasks of gathering and analyzing information from the Internet in order to assist in the identification of criminal activities facilitated by or committed using the Internet.”

According to the latest report published by Europol, during the last ten years the cases, suspects, victims, the production, development and distribution of child pornography has rapidly grown.¹²⁶ This conclusion has also been confirmed by the Child Exploitation and Online Protection Center as well as ECPAT International observing that the dimensions of child pornography offences is far broader than the law enforcement authorities are able to handle.¹²⁷ The technological advances and the offenders’ resourcefulness requires stronger law enforcement cooperation and support among member states, internet providers, private sector, international organizations and the society as a whole because the feature of anonymity of internet compounds the identification and the prosecution of the offenders.¹²⁸

iv. Joint Instigation Teams (JIT)

The necessity for close cooperation and exchange of information between countries around the globe with regards to crimes of international character, such as production and proliferation of child pornography materials, is crucial. The cross-border dimension of serious crimes require cross-border police initiatives, facilitated exchange of information, operations on the territory of two countries, etc. To understanding better how international cooperation in

¹²⁴ Child Sexual Exploitation, Europol Factsheet, 2012

¹²⁵ Decision 2009/371/JHA of the establishment of the European Police Office, Annex

¹²⁶ Child Sexual Exploitation, Europol Factsheet, 2012

¹²⁷ Dr. Weixiao Wei, Online Child Sexual Abuse Content: The Development of a Comprehensive, Transferable International Internet Notice and Takedown System, 2010, p. 71; available at: <https://www.iwf.org.uk/resources/independent-report>

¹²⁸ Ibid.

criminal matters between countries works, a brief introduction on the establishment of JITs and information exchange between states will be given.

Except being bound by bilateral agreements for cooperation in criminal matter, the European Union addressed the importance by establishing a legal framework for intense cooperation in many occasions. For instance, with article 30 of the Treaty of Amsterdam, the European Union makes first steps to address the establishment of joint teams, which in close cooperation with Europol, member states to fight organize crimes.¹²⁹ The idea was further developed, during Tampere Council (1999), and under article 34(2)(d) of the Treaty on European Union¹³⁰ the EU Convention on Mutual Assistance in Criminal Matter (Convention on Mutual Assistance) was established.

Article 13 of the Convention on Mutual Assistance is the legal basis for setting up a JIT. Article 13 explains on which occasions and how a JIT can be established and its content will further be explained below. Unfortunately, due to lack of ratifications, the entry into force of the Convention on Mutual Assistance was delayed. Thus, a Framework Decision on JIT was adopted. The content of the Framework Decision is based on articles 13, 15 and 16 of the Convention on Mutual Assistance where articles 15 and 16 refer to the civil and criminal liabilities of the officials. However, since the framework decisions do not have any direct effect, the extent to which countries can establish JIT under the Framework Decision on JIT depends on the domestic legal grounds for establishing a JIT.¹³¹ If properly implemented, the Framework Decision on JIT is the legal basis for setting up mutual cooperation if the Convention on Mutual Assistance has not been ratified by some member states.

As regulated by article 13 of the Convention on Mutual Assistance, competent authorities of two or more member states may set up a JIT for limited period and for a specific purpose. The purpose of the JIT is to carry out criminal investigations in the member states participating in it. The requirement for setting up such a team is to have “difficult and demanding investigations....coordinated [and] concerted action” between the participating countries (article 13(1)). The team should operate within the territory of the member state where the activities of the operation will dominate and should be governed by its national law (article 13(3)). Specification of the members in the agreement is mandatory and requires the

¹²⁹ Treaty of Amsterdam amending the treaty on European Union, Official Journal C 340, 10 November 1997, available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html#0001010001>

¹³⁰ Consolidated Version of the Treaty of the European Union, available at: http://eur-lex.europa.eu/en/treaties/dat/12002M/htm/C_2002325EN.000501.html

¹³¹ C. Rijken, Joint Investigation Teams: principles, practice, and problems Lessons learnt from the first efforts to establish a JIT, Utrecht Law Review, Volume 2, Issue 2 (December) 2006

leader of the team to be a representative of the competent criminal investigation authority and to operate in accordance with his/her competences under national law (article 13(3a)). The leadership in JIT may be changed when the investigation is conducted in more than one member state. The experts of a JIT can be members of the participating states; seconded members (operating in another member state (article 13(4)); other member states or organizations which have expressly been allowed by the agreement setting up the JIT to participate (article 13(12)).

The information obtained from members or seconded members of JIT during operations should be lawfully regulated and should have the purpose to serve the cause of the set up team; to detect, investigate and prosecute other criminal offences; prevent serious and immediate threat to security and to help other initiatives as far as it is agreed between the JIT member states (article 13(10)). However, a member state may decide not to provide specific information in case this would endanger an ongoing criminal investigation in the state concerned or if the court decides disclosure of information is against the public interest (protection of police operations, national security and confidentiality).¹³²

However, the exchange of information between the states participating in JIT may sometimes be hampered by the following inconveniences:

- Lack of harmonization in the national legislations may result in inadmissibility of evidence. For example, information obtained in one member state where it can serve as evidence may not be accepted in the court of another member state where the judicial proceedings take place.¹³³ However, such details should be dealt with in the negotiation phase of setting up a JIT. Additionally, the exchange of information may be hampered due to national restrictions on disclosure of information.¹³⁴

- The selection of the “managers” of JIT – who takes part in a joint project is crucially important for both the smoother stages of police cooperation against a certain cross-border crime and for maintaining trust between the parties. For instance, in a historical perspective two approaches in two JIT initiatives have shown different results - JIT project and Drug JIT. In the first one, a top-down approach was taken; it had a complex composition including steering group, project board, project manager and a joint intelligence group. Thus, the decision making was hindered by the participation of people not authorized to make binding

¹³² C. Rijken, Joint Investigation Teams: principles, practice, and problems Lessons learnt from the first efforts to establish a JIT, Utrecht Law Review, Volume 2, Issue 2 (December) 2006, p. 113

¹³³ Judit Nagy, About joint investigation teams in a nutshell, Current Issues of Business and Law, 2009, Vol. 4

¹³⁴ For more information see C. Rijken, Joint Investigation Teams: principles, practice, and problems Lessons learnt from the first efforts to establish a JIT, Utrecht Law Review, Volume 2, Issue 2 (December) 2006, p. 113

decisions. Additionally, the uncertainty of how to exchange information among all the participants and would it be ensured brought to the lack of trust and difficulties in realization of the project.¹³⁵ In the Drug JIT, a bottom-up approach was taken. Here the composition of the team was organized in a way that people responsible for investigation or gathering of information to take decisions themselves instead of waiting for a steering group to decide. Legal training on the different national systems was conducted as well as different team buildings which improved the trust and communication level among the participants.¹³⁶

- Financial aspect – the cost of the operations should be regulated in the agreement between the participating states. Sometimes additional expenses occur and parties of JIT have the option to be funded by Eurojust Grant, funded by the European Commission which covers travel and accommodation, interpretation/translation costs, also limited number of laptops and mobile phones can be granted on a request.

v. *Europol in JIT*

Under article 6 of the Europol Decision 2009/37/JHA Europol has the right to participate in Joint Investigation Teams (JIT) with relation to criminal investigation of cases which fall under the Europol competences.¹³⁷ A mutual agreement between the involved European member states' competent authorities and Europol Director is the legal mechanism for the establishment of a JIT where the staff of Europol is available to the member states.¹³⁸ The core importance of the JIT is that they allow police officials from different member states to operate within the borders of another country. The international cooperation is extremely important since not a small percentage of the crime of child pornography is conducted internationally, especially with the advancement of online dissemination of child pornography materials, for example.

Europol has the competences to assist the member states and to provide them with any needed information but unfortunately it cannot take any “coercive measures” during the

¹³⁵ C. Rijken, Joint Investigation Teams: principles, practice, and problems Lessons learnt from the first efforts to establish a JIT, *Utrecht Law Review*, Volume 2, Issue 2 (December) 2006

¹³⁶ C. Rijken, Joint Investigation Teams: principles, practice, and problems Lessons learnt from the first efforts to establish a JIT, *Utrecht Law Review*, Volume 2, Issue 2 (December) 2006

¹³⁷ Europol has a supporting capacity in such teams in accordance with article 1 of Council framework Decision 2002/465/JHA of 13 June 2001; under article 13 of the Convention on mutual assistance in criminal matters between the member states of the European Union (May 2000); article 24 of the Convention on mutual assistance and cooperation between custom administrations as states in article 6 of the Europol Decision.

¹³⁸ Mitsilegas, V., *EU Criminal Law*. Portland 2009, Hart Publishing, p. 170; stated also Europol Decision, article 6(2)(3)

operations.¹³⁹ However, under article 7 of the Europol Decision the agency has the right to initiate criminal investigation within the borders of the member states. The role of Europol is not to enforce the law, nor is it to chase the criminals; its purpose is restricted to gather, analysis, provide, supply and exchange information with the member states or other partners with regards to crimes laid down in its mandate. Legally this could be achieved either by cooperation with national units or by liaison offices situated in Europol. Article 8(1) of the Europol Decision requires that each member state should appoint one person to be in charge of the corresponding national unit. The responsibilities of the national units are:

- “Supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
- Respond to Europol’s requests for information, intelligence and advice;
- Keep information and intelligence up to date;
- Evaluate information and intelligence in accordance with national law for the competent authorities and transmit that material to them;
- Issue requests for advice, information, intelligence and analysis to Europol;
- Supply Europol with information for storage in its databases;
- Ensure compliance with the law in every exchange of information between themselves and Europol.”¹⁴⁰

In case of actions, which are contrary to the national security interests, which may “jeopardize the success of a current investigation” or threat the wellbeing of individuals, the national units may refuse to cooperate with Europol.¹⁴¹ The disclosure of information about an organization or the state itself which may harm their security, is also a condition when a certain country may refuse to work with Europol in some operations.¹⁴²

There is, however, a point of restriction in the line between Europol and the national units. The latter shall second one liaison officer to the headquarters of Europol in the Hague who should, in accordance to their national law, protect their state’s interests.¹⁴³ The role of the liaison officers is to exchange information between Europol and the national units. Such bilateral cooperation in investigations and information exchange may also cover crimes which

¹³⁹ Ibid., p. 170; Europol Decision, article 6(1)

¹⁴⁰ Europol Decision, article 8(4)

¹⁴¹ Ibid., article 8(5)

¹⁴² Ibid.

¹⁴³ Ibid., article 9(2)

do not fall within Europol competences as far as it is allowed under the national law of the participating state.¹⁴⁴

This work of JIT may raise not only legal questions but also issues of trust, liability and difficulties caused by the vague International legal ground on child pornography as well as the differentiation in the national legislation.¹⁴⁵

vi. *Europol Information System*

The national units are responsible to communicate through the Europol Information System (EIS) under article 11(3) of the Decision. This system is used for facilitation of the work and the better performance and cooperation among member states and Europol. The content of the EIS is: suspects of crimes incorporated in Europol's mandate; people who have already committed an offence and suited in a member state; names of suspects against whom there are solid evidence that they will commit a crime in respect to Europol's competences.¹⁴⁶ The data of the suspects found in the EIS is restricted to: names of the suspects; date and place of birth; nationality and gender; profession, place of living; social security information; number of ID; driving license; physical characteristics; non-coding part of the DNA.¹⁴⁷

vii. *Analysis Work Files*

In accordance with the Europol Information System and the data stored there, the European agency also may create the so called Analysis Work Files (AWF). These are incorporated and explained in article 14 of the Europol Decision. The files include the modified data and information about criminal offences for which Europol is competent (article 4(3) of the Decision). The content can include names of people holding criminal characteristics as explained in article 12(1) of the Decision; information about people who can be asked to testify on some criminal proceedings; victims (or facts which may lead to the believe they somebody may become a victim) of offences under the competences of Europol; contacts of criminals and their associates; information providers.¹⁴⁸ Information concerning

¹⁴⁴ Ibid., article 9(3)d

¹⁴⁵ Ibid.

¹⁴⁶ Europol Decision, article 12(1)

¹⁴⁷ Ibid., article 12(2)

¹⁴⁸ Ibid., article 14(1)

race, ethnics, political, religious or philosophical opinions, health or sexual life cannot be included in the files unless they are necessary for the investigation of some crimes. The aim of the AWF is the assist member states in their operations against organized crimes. In 2001 AWF Twins was established to support states parties in their initiatives against production and proliferation of child pornography materials.

Due to the great results of the supportive function of AWF Twins, a year ago this was replaced by the name of “Focal Points” Twins. Under the previous AWF activity Europol was part of the revealing of one of the key cases on child sexual abuse which took place in the Hague, Netherlands – operation Rescue.¹⁴⁹ The operation was concentrated on an online forum for people interested in little boys and led to the identification of 750 suspects, 250 arrests and 252 saved children, which is the greatest number of child victims ever in this sphere of crime.¹⁵⁰ The Europol task was to break the security features of the forum by getting the names and identities of the people using it. Distributing the information to more than 25 member states and other afield, the operation “Rescue” continues to motivate law enforcement agencies to investigate cases ensued from it.¹⁵¹

So far, the results in numbers from AWF (Focal Point) Twin are at about 3000 suspected in criminal activities with child abusive images disseminate through internet and more than 25 international operations in that sphere were conducted.

In addition to the Focal Point Twins operations Europol along with UK, Austria, Bulgaria, Finland, Slovenia, France, Hungary, the Netherlands, and Sweden organized the so called project Heaven in 2012 which purpose was to disrupt and capture the travelling child sex offenders in and outside Europe.¹⁵² The initial purpose of this project has been to establish “a permanent and proactive notification system”¹⁵³ of European offenders moving from one country to another. The law enforcement agents have the obligation by checking identifications and conducting interviews with people coming from places famous for its “child sex tourism” reputation to share information on suspects for committing illicit actions with children.

¹⁴⁹ The countries involved were: Australia, Belgium, Canada, Germany, Greece, Iceland, Italy, the Netherlands, New Zealand, Poland, Romania, Spain, United Kingdom and the United States

¹⁵⁰ Europol Factsheet 2012

¹⁵¹ Europol Factsheet 2012

¹⁵² Ibid.

¹⁵³ Ibid.

c) Initiatives and participation in projects

Under the coordination of Europol, the Comprehensive Operational Strategic Planning for the Police (COSPOL) was established in 2004 and brought to the unmasking of a file-sharing system of video materials with the participation of abused children. The operation was called Icarus and ended up with the arrest of 113 people involved in the network and more 286 suspects.¹⁵⁴

Another initiative which Europol supports is the goal of the European Financial Coalition to destroy the commercial benefits of the criminals involved in child abusive images which clearly represent child pornography. Additionally Europol supports the Virtual Global Taskforce (VGT) represented by law enforcement agencies¹⁵⁵ which have taken the initiative to fight sexual exploitation of children on the web, which also encompasses child pornography. The Virtual Global Taskforce (VGT) member agencies comprehend the global methods of cooperation and work closely to fight the cross-border proliferation of child abusive practices. The partner agencies are Italy (Italian Postal and Communication Police Service), Netherlands (Dutch National Police), UK (Child Exploitation and Online Protection Center), Europol, Interpol, Canada, Australia, and Indonesia. The purpose of the organization is to achieve safe internet environment for children, to locate, identify and protect children at risk and to hold abusers liable.

i. Cybercrime Center

Another initiative of the European Union and Europol is the newly established European Cybercrime Center which plays a huge role in the objectives and development of the work of Europol. The purpose of the Center is to “become the driving force behind the EU’s efforts in fighting cybercrimes”¹⁵⁶ as from the beginning of 2013. By providing the best practices, popularizing the risks deriving from the use of internet as well as introducing solutions to the European member states in the fights against internet crimes, the center is aiming to become a crucial facility against perpetrators. One of the fields of work of the cybercrime center is to collect and analyze data on materials related to child sexual exploitation.¹⁵⁷ The Cybercrime Center will fight the “production of child abuse images and their online dissemination as

¹⁵⁴ Europol Factsheet 2012

¹⁵⁵ Represented by Australia, Canada, Italy, New Zealand, United Arab Emirates (UAE), United Kingdom (UK), United States (US), and Interpol

¹⁵⁶ Europol Work Program 2013

¹⁵⁷ Ibid.

particularly serious forms of crime committed against children”¹⁵⁸ It also strives at recognizing the child pornography offenders and to tightly cooperate with the member states. The dismantling of criminal networks by cross-border cooperation the Focal Point Twins tries to establish the best practices against that crime. Additionally, the team of the Cybercrime Center aims at the better identification of the victims, so the authorities may easily take the necessary assisting measures as the current European legislation requires. Europol Liaison Officers’ network is the basic mechanism for cooperation among the member states. They exchange and analyze information; support projects of the European Financial Coalition, COSPOL Internet Related Child Abuse Material Project (CIRCAMP).¹⁵⁹

ii. How do the offenders work

According to Europol investigations and data analyses, the current trends of the child pornography, disseminated by internet, are facilitated by hidden channels where the users are selected on mutual trust and respect. The offenders use complex software allowing them to stay untraced, remain hidden and skillfully to escape police examination.

Another feature of the contemporary child offenders is to travel to certain countries where children are easily exposed by their parents and where the legislation on this type of crimes is weak.¹⁶⁰ The so called sexual predators victimize children by online grooming or through the so called mobile phones or other multimedia devices. The issues which Europol distinguishes as the most important for the successful investigation and prosecution of crimes related to sexual exploitation are the rise of the awareness in the society; technical and human resources for facilitating a proper investigations; international police cooperation and synchronized coordination on national, European and international levels which would decrease the number and duplications of crimes; the involvement of the private sector, non-governmental organizations and academia in the research and technical support in the fight against children abuse.¹⁶¹ The most recent trend in the proliferation of child pornography materials, which has been considered a very serious problem, is the self-produced materials by children. Aiken et al. point out that such images are mostly created and spread by children who are not aware of the dangers of Internet and how an innocent picture sent through

¹⁵⁸ Europol Official website: Child Sexual Exploitation: <https://www.europol.europa.eu/ec3/focal-points>

¹⁵⁹ Ibid.

¹⁶⁰ Russia, South East Asia, South America, Ukraine – Child Pornography Legislation within the European Union, Europol 2005

¹⁶¹ Child Sexual Exploitation, Europol factsheet, 2012

technological devise can evolve into a grave “viral distribution of [child pornography] images”.¹⁶²

iii. Operations

- Atlantic

One of the recent activities of Europol in the field of child pornography was conducted in February last year. The agency was involved for the first time in a joint operation with the United States Federal Bureau of Investigation where the criminals were arrested for the production of illegal materials with the participation of children. The operation was called Atlantic and was brought to an end with the investigation and coordination of Europol. Here are the facts:

- 37 criminals arrested;
- 8 child victims were identified;
- Detection of other producers and distributors of grave abuses of children;
- Leads to other victims abused by the criminals;

Europol task in this case was to distribute the investigation materials from FBI to the member states, involved in the operation – Italy, France, Netherlands, Spain and the United Kingdom. With the provided information and the analytical work of Europol other connections to previous cases were made and the arrested were found to be part of a broader ring and networks of child pornography.

The team between FBI and Europol was highly remarked by the director of Europol who has stated that such cooperation and mutual help is of great importance to the fight against the crime of exploitation of children. The FBI chief executive also pointed out the fact that the exploitation of children especially with the use of internet is not a problem of just some countries. He noticed that it is a global problem which needs to be handled by cooperation between the law enforcement agencies and the offenders to be brought to justice.¹⁶³

- Ransom

¹⁶² Aiken, M., Moran, M., & Berry, M. J., Child abuse material and the Internet: Cyberpsychology of online child related sex offending, 2011

¹⁶³ European Police and FBI Dismantle Network of Child Sex Offender, 29 February 2012

<https://www.europol.europa.eu/content/press/european-police-and-fbi-dismantle-network-child-sex-offenders-1361>

The second operation in which Europol was involved is called Operation Ransom. The importance of this operation reveals the illegal activity of this criminal network. A 27 year old Russian citizen developed a malware blocking someone's computer which afterwards accuses the owner in having visited websites containing abusive materials with children. The software also requests a fine of 100 euros to unblock the virus deceiving the victim that the request comes from a police authority. After the payment is done, the criminal steal the transfer data form the computer and take the money. Since the operation more than 1200 cases of injured were registered.

This operation was conducted by the Spanish police, Europol, Interpol as well as the Spanish embassy in Moscow. This initiative was not directly related to production or dissemination of images or videos of children involved in sexual activities but rather was oriented to people who paid money to steal illegal content from the victims' computers. The operation was held in Spain by the Spanish authorities and the help of the European Cybercrime Center. This expositor was considered to reveal the "largest and most complex cybercrime network dedicated to spreading police ransomware". It is estimated that the criminals affected tens of thousands of computers worldwide, bringing profits in excess of one million euros per year".¹⁶⁴ The results of this operation were:

- 11 arrests including the creator, developer and the original distributor of the software;
- Destroying the largest financial network in the Spanish region Costa del Sol;
- Russian, Ukrainians and Georgian citizens were also arrested being allegedly linked to the financial cells.¹⁶⁵
- Confiscation of IT equipment used for criminal activities
- Confiscated credit cards used to cash out victims' money as well as for money withdrawal prior to the operation.

In another case in 2010 Europol cooperated with the Italian postal and communication police in the dissolving a criminal group which used business websites to install and show unimaginably severe sexual online materials with children. The Italian police started to monitor suspicious websites hosted by Italian servers in the early 2009. After an investigation and further analytical work it was concluded that a malware was infecting not only Italian

¹⁶⁴ Police Dismantle Prolific Ransomware Cybercriminal Network, 13 February 2013

<https://www.europol.europa.eu/content/police-dismantle-prolific-ransomware-cybercriminal-network>

¹⁶⁵ Police Dismantle Prolific Ransomware Cybercriminal Network, 13 February 2013

<https://www.europol.europa.eu/content/police-dismantle-prolific-ransomware-cybercriminal-network>

servers but also international ones. The criminal group was extorting web servers by automatically redirecting the users to child pornography materials.

After the Italian Police has conducted the needed intelligence on the problem, Europol distributed the information to all the member states and the other agencies it works with. The further work determined that the owners of the servers were not aware of what was happening and were inactively involved in the crime. The absence of strong internet security brought a hole for the criminals to act.

The origin of the criminal group was European and the investigators concluded that they offenders were producing their own child abusive materials which disseminated by internet for commercial purposes. The results were:

- More than 1000 internet websites were deleted form the web;
- The owners of the servers were also affected because their activity was stopped;
- Strategies developed by Europol and the Italian Postal and Communication police helped for tracking the money trail of the customers and put an end of the illegal materials;

- *Operation Baleno*

Europol has also cooperated and supported the work of the Dutch Police and other European member states, Interpol and FBI in the operation Baleno in 2006 which was again targeting the child sexual abuse network. The results were the destruction of an international criminal network, houses search and arrests.¹⁶⁶

After these operations Europol posted a report in which it stated that the member states of the European Union are one of the most affected by malwares and viruses. The undiscovered criminal networks are also a threat and they will not stop their activity until they are captured and dissolved. Additionally Europol makes request for stronger technical and informative cooperation with the private sector since the power of internet is increasing and it has become extremely hard to trace and combat the perpetrators.¹⁶⁷

- *Operation Joint Hammer*

This particular action of revealing child pornography offenders was shared between US, Interpol and Europol. The whole operation started in 2006 when the Australian authorities

¹⁶⁶ Ten Years of Europol report 1999-2009

¹⁶⁷ Organized Criminals Hijack Web Servers to Distribute Child Abuse Materials, 7 January 2011, available at: <https://www.europol.europa.eu/content/press/organised-criminals-hijack-web-servers-distribute-child-abuse-material-503>

detected a video of sexually abused child and turned to the largest global investigation. The victim was identified to be from Dutch origin with a Flemish accent. After the Belgium authorities were informed it resulted in the development of operation Koala. The Belgium authorities identified and arrested the offender who was an Italian citizen. After the Italian police authorities arrested the producer of child pornography they blocked his website and retrieved at about 50,000 emails leading to the porn site. The emails formed the basics of operation Joint Hammer. The role of Europol was to transmit the emails to the countries where they originated from. Joint Hammer rescued 14 sexually abused girls, some of which were at the age of 3, at about 170 were arrested and 7 major child pornography rings were dismantled. Even though in 2009 the investigation was not completed convictions were present. A man from New Jersey, who produced sexual images of his 9 year old girl, was sentenced to 20 years of imprisonment; a fifth grade teacher from Arizona, who was a customer of the Italian porn site and had a sexual contact with a female student, faced many charges of sexual exploitation of children; a Philadelphian former prisoner for molesting children was again charged with distribution, receiving and advertising child pornography. He was also caught to administer two global online child pornography bulletin boards.¹⁶⁸

iv. Challenges in relation to child pornography

What can be concluded from the law enforcement operations against child pornography offenders is that most of the operations and police initiatives conducted recently concern online child pornography materials. The cybercrimes tend to expose many challenges for the investigations and joint operation. For instance, the worldwide application and decentralized character of the Internet, which has no controlling agency, nor has it a storage facility, allows for the emergence of new websites with child pornography content all the time, even if at the same time others are being closed down.¹⁶⁹ This means that the proliferation of the illegal content is unstoppable and the lust for profit, personal gratification at the expense of victimizing children is extremely difficult to be closed.

Additional challenge to the law enforcement can be the uncertainty around the jurisdiction responsible for investigating certain organizations or offenders. This is the reason

¹⁶⁸ Federal Bureau of Investigations, Rescuing Our Children, 2 September 2009, available at: http://www.fbi.gov/news/stories/2009/february/jointhammer_020909

¹⁶⁹ Wortley, R., Smallbone, S., Child Pornography on the Internet, Problem-Oriented Guides for Police, Published 2006, last updated May, 2012; can be found at: <http://www.cops.usdoj.gov/Publications/e04062000.pdf>

why, according to Wortley et al. (2012), some pornography crimes on the Internet remain uninvestigated due to the uncertainty under which law enforcement jurisdiction they fall.¹⁷⁰ Duplication of efforts may happen and unfortunately in cases when the host country of a certain child pornography website is unknown to the police teams, the investigation of the website is impossible. On the other hand, next to the peer-to-peer networks which facilitate the trade and exchange of child pornography images, the offenders challenge the law enforcement with sophisticated servers that hide the senders' identities from an email or hide which has been exchanged or traded by different methods.

Looking critically on the purposes and use of the Internet, it is obvious that it has been invented to facilitate connection and access to information by people facing no geographical borders. Due to the international usage of the Internet, it has been difficult to be regulated and sometimes laws that may control its usage are missing. The reason most probably lies on the balance simultaneously to protect children on the one hand and to respect people' rights of freedoms of speech and private life.

The varieties of legislations among countries also challenge the law enforcement. For instance many countries have different legal definitions of a child when it concerns child pornography; some countries do not have specific legislation on the crime, or do not have provisions on computer facilitated offences.¹⁷¹

At a national level as well as internationally it can be stated that the major dilemma for the law enforcement authorities to investigate and destroy child pornography practices are very similar to these explained in the first chapter related to the discrepancies in the legislation, particularly to identify the age of the victim appearing in the material and to estimate the graveness of the picture and whether it falls under the definition of child pornography.¹⁷² It is obvious that materials showing explicit sexual abuse with children are considered child pornography. But on the other hand a 40 years old did not face an arrest for possessing images of naked and semi-nude children photographed on the beach because the content of the materials did not constitute child pornography since there was no focus on the genitals of the children.¹⁷³

¹⁷⁰ Wortley, R., Smallbone, S., Child Pornography on the Internet, Problem-Oriented Guides for Police, Published 2006, last updated May, 2012, page 21; can be found at: <http://www.cops.usdoj.gov/Publications/e04062000.pdf>

¹⁷¹ Child Pornography: Model Legislation & Global Review, International Centre for Missing & Exploited Children, Seventh Edition, 2013, available at: <http://polis.osce.org/library/f/4060/3771/GOV-USA-RPT-4060-EN-3771>

¹⁷² Melissa Wells, David Finkelhor, Janis Wolak & Kimberly J. Mitchell, Defining Child Pornography: Law Enforcement Dilemmas in Investigations of Internet Child Pornography Possession, Police Practice and Research, Vol. 8, No. 3, July 2007

¹⁷³ Ibid., 267

At international level issues like the lack of material and human resources is considered to be quite inappropriate when we talk about fighting of child pornography.¹⁷⁴ This is related to the better organization of the specialized units and improvement of communication between the law enforcement authorities, NGOs and industry.¹⁷⁵ Nonetheless Europol and Interpol have a very solid database and mechanism for cooperation and sharing information techniques, a better relation with the national units is required. From a technological perspective the development of stronger international, national and local intelligence and investigative practices as well as sophisticated technological support should never stop evolving since the offenders techniques are getting more and more difficult to detect.¹⁷⁶ Additionally, the bureaucracy in the mutual legal assistance procedures may also jeopardize the effective investigation and cooperation among countries.

Despite the difference in the statutory regulations, definitions and investigation practices, the law enforcement agencies and national authorities have made a huge progress in combatting child pornography and exploitation of children. Through sharing data files, reporting channels, international sources, the police authorities can conduct high quality intelligence, track the initial places of child sexual abuse materials and prosecute their offenders. Unfortunately these steps take relatively long time and sometimes the abusive content is impossible to be removed which brings the dissemination process unstoppable.¹⁷⁷

d) Conclusion

It cannot be argued that offences against children are unacceptable and should not be tolerated. The crime of child pornography, the production, possession and proliferation of such materials continues to raise concerns among legislators, law enforcement agencies, state and non-state actors both on national and international levels. The fact that in the recent years the crime has reached enormous dimensions, not only in Europe but worldwide, proves once again that children are at great risk.

¹⁷⁴ Child Pornography on the Internet: Evaluating Preventive Measures in order to improve their effectiveness in the EU member states, 2007, available at:

http://transcrime.cs.unitn.it/tc/fso/pubblicazioni/TR/15_Child_Pornography_on_the_Internet.pdf

¹⁷⁵ Ibid., p. 16

¹⁷⁶ Dr. Victoria Baines, Online Child Sexual Abuse: The Law Enforcement Response, 2008

¹⁷⁷ Dr. Weixiao Wei, Online Child Sexual Abuse Content: The Development of a Comprehensive, Transferable International Internet Notice and Takedown System, 2010, p. 71; available at: <https://www.iwf.org.uk/resources/independent-report>

The thesis explored the development of the international and European legislation in the field of child abuse, with a special focus on child pornography. Particularly through desk research the paper outlined the current legislative norms having the purpose to protect individuals under the age of 18 from becoming victims of child pornography offences. Here, I would like to give an answer to the central research question which was “*in what ways do the new European legislation and international police cooperation help combat the proliferation, production and possession of child pornography*”. In a legislative aspect, European Union introduced the Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, which is in conformity with its predecessors - OPCRC, Lanzarote Convention and Cybercrime Convention. On the one hand, the Directive, as a dominant legal instrument in the post-Lisbon period, is expected to improve considerably and harmonize the national laws on the crime of child pornography among the 27 European member states. Definitions of terms and offences, respectively their penal framework, are expected to be consciously and correctly implemented among the member states by the end of 2013. On the other hand, if the countries fail to implement the Directive on time, its provisions will still be in force under national law as soon as the transition period is over.

With the improvement of the legislation, a visible step forwards is expected to be made in the sphere of police cooperation. Enhanced joint operations between national police authorities and European Police Office should seriously pursue child pornography offenders and reduce the production and dissemination practices. Child pornography offenders and their rings have been investigated and many of them prosecuted. Since Europol has been made a major Law enforcement agency having analytical and information exchange responsibilities, conducting of the joint operation should be easier and more effective.

However, despite the existence of solid states’ duties and obligations under the current conventions, protocols and directive, challenges for the law and its enforcement authorities to safeguard children appropriately are still present. Disparities in the definitions of child pornography, what the most legally adequate age at which a child appeared in sexually abusive material should be; further clarification of the relation to the age of sexual consent, as well as which content is considered abusive and constitute crime, impose difficulties in the whole process of protection of the best interest of children. Additionally, criminalization of pseudo – images and CGI should be made obligatory because the utmost protection of children should not relay on excuses.

However, it has been observed that positive results have been achieved not only on an European legislative level by the adoption of the newly established EU Directive, but also on

the practical arena with the enhanced cooperation and close collaboration between law enforcement agencies and national police authorities. The harmonization in the legislation among the 27 European member states will also result in easier child pornography case resolution, assistance of victims and better availability and exchange of information and best practices. It is necessary to mention that the operations described in the last chapter are only a very small portion of what actually has been initiated and achieved by the competent authorities in the investigation and prosecution of child abuse offences, including child pornography. To facilitate their work as well as to achieve satisfactory results, the law enforcement agencies and their partners need to continue improving their collaborative techniques. Their work additionally needs to be supported by adequate legislative accuracy and harmonization of child pornography law among countries.

On the other hand, it should be noted that it is impossible to prosecute everyone who has seen or tried to obtain child pornography materials. Law enforcement agencies should prioritize their efforts and focus more on the most severe offenders, those who constantly produce, supply the chain and gravely abuse and exploit children's lives because, after all, the prevention of the crime against children is important, not the number of the images confiscated.

Adequate training of specialized units against child pornography offences, superior technical equipment and strong cooperation with agencies and jurisdictions all over the world need to be established for the protection of the best interest of children. Many child pornography materials uploaded on the Internet cannot be accessed through a normal search engine due to the hidden channels and offenders' protective software mechanisms. Thus, specially trained people to search hidden channels and websites are absolutely crucial. Additionally, strong regulation on the servers allowing users to send data with hidden identification should be established. In this train of thought, Internet Service Providers (ISP) should play a significant role in the assistance of law enforcement agencies. ISP need to be internationally obligated to constantly report child pornography websites and to take the initiative in blocking of the illegal content.

Since child pornography materials have often been produced and disseminated for commercial purposes, payment with credit cards for illegal products should be strictly regulated and controlled as well. Public awareness campaigns should produce materials and tips for people. They should focus on parents to highlight the dangers and how to avoid them – using search filters on their personal computers or being more vigilant with the websites their children visit.

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