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Combating "child abuse images" through committed, transversal and internationally co-ordinated action

Report[1]
Social, Health and Family Affairs Committee
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Summary

Child abuse images are not just images. Despite the fact that most of them can be found in a "virtual world", one must never forget that behind every image, there is at least one child who has been sexually abused in real life. Child abuse images involve a series of crimes ranging from the solicitation, corruption or trafficking of children for sexual purposes and various forms of sexual abuse perpetrated on children, to the distribution, collection and consultation of images of the abuse committed.

In the light of the prevalence of such crimes in our societies, the member states of the Council of Europe should take committed action aimed at reinforcing national legislation and international standards, at developing targeted national policies in co-operation with the private sector, as well as at exchanging and co-operating at the international level. In the long term, all member states should criminalise the intentional viewing of child abuse images. They should also mandate the blocking of websites as a complementary measure – to be undertaken in accordance with transparent procedures and in full respect of human rights – whenever their rapid deletion is not possible.

1. *Reference to committee*: Doc. 12385 and Doc. 12396, Reference 3724 of 12 November 2010.

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A. Draft resolution[2]

1. “Child abuse images” or “child pornography” are not just images. Both terms refer to a series of crimes, from the solicitation, corruption or trafficking of children (under 18) for sexual purposes to the distribution, collection and consultation of images of the abuse committed, over various forms of sexual abuse perpetrated on children – sometimes even causing their death.

2. The Parliamentary Assembly is very concerned about the high prevalence of such crimes in our societies and the way in which they are facilitated by the Internet and other information and communication technologies, which reveal their “dark side” when it comes to child abuse images. It recalls that, due to the anonymity of the Internet, it is extremely difficult to uncover and to effectively prosecute offenders, and to identify and help victims. The Assembly therefore calls for committed, transversal and internationally co-ordinated action to fight all types of offences related to child abuse images.

3. Despite the fact that most images can be found in a “virtual world”, one must never forget that behind every child abuse image, there is at least one child who has been sexually abused in real life.

4. Child abuse images may not only be the result and visual depiction of abuse but may also stimulate new crimes and thus become a “multiplier” of the sexual abuse and exploitation of children. For this reason, already the “simple” viewing of child abuse images should be criminalised in all member states of the Council of Europe.

5. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, CETS No. 201) currently represents the most complete and advanced standard in this field, alongside with the Convention on Cybercrime (Budapest Convention, ETS No. 185). They shall soon be completed by the upcoming European Union Directive on combating the sexual abuse, sexual exploitation of children and child pornography, expected to be adopted by the European Parliament and Council before the end of 2011. These texts constitute a strong legal basis, but need to be reinforced concerning certain aspects such as the criminalisation of the intentional consultation of child abuse images (as far as the Lanzarote Convention is concerned) and the mandatory character of website blocking when deleting is not possible, which has, to the regret of the Parliamentary Assembly, not found its way into the final European Union draft directive.

6. Many member states have started to address the issue by developing strong legislation and policies. A reinforced European-wide exchange of information and best practice should thus make a more efficient fight against child abuse images possible. To appropriately reflect the complexity of this subject, the notions of “child abuse images” or “child abuse material” should, in the long term, replace the term of “child pornography” in all legal texts and political debates.

7. In the light of the successful co-operation with the private sector, the commitment of the Internet Service Providers (ISP) and the financial sector should be further encouraged in the future, inciting all companies to adhere to approaches of “self-regulation” and systematic reporting of illegal Internet contents to the authorities.

8. The Assembly therefore calls on the Council of Europe member states:

8.1. as concerns the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and the Council of Europe Convention on Cybercrime (Budapest Convention), to:

8.1.1. sign and ratify these conventions as soon as possible, if this has not yet been done, and, as concerns member states of the European Union, to implement them in a co-ordinated manner with regard to the upcoming European Union Directive;

8.1.2. strengthen their relevant national legislation, in particular by creating a strong legal basis for the intervention of law enforcement agencies according to procedures which are transparent and fully respectful of democratic principles and human rights;

8.1.3. support reinforcing the Lanzarote Convention by an Additional Protocol aimed at covering in more detail offences related to child abuse images;

2. Draft resolution adopted unanimously by the committee on 16 September 2011.

8.2. as concerns political measures to be taken, to:

8.2.1. develop comprehensive national policies tackling the issue from all possible angles, while following a clear “victim-centred approach” aimed at identifying victims and offenders as swiftly as possible, at halting the abuse and at assisting victims, including in the context of child-friendly justice systems to be developed according to the relevant Council of Europe guidelines adopted in November 2010;

8.2.2. set up efficient mechanisms to interrupt the commercial and non-commercial online distribution of child abuse images, giving priority to the rapid removal of illegal content wherever possible, but including the blocking of websites as a complementary measure when appropriate;

8.2.3. develop the dialogue with the private sector with the purpose of engaging its responsibility of immediately reporting any child abuse images identified and co-operating with law enforcement agencies;

8.2.4. support more systematic exchanges of information at European and international level on the one hand and further research on child abuse images and related offences on the other;

8.3. as concerns general awareness of the issue of child abuse images and related crimes, to:

8.3.1. strengthen the general dialogue by following a “multi-stakeholder approach”: public authorities, law enforcement agencies, civil society organisations, educational institutions and the individual family and child, including victims of past offences;

8.3.2. empower children and adolescents to protect themselves whenever possible, to strengthen their media awareness, and to make society as a whole aware of the impact and dangers of an increasing “sexualisation” of children in the media;

8.3.3. support the Council of Europe ONE in FIVE Campaign to stop sexual violence against children (2010-2014) by actively contributing to its European activities (including financial support to its parliamentary dimension), and by developing national campaign activities or direct links with existing national policies, including at parliamentary, local and regional level.

B. Draft recommendation[3]

1. Referring to its Resolution … (2011) on combating "child abuse images" through committed, transversal and internationally co-ordinated action, the Parliamentary Assembly recommends that the Council of Europe take a strong position on the action to be taken to combat child abuse images. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, CETS No. 201) belongs to the most complete and advanced standards in this field, next to the Optional Protocol to the United Nations Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography, the Council of Europe Convention on Cybercrime (Budapest Convention, ETS No. 185) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

2. However, the articles of the Lanzarote Convention on "child pornography" should be strengthened with regard to the full series of crimes related to child abuse images, including their production, distribution, collection and consultation. The fact that Article 20 (paragraph 1.*f*) of the convention provides an opt out to member states allowing them not to criminalise the act of "knowingly obtaining access, through information and communication technologies, to child pornography", is not acceptable for the Parliamentary Assembly. Provisions relating to the legal and political measures to be taken to effectively fight child abuse images and related offences should be further developed. These provisions should include the obligation to block websites with illegal content when their rapid deletion is not possible.

3. At national level, the Lanzarote Convention and the upcoming European Union Directive on combating sexual abuse and sexual exploitation of children and child pornography, expected to be adopted by the European Parliament and Council before the end of 2011, should be implemented in a co-ordinated manner, so as to ensure a maximum impact of these instruments on national legislation and, finally, the protection of every child.

4. The Assembly welcomes the general commitment of the Committee of Ministers to the protection of children's rights, not least by initiating the Council of Europe ONE in FIVE Campaign to stop sexual violence against children (2010-2014). It also welcomes the strong involvement of the Council of Europe in the "European Dialogue on Internet Governance (EuroDIG)" and encourages the Committee of Ministers to maintain a high level of activity in this field, also as a united European contribution to the international debate.

5. The Assembly therefore recommends that the Committee of Ministers:

5.1. continue promoting the ratification and implementation of the Lanzarote and Budapest Conventions in all member states;

5.2. elaborate and adopt an additional protocol on child abuse images and related crimes to the Lanzarote Convention as soon as possible, with the purpose of covering offences related to child abuse images in more detail and of reinforcing relevant provisions, in particular by criminalising not only the production and distribution of images but also their intentional consultation and by defining the blocking of illegal websites as a complementary but mandatory legal measure when deleting them fails;

5.3. initiate intergovernmental work on the legal responsibility of private players, notably Internet Service Providers (ISP), in the framework of the new Council of Europe agenda on matters of rule of law and of the Steering Committee on Media and New Communication Services (CDMC);

5.4. further develop and reinforce the ONE in FIVE Campaign in order to allow the Council of Europe and member states involved to address specific matters of sexual abuse and exploitation of children in an appropriate manner.

5.5. to ensure that the activities of Council of Europe bodies regarding the protection of children's rights and the right to the freedom of expression are well co-ordinated, *inter alia* by creating closer links between the Council of Europe programme "Building a Europe for and with Children" under its next strategy (2012-2014) and the intergovernmental work undertaken by the Steering Committee on the Media and New Communication Services, and by involving the Assembly at an early stage whenever appropriate.

3. Draft recommendation adopted unanimously by the committee on 16 September 2011.

C. Explanatory memorandum by Mr Conde Bajén, rapporteur

1. Introduction

"But I Was Only Looking…"[4]

1. The issue of "child pornography" is a complex one. It refers to a series of offences committed against children, starting with the solicitation, corruption or trafficking of children for sexual purposes and the trafficking of children, to the distribution, collection and consultation of images of the abuse committed, over various forms of sexual abuse perpetrated on children, sometimes even leading to their death. This series, already frightening enough in itself, may then even lead to further offences: people consulting "child abuse images" may be incited to produce such images themselves, either because the images have been the last trigger of an existing criminal potential, or because they will allow them to access some of the closed circles in which such images are often shared today.

2. "Child pornography" may therefore not only be the result and visual depiction of child abuse but also a "multiplier" of the sexual abuse and exploitation of children. As rapporteur of the present report, I am horrified by this series of interlinked crimes and its multiple causes and conditions in our society which go unnoticed by most of us. I am determined to shed some light on this complex issue, with the purpose of proposing concrete legal and political measures.

3. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, CETS No. 201) which was opened for signature in October 2007 and entered into force on 1 July 2010, defines the term "child pornography" 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". The Convention further defines as a "child" any person under the age of 18 years, which shall also be the definition adopted for the present report. Although the term of "child pornography" is widely used at the international level and in national legislation, and also appears in the title originally proposed for the current report, I suggest adopting a more appropriate terminology.

4. For many years, international child protection and law enforcement agencies have demanded that the terminology should be changed from "child pornography" to "child abuse images" (covering also animated pictures, drawings and images of fictional children), as the first does not sufficiently convey the seriousness of the abuse upon the child whilst the latter also refers to the impact upon the child and thus better reflects the complexity of the problem. For my report, I would like to use this term, which is also reflected by the new title suggested. In the long term, this notion or even the one of "child abuse material" (also covering texts) should be used in all legal texts and political debates in order to base European action on a common understanding and a common set of definitions. A complementary term often used by law enforcement experts is the one of "child exploitation material" which refers to any material which does not depict a sexual act involving a child but nevertheless shows a child in a sexualised pose.

5. There does not seem to be a universal definition of child sexual abuse. However, a central characteristic of most abuse cases is the dominant position of an adult that allows him or her to force or coerce a child into sexual activity (of various types). Child sexual abuse is not solely restricted to physical contact but can include noncontact abuse, such as exposure, voyeurism, and child pornography. Abuse by peers also occurs.[5] As concerns the term of "child sexual exploitation", it generally refers to more systematic or even commercial forms of child sexual abuse.[6] In this, it is distinct from the definition used by law enforcement agencies considering that "exploitation" refers to forms of abuse which do not involve physical contact.

6. The Council of Europe ONE in FIVE Campaign to stop sexual violence against children, mentioned in the original motion for this report (Doc. 12385), is aimed at raising awareness of and fighting the sexual abuse and exploitation of children in its various degrees and forms. It does so, amongst others, by promoting further signatures, ratifications and the full implementation of the Lanzarote Convention by all Council of Europe member states, and other states willing to accede to this convention. With my report, I wish to explore one of the "modern" problems of child abuse and exploitation, which is on the rise with the development of the

4. John McCarthy, Director of the SAFE Programme of New Zealand: Title of a presentation made at the Conference "Safety & Security in a Networked World: Balancing Cyber-Rights & Responsibilities", Oxford, 8-10 September 2005.
5. According to the American Psychological Association, Washington 2011, www.apa.org.
6. For example, according to ECPAT International, www.ecpat.net.

Internet and other new media. Detailed information provided by several international experts has been taken into account for this report in order to shed light on this complex matter in the most objective way and to allow the Assembly to make its own substantial contribution to this important debate.[7]

2. "Child abuse images": more than just pictures

7. Both the terms "child pornography" and "child abuse images" do not fully reflect the scope of the problem and all the offences involved. In reality, these terms do not only refer to the existence and consultation of pictures of child abuse as they may suggest. Behind each child abuse image – which most of us will never see or wish to see – there is physical abuse of at least one child victim, as well as a whole series of related crimes. In some countries the full range of activities linked to child abuse images are criminalised, involving activities drawing children into the abuse ("grooming", corruption of children, child trafficking), the actual sexual abuse of children with the purpose of producing images, the distribution of child abuse images, and finally the possession or consultation of such images. However, whilst the infliction of actual physical abuse on a child is uncontested as an offence, notably the consultation or viewing of "child pornography" by the individual Internet user is not yet considered and treated as a criminal offence in all countries, nor by all European standards.

8. Child abuse images are certainly not a phenomenon dating from the 21st century. Pictures of childhood sexuality have existed for many centuries, but became socially unacceptable in the 18th century with the increasing recognition of children's right to protection of their physical and moral integrity. However, today the production and dissemination of child abuse images are largely facilitated and fuelled by new media and especially the Internet. For each child abuse image produced, it can be expected that numerous offences are committed, as the online distribution of child abuse images exponentially multiplies the number of offences against the sexual integrity of child victims. Whilst in 1995, year often quoted as "year 0" before the Internet boom erupted in many countries, Interpol knew about 4 000 child abuse images in total, recent figures suggest that tens of thousands of individual children are concerned worldwide, and that every child is depicted in several pictures which are then endlessly reproduced. On the Child Exploitation and Online Protection Centre's (CEOP's) database in the United Kingdom alone, 850 000 distinct child abuse images are stored today.[8]

9. The circulation of child abuse images mostly happens within closed networks which offenders may only access through secured systems, often by delivering images of their own. These networks include "peer-to-peer" networks in their first generation, which have then been followed by more sophisticated open and closed networks using so-called "virtual systems" or "clouds" (based in several countries) or splitting images into several electronic files which would only be re-constituted by the authorised end user.[9] Developing the full history and methodology of the online distribution of child abuse images would, however, exceed the scope of this report and should therefore be done by those who need to examine the matter in more detail.

10. The anonymity of the Internet removes social barriers and taboos, creating the ideal setting for committing offences related to child abuse images and, at the same time, provides structures which make the identification of victims and offenders and the prosecution of the latter extremely difficult. Moreover, the production of child abuse images in most cases seems to take place in the circles of trust of children and images are exchanged via non-commercial channels and not as one could suspect, in the context of commercial exploitation activities. In their direct environments, children are drawn into sexual abuse via the so-called "four Ts": teaching ("this is a good thing happening"), threat, treat and trust. Given that children are often drawn into the abuse by persons they trust, the percentage of women participating in crimes related to child abuse images is on the increase. Some experts suggest a pyramidal typology for online content offenders, including those connected with child abuse images, and classify them into: simple viewers, open traders, closed traders and experts – with the level of expertise increasing from one layer to the next.[10]

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7. This refers in particular to the experts heard at the hearing of 22 March 2011 in Paris organised by the Social, Health and Family Affairs Committee: Ms Cristiana De Paoli, Head of Unit "Children and New Media" of Save the Children Italy; Mr Frédéric Malon, Chief superintendent, Head of the French Central Office for the Prevention of Violence against Individuals (OCRPV); Mr Arturo Canalda, Ombudsman for Children of the Community (regional government) of Madrid – any information for which no specific source is given in the text, was provided by one of these experts. Further experts heard at the meetings of the network of contact parliamentarians of the ONE in FIVE campaign are referred to below.

8. Online Crimes against Children, written by John Carr on www.freedomfromfearmagazine.org, quoting from the report of the Child Exploitation and Online Protection Centre (CEOP) to the Parliament in January 2010, www.official-documents.gov.uk/document/cm77/7785/7785.pdf.

9. John Carr, op. cit.

Interestingly, this typology, also used by Interpol today, clearly classifies the "simple viewers" amongst the online offenders. This position, taken by many law enforcement agencies, should finally find entry into all international and European standards, including the Lanzarote Convention.

11. Those who offend in one way or another do so for a variety of reasons and do not form a homogeneous group. Studies undertaken some years ago, but still valid, have revealed some of the reasons for collecting child abuse images: sexual arousal and gratification, justification of paedophile behaviour which is shared with many others, "preserving" a child's youth in form of pictures, using them as a medium of exchange with fellow exploiters, blackmail (using pictures to put pressure on children and their families), access to the market of abuse images via relevant exchange networks, and profit made out of child abuse images. Whilst some "child pornography" offenders will pose a direct threat to children (by abusing them), others will indirectly participate in the abuse because their demand for child abuse images can only be satisfied through children being sexually abused.[11] Effective prevention strategies will certainly have to examine the motivation of various categories of offenders in more depth in order to identify the appropriate action to be taken.

12. Recent figures on child abuse images are frightening: For 2010, the International Association of Internet Hotlines (INHOPE) notes over 24 000 reports of child abuse material processed, specifying that 71% of children were pre-pubescent, 25% were pubescent and 4% were infants. INHOPE further indicates that 77% of the victims are girls, 11% are boys and 12% of the images involve both genders, and that 78% of websites reported were non-commercial and 22% were commercially based, namely requiring payment of some kind.[12] Some experts say there is a marked growth in images of younger children being subjected to ever more violent and depraved sexual acts.[13] According to American specialists, in 2006, the benefits generated by paedo-pornographic images were estimated at 21 billion dollars, which gives just an idea of the scope of the commerce of child abuse images via the Internet, even though it must not be forgotten that most of the exchange of child abuse images is of a non-commercial nature. Generally, figures have to be handled with care: according to experts, high rates of identified victims or offenders provided by national authorities may not necessarily mean that there are more cases of abuse in a given country than in others, but can also reflect the country's greater awareness of the issue and inclination to share its figures at an international level. Another reason for figures (for example detection rates) varying from one country to the other seems to be that images are not taken into account in the same way: some countries would investigate all pictures identified, whilst others would neglect images where the person depicted seems to have reached the age of (sexual) maturity. This very sensitive issue is amongst those to be further clarified within each member state and in the context of future international exchanges and efforts for the harmonisation of legislation and policies.

13. In many cases, the production of child abuse images is closely linked with other forms of sexual child abuse and exploitation, such as "sex tourism". It is thus not a surprise that the production of child abuse images often involves the exploitation of children originating from poorer countries by offenders originating from richer countries. The issue is further indirectly linked to "softer" forms of child exploitation, such as, for example, that recently observed in Asian countries, where children are increasingly exposed as sexualised objects in entertainment shows forcing them to dress or behave in an adult way[14] (and where many of the children exploited for "child pornography" or "sex tourism" come from). The general "sexualisation" of the media accessible by children is also illustrated by recent reports from Switzerland which revealed that 37% of children between 10 and 12 had already seen pornographic images.[15]Child sexual abuse and exploitation worldwide are taking place in a context where children are increasingly "sexualised" by the media, by the entertainment sector or by advertisements in all our countries. It will not be possible to address all these issues in the present report, but it is important to be aware of them to understand why a comprehensive approach is required.

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10. Michael Moran: Online Child Abuse Material Offenders: Are we assigning Law Enforcement Expertise Appropriately? School of Computer Science and Informatics, University College Dublin, 8 November 2010. Michael Moran is also a Criminal Intelligence Officer at Interpol, Trafficking in Human Beings Sub-Directorate, on secondment from the Irish police.
11. John McCarthy, op. cit.
12. International Association of Internet Hotlines (INHOPE): Annual Report 2010, Amsterdam, www.inhope.org.
13. John Carr, op. cit.
14. How television degrades the image of childhood (*Comment la télé dégrade l'image de l'enfance*), *Courrier international* No. 1069, 28 April to 4 May 2011.
15. *Les enfants du porno* (The porno children), documentary broadcast on 7 avril 2011 on Télévision Suisse Romande (in French), www.tsr.ch.

3. Need for more committed action against child abuse images

14. The phenomenon of child abuse images is of both a local and global nature: victims are real and abuse takes place within our local communities while images can potentially be viewed by anyone in the world. To tackle the problem effectively, both dimensions need to be addressed. According to European law enforcement agencies, there are four main angles by which child abuse images can be tackled: 1) the producers of such images, 2) the websites hosting images, 3) the images themselves, and 4) the financial flows generated by commercial websites.

15. The usual proceedings in dealing with child abuse images would follow two strands. First of all, images or websites hosting them would be identified, very often through specialised hotlines dedicated to reporting child abuse images to the police, but increasingly through specialised programmes automatically detecting relevant key words linked to websites. National and international law enforcement agencies (national police forces in co-operation with Europol and Interpol) would then identify the Internet Service Providers (ISP) hosting the websites and through them try to reveal the origin and producers of images, thus the actual sex offenders, in order to prosecute them. Second, law enforcement agencies would, in parallel, seize and register the material and initiate the deletion of the relevant images from the Internet. Based on the child abuse images seized, they would try to identify the victims in order to stop the abuse inflicted upon them as soon as possible and prevent further abuse if possible. Unfortunately, it seems that not all national law enforcement agencies are making the same efforts with a view to the identification of victims and offenders, and the international co-operation that is required. Especially the practice of immediately blocking websites in order to avoid the "re-victimisation" of children every time their image is consulted, is not yet as widespread as it should be.

16. The complexity and difficulty of fighting crimes related to child abuse images is reflected by the discrepancy between the images registered and children actually identified: the International Child Sexual Exploitation image database (ICSE DB) of Interpol[16] contains about 650 000 child abuse images, and constitutes a major tool for international co-operation aimed at identifying child victims. National law enforcement agencies, such as the Central Office for the Prevention of Violence against Individuals (OCRPV) of the Criminal Investigation Department in France, generally have direct access to the Interpol database which facilitates the task of identifying victims and producers. However, it is estimated that only about 850 victims have been identified worldwide so far, 95 of them in France. In many countries specially trained and dedicated police services are in charge of unveiling new websites hosting illegal content. This often requires the intervention of undercover agents who need to be provided with a minimum stock of child abuse images themselves so as to be able to enter the "peer-to-peer" or other closed networks. Specialised staff require particular attention and follow-up, not only to make them psychologically strong against the images they have to view, but also to make sure that no paedophiles infiltrate relevant police forces to satisfy their personal desire. This shows how many resources need to be mobilised in order to effectively fight offences related to child abuse images.

17. According to Interpol, any policy aimed at effectively fighting child abuse images and related offences needs to follow a strong "victim-centred approach". In its Recommendation No. 4 (2011), the ICPO-INTERPOL European Regional Conference recalled that "the identification of the victim and offender halts further abuse and therefore reduces the levels of child abuse material circulating online", and that Interpol co-ordinates an International Victim Identification Specialists network and holds a core instrument with its International Child Sexual Exploitation Database (ICSE DB) quoted above. The Regional Conference further encouraged all member countries in the European region "to establish procedures for the systematic collection and storage of all child abuse material being seized or otherwise revealed within their jurisdiction" and to "establish a National Victim Identification Team … authorized … to be connected to the ICSE database".[17]

18. A recent case illustrates the success of joint efforts of investigation into child abuse images: the European Union law enforcement agency Europol (based in The Hague) recently managed – after years of investigation – to destroy one of the world's largest "child pornography" rings involving 670 suspects, 230 child victims and almost 200 arrests.[18] Victims and producers of child abuse images are, however, difficult to find,

16. INTERPOL is the world's largest international police organisation, with 188 member countries. Created in 1923, it facilitates cross-border police co-operation, and supports and assists all organisations, authorities and services whose mission is to prevent or combat international crime. It is based in Lyon (France). www.interpol.int.

17. ERC-2011/REC-04, Recommendation No. 4 adopted by the 40th ICPO-INTERPOL European Regional Conference in Malta on 11-13 May 2011.

18. Massive Dutch-run child pornography ring revealed, Radio Netherlands Worldwide (RNW), 16 March 2011, www.rnw.nl.

because they often originate from distant locations or can be found in complex criminal organisations. The general tendency, as already mentioned, concerns children from poorer countries or social classes exploited by people from wealthier countries or for the purpose of producing images to be commercialised in wealthier countries. The geographical distribution of child sexual abuse webpages as known to the Internet Watch Foundation (IWF)[19]in 2010 shows that most images are hosted in the United States (42%), followed by Europe (including Russia; 41%) and Asian countries (17%), which gives an indication of where they are produced. International co-operation with and between countries where child abuse images are identified exists, but is complex and very often involves lengthy procedures. Future policies therefore need to address this issue and make international co-operation more reactive and efficient, given that, via the Internet, child abuse images and related offences go beyond all geographical boundaries.

19. In addition to unveiling and putting an end to existing child abuse networks, it will be important to develop stronger and more comprehensive prevention strategies in the future. In this respect, further research in individual member states and at international level will be required in order to better understand the "pattern" of abuse taking place with the purpose of producing child abuse images. Fighting the production of child abuse images will certainly have to pass through fighting the root causes for the sexual abuse of children in general, through making children strong against any attempts to sexually abuse of them, and especially through protecting the most vulnerable children from such crimes. Finally, the continued and reinforced involvement of the private sector is of crucial importance. With regard to child abuse images, private players appear both as "facilitators" of the distribution of illegal Internet content and as active participants in the fight against illegal Internet content, such as child abuse images. They need to be associated with public policies following the highest standards possible, and must be held responsible for any action that can be harmful to children, for example by knowingly putting online child abuse images or by not reporting such images wherever they are identified. Given that this matter has not yet been explored in depth at Council of Europe level, it should certainly be put on the agenda of the upcoming intergovernmental work concerning the media and new communication services.

4. Legal instruments, reference texts and approaches to the issue

20. Some countries have already developed strong legislation concerning child abuse images disseminated via the Internet, generally under legal articles concerning "child pornography". However, there seem to be great differences between national laws regarding the legality of individual acts and resulting penalties, which lead to loopholes that can still be exploited by producers, distributors and collectors of child abuse images. A 2010 study by the International Centre for Missing and Exploited Children (ICMEC) shows that out of 196 countries analysed, 89 had no legislation at all that specifically addressed child abuse material, and of those who did, 33 did not criminalise the possession of child pornography (regardless of intent to distribute), whilst 52 did not even legally define child pornography.[20] In the light of such results, most experts agree that there is an urgent need for more consistency, common legal frameworks and co-ordinated international action.

4.1. European and international legal framework and reference texts

21. Until now, there have been three main international legal instruments which explicitly address child abuse images: the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, the Council of Europe Convention on Cybercrime (Budapest Convention) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). All three are effective tools for combating the sexual exploitation and abuse of children because they contain specific definitions of offences as well as provisions criminalising relevant behaviour and allowing for more effective prosecution of perpetrators. According to international experts, notably the United Nations Optional Protocol and the Lanzarote Convention may also serve as a basis for setting up legal mechanisms that require governments to implement and provide for services to assist child victims and their families.[21] Generally, the Lanzarote Convention is considered as the most complete and advanced instrument aimed at protecting children against sexual abuse of any form.[22]

19. Internet Watch Foundation (IWF): IWF Operational Trends 2010, www.iwf.org.uk.
20. International Centre for Missing & Exploited Children (ICMEC) / The Koons Family Institute on International Law & Policy: Child Pornography – Model Legislation & Global Review, 2010: www.icmec.org.
21. Ibid.
22. See the Handbook for Parliamentarians on the "Lanzarote Convention" edited by the Parliamentary Assembly in January 2011.

Other important reference texts concerning child abuse images and related crimes, as well as sexual violence against children in general, are the United Nations Convention on the Rights of the Child (Article 34) and the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

22. Nevertheless, even these most far-reaching international legal instruments reflect a certain lack of consistency between national approaches in some aspects, such as the question of where child sexual abuse actually starts. Thus, the Lanzarote Convention, under its Article 20 on "child pornography", criminalises the full range of offences related to "child pornography", including its production, proposal, distribution and transmission, as well as its procurement to oneself and to others and possession. However, under Article 20, paragraph 1.*f,* it allows each party to reserve the right not to criminalise acts of "knowingly obtaining access, through information and communication technologies, to child pornography". Likewise, the Budapest Convention, covering "child pornography" under its Article 9, allows parties not to apply the paragraphs which would criminalise the act of procuring or possessing "child pornography" via computer systems. This means that many countries will not punish the "simple" consultation of child abuse images via the Internet, although the demand for such images is known to stimulate further abuse.

23. As rapporteur, I therefore consider that, with the purpose of further strengthening and harmonising national legislation in Europe and beyond, the intentional access to child pornography should be criminalised by all countries. In this respect, the Assembly should call for the preparation of an additional protocol to the Lanzarote Convention in which measures to be taken against child abuse images and related offences are to be reinforced and specified in order to create an instrument that corresponds to the complexity of this matter. Future changes to the Budapest Convention which could possibly be required in order to harmonise both texts again, shall not be treated in more depth here or in the recommendation to be proposed to the Committee of Ministers, so as not to "dilute" the central message of this report.

24. At the level of the European Union, a new Directive on combating the sexual abuse, sexual exploitation of children and child pornography is underway. Once adopted by the European Parliament, this directive will finally replace current European Union legislation and notably Framework Decision 2004/68/JHA. Member states will then have two years to transpose the new rules into their national laws. Although the draft directive seems to be based on a large consensus between the European Commission, the European Parliament and the Council of the European Union, long "trialogue" negotiations, involving nine informal meetings in 2011, were necessary before reaching the final compromise text, due to the particularly contested issue of website blocking (see below).

25. Further references made, more or less directly, to child abuse images and relevant counter-measures are to be found amongst the texts adopted by the Committee of Ministers of the Council of Europe. Recommendation CM/Rec(2008)6 on measures to promote the respect of freedom of expression and information with regard to Internet filters develops a detailed set of guidelines ensuring that Internet filters aimed at protecting certain groups (children in particular) against harmful content, are applied in the most transparent, democratic manner and that their effectiveness, proportionality and legitimacy are regularly reviewed. The Declaration of the Committee of Ministers on protecting the dignity, security and privacy of children on the Internet (adopted on 20 February 2008) covers yet another aspect of child protection on the Internet that is often forgotten: it refers to the risks of Internet content which children themselves put online, and which may challenge their dignity, security or privacy or renders them vulnerable, and invites member states to provide for possibilities for deleting such content as swiftly as possible.

26. The Assembly has adopted various texts related to the freedom of expression on the Internet and the protection of children against harmful content in recent years. In its Recommendation 1882 (2009) on the promotion of Internet and online media services appropriate for minors, however, it refers in particular to possibly harmful Internet content which children or adolescents may try to access themselves, whilst, regarding child abuse images, the harm to children would rather be done at the moment when the images of sexual child abuse are actually produced. Nevertheless, the recommendation already calls for greater legal responsibility of Internet Service Providers (ISP). In Resolution 1757 (2010) and Recommendation 1936 (2010) on human rights and business, the Assembly generally calls upon member states to promote the implementation of human rights standards in business and provides interesting references with regard to general co-operation with the private sector. Finally, in its Resolution 1733 (2010) on reinforcing measures against sex offenders, the Assembly calls for improved international co-operation and exchange of information concerning sex offenders known in each country (without favouring a European-wide sex offenders register) and concerning the abduction of children (through relevant alert systems).

27. We must welcome the fact that the Council of Europe covers the issue of child protection on the Internet so broadly and has done so for many years. However, it is important to make sure that messages sent out to member states and other stakeholders remain coherent, and that there is no contradiction between

respective positions taken in matters of freedom of expression, notably via the Internet, and of child protection against all forms of violence. Likewise, it will be of utmost importance that the different international and European texts are implemented in a co-ordinated manner, to make sure that notably the upcoming European Union directive which is intended to focus notably on substantive criminal law and the Lanzarote Convention of the Council of Europe, which provides for a broader legal framework, can be complementary in their effects in the future. European Union member states which have not yet done so should be invited to express their political commitment not only by transposing the European Union directive, but also by signing, ratifying and implementing the Lanzarote Convention.

4.2. The European debate on website blocking

28. The most effective way of removing illegal content from the Internet is the deletion of relevant websites "at source". However, where this is not possible, for example because a website is hosted in a foreign country and co-operation with the competent authorities proves difficult, the blocking of pornographic websites is an important additional tool allowing for the immediate hindering of access to child abuse images and thus the interruption of their exchange via a given website.

29. The issue of blocking has received much attention, including from the media, during the negotiations related to the above-mentioned draft directive drawn up within the European Union. Through its original text, strongly supported by Ms Cecilia Malström, Commissioner for Home Affairs, the European Commission wished to introduce an obligation on all member states to block access to paedo-pornographic content where their immediate removal proved impossible.[23] The European Parliament Civil Liberties Committee (LIBE), by voting a report on 14 February 2011 (rapporteur: Roberta Angelilli, Italy, EPP), proposed a number of amendments to the draft directive, including to the relevant Article 21 to make sure that blocking would continue to be optional for member states, as at present. In its argumentation, the LIBE Committee insisted that any measure taken by member states "shall respect fundamental rights and freedoms of natural persons, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms, the European Union Charter of Fundamental Rights and general principles of Union law".[24] In parallel to discussions led at European level, individual countries, such as Germany, have now abandoned their plans to systematically block websites containing child abuse images but will, in the future, focus on deleting such images as swiftly as possible,[25]whilst others, such as Italy, France, Sweden or the United Kingdom, have practised website blocking for several years,.

30. In their argumentation, the representatives of the European Parliament are very much in line with the Internet Service Providers which are generally opposed to website blocking as a mandatory legal measure, given that they qualify it as ineffective. The main argument put forward by them is that relevant websites are regularly transferred to new Internet Protocol (IP) addresses and that, therefore, "black-lists" would have to be updated very regularly, almost on a daily basis. Furthermore, according to them, much of the exchange of child abuse images takes place in closed networks only accessible to "insiders". They therefore consider that website blocking does not prevent sex offenders from exchanging their illegal material online, and that the removal at source is the only effective technical measure in the fight against child sexual abuse material. Further arguments against blocking are provided by those watching over the right to freedom of expression on the Internet and the protection of private data who fear that the introduction of blocking and filtering mechanisms might open the gates to their abuse for other motives (political, religious), in particular in less democratic societies (see chapter 4.3. below). The pan-European association of Internet Service Providers (EuroISPA), following an approach of "self-regulation", therefore calls for the setting up of stringent international co-operation procedures aimed at the removal of illegal content at source and otherwise declares its members' readiness to continue their own co-operation with international law enforcement agencies.[26]

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23. Questions & Answers on removal versus blocking of child pornography on the Internet: www.europarl.europa.eu/en/pressroom/background.

24. European Parliament (2009-2014), Committee on Civil Liberties, Justice and Home Affairs, 2010/0064, 24 January 2011: Draft report on the proposal for a directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (rapporteur: Roberta Angelilli, EPP).

25. *Bundesregierung hebt Sperrgesetz gegen Kinderpornos auf* (Federal government abolishes blocking law against child pornography), German newspaper *Die Zeit,* 25 May 2011, www.zeit.de.

26. EuroISPA: Effectively Fighting the Online Distribution of Sexual Child Abuse Material, September 2010. www.euroispa.org.

31. Child protection agencies, such as Save the Children, ECPAT or the British NSPCC (National Society for the Prevention of Cruelty to Children) – many of them organised jointly under the European NGO Alliance for Safety Online (eNASCO) – have always been strongly in favour of the immediate blocking of paedo-pornographic websites identified. They consider that every consultation of a child abuse image re-victimises the children depicted, encourages the creation of new victims and should be avoided in order to immediately interfere with the exchanges of child abuse material and to reduce the customer base of illegal websites. During the ongoing negotiation processes at European Union level, child protection agencies have therefore strongly lobbied for a provision making the blocking of paedo-pornographic websites a mandatory legal measure.

32. In their position, child protection agencies are totally in line with the approach followed by Interpol whose experts give numerous arguments in favour of blocking. High up on their list is the argument that blocking is a preventive measure that only those determined to access child abuse images will try to circumvent, an act which would then make it impossible to claim that they made an "accidental and unwilling access". Moreover, Interpol points out that utilising access blocking will free up resources within the police to work on identifying the victims of sexual abuse rather than handling recurring reports from the public or non-governmental organisations (ONG) about content being redistributed again and again on various web pages. However, Interpol favours a blocking solution that will redirect Internet traffic to a "stop page", which would then not only have the pedagogic effect of reminding the Internet user that the intended transaction was illegal, but also to provide a relevant complaint mechanism (to make the blocking procedure more democratic).[27]

33. Facing the argument that blocking may be technically difficult or ineffective, experts in favour of blocking claim that "such technology is regularly used by premium content providers to protect their rights (to sports, films and music rights) and sees no reason why Internet Service Providers (ISP) should not deploy similar technology to ensure that their services do not provide child abuse images".[28]For example, in the United Kingdom, British Telecom was the first to block the access to such images, counting 45 000 attempts of access in 2009, which would represent a possible 58 million attempts per year worldwide. One can therefore deduce that blocking can also be exercised on a large scale.[29] However, even child protection agencies admit that blocking is only one of many complementary measures in the fight against online child abuse material and that the deletion of images at source is by far the best answer.[30]

34. Many experts and decision-makers have examined the issue of website blocking in depth without reaching a final consensus on the effectiveness of such a measure. After having examined the various positions taken in this complex matter, and notably in the light of the solid experience of law enforcement agencies in this field, I am convinced that the blocking of websites should be made mandatory as a complementary measure wherever the immediate removal of child pornographic content is not possible. In this respect, I much regret that the European Union has missed its unique opportunity to have such a regulation transposed into the national legislation of all its member states, via the draft directive currently being prepared, and I believe that the Assembly should also express its regret in this matter. However, I support the Committee of Ministers (see Recommendation CM/Rec(2008)6 on measures to promote the respect of freedom of expression and information with regard to Internet filters) in saying that such measures on the Internet should fulfil the conditions laid out in Article 10, paragraph 2, of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights. All member states would have to make sure that, wherever websites are blocked and "black-listed" this happens in the most democratic manner. An independent supervision of relevant procedures by dedicated institutions, with the involvement of national law enforcement agencies, should ensure that blocking is undertaken in full respect of legal provisions, democratic principles and human rights, by foreseeing effective complaint mechanisms to avoid any misuse of blocking measures.[31]

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27. See Interpol website: www.interpol.int.
28. Save the Children: Comments by Save the Children on the revision of the Framework Decision on combating the sexual abuse and exploitation of children and child pornography, Brussels, 15 October 2008. www.savethechildren.org.
29. According to Mr John Carr, Senior expert adviser to the International Telecommunication Union, Child Online Protection Initiative (United Kingdom) on "Fighting child pornography on the Internet", in his presentation made to the Network of Contact Parliamentarians of the ONE in FIVE Campaign of the Council of Europe to stop sexual violence against children, in Strasbourg on 13 April 2011.
30. According to Ms Cristiana De Paoli, Save the Children Italy, at the hearing of 22 March 2011 in Paris organised by the Social, Health and Family Affairs Committee.
31. John Carr, op. cit.

35. For any law enforcement measure leading to the filtering or blocking of websites, and in order to avoid unlawful misuse of such measures, for example for political reasons, the Assembly's Recommendation 1897 (2010) on respect for media freedom provides for some interesting points of reference. In addition to legal action taken to block certain websites, more individual filtering mechanisms and tools (in the form of programmes designed for individual computers) should be promoted in all member states. Generally, media awareness, in particular for children, should be promoted by various measures and campaigns as is the case in many countries, for example in the framework of the Safer Internet Day (SID)[32] supported by the European Union, and by the Internet Literacy Handbook of the Council of Europe for teachers, parents and students which is very regularly kept up to date.

4.3. The role of the private sector and the European debate on "Internet freedom"

36. The private sector is an important partner for public authorities when it comes to fighting child abuse images online, given that the Internet is to a great extent based on the services of private companies, such as the Internet Service Providers who already contribute to the fight against illegal content in various contexts. Internationally, they are organised in the framework of the International Association of Internet Hotlines (INHOPE), along with a number of NGOs running national hotlines. The partners pursue the common aim of regularly reporting paedo-pornographic websites through its special INHOPE Report Management System which has been operational since January 2010 (IHRMS; see also figures provided in the introduction to this report). More organisations can be found at the national level, such as the Internet Watch Foundation (IWF) in the United Kingdom which is directly involved in the national blocking mechanisms.[33] Self-regulation of ISPs is also promoted via various professional associations at national or European level, such as the European Internet Services Providers Associations (EuroISPA), which openly condemns the distribution of child abuse material.[34] Major Internet companies such as Microsoft already take a proactive approach to the issue – according to Microsoft's own information, the company "[applies] filtering tools and [employs] more than 100 trained experts to help detect, classify and report child abuse images".[35]Other companies should be encouraged to follow this example in the future or to develop other proactive measures such as quality labels for websites and Internet services.

37. More generally, the discussion on how to fight child abuse images most effectively takes place in the context of a larger debate on the freedom of expression on the Internet or "Internet freedom". In many cases, the Internet can significantly enhance the exercise of most human rights and fundamental freedoms, and in particular the right to freedom of expression. However, the Internet may also be used in a way which threatens these rights and freedoms as well as the right to private life and secrecy of correspondence, and affronts human dignity – it here clearly reveals its "dark side".[36] It is to be welcomed that the Council of Europe actively contributes to relevant debates through various activities such as the recent organisation of the fourth "European Dialogue on Internet Governance (EURODIG)" in Belgrade on 30-31 May 2011, the current preparation of a Committee of Ministers' declaration on "Internet governance principles" (for autumn 2011) and the preparation of the Council of Europe Strategy on Internet Governance 2012-2015 to be adopted in Vienna on 24-25 November 2011. The Assembly should strongly support the "multistakeholder approach" pursued by the Council of Europe itself and close co-operation with the private sector, and consider participating more actively in this debate in the future. The presence of the Council of Europe in this debate is of utmost importance, also to make sure that European countries speak with one voice on international platforms such as the United Nations Internet Governance Forum (IGF).

38. Even in this context and the debates on "Internet freedom", many experts would agree that the right to freedom of expression needs to be lawfully restricted when it comes to the matter of child abuse images, just as is the case for "hate speech" in many countries. However, any limitation of access to the Internet would inevitably pose risks to the right to freedom of expression. Therefore, comprehensive policies are needed to address risks and harm to children on the Internet, which should be based on three pillars: respect of human rights, multistakeholder approaches (including the participation of children themselves) and international co-operation. Restrictive measures should be closely examined according to their proportionality, effectiveness

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32. See: www.saferinternet.org/web/guest/safer-internet-day.
33. Internet Watch Foundation: Annual and Charity Report 2010, www.iwf.org.uk.
34. EuroISPA: Effectively fighting the online distribution of child sexual abuse material, September 2010, www.euroispa.org.
35. Microsoft: Publication on "Combating Child Pornography Online" addressed to Policymakers, February 2011, www.microsoft.com/TrustOnline.
36. According to Ms Bissera Zankova, representative of the Bulgarian government at the Steering Committee on Media and New Communication Services (CDMC) at a hearing organised by the Social, Health and Family Affairs Committee on 22 June 2011 in Strasbourg.

and transparency and their consequences should be made known to member states so as to find entry into their comprehensive policies.[37] Although I fully agree with the need for such comprehensive policies, I still insist that the human right to the freedom of expression must not be ensured at the expense of children's human right to be protected from "all forms of sexual exploitation and sexual abuse"[38]as specified by the United Nations Convention on the Rights of the Child.

5. Conclusions

39. In the light of the results of this analysis, the Assembly should insist on stronger legislation, more committed political action and reinforced international co-operation between member states of the Council of Europe and other countries to ensure that our children are better protected from all the appalling crimes related to child abuse images. Action to be taken at European level, in particular at the Council of Europe, should start with the reinforcement of legal standards through an additional protocol to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

40. In this framework, there should be a change towards a common and precise terminology, speaking of "child abuse images" instead of "child pornography", and agreeing on a common understanding of such images and common criteria for investigations. Amongst the crucial issues to be clarified are, for example, how to deal with images on which a child's age cannot be clearly determined and how to deal with cases where sexual abuse has been committed by underage offenders or where sexually explicit images are put online, for example on social networking websites, by adolescents who are not aware of the illegality and consequences of their actions.

41. Amongst the political measures to fight child abuse images and related offences, the Council of Europe ONE in FIVE Campaign to stop sexual violence against children is an important vector to raise further awareness for the issue and invite member states to reinforce their own action against child abuse images at national level. In any action taken at Council of Europe level, it is important to send out coherent messages to member states and to thoroughly co-ordinate different activities (standard setting, promotion and assistance, etc.) in the fields of protection of children's rights and the protection of the freedom of expression (including via the Internet).

42. All member states should be ready to apply the most far-reaching measures to fight the production, dissemination and consultation of child abuse images, including the blocking of websites containing illegal contents wherever required and appropriate. Public authorities of member states should be ready to impose such complementary measures against the powerful arguments of the Internet industry which sometimes claims the right to "Internet freedom" to avoid in their view complicated and costly proceedings to block the access to illegal websites. Nevertheless, priority should be given to measures to ensure the identification of websites hosting child abuse images, followed by the rapid removal of these images and the identification and criminal prosecution of offenders. Only where this cannot be ensured in an acceptably short timeframe, which is to be defined, should blocking come in as an additional measure. Blocking should be undertaken in the most transparent and democratic manner through relevant supervised procedures, safeguarded against their abuse, ensuring the protection of private data and providing for relevant complaint mechanisms.

43. Any measure taken against child abuse images should further be part of comprehensive national and international strategies against the sexual abuse and exploitation of children, which take into consideration both the local and global dimension of the issue, which involve both legal and political measures, and which reinforce formal and informal international co-operation in this field, as well as close co-operation with the private sector. Whilst looking into specific problems, such as child abuse images or child sex tourism, all stakeholders involved must remain committed to resolving the root causes of child sexual abuse. More resources should be made available for research into child sexual abuse phenomena, their causes and the support to be given to victims, as well as to police and social services to investigate child abuse cases and prevent future abuse. These resources should also be used to initiate strong victim-centred approaches, including the institutional settings required (dedicated victim identification units), because the identification of victims and offenders is the only means to definitely halt the abuse linked to child abuse images. With a view to preventing offences related to child abuse images in the first place, the role of the educational sector is a crucial one from an early age onwards.

37. Ibid.
38. United Nations Convention on the Rights of the Child, Article 34, www2.ohchr.org/english/law/crc.htm.

44. Although some self-regulation and reporting action is already undertaken by Internet Service Providers and other companies, any private action following proactive approaches should be encouraged by public authorities. At the level of the Council of Europe, the matter of legal responsibility of private companies, especially Internet Service Providers should be further explored in the framework of the competent intergovernmental bodies.

45. Society as a whole must be made aware of the fact that the increasing "sexualisation" of children in the context of the media and advertisements is one of the factors stimulating the production and consumption of child abuse images. Any "sexualisation" of children, in the media and elsewhere, is therefore to be avoided and combated as it is a first step towards representing our children as sexual objects, making them vulnerable to abuse and exploitation by individual sex offenders and groups of criminals. However, children's rights and child abuse images as a criminal offence should be given more attention and prominence in the media.

46. Finally, our children themselves must be educated in a way which makes them aware, in a child-friendly manner, of dangers to their physical and mental integrity. They should be empowered to protect themselves when they can, and solicit the help of adults they can trust when they need to. This, however, must never absolve adults in charge of child care and public decision-makers from taking full responsibility for the protection of children in their care.