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The VWAA was formed in 1981 to advance the interests of women attorneys in Virginia, to encourage their mutual improvement and social interaction, and to promote the interests of women under law. The VWAA remains the only statewide bar association dedicated to the needs of women attorneys in Virginia as professionals and as women.

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The Abuse of Information and Communication Technologies for Child Sex Trafficking

By: Eliza Harrell; Sandra Marchenko; Naomi Van Treuren, International Centre for Missing and Exploited Children

Human trafficking – and in particular child sex trafficking – has evolved in recent years. What once happened on the streets and in back alleys is now arranged online with the help of information and communication technologies (ICTs).¹ These technologies offer a medium through which traffickers can recruit young girls into the sex industry; market and sell them for sex to a wide range of customers; and receive payments for their services. Those interested in purchasing these services can shop for sex with a minor in the privacy of their home with decreased risk of detection or public exposure.

While precise data can be difficult to uncover, it is clear that the scale of the phenomenon is large and its nature fluid, especially in light of current technological trends. It is estimated that as many as 1.8 million children are exploited in commercial sex or pornography worldwide,² though the exact scope is difficult to determine. The International Labor Organization (ILO) has estimated that globally as many as 1.2 million victims of trafficking are under the age of 18,³ and 43% of those were trafficked for the purposes of sexual exploitation.⁴

The Internet and related technologies are now more accessible and affordable, facilitating commercial and personal interaction across borders in ways that

impact both legitimate and illicit activities.⁵ These technologies allow the flow of information without boundaries on a global scale.⁶ While ICTs may not be inherently harmful, “...for those criminals searching for means of exploiting their victims, they provide ‘new, efficient, and often anonymous’ methods”⁷, thus “increasing their ability to exploit a greater number of victims across geographic boundaries.”⁸ So while sex trafficking is not a new phenomenon, ICTs offer new tools for criminals to conduct these types of illicit activities while concealing their own identities and decreasing their costs.⁹

Initially, traffickers had to travel, domestically or internationally, to purchase girls and women to be trafficked for sexual exploitation.¹⁰ But as ICTs have become more prevalent, “increasingly, the business of human trafficking is taking place online and over mobile phones.”¹¹ It is now possible for traffickers to view images of girls, bid on them, and then pay for their services entirely online.¹² The unregulated nature of the Internet allows traffickers to “...use this platform for criminal purposes with minimal risk of prosecution.”¹³

The unregulated nature of the Internet allows traffickers to “...use this platform for criminal purposes with minimal risk of prosecution.”

The *National Report on Domestic Minor Sex Trafficking* noted an 800% increase over a two- year period of reports of child sex trafficking victims who had been “prostituted with the aid of technology.”¹⁴ Popular social networking sites, online classified advertising sites, chatrooms, and

online gaming systems are all utilized to contact children and young people to “make connections with minors, advertise minors for sex, record sexual videos and images of minors for advertising, and transfer payment for commercial sex with a minor.”¹⁵

Specifically, traffickers frequently use the most popular social networking sites such as Facebook, MySpace, Twitter, and Instagram to recruit minors into sex trafficking and to maintain communication between the trafficker, the trafficked minor, and the customers.¹⁶ In one particular case, a trafficker searched these sites looking for attractive young girls. When he identified a possible victim, he would contact her online and compliment her, ask to get to know her better, and if she showed interest, he would ask for her cell phone number and contact her offline to make arrangements to meet in person.¹⁷ At least 16 young girls were lured in and agreed to meet this individual in person, subsequently being forced by him to engage in commercial sex.¹⁸ In a similar case, after the young girl agreed to meet her trafficker in person, he immediately began advertising her on various escort service websites like MyRedBook and trafficked her for several weeks before her rescue.¹⁹ He used Facebook not only to recruit his victims, but also to manage them, and post advertisements on escort websites.²⁰

Online classified advertising websites in particular have become a “primary venue for traffickers to sell sex with minors and

for buyers to purchase sex with child victims of trafficking.”²¹ According to AIM Group, a media research and consulting company, Backpage.com is the premier website for human trafficking in the U.S., accounting for nearly 70% of online ads for prostitution among the five websites that allow such ads in the U.S. and earning more than \$22 million annually from prostitution ads.²²

Another emerging frontier in this battle is the “deep web”, where more sophisticated offenders are now doing business to ensure their and their customers’ online anonymity.²³ The “deep web” encompasses sites and portals not found through standard search engine results; they can only be viewed with a specialized browser (such as Tor) that conceals the identity and location of both the user and the provider.²⁴ It is exponentially larger than the publically accessible web.²⁵ The “deep web” is a haven for sites that offer illegal commerce ranging from false identification to counterfeit currencies²⁶; it is “also a sanctuary for operators of child pornography sites like Hard Candy, Jailbait, Lolita City, PedoEmpire, Love Zone, and others for child abuse images.”²⁷ The “deep web” poses an emerging threat as traffickers look for new tools to use to exploit children while evading detection and identification.

The increasing anonymity offered by ICTs, which equates to low risk of detection, is not the only motivation for the migration of child sex trafficking. These

The “deep web” encompasses sites and portals not found through standard search engine results; they can only be viewed with a specialized browser that conceals the identity and location of both the user and the provider.

technologies also significantly expand the profit potential of such criminal activity. The ILO currently estimates that annual profits generated from trafficking may be as high as \$32 billion USD²⁸; this estimate can only increase with the use of technologies that lower the transaction costs of these enterprises. It has become so profitable in fact that, “some criminals have turned away from illicit activities such as drug dealing and robbery toward child sex trafficking, from which they can generate potentially several thousand dollars per day, as a single child can generate as much as \$1,000 on a weekend night.”²⁹ This profitability also has grown as “Internet advertising and web-enabled cellphones have aided pimps in reaching a larger client base”, giving them the ability to schedule more sexual encounters per child.³⁰ In turn, more organized crime syndicates have been drawn into this marketplace.³¹

The “methods and means of online trafficking are developing at much faster rates than laws that seek to protect trafficking victims.”

These trends are not limited to child sex trafficking exclusively however, as children are also vulnerable to other forms of exploitation via ICTs such as child pornography, online grooming, sextortion, and on-demand (live streaming) child sexual abuse. In 2010, the Department of Justice’s Project Safe Childhood published the *National Strategy for Child Exploitation Prevention and Interdiction*, which contained a threat assessment demonstrating increases over the last decade in

cybercrimes involving the sexual exploitation of children, including child pornography, online enticement of children for sexual purposes, commercial sexual exploitation of children, and child sex tourism.³² Furthermore, it has been estimated that by the end of 2014 there will be nearly 3 billion Internet users worldwide and 2.3 billion mobile-broadband subscriptions³³ making access to illegal content and related sites virtually unlimited thus expanding the risk to children exponentially.

Understanding these trends is crucial as there is significant overlap across the various forms of sexual exploitation; a child who has been groomed online may fall victim to trafficking and be forced into prostitution; pornographic images of a trafficking victim may be made; a trafficking victim may be victimized further through live streaming abuse ordered by a customer in another country. Technology plays an obvious role in each of these scenarios, changing the ways in which the traditional crimes of child exploitation are perpetrated. As a result, it is necessary to consider and analyze existing legal frameworks, with particular attention to the ways in which they must be adapted to this new context.

Legal Frameworks

With increasing research and resulting data, it has become evident that the Internet and related technologies have unquestionably contributed to the increase of trafficking.³⁴ And while many countries have taken steps to address human trafficking in their national laws, the majority of these laws do not specifically discuss the use of technology to facilitate trafficking. One assessment of existing laws, international agreements and other

policies related to Internet-facilitated sex trafficking found that the “methods and means of online trafficking are developing at much faster rates than laws that seek to protect trafficking victims.”³⁵

While there are several international treaties that address cybercrime and human trafficking, they are silent on several key issues – the use of ICTs to: 1) recruit sex trafficking victims; 2) market and advertise the sexual services of these victims; 3) sell the victims for sexual exploitation; and 4) receive payments for their sexual exploitation.³⁶

The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*, supplementing the United Nations Convention against Transnational Organized Crime, defines sex trafficking in Article 3(a) as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”³⁷ The term “exploitation” includes the prostitution of others or other forms of sexual victimization, and slavery or practices similar to slavery.³⁸ When considering a child victim, the means used to achieve consent is irrelevant. The Palermo Protocol does address the recruitment of child trafficking victims, by any means including online technologies, though it does not address advertising, selling, or receiving payments for trafficking.³⁹

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child

pornography (Optional Protocol) prohibits the sale of children by any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; prohibits child prostitution meaning the use of a child in sexual activities for remuneration; and prohibits child pornography.⁴⁰ Article 3 of the Optional Protocol includes in the definition of the sale of children offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation and/or child prostitution, as well as certain acts related to child pornography.⁴¹ The prohibition of “offering” a child for sale for the purpose of sexual exploitation, by any means (including via the Internet), can be interpreted as a prohibition of both advertising and selling a child through the use of ICTs. The Optional Protocol does not, however, address recruitment or receipt of payment, nor does it specifically use the term “trafficking” in the language of the law.

The *Council of Europe Convention on Cybercrime (Budapest Convention)* targets crimes that harm computer systems and crimes that are committed through computer systems.⁴² It focuses on offenses against the confidentiality, integrity, and availability of computer data and systems; computer-related offenses such as fraud or forgery committed via the Internet; content-related offenses regulating information sharing over the Internet; and offenses related to infringements of copyright and related rights.⁴³ It contains a provision to combat child pornography on the Internet, but “it does not go so far as to explicitly criminalize the use of the Internet to traffic children or to sell children into sexual servitude.”⁴⁴ The Convention is in large part designed to protect the integrity of computer systems and data, thus it “does

not broadly criminalize otherwise illicit activity perpetrated via the Internet.”⁴⁵

The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (Lanzarote Convention) requires Member States to criminalize offenses concerning child prostitution including recruiting a child into or causing a child to participate in prostitution; coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes; and having recourse to child prostitution.⁴⁶ Child prostitution is further defined as, “using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.”⁴⁷ The Lanzarote Convention does prohibit recruiting a child into prostitution and profiting from it, however the use of ICTs to facilitate these acts is not addressed. This is of particular note given that the Convention specifically addresses the use of ICTs to knowingly obtain access to child pornography and to solicit children for sexual purposes (online grooming), thus being an intentional omission by the Convention drafters.

The Council of Europe Convention on Action against Trafficking in Human Beings requires the criminalization of trafficking and utilizes the same definition of trafficking as the Palermo Protocol.⁴⁸ It also references recruitment, but does not make mention of the use of ICTs toward that end.

The inconsistency in definitions and scope of these international instruments, particularly as it relates to the use of ICTs, deserves attention. It is crucial that existing international law be amended to clearly

articulate the use of ICTs to facilitate the trafficking of children for sexual purposes including recruiting, advertising, selling, and receiving payment for the sexual services of minors, given that this technological trend is now defining the nature of these crimes today.

As there is currently no international consensus and “no global law directly criminalizing the use of the Internet to recruit, advertise, sell or otherwise exploit victims of sex trafficking”⁴⁹, domestic law should be enacted to address Internet-facilitated sex trafficking now, as these tools are of specific use to practitioners and can have immediate, positive impact for child victims. In the interim, existing national laws can also be better utilized to prosecute traffickers,⁵⁰ particularly considering that the nature of these cases generally involves overlapping forms of exploitation. In these scenarios, both civil and criminal laws such as immigration, financial (i.e. anti-money laundering), labor, cybercrime, and others

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may be applicable and maximized to achieve the same effect of apprehending and detaining those who profit from the victimization of children.

In turn, the gaps in existing legal frameworks should be addressed through the introduction of new, innovative laws that recognize the ever-evolving nature of technology. For example, current legal definitions (where available) of intent, possession, and production of child

pornography, cannot be easily translated into the arena of live web-streaming.⁵¹ So perpetrators who order and view live child sexual abuse acts from afar are not necessarily prosecutable under current statutes related to child pornography or other criminal codes, as they have not stored copies of this content that can then serve as evidence of their crimes.

Additional domestic legal provisions that should be considered include: 1) allowance for extraterritorial jurisdiction to permit prosecution of a trafficker, regardless of where the crime took place and/or the accused's country of origin/ citizenship; 2) the removal of dual criminality requirements to facilitate the prosecution of an offender in his own country, even when the actions were legal in the country in which they were committed⁵²; 3) the introduction of safe harbor laws (non-punishment) to protect the victim from prosecution of a crime like prostitution; 4) the concept that the consent of a child victim of trafficking should be irrelevant; and 5) the civil, criminal, and/or administrative liability of legal persons for offenses of child sexual exploitation.

In order to effectively implement these legal provisions, law enforcement agencies should be given the ability to undertake proactive measures and use special investigative methods as the “effectiveness of techniques such as electronic surveillance undercover operations ... cannot be overemphasized.”⁵³ A 2011 report by the *National Institute of Justice* “examined law enforcement efforts to address sex-trafficking demand and found that

technology facilitated reverse sting operations” are one of the most commonly used tactics in the U.S.⁵⁴ Of the 140 closed cases the report analyzed from across the U.S., 85% were sex trafficking cases of which 27% used the Internet as a tool for trafficking.⁵⁵ Such operational success can be duplicated in other countries if law enforcement officers are similarly empowered. Together, these legislative and operational tools can decrease “forum shopping” by perpetrators, and ensure global unity in the fight against child sexual exploitation.

Supporting Initiatives

Strengthened national legislation and the harmonization of laws are essential, but instituting a variety of approaches such as raising public awareness, supporting capacity building programs for key personnel, encouraging industry responsibility, and fostering cross-sector collaboration are also important elements of a comprehensive approach to international child protection efforts.

Further research on current trends, challenges, and best practices is necessary in order to fully understand the scope of the problem, to foresee ongoing and potential trends and threats, and to ensure the proper allocation of resources. This will help better inform the global response to these crimes in a way that prioritizes both efficiency and effectiveness.

It is also important that law enforcement, prosecutors, and judges be fully trained on how ICTs may facilitate trafficking crimes and other forms of child sexual exploitation; what tools and skills

Of the 140 cases analyzed from across the U.S., 85% were sex trafficking cases of which 27% used the Internet as a tool for trafficking.

are needed by key personnel to adequately investigate these cases; and proper methods for collecting evidence to ensure the chain of custody for prosecution. Building the professional capacity of the criminal justice sector will ensure proper implementation of legal frameworks while also helping to better inform future policymaking efforts.

Private industry, especially those in the ICT sector (i.e. Electronic Service Providers, online advertisement sites, social networking sites, etc.), also have a responsibility to participate in anti-trafficking efforts. This may include introducing measures such as terms of use agreements that strictly prohibit illegal activity, developing procedures for reviewing advertisements prior to posting, reporting illegal content on their networks to the appropriate authorities, instituting firm policies for data retention and preservation, cooperating with law enforcement in case of an investigation, and even providing online safety awareness materials for their customers.

These companies can also partner with the criminal justice sector to develop new technological tools that can help track, identify, and locate trafficking victims and perpetrators, much like PhotoDNA has done for online child pornography.⁵⁶ Enhanced relationship mapping tools can supplement these technologies, to help investigators more effectively record and analyze the rising involvement of organized crime networks in online child sex trafficking as well. Ultimately, efficient and effective data collection and information sharing exponentially increases the likelihood of successful law enforcement operations.

International legal cooperation and cross-border and multi-sector collaboration is critical to maximize resources, avoid duplication of efforts, facilitate the

exchange of information, and aid in the swift identification of child victims, as well as the perpetrators who harm them.

As demonstrated, the gap between existing legal frameworks and the current patterns in ICT-facilitated sex trafficking and other crimes is self-evident and troubling. The legal community must advocate for changes in national and international laws, while fostering the development of resources and tools that can combat these crimes in this new digital age.



International Centre
FOR MISSING & EXPLOITED CHILDREN

The International Centre for Missing & Exploited Children (ICMEC) is a private 501(c)(3) nongovernmental, nonprofit organization. It is the leading agency working internationally to combat child abduction and sexual abuse and exploitation. The organization has built a global network of 22 nations, trained law enforcement in 121 countries and worked with parliaments in 100 countries to enact new laws on child pornography.

ICMEC works in partnership with INTERPOL, the Organization of American States and the Hague Conference on Private International Law among others.

For more information about ICMEC
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Sandra Marchenko is the Director for The Koons Family Institute on International Law & Policy at the International Centre for Missing & Exploited Children (ICMEC) in Alexandria, Virginia.

ICMEC promotes the safety and well-being of children through activism, policy development, and multinational coordination. ICMEC's programs and initiatives are uniting the world and providing international solutions to the problems of child abduction and exploitation.

As Director for The Koons Family Institute, Sandra assesses existing child protection laws around the world, provides recommendations for reform, and develops and promotes model legislation. She works with local, national, regional, and international agencies to harmonize the collection of data and statistics on child sexual exploitation. Sandra also works to develop up-to-date research and key resource materials to assist NGOs, government agencies, and other institutions in their efforts to combat all forms of child victimization.

Sandra came to ICMEC from the Fairfax Bar Association, where she was the MCLE Coordinator for more than five years. In this capacity, she coordinated the continuing legal education program for the 2000+ member organization and worked closely with the local Bench and Bar on a variety of programs. During law school and immediately after, she worked as a volunteer attorney with the World Organization for Human Rights, working with torture victims seeking asylum in the United States.

Prior to law school, Sandra worked for the International Research & Exchanges Board (IREX), first opening its representative office in Rostov-na-Donu, Russia, and then in the Washington, D.C. headquarters. Her

responsibilities included everything from program-specific work to managing the overseas network of field staff in 23 countries.

Sandra holds a B.A. in Russian Language and Literature with a minor in History from the University of North Carolina at Chapel Hill. She earned a J.D. from the American University Washington College of Law in Washington, D.C. and is licensed in the Commonwealth of Virginia. She is fluent in Russian.



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As Program Coordinator for The Koons Family Institute on International Law & Policy, Naomi provides support for the development, implementation, and evaluation of ICMEC programs. She assists with research and writing on topics relating to child sexual exploitation, missing children, and abduction, as well as the collection and harmonization of data and statistics on child sexual abuse and exploitation. Naomi also coordinates the recruitment and daily oversight of ICMEC's internship program, and provides general administrative support for ICMEC.

Naomi holds a B.A. in Criminal Justice with a minor in Political Science from The George Washington University. She earned a J.D. from The Catholic University of America Columbus School of Law in Washington, D.C. and is licensed to practice law in Maryland.

Eliza Harrell began her career in law enforcement at the Manhattan District Attorney's Office as a paralegal, and was selected to attend the Westchester County Police Academy to become a sworn law enforcement officer in the agency's Central Investigations Bureau. She worked cases ranging from child abuse to white-collar crime, while also attending several elite training programs, including the NYPD Criminal Investigations Course, HIDTA Advanced Narcotics Investigations, and MAGLOCLEN Money Laundering Investigations.

She returned to the local area as a case manager with the National Center for Missing and Exploited Children's Family Abduction Unit in 2007, where she utilized her investigative training and practice, in addition to her fluency in Spanish, on a daily basis. She specialized in domestic and international child abductions to the Western Hemisphere, including Latin America, Canada, the Caribbean, Spain and Portugal. She also traveled extensively as a member of the Jimmy Ryce Law Enforcement Training Center, teaching best practices for investigation and management of family abduction cases to local, federal and international law enforcement officers across the country. In fact, she was commended in 2008 by Chief Cook for her roll call training offered to APD on response protocols for family abductions/custodial disputes which led to revision of the department's directive for these types of incidents.

Now as Director of Marketing & Engagement for the International Centre for Missing and Exploited Children, Eliza coordinates outreach, communications and marketing efforts for global campaigns against child abduction, sexual abuse and exploitation. She also secures grant funding on behalf of the organization, in coordination with program staff and organizational leadership.

Eliza graduated cum laude with a bachelor's degree in International Relations from the School of Foreign Service at Georgetown University and recently completed her Master's Degree in Public Administration (with a concentration in Administration of Justice) from George Mason University.

Endnotes

¹ The term information and communication technologies (ICTs) refers to hardware and software devices and programs like personal computers, scanners, digital cameras, multimedia programs, and communications equipment like the Internet, email, video conferencing, wireless networks, and mobile services.

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⁴⁹ Kunze, *supra* note 6, at 253.

⁵⁰ Youngbee Dale, *Money laundering and human trafficking*, THE WASHINGTON TIMES, Aug. 14, 2012, <http://communities.washingtontimes.com/neighborhood/ri-ghts-so-divine/2012/aug/14/money-laundering-and-human-trafficking/>.

⁵¹ EUROPEAN FIN. COAL. AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN ONLINE, *Commercial Sexual Exploitation of Children Online: A Strategic Assessment*, 11 (Oct. 2013) https://www.europol.europa.eu/sites/default/files/publications/efc_strategic_assessment_public_version.pdf.

⁵² Daniel Edelson, *The Prosecution of Persons Who Sexually Exploit Children In Countries Other than Their Own: A Model For Amending Existing Legislation*, 25 FORDHAM INT'L LAW J. 483, 497 (2001).

⁵³ UNITED NATIONS OFFICE ON DRUGS AND CRIME, *Toolkit to Combat Trafficking in Persons*, 190 (2008) http://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook%5B1%5D.pdf.

⁵⁴ Latonero, *supra* note 11, at 11.

⁵⁵ *Id.*

⁵⁶ *PhotoDNA Newsroom: Press Materials*, MICROSOFT, <https://www.microsoft.com/en-us/news/presskits/photodna/materials.aspx> (last accessed May 14, 2014).