

# THE DIGITAL CHILD

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# DIGITALIZATION OF CHILDREN'S EXPERIENCES

- ▶ Child Pornography
- ▶ Sexting
- ▶ Cyber-Surveillance
- ▶ Cyber-Bullying
- ▶ Revenge Porn
- ▶ Remote, Live Sexploitation
- ▶ Virtual Child Pornography
- ▶ Trolling and Misogyny

# DIGITAL CRIMES HAVE A UNIQUE IMPACT ON CHILDREN (EXAMPLES)

- ▶ Sexting
  - ▶ Emerging sexuality
  - ▶ Treated as criminal sometimes
  - ▶ Public exposure and humiliation
  - ▶ Could become revenge porn
  - ▶ Permanency of record
- ▶ Cyber-Bullying
  - ▶ Adolescents' heightened sensitivity to peer relations
  - ▶ Lack of sensitivity due to “virtual” nature of media (amplifies aggressive actions)
- ▶ Child Pornography
  - ▶ Two stages of restoration
    - ▶ After initial trauma ends
    - ▶ After victim discovers that images exist on the Internet (potentially never ends); each time DOJ notice is received

# EVERYWHERE FOREVER YET NOWHERE EVER

- ▶ Internet and Digitalization Crosses Spheres & Jurisdictions Brings into Question Who Is Responsible for Prevention, Regulation, Enforcement, and Recovery
  - ▶ Home/Family
  - ▶ School
    - ▶ Corporate Content Moderators (Facebook and Google)
    - ▶ Governmental Content Moderators (China's "Big Mamas")
  - ▶ County/State Legal Structure
    - ▶ District Attorneys
    - ▶ State Attorneys General
    - ▶ DHS

# EVERYWHERE FOREVER YET NOWHERE EVER (CON'T)

- ▶ National Legal Structure
  - ▶ ICE
  - ▶ FBI
  - ▶ U.S. Postal Service
  - ▶ USDOJ
  - ▶ Non-Profits (NCMEC, ECPAT, etc.)
- ▶ Foreign and International Legal Structures
  - ▶ Europol (see, e.g., European Cybercrime Centre, which primarily provides services to law enforcement)
  - ▶ Interpol
  - ▶ Foreign Governments/Courts
  - ▶ United Nations
    - ▶ U.N. Committee on the Rights of the Child
    - ▶ UNICEF
    - ▶ Child Online Protection (“COP”) of U.N.’s International Telecommunications Unit
    - ▶ Annual Internet Governance Forum

# EVERYWHERE FOREVER YET NOWHERE EVER (CON'T)

- ▶ International Treaty Bodies
  - ▶ International Labour Organization
  - ▶ U.N. Committee on the Rights of the Child
- ▶ International Criminal Court
- ▶ Regional Courts
  - ▶ EU Court of Justice (“Right to Privacy”)
  - ▶ Inter-American Court of Human Rights
  - ▶ African Court on Human and People’s Rights
- ▶ Regional Treaty Bodies
  - ▶ African Committee on the Rights and Welfare of the Child
  - ▶ Council of Europe
  - ▶ SAARC

# WE CAN'T KEEP UP

- ▶ Rapidly Evolving Nature of the Crimes Makes it Difficult to Promulgate Legislation that Addresses the Unique Nature of Digital Crimes (Examples)
  - ▶ *Amy and Vicky Act/Paroline vs. U.S.*
  - ▶ Sexting
  - ▶ Virtual Child Pornography
  - ▶ Remote Sexual Exploitation
  - ▶ Social Media
  - ▶ Trolling

# WE CAN'T KEEP UP: CURRENT INTERNATIONAL LEGAL RESOURCES

- ▶ U.N. Convention on the Rights of the Child (U.S. NOT a party)
- ▶ **Article 17**
- ▶ States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.
- ▶ To this end, States Parties shall:
  - ▶ (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
  - ▶ (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
  - ▶ (c) Encourage the production and dissemination of children's books;
  - ▶ (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
  - ▶ (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.



# CURRENT INTERNATIONAL LEGAL RESOURCES (CON'T)

- ▶ U.N. Convention on the Rights of the Child (con't)
  - ▶ Preamble mentions dignity *three* times
  - ▶ Art. 16 provides that “No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation [and] [t]he child has the right to the protection of the law against such interference or attacks.”
  - ▶ Art. 19 requires members to take appropriate measures to “protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse ....”
  - ▶ Art. 39 requires countries to take all appropriate measures to promote physical and psychological restoration and social reintegration of a child victim of exploitation, abuse, or any other form of “cruel, inhuman, or degrading treatment ... Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.”

# CURRENT INTERNATIONAL LEGAL RESOURCES (CON'T)

- ▶ U.N. Committee on the Rights of the Child
  - ▶ General Comment No. 17 (2013 on Art. 31 CRC/C/GC/17-17<sup>th</sup> Apr.) on the Internet and Digital Media
- ▶ U.N. Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (U.S. IS a Party)
  - ▶ Art. 9 requires countries to ensure that sexually exploited children receive medical and psychological services for their full integration into society.

# CURRENT INTERNATIONAL LEGAL RESOURCES (CON'T)

- ▶ ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, Convention No. 182 (U.S. Is a Party)
  - ▶ Art. 7(2)(B) requires each member to “provide the necessary and appropriate direct assistance for . . . their rehabilitation and social integration”
- ▶ Council of Europe Convention on Cybercrime
- ▶ Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (“Lanzarote Convention”)
  - ▶ Art. 14 provides “Each Party shall take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child’s views, needs and concerns.”

# CURRENT INTERNATIONAL LEGAL RESOURCES (CON'T)

- ▶ European Union Directive 2012/29/EU requires member states to provide adequate support to victims and to “encourage offenders to provide adequate compensation to victims.”
  - ▶ 2012/29/EU implementation is due in 2015
  - ▶ Member states are already required to provide support under Directive 2011/92/EU & Framework Decision 2001/220/JHA

# GAPS IN THE SYSTEM

- ▶ Children Prosecuted for Sexting under Child Pornography Laws
- ▶ Blurred distinction
  - ▶ Crime vs. Poor Judgment
  - ▶ Victim vs. Perpetrator
- ▶ Tension between Free Expression and Privacy Rights
- ▶ Jurisdictional Issues (e.g., can schools/parents/governments regulate children's social media activities?)
- ▶ Widespread Sexualization of Children in Media and Commerce
- ▶ Victims' Funds May Not Provide for Victims of Digital Crimes
- ▶ Less than Seamless Coordination between Enforcement Authorities
- ▶ Limited Enforcement and Recovery (Especially Cross Border)

# LOOKING FORWARD

- ▶ Consider Supporting Development of Robust Privacy Rights for Children
  - ▶ Develop Copycat of California's Eraser Bill
  - ▶ Expand COPPA to Cover All Children (not just those under 13 years)
- ▶ Expand Sexting Legislation to Other Jurisdictions
- ▶ Explore Ways to Use EU's Privacy Rights to Limit Distribution of Digital Images/Materials
- ▶ Rescind Immunity for Internet Service Providers (under Communications Decency Act)

# LOOKING FORWARD (CON'T)

- ▶ Develop Cross-Border Recovery Systems/Funds for Child Victims of Digital Crimes
- ▶ Explore Development of Technological Innovations that Would Destroy Harmful Data
  - ▶ “Search and Destroy” Software
  - ▶ Disintegration of Data (Snapchat)
- ▶ Automatic Copyright of Images of Children (Allows Recovery)

# LOOKING FORWARD (CON'T)

- ▶ Require Corporate Content Moderator Staffs to Have Gender Proportionality
- ▶ New Definitions of Child/Youth to Include Young Adults in Light of Neurological Development?
- ▶ Need for a New Optional Protocol?