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### Internet Sexual Predators: Protecting Children in the Global Community

Madeleine M. Plasencia

University of Miami School of Law, [mplasencia@law.miami.edu](mailto:mplasencia@law.miami.edu)

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# Internet Sexual Predators: Protecting Children in the Global Community

*Madeleine Mercedes Plasencia\**

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*“[C]yberspace”—located in no particular geographical location but available to anyone, anywhere in the world, with access to the Internet.<sup>1</sup>*

I’m riding on the BART in San Francisco; the young man in front of me

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\* Assistant Professor of Law, University of Tulsa College of Law. I thank Byrgen Finkelman for reviewing many versions of this Article and providing expert guidance in construction and refinement of the piece as it progressed. Thanks go to Berta Hernández-Truyol for suggesting this venue, Patricia Cain for moral support, Dean Martin H. Belsky for pointing me in the direction of human rights and international child rights materials, Marianne Blair for international family law insights, and tremendous research support from my assistants, Matthew Wood, Catherine Mitchell, and Douglas Murphy. Thanks to the staff of The University of Iowa *Journal of Gender, Race & Justice*, and particularly to editors Adam Rodriguez, Anel Dominguez, and Erich Buck for commentary and support. Thanks go to contributions made by the participants and audience of the fourth annual symposium, *A Critical Legal Perspective on Entertainment: Sports, Sex and Identity*, hosted by *The Journal of Gender, Race & Justice* on October 15-16, 1999. The original version of this Article was presented at the symposium. Finally, this Article was supported by the Summer Research Grant awarded by the University of Tulsa, 1999. Any errors or omissions in the Article are exclusively those of the author.

1. Reno v. ACLU, 521 U.S. 844, 851 (1997).

reads through the sports scores as I, without his knowing or probably caring, scan the “Bay Area” section of his *San Francisco Chronicle*. *San Jose Man Charged in Sex Prisoner Scheme Plan to bring Viet Girl to U.S.* reads one news item.<sup>2</sup> I immediately ask for the page, and he hands it over. The article is about a forty-one-year-old man living in San Jose, California, and his sexual relationship with a thirteen-year-old Vietnamese girl living in Vietnam. How did a San Jose adult man and a Vietnamese child become sexually involved? He found her through the Internet.<sup>3</sup>

## I. INTRODUCTION

The Internet, serving as the largest network of computers in the world, has provided the horizontal parallax over which all can participate in communication and transaction, education and entertainment.<sup>4</sup> It also serves a community of participants and beneficiaries whose goals are not always shared or legal. The rise of this advanced technology has led to a new “red light district.”

Unlike the physical spaces available for the distribution of pornography and sexual favors for money, the Internet, with its lack of structure, has led to an unimaginable amount of pornography available for any on-line spectator.<sup>5</sup> Information necessary for consummation of transactions in the sex economy worldwide is more easily available than ever before. Moreover, children worldwide are now at greater risk than ever before.<sup>6</sup>

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2. Bill Wallace, *San Jose Man Charged in Sex Prisoner Scheme Plan to Bring Viet Girl to U.S.*, S.F. CHRON., Sept. 24, 1999, at A24.

3. See *id.*; discussion *infra* Part II.B.

4. Advanced technologies have been said to lead to a new international economy, an economy of transactions free from spatial, political, cultural and synchronicity boundaries. See generally T.G. LEWIS, *THE FRICTION-FREE ECONOMY: MARKETING STRATEGIES FOR A WIRED WORLD* (1997) (discussing how the significant break from the old ways of thinking, and from traditional economics, has affected a company’s ability to compete in today’s marketplace). The invention of the printing press caused a similar stir. Monastic handwritings, allowing for the sharing of information among the educated elite, were forever changed by the mass production and availability of writings. The result of the press was to allow the democratization of knowledge. First seen as a dangerous proliferation of material, the printing press came to provide the means of edification and empowerment for those who could read. See CURT FERDINAND BUHLER, *THE FIFTEENTH CENTURY BOOK: THE SCRIBES, THE PRINTERS, THE DECORATORS* 40-65 (1960); see also LUCIEN PAUL VICTOR FEBRVE, *THE COMING OF THE BOOK: THE IMPACT OF PRINTING 1450-1800* (1976) (describing the emergence of the book and its historical significance).

5. Access to pornography over the Internet has been the subject of an ongoing struggle between Congress to limit access and the Supreme Court to reaffirm First Amendment free speech rights. For example, in *Reno v. ACLU*, 521 U.S. 844, the Court struck down the Communications Decency Act of 1996, enacted to prohibit the transmission of “obscene or indecent” communications over the Internet to any person under 18 years of age, on First Amendment grounds. *Id.* at 885.

6. See discussion *infra* Part II.

In Part II of this Article, I discuss how the Internet puts children at greater risk. Part III is an examination of cases arising out of Internet use that led to abuse of children. Part IV explores the Internet and the mail-order bride business as it affects children outside the United States. In Part V, I discuss crimes involving what is termed “virtual abuse.” Part VI covers legislative responses to the problem. In Part VII, I examine jurisdictional problems encountered with crimes involving cyberspace. Finally, Part VIII provides my conclusions and a caveat.

## II. CHILDREN AT RISK

With quick and anonymous virtual travel made possible through the Internet, pedophiles are “logging on” and forming chat groups, swapping pornographic images and sharing true stories of sexual activity with children.<sup>7</sup> This process of bonding with other pedophiles by forming support sites in cyberspace has been referred to as “virtual validation.”<sup>8</sup> The danger of virtual validation is that conduct that would otherwise be subject to criminal sanctions is validated by other pedophiles. Supported and encouraged fantasy triggers action in the real world. Provocative images of child pornography, stories of sex and other community-supported chat bolster and empower a pedophile’s sense of self. The pedophile, in return, is more likely to act. “Pedophiles who make contact with children have a developmental pattern,” says Dr. Chris Hatcher, a clinical psychology professor.<sup>9</sup> “It begins with fantasy, moves to gratification through pornography, then voyeurism, and finally to contact. The Internet accelerates that pattern. It quickly gives pedophiles a level of virtual validation that would have otherwise taken years to obtain.”<sup>10</sup> And, it makes it easier for pedophiles to access vulnerable children.

The Internet also makes enforcement of existing laws, especially those prohibiting child pornography, extremely difficult. In 1982, the Supreme Court upheld a ban on the distribution of materials depicting children engaged in

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7. America Online (AOL) was instrumental in distributing child pornography through its lines. Stephen M. Case, former CEO of AOL, admitted to *Rolling Stone* magazine in 1996 that “up to half of the money-making chat on AOL was devoted to sex.” Neil Munro, *Building a Case*, NAT’L J., July 31, 1999, at 2218, 2221. For anecdotal evidence of the impact of the Internet on the proliferation of child pornography, see John Simons, *Seeking Victims in Cyberspace*, U.S. NEWS & WORLD REPORT, Sept. 19, 1994, at 73.

8. See Bob Trebilcock, *Child Molesters on the Internet: Are They in Your Home?* REDBOOK, Apr. 1997, at 100, 138 (quoting Chris Hatcher, Ph.D., a clinical professor of psychology at the University of California in San Francisco, who coined the phrase “virtual validation”).

9. *Id.*

10. *Id.*

sexual conduct.<sup>11</sup> The Internet, with its mushrooming popularity, has done an end-run around enforcement procedures traditionally used to seize and limit the physical entry of child pornography into the United States. With the advent of increased technology such as the digital camera, pedophiles are able to produce images directly on-line. No photo shop need be involved, and no traditional enforcement scheme works in this paperless environment. And as the San Jose case demonstrates, pedophilia is no longer contained by local, state, or national boundaries.

### III. THE INTERNET PREDATOR

#### A. *The Faces of the Predator*

The FBI indicates that the profile of the United States pedophile is “young, white and wealthy.”<sup>12</sup> The disappearance of a child linked to Internet child traffickers prompted FBI agents to launch the “The Innocent Images” investigation project in 1993.<sup>13</sup> Since its inception, 413 people have been arrested and 337 convicted of on-line child pornography trafficking or using the Internet to solicit children for sex.<sup>14</sup> “Only a handful have not been upper-class, educated white men,” according to Special Agent Pete Gulotta.<sup>15</sup>

Most often, pedophiles discovered surfing for children on the Internet have been “military officers with high clearances, pediatricians, lawyers, school principals, and tech executives.”<sup>16</sup> Successful pedophiles “are better with your children than you are. They give them more attention. They are your swim coach, your Sunday school teacher—people you trust to come into contact with your child every single day.”<sup>17</sup> Your average pedophile “is not the dirty old man

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11. *New York v. Ferber*, 458 U.S. 747, 764 (1982) (declaring that child pornography is not entitled to First Amendment protection provided that “the conduct to be prohibited . . . [is] adequately defined by the applicable state law, as written or authoritatively construed”).

12. The vast majority of persons trafficking in Internet child pornography are “almost all white males between the ages of 25 and 45” and are “upper-middle-class educated white men.” Maria Seminerio, *Pedophile Profile: Young, White, Wealthy* (Sept. 20, 1999) <<http://www.zdnet.com/zdnn/stories/news/0,4586,2337621,00.html>>.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Bob Trebilcock, “*Why Pedophiles Go On-Line: One Convict’s Story*,” REDBOOK, Apr. 1997, at 100, 102 (quoting “Bob,” a computer expert and recovering pedophile); *see also Teacher Admits She Lured Girl For Sex Via Chat Room*, CHI. TRIB., Apr. 21, 2000, § 1, at 10 (detailing a female schoolteacher’s foiled attempt to have sex with a 16-year-old girl); *Internet Sex*, CITY NEWS SERVICE, Feb. 28, 2000, available in LEXIS, News Library, City News Service File (describing music teacher who used work computer to chat with minor).

in a trench coat, but a teacher at your local elementary school. The Internet becomes his outlet.”<sup>18</sup> As the cases below demonstrate, absent the Internet, the men would never have met the children.

### B. The San Jose-Vietnam Case

On September 24, 1999, Michael David Rostoker was arrested in San Jose, California for “traveling to engage in sex with a minor and enticing someone under 18 into sexual activity.”<sup>19</sup> Rostoker was no ordinary fellow. He was a forty-one-year-old engineer, chief executive officer of a software research company and a well-known and respected patent attorney.<sup>20</sup> He was president and owner of a subsidiary of the Kawasaki Group, a corporate conglomerate numbering in Forbes’s top fifty revenue-grossing companies of 1999.<sup>21</sup> Rostoker once designed computer systems for General Electric and was in-house counsel for Intel. In fact, in 1998, he was in the LL.M. program at Stanford University School of Law.<sup>22</sup> Yet, socially, Rostoker had a secret of sorts. His sexual partner was a child who lived in Vietnam, twelve hundred miles from his home in San Jose.<sup>23</sup> But that did not deter Rostoker. He traveled eleven times to Vietnam in 1999 to meet with the then thirteen-year-old girl.<sup>24</sup> Access to the child cost money; Rostoker paid the girl’s family \$150,000 to “buy her.”<sup>25</sup> To secure his sexual opportunities, he also paid \$900 a month to the girl’s family in order to make her available to him for sex on a visit-by-visit basis.<sup>26</sup> Eventually, he decided he wanted her to live with him, as his “sex slave” in the United States. Rostoker concocted a plan to keep the girl “secure”

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18. Trebilcock, *supra* note 17, at 102 (quoting “Bob”).

19. Erin McCormick & Jim Herron Zamora, *Slave Trade Still Alive in U.S.: Exploited Women, Children Traffic[k]ed From Poorest Nations*, S.F. EXAMINER, Feb. 13, 2000, at A1, available in LEXIS, News Library, S.F. Examiner File. Michael Rostoker was arrested in September of 1999 as he prepared to board a plane, allegedly on his way to pick up a 13-year-old girl from Vietnam. *Id.* Rostoker was charged with traveling to engage in sex with a minor and enticing someone under 18 into sexual activity. *Id.* In e-mail correspondence with the young Vietnamese girl, Rostoker scolded her for saying that she was too young for sex, and told her that it was “easy” to find girls younger than her in Saigon who are prostitutes for sex. *Id.*

20. Howard Mintz, *Agents: CEO Tried to Import Girl, 13, to Wed*, (Sept. 24, 1999) <[http://www.mercurycenter.com/resources/search/center/search\\_newslibrary.html](http://www.mercurycenter.com/resources/search/center/search_newslibrary.html)>.

21. *Id.*

22. *Id.*

23. *Id.*

24. See Wallace, *supra* note 2 (according to an affidavit filed in the federal district court in San Jose).

25. Mintz, *supra* note 20.

26. *Id.* In addition, Rostoker paid a tutor to help her learn English. *Id.*

in his country home, tucked away in the Santa Cruz Mountains. FBI agents apprehended him at the San Francisco airport on his way to pick her up in Vietnam and fly her back with him.<sup>27</sup> He was indicted and held on a two million dollar bond.<sup>28</sup>

How did such a bizarre case arise? Rostoker was able to make Internet contact with a girl broker, pay the broker, and set up an e-mail account to communicate with the child.<sup>29</sup> Ironically, Rostoker's cache of seducing e-mails was a key element in uncovering the child sex scheme.<sup>30</sup> Each of the eleven times Rostoker boarded the airplane to Vietnam, he did so with the intention of having sexual contact with a child, albeit in a foreign country.<sup>31</sup> This was sufficient to criminally indict him in any jurisdiction in the United States.<sup>32</sup>

### *C. The Oklahoma Cases*

Another example of exploitation, this time in the heartland, occurred when a child pornography ring was discovered in Northeast Oklahoma and became the recurring news item during the doldrums of the pre-football season on local television in October of 1999.<sup>33</sup> The reports revealed a long history of Internet sexual stalking of children by adults that included systematic and wrenching abuse. Beginning in 1995, the parents of a five-year-old boy and his eleven-year-old sister received money for videotaping the boy and his sister having sex with several men, their mother and stepfather and animals, including sex in bondage.<sup>34</sup> The police seized over three hundred videotapes in the multi-county child pornography ring and made a series of arrests including the stepfather and mother of the victims.<sup>35</sup> The men who possessed copies of the videos ranged in

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27. McCormick & Zamora, *supra* note 19. Rostoker went to Vietnam to "marry" the young Vietnamese girl in April of 1999, and was trying to obtain a forged birth certificate showing her to be 18 so that he could bring her back to the United States as his wife. *Id.*

28. *Id.* Rostoker has since posted the two million dollar bond and plead not guilty to the charges. *Id.*

29. *Id.*

30. *Id.*

31. McCormick & Zamora, *supra* note 19.

32. See 18 U.S.C. § 2422 (1986) (prohibiting anyone from "using the mail or any facility or means of interstate or foreign commerce . . . [to] knowingly persuade[], induce[], entice[], or coerce[] any [minor] individual . . . to engage in prostitution" or other sexual crimes).

33. See *NBC News* (KRJH NBC television broadcast, Oct 8-22, 1999). For two weeks without interruption, Tulsa television news carried stories about child exploitation. The same material that sells on the shelves of "dirty picture" stands sells air time during the news.

34. Janet Warford-Perry, *Porn Charges Filed*, *TULSA WORLD*, Oct. 5, 1999, available in LEXIS, News Library, Tulsa World File.

35. *Id.*

age from thirty-two to fifty-three years.<sup>36</sup> The crimes took place in the hole in the “golden buckle” of the Bible belt—Tulsa, Bristow, Sand Springs, and Miami, Oklahoma.<sup>37</sup> Prosecutors in the Oklahoma cases maintain that because one of the accused men, Wayne Siegel, had a home computer with access to the Internet and many of the images were maintained on computer disks, the images must have been transmitted to others over the Internet.<sup>38</sup>

#### *D. The Oklahoma to Illinois Cases*

A companion news story to the Oklahoma cases included the horrors of the Sanger case, involving an Illinois man who seduced children over the Internet.<sup>39</sup> The first contact between the abuser and the victim took place in chat rooms. Once there, Sanger would get the child to meet him “alone.” E-mail correspondence led to “real time” rendezvous.<sup>40</sup> Sanger would electronically entreat the child to visit and play with him just as he might lure a child into a car. Having relocated to Oklahoma following arrests for possession of child pornography in Chicago, Sanger continued preying on children using the Internet.<sup>41</sup>

#### *E. The California Cases*

Child exploitation through the Internet is no stranger to Silicon Valley. Deploying expertise in software and encryption technology, many of the pedophiles captured in California are executive “techie” types. One technology executive, William Bowles, the former chairman of Webcaster iBeam Broadcasting, used the moniker “ValleyGuy” to pursue his juvenile love

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36. *Id.* Arrested in this Tulsa county raid were Ricky Welch, 46; Ronald Dean Curts, 53; Truman Wolery, 51. *Id.* The victim’s stepfather, Jerrod Julian, and mother, Heike Julian, were charged with possession of child pornography and child abuse. *Id.*

37. *Id.*

38. David Harper, *Federal Sex Case is Tossed*, TULSA WORLD, Feb. 2, 2000, available in LEXIS, News Library, Tulsa World File.

39. *Bristow Man Accused of Distributing Child Porn*, (Oct. 2, 1999) <[http://www.ardmoreite.com/stories/100199/new\\_bristow.shtml](http://www.ardmoreite.com/stories/100199/new_bristow.shtml)>; see also *NBC News* (KJRH NBC television broadcast, Oct. 14, 1999) (reporting the various sexual assaults both children endured).

40. See *Bristow Man Accused of Distributing Child Porn*, *supra* note 39.

41. *Child Pornography Case May Involve as Many as 20 Victims*, (last modified Oct. 12, 1999) <[http://www.ardmoreite.com/stories/101299/new\\_porno.shtml](http://www.ardmoreite.com/stories/101299/new_porno.shtml)>. John Perry Sanger was accused in a child pornography case that may have involved up to 20 victims. Sanger allegedly threatened to harm two juveniles, a 9-year-old boy and his 12-year-old sister, if they didn’t carry out his requests for sexual favors. *Id.*



objects.<sup>42</sup> In August of 1999, he was arrested for trying to consummate an on-line relationship with a Sacramento police officer posing as a thirteen-year-old boy.<sup>43</sup>

In another California case, police posed as a thirteen-year-old girl and apprehended thirty-four-year-old Patrick Naughton, an executive vice-president of Infoseek Corporation, for attempting to have sex with a "child."<sup>44</sup> Infoseek is Disney's partner in the Go Network Internet portal.<sup>45</sup> Once a "rising star" at Disney, he had been hand-picked to head up Disney's new search engine for youth, Go.com. Naughton also assisted in the development of ESPN.com. Disney has always aggressively defended its position as a leader in the protection of children using the Internet and specifically its portals, Disney.com and ESPN.com.<sup>46</sup> The undercover police officer repeatedly told Naughton that "she" was only thirteen.<sup>47</sup> Still, Naughton insisted on meeting for a physical relationship. He was nabbed by police at a Santa Monica pier waiting to meet the "girl." The police seized his laptop, which stored sexually explicit images of children.<sup>48</sup>

In a case out of Woodland Hills, California, Francis J. Kufrovitch, a forty-three-year-old financial advisor, traveled from California to Texas to meet a twelve-year-old Connecticut girl he met on the Internet.<sup>49</sup> Apparently, the girl was attending a swim meet with her mother in Irving, Texas.<sup>50</sup> Kufrovitch took a room adjacent to the one the girl and her mother occupied at the motel. The mother of the victim found the pajama-clad girl in Kufrovitch's room with him, having interrupted Kufrovitch in the midst of a sexual advance by knocking on

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42. *Executive Pleads Guilty*, FRESNO BEE, Nov. 25, 1999, at A27.

43. *Id.* William Michael Bowles was charged with and admitted to an attempted lewd act with a child and two counts of possession of child pornography. He agreed to a year in county jail and probation for five years. *Id.*

44. Bruce Orwall & Kara Swisher, *Infoseek Executive, Due for Disney Post, Charged With Luring Minor on Internet*, WALL ST. J., Sept. 20, 1999, at B8. Patrick Naughton was convicted in December of 1999 under the Child Pornography Protection Act of 1996. *Id.*; see also Lisa Bowman, *Patrick Naughton Faces Retrial* (Jan. 5, 2000) <<http://www.zdnet.com/zdnn/stories/news/0,4586,2417667,00.html>>; Dennis Taylor, *Sex and the Executive: Recent Cases Involving Executives and Minors Could be Related to Job Stress*, BUS. J., Dec. 17, 1999, at 21 (discussing the way stress may prompt sexual compulsiveness).

45. Orwall & Swisher, *supra* note 44.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Man Pleads Guilty to Luring Girl on Internet Cyberspace*, L.A. TIMES, Mar. 14, 1998, at B8.

50. *Id.*

the door.<sup>51</sup> Law enforcement officials obtained testimony from three other minors regarding intercourse with Kufrovitch.<sup>52</sup>

In yet another California case, a teenage girl was seduced by a thirty-seven-year-old man, Jonathan Wolf, who went by the alias of "Master Deville."<sup>53</sup> She told her mother she was going to a friend's party, while her real intention was to run away with her on-line beau.<sup>54</sup> Wolf told her to remove the hard disk drive from her computer so that her on-line conversations could not be located after she left her house.<sup>55</sup> "Deville's" plan involved chatting with minors on-line, then paying for the minor's travel by bus from nearby or remote states.<sup>56</sup>

#### F. The Washington Case

In a case involving the cross-border luring of minors, two Washington men, Adam Ingram, age twenty, and Kevin Woods, age nineteen, kidnaped two Canadian girls from Vancouver, ages thirteen and fourteen, after meeting them on-line.<sup>57</sup> Ingram and Woods raped the girls and forced them to have sex with other men.<sup>58</sup> The men's plan was to have them work in San Diego, California in an escort service run by Ingram's cousin.<sup>59</sup>

All of these cases came about as a result of Internet contact between adults and children. While the focus so far has been on domestic cases, there are increasingly international dimensions to this problem. Part IV explores the relationship between the Internet and the mail-order bride industry as that industry reaches children beyond the borders of the United States.

### IV. A NEW GENERATION OF MAIL-ORDER BRIDES AND GROOMS

#### Sifting through the history of the mail-order bride and domestic child

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51. *Id.*

52. *Id.*

53. Stacy Finz, *Man Seeking Sex Slave Lured Pinole Teen, Police Say: Suspect in Internet Case Released on Bail*, S.F. CHRON., Dec. 29, 1998, at A11. In this case, Wolf, 37, declared in his Internet profile on Yahoo, "I'm accepting applications for a female slave. . . . She must be willing to relocate and serve me 24 hours, seven days a week." *Id.*

54. *Id.*

55. *Id.* Although the minor girl did remove the hard drive from her computer as Wolf instructed, police were led to the pair by two diskettes left behind in her bedroom. *Id.*

56. *Id.*

57. Jennifer Bjorhus, *Men Plead Not Guilty to Prostitution Charges*, PORTLAND OREGONIAN, Jan. 16, 1998, at C05.

58. *Id.*

59. *Id.*

pornography industries, linkages emerge. Proponents of the mail-order bride business refer to this business as a “cross-cultural dating service.”<sup>60</sup> Opponents of certain segments of the mail-order bride industry generally refer to the business as “sexual slavery.”<sup>61</sup> Either way, the profile of the mail-order bride has changed dramatically since the industry began.

Historically, this method of marrying did not involve the crossing of races, nationalities or cultures. In the seventeenth century, early settlers of Quebec emigrated from France to marry French soldiers.<sup>62</sup> In the eighteenth and twentieth century, Japanese and Korean laborers in Hawaii sought mail-order brides from their home countries.<sup>63</sup>

In recent decades, radical changes have occurred. Between 1970 and 1983, the number of mail-order brides from Asia leaped from 34 to 3428.<sup>64</sup> A large number of mail-order brides have come from the Philippines.<sup>65</sup> Filipinas typically have married a groom from the United States, Australia, Canada, or western Europe.<sup>66</sup> The majority of the grooms are white.<sup>67</sup> Most grooms sought “youthful” brides, often as young as age thirteen.<sup>68</sup>

Many commentators have observed the enabling relationship between sex tourism and mail-order brides.<sup>69</sup> The Internet adds a new dimension to this nexus by intertwining the two industries. Internet travel leads to physical travel in ways not otherwise available, facilitating the exploitation of minors internationally. First, contact with children in other countries is more efficient and effective through Internet sex brokers. The same companies that offer mail-order bride services often carry tours of Third World countries with sexual

60. See Eddy Meng, Note, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197, 217 (1994).

61. *Id.* at 199.

62. *Id.* at 200.

63. *Id.*

64. *Id.* at 201.

65. *Id.* at 200-06.

66. Meng, *supra* note 60, at 204-05.

67. *Id.* at 204.

68. See Donna R. Lee, Comment, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 146 (1998) (focusing on the Philippines); see also Jenny Booth, *Child Prostitution: “The New Kind of Economic Slavery,”* SCOTSMAN, Jan. 12, 2000, at 6 (“As intercontinental travel has grown cheaper and easier, [child sex] tourist industries has [sic] sprung up in a number of developing countries, including Kenya, Gambia, Honduras, the Dominican Republic and Guatemala.”).

69. See Lee, *supra* note 68; Meng, *supra* note 60; see also Christine S.Y. Chun, Comment, *The Mail-Order Bride Industry: The Perpetuation of Transnational Economic Inequalities and Stereotypes*, U. PA. J. INT’L ECON. L. 1155, 1164 (1996) (noting the way many bridal agencies advertise sex tours as part of their regular services).

rendezvous as part of, or central to, the excursion.<sup>70</sup> Second, children in economically disadvantaged countries may find themselves on the streets, begging for food and shelter, and often resorting to prostitution.<sup>71</sup> These children are particularly vulnerable to opportunistic adults. In Indonesia, for example, only fifty-four percent of children were enrolled in that country's public school system in 1998, which charges fees for tuition, uniforms, and books.<sup>72</sup> Together with many young Indonesian women, these children sell their bodies for survival.<sup>73</sup> The abuse that was once possible only through personal, "face-to-face" contact, typically on playgrounds or schoolyards, is now available through the use of the Internet.

## V. VIRTUAL ABUSE

The Internet has provided a platform where the margins of physical and virtual space are constantly blurring. The conceptual and physical reach of the law must attempt to keep pace with the technologically enabled "travel" and "touching" that can only take place in cyberspace. In *United States v. Laney*,<sup>74</sup> the defendant was convicted of participating in the "live" molestation of a ten-year-old girl, although he was neither physically nor temporally present during the Internet broadcast or on-line chat.<sup>75</sup> Although other members of his child pornography ring (the "Orchid Club") were present through the Internet during the molestation, Laney viewed the molestation transmitted to his computer about five days later.<sup>76</sup> In this case, the mere perception of images as they unfurled on a two-dimensional screen allowed "touch" to transcend physicality.<sup>77</sup>

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70. See *Lee*, *supra* note 68, at 160.

71. *Id.*

72. See Jared Levinson, "Living Dangerously": Indonesia and the Reality of the Global Economic System, 7 J. INT'L L. & PRAC. 425, 450-51 (1998).

73. *Id.* at 451.

74. 189 F.3d 954 (9th Cir. 1999).

75. *Id.* at 957.

76. *Id.* at 957-58. Other members of the Orchid Club "participated" in the molestation by sending messages during the "airing" and by exchanging messages over the Internet in a "chat room" in "real time." The messages involved requests for particular acts to be performed and shared responses to the images. *Id.*

77. Consciously or not, the *Laney* court applied Aristotelian views of reality. This cyberlaw case is illustrative of the collapse between physical space and virtual or perceived space that only Aristotelian or Newtonian physics could have anticipated. What were once the musings of philosophers or science-fiction writers have now become issues before the courts. For a general introduction to the philosophy of Aristotle, including Aristotle's argument that reality is defined by the perception of matter in motion, see generally HELENS. LANG, *THE ORDER OF NATURE IN ARISTOTLE'S PHYSICS* (1998). "Aristotle defines form as the end when it acts as a principle of motion, and actuality is regularly identified as a cause of

## VI. LEGISLATIVE RESPONSES TO THE PROBLEM

As the range of cases demonstrates, no single law or approach has successfully protected the world's children from the myriad forms of abuse made possible by and available on the Internet.<sup>78</sup> Recently, the United States and other nations around the globe have responded to the explosion of sexual exploitation of minors.<sup>79</sup> Specifically, the United States passed the Child Pornography Prevention Act (CPPA) in 1996.<sup>80</sup> The CPPA maintains that a

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motion, i.e., the mover." *Id.* at 246.

A recent speech by Nicholas Negroponte, Director of the Media Lab at the Massachusetts Institute of Technology, notes the direction of technology, which is increasingly integrating these Aristotelian influences. Negroponte's predictions for the future may seem far-fetched, but are they?:

There's clearly a trend today away from a single-minded view of a keyboard, a screen, and something sitting on a desk or your lap. It's moving into things that fit in your pockets or your hands and serve multiple purposes. . . . Where do we go beyond that? We move into a world where the form factor of computing will be very surprising. . . . One discovery we made recently is that the human body itself serves as an extraordinary means of moving data. You can move about a 100,000 bits per second through your body.

An example of that is a cell phone composed of nothing more than two rings—think of these like wedding rings—one with a speaker on it, the other with a microphone. And while it's not very fashionable, you wear one on your thumb and one on your little finger, and when you place a call the signals move through your body. The phone itself is actually in your shoe. It's a little different from Maxwell Smart because we don't have to take off our shoes in this case. It also happens to be a means of generating power, because as you walk you generate a fair amount of power that can be captured. The notion of parasitic power will be very much a part of the future world of digital devices that are transparent, have personality, and have very, very different form factors.

And if you can move bits through the body, anything you touch can deliver bits to you, or you can deliver bits to somebody whose hand you shake. An example of that would be an ATM machine five or ten years from now. You punch in the numbers, and the machine says, "One moment. Hold your finger on the 1 key as I download a couple of hundred dollars into your body." It gets downloaded into the digital wallet that, let's pretend, is in your shoe. And then when you go to pay somebody at the store, you pay him \$39.95 by shaking his hand, and maybe he's leaning on the cash register [to which the money is electronically transferred].

And where will MP3 players get their data from in the future? We assume it comes from some RJ-11 jack plugged into the Internet or wireless data link. Well, it may be that the way two kids exchange a piece of music is by shaking hands. Their MP3 players just swap the bits. . . . That kind of data exchange will be very, very much a part of the future. It sounds silly today, but I promise you that this is the sort of thing that will happen.

Bob Ankosko, *Welcome to the Future*, STEREO REVIEW'S SOUND & VISION, January 2000, at 9, 9.

78. This Article does not propose or promote arguments asserting that limitations should be placed on the growth and accessibility of the Internet. The presence of child pornography on the Internet is not desirable; however, this author in no way suggests that the rest of the content of the Internet be sacrificed in the interest of containing international or domestic purveyors of smut.

79. See Margaret A. Healy, Note, *Prosecuting Child Sex Tourists at Home: Do Laws in Sweden, Australia, and the United States Safeguard the Rights of Children as Mandated by International Law?* 18 FORDHAM INT'L L.J. 1852, 1873-1912 (1995) (surveying the laws against child sex tourism in these various countries and international law in general).

80. 18 U.S.C. § 2252(A) (1996).

visual depiction of those who “appear to be” a “minor” in sexually explicit conduct amounts to child pornography.<sup>81</sup> In addition to striking out at child pornography using actual children, the CPPA was also passed in an effort to keep pace with the evolving methods of image production available in cyberspace.<sup>82</sup> Congress specifically sought to prosecute purveyors of “virtual pornography,” images of virtual children in sex acts peddled through e-mail, viewable on the Internet and storable on computer disks.<sup>83</sup> The production of virtual pornography involves morphed images of adults, drawings, or other graphical images digitally altered to appear as actual children in sex acts.<sup>84</sup> Cases questioning the constitutionality of the CPPA have resulted in conflicting rulings between the circuits.<sup>85</sup>

In 1998, President Clinton passed The Protection of Children from Sexual Predators Act (PCSPA),<sup>86</sup> which prohibits foreign travel by a United States citizen with the intent to engage in sexual acts with someone under the age of eighteen years.<sup>87</sup> Moreover, transmitting the e-mail address of a person fifteen-years-old or younger with the intent to entice, solicit or engage in any sexual activity is punishable by a fine and up to five years in prison.<sup>88</sup> Under the PCSPA, electronic communications service providers have a duty to inform enforcement officials of the production and known sharing of child

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81. *Id.* § 2256(8)(B).

82. *See Free Speech Coalition v. Reno*, 198 F.3d 1083, 1089 (9th Cir. 1999) (“The new law sought to stifle the use of technology for evil purposes.”).

83. *See S. REP. NO. 104-358*, at 7 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2241, 2243, 2251, 2252, 2252A, 2252B, 2256, 2000aa. “The premise behind the Child Pornography Prevention Act is the asserted impact of such images on the children who may view them. The law is also based on the notion that child pornography, real as well as virtual, increases the activities of child molesters and pedophiles.” *Free Speech Coalition*, 198 F.3d at 1089.

84. *See S. REP. NO. 104-358*, at 7; *Free Speech Coalition*, 198 F.3d at 1091.

85. *Compare United States v. Hilton*, 167 F.3d 61 (1st Cir. 1999), *and United States v. Acheson*, 195 F.3d 645 (11th Cir. 1999) (upholding the constitutionality of the CPPA), *with Free Speech Coalition v. Reno*, 198 F.3d 1083 (9th Cir. 1999) (ruling that the CPPA was unconstitutionally vague). As a result of the Ninth Circuit decision, Patrick Naughton, convicted under the CPPA, was released pending further proceedings. *Judge Releases Naughton from Jail* (Dec. 22, 1999) <<http://www.zdnet.com/zdnn/stories/news/0,4586,2413176,00.html>>. Nevertheless, prosecutors found Naughton possessed pictures of actual (not digitalized) children. Naughton testified at his trial that his on-line sexual banter with the undercover police officer who posed as a thirteen-year-old girl named “krisLA” was fantasy role-playing. Naughton further testified that the pictures of child pornography found “on his laptop were sent without his knowledge.” *Id.*

86. Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, 112 Stat. 2974 (codified as amended in scattered sections of 18 U.S.C., 28 U.S.C., and 42 U.S.C.).

87. 18 U.S.C. § 2422(b) (2000).

88. *Id.* § 2425.

pornography by any of its users,<sup>89</sup> but monitoring is not required.<sup>90</sup> Other countries, particularly those evidencing large numbers of sex tourists, have enacted similar legislation.<sup>91</sup> In 1994, Australia enacted legislation making it illegal for a person, while outside of Australia, to engage in sexual acts with a person under sixteen.<sup>92</sup> In 1995, New Zealand enacted legislation with similar provisions.<sup>93</sup> And in 1996, the United Kingdom formed a Standing Committee, which proposed legislation making it an offense to conspire or incite a person to commit certain sexual offenses while abroad.<sup>94</sup>

Nevertheless, the proliferation of sexual materials on the Internet suggests that the law cannot keep pace with the conduct it seeks to control. For example, ponder the purpose of a website that navigates the reader through information (in textual and graphical format) which is necessary to assess the laws of sexual consent across the globe and state-by-state in the United States.<sup>95</sup> One particular hyperlink takes the reader to the *Age of Consent Chart*.<sup>96</sup> Here the reader can quickly scan for information about the legal age for sexual contact with nationals of virtually every country, subcategorized by female-to-female, male-to-male, and male-to-female contact.<sup>97</sup> By clicking on the name of a country, the visitor is provided with detailed information as to which sexual acts are permitted at specified ages.<sup>98</sup> This site is notable both for the ready availability of the compiled information and the perception that there is an audience for it.<sup>99</sup>

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89. 42 U.S.C. § 13032(b)(1) (2000).

90. *Id.* § 13032(e).

91. See World Congress Against Commercial Sexual Exploitation of Children, *The International Legal Framework and Current National Legislative and Enforcement Responses* (visited Sept. 5, 2000) <<http://www.childhub.ch/webpub/csechome/2156.htm>> (discussing the international laws currently in place for the protection of children from sexual exploitation, specifically within the area of sexual slavery).

92. *Id.*

93. *Id.*

94. *Id.*

95. *Age of Consent* (visited Sept. 5, 2000) <<http://www.ageofconsent.com>>.

96. *Legal Age of Consent* (visited Sept. 5, 2000) <<http://www.ageofconsent/ageofconsent.htm>>.

97. See *id.*

98. See *id.*

99. What is the purpose of this type of information? Some highlights reflect the core of the problem in analyzing normative structures which may be developed on a global basis. In Greece, girls age 15 can consent to sex with another female at age 15 or older, but boys age 16 or younger years may not consent to sex with another male. *Id.* Back to our U.S. transgressor, Michael Rostoker: why did he not marry his young love in Vietnam? Marriage may have been legal there, but the evidence from the record hints at his true intention—to keep her as a “sex toy” in the United States. The lack of agreement over the age of consent is manifest in the differences between the states. Compare HAW. REV. STAT. ANN. §§ 707-730 (Michie 1994) (stating that 14 is the legal age of consent), with OR. REV. STAT. §

Perhaps even more daunting than the pace at which Internet technology is advancing are the difficult questions of extraterritorial jurisdiction. Interfacing with the Internet provides many opportunities to assert extraterritorial jurisdiction. Several countries have found the power and authority to do so under the United Nations Convention on the Rights of the Child (Convention),<sup>100</sup> unanimously adopted by the General Assembly of the United Nations.<sup>101</sup> Article 34 of the Convention attempts to protect children from sexual exploitation.<sup>102</sup> The countries that are subject to the Convention are required to take action on a domestic and international basis to protect against the sexual exploitation of children for personal or economic gain.<sup>103</sup> The United States, however, is not a signatory to the Convention.<sup>104</sup>

## VII. JURISDICTIONAL ISSUES

In an attempt to counter the increasing reach of pedophiles, Congress has augmented the relevant jurisdictional provisions of U.S. law. In this Part, I will discuss jurisdictional issues surrounding “crimes” occurring outside U.S. borders. In Section A, I review the current test for determining if extraterritorial jurisdiction exists. In Section B, I argue for the application of that standard to the PCSPA. In Section C, I discuss a hypothetical, but not unlikely, scenario, where child abuse or pornography is “aired” over the Internet from a foreign location. Finally, in Section D, I will address some global concerns raised by the Internet.

### A. The Standard for Extraterritorial Jurisdiction

Extraterritorial jurisdiction has been asserted by the United States in many instances, and justification has often been predicated upon some “effect” or harm domestically.<sup>105</sup> Where extraterritorial jurisdiction is not expressly

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163.435 (1995), and WIS. STAT. ANN. §§ 948.01, 948.09 (West 1996) (listing the age of consent at 18).

100. *Convention on the Rights of the Child*, U.N. Doc. A/Res/44/23 (1989).

101. See AMERICAN BAR ASS'N CTR. ON CHILDREN AND THE LAW, *CHILDREN'S RIGHTS IN AMERICA: U.N. CONVENTION ON THE RIGHTS OF THE CHILD COMPARED WITH UNITED STATES LAW* iii (Cynthia Price Cohen & Howard A. Davidson eds., 1990) (comparing U.S. law with Convention Articles).

102. See *id.* at 307; *Convention on the Rights of the Child*, *supra* note 100.

103. AMERICAN BAR ASS'N CTR. ON CHILDREN AND THE LAW, *supra* note 101, at 307.

104. *Id.* at iv.

105. See Mark Gibney & R. David Emerick, *The Extraterritorial Application of United States Law and the Protection of Human Rights: Holding Multinational Corporations to Domestic and International Standards*, 10 TEMP. INT'L & COMP. L. J. 123, 129 (1996) (discussing the applicability of United States health, environmental, and safety regulations on United States corporations abroad).



provided by statute, courts may apply the test elicited in *United States v. Bowman*,<sup>106</sup> which allows for such an implication depending upon “the nature of the offense.”<sup>107</sup> For example, in *United States v. Harvey*,<sup>108</sup> Judge Scirica commented that

many pedophiles . . . purchase [child pornography] through mail order catalogues . . . to establish contact with other pedophiles, and even to establish liaisons with some of the child models. . . . The Committee has found a close connection between child pornography and the equally outrageous use of young children as prostitutes. The precise relationship between these two forms of child abuse, however, can take many different forms.<sup>109</sup>

Judge Scirica further noted that extraterritorial jurisdiction over United States nationals should be upheld in cases involving the creation of child pornography abroad.<sup>110</sup>

In *Harvey*, the defendant had photographs of children engaging in sexual acts and 560 index cards with graphic details about Harvey’s sexual activities with young boys while he was on trips to the Philippines.<sup>111</sup> The standard for extraterritorial jurisdiction in this case was premised on an “effects” test.<sup>112</sup> If the pedophile travels abroad with the intent to sexually exploit children of other countries, photographs the conduct and reasonably expects that the child pornography will be “transported in interstate or foreign commerce,” extraterritorial scrutiny of the acts applies.<sup>113</sup> Thus, the *Harvey* court held that the defendant’s sexual exploitation of Philippine children in the Philippines, coupled with the production of photographs subsequently transported to the

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106. 260 U.S. 94 (1922) (involving a conspiracy, outside of the United States, to defraud a corporation in which the United States was a stockholder). The Court found jurisdiction based on the nature of the offense and its impact on the government. *Id.*

107. *Id.* at 98.

108. 2 F.3d 1318 (3rd Cir. 1993).

109. *Id.* at 1328 n. 12 (quoting S. REP. NO. 95-438, at 6 (1978), *reprinted in* 1978 U.S.C.C.A.N. 40, 43-44).

110. *Id.* at 1329.

111. *Id.* at 1321.

112. *Id.* at 1328.

113. *Id.* In *United States v. Georgescu*, 723 F. Supp. 912 (S.D.N.Y. 1987), the district court, under principles of international law, found adequate contacts with the United States to prosecute sex crimes against a foreign predator who accosted a nine-year-old foreign victim while en route to the United States but still in foreign airspace. *Id.* at 920.

United States, provided in personam jurisdiction over the defendant, even as he remained abroad.<sup>114</sup>

In *United States v. Thomas*,<sup>115</sup> the Ninth Circuit similarly upheld the conviction of an individual for transporting sexual photographs of a young girl taken in Mexico.<sup>116</sup> The defendant argued that the United States could not introduce these photographs as evidence at his trial because they involved extraterritorial acts. The court concluded otherwise.<sup>117</sup> Expounding on the nature of the offense and the extensive reach of criminal jurisdiction over all U.S. nationals abroad, the *Thomas* court upheld the conviction.<sup>118</sup> Jurisdiction in both *Harvey* and *Thomas* was analogized to extraterritorial jurisdiction in drug and narcotic cases.<sup>119</sup>

### B. Extraterritorial Jurisdiction and the PCSPA

The Protection of Children From Sexual Predators Act has not been applied to conduct occurring outside the territorial borders of the United States, even though it appears to grant the authority for extraterritorial prosecutions in its express provisions.<sup>120</sup> Thus, from an enforcement perspective, the PCSPA has not been a success. However, given the forceful language evident in the legislative history and the statutory scheme addressing sexual preying on children, I believe international jurisdiction is consistent with the *Bowman* standard;<sup>121</sup> therefore, sexual offenders who violate U.S. laws while traveling abroad should be apprehended and prosecuted. Surely, extraterritorial criminal jurisdiction embraces the commitment against exporting our criminals.<sup>122</sup>

Two strands of extraterritorial law currently in vogue in the United States justify this exercise of power. One strand looks to the conduct of the defendant

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114. *Harvey*, 2 F.3d at 1328.

115. 893 F.2d 1066 (9th Cir. 1990).

116. *Id.* at 1067-68.

117. *Id.*

118. *Id.*

119. In *Harvey* and *Thomas*, the courts analogized child pornography with narcotics trafficking, in that they both are produced in significant quantities outside of the United States and refusing to find extraterritorial jurisdiction would hamper enforcement. See *Harvey*, 2 F.3d at 1327; *Thomas*, 893 F.2d at 1068-69.

120. See The Protection of Children from Sexual Predators Act of 1998, Pub. L. No. 105-314, 112 Stat. 2974 (codified as amended in scattered sections of 18 U.S.C.).

121. See *United States v. Bowman*, 260 U.S. 94 (1922).

122. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 402 (2000) (listing cases which give the United States bases of jurisdiction in international settings).

and deleterious effects of that conduct on the United States.<sup>123</sup> If the defendant domestically engages in conduct material to the completion of the crime, then reaching overseas to nab a U.S. national would be appropriate.<sup>124</sup> The other strand takes international law into account. Violation of human rights laws allows for extradition as a “crime against humanity,” regardless of a violator’s status among the state’s rank-and-file.<sup>125</sup> Are crimes against humanity any less significant when the victims involved are children overseas?

### C. *The Hard Case*

#### 1. A “Hypothetical”

The cases examined in Part III are the “easy” cases because there is a clear connection to establish jurisdiction. What of the case involving a fifty-seven-year-old Canadian merely posting pictures of himself on his personal website having sex with his fourteen-year-old girlfriend?<sup>126</sup> What if these pictures are easily accessible with the use of an Internet search engine? Clicking onto any of the popular web searchers, for “nude pictures” leads the viewer to the pornographic photographs.

Suppose that child molesters in the United States have discovered the site and have added the pictures to their own collections of child pornography. Perhaps children have also found the site and are viewing the pictures. Would this satisfy *Bowman’s* effects test?<sup>127</sup> Is the United States vested with jurisdiction over a foreign national who has violated one or more of its age of consent laws on foreign soil but has not violated the age of consent law of his own country? The answer is “no.” But how can the world respond to this problem? Possible answers, and a caveat, follow.

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123. See *North South Finance Corp. v. Al-Turki*, 100 F.3d 1046 (2nd Cir. 1996) (affirming the district court’s dismissal of plaintiffs’ claim on jurisdictional grounds, and declining to define the jurisdictional reach of Racketeer Influenced and Corrupt Organizations (RICO), 18 U.S.C. §§ 1961-1968). The Second Circuit commented that the treble damages provision of RICO “heightens concerns about international comity and foreign enforcement.” *Id.* at 1052.

124. See, e.g., Michael J. Dunne & Anna L. Musacchio, *Jurisdiction Over the Internet*, 54 BUS. LAW. 385, 389-98 (1998) (describing prosecutorial jurisdiction as restricted to significant business activity affecting the United States).

125. See Andrea Bianchi, *Immunity Versus Human Rights: The Pinochet Case*, 10 EUR. J. INT’L L. 237 (1999) <<http://www.ejil.org/journal/vol10/no2/art1.html>>.

126. Taking pictures of the girl is illegal. Sex with a consenting 14-year-old, however, is legal. This hypothetical is loosely based on a Canadian case involving a Canadian man who posed as a photographer for *Playboy*, then took pictures of girls between the ages of 13 and 17. See *Man Convicted of Possessing Child Pornography Given Community Sentence*, CANADIAN PRESS NEWSWIRE, May 26, 2000, available in LEXIS, News Library, Canadian Bus. & Current Affairs File.

127. See *United States v. Bowman*, 260 U.S. 94 (1922).

## 2. Global Age of Consent

Several solutions may potentially resolve this issue. One possible solution is the establishment of a global age of consent; however, this is fraught with problems stemming from self-determinacy and cultural-specific values. In fashioning a global age of consent, would the nation-states fare better internationally than the states of the United States? The answer is “not likely”; yet, that may be a good thing.

The focus in the United States is on the letter of the law. But more importantly, “colonization” of the normative structures of other countries through the imposition of a federally prescribed age of consent standard violates notions of comity, state sovereignty, and full faith and credit, both domestically and internationally.<sup>128</sup> The practice of *Trokosi*—maintaining children as slaves to be exploited in Ghana<sup>129</sup>—and the selling of children for sex in Vietnam and Indonesia,<sup>130</sup> are symptomatic of a severe economic depression in those countries. Yet, are attitudes in the United States really that different from those in other countries? The American Psychological Association recently published a study in its most prestigious journal, the *Psychological Bulletin*, concluding that adults engaging in sex with “willing” children may actually have “positive effects” on the child.<sup>131</sup> This study, if believed, could be used to justify the very crimes against children that the United States condemns.

Achieving an international standard for the age of consent would sacrifice the essence of “otherness” in a world of converging sameness facilitated by the Internet. Loretta Todd, a local artist in Tulsa, Oklahoma, spoke eloquently on the integral nature of otherness, stating that “[c]ultural autonomy signifies a right to cultural specificity, a right to one’s origins and histories as told from within the culture and not as mediated from without.”<sup>132</sup>

The protection of and control over cultures in every sovereign state is challenged by the English language dominated cyberworld. In France, “*internauts . . . surf la toile*,” exchanging English and French language

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128. This presupposes that U.S. norms will win out. Perhaps not, and if so, would the U.S. public be willing to agree to a lower age?

129. See Amy Small Bilyeu, Comment, *Trokosi-The Practice of Sexual Slavery in Ghana: Religious and Cultural Freedom Vs. Human Rights*, 9 IND. INT’L & COMP. L. REV. 457 (1999).

130. See, e.g., Levinson, *supra* note 72, at 451 (reporting that there are an estimated 650,000 prostitutes in Indonesia, 30% of which are children); Mintz, *supra* note 20 (discussing the arrest of Michael David Rostoker at San Francisco International Airport for attempting to illegally travel to Vietnam to have sex with a 13-year-old girl).

131. See Bruce Rind et al., *A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples*, 124 PSYCHOL. BULL. 22 (1998).

132. Gilcrease Museum, Exhibit, *Down From the Shimmering Sky: Masks of the Northwest Coast*, Tulsa, Okla. (Aug. 21-Nov. 7, 1999).

messages on “*la messagerie électronique*.”<sup>133</sup> And so, the anarchic structure of the Internet, with no single entity in charge, would in fact put the United States and its normative conceptions in charge of what has been, until now, an already limited discourse.<sup>134</sup>

#### *D. Some Possibilities*

Experience shows that pedophiles use encryption software to chat.<sup>135</sup> Because of encryption, governments have been ineffective in monitoring illegal conspiracies whose planning took place over the Internet.<sup>136</sup> International organizations and unions provide possible venues for power and authority in a collaborative effort against illegal Internet activity. The European Union (EU) may eventually agree to allow agencies to collaborate on accessing the codes needed to unscramble information.<sup>137</sup> A Global Internet Charter establishing illegal content may also be developed and implemented.<sup>138</sup>

There are a plethora of international human rights laws that could address this global problem. The question remains: will the United States lead, let alone participate, in this strategy? It appears not, considering that the United States balked at the opportunity to lead in the protection of children from sexual abuse in the international arena.<sup>139</sup> Likewise, it balked at the opportunity to lead in the ban against nuclear testing.<sup>140</sup> This is a disturbing trend for those seeking to use the leadership status of the United States in matters of global (and not so global) importance. As noted in the *New York Times*, “the appearance that Americans are moving away from international agreements and responsibilities

133. *Le Cyber Challenge*, ECONOMIST, Mar. 11, 2000, at 55, 55.

134. See generally Madeleine Mercedes Plasencia, *The Politics of Race on the Electronic Highway: An Analysis of the Video Dialtone Redlining Cases, and the NYNEX Consent Decree in Roxbury*, 15 *TOURO L. REV.* 513 (1999).

135. See Bob Trebilcock, *supra* note 8, at 136 (noting that pedophiles are able to use encryption online to avoid detection).

136. *Id.*

137. See Rosemary Hogan, *Child Pornography and the Internet—Freedom of Expression Versus Protecting the Common Good*, 3 *IRISH J. FAM. L.* 7, 8 (1999) (reviewing child pornography laws in Ireland and noting that the European Union has proposed a Joint Action on Trafficking in Human Beings and Sexual Exploitation of Children, and held an annual Conference on Combating Paedophile Information Networks in Europe (COPINE) in December of 1997).

138. See, e.g., *EU Communication On International Charter*, NEWSLETTER (Cyber-Rts. & Cyber-Liberties, U.K.) (March 1998) <<http://www.leeds.ac.uk/law/pgs/yaman/newslet6.htm>> (discussing the ramifications of a government agency’s ability to unscramble messages at will).

139. *Id.*

140. See Barbara Crossette, *Defeat of a Treaty: The Shock Waves: Around the World, Dismay over Senate Vote on Treaty*, *N.Y. TIMES*, Oct. 15, 1999, at A1 (reporting that Congress defeated the nuclear test ban treaty).

can also be alarming. In either case, the . . . [nuclear test ban] example is important.”<sup>141</sup>

#### VIII. CONCLUSION AND CAVEAT

The global community must weigh the competing values of free speech and child safety. This Article considers the dynamic impact the Internet has made on child pornography and sexual abuse. Child pornography was once extremely difficult to find in the United States, but now is available to any person who has access to the Internet, regardless of age. The dilemma we must now confront is how to protect children across the globe without compromising freedom of expression. This Article has examined various solutions, some more practicable than others. A definitive answer remains elusive. Any solution will necessarily involve international agreement on the relative values of a free Internet and the safety of our children.

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141. *Id.*

