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## Can We End the Shame?—Recent Multilateral Efforts to Address the World Child Pornography Market

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# Can We End the Shame?—Recent Multilateral Efforts to Address the World Child Pornography Market

## ABSTRACT

*In this Note, the author describes the United States and international child pornography markets. The author demonstrates how the United States Congress, judiciary, and law enforcement agencies have addressed the child pornography problem at the national and international level. In addition to the United States efforts to address this problem, the Netherlands, Denmark, and Thailand—who have all exported child pornography to the United States—have taken steps to curb the flow of child pornography. National and international child pornography markets continue to flourish, however, and the author concludes that more steps to eradicate child pornography are necessary. Finally, the author describes recommendations made by the United Nations and other non-governmental organizations to eradicate the world child pornography market.*

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## I. INTRODUCTION

Since the 1970s, the United States has become increasingly concerned about the scourge of child pornography. This public concern prompted Congress to examine closely the nature and extent of the child pornography<sup>1</sup> problem and to enact new legislation.<sup>2</sup> A number of federal, state, and local law enforcement agencies work to curb the production and distribution of child pornography.<sup>3</sup> Because much of the child pornography available in the United States, however, is obtained from Europe or other foreign sources, the United States also focuses attention on the need for international cooperation in regulating child pornography.<sup>4</sup> Other states and international organizations share in the United States cam-

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1. See, e.g., *Sexual Exploitation of Children: Hearings Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 95th Cong., 1st Sess. (1977) [hereinafter 1977 Hearings]; *Protection of Children Against Sexual Exploitation: Hearings Before the Subcomm. to Investigate Juvenile Delinquency of the Senate Comm. on the Judiciary*, 95th Cong., 1st Sess. (1977) [hereinafter 1977 Senate Hearings]; *Child Pornography and Pedophilia: Hearings Before the Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 98th Cong., 2d Sess., pt. 1 (1984) [hereinafter 1984 Hearings]; *Child Pornography and Pedophilia: Hearing Before the Subcomm. on Investigations of the Senate Comm. on Governmental Affairs*, 99th Cong., 1st Sess., pt. 2 (1985) [hereinafter 1985 Hearings]; *Computer Pornography and Child Exploitation Prevention Act: Hearing on S. 1305 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985); *Child Abuse Victims' Rights Act: Hearings on S. 985 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985); *Child Sexual Abuse and Pornography Act of 1986: Hearing on S. 2398 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 99th Cong., 2d Sess. (1986).

2. Protection of Children Against Sexual Exploitation Act of 1977, Pub. L. No. 95-225, 92 Stat. 7 (1978) (codified as amended in scattered sections of 18 U.S.C.) [hereinafter 1977 Act]; Child Protection Act of 1984, Pub. L. No. 98-292, 98 Stat. 204 (codified as amended in scattered sections of 18 U.S.C.) [hereinafter 1984 Act]; Child Sexual Abuse and Pornography Act of 1986, Pub. L. No. 99-628, 100 Stat. 3510 (codified as amended in scattered sections of 18 U.S.C.) [hereinafter Sexual Abuse Act]; Child Abuse Victims' Rights Act of 1986, Pub. L. No. 99-591, 100 Stat. 3341 (codified as amended in scattered sections of 18 U.S.C.) [hereinafter Victims' Rights Act]; Child Protection and Obscenity Enforcement Act of 1988, Pub. L. No. 100-690, 102 Stat. 4485 (codified as amended in scattered sections of 18 U.S.C.) [hereinafter 1988 Act].

3. See H. DAVIDSON & G. LOKEN, *CHILD PORNOGRAPHY AND PROSTITUTION* 19-24 (1987).

4. See S. REP. NO. 537, 99th Cong., 2d Sess. 29-35 (1986) [hereinafter 1986 SENATE REPORT].

paign against child pornography.<sup>5</sup>

## II. EFFORTS TO CURB CHILD PORNOGRAPHY IN THE UNITED STATES

### A. *Child Pornography in the United States*

Child pornography is the visual depiction of a child involved in sexually explicit activity;<sup>6</sup> the United States Supreme Court referred to it as the "permanent record" of the sexual abuse of a child.<sup>7</sup> Children generally become participants in child pornography through deliberate enticement rather than through the threat of physical harm.<sup>8</sup> Child pornography victims come from all socioeconomic groups. The victims are of both sexes, usually white, and range from eight to sixteen years of age.<sup>9</sup> They usually lack self-esteem, spend a lot of time in public places, and are underachievers at school.<sup>10</sup> Adult pornographers and pedophiles easily influence these children because they often come from unstable homes and do not have strong moral or religious values.<sup>11</sup>

A significant number of child pornography consumers are pedophiles.<sup>12</sup> Pedophilia, which means "love of a child," is a sexual perversion of adults who are sexually attracted to children.<sup>13</sup> Pedophiles are usually white males of varying ages from all socio-economic levels of society; the majority are married.<sup>14</sup> The pedophile does not fit the stereotype of a "dirty old man" and is often a respected member of the com-

5. *Id.* at 30-35; see also Hermann & Jupp, *International Child Sex Trade*, in D. CAMPAGNA & D. POFFENBERGER, *THE SEXUAL TRAFFICKING IN CHILDREN* 152-54 (Nat'l Center for Missing & Exploited Children, 1988).

6. See 18 U.S.C. § 2256(2) (1988).

7. *New York v. Ferber*, 458 U.S. 747, 759 (1982).

8. See H. DAVIDSON & G. LOKEN, *supra* note 3, at 3; S. O'BRIEN, *CHILD PORNOGRAPHY* 89-92 (1983).

9. S. O'BRIEN, *supra* note 8, at 65-66; H. Davidson & G. Loken, *supra* note 3, at 3.

10. S. O'BRIEN, *supra* note 8, at 68.

11. *Id.* Pedophilia is a "paraphilia in which children are the preferred sexual object." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1665 (1981). Paraphilia is "a preference for or addiction to unusual sex practices." *Id.* at 1638; see *infra* notes 12-18 and accompanying text.

12. H. DAVIDSON & G. LOKEN, *supra* note 3, at 2; ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY, FINAL REPORT 609 (U.S. Dep't of Justice, 1989) [hereinafter FINAL REPORT]; S. O'BRIEN, *supra* note 8, at 79-88.

13. 1986 SENATE REPORT, *supra* note 4, at 6.

14. 1984 *Hearings*, *supra* note 1, at 130-31 (Report of the Los Angeles Police Dep't Sexual Exploited Child Unit); S. O'BRIEN, *supra* note 8, at 80.

munity.<sup>15</sup> Pedophiles turn to children for sexual gratification because they experience difficulties in adult relationships.<sup>16</sup> It is not uncommon to find pedophiles who are Boy Scout leaders, police officers, teachers, clergy members, or in other occupations that bring them into contact with children.<sup>17</sup> Some pedophiles are also members of organizations that promote adult-child sex, such as the Rene Guyon Society and the North American Man-Boy Love Association.<sup>18</sup>

Professional pornographers, free-lance pornographers, and pedophiles produce child pornography.<sup>19</sup> Professional pornographers utilize developing labs and printers to mass produce pornography.<sup>20</sup> This equipment makes it easier for these pornographers to work and increases their profits and reduces their risk of apprehension.<sup>21</sup> The free-lance amateur pornographer photographs unwanted or abused children. The pornographer obtains permission from the child's parents to photograph the child.<sup>22</sup> The photographs portray the child in sexual activity, which may include adults or animals.<sup>23</sup> As a reward for the child's participation, the pornographer may give the child a toy or money.<sup>24</sup> The photographer then sells the photographs to distributors and individuals.<sup>25</sup> The parents and the pornographer typically divide the profits.<sup>26</sup>

Pedophiles produce and distribute most child pornography.<sup>27</sup> Pedophiles generally entice children into participating in the production of child pornography.<sup>28</sup> The pedophile develops a relationship with the child.<sup>29</sup> A pedophile may take the child to the movies or to an amusement park, or may give the child presents or money.<sup>30</sup> Once the

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15. 1984 *Hearings*, *supra* note 1, at 130-31; H. DAVIDSON & G. LOKEN, *supra* note 3, at 2; *see* S. O'BRIEN, *supra* note 8, at 47, 80.

16. S. O'BRIEN, *supra* note 8, at 85.

17. 1986 SENATE REPORT, *supra* note 4, at 7; S. O'BRIEN, *supra* note 8, at 79-81.

18. 1986 SENATE REPORT, *supra* note 4, at 15-29.

19. *Effect of Pornography on Women and Children: Hearings Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 98th Cong., 2d Sess. 141-42 (1984) [hereinafter *Hearings: Women & Children*] (statement of Daniel S. Campagna).

20. *Id.* at 141.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 141-42.

25. *Id.* at 141.

26. *Id.*

27. 1984 *Hearings*, *supra* note 1, at 132; 1986 SENATE REPORT, *supra* note 4, at 4.

28. 1984 *Hearings*, *supra* note 1, at 131.

29. *Id.*

30. *Id.*

pedophile gains the child's trust, the pedophile begins to make sexual advances.<sup>31</sup> The pedophile may also take photographs and movies of the child to keep in a private collection for personal use; may sell the pictures to magazines such as *Moppets* or *Lollitots*; or may trade the photographs or movies for materials depicting other children in sexual activity.<sup>32</sup> Pedophiles may reproduce and distribute the films both privately and commercially.<sup>33</sup>

According to a report that the Sexually Exploited Child Unit of the Los Angeles Police Department submitted to the United States Senate, child pornography is an estimated "multi-million to a \$2 billion yearly industry" involving an underground network of pedophiles and other producers and distributors of pornography.<sup>34</sup> The profits from child pornography can be enormous. A magazine that can be produced for thirty-five to fifty cents may be sold for \$7.50 to \$12.50 a copy, and films or videotapes made with inexpensive equipment can be sold for \$50 to \$200 each.<sup>35</sup>

Child pornography is severely criticized because of its harmful effect on children.<sup>36</sup> Pornographers sexually exploit children during the production of child pornography.<sup>37</sup> A pornographer often shows child pornography to the child to lower the child's inhibitions and to encourage the child to act in ways similar to activities depicted in the magazines.<sup>38</sup> After the child engages in sexual activity with the pedophile or others and is photographed, the pedophile can use the pornography to blackmail the child by threatening to show the photographs to the child's family, friends, or a public official if the child tells what happened.<sup>39</sup> Child pornography is a "permanent record" of the child's sexual activity.<sup>40</sup> The awareness that such a record is circulating and may continue circulating in the future can cause emotional and psychological harm to the

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31. *Id.*

32. *See id.* at 132.

33. *Id.*

34. *Id.* at 46 (testimony of William Dworin, Los Angeles Police Dep't).

35. S. REP. NO. 438, 95th Cong., 2d Sess. 6 [hereinafter 1977 SENATE REPORT], reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 40, 43-44.

36. *New York v. Ferber*, 458 U.S. 747, 758-59 (1982); see also 1977 SENATE REPORT, *supra* note 35, at 8-9, 1978 U.S. CODE CONG. & ADMIN. NEWS at 45-47.

37. *Ferber*, 458 U.S. at 759; 1977 SENATE REPORT, *supra* note 35, at 8-9, 1978 U.S. CODE CONG. & ADMIN. NEWS at 45-47.

38. 1986 SENATE REPORT, *supra* note 4, at 10-11; see also D. CAMPAGNA & D. POFFENBERGER, *supra* note 5, at 118.

39. D. CAMPAGNA & D. POFFENBERGER, *supra* note 5, at 118; 1986 SENATE REPORT, *supra* note 4, at 11.

40. *Ferber*, 458 U.S. at 759.

victim for a lifetime.<sup>41</sup>

Pedophiles use child pornography in other ways which also endanger children. Pedophiles use child pornography to expand their sexual activities.<sup>42</sup> Although a pedophile can preserve a child's youth through pornographic pictures,<sup>43</sup> the pedophile may also look for new children by advertising for a child in magazines or on computer bulletin boards.<sup>44</sup> Pedophiles often prefer children within a certain age range; when a child that a pedophile has seduced gets older, the pedophile may want to find a younger one.<sup>45</sup> Pedophiles form underground networks of adults who regularly communicate by letter or computer so that they may locate new children<sup>46</sup> and exchange child pornography. After a contact is made through this network, the pedophile trades pictures of children that he has exploited and obtains new pictures for his collection and opportunities to meet new children.<sup>47</sup>

Finally, many cases of child molestation are linked to interest in child pornography.<sup>48</sup> In the Senate Hearings on Child Pornography and Pedophilia conducted in November 1984, Senator Roth observed that in "thousands of well-documented cases throughout the United States over the past decade, police have found that an overwhelming majority of child molesters collected or produced commercial and private child pornography."<sup>49</sup>

### B. *The Growth of Child Pornography in the United States*

Child pornography began to be sold in an "under the counter" fashion at adult bookstores in the late 1960s.<sup>50</sup> It generally depicted young women dressed to look like children.<sup>51</sup> The popularity of child pornogra-

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41. *Id.*; see also Shouplin, *Preventing the Sexual Exploitation of Children: A Model Act*, 17 WAKE FOREST L. REV. 535, 545 (1981); Note, *Protection of Children from Use in Pornography: Toward Constitutional and Enforceable Legislation*, 12 U. MICH. J.L. REF. 295, 301 (1979).

42. 1986 SENATE REPORT, *supra* note 4, at 11.

43. *Id.*

44. *Id.* at 11-15; see also Note, *The Use of Computers in the Sexual Exploitation of Children and Child Pornography*, 7 COMPUTER L.J. 383 (1987).

45. 1984 Hearings, *supra* note 1, at 131.

46. See generally Note, *supra* note 44.

47. 1986 SENATE REPORT, *supra* note 4, at 11.

48. 1984 Hearings, *supra* note 1, at 2 (statement of Sen. Roth).

49. *Id.*

50. Comment, *Preying on Playgrounds: The Sexploitation of Children in Pornography and Prostitution*, 5 PEPPERDINE L. REV. 809, 810 (1978).

51. *Id.* at 810 n.3.

phy, however, increased dramatically in the 1970s; by 1977, 260 different "kiddie porn" magazines with names such as *Night Boys*, *Torrid Tots*, *Boys Who Love Boys*, *Lolita*, and *Children-Love* were available in the United States.<sup>52</sup> After the enactment of the Protection of Children Against Sexual Exploitation Act of 1977,<sup>53</sup> the child pornography market in the United States lost much of its commercial character; today, individuals buy, sell, and trade child pornography through an underground market.<sup>54</sup> Although some transactions do not involve money, the commercial motivation for the production and distribution of child pornography is still present.<sup>55</sup> In 1982, one commercial pornographer possessed a list containing five thousand customer names at the time of her arrest.<sup>56</sup> She was subsequently prosecuted and convicted for distributing child pornography.<sup>57</sup> The commercial production of child pornography currently is much greater in some foreign states, and these states constitute a major portion of the supply of child pornography in the United States.<sup>58</sup>

### C. *The United States Response to Child Pornography*

In the 1970s, reports of the growing child pornography market produced a popular outcry.<sup>59</sup> As a result of increasing public concern and several congressional hearings, Congress enacted the first federal law against the production and distribution of child pornography, the Protection of Children Against Sexual Exploitation Act of 1977 (1977 Act).<sup>60</sup> This law also proscribed the interstate transportation of children for commercial exploitation of prohibited sexual conduct.<sup>61</sup> Those who violated the Act could have received a maximum first conviction of ten years

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52. 1977 SENATE REPORT, *supra* note 35, at 5, 1978 U.S. CODE CONG. & ADMIN. NEWS at 42-43.

53. 1977 Act, *supra* note 2.

54. 1986 SENATE REPORT, *supra* note 4, at 29; H. DAVIDSON & G. LOKEN, *supra* note 3, at 2.

55. H. DAVIDSON & G. LOKEN, *supra* note 3, at 2.

56. *Id.*

57. *Id.*

58. 1986 SENATE REPORT, *supra* note 4, at 29-30.

59. Comment, *supra* note 50, at 811.

60. 1977 Act, *supra* note 2; see 1977 Hearings, *supra* note 1; 1977 Senate Hearings, *supra* note 1; see also *Child Pornography: Outrage Starts to Stir Some Action*, U.S. NEWS & WORLD REP., June 13, 1977, at 66.

61. 1977 Act, *supra* note 2, § 2(a), 92 Stat. 7-8 (1978) (codified as amended at 18 U.S.C. § 2252 (1988)).



imprisonment, a \$10,000 fine, or both.<sup>62</sup> There were, however, several problems with the 1977 Act, including (1) the determination of whether a picture contains sexually explicit conduct was made from the perspective of a person viewing the picture; (2) only children under age sixteen were considered minors; (3) the production and distribution of child pornography were prohibited only if done for financial profit; and (4) the distribution provisions only applied to obscene materials.<sup>63</sup> As a result, the 1977 Act did not protect many exploited children, and the Act failed to reach the increasing noncommercial production of child pornography. According to the Attorney General's Report on Pornography, "the 1977 Act was soon found by federal law enforcement officials to be of only limited practical value. The production of child pornography is so clandestine in character that from 1978 to 1984 only one person was convicted under that portion of the 1977 Act."<sup>64</sup>

In 1982, the United States Supreme Court paved the way for stricter judicial enforcement of the child pornography laws in the landmark decision of *New York v. Ferber*.<sup>65</sup> In *Ferber*, the Court distinguished child pornography from obscenity and rejected the application of the *Miller* test for obscenity to child pornography; the *Miller* test asks whether a work appeals to the prurient interest of the average person and does not consider physical or emotional harm to the child.<sup>66</sup> The Court recognized the compelling interest of the state in safeguarding the well being of minors and therefore allowed states more freedom to regulate child pornog-

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62. *Id.*

63. Loken, *The Federal Battle Against Child Sexual Exploitation: Proposals for Reform*, 9 HARV. WOMEN'S L.J. 105, 111-13 (1986).

64. FINAL REPORT, *supra* note 12, at 604.

65. 458 U.S. 747 (1982).

66. *Id.* at 761, 764 (discussing *Miller v. California*, 413 U.S. 15 (1973)). The obscenity test delineated in *Miller* is that a "state offense must also be limited to works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value." *Miller*, 413 U.S. at 24.

In *Ferber*, the Court stated that the *Miller* test was adjusted in child pornography cases so that a "trier of fact need not find that the material appeals to the prurient interest of the average person; it is not required that sexual conduct portrayed be done so in a patently offensive manner; and the material at issue need not be considered as a whole." *Ferber*, 458 U.S. at 764.

The Court made clear, however, that state law must adequately define prohibited conduct in child pornography legislation, that the state offenses must be limited to visual depictions of a child below a certain age, and that states also must define and circumscribe sexual conduct properly. *Id.*

raphy than other forms of obscenity.<sup>67</sup>

Soon after *Ferber*, Congress passed the Child Protection Act of 1984 (1984 Act), which amended the 1977 Act.<sup>68</sup> This amendment strengthened the 1977 Act by enhancing the provision against reproducing child pornography for distribution purposes and by making more severe the sanctions for violations of the statute; comprehensive criminal and civil

67. The *Ferber* Court listed five reasons for giving states more freedom to regulate child pornography:

*First.* It is evident beyond the need for elaboration that a State's interest in "safeguarding the physical and psychological well-being of a minor" is "compelling"

. . .

. . . .

. . . The legislative judgment, as well as the judgment found in the relevant literature, is that the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child. That judgment, we think, easily passes muster under the First Amendment.

*Second.* The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children in at least two ways. First, the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation. Second, the distribution network for child pornography must be closed if the production of material which requires the sexual exploitation of children is to be effectively controlled. . . .

. . . .

*Third.* The advertising and selling of child pornography provide an economic motive for and are thus an integral part of the production of such materials, an activity illegal throughout the Nation. . . .

*Fourth.* The value of permitting live performances and photographic reproductions of children engaged in lewd sexual conduct is exceedingly modest, if not *de minimis*. . . .

*Fifth.* Recognizing and classifying child pornography as a category of material outside the protection of the First Amendment is not incompatible with our earlier decisions. . . . When a definable class of material . . . bears so heavily and pervasively on the welfare of children engaged in its production, we think the balance of competing interests is clearly struck and that it is permissible to consider these materials as without the protection of the First Amendment.

*Ferber*, 458 U.S. at 756-64 (citations omitted); see also Green, *Children and Pornography: An Interest Analysis in System Perspective*, 19 VAL. U.L. REV. 441, 460-69 (1985) (discussing the impact of *Ferber* on child pornography law). In April 1990, the United States Supreme Court upheld an Ohio statute proscribing the possession of child pornography. The Court held that Ohio constitutionally could prohibit the possession and viewing of child pornography. The Court reasoned that the Ohio law was not enacted based on a paternalistic interest in regulating the defendant's mind but was enacted to protect the physical and psychological well-being of minors and was not overbroad. *Osborne v. Ohio*, 110 S. Ct. 1691, 109 L. Ed. 2d 98, 1990 Westlaw 43483 (U.S., Apr. 19, 1990).

68. 1984 Act, *supra* note 2.

forfeiture provisions were also added.<sup>69</sup> The 1984 Act also expanded the reach of the statute by raising the age of minors to eighteen,<sup>70</sup> and by removing the requirements of commercial profit, intent, and obscenity from the law.<sup>71</sup>

In 1986, Congress passed legislation that more comprehensively attacked the child pornography problem. Congress amended the existing United States child pornography laws by enacting the Child Sexual Abuse and Pornography Act of 1986<sup>72</sup> and the Child Abuse Victims' Rights Act of 1986.<sup>73</sup> The Child Sexual Abuse and Pornography Act prohibits advertising or soliciting child pornography. The Act includes undeveloped film and videotape in the definition of visual depiction, and makes transporting a minor in interstate or foreign commerce for the production of child pornography a separate offense.<sup>74</sup> The Child Abuse Victims' Rights Act provides child victims of exploitation with a federal civil remedy, increases the minimum penalty for repeat offenders, and requires the United States Attorney General to make recommendations to Congress on procedures which would enable child witnesses to participate in federal sexual abuse cases.<sup>75</sup> Congress also amended the Mann Act to protect both males and females, increased the Mann Act's penalties for transporting minors across state lines for prohibited sexual purposes,<sup>76</sup> and passed several comprehensive sexual assault statutes.<sup>77</sup>

In addition to actions by Congress to strengthen federal child pornography legislation, individual states also passed child pornography laws. In 1978, only eight states had statutes aimed specifically at curbing the sexual exploitation of minors in pornography or regulating the distribution and sale of child pornography.<sup>78</sup> Because of the increased attention that child exploitation received during the 1980s, however, the public began pressuring state legislatures, and by 1 November 1986, all fifty

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69. *Id.* §§ 3-4, 6, 98 Stat. 204-06 (codified as amended at 18 U.S.C. §§ 2251, 2252-2254 (1988)).

70. *Id.* § 5(a)(1), 98 Stat. 205 (codified as amended at 18 U.S.C. § 2256 (1988)).

71. *Id.* §§ 4(3), 5(5), 98 Stat. 204-05 (codified as amended at 18 U.S.C. §§ 2252(a)(2), 2256(3) (1988)).

72. Sexual Abuse Act, *supra* note 2.

73. Victims' Rights Act, *supra* note 2.

74. *See* Sexual Abuse Act, *supra* note 2, §§ 2-4, 100 Stat. 3510-11 (codified as amended at 18 U.S.C. §§ 2251, 2255 (1988)).

75. Victims' Rights Act, *supra* note 2, § 101(b), 100 Stat. 3341-71 (codified as amended at 18 U.S.C. §§ 2251, 2252, 2255-2256 (1988)).

76. Sexual Abuse Act, *supra* note 2, § 5, 100 Stat. 3511-12 (codified as amended at 18 U.S.C. §§ 2251(a), 2421-2423 (1988)).

77. *See, e.g.,* Victims' Rights Act, *supra* note 2; Sexual Abuse Act, *supra* note 2.

78. Comment, *supra* note 50, at 821-22 & n.89.

United States states enacted child pornography laws.<sup>79</sup>

The United States Attorney General addressed the child pornography problem as well. The Attorney General's Commission on Pornography issued a report in 1986 that included forty-eight recommendations relating to child pornography.<sup>80</sup> Some of these recommendations became part of the Child Sexual Abuse and Pornography Act of 1986, while others became part of the Child Protection and Obscenity Enforcement Act of 1988.<sup>81</sup> The Commission indicated that efforts to combat child pornography should be coordinated and recommended that the "94 Law Enforcement Coordinating Committees throughout the country be directed to form child pornography task forces, and that the Justice Department or some other federal agency create a centralized data base on child pornography trafficking to be used as a resource for all law-enforcement programs."<sup>82</sup> The Commission focused on the need for international cooperation and recommended that "[t]he State Department, the United States Department of Justice, the United States Customs Service, the United States Postal Inspection Service, the Federal Bureau of Investigation and other federal agencies should continue to work with other nations to detect and intercept child pornography."<sup>83</sup>

By 1986, it was apparent to the United States Justice Department that a coordinated effort between the United States and other states, as well as between United States federal, state, and local law enforcement and social service agencies was needed to combat more effectively the problem of child pornography.<sup>84</sup> The Attorney General established the National Obscenity Enforcement Unit in 1987 to coordinate law enforcement efforts on the national level.<sup>85</sup> This agency's purpose is "to spearhead the federal government's obscenity and child pornography prosecutions and to assist local, state and federal prosecutors with their work in

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79. H. DAVIDSON & G. LOKEN, *supra* note 3, at 8, 39-44.

80. *Id.* at 23, 35-37; FINAL REPORT, *supra* note 12, at 595-735 (1986).

81. Sexual Abuse Act, *supra* note 2; 1988 Act, *supra* note 2. The Child Sexual Abuse and Pornography Act of 1986 incorporated the recommendations to prohibit advertisements for child pornography and to include undeveloped film in the definition of visual depiction. The Child Protection and Obscenity Enforcement Act of 1988 incorporated the recommendations that Congress should prohibit the production of pornography and make a felony the selling or buying of children for the production of child pornography. *See supra* notes 74-77 and accompanying text; *see also infra* notes 151-57 and accompanying text.

82. *See generally* FINAL REPORT, *supra* note 12, at 677, 690.

83. *Id.* at 671 (emphasis in original omitted).

84. *See generally id.* at 595-735.

85. U.S. Dep't of Justice, Press Release of Sept. 14, 1987, at 2 [hereinafter Press Release].

these areas."<sup>86</sup> The National Obscenity Enforcement Unit, is a special task force comprised of representatives from the Justice Department, works closely with representatives from the Customs Service, the Internal Revenue Service, the Federal Bureau of Investigation, and the United States Postal Inspection Service.<sup>87</sup>

The United States Postal Inspection Service, the United States Customs Service, and the United States Federal Bureau of Investigation have primary jurisdiction to investigate child pornography activity on the federal level.<sup>88</sup> Because child pornography collectors often exchange child pornography through the mails,<sup>89</sup> the United States Postal Inspection Service identifies suspect correspondence and investigates child pornography cases in which the United States mails are used.<sup>90</sup> The United States Customs Service investigates the importation and exportation of child pornography.<sup>91</sup> In 1985, reports indicated that "[i]nvestigators are beginning to look for the major distributors, producers, and consumers, using longer-term investigations. Undercover operations are being developed as interoffice and interagency efforts, both at home and abroad."<sup>92</sup>

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86. *Id.*

87. *Id.* at 22-23, Telephone interview with Patrick Trueman, Chief of the National Obscenity Enforcement Unit, recently renamed on 5 July 1990 the Child Exploitation and Obscenity Section, Criminal Division of the Justice Department, Washington D.C.

88. *Id.*

89. According to a policy statement in the Postal Inspection Manual;

[t]he objective in child pornography cases is to identify and investigate trafficking through the mail. Suspects not found to be mailing materials are referred to local police or other appropriate authorities. . . .

In conducting child pornography investigations, inspectors should maintain close contact with police, other state and federal law-enforcement agencies, and social workers who, due to their work, frequently become aware of child abuse and/or child pornography. Evidence is examined, such as mailing lists seized during the execution of search warrants, in an effort to identify persons interested in this type of material. Once an individual or firm is identified as possibly using the mails to distribute child pornography, test correspondence is initiated in an attempt to establish a dialogue with the pornographer to determine his predisposition for this material. If other offenses such as child abuse are discovered incident to an investigation, this activity is immediately referred to appropriate local authorities for further attention.

UNITED STATES POSTAL INSPECTION SERVICE MANUAL 5 (Jan. 1987), *reprinted in* H. DAVIDSON & G. LOKEN, *supra* note 3, at 23.

90. H. DAVIDSON & G. LOKEN, *supra* note 3, at 23.

91. *Id.*

92. R. Martinez, *The U.S. Customs Service Child Pornography Program* (LECC Network News 2 (Fall 1985)), *reprinted in* H. DAVIDSON & G. LOKEN, *supra* note 3, at 23.

In October 1985, the United States Customs Service formed a Child Pornography and Protection Unit to coordinate all of the Service's child pornography cases and to act as a clearinghouse for information on relevant publications and known suppliers or customers.<sup>93</sup> The Federal Bureau of Investigation works with foreign and domestic state and local officials to carry out long term pornography investigations and undercover operations.<sup>94</sup>

The coordinated efforts of the Department of Justice, the United States Postal Inspection Service, and the Customs Service have produced positive results.<sup>95</sup> In September 1987, the Department of Justice, the Postal Inspection Service, and the Customs Service announced the results of two nationwide undercover operations targeting child pornographers.<sup>96</sup> According to the Justice Department, these operations—the Postal Inspection Service's "Project Looking Glass" and the Customs Service's "Operation Borderline"—involved the mailing of "letters and brochures advertising child pornography . . . to individuals who had shown a predisposition, on at least two prior occasions, to purchase, traffic in, or receive child pornography."<sup>97</sup> After orders were received and controlled deliveries were made, federal search warrants immediately were issued to recover the child pornography.<sup>98</sup> These three agencies, in a joint effort to identify and prosecute child pornographers, indicted more than one hundred individuals and conducted more than 275 searches.<sup>99</sup> In addition to focusing on domestic enforcement, representatives from the Justice Department, the Customs Service, and the Postal Inspection Service regularly meet with each other to exchange information on the international market in pornography.<sup>100</sup>

### III. WORLD EFFORTS TO REDUCE CHILD PORNOGRAPHY

The United States is considered the world's most lucrative market for child pornography.<sup>101</sup> Most child pornography imported into the United States historically came from Western Europe.<sup>102</sup> Child pornography to-

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93. U.S. CUSTOMS SERVICE, CUSTOMS U.S.A. 8 (1987).

94. H. DAVIDSON & G. LOKEN, *supra* note 3, at 23.

95. Press Release, *supra* note 85, at 1.

96. *Id.*

97. *Id.* at 2.

98. *Id.* at 3.

99. *Id.* at 1.

100. U.S. CUSTOMS SERVICE, ACCOMPLISHMENTS 1982-1988, at 4 (1988).

101. 1986 SENATE REPORT, *supra* note 4, at 34.

102. *Id.* at 29-30.

day is produced primarily in southeast Asia, particularly in Thailand.<sup>103</sup> Producers of foreign child pornography traditionally utilize the most advanced equipment and therefore produce child pornography that is superior in quality to domestically produced child pornography.<sup>104</sup> The quality in some magazines has deteriorated recently, however, because of crackdowns on child pornography both in the United States and abroad.<sup>105</sup> Foreign producers advertise in their own magazines for amateur photographs which appear in future issues of these magazines.<sup>106</sup> This solicitation process allows a significant number of photographs that originate in the United States to be published in foreign child pornography magazines.<sup>107</sup>

Syndicated sex rings,<sup>108</sup> entrepreneurs, and free-lance photographers distribute child pornography through couriers, mail, and direct sales.<sup>109</sup> An international producer will use "[m]ultiple 'covers' . . . to disguise his identity and point of production, including constant relocation, the creation of 'shadow' or bogus companies, and sending materials abroad from countries where the likelihood of detection by customs officials is less due to the sheer volume of outgoing mail."<sup>110</sup>

The child pornography market is part of a larger world of interna-

103. A. ANDERSEN, INTERNATIONAL REPORT ON CHILD PORNOGRAPHY, CHILD PROSTITUTION AND CHILD TRADE 44 (Norwegian Dep't of Justice, May 15, 1987).

104. D. CAMPAGNA & D. POFFENBERGER, *supra* note 5, at 119-21.

105. 1986 SENATE REPORT, *supra* note 4, at 38.

106. 1984 *Hearings*, *supra* note 1, at 9. One advertisement stated, "Turn your old pre-teen photos to money. We pay top price for amateur photos. . . . Your contribution will be greatly appreciated and will help us to continue this series." *Id.*

107. *Id.* at 12-13.

108. D. CAMPAGNA & D. POFFENBERGER, *supra* note 5, at 119-21; *see also* A. BURGESS & C. GRANT, CHILDREN TRAUMATIZED IN SEX RINGS 7-11 (Nat'l Center for Missing & Exploited Children, 1988). Burgess and Grant describe the way in which sex rings are used to distribute child pornography:

*Sex ring crime* is a term describing sexual victimization in which there are one or more adult offenders and several children who are aware of each other's participation. There are three different types of child sex rings. The solo sex ring involves one adult perpetrator and multiple children. There is no exchange of photographs, nor are there sexual activities with other adults. By contrast, a syndicated ring involves multiple adults, multiple child victims, and a wide range of exchange items including child pornography and sexual activities. At a level between these two types of rings is the transition ring, in which the children and pornography are exchanged between adults, and often money changes hands.

*Id.* at 7 (footnotes omitted).

109. *See* D. CAMPAGNA & D. POFFENBERGER, *supra* note 5, at 119-21.

110. *Id.* at 121.

tional sexual trafficking in children.<sup>111</sup> Children are sexually exploited and are bought or sold for child pornography and prostitution through adoption schemes, indenturing, and sex tourism.<sup>112</sup> According to Defence for Children International, "child pornography is at least a \$2.5 billion a year business involving many millions of children internationally."<sup>113</sup> Varying state laws and the lack of strict enforcement have enabled the international child pornography market to evolve into a vast international business.<sup>114</sup> There is also little encouragement for states involved in the production, distribution, and consumption of child pornography to strengthen and enforce existing child pornography laws and to cooperate with other states to eradicate the flow of child pornography.<sup>115</sup> Although treaties prohibit mailing obscene materials through international mail, states sometimes ignore these agreements.<sup>116</sup> There is also a lack of consensus between states about the magnitude and severity of the child pornography problem and the need to address this problem both at the state and international level.<sup>117</sup>

In 1984, the United States Congress began to address the problem of international child pornography and initiated cooperative efforts with the Netherlands, Denmark, and Sweden to curb the flow of international

111. *Id.* at 143-52.

112. *Id.* at 149-54.

113. A. ANDERSEN, *supra* note 103, at 44. Defence for Children International is an international advocacy group based in Geneva, Switzerland. It was organized after the International Congress on Child Abuse and Neglect in London, England in 1979 and currently has members in over forty states with affiliated organizations in forty other states. It is a nonpartisan, nonsectarian group that seeks to implement the United Nations Declaration of the Rights of the Child through intervention, investigation, education, and indirect assistance, and that serves as a consultant group for several United Nations committees. 1984 *Hearings*, *supra* note 1, at 22.

114. *See Hearings: Women & Children*, *supra* note 19, at 141-44; *see also* INTERNATIONAL CATHOLIC CHILD BUREAU, CHILDREN AND PORNOGRAPHY: A SURVEY OF THE PROTECTION OF MINORS AGAINST PORNOGRAPHY 9-14 (1988) [hereinafter CHILD BUREAU].

115. *See* CHILD BUREAU, *supra* note 114, at 9-14, 22-24.

116. *See* 1984 *Hearings*, *supra* note 1, at 17 (statement of John Kelly, Deputy Ass't Secretary of State) (citing Universal Postal Union, *done* Oct. 26, 1979, art. 36(4)(e), 32 U.S.T. 4587, T.I.A.S. No. 9972, — U.N.T.S. —, *superseded* by Third Additional Protocol to the Constitution of the Universal Postal Union, *done* July 27, 1984, — U.S.T. —, T.I.A.S. No. —, — U.N.T.S. — (entered into force Jan. 1, 1986)).

117. *See generally* Paper Presented by the Metropolitan Police, New Scotland Yard, London, at the ICPO European Meeting on the Exploitation of Prostitution and on Pornography (Sept. 1987) [hereinafter Scotland Yard Paper]; *see also* CHILD BUREAU, *supra* note 114, at 9-14, 22-23.



child pornography.<sup>118</sup> The United States continues to strengthen its existing child pornography laws and its policy of aggressive enforcement.<sup>119</sup> The Netherlands and Denmark, historically major producers of child pornography, both enacted laws that prohibit the production and distribution of child pornography; unfortunately, lax enforcement undercuts the effectiveness of these measures.<sup>120</sup> At the same time, the production and distribution of child pornography has grown in other foreign states, such as Thailand. Because of the weak enforcement of existing state laws and increased international production of child pornography, more steps to curb the flow of international child pornography must be taken at the international level.<sup>121</sup> The United Nations and other international organizations, recognizing the threat that the international child pornography market poses to the children of many states, offer a number of recommendations for future steps that states concerned about this problem should take.<sup>122</sup>

A. *Cooperative Efforts of the United States, the Netherlands, Denmark, and Sweden*

After the United States Congress enacted the Protection of Children Against Sexual Exploitation Act of 1977, the commercial market for child pornography in the United States began to disappear, and pedophiles in the United States began to buy child pornography from Europe.<sup>123</sup> Most of the European child pornography in the form of magazines, films, and videos seized by the United States Customs Service originates in Sweden, Denmark, and the Netherlands.<sup>124</sup> Until the 1980s, however, the European child pornography market received little

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118. 1984 *Hearings*, *supra* note 1, at 17; 1986 SENATE REPORT, *supra* note 4, at 30-31.

119. See H. DAVIDSON & G. LOKEN, *supra* note 3, at 7-12, 21-25.

120. 1986 SENATE REPORT, *supra* note 4, at 31-35.

121. CHILD BUREAU, *supra* note 114, at 8.

122. See *id.* at 25; Scotland Yard Paper, *supra* note 117, §§ 5.1-5.7; DEFENCE FOR CHILDREN INTERNATIONAL & CENTRAL UNION FOR CHILD WELFARE IN FINLAND, CHILD PROSTITUTION, TRAFFICKING AND PORNOGRAPHY: INTERNATIONAL REPORT 27-32 (1986) [hereinafter INTERNATIONAL REPORT]; *Commission on Human Rights of the U.N. Economic and Social Council: Slavery and Slavery-Like Practices: Report of the Working Group on Contemporary Forms of Slavery on Its Thirteenth Session*, at 22-23, U.N. Doc. E/CN.4/Sub.2/1988/32 (1988) [hereinafter *Working Group Report*].

123. 1986 SENATE REPORT, *supra* note 4, at 29; FINAL REPORT, *supra* note 12, at 671.

124. CHILD BUREAU, *supra* note 114, at 5; 1986 SENATE REPORT, *supra* note 4, at 30; Scotland Yard Paper, *supra* note 117, §§ 3.6, 3.9, 3.15; INTERNATIONAL REPORT, *supra* note 122, at 26-27; *Working Group Report*, *supra* note 122, at 15-17.

criticism or scrutiny.<sup>125</sup>

In August 1984, NBC television aired *The Silent Shame*, a documentary that exposed the Netherlands and Denmark as suppliers of child pornography.<sup>126</sup> As a result, concern about the international flow of child pornography dramatically increased in the United States and in Europe.<sup>127</sup> Officials from United States embassies in the Hague and Copenhagen approached the governments of the Netherlands and Denmark and indicated that the United States was willing to share information that it had received about Dutch and Danish sources of child pornography.<sup>128</sup> The United States embassy officials suggested a joint effort between the three states to combat the child pornography problem and encouraged the two European states<sup>129</sup> to enforce article 36(4)(e) of the Universal Postal Convention, which prohibits immoral or obscene articles from circulation in international mail.<sup>130</sup> The officials of both the Netherlands and Denmark responded positively. The Dutch authorities requested information concerning possible Dutch exporters of child pornography.<sup>131</sup> The Danish authorities pointed out that child pornography is illegal in their state and launched a full-scale investigation of child pornography.<sup>132</sup> After a preliminary investigation, however, Denmark claimed that the child pornography they found was produced abroad.<sup>133</sup>

In November 1984, the United States Senate conducted its first hearing on the importation of child pornography from foreign states.<sup>134</sup> The United States Customs Service testified that about one-half of the 4,266 pornography seizures made in 1984 depicted some form of child exploitation.<sup>135</sup> The Customs Service claimed that the Netherlands, Denmark, and Sweden are the source of about eighty-five percent of all pornography imported into the United States.<sup>136</sup> After the hearing, the United States Interagency Group to Combat Child Pornography visited

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125. 1986 SENATE REPORT, *supra* note 4, at 29-30; *see* 1977 Act, *supra* note 2, § 2(a), 92 Stat. 7-8 (codified as amended at 18 U.S.C. §§ 2251, 2252 (1988)).

126. 1984 *Hearings*, *supra* note 1, at 8-16.

127. 1986 SENATE REPORT, *supra* note 4, at 1-2.

128. 1984 *Hearings*, *supra* note 1, at 17-18.

129. *Id.* at 17.

130. *See supra* note 116 and accompanying text.

131. 1984 *Hearings*, *supra* note 1, at 17-18.

132. *Id.* at 17-18.

133. *Id.* at 18.

134. *Id.* at 2.

135. *Id.* at 5.

136. *Id.* at 6.

these three states.<sup>137</sup> This task force included representatives from the United States Department of Justice, Federal Bureau of Investigation, Customs Service, Postal Service, and Department of State.<sup>138</sup> In response to the visit of the task force, the Dutch authorities stated that they were about to enact new legislation to facilitate the prosecution of child pornography distributors.<sup>139</sup> The Dutch also suggested<sup>140</sup> that the United States and the Netherlands discuss ways in which they could utilize the 1983 United States-Dutch Mutual Judicial Assistance Treaty to facilitate child pornography information exchanges.<sup>141</sup> The United States and the Netherlands then established a "formal program of bilateral cooperation [to insure] prompt exchanges of information, including that of evidentiary nature with chain of custody materials and the sharing of investigative reports in which U.S. consumers of child pornography confirm their receipt of such materials from a given address and purveyor."<sup>142</sup>

The Danish authorities also sought cooperation with the United States and other states on the problem of child pornography.<sup>143</sup> The United States task force provided Denmark with the addresses of possible Danish child pornography distributors; this information precipitated the prosecution of three managers of a Danish publishing firm for the pro-

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137. 1985 Hearings, *supra* note 1, at 46-47 (statement of Larry B. Sheafe, Director, Office of Investigations, U.S. Customs Service).

138. The federal Interagency Group to Combat Child Pornography was organized in 1984 to encourage the agencies represented to join their efforts in child pornography cases and to communicate the concerns of the United States Government about child pornography to appropriate foreign governments. Mr. Gary Matthews, Deputy Assistant Secretary of State for Human Rights, chaired the Interagency Group. Mr. Matthews' presence as leader of the Group conveyed to the European governments that the United States considers child pornography a serious problem. *Id.*

In its 1985 visit to Europe, the Group first met with the custom's attaché in Bonn, West Germany. The Group then met with law enforcement and government officials in the Netherlands, Denmark, and Sweden. The members of the Group explained how their agencies approach the child pornography problem. The Europeans were particularly interested in the United States explanation of the sanctity of first class mail. The Europeans assumed that United States officials indiscriminately opened and read international mail. *Id.*

139. *Id.* at 48-49.

140. *Id.* at 24 (statement of Elliot Abrams, United States Assistant Secretary of State for Human Rights and Humanitarian Affairs).

141. Treaty on Mutual Assistance in Criminal Matters, United States-Netherlands, done June 12, 1981, — U.S.T. —, T.I.A.S. No. 10734 (entered into force Sept. 15, 1983).

142. 1985 Hearings, *supra* note 1, at 24.

143. *Id.*

duction and sale of child pornography.<sup>144</sup>

Sweden also expressed its desire to receive from the United States information concerning the production and distribution of child pornography.<sup>145</sup>

### B. *United States Legislation and Enforcement*

The United States recently focused enforcement measures, legislation, and judicial attention on the international child pornography trade. In 1983, the United States Customs Service committed itself to halt the importation of child pornography.<sup>146</sup> The Customs Service seized 1,235 shipments of child pornography in 1985, which represented a decrease of forty percent from the previous year.<sup>147</sup> This decline is attributable in part to efforts originating in both the United States and Europe to reduce child pornography.<sup>148</sup> A United States Senate report indicated, "At the same time seizures have declined, however, Customs investigations of child pornography cases almost doubled, from 106 in 1984 to 209 in 1985. The number of search warrants increased 115 percent, arrests rose 124 percent and convictions increased from 14 to 45, an increase of 221 percent."<sup>149</sup> In 1987, the United States Customs Service conducted 536 investigations, made 337 seizures, and obtained 109 indictments and sixty-nine convictions.<sup>150</sup>

The United States stepped up its efforts against child pornography not only by increasing its effective law enforcement efforts directed at international child pornography, but also by enacting the Child Protection and Obscenity Enforcement Act of 1988.<sup>151</sup> This Act amends 18 U.S.C. sections 2251(c) and 2252(a) to include offenses committed by means of a computer.<sup>152</sup> A new RICO provision in the Act amends the definition of racketeering activity contained in 18 U.S.C. section 1961(1) to encompass any act involving child sexual exploitation that is indictable under 18 U.S.C. sections 2251 and 2252.<sup>153</sup> The Act strengthens the forfeiture procedures under 18 U.S.C. sections 2253 and 2254.<sup>154</sup> A new provi-

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144. *Id.*

145. *Id.*

146. *Id.* at 25 (statement of Larry Shaefer).

147. 1986 SENATE REPORT, *supra* note 4, at 36.

148. *Id.*

149. *Id.*

150. U.S. CUSTOMS SERVICE, *supra* note 93, at 8.

151. 1988 Act, *supra* note 2.

152. 18 U.S.C. §§ 2251(c), 2252(a) (1988).

153. *Id.* § 1961(1).

154. *Id.* §§ 2253-2254.

sion—section 2257—requires pornographers to keep records of so-called pornography performers.<sup>155</sup> Of particular interest for curbing international child pornography are a new section 2251A, which prohibits the selling or buying of children for purposes of child pornography,<sup>156</sup> and the Tariff Act amendment which allows “the delay of forfeiture [by the Customs Service] to permit the continuance of a criminal investigation.”<sup>157</sup>

The United States recently prosecuted a foreign pornographer under its federal child pornography laws. In October 1988, the United States District Court for the District of Massachusetts found Jorgen Jensen, a Danish citizen, guilty of importing child pornography video tapes into the United States.<sup>158</sup> The court sentenced Mr. Jensen to thirty-seven months imprisonment and imposed a \$47,000 fine.<sup>159</sup> Against arguments that the court did not have jurisdiction over Jensen because of his Danish citizenship, the prosecution argued that the United States possessed jurisdiction based on the effects doctrine.<sup>160</sup> The prosecution drew a parallel between the *Jensen* case and drug smuggling, claiming that “the legislative history supports the inference that Congress intended to include extraterritorial criminal activity within the ambit” of the child pornography legislation.<sup>161</sup> The court’s decision to exercise jurisdiction sets

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155. *Id.* § 2257.

156. *Id.* § 2251A.

157. 19 U.S.C. § 1305.

158. Telephone interview with Susan Via, Ass’t United States Attorney, Boston (March 27, 1990).

159. *Id.*

160. Government’s Memorandum of Law: Jurisdiction and Venue at 16, *United States v. Jensen*, No. 88-160-Mc (D. Mass. 1988).

161. *Id.* at 10. In January 1990, the United States Court of Appeals for the Ninth Circuit considered whether the United States child pornography statutes could be applied to the extraterritorial acts of a United States citizen. In *United States v. Thomas*, 893 F.2d 1066 (9th Cir. 1990) a United States national appealed a conviction in the United States District Court for the Southern District of California under the United States child pornography statutes. The defendant argued that his conviction should be overturned because the prosecution failed to produce any evidence at trial that the defendant took the pornographic pictures in the United States. The defendant claimed that if he had committed the acts they would have been committed in Mexico and that section 2251(a) of the child pornography statutes does not apply to extraterritorial acts.

The Ninth Circuit held that although section 2251(a) does not explicitly state that it applies to extraterritorial acts, such application can be inferred from the “nature of the offenses and Congress’ other legislative efforts to eliminate the type of crime involved.” *Id.* at 1068 (quoting *United States v. Baker*, 609 F.2d 134, 136 (5th Cir. 1980)). The court drew an analogy between the application of the child pornography statutes and the application of statutes proscribing the possession of controlled substances.

a precedent for broader application of the federal child pornography laws to nonnational criminals.

Despite the United States aggressive stance against child pornography both domestically and internationally, the United States lags behind the United Kingdom in that United States federal law does not prohibit the possession of child pornography.<sup>162</sup> This omission is contrary to the laws of thirteen states of the United States which prohibit possession.<sup>163</sup> The United States Attorney General's report on pornography also recommends that state law make a felony the possession of child pornography and the United States Supreme Court recently affirmed a state's right to legislate against the possession of child pornography in *Osborne v. Ohio*.<sup>164</sup> The United Kingdom amended its child pornography laws in 1988 to make possession a per se offense.<sup>165</sup> In the United Kingdom, the

The court quoted *Baker*, saying, "The power to control efforts to introduce illicit drugs into the United States from the high seas and foreign nations is a necessary incident to Congress' efforts to eradicate all illegal drug trafficking." *Baker*, 609 F.2d at 137. The court reasoned that in the case of child pornography it is likely that Congress intended section 2251(a) to apply to extraterritorial acts to punish those who create child pornography outside the United States that is or may reasonably be expected to be transported in interstate or foreign commerce. The court concluded that the application of section 2251(a) to the defendant's extraterritorial acts would not violate international law because "[i]nternational law permits a country to apply its statutes to extraterritorial acts of its nationals?" *Thomas*, 893 F.2d 1069.

162. H. DAVIDSON & G. LOKEN, *supra* note 3, at 10.

163. H. DAVIDSON & G. LOKEN, *supra* note 3, at 11.

164. FINAL REPORT, *supra* note 12, at 648, *Osborne v. Ohio*, 110 S. Ct. 1691 (1990) *Thomas*; see *supra* note 67 (discussing *Osborne*).

165. Criminal Justice Act of 1988, ch. 33, § 160. The Act provides:

(1) It is an offence for a person to have any indecent photography of a child (meaning in this section a person under the age of 16) in his possession.

(2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove—

(a) that he had a legitimate reason for having the photograph in his possession; or

(b) that he had not himself seen the photograph and did not know, nor had any cause to suspect, it to be indecent; or

(c) that the photography was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) A person shall be liable for summary conviction of an offence under this section to a fine not exceeding level 5 on the standard scale.

(4) Sections 1(30), 2(3), 3 and 7 of the Protection of Children Act 1978 shall have effect as if any reference in them to that Act included a reference to this section.

(5) Possession before this section comes into force is not an offence.

penalty for possession of child pornography is a fine of £1,000.<sup>166</sup>

The United States should also take further steps on the international level to curb the transshipments of pornography, which make enforcement efforts ineffective. According to a 1986 United States Senate Report,

As closer scrutiny of Dutch and Scandinavian shipments continues, Customs officials anticipate an increase in "transshipments" of child pornography through third countries such as France, West Germany, and Japan, whose mail shipments are so vast that none could be thoroughly searched on a routine basis. . . . Likewise, more material from countries such as Thailand and the Philippines, which have booming child-sex markets, can be expected.<sup>167</sup>

### C. *Child Pornography Law and Enforcement in Denmark*

According to section 232 of the Danish Criminal Code, "Whoever by obscene behavior violates public decency or gives public offense shall be liable to imprisonment for any term not exceeding four years or, in extenuating circumstances, to simple detention or a fine."<sup>168</sup> Under this law, Denmark can prosecute a person who takes an obscene picture of a child.<sup>169</sup> The state may also prosecute those involved in child pornography for having sexual intercourse with any child under fifteen years of age.<sup>170</sup>

The Danish Criminal Code covers commercial distribution of child pornography.<sup>171</sup> The law provides, "Whoever for profit sells or other-

166. Criminal Justice Act of 1982, ch. 48, §§ 37, 75.

167. 1986 SENATE REPORT, *supra* note 4, at 37-38.

168. Danish Criminal Code, ch. 24, § 232, *translated in 1985 Hearings, supra* note 1, at 75.

169. Letter of Mr. Jorgen Larsen, Counselor, Royal Danish Embassy, to Mr. Bruce Selcraig, Staff Investigator, U.S. Senate (Feb. 4, 1985) [hereinafter Larsen Letter], *reprinted in 1985 Hearings, supra* note 1, at 79, 80.

170. Danish Criminal Code, ch. 24, § 222, *translated in 1985 Hearings, supra* note 1, at 71. Section 222 provides:

Whoever has sexual intercourse with any child under fifteen years of age shall be liable to imprisonment for not more than four years.

If the child is under twelve years of age, or if the perpetrator has enforced the sexual intercourse by duress . . . or by intimidation, the penalty may be increased to imprisonment for not more than ten years.

*Id.*

171. *Id.* § 235, *translated in 1985 Hearings, supra* note 1, at 75. Under United States child pornography laws, a person under eighteen is deemed a child. This difference between Danish and United States laws makes it difficult for the two states to coordinate their efforts to address child pornography. 1985 *Hearings, supra* note 1, at 52.

wise distributes or, with the intent of selling or distributing, produces or acquires pornographic pictures, film, or the like, of children is liable to fine."<sup>172</sup> Danish law also provides that government authorities may confiscate child pornography.<sup>173</sup> The Danish Criminal Code provides a penalty for complicity.<sup>174</sup>

In a 1986 report on child pornography prepared for the Norwegian Department of Justice, the Danish Minister of Justice declared that "no proof was uncovered that child pornography is extensively produced in Denmark."<sup>175</sup> The Minister said, however, that Denmark regards pornography that is originally produced in Denmark differently than pornography made in other states.<sup>176</sup> According to the Minister's report, "The printing and reproducing of pornography that has been photographed [or] filmed outside [Denmark] lead to more lenient punishment than in those cases where the shooting has been done in Denmark."<sup>177</sup>

Both Denmark and the United States are party to the Universal Postal Convention of 1979, which prohibits international mailings of obscene or immoral articles.<sup>178</sup> Danish law enforcement officials find it difficult to prosecute cases involving intrastate mailings of obscene materials despite past success in prosecuting such cases before the Danish Supreme Court.<sup>179</sup> As a further impediment to child pornography prosecution, these officials receive little support from Danish Postal Service employees.<sup>180</sup> A 1986 United States Senate report observed:

As in most European countries, Denmark has very rigid mail secrecy laws. Mail can be interfered with only under extraordinary circumstances and only with the approval of the courts. In addition, Danish postal authorities, who do not have the police powers of their American counterparts, are not required to notify police if they suspect the mails have been

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172. Danish Criminal Code, ch. 24, § 235, *translated in 1985 Hearings, supra* note 1, at 75.

173. Larsen Letter, *supra* note 169, *reprinted in 1985 Hearings, supra* note 1, at 80.

174. *Id.* Section 23 provides that the penalty for an offense will apply to anyone who has contributed to the offense by instigation, advice, or action. This means that anyone who assists in the production or distribution of child pornography is also liable under the Danish child pornography statutes. The penalty for distribution of child pornography in Denmark is not as great as the penalty for production of child pornography because production is regarded as child molestation. *Id.*

175. A. ANDERSEN, *supra* note 103, at 41.

176. *Id.*

177. *Id.*

178. *See supra* note 116.

179. 1985 *Hearings, supra* note 1, at 68-69.

180. *Id.*



used for illegal purposes.<sup>181</sup>

#### D. *Child Pornography Law and Enforcement in the Netherlands*

Prior to 1986, prosecution of those engaged in child pornography was particularly difficult under Dutch law.<sup>182</sup> Law enforcement officials who wanted to prosecute child pornographers first had to locate hidden production sites, and even then it was "almost essential" under existing laws "to apprehend the producer in the act of abusing an unwilling child" to obtain a conviction.<sup>183</sup> The child's unwillingness was a required element for prosecution in some Dutch jurisdictions.<sup>184</sup> The Dutch Government, therefore, could prosecute child pornographers only in the most egregious cases of child sexual exploitation.<sup>185</sup>

On 21 May 1986, the Tweede Kamer—the Dutch legislative body—enacted a new child pornography law to amend the Dutch Criminal Code.<sup>186</sup> Article 240b of this law provides:

Any person who distributes or openly exhibits or who with a view to distribution or open exhibition produces, imports, conveys in transit, exports or stocks a picture (including other forms of information such as film or videotape containing such a picture) of a sexual act in which a person obviously below the age of 16 years is engaged shall be punishable by imprisonment for a maximum of three months or a third category fine (maximum 10,000 florins).<sup>187</sup>

This law eradicated the unwillingness element of the child pornography offense.<sup>188</sup> According to the legislative history of this law, article 240b is based on a presumption that a child younger than age sixteen cannot voluntarily participate in the production of child pornography.<sup>189</sup>

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181. 1986 SENATE REPORT, *supra* note 4, at 31.

182. *Id.* at 32-33. See generally 1985 Hearings, *supra* note 1, at 25-31; Report of the Dutch Government Task Force on Child Pornography (Aug. 1986) [hereinafter Dutch Report] (translation).

183. 1985 Hearings, *supra* note 1, at 26.

184. *Id.*

185. *Id.*

186. *Child Pornography: Dutch Legislation Comes into Force*, 3 INT'L CHILDREN'S RIGHTS MONITOR, No. 3, at 6 (1986).

187. Bill 15,836, No. 17, art. 240b, translated in *Market Forces or Force of the Law?*, 2 INT'L CHILDREN'S RIGHTS MONITOR, No. 1, at 10, 14 (1985) [hereinafter *Market Forces*].

188. *Market Forces*, *supra* note 187, at 14.

189. *Id.*

This presumption is irrebutable.<sup>190</sup>

Members of the Tweede Kamer discussed the phrase "obviously below the age of 16 years."<sup>191</sup> The Dutch Minister of Justice pointed out that it would not be difficult to apply the law to children twelve years old and younger.<sup>192</sup> The Minister believed that prosecution of an offender would be more difficult were the law to apply to children over twelve.<sup>193</sup>

In 1986, a Dutch government task force issued a report on child pornography in the Netherlands.<sup>194</sup> According to the report, child pornography had increased because of the "juridical room which developed in the course of years," but would diminish because of the impact of recent jurisprudence and legislation.<sup>195</sup> The report noted, however, that some problems might exist with the new child pornography law. One problem is that the language "to be distributed" in the new article 240b of the Dutch Criminal Code makes enforcement more difficult because it is harder to determine whether a party is holding child pornography for distribution.<sup>196</sup> The report provided an example of an owner of child pornography who recently claimed that the stash of child pornography in his garage was taken off the market.<sup>197</sup> Another potential loophole that the task force noticed is the use of the term "sexual act".<sup>198</sup> The report feared that judges may not include a picture of an individual child in that definition.<sup>199</sup>

In addition to determining potential loopholes in the child pornography law, the Dutch task force recommended that the following safeguards and procedures be instituted to improve enforcement:

- (1) A clear and uniform interpretation of the new child pornography law by justice and police officials.
- (2) A uniform national investigation and prosecution policy in child pornography cases.
- (3) Regular local police checks on local sex shops to ensure no child pornography is being sold.
- (4) Local police investigation of any newspaper/magazine advertisements that appear to be soliciting children or adults interested in child

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190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. Dutch Report, *supra* note 182.

195. *Id.* at 16.

196. *Id.* at 17.

197. *Id.*

198. *Id.*

199. *Id.*

sexual activity.

(5) Judicial investigation and a search of the suspected point of production as soon as possible in any case of suspicion of commercial child pornography production.

(6) A policy of searching for photographic records of sexual abuse and possible connections to the child pornography trade in any police investigation of child sexual abuse cases.

(7) Establishment by the National Criminal Intelligence Service of a central catalog of seized child pornography for reference use by local police.

(8) Designation by local police departments of an official responsible for liaison with the National Criminal Intelligence Service on child pornography matters.

(9) Periodic National Criminal Intelligence Service exchanges of information on child pornography investigations with relevant third countries.<sup>200</sup>

The new Dutch law does not require that a pornographer forfeit his assets when convicted; therefore, the pornographer's business could continue to operate even after conviction.<sup>201</sup> This does not evince considerable resolve on the part of the Dutch legislature. Dutch officials, however, maintain that the new child pornography law will have a significant effect on Dutch pornographers.<sup>202</sup> They reason that because there is a larger adult pornography market, distributors will not want to risk losing adult pornography sales by selling child pornography in violation of the new child pornography law.<sup>203</sup>

According to the Dutch task force report, the United States falsely alleged that the Netherlands is a continuing source of commercial child pornography.<sup>204</sup> Few United States law enforcement officials agree with the Dutch claim.<sup>205</sup> The report admits that the Netherlands supplied commercial child pornography in the past, but it claims that increased law enforcement efforts make this no longer the case.<sup>206</sup> The report also emphasizes that the past exportation of commercial child pornography from the Netherlands was the result of foreign demand.<sup>207</sup> Through the International Criminal Police Organization (Interpol), the Dutch task

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200. 1986 SENATE REPORT, *supra* note 4, at 33 n.131.

201. *Id.* at 33.

202. *Id.*

203. *Id.*

204. Dutch Report, *supra* note 182, at 11-12.

205. 1986 SENATE REPORT, *supra* note 4, at 33.

206. Dutch Report, *supra* note 182, at 11-12.

207. *Id.* at 11.

force asked Belgium, West Germany, Denmark, Sweden, the United Kingdom, and Canada if they knew of any instances in which child pornography had been either imported from the Netherlands or exported to the Netherlands from their state.<sup>208</sup> West Germany was the only state which reported that it discovered a child pornography link with the Netherlands.<sup>209</sup>

The difference between the enforcement tools utilized by the United States and the Netherlands is one explanation for the discrepancy over the extent of child pornography exported from the Netherlands. A United States Senate report explains part of the difference in enforcement:

The mail surveillance and mail openings done legally in the United States by agencies such as the Postal Service and U.S. Customs Service are extremely rare in the Netherlands and the Scandinavian countries. Under Dutch law the seizure or opening of personal mail as part of an investigation must be authorized by an examining magistrate, an officer of the courts. Likewise, "sting" operations that have become common in the United States virtually are unheard of in European law enforcement.<sup>210</sup>

In addition, investigations in the Netherlands take longer than investigations in the United States because of the *agent provocateur* provisions in Dutch law and because there is no conspiracy statute in the Netherlands.<sup>211</sup>

#### E. *Child Pornography Law and Enforcement in Thailand*

Thailand has no law that specifically prohibits the production and distribution of child pornography. Section 279 of the Criminal Code of Thailand, however, states, "Whoever commits an indecent act on a child not over thirteen years of age, with or without her consent, shall be punished with imprisonment not exceeding seven years or fine not exceeding fourteen thousand baht, or both."<sup>212</sup> An obvious problem with this section is that it is not gender-neutral; only indecent acts performed on female children are prohibited by the language of the statute. Section 279 also provides:

If the commission of offence according to the first paragraph, the offender commits it by threatening by any means whatever, by doing any act of

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208. *Id.* at 12.

209. *Id.*

210. 1986 SENATE REPORT, *supra* note 4, at 34.

211. 1985 Hearings, *supra* note 1, at 26.

212. Criminal Code of Thailand, tit. 9, § 279 (translation).

violence, by taking advantage of such child being in the condition of inability to resist, or by causing such child to mistake him for another person, the offender shall be punished with imprisonment not exceeding ten years or fine not exceeding twenty thousand baht, or both.<sup>213</sup>

Section 287 prohibits the production and distribution of visual depictions of anything that is obscene.<sup>214</sup> The penalty for a violation of section 287 is six months in prison, a fine, or both.<sup>215</sup>

Despite the existence of these laws, the production of child pornography is increasing in Thailand. One reason for the rise in production is that law enforcement in Thailand suffers from corruption among underpaid, lower ranking officials and from a general lack of political resolve to end the problem.<sup>216</sup> Criminals generally can avoid arrest by bribing the police.<sup>217</sup> Additionally, the production of child pornography in Thailand is linked to the Thai sex trade, which provides entertainment for many foreigners.<sup>218</sup> According to one report, the Thai Government encourages sexual tourism—despite the fact that it is illegal—to boost the Thai economy.<sup>219</sup>

The case of Maniit Thamaree, a Bangkok businessman, provides a graphic example of the link between sex tourism and child pornography, and demonstrates how little has been done to deal effectively with the problem, despite efforts from the United States and Thailand to address the problem. Cooperative efforts between the Thai police, Michigan officials, and the United States Customs Service led to Thamaree's arrest in 1985.<sup>220</sup> He was found guilty of the production and distribution of child pornography and of arranging "sex-tours" on which Western men sexually exploited Thai children.<sup>221</sup> Thamaree produced and offered for sale child pornography magazines to over two hundred, listed, United States customers. Thamaree encouraged customers in the United States to come to Thailand to abuse children sexually. Thamaree possessed thousands of negatives and prints of children being raped when he was arrested.<sup>222</sup> He received a sentence of only twelve months in prison.<sup>223</sup>

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213. *Id.*

214. *Id.* § 287.

215. *Id.* § 287(c).

216. CHILD BUREAU, *supra* note 114, at 10.

217. *Id.*

218. *Id.*

219. *Id.*

220. Herrmann & Jupp, *supra* note 5, at 143-44.

221. *Id.* at 144.

222. *Id.* at 143.

223. *Id.*

According to the Deputy Commander of the Crime Suppression Division in Thailand, European pornographers actively recruit impoverished Thai girls to model for their child pornography magazines by offering the girls' parents sums equaling between \$270 and \$350.<sup>224</sup> The Commander of the Crime Suppression Division in Thailand claims that Thai authorities attempt to stop the child pornography activity, but that the authorities need international cooperation.<sup>225</sup> The Commander was quoted in a Thai newspaper article as saying, "Our record shows that almost all pornographic photos were taken by foreigners. We urge cooperation from the countries where the porno magazines are to crack down on publishers and distributors."<sup>226</sup>

#### IV. RECOMMENDATIONS OF THE UNITED NATIONS AND OTHER NON-GOVERNMENTAL ORGANIZATIONS

The United Nations Declaration of the Rights of the Child, adopted by the United Nations General Assembly in 1959, states in principle 9, "The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form."<sup>227</sup> The member states of the United Nations unfortunately have not achieved this objective. Although international law and most states prohibit the production of commercial child pornography and the circulation of obscene materials, efforts to enforce laws prohibiting child pornography are "lax, non-existent, or inadequate in all nations."<sup>228</sup> State governments generally do not use enough resources to combat the child pornography problem.<sup>229</sup> Children lack the economic and political power necessary to influence government policies, and government leaders do not want to admit, for political or social reasons, that they have dealt inadequately with the problem.<sup>230</sup>

The investigation of commercial child pornography is not currently under the sole direction of an official international group; the United Nations International Children's Emergency Fund's (UNICEF) man-

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224. 4 INT'L CHILDREN'S RIGHTS MONITOR, No. 2, at 15 (1987).

225. *Id.*

226. *Id.*

227. *United Nations Declaration on the Rights of the Child*, G.A. Res. 1386, 14th Sess., 3d Comm. (841st plen. mtg.), prin. 9 (Nov. 20, 1959), reprinted in 7 UNITED NATIONS RESOLUTIONS (Ser. I) 195 (D. Djonovich ed. 1974).

228. K. HERRMANN, AN INTERNATIONAL STRATEGY FOR INTERVENTION INTO THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN 5 (1985) (study commissioned by UNICEF).

229. CHILD BUREAU, *supra* note 114, at 10-11.

230. Herrmann & Jupp, *supra* note 5, at 156-57.

date to protect children is strictly advisory.<sup>231</sup> A number of non-governmental international organizations, in conjunction with churches and domestic groups, focus international attention on this critical problem.<sup>232</sup> These organizations have made a number of recommendations to curtail the practice.<sup>233</sup>

UNICEF commissioned Defence for Children International (DCI), a child-advocacy organization based in Geneva, Switzerland, to study the international child pornography problem.<sup>234</sup> In a 1985 report, DCI recommended that states concerned about the sexual exploitation of children take the following five curative steps.<sup>235</sup> First, state leaders should show their "outrage, concern, and commitment to end" the problem.<sup>236</sup> Second, states must enforce existing national legislation and comply with current international law.<sup>237</sup> State task forces must monitor enforcement, and states that consistently violate international law "must be held accountable through the United Nations' committee procedure."<sup>238</sup> Third, existing state laws must be strengthened; DCI suggested that the Convention on the Rights of the Child include strong implementation procedures.<sup>239</sup> Article 34 of the Convention, as adopted, provides:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials.<sup>240</sup>

Fourth, DCI recommends that a clearinghouse gather research and im-

231. *Id.* at 153.

232. *Id.* at 153-54.

233. K. HERRMANN, *supra* note 228, at 13-25; CHILD BUREAU, *supra* note 114, at 25; A. ANDERSEN, *supra* note 103, at 30-31; *Working Group Report*, *supra* note 122, at 23.

234. K. HERRMANN, *supra* note 228.

235. *Id.* at 13-25.

236. *Id.* at 14.

237. *Id.* at 14-16.

238. *Id.* at 15.

239. *Id.* at 16-18.

240. Draft Convention on the Rights of the Child, G.A. Res. 44/25, art. 34, U.N. Doc. A/RES/44/25 (1989).

portant data on the sexual exploitation of children worldwide "to present a truly international perspective useful for both understanding and intervention."<sup>241</sup> Fifth, cooperation must exist between governments and organizations facilitated by the clearinghouse and directed by a body "sponsored by and funded by an organization such as UNICEF."<sup>242</sup> DCI also suggests that UNICEF sponsor an international symposium in the near future to address the problem of child pornography.<sup>243</sup>

The International Catholic Child Bureau (ICCB) recommends the prohibition of possession of child pornography.<sup>244</sup> On the state level, the ICCB recommends in its report on Children and Pornography that state governments "make the possession of child pornography for personal use illegal"; increase the sanctions for violations of child pornography laws by imposing prison sentences in addition to fines; publish annual statistics on prosecutions and convictions of child pornographers; amend child pornography laws to keep pace with technological advances; and provide the resources necessary to enforce child pornography laws.<sup>245</sup> The ICCB also recommends that states involved in sexual tourism "seek alternative sources of revenue."<sup>246</sup>

On the international level, the 1986 *Report on Child Prostitution, Trafficking and Pornography*, made by DCI and the Central Union for Child Welfare in Finland, recommends specific minimum objectives for curbing the flow of child pornography.<sup>247</sup> The Report suggests defining ambiguous terminology such as indecent, obscene, immoral, and pornographic.<sup>248</sup> According to the Report, international conventions should prohibit depictions of children if they portray "children in sexual relations with an adult or another child or being the viewer of such an act," and "nude children, or children with uncovered genitalia, in sexual positions or poses that would suggest intercourse or other sexual related activities."<sup>249</sup> The report also recommends that international conventions prohibit pictures of "children in adult pornographic publications whether their pictures be sexually explicit or not."<sup>250</sup> The report states that conventions should prohibit child pornography based on "direct

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241. K. HERRMANN, *supra* note 228, at 19.

242. *Id.*

243. *Id.* at 24.

244. CHILD BUREAU, *supra* note 114, at 25.

245. *Id.*

246. *Id.*

247. INTERNATIONAL REPORT, *supra* note 122, at 30-31.

248. *Id.* at 30.

249. *Id.*

250. *Id.*



child protection principles," rather than on the effects it may have on the viewer.<sup>251</sup>

The United Nations Working Group on Slavery recently revealed that children in the third world are being sold into slavery for the purpose of sexual abuse.<sup>252</sup> The report recommends that "urgent consideration be given to the problems of the implementation of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, with particular attention to the meaning and scope of its provisions in the light of new forms of prostitution and pornography imposed on children."<sup>253</sup> In addition, the International Abolitionist Federation requested the Secretary-General of the United Nations

to urge States that have not yet done so to accede to the Convention on Obscene Publications of 2 December 1949, and to that of 1923, as amended in 1947, and to monitor implementation of these Conventions, and to convene . . . a diplomatic conference of signatory countries in order to establish an additional protocol for the purpose of organizing the monitoring of implementation of this Convention by the various parties.<sup>254</sup>

States earnest in their efforts to eradicate child pornography must address international child pornography, because child pornography production and distribution is international in scope. Law enforcement officials in states concerned about child pornography cannot deal effectively with the problem unless more is done to obtain cooperation from every state that is a part of the world child pornography market. As was pointed out in Senate Hearings before the Subcommittee on Juvenile Justice, "the time is ripe for a serious international effort on behalf of a multinational convention to prohibit all traffic in child pornography, and to establish regular procedures for cooperation among nations in the investigation and prosecution of transnational child pornography rings."<sup>255</sup>

## V. CONCLUSION

Since 1977, the United States has taken significant steps to reduce the child pornography trade. The 1977 Act prohibits the production and dis-

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251. *Id.* at 31.

252. See generally *Working Group Report*, *supra* note 122, at 22-23.

253. *Id.* at 23.

254. *Commission on Human Rights of the U.N. Economic and Social Council: Review of Developments in the Field of Slavery and the Slave Trade in All Their Practices and Manifestations*, at 12, U.N. Doc. E/CN.4/Sub.2/AC.2/1988/7/Add.1 (1988).

255. *Hearings: Women & Children*, *supra* note 19, at 214 (statement of Gregory Loken).

tribution of commercial child pornography.<sup>256</sup> The child pornography market, however, was not significantly affected by this Act because of the market's underground character.

In 1982, the United States Supreme Court recognized the compelling interest of the state to safeguard children from the devastating harm of child pornography in *New York v. Ferber*.<sup>257</sup> Soon after *Ferber*, Congress passed the Child Protection Act,<sup>258</sup> and followed in 1986 and in 1988 with two more significant pieces of child pornography legislation.<sup>259</sup> These new laws prohibit both the commercial and noncommercial production and distribution of child pornography, advertising for child pornography purposes, and buying and selling children for use in child pornography.<sup>260</sup> Strict penalties, forfeiture provisions, and a RICO provision ensure that perpetrators face severe sanctions for violating the child pornography laws.<sup>261</sup>

In 1987, the United States Justice Department set up the National Obscenity Enforcement Unit to coordinate enforcement efforts at the federal level and to aid local, state, and federal prosecutors.<sup>262</sup> The Obscenity Unit, in conjunction with representatives from the Postal Service, Customs, and the FBI, has achieved significant success at identifying and prosecuting child pornographers.<sup>263</sup>

In 1984, Congress began to address the problem of child pornography on the international level.<sup>264</sup> The international market is estimated to comprise a "2.5 billion dollar a year business involving millions of children" throughout the world.<sup>265</sup> The market encompasses both the solicitation and production of child pornography and is part of the larger scheme of sexual trafficking in children.<sup>266</sup> The United States Customs Service recognized in 1984 that a significant amount of child pornography enters into the United States from international sources.<sup>267</sup> In 1983, Congress addressed this problem by initiating cooperative efforts with the Netherlands, Denmark, and Sweden to curb the exportation of child

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256. 1977 Act, *supra* note 2.

257. *See supra* notes 65-67 and accompanying text.

258. *See supra* notes 68-71 and accompanying text.

259. *See supra* notes 72-77 and accompanying text.

260. *See supra* note 156.

261. *See supra* notes 153-55 and accompanying text.

262. *See supra* notes 85-87 and accompanying text.

263. *See supra* text accompanying note 87.

264. *See supra* text accompanying note 118.

265. *See supra* text accompanying note 113.

266. *See supra* text accompanying notes 109, 111.

267. *See supra* text accompanying note 126.

pornography.<sup>268</sup> After that initiative, the Netherlands passed its first child pornography law and Denmark expressed a greater interest in enforcing its existing laws.<sup>269</sup> Seizures of child pornography from these states have declined significantly; transshipments of child pornography through other states, and the new influx of child pornography from Asia pose future problems for law enforcement officials.<sup>270</sup>

The United States, Denmark, and the Netherlands have taken steps to curb the child pornography trade, but more efforts are needed. The recommendation of the United States Attorney General that the United States make possession of child pornography a felony under state law has not yet been wholly implemented domestically, nor has possession of child pornography been made a federal offense.<sup>271</sup> In Denmark and the Netherlands, rigid mail secrecy laws make enforcement very difficult.<sup>272</sup> In Thailand, widespread corruption and governmental apathy make enforcement lax; also, the poverty of young Thai children causes them to be easy prey for tourists and pornographers from wealthier Western states.<sup>273</sup>

The United Nations and other non-governmental organizations recommend that states engage in international cooperative efforts to combat the practice of child pornography.<sup>274</sup> A consensus of moral outrage should lead to national and international action. There must be public recognition of the problem and public support for the use of the resources necessary to deal with child pornographers.

States should enforce existing laws and enact new legislation to ban the production, distribution, and possession of child pornography. International conventions, such as the Agreement for the Suppression of the Circulation of Obscene Publications, should be used to encourage cooperation between states. Finally, all states whose children currently are not protected properly from the child pornography industry must commit to the implementation of international agreements.

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268. See *supra* part III, section A.

269. See *supra* text accompanying note 186.

270. See *supra* text accompanying note 167.

271. See *supra* text accompanying note 162.

272. See *supra* text accompanying notes 181, 210.

273. See *supra* text accompanying notes 216, 224.

274. See *supra* part IV.