



ORDO IURIS

INSTITUTE FOR LEGAL CULTURE

Warsaw, 13th May 2019

**Honorable Member
United Nations Committee
on the Rights of the Child**

*Dear Madam or Sir,
Member of the United Nations Committee on the Rights of the Child,*

The *Ordo Iuris* Institute for Legal Culture welcomes the opportunity to assist the United Nations Committee on the Rights of the Child in preparation of the first General Comment on children's rights in relation to the digital environment.

The *Ordo Iuris* Institute for Legal Culture is an independent legal organization established as a foundation in Poland. It gathers academics and legal practitioners who strive to promote legal culture based on the respect of human rights and dignity. The *Ordo Iuris* pursues its objectives by means of research and other academic activity as well as advocacy and litigation.

Ordo Iuris Institute is among the organizations that are consulted by the Polish Government within the legislative process. Third party interventions (including *amici curiae* briefs) by *Ordo Iuris* Institute have been accepted by Polish courts of all levels, including the Supreme Court of the Republic of Poland. The Institute has been also permitted by the President of the European Court of Human Rights to deliver third party interventions and allowed by the President of the European Committee of Social Rights to submit observations. *Ordo Iuris* Institute submitted its opinions to the Venice Commission, the Secretary General of the Council of Europe, Commissioner for Human Rights, the Committee on Political Affairs and Democracy of the PACE and constitutional courts of numerous countries. The experts of the Institute are consulted and allowed to deliver interventions in matters of democracy and the rule of law i.a. by the Monitoring Committee of the Parliamentary Assembly of the Council of Europe and by the Department of State of the United States of America. Moreover, *Ordo Iuris* Institute has ECOSOC consultative status with the United Nations.

We hope the Committee on the Rights of the Child will find our intervention supportive.

Jerzy Kwaśniewski
President of the Board
Ordo Iuris Institute for Legal Culture

Ordo Iuris Institute would like to stress the most crucial problems regarding children's rights in relation to the digital environment, which are related to the sexualisation of children through the use of information and communications technologies.

I. Crucial problems regarding children's rights in relation to the digital environment

Exposure of children to harmful content

Exposure to harmful content refers to children accessing or being exposed to, intentionally or incidentally, age-inappropriate sexual or violent content, or content otherwise considered harmful to their development.¹ Harmful content can cover a broad range of material, not necessary illegal that negatively influence children. It could be child or adult pornography, violent video games or sites with sexual material. Early exposure to sexual content in the media may have a profound impact on children's physical and mental health, values, attitudes and behaviours toward sex and relationships.

Studies show that the earlier child had contact with sexual content, the higher is her or his sexualisation.² Child sexualisation is the central cause of problems such as alcohol or psychoactive substance addiction, depression, risky sexual behaviour and violent behaviour.³ The earlier and more exposure to sexual content, the earlier teenagers initiate sexual intercourse and are likely to have casual sex. Moreover, children who have sex in teenage age are more likely to have multiple sexual partners, engage in frequent intercourse and use drugs and alcohol before sex. Early exposure to sexual content may also lead to sex addictions and other intimacy disorders. What is more, it may increase the risk of child becoming a victim of sexual violence or sexual perpetrator might be more likely to commit sexual assault, rape or child molestation.⁴

¹ Interagency Working Group on Sexual Exploitation "Terminology Guidelines for the protection of children from sexual exploitation and sexual abuse", Luxembourg 2016, p. 44.

² S. Grzelak (red.), "Vademecum skutecznej profilaktyki problemów młodzieży", Warsaw 2015, p. 91 – 93; J. Peter and Patti M. Valkenburg, "Adolescents' Exposure to Sexually Explicit Internet Material, Sexual Uncertainty, and Attitudes Toward Uncommitted Sexual Exploration: Is There a Link?" *Communication Research* 35 (2008): 579-601 (581); M. L. Ybarra and K. J. Mitchell, "Exposure to Internet Pornography among Children and Adolescents: A National Survey," *CyberPsychology & Behavior* 8 (2005): 473-86 (479); E. Häggström-Nordin, U. Hanson, and T. Tydén, "Associations between Pornography Consumption and Sexual Practices among Adolescents in Sweden," *International Journal of STD & AIDS* 16 (2005): 102-7(104-5); A. Chandra, S. C. Martino, R. L. Collins, M. N. Elliott, S. H. Berry, D. E. Kanouse, and A. Miu, "Does Watching Sex on Television Predict Teen Pregnancy? Findings from a Longitudinal Survey of Youth," *Pediatrics* 122 (2008): 1047-1054; D. Zillmann, "Influence of Unrestrained Access to Erotica on Adolescents' and Young Adults' Dispositions toward Sexuality," *Journal of Adolescent Health* 27S (2000): 41-44 (42); Ven-hwei Lo and Ran Wei, "Exposure to Internet Pornography and Taiwanese Adolescents' Sexual Attitudes and Behavior," *Journal of Broadcasting & Electronic Media* 49 (2005): 221-37 (229).

³ S. Grzelak (red.), *op. cit.*, p. 44.

⁴ C.C. Ross, "Overexposed and Underprepared: The Effects of Early Exposure to Sexual Content", <<https://www.psychologytoday.com/us/blog/real-healing/201208/overexposed-and-under-prepared-the-effects-early-exposure-sexual-content>>, access: 12.05.2019.

Sexual abuse and sexual exploitation of children increasingly take place through the Internet. Child sexual abuse takes on digital dimension when, for instance, acts of sexual abuse are photographed or video-/audio-recorded and online dimension when after that they are available online.⁵

Sexual abuse and sexual exploitation in the online and digital environment can take variety of forms. What is common, it is a use of the Internet or computer as a mean to exploit children sexually. Online sexual exploitation includes any use of information and communications technologies (ICTs) that results in sexual exploitation or causes a child to be sexually exploited or that results in or causes images or other material documenting such sexual exploitation to be produced, bought, sold, possessed, distributed or transmitted.⁶ Such materials are: children pornography (Article 2 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, hereinafter “OPSC”), digitally generated child sexual abuse material and sexualised images of children. Another phenomenon on the rise is live online sexual abuse. It relates to both to the sexual exploitation of children through prostitution and sexual performance and to the production of child sexual abuse material.⁷ Live online child sexual abuse is often transmitted to viewers through “streaming” over the Internet. This could be seen as a child sexual abuse on-demand. Behind all this recorded, documented or performed live material stay the exploitative use of children in pornographic performances and materials prohibited by the Article 34 (c) of the Convention on the Rights of the Child (hereinafter “CRC”). Another dimension of online exploitation and abuse of children is solicitation of children for sexual purposes (“online grooming”). It is a practice by which an adult built a “friendship” with children with the intention to use him or her sexually. In many online grooming cases today, children are being sexually abused and exploited online most frequently by being manipulated into producing sexual images or videos. This boosts the production of child pornographic material and is often linked to other forms of exploitation such as “sexual extortion” (blackmailing).⁸

Digital and online environment may also lead to sexual exploitation of children in the context of travel and tourism. It refers to sexual exploitation of children that is embedded in a context of travel, tourism, or both. The offence can be committed by either foreign or domestic tourists and travellers and longer-term visitors.⁹ It is worth mentioning remarks in this regard made by the Committee on the Rights of the Child in General Comment No. 16. The Committee noticed that the business sector has a great impact on children’s rights highlighted that “for example, child sex tourism can be facilitated by travel agencies operating on the Internet as they enable the exchange of information and planning of sex tourism activities.”¹⁰ The same could be said in the case of the sale of children and child trafficking. Especially, when it comes to new forms of the sale of children such as delivering a child born by a surrogate. A child is ordered as a product before his or her exists and then is transfer from surrogate to another party for remuneration or any other consideration.

⁵ Interagency Working Group on Sexual Exploitation, *op. cit.*, p. 22.

⁶ *Ibid.*, p. 27.

⁷ *Ibid.*, p. 46.

⁸ *Ibid.*, p. 49-50.

⁹ *Ibid.*, p. 55-56.

¹⁰ Committee on the Rights of the Child, “General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights”, 2013, p. 9.

II. International Law

Regarding the problem of exposure of children to harmful content the CRC envisages protection against it in Article 19 (1). States Parties are obliged to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. This obligation is connected with obligations derived from Article 24 and 17 of the CRC. The former required that State ensures the right of the child to the enjoyment of the highest attainable standard of health, the later obliges State to encourage the mass media to disseminate information and material aimed at the promotion of children's social, spiritual and moral well-being and physical and mental health.

The CRC protects also children against sexual abuse and exploitation. Article 34 of the CRC clearly states that 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. Moreover tourism activities, Article 35 of the CRC requires that States Parties should take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. That protection is further explored by the OPSC. The OPSC required that States are obliged to criminalise the following constituent parts of the offence of child pornography: "producing, distributing, disseminating, importing, exporting, offering, selling, or possessing for the above purposes child pornography." The OPSC refers also to international cooperation and criminalization of child sex tourism (Preamble, Article 10 (1) and (3) of the OPSC). The OPSC defines "the sale of children" in its Article 2 of the OPSC as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. The OPSC refers to "traffic in children" in its Preamble, combining this phenomena with international traffic for the purposes of sale of children, child prostitution, and child pornography.

III. Laws, policies, programs and evidence of good practice¹¹

Laws against sexual exploitation and sexual abuse in digital environment should base on the policy position that child should be protected from that activities because they are too young to give informed and valid consent. Adult or child pornography or any harmful content for children should be considered as an offence against public morals or violation of public order and be punished according to that. The child pornography should be a criminal offence in all national legal systems. Computer-related acts of sexual abuse or sexual exploitation of a child could be criminalized by way of general offence or cyber specific offence. In this regard the special attention should be paid to process of drafting the law. Revision and creation of the new law must be drafted in a such a manner as to keep up with technological innovation. All sexual violence against children (contact and non-contact) offences should be criminalized. Special attention should be paid to contact sexual abuse offences conducted through live web streaming of child sexual material or sexual exploitation via the Internet. Both of them should be criminalized on the equal foot as a rape of a child. Possession of "virtual" and "simulated" child sexual abuse material should be criminalized equally as the possession of the real child sexual abuse material,

¹¹ United Nations Office on Drugs and Crime, "Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children", New York 2015, p. 40-58.

because of their stimulation of the demand for the latter. Sexual exploitation of children in the context of sailing and trafficking should be fully covered by national criminal legislation. It means that prostitution, trafficking and sailing should not only focus on girls but also on the boys. Moreover, sexual exploitation should be judged in the light of the abuse and exploitation rather than sex activity. In result, prostitution, trafficking and sailing of children for sexual purposes should be criminalized regardless of the age of the consent to sexual activity. In relation to all above mentioned acts of sexual violence against children States should take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for these acts.

In order to effectively counteract sexual abuse and exploitation the greater cooperation with and self-regulation by the private sector is needed. Protection of the children's rights in relation to the digital environment could not be afforded without involvement of the private sector, society and parents. Business enterprises should be obliged to develop tools to detect and investigate ICT-facilitated child abuse and exploitation. The self-regulation could be created by the state or by the enterprises. Internet Service Providers and social networks should be required to implement reporting requirements and mechanisms, that will include measures to: (a) identify and report within a reasonable period of time child sexual abuse material and sexual exploitation of the child via the Internet, (b) provide procedures to effectively verify age of majority by entities providing pornographic content, (c) prevent their services from facilitating and sharing of child sexual abuse material or streaming sexual exploitation of the child, (d) reveal any offending user's name and IP address to law enforcement authorities. However, not all Internet Service Providers monitor user consent or strictly enforce rules regarding user minimum age, that is why role of State in cooperation and execution of the law is so crucial. Furthermore, cooperation between industry and government is crucial, because increasing number of crimes, including child abuse and exploitation involve digital evidence held by third parties. The mechanism for timely access to data, law enforcement together with fair and transparent legal process for investigations are needed. Regarding sex tourism and child trafficking, tourism industry should cooperate globally with states and other actors on that market. A good example of a basic cooperation in this regard is a Code of Conduct for the Protection of Children From Sexual Exploitation in Travel and Tourism created by ECPAT International or an the Athens Ethical Principles to End Human Trafficking.

The most crucial role in addressing ICT-facilitated abuse and exploitation play parents, guardians, teachers and civil society. Their active involvement in supporting children in understanding and handling online risks is the best prevention measure. In practice, it should be based on frequent and open dialogue between parents and children about troubling materials or situations encountered by children in the Internet. Governments, private sector, schools and civil society have developed online safety guidelines that help parents, guardians and teachers in that responsibility. Moreover, some other digital tools such as parental controls filters, user monitoring or "flagging" of certain material online, hotlines (reporting points), software applications and mobile "apps" are vital part of efforts to the child's protection. On the other hand, all education and psychological methods of prevention are essential and basic methods within all societies in protecting children from ICT-facilitated abuse and exploitation. Education initiatives enable children and families to understand and rightly react to the risks associated with ICTs.

IV. The best interest of the child

Protection of the children's rights and their best interest in relation to the digital environment is strictly related to parental rights. Parental rights are the most crucial in defence for the protection of children's rights. For this reason parental rights enshrined in the Universal Declaration of Human Rights (Article 26 (3) of the UDHR), the International Covenant on Civil and Political Rights (Article 18 (4) of the ICCPR), the International Covenant on Economic, Social and Cultural Right (Article 13 (3) of the ICESCR) need better protection. Strong family ties are the best shield to protect children from sexual violence, including sexual abuse and exploitation. This is confirmed by scientific research. "Children who have indicated both parents as a life guide significantly less have problems various problems compared to young people, who do not indicate any parent as a life guide."¹²

V. Recommendations:

Ordo Iuris Institute recommend to include in General Comment on children's rights in relation to the digital environment, following states' obligations:

- 1. States should take all necessary steps to limit access to harmful content that negatively influence children, including sexual materials and pornography.**
- 2. States should strengthen cooperation with business enterprises, especially with ICTs Providers and Internet Service Providers for the prevention, detection, investigation, prosecution and punishment of those responsible for these acts.**
- 3. States should adopt the law that will obliged Internet Service Providers and social networks to implement reporting requirements and mechanisms to: a) identified and report within a reasonable period of time child sexual abuse material and sexual exploitation of the child via the Internet, (b) provide procedures to effectively verify age of majority by entities providing pornographic content, (c) prevent their services from facilitating and sharing of child sexual abuse material or streaming sexual exploitation of the child, (d) reveal any offending user's name and IP address to law enforcement authorities.**

¹² Fundacja Instytut Profilaktyki Zintegrowanej, „Jak zwiększyć skuteczność profilaktyki problemów młodzieży”, <<http://ipzin.org/index.php/71-broszura-informacyjna-jak-zwiekszyz-skuteczность-profilaktyki-problemow-mlodziezy-2> >, access: 12.05.2019, p. 10.