

NOTE

INTERNATIONAL LAW ENFORCEMENT AGENCIES AND THE PREVENTION OF ONLINE CHILD PORNOGRAPHY: IMPLEMENTATION OF PROPOSED SANCTIONS IN RUSSIA AND UKRAINE

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INTRODUCTION

The images are grotesque and sadistic, yet have been copied, altered, and shared millions of times around the globe. Depicting children of all ages, from infancy through puberty, child pornography is manufactured and distributed wherever the Internet exists.¹ The content ranges from simple images of children's genitals, to passive sexual intercourse, to violent sexual acts.² Further horrifying is the growing abundance of "self-generated" sexually explicit material created by children for adults.³ New victims are identified daily, while some victims' images have been circulating for over twenty years.⁴ Once an image becomes available online, it proliferates and "last[s] forever," continuing to harm and exploit the child victim long after the abuse has ended.⁵ Worst of all, there is no

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1. See Audrey Rogers, *Child Pornography's Forgotten Victims*, 28 PACE L. REV. 847, 847 (2008) (discussing 2005 study detailing the content of child pornography images).

2. See Alisdair A. Gillespie, *Defining Child Pornography: Challenges for the Law*, 22 CHILD & FAM. L. Q. 200, 206 (2010) (describing various forms of online child pornography).

3. See EUROPOL, 2015 VIRTUAL GLOBAL TASKFORCE CHILD SEXUAL EXPLOITATION ENVTL. SCAN 9–10 (2015).

4. See, e.g., Emily Bazelon, *The Price of a Stolen Childhood*, N.Y. TIMES MAGAZINE, Jan. 27, 2013, http://www.nytimes.com/2013/01/27/magazine/how-much-can-restitution-help-victims-of-child-pornography.html?_r=0 [<https://perma.cc/92FK-2BCK>] (detailing how one victim was recognized worldwide as a "child pornography star" because of the abusive and explicit videos and pictures her father posted of her on the Internet when she was a child).

5. As described by President and Chief Executive Officer of the International Centre of Missing and Exploited Children, Ernie Allen:

Every time [child pornography images] are traded, distributed or downloaded, the child in the photo is re-victimized. The people who produce, distribute or possess

tangible way to determine who will see the image or use it for sexual gratification.⁶

The online child pornography industry is difficult to regulate and prevent, making it one of the Internet's most pervasive and dangerous features.⁷ The Internet's transnational nature makes the illicit industry difficult to monitor, with no country or region claiming absolute jurisdiction;⁸ and with little regulation, illicit and repulsive content proliferates.⁹ Anyone with access to the Internet can upload child pornography, so perpetrators can easily share and distribute abusive material.¹⁰ And while international preventative measures have increased significantly over the past fifteen years,¹¹ none have successfully stemmed the rising tide of online sharing and documentation of child sex abuse.¹²

Under international law, the term "child pornography" encompasses any material that depicts a child engaged in sexual acts.¹³ The Council of Europe's Convention on Cybercrime (Convention) and the United Nations' Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol)

these images must be held accountable No country is immune to this form of child exploitation, and it will take a concerted effort from government, law enforcement and others to ensure the world's children are protected.

Despite Increase in Global Child Protection Laws Many Countries Still Do Not Consider Child Pornography a Crime, INT'L CTR. FOR MISSING & EXPLOITED CHILD., <http://www.icmec.org/press/despite-increase-in-global-child-protection-laws-many-countries-still-do-not-consider-child-pornography-a-crime/> [https://perma.cc/2TSC-XT9P] (last visited Feb. 6, 2016) [hereinafter *Despite Increase*, MISSING & EXPLOITED CHILD.].

6. A child pornography victim described the pain of knowing thousands of men all over the world had seen her abuse. See Bazelon, *supra* note 4 ("But by going public, she had inadvertently exposed her identity to thousands of men who for years had collected her images For Nicole, knowing that so many men have witnessed and taken pleasure from her abuse has been excruciating.").

7. See *Despite Increase*, MISSING & EXPLOITED CHILD., *supra* note 5.

8. See *id.*

9. See Hum. Rts. Council, Rep. of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, ¶ 31, U.N. Doc. A/HRC/31/58 (Dec. 30, 2015) ("The ease of obtaining child sexual abuse material through information and communications technologies has given rise to a greater range of offenders.").

10. See *id.*

11. See *Despite Increase*, MISSING & EXPLOITED CHILD., *supra* note 5.

12. See generally *Executive Summary of the Netherlands*, EPCAT Executive Summary, EPCAT, 2011, 1–2. Despite having some of the most developed child pornography laws and prevention methods worldwide, the Netherlands continues to be a primary host of child pornography websites. See *id.*

13. See George Ivezaj, *Child Pornography on the Internet: An Examination of the International Communities Proposed Solutions for a Global Problem*, 8 MICH. ST. U.-DCL J. INT'L L. 819, 825 (1999).

are the most authoritative international treaties on child pornography and cybercrime.¹⁴ Discrepancies in domestic laws, allocations of resources, and a reluctance to prioritize cybercrime, however, have led to failures in the prevention of online child pornography.¹⁵

In addition to the development of international legislation, increased recognition of the proliferation of online child pornography has led to greater cooperation and involvement of international law enforcement agencies, namely Interpol, Europol, and the Virtual Global Taskforce.¹⁶ These organizations are responsible for preventing the spread of online child pornography through international sting operations and monitoring systems.¹⁷ In 2004, Operation Auxim resulted in the confiscation of over two million child pornography images in Australia.¹⁸ In 2011, a yearlong investigation resulted in the arrest of 112 people spanning twenty-two European countries.¹⁹ In 2013, Project Spade led to the arrest and prosecution of over 350 individuals in the United States, the United Kingdom, and Canada.²⁰ Finally, in 2017, nearly 900 members of a global pedophile ring were arrested for an online child pornography-sharing ring in after a two-year investigation.²¹

Although these operations have been hugely successful in Australia, North America, and Western Europe, they have failed to make a significant impact in other parts of the world.²² Government refusal and

14. See Malgorzata Skórzewska-Amberg, *Pornography in Cyberspace – European Regulations*, 5 MASARYK U. J.L. & TECH. 261, 263 (2011); see also Dina I. Oddis, *Combating Child Pornography on the Internet: The Council of Europe’s Convention on Cybercrime*, 16 TEMP. INT’L & COMP. L.J. 477, 478–79 (2002) (discussing the Council of Europe’s Convention on Cybercrime).

15. See Alisdair Gillespie, *Jurisdictional Issues Concerning Online Child Pornography*, 20 INT’L J. L. & TECH. 151, 155–56 (2012).

16. See INHOPE, ANNUAL REPORT 2013–2014 4 (2014) [hereinafter INHOPE, ANNUAL REPORT 2013–2014] (explaining that cooperation between the International Association of Internet Hotlines (INHOPE) and international law enforcement organizations has significantly improved “take down” statistics); *Interpol and FBI to Forge Closer Ties Against Terrorism and Cybercrime*, INTERPOL (Sept. 23, 2015), <https://www.interpol.int/News-and-media/News/2015/N2015-142> [<https://perma.cc/SFV3-NSXM>].

17. See *Despite Increase*, MISSING & EXPLOITED CHILD., *supra* note 5.

18. See Carolyn Penfold, *Child Pornography Laws: The Luck of the Locale*, 30 ALTERNATIVE L.J. 123, 140 (2005).

19. See *European Child Pornography Ring Busted*, AL JAZEERA EUR. (Dec. 16, 2011), <http://www.aljazeera.com/news/europe/2011/12/2011121613454137101.html> [<https://perma.cc/X857-WBRP>].

20. *Police Hail Success of Canada Child Porn Investigation*, BBC NEWS (Nov. 14, 2013), <http://www.bbc.com/news/world-us-canada-24947579> [<https://perma.cc/N6BH-4QXU>].

21. See *900 Suspected Pedophiles Arrested as ‘Darknet’ Child Porn Kingpin Jailed for 30 Years*, RT NEWS (May 6, 2017), <https://www.rt.com/news/387317-pedophile-ring-arrested-playpen/> [<https://perma.cc/E9EP-F3S5>].

22. See, e.g., INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, CHILD PORNOGRAPHY:

inability to cooperate with international law enforcement groups has allowed online child pornography offenders to go undetected,²³ especially in Russia and Ukraine, where the online child pornography trade flourishes.²⁴

Consequent to the growing tide of online child pornography, the international community must take a more stringent approach. This Note argues that international law enforcement agencies should require member states to ratify the Convention and the Optional Protocol. Together, these two treaties ensure a thorough, cooperative, and fluid approach to combatting online child pornography.²⁵ Stronger bonds will benefit international law enforcement groups and their member states.²⁶ International law enforcement agencies should therefore require their member states to ratify the Convention and the Optional Protocol to ensure that governments will prioritize and cooperate with international endeavors to combat online child pornography.

Part I of this Note provides relevant background information. Subsections I.A through I.C discuss Internet usage, the development of the Convention and the Optional Protocol, and the three international law enforcement agencies—Interpol (the International Criminal Police Organization), Europol, and the Virtual Global Taskforce—primarily responsible for combatting online child pornography. Section I.D addresses the current status of online child pornography, focusing on Russia and Ukraine. Part II proposes that international law enforcement agencies require their member states to ratify the Convention and the Optional Protocol to better combat the international distribution of online child pornography. Section II.B

MODEL LEGISLATION AND GLOBAL REVIEW 15–40 (7th ed. 2013) (listing countries where domestic child pornography laws are lacking or have failed to make a significant impact).

23. See *infra* Sections II.D.2–3.

24. See *infra* Sections II.D.2–3.

25. See Skórzewska-Amberg, *supra* note 14, at 263 (discussing the Convention and the United Nations' Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol)).

26. See, e.g., *No Country Can Deal with Cybercrime in Isolation – INTERPOL Chief on BBC*, INTERPOL (Jan. 22, 2016), <http://www.interpol.int/News-and-media/News/2016/N2016-012> [<https://perma.cc/8YKQ-K6VJ>] (discussing the need for international cooperation in combatting cybercrime) [hereinafter *Cybercrime in Isolation*, INTERPOL]; *Preface to Version 3.0*, INHOPE, CODE OF PRACTICE (2013) (emphasizing the necessity of international cooperation by explaining, “The members of INHOPE have the support of their national government, the online technology service provider industry, and law enforcement in the countries of operation.”); *Cooperation Agreements*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Legal-materials/Cooperation-agreements> [<https://perma.cc/U4YW-U5VH>] (last visited Mar. 7, 2016) (“In a global framework, no organization is able to act efficiently alone. Cooperation is needed with other relevant institutions that are capable of providing additional assistance or knowledge.”).

discusses the implementation of the proposed solution in Russia and Ukraine, and how, if adopted, it could prevent further spread of online child pornography in both countries. The Note then concludes.

I. BACKGROUND

Several historical and legal developments have led to the current state of proliferation of online child pornography and the international law enforcement response. Section A discusses how the spread of Internet usage led to the involvement of international organizations to combat cybercrime and online child pornography. Section B details how international treaties initially addressed the rising prevalence of cybercrime and child pornography on the Internet and the policy goals these treaties proposed for member states. Section C discusses the involvement of international law enforcement agencies in the fight against online child pornography. Finally, Section D details the contemporary presence of child pornography on the Internet and the problems specific to Russia and Ukraine.

A. *The History of Internet Usage and the Rise of International Cybercrime*

Global Internet usage became commonplace in the mid-1990s, as access to home computers and Internet connections became more widespread.²⁷ These numbers continued to balloon over the decades that followed. In Europe, there were ninety-four million Internet users in 2001 and 190 million users by 2004.²⁸ Approximately 3.4 billion people, or forty-six percent of the world's population, are connected to the Internet today.²⁹ As was the case when the Internet first became popular, the majority of Internet usage remains concentrated in developed nations.³⁰

The rise of the Internet introduced cybercrime to the international community.³¹ The transnational nature of the Internet was a new phenomenon for law enforcement, and what constituted “cybercrime”

27. See Soumyo D. Moitra, *Developing Policies for Cybercrime: Some Empirical Issues*, 13 EUR. J. CRIME CRIM. L. & CRIM. JUST. 435, 435 (2005) (describing the Internet's growth).

28. *Id.* at 435 n.1.

29. See *Internet Users*, INTERNET LIVE STATS, <http://www.internetlivestats.com/internet-users/> [<https://perma.cc/XCF6-4FSH>] (last visited Jan. 25, 2017).

30. See Jonathan Clough, *A World of Difference: The Budapest Convention on Cybercrime and the Challenges of Harmonisation*, 40 MONASH U. L. REV. 698, 699 (2014).

31. See Ivezaj, *supra* note 13, at 819–20 (discussing the impact of the Internet and the concerns it raised for international legislation).

was not uniform across countries.³² The “remoteness between the perpetrator and the victim” that characterizes cybercrime was especially complex for the international legal community, as perpetrators and victims could now be nations—or continents—apart.³³ This created serious jurisdictional issues, as nations grappled over whether the Internet should be considered an “international space” where all nations have jurisdiction, or whether countries would limit their “cyber jurisdiction” to the computer systems within their territories.³⁴ Furthermore, no international consensus permitted nations to investigate and prosecute cybercriminals abroad.³⁵ Without an international consensus to prosecute cybercriminals, child pornographers easily evaded detection.³⁶

B. *International Legislation to Recognize and Prevent the Spread of Online Child Pornography*

The Internet and cybercrime’s growing prevalence compelled international lawmaking bodies to enact legislation in the early 2000s.³⁷ This Section discusses the Council of Europe’s Convention on Cybercrime and the United Nations’ Optional Protocol of the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography. Together, these two treaties create a stringent, multilateral, and cooperative approach to combatting online child pornography.

1. The Council of Europe’s Convention on Cybercrime

The Council of Europe³⁸ first established a working group to address

32. See Moitra, *supra* note 27, at 446.

33. *Id.*

34. Some authors argue for the creation of an “international cyberspace” allowing for more uniformity in international cybercrime laws. See Gillespie, *supra* note 15, at 200.

35. See Kim Soukeih, *Cybercrime – The Shifting Doctrine of Jurisdiction*, 10 CANBERRA L. REV. 221, 235 (2011) (“[J]urisdictional issues will continue to persist until a comprehensive international consensus is reached. Cybercrime policing . . . is only as effective as its weakest link.”).

36. See *id.* at 226 (“[T]here is overwhelming evidence that the physical location where the act took place remains paramount, and that this is too limited a perspective in light of the geographical sweep of most cybercrimes.”).

37. See Oddis, *supra* note 14, at 486 (discussing the exposure of a massive child pornography club across fourteen countries and prevalence of other such clubs around the world).

38. The Council of Europe is an intergovernmental organization and legal advisory group that promotes human rights, democracy, and the rule of law among its member states. See *Values*, COUNCIL OF EUR., <http://www.coe.int/en/web/about-us/values> [<https://perma.cc/E9TS-HSEA>] (last visited May 11, 2017). The Council of Europe cannot make binding law, but it requires its members to “[a]ccept the principles of the rule of law . . . and collaborate sincerely and effectively in the realization of the aim of the Council.” See Statute of the Council of Europe art. 3, May 5, 1949, E.T.S. No. 001. For purposes of this Note, both the Russian Federation and Ukraine are members of the Council of Europe. See *Our Member States*, COUNCIL OF EUR.,

cybercrime in 1996, having recognized that technological developments “had given birth to new types of crimes committed in an as yet unregulated territory.”³⁹ The Council of Europe’s Convention on Cybercrime (Convention) was the first multilateral treaty to address international cybercrime and online child pornography.⁴⁰ The Convention was the first international treaty that criminalized online child pornography and established universal standards for identification and prosecution of its illicit content.⁴¹ Today, the Convention provides the most comprehensive means of combatting transnational cybercrime and is a leader in the field of cybercrime regulation.⁴²

The Convention opened for signature on November 23, 2001, and entered into force on July 1, 2004.⁴³ By July 22, 2004, the Convention had been signed by thirty-four European members and four non-European members—Canada, Japan, South Africa, and the United States.⁴⁴ As of 2017, the Convention has fifty-two ratifying states, including ten non-European states.⁴⁵ Nonetheless, the Convention was initially met with opposition, as many governments feared the Convention would infringe upon privacy rights and freedom of speech.⁴⁶ To date, China, India, North and South Korea, and the Russian

<http://www.coe.int/en/web/about-us/our-member-states> [<https://perma.cc/K8UR-4VNJ>] (last visited May 11, 2017).

39. Oddis, *supra* note 14, at 501.

40. See, e.g., Clough, *supra* note 30, at 699–700. Some refer to the Convention as the “Budapest Convention.” *Id.*

41. Article 9 of the Convention defines child pornography and “minors,” and requires parties to adopt legislative measures to criminalize the possession, distribution, and production of child pornography. See Convention on Cybercrime art. 9, *opened for signature* Nov. 23, 2001, E.T.S No. 185 (entered into force July 1, 2004) [hereinafter Convention]; *Details of Treaty No. 185*, COUNCIL OF EUR., <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185> [<https://perma.cc/YD8M-ETKR>].

42. See Clough, *supra* note 30, at 708.

43. See *Chart of Signatories and Ratifications or Treaty No. 185 – Convention on Cybercrime*, COUNCIL OF EUR. (Mar. 16, 2016), http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures?p_auth=J847kdTO [<https://perma.cc/8LSS-NGU3>].

44. Non-European ratifying states include Australia, Canada, Dominican Republic, Japan, Mauritius, Panama, Sri Lanka, and the United States. See *id.*

45. See *id.*

46. Many countries made declarations and reservations against the full implementation of the Convention. See *Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime*, COUNCIL OF EUR. (Mar. 16, 2016) http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations?p_auth=I2ICVi4t [<https://perma.cc/BP3M-FN8T>] [hereinafter *Reservations and Declarations*, COUNCIL OF EUR.] (collecting reservation statements from various countries); see also Oddis, *supra* note 14, at 479 (explaining why Australia, Japan, the United States, and several European countries initially opposed the Convention out of concern for privacy rights and freedom of speech).

Federation have abstained from accession to the Convention.⁴⁷

The Convention was drafted with three principal aims: (1) to require signatories to define and codify domestic criminal offenses and sanctions for computer-related crimes; (2) to establish a “criminal procedure framework that empowers [states] to investigate and prosecute [computer crimes]”; and (3) to set up a regime that would implement effective international cooperation when combatting cybercrime.⁴⁸ Notably, Article 22 of the Convention establishes guidelines for international jurisdictional issues surrounding cybercrime.⁴⁹ Article 22 provides that signatories “shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with . . . this Convention, when the offence is committed: in its territory; or on board a ship . . . or aircraft.”⁵⁰ Furthermore, the Convention holds that signatories must establish jurisdiction over cybercrimes committed “by [a] national[], if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.”⁵¹ Regardless of where a cybercrime is committed, other nations may still prosecute a cybercriminal.⁵²

While the Convention laid the foundation for cybercrime jurisdiction, it also compelled ratifying states to fully cooperate and assist other nations’ cybercrime investigations. First, the Convention encourages state parties to “afford one another mutual assistance to the widest extent possible”—both through international arrangements and domestic laws⁵³—for the purposes of cybercrime investigations.⁵⁴ The Convention articulates specific principles for states to abide by when providing mutual assistance in cybercrime activities and extraditions, including that a state must provide specific reasons as to why it refuses to cooperate with another state’s request.⁵⁵ Additionally, the Convention encourages nations to provide each other with “spontaneous information” they believe will aid other states’ investigations,⁵⁶ and to preserve

47. See Soukeih, *supra* note 35, at 232.

48. See Oddis, *supra* note 14, at 502.

49. See Convention, *supra* note 41, art. 22; Oddis, *supra* note 14, at 503.

50. Convention, *supra* note 41, art. 22.

51. *Id.*

52. See *id.*

53. See *id.* art. 25; see also Clough, *supra* note 30, at 701 (explaining why international harmonization through the Convention was pivotal for cybercrime laws).

54. Convention, *supra* note 41, art. 25.

55. See *id.* art. 24, 25.

56. See *id.* art. 26.

computer data upon request.⁵⁷

Finally, the Convention provides the first international definition of child pornography, and encourages ratifying states to domestically criminalize material that constitutes child pornography.⁵⁸ The Convention defines child pornography as “[p]ornographic material that visually depicts (1) a minor engaged in sexually explicit conduct, (2) a person appearing to be a minor engaged in sexually explicit conduct, and (3) realistic images representing a minor engaged in sexually explicit conduct.”⁵⁹ This definition paved the way for future international treaties⁶⁰ and provided an important framework for how nations would identify online child pornography.⁶¹ The Convention was thus pivotal in encouraging states to cooperate in the international prevention of cybercrime and establishing a universal definition of child pornography.

2. The United Nations’ Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography

Like the Council of Europe, the United Nations became concerned with the growing prevalence of online child pornography during the 1990s.⁶² In 1999, UNESCO hosted the Conference in Paris on Internet Pedophilia and Child Porn, in which it called for the formulation of a plan to provide “‘practical and justifiable solutions’ within well-defined social, economic, and political parameters.”⁶³ Further discussions were held that year in Vienna at the International Conference on Combating Child Pornography on the Internet.⁶⁴ The International Conference on Combating Child Pornography called for greater cooperation and partnership between governments and the Internet industry, along with the international criminalization of distribution, transmission, and

57. *See id.* art. 29.

58. Oddis, *supra* note 14, at 503.

59. Convention, *supra* note 41, art. 9.

60. *See* Oddis, *supra* note 14, at 505.

61. *See id.*

62. *See* Alex C. Hermoso et al., *Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: the Case of the Philippines*, Experts Meeting on Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: an International Challenge, UNESCO, at 1, CII-98/CONF. 605/20 (Jan. 18–19, 1998), <http://unesdoc.unesco.org/images/0011/001147/114733Eo.pdf> [<https://perma.cc/4UZT-CMBP>].

63. United Nations Educ., Sci. and Cultural Org. [UNESCO], *Background Document for Experts Meeting on Sexual Abuse of Children, Child Pornography and Paedophilia on the Internet: an International Challenge*, at 1, CII-98/CONF. 605/1 (Jan. 18–19, 1998), <http://unesdoc.unesco.org/images/0011/001147/114751Eo.pdf> [<https://perma.cc/A5J3-8KQ9>].

64. *See* EUROPOL, CHILD SEXUAL EXPLOITATION FACT SHEET 2011 3 (2011), <https://www.europol.europa.eu/publications-documents/child-sexual-exploitation-fact-sheet-2011> [<https://perma.cc/XED5-VVWT>].

“intentional possession” of child pornography.⁶⁵

Growing international concern over online child pornography in the 1990s eventually led to a response from the United Nations. The United Nations Human Rights Commission introduced the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography (Optional Protocol) to the General Assembly in May of 2000.⁶⁶ Citing to the International Conference on Combating Child Pornography,⁶⁷ the Optional Protocol provided an international definition of child pornography and called for member states to criminalize its possession, distribution, and production.⁶⁸ Specifically, the Optional Protocol classifies child pornography as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”⁶⁹ This broad definition contrasts with the Convention’s limited interpretation of “visual” child pornography, and allows for prohibition of nonimages, such as audio or textual representations.⁷⁰

Although the Convention and the Optional Protocol differ in their definitions of child pornography, much of their proposed legislation is the same. First, the Optional Protocol requires that state penal codes criminalize the production and distribution of child pornography, regardless of whether the crime was committed within or outside a country’s territory.⁷¹ Second, the Optional Protocol encourages state parties to “take such measures as may be necessary to establish . . . jurisdiction over the offences . . . when the offences are committed in its

65. G.A. Res. 54/263, annex, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, at 247 (May 25, 2000) [hereinafter *Optional Protocol*]. The *Optional Protocol* does not more comprehensively define “Internet industry,” but observers have generally included Internet server hosts and social media developers to be within the “Internet industry.” See, e.g., Handbook on the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, UNICEF INNOCENTI RESEARCH CENTER, Feb. 2009, 19 (recommending that the “Internet industry” develop a “mandatory and universal ‘report abuse’ button on the toolbar of every browser and on all social networking sites.”).

66. See *id.*

67. See *id.* (“[R]ecalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) . . .”).

68. See *id.* art. 3 (“Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis: . . . (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.”).

69. *Id.* art. 2(c).

70. See Hum. Rts. Council, Rep. of the Special Rapporteur on the Sale of Children, Child Prostitution, and Child Pornography, ¶ 26, U.N. Doc. A/HRC/28/56 (Dec. 22, 2014).

71. *Optional Protocol*, *supra* note 65, art. 3.

territory or on board a ship or aircraft registered in that State,” when the alleged pornographer is a citizen or long-term resident of the state, or when the victim is a citizen of the state.⁷² Finally, states are encouraged to “take all necessary steps” to strengthen international cooperation when combatting online child pornography.⁷³ These clauses mirror the Convention’s Article 22, which calls for member state cooperation in investigating and prosecuting cybercriminals.⁷⁴ Together, the Convention and the Optional Protocol encourage a collaborative and strident approach amongst countries and law enforcement groups to the growing transnational prevalence of online child pornography.

C. *International Law Enforcement Agencies and the Prevention of Online Child Pornography*

The Convention’s and Optional Protocol’s demands for global cooperation in the prevention of online child pornography have led to the creation of international law enforcement groups that facilitate the investigation and prosecution of Internet child abusers.⁷⁵ The following Subsections discuss the primary international law enforcement agencies that combat child pornography: Interpol, Europol, and the Virtual Global Taskforce.

1. Interpol

Interpol is the largest international group that combats online child pornography.⁷⁶ Established in 1923 with 190 member countries,⁷⁷ Interpol is an international resource for police forces.⁷⁸ It connects law enforcement bodies internationally, thereby improving global

72. *Id.* art. 4(1).

73. *Id.* art. 10(1).

74. *See supra* text accompanying note 50.

75. *See supra* note 26; Hum. Rts. Council, *supra* note 70, at ¶ 88 (“The Special Rapporteur invites the international community to establish a coordinated global response, by: a) Establishing a comprehensive and global legal framework preventing, prohibiting, and protecting children from sale and sexual exploitation online; b) Sharing and updating information related to child victims and offenders, obtaining digital evidence to effectively investigate and prosecute perpetrators and criminal networks responsible for the sale and sexual exploitation of children.”).

76. *See* Giulio Calcara, *The Role of Interpol and Europol in the Fight Against Cybercrime, with Particular Reference to the Sexual Exploitation of Children Online and Child Pornography*, 7 MASARYK U. J.L. & TECH 19, 22 (2013).

77. *See Overview*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Overview> [<https://perma.cc/ZNG8-VTFW>] (last visited May 11, 2017) [hereinafter *Overview*, INTERPOL].

78. Although Interpol is an international organization, it was not created through an international treaty, nor is it a branch of an international governing body. Calcara, *supra* note 76, at 22.

cooperation in crime prevention.⁷⁹ Interpol's constitution outlines its dedication to human rights and the rule of law, and sets guidelines regarding Interpol's international neutrality and cooperation with other organizations.⁸⁰ Specifically, Interpol requires that member countries abide by its constitution, ensuring the widest possible cooperation between police forces.⁸¹

The transnational nature of cybercrime makes Interpol an important player in its prevention.⁸² In the case of child pornography, Interpol works to block access to online child abuse material, identify victims, and help law enforcement groups identify, locate, and arrest abusers and distributors.⁸³ Specifically, Interpol maintains a database of recognized victims that national police forces may use to identify and locate victims domestically, known as the International Child Sexual Exploitation (ICSE) database.⁸⁴

Established in 2009 and funded by the European Commission, the ICSE database uses image comparison systems to identify victims.⁸⁵ Member countries may upload material from their national databases to compare with international records and also download material from the international database for their records.⁸⁶ Currently, forty-nine countries and Europol are connected to the ICSE database, and several other countries and organizations contribute data for analysis.⁸⁷ Notably, the database allows law enforcement agencies to quickly identify victims in multiple images, and more easily monitor distribution of abusive material.⁸⁸ Five victims are identified per day,

79. See *Overview*, INTERPOL, *supra* note 77.

80. See Int'l Criminal Police Org. [INTERPOL], *Constitution of the ICPO-INTERPOL* art. 2–3, 9, I/CONS/GA/1956(2008) (1956) [hereinafter *Interpol Constitution*].

81. See *Legal Materials: A Guide to the Legal Aspects of International Police Cooperation Through INTERPOL*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Legal-materials> [<https://perma.cc/7AQM-G83N>] (last visited May 11, 2017); see also *Interpol Constitution*, *supra* note 80, art. 45 (“All bodies representing the countries . . . shall be deemed to be Members of the Organization unless they declare . . . that they cannot accept this Constitution.”).

82. See *Cybercrime in Isolation*, INTERPOL, *supra* note 26.

83. See *Crimes Against Children*, INTERPOL, <https://www.interpol.int/Crime-areas/Crimes-against-children/Crimes-against-children> [<https://perma.cc/ZJU4-Q7PL>] (last visited May 11, 2017).

84. See *id.*

85. *Victim Identification*, INTERPOL, <https://www.interpol.int/Crime-areas/Crimes-against-children/Victim-identification> [<https://perma.cc/S9UU-LPEW>] (last visited May 11, 2017).

86. See *id.*

87. *ICSE Database Infographic*, INTERPOL, https://www.interpol.int/Media/Files/News-Media-releases/2015/N2015-196-ICSE_Infographic01_01 [<https://perma.cc/GH6S-97PW>] (last visited Jan. 1, 2017).

88. See Calcara, *supra* note 76, at 25.

and over 10,000 victims have been identified and 4,700 offenders arrested since the database's inception.⁸⁹

In addition to the ICSE database, Interpol maintains the "Worst-of" list, which includes Internet domains (URLs) that contain the most severe child pornography material.⁹⁰ The "Worst-of" list is maintained at Interpol National Center Bureaus in member states, where police organizations and Internet service providers may use it at their discretion.⁹¹ Created in 2009, the "Worst-of" list monitors online forums and child pornography rings.⁹² Websites must satisfy the following criteria to be included on the list: (1) victims must not be computer generated, but must be "real"; (2) victims must appear to be younger than thirteen; (3) the abuse must appear to be "severe";⁹³ and (4) the domain must have been "online within the last three months."⁹⁴ Additionally, at least two member states must have reviewed the online material and found that it satisfied the above criteria to block the domain.⁹⁵ There is no international requirement that Internet service providers or state governments block the domains included on the "Worst-of" list, and it is left to national governments to determine if the blocking regulations will be imposed and enforced.⁹⁶ Interpol maintains that blocking access to these domains or deleting the websites outright are effective measures against online child pornography.⁹⁷

89. See *Interpol Network Identifies 10,000 Child Sexual Abuse Victims*, INTERPOL (Jan. 9, 2017), <https://www.interpol.int/News-and-media/News/2017/N2017-001> [<https://perma.cc/93BS-FS72>]; *ICSE Database Infographic*, *supra* note 87.

90. INTERPOL, FACT SHEET: CRIMES AGAINST CHILDREN 1 (2015) [hereinafter INTERPOL, FACT SHEET].

91. See *Access Blocking: Criteria for Inclusion in the "Worst-of" List*, INTERPOL, <http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/Criteria-for-inclusion-in-the-Worst-of-list> [<https://perma.cc/23BA-97WT>] (last visited May 11, 2017) [hereinafter "*Worst-of" List*, INTERPOL]; INTERPOL, FACT SHEET, *supra* note 90.

92. See "*Worst-of" List*, INTERPOL, *supra* note 91; INTERPOL, FACT SHEET, *supra* note 90.

93. "Severe" abuse includes images of children's genitals, sexual contact, or children engaged in sexual activities or positions. See "*Worst-of" List*, INTERPOL, *supra* note 91.

94. *Id.*

95. See *id.* If a domain (URL) holder believes their website has been incorrectly or unfairly blocked, they may appeal to Interpol. See *Access Blocking: Complaints Procedure*, INTERPOL, <https://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/Complaints-procedure> [<https://perma.cc/EN9Y-L7TF>] (last visited Mar. 25, 2017).

96. See *Access Blocking: Information for ASPs*, INTERPOL, <http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking/Information-for-ASPs> [<https://perma.cc/QT3L-PCA7>] (last visited May 11, 2017).

97. *Id.* ("Making child sexual abuse material unavailable for the Internet user until it is deleted is crucial in preventing distribution.")

2. Europol

Europol is a similar law enforcement group that combats international crime, but it is explicitly a “European law enforcement agency,” funded and regulated by the European Union.⁹⁸ The European Union established Europol as a way “to collect, store, analyze, and exchange information and intelligence” between Member States, to aid member states’ transnational investigations, and to provide special training and advisement for European nations.⁹⁹ Significantly, Europol provides uniformity in European law enforcement tactics to ensure cooperation in transnational criminal investigations throughout Europe.¹⁰⁰ E.U. law dictates Europol’s actions, thereby requiring that the European Union adopt legislation before Europol can act upon it.¹⁰¹ In turn, Europol requires member states to establish national units that complete Europol tasks, including providing Europol with information and intelligence, responding to intelligence requests, and ensuring compliance with E.U. law.¹⁰²

In the case of online child pornography, the European Union adopted a “common and complete” definition and approach to child pornography that harmonized European law.¹⁰³ These were implemented through Directive 2011/93/EU, under which the European Union defines both “child”¹⁰⁴ and “child pornography.”¹⁰⁵ In terms of criminalization and prosecution of child pornography, most European Union countries adopted the Convention and Optional Protocol prior to the adoption of Directive 2011/93/EU, thereby establishing possession, distribution, and production of child pornography as a crime in Europe.¹⁰⁶ Directive

98. Calcara, *supra* note 76, at 28. The 2009 European Council decision modernized regulations surrounding Europol, Europol funding, and its capacity as a law enforcement unit of the European Union. *See generally, Council Decision of 6 April 2009 establishing the European Police Office (Europol)*, 2009 O.J. (L 121) 37 (EC) (establishing Europol).

99. *Id.* art. 5(a).

100. *See About Europol*, EUROPOL, <https://www.europol.europa.eu/content/page/about-us> [<https://perma.cc/ALS9-MSBN>] (last visited May 11, 2017).

101. *See id.*

102. *See Council Decision of 6 April 2009, supra* note 98, art. 8.

103. Calcara, *supra* note 76, at 28 (“It is only with the Directive 2011/92/EU [sic] that the European Union has finally gained a common and complete regulation that harmonizes the various legislations of the EU member States.”).

104. Under Directive 2011/93/EU, a “child” means any person below the age of eighteen. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, art. 2(a), 2011 O.J. (L 335) 1.

105. The European Union chose to recognize “any material that visually depicts a child in real or simulated sexually explicit conduct” as child pornography. *Id.* art. 2(c)(i).

106. *See* Calcara, *supra* note 76, at 28.

2011/93/EU ultimately gave Europol the power to conduct international investigations of child pornography, and helped harmonize and streamline cooperation among European states.¹⁰⁷ Furthermore, Directive 2011/93/EU gave Europol the authority to investigate and prosecute child pornography outside of the European Union, thereby expanding Europol jurisdiction beyond E.U. states.¹⁰⁸ At an October 2015 conference, Europol and Interpol specialists agreed to work towards greater international cooperation in combatting online child pornography.¹⁰⁹

3. The Virtual Global Taskforce

The Virtual Global Taskforce is an alliance of police forces, nongovernmental organizations, and international coalitions that coordinates and conducts sting operations against online child pornographers.¹¹⁰ Founded in 2003, the Virtual Global Taskforce is the sole anti-child pornography organization with international jurisdiction and the power to arrest.¹¹¹ Member states include Australia, Canada, Colombia, the Netherlands, New Zealand, Philippines, South Korea, Switzerland, the United Arab Emirates, the United Kingdom, and the United States.¹¹² Additionally, both Europol and Interpol support the Virtual Global Taskforce's operations by providing cyber intelligence and coordinating communications.¹¹³ These organizations and agencies work together to target, identify, and arrest online child abusers all over the world, often working directly with local law enforcement agencies to prevent the distribution of child pornography.¹¹⁴

Because it is comprised of law enforcement agencies with the power

107. *See id.* at 29.

108. Directive 2011/92/EU, *supra* note 104, art. 5; *see also* Calcara, *supra* note 76, at 29–30 (discussing Europol's implementation of "Project HAVEN" and its success in identifying and prosecuting child abuse committed by European citizens outside of Europe).

109. *Europol-Interpol Cybercrime Conference 2015*, EUROPOL (Aug. 14, 2015), https://www.europol.europa.eu/latest_news/europol-interpol-cybercrime-conference [<https://perma.cc/NNV8-4GFU>].

110. *See What We Do*, VIRTUAL GLOB. TASKFORCE, <http://virtualglobaltaskforce.com/what-we-do/> [<https://perma.cc/FAY5-WFKQ>] (last visited May 11, 2017); *Member Countries*, VIRTUAL GLOB. TASKFORCE, <http://virtualglobaltaskforce.com/who-we-are/member-countries/> [<https://perma.cc/A6LU-END9>] (last visited May 11, 2017).

111. *See Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110. Europol became a member of the Virtual Global Taskforce in 2011. *Europol Joins the Virtual Global Task Force*, INTERPOL, (Apr. 7, 2011), <http://www.interpol.int/News-and-media/News/2011/N20110407b> [<https://perma.cc/ERR5-SEFA>].

112. *See Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

113. *See id.*

114. *See id.*; *What We Do*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

of arrest, the Virtual Global Taskforce has carried out some of the more aggressive and successful anti-child pornography operations.¹¹⁵ For example, from June through October 2015, Operation Atlas resulted in the arrest of 303 perpetrators and the rescue of 106 victims worldwide.¹¹⁶ In March 2011, Operation Rescue led to the destruction of a global pedophile network and the arrest of 184 offenders globally.¹¹⁷ These large, transnational operations involve law enforcement agencies and state governments that have cooperated with the Virtual Global Taskforce's initiatives.¹¹⁸

The Virtual Global Taskforce is also involved in smaller operations rescuing individual victims. One particular case involved the identification and rescue of a twenty-two-month-old baby who was being abused in Romania.¹¹⁹ The National Center for Missing and Exploited Children in the United States identified the victim and sent the information to the U.S. Homeland Security Investigations (HSI) attaché office in The Hague.¹²⁰ HSI then coordinated with Europol, which contacted Romanian officials.¹²¹ Romanian officials then located the victim, executed a search warrant, arrested the abuser, and rescued the victim within seventy-two hours.¹²² This operation is emblematic of other, similar missions carried out by the Virtual Global Taskforce over the past decade.¹²³ The Virtual Global Taskforce's operations epitomize

115. See *Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

116. Operation Atlas included "participation of ten [Virtual Global Taskforce] members: the Australian Federal Police (AFP), Colombian National Police, Dutch National Police (DNP), Cybercrime Coordination Unit of Switzerland, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), Korean National Police Agency (KNPA), New Zealand Police, Royal Canadian Mounted Police (RCMP), the United Arab Emirates Ministry of the Interior and the United Kingdom's National Crime Agency (NCA)." *VGT Announces Over 300 Arrests from Operation Atlas*, VIRTUAL GLOB. TASKFORCE (Nov. 12, 2015), <http://virtualglobaltaskforce.com/2015/vgt-announces-over-300-arrests-from-operation-atlas-2/> [<https://perma.cc/YRC2-X2UR>].

117. See *id.*

118. See *What We Do*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

119. See *International Effort Leads to Rescue of 22-month-old Romanian Baby Being Molested*, VIRTUAL GLOB. TASKFORCE (Feb. 25, 2015), <http://virtualglobaltaskforce.com/2015/international-effort-leads-to-rescue-of-22-month-old-romanian-baby-being-molested/> [<https://perma.cc/QV7D-G5PS>].

120. *Id.*

121. See *id.*

122. *Id.*

123. See, e.g., *Two Teens Rescued from Suspected British Child Sex Offender*, VIRTUAL GLOB. TASKFORCE (Nov. 17, 2014), <http://virtualglobaltaskforce.com/2014/two-teens-rescued-from-suspected-british-child-sex-offender/> [<https://perma.cc/G8K5-2FYQ>] (describing how two Filipino teenagers were rescued from a hotel room in Cebu City, where a British man had traveled to meet underage girls).

the collaborative enforcement work that the Convention and the Optional Protocol endorse.¹²⁴

D. *The Contemporary Presence of Child Pornography on the Internet*

Although the online distribution of child pornography is a transnational problem, certain nations have greater numbers of hosting websites for child pornography.¹²⁵ This Section discusses where online child pornography originates and which countries pose the greatest difficulties for international law enforcement groups. Subsections II.D.2 and II.D.3 detail the current status of child pornography in Russia and Ukraine—two primary hosts of online child pornography.

1. INHOPE Monitoring and the International Prevalence of Child Pornography

The International Association of Internet Hotlines (INHOPE) is the primary international monitor of online child pornography.¹²⁶ INHOPE collaborates with national governments, nonprofit groups, and international law enforcement agencies to provide a platform for its members to report online child pornography hosted within their own countries.¹²⁷ Comprised of fifty-one hotlines, INHOPE collects and publishes reported data on forty-five countries.¹²⁸ INHOPE monitors commercial and freely available child pornography domains, and collects data on servers both within and outside of its network.¹²⁹

Table 1 shows “hosting countries” that have the highest number of child pornography domains according to a 2013 INHOPE analysis of commercial child pornography.

TABLE 1: INHOPE COMMERCIAL URLS BY HOSTING COUNTRY, 2013

Country ¹³⁰	Number of URLs
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124. See *supra* Sections I.B.1–2.

125. See INHOPE, ANNUAL REPORT 2013–2014, *supra* note 16, at 26–27.

126. INHOPE developed the INHOPE Report Management System, which is “the only database in the world that stores details of URLs of child sex abuse material classified by Hotlines as illegal.” *Id.* at 8. INHOPE members use the Report Management System to address websites hosted within their own countries, and to alert member hotlines of content within other countries. See *id.* at 8–9.

127. In 2013, INHOPE signed “memorandums of understanding” with Interpol and Europol, to “strengthen . . . the ties between INHOPE member hotlines and law enforcement.” *Id.* at 5.

128. INHOPE, ANNUAL REPORT 2013–2014, *supra* note 16, at 6.

129. See *id.* at 8–9, 12–13.

130. EUROPEAN FINANCIAL COALITION AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN ONLINE, STRATEGIC ASSESSMENT 2014 § 3.3 (2015) [hereinafter EUROPEAN FINANCIAL COALITION].

1. United States ¹³¹	2,617
2. Netherlands	942
3. Russian Federation	437
4. Japan	322
5. Ukraine	182
6. Canada	177
7. Czech Republic	125
8. Germany	81
9. Luxembourg	77
10. Singapore	60
11. South Korea	51
12. Kazakhstan	42
13. United Kingdom	34
14. France	27

A broader date range of the data yields similar results, as shown in Tables 2 and 3.

TABLE 2: INHOPE COMMERCIAL URLS BY HOSTING COUNTRY, OCTOBER–DECEMBER 2012

Country ¹³²	Number of URLs
1. United States	516
2. Russian Federation	121
3. Kazakhstan	119
4. Japan	83
5. Netherlands	67
6. Ukraine	58
7. Germany	50
8. Czech Republic	40
8. Hungary	24

TABLE 3: INHOPE COMMERCIAL URLS BY HOSTING COUNTRY, JANUARY–JUNE 2014

Country ¹³³	Number of URLs
1. United States	2,048
2. Japan	455

131. INHOPE notes “cloud hosting” likely causes an uneven number of child pornography domains to be listed in the United States. *See id.*

132. *Id.*

133. *Id.*

3. Netherlands	156
4. Russian Federation	88
5. Ukraine	59
6. Canada	23
7. Germany	22

As evidenced by the above data, the primary hosting countries of commercial child pornography are in Western Europe, the United States, and Japan.¹³⁴ These states have some of the highest Internet usage rates in the world, making it easier for their populations to distribute and publish child pornography online.¹³⁵

Two significant outliers to these demographics—Russia and Ukraine—pose difficulties for the international prevention of child pornography. Neither nation is a member of Europol or the Virtual Global Taskforce,¹³⁶ nor have they prioritized the fight against online child pornography within their domestic legislation.¹³⁷ The following Subsections discuss the impediments Russia and Ukraine face when combatting child pornography, and how the Russian and Ukrainian governments have tried to address them.

2. The Russian Problem

As demonstrated by the tables above, the Russian Federation is one of the largest hosts of online child pornography.¹³⁸ According to 2014 data, Russia is second only to the United States in hosting of child pornography websites, hosting twenty-four percent of all child pornography websites worldwide.¹³⁹ In 2005, Russia was declared a “haven” for child

134. *See id.*

135. *See* INHOPE, ANNUAL REPORT 2013–2014, *supra* note 16, at 7 (“Online child sexual exploitation is likely to rise in the coming years, with ever-increasing Internet adoption rates globally.”); ICT FACTS AND FIGURES 2016, INT’L TELECOMM. UNION (2016) (showing Internet usage rates around the world).

136. *See Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110; *Member States*, EUROPOL, <https://www.europol.europa.eu/content/page/member-states-131> [<https://perma.cc/UFL4-GMTH>] (last visited May 11, 2017).

137. *See infra* text accompanying notes 140, 172.

138. *See* EUROPEAN FINANCIAL COALITION, *supra* note 130.

139. *See* INHOPE, STATS & INFOGRAPHICS FOR 2014 (showing that Russia hosts twenty-four percent of child pornography sites worldwide, while the United States hosts thirty-seven percent). Russia hosts six percent of worldwide *commercial* child pornography sites, while the United States hosts seventy-two percent. *Id.* This is likely because so many commercial child pornography websites on CloudFlare are registered in the United States. *See id.*; EUROPEAN

pornographers, due to lax criminal laws and poor law enforcement practices.¹⁴⁰ The number of Russian child pornography websites continued to increase, growing by almost a third by mid-2013.¹⁴¹ Moreover, Internet usage is growing in Russia, especially among children.¹⁴² Over seventy-one percent of the Russian population uses the Internet,¹⁴³ and the country is ranked sixth for overall global usage.¹⁴⁴ High usage rates should incentivize the Russian government to prioritize child pornography prevention and stricter enforcement of criminal laws.¹⁴⁵

Domestically, Russia has taken strides to better address the issue. In 2004, only thirty child pornography cases were opened;¹⁴⁶ in contrast, during the first six months of 2014, over five hundred child pornography

FINANCIAL COALITION, *supra* note 130.

140. See Jacky Rowland, *Russia is 'Major Child Porn Source'*, BBC NEWS (Dec. 4, 2002), <http://news.bbc.co.uk/2/hi/europe/2543717.stm> [<https://perma.cc/N7C8-JNWG>]; Delphine Thouvenot, *Bad Laws Make Russia Haven for Child Pornographers*, MAIL & GUARDIAN (Sept. 30, 2005), <http://mg.co.za/article/2005-09-30-bad-laws-make-russia-haven-for-child-pornographers> [<https://perma.cc/XA2A-A4W8>].

141. See *Activists Advocate Criminal Charges for Child Porn Possession*, RT: RUSSIAN POLITICS (Nov. 28, 2014), <https://www.rt.com/politics/209691-russia-child-criminal-responsibility> [<https://perma.cc/Q58R-Q4K8>] (“In mid-2013, [member of parliament] Aleksandr Romanovich (Fair Russia) told a parliamentary session that the number of Russian websites containing child porn had grown almost by a third in recent years. The amount of available pornographic materials featuring children had grown twenty-five times. On average, every such site attracts 30,000 visits every month, he said.”).

142. See SVETLANA S. HUNTLEY, INT’L CTR. FOR MISSING & EXPLOITED CHILDREN, *RUSSIAN LEGISLATION ON THE PROTECTION OF CHILDREN AGAINST SEXUAL ABUSE AND SEXUAL EXPLOITATION: A REVIEW* 8 (2013) (Children ages nine to sixteen constitute over sixty percent of the Internet users in Russia); see also *infra* note 143 (Since 2000, internet usage has experienced annual increases in Russia).

143. As of January 27, 2017, there were 102,258,256 Internet users in Russia and 71.3% of the Russian population used the internet. *Russia Internet Users*, INTERNET LIVE STATS, <http://www.internetlivestats.com/internet-users/russia> [<https://perma.cc/DA5N-7DEX>] (last visited Jan. 27, 2017).

144. *Internet Users by Country (2016)*, INTERNET LIVE STATS, <http://www.internetlivestats.com/internet-users-by-country/> [<https://perma.cc/LHC8-L86L>] (last visited Jan. 27, 2016).

145. Russian lawmaker Elena Mizulina has been particularly vocal about the passing and enforcement of stricter anti-child pornography criminal laws in Russia. See Paula Newton, *Russia: Where Keeping Child Porn Is Legal*, CNN (June 2, 2011), <http://www.cnn.com/2011/WORLD/europe/06/02/russia.child.porn/> [<https://perma.cc/PZ5P-L9AT>]. She argues individuals should be prosecuted for possessing child pornography even if they do not distribute it. See *Russian Lawmaker Moves for Criminalizing Child Porn Possession*, RAPS: RUSSIAN LEGAL INFO. AGENCY (Apr. 21, 2014), http://rapsinews.com/legislation_news/20140421/271182585.html [<https://perma.cc/ER3Q-REM2>]. Mizulina has also called for a stricter legal definition of child pornography in the Russian criminal code, and for the country to develop a directory of images to better identify victims. See *id.*

146. See Thouvenot, *supra* note 140.

criminal cases had been opened.¹⁴⁷ In 2011, the Russian government founded the Safe Internet League to “eradicate dangerous content through community action by IT professionals, industry players, and regular Internet users.”¹⁴⁸ The Safe Internet League relies on volunteers to report abusive online material, which is then analyzed by experts.¹⁴⁹ Owners of reported websites are given the opportunity to voluntarily delete the illicit content before the report is forwarded to law enforcement agencies.¹⁵⁰ In 2014, the Safe Internet League processed 73,403 reports of child pornography websites, of which 18,773 were confirmed.¹⁵¹ Illegal child pornography content was subsequently removed from 18,160 web pages.¹⁵² Additionally, to enable victim recognition, the Safe Internet League established the first and only database of child sex abuse images retrieved from Russian websites.¹⁵³ Since its establishment in 2011, the Safe Internet League has helped prosecute eight hundred cases of online child pornography distribution in Russia, and thirty cases of child pornography production.¹⁵⁴

While the Russian government has initiated stronger tactics to identify and remove online child pornography, legal responses to child pornography remain lax.¹⁵⁵ Possession of child pornography remains legal in Russia, despite Russian lawmakers’ attempts to introduce legislation that would render possession illegal.¹⁵⁶ A bill introducing harsher punishment for the possession and distribution of online child pornography was recently rejected by the State Duma of Russia on grounds that it introduced too-broad language regarding the possession

147. See *Over 500 Child Pornography Cases Opened in Russia in First Half of 2014*, RAPS NEWS (Nov. 10, 2014), <http://rapsinews.com/news/20141110/272542178.html> [<https://perma.cc/X259-N7E5>].

148. *About Us*, SAFE INTERNET LEAGUE, <http://ligainternet.ru/en/liga/about.php> [<https://perma.cc/9J3S-L3PA>] (last visited May 11, 2017).

149. See *id.*; SAFE INTERNET LEAGUE, ANNUAL REPORT 2014 6 (2014).

150. See SAFE INTERNET LEAGUE, ANNUAL REPORT 2014, *supra* note 149, at 6.

151. *Id.*

152. *Id.*

153. See *id.* at 15.

154. See SAFE INTERNET LEAGUE, ANNUAL REPORT 2015 10 (2015).

155. See Huntley, *supra* note 142, at 5 (noting the number of child victims of “various crimes”—meaning all types of crimes stipulated by the Russian Criminal Code—has not changed considerably in recent years, despite changes to laws on child sexual abuse, sexual exploitation, and trafficking that were introduced between 2003 and 2012).

156. See RAPS: RUSSIAN LEGAL INFO. AGENCY, *supra* note 145. Pavel Astakhov, the Children Rights Commissioner of Russia, has called for “urgent measures” to protect children from online sexual abuse. *Police Lament the Lack of Laws to Combat Child Sexual Abuse Images in Russia*, COUNCIL OF EUR. (June 9, 2011), http://www.coe.int/t/dg3/children/1in5/News/RussianImages_en.asp [<https://perma.cc/2W6P-KNK4>].

of “naturalistic images” of minors to the Russian criminal code.¹⁵⁷ Russia has also been accused of taking a “lackadaisical” approach to cybercrime in general, as evidence suggests that the government cooperates with cybercriminals and hackers.¹⁵⁸

Despite Russia’s domestic initiatives to combat online child pornography, the country has been slow to join international efforts. Russia initially opposed the Council of Europe’s Convention on the grounds that it violates national sovereignty.¹⁵⁹ As recently as 2013, Russian officials argued against the Convention because “the denial of any restrictions [on the] [I]nternet will create an atmosphere of criminal permissiveness, which in turn will lead to an increase of human rights violations in the global network.”¹⁶⁰ Russia did, however, sign and ratify the Optional Protocol in 2013, more than ten years after the treaty opened for signature.¹⁶¹ Arguably, the ratification of the Optional Protocol would have incentivized Russia to modify its child sex abuse and pornography laws, due to the legal recommendations the Optional

157. See Bill No. 217688-6: On Amendments to the Criminal Code of the Russian Federation (with regard to establishing responsibility for the production and distribution of materials or objects with pornography images of minors), [http://asozd2.duma.gov.ru/main.nsf/\(Spravka\)?OpenAgent&RN=217688-6](http://asozd2.duma.gov.ru/main.nsf/(Spravka)?OpenAgent&RN=217688-6) [<https://perma.cc/2L8P-XRUH>]. On March 10, 2017, the State Duma rejected the proposed bill. *Id.*; see also Committee of the State Duma, Conclusion on the Draft Federal Law No. 217688-6 “On Amendments to the Russian Federation Criminal Code,” Introduced by the Legislative Assembly of St. Petersburg.

158. See Trevor McDougal, *Establishing Russia’s Responsibility for Cyber-crime Based on Its Hacker Culture*, 11 INT’L L. & MGMT. REV. 55, 58–60 (2015) (describing the Russian government’s “lackadaisical” approach to cybercrime and the Russian government’s apparent cooperation with hackers).

159. See *supra* text accompanying note 47.

160. See Boris Vasiliev, “Sovereignty, International Cooperation and Cyber Security – A Treaty Dialogue,” *A Speech from the India Conference on Cyber Security and Cyber Governance 2013*, CYFY, <http://www.orfonline.org/cyfy-2013-session-1-sovereignty-international-cooperation-and-cyber-security-boris-a-vasiliev/> [<https://perma.cc/9X9K-2WWF>] (last visited May 11, 2017); see also Jeremy Kirk, *Despite Controversy, Cybercrime Treaty Endures*, IDG NEWS SERVICES, http://www.pcworld.com/article/244407/despite_controversy_cybercrime_treaty_endures.html [<https://perma.cc/9WCM-3LTU>] (last visited May 11, 2017) (describing the Convention and how certain states, including Russia, have refused to ratify it).

161. See *OHCHR Country Profile for Russian Federation: Status of Ratifications*, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <http://indicators.ohchr.org/> [<https://perma.cc/P7N3-T3AD>] (last visited May 11, 2017). Russia has also ratified the Council of Europe’s Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (C.E.T.S. 201), but this has not led to a decrease in the amount of child pornography prevalent on the Internet. See HUNTLEY, *supra* note 142, at 5–9, 10. To effectively combat online child pornography, Russia must adopt aggressive measures to combat all cybercrime. See, e.g., McDougal, *supra* note 158 (describing Russia’s lax approach to domestic cybercrime).

Protocol provides for its ratifying states.¹⁶² Despite this recent momentum, Russian lawmakers continue to refuse to ratify the Convention, encumbering the country's involvement in the international fight against online child pornography.

3. The Ukrainian Problem

Although the rate of Ukrainian Internet usage is comparatively low,¹⁶³ Ukraine has consistently ranked within the top six of child pornography hosting countries.¹⁶⁴ In 2013, Ukraine had the fifth highest number of commercial child pornography sites hosted on its Internet domains.¹⁶⁵ 2014 statistics showed little change, with Ukraine hosting the highest number of child pornography websites—both commercial and noncommercial—outside of the INHOPE¹⁶⁶ network.¹⁶⁷ These rates are particularly troubling because only 44.1% of the Ukrainian population has Internet access, and the country is ranked thirty-fourth for global Internet usage.¹⁶⁸ Thus, despite the low degree of Internet usage, the high rate of Ukrainian child pornography sites suggests a serious prevalence of child sex abuse material hosted within Ukraine.

The low rate of Ukrainian Internet usage, coupled with the high incidence of online child pornography, likely originate from recent political turmoil in Ukraine. According to a 2010 UNICEF report about online child pornography, the majority of Ukrainian child abuse victims are impoverished orphans or homeless children.¹⁶⁹ The recent war with Russia has further displaced Ukrainian children, increasing the overall population of children living in orphanages.¹⁷⁰ The increased number of

162. See Huntley, *supra* note 142, at 10; see also Bill No. 217688-6, *supra* note 157 (proposed legislation that would update Russian criminal laws regarding child pornography).

163. See *infra* note 168.

164. See EUROPEAN FINANCIAL COALITION, *supra* note 130.

165. EUROPEAN FINANCIAL COALITION, *supra* note 130.

166. Ukraine is not a member of INHOPE. See *Member Hotlines*, INHOPE, <http://www.inhope.org/gns/our-members.aspx> [<https://perma.cc/F5ZD-NZS2>] (last visited Mar. 26, 2017).

167. See *INHOPE Stats and Infographics for 2014*, INHOPE, http://www.inhope.org/Libraries/Statistics_Infographics_2014/INHOPE_stats_infographics_for_2014.sflb.ashx [<https://perma.cc/LTT6-SYTC>].

168. See *Internet Users by Country (2016)*, INTERNET LIVE STATS, *supra* note 144. For comparison, the United States is the largest host of child pornography websites, and 88.5 percent of the American population has access to the Internet. See *INHOPE Stats and Infographics for 2014*, INHOPE, *supra* note 167; *Internet Users by Country (2016)*, INTERNET LIVE STATS, *supra* note 144.

169. See *Sexual Exploitation of Children: What is the Situation in Ukraine?*, UNICEF (Feb. 1, 2010), http://www.unicef.org/ukraine/media_13963.html [<https://perma.cc/WS5Y-TR5F>].

170. See *No Way Home: The Exploitation and Abuse of Children in Ukraine's Orphanages*:

children living in orphanages is especially alarming for human rights activists, as poor oversight and corruption within Ukrainian orphanages makes children vulnerable to exploitation.¹⁷¹ Additionally, the 2010 UNICEF report found that impoverished children are regularly forced into pornography for their families' benefit, as their families often profit from the commercial production and distribution of the images.¹⁷² Overall, the UNICEF report found that Ukrainians are insufficiently aware of how to prevent sexual abuse among children, and that government legislation and institutions do not adequately prevent online child pornography.¹⁷³

Perhaps recognizing these issues, Ukraine has been cooperative with international legislation and organizations. Ukraine ratified the Optional Protocol and the Convention in 2003 and 2006, respectively.¹⁷⁴ Ukraine has also been a member of Interpol since November 4, 1992,¹⁷⁵ and has hosted a number of cybercrime stings in recent years.¹⁷⁶ For example, in 2015, joint Europol, Austrian, and Belgian forces apprehended a major cybercrime group in Ukraine.¹⁷⁷ The sting consisted of the search of eight houses in four different cities and involved law enforcement agencies from Estonia, Germany, Latvia, Moldova, Poland, Ukraine, and the United States.¹⁷⁸ The Virtual Global Taskforce also carried out a major operation in 2010 in Ukraine that resulted in five arrests.¹⁷⁹

Despite its cooperation and involvement with international law enforcement groups, Ukraine remains a "haven" of cybercrime and child

A Report, DISABILITY RIGHTS INT'L iv (2015).

171. See *id.* ("The lack of adequate care and protection in [orphanages] exposes children to life-threatening dangers...Separated from society and without the protection of family and friends, children are subject to beatings, rape, and other forms of routine violence...Without adequate government oversight, children detained in institutions are at-risk of sexual abuse, trafficking for sex, pornography, or sale of bodily organs.").

172. See UNICEF, *supra* note 169.

173. See *id.*

174. OHCHR Country Profile for Ukraine: Status of Ratifications, U.N. HUM. RTS. OFF. HIGH COMMISSIONER, <http://indicators.ohchr.org/> [<https://perma.cc/9MXS-5LM4>] (last visited Apr. 25, 2017); *Chart of Signatories and Ratifications or Treaty No. 185 – Convention on Cybercrime*, COUNCIL OF EUR., *supra* note 43.

175. Ukraine, *Member Countries*, INTERPOL, <http://www.interpol.int/Member-countries/Europe/Ukraine> [<https://perma.cc/2C2U-3U6F>] (last visited Feb. 1, 2016).

176. See *900 Suspected Pedophiles Arrested*, *supra* note 21.

177. See *Major Cybercrime Ring Dismantled by Joint Investigation Team*, EUROPOL (June 25, 2015), <https://www.europol.europa.eu/content/major-cybercrime-ring-dismantled-joint-investigation-team> [<https://perma.cc/6PYB-FJFA>].

178. *Id.*

179. See *What We Do*, VIRTUAL GLOB. TASKFORCE, *supra* note 110 (discussing Operation Basket).

pornography.¹⁸⁰ This may be attributed to Ukraine's failure to legally define or criminalize child pornography until 2010, despite ratifying the Optional Protocol in 2003.¹⁸¹ Between 2009 and 2011 the Ukrainian government prosecuted only twenty-nine online child pornography cases,¹⁸² although INHOPE statistics indicate a much higher rate of child pornography activity within Ukraine.¹⁸³ Further, Ukraine's lack of resources and political instability make imposition of anti-cybercrime initiatives difficult for authorities.¹⁸⁴ Russian involvement in Crimea has exasperated these problems, creating further unrest in Ukraine.¹⁸⁵ In response to the Russian invasion, the Ukrainian government declared on October 12, 2015: "[T]he application and implementation by Ukraine . . . [of the Convention] . . . is limited and is not guaranteed."¹⁸⁶ The Ukrainian government further noted that its suspension of the Convention would remain in effect until Russia withdrew from the occupied territories.¹⁸⁷ Presently, the Ukrainian government has yet to repeal its suspension of the Convention,¹⁸⁸ and the child pornography crisis in Ukraine persists.

II. ANALYSIS

This Part proposes the following solution for online child pornography prevention: international law enforcement agencies should require their member states to ratify both the Convention and the Optional Protocol to ensure that member state governments cooperate and prioritize child pornography prevention. Subsection II.A discusses the proposed

180. See *Ukraine Thrives as a Cybercrime Haven*, KYIV POST (Mar. 8, 2012), <http://www.kyivpost.com/article/content/ukraine/ukraine-thrives-as-cybercrime-haven-123965.html> [<https://perma.cc/H5YR-KNAM>].

181. See GLOB. ALLIANCE AGAINST SEXUAL ABUSE ONLINE, 2014 REPORTING FORM: UKRAINE 3 (2014).

182. See ELISA MARAN, ECPAT, GLOBAL MONITORING STATUS OF ACTION AGAINST COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN: UKRAINE 12 (ECPAT International 2d ed., 2011).

183. See *INHOPE Stats and Infographics for 2014*, INHOPE, *supra* note 167.

184. See UKRAINIAN PARLIAMENT COMM'R FOR HUMAN RIGHTS, STATE OF OBSERVANCE AND PROTECTION OF THE RIGHTS OF THE CHILD IN UKRAINE 27 (2010).

185. See generally *Timeline: Political Crisis in Ukraine and Russia's Occupation of Crimea*, REUTERS (Mar. 8, 2014), <http://www.reuters.com/article/us-ukraine-crisis-timeline-idUSBREA270PO20140308> [<https://perma.cc/YFU5-DWPQ>] (detailing the events leading up to the Russian annexation of Ukrainian territory, Crimea).

186. See *Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime*, *supra* note 46, "Ukraine." Ukraine declared the suspension in effect on February 20, 2014. *Id.*

187. See *id.*

188. See *Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime*, *supra* note 46, "Ukraine."

solution for international law enforcement agencies, and Subsection II.B details its implementation in Russia and Ukraine.

A. *Proposed Solution*

International law enforcement agencies should mandate that their member states ratify the Convention and the Optional Protocol as a means of strengthening the global responses to online child pornography. The ratification of the Convention and Optional Protocol would compel governments to enforce their provisions and take a stronger stance against online child pornography, and enforcement of this policy by international law enforcement groups would further encourage state governments to act. Despite efforts toward stronger international cooperation and accountability, recent data has not shown a decline in the prevalence of online child pornography.¹⁸⁹ Child pornography prevention continues to be concentrated in countries that cooperate with international law enforcement agencies.¹⁹⁰ Thus, ratification by additional countries and stricter enforcement of the Convention and the Optional Protocol will ensure that more states cooperate with international law enforcement agencies, thereby lowering international rates of online child pornography.

Although the Convention and the Optional Protocol promote similar policies of international cooperation, the treaties should be ratified together.¹⁹¹ While the Convention strongly encourages international cooperation to combat all cybercrime, the Optional Protocol specifically focuses on adoption of online child pornography legislation.¹⁹² Additionally, the Optional Protocol provides a broader definition of child pornography, thereby ensuring ratifying states will address child pornography in all forms.¹⁹³ Moreover, the Convention focuses on cybercrime policies overall, thereby encouraging more stringent international approaches to global cybercrime.¹⁹⁴ Dual ratification would thus encourage states to combat online child pornography in a comprehensive, multilateral fashion that supports

189. See EUROPEAN FINANCIAL COALITION, *supra* note 130, at § 3.1; *supra* Section I.A.

190. See *supra* Section II.D; see also *supra* text accompanying notes 18–24 (describing the work of international law enforcement agencies in combatting child pornography, and that operations have been successful in Australia, North American, and Western Europe, but less so in other parts of the world where cooperation with the agencies has been lacking, including in Ukraine and Russia, where online child pornography trade flourishes).

191. See *supra* Sections II.B.1–2.

192. See *supra* Sections II.B.1–2.

193. See *supra* text accompanying notes 69–70.

194. See *supra* Section II.B.1.

transnational data exchanges.

Three organizations could potentially implement the proposed solution. First, Interpol, with the highest number of member states,¹⁹⁵ is the primary contender for implementation, as any policy changes it makes would be far-reaching.¹⁹⁶ Member states rely on Interpol to prevent crimes within their borders¹⁹⁷ to such a degree that they are compelled to cooperate with any changes Interpol implements. Furthermore, if member states fail to cooperate with Interpol, they risk losing access to Interpol's extensive network of law enforcement groups and databases, including the Child Abuse Image Database and the "Worst-of" list.¹⁹⁸ Interpol can thus use its international influence as a means of compelling states to ratify the Convention and Optional Protocol, thereby encouraging international cooperation in the fight against online child pornography.

Next, although Interpol's adoption of the proposed solution would have the most far-reaching impact, the Virtual Global Taskforce is more likely to be successful in adopting and implementing the proposed solution. As the most aggressive and smallest agency of the three,¹⁹⁹ the Virtual Global Taskforce's adoption of the proposed solution is more likely to compel its member states to cooperate. Unfortunately, the United Arab Emirates is the current chair of the Virtual Global Taskforce,²⁰⁰ but it has not ratified the Optional Protocol or the Convention.²⁰¹ Were the Virtual Global Taskforce to adopt the proposed legislation, the United Arab Emirates would be compelled to ratify both treaties to maintain its position. Ratification would encourage the United Arab Emirates government to address online child pornography and cybercrime domestically, and further the state's cooperation in the international prevention of child pornography.

195. Interpol has 190 member states. *Overview*, INTERPOL, *supra* note 77.

196. All 190 of Interpol's member states would be compelled to ratify, or at least reconsider, the Convention and the Optional Protocol.

197. Although this Note has primarily focused on Interpol's role in preventing child pornography and cybercrime, Interpol is also involved in prevention of international drug and sex trafficking, organized crime, terrorism, and corruption. *See Crime Areas*, INTERPOL, <http://www.interpol.int/Crime-areas> [<https://perma.cc/TT7A-N3TX>] (last visited May 11, 2017).

198. *See supra* text accompanying notes 83–97.

199. *See supra* text accompanying notes 110–118.

200. *Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

201. *OHCHR Country Profile for United Arab Emirates: Status of Ratifications*, U.N. HUMAN RTS. OFF. HIGH COMMISSIONER, <http://indicators.ohchr.org/> [<https://perma.cc/T3ET-G94P>] (last visited May 11, 2017); *see also Chart of Signatories and Ratifications or Treaty No. 185 – Convention on Cybercrime*, COUNCIL OF EUR., http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations?p_auth=I2ICVi4t [<https://perma.cc/XF88-J85E>] (last visited May 11, 2017).

Finally, Europol's adoption of the proposed solution would have little impact. A majority of Europol's member states have already ratified and adopted the Convention and the Optional Protocol within their domestic laws.²⁰² Furthermore, European Union law requires that member states prioritize and combat child pornography through international cooperation.²⁰³ Directive 2011/93/EU established the possession, distribution, and production of child pornography as crimes throughout the European Union.²⁰⁴ Additionally, Directive 2011/93/EU gave Europol the power to conduct international investigations of child pornography within the European Union.²⁰⁵ In sum, it would be most beneficial for Interpol and the Virtual Global Taskforce to implement the proposed solution, but would only be minimally beneficial for Europol to implement the same policy.

Critics may argue that international law enforcement agencies cannot impose sanctions on state governments because membership itself is voluntary. If member states are compelled to ratify the Convention and the Optional Protocol to maintain their membership with the law enforcement agencies, they may be less likely to cooperate with the agencies. This could affect agencies' operations, as the organizations rely on their members for funding.²⁰⁶ Additionally, critics may argue that the Convention and the Optional Protocol do not mandate state implementation of child pornography laws, nor do they impose sanctions on uncooperative countries.²⁰⁷ The proposed policy would therefore give international law enforcement agencies the power to compel their member states to adopt laws under the threat of sanctions, a power the organizations otherwise do not have.

Responses to these criticisms are threefold. First, international law enforcement agencies can compel their member states to ratify legislation

202. See *supra* text accompanying note 106.

203. See *supra* Section I.C.2.

204. See *supra* text accompanying note 107.

205. See *supra* text accompanying note 108.

206. Interpol requires member countries to pay annual contributions, and the amount each country pays is based on a proportional scale agreed between the members and voted upon annually by the Interpol General Assembly. *Funding: Member Country Contributions*, INTERPOL, <http://www.interpol.int/About-INTERPOL/Funding/Member-country-contributions> [<https://perma.cc/2B6M-BF4F>] (last visited May 11, 2017). Conversely, Europol is financed by the E.U. Community Budget. *Finance & Budget*, EUROPOL, <https://www.europol.europa.eu/content/page/finance-819> [<https://perma.cc/7KV7-34Y2>] (last visited May 11, 2017). The Council of the European Union and the European Parliament decide Europol's budget based on proposals from the European Commission and the Europol Management Board. *Id.*; see *supra* note 98 (discussing the establishment of Europol and Europol funding).

207. See, e.g., Huntley, *supra* note 142, at 28 (discussing the Optional Protocol's failure to detail sanctions for ratifying countries).

if ratification advances the agencies' objectives.²⁰⁸ Moreover, encouraging member countries to ratify legislation would not increase member states' existing burdens. Countries benefit from their memberships in law enforcement organizations, motivated by their interests in domestic crime prevention.²⁰⁹ Governments will be unlikely to refuse to ratify the Convention or the Optional Protocol if it would mean the loss of the agencies' support networks and databases. International law enforcement groups can therefore utilize the services they provide their member states as a bargaining chip for adoption of the proposed legislation.

Second, law enforcement agencies would not overstep any boundaries by requiring member states to ratify legislation. Like the United Nations and the Council of Europe,²¹⁰ international law enforcement groups cannot compel their member states to amend domestic laws.²¹¹ Additionally, neither the Convention nor the Optional Protocol require signatories to alter their laws.²¹² Article 9 of the Convention establishes that countries may refuse to criminalize procurement or possession of child pornography through computer systems.²¹³ Similarly, the Optional Protocol states, "Nothing in the present Protocol shall affect any provisions . . . that may be contained in . . . [t]he law of a State Party."²¹⁴ By requiring member nations to ratify the treaties, international law enforcement agencies would solely request that governments acknowledge—rather than wholly implement—their policies. The proposed solution would not compel states to adopt new laws, but merely to acknowledge international legislation that encourages stronger cooperation and enforcement against online child pornography.

Finally, Interpol and Europol already have legal requirements for their member states,²¹⁵ and law enforcement organizations may rightfully impose sanctions upon their member states to ensure global

208. INHOPE requires its members abide by its "Code of Practice." INHOPE, CODE OF PRACTICE, *supra* note 26, art. III.

209. *See supra* Sections II.C.1–3.

210. *See supra* note 38 (discussing the Council of Europe's authority).

211. *See supra* text accompanying notes 208–210; *infra* text accompanying notes 216–221.

212. *See infra* text accompanying notes 230–233.

213. *See* Convention, *supra* note 41, art. 9.

214. Optional Protocol, *supra* note 65, art. 11.

215. *See supra* text accompanying notes 81–90 (explaining Interpol's legal requirements for its member states); *supra* text accompanying note 102 (explaining Europol's legal requirements for its member states). Details regarding the Virtual Global Taskforce's legal requirements are unavailable to the public. *See Member Countries*, VIRTUAL GLOB. TASKFORCE, *supra* note 110.

cooperation.²¹⁶ For example, Interpol works closely with the U.N. Security Council and Sanctions Committee by overseeing ongoing sanction policies, advising the United Nations on sanction proposals, and issuing Special Notices on international sanctions.²¹⁷ Interpol, Europol, and the Virtual Global Taskforce may sanction their member states to ensure that all members equally enforce and utilize the same law enforcement mechanisms.

B. *Implementation of the Proposed Solutions*

Russia and Ukraine exemplify what happens when states permit the proliferation of child pornography unchecked by international law enforcement. Both countries are significant sources of online child pornography, and both have been slow to combat it.²¹⁸ This Section details how the implementation of the proposed solution would have prevented the current crises in Russia and Ukraine.

1. Implementation of the Proposed Policy in Russia

Russia's resistance to international legislation has delayed the prevention of child pornography. Although Russia has been a member of Interpol since September 27, 1990,²¹⁹ it is neither a member of the Virtual Global Taskforce nor Europol.²²⁰ Russia's government recently ratified the Optional Protocol, but it continues to oppose the Convention.²²¹ Further, Russian lawmakers currently struggle with the adoption and implementation of child pornography laws, and the country remains a primary source of cybercrime.²²²

Had the Russian government been mandated to ratify the Convention and the Optional Protocol when the treaties were introduced, it likely would have addressed the problem of online child pornography

216. Other authors have proposed similar remedies. *See, e.g.*, DAVID SATTER, THE HENRY JACKSON SOCIETY, RUSSIA'S ABUSE OF INTERPOL 9 (2015) (recommending Interpol impose sanctions against Russia to prevent future corruption and abuse of Interpol's services).

217. *See Cooperation Between INTERPOL and the U.N. Security Council*, INTERPOL (Mar. 2013), <https://www.interpol.int/en/News-and-media/Publications2/Leaflets-and-brochures/Cooperation-between-INTERPOL-and-the-UNITED-NATIONS-Security-Council/> [<https://perma.cc/3ZGY-QN66>]. *Cf.* Barbara Yukins-Karitzky, *Die Staatshaftung im amerikanischen Recht*, ARCHIV DES ÖFFENTLICHEN RECHTS 370 (1962).

218. *See supra* Section I.D.1.

219. "Russia," *Member Countries*, INTERPOL, <http://www.interpol.int/Member-countries/Europe/Russia> [<https://perma.cc/A94S-GBYE>] (last visited May 11, 2017).

220. *See supra* note 136 and accompanying text.

221. *See Russian Federation*, U.N. HUMAN RTS. OFF. HIGH COMMISSIONER, *supra* note 161; *see also Chart of Signatories and Ratifications or Treaty No. 185*, *supra* note 43 (displaying lack of signature from Russian Federation).

222. *See supra* Section I.D.2.

sooner. Russia's refusal to ratify either legislation delayed adoption and development of cybercrime and child pornography laws.²²³ As well, ratification of both treaties may have compelled Russia to engage in the international prevention of online child pornography and cybercrime. This would have encouraged Russian participation in other international law enforcement groups, namely the Virtual Global Taskforce and Europol.

Critics may argue that Russia's ratification of the Optional Protocol makes unnecessary its ratification of the Convention. Because the Optional Protocol encourages international cooperation in combatting child pornography, it already compels Russia to cooperate with international law enforcement groups.²²⁴ However, the Optional Protocol's approach to international cooperation is lax compared with the Convention's.²²⁵ The Convention specifically focuses on international cooperation between ratifying states, including extradition agreements, sharing and preservation of data, and transborder access to stored computer data.²²⁶ Comparatively, the Optional Protocol has only one article dedicated to data sharing and international cooperation.²²⁷ Were Russia to ratify the Convention, it would be strongly encouraged to share its data on child pornographers with international law enforcement groups.²²⁸

Critics may further argue that Russia has already signed and ratified the Council of Europe's Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (C.E.T.S. 201) in August 2013,²²⁹ making unnecessary that Russia ratifies the Convention on

223. See *supra* text accompanying notes 159–161.

224. “States Parties shall 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 acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.” Optional Protocol, *supra* note 65, art. 10(1).

225. See *supra* text accompanying notes 191–193.

226. See Convention, *supra* note 41, arts. 23–25, 29, 31–32.

227. See *supra* text accompanying notes 73–76.

228. Ratification of the Convention would allow Russian authorities to share data it has collected through the Safe Internet League. See *supra* text accompanying notes 148–169.

229. Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *opened for signature* Oct. 25, 2007, C.E.T.S No. 201 (entered into force July 1, 2010) [hereinafter C.E.T.S. 201]. Russia ratified the C.E.T.S. 201 on August 9, 2013, and implemented the treaty on December 1, 2012. See *Chart of Signatures and Ratifications of Treaty 201*, COUNCIL OF EUR., http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/signatures?p_auth=ZB4LtDOo [https://perma.cc/6G2N-8UAE] (last visited May 11, 2017).

Cybercrime. The adoption and implementation of C.E.T.S. 201 has led to revisions in Russian law.²³⁰ However, ratification of the Convention would ensure that Russia takes a more cooperative and transnational approach to online child pornography, something C.E.T.S. 201 cannot deliver. C.E.T.S. 201 focuses on strengthening domestic child sex abuse laws and resources for victims, not international prevention of cybercrime and child pornography.²³¹ Furthermore, Russia reserved the right to limit the application of Articles 20 and 21 of C.E.T.S. 201,²³² both of which concerned the criminalization and prevention of online child pornography.²³³ By ratifying the Convention, Russia would be encouraged to engage in international operations against child pornography. Ratifying the Convention would also compel Russia to take greater steps in sharing information with international law enforcement groups and encourage better international cooperation against all forms of cybercrime.

Presently, Russia's relationship with Interpol is unstable. Russia has been accused of misuse of Interpol to further its political motives,²³⁴ and has been cited for "not correspond[ing] with the organization's rules."²³⁵ The proposed solution could test the waters between Russia and Interpol to determine whether Russia will continue to rebuff Interpol and other international law enforcement groups. Furthermore, Russian ratification of the Convention would lead to greater cooperation between Russia and other nations, thereby encouraging collaborative initiatives to

230. See HUNTLEY, *supra* note 142 at 54–57 (discussing the implementation of C.E.T.S. 201 into Russian law).

231. See *Details of Treaty 201*, COUNCIL OF EUR., <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201> [<https://perma.cc/4GAD-C8Z3>] (last visited May 11, 2017).

232. See *Reservations and Declarations for Treaty No. 201 – Convention on Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, COUNCIL OF EUR., http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/declarations?p_auth=ONwFKaOy [<https://perma.cc/U53V-XRY3>] (last visited Mar. 26, 2017).

233. Article 20 concerns the criminalization of the production, distribution, procurement, and possession of child pornography. See C.E.T.S. 201, *supra* note 229, art. 20. Article 21 concerns the criminalization of producing, recruiting children for, and profiting from child pornography. See *id.* art. 21.

234. See Andrew Higgins, *How Moscow Uses Interpol to Pursue its Enemies*, N.Y. TIMES (Nov. 6, 2016), https://www.nytimes.com/2016/11/07/world/europe/how-moscow-uses-interpol-to-pursue-its-enemies.html?_r=0 [<https://perma.cc/5AKX-Z7V5>] (describing how Russia uses Interpol "crime alerts" as a means of targeting political enemies); see also Satter, *supra* note 216, at 4.

235. See Alexander Winning, *Interpol Refuses Russian Request for Khodorkovsky Search Notice*: TASS, REUTERS (Feb. 12, 2016), <http://www.reuters.com/article/us-russia-khodorkovsky-interpol-idUSKCN0VL202> [<https://perma.cc/Q4G5-DWK5>].

combat international cybercrime.

2. Implementation of the Proposed Policy in Ukraine

Arguably, Ukraine represents the antithesis to the proposed solution because it has ratified both the Convention and the Optional Protocol and has been cooperative with international law enforcement groups.²³⁶ Despite these advances, Ukraine remains a primary source of online child pornography.²³⁷ Ukraine's situation thus highlights the importance of ensuring that ratifying countries adopt and implement the proposed legislation to better facilitate international investigations of child pornography. While Ukraine has adopted both pieces of legislation, it has failed to satisfy either's obligations.

First, Ukraine's implementation of the Convention has been lackluster. When Ukraine first ratified the Convention, it reserved the right to not fully implement Articles 9(1)(d)–(e).²³⁸ This allowed for Ukrainian lawmakers to abstain from criminalization of the procurement and possession of online child pornography.²³⁹ Further worsening matters, Ukraine officially suspended the Convention in 2014 after the Russian invasion of Crimea.²⁴⁰ As of today, the Convention is no longer implemented in Ukraine.²⁴¹

Similarly, the Ukrainian government has delayed implementation of the Optional Protocol.²⁴² As discussed above, Ukraine ratified the Optional Protocol without formally criminalizing child pornography possession or distribution.²⁴³ Rather than prosecute child pornography perpetrators, Ukraine has primarily focused on educating its judiciary, prosecutors, and children on the dangers of and protections against online child pornography.²⁴⁴ Not until November 2015 did the government introduce the first Ukrainian law enforcement agency to explicitly focus on cybercrime.²⁴⁵ Nevertheless, implementation of the Optional Protocol

236. See *supra* Section II.D.3.

237. See *supra* Section II.D.3.

238. See *Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime*, *supra* note 46, at “Ukraine.”

239. See Convention, *supra* note 41, art. 9(1).

240. See text accompanying *supra* note 186.

241. See *Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime*, *supra* note 46.

242. See *supra* text accompanying notes 180–183.

243. See *id.*

244. See GLOB. ALLIANCE AGAINST SEXUAL ABUSE ONLINE, *supra* note 181, at 1.

245. See *Ukraine to Create Cyber Police Within a Month*, WEB-PORTAL OF UKRAINIAN GOV'T (Oct. 10, 2015), http://www.kmu.gov.ua/control/en/publish/article?art_id=248548736 [<https://perma.cc/GV97-4EPJ>].

remains slow-moving in Ukraine.

Critics may argue that Ukraine's poor implementation of the Convention and Optional Protocol is within Ukraine's sovereign right to determine how to domestically implement international law, and that the Ukrainian government lacked sufficient resources to fully implement the proposed legislation. While ongoing poverty and political instability in Ukraine have made it difficult for the country to combat cybercrime, these criticisms do not excuse the ongoing child pornography crisis within the country. Ukraine ratified the Optional Protocol long before the Russian invasion and mounting political instability. Additionally, the Ukrainian government has an international duty to protect its children from abuse and exploitation within its orphanage institutions.²⁴⁶ Thus, the Ukrainian government has neglected basic human rights obligations by failing to implement and enforce the Convention and Optional Protocol within its borders, allowing the child pornography industry to prosper.

Ukraine has been and remains a primary source of online child pornography.²⁴⁷ Had Ukraine adopted the Convention and Optional Protocol earlier—per the proposed solution—the current crisis may have been prevented. First, the proposed solution would have required the Ukrainian government to comply with international law enforcement groups' requests. Ukraine's reliance on international law enforcement groups suggests its government would be highly receptive and compliant to international law enforcement agencies' requests. Second, earlier adoption and stricter enforcement of the Convention and the Optional Protocol would have compelled the Ukrainian government to take a stricter stance toward online child pornography in its domestic law enforcement agencies, such as authorizing the cyber police force earlier.²⁴⁸ This two-pronged approach would have compelled Ukraine to take a harsher stance against online child pornography earlier, and simultaneously would have prevented Ukraine from becoming reliant on international law enforcement groups to combat its domestic cybercrime.

The Ukrainian case highlights the importance of the proposed solution. Had international law enforcement groups compelled their member states to ratify and implement the Convention and Optional Protocol, the Ukrainian government would have taken greater steps to implement the legislation. Ukraine's reliance on international law

246. See *No Way Home*, *supra* note 170, at xiii (describing steps that Ukraine must take to enforce international human rights law to protect exploited and vulnerable children in public institutions).

247. See *supra* Sections I.D.1, 3.

248. See WEB-PORTAL OF UKRAINIAN GOV'T, *supra* note 245.

enforcement groups exposes the country's inability to combat child pornography and cybercrime on its own. While this arrangement benefits international law enforcement groups' efforts through data-sharing and mutual cooperation, it also demonstrates Ukraine's inability to successfully implement anti-cybercrime and child pornography initiatives. Implementation of the proposed solution thus ensures that both international law enforcement groups and member states are better able to combat online child pornography.

CONCLUSION

Child pornography will never absolutely disappear from the Internet, but state governments and international law enforcement agencies can work together to effectively curb it. The Council of Europe's Convention on Cybercrime and the United Nations' Optional Protocol on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography promote stringent, cooperative, and multilateral approaches to child pornography. The implementation of both treaties will strengthen international cooperation in the fight against child pornography. International law enforcement groups can use their influence to urge their member states to ratify this legislation. Furthermore, broader ratification of the treaties will benefit both international law enforcement organizations and their member states, as increased participation and cooperation in the prevention of child pornography will make the Internet a safer space.

Additionally, with their vast resources, upon which many states rely, international law enforcement agencies have leverage over their member states and can negatively incentivize those member states for failure to effectively combat the spread of online child pornography. The proposed solution thus also introduces sanctions that would encourage member states to better cooperate and comply with international efforts to combat online child pornography.

Russia and Ukraine serve as important models for implementation of the proposed legislation. Both countries are primary sources of online child pornography.²⁴⁹ Russia has resisted cooperation with international law enforcement groups,²⁵⁰ while Ukraine is heavily dependent on them.²⁵¹ Together, these two nations exemplify the difficulties faced by international law enforcement agencies. Their cases serve as models for the future of online child pornography prevention in other nations that struggle with child pornography offenders. The implementation of the

249. See *supra* Sections I.D.1–3.

250. See *supra* Section I.D.2.

251. See *supra* Section I.D.3.

proposed solution would not only strengthen international child pornography measures, but would induce greater international cooperation in other areas of cybercrime.