



Sexual violence against children online

Input from the Swiss Foundation for the Protection of Children for the General Comment on children's rights in relation to the digital environment

1. Introduction

The United Nations Committee on the Rights of the Child has decided to draft a General Comment on children's rights in relation to the digital environment. The Swiss Foundation for the Protection of Children welcomes the opportunity to provide input.

The Swiss Foundation for the Protection of Children is a national foundation that calls for all children in our society to be allowed to grow up with dignity and without violation of their integrity. The Swiss Foundation for the Protection of Children has spent many years successfully fighting for the rights of children and against all forms of violence against children. The Swiss Foundation for the Protection of Children runs the organisation ECPAT Switzerland against child prostitution, child sexual abuse material (child pornography) and child trafficking. The Swiss Foundation for the Protection of Children is a non-profit organisation that bases its activities on recognised legal and scientific foundations, in particular the United Nations Convention on the Rights of the Child.

The Swiss Foundation for the Protection of Children applauds the Committee on the Rights of the Child's suggestion of **protection from violence and sexual exploitation** as one of the topics for the General Comment. As the Swiss Foundation for the Protection of Children primarily advocates for the prevention of sexual violence against children, it shall concentrate on this aspect in its submission. The Swiss Foundation for the Protection of Children therefore draws upon Article 34 of the United Nations Convention on the Rights of the Child. The Convention's contracting states shall undertake to protect children from all forms of sexual exploitation and sexual abuse, including digital forms.

2. Online or off, sexual violence is always real

Many children today grow up in a digital environment. In countries like Switzerland, the digital world permeates all areas of children's lives. 99% of young people between the ages of 12 and 19 have a smartphone.¹ 86% of children between the ages of 6 and 13 use the internet at least occasionally.² Children and teens use digital media to watch films, communicate over social networks, play games, share photos, get help with their homework, etc. While the use of digital media affords many positive experiences to children and teens, it also comes with risks.³ This is because sexual violence against children is increasingly being practised online. A significant increase in online grooming has been found in recent years:⁴ more than 30% of adolescents have been approached online by a stranger with unwanted sexual intent.⁵ There has also been an increase in the distribution of child sexual abuse material. The FBI reported around 9,000 cases of child sexual abuse material to Switzerland in 2018.⁶ Sexual violence against a child is always real – whether online or offline – and has devastating effects. Victims of sexual violence online, however, are often doubly damaged: first when they experience the abuse, and then when images of the abuse are distributed over the internet. The Swiss Foundation for the Protection of Children therefore calls for sexual violence against children online to be treated just as seriously as any other form of child abuse.

The Swiss Foundation for the Protection of Children thus categorically recommends the following:

Sexual violence against children online must be regarded as seriously as sexual violence against children offline and be correspondingly dealt with through the courts, the police, legislative authorities, society, etc. This equal treatment must therefore be reflected in all relevant legal bases. To this end, penalties must be harmonised, and the effective prosecution of internet crimes and the necessary resources ensured.

¹ Suter, L., Waller, G., Bernath, J., Külling, C., Willemse, I. & Süss, D. (2018). JAMES - Jeunes, activités, médias – enquête Suisse. Zürich: Haute école des sciences appliquées de Zurich p. 64 (cited in: JAMES 2018): available at <https://www.zhaw.ch/en/psychology/research/media-psychology/media-use/james/>

² Genner, S., Suter, L., Waller, G., Schoch, P., Willemse, I. & Süss, D. (2017). MIKE – Medien, Interaktion, Kinder, Eltern: Ergebnisbericht zur MIKE-Studie 2017. Zürich: Zürcher Hochschule für Angewandte Wissenschaften, p. 28 (cited in: MIKE 2017): available at <https://www.zhaw.ch/en/psychology/research/media-psychology/media-use/mike/#c123357>

³ JAMES 2018, p. 40

⁴ Willemse, I., Waller, G., Genner, S., Suter, L., Oppliger, S., Huber, A.-L. & Süss, D. (2014). JAMES - Jugend, Aktivitäten, Medien - Erhebung Schweiz. Zürich: Zürcher Hochschule für Angewandte Wissenschaften: In 2014, only one in five adolescents stated that they had experienced online grooming, p. 37

⁵ JAMES 2018, p. 53

⁶ NZZ am Sonntag from 12.01.2019: *Das FBI stösst auf 9000 Fälle von Kinderpornografie aus der Schweiz*

This recommendation applies for all manifestations of sexual violence online. Subsequently, two of its virulent forms – child sexual abuse material and online grooming – will be discussed in depth.

2.1. Child sexual abuse material (child pornography)

The term "child pornography" is used colloquially and in various international and national legal instruments. This term, however, is inexact and trivialising. Pornographic images with children are always images of child sexual abuse and have nothing to do with consensual, adult pornography. Pornographic images with children are never legal. The Swiss Foundation for the Protection of Children therefore prefers the term "child sexual abuse material" in order to express in words that each of these images represents a crime.

In Switzerland, adults involved in illicit pornography, including child sexual abuse material, face up to five years of prison time (Art. 197 of the Swiss Criminal Code (SCC)). Suspected cases of child sexual abuse material have increased significantly in recent years. In 2017, in addition to the 9,000 cases reported by the FBI, the Swiss Federal Office of Police (fedpol) itself investigated 1,000 cases.⁷ Despite these high numbers, there are relatively few convictions. In 2017, only 580 adult individuals were convicted for images of child abuse and other illicit pornography.⁸

During the same period, 227 minors were convicted of illicit pornography charges.⁹ This shows that children and adolescents may not only be victims, but also perpetrators. Every child may be liable for prosecution from the production, distribution or consumption of illegal pornography. Children are equally liable if they distribute otherwise permissible pornography to other children under the age of 16, for example by sharing such content in WhatsApp chats.

For certain behaviours, Swiss law recognises two age categories with regard to criminal liability: one for children under the age of 16 and one for adolescents over 16. Adolescents over 16 thus go unpunished if they produce, possess or consume mutually consensual pornography (Art. 197 VIII SCC). Children under 16, however, who record themselves in sexual acts and thus produce illegal child sexual abuse material, are criminally liable.

Three alarming developments regarding child sexual abuse material must be observed:

1. While international reports regarding child sexual abuse materials have greatly increased in recent years, the number of adult convictions remains relatively low.

⁷ Ibid

⁸ Conviction statistics for 2017 at <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/strafjustiz.assetdetail.5450153.html>

⁹ Ibid

2. The majority of reports come from foreign authorities.
3. Minors are increasingly convicted on charges of illicit pornography.

The Swiss Foundation for the Protection of Children therefore recommends the following:

- (1) Cases of child sexual abuse material must be consistently treated as cases of real child abuse. If necessary, the law must be adapted accordingly. Perpetrators of internet crimes must be charged and punished accordingly. This requires the creation of an adequate number of reporting points, working closely together with law enforcement.***
- (2) Authorities worldwide must be given resources (particularly with regard to technology, legal, financial and political support and human resources, including for undercover investigations) in order to uncover more cases involving child sexual abuse material. Technologies for the prevention, detection, blocking and deletion of images of child abuse must be consistently applied. Private internet providers must do their part in the fight against child sexual abuse material.***
- (3) Preventive measures shall be systematically carried out that prevent children from becoming offenders themselves.***

2.2. Online grooming and online sexual harassment

Online grooming is defined as targeted and sexually oriented contact with children online by adults. Online grooming can be viewed in a narrower and broader sense. Online grooming in the narrower sense is described in Art. 24 of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention): An adult, communicating with a child online, suggests a meeting and carries out specific preparations in order to commit sexual acts with the child or commit a criminal sexual offence. In Switzerland, such an act is punishable as an attempt

to plan for sexual acts with children (Art. 187 I subsection 1 SCC) or for the production of illicit pornography (Art. 197 III SCC).¹⁰

Online grooming in the broader sense, namely sexually-motivated online chat activity by an adult with a child, is not explicitly a criminal act in Switzerland according to prevailing legal doctrine.¹¹ Political initiatives to make online grooming in the broader sense punishable as a crime are regularly rejected.¹² This despite the Swiss Federal Council, in its dispatch for the ratification of the Lanzarote Convention, noting that chat forums (including gamers' forums) are frequently misused for online grooming in the broader sense.¹³ According to the new study JAMES 2018, 30% of adolescents in Switzerland have been approached online by a stranger with unwanted sexual intent.¹⁴ A legal gap therefore exists in the Criminal Code that should be closed through revision to Art. 198 SCC (sexual harassment). Verbal sexual harassment in real life is already a crime. This new revision would also make online sexual harassment (i.e. online grooming in the broader sense) an explicit crime. In addition, sexual harassment of children was to date only punishable when a complaint was filed. Children, however, cannot be expected to file criminal charges themselves. This high hurdle is also reflected in the low numbers of charges. In 2018, fedpol recorded only three reported cases of online grooming.¹⁵ The Swiss Foundation for the Protection of Children is therefore of the opinion that sexual harassment of minors should be a prosecutable offence.¹⁶

The Swiss Foundation for the Protection of Children therefore recommends the following:

Sexual harassment online should be classified and punished as a manifestation of online grooming. All manifestations of grooming should be punishable by law. Law enforcement should be provided with adequate means to combat online grooming (including the legal bases for undercover investigations in particular).

¹⁰ Dispatch on the ratification of the Lanzarote Convention and its implementation (Change to the Swiss Criminal Code) from 04 July 2012, Federal Gazette 2011 1556, p. 7626

¹¹ Maier, Basler Kommentar zum StGB, prec. Art. 187 N 10d and Isenring, Basler Kommentar zum StGB, Art. 198 N 24

¹² For example, Motion 12.3476 or Parliamentary Initiative 13.442. Parliamentary Initiative 18.434 is currently pending.

¹³ Federal Gazette 2011 1556, p. 7626.

¹⁴ JAMES 2018, p. 53

¹⁵ Fedpol: Statistiken zum Jahresbericht 2018, available at: <https://www.fedpol.admin.ch/dam/data/fedpol/publiservice/publikationen/berichte/jabe/jabe-2018-stat-d.pdf>

¹⁶ Fontanive, Simmler. Gefahr im Netz: Die unzeitgemässe Erfassung des Cybergroomings und des Cyberharassments im schweizerischen Sexualstrafrecht – Zur Notwendigkeit der Modernisierung von Art. 198 StGB, in ZSR I 2016, p. 510 ff.

The states must ensure that children are made aware of the concept of online grooming through preventive measures.

3. Prevention of sexual violence against children online

Combating sexual violence against children online must not be limited only to the passing of pertinent statutory provisions and criminal prosecution. Comprehensive preventive programmes and structures are necessary so that sexual violence against children online can be fought early, before it progresses to a criminal act. In this context, The Swiss Foundation for the Protection of Children calls for efforts in the area of prevention to be strengthened at all levels throughout Switzerland and for corresponding resources to be made available. Chapter 2 of the Lanzarote Convention sets forth that the states shall establish necessary legislation or other measures in order to prevent all forms – including digital forms – of sexual exploitation and sexual abuse of children.

The Swiss Foundation for the Protection of Children therefore recommends the following:

Government agencies shall support – strongly, systematically and with appropriate resources – the prevention of sexual violence against children online.¹⁷ The general public shall be made aware of the topic. Parents, educators and others in supervisory capacities shall be systematically informed and trained. Children's knowledge in matters pertaining to digital media and sex shall be broadened, particularly in how to handle personal data and photos. Offender prevention programmes shall be expanded so that all persons with paedophile tendencies have a place to go for help, and crimes may be prevented.¹⁸ Private stakeholders, for example internet providers, shall also be involved in preventive efforts. The establishment of reporting points for child sexual abuse material, cooperation with the police and the

¹⁷ See Jugend und Medien, ein Präventionsprogramm des Bundes: <https://www.jeunesetmedias.ch/fr.html>

¹⁸ Postulate, Jositsch, 16.3644: Preventive project "Kein Täter werden" for Switzerland available at <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20163644>. The Postulate was received, a report thereof is being developed.

use of filters can be effective measures in preventing sexual violence against children online.¹⁹

¹⁹ The Swiss Parliament recently revised the Telecommunications Act SR 784.10, stipulating the cooperation of telecommunications providers with reporting points and law enforcement to combat child sexual abuse material. The changes are expected to enter into force on 1 January 2020. Information on the final vote can be found at: <https://www.parlament.ch/centers/eparl/curia/2017/20170058/Schlussabstimmungstext!%201%20NS%20D.pdf>