

FEB 09 2001

/G/
A/CONF.187/Austria/2

April 5, 2000
English

260362

UN LIBRARY

FEB 14 2001

**Vienna Commitment
against
Child Pornography on the Internet**

UN/SA COLLECT

**Conclusions and recommendations of the international conference
„Combating Child Pornography on the Internet“**

29 September to 1 October 1999

The present paper is submitted jointly by Austria, the United States of America, the European Commission and Childnet International.

The designations employed, the presentation of the material and the view expressed in this paper are those of the Republic of Austria and do not necessarily reflect the practices and view of the United Nations in any of these respects.

Vienna Commitment against Child Pornography on the Internet

Conclusions and recommendations of the international conference
„Combating Child Pornography on the Internet“,
29 September to 1 October 1999, Hofburg, Vienna

I. Introduction

We, experts and representatives from governments, the Internet industry, international organizations, hotlines and non-governmental organizations from around the world gathered at the international conference „Combating Child Pornography on the Internet“, from 29 September to 1 October 1999, in Vienna, to address the challenges and identify joint actions against child pornography on the Internet. The Conference was organized by the governments of Austria and the United States, as well as the European Commission. It was initiated by Foreign Minister Wolfgang Schüssel and Secretary of State Albright as part of the transatlantic dialogue and endorsed by the EU-US summit in December 1998.

Our commitment to combat child pornography on the Internet is based on the conviction that the Internet is and will become even more dominant in our daily life, be it in communications or business. We strongly support the further expansion of the Internet. Everybody around the world should have access to the Internet. Everybody, in particular every young person should learn how to use it. At the same time, we must ensure and take action so that the Internet is free from crime and a safe place for our children. We commit ourselves to work towards this goal. This is a common responsibility which calls for joint responses in partnership.

Guided by the best interest of the child, our efforts to combat and eliminate child pornography on the Internet are based on existing international obligations and commitments for the protection of children, including the Convention on the Rights of the Child. We build and act upon commitments undertaken at the Stockholm World Congress against Commercial Sexual Exploitation of Children (1996) and ongoing initiatives in many countries and regions. In the wider context of sexual abuse and exploitation of children, and with a view to building a global society in which children are protected and respected, the fight against child pornography is a challenge to us all.

We are guided by the fundamental rights of the individual and underline the importance of freedom of expression as well as the right to privacy.

Child pornography on the Internet is a growing problem, and as more of the world comes online, it will continue to grow. It does not know or respect borders. The fight against it is facing particular technical and legal challenges, including fast technical innovations and changing patterns e.g. concerning places of origin and forms of exchange. The fight against this abuse cannot be done alone but only through strong international cooperation, among governments, particularly law enforcement agencies,

but equally important between States and the Internet industry, hotlines and non-governmental organizations. Therefore, one of the main outcomes of this conference is the forging of a strong international partnership among all different stake holders in the fight against child pornography on the Internet.

The conference addressed in particular the following issues which were discussed in working groups with the aim of developing concrete recommendations:

- how to re-enforce cooperation among law-enforcement officials and the judiciary;
- the question of elaborating elements for codes of conduct of the Internet industry;
- how to make hotlines more effective, encourage networking and the establishment of further hotlines.

II. Major overarching conclusions

The working groups elaborated and agreed upon detailed recommendations for action which are contained in the reports of the working groups below. The major, overarching conclusions can be summarized as follows:

1. Zero tolerance against child pornography on the Internet

We commit ourselves to a policy of zero tolerance against child pornography. This requires clear and strong legislation and effective law enforcement. Our efforts must make it clear to any potential perpetrator that the Internet is no longer an anonymous place for crimes and illegal activities.

2. The need for a global partnership among all actors and stake holders

We commit ourselves to the strengthening of partnerships at national and international levels among governments, the Internet industry, hotlines and NGOs. We need an alliance of legal regulation, law enforcement and industry self-regulation. Legal regulation by governments must be complemented by self-regulation of the Internet Service Providers (ISPs). Law enforcement can only be successful with the strong support of ISPs and from hotlines. Governments, the industry and NGOs must join forces in capacity building and training, as well as in awareness raising and empowerment of Internet users.

3. Worldwide criminalization of child pornography

The conference calls for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography. In addition to national legislation, efforts for an international instrument, such as the ongoing negotiations within the Council of Europe on a Convention against Cybercrime, are welcomed and encouraged. States, which have not yet done so, are called upon to enact appropriate legislation. There must be no safe haven. Progress in this area must be monitored. States and regional and international institutions are encouraged to work towards harmonization of legislation.

While recognizing some remaining difficulties concerning its definition, the conference identified international minimum standards concerning the prohibition of child pornography, in particular in its application to the Internet.

4. Strengthening law enforcement at national level and improving international cooperation among law enforcement agencies

This requires in particular

- the establishment and strengthening of special units dealing with Cybercrime, in particular child pornography, which are adequately equipped with a prompt reaction capacity.
- the establishment by law enforcement agencies of efficient programmes for specialized training of personnel dealing with fighting child pornography e.g. by organizing regular meetings at national, regional and international levels of competent practitioners with a view to promoting general information exchange, best practices, tactical coordination and analysis of the situation.
- the creation and maintenance of a digitized central library of child pornography images at national, regional and international levels.
- the resolution of legal problems and impediments to effective and swift transboundary cooperation, such as questions relating to jurisdiction, legal assistance, expedited procedures for evidence and search and seizure.

5. Closer cooperation and partnership between governments and the Internet industry

The Internet industry is an indispensable partner of law enforcement agencies in the investigation and prosecution of child pornography but also in exchange of experience and capacity building. Open questions concerning the relationship between law enforcement and the industry must be clarified, e.g. the reporting obligations of ISPs and the preservation of data for evidence. Clarification and harmonization of the responsibilities and liabilities of the Internet industry is necessary.

In particular,

- voluntary self-regulation and codes of conduct of the Internet industry should be strengthened and expanded. Such self-regulatory mechanisms must be compatible with and complementary to governmental legislation;
- the Internet industry and law enforcement shall work together to examine mechanisms for preserving data necessary to prosecute child pornography violations, so that the data exists when law enforcement obtains appropriate legal process;
- the Internet industry and law enforcement should consider together how technology might be used to identify child pornography;
- the Internet industry has a responsibility to empower Internet users, including children and young people, to protect themselves and, where applicable, their children against illegal content on the Internet (filtering, rating systems).

6. The critical role of Hotlines or Tiplines

We stress the importance of Hotlines or Tiplines, be they established by governments, the industry or by NGOs. They play an important role in allowing users to have an easy point of contact with a trusted third party to whom they can report illegal content, knowing that action will be taken as a result. The work of hotlines has led to much

useful intelligence, and led to the removal of many images from the Internet. Their legal status should be clarified and improved, in order to ensure that they are protected against civil liability in connection with information they provide to law enforcement agencies.

We encourage the establishment of new hotlines in countries where they do not yet exist, building upon experiences and best practices of existing hotlines. We welcome the steps undertaken to improve the networks among them, in particular the announcement made at the conference of the establishment of the new Internet Hotline Providers in Europe (INHOPE) Association which is open to other hotline initiatives.

7. Training and capacity building

The conference identified training and capacity building of law enforcement officials and all other personnel involved as critical and a prerequisite for improving our tools in the fight against child pornography on the Internet. Governments, the industry, hotlines and NGOs must join forces towards this goal. International assistance, including sharing of expertise and training must be provided to countries which are only at the beginning of tackling the challenges of the information society. All staff involved in the combat against child pornography shall receive specialized training in child development and child rights issues.

8. Raising awareness and empowerment of users

We commit ourselves to work towards raising worldwide awareness about this negative phenomenon. We must aim to empower every Internet user, in particular young users, to safely use the vast benefits of the Internet.

The compilation of links of initiatives against child pornography on to the website of the conference (www.stop-childpornog.at) can be used as a practical guide for further action.

III. Follow-up to the Conference

The participants of the conference pledge to take all necessary steps towards the implementation of the objectives and recommendations agreed upon at the conference and to strengthen further the cooperative relationship between the law enforcement community and the Internet industry, as well as hotlines and NGOs. New linkages and coalitions emerged from the conference and shall be strengthened. We encourage everybody to make best use of new insights, new initiatives and best practices identified at the Conference. We must enhance the involvement of youth and youth organizations in our efforts. We must expand our cooperation geographically. Next year's 10th UN Congress on the Prevention of Crime and the Treatment of Offenders, which will focus also on computer crimes, will be an important opportunity to bring in new partners in our common endeavor.

The organizers of this conference, Austria, the United States of America and the European Commission pledge to do their utmost to ensure concrete follow-up to and implementation of the recommendations of the conference. For this purpose, we will present and promote the results in relevant international fora and organizations, in

particular the EU, the Council of Europe, the G-8 and the UN and encourage others to do likewise.

The proceedings and results of the conference are posted on the website of the conference (www.stop-childpornog.at) and will be disseminated widely.

We express our readiness to continue to work together and to review the implementation of the recommendations of the conference. Regular monitoring of progress shall be undertaken by all relevant actors.

IV. Conclusions and recommendations of the Working Groups

Working Group 1

„LAW ENFORCEMENT AND JUDICIARY“

The theme for WG 1 was „Law enforcement and judiciary“. The following is the report of WG1. It is divided into two parts: Context and Recommendations:

1) CONTEXT

A) Positive elements

- There were continuous references in the discussions of WG1 to the United Nations Convention on the Rights of the Child and the Stockholm World Congress Declaration and Agenda for Action against Commercial Sexual Exploitation of Children as the basis for child protection.
- There is a high degree of complementarity between legal regulation adopted by the State (hard law) and regulation adopted by the computer industry (soft law).
- Criminal law against child pornography exists in most countries, and new laws on the issue have been adopted recently where they did not exist beforehand (e.g. Japan and Spain).
- Specific legislation is emerging in some countries to criminalise not only the production and distribution of child pornography but also its possession. The new trend of the law is to cover real and fictitious or pseudo child pornography.
- A welcome development is the emergence of codes of conduct from Internet Service Providers (ISPs) against child pornography as part of self-regulation.
- There have been some recent successful cases of international law enforcement against child pornography through improved co-operation between law enforcers. This is exemplified by Operation Cathedral whereby law enforcers from over ten Countries synchronised their operations to arrest child sex abusers successfully.
- Co-operation and networking among law enforcers and between law enforcers, ISPs and civil society are improving on several fronts.
- Law enforcers are becoming more ready to coordinate with the Internet industry, users and civil society to address the technical dynamics posed by the Internet.

B) Key Challenges

- There are differences in legal systems and legal procedures to counter child pornography. There is no universal definition of child pornography.
- The substantive laws of countries concerning the form of child pornography to be prohibited vary markedly. They diverge on the issue of whether it should cover audio and/or visual child pornography.
- The legislation of countries differs concerning the content of child pornography to be prohibited. There are differences concerning the age of the child and while some countries prohibit real and fictitious child pornography, others only prohibit real child pornography.
- There is a variety of approaches concerning the elements of crime to be covered by national legislation. While some countries criminalise production, distribution and possession of child pornography, others fail to cover its possession. While some of the offences are based on criminal intent and negligence, others only cover criminal intent.
- There is a diversity of measures concerning the responsibilities of various persons involved in child pornography and related sanctions. There are differentiated responsibilities in regard to producers, users and ISPs, and among ISPs there are differences in the roles of access, host and content providers.
- There are several law enforcement difficulties linked to inadequate human resources, lack of technological facilities and capacity, and deficiencies concerning respect for good governance.
- There is limited coordination on some fronts among law enforcers and between law enforcers, the Industry and civil society.
- The crossborder nature of child pornography poses particular difficulties to law enforcers, especially in regard to evidence gathering and sharing.
- Transfrontier action against child pornography is constrained by conflicts of jurisdiction and the uncertain issue of which country should intervene at which point in time to apprehend the child abusers.
- There is an imbalance between the total anonymity through the Internet, on the one hand and child protection and law enforcement needs, on the other hand. There are new technological challenges of a complex nature which are difficult to address. These include the intricacies of encryption and how to deal with it.

2) RECOMMENDATIONS

While the Working Group 1 felt that it was necessary to focus on law enforcement and judicial issues, it was also considered important to devote attention to measures in the

field of prevention through partnerships with civil society, as well as to focus on recovery and re-integration of victims. Furthermore, the significance and practical application of social and psychological knowledge needs to be highlighted concerning both victims and offenders.

1) Recommendations for Governments relating to:

A) Substantive law measures

- Governments should ensure the adoption of a series of international common minimum standards relating to child pornography based upon a common definition of the phenomenon, covering an agreed set of behaviours.
- Governments should ensure that, subject to legal exceptions, the intentional possession, production, distribution, importation, exportation, transmission and advertising of child pornography through a computer system or through electronic storage devices are criminalised. They should extend the criminalization of child pornography to prohibit real and pseudo or fictitious child pornography.
- Governments should take the necessary measures to ensure that the criminal offences concerning child pornography are punishable by effective, proportionate and dissuasive sanctions for natural persons and consider the possibility to take similar measures for legal persons.
- Governments should establish adequate frameworks with differentiated responsibility for Internet Service Providers concerning child pornography to ensure:
 - full responsibility for content providers;
 - responsibility for host service providers limited to cases where they knowingly host child pornography and the obligation to report such cases to law enforcement;
 - responsibility for access providers only according to civil, administrative and/or judicial orders.

B) Procedural law measures.

- Governments should adopt legislative measures to enable the rapid preservation of stored data, including data held by Internet Service Providers in another country (taking into account technical difficulties in storage capacity, billing policies and data protection issues) which may subsequently be the subject of a request for mutual assistance for its search, seizure and disclosure.
- Governments should adopt common measures to speed up and enable the transborder use of coercive powers such as transborder computer search and seizure, in order to accelerate standard procedures. Existing channels of

communication, such as 24h/7days points of contact-networks, should be utilised for these purposes.

2) Recommendations for improving law enforcement efficiency and co-operation.

- Law enforcement agencies should set up specialized units at national level, consisting of knowledgeable personnel and equipped with adequate technical facilities, that would operate as rapid contact points for the purposes of:
 - responding quickly to requests for information on suspected intentional possession, production, distribution, importation, exportation, transmission and advertising of child pornography;
 - exchanging potential evidence and intelligence expeditiously at international level and establishing a common format for the exchange of such information;
 - improving and/or developing databases and specialised computer investigation techniques, such as undercover operations, for the purpose of prosecuting child pornography;
 - acting as a Centre of Excellence on cyber-crime issues (a national register of police and technical experts could be established or made available) for the purpose of sharing best practices and experience;
 - monitoring and scanning systematically the Internet (newsgroups, chatrooms and websites) for detecting child pornography;
 - developing intelligence analysis in order to determine priorities and to concentrate on child sex offenders;
 - acting as interface nationally and internationally with hotlines, taking into account their potential and technical expertise.
- Law enforcement agencies should establish efficient programmes for specialised training of personnel dealing with fighting child pornography, including but not limited to:
 - appropriate steps to ensure that training initiatives take into account child rights;
 - preparation of technical training course(s) for law enforcement officers, including courses available on the Internet, provided that confidentiality and access facilities to the course would be ensured;
 - organisation of regular meetings at national, regional and international levels of competent practitioners specializing in fight against child pornography on the Internet with a view to promoting general information exchange, best practices, tactical co-ordination and analysis of the situation.
 - creation and maintenance of a digitised Central Library of child pornography images at the national, regional and international levels (made available on the Internet to law enforcers, with the necessary conditions and limitations as regards access and data protection issues) which would aid the search for victims, help to determine the nature of offences and train police officers.

- Local, national, regional and international law enforcement agencies and organisations should co-operate closely to exchange relevant information and intelligence on child pornography on the Internet, by signing appropriate co-operation agreements.
- Bilateral, regional and/or multilateral agreements to facilitate co-operation among and between law enforcers should be promoted.

3) Recommendations for improving co-operation between law enforcement and Internet industry, civil society and other actors.

- Governments should foster co-operation between law enforcement agencies, the Internet industry, civil society, including non-governmental organisations, and intergovernmental organisations, in the fight against child pornography on the Internet.
- Internet industry should be encouraged to develop and/or implement self-regulation as well as best practices, technological solutions and sharing of such experiences among industries and governments. The elements of self-regulation may include application of age verification, rating and filtering.
- Internet industry should be encouraged to provide training and logistical support to law enforcement, and to promote mutual understanding by, e.g., identifying appropriate fora where common interests could be addressed, particularly during the development of technical standards.
- Internet industry should be encouraged to include provisions against child pornography into binding contracts with the users which would be equipped with sanctions agreed upon by the contracting parties.
- Law enforcement agencies should be encouraged to develop an appropriate standard format for requesting information from industry.
- Internet industry should be encouraged to limit the untraceability of criminal activity and to provide data related to child pornography cases, while protecting the privacy of users and taking into account the commercial interests of industry.
- Law enforcement agencies and Internet industry should be encouraged to jointly identify those minimum elements of traffic-related data which are considered as essential for investigating and prosecuting computer crime offences, taking into account data protection needs.
- Law enforcement agencies and Internet industry should work jointly together to examine whether the laws are to be amended and ensure that such data are available for a reasonable period of time.
- Law enforcement agencies and Internet industry should work jointly to promote awareness actions for users, in particular for children, parents and the community, with culturally- sensitive programmes.

- Law enforcement agencies and Internet industry should be encouraged, without incurring liability, to promote the development of effective software for the purpose of identifying and/or searching for child pornography.

Working Group 2 Guidelines for Codes of Conduct

The Working Group consisting of international representatives of industry, law enforcement, child advocates and government view the Internet as potentially the most powerful medium devised for education and the enrichment of children's' lives.

Nevertheless, the working group recognizes that there are risks, the management of which is the shared responsibility of the industry, government, law enforcement, parents, and others with the care of children.

We reaffirm a long-standing commitment to our policy of zero tolerance for child pornography, for example through codes of conduct.

Accordingly we will continue to work actively and cooperatively to enhance the efficiency of our efforts today.

The working group is committed to promoting end user empowerment through providing information to end users and filtering as well as other control tools to parents and others responsible for children.

Through our consensus on these principles we will now move to develop internationally consistent self-regulatory policies within our respective national legal contexts.

These efforts will of course need to be complimented by education, continued law enforcement efforts, and governmental cooperation, which when working together will provide the best opportunity for the protection of children and the safer Internet use.

Following is the result and consensus of the Working Group's discussion on Guidelines for Codes of Conduct against Child Pornography.

[Note: In applying these guidelines into specific Codes of Conduct, one must distinguish between different kinds of ISPs, and thus differing responsibilities will have to be defined.]

1) Need for Codes of Conduct

Everyone agreed that the Internet industry should establish Codes of Conduct which include specific measures that address the child pornography issue on the Internet.

2) Need for Cooperation at large

Child pornography on the Internet is one of the most critical and urgent issues, and it is in Internet industry's own interest to act on this problem in cooperation with other social

institutions such as Law enforcement, government, judiciary, and civil society members.

3) Need for Cooperation with Law Enforcement authorities

Cooperation between Internet industry and Law Enforcement is necessary for investigating and prosecuting child sexual exploitation. Internet industry associations and the law enforcement community should provide ongoing reciprocal training and exchange of experience.

4) Education of the public

Internet industry associations and governments should join together to educate the public about responsible use of the Internet and its potential dangers. The Internet industry and non-governmental organizations as well as specialized agencies will continue their mutual educational efforts.

5) Response mechanism

The Internet industry associations and Law Enforcement should over time develop 24x7 contact mechanisms to assist with emergencies, consistent with national laws.

6) Data preservation

The Internet industry and law enforcement will work together to examine mechanisms for preserving data necessary to prosecute child pornography violations, so that the data exists when law enforcement obtains appropriate legal process.

7) Reporting of child pornography

On the following point, rough consensus was achieved:

Internet industry will report suspected child pornography and exploitation to relevant independent third parties (including hotlines) or law enforcement agencies, as directed by national law and according to the respective legal framework when they learn of it on their public systems. Should the relevant independent third parties come to the assessment that the content is child pornography, they will forward the case to law enforcement agencies and give notice for take-down.

As some discussion recommenced in the morning session, this is to clarify the issues actually discussed to this point:

- a) ISPs should not act as judges to the illegality or legality of Internet content.
- b) If content which is clearly child pornography is brought to the ISPs attention, it will report it to the appropriate law enforcement authorities.
- c) Content whose status is uncertain should be referred to independent third parties or relevant government mandated bodies for assessment.

8) Transparency

As a means to empowering parents to protect their children's privacy, Internet industry will prominently post their privacy policies.

Working Group 3

Hotlines

Child pornography on the Internet is a growing problem, and as more of the world comes online will continue to grow. The Internet, unfortunately has proved an ideal medium for the publication, exchange, and sale of child pornography.

Even though such material may constitute only a small fraction of the vast content available on the Internet, it is rightly identified as a top priority for action by the Internet industry, law enforcement, children's rights organisations and users because it represents a record of the crime of child sex abuse or is a tool in the proliferation of such abuse.

In the wider context of the sexual abuse and exploitation of children, and with a view to building a global society in which children are protected and respected, the fight against child pornography on the Internet is a challenge to us all.

Hotlines or tiplines have developed in recent years as one effective response by society to this issue. Such initiatives take varied forms, from formal legal notice and take down procedures run by Government Agencies, to industry run complaints systems. They allow users to have an easy point of contact with a trusted party to whom they can report illegal content (including child pornography) they find on the Internet, knowing that some action will be taken as a result. Such initiatives have had a significant and effective impact in countries where they operate with many images reported to law enforcement and/or to industry for removal from their servers.

The ART principles (availability, reliability and transparency) suggested by Professor Burkert are a very useful basis for any hotlines work.

But much remains to be done. We have identified significant challenges arising from for example:

- the volume of material being posted daily, with many repeat postings of „older pictures“;
- the technical sophistication of some publishers of this material;
- the hosting of web sites in some jurisdictions where both law enforcement and industry are not ready to respond adequately;
- the growth in use of chat and instant messaging as real time methods of exchanging material or, of even greater concern, of targeting children.

We also recognise that there are organisational issues that hotlines need to address:

- building a relationship of trust with the user community including providing appropriate feedback;
- improving understanding and relationships with law enforcement;
- clarification of their legal status in relation to storage of illegal content;
- the extent to which they are influenced by child protection considerations and have child friendly services to allow older children and young people to participate in efforts to combat child pornography;

- how to develop common good practices while respecting national cultural and legal sensibilities, and promote exchange of reports internationally.

We recognise that while many of the first hotlines were established in Europe and North America, increasingly new initiatives are coming into being across the world which are contributing new ideas and approaches to the work of hotlines. We welcome the establishment of initiatives to bring hotlines together (like the newly established INHOPE Association) and would urge them to support and assist new and emerging hotlines.

We recommend that further work is necessary to:

1. identify the children featured in pornographic pictures so as to provide them with support. We suggest that a pilot project is undertaken under the auspices of a leading child protection agency working with law enforcement. We propose the NCMEC might take a lead role in such a project.
2. consider how technology might be used to identify child pornography pictures in order to remove them from circulation, and assist law enforcement investigations. We suggest further consideration of this issue by a working party including industry, law enforcement and hotlines.
3. implement effective awareness raising measures so that users – including children and young people - who find child pornography online know how they can report it to a trusted party and how it will then be dealt with. We suggest that a web site could be developed as a source of good practice and suggestions for hotlines and other community organisations seeking to educate users about Internet safety issues.

In relation to the work of hotlines in particular we recommend further work to:

1. ensure appropriate co-operation between hotlines and law enforcement in individual countries. While legal systems vary, we believe there should be regular national exchanges of views and where possible joint training sessions to ensure that hotlines and law enforcement activities complement one another. While this is primarily a matter for national action we suggest as a first step Interpol and the INHOPE Association might meet to consider how such co-operation can be further encouraged.
2. develop better systems for exchanging reports between hotlines.
3. develop standardised training programs for new hotlines to ensure they have quality staffing, and transparent and reliable procedures. We suggest that resources tailored for new and emerging hotlines might be produced and placed on the web.

We commit ourselves to contributing to a renewed international effort to eliminate child pornography from public areas of the Internet, and support law enforcement in its efforts to bring the publishers of such material and especially child abusers to justice.