

# UN Cybercrime Treaty Opens the Door to Child Pornography and Pedophilia

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## INTRODUCTION

A new UN treaty against cybercrime expressly allows the production and dissemination of materials that were until now considered illegal child pornography under international law. This Definitions paper will discuss how the treaty undermines existing international law against child pornography and legalizes an endless stream of material depicting sexualized children that will fuel pedophilia and child sexual abuse. The treaty will make it harder for law enforcement to prosecute child sexual abuse and place children in more danger. All this places the burden of protection on children themselves instead of parents, tech companies, and governments.

## New UN Cybercrime Treaty allows for virtual child pornography and allows for "sexting" by minors

### *Legalizes child pornography*

The General Assembly adopted the UN treaty against cybercrime on December 24, 2024.<sup>1</sup> A signing ceremony for the new treaty will take place in Hanoi, Vietnam on October 25, 2025.<sup>2,3</sup> The treaty will enter into force once forty countries ratify it.

The treaty does not refer to "child pornography" at all, opting to replace this term entirely with the term "child sexual abuse material" (CSAM) instead (more about this new term below).

Article 14.1 of the new treaty defines child "sexual abuse/

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**The treaty then expressly establishes that countries who ratify the treaty "may" decriminalize some materials until now considered illegal child pornography.**

exploitation material" as any "visual material, and may include written or audio content, that depicts, describes or represents any person under 18 years of age" in a sexualized way.<sup>4</sup> The treaty then expressly establishes that countries who ratify the treaty "may" decriminalize some materials until now considered illegal child pornography.<sup>5</sup>

According to article 14.2 of the new treaty, countries may opt to decriminalize the production, distribution, and possession of sexualized visual, written or audio content depicting children, so long as they do not represent an "existing person" or do not "visually depict child sexual abuse or child sexual exploitation."<sup>6</sup>

### *Legalizes dissemination of sexual images by minors*

In addition, Articles 14.4 and 15.4 also give states the option to decriminalize "sexting" by children under any and all circumstances as well as "sexting" by a child to an adult when the child is above the age of consent and the "sexting" is only private behavior.<sup>7</sup> In such cases, the treaty only requires prosecution in cases where images are shared "non-consensually."

These exceptions for child porn and "sexting" by minors in the new treaty expressly allow the creation and dissemination of content that states have been required to prosecute under current international law, including the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography ("Optional Protocol"). The Optional Protocol defines any sexualized images of minors as illegal "child pornography" that must be subject to criminal penalties, including virtual material or consensually self-generated and that shared material.<sup>8</sup> The fact such material is created virtually or consensually by children does not take away the danger this poses to children. It is still child pornography.

### **Where did the exceptions in the new Cybercrime Treaty come from?**

Supporters of the new treaty argue that the exceptions allowing virtual child pornography and "sexting" by children are necessary for the following reasons:

- They argue that legalizing "sexting" is necessary because adolescents have a right to sexual expression. During the final session of negotiations for the cybercrime treaty in 2024, a delegate from Austria was adamant that the exceptions

should be in the treaty to protect the "sexual rights" of minors. She argued this Western point of view with candor:

"Children above the age of 14 have a right to develop sexual relationships. Children at this age may choose to have a sexual relationship with someone who is 19 years old, therefore an adult," she said. "Children may produce pictures in the course of sexual engagement and share it with each other. It is our conviction that pictures produced as part of the legal and voluntary relationship should not be criminalized," she explained.<sup>9</sup>

- They argue that letting pedophiles satisfy their sexual preferences with virtual material will make it less likely that they would prey on real children.

Delegates of the European Union have been rumored to make such arguments behind closed doors and in private discussions but have never made them openly. This would appear to be consistent with the "harm-reduction" approach that Western countries take to many social issues. According to proponents of this approach, merely stigmatizing pedophilia and ostracizing those who sexualize children for their own pleasure will lead to more illegal sexual abuse. They would rather legitimize pedophilia as a sexual orientation (using the term "minor-attracted persons" to reduce stigma)<sup>10</sup> and let pedophiles continue to sexualize children virtually. They assume that doing this will limit the harms to real children.

- The most frequently cited reason, however, is the need to adopt a "trauma-informed" and "harm-reduction" approach to law enforcement, based on new theories in behavioral therapy. This is the argument developed by international agencies and Western governments who argue that "child sexual abuse material" (CSAM) is a better term than "child pornography." (Some also use "child sexual exploitation material"/CSEM.)

To illustrate this argument, the U.S.-based Rape, Abuse & Incest National Network (RAINN) and other organizations announced that they would be using CSAM in place of "child pornography," arguing that:

"While some of the pornography online depicts adults who have consented to be filmed, that's never the case when the images depict children. Just as kids can't legally consent to sex, they can't consent to having images of their abuse recorded and distributed. Every explicit photo or video of a kid is actually evidence that the child has been a victim of sexual abuse."<sup>11</sup>

## More sources for using CSAM rather than "child pornography"

The most widely-cited source for replacing the term "child pornography" with CSAM in the context of the United Nations is a document produced by UN agencies to promote the use of CSAM as a replacement for "child pornography" known as the Luxembourg Guidelines.<sup>12</sup> The Luxembourg Guidelines are a comprehensive review of law enforcement terms for child sexual abuse through a psychological lens of "trauma-informed analysis."

In the context of behavioral health services, where it originates, the trauma-informed approach requires health professionals to be careful about the language and gestures they use to avoid "re-victimizing" their patients by recalling a traumatic event.<sup>13</sup> The Luxembourg guidelines borrow this approach and apply it to criminal law and law-enforcement terminology in the context of child sexual abuse.

For example, the guidelines claim that the term "child pornography" is stigmatizing if used to describe children abused in the creation of pornographic material. They argue that, because pornography is a consensual activity between adults, using the term "child pornography" implies willing participation by the abused child. This stigmatizes or re-victimizes any child who was depicted in child pornography.<sup>14</sup>

In a similar vein, when it comes to "sexting" by children, the Luxembourg Guidelines, say that "it is crucial that the fact that the material is self-generated does not result in blaming the child for what happens or in holding the child criminally liable for the production of child sexual abuse material."<sup>15</sup> In other words, they recommend decriminalizing "sexting" by children altogether to avoid stigmatizing children.

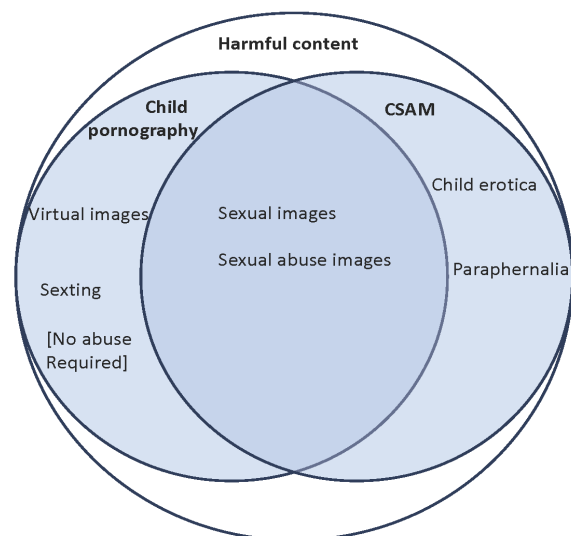
The guidelines admit that changing the terminology will create loopholes that leave certain types of criminal conduct previously covered under the child pornography standard unpunished. Specifically, the Luxembourg guidelines admit the additional difficulty of prosecuting predators when "sexting" by minors is decriminalized entirely. They note how "determining whether a child (where the child is above the age of sexual consent) engaged in a sexual relationship with an adult constitutes sexual exploitation or a mutually consensual sexual relationship remains problematic."<sup>16</sup> At the same time, the agencies behind the Luxembourg Guidelines routinely advocate for lowering the age of consent.<sup>17</sup>

## What is the difference between "child pornography" and CSAM?

Substituting "child sexual abuse material" (CSAM) for child pornography is not just a fresh coat of semantic paint: the two things are not precisely the same.

Some who advocate for replacing the term "child pornography" with CSAM argue that it is simply a semantic change, substituting one term for one that is arguably more precise and certainly more condemnatory to describe exactly the same thing. From an advocacy perspective, such shifts in terminology are a frequent feature, whether to impart or reduce stigma or to create a sense of urgency or duty ("illegal" vs. "undocumented," "homeless" vs. "unhoused," etc.) However, substituting "child sexual abuse material" (CSAM) for child pornography is not just a fresh coat of semantic paint: the two things are not precisely the same.

There is a significant amount of overlap between the two terms: both include sexual/sexually abusive images of children. However, "child pornography" also includes some things that CSAM does not, such as virtual sexual images of children created without any specific children being abused, whether hand-drawn or created using technology like virtual animation or artificial intelligence (AI). It also includes materials created by minors themselves, such as those exchanged through "sexting." Meanwhile, CSAM includes some elements that are not typically classified as "child pornography" related to the abuse of children, but that are not a depiction of the abuse itself. This is sometimes called paraphernalia or child erotica by law enforcement and includes less explicit images or images of children posed erotically but not fully exposed that may not fit some definitions of "child pornography" but would qualify as CSAM. Both child pornography and CSAM fit within the broader category of "harmful materials" which may fall within different aspects of law and policy (see the Venn diagram below).



As the diagram shows, simply replacing the terminology of "child pornography" with CSAM is not a direct one-to-one substitution. Both terms contain elements lacking in the other, which is why, prior to the new treaty, the General Assembly opted to use the terms together in a complementary manner.

### How was the new standard accepted in the UN Cybercrime Treaty?

The trauma-informed language in the UN cybercrime treaty was not immediately accepted at the United Nations. It faced several stages of opposition before being ultimately adopted in 2024.

Initially, the U.S. government was one of the chief opponents of the trauma-informed approach. U.S. Justice Department experts argued in training materials for law-enforcement against using the new terminology of CSAM, saying that it would undermine the strict standard for "child pornography" long-promoted by the U.S. government internationally through the Optional Protocol to the Convention on the Rights of the Child—to which the U.S. is a party—and replace it with a vague new standard that might create loopholes that could be exploited by sexual degenerates and child sex traffickers.<sup>18</sup> Then, without explanation, around 2018 the U.S. Justice Department decided to go along with the European Union and the agency experts. At the UN, the US joined EU efforts to replace the term "child pornography" with "child sexual exploitation/abuse material" throughout UN policy.

Joint U.S. and EU advocacy for the new term led to a 2019 resolution of the UN Economic and Social Council on efforts to combat trafficking adopted the CSAM language instead of "child pornography" as the official terminology of the United Nations system.<sup>19</sup> When the issue was taken up in the wider UN General Assembly, however, several delegations who support international anti-trafficking efforts saw a danger to children in replacing the child pornography standard entirely. They insisted that the two standards, "child pornography" on one hand and "child sexual abuse material" on the other, should be used complementarily, and that the new term CSAM should not replace the already established one.

As a result, the resolutions of the General Assembly that have traditionally addressed the issue of child pornography were updated with the term "child sexual abuse material" added next to the established term "child pornography," without replacing it.<sup>20</sup> The rationale behind this is that the term CSAM may include

material and images that are not explicitly sexual enough to be considered child pornography (sometimes called child erotica, pseudo-child pornography, or paraphernalia), and therefore the term can actually complement the already established strict standard, even though it cannot replace it.

Because both the EU and the United States—the two most powerful delegations at the United Nations—promoted the new approach, that compromise was always precarious. It ultimately came apart in 2024 when the UN cybercrime treaty was adopted. In every negotiation in the General Assembly since 2019, delegates from Europe and the United States have argued to delete the term "child pornography" altogether in UN policy and only use the newer term "child sexual abuse material." Sometimes they were successful. When the General Assembly adopted the new convention against cybercrime it finally caved to U.S. and EU demands and replaced the child pornography standard altogether with a new standard that is seemingly incompatible. The new standard for CSAM, as explained above, decriminalized a vast swath of content until now considered illegal child pornography.

### **A behavioral approach to law enforcement puts the burden of protection on children**

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**Children should not have to bear the burden of having to protect themselves from exploitation on online technology platforms. The burden of protection should be on their parents, technology platforms, and public authorities**

Regardless of the merits of a trauma-informed approach to law enforcement, the priority for law enforcement must always be to neutralize predators and protect any future victims. While a trauma-informed approach may help victims feel less traumatized in therapeutic settings, it may not always be the most effective way of preventing abusers from harming future victims. And there is no evidence that it is successful in this regard.

Children should not have to bear the burden of having to protect themselves from exploitation on online technology platforms. The burden of protection should be on their parents, technology platforms, and public authorities. Sadly, the loopholes in the new UN cybercrime treaty do the contrary. They are a boon for the worst sex abusers and predators, who will gain access to an endless stream of legally generated real and virtual child pornography. This can only lead to the sexual exploitation of more children, and is unacceptable.

The approach in the new treaty will likely fuel demand for child pornography and child sexual abuse material. The danger of increasing demand for child pornography and a related uptick of sexual abuse of children by allowing virtual or self-generated



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material, sometimes called "pseudo-child pornography," is something Congress repeatedly took into consideration when tightening federal law against child pornography.<sup>21</sup> More recently, UN Special Rapporteur on the causes and consequences of violence against women, Reem Alsalem, documented how pornography fuels perversion, violence, and sex trafficking and argued for its abolition.<sup>22</sup>

If children are allowed to consensually produce and share self-generated sexual images or programmers are allowed to create virtual child pornography it will create an endless supply of new child pornography and child sexual abuse material. This will only embolden predators to hurt more children. It is well known that child pornography fuels child sexual abuse.<sup>23</sup> It is irresponsible to presume that predators will stop at virtual child pornography and self-generated child pornography. Many will graduate to worse and more explicit forms of child pornography, and this will in turn fuel more child exploitation and sex trafficking.

Another concern is the fracturing of the previously unified standard against child pornography. The conflict of laws between countries that continue to enforce the definitions and standards in the Optional Protocol to the Convention on the Rights of the Child and those that implement the new standards and definitions of the new cybercrime treaty will leave children unprotected. It will make it harder for law enforcement agencies to cooperate across borders and will allow sex abusers and criminal pornographers impunity. Allowing children to self-generate sexual content especially will create an impossible conflict of laws across borders. Once child pornography is generated legally in one country, what happens when it is shared across borders? If an underage girl from Africa or the Middle East produced sexual content and shared it across borders with someone in Europe, whose laws would apply? What of child pornography created across borders through the internet consensually?

The new approach also ignores how child sexual abuse and child pornography are part of a wider system of exploitation and abuse. If advocates see replacing the term "child pornography" with CSAM as a way of differentiating between "good" pornography and "bad" abuse materials, it is critical not to overlook the widespread abuse in the pornography industry, and the exploitative nature of pornography itself, that is being whitewashed in that comparison. While the abuse and exploitation of children rightly carries a particular and heightened condemnation, pornography featuring adults is also a type of abuse. This is the argument made in a recent report to



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the General Assembly by the special rapporteur Reem Alsalem. In the report, she calls for the abolition of prostitution, rejects the terminology of "sex work" used to normalize it, and also advocates for the abolition of pornography, which she describes as "filmed prostitution."<sup>24</sup> Alsalem notes the linkages between violent and degrading pornography, prostitution, and violence against women and girls.

Allowing the blanket decriminalization of sexting, which is essentially self-generated child pornography by consenting minors, is especially dangerous in this context. It is well known that groomers and traffickers make use of children to generate an endless supply of child pornography and then adult pornography.<sup>25</sup> They trick vulnerable teenagers into participating in virtual sexual exchanges as a prelude to a life of slavery in the sex trade.<sup>26</sup> Decriminalizing "sexting" altogether and allowing it in cases of consensual "sexting" places the burden of protection on vulnerable children themselves. This is precisely the criminal organization model of the notorious social media personality Andrew Tate.<sup>27</sup> This model thrives on the grey zone of sexual autonomy afforded to children. Legalizing "sexting" will make it too hard for law enforcement to establish which images are consensually created and shared. Public prosecutors must have the ability to prosecute anyone implicated in trafficking rings and criminal networks, including minors. Criminal liability is a tool to end impunity and protect children. It gives prosecutors leverage to go after the adult criminals but allows discretion in the prosecution of minors depending on their level of culpability and capacity to give consent in the first place.

In addition, the mere fact that the treaty allows the creation and consumption of virtual child pornography elevates pedophilia as a legitimate and harmless sexual orientation. And, once "sexting" between adults and children is made legal, it opens the door to unspeakable abuses. It puts the burden on children to protect themselves from predators. More children will be sexually abused and exploited as a result, not fewer. This is unacceptable.

Finally, the rapid development of artificial intelligence across all technology platforms is increasing the risks from sexualization for children. Sexual deviants and predators are becoming more adept at using artificial intelligence and tech platforms to groom their victims. A recent article in the Wall Street Journal found that Meta and other tech companies are actively using artificial intelligence to develop sexualized content that caters to pedophiles.<sup>28</sup> The WSJ investigation also revealed that the algorithms on which AI chat bots run are quick to sexualize children who use them, presenting them with explicit and

inappropriate material. This was just one application of artificial intelligence that would be legalized by the new treaty. One can only speculate about the consequences of such a lax approach in the realm of virtual images generated by artificial intelligence, or sexualized robot mannequins.

### The continued importance of the strict standard against child pornography in the Optional Protocol of the Convention on the Rights of the Child

When child pornography became a major law enforcement challenge in United States in the 1970s, it rapidly became clear that the only way to effectively fight child pornography would be to adopt a strict standard. In the *Farber* and *Osborne* cases, the Supreme Court agreed to allow state and federal laws to adopt strict criminal standards to penalize the mere creation, distribution, and possession of child pornography. As a result, there is no need to prove an underlying crime of child sexual abuse for the possession or distribution of child pornography to be crimes. This strict standard is essential to deter criminal acts.

The need for a strict standard is self-evident: there is no other way to stop the dissemination of such content once it is created. Technological advances in the internet and personal electronic devices led to an unimaginable proliferation of online images, including child pornography. Once content is created and distributed through the internet, it is prohibitively difficult, time-consuming, and sometimes impossible, to establish a connection to the original sexual abuse, let alone to track down and remove all instances of the content. Any loophole or caveat to a strict standard would make it too difficult to prosecute perpetrators, but above all, it eliminates deterrence.

The current definition of child pornography in U.S. law has been updated repeatedly to encompass the technological advances of the recent decades and to protect children for such risks. Currently it includes:

[A]ny visual depiction of sexually explicit conduct involving a minor (someone under 18 years of age). Visual depictions include photographs, videos, digital or computer-generated images indistinguishable from an actual minor, and images created, adapted, or modified, but appear to depict an identifiable, actual minor. Undeveloped film, undeveloped videotape, and electronically stored data that can be converted into a visual image of child pornography are also deemed illegal visual depictions under federal law.<sup>29</sup>

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Congress recognized over thirty years ago that any form of child pornography, including virtual child pornography, ultimately fuels demand for real child pornography and real sexual abuse, thus making it impossible to contain the problem and multiplying the danger to children.

The federal government recognized the importance of prosecuting not only child pornography depicting sexual abuse of real children, but also virtual child pornography. Following a 2002 Supreme Court case that struck down the application of federal child pornography laws to virtual child pornography, the Congress soon adopted a new law, the PROTECT Act, using a different constitutional basis for prosecuting virtual child pornography, that continues to be valid despite having been challenged.<sup>30</sup> Congress recognized over thirty years ago that any form of child pornography, including virtual child pornography, ultimately fuels demand for real child pornography and real sexual abuse, thus making it impossible to contain the problem and multiplying the danger to children.<sup>31</sup>

It is this strict rationale for prosecuting child pornography cases that was enshrined in the Optional Protocol of the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>32</sup> The protocol was promoted and ratified by the U.S. government to help prosecute child pornography world-wide. Article 2 of the treaty defines child pornography broadly 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." This standard has been adopted in the national laws of over 178 countries that ratified the treaty and should not be undermined.<sup>33</sup>

## CONCLUSION

The threat to children from new international standards against child sexual abuse material were only fully revealed with the adoption of the UN cyber-crime treaty. Until then, the arguments in favor of a "trauma-informed" approach masked the actual danger. But now, the new treaty's provisions expressly allowing the creation, possession and distribution of virtual child pornography and "sexting" by minors make the real danger plain for all to see. The exceptions in the cybercrime treaty are blunt and overboard. They will make it harder for governments to prosecute pedophiles and other sexual predators in line with their obligations under the Optional Protocol of the Convention on the Rights of the Child. The treaty will legalize the creation of an endless stream of legally generated real and virtual child pornography.

Because of the rapidly developing pace of new technologies, including artificial intelligence, countries should be tightening standards to prosecute predators, not loosening them. Governments charged with protecting the most vulnerable

among us must stay ahead of these developments. They cannot fall behind in their efforts to investigate and punish sexual abuse crimes.

For this reason, countries should not ratify the treaty to avoid undermining existing international law enforcements against child pornography. Donor countries should stop law enforcement aid for cybercrime and trafficking to countries that ratify the treaty. And, U.S. allies in particular, must not be allowed to undermine binding international treaties based on federal law.

## Endnotes

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