**Sexual violence against children online**

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

**12 November 2020**

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. In March 2019, the Committee invited all interested parties to comment on the concept note of the general comment. These inputs and the comments of the Swiss Foundation for the Protection of Children (hereafter “the Foundation”) where published in Spring 2019.[[1]](#footnote-1) The Committee then invited all interested stakeholders to comment on its draft general comment. The Foundation 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 Foundation 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 Foundation has spent many years successfully fighting for the rights of children and against all forms of violence against children. The Foundation runs the organisation ECPAT Switzerland against child prostitution, child sexual abuse material (child pornography) and child trafficking.

The Foundation applauds the Committee on the Rights of the Child's suggestion of **protection from violence and sexual exploitation** as one of the topics of the General Comment. As the Foundation primarily advocates for the prevention of sexual violence against children, it shall concentrate on this aspect in its submission. The Foundation therefore draws upon the articles 19, 34, 37 (a) and 39 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.

1. Context

Children constitute more than 30% of the world’s population – they are important actors in society and must have their rights realised and their voices heard in matters which affect them. This applies also to the digitalised society: Each child, as an individual rights-holder, should be able to exercise his human rights and fundamental freedoms online as well as offline.

Although the World Wide Web was not created with children in mind, a big part of its users are children. An estimated one third of all internet users in the world today is below the age of 18.[[2]](#footnote-2) Also, children are often the first to pick up on the latest digital technologies and trends, often much earlier than adults. 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.[[3]](#footnote-3) 86% of children between the ages of 6 and 13 use the internet at least occasionally.[[4]](#footnote-4) 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.[[5]](#footnote-5)

This is because sexual violence against children is increasingly being practised online. A significant increase in online grooming has been found in recent years:[[6]](#footnote-6) more than 30% of adolescents have been approached online by a stranger with unwanted sexual intent.[[7]](#footnote-7) There has also been an increase in the distribution of child sexual abuse material. The Federal Bureau of Investigation (FBI) reported around 9,000 cases of child sexual abuse material to Switzerland in 2018.[[8]](#footnote-8)

Suspected cases of child pornography or child abuse material have increased massively in Switzerland in recent years: From 1995 onwards a significant increase in the number of convictions is recorded, which can be explained, among other things, by the new means of dissemination – above all the World Wide Web.[[9]](#footnote-9) But it should be clearly emphasized here that the criminal conviction statistics of Switzerland only shows the convictions for one crime under the articles of the Swiss Criminal Code [SCC]). Specifically, it does not separately identify convictions for prohibited pornography involving children / sexual child abuse material (art. 197 para. 4 SCC). Only a look at the statistics by offences and injured persons provides information on how many children and adolescents were victims of sexual child abuse material. The number of children and adolescents who were harmed ranged between 200 and nearly 400 in the period from 2010 to 2019 while the number of convictions of adults under art. 197 SCC was more than twice as high.[[10]](#footnote-10) This permits two conclusions: First, the statistics do not explicitly show convictions for sexual child abuse material. Second, the high number of convictions under art. 197 SCC and the low number of the harmed children and adolescents clearly show that there is a contradiction between the increase in child sexual abuse material and the convictions under art. 197 SCC.

Recent surveys by Europol have shown that during the period of the lockdown due to the COVID19 pandemic, the number of child sexual abuse material has increased dramatically in several European countries.[[11]](#footnote-11) However, in contrast to the European Union, the Swiss Confederation does not rely on a common and uniform strategy, but will hand over its activities in the undercover investigation of cyber-pedocriminality crime to the cantons as of January 2021.[[12]](#footnote-12) This is despite the fact that the cantons devote no or too few resources to the fight against cyber-pedocriminality.[[13]](#footnote-13)

In addition, today no nationwide data are available that contain information on cyber-crime. The Swiss Police Crime Statistics can therefore not provide any information on this. Since latest the identification and recording of crimes that contained a “cyber”-offence is improved: The Swiss Police Crime Statistics will publish these figures in March 2021 on the basis of the reference year 2020.[[14]](#footnote-14)

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 or videos of the abuse are distributed over the internet. The Foundation therefore calls for sexual violence against children online to be treated just as seriously as any other form of child abuse.

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 Foundation 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 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.[[15]](#footnote-15) Despite these high numbers, there are relatively few convictions (see above).

Seven alarming developments regarding child sexual abuse material must be observed in Switzerland:

1. The international reports regarding child sexual abuse materials have greatly increased in recent years.
2. The number of children and adolescents who were harmed ranged between 200 and nearly 400 in the period from 2010 to 2019, while the number of convictions of adults under art. 197 SCC was more than twice as high.
3. There is hardly any data collected by Swiss authorities on hosted or consumed child sexual abuse material in Switzerland. The majority of reports come from foreign authorities.
4. Today, there are no nationwide data available that contain information on child sexual abuse material in Switzerland.
5. According to new provisions in the Telecommunications Act (TCA), providers are only obliged to report child sexual abuse material if they come across them accidentally or are made aware of them by third parties. [[16]](#footnote-16)
6. The Confederation will hand over the undercover investigation of cyber-pedagogical crime to the Cantons as of 1 January 2021. The cantons have no or too few resources or lack the legal basis to conduct undercover investigations. These resources are indispensable for a functioning criminal prosecution.
7. There is a lack of preventive counselling and treatment services aimed at persons with sexual interests in children. These must reduce the psychological stress of the persons concerned and develop strategies with them for better coping with problematic everyday situations in general and confrontation with children in particular. This can prevent sexual assaults on children and young people.
8. EU strategy against child sexual abuse

The sexual abuse of children on the Internet is also increasing dramatically in the European Union. Between 2010 and 2019, reports of child sexual abuse material online rose from 23,000 to 800,000 in Europe.[[17]](#footnote-17) According to Europol's latest report, another huge increase in cyber-educational crime was recorded during the COVID19 pandemic.[[18]](#footnote-18) Nearly 90% of all websites are hosted in Europe respectively in the Netherlands, making Europe a world-class crime scene according to the EU Home Affairs Commissioner, Ylva Johansson.[[19]](#footnote-19)

To tackle this problem, the European Commission has put its words into action: In July 2020 it presented to the EU Parliament and EU Council a joint European strategy to combat child sexual abuse online and offline for the years 2020–2025.[[20]](#footnote-20)

With eight measures, the EU states are aiming at a common goal with pooled resources: The member states must ratify the implementation of the directive on sexual child abuse as a priority. The Commission will continue to use its enforcement powers and initiate infringement proceedings if this is necessary for rapid implementation. Europol intends to establish a so-called innovation laboratory to facilitate the development of national capacities to keep up with technological developments. The package of measures also provides for the establishment of a European Centre for Preventing and Combating Child Sexual Abuse (online and offline). This center is to receive reports from companies and private individuals about incidents on the Internet and to check whether these are criminal offences and then forward them to the investigating authorities. In addition, experts are to support the member states in prevention programs and make exemplary projects in the member states better known. A further focus is on supporting victims – for example, when it comes to removing their videos or photos from the Internet in order to protect their privacy and avoid having to spend a lifetime knowing that such documentation of crimes exists. The new center will cooperate with the Cybercrime Unit of Europol in The Hague. The Commission has also launched a process with the private sector to identify and provisionally assess possible technical solutions for detecting and reporting child sexual abuse in end-to-end encrypted electronic communications by the end of 2020, and to address the regulatory challenges and opportunities in the fight against these crimes.

In future, all service providers will be obliged to actively search their platforms for child sexual abuse material. With regard to the so-called end-to-end encryption, ways will be found to allow investigations to be carried out in compliance with existing data protection laws.[[21]](#footnote-21) The relevant legal bases are to be adapted accordingly.[[22]](#footnote-22)

The Commission will continue to contribute to raising global standards for the protection of children against sexual abuse by promoting cooperation between several interest groups in the framework of the Global Alliance "WePROTECT" and through targeted funding.

1. Joint action

The Foundation welcomes the action of the EU Commission and emphasises that Switzerland must now also tear all the curtains that conceal the sexual abuse of children. To this end, all levels involved must act as quickly as possible and jointly, as the Internet knows neither geographical nor political boundaries.[[23]](#footnote-23) The revision of the Telecommunications Act which has been adopted must be used to implement the provisions on the protection of children and young people as quickly as possible – this also applies to the enactment of the Federal Council's implementing provisions.

The Swiss Foundation for the Protection of Children therefore demands in relation to Switzerland:

1. The production of online child sexual abuse material is to be punished in the same way as real child abuse according to the relevant criminal law provisions.
2. The punishment framework of the valid criminal offences of sexual child abuse must be increased.
3. The cantons must pursue cyber-pedocrime with priority and consistency and punish it accordingly.
4. Preventive measures that prevent children from becoming perpetrators themselves must be systematically implemented and examined for their effectiveness.
5. Nationwide statistics and data on sexual child abuse material hosted or consumed in Switzerland are needed.
6. Nationwide statistics and surveys, e.g. in the Swiss Police Criminal Statistics, on convictions in cyber-pedocriminality are needed.
7. All service providers must be obliged to actively search their platforms for pictures or videos with pornographic content in accordance with Art. 197 Paragraphs 4 and 5 of the Swiss Penal Code. If they find such content, they must report it immediately to OFCOM and Fedpol and then delete it.
8. The Federal Council must issue regulations to protect children from dangers arising from the use of telecommunications services. It must oblige service providers to inform their customers about the protection of children and young people.
9. The federal government must develop a federal police force that is effectively equipped to combat cyber pedocrime and that is strongly networked at the international, European and national levels. The Confederation must support the cantons with resources in their covert investigations independent of suspicion.
10. A national strategy is needed that specifies the coordination of inter-cantonal covert investigations and the support of cantonal bodies in accordance with the Central Offices Act. This strategy should also identify the legislative changes needed to combat cyber-pedocrime, for example in the area of end-to-end encryption (in terms of data protection), or the creation of a non-governmental reporting office.
11. The cantons must establish or expand resources that enable comprehensive investigations into cyber-pedocrime. Where they are still lacking, the necessary legal basis must be created.
12. Independent reporting offices for child sexual abuse material must be established.
13. Government agencies must step up their efforts to prevent sexual violence against children online, systematically and with appropriate resources. The population must be further sensitised to the issue. Parents, teachers and other caregivers must be systematically informed and trained. Children are encouraged in their media and sexual competence and learn in particular how to handle personal data and material with care.
14. Prevention programs must be expanded so that all people with a pedosexual disposition can find a contact point and crimes can be prevented.

All measures requested must be taken as quickly as possible.

1. See: <[https://www.ohchr.org/EN/HRBodies/CRC/Pages/Submissions\_Concept\_GC\_Digital\_Environment.aspx](https://perma.cc/6J56-TUEM)>. [↑](#footnote-ref-1)
2. Livingstone, S., Carr, J. and Byrne, J., One in Three: Internet Governance and Children’s Rights. Innocenti Discussion Paper No. 2016-01, UNICEF Office of Research, 2016, Florence. [↑](#footnote-ref-2)
3. Suter Lilian/Waller Gregor/Bernath Jael/Külling Céline/Willemse Isabel/Süss Daniel, JAMES – Jugend, Aktivitäten, Medien – Erhebung Schweiz, Ergebnisbericht zur JAMES-Studie 2018, ZHAW, 2018, S.64 (zitiert: JAMES 2018): see: <[https://www.zhaw.ch/storage/psychologie/upload/forschung/medienpsychologie/james/2018/Ergebnisbericht\_JAMES\_2018.pdf](https://perma.cc/JX6K-9CEE)>. [↑](#footnote-ref-3)
4. Genner Sarah/Suter Lilian/Waller Gregor/Schoch Pia/Willemse Isabel/Süss Daniel, MIKE – Medien, Interaktion, Kinder, Eltern: Ergebnisbericht zur MIKE-Studie, ZHAW 2017, S.28 (zitiert: MIKE 2017): see: <[https://www.zhaw.ch/en/psychology/research/media-psychology/media-use/mike/#c123357](https://perma.cc/A936-VMGL)>. [↑](#footnote-ref-4)
5. JAMES 2018, p. 40. [↑](#footnote-ref-5)
6. Willemse Isabel/Waller Gregor/Genner Sarah/Suter Lilian/Oppliger Sabine/Huber Anna-Lena/Süss Daniel, JAMES - Jugend, Aktivitäten, Medien - Erhebung Schweiz. ZHAW, 2014, see: <[https://www.zhaw.ch/storage/psychologie/upload/forschung/medienpsychologie/james/2014/Ergebnisbericht\_JAMES\_2014.pdf](https://perma.cc/VP8F-6L9G)>. Only one in five adolescents stated that they had experienced online grooming, p. 37. [↑](#footnote-ref-6)
7. JAMES 2018, p. 53. [↑](#footnote-ref-7)
8. NZZ am Sonntag from 12.01.2019: *Das FBI stösst auf 9000 Fälle von Kinderpornografie aus der Schweiz.* [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. See <https://www.bfs.admin.ch/bfs/de/home/statistiken/kriminalitaet-strafrecht/polizei/geschaedigte.assetdetail.11147627.html>. [↑](#footnote-ref-10)
11. See Report Europol, Exploiting Isolation: Offenders and Victims of Online Child Sexual Abuse during the Covid19-Pandemic, 19.06.2020, see: <[https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic](https://perma.cc/C9FG-33NX)>. [↑](#footnote-ref-11)
12. Fedpol gibt Suche von Pädo-Kriminellen an Kantone ab, 10vor10, SRF vom 20.07.2020, see: <[https://www.srf.ch/news/schweiz/detektiv-arbeit-im-internet-fedpol-gibt-suche-von-paedo-kriminellen-an-kantone-ab](https://perma.cc/C3HZ-V7LP)>. [↑](#footnote-ref-12)
13. Kampf gegen Kindsmissbrauch: Zuger Polizei hat gegenüber Luzern die Nase vorn 31.07.2020, zentralplus, das Onlinemagazin für Luzern und Zug, see: <[https://www.zentralplus.ch/kampf-gegen-kindsmissbrauch-zuger-polizei-hat-gegenueber-luzern-die-nase-vorn-1856157/](https://perma.cc/F7YX-EUTC)>. [↑](#footnote-ref-13)
14. Police crime statistics 2019, p. 9, see: <[https://www.bfs.admin.ch/bfs/de/home.assetdetail.11147486.html](https://perma.cc/BNB2-ULYM)>. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. Art. 46a Abs. 3 FMG; see: [BBl 2019 2619](https://perma.cc/X3FP-URRV). [↑](#footnote-ref-16)
17. Press release of the EU Commission of 10.06.2020, see: <[https://ec.europa.eu/germany/news/20200610-kampf-gegen-sexuellen-missbrauch\_de](https://perma.cc/A3LR-JETJ)>. [↑](#footnote-ref-17)
18. This is particularly true in March 2020, when a large number of European countries have decided the lockdowns. Cf. report Europol, Exploiting Isolation: Offenders and Victims of Online Child Sexual Abuse during the Covid19 pandemic of 19.06.2020, see: <[https://www.europol.europa.eu/publications-documents/exploiting-isolation-offenders-and-victims-of-online-child-sexual-abuse-during-covid-19-pandemic](https://perma.cc/Y7RM-HC3L)>. [↑](#footnote-ref-18)
19. Speech by Commissioner Johansson at a webinar on "Preventing and combating child sexual abuse & exploitation: towards an EU response of 09.06.2020, see: <[https://ec.europa.eu/commission/commissioners/2019-2024/johansson/announcements/speech-commissioner-johansson-webinar-preventing-and-combating-child-sexual-abuse-exploitation\_e](https://perma.cc/8HWP-JPK3)>. [↑](#footnote-ref-19)
20. EU Strategy for a more effective fight against child sexual abuse, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, 24.07.2020, see: <https://op.europa.eu/en/publication-detail/-/publication/ff4aa231-a71e-11ea-bb7a-01aa75ed71a1/language-en/format-RDF/source-144553153>. [↑](#footnote-ref-20)
21. EU Strategy for a more effective fight against child sexual abuse, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, 24.07.2020, p. 2. [↑](#footnote-ref-21)
22. This concerns the [Directive 2011/93/EU](https://perma.cc/WFB9-YZ8K) 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, OJ L 335, 17.12.2011. For simplicity, the document refers to this as “Child Sexual Abuse Directive”. [↑](#footnote-ref-22)
23. In the strategy of the Federal Department of Justice and Police for combating crime 2020-2023 presented in June 2020, there is no focus on cyber-pedagogical crime, cf. strategy for combating crime 2020-2023 see: <[https://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2019/2019-12-06.html](https://perma.cc/DF6E-V7J2)>. [↑](#footnote-ref-23)