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| March 29, 2019**Comments on Draft Guidelines on the Implementation of the OPSC** Thank you for the opportunity to provide our comments on the Draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (the OPSC). Comic Book Legal Defense Fund (CBLDF) is a United States non-profit organization dedicated to defending the First Amendment rights of the comics medium and the community of creators, retailers, distributors, publishers, librarians, educators, and readers who use it. We applaud all efforts to protect children from exploitation and abuse. There are many aspects of the Draft Guidelines that could be helpful in achieving those goals. Unfortunately, other aspects of the Draft Guidelines also conflate expressive content with criminal behavior in a way that we find concerning.Paragraph 61 asserts that the definition of child pornography includes expressive content, including: “drawings and cartoons,” “any digital media representation,” and “written materials in print or online.” This assertion is contrary to the United States Supreme Court’s determination in *New York v. Ferber* that the government’s rationale for child pornography regulation is the protection of actual children, specifically by purging the record of their abuse and eradicating the market for records of such abuse. In *Ashcroft v. Free Speech Coalition,* the same court ruled that definitions of child pornography do not extend to expressive images such as drawings and cartoons. Government’s compelling interest is in protecting actual minors from abuse, not in criminalizing expressive content.Paragraph 62 “urges States parties to prohibit, by law, child sexual abuse material in any form.” In practice, this broad prohibition of expressive content will serve to divert law enforcement resources from protecting actual victims, and towards punishing thought crimes. In the Canadian case *R. v. Matheson*, which CBLDF helped defend, a 25-year-old American citizen with no criminal history was prosecuted for entering Canada with expressive art on his computer that was wrongly defined as child pornography. He lost the right to use the Internet to further his work or education while the case spent two years moving through the courts. Ultimately, charges were withdrawn, but not before Matheson was exposed to tens of thousands of dollars in legal debt. In the case *U.S. v. Handley,* the government prosecuted Christopher Handley, a disabled 39-year-old veteran for possession of expressive content alleged to be obscene child pornography. Handley pleaded guilty rather than go to trial. He had no history of criminal behavior and possessed no actual photographic pornography of any kind. In sentencing documents, the government argued that the mere possession of adult comic books represented a form of “sexual deviancy” that required imprisonment to be followed by psychological treatment and supervision. These prosecutions did not result in protecting actual minors, they instead punished individuals who pose no threat to their communities for the possession of expressive content.Paragraph 63 asserts that “The Committee is of the view that ‘simulated explicit sexual activities’ should be interpreted as including any material, online or offline, that depicts or otherwise represents any person appearing to be a child engaged in real or simulated sexually explicit conduct and realistic and/or virtual depictions of a child engaged in sexually explicit conduct. Such depictions contribute to normalizing the sexualisation of children and fuels the demand of child sexual abuse material.” There is a lack of evidence to support the assertion made by the final sentence. Expressive content is not reality. Expressive content has always explored taboos related to sexuality, violence, and criminal behavior. The recent history of expressive content has seen cycles of moral panic related to media effects arguments similar to those used by this committee. Historically, it has been shown that media effects arguments are dubious. In the 1950s, comic books were placed under investigation in the United States as a cause of juvenile delinquency, prompting a moral panic that resulted in a hobbling of the medium’s content, reducing the audience served substantially and placing thousands of creative professionals out of work. The government’s final report and subsequent academic research proved that there was no such link, but not before the damage was done. More recently, video games have been positioned as a causal influence on normalizing and perpetuating violence in society. In *Brown v. EMA,* the U.S. Supreme Court quashed a law attempting to regulate violent video games, finding it to be unconstitutional. Media effects reasoning was brought before the court in this case, including social science studies. The court found that the studies purported to show only correlation – not causation – and that “at best” they purported to show “some correlation between exposure to violent entertainment and miniscule real world effects.” It is both dangerous and imprecise to suggest that the existence of media addressing a troubling aspect of real life promotes and normalizes those negative real-life behaviors. Prosecuting expressive content in the ways described in these paragraphs would ultimately divert law enforcement resources away from protecting actual victims and towards prosecuting readers and distributors of expressive content who are not guilty of any child abuse crimes.Beyond the above voiced concerns, expanding the definition and prosecution of child pornography to include expressive works of art and writing endangers vast swaths of legitimate speech. Young adult fiction routinely addresses sexuality because it is a topic of immediate concern to young adult audiences. Memoirs by abuse survivors will often depict and describe the graphic details of abuse as an aspect of the healing process. Mainstream works of art and photography exist in a continuum of art history where the nude, including nude images of minors, are examined, depicted, and described. All of these legitimate areas of inquiry are endangered by the calls for government censorship contained in these Draft Guidelines, and the subsequent chilling effects of self-censorship that will result if laws are adopted as suggested. It is laudable that this body and governments around the world are taking action to curb child sexual abuse. In all cases, our efforts must be directed towards protecting real children, and not on restricting free expression. Thank you for your consideration of these comments.Very Truly Yours,Charles BrownsteinExecutive Director*CBLDF is classified as a 501(c)(3) not-for-profit organization by the Internal Revenue Service, and donations are tax deductible in the year they are given. Please consult with your tax advisor to determine the full extent to which your donation is deductible.* |  | *A non-profit, tax-exempt**organization protecting**the First Amendment rights**of the comics community*Charles Brownstein*Executive Director*Alex Cox*Deputy Director*Georgia Nelson*Development Manager*Robert Corn-RevereLegal Counsel*\_\_\_\_\_****Board of Directors***Christina Merkler*President*Chris Powell*Vice President*Ted Adams*Treasurer*Dale Cendali *Secretary*Jeff AbrahamJennifer L. 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