

THE UNITED STATES AND ITS OBLIGATIONS UNDER THE  
 OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS  
 OF THE CHILD ON THE SALE OF CHILDREN, CHILD  
 PROSTITUTION AND CHILD PORNOGRAPHY TO COMBAT  
 CHILD EXPLOITATION IN THE DIGITAL WORLD

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## I. INTRODUCTION

Over the last twenty years, rapidly emerging technology helped enable online offenders to exploit and abuse children by means of internet practices like “cyberenticement,” a term that refers to an offender’s communications with a child, “solicitation,” the making of a sexual request, and “grooming,” the process by which an offender makes continued contact with the child to form a trusting relationship.<sup>1</sup> In 2000, the General Assembly adopted a treaty called the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography and implemented the treaty into force in 2002.<sup>2</sup> The Optional Protocol helps achieve certain goals relating to children’s interests expressed in the principal treaty, the Convention on the Rights of the Child. That treaty is an international human rights treaty which enumerates children’s rights. The General Assembly adopted the Convention on the Rights of the Child in 1989 and the treaty entered into force in 1990.<sup>3</sup> States that ratified the convention are bound to the treaty by international law.<sup>4</sup> States that signed but have not yet ratified the treaty are not bound to the treaty, but are obliged not to act contrary to the treaty’s aims.<sup>5</sup> The United States is a party to this treaty, and as such, must fulfill certain obligations to protect children’s rights in the

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<sup>1</sup> U.N. OFFICE ON DRUGS AND CRIME, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, ix, (May 2015).

<sup>2</sup> G.A. Res. A/Res/54/263, The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, (May 25, 2000). The resolution was adopted on 25 of May 2000 and entered into force on 18 of January 2002. There are 176 State parties, and the U.S. signed the treaty in 2000 and ratified it in 2002.

<sup>3</sup> G.A. Res. A/Res/44/25, Convention on the Rights of the Child, (Nov. 20, 1989). The treaty was adopted on the 20 of November 1989 and ratified on the 2 of September 1990. There are 194 State parties. The United States signed the treaty in 1995 but has not ratified it for reasons set forth later in the note. There are three Optional Protocols to the Convention on the Rights of the Child. One is the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure which was adopted in 2011 and entered into force in 2014 cited as A/RES/66/138 (December 19, 2011). Another Optional Protocol to the Convention on the Rights of the Child discussed the involvement of children in armed conflict cited as A/RES/54/263 (May 25, 2000). The armed conflict protocol was adopted on the same day as the optional protocol regarding the sale of children, child prostitution, and child pornography. When this note discusses the Optional Protocol, it is referring to the latter.

<sup>4</sup> UNICEF, *How the Convention on the Rights of the Child Works*, <https://www.unicef.org/child-rights-convention/how-convention-works>.

<sup>5</sup> *Id.*

digital sphere. In the U.S. framework, there are federal statutes in place that criminalize different aspects of child sex trafficking.<sup>6</sup>

The international community is faced with unique challenges in combating child exploitation thanks to technological developments such as high-speed internet and smart phones.<sup>7</sup> On August 13, 2020, the U.N. Committee on the Rights of the Child released Draft General Comment No. 25, which deals with children's rights relating to the digital environment.<sup>8</sup> A general comment is the treaty body's interpretation of the treaty's provision, and its purpose is to clarify the duties and obligations of state parties to improve the implementation of the treaty provisions.<sup>9</sup> In March 2019, the U.N. Committee on the Rights of the Child invited interested parties to submit comments on the concept note of the general comment and then in August 2020, the Committee invited interested parties to comment on the draft of the general comment.<sup>10</sup> The Committee received 142 submissions from states, regional organizations, other U.N. agencies, and other private entities and individuals.<sup>11</sup> The most recent draft of the general comment, which will be referred to in this Note, was released on August 13, 2020. Draft General Comment No. 25 highlighted some of the new threats that children face online.<sup>12</sup>

The United States is failing to meet its obligation under the Optional Protocol with the current federal framework.<sup>13</sup> Instead, Congress should consider a multifaceted approach that actively engages a variety of actors, including children, parents, governments, and private businesses to combat the problem.<sup>14</sup>

Part I of this Note will examine the issue of technology regarding child exploitation through cyberenticement, solicitation, and online grooming, as well as the U.S. legal framework for combating the issue. Part II will

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<sup>6</sup> THE DEPARTMENT OF JUSTICE, *Citizen's Guide to U.S. Federal Law on Child Sex Trafficking* (updated May 28, 2020), <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-sex-trafficking>.

<sup>7</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1, at ix.

<sup>8</sup> Comm. On the Rights of the Child, Children's rights in relation to the digital environment, Draft General Comment No. 25 (2021), CRC/C/GC (August 13, 2020).

<sup>9</sup> DAG HAMMARSKJÖLD LIBRARY, *What are General Comments of the Human Rights Treaty Bodies?* (January 6, 2020).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See generally* Children's rights in relation to the digital environment, Draft General Comment No. 25 (202x), CRC/C/GC/25 (2 March 2021).

<sup>13</sup> 18 U.S.C. § 1591- Sex trafficking of children or by force, fraud, or coercion.

18 U.S.C. § 2421- Transportation generally.

18 U.S.C. § 2422- Coercion and enticement.

18 U.S.C. § 2423- Transportation of a child.

18 U.S.C. § 2425- Use of interstate facilities to transmit information about a child.

<sup>14</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at ix.

explore the Draft General Comment No. 25, as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography and the U.S ratification of the treaty. Part III will discuss the pitfalls of the approach and what can be done to meet U.S. obligations under the treaty to better protect children from sexual exploitation. The Note will conclude that while the U.S. has made significant progress in combating child exploitation, the federal government can take more steps to fulfill its obligations under the treaty.

## II. PART I: THE PROBLEM OF CHILD EXPLOITATION IN THE DIGITAL WORLD

This Note will first discuss child exploitation generally before examining the scope of the issue in the digital world and how offenders, victims, and law enforcement are affected by it.

### A. *Child Exploitation Generally*

Child sexual exploitation is not a new practice; however, it is one that States have only recently started to address at the policymaking level beginning in the twentieth century.<sup>15</sup>

Child abuse focuses on the treatment of the victim while exploitation focuses on the benefit received by the offender.<sup>16</sup> Exploitation is defined as “a situation or context in which an individual takes unfair advantage of someone else for his own ends.”<sup>17</sup> An individual guilty of sexually exploiting children is one who uses the child for their own sexual benefit, and they may do so indirectly, without ever touching the child.<sup>18</sup>

Child exploitation is unsurprisingly an extremely secretive phenomenon, which is in part why the behavior went unregulated and unpunished at an international level for so long.<sup>19</sup> International law focuses primarily on commercial sexual exploitation which is a shockingly lucrative international industry and a massive financial incentive exists for those who prey on the most vulnerable in society.<sup>20</sup> For example, a single child pornography website can make as much as \$1.4 million per month.<sup>21</sup> However, a commercial element is not required for exploitation to exist.<sup>22</sup>

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<sup>15</sup> TREVOR BUCK, INTERNATIONAL CHILD LAW 353 (3d ed. 2014).

<sup>16</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at ix.

<sup>17</sup> Buck, *supra* note 15.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* (citing Ethel Quayle & Max Taylor, *Model of Problematic Internet Use in People with a Sexual Interest in Children*, 6 CYBERPSYCHOLOGY & BEHAVIOR 93 (2003)).

<sup>22</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at ix.

Offenders often exploit children for reasons like personal pleasure, a desire to have domination or control, and other reasons apart from financial gain.<sup>23</sup> Each motivation is not mutually exclusive, and the purposes of exploitation often coincide with one another.<sup>24</sup> While there are many types of online sexual exploitation, this Note will focus on the issue of cyberenticement, solicitation, and online grooming.

*B. The Issue of Cyberenticement, Solicitation, and Online Grooming*

Pursuant to the Convention on the Rights of the Child, a child is any human being under the age of eighteen, unless under the law applicable to the child, majority status is obtained earlier.<sup>25</sup> Child exploitation and abuse are broad categories, encompassing activities including but not limited to child trafficking, prostitution, and pornography.<sup>26</sup> This Note focuses on cyberenticement, solicitation, and online grooming, which are terms used collectively or interchangeably to describe communications made by adults to sexually abuse or exploit a child.<sup>27</sup>

Cyberenticement usually involves offenders who use the internet to contact and communicate with a child with the goal of sexually abusing or exploiting them.<sup>28</sup> Solicitation refers to the adult's actual sexual request, whether that request is for sexual activities, conversation, or some other form of sexual communication or information such as sexting or sending sexually explicit messages, explicit photographs, or sexual videos.<sup>29</sup> The process of grooming, or actions taken by the offender to build an emotional connection with the child, usually occurs before solicitation.<sup>30</sup> The offender's objective here is to make the child more compliant while also gaining the child's trust and confidence to prevent disclosure.<sup>31</sup> The amount of time it takes to groom a child varies and is largely dependent upon the relationship between the offender and child.<sup>32</sup>

The advent of self-generated content like sexting is a technological development that heavily implicates child exploitation.<sup>33</sup> Sexting is "the 'exchange of sexual messages or images' that involves 'the creating, sharing and forwarding of sexually suggestive nude or nearly nude images' through

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> G.A. Res. 44/25, art. 1 (Nov. 20, 1989).

<sup>26</sup> TREVOR BUCK, INTERNATIONAL CHILD LAW, 355 (3<sup>rd</sup> ed. 2014).

<sup>27</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 11.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 22.

mobile phones and/or the internet.”<sup>34</sup> Approximately 15% to 40% of young people participate in sexting.<sup>35</sup> The problem is that children do not realize that once the photo or message is sent, they have essentially lost any control over that content.<sup>36</sup>

Research indicates that up to 88% of sexually explicit online content appeared somewhere else on the Internet without the original producer’s permission.<sup>37</sup> Cyberenticers usually hope to solicit sexual materials, such as photos or videos, from the child.<sup>38</sup> To understand the complexity of the issue, it is important to note why children are often singled out by offenders and therefore in need of greater protections.

### C. *Children as Unique Victims*

Children are uniquely vulnerable and are therefore singled out and protected by a higher legal standard than adults in international law.<sup>39</sup> In most cases, they do not have the same freedom of choice as their adult counterparts and there is an inherent unfair power dynamic between the adult perpetrator and the child.<sup>40</sup> Further, the consequences of sexual exploitation affect the child’s life even through adulthood.<sup>41</sup> Children are confronted with the threats of violence, pregnancy, and sexually transmitted diseases.<sup>42</sup>

Even when the exploitation is indirect (e.g. a nude a photograph where the child is not necessarily physically harmed) the exploitation can create psychological trauma and instill fear that the child’s family, friends, and acquaintances will think that the child was willingly involved.<sup>43</sup> As a result of abuse or exploitation, the child can suffer from depression and may require specialized help for issues like substance abuse, mental health problems, and sexual trauma.<sup>44</sup> Additionally, because it is common for these children to come from dysfunctional families, they might be completely emotionally and economically dependent, on their abusers.<sup>45</sup> While children are at unique risk of online sexual abuse, there are particular groups of children who are even more vulnerable than others.

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See BUCK, *supra* note 15, at 354.

<sup>40</sup> *Id.* at 354-355.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Child Sex Trafficking*, U.S. DEP’T OF JUST. (May 28, 2020), <https://www.justice.gov/criminal-ceos/child-sex-trafficking>.

<sup>45</sup> *Id.*

*D. Typical Profile of Victims*

The 2015 Report conducted by the U.N. Office on Drugs and Crime found that the majority of child abuse and exploitation victims are girls.<sup>46</sup> The National Center for Victims of Crime noted that the prevalence of child abuse is difficult to determine because abuse is often underreported.<sup>47</sup> A study conducted by the Crimes Against Children Research center, showed that one in five girls and one in twenty boys are victims of child sexual abuse.<sup>48</sup> Given the tendency for underreporting and the taboo surrounding sexual exploitation, especially regarding boys, the true number is likely even higher. In regards to cyberenticement and online solicitation, studies indicate that around three quarters of all solicitations are sent to girls and females aged fourteen to seventeen years old are at a higher risk of solicitation.<sup>49</sup> Other factors that increase the risk of victimization include prior abuse, familial dysfunction, poverty, and social isolation.<sup>50</sup>

Adolescents are the most at-risk group for cyberenticement.<sup>51</sup> Those who are not careful on the internet or are unsafe online are most susceptible to exploitation through cyberenticement, solicitation, or online grooming and adolescents are more likely than young children to engage with strangers online.<sup>52</sup> Further, adolescents are generally less supervised by their parents than young children.<sup>53</sup> It is not uncommon for adolescents to post suggestive photographs publicly, and many young people are unable to recognize potentially dangerous situations.<sup>54</sup> Offenders attack the most defenseless members of an already highly vulnerable population.<sup>55</sup>

Social isolation plays a large role in a child's propensity to partake in risky online behavior.<sup>56</sup> Many children turn to websites and social media for friends when they lack interpersonal relationships.<sup>57</sup> Some tend to amass a large number of online "friends" who are essentially strangers, and then share private information with these individuals.<sup>58</sup> They might have lower self-esteem and be more willing than the average child to have contact with the

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<sup>46</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 23.

<sup>47</sup> *Child Sexual Abuse Statistics*, NATIONAL CENTER FOR VICTIMS OF CRIME (last visited February 9, 2022), <https://victimsofcrime.org/child-sexual-abuse-statistics/>.

<sup>48</sup> *Id.*

<sup>49</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 23.

<sup>50</sup> *Id.* at 23-27.

<sup>51</sup> *Id.* at 26.

<sup>52</sup> *Id.* at 26.

<sup>53</sup> *See generally id.* at 2.

<sup>54</sup> *Id.* at 2.

<sup>55</sup> *Id.* at x.

<sup>56</sup> *Id.* at 27.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

offender.<sup>59</sup> While having discussed the typical profile of the child victim, this Note will now move to discuss the profile of offenders.

*E. Typical Profile of Offenders*

Although both men and women engage in child exploitation, men are the most common offenders.<sup>60</sup> The consumers of child sexual abuse material are usually men between ages twenty-five and forty years old.<sup>61</sup> Almost all cyberenticement solicitations are made by men.<sup>62</sup> These individuals usually have high levels of education, this might be due to their comfort in using more advanced technology.<sup>63</sup> In general, abusers are more likely former victims of abuse than the general public.<sup>64</sup> The Institut National de Santé Publique du Québec cites a study conducted in 2008 which indicated that males who were abused as children and who later became sexual offenders as adults had more problems in their childhood and adulthood than members of the general public.<sup>65</sup>

Similar to how socially isolated victims are more likely to fall prey to exploitation, the offenders also have a higher propensity for socially isolation and, thus, are more likely to fill their real life emotional deficit with online sexual activity.<sup>66</sup> A European Online Grooming Project report for the Safer Internet Programme classified online sexual offenders in three categories.<sup>67</sup> First, “intimacy seekers” are those who behave like their relationships with children are romantic and consensual.<sup>68</sup> These offenders spend their time trying to meet up with the children in-person.<sup>69</sup> The second group, labeled “adaptable offenders” act like their victims are sexually mature and therefore able to consent, regardless of their age.<sup>70</sup> Last, “hypersexual

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at xi.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 23.

<sup>63</sup> *Id.* at xi. For a more in-depth discussion of the education levels of offenders, see Finkelhor, D., et al., *Online Victimization: What Youth Tell Us*, in *MEDICAL, LEGAL, AND SOCIAL SCIENCE ASPECTS OF CHILD SEXUAL EXPLOITATION: A COMPREHENSIVE REVIEW OF PORNOGRAPHY, PROSTITUTION, AND INTERNET CRIMES* 437-467 (S.W. Cooper, et al., eds., 2005).

<sup>64</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at xi.

<sup>65</sup> Karine Baril, *Sexual Abuse in the Childhood of Perpetrators*, INSTITUT NATIONAL DE SANTÉ PUBLIQUE DU QUÉBEC, <https://www.inspq.qc.ca/en/sexual-assault/factsheets/sexual-abuse-childhood-perpetrators#ref> (last visited February 10, 2022).

<sup>66</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 28.

<sup>67</sup> *Id.* (citing *Final Report*, EUROPEAN ONLINE GROOMING PROJECT, at 13-14 (March 2012)).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

offenders” are distinguished by owning large collections of sexually explicit materials.<sup>71</sup>

The goal of many cyberenticers is to fulfill a fantasy about engaging in sexual activities with a child.<sup>72</sup> They usually create elaborate profiles with the hope of luring a child in, then quickly solicit self-created sexually explicit material such as photographs or videos.<sup>73</sup> These offenders are also commonly part of groups of similarly-involved individuals to share strategies for making contact and social affirmation.<sup>74</sup> Cyberenticing includes activities such as trying to get a child to meet in person, calling the child on the phone, going to the child’s home, giving the child gifts or money, sending mail to the child, or buying a travel ticket for the child.<sup>75</sup> Now that this Note has discussed the profiles of children and offenders, it will now discuss how technology affects them.

#### *F. Implications of Technology for Children*

Technological innovation and increased access to the internet have further complicated the problem of child sexual exploitation.<sup>76</sup> Children especially possess increased access to information and communication technologies; for many children, constant connection to the digital world is part of the fabric of their existence.<sup>77</sup> Children are faced with the constant threat of coming into contact with someone online and sharing information or files without realizing the implications of doing so.<sup>78</sup> It can be difficult for parents to monitor what their children are doing online because, compared to the child, parents are often largely inexperienced with the technology.<sup>79</sup>

Online websites and social media also allow offenders to create fake identities to lure in victims into a relationship.<sup>80</sup> When offenders create fake social media profiles, a child might believe that they have a relationship with a totally different person—someone their own age who looks completely different.<sup>81</sup> These fake profiles are convincing to children and offenders create elaborate fake profiles with photographs and a believable backstory. The offender then starts the grooming process using the fake profile and gains the child’s trust.<sup>82</sup> Once the child is attached, the offender can reveal his true

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<sup>71</sup> *Id.* at 28.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 28, 33.

<sup>75</sup> *Id.* at 28.

<sup>76</sup> *Id.* at ix.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

<sup>80</sup> *Id.* at 16.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

identity and retain the loyalty, love, and trust of the victim.<sup>83</sup> Grooming can also prevent disclosures, which is why so many cases go unreported.<sup>84</sup> The use of technology also makes the harm to victims more imminent and omnipresent.<sup>85</sup> Because of the immediacy of the contact, offenders can quickly target and form relationships with children.<sup>86</sup> Offenders, not facing the same threats of exposure, may solicit sexual activities or material after only a few interactions.<sup>87</sup> Once the offender has material such as a photograph, the offender can blackmail the child by threatening to make the photo public or share it with the victim's parents.<sup>88</sup> The offender can then use the photo as a bargaining chip to receive more sexual content or in-person meetings, and a cycle begins where the victim becomes increasingly dependent on the offender and cannot escape the relationship for fear of exposure and negative social ramifications.<sup>89</sup>

### *G. Implications of Technology for Offenders*

Technology facilitates criminal behavior on behalf of those looking to exploit children perpetrators have easy and virtually instantaneous access to broad pool of potential victims.<sup>90</sup> The internet and cell phones provide a global marketing channel for child exploitation.<sup>91</sup> Cell phones, the internet, and social media encourage the objectification of young girls in particular, and sexually promiscuous images are constantly created, shared, and collected using technology such as online file sharing networks.<sup>92</sup> Individuals can use social media or other websites to initiate, schedule, or even purchase sexual interactions with a child.<sup>93</sup> Having greater access to children through online forums enables offenders to quickly target victims who have a higher probability of responding.<sup>94</sup> For example, an offender could reach out to fifty children of varying ages and easily begin communications with all fifty to start the grooming process. As time goes by, some victims will continue to respond while some will either ignore the offender or lose interest.<sup>95</sup> At that point, the offender is able to allocate more of his energy and time to the victims who

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<sup>83</sup> *Id.*

<sup>84</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

<sup>85</sup> *Id.* at 20.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at ix.

<sup>91</sup> THE DEPARTMENT OF JUSTICE, *Child Sex Trafficking* (May 28, 2020), <https://www.justice.gov/criminal-ceos/child-sex-trafficking>.

<sup>92</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 24.

<sup>93</sup> *Child Sex Trafficking*, *supra* note 44.

<sup>94</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 15.

<sup>95</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

have provided the most interest.<sup>96</sup> Technology facilitates these interactions, as most offenders would not have the time or access to such a vast number of children offline.<sup>97</sup>

Social media platforms also give perpetrators access to personal biographical information of children they would not otherwise have access to.<sup>98</sup> This information could include photographs of the child, where the child lives, or the child's interests.<sup>99</sup> Features enabling children to post their locations also gives the offender continuous and instantaneous information about the child's whereabouts.<sup>100</sup>

Social media sites may enforce privacy rules about who can access an individual's profile, but those rules are constantly changing so it is difficult for children and their parents to truly know who has access to their online information.<sup>101</sup> Many children have a false sense of security that only their friends will see their posts and a culture of over-sharing puts children at unique risk. Offenders can use information obtained through social media to target high-probability victims.

Technology does not only facilitate communication with victims; it also facilitates communication with other similarly situated criminals.<sup>102</sup> Although this risk of victim-offender communication is more prevalent in the child pornography context, it is also possible that a perpetrator could solicit content from a child and then share it with others on the internet. A study done by the U.N. Office on Drugs and Crime about the effects of technology on child abuse and exploitation noted that most child abuse material is exchanged via "peer-to-peer" platforms which enable large file sharing or on the "dark web" between anonymous users.<sup>103</sup> Peer-to-peer platforms are domains online where individuals share large files without the need for a third party centralized server.<sup>104</sup> To avoid getting caught, criminals use the explicit materials as a currency instead of paying with a credit card or in some other manner that would reveal their identity.<sup>105</sup> Online anonymity makes detection difficult providing an additional challenge for law enforcement.<sup>106</sup>

Increased technology also serves as social affirmation for offenders.<sup>107</sup> Offenders are able to go online and join groups with other

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 16.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

<sup>102</sup> *Id.* at ix.

<sup>103</sup> *Id.* at 18.

<sup>104</sup> *Id.* at 16.

<sup>105</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1 at 18.

<sup>106</sup> *Id.* at 18-19.

<sup>107</sup> *Id.* at 20-21.

individuals who are participating in the same criminal behavior.<sup>108</sup> Because of the physical distance that is between the perpetrator and the victim, the perpetrator is more removed from the situation and more easily able to convince himself it is morally and socially acceptable behavior.<sup>109</sup> Using online forums and groups, offenders are also able to share techniques to more readily gain access to victims while avoiding capture.<sup>110</sup> Before the rise of technology, offenders would not talk publicly about their relationships with children for fear of being socially ostracized.<sup>111</sup> Now, with digital communities and online anonymity, sexual offenders can feel embraced and welcomed instead of isolated.<sup>112</sup> While changes in technology affect children and offenders, they also affect law enforcement.

#### *H. Implications for Law Enforcement*

According to the study conducted by the U.N. Office on Drugs and Crime, law enforcement faced with strict budgetary concerns generally does not have the amount of resources necessary to navigate and investigate the digital world, leaving the arena practically unregulated.<sup>113</sup> In the United States, the law enforcement agency responsible for policing the digital world is the Federal Bureau of Investigation, working in tandem with state and local police departments.<sup>114</sup> In the United States, investigations of these crimes usually require a multi-jurisdictional response between agencies in not only different geographical areas but also in different levels of government.<sup>115</sup> Federal and local law enforcement groups must cooperate to protect victims and prosecute offenders.<sup>116</sup> Further, many victims, especially those who have been subject to grooming and have an emotional relationship with their offender, do not want these individuals to be criminally punished. Such is common in situations where a girl believes that her abuser or groomer is her boyfriend. The online context is similar to the sex-trafficking context.<sup>117</sup> Because a victim may only know the pseudonym of her trafficker, it is highly possible that a child may not even know what her offender actually looks like, or what the offender's real name is.<sup>118</sup> These problems are exacerbated by the

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<sup>108</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 21.

<sup>111</sup> *Id.* at 20.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at ix.

<sup>114</sup> THE DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS, *Internet Crimes Against Children Task Force Program* (last visited January 14, 2021), <https://ojjdp.ojp.gov/programs/internet-crimes-against-children-task-force-program>.

<sup>115</sup> *Child Sex Trafficking*, *supra* note 44.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

high incentives to participate in child exploitation, whether for personal gratification or financial gain, combined with a low risk of being caught and prosecuted. The United States has several statutes under which the Department of Justice can prosecute online child sexual offenders, and the U.S. response is set forth below.

### I. *The US Federal Law Response*

In the United States, many child sexual abuse cases are typically dealt with at the state level. However, when the internet is involved and the crime takes place in multiple states, the federal government has jurisdiction.<sup>119</sup> At the state level, individual states have several statutes that serve to combat cyberenticement by punishing any offender who uses a computer or other similar technological device to contact a child whom the offender knows or believes to be a child and to solicit, encourage, entice, or lure the or her for the purposes of engaging in any sexual activity.<sup>120</sup>

Given the multi-jurisdictional nature of the internet in that internet crimes are rarely confined to one state, the focus of this Note is on the U. S. federal response to combating child cyberenticement, solicitation, and grooming. In the United States, the Criminal Division of the Department of Justice has a number of specialized units that focus on fighting particular types of crimes.<sup>121</sup> One of those units is the Child Exploitation and Obscenity Section, which was founded in 1987 with a mission to protect children from exploitation by enforcing federal criminal statutes.<sup>122</sup> That mission remains the same since the adoption of the Optional Protocol, as the ultimate goal of the Optional Protocol is similarly to protect children's rights. The section's attorneys work with computer forensic specialists and ninety-four U.S. Attorney offices to prosecute defendants charged with violations of a federal child exploitation law.<sup>123</sup> The Child Exploitation Section also works with law enforcement and other members of the government on training, policy development, legislation, and agency regulations with respect to child exploitation.<sup>124</sup>

The United States Code features federal child exploitation laws discussed below. The statutes were enacted at different times, and there is no

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<sup>119</sup> U.S. DEP'T OF JUST., *Child Sexual Abuse* (May 28, 2020), <https://www.justice.gov/criminal-ceos/child-sexual-abuse>.

<sup>120</sup> U.N. OFFICE ON DRUGS AND CRIME, *supra* note 1.

<sup>121</sup> See U.S. DEP'T OF JUST., *Sections/Offices*, <https://www.justice.gov/criminal/sections/offices> (last visited February 9, 2022) (listing the various specialized units of the Criminal Division).

<sup>122</sup> U.S. DEP'T OF JUST., *Child Exploitation and Obscenity Section (CEOS)*, <https://www.justice.gov/criminal-ceos> (last visited October 2, 2020).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

direct evidence that any were passed in direct response to the ratification of the Optional Protocol. The statute that is most relevant in the digital context is 18 U.S.C. § 2422, enacted in 2006, which criminalizes the coercion and enticement of a child.<sup>125</sup> Congress enacted this statute around the same time that the Optional Protocol was adopted and entered into force. Section 2422(b) provides that the United States

makes it a crime to use the U.S. Mail or certain technology, such as the internet or the telephone (whether mobile or a land line), to persuade, induce, entice, or coerce a minor to engage in prostitution or any other illegal sexual activity. For example, it is a federal crime for an adult to use the mail, a chat room, email, or text messages to persuade a child to meet him or her to engage that child in prostitution or other illegal sexual activity. Under this statute, it is not necessary to prove that either the defendant or the victim crossed state lines. The penalty for this offense is not less than ten years in prison, up to life.<sup>126</sup>

Therefore, the federal government can prosecute offenders who use technology such as the internet, email, and cellphones to lure a child in to engage in illegal sexual activity. Federal prosecutors can also punish cyberenticement crimes under 18 U.S.C. § 2425, enacted in 1992, which criminalizes the use of interstate facilities to transmit information about a child. This statute provides that the United States:

makes it illegal for any person to use the mail, telephones, or the Internet, to knowingly transmit the name, address, telephone number, social security number, or email address of a child under the age of sixteen with intent to entice, encourage, offer, or solicit any person to engage in criminal sexual activity. This offense is punishable by up to five years in prison.<sup>127</sup>

Under this statute, the federal government can prosecute an offender for transmitting information about a child under the age of sixteen using technology like the internet if the intent behind that transmission is to encourage the child to participate in illegal sexual activity.

The government can also prosecute child exploitation crimes involving technology under two other federal statutes, which do not directly

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<sup>125</sup> 18 U.S.C. § 2422 (2006).

<sup>126</sup> *Citizen's Guide*, *supra* note 6.

<sup>127</sup> *Id.*

deal with technology or the U.S. mail. The first is 18 U.S.C. § 2421, which was enacted in 1945, and deals with transportation of people generally. The other federal statute is 18 U.S.C. § 2423 which was enacted in 2002, dealing with the transportation of children.<sup>128</sup> These statutes are invoked if an offender contacted a child online and then attempted to meet her in real life for some sort of sexual activity. To satisfy the jurisdictional component of these two federal statutes, the government must prove that the victim crossed a state line.<sup>129</sup> In the United States, the government must work through this statutory framework to prosecute individuals for the cyberenticement, solicitation, and grooming of a child.

In addition to prosecuting under these statutes, the U.S. Federal government created specialized units and funds several organizations whose goal is to combat child exploitation online. For example, the High Technology Investigative Unit of the Department of Justice works together with the Child Exploitations and Obscenity Section of the Department of Justice to initiate investigations and offer education to law enforcement agencies.<sup>130</sup> The Federal Bureau of Investigation is tasked with investigating child exploitation crimes and coordinating with local law enforcement, sharing resources and holding offenders accountable.<sup>131</sup>

The U.S. federal government also helps fund non-profits such as the National Center for Missing and Exploited Children as well as the National District Attorney's Association. These non-profits offer education about the harms children could face online to local communities, serve as a comprehensive reporting system, aid in the recovery of child victims, and offer victim and family support.<sup>132</sup>

The federal government implemented a plan to combat child exploitation online through a policy called The National Strategy for Child Exploitation, Prevention, and Interdiction.<sup>133</sup> The National Strategy is an ongoing effort that began with the PROTECT Our Children Act of 2008.<sup>134</sup> The most recent 2016 Report of the National Strategy began by discussing the work that federal agencies and prosecutors conducted to support victims, and provide grants to state and local governments as well as non-profits to educate

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<sup>128</sup> *Id.*

<sup>129</sup> *Citizen's Guide*, *supra* note 6.

<sup>130</sup> U.S. DEP'T OF JUST., *Child Exploitation and Obscenity Section Mission* (updated May 29, 2020), <https://www.justice.gov/criminal-ceos/ceos-mission>.

<sup>131</sup> FED. BUREAU OF INVESTIGATION, *Crimes Against Children/Online Predators*, <https://www.fbi.gov/investigate/violent-crime/cac> (last visited Feb. 11, 2022).

<sup>132</sup> NAT'L DIST. ATT'YS ASS'N, *CASE Campaign Against Sexual Exploitation*, <https://ndaa.org/programs/child-abuse/case/> (last visited Feb. 10, 2022); *About Us*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., [https://www.missingkids.org/footer/about\\_\(last visited Feb. 10, 2022\)](https://www.missingkids.org/footer/about_(last%20visited%20Feb.%2010,%202022)).

<sup>133</sup> THE DEP'T OF JUST., *THE NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION AND INTERDICTION* (Apr. 2016).

<sup>134</sup> *Id.* at 1.

the public about the dangers of child online exploitation in hopes of combating it.<sup>135</sup> The National Strategy provided a threat assessment addressing the scope of online child exploitation and described plans for how to combat child exploitation in investigations, prosecutions, education, victim services, and policy.<sup>136</sup> These different federal approaches will be discussed at length in the analysis section of this Note in determining what more that the United States can do to meet its obligations under the Optional Protocol.

The Optional Protocol is implemented by the federal government as long as the federal government has jurisdiction over the conduct.<sup>137</sup> If the federal government does not have jurisdiction, the state and local governments should implement the Optional Protocol.<sup>138</sup> Should the state and local governments have jurisdiction, the federal government would take measures to ensure that the Optional Protocol is fulfilled at the lower levels of government.<sup>139</sup> Other reservations to implementing the Optional Protocol discuss the adoption of children, which is not relevant to this note.<sup>140</sup>

### III. PART II: INTERNATIONAL LAW APPLICABLE TO CHILD EXPLOITATION

#### A. *The International Law Response*

Given the multi-jurisdictional nature of the crimes and the interest in protecting children, international law has addressed the problem of child exploitation and abuse.<sup>141</sup>

The principle international treaty about the rights of children is the 1989 Convention on the Rights of the Child.<sup>142</sup> The treaty was set forth by member states of the U.N. Human Rights Office of the High Commissioner, which is the main U.N. entity on human rights.<sup>143</sup> The U.N. Human Rights Office of the High Commissioner represents the world's commitment to the human rights set forth in the Universal Declaration of Human Rights, which was the first time representations from all regions of the world implemented universal

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<sup>135</sup> *Id.* at 1, 5-8.

<sup>136</sup> *Id.* at 71-79.

<sup>137</sup> S. EXEC. DOC. NO. 107-4, at 15 (2002).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*; UN, Dept. of Econ. and Social Affairs, Child Adoption: Trends and Policies, ¶ 25, U.N. Doc. ST/ESA/SER.A/292 (2009).

<sup>141</sup> U.N. OFFICE ON DRUGS AND CRIME, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 36 (2015), [https://www.unodc.org/documents/Cybercrime/Study\\_on\\_the\\_Effects.pdf](https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf).

<sup>142</sup> G.A. Res. 44/25 (Nov. 20, 1989).

<sup>143</sup> U.N. Human Rights Office of the High Commissioner, *Who We Are: An Overview*, <https://www.ohchr.org/EN/AboutUs/Pages/WhoWeAre.aspx> (last visited Feb. 10, 2022).

human rights protections.<sup>144</sup> To continue to protect human rights by enumerating children's human rights, member states adopted the Convention on the Rights of the Child.<sup>145</sup> The Committee on the Rights of the Child, a body of eighteen independent experts, was formed to monitor the implementation of the Convention on the Rights of the Child.<sup>146</sup> As discussed above, the United States has signed but not ratified the Convention on the Rights of the Child, meaning that it is not bound by international law to the treaty.<sup>147</sup>

There are three Optional Protocols to the Convention on the Rights of the Child.<sup>148</sup> An Optional Protocol is a legal instrument that relates to an existing treaty to specifically address certain issues that the main treaty did not sufficiently cover.<sup>149</sup> In 2000, two Optional Protocols to the Convention on the Rights of the Child were adopted: The Optional Protocol to the Convention on Involvement of Children in Armed Conflict and The Optional Protocol to the Convention on the Sale of Children, Child Prostitution, and Child Pornography.<sup>150</sup> Later, in 2011, the U.N. General Assembly approved a third Optional Protocol on a communications procedure to allow individual children to submit their complaints regarding violations of their rights under the Convention.<sup>151</sup> The United States is a party to both of the 2000 Optional Protocols but has not ratified the third Optional Protocol or the main Convention itself.<sup>152</sup> This means that the United States is bound by international law to the first two Optional Protocols, including that on the sale

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<sup>144</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). The Universal Declaration of Human Rights was adopted in 1948 and currently has 189 state parties. The United States is party to the treaty.

<sup>145</sup> U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *Committee on the Rights of the Child*, <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx> (last visited Feb 10, 2022).

<sup>146</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> U.N. Department of Economic and Social Affairs, *Chapter Three: Monitoring the Convention and the Optional Protocol* (last visited January 24, 2021), <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-three-monitoring-the-convention-and-the-optional-protocol-3.html>.

<sup>150</sup> G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, (May 25, 2000), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>; G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, (May 25, 2000), <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRRC.aspx>.

<sup>151</sup> U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, *Committee on the Rights of the Child*, <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx> (last visited Feb. 10, 2021).

<sup>152</sup> *Id.*

of children, child prostitution, and child pornography which is the main focus of this Note.

The Convention on the Rights of the Child, and related Optional Protocol, lays out the obligations that states assumed upon ratification, to take the appropriate measures at all levels of government to attack child exploitation.<sup>153</sup> These crimes are not generally prosecuted at the international level; rather, states have pledged to cooperate with each other and hold offenders accountable in their respective national systems.<sup>154</sup> In addition to prosecuting offenders, States also have assumed an obligation to offer a number of victim services, such as therapy for the recovery of victims.<sup>155</sup> The next section will go into a more detailed account of the Convention of the Rights of the Child and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.

*B. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography*

The United Nations promoted the convening of conferences to draft a number of treaties concerned with the protection of children.<sup>156</sup> In the Universal Declaration of Human Rights, U.N. parties agreed that everyone is entitled to the fundamental human rights listed in the Universal Declaration of Human Rights regardless of sex, language, religion, ethnicity, or other status.<sup>157</sup> Specifically, children require special care to be fully prepared to live life in society and be raised with the ideals of peace, dignity, tolerance, and freedom.<sup>158</sup> Because of physical and mental immaturity, children need special legal protections, safeguards, and care during their development.<sup>159</sup> To protect children, the U.N. General Assembly adopted and opened for signature the Convention on the Rights of the Child on November 20, 1989.<sup>160</sup> The treaty entered into force on September 2, 1990, after securing the requisite number of 194 state ratifications.<sup>161</sup> As previously discussed, the United States signed this Convention in 1995 but has not ratified it.

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<sup>153</sup> U.N. OFFICE ON DRUGS AND CRIME, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 36 (2015), [https://www.unodc.org/documents/Cybercrime/Study\\_on\\_the\\_Effects.pdf](https://www.unodc.org/documents/Cybercrime/Study_on_the_Effects.pdf).

<sup>154</sup> *Id.* at 37.

<sup>155</sup> *Id.* at 36.

<sup>156</sup> *Id.*

<sup>157</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

<sup>158</sup> Convention on the Rights of the Child, *supra* note 3, at preamble.

<sup>159</sup> *Id.* at preamble.

<sup>160</sup> *See generally* G.A. Res. A/Res/44/25 (20 November 1989).

<sup>161</sup> United Nations Treaty Collection, *Convention on the Rights of the Child*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4) (last visited Feb. 10, 2021).

The Children's Convention encompasses a variety of fundamental rights, including things such as the right to have a name and nationality and the right to freedom of religion.<sup>162</sup> Most relevant to this Note, by joining the convention, state parties obligate themselves to offer legal protections to children from maltreatment and exploitation. State parties also agree to make the child's best interests be a primary consideration in all actions concerning children, legislative or otherwise.<sup>163</sup> The Convention enumerates that state parties should take appropriate measures to prevent the sexual exploitation and abuse of children.<sup>164</sup> The United States has signed the Convention on the Rights of the Child, but is not a party to the treaty for jurisdictional reasons discussed below, meaning that the United States is not bound by the obligations enumerated in the Convention on the Rights of the Child.<sup>165</sup>

To combat child exploitation specifically, in 2000 state parties adopted the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.<sup>166</sup> State parties were concerned with phenomena such as the widespread and continuing practice of sex tourism, as well the growing availability of child pornography on the internet and other evolving technology and believed that additional protocol was necessary to further protect children.<sup>167</sup> The Optional Protocol entered into force in 2002, upon securing the requisite 176 ratifications by states.<sup>168</sup>

The Optional Protocol is open for signature by any State who is either party to or has signed the Convention on the Rights of Children.<sup>169</sup> The optional protocol currently has 121 signatories and 177 States that are party to the treaty.<sup>170</sup> The United States signed the Optional Protocol on July 5, 2000 and ratified the treaty with reservations on December 23, 2002.<sup>171</sup> The U.S. reservations, mostly dealing with issues of jurisdiction and definition, were

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<sup>162</sup> Convention on the Rights of the Child, G.A. Res. A/Res/44/25 (20 November 1989 at art. 8 and art. 2).

<sup>163</sup> *Id.* at art. 19.

<sup>164</sup> *Id.* at art. 19, art. 34.

<sup>165</sup> United Nations Treaty Collection, *Convention on the Rights of the Child*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4) (last visited Feb. 10, 2021).

<sup>166</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, *supra* note 2, at preamble.

<sup>167</sup> *Id.*

<sup>168</sup> United Nations Treaty Collection, *Convention on the Rights of the Child*, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4) (last visited Feb. 10, 2021).

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 3.

made upon ratification, accession or succession.<sup>172</sup> These reservations will be discussed in further detail below.

The first reservation involves the jurisdictional elements of Article 3 and Article 4. To be precise, the reservation states that if U.S. law does not provide jurisdiction over any of the offenses described in Article 3, including sexual exploitation of the child, and the offense is committed on board a ship or airplane registered in the United States, the jurisdictional obligation over the offense would not apply until the United States notified the U.N. Secretary-General.<sup>173</sup> Even though the United States is party to the Optional Protocol, it does not assume any obligations under the related Convention on the Rights of the Child as it is not a party to that treaty.<sup>174</sup>

Other reservations clarified some of the definitions in the Optional Protocol. The United States understands child pornography to be “the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose,” and does not adopt the definition set forth by the Optional Protocol.<sup>175</sup>

The Optional Protocol was drafted to combat the increasing trafficking and sale of children for the purpose of sexual exploitation.<sup>176</sup> The Optional Protocol states that “a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited.”<sup>177</sup>

The Optional Protocol takes a “holistic” approach to combating the issue of child exploitation meaning that states are required to address “the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunction[al] families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children.”<sup>178</sup> Given the global nature of child exploitation, especially when considering technological advancements, the international community recognizes the need for cooperation amongst states and national law enforcement agencies to reach the goals of promotion and protection of children’s rights.<sup>179</sup> While the overarching purpose of the Optional Protocol has been discussed, an understanding of some of the main enumerations in the

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 5.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, *supra* note 2, at 247.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at preamble.

<sup>179</sup> *Id.*

Protocol is key to identifying the obligations of party states. First, the Protocol sets forth a number of definitions.

*i. Optional Protocol Definitions*

Article 2 of the Optional Protocol defines “child prostitution” as “the use of a child in sexual activities for remuneration or any other form of consideration.”<sup>180</sup> Meanwhile, “child pornography” is defined 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.”<sup>181</sup> Both child prostitution and child pornography can be implicated in the realm of cyberenticement, solicitation, and online grooming. For example, an offender can solicit a child for sexual activity in exchange for money on the internet, which would fall under the definition of child prostitution. Similarly, a child could send nude photographs over the internet, which would fall under the definition of child pornography. In addition to setting out specific definition, the treaty also enumerates obligations for party states.

*ii. State Obligations*

By joining the Optional Protocol, states parties pledged to ensure that they would make criminally punishable all acts, whether committed domestically or transnationally, of offering, delivering, or accepting a child for the purposes of sexual exploitation.<sup>182</sup> Under the treaty, offering or obtaining a child for child prostitution should also be criminalized in addition to producing, offering, or possessing child pornography.<sup>183</sup> These acts should be criminalized under national law whether or not the crime was committed individually or in an organized manner.<sup>184</sup> By ratifying the Optional Protocol the United States also agreed to submit periodic reports to the Committee on the Rights of the Child.<sup>185</sup> The United States submitted a report in 2016 and the report found that given the National Strategy discussed above, the United States was meeting its obligation to the protocol in regards to online enticement by establishing “specific, aggressive goals and priorities” and the United States “provided for cooperation and collaboration at all levels of the government and private sector.”<sup>186</sup>

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<sup>180</sup> *Id.* at art. 2.

<sup>181</sup> *Id.* at art. 2.

<sup>182</sup> *Id.* at art. 3.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at art. 12.

<sup>186</sup> Comm. on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child

*iii. Jurisdiction*

Article 4 discusses jurisdiction to clarify instances when states pledged to exercise jurisdiction.<sup>187</sup> A state has jurisdiction when the crime is committed in its territory or onboard a ship or aircraft registered to that state.<sup>188</sup> A state party also has jurisdiction in prosecuting the crime when the offender is a national of that state or habitually resides there.<sup>189</sup> Any state should also exercise jurisdiction if the offender is present in its territory and that state does not choose to extradite the offender to another jurisdiction.<sup>190</sup> Ultimately, this treaty does not entail a state pledge to exercise universal jurisdiction over the crimes, though a state could do so if it wished. In addition to setting our jurisdictional principles, the Optional Protocol discusses state cooperation and victim services.

*iv. State Cooperation and Victim Services*

Under the Optional Protocol, State parties also have obliged themselves to cooperate with each other and to offer as much assistance as possible.<sup>191</sup> In the investigation and prosecution of child exploitation crimes, individual States pledged seize goods and instrumentalities used to commit the crime and proceeds derived from the acts.<sup>192</sup> States further agreed to comply with seizure requests from other State parties.<sup>193</sup>

The Optional Protocol notes that party states should offer services for victims during and after legal proceedings.<sup>194</sup> This includes ensuring that persons who work with victims are properly trained and encouraging states to protect organizations that offer protection and rehabilitation to victims.<sup>195</sup> Because of the rapidly changing technological environment, the Committee on the Rights of the Child has drafted a general comment on children's rights in the digital world.

*C. Draft General Comment No. 25*

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on the Sale of Children, Child Prostitution, and Child Pornography, CRC/C/OPSC/USA/3-4 ¶ 15 (2016).

<sup>187</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography, *supra* note 2, at art. 4.

<sup>188</sup> *Id.* at art. 4 ¶ 1.

<sup>189</sup> *Id.* at art. 4 ¶ 2(a).

<sup>190</sup> *Id.* at art. 4 ¶ 3.

<sup>191</sup> *Id.* at art. 10 ¶ 1.

<sup>192</sup> *Id.* at art. 7.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at art. 8.

<sup>195</sup> *Id.*

In response to technological advancement and its implication on children's rights, in August 2020, the Committee on the Rights of the Child drafted a General Comment about children's rights in relation to the digital environment. Designated Draft General Comment No. 25, the comment stated that, as the use of technology increases, opportunities to harm children are likely to increase as well.<sup>196</sup> The asserted purpose of the Draft General Comment is to give guidance to States on legislation and policy measures in order to ensure that States are in compliance with the Optional Protocol.

Because children use technology, just like adults, according to the Draft General Comment, states must ensure that the best interests of the child are considered when making legislation regarding the digital environment.<sup>197</sup> Further, states must act transparently when determining a child's best interests.<sup>198</sup> In addition to focusing on the child, the Draft General Comment notes that states must fund research to determine the scope of the problem.

*i. Research*

The Draft General comment states that children have a right to life, survival, and development.<sup>199</sup> The Draft General comment notes that the digital environment poses unique risks to those rights.<sup>200</sup> Some risks include the nature of the digital content which could be explicit or personal, opportunities for contact by offenders, and other virtual conduct like sharing locations and other personal information. The digital arena provides increased opportunities for sexual exploitation and abuse.<sup>201</sup> Further, the digital environment poses unique risks to a child's development because direct social relationships are crucial in molding a child's emotional and social attitude and abilities.<sup>202</sup> Replacing these social relationships with a digital device can cause issues for the child in developing socially and states are required to research the effect of these technologies while also advising parents of the risks these digital devices pose.<sup>203</sup> While it is important to keep the child's interests in mind, it is key to consider the parent's autonomy as well as to not infringe upon individual liberties.

*ii. Balance of Interests*

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<sup>196</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 3, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* ¶ 15.

<sup>203</sup> *Id.*

When drafting legislation, the Draft General Comment recommends that states should also balance the importance of parental supervision with the need to respect a child's emerging autonomy.<sup>204</sup> The Comment advises states to work with digital providers to offer services that are appropriate for children while keeping this balance in mind.<sup>205</sup> It is also the state party's duty to ensure that parents are aware of the importance of this balance to both protect the child and encourage independence and foster the child's evolving capacities.<sup>206</sup>

Protecting children's rights in the digital environment requires a multidimensional approach including legislative, administrative, and precautionary measures.<sup>207</sup> In essence, legislators and activists should consider input from both children and caregivers. States should ensure that its national laws are expanded to cover the concerns enumerated in the Optional Protocol in the digital world.<sup>208</sup> Given the rapidly changing nature of the digital environment, this could mean frequent updates to ensure national laws are in compliance with the Protocol.<sup>209</sup> Once the state has identified and balanced both the child and parent's interests, the Draft General Comment recommends the party state lay out a strategy to protect children online.

### *iii. Strategy and Action Plans*

To meet treaty obligations, states should implement action plans that offer training to a variety of relevant actors including parents and caregivers, certain professionals, and the general public.<sup>210</sup> This training should focus on developing a child's technological skills while offering measures to protect children from online sexual abuse and exploitation.<sup>211</sup> A meaningful strategy would provide support for child victims, especially those in disadvantaged and vulnerable situations. This may mean that states should publish resources in a number of minority languages.<sup>212</sup> Child safe-guarding policies should be especially present in places where children are commonly present, such as schools, cafes, youth centers, and other institutions where children reside.<sup>213</sup> Coordination between national and local levels of government is critical in coordinating effective policy, and there should be a unified body that independently evaluates whether policy is in compliance with treaty

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<sup>204</sup> *Id.* ¶ 21.

<sup>205</sup> *Id.* ¶ 21.

<sup>206</sup> *Id.* ¶¶ 20-21.

<sup>207</sup> *Id.* ¶ 22.

<sup>208</sup> *Id.* ¶ 23.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.* ¶¶ 32-33.

<sup>211</sup> *Id.* ¶ 32.

<sup>212</sup> *Id.* ¶ 25.

<sup>213</sup> *Id.* ¶ 26.

obligations.<sup>214</sup> Part of developing a strategy includes ensuring there is funding available to put that strategy into action.

*iv. Funding*

States should encourage and record research on the effect of technology on children to inform legislation.<sup>215</sup> States are obliged to allocate public funds to support policies protecting children's rights in the digital world, and should confirm that any private sector donations or contributions are properly mobilized and not undermined by third parties.<sup>216</sup>

*v. Private Parties*

The private sector, including social media companies such as Facebook, is also an important actor in protecting children's rights online.<sup>217</sup> States must ensure that businesses are monitoring their online networks to prevent internet resources from being misused in a way that could adversely affect a child's safety.<sup>218</sup> Monitoring can be achieved through industry code, ethical terms of service, and high levels of transparency and accountability in a company's online dealings.<sup>219</sup>

*vi. Remedies and Victim Services*

State parties have an obligation to seek justice and offer remedies to child victims.<sup>220</sup> Remedies could include measures such as restitution or removal of certain online unlawful conduct.<sup>221</sup> States should provide an adequate framework to offer support to victims such as therapy and social reintegration.<sup>222</sup> Many different agencies, whether non-profit or government related, should offer this support to prevent re-victimization during the judicial process.<sup>223</sup> States are obliged to train law enforcement, prosecutors, and judges in how to deal with child victims specifically, and these actors should be up-to-date on emerging technologies to be able to adequately

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<sup>214</sup> *Id.* ¶ 27.

<sup>215</sup> *Id.* ¶ 30.

<sup>216</sup> *Id.* ¶¶ 28-29.

<sup>217</sup> *Id.* ¶ 35.

<sup>218</sup> *Id.* ¶ 36.

<sup>219</sup> *Id.* ¶ 39.

<sup>220</sup> *Id.* ¶ 44.

<sup>221</sup> *Id.* ¶ 46.

<sup>222</sup> *Id.* ¶ 45.

<sup>223</sup> *Id.* ¶ 46.

understand the digital realm to more effectively punish violations of children's rights online.<sup>224</sup>

IV. PART III: THE APPROACH OF THE UNITED STATES FAILS TO SATISFY OBLIGATIONS IT UNDERTOOK BY RATIFYING THE OPTIONAL PROTOCOL

The U.S. framework for combating child exploitation in the digital age is a good start to meeting treaty obligations under the Optional Protocol, but the U.S. should take more steps to improve compliance. The U.S. could improve its response in the areas of research and victim rehabilitation, but ultimately the problem is a lack of resources, especially in rural areas.<sup>225</sup> The National Criminal Justice Reference Service notes that the economic problems confronting rural areas impact the resources available to respond to crimes and assist victims.<sup>226</sup> While the National Criminal Justice Reference Service is discussing domestic abuse victims, many of the same principles and issues apply to online sexual assault victims as well.<sup>227</sup> The National Criminal Justice Reference Service mentions that children in rural communities are as likely, and possibly more likely, to face abuse or neglect than children in cities, and as discussed previously, children who feel an emotional deficit in real life have a higher propensity to fall prey to exploitation online.<sup>228</sup> While victim services are more extensive in cities, victims in rural areas must potentially travel long distances to access victim services.<sup>229</sup>

To improve its response to online child exploitation under the Optional Protocol, the U.S. should better coordinate with local authorities. This could help ensure that families in the U.S. have the same access to the education and services necessary to protect their children from exploitation regardless of what state, city, or county they live in. For instance, one area the U.S. could improve upon is the prosecution of offenders.

A. *Prosecution of Offenders*

Pursuant to the Optional Protocol, the U.S. must ensure that the prohibition and punishment of all forms of sexual exploitation of children is fully covered under its criminal law.<sup>230</sup> General Comment No. 25 discusses

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<sup>224</sup> *Id.* ¶ 47.

<sup>225</sup> *Section 6 Rural Victims NVAA 2000 Text*, NAT'L CRIM. JUST. REFERENCE SERV., [https://www.ncjrs.gov/ovc\\_archives/academy/chap22-6.htm](https://www.ncjrs.gov/ovc_archives/academy/chap22-6.htm) (last visited Mar. 7, 2021).

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> G.A. Res, A/Res/54/263, at 8-9 (Mar. 16, 2001).

how the digital environment has created new channels for offenders to sexually exploit children.<sup>231</sup> The U.S. has criminalized this behavior under federal law. The statute codified at 18 U.S.C. § 2422 criminalizes using the internet to coerce or entice a child to engage in prostitution or other illegal sexual activity.<sup>232</sup> Under this statute, an offender could be prosecuted for grooming a child and meeting in person to engage in sexual conduct or to exchange explicit photographs or videos of the child. Additionally, 18 U.S.C. § 2425 makes it illegal for a person to use the internet to transfer the personal information about a child under the age of sixteen to entice, encourage, or offer the child to engage in criminal sexual activity.<sup>233</sup> Similarly, under this statute, an offender could be prosecuted for cyber-enticement, solicitation, or online grooming as long as the child is under sixteen and the offender made an offer to engage in sexual activity. While the law is in the books, it is unclear how successful these prosecutions are in action.

According to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), two programs have identified millions of computers involved in peer-to-peer sharing of child pornography in the United States in 2010. In 2017, the federal government investigated 69,000 cases, but only 1,000 suspected child predators were arrested. SMART notes that “[a]lthough resources for law enforcement in this area have increased, the reality is that only some cases will be fully investigated and prosecuted.”<sup>234</sup> These statistics indicate that although the law is available to prosecute under, such prosecutions are rare. The level of difficulty inherent in these types of investigations is one possible explanation for this.

### *B. Investigation*

Despite the existence of such laws, enforcement is scarce. One major hurdle to the prosecution of digital crimes is the difficulty in investigating them. General Comment No. 25 states that digital technologies add complexity to the investigations of child sexual exploitation crimes and can impede the prosecution of these offenders.<sup>235</sup> For example, the anonymity of the digital world makes identifying offenders difficult. To enforce these statutes, the Child Exploitations and Obscenity Section of the Department of

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<sup>231</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment, ¶¶ 1-4, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>232</sup> 18 U.S.C. § 2422.

<sup>233</sup> 18 U.S.C. § 2425.

<sup>234</sup> Michael Seto, *Chapter 4: Internet-Facilitated Sexual Offending*, U.S. DEP’T OF JUST., <https://smart.ojp.gov/somapi/chapter-4-internet-facilitated-sexual-offending> (last visited Mar. 7, 2022).

<sup>235</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment, ¶ 47, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

Justice works with the High Technology Investigative Unit to initiate investigations and conduct forensic analysis on computer evidence in federal child exploitation cases.<sup>236</sup> The High Technology Investigative Unit also offers education to law enforcement agencies, researches new investigative tools, and testifies as experts in federal court.<sup>237</sup>

The FBI also plays a vital role in the investigation of child exploitation crimes.<sup>238</sup> Many FBI investigations are undercover and conducted by the Child Exploitation and Human Trafficking Task Forces, which combine the resources of federal, state, and local law enforcement agencies.<sup>239</sup> The FBI also works with the Internet Crimes Against Children Task Forces funded by the Department of Justice.<sup>240</sup> The FBI supports training for federal, state, local, and foreign law enforcement agencies involved in similar types of digital investigations.<sup>241</sup>

Tips to the National Center for Missing and Exploited Children indicated that reports of online sexual exploitation have spiked during the pandemic—from 6,863 reports in the first half of 2019 to 13,268 reports through June 2020.<sup>242</sup> While the federal government is trying to improve investigative techniques, many of these online solicitations go by unnoticed and uninvestigated because law enforcement simply does not have enough resources.<sup>243</sup>

### C. Education and Awareness

Draft General Comment No. 25 discussed the importance of a state conducting research on the effects of technology on a child's rights in order to inform policy and legislation, as well as educate parents on the increased dangers associated with the internet.<sup>244</sup> Given the federal system, to meet the Optional Protocol obligations the U.S. federal government must coordinate

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<sup>236</sup>*Child Exploitation and Obscenity Section (CEOS) Mission*, U.S. DEP'T OF JUST. (May 29, 2020), <https://www.justice.gov/criminal-ceos/ceos-mission>.

<sup>237</sup> *Id.*

<sup>238</sup>*Crimes Against Children/Online Predators*, FED. BUREAU OF INVESTIGATION (last visited Mar. 7, 2022), <https://www.fbi.gov/investigate/violent-crime/cac>.

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> Dustin Racioppi, 'People don't want to talk about it,' but reports of kids being exploited online have spiked amid coronavirus pandemic, USA TODAY (Oct. 26, 2020, 12:14 PM), <https://www.usatoday.com/story/news/nation/2020/10/22/coronavirus-child-abuse-nj-online-child-exploitation-reports-increase/6004205002/>.

<sup>243</sup> *Chapter 4: Internet-Facilitated Sexual Offending*, U.S. DEP'T OF JUST., <https://smart.ojp.gov/somapi/chapter-4-internet-facilitated-sexual-offending> (last visited Mar. 7, 2022).

<sup>244</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 32, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

with local communities to ensure that local communities are conducting research and education.<sup>245</sup> One way that the U.S. satisfies these obligations is through non-profit organizations such as the National Center for Missing and Exploited Children and the National District Attorney's Association.

The National District Attorney's Association is a non-partisan and non-profit membership association that provides training and technical assistance to prosecutors across the country.<sup>246</sup> The National Center for Missing and Exploited Children is a comprehensive reporting system for issues relating to the prevention and recovery from child victimization.<sup>247</sup> The National District Attorneys Association partnered with the National Center for Missing and Exploited Children (hereinafter "The National Center") to launch the Campaign against Sexual Exploitation which enabled jurisdictions to request a toolkit of posters, statistics, and information that addresses issues like online enticement.<sup>248</sup> The individual jurisdictions can then use those resources to engage the local community and address specific child victimization problems.<sup>249</sup> This cooperation between levels of government, and non-profit advocacy organizations meets one of the main concerns of the General Comment which is that families and local communities are made aware of the problem in order to build strategy on how to protect children and confront it.

#### *D. National Strategy*

Draft General Comment No. 25 outlines that states should ensure that national policies and strategies for children's rights, as well as any action plans, should address children's rights as related to the digital environment and be regularly updated.<sup>250</sup> The U.S. has met this obligation through comprehensive policy such as The National Strategy for Child Exploitation, Prevention, and Interdiction.<sup>251</sup> This strategy was published to Congress in April 2016 by the U.S. Department of Justice.<sup>252</sup> The plan is an update from

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<sup>245</sup> Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, *supra* note 2.

<sup>246</sup> *About NDAA*, NAT'L DIST. ATT'YS ASS'N, <https://ndaa.org/about/aboutndaa/> (last visited Mar. 7, 2022).

<sup>247</sup> *About Us*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD.), <https://www.missingkids.org/footer/about> (last visited Mar. 7, 2022).

<sup>248</sup> *CASE Campaign Against Sexual Exploitation*, NAT'L DIST. ATT'YS ASS'N, <https://ndaa.org/programs/child-abuse/case/> (last visited Mar. 7, 2022).

<sup>249</sup> *Id.*

<sup>250</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 24, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>251</sup> *National Strategy for Child Exploitation Prevention and Interdiction*, U.S. DEP'T OF JUST. (Oct. 14, 2020), <https://www.justice.gov/psc/national-strategy-child-exploitation-prevention-and-interdiction>.

<sup>252</sup> *Id.*

the original 2010 National Strategy.<sup>253</sup> In addition to law enforcement agencies and prosecutors, the National Strategy mentions other agencies that play key roles in supporting victims, providing grants to state, local, and tribal governments, and educating the public about the dangers of child exploitation.<sup>254</sup> The National Strategy directly addresses many of the obligations set forth in the Optional Protocol and Draft of the General Comment No. 25.

#### *E. Coordination*

Pursuant to the General Comment, the state should identify a government body that coordinates policies and programs related to children's rights in the digital environment that works not only with different local and regional levels, but also with the private sector.<sup>255</sup> The National Center works with the Department of Justice and other federal and local law enforcement agencies, education services, the public, and individual families.<sup>256</sup>

With funding and assistance from the federal government, The National Center also works with private businesses to keep children safe online.<sup>257</sup> For example, the National Center has worked closely with Facebook in creating and participating in voluntary industry initiatives to work to prevent child victimization.<sup>258</sup> Facebook develops online tools to protect children and shares these developments with other online companies.<sup>259</sup> Similarly, the National Center works with Google to make the internet a safer place for everyone.<sup>260</sup> For example, Google created a "Family Safety Center" which offers education about family safety basics online and keeping data secure.<sup>261</sup>

Specifically, in the cyberenticement and grooming context, the National Center works with Microsoft on developing and sharing technologies like PhotoDNA, grooming detection techniques, and research to improve understanding of child sexual abuse online.<sup>262</sup> PhotoDNA is used by over 150 companies and organizations worldwide and has been used to report millions

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<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 27, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>256</sup> *National Strategy for Child Exploitation Prevention and Interdiction*, U.S. DEP'T OF JUST. (Oct. 14, 2020), <https://www.justice.gov/psc/national-strategy-child-exploitation-prevention-and-interdiction>.

<sup>257</sup> *Our Corporate Partners*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/supportus/our-corporate-partners> (last visited Mar. 7, 2022).

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

of child exploitation images.<sup>263</sup> Microsoft has also developed anti-grooming technology which applies to text-based chat conversations and evaluates conversations, assigning them a probability rating.<sup>264</sup> Depending on the rating and a standard set by individual companies implementing the technology, flagged conversations are sent to human moderators who then identify threats and report them to law enforcement and organizations such as the National Center for Missing and Exploited Children.<sup>265</sup> Like Google, Microsoft also works to educate consumers about childhood online safety.<sup>266</sup> These companies working together with the government and other non-profits exemplifies the multifaceted approach involving a variety of different actors that the Optional Protocol and General Comment mandate.

#### F. Assessments

Draft General Comment No. 25 mentions that States should be independently evaluated for effectiveness of its law and strategy for meeting the obligations outlined in the Optional Protocol.<sup>267</sup> In 2016, the U.S. surveyed over 1,000 investigators, law enforcement, prosecutors, analysts, Department of Justice grant recipients, and providers of victim services to assess the threat of child sexual exploitation.<sup>268</sup> This report and evaluation is called the National Child Exploitation Threat Assessment of 2016.<sup>269</sup> The assessment evaluated the effectiveness of the previous strategy and highlighted the potential threats that children will face in the upcoming five years.<sup>270</sup>

According to the 2016 report, in regards to child sexual abuse in the digital age, the most pressing issue was the constant evolution of threats due to new technological developments.<sup>271</sup> New methods of sex abuse, such as “sextortion,” are emerging in the online context.<sup>272</sup> Sextortion is a crime where an offender threatens to distribute private, sensitive material if the

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<sup>263</sup> Courtney Gregoire, *Microsoft shares new technique to address online grooming of children for sexual purposes*, MICROSOFT (Jan. 9, 2020), <https://blogs.microsoft.com/on-the-issues/2020/01/09/artemis-online-grooming-detection/>.

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *See Id.*

<sup>267</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children’s Rights in Relation to the Digital Environment, ¶ 27, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>268</sup> *National Strategy for Child Exploitation Prevention and Interdiction*, U.S. DEP’T OF JUST. (Oct. 14, 2020), <https://www.justice.gov/psc/national-strategy-child-exploitation-prevention-and-interdiction>.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> *Id.*

victim does not provide them with sexual images, sexual favors, or money.<sup>273</sup> Further, technology facilitates large numbers of child victims to be easily targeted, tricked, and coerced.<sup>274</sup>

These periodic assessments contribute to the U.S. meeting its obligations under the Optional Protocol. Without these evaluations, the U.S. would fail to highlight problem areas, identify threats, and create solutions to protect children from sexual exploitation online.

### G. *Victim Services*

The main obligations discussed in General Comment No. 25 are the State's obligation to establish, coordinate, monitor, and evaluate the system for referral of cases, as well as to provide support to victims after the government identifies cases.<sup>275</sup> A number of agencies, funded both by the federal government and through private donations, offer these services. Broadly speaking, the Department of Justice coordinates the Office for Victims of Crime, which enhances capacity for the U.S. to assist victims in rebuilding their lives.<sup>276</sup> The office invests millions of dollars annually in victim compensation and assistance in every state and territory.<sup>277</sup> The funding also enhances the capacity of training and technical assistance programs to support crime victims across the country.<sup>278</sup>

The National Center for Missing and Exploited Children also offers victim and family support specifically for child victims of sexual exploitation crimes.<sup>279</sup> This support includes crisis intervention, referrals to community agencies and local mental health professionals, and peer networks.<sup>280</sup> The National Center offers informational pamphlets about these resources and services in both English and Spanish, abiding by the Draft of the General Comment No. 25's recommendation of supplying this information in relevant minority languages.<sup>281</sup>

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<sup>273</sup> Fed. Bureau of Investigation, *What is Sextortion?*, YOUTUBE (July 7, 2015), <https://www.fbi.gov/video-repository/newss-what-is-sextortion/view>.

<sup>274</sup> *Id.*

<sup>275</sup> Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 45, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

<sup>276</sup> *Office for Victims of Crime*, U.S. DEP'T OF JUST. (April 18, 2020), <https://ovc.ojp.gov/about-ovc>.

<sup>277</sup> *Id.*

<sup>278</sup> *Id.*

<sup>279</sup> *Victims & Family Support*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., <https://www.missingkids.org/gethelpnow/support> (last visited Mar. 7, 2022).

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*; Comm. on the Rts. of the Child, General Comment No. 25 (2021) on Children's Rights in Relation to the Digital Environment, ¶ 25, U.N. Doc. CRC/C/GC/25 (Mar. 2, 2021).

## V. CONCLUSION

The ability to make connections with people instantaneously, combined with the ability to share loads of personal information at any given time puts children at an increased risk of online sexual exploitation. To combat this threat, the United Nations published the General Comment No. 25 to the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography.

The General Comment elaborates on obligations that states parties pledged, by ratification of the Optional Protocol, to undertake to ensure child safety online. Obligations include the state offering education and shared resources for prosecutors and investigators at all levels of government. The General Comment outlines a multifaceted approach, combining the efforts of nonprofits, private business, and civil society, to work together to offer both preventative and post-crime victim resources. While the statutory framework exists for the United States to meet its obligations under the treaty, statistics indicate this is far from reality. While the United States has a solid reporting mechanism and plan of action to combat the issue, to further comply with the treaty, more funds should be rapidly allocated to community education, investigative resources, and investigative services. Given the ever-changing nature of the issue, the framework of the law in the United States allows it to tackle coming challenges and stay in sync with the international consensus on how to combat child sexual exploitation in the digital age.