ECPAT International Submission to the
Office of the High Commissioner for Human Rights
Annual Discussion on Rights of the Child
Sexual Exploitation of Children and Information and Communication Technologies

I. INTRODUCTION

1. ECPAT International welcomes the opportunity to make a written submission to the UN Office of the High Commissioner for Human Rights on the issue of sexual exploitation of children through information and communication technologies (ICTs), in preparation for the Annual Discussion on the Rights of the Child at the 31st session of the UN Human Rights Council in March 2016.

2. ECPAT International is a global network of civil society organizations, working to eradicate sexual exploitation of children. Over the past 25 years, ECPAT has become the international watchdog on child sexual exploitation, advocating for State accountability and more robust measures to protect children. ECPAT currently has 85 network members (affiliates as well as ECPAT groups) operating in 77 countries across eight regions of the world.

3. ECPAT recognizes that information and communications technologies (ICT) are an integral and positive aspect in the lives of children, providing access to information, new forms of participation and a vast range of educational and cultural resources.   However, it is important to also recognize that wider usage of ICTs has brought with it a heightened risk to children. The use and adaptation of ICTs to facilitate the commission of crimes and other unlawful conduct, notably sexual exploitation, has exposed children to an array of risks and violence online, which have very real and tragic consequences offline.

4. To address sexual exploitation of children through the use of ICTs effectively, States need to develop a comprehensive, multi-sector and transnational response which engages an array of partners   and   institutional   actors.

II. EMERGING MODALITIES OF SEXUAL EXPLOITATION OF CHILDREN THROUGH INFORMATION AND COMMUNICATION TECHNOLOGIES

(A) Addressing the growing gaps in international law on sexual exploitation of children through information and communication technologies

5. New modalities of sexual exploitation of children through ICTs are evolving with alarming speed. Legal instruments defining and criminalizing sexual exploitation of children through ICTs have not kept pace. In some instances, key legal instruments predate important technological advances. For example, the *Optional Protocol on Sale of Children, Child Prostitution and Child Pornography* (OPSC), the leading international instrument prohibiting sexual exploitation of children does not criminalize live-streaming of child sexual abuse or online sexual grooming. In other instances, the use of limiting language has exposed gaps in the law, e.g. Article 3(c) of the OPSC, *only* criminalizes possession of child sexual abuse materials (child pornography) where there is a corresponding intent to produce, distribute, disseminate, import, export, offer or sell the content. In the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* ('Lanzarote Convention'), Article 23 criminalizes grooming only if there is an intention to 'meet a child', whereas in reality, with the advent of ICTs it is no longer necessary for a perpetrator of online grooming to physically meet the child to commit a serious sexual offence.

6. ECPAT recognizes the challenges of amending and updating international legal instruments;

however, without interventions to ensure that international instruments are properly interpreted (e.g. General Comments, or Guidelines) to take into account developments in ICTs or Internet platforms, children will continue to be exposed to sexual exploitation, while perpetrators reap the benefits of growing gaps under international law.

(B) Making the private sector accountable for preventing sexual exploitation of children through information and communication technologies

7. Private sector actors – Internet service providers, Internet search engine providers, service and content providers, app developers, messaging platforms, and mobile operators – play a key role in facilitating, enabling and propagating the sexual exploitation of children through their online platforms, systems and services. Notwithstanding this reality, weaknesses in the legal framework have allowed many private sector actors to escape liability and responsibility for the way in which their platforms or services have been misused. Recently, in October 2014, two victims of sexual exploitation, aged 15, launched a civil action against Internet classifieds website Backpage.com for promoting, supporting, contributing to and benefiting from child sexual trafficking in the United States.[1]   The plaintiffs alleged that, '[a]s a result of the determined efforts of Backpage.com, the market for online commercial sex has grown, the demand for children for sale has expanded, and the practices of Backpage.com contributed to fuelling that demand.'[2]

8. To date, there are no binding international instruments to address the responsibility or accountability of private sector actors in facilitating or enabling the sexual exploitation of children online or through ICTs.   In some instances, regional instruments have created obligations for private sector actors when content and service providers detect or are made aware of illegal content on their systems or platforms. For example, Article 14 of the *European Union Directive on Electronic Commerce[3]* requires Internet service providers (ISPs) to follow-up actively on reports of child sexual abuse materials online, removing such content where it is found, hosted or stored on their servers. In other instances, countries, such as the United States has enacted legislation, which enables private sector actors (such as Internet providers) to be held civilly or criminally responsible for their conduct. The International Telecommunication Union issued *Guidelines for Industry on Child Online Protection* in 2014,[4] which offer clear guidance to private sector actors (e.g. Internet service providers, mobile operators, content providers, online retailers, app developers, use-generated connect providers, interactive and social media providers, national and public service broadcasters, hardware manufacturers, operating system developers and app stores) on the actions which should be taken to protect children's safety when using ICTs.   The Guidelines were developed through an inter-agency process, drawing from international experts in the child protection and ICT industry. The ITU Guidelines provide a good starting point from which to develop international standards and eventually a binding international instrument to hold private actors responsible and accountable for their role in the sexual exploitation of children.

III. PREVENTION STRATEGIES TO ADDRESS SEXUAL EXPLOITATION OF CHILDREN THROUGH INFORMATION AND COMMUNICATION TECHNOLOGIES
(A) Targeting unconnected as well as connected children in Online Safety Programming

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[1] PRNewswire, 'Ropes & Gray Litigation Team Files Federal Lawsuit Against Backpage.com's Online Child Sex Trade', 16 October 2014, accessed 25 October 2015 at: http://www.prnewswire.com/news-releases/ropes--gray-litigation-team-files-federal-lawsuit-against-backpagecoms-online-child-sex-trade-279484442.html

[2] *Ibid.*

[3] European Union, *Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'),* 2000, accessed at: http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32000L0031

[4] International Telecommunication Union, *Guidelines for Industry on Child Online Protection,* 2014 edition, accessed at: http://www.itu.int/en/cop/Documents/bD_Broch_INDUSTRY_0909.pdf

9. It should be recognized that a child may be subjected to sexual exploitation through ICTs, even if he or she does not have access to ICTs or the Internet. In many cases, first contact by a perpetrator with a child victim will not be made online: it will be made offline in a local school, through a family member or within the child's community. The victimization of a child may take place in confined location away from the Internet – captured by an ICT device and then later disseminated through the Internet. Children at-risk are often in remote rural communities, shelters, on-the-street or are part of under-privileged or marginalized communities. It is the circumstances of the child, not their connectivity, which places them at-risk of sexual exploitation.

10. More than 50 per cent of children continue to have no access to the Internet.[5] Among those unconnected, more than 90 per cent live in developing countries. In Africa alone, 80 per cent of the population does not have Internet access. It is estimated that 78 per cent of those connected are based in developed countries.[6] Child online safety programmes do not reach these 'unconnected' children, often not even recognizing them as at-risk populations. Much of the online safety programming is focused in developed countries where the majority of online-children live. Any programme which seeks to educate or empower children must be designed to target both 'unconnected' children as well as 'connected' children, if it is to be optimally effective in preventing child sexual exploitation through ICTs.

(B) Promoting the use of child helplines and hotlines

11. Helplines can be an effective reporting and prevention mechanism for children at-risk and child victims of sexual exploitation. Helplines enable child victims to access support, services and information in a confidential and safe space. Helplines are also an important outreach tool for children at-risk, providing information and services. Child Helpline International Foundation (CHI) is a network of 192 child helplines in 145 countries around the world. The CHI received over 14 million contacts from children in need of care and protection last year. Often the support and services a child receives through a helpline will be the difference between a child escaping a cycle of exploitation rather than continuing to live within it.

12. Helplines are also a compelling source of information and data on forms of sexual exploitation through ICTs and other forms of violence. Through the data generated from individual calls, organizations such as CHI are able to highlight emerging trend and gaps in child protection, advocating for stronger and more robust measures to combat violence against children.

(C) Promoting adult helplines for perpetrators or adults at-risk of offending

13. Helplines can be an important resource for adults living with sexual feelings toward children or a proclivity for child sexual abuse images. The helpline and resource centres, known as 'Stop it Now!' currently operate in the United States, the Netherlands and the United Kingdom, offering a range of resources and support services to adults.[7] The services of Stop It Now are confidential, providing services through a telephone Helpline[8] and through email.

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[5] According to the International Telecommunications Union (ITU), at the end of 2014, Internet usage had only reached 40 per cent globally, leaving 60 per cent of the world's population with no access. Internet Telecommunication Union, 'The World in 2014, ICT fact and figures,' 2014. Last accessed: 10 February 2014 , <http://www.itu.int/en/ITU-D/Statistics/Documents/facts/ICTFactsFigures2014-e.pdf>
[6] *Ibid*.
[7] *Stop it Now!* Resource centres are present in the United Kingdom, the United States of America and the Netherlands. For examples of resources centres, please see, *Stop it Now UK & Ireland* accessed at: http://www.stopitnow.org.uk/concerned_about_your_behaviour.htm; *Stop it Now! Helpline*, Lucy Faithfull Foundation accessed at: http://www.lucyfaithfull.org.uk/stop_it_now_helpline.htm; *Stop it Now Scotland* accessed at: http://www.stopitnow.org.uk/scotland.htm
[8] The *Stop It Now* 'telephone Helpline offers confidential services for people seeking advice and support. This means that when you call us you do not have to give any identifying information such as address, telephone number or last name…If you email us on help@stopitnow.org.uk, your email address will not be displayed to preserve confidentiality,' accessed at: http://www.stopitnow.org.uk/concerned_about_your_behaviour.htm

14. The services provided by 'Stop It Now' should be modeled and replicated around the world. Offering confidential support and advice to an individual struggling to deal with inappropriate thoughts or behavioural tendencies towards children may well prevent that individual from going on to victimize a child through sexual exploitation.

(D) Hotlines to report sexual exploitation through ICTs

15. Internet hotlines are an equally important resource to increase reporting of child sexual abuse materials online. Through such hotlines, any Internet user – adults as well as children – is able to report child sexual abuse materials they encounter on the Internet quickly and easily, enabling such content to be removed. The process for reporting usually involves an assessment or vetting of the content, typically by specialized analysts, followed by referring the illegal or inappropriate matter to relevant authorities (e.g. law enforcement and/or Internet Service Providers). The relevant authorities will then initiate a notice and take down procedures, which can also result in the offending material being placed on a block list pending its eventual deletion at source. Through these measures, the amount and circulation of child sexual abuse material online can be limited, preventing further re-victimization of the children depicted in the images.

IV. CHALLENGES IN THE DETECTION AND INVESTIGATION OF SEXUAL EXPLOITATION THROUGH INFORMATION AND COMMUNICATION TECHNOLOGIES

(A) Building partnerships to better understand sexual exploitation through information communication technologies

16. To prevent and prohibit child sexual exploitation through ICTs effectively, States must understand the *modus operandi* of perpetrators as well as related behaviour which facilitates and enables such conduct. To achieve this end, States must build partnerships amongst relevant stakeholders such as private sector actors, practitioners working with convicted offenders, child helplines and other reporting mechanisms.

17. If law enforcement agencies are to be effective in detecting, investigating and prosecuting sexual exploitation of children through ICTs, Government ministries must be willing to work closely with private sector actors (e.g. Internet Service Providers, financial/payment services). All of the key stakeholders need to be involved and at the policy-table, sharing data and information on how offenders are adapting new technology and changing their behaviour to evade detection and investigation. Through partnerships with Internet service providers or Internet companies, Government ministries and law enforcement will be able to respond with greater agility to changing *modus operandi* (e.g. use of encryption software and anonymising services, use of cloud services, crypto-currencies and live-streaming). Equally, private sector actors working closely with law enforcement may also be able to respond more quickly, developing more effective tools to thwart perpetrators' attempts to circumvent detection and investigation of sexual exploitation through ICTs.

(B) Identifying and locating the child victims depicted in child sexual abuse materials

18. The increase in online imagery has led to another disturbing reality: even if the sexual abuse materials are seized or confiscated, the child victim appearing in the sexual abuse images may still continue to be subjected to sexual abuse or torture. The International Criminal Police Organization (INTERPOL) has images of at least 40,000 children[9] in its International Child Sexual Exploitation Database (ICSE) that cannot be identified: children who continue to be victimized. Chillingly, police recount seeing the same child in sexual abuse images over years, watching the child grow up in a cycle of sexual violence and exploitation. The numbers from

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[9] INTERPOL, *Online Child Sexual Exploitation – the size of the problem*, 2015, unpublished (on file with ECPAT International), p 2.

INTERPOL are drawn only from those countries connected to the ICSE databases. It is believed that the numbers reported by INTERPOL likely to represent only a small fraction of the total instances of children around the world currently being subjected to sexual exploitation through ICTs. Currently only 45 of the 190 INTERPOL member countries are connected to the ICSE database. All member countries of INTERPOL must be made to join and have access to the ICSE database as soon as possible.

19. States must prioritize the allocation of resources and technology to improve the capacity of law enforcement services to identify and locate children being victimized in sexual abuse materials. For example, governments should engage with private companies, such as Microsoft, encouraging them to share software developed (e.g. software to identify and block child abuse imagery) to ensure that successful software is disseminated and used as widely as possible by law enforcement agencies around the world.

V. RECOMMENDATIONS

20. Recognizing that child sexual exploitation through ICTs constitutes a gross violation of a child's human rights under international law, ECPAT International urges the Human Rights Council to develop a global strategy to protect children from sexual exploitation through ICTs which does the following:

(1) Promotes measures to ensure international legal instruments and standards are interpreted and applied in a manner that takes into account the evolving and dynamic nature of sexual exploitation of children through ICTs;

(2) Establishes international standards and/or a binding international instrument, which codifies the obligations of private sector actors in preventing and prohibiting the sexual exploitation of children;

(3) Develops outreach and education programmes that target, not only the child in their capacity as an Internet user, but also children who do not have access to ICTs or the Internet;

(4) Supports and promotes the creation of national helplines and hotline for children-at-risk and child victims of sexual exploitation through ICTs;

(5) Supports and promotes the creation of national helplines for adults claiming to have sexual feelings towards children or a proclivity for child sexual abuse materials;

(6) Supports and promotes the creation of hotlines for the general public to report online child sexual abuse materials;

(7) Encourages member countries of INTERPOL to join and gain access to the ICSE database;

(8) Develops technical tools and databases to improve capacity to identify and locate child victims of sexual exploitation through ICTs;

(9) Increases resources and technical capacity of law enforcement agencies to investigate, remove, disrupt and reduce the availability of online sexual abuse materials and other forms of sexual exploitation through ICTs; and

(10) Builds partnerships between law enforcement agencies, private sector, and other relevant stakeholders to respond more effectively to evolving modalities of sexual exploitation of children.