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LANZAROTE COMMITTEE

Committee of the Parties to the Council of Europe
Convention on the protection of children against sexual
exploitation and sexual abuse (T-ES)

**Observations on the implementation of Article 23 of the
Lanzarote Convention concerning the online solicitation of
children for sexual purposes, otherwise known as “grooming”**

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concerning the online solicitation of children for sexual purposes,
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**Article 23 of the Lanzarote Convention –
Solicitation of children for sexual purposes**

Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.

Brief introduction to Article 23 of the Lanzarote Convention and preliminary observations on grooming

Article 23 addresses the intentional use by adults of information and communications technologies, most notably interactive environments on the internet, to contact persons below the age of consent to sex with a view to persuading them to meet in real life for the purpose of engaging in unlawful sexual activity.

In the latter part of the 20th Century and in the early 21st, the growth of the internet and its large scale adoption by children and young people created what were, for practical purposes, entirely new opportunities for sexual predators to make contact with persons below the age of consent. Whereas every jurisdiction within the Council of Europe’s membership had laws which outlawed sexual acts between adults and persons below the age of consent to sex, few had specifically confronted the legal challenges presented by online grooming.

Article 23 was formulated following reports in many countries of a growing number of cases where a child had been raped or otherwise sexually molested following a real world encounter with an adult whom they had previously known only in an online setting e.g. in an internet chat room¹. Internet chat rooms still exist but from about 2005 onwards the locus for grooming shifted to a variety of social media platforms.

Typically the adult would engage in a deliberate process of preparing, or *grooming*, the child for their eventual participation in sexual acts during or at a meeting in the real world. This process might take weeks, months, even years, but equally there are a good many instances where it could be completed quite rapidly e.g. within hours or days. Classically the child is manipulated into believing they are in love with their “new online friend”. The child could form a strong attachment to the perpetrator meaning they

¹ <http://www.europeanonlinegroomingproject.com/wp-content/file-uploads/European-Online-Grooming-Project-Executive-Summary.pdf>

would be less likely to report them to a parent, teacher or the police, or to help in any way that they believe might harm the person concerned. In grooming cases the adult might lie to the child about their real age but that is by no means always the case. Moreover it is important to acknowledge that frequently there may be little or no deception involved at all. Many children go to meet the person very well aware that the purpose of the meeting is sexual and that the other person is a great deal older than they are. Nevertheless that does not alter the basic criminality of the adult's behaviour nor their responsibility for it.

During the grooming process the adult might send presents to the minor, introduce sexual topics into their online exchanges, perhaps show them sexual images, even child abuse images in an attempt to normalise the idea of engaging in sexual acts. However, an essential element of the crime, the final act which removes any doubts about the adult's intentions towards the child is provided when the adult takes concrete steps to attend a real world meeting which they had previously arranged with the child. On arrest, for example at a designated hotel or other place, perpetrators would frequently be found to have sweets, teddy bears and condoms in their possession.

Proof of the act of going to meet the child is considered to be essential because, absent such conduct, it would be open to an accused person to argue they never had any real intention of harming the child. They might try to establish that their online conversations or other exchanges were simply a fantasy on their part or, at worst, a "thought crime". However, when the online exchanges are married directly to evidence that real world steps were taken to fulfil the sexual element by making arrangements to attend a meeting, the crime is complete.

With the spread of webcams and cameras which are embedded in mobile phones, tablets, laptops and other portable devices, it has become apparent that some adults who may never attempt to arrange a real world meeting with a child might nevertheless seek to persuade the child to perform sexual acts on camera or create sexualised images for them. Strictly-speaking, because no real world meeting takes place or is intended this is not "grooming" in the sense of Article 23, although many attributes of the conduct involved are similar and indeed it is evident from the replies received to the questionnaire e.g. see Estonia's response, that this aspect has been anticipated. In several jurisdictions such behaviour, relating to the intentional acquisition of sexualised images from children is also illegal.

The Lanzarote Committee's General Overview Questionnaire

A General Overview Questionnaire was sent to the 46 member states which had at that time either signed or ratified the Lanzarote Convention - that is all Council of Europe member States except the Czech Republic. Since the questionnaire was distributed the Czech Republic has signed the Convention.

The above mentioned questionnaire sought information about the action states had taken to give effect, *inter alia*, to the substance of Article 23.

The relevant question was as follows:

Question 16: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;
- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;
- c. (...);
- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

This question concerns all criminal offences covered by the Lanzarote Convention including the one provided for by Article 23.

Summary of Responses received (see also Appendix 1) in relation to Article 23:

At the 8th meeting of the Lanzarote Committee (8-10 April 2014)², it was noted that “...several Committee members had talked of their difficulty in answering the part of question 16 of the General Overview Questionnaire on solicitation of children for sexual purposes (“grooming”) (Article 23 of the Convention), the Committee (therefore) agreed to exchange views on the transposition of this article into the law and practice of the States Parties at its next meeting (9-11 September 2014). For this purpose, it invited the States Parties to send the Secretariat (lanzarote.committee@coe.int) the text (in English or in French) of the provisions transposing Article 23 of the Convention into their legal system. It also asked the Secretariat to collate the replies to the corresponding part of question 16 and to draw up a working document including comments on these replies.”

The present document is aimed at facilitating the above mentioned exchange of views. The following observations on the replies to the question concerning Article 23 are put forward to contribute to the stocktaking exercise launched by the Lanzarote Committee with its General Overview Questionnaire.

1. Of the 46 countries to whom the questionnaire was sent 17 did not respond, therefore in total 29 did respond.
2. Of the 29 countries that did respond 22 had ratified the Convention and 7 had signed. The age of consent to sex varies between countries from 14 years old upwards. People cannot therefore be convicted of grooming these children since they legally can consent to sex.
3. Of the 29 countries which responded, in answer to question 16 a, 21 stated that their internal laws complied with Article 23. These are: Albania, Armenia, Austria, Croatia, Cyprus, Denmark, Estonia, Finland, Germany, Iceland, Italy,

² See paragraph 60 of the 8th meeting report, available at:
[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2014\)10%20Report%208th%20meeting%2017%20June_en.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2014)10%20Report%208th%20meeting%2017%20June_en.pdf)

Luxembourg, Moldova, Monaco, Montenegro, Netherlands, Serbia, Spain, Sweden, Turkey and Ukraine.

4. In answer to question 16 a, 8 countries did not indicate that they met the terms of Article 23. These are: Azerbaijan, Belgium, Bosnia & Herzegovina, Georgia, Latvia, Lithuania, Portugal and Romania.
5. In the case of Belgium and Lithuania it was stated that changes to their internal law were currently being considered which would align with Article 23.
6. In the case of Denmark it is stated that the law embraces grooming behaviour in both the online and the offline world. This is also known to be the case in other jurisdictions e.g. in the UK.
7. In answer to question 16b only one member state (Luxembourg) stated that its law materially differed from the terms of Article 23. Luxembourg replied that its legislation was going further than the requirements of Article 23 since the mere proposal to meet a child under 16 is a criminal offence.
8. In response to question 16 d, concerning the age of the child: all of the responses defined a single age for the purposes of determining who was covered by the law but it was evident that in a number of instances e.g. Austria, Bosnia & Herzegovina, Luxembourg and Iceland, harsher sentences would be given to those who offended against children at the younger end of the spectrum. See also: Albania (more severe punishment if the child is below 14), Armenia (the ages of 12 and 14 are referred to), Croatia (below 15), Estonia (14), Latvia (14), Lithuania (14), Montenegro, Portugal (14), Serbia (14)

Best Practice

When replying to question 16 of the General Overview Questionnaire with regards to the implementation of Article 23, no member state provided any examples of best practice. Moreover, having spoken to the principal author of the European online grooming project referred to above in Footnote 1, it seems that in any event these have not been widely developed. Equally, between different jurisdictions there appears to be divergent practice in terms of recording or publicising known incidences of grooming within crime statistics or other indicators thus making it impossible to form any wider sense of how prevalent a problem grooming is in Member States.

The challenges

These are principally:

1. Equipping parents and teachers to help children build their own resilience and awareness. Many children will readily be able to identify a “creep” who approaches them in an online environment and they will either ignore them or make clear they are not interested in developing any kind of relationship. The victims of grooming are to be found among those, possibly younger, more innocent or more troubled or needy children who have not yet developed such acute antennae or resilience.

Thus the first challenge is to develop age appropriate resources which parents and teachers can use to help make children aware that people with an inappropriate interest in them exist in the online world and also provide advice

and guidance on how to react should they be approached. It follows that parents and teachers also need to be helped to be able to understand the issues themselves and perhaps also be provided with guidance on how to broach the issue with their children.

A key aspect of this dimension is helping parents and teachers, as well as other professionals who work with children and families, to spot the signs of grooming³ and equipping them with the knowledge of how to respond should they recognise such behaviour.

2. Law enforcement agencies need trained police officers who know how to respond appropriately to reports of suspected grooming and, in particular, know how to talk to the online providers to obtain the necessary evidence to enable them to begin preparing for an arrest or other form of intervention.
3. Social media platforms need to make clear that grooming behaviour is forbidden on their site and provide clear information about how to report it on their site and to law enforcement.
4. Above all social media platforms need to have clear procedures about how to respond to reports of grooming and these must be explained and effectively communicated to law enforcement.
5. Some of the larger platforms used by children and young people e.g. Facebook, have produced such documents⁴, as has Twitter⁵ and Google⁶. Each of these bigger enterprises also make their staff available from time to time to take part in law enforcement training exercises although it is thought that smaller platforms are less likely to have the level of resources needed to do this on a major scale. Equally it may be difficult for law enforcement to keep up with the twists and turns of online fashion among children and young people as new platforms emerge, become hugely popular for a while then vanish.
6. Differences in the legal and process requirements imposed by different jurisdictions are often cited in Europe and elsewhere as being a potential source of difficulty or delay, in terms of reporting or responding to suspected grooming cases: most of the major providers are domiciled in the USA. However, there is no empirical evidence to support that view⁷. Every major social media platform has a mechanism which allows law enforcement to fast track cases of that type, although the position among smaller platforms again may be more varied.
7. Nonetheless whilst it is recognised as a commercial reality that each social media platform has its own “look and feel”, designed to reflect the unique character of the site, typically they also have visually different mechanisms for

³ See for example: <https://www.thinkuknow.co.uk/Global/parents/Grooming%20Factsheet.pdf>

⁴ <https://www.facebook.com/safety/groups/law/guidelines/>

⁵ <https://support.twitter.com/articles/41949-guidelines-for-law-enforcement>

⁶ <https://www.google.com/transparencyreport/userdatarequests/legalprocess/>

⁷ Although this is largely because the platforms do not routinely publish data to help prove or disprove the point

reporting grooming and other types of issues. This can mean that every child and every parent or teacher, in effect has to learn a whole set of different processes, icons and language: one for each site, if they are to be able to report what are essentially the same or similar issues. It therefore seems likely it would be beneficial for social media platforms to be encouraged to develop common approaches to reporting and dealing with grooming behaviour on their site. This matter was discussed within the framework of the EU's *CEO Coalition on a Better Internet for Kids*⁸. It found little support among the social media platform providers although there was a strong consensus around the idea of all companies developing "simple and robust reporting tools".

Some suggestions/ideas to fight grooming

Teaching children (and their parents and teachers) about "Stranger Danger" is essential in relation to the real world but it is just as important in the context of cyberspace because becoming engaged with strangers can lead children into situations where they will be groomed. The internet removes the immediacy of face to face contact but in today's interactive environments that can still lead the unsuspecting and the needy into intense and perilous situations.

In many ways this is an extremely difficult issue to broach with younger children and many adolescents because it raises complex questions about trust, manipulation and betrayal. At the same time the topic cannot be discussed as simply another aspect of "Stranger Danger". Firstly this is because the person grooming them may be known to them in the real world e.g. part of their family, school or social circle and secondly because part of the whole idea of grooming is that the child becomes convinced that the person they are in contact with is a very close, even intimate friend. If an online relationship turns into a bullying or threatening one then it might be easier for a child to recognise that they are in danger but absent that a child may never feel threatened at all and may never be willing to "tell" on someone they think they love.

A key tactic that is common in very many grooming cases is that the abuser latches on to an element of personal information about the child. They build upon this to reach out to the child and draw him or her into their web. For that reason many of the resources which have been developed to try to counter grooming have focused on privacy question. An example is the "Net Smart" or "Smart" rules, variations of which are deployed and are widely available⁹ e.g.:

Keep your children safe online

Teach your children the five key Childnet SMART rules which remind young people to be SMART online. You should go through these tips with your children.

S – SAFE Keep safe by being careful not to give out personal information – such as your name, email, phone number, home address, or school name – to people who you don't already know in the real world.

⁸ <http://ec.europa.eu/digital-agenda/en/news/better-internet-kids-ceo-coalition-1-year>

⁹ http://www.parentsprotect.co.uk/online_grooming.htm

M – MEETING Meeting someone you have only been in touch with online can be dangerous. Only do so with your parents'/carers' permissions & when they or another trusted adult can be present. Always meet in a bright public place with lots of other people round. A first meeting should never be at a hotel or at someone's home.

A – ACCEPTING Accepting e-mails, IM messages or opening files from people you don't know or trust can be dangerous – they may contain viruses or nasty messages.

R – RELIABLE Someone online may be lying about who they are, and information you find on the internet may not always be truthful or reliable.

T – TELL Your parent, carer or a trusted adult if someone or something makes you feel uncomfortable or worried.

Positives and negatives of the internet

Find out more about the benefits and risks for children and young people when using the Internet from, for example the CEOP web site, particularly the section aimed at 11-16 year olds as this is the prime age range for grooming victims.

Further Research

At various points in this document it has been noted how little hard evidence is available concerning the scale of grooming within Member States or in relation to different types of best practice which have been developed to address the issue. However, the European Union has recently awarded a research contract to look into these and related issues. The project lasts for two years and begins on 1st August, 2014. It is being led by Professor Julia Davidson who also led the work on grooming report referred to above.

It is suggested that the Lanzarote Committee Secretariat establishes contact with Professor Davidson to see if there is any way they can help with her work and in particular to ensure that Council of Europe Member States are made aware of the outcome of her research as soon as it becomes available.

Appendix 1: Member States to whom the questionnaire was distributed

Country	Ratified	Rat & Replied	Rat but No Reply	Signed & replied	Signed but No Reply
Albania	x	x			
Andorra	x		x		
Armenia				x	
Austria	x	x			
Azerbaijan				x	
Belgium	x	x			
Bosnia & Herzegovina	x	x			
Bulgaria	x		x		
Croatia	x	x			
Cyprus				x	
Denmark	x	x			
Estonia				x	
Finland	x	x			
France	x		x		
Georgia				x	
Germany		x			
Greece	x		x		
Hungary					x
Iceland	x	x			
Ireland					x
Italy	x	x			
Latvia				x	
Liechtenstein					x
Lithuania	x	x			
Luxembourg	x		x		
Malta	x		x		
Moldova	x	x			
Monaco				x	
Montenegro	x	x			
Netherlands	x	x			
Norway					x
Poland		x			x
Portugal	x	x			
Romania	x	x			
Russian Federation	x		x		
San Marino	x		x		

Serbia	x	x			
Slovak Republic					x
Slovenia	x		x		
Spain	x	x			
Sweden	x	x			
Switzerland	x		x		
Former Yugoslav Republic of Macedonia	x		x		
Turkey	x	x			
Ukraine	x	x			
UK					x
46	33	20	11	7	7