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6 June 2019

LANZAROTE COMMITTEE

Committee of the Parties to the Council of Europe
Convention on the protection of children against sexual
exploitation and sexual abuse

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OPINION

**of the Lanzarote Committee on
child sexually suggestive or explicit images and/or videos
generated, shared and received by children**

Adopted by the Lanzarote Committee on 6 June 2019

- a. *Acknowledging that children are increasingly using information and communication technologies (ICTs), in particular social media and mobile messaging applications, to communicate and to form relationships;*
- b. *Mindful that children also explore and express their sexuality through ICTs, including by generating and sharing sexually suggestive or explicit images and/or videos of themselves;*
- c. *Observing that the aim of voluntary and consensual sharing by children of their own sexually suggestive or explicit images and/or videos through ICTs is not that of distributing sexual abuse material;*
- d. *Considering that a child's understanding of the consequences of self-generating and sharing sexually suggestive or explicit images and/or videos varies according to age and maturity;*
- e. *Aware that in the digital environment child sexually suggestive or explicit images and/or videos are easily targeted and exploited by sexual offenders and have a long-lasting harmful impact on the children depicted in the images and/or videos;*
- f. *Concerned by the increasing number of child self-generated sexually suggestive and explicit images and/or videos that is putting more and more children at risk of harm and conscious of the need to raise children's awareness on alternative safer ways to express their sexuality;*
- g. *Stressing that children should be informed that "any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes" is defined as "child pornography" by Article 20§2 of the Lanzarote Convention and that therefore child self-generated sexually suggestive or explicit images and/or videos could constitute "child pornography";*
- h. *Determined to ensure that the best interests of the child be a primary consideration in all decisions concerning child self-generated sexually suggestive or explicit images and/or videos;*
- i. *Recalling that the conduct related to "child pornography" that Article 20§1 of the Lanzarote Convention requires Parties to criminalise has to be intentional and committed without right;*
- j. *Considering that, when sexually suggestive or explicit images and/or videos of children are generated by them and shared for their own private use, Parties should take into account children's fundamental right to protection of privacy to relieve them from offences related to "child pornography";*
- k. *Underlining furthermore that Article 20§3 second indent of the Lanzarote Convention allows Parties to reserve the right to decide not to consider as criminal*

conduct the production and possession of pornographic material involving children having reached the legal age for sexual activities when such material is produced and is possessed by them with their consent and solely for their own private use;

l. Recalling in addition that §116 of the Lanzarote Convention's Explanatory Report highlights that "in certain circumstances where minors commit offences (such as, for example, where they produce child pornography among themselves and for their own private use but subsequently distribute those images or make them available on the Internet), there may be more appropriate methods of dealing with them and that criminal prosecution should be a last resort";

m. Desirous to guide Parties in the implementation of Article 20 of the Lanzarote Convention with respect to child self-generated sexually suggestive or explicit images and/or videos by identifying situations which do not constitute criminal offences and those which call for criminal prosecution as a last resort;

The Lanzarote Committee holds that:

1. Sexually suggestive or explicit images and/or videos generated by children in a particularly vulnerable situation (very young children - e.g. prepubescent children - children with disabilities, children in a situation of dependence) should be considered the result of abusive/exploitative conduct; consequently, these children should be addressed to victim support and not subject to criminal prosecution;

2. Children whose self-generated sexually suggestive or explicit images and/or videos are exploited (offered or made available, distributed or transmitted to others) should be addressed to victim support and not subject to criminal prosecution;

3. The self-generation of sexually suggestive or explicit images and/or videos by children does not amount to "the production of child pornography" when it is intended solely for their own private use;

4. The possession by children of sexually suggestive or explicit images and/or videos of themselves does not amount to "the possession of child pornography" when it is intended solely for their own private use;

5. The voluntary and consensual sharing by children among each other of the sexually suggestive or explicit images and/or videos of themselves does not amount to "offering or making available, distributing or transmitting, procuring, or knowingly obtaining access to child pornography" when it is intended solely for their own private use;

6. Reception by a child without knowledge or intention of sexually suggestive or explicit images and/or videos generated by other children does not amount to "procuring or knowingly obtaining access through information communication technologies to child pornography";

7. Children should only be criminally prosecuted for conduct related to “child pornography” as a last resort and priority should be given, depending on the circumstances, to more appropriate methods of dealing with their harmful behaviour (e.g. educational measures, therapeutic assistance) when:

- a. children who initially generated the sexually suggestive or explicit images and/or videos of themselves only for their own private use subsequently decide to knowingly or intentionally offer or make available, distribute or transmit such images and/or videos to others;
- b. children who receive other children’s self-generated sexually suggestive or explicit images and/or videos without asking for them subsequently decide to keep (i.e. store, not delete) such images and/or videos;
- c. children intentionally obtain sexually suggestive or explicit images and/or videos generated by other children.