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Joint work of **ECPAT Deutschland e. V.** and **ECPAT New Zealand** (End Child Prostitution, Child Pornography and Child Trafficking for Sexual Purposes)

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Comparative Report on “Child Pornography on the Internet” in Germany and New Zealand

I. Note by the author:

This report on Child Pornography on the Internet is an informal research. It was done for internal purposes only, but I (in the name of ECPAT Germany and ECPAT New Zealand) am willing to share it with other people and organisations.

There only exists little official information on that topic, so I cannot guarantee that this research is fully complete.

II. General Information on the countries

1. Germany¹

Located in the heart of Europe, the Federal Republic of Germany (Bundesrepublik Deutschland) is one of the world's leading industrialised countries. It is a member state of the United Nations, NATO, the G8 nations and founder member of the EEC and European Union.

Germany is a constitutional federal republic, whose political system is laid out in the 1949 constitution called Grundgesetz (Basic Law). It has a parliamentary system in which the head of government, the Bundeskanzler (Chancellor), is elected by the parliament.

German Parliament is made up of the Bundestag and the Bundesrat. The supreme legislative body is the Bundestag (Federal Assembly) the Lower House of Parliament.

The Bundesrat (Federal Council), the Upper House of Parliament represents the federal state (Bundeslaender) and co-operates in law-making and administering the federation.

Germany has a total area of 342,223 sq km, and has an estimated population of 82,531,700 people.

2. New Zealand²

New Zealand is a country of two major islands and a number of smaller islands in the southwestern Pacific Ocean. It is a member of the Commonwealth Nations, APEC, OECD and the United Nations.

New Zealand is a constitutional monarchy with a parliamentary democracy and a Commonwealth Realm. Under the New Zealand Royal Titles Act 1953, Queen Elizabeth II is Queen of New Zealand and is represented as head of state by a Governor-General. Parliament

¹ Information taken out of <http://en.wikipedia.org/wiki/Germany>

² Information taken out of http://en.wikipedia.org/wiki/New_Zealand

consists of the 120-member unicameral House of Representatives. The Prime Minister of New Zealand leads the executive Cabinet. There is no written constitution. Its' legal system is based on case law.

The total land area of New Zealand is 268,680 sq km and has an estimated population of 4,089,228 people.

III. Child Pornography on the Internet in Germany

1. Information on existing legislation on child pornography on the Internet

a. Legislation on the definition of child pornography

Pornography is a presentation that puts forward sexual proceedings in a rude obtrusive way without referring to humanity whatsoever. Its general tendency aims at an exclusive and predominant lecherous interest to look at sexual actions (BGHSt³ 23, 41; 37, 55).

In German legislation child pornography is defined as pornographic publications (§ 11 III StGB)⁴, that deal with the sexual abuse of children (§ 184 b StGB). The word “publication” includes digital pictures or electronically produced presentations as well as their savings on a hard disc or other datacarriers (§ 11 III StGB).

b. Legislation on producing, offering, distributing, transmitting, procuring and possessing child pornography through or in a computer system

The elements of a crime relating to distribution of pornography and child pornography are normalised in §§ 174 – 184 f StGB.

With the introduction of a new paragraph that is dedicated to child pornography and that came into force on April 1st 2004, the legislator wants to make clear, that this form of sexual presentation is valued differently than the distribution of other pornographic publications. One of the most significant changes is the introduction of § 184 b StGB that increases the punishment in the field of child pornography, it is no longer an offence, but a crime.

It prohibits the distribution, public offering, transmitting, procuring and possessing of child pornographic publications.

In the case that someone procures child pornographic publications for himself or someone else (distribution), he can be convicted to up to five years jail (previously one year). If the distribution takes place for commercial reasons or in a small conspirative group outside the market activities a prosecution will now be possible and the offender can be convicted to up to 10 years jail.

Furthermore § 176 IV Nr. 3 StGB now prohibits influencing children with publications in order to make them fulfil sexual actions (“Grooming”). The reasoning is due to the increase of sexual offenders who contact children via Chatrooms and attempt to meet with them. The paragraph makes it possible to prosecute potential sexual abuse. The publications used to influence do not necessarily have to have a sexual meaning. § 176 V StGB prohibits to offer, to demonstrate or to promise a child for sexual abuse or to conspire with someone to such action.

c. Information on the age of consent to sexual activity vis-à-vis the age used in child pornography legislation

In Germany the age of consent to sexual activity is 14 years. The age used in Child Pornography Legislation has been changed with the reform of the German Penal Code of April 1st 2004. The Age of Protection is no longer 14 years, but includes the protection of children until the age of 18.

d. Legislation on Internet Service Providers in relation to child pornography on the Internet and other forms of sexual exploitation of children through the Internet

There exists no explicit legislation on Internet Service Providers in relation to child pornography on the Internet in the German Penal Code, nor in any other German law. To bring about the Providers liability through the general clause of omission of supervision and protection (§ 13 StGB) is very difficult. The Provider generally does not have the intention needed to find him

³ BGH = Bundesgerichtshof = Supreme Court

⁴ StGB = Strafgesetzbuch = German Penal Code

liable. Proving the contrary will fail in most cases. An approach to the Providers' responsibility and communication in the Internet exists with the laws on information and communication services (Informations- und Kommunikationsdienste Gesetz). This law makes a clear distinction between Network-, Access- and Host Service Providers, meaning that Network and Access Providers can most of the time, not be found responsible. § 8 I TDG⁵ states that the provider is responsible for his own information he is offering, but § 8 II TDG specifies that he is not responsible for external illegal content and that he has no obligation of supervision nor investigation as it is known in other countries such as Sweden. The law refers primarily to the author of the content and implements for the Host Service Providers only a "notice and take down procedure". Liability is only possible, if it can be proven that he had knowledge of illegal content. The possibility he could have had the knowledge is not sufficient. If he has the knowledge he has the obligation to delete the data from his services.

Therefore the law can be seen as a minor approach to fight against child pornography, but does not allow prosecution against child pornography in a large and sufficient scale.

2. *Information on the implementation of child pornography legislation on the Internet*

a. *Relevant Jurisprudence*

Because of the recent reform in legislation there does not exist relevant German jurisprudence on child pornography in the Internet.

b. *Competent law enforcement*

In the German federal system, the fight against criminal offence on the Internet falls mainly under the duty of the Federal States (Länder)⁶. Over the last five years the criminal investigation departments of the Länder have introduced well equipped special investigation units with IT specialists. But the 16 different Länder - structures resulting from the federal system block the prosecution of global crime. A standardisation is urgently needed to obtain positive results.

The criminal investigation department of the Bund (Bundeskriminalamt)⁷ works closely with these units of the Länder. It has a co-ordination agency (Zentralstelle "Kinderpornografie") that collects all information given by the Länder and evaluates it.

Currently about 40 officials of the Criminal investigation departments of the Bund and of Bavaria are doing research on child pornography on the Internet independent of evidence or suspicion. To date they have been successful and managed to solve 4,726 cases and investigate 3,883 suspects over the last year. The fact the police is on the Internet has a deterrent effect on the offenders. Nevertheless these officials are confronted with difficulties e.g. the officials of the Bund are not allowed to investigate under false identity. This problem can and should be solved by reforming the law and allowing police officers anonymous research.

3. *Information on initiatives to prevent and combat child pornography on the Internet and other forms of sexual exploitation of children via Internet*

a. *Institutional and policy measures*

Germany has signed as one of 122 members the Stockholm action plan against commercial sexual child abuse from 1996. In 2003 Germany proposed an action plan, which takes measures in the field of child pornography. The reform on sexual criminal offences in April 2004 is a positive response to the demands of the action plan.

Part of the action plan is the campaign "Hinsehen.Handeln.Helfen" ("Look.Act.Help") which has been put forward by the Ministry Family, Seniors, Women and Youth⁸ to fight against sexual abuse of children, including abuse via the internet. With the support of known German actors the campaign toured around 18 German cities in summer 2004, giving information, answering questions and handing out material. This material and further information on different hotlines throughout the Federal States is available on their homepage.

⁵ TDG = Teledienste Gesetz = Law on Teleservices

⁶ in Bavaria: www.polizeu.bayern./ppmuc/wir/k345.htm

⁷ www.bka.de

⁸ www.bmfsfj.de

Another campaign of the ministry “Schau hin”⁹ (“Look at it”) aims to build a bridge between parents and children using the Internet and to create dialogue. It is designed to give answers to frequently asked questions by parents and helpful tips to deal with problems concerning their children using the Internet. Parents are encouraged to exchange their experiences, by organising meetings of parents for parents. “Schau hin” gives ideas for its’ organisation and offers material that can be used at these meetings. Meetings have been successfully taking place throughout the whole country. At the same time “Schau hin” supports school projects in which teachers, parents and children work together to raise awareness of the dangers in using the new media.

“Schau hin” works in partnership with the two German public TV channels ARD and ZDF, as well as ARCOR, a leading telecommunication agency, and is supported by several famous Music and TV stars.

Youth Ministries of all German Federal States founded the programme “Jugendschutz.net” (Youth Protection on the Internet and MediaServices)¹⁰ in 1997. With the initiative of the Jugendmedienschutz-Staatsvertrag (JMStV - Statecontract on Youthmedia-Safety) in April 2003 this became part of the Commission for Youtmedia-Safety, which ensures that the media is under the same legislation, control and rating in all parts of the country. Jugendschutz.net searches the Internet for abuses of youth protection and ensures that Internet providers accept these protection clauses and respect the needs of the youth.

If the ISPs are not willing to ban objectionable material from their services, Jugendschutz.net can seek help from the Commission. The Commission has the jurisdiction to tell the ISPs to omit the content or even to pay a fine.

Jugendschutz.net has published a guideline “Netz fuer Kinder – Surfen ohne Risiko” (“Net for Kids – Surfing without Risks”) for teachers and parents, which aim is to support the competent use of the Internet and to help children with their first steps on the Internet. The brochure presents websites for children, informs about dangers for children on the net and gives tips for safe surfing on the net.

Jugendschutz.net has recently been doing research on how safe Internet Chatrooms are for children and what can be done to make them safe. The result of that research has been put together in a brochure, that contains a Chat-Atlas, which names the safest chatrooms as well as a legal analysis of potential crimes that can take place in these chatrooms. The Brochure is destined to give advice to children, youth and parents.

Jugendschutz.net has a Hotline for more information, (anonymous) complaints and feedback Jugendschutz.net works in co-operation with INHOPE and other hotlines outside of Europe.

On its’ web site the German Police Force for Criminal Prevention (ProPK) tells how to deal with child pornography and what steps should be undertaken to report cases. It is recently supported by major Internet providers (Further detail is given below under 3.c.).

Additionally, the criminal police departments have reinforced their search for criminals that deal with or possess child pornography through or on a computer system, in order to identify them. All legal directives are taken into account, so that the information found can be used as legal proof in national and international cases.

b. Measures to protect children

ECPAT Germany supports the new approach of the victim’s identification. This idea is of particular interest, not only because it allows victim compensation, but also because the victim will be able to name the offender, who can then be prosecuted for sexual abuse in addition to a prosecution for child pornography. Yet, an adjustment of the child’s protection ages concerning these two criminal offences still needs to be developed, in order to allow satisfying results.

The law on youthendangering publications and media contents (Gesetz über jugendgefährdende Schriften und Medieninhalte – GjSM) specifies that certain content only can be electronically accessible, if there are technical arrangements to ensure that the offer and distribution in

⁹ www.schau-hin.info

¹⁰ www.jugendschutz.net

Germany is limited to adult users (§ 3 II GjSM). This law finds application for nation wide regulated teleservices, but the German Länder have taken measures and adopted regulations in their domestic jurisdiction.

Furthermore there exist many campaigns organised by the state, NGOs and the private sector for awareness raising about potential dangers children might get exposed to while using the internet and for introducing a certain computer ethic. Guidelines for children, parents, teachers and other groups have been developed individually in order to ensure appropriate behaviour in case of a confrontation with child pornography and offenders. Schools, parents and universities are called to install filter software to protect youth from a growing influence via the Internet.

The law on witness protection (Zeugenschutzgesetz) implements an audio-visual interrogation for witnesses under the age of sixteen to avoid a direct confrontation of the victim with the offender.

With the Law on the Reform of the rights of the victim (Opferrechtsreformgesetz) that came into force on September 1st 2004 the victim is given the possibility to engage a lawyer paid by the state.

It is now possible for the victim to ask for financial compensation in the penal process, without having to initiate a separate civil process. This is making it possible to finance therapies for the abused child and to give him new perspectives for the future.

The laws on witness protection and rights of the victims in Germany have been largely improved over the last few years and theoretically enhance the child's position. But their realisation still needs to be ensured. An audio-visual interrogation often does not take place, mainly because of financial reasons and is only optional when victims are over the age of 16, but still a minor. Additionally these laws do not include international witnesses or victims. As a result only few international cases are brought before the court.

c. Initiatives undertaken by or in collaboration with the private sector

The Voluntary Self Control Multimedia Service Providers (FSM e. V.)¹¹ has developed a "code of conduct". The members give attention to the legal application of the Internet and if possible and reasonable to ban illegal content, to report sites and to try to identify their clients. Misconduct of members might lead to sanctions and in its worst case to exclusion. The establishment of report sites and hotlines will have impact on the "notice and take down procedure". Once the providers have been informed they will have knowledge about the child pornographic data and will have to delete it.

A nationwide initiative has been brought forward in August 2004 by the German Criminal Police Force of the State and the Federal States (Bund and Länder) (PROPK)¹² and the FSM to raise awareness for the production and distribution of child pornography in the Internet. It is the first time that meaningful Internet providers such as AOL Germany,¹³ T-Online International and Arcor work hand in hand with German police force (PROPK). They have undertaken to not only denounce child pornography but to participate actively in the fight against child pornography by deleting child pornographic websites from their providers and by denouncing those responsible to the police.

The success of this initiative will only be realised if and when the police follow up on the members of the FSM, which has not happened yet.

d. Initiatives undertaken by or in collaboration with NGOs, civil society and consumers' associations

There exist some NGOs in Germany that are specialised or have set priorities on this issue. Anti-Kinderporno¹⁴, Gegen Missbrauch e. V.¹⁵, Naiin e. V.¹⁶, Dunkelziffer e. V.¹⁷ and ECPAT

¹¹ www.fsm.de

¹² www.polizei.propk.de

¹³ www.carechild.de webpage of AOL-Users against child abuse.

¹⁴ www.anti-kinderporno.de

¹⁵ www.gegen-missbrauch.de

¹⁶ www.naiin.org/de

Germany¹⁸ are the most important to name. Other NGOs are involved with this issue, but there exists a lack of knowledge concerning the matter. It seems it is mainly the State that has started initiatives to fight against Child Pornography on the Internet not NGOs. Co-operation and standardisation on potential measures to take will be very welcomed; especially initiatives on the media-competence of children, parents, teachers, youth group leaders, etc... It is also hoped for the establishment of programmes with the co-operation and financial support of German ministries.

Dunkelziffer e. V. is an organisation that apart from trying to reach parents, teachers and students has also organised seminars for the officers of the criminal police, prosecutors and judges of all federal states. Each year there are four courses with approximately 25 participants. Thus Dunkelziffer is able to set standards in adult education, that the offices due to financial constraints are not able to reach by themselves.¹⁹ So far, this unique initiative has had a lot of positive response, with several hundred state-employees having made use of the offer.

e. *Information on the co-ordination among different actors at the national and international levels*

The German Parliament (Bundestag) has outvoted the objection of the Second Chamber (Bundesrat) to the European Arrest Warrant in June 2004. The law can now come into force. It will simplify the international co-operation and procedure in criminal penal law, including the prosecution of crime concerning sexual abuse of children and child pornography. The co-operation with Europol, created on a German initiative, is good, but the harmonisation of legislation and law enforcement on a European level should and will play a very important role in the future.

IV. *Child Pornography on the Internet in New Zealand*

1. *Information on existing legislation on child pornography on the Internet*

a. *Legislation on the definition of child pornography*

In New Zealand legislation neither “pornography” nor “child pornography” is explicitly defined. Usually it is referred to the definition given by the Optional Protocol to the Convention to the Rights of the Child.

According to the Optional Protocol to the Convention on the Rights of the Child, Child Pornography is any representation, by whatever means, of a child engaged in real or simulated sexual activities or any representation of the sexual parts of a child for primarily sexual purposes. This can include photographs, negatives, slides, magazines, books, drawings, movies, videotapes and computer disks or files. Generally speaking there are two categories of pornography: soft core which is not sexually explicit but involves naked and seductive images of children and hard core which relates to images of children engaged in sexual activity.²⁰

b. *Legislation on producing, offering, distributing, transmitting, procuring and possessing child pornography through or in a computer system*

The Films, Videos, and Publications Classification Act 1993 makes it an offence to possess or trade in “objectionable” publications.

‘Publication’ means:²¹

- a. any film, sound, recording, picture, newspaper, photograph, photographic negative, photographic plate or photographic slide;
- b. any print or writing;
- c. any paper or other thing

¹⁷ www.dunkelziffer.de

¹⁸ www.ecpat.de

¹⁹ http://www.dunkelziffer.de/de/fortbildung_1.html

²⁰ See also information booklet by ECPAT International: „Questions and Answers about Commercial Sexual Exploitation of Children“, 2001.

²¹ Films, Videos, and Publication Classification Act 1993 Section 2.

- (i) that has printed or impressed upon it, or otherwise shown upon it, any word, statement, sign, or representation; or
- (ii) on which is recorded or stored any information that by the use of any computer or other electronic device, is capable of being reproduced or shown as any word, statement, sign, or representation.

For the purpose of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters such as sex, horror cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good. Furthermore, a publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support, the exploitation of children, or young persons, or both, for sexual purposes.²² The question whether or not a publication is objectionable is a matter for the expert judgement of the person authorised or required, by or pursuant to this Act, to determine it.²³

Penalties for possessing child pornography used to be a fine up to \$ 2,000 for each offence. In the case of a body corporate the person was liable to a fine up to \$ 5,000.²⁴

Penalties for trading child pornography could be sanctioned with \$ 5,000 to \$ 20,000 or up to one year's imprisonment.²⁵

It might have been up to \$ 20,000 or a maximum of one year's imprisonment for each offence if any attempt was made to trade commercially. Commercial firms may be fined even more.

Government has toughened legislation on crimes relating to child pornography. The Films, Videos and Publication Classification Amendment Bill has come into force on 22nd of February 2005, which has introduced important changes in sanctions.

The new bill extends the scope of existing distribution offences to include giving objectionable publication to another person.

Penalties for producing, trading and distribution of child pornography have been increased from one to ten years prison. Offenders possessing objectionable material such as child pornography can now be sentenced to five years jail (instead of the proposed two years). The penalties will cover all forms of distribution, for commercial gain or not.

Furthermore the bill provides for extradition of people who have committed offences in other countries, and introduces importing and exporting offences in recognition that trade in child pornography is an international problem.

c. *Information on the age of consent to sexual activity vis-à-vis the age used in child pornography legislation*²⁶

According to the Children, Young Persons and their Families Act 1989 "Child" means a boy or a girl under the age of fourteen. 'Young persons' means a boy or a girl of fourteen years but under seventeen years.

In New Zealand a person may consent voluntarily to sexual activity with another person at the age of 16. However, for the purposes of the Customs Child Pornography Project 'child pornography' is material relating to a person younger than seventeen years of age.

d. *Legislation on Internet Service Providers in relation to child pornography on the Internet and other forms of sexual exploitation of children through the Internet*

The Films, Videos, and Publication Classification Act 1993 does not give any information about how Internet Service Providers (ISPs) can be found responsible for supplying, distributing or displaying an objectionable publication, nor does any other New Zealand Law.

So far, those found liable were either author to the content or the individuals who required the pornography.

²² Films, Videos, and Publication Classification Act 1993 Section 3.

²³ Films, Videos, and Publication Classification Act 1993 Section 4.

²⁴ Films, Videos, and Publication Classification Act 1993, Section 131.

²⁵ Films, Videos, and Publication Classification Act 1993, Sections 123, 124.

²⁶ <http://www.interpol.int/Public/Children/SexualAbuse/NationalLaws/csaNewZealand.asp>

It has been considered that ISPs should be found liable for information they were providing themselves. They can also be responsible if they have positive (and not only possible) knowledge that external material they are providing is objectionable material and do not delete it.

2. *Information on the implementation of child pornography legislation on the Internet*

a. *Relevant Jurisprudence*

Because of the reform in legislation on child pornography relevant New Zealand jurisprudence does not exist yet.

b. *Competent law enforcement*

In New Zealand the fight against criminal offence on the Internet is done by New Zealand Police, New Zealand Customs Service and mainly by the Department of Internal Affairs. Responsible for enforcing the provision of the Films, Videos, and Publications Classification Act within the DIA is the Censorship Compliance Unit (CCU), which was established in 1996.

It ensures that publications considered to be objectionable are not made available to members of the public and that the film and video industry, magazine distributors, and shops adhere to the decisions of the Office of Film and Literature Classification. It also investigates complaints.

The CCU has a total of nine full time workers in Wellington, Auckland, and Christchurch. Independent of evidence or suspicion it searches for WebSites that trade with child pornography (so called peer-to-peer websites). Officers of the CCU are able to research under false identity. In the case of material being found, the computer can be seized and a specialist part of the CCU will analyse the seized computer and prepare the prosecution file.

Since its establishment the CCU has been very successful. From 1996 until 2002 the DIA investigated 420 cases of New Zealanders distributing and trading 'objectionable material' most of which was child pornography. 70 have been successfully prosecuted and many others are awaiting trial.²⁷

3. *Information on initiatives to prevent and combat child pornography on the Internet and other forms of sexual exploitation of children via Internet*

a. *Institutional and policy measures*

New Zealand has signed as one of 122 members the Stockholm action plan against commercial sexual child abuse from 1996. In 2001 the Government published its Plan of Action Against the Commercial Sexual Exploitation of Children²⁸. In order to keep in step with the development in technology the action plan also gives future directions to fight against child pornography. The Amendment Bill to the Films, Videos, and Publication Act reform is a positive response to the demands of the action plan.

Over the last few years the DIA has increased its' search for offenders dealing with or possessing child pornography through or on a computer system, in order to identify them. So that the information found can be used as legal proof in national and international cases legal directives are taken into account.

b. *Measures to protect children*

In New Zealand there are several laws that aim to protect the victim.

The Evidence Act gives guidelines on how to proceed in trial. When necessary, which will most commonly be the case in child pornography and sexual abuse, the judge can consider if the complainant's evidence can be given under the modes of Section 23 E (audio-visual hearing to avoid the victims' direct confrontation with the offender during trial).

²⁷http://www.ecpat.net/eng/Ecpat_inter/projects/monitoring/online_database/Countries.asp?arrCountryID=123&CountryProfile=facts,affiliation,humanrights&CSEC=Overview,Prostitution,Prongraphy,trafficking&Implement=Coordination_cooperation,Prevention,Protection,Recovery,ChildParticipation&Nationalplans=National_plans_of_action&orgWorkCSEC=orgWorkCSEC&DisplayBy=optDisplayCategory&GetcategoryName=Pronography

²⁸ see also New Zealand's National Plan of Action Against the Commercial Sexual Exploitation of Children, published by the Ministry of Justice 2001.

Further rights are given to the victim by the Victims' Rights Act 2002. For example identity is kept secret and therefore can not be published. In certain cases the victim can also seek police protection.

Whenever the pictures give enough evidence and when it can be proven that the pictures were taken in New Zealand, the offender will be charged for physical abuse. An identification of the victim is not necessary, but identification will usually take place in order to allow compensation. For pictures where sexual abuse can not be proven the police will try to identify the victim, so that the victim will be able to name the offender, who can be prosecuted for sexual abuse as well as to a prosecution for child pornography. It is questionable in how many cases the victims' identification will really take place and therefore there should be close follow-up on the victims' identification to ensure its realisation.

Additionally an adjustment of the child's protection age concerning these two criminal offences (Sexual abuse: 16 years (Crimes Act 1962, Section 132 following); Child Pornography: 17 years) still needs to be developed, in order to allow satisfying results.

In New Zealand the victim will receive reparation from the offender in cases of lower level crime, if the judge orders the offender to do so. New Zealand legislation refers to the no-fault compensation scheme, which means that the victim will not receive compensation from the offender, but from a government department, the "Accident Compensation Authority", as the offender usually won't have the financial ability to pay. The victim does not go through another court procedure, but compensation will be given by a decision of that authority, in order to finance therapies, etc.

c. *Initiatives undertaken by or in collaboration with the private sector*

In order to put themselves into better legal positions, most of New Zealand ISPs have signed a voluntarily Code of Conduct. By these means they oblige themselves to protect rights of access and free speech, protect minors from objectionable material, and educate Internet users on how to protect themselves and others from inappropriate or objectionable material.²⁹

Misconduct of the members might lead to sanctions and in its worst case to the revocation of the membership. There exists no applicable New Zealand Legislation in case of breach. Sanctions can be directions to take or not to take certain actions and other warnings. ISPs can be requested not to repeat the violation. The executive body will publish the reason for the revocation of membership.³⁰ The Code of Conduct is currently going through a review phase in order to raise its standard and make it more effective.

Watchdog³¹ was New Zealand's first ISP (and is one of the few in the world) that provides filtered Internet access for families, schools, and businesses. It has won a contract with the Ministry of Education to provide Managed Internet Service to State and State-Integrated schools in New Zealand at no charge along with three other ISPs. This Service (CampusNet) includes Web filtering, Email filtering and Firewall. The Ministry of Education recommends but does not oblige schools to Internet filtering, and gives them the possibility to get filtering for free if they choose one ISP out of the four. Schools have the option to manage themselves.

WATCHDOG and TELECOM provide 800 schools out of 2,700 with managed filter service.

The Ministry of Education is currently reviewing the costs for providing schools with Proxi-Providers, in order to enable schools to identify which of their student or staff has been logged on the Internet.

d. *Initiatives undertaken by or in collaboration with NGOs, civil society and consumers' associations*

New Zealand's Internet Safety Group (ISG), an independent non-profit organisation, has developed an initiative called "NetSafe" to ensure cybersafety education for all New Zealanders. It is strongly supported by its' members the Ministry of Education, Child, Youth and Family,

²⁹ <http://www.msd.govt.nz/publications/journal/19-december-2002/19-pages1-13.html>

³⁰ http://internetnz.net.nz/icop/wg_enforce.htm

³¹ www.watchdog.net.nz

New Zealand Police, Department of Internal Affairs, New Zealand Customs Service and others. They are not only given financial support, but ISG and its members work hand in hand.

The NetSafe Kit for Schools is a very detailed brochure about prevention, detection and response to cybercrimes. All Schools in New Zealand have been provided with such a Kit. It is destined to students, staff and parents and calls them to create a cybersafe surrounding for children and young adults at school, as well as at home. It gives guidelines on how to set up education projects, and provides schools with material for different age groups for this purpose. Schools are not bound to copyrights, but are given permission to reproduce the material and do changes, as long as the NetSafe logo appears on it.

The NetSafe Kit has been very successful, has several awards and has been given international recognition.

The ISG created training modules for key persons in schools such as Principals, IT-Managers, Board members, Counsellors and librarians, in order to ensure media-competence.

Following the arrest of 50 people suspected of being involved in trading and possession of child pornography in New Zealand in mid-February 2005 the ISG gave support to the accused and their families. They handed out leaflets providing information on how to seek psychological and mental care.

Another NGO dealing with the topic of child pornography on the Internet is ECPAT New Zealand. Its initiative “Cyberkidz”³² has provided schools with an Internet Resource Kit and other material on how to protect children, to be used by parents and teachers educating their children of primary school age in English and the Maori language. ECPAT has also launched an Internet hotline³³ to report objectionable material on the Internet.

4. *Information on the co-ordination among different actors at the national and international levels*

The DIA, New Zealand Police and New Zealand Customs Services work closely together.

The DIA maintains close links with related law agencies overseas and with Interpol. Information uncovered in New Zealand has been forwarded to law enforcement officers in other countries and vice versa and has helped in a number of international investigations.

V. *Comparison Germany / New Zealand*

1. *Legislation*

By introducing an amendment that raises the maximum penalty for possession of child pornography to five years jail, New Zealand Legislation has been aligned with Germany, as well as with other countries such as Australia, Canada and the United Kingdom. This standardization is a positive result and will contribute to simplify the international co-operation and prosecution of crime concerning child pornography.

There exists no New Zealand Law that makes “grooming” of children punishable as in German law.

With that law, Germany is a step ahead of New Zealand. Section 134 of the Crimes Act 1961 which charges offenders with attempted sexual intercourse does not cover the situation where an adult establishes contact with a child through meetings, phone conversations, texts and chatrooms, or arranges a meeting with only the intention of committing a sexual offence. Germany has brought its’ legislation up to date with the ever progressing technology of new media and can prosecute even before any sexual activity has taken place. It is clearly designed for prevention and not for sanction. It would be appreciated if New Zealand would pick up the initiative and introduce similar legislation in order to protect our children.

Important differences in legislation on Victims Rights, Witness Protection and Evidence do not exist. But both countries will have to make sure, that these laws are applied practically.

³² www.cyberkidz.co.nz

³³ <http://www.ecpat.org.nz/report.htm>

2. Law enforcement by the Bundeskriminalamt (BKA) and the Censorship Compliance Unit (CCU)

With the Internal Affairs CCU and the BKA, New Zealand and Germany are two of the best equipped countries in the world to deal with the issue of child pornography. In comparison with other EU-countries both Germany and New Zealand have dedicated resources and do much proactive work. The DIA has based its' CCU on the already longer existing German System, but still there exist some differences. The BKA is mainly a monitoring and coordinating agency. The BKA usually only does the intell and handles the incall from Interpol, but then relies on local police of the Laender. This is due to the federal system, which gives large responsibility as well as independence to the 16 Laender.

Being a central State, New Zealand does not have to deal with this problem. Even though the DIA co-operates with the Police and Customs Services, the work of the CCU does go much further than the work done by the BKA officers. Its' 9 full time workers not only search for web sites with objectionable contents, but have the powers to execute the search warrants themselves, do the computer forensic, charge the offender and prepare the prosecution file for the prosecutor. In Germany separate groups do this within separate stages. Furthermore, New Zealand officers can undertake covert investigation on the Internet, which the BKA is not able to do. Information gathered that way can be forwarded to the German authorities and used as evidence.

Despite these differences, the BKA and CCU deal with similar offences and are mostly equally successful.

3. ISPs, Code of Conduct and Filtersoftware

The ISPs initiative in Germany and New Zealand to sign a Code of Conduct is to ensure the legal application of the Internet. This Code of Conduct has the purpose of not only ensuring Internet safety for the ISPs' users, but also for the ISPs themselves.

The signature to the Code of Conduct is given on a voluntary basis. Even though most ISPs would have signed the Code of Conduct, it is important, that each ISP be obliged to become a member of the Code to provide safe application of the Internet globally.

In both countries a breach of the Code does not result in any legal prosecution. Therefore it would be welcomed that the Code of Conduct be brought from a voluntary basis to a legal basis, to ensure application. Law enforcement and follow-ups on the ISPs will be very difficult, but nevertheless it will encourage ISPs to be more careful about the services they provide. Yet another step to discourage the distribution of child pornography.

In Germany there exists no ISP asked by the Ministries to specifically provide schools with filter software on a national basis, such as Watchdog in New Zealand. This is due to the fact that Schools and Education are part of the Federal States individual responsibility.

Nevertheless, there exists an initiative by the Ministry of Education and Research³⁴ and the German Telecom, called "Schulen ans Netz"³⁵ (Schools at the Net). It wants to give online help to teachers working with new technology and media. It provides Internet services and platforms, some which are for female teachers or female students only. This initiative is thought to promote work with new technology at schools and give them access to the Internet. A specialised team (IT works) helps the schools to seek solutions for computer and network problems and inform them on quality and user-friendliness of filter software. The specialists from "Schulen ans Netz" are in contact with several software providers and keep up to date with the software and its' effectiveness. Depending from which country the filter software is coming, there might be a variety of content understood to be youth endangering, and therefore different content will be filtered. Filter software from the United States, which commonly is used, does often not correspond with the German set up standards on youth endangering material. Even though

³⁴ www.bmbf.de

³⁵ www.schulen-ans-netz.de/san/index.php

technology for filtering does exist, filtering will not provide absolute safety and the technology still has to be improved.³⁶

It is left to schools to decide which one they would like to install. Sometimes schools of one community share one centrally administered IT-infrastructure, and decide together which kind of filter software to use. However, German Schools often do not have enough financial support to provide appropriate filter software, so that filter software is often insufficient. Therefore it will remain the responsibility of the teachers to ensure the safety of the students. Unfortunately it has already occurred that some of the teachers were of the opinion that filtersoftware might have a negative influence on the media competence of the students. Because of that some schools did not use filter software even though it was present.

Most of the 16 Federal States have taken their own initiative. In some of the Federal States such as Thuringen³⁷, schools get financial support for computer hard and software, including filter software. If they buy filter software, schools have the ability to choose which they want to take. Thuringen has given schools the possibility to configure their Internet-Servers in a way, that they have no longer direct access to the WWW. A central server will automatically filter the content of WebPages. The filtering is based on different international and national published lists, up-dated on a daily basis. In addition to that, schools are able to report other WebPages, which in their point of view might contain objectionable material. This service is at no charge. The filtering is provided by the "Arbeitskreis Schulsoftware" (workshop on schoolsoftware) in co-operation with the Kultusministerium and the University of Jena, Germany.³⁸

Saxony has no central programme that provides schools with filter software, nor are there any legal guidelines for schools on how Internet safety has to be provided. But Saxony started a "Mediaoffensive"³⁹ in 2000. This initiative is based on a support on IT-supply, IT-maintenance, workshops for teachers, and development of media competence. Each community is responsible to supply its' schools with hard and software. The schools then establish a concept on how they want to make use of electronic media and how they intend to ensure the students' safety. The safety can be ensured by technical means, e.g. filter software and by pedagogical means, e.g. use-agreements. Each public school has an IT coordinator who moderates the process of the school internal workshops for teachers, the advising, as well as the introduction and application of youth safety.

Bavaria has no central initiative to provide schools with filter software and this will not be initiated in the near future. However, there is a project supported by three State Ministries that is testing different filter software for schools. If they should be approved, schools will still have to come up for the costs. The teacher's responsibility will be maintained.

The co-operation of New Zealand's Ministry of Education and Watchdog is a good way to ensure the same standard at all schools throughout the country. All schools can be provided with the same filter software, which corresponds with the New Zealand definition of objectionable material and which will be professionally managed. It could be used by German Ministries for a model to introduce similar co-operation.

4. State and NGOs initiatives

I very much appreciate the actions of the German Ministries and NGOs. Nevertheless I think that Germany needs to be more pro-active. Being a small country New Zealand has the possibility not only to develop programmes, but also to apply them, which with a population of more than 80'000'000 is more difficult for Germany. In my opinion it is not sufficient to start nationwide campaigns that only include 18 German cities for a short period of time. Germany as such is working on a too small scale able to reach a large amount of its' population. Overall I get the

³⁶ <http://www.secorvo.de/projekt/jugendschutz.htm>

³⁷ other Federal States in Germany might have similar programmes, not all Federal States have replied to my questions.

³⁸ <http://filter.th.schule.de/menue/hauptseite.php?uf=22>

³⁹ <http://www.sachsen-macht-schule.de/medios/>

impression that German NGOs tend to take a less active attitude to fight child pornography than their New Zealand counterparts, such as the Internet Safety Group. After a positive result from the legal point of view, NGOs in Germany should try to put more emphasis on awareness raising and lobbying work. There exist many brochures on proper behaviour on the Internet, but this is not sufficient. Special programmes for awareness raising in schools in Germany, with individual workshops for teachers and students should be created. German NGOs have to start acting. By showing they are achieving positive results they will get the respect and support of government departments and be able to spread their message. There do exist many smaller NGOs in Germany, which are less known, and won't have a great impact by working by themselves. Cooperation and nation wide initiatives are strongly needed. Looking at the work that is being done by NGOs, New Zealand has much of experience to share, and ideas that can be offered to other countries. German schools and NGOs need more financial support by the German Government for awareness raising. It is not only about providing technology to prevent children from danger on the Internet or to make information available on different websites. Information has to be given to teachers, students and parents physically and individually. Focus has to be put on better mediacompetence at school. Everyone involved needs to recognise potential danger and be aware of the ways to protect themselves, even if filter software is not accessible. Furthermore NGOs working in developing countries should apply these measures in their own programmes, for example when constructing a new school or installing new computers at existing institutions.

VI. Conclusion

Germany and New Zealand have both made significant efforts to protect us from child pornography on the Internet. Child Pornography will continue to exist in the future. Unfortunately it is not realistic to think that we will be able to fully eradicate it.

New technology (including Short Messaging Service, Peer to Peer Exchange, Instant Messaging, Internet Relay Chat, and other) is used by children of a very young age and will be used by offenders for their particular interests. Unfortunately this adaptation usually takes place well before law enforcement figures out these new twists.⁴⁰ Therefore it is important that the protection side keeps an eye on the evolution in technology to catch the offenders, before harm is done to the children.

We have to continue to think of detailed political directives, introduce them and ensure that they are being applied and respected. Even if we can't extinguish it, we should at least be able to considerably diminish it.

⁴⁰ http://www.innocenceindanger.org/innocence/news203/news_dstead.htm