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Sweetie 2.0

Using Artificial Intelligence to Fight
Webcam Child Sex Tourism

Simone van der Hof
Irina Georgieva
Bart Schermer
Bert-Jaap Koops *Editors*



Springer

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Bart Schermer · Bert-Jaap Koops
Editors

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Series Information

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Foreword

Two factors in the developing world, namely rising Internet usage rates and persistent poverty, have fostered the emergence of a new and rapidly growing form of online child sexual exploitation. Webcam Child Sex Tourism (WCST), as it was coined some 5 years ago, was identified as a practice whereby men from wealthier parts of the world pay money to children in developing countries to perform sexually explicit shows in front of a webcam.

At a time when WCST was not really present on the radar of law enforcement as a criminal activity, Terre des Hommes, working with former teenage prostitutes in the Philippines, picked up numerous signals that the phenomenon was spreading like an epidemic in the slums of Manila and Cebu. Recognizing the latter's significance, we realized that focusing exclusively on rescuing victims—our traditional role—was insufficient. A shift in our strategy was required, namely to move the focus of our work from the “supply” side of the problem to the “demand” side. The euphemistically named “clients” or “customers” are perpetrators who recognized years ago the potential of the Internet to live-stream sex shows involving children, evidence of which would disappear the moment the connection was broken, rendering arrest or prosecution virtually impossible.

The demand for live online sexual contact with children has grown exponentially over the past 5 years. Terre des Hommes now maintains the only way to take on this sordid industry is to go after the users themselves by tracking them online.

Therefore, in 2013, Terre des Hommes initiated the Sweetie Project. It aimed to draw attention to the scale of the online sexual exploitation of children and demonstrate that the identification of potential child abusers is relatively simple. By using computer animation technology, a virtual 10-year old Philippine girl was created, which allowed researchers to identify one thousand predators from no less than 71 countries within 10 weeks, using information obtained online in the public domain such as Facebook or Yahoo accounts. This fact alone illustrates that the

average online abuser feels largely unthreatened by any exposure of their criminal activity.

“The moment you go online, pretending to be a child from the Philippines, they jump at you, hundreds of them,” as one of the researchers on the Sweetie Project stated at the time. According to an estimate by the FBI confirmed by the UN, there are some 750,000 individuals online at any given moment, seeking to engage children in sexual activities. However, at the time of our first research efforts we could only document six successful prosecutions worldwide. Obviously, law enforcement is ill equipped trying to apply twentieth-century-based laws and practices to this twenty-first-century form of serious crimes against children.

At the culmination of the Sweetie Project, the files of the 1,000 perpetrators were handed over to the Dutch desk at Europol for distribution to member states and beyond. Sweetie became world news for months. As far as we know, arrests and convictions have taken place in countries such as Australia, Belgium, Denmark, the Netherlands, Poland, and the UK. The issue is now in the public domain, laws are under review in some countries and law enforcement has acknowledged the seriousness of what is generally now described as “the live streaming of child sex abuse.” However, there is growing concern expressed by several police forces that “we cannot arrest our way out of this problem.” It is simply too big.

Terre des Hommes advocates a more proactive approach, preventive in nature, to tackle the demand side of WCST. With this in mind, we developed “Sweetie 2.0” software to intercept, identify, and deter individuals who use the internet to sexually abuse children. The updated chatbots enable their administrators to monitor larger parts of the Internet to locate and identify (potential) predators, and to subsequently send them messages that warn of the legal consequences should they proceed. According to research conducted by forensic psychologists, some 25% of men (one in four!) who begin by watching child pornography will then move on to hands-on child sexual abuse. Early intervention, the objective of Sweetie 2.0, could play a significant role in preventing this outcome.

Applying such investigation tools, however, raises serious legal questions. Will law enforcement be allowed to apply these innovative new technologies? What about issues of entrapment or the protection of privacy? Can live-streaming be regarded as a criminal offense in the first place? Not simple questions; difficult to answer and compounded by differences in judicial practice between countries.

It is, therefore, with great pleasure that we welcome this book, the outcome of a joint research initiative by Leiden University’s Center for Law and Digital Technologies (eLaw) and Tilburg University’s Institute for Law, Technology, and Society (TILT). The team involved took on the study of this new and challenging phenomenon in order to unravel these complicated legal issues in a concise and readable(!) manner, and to provide much needed answers where possible and prudent.

It is no mean feat, for which we at Terre des Hommes are genuinely grateful. We hope you enjoy reading it with the same enthusiasm with which it was conceived and put together.

The Hague, The Netherlands

Hans Guyt
Team Leader, Sweetie Project Terre
des Hommes NL

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Ilina Georgieva is a Ph.D. candidate of The Hague Programme for Cyber Norms. In her research, Ilina is focusing on the capacity of networks of intelligence agencies to shape the international community’s perception of what is normal in cyberspace. For that purpose, she investigates the networks’ normative power by looking into their practice of foreign electronic surveillance. Prior to joining the Institute of Security and Global Affairs, Ilina served as a researcher on the Sweetie Project at eLaw, the Center for Law and Digital Technologies at Leiden University. Her research encompassed a comparative legal study concerning the transborder investigation of Internet sexual crimes against children. Before joining eLaw’s team, she worked as an Editor at the Utrecht Journal of International and European Law (October 2013–September 2014). Ilina was also a part of Heidelberg

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Bart Schermer is an Associate Professor at eLaw, the Center for Law and Digital Technologies at Leiden University, and a fellow at the E.M. Meijers Institute for Legal Studies. He specializes in privacy, data protection, and criminal law. Apart from his work at the University Bart is Chief Knowledge Officer at Considerati, member of the Cybercrime Expert Group for the Dutch judiciary and member of the Human Rights Committee of the Advisory Council on International Affairs.

Bert-Jaap Koops is Professor of Regulation and Technology at the Tilburg Institute for Law, Technology, and Society (TILT) in the Netherlands. His main research fields are cybercrime, cyber-investigation, privacy, and data protection. He is also interested in topics such as DNA forensics, identity, digital constitutional rights, "code as law", and regulatory implications of human enhancement, genetics, robotics, and neuroscience. With a personal postdoc (1999), VIDI (2003) and VICI (2014) grant, Koops is one of the few Dutch researchers who received all three stages of NWOs (Netherlands Organisation for Scientific Research) personal research-grant scheme. Koops studied mathematics and general and comparative literature at Groningen University, and received his Ph.D. in law at Tilburg University in 1999. From 2005 to 2010, he was a member of De Jonge Akademie, a young-researcher branch of the Royal Netherlands Academy of Arts and Sciences. In 2016/17, he was Distinguished Lorentz Fellow at the Netherlands Institute for Advanced Study (NIAS). He coedited 13 books in English on technology regulation and published many articles and books in English and Dutch on a wide variety of topics.

Hans Guyt was the co-founder of Greenpeace Netherlands in 1978 and the International Campaigns Director for Greenpeace International in the 1980s, and as a former Dutch merchant navy officer joined the Dutch Non-Governmental Organization, Terre des Hommes in 1999 as Director of Programs. This international humanitarian aid and development charity focuses on the welfare of children and operates in some 27 countries in Asia, Africa, Europe, and the Middle East. Terre des Hommes' main theme is child exploitation, dealing with issues such as child prostitution, child trafficking, and child slavery. In 2011, Terre des Hommes and their local partners in the Philippines encountered a new form of child sexual exploitation. Street children trying to keep themselves alive by selling their bodies, explained they used the numerous and cheap Internet facilities in urban centers to establish contact with men in richer parts of the world who would pay for live sex shows. This phenomenon, known in the Philippines as "cybersex", is now

widespread and on the increase. In addition to efforts to rehabilitate former young prostitutes and to prevent others from falling victim to the sex industry, Terre des Hommes decided to investigate this “new” demand for sex with children. From the beginning, Hans Guyt has lead the team that brought an innovative and effective approach to monitoring the internet for child predators. Using a specially developed computer image of an 11-year old Filipina girl, the “Sweetie Project” (launched in 2013) set a new standard for early intervention and awareness raising regarding Internet-based child abuse. The progress of the “Sweetie Project” has been watched with interest not only by the general public, but also by the judicial and legislative communities in many countries. It has won several international awards, receives worldwide attention and has brought “live-streaming of child sex abuse”, as it is now formally known, out into the open.

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Chapter 1

Legal Aspects of Sweetie 2.0



**Bart Schermer, Ilina Georgieva, Simone van der Hof
and Bert-Jaap Koops**

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Abstract Webcam sex tourism, the act of engaging children in webcam prostitution, is a growing international problem. Not only does webcam sex tourism provide easy access to child abuse and child abuse images for child abusers, it also a crime that has a comparatively low risk for the offenders. Live webcam performances leave few traces and little evidence that law enforcement can use. Further difficulties arise from the fact that webcam sex tourism often has a cross-border character, which causes jurisdictional conflicts and makes it more difficult to obtain evidence or even launch an investigation. The Dutch children’s rights organization Terre des Hommes (TdH) was the first NGO to actively tackle webcam child sex tourism by using a virtual character called ‘Sweetie’ to identify offenders in chatrooms and online forums. Since then, Sweetie has been further developed into a chatbot, called Sweetie 2.0, to automate interaction with offenders. But using artificial intelligence raises serious legal questions. Sweetie as an investigative tool is so innovative, that it is unclear whether its use is actually covered by existing rules of criminal procedure. However, the question of criminal procedural legality of Sweetie is preceded by a prior substantive criminal law question: is interacting with Sweetie in a sexually charged way a criminal offence in the first place, given that Sweetie is not a person, but a virtual avatar? An answer to this question is important, because if webcam sex tourism with a virtual avatar is not considered criminal, it will be much harder to make the case that Sweetie is an acceptable investigative method. This chapter addresses the application of substantive criminal law and criminal procedure to Sweetie 2.0.

Keywords Criminal Law • Cybercrime • Sexual Offence • Child Pornography • Criminal Procedure • Entrapment

1.1 Introduction

1.1.1 Aims and Challenges

Digital technologies and the Internet may pose risks for the safety and well-being of children. The Internet in particular has created new opportunities for child sexual offenders to find and contact victims, and to sexually exploit them. Sexual predators are active in self-created Internet communities, where they exchange tips and tactics on how to most effectively approach and manipulate children.¹ Perpetrators also use social media platforms and chatrooms to directly engage with victims. This constantly evolving model of sexual exploitation of children is characterised by the exchange of messages with victims via the Internet that typically escalate quickly to sexually-explicit conversations. Once contact has been established, the victim is usually asked or even pressured to undress in front of a webcam, to perform or witness sexual acts, or all of the above. An additional dimension to this problem is the fact that parents or legal guardians may directly be involved in the sexual exploitation of their children. The latter is especially true for families living in developing countries, who prostitute their children as a much needed source of income.

The situation whereby children are engaged in webcam prostitution is generally referred to as webcam child sex tourism. Webcam sex tourism not only causes serious and lasting damage to children,² it also challenges the effectiveness of criminal investigations, as live webcam performances leave few traces and little evidence that law enforcement can use. Further difficulties arise from the fact that webcam sex tourism often has a trans-border character, which causes jurisdictional conflicts and makes it more difficult to obtain evidence or even launch an investigation.

The Dutch children's rights organization Terre des Hommes ('TdH') was the first NGO to combat webcam child sex tourism by using a virtual character called 'Sweetie'. Sweetie was used to identify offenders in chatrooms and online forums. The Sweetie avatar, posing as a ten-year old Filipino girl, was operated by an agent of the organisation, whose goal was to gather information on individuals who contacted Sweetie and solicited webcam sex. The gathered information was subsequently handed over to the authorities, who thereupon launched investigations in various countries.³

The successful implementation of Sweetie 1.0 inspired the further technological development of Sweetie. This time, a technical team commissioned by TdH engineered an artificial intelligence ('AI') software system, capable of depicting and

¹ Lovejoy 2007, p. 312.

² Goldstein 1999, p. 144.

³ Further information on the project known as 'Sweetie 1.0' can be found on www.terredeshommes.nl/en/sweetie-face-webcam-child-sex-tourism [16 June 2016].

acting as Sweetie without human intervention in order to not only identify persistent perpetrators, but also to deter first-time offenders.⁴

However, the creation of the software raises various challenging legal questions on its application in a law enforcement context. The laws that govern the use of special investigative tools and the role of law enforcement need to be considered. It is precisely this background against which the central question of this legal study takes shape. This report aims to illuminate the existing legal framework of criminal laws and procedures in a number of selected countries in order to determine whether said framework allows for investigative methods such as Sweetie to be used by law enforcement agencies in the fight against webcam child sex tourism.

1.1.2 Problem Statement and Research Questions

In this report we address the following problem statement:

To what extent is it possible for law enforcement agencies to use Sweetie 2.0 for the investigation and prosecution of webcam sex with minors based on the current criminal law framework (in a selected number of countries)?

The answer to this problem statement may yield the conclusion that the (inter)national criminal law framework may currently not be adequate to combat webcam sex using tools like Sweetie. Therefore, we will also consider the following question:

Which changes to the (inter)national criminal law framework are necessary/desirable in order to facilitate the effective and legitimate use of Sweetie by law enforcement agencies?

To solve this twofold problem statement, we will explore the following research questions:

1. How is webcam sex with minors criminalised in selected jurisdictions?
2. To what extent do existing crime descriptions within substantive criminal law apply to virtual victims (i.e., chatbots like Sweetie 2.0)?

⁴ For further information on the second part of the project known as ‘Sweetie 2.0’, see <https://www.terredeshommes.nl/programmas/sweetie-20-webcamseks-met-kinderen-de-wereld-uit> [16 June 2016].

3. To what extent does the criminal procedure law framework allow for the (proactive) investigation of webcam sex offences using Sweetie 2.0, taking into account that:
 - a. Sweetie 2.0 is an AI that interacts with suspects without direct human control or intervention;
 - b. A ‘fake identity’ is used for the AI.
4. Are there specific limitations in criminal procedure when it comes to entrapment and what are the consequences of this for using Sweetie 2.0?
5. Which forensic requirements apply to the collection of evidence using Sweetie 2.0?

Given the global nature of the issue of webcam sex tourism, we will also discuss issues surrounding international investigations and jurisdiction.

1.1.3 Research Methodology

In this report Sweetie’s use will be assessed in the light of the five main legal issues it raises.

In the area of substantive criminal law, these include the application of criminal provisions to virtual victims such as Sweetie, and the criminalisation of preparatory acts and attempts to commit the sexual offences in question. In this context, particular attention will be given to the doctrine of impossible attempts.

In terms of procedural criminal law aspects, we seek to establish whether existing coercive powers can provide a legal basis for the use of Sweetie 2.0. Special investigative powers are usually employed without the suspect’s knowledge or consent, which interferes with his/her right to privacy and private life as stipulated in Article 8 ECHR⁵ and Article 17 ICCPR.⁶ In addition, the right to a fair trial as codified in Article 6 ECHR and Article 14 ICCPR has to be taken into account when assessing the (proactive) use of artificial intelligence agents in criminal investigations and the thereby triggering defence of entrapment.

We will use the following research methodologies to analyse the use of Sweetie:

Desk Research and Literature Study

The basis of the research is desk research and literature study.

Comparative Legal Analysis

After introducing the international instruments that are relevant for this study, the report continues with the comparative legal analysis. The main goal of the

⁵ Convention for the Protection of Human Rights and Fundamental Freedoms, CETS no. 194, Rome, 4.XI.1950 (ECHR).

⁶ International Covenant on Civil and Political Rights (16 December 1966, entered into force 23 March 1976) 999 UNT 171 (ICCPR).

comparative legal analysis is to compare and contrast the legal approaches to dealing with the issue of webcam child sex tourism and the application of Sweetie 2.0. Furthermore, the comparative legal analysis will highlight any issues when it comes to jurisdictional issues related to criminalisation and cross-border investigation.

Given that webcam sex tourism is a global phenomenon a diverse set of countries (in terms of geographical location and legal systems) was chosen for analysis. The following countries were selected for analysis:

- Argentina
- Australia
- Belgium
- Brazil
- Canada
- Croatia
- England and Wales
- Estonia
- Germany⁷
- Israel
- Netherlands
- Nigeria
- Philippines
- Poland
- Scotland⁸
- South Korea
- Spain
- Turkey
- United States

Selection criteria were: geographic spread, type of legal system, exposure to webcam sex tourism and prior experience with Sweetie 1.0.⁹ Practitioners and scholars from the selected jurisdictions were asked to prepare a comprehensive report on their respective criminal system and to evaluate it against the research question(s) of the Sweetie project. The authors of the country reports are acknowledged throughout the present study.

⁷ The information used to assess the German situation reflects on substantive criminal law issues only. Therefore, Germany is not considered in the analysis of criminal procedure.

⁸ Scotland is a part of the United Kingdom, as are England and Wales. However, given the different criminal law system vis-à-vis the rest of the UK, it is listed as a separate jurisdiction.

⁹ Some relevant countries (such as Russia or Kenya) did not make the final selection due to the unavailability of a legal expert in the timeframe of the project.

1.1.4 Structure of the Chapter

This study is divided into eight parts, including the present introduction. The report continues with Sects. 1.1.5–1.1.6, which presents Sweetie, the software behind the avatar, its goals and application. Section 1.2 discusses the core legal issues raised by Sweetie in terms of substantive criminal law by establishing a baseline of the international law provisions applicable to the matter, and subsequently turns to a comparative analysis of the legal norms that cover webcam child sex tourism in the studied countries. Section 1.3 does the same with regard to procedural criminal law. Section 1.4 touches upon the standards of digital forensics relevant for the preservation of data and evidence originating from the cyber domain. Section 1.5 elaborates on the jurisdictional issues concerning trans-border investigations of webcam sexual assaults of children. An analysis of the restrictions found in the discussed criminal law systems and suggestions on how to adapt the legal frameworks to the challenge of webcam child sex tourism can be found in Sect. 1.6. Section 1.7 offers a summary and conclusion of our findings.

1.1.5 Sweetie

As a result of the rapid proliferation of devices with cameras, free video chat software (e.g. Skype and Google Hangout), the increase in Internet bandwidth, and the lowering cost of data traffic, people throughout the world now communicate on a daily basis via video. A specific aspect of video chatting is that of a sexual nature: webcam sex.

While webcam sex can take place legally between consenting adults, there are also risks associated with webcam sex, in particular for minors. Risks arise not only because predators actively approach unsuspecting minors, but also because a ‘cottage industry’ of webcam prostitution of minors has emerged, in particular in developing countries. This relatively new phenomenon of webcam child sex tourism has quickly grown into a hidden, but global problem.

To combat webcam sex tourism and raise awareness for the issue, Terre des Hommes developed the Sweetie programme. Sweetie 1.0 was a virtual 10-year old Filipino girl used to identify and expose pedosexuals engaged in webcam sex tourism. Sweetie was operated by a human agent that engaged in conversation with the suspected webcam sex tourist.

While Sweetie 1.0 was extremely successful, one limitation of its design was the human operator. A human operator can only conduct a number of chat conversation at the same time, while real victims receive up to two hundred sex solicitations an hour. To counter this problem TdH has developed a more advanced version of Sweetie: Sweetie 2.0. The main difference with Sweetie 1.0 is that Sweetie 2.0 is no

longer operated by a human but is now a fully autonomous artificial intelligence that can engage in a meaningful conversation with a suspect.¹⁰ Unlike human operators, the use of this artificial intelligence is in theory infinitely scalable.

1.1.6 Technology

Sweetie is a virtual minor that engages in conversation with a suspect who has a sexual interest in children with the goal of identifying this suspect. Sweetie is comprised of three main technological elements: (1) three-dimensional imagery, (2) a chatbot facility, and (3) an underlying software framework.¹¹

3D Imagery

The most striking aspect of the original Sweetie was the use of 3D imagery to create a realistic representation of a virtual girl. The realistic animations of Sweetie were designed to make suspects think that they were dealing with a real minor. For Sweetie 2.0 the animations have been further refined. It is important to note that Sweetie's animations do not show any nudity or images of a sexual nature.

Chatbot Facility

To eliminate the need for human intervention, Sweetie 2.0 employs AI technology. A chatbot character has been built based on the experiences, work instructions and chat logs from the initial Sweetie project. Using results from the past, the conversation model will simulate as realistically as possible a fictitious 10/11-year-old child.

Software Framework

To use the chatbot functionality for various communication platforms a base has been built that interconnects all software components. These components include, but are not limited to:

- Automated chat functionality for the chatrooms and direct chat;
- Functions to drive the generated imagery;
- Management functionality for the chatrooms, characters, chat structure and corresponding question/answer combinations;
- Storage of all chats and related details;
- Processing of identifiable material from the chats for each chat partner;
- Detection functionality to recognize repeating chat partners, indecent proposals/ or explicit materials;
- Dashboard for graphical presentation of all required actions, chat results, as well as statistics for operational, tactical and strategic insight;

¹⁰ This type of artificial intelligence is popularly known as a 'chatbot'.

¹¹ <https://tracksinspector.com/blog/ti-software-sweetie-2-0.html> [28 September 2016].

- Reporting module to confront potentially offending chat partners with their own behaviour and chat phrases. This module will also follow up with relevant advice, deterrent warnings and/or possible threat of identification, based on the findings of current academic research for the project.

The chat logs are stored and exchanged data are processed per chat to a profile for each chat partner. This profile can ultimately be used to identify repetitive patterns. All chat reports and extracts of chats are logged in a universally accepted standard which facilitates the exchange of cases. This will take into account generic storage methods used by various national and international (investigation) agencies such as Interpol and Europol in order to simplify matching with other (online) child abuse cases.

1.2 Substantive Criminal Law

Sweetie is an investigative tool that enables law enforcement to engage with sexual predators and interact with them. If law enforcement is to use Sweetie as an investigative method, this means that the actual behaviour under investigation (i.e., interacting with Sweetie) must be deemed criminal behaviour. If this is not the case, then it will be much harder, if not impossible to prove that the suspect committed or attempted a criminal act. This in turn will make it more difficult to justify the use of Sweetie as an investigative method.

In this section we explore whether and how (an attempt) to interact with Sweetie in a sexually oriented way is criminalised in the various jurisdictions under investigation. To this end we first consult the international law instruments to establish a 'baseline' of criminal behaviour and then explore specific substantive law issues in relation to webcam sex in general and webcam sex with an avatar such as Sweetie in particular.

1.2.1 *Criminalisation of Abuse of Minors and International Harmonisation*

In most, if not all jurisdictions worldwide, sexual abuse of minors is criminalised. Different forms of abuse are criminalised in national criminal law. Apart from criminalisation at the national level, there is also international harmonisation when it comes to the protection of minors and the criminalisation of abuse of minors.

At a global level the protection of minors is codified in different international law instruments. For the purpose of this report we will explore four particularly relevant international law instruments: (1) the UN Convention on the Rights of the Child

(CRC),¹² and (2) the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC),¹³ (3) the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)¹⁴ and, (4) the Council of Europe Cybercrime Convention.^{15,16}

UN Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child (CRC) is an international treaty that sets out the civil, political, economic, social, health and cultural rights of children. At the moment of writing there are 196 countries party to the treaty.¹⁷ The United States is the only member of the UN that has not ratified the document.

The fundamental idea of the CRC is that every child, every human being below the age of eighteen years, is born with fundamental freedoms and the inherent rights of human beings. Moreover, the CRC recalls that children are entitled to special care and assistance because of their vulnerability.¹⁸ According to the preamble children need to grow up ‘in a family environment, in an atmosphere of happiness, love and understanding.’¹⁹ Article 20 of the CRC, for example, states that a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the state. Furthermore, General Comment 13 to the CRC underlines the importance that every child’s life must be free from all forms of violence.²⁰

¹² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC or UNCRC), available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> [13 June 2016].

¹³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (adopted on 25 May 2000, entered into force 18 January 2002) A/RES/54/263, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx> [13 June 2016].

¹⁴ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS 201, Lanzarote, 25.X.2007 (Lanzarote Convention).

¹⁵ Council of Europe Convention on Cybercrime, CETS No.185, Budapest, 23.XI.2001 (Budapest Convention), available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/libe/dv/7_conv_budapest_/7_conv_budapest_en.pdf [13 June 2016].

¹⁶ Both the Lanzarote Convention and the Cybercrime Convention are Council of Europe instruments. In the European Union Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children, and child pornography is also applicable. Given the more global remit of the Council of Europe instruments, we will not discuss Directive 2011/93/EU further in the context of this report.

¹⁷ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en [18 May 2016].

¹⁸ UNCRC, Preamble, paras 4 and 9.

¹⁹ UNCRC, Preamble, para 6.

²⁰ Committee on the Rights of the Child 2011, *General comment No. 13: The right of the child to freedom from all forms of violence*, CRC/C/GC/13.

While the CRC does not criminalise specific acts against the well-being of children, several articles put a positive obligation on the states to protect children against sexual abuse and exploitation. Article 19 and Article 34 are particularly relevant in this regard:

Article 19

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) has been signed by 182 state parties to this date, yet no more than 173 have ratified it.²¹ The protocol is intended to achieve the purposes of the articles in the CRC. For example, Article 1 states that parties are to protect the rights and interests of child victims of trafficking, child prostitution, child pornography and child labour. Article 2 (broadly) defines the criminal acts of sale of children, child prostitution and child pornography:

For the purposes of the present Protocol:

- (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

The OPSC obliges states to criminalise these practices. Finally, the protocol sets international standards for mutual assistance in investigations, confiscation of assets and extradition.

²¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-c&chapter=4&lang=en [18 May 2016].

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

The Lanzarote Convention is a Council of Europe Convention aimed at combating sexual exploitation and abuse of minors. The purposes of the Lanzarote Convention are defined in its Article 1:

- Prevent and combat sexual exploitation and sexual abuse of children;
- Protect the rights of child victims of sexual exploitation and sexual abuse;
- Promote national and international co-operation against sexual exploitation and sexual abuse of children.

The treaty obliges parties to pass laws that criminalise any practice that is in conflict with these purposes, for instance child pornography. All Member States of the Council have ratified the treaty.

We will use the Lanzarote Convention as a basis for our discussion of substantive criminal law as it provides the most complete inventory of crimes related to minors.

Council of Europe Cybercrime Convention

Being the first in its kind, the Convention on Cybercrime pursues a common criminal policy aimed at the protection of society against crimes committed via the Internet and other computer networks.²² The treaty fosters fast and effective international cooperation, harmonisation of domestic criminal law in the area of cybercrime and the provision of domestic criminal procedural law powers necessary for the investigation and prosecution of such crimes. The Convention contains provisions on a wide variety of crimes, such as violations of network security, computer related fraud and child pornography.

Thus far, 49 states have ratified the Cybercrime Convention.²³ Parties to the treaty are not only Member States of the Council of Europe. The treaty is also ratified by Australia, Canada, The Dominican Republic, Israel, Japan, Mauritius, Panama, Sri Lanka and the United States. Relevant for the purpose of this study is that the Cybercrime Convention criminalises offences related to child pornography (Article 9).

International Harmonisation in the Area of Abuse of Minors

Table 1.1 specifies which of the countries under investigation in this study have signed and ratified the international law instruments described above.

Criminalisation of Webcam Sex with Minors

This section reviews the criminal law offences potentially applicable to sexual abuse of minors via webcam. It does so by summarising the provisions focusing on the key types of behaviour regularly occurring in webcam abuse. It then turns to evaluate whether and how said provisions apply to virtual minors such as Sweetie.

²² Convention on Cybercrime, Preamble, para 8.

²³ www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/signatures [18 May 2016].

Table 1.1 International harmonisation in the area of abuse of minors [Source The authors]

	UN Convention on the Rights of the Child (CRC)	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC)	CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)	CoE Cybercrime Convention
Argentina	X	X	–	–
Australia	X	X	–	X
Belgium	X	X	X	X
Brazil	X	X	–	–
Canada	X	X	–	X
Croatia	X ^a	X	X	X
England and Wales	X	X	S (Signed, not ratified)	X
Estonia	X	X	S	X
Germany	X	X	X	X
Israel	X	X	–	X
Netherlands	X	X	X	X
Nigeria	X	X	–	–
Philippines	X	X	–	–
Poland	X	X	X	X
Scotland	X (UK)	X (UK)	S (UK)	X (UK)
South Korea	X	X	–	–
Spain	X	X	X	X
Turkey	X	X	X	X
United States	S	X	–	X

^aSigned by Yugoslavia, ratified by Croatia

International Harmonisation

What we can deduct from Table 1.1 is that while all countries under investigation in this study have signed and ratified the CRC and the OPSC, not all countries have signed the Lanzarote Convention, which provides the most complete inventory of criminal offences related to the abuse of minors. This may pose a problem when it comes to the international harmonisation of the criminalisation of webcam sex, given that the OPSC does not specifically define or criminalise certain types of child exploitation such as webcam sex and grooming.

Criminal behaviour aimed at minors that does not qualify as prostitution or as child pornography is, for instance, not covered by the OPSC. This means that crimes such as webcam sex, grooming and the corruption of children are not fully harmonised throughout the jurisdictions under examination.

Furthermore, it may also mean that webcam sex, grooming and the corruption of children are not criminalised at the national level. Though when it comes to the topic of this research (webcam sex with minors) we have not found any proof of this. All jurisdictions that did not sign the Lanzarote Convention have still criminalised webcam sex with minors in national law, in one way or another, as the following discussion demonstrates.

Relevant Crime Descriptions

The international law instruments described above and the national criminal laws of the different countries contain a number of broadly formulated crime descriptions that may or may not cover webcam sex with minors.

Depending on the exact form and circumstances of the act, the offences listed below may come into view when a person is interacting with a minor through a webcam for the purpose of sexual gratification. For the sake of good order, we use the articles from the Lanzarote Convention as a framework for discussion. The relevant articles are:

- Article 18. Sexual abuse
- Article 19. Offences concerning child prostitution
- Article 20. Offences concerning child pornography
- Article 21. Offences concerning the participation of a child in pornographic performances
- Article 22. Corruption of children
- Article 23. Online solicitation of children for sexual purposes

Sexual Abuse

Sexual abuse may cover a range of sexual activities that take place between the perpetrator and the minor, such as rape, assault and the commission of lewd/lascivious acts. Article 18 of the Lanzarote Convention defines sexual abuse as:

- a. engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
- b. engaging in sexual activities with a child where: – use is made of coercion, force or threats; or – abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or – abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Paragraph 1a criminalises engaging in sexual activities with a person who has not reached the age at which it is allowed to engage in sexual activities with him or her. This age is established in domestic law:

2. For the Party shall decide the age below which it is prohibited to engage in sexual activities with a child.

Paragraph 1b criminalises engaging in sexual activities with a child where use is made of coercion, force or threats, or when this person abuses a recognised position of trust, authority or influence.

All of the countries under investigation have provisions in their domestic law that criminalise sexual abuse of minors. In the Lanzarote Convention the term ‘sexual activities’ has not been further defined. The negotiators preferred to leave it to the States to further define the meaning and scope of the term.²⁴ In the domestic law of the countries under investigation, ‘sexual activities’ generally cover acts whereby there is direct physical contact (including by force, under threat or through other forms of coercion) between the perpetrator and the victim, such as rape and assault. A position of trust, authority or influence over the minor is an aggravating circumstance, which generally carries higher penalties.

Offences Concerning Child Prostitution

Child prostitution covers a number of criminal acts whereby a minor is used for sexual activities in exchange for some form of remuneration. Article 2 para b of the OPSC defines child prostitution as:

(...) the use of a child in sexual activities for remuneration or any other form of consideration.

Article 19 para 2 of the Lanzarote Convention defines child prostitution as:

(...) the fact of using a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment, regardless if this payment, promise or consideration is made to the child or to a third person.

Offences concerning child prostitution

1. Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a. recruiting a child into prostitution or causing a child to participate in prostitution;
 - b. coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes;
 - c. having recourse to child prostitution.

Criminal liability is extended to both the person(s) prostituting the minor and the customer(s).

In relation to the topic of this research, this article is of particular importance. In most cases of webcam sex with minors, a minor from a developing country is forced or coerced by a third party (parents, criminals) to participate in a webcam session with a perpetrator (the ‘webcam sex tourist’). This webcam sex tourist generally wants to watch (and indirectly participate in) a pornographic performance involving a minor in exchange for money.

Given the broad definition of ‘sexual activities’ there are no a priori limitations to applying this article in the context of webcam sex tourism.

²⁴ *Explanatory report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. CETS 201*, para 127.