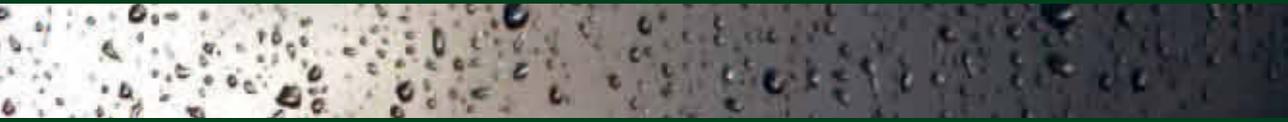




National Rapporteur on Trafficking in  
Human Beings

# Child Pornography



*First report of the Dutch National Rapporteur*

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Bureau of the Dutch National Rapporteur  
P.O. Box 20301  
2500 EH The Hague  
+31(0)70 3704514  
[www.bnrm.nl](http://www.bnrm.nl)

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## Abbreviations used

ABRvS	<i>Afdeling Bestuursrechtspraak van de Raad van State</i> Administrative Jurisdiction Department of the Council of State
ACE	Adverse Childhood Experiences
AFP	<i>Algemeen Forensische Psychiatrie</i> General Forensic Psychiatry
AG	<i>Advocaat Generaal</i> Advocate-General
AMC	<i>Academisch Medisch Centrum</i> Academic Medical Centre, University of Amsterdam
AMK	<i>Advies- en Meldpunt Kindermishandeling</i> Child Abuse Counselling and Reporting Centre
AMS-IX	Amsterdam Internet Exchange
AO	<i>Algemeen Overleg</i> General Consultation
APV	<i>Algemeen plaatselijke verordening</i> General municipal bye-law
ASACP	Association of Sites Advocating Child Protection
ASHG	<i>Advies en Steunpunt Huiselijk Geweld</i> Advice and Support Centre for Domestic Violence
AWF	Analytical Work File
B&W	<i>Burgemeester en wethouders</i> Mayor and aldermen
BBS	Bulletin Board System
BIJ	<i>Bestuurlijke Informatie Justitiabelen</i> Administrative Ex-Prisoner Information Service for Municipalities
BIVGEG	<i>Bestuurlijke Informatievoorziening Gemeenten Ex-Gedetineerden</i> Provision of Administrative Information to Municipalities regarding Ex-Prisoners
Bjg	<i>Besluit justitiële gegevens</i> Decree concerning personal details disclosed in legal proceedings
BJZ	<i>Bureau Jeugdzorg</i> Youth Care Agency
BNRM	<i>Bureau Nationaal Rapporteur Mensenhandel</i> Bureau of the Dutch National Rapporteur on Trafficking in Human Beings
BOB	<i>Bijzondere opsporingsbevoegdheden</i> Special investigative powers

BR-NON	<i>Bovenregionale Recherche Noord- en Oost-Nederland</i> North and East Netherlands Supraregional Crime Squad
BRT	<i>Bovenregionaal Rechercheteam</i> Supraregional Crime Squad
BZK	<i>Binnenlandse Zaken en Koninkrijksrelaties</i> Ministry of the Interior and Kingdom Relations
CAC	Children's Advocacy Centre
CBA	<i>Criminaliteitsbeeldanalyse</i> Crime picture analysis
CBP	<i>College bescherming persoonsgegevens</i> Dutch Data Protection Authority
CCV	<i>Centrum voor Criminaliteitspreventie en Veiligheid</i> Dutch Centre for Crime Prevention and Safety
CEOP	Child Exploitation & Online Protection Centre
CHI	Child Helpline International
CJG	<i>Centrum voor Jeugd en Gezin</i> Youth and Family Centre
CMO	<i>Centrum voor Maatschappelijke Ontwikkeling</i> Institute for Social Support and Welfare
COPINE	Combating Paedophile Information Networks in Europe
COSA	<i>Cirkels voor Ondersteuning, Samenwerking en Aanspreekbaarheid</i> Circles of Support and Accountability
COVOG	<i>Centraal Orgaan Verklaring Omtrent het Gedrag</i> Central Agency for Certificates of Good Conduct
CPE	Child Pornography Exploitation
CRI	<i>Centrale Recherche Informatiedienst</i> National Criminal Intelligence Service
CSOM	Centre for Sex Offender Management
CWI	<i>Centrum voor Werk en Inkomen</i> Centre for Work and Income
DCI	Defence for Children International
Dienst IPOL	<i>Dienst Internationale Politie-Informatie</i> Department of International Police Information
DINPOL	<i>Dienst Internationale Politie-Samenwerking</i> Department of International Police Cooperation
DNS	Domain Name System
DSRT	<i>Dienst Specialistische Recherche Toepassingen</i> Special Criminal Investigations Applications Department
DVI	<i>Diploma Veilig Internet</i> Certificate in Safe Internet Use
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
EFC	European Financial Coalition against Commercial Sexual Exploitation against Children Online
EL&I	<i>Economische Zaken, Landbouw en Innovatie</i> Ministry of Economic Affairs, Agriculture and Innovation

EU	European Union
EVRM	<i>Europees Verdrag tot bescherming van de rechten van de mens en de fundamentele vrijheden</i>
	ECHR – European Convention on Human Rights
EZ	<i>Economische Zaken</i>
	Ministry of Economic Affairs
FPT	<i>Forensisch Psychiatrisch Toezicht</i>
	Forensic Psychiatric Supervision
FTP	File Transfer Protocol
GGD	<i>Gemeentelijke Gezondheidsdienst</i>
	Municipal Health Service
GGZ	<i>Geestelijke Gezondheidszorg en Verslavingszorg</i>
	Netherlands Institute for Psychological Care and Addiction Care
GHOR	<i>Geneeskundige Hulpverleningsorganisaties in de Regio</i>
	Regional Medical Care Organisations
Gmw	<i>Gemeentewet</i>
	Municipalities Act
GPS	<i>Geïntegreerd Processysteem Strafrecht</i>
	Integrated Process System
GSMA	GSM Association
GVAK	<i>Gemeenschappelijke Voorziening Aanpak Kinderporno</i>
	Joint Provisions to Tackle Child Pornography
HDief	<i>Herkenning Digitale Informatie en Fingerprinting</i>
	Identification of Digital Information and Fingerprinting
HR	<i>Hoge Raad</i>
	Supreme Court
ICAID	Interpol Child Abuse Image Database
ICANN	Internet Corporation for Assigned Names and Numbers
ISMEC	International Centre for Missing & Exploited Children
ICSE DB	International Child Sexual Exploitation Database
ICT	Information and Communication Technology
IIAV	<i>Internationaal Informatiecentrum en Archief voor de Vrouwenbeweging</i>
	Institute for Women's History
ILO	International Labour Organisation
INDIGO	<i>Initiatief Niets Doen Is Geen Optie</i>
	'Doing Nothing is not an Option' Initiative
IP	Internet Protocol
IRC	Internet Relay Chat
ISP	Internet Service Provider
IWF	Internet Watch Foundation
IYAC	International Youth Advisory Congress
J&G	<i>Jeugd en Gezin</i>
	Programme Ministry for Youth and Family
JDS	<i>Justitieel Documentatiesysteem</i>
	Criminal Records System
JGZ	<i>Jeugdgezondheidszorg</i>
	Youth Healthcare

JIP	<i>Jongeren Informatie Punt</i> Young People's Information Point
JOSS	<i>Juridische Opvang Slachtoffers Seksueel Geweld</i> Legal Support for Victims of Sexual Violence
JustiD	<i>Justitiële Informatiedienst</i> Legal Information Service
KIDS	<i>Onderkenning en aanpak van Kinderporno koeriers en Kinderseks toerisme door multidisciplinaire samenwerking op Schiphol</i> Identification and tackling of Child Pornography Couriers and Child Sex Tourism by means of multi-disciplinary cooperation at Schiphol
KLPD	<i>Korps Landelijke Politiediensten</i> National Police Services Agency
KMar	<i>Koninklijke Marechaussee</i> Royal Military Constabulary
KNMG	<i>Koninklijke Nederlandsche Maatschappij tot bevordering der Geneeskunst</i> Royal Dutch Medical Association
LP	<i>Landelijk Parket</i> National Public Prosecutor's Office
LJN	<i>Landelijk Jurisprudentie Nummer</i> National Case Law Number
LOVS	<i>Landelijk Overleg Voorzitters Strafsectoren</i> National Consultative Committee for the Chairmen of Criminal Law Sectors
LVCT	<i>Landelijk Centrum voor Vroegkinderlijke Chronische Traumatisering</i> National Centre for Chronic Traumatization in Early Childhood
MACSAC	Mobile Alliance against Child Sexual Abuse Content
MAPPA	Multiple-Agency Public Protection Arrangements
Mappp	Multiple-agency public protection panels
MSN	Microsoft Network Messenger
MvT	<i>Memorie van Toelichting</i> Explanatory Memorandum
NAPS	<i>Nationaal Actieplan 'Aanpak seksueel misbruik van kinderen'</i> National Action Plan for Combating Sexual Abuse of Children
NCMEC	National Centre for Missing and Exploited Children
NCSS	National Cyber Security Strategy
NCTV	<i>Nationaal Coördinator Terrorismedebestrijding en Veiligheid</i> National Coordinator for Counterterrorism and Security
NDB	<i>Nationaal Dreigingsbeeld</i> National Threat Assessment]
NDIC	National Drug Intelligence Centre
NFI	<i>Nederlands Forensisch Instituut</i> Netherlands Forensic Institute
NGO	Non-governmental organisation
NHL	<i>Noordelijke Hogeschool Leeuwarden</i> NHL University of Applied Sciences, Leeuwarden
NICC	<i>Nationale Infrastructuur ter bestrijding van Cybercrime</i> National Infrastructure for tackling cybercrime

NIP	<i>Nederlands Instituut van Psychologen</i> Netherlands Institute of Psychologists
NJ	<i>Nederlandse Jurisprudentie</i> Dutch Law Reports
Nji	<i>Nederlands Jeugdinstituut</i> Netherlands Youth Institute
NOC*NSF	<i>Nederlands Olympisch Comité*</i> <i>Nederlandse Sport Federatie</i> Netherlands Olympic Committee* Dutch Sports Federation
NR	<i>Nationale Recherche</i> National Crime Squad
NRI	<i>Nationaal Registratie Instituut</i> National Registration Institute
NRM	<i>Nationaal Rapporteur Mensenhandel</i> National Rapporteur on Trafficking in Human Beings
NSPCC	National Society for the Prevention of Cruelty to Children
NTD	Notice-and Takedown
NVvR	<i>Nederlandse Vereniging voor Rechtspraak</i> Netherlands Association for the Judiciary
OBJD	<i>Onderzoeks- en Beleidsdatabase Justitiële Documentatie</i> Investigation and Policy Database of Judicial Documentation
OCW	<i>Onderwijs, Cultuur en Wetenschap</i> (Ministry of) Education, Culture and Science
OM	<i>Openbare Ministerie</i> Public Prosecution Service
Ovj	<i>Officier van justitie</i> Public prosecutor
p2p	Peer-to-peer
PaG	<i>Parket-generaal</i> National Office of the Public Prosecution Service
PbEG	<i>Publicatieblad van de Europese Gemeenschappen</i> Official Journal of the European Communities
PbEU	<i>Publicatieblad van de Europese Unie</i> Official Journal of the European Union
PG	<i>Procureur-generaal</i> Procurator-General
PIJ	<i>Plaatsing in een Inrichting voor Jeugdigen</i> Placement in a Young Offenders' Institution
PPS	<i>Publiekprivate samenwerking</i> Public-private sector partnership
PTSD	Post-traumatic stress disorder
PVAKP	<i>Programma Verbeteren Aanpak Kinderporno</i> Programme of Improvements in Tackling Child Pornography
YISS	Young Internet Safety Surveys
RAAK	<i>Reflectie- en Actiegroep Aanpak Kindermishandeling</i> Reflection and Action Group to Tackle Child Abuse
RAK/RAAK	<i>Regionale Aanpak Kindermishandeling</i> Regional Action Plan against Child Abuse

Rb.	<i>Rechtbank</i> Court
RC	<i>Rechter-commissaris</i> Examining judge
RHC	<i>Raad van Hoofdcommissarissen</i> Board of Chief Commissioners
RIAGG	<i>Regionaal Instituut voor Ambulante Geestelijke Gezondheidszorg</i> Regional Institute for Outpatient Mental Healthcare
RISc	<i>Recidive Inschattings Schalen</i> Risk Assessment Scales
RKC	<i>Raad van Korpchefs</i> Board of Chief Officers
RN	<i>Reclassering Nederland</i> Netherlands Probation and After-care Services
SHO	<i>Samenwerkende Hulporganisaties</i> Dutch Interchurch Aid
SIBA	<i>Statistische Informatievoorziening en Beleidsanalyse</i> Department for Statistical Information and Policy Analysis
SNS	Social Network Sites
Sr	<i>Wetboek van Strafrecht</i> Dutch Criminal Code
SRGZ	<i>Monitor seksuele en reproductieve gezondheid, zorgbehoefte en zorggebruik</i> Monitor of sexual and reproductive health, care requirements and use of care provision
Stb.	<i>Staatsblad</i> Dutch Bulletin of Acts and Decrees
Stcrt.	<i>Staatscourant</i> Dutch Government Gazette
Stichting M.	<i>Stichting Meld Misdaad Anoniem</i> Report Crime Anonymously
STSGG	<i>Samenwerkingsverband tegen Seksueel Geweld Groningen</i> Groningen cooperative partnership against sexual violence
Sv	<i>Wetboek van Strafvordering</i> Dutch Code of Criminal Procedure
SZW	<i>Sociale Zaken en Werkgelegenheid</i> (Ministry of) Social Affairs and Employment
TBI	<i>Team Beeld en Internet</i> Images and Internet Team
Tbs	<i>Terbeschikkingstelling</i> Placement under a hospital order
TCP	Transmission Control Protocols
TGP	Thumbnail Gallery Post
TGP (CJ)	Thumbnail Gallery Post (Circle Jerk)
THTC	Team High-Tech Crime
TIJN	<i>Samenwerkingsverband Twente, IJsselland, Noord-Oost Gelderland</i> Twente, IJsselland, Noord-Oost Gelderland Cooperative Partnership

Trb.	<i>Tractatenblad</i> Treaty Series
UK	United Kingdom
UN	United Nations
UNICEF	United Nations Children's Fund
USA	United States of America
UWV	<i>Uitvoeringinstituut Werknemersverzekeringen</i> Employee Insurance Agency
VenJ	<i>Veiligheid en Justitie</i> (Ministry of) Security and Justice
VGT	Virtual Global Taskforce
VI	<i>Voorwaardelijke invrijheidstelling</i> Release on licence
VIR	<i>Verwijsindex risicojongeren</i> Reference index of young people at risk
VNG	<i>Vereniging van Nederlandse Gemeenten</i> Association of Netherlands Municipalities
VOG	<i>Verklaring Omtrent het Gedrag</i> Certificate of Good Conduct
VWS	<i>Volksgezondheid, Welzijn en Sport</i> (Ministry of) Public Health, Welfare and Sport
WHO	World Health Organisation
WJZ	<i>Wet op de jeugdzorg</i> Youth Care Act
WODC	<i>Wetenschappelijk Onderzoek- en Documentatiecentrum</i> Research and Documentation Centre
www	<i>World Wide Web</i>
ZAO	<i>Zeden Aanspreek Officier</i> Liaison Officer for Victims of Sexual Abuse
ZM	<i>Zittende Magistratuur</i> The judiciary



## Foreword

The report before you is my first report on child pornography, or in other words, child abuse material. It forms the outcome of my research into the nature and extent of child pornography, and into the measures taken by the Dutch government to tackle it. The core message of my report is that children are entitled to protection from all forms of sexual violence. Child pornography – in other words, the capturing of sexual violence in images or on film – is just one type of sexual violence. In almost every case of child pornography, sexual abuse is at the basis of its production. In order to adequately protect the sexual safety of children, an integrated approach is required. In the Netherlands, an artificial distinction seems to have existed until recently between the measures deployed to tackle child pornography on the one hand and those used to combat violations of the sexual integrity of children on the other. That distinction has stood in the way of a broad, integrated approach towards tackling sexual violence against children. The Dutch government seems to have taken my message on board.

Through the years, children have been sexually abused, and the response to this has varied over time. In the past, children were often not believed, sometimes simply because they were children, and at other times because adults did not want to, or were not able to, believe such a thing. Preserving the good reputation of institutions was sometimes regarded as more important than protecting the individual child. Even today, signs of sexual abuse often remain unnoticed. In the Netherlands, a great deal of attention is currently being devoted to the sexual abuse of children, partly as a result of the inquiries regarding sexual abuse within the Roman Catholic Church, child welfare services and day-care centres. A number of high-profile cases of sexual abuse have emerged over the past decades, resulting in retrospective investigations into 'how such a thing could happen.' However, by that stage it is already too late. Protecting children from sexual violence needs to be a constant concern for the government and not something that is triggered by the occurrence of present-day incidents.

The fact that images of the sexual abuse exist and that those images are distributed by means of modern technology does not mean that child pornography is essentially different from other types of sexual violence. However, if images of the abuse exist, it is no longer a question of believing or not believing. After all, the images provide proof that abuse has taken place, and that is precisely the aspect where the integration of measures to tackle child pornography into the overall approach towards tackling sexual violence against children can play an important role. For the victim, the existence of images adds yet another dimension to the abuse. Once the images are on the Internet, they cannot actually be removed. This means that attaining closure with regard to a traumatic experience cannot be achieved. After all, the material will still exist on the Internet when the victims are adults. It is therefore necessary, for the authorities providing assistance, to take account of this permanency in the assistance they provide.

*An integrated approach puts the child first*

The task of combating child pornography should not exist in isolation, but should be part of a broad, consistent programme of measures aimed at combating sexual violence against children. What exactly does that entail? An integrated approach not only focuses upon detecting perpetrators, but above all, it puts the child first. In view of the exponential growth of abusive material on the Internet, repressive measures alone are not capable of providing sufficient protection for children. If the approach is to be effective, it must also include measures aimed at the prevention and identification of victims and perpetrators alike – as preventing someone from becoming a perpetrator (once again) also means preventing children from being (further) abused.

Within this approach, attention must be devoted to the Internet and other forms of technology as a matter of course. This means, for example, that in cases of sexual abuse, checks should be carried out to ascertain whether images of the abuse were also produced. This does not currently take place as a matter of course. In addition, the identification of victims is something that not only needs to take place in the real world, but it should also be a case of listening to what children are saying online. The assistance that is provided to victims needs to be tailored to the world in which we currently live, and an answer needs to be found that addresses the possible digital aspects involved in being a victim. It is clear that an integrated approach requires the involvement of many parties, each with expertise in its own field. Effective coordination is therefore also required.

*Recent developments*

In October 2011, I presented my findings and recommendations to the Minister of Security and Justice and the State Secretary for Health, Welfare and Sport, after which the report was discussed in Parliament. Partly as a result of my findings, various positive developments have since been set in motion, as matters of priority. It is my pleasure to single out the most important of these developments here.

By far the most important measure is the taking up of my recommendation to develop an integrated programme of measures to tackle child pornography. The Ministry of Security and Justice and the Ministry of Health, Welfare and Sport are assuming joint responsibility for this. By doing so, they are demonstrating their commitment to the obligations arising from the Convention on the Rights of the Child and its Optional Protocol, and the Lanzarote Convention. A Child Abuse and Sexual Abuse Task Force, which is yet to be established, will coordinate the implementation of the policy.

The most significant changes have taken place with respect to the understanding of this issue among those responsible for providing assistance to victims, with the increasing realisation that cyberspace is a relatively new arena in which sexual abuse is taking place, and one that adds a new dimension to victimhood. Moreover, the understanding that the Internet presents an opportunity to combat sexual violence is also growing. In February 2012, an online reporting button was launched, where children can find help and advice in the event of negative experiences on the Internet. Efforts have not only been made in terms of identifying (potential) victims, but also in terms of identifying potential perpetrators. In this way, the offender-oriented 'Stop it Now!' programme, which was launched in April 2012, will help prevent children from being subjected to sexual violence.

As far as detecting perpetrators is concerned, the capacity that has been deployed to combat child pornography has increased substantially. The Programme of Improvements in Tackling Child Pornography that had already been set in motion has enabled a more effectively integrated working method to be

developed within a short space of time. A new, large-scale and national child pornography unit will not only work in collaboration with the national High Tech Crime Unit, but also with regional police units, which attend to types of analogue sexual violence against children. Detection will be aimed at rescuing victims and locating perpetrators who produce material. The results of a project to employ non-judicial interventions for low-risk offenders – those who view child pornography sporadically – have been positive. This project will therefore also be implemented on a national scale.

When prosecuting suspects, the ability to ensure that victims remain anonymous in criminal proceedings is a positive development, as is the extension of the right to speak to include parents in cases in which (very young) children are not able to speak for themselves. Developments are also underway right at the very end of the judicial process – which involves the reintegration of convicted perpetrators, including the expansion of COSA, a probation and after-care project, and the investigation of the possibilities of long-term or life-long supervision of convicted sex offenders.

#### *International cooperation*

Sexual violence against children is not limited to one particular period in time. But that is not the only thing: sexual violence against children is a phenomenon that exists in every single country, and that evokes similar emotions elsewhere as it does in the Netherlands. The task of tackling child pornography is far from simple. When conducting my research, I looked into the ways in which other countries combat child pornography and other forms of sexual violence against children. Sexual violence against children does not stop at the border. After all, with one click, images of a Dutch child being abused can be downloaded by an individual in Australia. Images of foreign victims can also be found on the computers of Dutch suspects. Child sex tourism in itself also has an international component. The significant international nature of the problem calls for cross-border cooperation. It has already been demonstrated that international cooperation enables networks of producers and distributors of child abuse material to be rounded up, and facilitates the identification and rescue of children who have become victims.

This is my first report on child pornography, but also my last. And that is a good sign. The Dutch government has extended my monitoring role in relation to child pornography to the entire field of sexual violence against children. This means that there is government recognition of the fact that child pornography is but one of the forms of sexual violence against children and that it needs to be tackled as such. My next report will therefore encompass that *entire* field, and consequently the progress achieved in tackling child pornography will form an integral part of that report.

#### *Words of thanks*

As far as BNRM is concerned, the realm of child pornography and the approach towards tackling it was something new. All individuals and organisations involved in tackling child pornography have made their services available to my Bureau and I in order to provide an insight into the implementation processes in this complex area. The network we have built and the contacts we have made have all contributed significantly towards the insights that we gained. All of the parties involved, from *Advies- en Meldpunten Kindermishandeling* [Child Abuse Counselling and Reporting Centres] to *Team Beeld en Internet* [Images and Internet Team], were willing to share information and viewpoints with us, and we wish to express our gratitude for that.

Statistics play an essential part when it comes to determining trends; this formed an additional area in which BNRM needed to tap into both old and new sources in order to show the desired results. We would

therefore like to thank Child Helpline International, *Meldpunt Cybercrime* [Cyber Crime Reporting Website], *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet], the Netherlands Probation and After-care Services, *Stichting M.* [Report Crime Anonymously], Stop it Now! UK & Ireland, and the *Wetenschappelijk Onderzoek- en Documentatiecentrum* [Research and Documentation Centre].

Many interns have provided a boost to the activities of BNRM. They carried out subsidiary research and information retrieval work; in short they have made a relevant contribution towards the realisation of this report, and I am also very grateful to them.

The new mandate was a challenge for me and my Bureau. The efforts and dedication of my staff have made this report into the report now in front of you. I am very grateful to my staff for all their work in helping to complete this task.

C.E. Dettmeijer-Vermeulen  
*National Rapporteur on Trafficking in Human Beings*

# Introduction

*“Growing children deserve every protection possible, from all of us. It is imperative that children grow up in a safe environment and are able to develop into adults in a healthy and balanced way. People who are victims of sexual violence or abuse during childhood often carry the scars of those traumatic events with them for the rest of their lives. Based upon their own responsibility, family, society and the government must therefore make every effort to ensure that children are protected from any harm to their physical and mental integrity”.<sup>1</sup>*

## Current context

Child pornography forms the subject of a great deal of attention from both the social and political spheres. It is, after all, closely related to sexual violence against and the sexual abuse of children<sup>2</sup>, both of which provoke extreme repugnance and indignation within society.

The opportunities to produce, distribute and view child pornography have increased exponentially due to the rise of the Internet and the rapid rate of development in digital technology. In the Netherlands, this topic has gained even greater prominence as a result of a number of notorious cases. Such examples include the case of Benno L. who produced images of acts of sexual abuse that he carried out, involving children entrusted to him in his capacity as a swimming instructor; the ‘Boylover’ case, involving an Internet forum for users with a preferential interest in children and in which a Dutch citizen managed the server and (in part) the website<sup>3</sup>; and the most recent and utterly shocking Amsterdam sexual abuse case<sup>4</sup>, in which the sexual abuse of children took place on a large-scale, of which images were also pro-

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- 1 Approval of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, drawn up on 25 October 2007 (Treaty Series 2008, 58), Explanatory Memorandum, *Parliamentary Papers II* 2008/09, 31 808 (R1872), no. 3, p.1
  - 2 Sexual violence is defined in the *Zedenalmanak* [Almanac of Sexual Offences published by the Dutch Ministry of Justice] as follows: “all occurrences in which individuals are confronted with sexual acts or behaviour of a sexual nature of third parties against their will, whether within their own home or elsewhere, and in which violence is involved in an unequal balance (of power). Sexual abuse applies to situations in which sex acts take place that involve the abuse of a dependency relationship”. (de Savornin Lohman et al., 2003, pp. 9-10).
  - 3 No child pornography was available on this website, however links were provided to child pornography sites.
  - 4 Also known as the “Robert M.” case, after the chief suspect. This case will be referred to as the Amsterdam sexual abuse case further in this report.

duced and distributed. The large number of pending cases of child pornography being dealt with by the police has also ensured the attention of politicians. The interim report from the Deetman Committee of February 2011 and the fourth public notice from the Samson Committee confirm that the sexual abuse of children is a perennial problem.<sup>5</sup> The recent sexual abuse cases reinforce this picture. The visibility of sexual violence against children, and therefore the social and political attention that this phenomenon attracts, are also increasing.<sup>6</sup>

Sexual violence against children also forms an important item on various policy agendas on the international level. Concerns at UN level with regard to the sexual safety of children formed an important reason for the creation of new regulations.<sup>7</sup> In 2007, the Council of Europe reached an agreement on a convention to protect children against sexual exploitation and sexual abuse (Lanzarote Convention).<sup>8</sup> The aim of this Convention is to protect children in a broad sense from sexual violence, including child pornography, in which aspects of the digital domain such as the increased use of the Internet by both perpetrators and victims play an important role. This is the first convention in which technological developments were expressly taken into account in regulations, against the background of general protection of children from sexual violence. The Convention therefore forms a significant starting point with regard to the protection of children from sexual violence, and in turn also in the strategy to tackle child pornography.<sup>9</sup> Work is currently underway in an EU context to draw up a new directive to tackle sexual abuse, sexual exploitation of children and child pornography.

In recent times, the Ministry of Security and Justice (formerly: Ministry of Justice) has taken a number of initiatives specifically designed to tackle child pornography, including the creation of a Task Force *Aanpak Kinderporno en Kindersekstoerisme*<sup>10</sup> and the creation of the *Programma Verbeteren Aanpak Kinderporno* (PVAKP) [Programme of Improvements in Tackling Child Pornography].<sup>11</sup> In addition, the decision was taken to double the police capacity earmarked for tackling child pornography.<sup>12</sup> In October 2009, a spe-

5 In Germany, an independent committee has also conducted a study of sexual abuse of children (*Unabhängigen Beauftragten zur Aufarbeitung des sexuellen Kindesmissbrauchs* [Independent Commissioner for the Rehabilitation of Victims of Child Sexual Abuse], 2011). This involved a wide-ranging investigation in which sexual abuse in churches, official bodies and families was examined and the emphasis was placed upon coping with the abuse. Amongst other aspects, it emerged from the final report that child pornography as a form of sexual violence against children is one of the phenomena of which further and more detailed investigation is deemed necessary.

6 Investigation committees concerning sexual abuse are partly the result of the increased visibility but they also contribute towards achieving this visibility.

7 Optional Protocol on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child (New York, 25 May 2000), Treaty Series 2001, 63 and 130. See §1.3 for further details.

8 Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58. See also §1.3 for further details.

9 See also §2.3.

10 Decision of the Minister for Justice of 6 November 2009, no. 5627198/09, concerning the creation of the Task Force *Aanpak Kinderporno en Kindersekstoerisme* [Task Force on Child Pornography and Child Sex Tourism].

11 See §2.4.1.

12 *Parliamentary Papers II* 2010/11, 32 500 VI, no. 106.

cial task, entailing the production of reports concerning child pornography, was introduced; that role of rapporteur on this issue was incorporated into the role of the National Rapporteur on Trafficking in Human Beings (NRM).<sup>13</sup>

### Scope covered by the reporting role

Starting in October 2009, an orientation study<sup>14</sup> in this new field was undertaken that produced an impression of the phenomenon of child pornography within the context of sexual violence against children. This will be examined in detail in the first chapter; this introduction will only outline the scope of the content of this reporting role. The subject of the task of producing reports is child pornography,<sup>15</sup> which essentially involves images of sex acts by and involving minors. In short, the provisions of the Dutch Criminal Code in relation to child pornography mean that the production, distribution, possession and viewing of child abuse images constitute criminal offences.<sup>16</sup> Victimisation in child pornography may therefore in the first instance relate to the fact that children form the victims during the production of such material. In many cases, the children involved are also the victims of sexual abuse. Such cases involve sexual violence committed against children, which then becomes child pornography, due to the fact that images are or have been made of that abuse. Furthermore, children may, either immediately or later in life, become the victims of the distribution, possession or viewing of child pornography in which they themselves appear. The aspects that cause the children to remain victims relate to the fact that the child goes on to experience the implications of appearing as the subject of child abuse images. This particular aspect of victimization has shown explosive growth with the rise of the Internet.

Victims, perpetrators and technology form the core of the phenomenon of child pornography<sup>17</sup>, in which the technological aspect relates to the abusive material involving children itself, on the one hand, and the technological means of production, distribution and possession on the other. These vary significantly. There are many (types of) perpetrators, victims, images and means of producing, distributing and/or possessing digital child abuse images. Although the material itself that is currently available is primarily in digital form, the capacity of being a perpetrator and the state of victimisation exist both in the offline and online domains,<sup>18</sup> and as a result, the phenomenon consists of an analogue and a digital element.

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13 Decree of 28 October 2009 of the Minister for Justice, comprising the arrangements to establish the National Rapporteur on Trafficking in Human Beings, 2009 (*Dutch Government Gazette* 2009, no. 18798).

14 A literature study, analysis of policy initiatives and building up an extensive network within working practice formed part of this; BNRM also organised an expert meeting at the beginning of 2010; see also the overview of activities at [www.bnrm.nl](http://www.bnrm.nl).

15 See Establishment Decree [*Instellingsbesluit*]. Nevertheless the Establishment Decree places the emphasis upon the NRM being able to undertake activities in this area of investigation as it sees fit.

16 Article 240b of the Dutch Criminal Code, see §1.3.

17 The Samson Committee, which investigates sexual abuse of children who have been placed in institutions under the government's responsibility or with foster parents, describes the context of perpetrators, victims and the situation. With regard to child pornography, the digital environment and therefore the technological aspect constitute that context.

18 For the sake of ease of reading, the terms virtual and digital world and cyberspace are used to refer to the online domain, whilst the terms analogue, real and physical world are used for the offline domain. An explanation of the terms follows in §1.2.3.

*Focus: the protection of children from sexual violence*

The aforementioned core elements of the phenomenon make it clear that child pornography is inextricably linked to other forms of sexual violence, and that it cannot be tackled, neither can that strategy be monitored, if the focus solely rests on the child abuse material and does not extend to the underlying sexual violence. This also means that the reporting role must be performed in such a way that the phenomenon of child pornography is regarded as one aspect of the broad area of sexual violence against children, both offline and online. If the reporting task is limited to child abuse material as such, the purpose it would serve would be too limited.<sup>19</sup>

There is a broad consensus with regard to the great importance of protecting children from sexual violence and with regard to the harm that sexual violence causes to the child's development and wellbeing.<sup>20</sup> Child pornography has been made a punishable offence in order to provide a means of tackling the sexual abuse of children.<sup>21</sup> The criminalisation is in keeping with the obligation imposed upon countries, in the form of various conventions and tools, in order to protect children from all forms of sexual exploitation and abuse, including the use of children in pornographic material.<sup>22</sup> For this reason, tackling child pornography partly serves to protect children from sexual violence, both in the form of actual abuse and in the form of exposure to the implications of the production, distribution and possession of such images. The production, acquisition and viewing of child abuse material via Internet are deemed to constitute online sexual violence, whilst the actual abuse constitutes a form of offline sexual violence against children.<sup>23</sup>

*Perspective: from the viewing of child abuse material to protection policy*

In this report, we will examine the policy used by the government and other organisations to protect children from sexual violence in a broader context, from the perspective of child pornography. As such, this report will not allow us to fully map out this policy of protection, nor can we examine the even broader topic relating to the combating of child abuse in general. However, this report can indicate the extent to which aspects associated with child pornography are taken into account in the protection policy and its implementation in practice. In short, the findings boil down to the fact that policy initiatives that aim to tackle sexual violence in the analogue, real world do not take account of specific online aspects (such as child abuse images), and that the same applies vice versa. With regard to the practical implementation of the policy, we not only examined specific interventions in relation to child pornography (since these chiefly concern repressive measures based upon detection and monitoring, pursuant to Article 240b of the Dutch Criminal Code, and would not take account of the principles expressed in the Lanzarote Convention)

19 Performing this task in a way that covers the full extent of sexual violence would reach too far beyond the task in hand at present and the means that are currently available.

20 Smallbone et al., 2008

21 See §1.2.

22 For example, see Article 34, sub-section c of the UN Convention on the Rights of the Child: "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 [...] The exploitative use of children in pornographic performances and materials"; see §1.3 with regard to the Lanzarote Convention and other international documents.

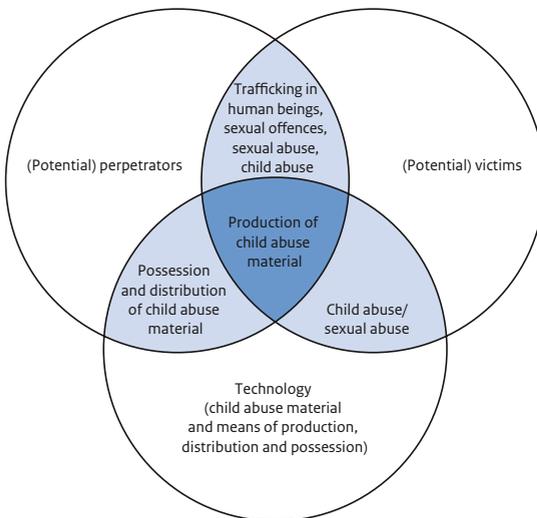
23 See Table 1.1 and Table 1.2 for an explanation of the forms of offline and online sexual violence against children.

but also the extent to which any abusive context is taken into account in other forms of intervention relating to sexual violence against children, such as prevention, identification and registration and care provision for victims. With regard to certain elements, it is not possible to make an explicit distinction in relation to child pornography within the broad context of sexual violence against children, as we do not have that reference framework. We also assessed the extent to which policy and implementation incorporate the complexity and in particular the variation within the phenomenon in initiatives and actual actions.

## Perpetrators, victims and technology

The figure below shows how the three aspects of child pornography – perpetrators, victims and technology<sup>24</sup> – relate to one another. It also shows the relationship with other forms of sexual violence against children.

**Figure 0.1** Perpetrators, victims and technology



The capacity of being a perpetrator, victimisation and technology converge in the dark-blue area in the form of the production of child abuse material. The light-blue areas indicate the routes by which such activity is identified and addressed. A few illustrative examples are as follows: Where perpetrators and technology overlap one another, the police may suspect individuals of possessing or distributing material, but potential victims are not yet known. It may be the case, however, that an individual is not only viewing the material but is also found to be producing it. If that is the case, we find ourselves back in the dark-blue area. When victims and technology (material) overlap one another, the question – as far as bodies that are responsible for the child’s care (such as AMK, Youth Care Agency or community care services) are concerned – is whether they are also taking account of indications of victimisation from

24 Technology in this case consists of child abuse material on the one hand and (information and communication) technology (ICT) on the other hand, which is used in the production, distribution and for possession of such material; see §1.4.1.

the digital domain (light-blue area) if victimisation by sexual abuse is suspected, and are therefore able to contribute towards locating evidence of the abuse, and putting an end to a situation in which the abuse is taking place offline. Similarly, by working in cooperation with the police, they then would also be able to help to identify producers of child abuse material (dark-blue area). Where perpetrators and victims appear in the same field in the figure, this indicates cases in which there may be evidence of an offence such as trafficking in persons, child prostitution, sexual abuse or general abuse. By reporting such cases to the police or notifying the AMK, for example, victims and perpetrators can be identified. The question in this regard is whether the bodies concerned also consider the eventuality that abusive material has been or is being produced. What also becomes clear is that the route from a light-blue area to the dark-blue area (actual production) can give rise to information concerning another light-blue area. It may be the case, for example, that when examining a suspect's computer hard drive in an initially (relatively) simple 'case of possession', this individual is also found to be a producer or be connected with a producer. Upon closer investigation, this conclusion may give rise to the discovery of (other) physical abuse (overlap between perpetrators and victims) or the identification of victims on material that has already been found (overlap between victims and technology (material)).

The sections of the circles that do not overlap with another circle represent a situation in which no actual perpetrator or victim or recently-produced material is found, but which concerns old material and the potential capacity of being a perpetrator or a potential victim, which includes the potential for recidivism of perpetrators and re-victimisation of victims. The question will then be which bodies (must) take action in this regard, and what form the intervention will take.

Figure 0.1 represents the focus and the perspective of the reporting task in relation to child abuse material. The core focus is the protection of children from sexual violence. The employment of a child pornography perspective may prove functional for the provision of that protection. At the end of this report, the findings will be linked back more closely to this figure. Then we can ascertain which interventions could together form an integrated strategy in tackling child pornography.

### Creating the reporting body

In 2009, the Decree establishing the National Rapporteur on Trafficking in Human Beings (NRM) was revised.<sup>25</sup> By virtue of the new arrangements, the NRM reported not only on the strategy to tackle trafficking in human beings but also that of tackling child pornography. The explanatory notes to the Establishment Decree noted the following with regard to the assignment of the reporting task to the NRM: "A relationship between the investigative area of human trafficking and sexual exploitation partly ensues from (...) the Lanzarote Convention. This Convention has in part been grafted onto existing international agreements on trafficking in human beings. The common nature of child pornography and trafficking in human beings as transnational offences also emerges from these documents."

The Decree to establish a *Rapporteur Kinderpornografie* was no sudden action. The Member of Dutch Parliament Kees Van der Staaij (SGP) noted in 2007: 'Child pornography, child sex tourism, trafficking of children and child prostitution should be viewed in conjunction, in the form of a preventative

25 Order of 28 October 2009 of the Minister for Justice concerning the regulations to establish a Dutch National Rapporteur on Trafficking in Human Beings.

and repressive approach. Is a *rapporteur* that monitors and coordinates the matter a good idea?<sup>26</sup> The *Verbeterprogramma Kinderporno – ‘op beeld vastgelegd sexueel misbruik van kinderen’* [Programme of Improvements in Tackling Child Pornography- ‘the sexual abuse of children recorded in photographic form’] of the National Police Services Agency<sup>27</sup> was published in 2008. This programme also made recommendations with regard to monitoring, and one of those recommendations read as follows: “Investigate whether the tackling of child pornography as a subject can be added to the duties of the NRM, or whether a separate National Rapporteur in Sexual Abuse of Minors could be appointed.” The organisations *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet] and ECPAT Nederland [End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes] wrote a letter to the Chamber arguing for a General Consultation in 2008 with regard to the appointment of a national ‘rapporteur in the sexual exploitation of children’ in order to be able to measure the effects of policy and the way in which it was being implemented in operational form.<sup>28</sup> The Member of Dutch Parliament Fred Teeven (VVD) stated the following in relation to this subject in 2007: “the appointment of a national *rapporteur* for legislation pertaining to sexual offences and child pornography (...) is a good idea.”<sup>29</sup>

In the Establishment Decree of October 2009, the duties of the *Rapporteur* with regard to child pornography were specified, on an equal footing with its duties relating to trafficking in humans. The brief consists of investigating the developments in the extent and characteristics of child pornography and the effects of the policy measures that are taken to tackle it, advising the government with regard to the prevention and tackling of child pornography, and producing periodic reports for the government.<sup>30</sup>

Except for the Netherlands, no other countries have yet established an (independent) reporting body concerning child pornography. However, there are officials operating with a similar mandate in connection with the United Nations, such as the Special Rapporteur on the sale of children, child prostitution and child pornography<sup>31</sup> and the Special Representative on Violence Against Children.<sup>32</sup> The mandate of the Special Rapporteur has already demonstrated the existence of a certain connection between the respective reporting tasks concerning child pornography and human trafficking, in so far as these concern child victims. The Special Rapporteur and the Special Representative recently published a joint

26 *Parliamentary Papers II* 2007/8, 30 800 VI, no. 37.

27 *Landelijk project kinderporno* [national project to tackle child pornography], 2008.

28 See [www.meldpunt-kinderporno.nl/files/Biblio/AO%20Kinderporno%2010%20december.pdf](http://www.meldpunt-kinderporno.nl/files/Biblio/AO%20Kinderporno%2010%20december.pdf) (viewed 12 September 2011).

29 This statement was made in the consultation between the Parliamentary Standing Committee on Justice and the Minister for Justice on 31 October 2007, *Parliamentary Papers II* 2007/08, 31 200 VI, no. 101.

30 Establishment Decree, Article 4. In the report she shows the findings of her investigation and the conclusions based upon these, and she makes recommendations (Article 5, paragraph 1). The recommendations may be aimed at the central government, local and other authorities, (the Netherlands’ contribution to) international organisations and non-governmental organisations (Article 5, paragraph 2).

31 They report to the Human Rights Council of the United Nations with regard to the exploitation of children all over the world and make recommendations concerning this area to governments, other bodies of the United Nations and non-governmental organisations.

32 Special Representative of the Secretary-General on Violence against Children.

report<sup>33</sup> and the fact that they have sought to collaborate on such a report demonstrates the relationship and a certain overlap between the stated fields in which reports are produced, and the issue of violence against children, including sexual violence. Some of these various areas of overlap will be discussed in this report, and the common denominator is the protection of children from sexual violence.

## Structure of the report

The aim of this initial report is to provide some insight into the phenomenon of child pornography. The current state of affairs is also broadly analysed. The core theme within the analysis is that the approach towards tackling child pornography is inextricably linked to the overall approach towards tackling sexual violence against children, and must form part of this. At the present time, ample attention is already being paid to the structure of the policy on child pornography, specifically with regard to the repressive strategy. Considerations are being made regarding the most effective way of allocating the police capacity involved in the programme of measures, at a central and regional level, as described in the section on detection in Chapter 3. However, an effective programme consists of more than just repressive action alone. Bodies other than the police and the judicial authorities have responsibilities in this area, as well; these other bodies will also be discussed in the following chapters.

### *Chapter 1 'The phenomenon of child pornography'*

This chapter forms the response to an extensive literature study, which enabled us to gain an insight into the complexity of the phenomenon. In this regard, it is important to recognise that the subject concerned provokes a great many emotions in society, which can easily give rise to the formation of an incomplete or inaccurate picture. It is precisely for this reason that, for the sake of the efficacy of the policy, it is necessary to take the information about the phenomenon that is currently available as a basis, as much as possible. In any case, that information shows that this issue concerns an extraordinarily varied and multiform phenomenon. The legal context will be described, and the nature of the phenomenon will be interpreted as a social phenomenon by investigating the various aspects in greater detail, namely perpetrators, victims and technology. Based upon the various ways in which individuals can be perpetrators and victims, combined with the developments in the technological domain, we clarify the actual forms that child pornography can take. We will also devote attention to the question of the extent of the phenomenon, a question that is important but that can hardly ever be answered. The number of perpetrators, the number of victims and the quantity of the material cannot be expressed in figures, although it is clear that the phenomenon of child pornography is growing exponentially. Furthermore, we will provide an overview of the way in which the government's vision and social attitudes with regard to the phenomenon have evolved from the end of the 1960s to the present day. The latter period of that timescale is characterised by the rapidly increasing importance of ICT. This report will describe the influence that this has had upon the capacity of being a perpetrator and the potential of becoming victimized. The fact that is of key importance here is that the Internet has become a pre-eminently facilitating medium for child abuse material and that at the same time an important question is raised, namely the extent to which ICT actually provides new opportunities to protect children from sexual violence.

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33 Joint Report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children, UN Doc A/HRC/16/56, 7 March 2011.

### Chapter 2 'The government agenda'

In this chapter we will analyse the manner in which the government has responded in terms of policy-making to the phenomenon of child pornography as it manifested itself as a social phenomenon and is still continuing to do so. In view of the fact that child pornography forms part of the wider context of sexual violence against children, this report will look at aspects including the question as to whether the specific characteristics of child pornography that are shown in Chapter 1 have been taken into account in the policy initiatives in that area over the past two decades. We will also examine current policy initiatives from the perspective of international developments and conventions, in which Articles 19 and 34 of the UN Convention on the Rights of the Child and the Lanzarote Convention in particular have served as the guideline. The discussion will highlight the most important policy initiatives that, whether implicitly or explicitly, directly or indirectly, were geared towards tackling child pornography. In this regard, we will not only examine the repressive strategy (adopted by the police and the judicial authorities), but also the policy initiatives formulated or supported by the Ministries of Health, Welfare & Sport, of Education, Culture & Science, of Social Affairs & Employment and of Economic Affairs, Agriculture & Innovation. In any case, the analysis shows that initiatives that were directly geared towards tackling child pornography were taken by the Ministry of (Security and) Justice, and the initiatives concerning the other Ministries were more specifically targeted towards tackling child abuse, including sexual violence. Child abuse material hardly ever constituted a factor<sup>34</sup> in these initiatives, and neither does there seem to be a clear insight into the digital element within the sexual abuse of children. It is therefore obvious that these initiatives need to be combined.

### Chapter 3 'Implementation'

The central question in this chapter relates to the way in which the means of implementation in practice contribute to the strategy to tackle child pornography within the wider context of protecting children from sexual violence. The processes that form part of the implementation policy that will be discussed include prevention, identification and registration, the repressive approach – consisting of detection, prosecution and trial and (after-care for and) monitoring of convicted sex offenders – and the provision of care to victims. In so far as they are available, statistics relating to the implementation in practice have been collected and are presented in this chapter. The results of the orientation study that BNRM conducted amongst the AMKs are also shown in the section on notification and registration.

Finally, this report also devotes special attention to the public-private sector partnership, which is essential in tackling child pornography. The initiatives in this area that have already proved successful and the way in which the partnership could develop further are also described. A significant proportion of child pornography occurs on the Internet, and the Internet forms a field of influence in which the private sector and the online community also play a role. By definition, the distribution of child abuse material in digital format transcends borders and it is therefore essential that international cooperation is sought. A number of examples from other countries will also be described in this chapter, and the relevance of those examples to practice in the Netherlands will be explained.

In practice, it is not always the case that a specific implementation policy exists in order to tackle child pornography. With regard to the process of repression, aspects relating to child pornography are the

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34 This is striking as the Lanzarote Convention in fact places all forms of sexual violence against children, including child pornography, on an equal footing when it comes to the basic principles to be used, such as prevention and reporting; see also §2.3.

ones that have been examined in the greatest detail. This is not surprising, however, in view of the fact that Article 240b of the Dutch Criminal Code by definition forms the basic principle of action for the police, the Public Prosecution Service, the judicial authorities and (partly) the probation service. Nevertheless, measures to monitor convicted sex offenders who are returning to society having served their sentence, for example, are not specifically targeted at those convicted of offences related to child pornography. This means that within the context of this report, in order to gain an insight into implementation in practice, the perspective must first of all be broadened to include the monitoring of those convicted of sexual offences against minors in general. Then the perspective must be narrowed to focus upon persons convicted in cases involving child pornography. In this regard, the question then, for example, is the extent to which a digital context is taken into account in the monitoring of convicted sex offenders. This also applies to preventative measures and care provision for victims. Likewise, there is no specific implementation policy in these areas with regard to the question of how to deal with child pornography.

#### *Chapter 4 'Conclusions and recommendations'*

Finally, the report states which conclusions can be drawn from the previous chapters and what recommendations must be associated with these. In effect, this report concerns one core message:

*Children are entitled to protection from all forms of sexual violence. The approach towards tackling child pornography must form part of an integrated approach towards tackling sexual violence against children. Connection, coordination and monitoring form essential elements of that approach.*

The necessity to ensure connection and coordination is in keeping with the Explanatory Memorandum to the Act approving the aforementioned Lanzarote Convention on the protection of children against sexual exploitation and sexual abuse.<sup>35</sup> In this memorandum, the government wholeheartedly subscribed to the purpose of the Convention, and stated how all elements from the strategy stated in the Convention will be implemented in this country. The coordinating task arising from the Lanzarote Convention was assigned to the Ministry of Justice and the Programme Ministry for Youth and Family, but has now been assigned to the Ministry of Security and Justice and the Ministry of Public Health, Welfare & Sport. As far as their practical implementation is concerned, however, these divided responsibilities for the broad domain of sexual abuse of children, including child pornography, hardly ever converge back together. The stated policy initiatives and provisions often exist separately from one another.

The aforementioned situation provides reason to make the following recommendations: to make provisions for an integrated approach towards tackling sexual abuse, which will fully encompass a programme of measures to tackle child pornography; to ensure coordination to enable such a programme to be organised and implemented; to set up an independent monitoring system and to embed all of this in law to ensure continuity.

The foundation for this core message is laid in the following chapters and this core message will be made concrete in Chapter 4. The aim of this report is to provide some pointers for the organisation of the integrated approach to protect children from sexual violence and to indicate the way in which a link can be found between the analogue and digital elements in this approach.

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35 *Parliamentary Papers II 2008/09*, 31 808, no.3.

## 1.1 Introduction

Child pornography is a complex subject that evokes many emotions in society. However, in order to be able to tackle it effectively, it is necessary first of all to gain a good understanding of the phenomenon, one that is based upon available knowledge as much as possible. In this chapter, the phenomenon of child pornography will be introduced by referring to a number of developments in the Netherlands, the legal framework, and relevant scientific insights. These will act as a guideline for the findings in the subsequent chapters regarding the government agenda and policy (Chapter 2), the implementation of these (Chapter 3), and the recommendations (Chapter 4).

The chapter begins with a brief exploration of the history of child abuse material in the Netherlands, comprising three time periods (§1.2). The first period, from the late 1960s to the early 1980s, saw an increase in the production, distribution and possession of child abuse material, partly as a result of the liberal spirit of the age. At that time, the phenomenon was quite literally visible in the Netherlands. Once attitudes towards child abuse images changed in the early 1980s, it became less visible. The large-scale commercial circuit faded into the background, although the amateur circuit continued to proliferate. Advances in the realm of information and communication technology (ICT) in the mid-1990s helped to make the production, distribution and communication of abusive material more widely accessible. Analogue child abuse material disappeared and digital material appeared. The rise of the Internet brought it into the public eye once more and new issues emerged that presented a challenge in terms of policy and implementation.

A historical overview will be followed by a description of the legal framework (§1.3) and an account of the nature (§1.4) and extent (§1.5) of digital child abuse material. These sections will show that victims, perpetrators and technology form the core of the phenomenon of child pornography, whereby technology concerns the abusive material involving children on the one hand and the technological means of production, distribution and possession on the other. Considerable variation exists with regard to these elements of child abuse material; there are many (types of) perpetrators, victims, images and means of producing, distributing and/or possessing such material.

Although the material itself is primarily in digital format, the roles of perpetrator and victim exist in both the offline and online domain<sup>1</sup>, as a result of which the phenomenon of child pornography

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<sup>1</sup> For the sake of ease of reading, the terms virtual and digital world and cyberspace are used to refer to the online domain, whilst the terms analogue, real and physical world are used for the offline domain. An explanation of the terms follows in §1.2.3.

incorporates both an analogue and a digital element. As an international cybercrime, child pornography is not bound to time or space, and this, in itself, imposes specific requirements as far as international cooperation is concerned. As an offence, child pornography does not exist in isolation; it always occurs (and always has occurred) in conjunction with other (punishable) sexual conduct, ranging from child prostitution to trafficking in human beings, from abuse to grooming or corruption.<sup>2</sup> The influence of ICT has not been limited to the nature and extent of child abuse material; in fact it has also extended to include other sexual offences in which children can be victims. The common denominator of these offences is that children are victims of sexual violence. This context and the interconnection that exists are elements that must also be expressed in the form of policy and implementation.

The report below illustrates this context and the potential relationship between different offences.

#### *Parents offer their 8-year-old daughter for sex<sup>3</sup>*

An 8-year-old girl was offered on the Internet by her parents for sex in return for payment. The police and the judicial authorities intervened just before the child from Hardinxveld-Giessendam was to fall prey to a 32-year-old man from Brabant. The parents have already been in custody for four weeks [...]. The 32-year-old man from Heusden in Brabant, who had stated his intention to 'purchase' the child, was also arrested. The incident happened yesterday morning.

#### *Child abuse material*

The girl's parents, a 44-year-old man and his wife, 43, have already been in custody for four weeks. Their arrest has been kept secret up to now due to the interests of the investigation. They are suspected of promoting sex with a minor, trafficking in human beings, and producing and distributing child abuse material. A spokeswoman for the Public Prosecution Service (OM) in Rotterdam confirmed that the child was taken from her home immediately and placed with a foster family. The Public Prosecution Service will make a public statement today.

#### *Concerned family member*

The police received a tip-off on 12 May from a concerned member of the couple's family. He had discovered, on the laptop he had borrowed from the couple, some e-mail correspondence between them and the 32-year-old suspect. The e-mails contained negotiations as to how much money was to be paid in exchange for sex with the child. Dozens of photographs had been exchanged, including photos of the 8-year-old child.

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- 2 Grooming is the term given to making contact with children for sexual purposes. Corruption is allowing a child under the age of consent to witness sexual abuse or sexual activities for sexual purposes. Since 1 January 2010, these acts have been made criminal offences in Article 248d and 248e respectively of the Dutch Criminal Code. The criminalisation of these acts came to form part of legislation in the Netherlands following the ratification of the Lanzarote Convention (2007) on the Protection of Children Against Sexual Exploitation and Sexual Abuse, *Treaty Series* 2008, 58. See §1.3 for further details.
  - 3 *Ouders bieden dochter van 8 aan voor seks* [Parents offer their 8-year-old daughter for sex], AD.nl, 9 June 2011, available at [www.ad.nl/ad/nl/1012/Binnenland/article/detail/2443464/2011/06/09/Ouders-bieden-dochter-van-8-aan-voor-seks.dhtml](http://www.ad.nl/ad/nl/1012/Binnenland/article/detail/2443464/2011/06/09/Ouders-bieden-dochter-van-8-aan-voor-seks.dhtml) (viewed 7 September 2011).

*Parents offered young daughter due to large debts*<sup>4</sup>

[...]

The ‘buyer’, who was arrested in his hometown of Heusden on Wednesday, is also suspected of child abuse. The Public Prosecution Service (OM) confirmed that photographs found at his home showed him abusing a girl. It is not clear whether the child is the girl from Hardinxveld.

[...]

## 1.2 Developments over time

### 1.2.1 Introduction

The core of the phenomenon of child pornography – victims, perpetrators and (visual) technology – has evolved over the course of time. The invention of photography in 1839 was a determining factor in the emergence of child abuse images. Many other technological developments that followed on from photography have provided new means for perpetrators to victimise individuals, produce images, distribute those images and view them.<sup>5</sup>

The development of child pornography in the Netherlands can be illustrated by referring to three time periods, from the late 1960s onwards. These periods show us how the relationship between victims, perpetrators and technology has developed over time. From the late 1960s to the early 1980s, the liberal spirit of the age gave rise to an increase in the production, distribution and possession of child abuse images. As a phenomenon, it literally became visible due to the fact that child pornography magazines were freely available. Once the spirit of the age changed in the early 1980s and attitudes towards the phenomenon of child pornography changed along with it, it became less visible. The large-scale commercial circuit faded into the background, though the amateur circuit continued to proliferate (§1.2.2, see also §2.2). In the period from the mid-1990s to the present day (§1.2.3), ICT has made the production, distribution and possession of child abuse material more widely accessible and has once again brought the phenomenon into the public eye. The rise of ICT has also caused the phenomenon to become less clear-cut. Acts that were previously inconceivable due to the state of technology, such as a hacker secretly switching on a child’s webcam<sup>6</sup>, are now amongst the possibilities.

### 1.2.2 The period up to the mid-1990s

Although sexual activities involving children (whether alone or with others, actively or passively) have always been a subject of artistic expression, the invention of photography in 1839 formed a determining factor in the creation of child abuse images. Photography forms a very accurate approximation of reality. Sexual acts and actors are reproduced exactly, and the image of this forms a permanent record

4 *Ouders boden dochtertje aan vanwege zware schulden* [Parents offered young daughter due to large debts], AD.nl, 10 June 2011, available at: [www.ad.nl/ad/nl/1012/Binnenland/article/detail/2443927/2011/06/10/Dochtertje-8-voor-seks-aangeboden-wegens-schulden.dhtml](http://www.ad.nl/ad/nl/1012/Binnenland/article/detail/2443927/2011/06/10/Dochtertje-8-voor-seks-aangeboden-wegens-schulden.dhtml) (viewed 7 September 2011).

5 Ferraro & Casey, 2005, pp. 9-10.

6 Court of Haarlem, 24 July 2008, LJN [National Case Law Number]: BD8449.

of the event.<sup>7</sup> Since that time, children have (also) been sexually abused for the purpose of producing child abuse material.<sup>8</sup> Since the 1960s, the production, distribution and viewing of such material have increased significantly, and the first studies of the phenomenon were carried out some time later.<sup>9</sup> We can see parallels between this pre-Internet period and the present digital age. Even at that time, individuals with a sexual preference for children were in contact with other perpetrators and (potential) victims all over the world. At that time, people also attempted to conceal their communications, as is the case now, in order to avoid being discovered.

#### *The late 1960s to the mid-1980s*

During the 1960s a more liberal sexual morality developed, which emerged partly as a result of the secularisation of society, the development of means of contraception and the increase in levels of education. This decade saw the emergence of movements that proclaimed the principle of “free love”, including sex with minors.<sup>10</sup> On the one hand, the production and distribution of child abuse images in those years was the result of the spirit of the age, but it was also made possible due to the fact that technologies for film and photography were becoming increasingly accessible to the public at large. Although the quality was still poor, practically anyone could produce child abuse material and view it at home. There were no efforts to tackle child pornography during the 1960s and 1970s; legislation to that end was not in place until the mid-1980s.

#### *Developments in legislative history*

Article 240b of the Dutch Criminal Code, in which various acts relating to child pornography were made into criminal offences, entered into force in 1986.<sup>11</sup> Prior to that time, criminal legislation in the Netherlands did not contain any separate provisions that criminalised acts relating to child pornography. Initially, it was not deemed necessary either. For example, in the early 1980s, the government stated, within the context of the policy to tackle sexual violence against women and girls, that various provisions in the Dutch Criminal Code already ensured that action could be taken in situations in which there was evidence of threat, coercion or actual physical violence against women who worked (or intended to work) as models. According to the government, the same argument held true for those forms of pornography in which minors were used as models. Articles 244 et seq. were deemed to provide sufficient means of taking action against such offences.<sup>12</sup> It was therefore possible to take action against child abuse images, but prior to 1986 it was only possible on the grounds of the fact that the distribution of child abuse material constituted an offence, and

7 Ferraro & Casey, 2005, pp.9-10.

8 Jenkins, 2001, pp. 30-32.

9 For example, Burgess, 1984; De Wit et al., 1986.

10 Lünemann et al., 2006.

11 Dutch Bulletin of Acts and Decrees 1985, 385, entered into force on 21 May 1986 (Dutch Bulletin of Acts and Decrees 1986, 245).

12 Memorandum: Tackling sexual violence against women and girls, *Parliamentary Papers II* 1983-1984, 18 542 nos. 1-2. Similarly, in the period prior to the enactment of specific legislation, no distinction existed between pornography involving adults and that involving children in national legislation of other countries, and the regulation of the material was based upon arguments of decency. A great deal of national legislation pertaining to child pornography originated from indecency legislation. Akdeniz, 2008, pp. 17-20 & 94-96.

by virtue of the penal provisions pertaining to the criminal acts underlying the production of such material, such as rape or sexual abuse. Child abuse material was otherwise not addressed. This meant, for example, that the production of material in which a child was *voluntarily* involved lay beyond the scope of criminal legislation.<sup>13</sup>

The addition of specific provisions to make child pornography a criminal offence was subsequently a sudden step, the reason for which lay largely in the report that appeared in 1984 concerning the role that the Netherlands was alleged to be playing in the international production of and trade in child abuse material.<sup>14</sup> The acts being criminalised concerned the distribution or public exhibition of child abuse material, or the production, conveyance, or holding in stock of such material with a view to distributing or exhibiting it. The material in question involved individuals who had obviously not yet reached the age of sixteen. The possession of child abuse images or films for one's own use was not a criminal offence. Until 1996, offences carried a penalty of up to three months' imprisonment. In 1996, the penalty carried by offences was increased to a maximum of four years' imprisonment.<sup>15</sup>

Trade in child abuse material thrived during this period.<sup>16</sup> In this regard we can make a distinction between – on the one hand – recording the abuse of children in photographs or on film<sup>17</sup> ('production'), and on the other hand, the technical provision of child abuse material by printing, copying, compiling ('reproduction')<sup>18</sup> and/or distributing ('distribution') existing material, in the form of magazines or videos.

13 Presentation by the Ministry of Justice, Department of Legislation, BNRM Expert Meeting on Child Pornography, The Hague, 18 February 2010

14 For further details, see also §2.2 about the Child Pornography Working Group under the leadership of Public Prosecutor De Wit. In the early 1980s, a legislative bill was pending in the Lower House of Parliament with a view to amending the provisions in the Dutch Criminal Code concerning pornography. That bill implemented the recommendations of the advisory committee on sexual offences legislation (the Melai Committee). The Melai Committee had made a recommendation with regard to the role of criminal law in the domain of protecting public morality. Although the protection of children from pornography formed an important basic principle of the recommendations made by the Committee, neither the Committee's report nor the legislative bill that followed it devoted attention to the phenomenon of child pornography. It was only at a late stage during the consideration of the legislative bill, when the third memorandum of alterations was produced, that the proposal was made to add a specific provision to criminalise child pornography to that bill (presentation of the Ministry of Justice, Department of Legislation, BNRM Expert Meeting on Child Pornography, The Hague, 18 February 2010).

15 For further details, see also §2.2.

16 O'Donnell & Milner, 2007, pp. 4-19.

17 De Wit et al. asserted that this in fact usually involved the sexual abuse of individuals under the age of 16 by virtue of Article 247 of the Dutch Criminal Code or participation in that offence, De Wit et al., 1986, p.5.

18 De Wit et al. (see §2.2) repeatedly encountered a stumbling block, in their own words, regarding the confusion that arose when discussing the 'production' of child abuse material and the 'reproduction' (the compiling of photographs and the technical provision, through printing) of child pornography magazines. De Wit et al., 1986, p.5.

Even at the time, the trade in child abuse material was already taking place on an international level. During the period from 1969 to 1979, which Tate dubbed the ‘ten year madness’<sup>19</sup>, the Netherlands occupied an international position as a distributor of child abuse material.<sup>20</sup> In addition to material made by professional producers in other countries, commercial distributors in the Netherlands acquired images for their child pornography magazines via amateur producers. ‘Consumers’ were called upon in such magazines to submit material they had produced themselves. The quality of these images was generally very poor, and this fact – coupled with the minimal payment for these images – could indicate that the photographs were not made for a commercial purpose but were already in the possession of the amateur producer.<sup>21</sup> The consumer therefore played a vague role as a purchaser *and* producer of child abuse material. Their role was a significant one, however: 70% of the material in the magazines originated from this source.<sup>22</sup> Although the commercial trade flourished as a result of the introduction of cheap video cassettes and video cassette recorders,<sup>23</sup> the state of technology at that time had certainly also been a limiting factor in the production of child abuse material. In view of the costs and the physical size of the equipment, amateur producers were not able to produce high-quality material, let alone be able to take on the role of a large-scale printer or distributor of child pornography magazines. Such activities formed the sole preserve of commercial producers. When producing copies of films, the quality of a copy declined noticeably with every copy that was made<sup>24</sup> and people generally had to rely on professional photograph developers in order to have photographs developed.

We can distinguish between two forms of distribution, namely the private exchange circuit and the commercial circuit. Little context is available with regard to the private exchange circuit in the Netherlands, except for the fact that it existed and operated internationally.<sup>25</sup> Individuals used secret and less secret code words and even disclosed their intentions fully to ask for abusive images of children and opportunities to abuse children in advertisements in child pornography magazines in the Netherlands.<sup>26</sup> The fact that networks of contacts existed in this domain was also evident in the emergence of associations that

19 The British investigative journalist [Tim] Tate, who also wrote about the role of the Netherlands in the 1970s in his book that was published in 1990, claimed that Denmark was a major commercial production and distribution house of child abuse material in Europe at that time. The Danish government had legalised the production of all forms of pornography (therefore also child pornography) from 1969 to 1979. The legislation said to be concerned was Section 234 that formed part of the Danish Criminal Code at the time. The Danish production houses were highly professional and worked with the latest equipment that enabled detailed photographs, magazines and films such as “Sucking Daddy”, “Pre-Teen Trio” and “Fucking Children” to be produced (Tate, 1990, pp.41 and 44-57; see also O’Donnell & Milner, 2007, p.5; De Wit et al., 1986, pp.8 and 14-16).

20 Tate, 1990.

21 Rossen & Schuijjer, 1992, p.180.

22 De Wit et al., 1986, p.6.

23 Tate, 1990, pp. 209-210.

24 O’Donnell & Milner, 2007, p.20.

25 De Wit et al. (1986) came to this conclusion after having examined a number of official reports.

26 O’Donnell & Milner, 2007, pp.10-17; Tate (1990, p.59) summarised a couple of personal adverts from the Dutch child pornography magazine ‘Lolita’: “Englishman, 37, paedophile, wishes to meet a mother with Lolita daughter or lady with paedophile feelings with view to marriage” and “Pretty mother with pretty young daughters invites enquiries from gentlemen anywhere who are interested in meeting us or in photography”.

propagated sex with minors, such as the North American Man/Boy Love Association in the USA, Paedophile Information Network in the United Kingdom and *Vereniging Martijn* in the Netherlands.<sup>27</sup> These associations and individuals with a sexual preference for children also had contact with one another.<sup>28</sup>

The commercial distribution channels at that time were the same as the normal pornography distribution channels, such as sex shops and mail order companies, and these proved to be very lucrative for commercial producers and distributors.<sup>29</sup> The fact that child abuse material was openly for sale in sex shops did not mean that the commercial distributors, for whom it was more important to operate with their merchandise in public than it was for the amateur exchange circuit, did not take precautionary measures to keep their identity concealed.<sup>30</sup>

The anonymity of perpetrators in both the amateur and commercial circuit hampered their detection in any case.<sup>31</sup> At the end of the 1970s, many countries all over the world began to realise that regulations with regard to child abuse material needed to be tightened, and the open commercial sector began to fade into the background in some parts of the world. It was 1984 before this was the case in the Netherlands. Child abuse material increasingly provoked public indignation after the police in Amsterdam carried out a number of raids on sex shops and had seized the material on sale there.<sup>32</sup> In the intervening years, the Netherlands continued to constitute a major distribution centre.<sup>33</sup> The consequences of the liberal spirit that existed at that time are being felt even today: it is likely that a large number of the images of child abuse, which are now on the Internet, were produced in this period.<sup>34</sup> The victims of that time are now adults.

#### *The mid-1980s to the mid-1990s*

During this period society began to pay more attention to sexual violence against children, and governments in the Netherlands adopted a more a more serious approach towards combating child pornography.<sup>35</sup> Now that the spirit of the age hampered the large-scale commercial trade,<sup>36</sup> a strong, organised

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27 O'Donnell & Milner, 2007, pp.9-14: [www.martijn.org/page.php?id=103000](http://www.martijn.org/page.php?id=103000) (viewed 21 July 2011).

28 Tate, 1990, pp. 127-165.

29 Tate, 1990, pp. 50-52.

30 Tate (1990, p.76) refers to these Dutch distributors as 'wholesalers', who supply the world with child pornography magazines. Proper addresses of publishers were listed in the magazines, but in practice they were found not to exist or the addresses consisted of anonymous PO Box numbers.

31 De Wit et al., 1986, p.8

32 Rossen & Schuijjer, 1992, pp.160-162.

33 Tate, 1990, p.77. De Wit et al. concluded in 1986 (therefore after the initial raids by the police) that an organised distribution system for commercially produced child abuse material did not exist, but that a relatively large quantity of child abuse material was sent to Germany and the USA and that it was flowing back into the country (De Wit et al., 1986, p.26); see also §2.2.

34 Taylor & Quayle, 2003, p.45.

35 Lanning, 2010, Vasterman, 2004.

36 New magazines appeared on the market of which the contents were legal. These magazines such as the Dutch magazine 'Boy Love World' contained photographs of children of which the content did not constitute a criminal offence, and accounts of sexual abuse, but also advertisements to obtain child abuse material (of which the content did constitute a criminal offence) (Tate, 1990, p.140).

and international network of amateur producers and distributors remained: a 'sophisticated global cottage industry'<sup>37</sup> emerged, in which individuals from the amateur circuit made use of new forms of technology in order to produce and distribute material themselves, and due to increasing globalisation also travelled to meet other perpetrators and victims. This, in turn, continued to fuel trafficking in human beings, child sex tourism, child prostitution and abuse even further.<sup>38</sup>

Research into the nature and extent of child abuse material from this period is largely absent and consequently there is little insight into the production of material in the Netherlands.<sup>39</sup> However, the fact that it was no longer visible to the wider public did not mean that the phenomenon had disappeared from the Netherlands. The material found amongst the aforementioned material that was seized in Amsterdam was primarily old, and had been produced in other countries.<sup>40</sup> It was also said that a 'substantial' part of this material appeared to have come from the Netherlands itself. The material that was seized (still) consisted, at that time, of photographs, video recordings and 8 mm film copied onto video format. According to the Child Pornography and Child Prostitution Working Group, care organisations were not alert to the potential victimisation element of child pornography, which meant that there were no records of this either.<sup>41</sup> The period also heralded an age in which the production, distribution and possession of child abuse images and films became visible once again. In 1992, the investigative journalist Tate cited the case of a woman that had been a victim of child pornography at the end of the 1950s: "*Paedophiles [...] will always find new ways to obtain, abuse and manipulate children. They are always looking for new victims and new methods of getting them*". Tate already anticipated in

37 O'Donnell & Milner (2007, p.20) wrote: "*as a result of expanding access to these increasingly inexpensive technologies, child pornography quickly mutated into a 'sophisticated global cottage industry [...] where material was produced in domestic settings and exchanged or bartered for personal rather than profit motives*".

38 O'Donnell & Milner, 2007, p.21. For example, travel guides were published with names such as 'Mankoff's Lusty Europe' and 'Where the Young Ones Are', which described where child prostitutes could be found. Part of the international amateur network existed in the Netherlands. Tate (1990, p.140) dubbed this the 'Dutch connection' and claimed that (wanted) sex offenders moved to the Netherlands, which they regarded as a safe haven. That was certainly the case with the 'Björn tapes', behind which lay a British-Dutch paedophile network. In this case, material was produced and distributed in the Netherlands and the purchasers of the tapes were spread across the whole of Europe. *A Paedophile Ring in Amsterdam*, The Guardian, March 1997, available at: [www.nickdavies.net/1997/03/01/a-paedophile-ring-in-amsterdam/](http://www.nickdavies.net/1997/03/01/a-paedophile-ring-in-amsterdam/) (viewed 30 August 2011).

39 Child Pornography and Child Prostitution in the Netherlands Working Group, 1998, p.28. Material was no longer compiled and openly offered for sale. It was no longer possible to obtain figures of the victims from child pornography magazines, as had been done in research into child abuse material from the 1970s and the early 1980s (see for example Rossen & Schuijjer, 1992).

40 The study concerned an inventory drawn up by the Amsterdam/Amstelland regional police on the basis of investigations in the period '94-'96 and may shed some light on the material that was in circulation in the period 1985-1994. For example, the study did not mention computer files containing child abuse material (Child Pornography and Child Prostitution Working Group in the Netherlands, 1998, pp.29-30). The working group also noted that it is difficult to distinguish between new and old material, and material produced in the Netherlands and that produced in other countries.

41 Child Pornography and Child Prostitution Working Group in the Netherlands, 1998, p.28.

1990 that as far as child abuse material is concerned, “computers may prove to be the problem of the 1990s”<sup>42</sup>. Perpetrators would be able to communicate with one another using ‘computer-based bulletin boards’. The extent of abusive material has increased (exponentially) since that time.<sup>43</sup> The nature of the crime has changed slightly, but over time perpetrators have always demonstrated the need to communicate with victims and with other perpetrators in order to obtain new material, and ICT has proved to be an ideal means of meeting these needs. However, ICT, including the Internet, is perhaps more than just a means: “There is increasing evidence [...] of the Internet itself, and the social and psychological processes that are involved in accessing it, being both a process and factor in its own right that is both cumulative and additional to other means of communication”.<sup>44</sup>

### 1.2.3 Mid-1990s to present

In this period, it is not so much the spirit of the age but primarily the developments in digital technology that are providing new opportunities for individuals to produce, distribute or possess child abuse material and/or to contact other perpetrators and victims. Due to the influence of ICT on the phenomenon, child pornography is currently a cybercrime, but in certain cases it may also take the form of a high-tech crime. Some individuals only view material, whilst others also actually abuse children in the real world in order to produce child abuse material. Terms such as the ‘online and offline world’ and ‘hands-on and hands-off acts’<sup>45</sup> are used in relation to child pornography, but also in relation to other sexual offences, and so in practice there are always more areas of overlap that are developing. The technological developments and altered insights with regard to the phenomenon have given rise to amendments in legislation.

#### *Developments in legislative history*

In 1996, far-reaching changes were made to Article 240b of the Dutch Criminal Code.<sup>46</sup> In the early 1990s, the perception with regard to the phenomenon of child pornography that had applied up to that time changed. The police were confronted with a number of serious child pornography cases. The penalty carried by the offences was increased from three months to four years’ imprisonment. This not only conveys the severity of the offence but also enables the application of pre-trial detention and the use of a number of powers deemed necessary to tackle the issue effectively, such as the authority to search the premises. In order to be able to tackle the commercial trade in child abuse material more effectively, some provisions were added to the Article to criminalise those who make a profession of committing the criminal offences, or make a habit of committing such offences. The maximum sentence for that offence is currently set at six years.

42 Tate, 1990, pp. 209-210.

43 O’Donnell & Milner, 2007, p.54.

44 Taylor & Quayle, 2003, p.14.

45 These terms are explained in more detail later in this sub-section, see Table 1.1 and Table 1.2.

46 Dutch Bulletin of Acts and Decrees 1995, 575, entered into force on 1 February 1996. It should be noted that Article 240b of the Dutch Criminal Code contained a further exception at that time for the legal possession of child abuse material for specific purposes: “Anyone who has such an image in their possession, of which it has been ascertained that he/she is using it for an academic, educational or therapeutic purpose, shall not be liable to punishment”. This provision was removed in a later amendment (Dutch Bulletin of Acts and Decrees 2002, 388); this change entered into force on 1 October 2002 (Dutch Bulletin of Acts and Decrees 2002, 470).

In addition, the criminalisation of simple possession of child abuse material was also taken a step further; until that time, possession was not a criminal offence. To constitute a criminal offence, it is now no longer a requirement for certain acts, including ‘having possession [with an intent to distribute or display],’ to take place with a view to distributing or openly exhibiting child abuse material; rather, the legislator now regards such acts as a punishable offence, even if there was no additional intention involved. Furthermore, this also does away with the need to provide evidence of such intent.<sup>47</sup> The production of child abuse material for personal use and possession of such material in the private domain are now also subject to the provisions of Article 240b of the Dutch Criminal Code.

Further legislative changes followed in 2002,<sup>48</sup> chiefly by reason of international developments. The ratification by the Netherlands of the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in 1999<sup>49</sup> made it mandatory to raise the age limit in Article 240b of the Dutch Criminal Code to 18 years. In addition, due to the ratification of the Convention on Cybercrime created within the framework of the Council of Europe,<sup>50</sup> virtual child abuse material also became a criminal offence. The words ‘*schijnbaar betrokken*’ [apparently involved] were added to Article 240b of the Dutch Criminal Code, which means that it is no longer a requisite that a real child was involved in the production of child abuse material. The terminology ‘*in voorraad hebben*’ [having possession (with an intent to distribute or display)] was replaced by the word ‘*bezit*’ [possession] following a ruling by the Supreme Court.<sup>51</sup> The possession of a child abuse image also includes the possession of one or more images for personal use, so the possession of one or more images for personal use also constitutes a criminal offence. From that point onwards, and as is still the case now, the provisions making child pornography a criminal offence concern three types of child abuse material: 1. an image of a real child (any person below the age of 18 years); 2. an image of a real person who looks like a child; 3. a realistic image of a non-existent child.<sup>52</sup> These amendments form part of the partial amendment to the decency legislation and therefore also relate to criminal provisions other

47 Presentation of the Ministry of Justice, Department of Legislation, BNRM Expert Meeting on Child Pornography, The Hague, 18 February 2010.

48 Dutch Bulletin of Acts and Decrees 2002, 388, entered into force on 1 October 2002 (Dutch Bulletin of Acts and Decrees 2002, 470).

49 Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention), Geneva, 17 June 1999, Treaty Series 2001, 69 and 2004, 35.

50 Convention concerning the tackling of criminal offences in relation to electronic networks (Convention on Cybercrime), Budapest, 23 November 2001, Treaty Series 2002, 18 and 2004, 290)

51 Supreme Court, 21 April 1998, NJ [Dutch Law Report] 1998, 782, with note ‘t Hart.

52 See also Article 9, paragraph 2, sub-sections a to c inclusive of the Convention on Cybercrime. Cf. Article 1 of the EU Framework Decision, which also enables a number of exceptions to this in Article 3, for example with regard to the criminalisation of the production and possession of virtual child abuse material for private use. The Netherlands has not implemented possible provisos in this area.

than those concerning child pornography.<sup>53</sup> These legislative amendments were evaluated in 2006 (see §2.2).

### Internet

The influence of ICT upon today's society is indisputable. To indicate that influence, we refer to the present time using phrases such as the 'digital society' or the 'information society'. That same influence also applies with regard to child abuse material. The trade in such material can currently take place entirely via the digital super-highway, as the material itself is in digital format.<sup>54</sup> This means that child abuse material in analogue format has, under the influence of ICT, largely been replaced by material in digital format.<sup>55</sup> ICT encompasses many developments that were already set in motion decades ago due to the development of the computer.<sup>56</sup> Such characteristics, such as Moore's Law and other developments that can be related to this law, also influence the nature and extent of digital child abuse images and films.

Moore's Law assumes that the calculation power of computers doubles approximately every two years.<sup>57</sup> The speed of processors, data storage, network functionality and even pixels of digital cameras are increasing exponentially, whilst the price and user-friendliness of consumer technology have become considerably more favourable.<sup>58</sup> Consequently, capacity is no longer a limiting factor in the storage of

53 Lünemann et al., 2006, p.152. In addition to Article 248a of the Dutch Criminal Code (grooming of a minor for sexual abuse) and 248c of the Dutch Criminal Code (presence during acts of sexual abuse by minors), this also concerns Article 250a (old), which was later incorporated into the provisions making trafficking in human beings a criminal offence in Article 273 of the Dutch Criminal Code. As part of this revision, the complaint requirement was removed in its entirety and an obligation to give the complainant every opportunity to provide their viewpoint was formulated in its place (Article 167a of the Dutch Code of Criminal Procedure). The protection of other vulnerable groups was also tightened by adding the element of 'reduced consciousness' in Articles 243 and 247 of the Dutch Criminal Code. An important aim of the amendments is to boost the protection of minors from forms of sexual abuse. To this end, not only was the provision concerning child pornography tightened, but also the extraterritorial jurisdiction was extended in relation to the strategy to tackle child sex tourism (Articles 5 and 5a of the Dutch Criminal Code). Other forms of sexual exploitation of minors were also made criminal offences. Apart from that, child sex tourism, being offences committed by a Dutch citizen in other countries, can also be prosecuted pursuant to Article 248b of the Dutch Criminal Code (using the services of underage prostitutes), Article 244 of the Dutch Criminal Code where intercourse with children below the age of twelve years is concerned and Article 245 of the Dutch Criminal Code where sex with children between the age of twelve and sixteen years is concerned.

54 Van der Hulst & Neve, 2008, p.50-51.

55 O'Donnell & Milner, 2007, pp.29-63.

56 Mulder et al. (2010, p.259) refer to ICT as a sub-discipline of the field of technology. The designation ICT is said to be a doubled designation, as communications technology forms part of information technology.

57 See [ftp://download.intel.com/museum/Moores\\_Law/Video-Transcripts/Excepts\\_A\\_Conversation\\_with\\_Gordon\\_Moore.pdf](ftp://download.intel.com/museum/Moores_Law/Video-Transcripts/Excepts_A_Conversation_with_Gordon_Moore.pdf) and [ftp://download.intel.com/museum/Moores\\_Law/Articles-Press\\_Releases/Gordon\\_Moore\\_1965\\_Article.pdf](ftp://download.intel.com/museum/Moores_Law/Articles-Press_Releases/Gordon_Moore_1965_Article.pdf), (viewed 8 August 2011).

58 See Ferraro & Casey (2005, pp.9-15) for an economic market analysis in time of relevant technological equipment, such as camera, scanners and desktop computers.

child abuse material.<sup>59</sup> Current (high-tech) innovations that hamper the detection of such material,<sup>60</sup> such as encryption,<sup>61</sup> cloud computing,<sup>62</sup> (pre-paid) smart phones and free Wi-Fi,<sup>63</sup> will ultimately also become accessible to low-tech users. Such innovations are used by billions of people all over the world. The drawback is that individuals with harmful intentions can also use technology now and in the future in order to achieve their purpose.

*Digital child abuse material and ICT as an opportunity*

Technology not only presents a challenge due to the fact that individuals discover new ways of displaying deviant behaviour, but also creates opportunities for academia and organisations involved in preventing and tackling child pornography. Those opportunities lie in the digital material itself on the one hand, and in the technology used in order to produce, distribute and/or view on the other hand.

- As far as tackling child pornography is concerned, the material can provide proof that abuse has taken place. In the case of babies and toddlers, it may even be the only proof that a form of sexual violence has taken place. Other digital data, such as chatroom conversations, links to websites, etc., may indicate that sexual violence against children has taken place or is in a preparatory stage.<sup>64</sup> Individuals also leave data behind in cyberspace that can form a digital profile. All of these digital signals provide potential information concerning the (identity of) perpetrators and victims.<sup>65</sup>
- ICT can also make a contribution in the prevention of sexual violence against children. Potential perpetrators and victims are both active in cyberspace. This means, for example, that information concerning sexual violence against children can be provided by the government through digital channels, and that ICT and its users can make a contribution towards increasing the physical and social safety of these digital channels.

59 Taylor & Quayle, 2003, p.199.

60 We know for example that users of child abuse material have ever greater expertise and use concealment methods (such as encryption) in order to remain undetected. For example, it is possible in certain publicly-accessible environments (such as chatrooms, auction sites and peer-to-peer (p2p) networks) to communicate in private (Van der Hulst & Neve, 2008, p.43; Solum, 2009, p.54).

61 By encrypting information, unauthorised users can be prevented from accessing that information. In practice, the public key encryption method is mainly used in encryption. KLPD – National Crime Squad, 2010, p.196 (not publicly available).

62 ‘Cloud’ refers to the storage and processing of data via the Internet. In the cloud model, data and computing capacity are available online without it being possible to know where the data are stored and which computers are carrying out the computation. The physical location of storage and computing capacity varies and is not relevant within the cloud model. KLPD – National Crime Squad, 2010, p.194 (not publicly available).

63 GOVCERT, 2010.

64 See *Vrijwilliger Kaatsheuvel gepakt voor kinderporno* [Volunteer in Kaatsheuvel arrested for possession of child abuse images] Eindhovens Dagblad, 9 August 2011, available at [www.ed.nl/regio/eindhovenregio/9263533/Vrijwilliger-Kaatsheuvel-gepakt-voor-kinderporno.ece](http://www.ed.nl/regio/eindhovenregio/9263533/Vrijwilliger-Kaatsheuvel-gepakt-voor-kinderporno.ece) (viewed 10 August 2011).

65 See for example *Melanie had eerder gered kunnen worden* [Melanie could have been saved sooner], De Telegraaf, 5 July 2011, available at: [www.telegraaf.nl/binnenland/10141960/\\_Melanie\\_eerder\\_gered\\_kunnen\\_worden\\_.html](http://www.telegraaf.nl/binnenland/10141960/_Melanie_eerder_gered_kunnen_worden_.html) (viewed 9 August 2011).

- ICT also forms an opportunity for academic researchers to find out more about (potential) perpetrators and victims due to the fact that certain characteristics/shortcomings of criminal investigations<sup>66</sup> no longer apply or are less of an issue. In particular, this concerns investigations into (potential) perpetrators that have not (yet) come into contact with the authorities. Academic researchers can now view posts by these individuals on news groups, for example.<sup>67</sup>

ICT has simplified the production, distribution and possession of child pornography considerably.<sup>68</sup> In the Netherlands, ICT has gained a prominent position. It is ranked as one of the countries around the world with the highest levels of access to and actual use of (broadband) Internet amongst the population.<sup>69</sup> The Netherlands not only enjoys high Internet penetration<sup>70</sup> and has high levels of Internet use, but also occupies an important position with regard to the Internet infrastructure. The Amsterdam Internet Exchange (AMS-IX) forms one of the major junctions of Internet traffic in Europe, and consequently various Internet service providers (ISPs) have established premises in the vicinity of the AMS-IX.<sup>71</sup> These ISPs host vast quantities of data, such as websites, belonging to individuals and companies from all over the world. Just as the infrastructure of the port of Rotterdam unwittingly facilitates the arrival of illegal goods (such as drugs), child pornography can also be hosted by the 'data ports' (servers) in the vicinity of Amsterdam.<sup>72</sup>

The introduction of the Internet is regarded as a breakthrough in the use of ICT. The Internet is a global data communications system formed by innumerable public and private telecommunications networks being connected together that (primarily) use the Internet Protocol (IP), Transmission Control Protocols (TCP) and protocols that in turn implement the Internet Protocol, such as the Domain Name System (DNS).<sup>73</sup> This turns the Internet into a network of computer networks in which the agreements with regard to the use of these (universal) protocols ensure that these computer networks are able to communicate between one another.<sup>74</sup> Services that can be used via the Internet include for example e-mail, peer-to-peer programmes (p2p) and news groups<sup>75</sup> (see §1.4.1.2). The most well-known service is the World Wide Web (www), which resulted in the breakthrough of the Internet in the general public domain in the mid-1990s thanks to the introduction of web browsers<sup>76</sup>.

66 Bijleveld, 2006.

67 See for example the study by Jenkins (2001) of child abuse material based upon posts on bulletin boards.

68 See §1.4.1.2.

69 See [www.ec.europa.eu/information\\_society/digital-agenda/scoreboard/countries/nl/index\\_en.htm](http://www.ec.europa.eu/information_society/digital-agenda/scoreboard/countries/nl/index_en.htm) (viewed 22 June 2011).

70 Internet penetration refers to the number of households that have access to the Internet.

71 See [www.nl-ix.net/news/51/holland\\_becoming\\_worlds\\_key\\_peering\\_harbor/](http://www.nl-ix.net/news/51/holland_becoming_worlds_key_peering_harbor/) and [www.prefix.pch.net/applications/ixpdir/?show\\_active\\_only=o&sort=participants&order=desc](http://www.prefix.pch.net/applications/ixpdir/?show_active_only=o&sort=participants&order=desc) (viewed 21 July 2011).

72 In 3.3.3.1 it emerges that a significant proportion of the alleged child abuse material that is reported to *Meldpunt Kinderporno* [Hotline Combating Child Pornography on the Internet] is hosted by servers in the Netherlands.

73 Mathiason et al., 2004, pp.6-7.

74 O'Donnell & Milner, 2007, p.30.

75 The newsgroups that together make up Usenet actually do not form part of the Internet, see Jenkins, 2001, pp.54-57.

76 Sommer & Brown, 2011, pp.17-20.

Four aspects of the Internet that also exert an influence upon the phenomenon of child pornography are the end-to-end principle, the use of open standards, the global nature of the Internet, and the private market.<sup>77</sup> This last aspect of the Internet entails that networks are owned and administrated by autonomous organisations, primarily from the private sector. For this reason, governments have, in principle, little control over the Internet. The global nature of the Internet means that it is not bound by national boundaries, and that data, such as child abuse material in digital format, is sent irrespective of political and territorial borders. This also means that the perpetrators, (potential) victims and material can come into contact with one another more easily, more quickly and more often.<sup>78</sup> The fact that perpetrators and victims can find one another all over the world is also related to the aspects of common standards. The Internet can be accessed openly and freely by anyone. Children from Mid-Eastern Europe, for example, who are vulnerable due a low socio-economic status can also be found on the Internet.<sup>79</sup> The Internet is also based upon the end-to-end principle.<sup>80</sup> This means that it was designed as a neutral, transparent and very simple communication channel. All complex software and other functions for receiving and processing data are contained (in equipment) at the end of the network. In short, the Internet, as the communication channel, does not discriminate: as far as the Internet is concerned, digital child abuse material is data that is no different to any other data. For this reason, the term ‘trade in (criminal) information’ is also sometimes used.<sup>81</sup> Data is not carried through a central point, but can take innumerable routes through the network structure. The fact that the data is located at the ends of the network means that the activities of management, monitoring and surveillance of the network are extremely difficult, and that attention should rather be focused upon the computer and users at the opposite ends of the network.<sup>82</sup> The question of how to achieve an acceptable form of management, monitoring and surveillance<sup>83</sup>, whilst retaining the aforementioned characteristics of the Internet, falls within the scope of Internet governance<sup>84</sup> (as do the regulations with regard to digital child abuse material), which will be examined in greater detail in §3.8.

#### Cyber and/or high-tech crime

As we have shown above, ICT can also be misused by individuals in order to obtain or distribute abusive images and films and in order to contact children with the intention of abusing them or producing child abuse material. When ICT is used to commit criminal offences, it is referred to as cybercrime, ICT and computer crime, or high-tech crime.<sup>85</sup> In this context, the report only uses the terms ‘cybercrime’ and ‘high-tech crime’. The *Hightech Crime Criminaliteitsbeeldanalyse 2009 (CBA)* [High-tech Crime Picture Analysis] describes cybercrime as “*any criminal act aimed at committing cybercrime, in which the use of automated function in the processing and transfer of data is of significant importance*”.<sup>86</sup> The literature makes a distinction

77 Mathiason et al., 2004, p.7; Solum, 2009, p.50.

78 Davidson & Gottschalk, 2011, p.28.

79 ECPAT International, 2008.

80 Taylor & Quayle, 2006, p.172 call this principle ‘edge-to-edge’.

81 Van der Hulst & Neve, 2008, pp.50-51.

82 Taylor & Quayle, 2006, p.173.

83 Lessig, 2001.

84 Solum, 2009, p.48

85 Mulder et al., 2010, pp.259-286.

86 KLPD – National Crime Squad, 2010 (not publicly available).

between two forms of cybercrime, namely conventional forms of crime that are committed using ICT ('old crimes, new tools') and new forms of crime that would not have existed in any form without ICT ('new crimes, new tools'),<sup>87</sup> such as the use of botnets.<sup>88</sup> The production, distribution and the possession of child abuse material already existed before the advent of ICT. There is therefore actual evidence of the digitisation of a traditional crime<sup>89</sup> and for this reason, child pornography is primarily a crime that falls under the first category, but that can be used to a lesser extent to commit new cybercrimes. In practice, crimes may form a combination of different methods that fall under both categories.<sup>90</sup> For example, warnings are issued stating that criminals may distribute infected child abuse material that will install malware on the user's PC.<sup>91</sup> Data such as credit card details can be collected by this malware, but also by means of direct payments to child pornography websites. If users subsequently discover that they have been the victim of such a form of Internet fraud, they will be less inclined to report this to the police. A more complicated situation arises if credit card details are used by others in order to purchase child abuse material. Victims of this form of Internet fraud may then, unjustly, come into contact with the judicial authorities.<sup>92</sup>

An exploratory investigation of cybercrime in the Netherlands has shown that cybercrime is increasingly a 'crime of the people' and that digital child abuse material, as well, has now come within the reach of many people.<sup>93</sup> Online cybercrime has become an everyday phenomenon, to the same extent as offline crime. Stol claims that high-tech criminals also exist within the cybercriminal group: "*cybercrime may then be a crime of the people, just as in the case of usual types of crime there are also 'professionals' who commit crimes in conjunction with other criminals using technologically-advanced methods*".<sup>94</sup> According to the CBA, high-tech crime can be distinguished from 'ordinary' crime due to the fact that high-tech criminals work in an organised way, "*in which (relatively) new and advanced digital technology, techniques or methods are used, involving complex ICT systems and networks*".<sup>95</sup> A study by Moran (see §1.4.2) has shown that high-tech criminals are

87 Van Amersfoort et al., 2002, pp.3-4; Van der Hulst & Neve (2008, pp.14-15) cite two categories: computer crime and cybercrime. Where ICT can be regarded as a means *and* a target, we call this computer crime. All other ICT-related (often traditional) crimes are known as cybercrime. Crimes in both categories can take various forms that are closely interwoven and are often committed in conjunction with one another. A characteristic feature of the forms that computer crime can take (such as hacking and the distribution of viruses) is that they are often highly-technical and virtual in nature: they have been created as a result of ICT and cannot exist without it. By contrast, the forms in which cybercrime exists generally concern traditional crimes that can also be committed without the intervention of ICT (such as child pornography and fraud), but that have taken on a new form due to the use of ICT as a result of advanced technical means being used.

88 Botnet stands for 'robot network'. This is a network of infected computers (known as bots or zombies) used by a cybercriminal to hijack part of the computing capacity and network functionality of the infected computers, KLPD – National Crime Squad, 2010, p.40 (not publicly available).

89 Stol, 2004.

90 KLPD – National Crime Squad, 2010, p.11 (not publicly available).

91 Financial Coalition Against Child Pornography, 2011, pp.10-12.

92 See [www.guardian.co.uk/technology/2007/apr/19/hitechcrime.money](http://www.guardian.co.uk/technology/2007/apr/19/hitechcrime.money) (viewed 18 July 2011).

93 Leukfeldt et al., 2010.

94 Stol, 2010, p.53.

95 KLPD – National Crime Squad, 2010, pp.13-14 (not publicly available).

also found within the group of perpetrators of child pornography, and it is precisely within this group of perpetrators that recently produced material is exchanged.<sup>96</sup> As a result, digital child abuse material of the 21<sup>st</sup> century is a cybercrime and, in certain cases, also a high-tech crime. Child abuse material also always includes an analogue element in addition to this technological component, since the material is, after all, first produced, and in doing so children are abused in the analogue, physical world. A digital world was created with the introduction of ICT. Although the digital and analogue domains initially existed more or less alongside one another, that division has, however, become less distinct over the course of time.

#### *Hands-on/hands-off & online/offline*

From a legal perspective, offences concerning child pornography include the production, offering, distribution, open exhibition, intentional viewing or possession of child abuse material.<sup>97</sup> From a psychological perspective, we are concerned with viewers (owners and distributors) and producers.<sup>98</sup> The difference between these groups lies in the ‘hands-on’ abuse by the producers and the ‘hands-off’ behaviour of the viewers, whereby we may regard viewers of child abuse material as contributing towards the continuation of physical sexual abuse of children due to their demand for abusive material involving children, as they do indeed contribute towards the continuation of physical sexual abuse of children in demanding such material. Furthermore, the knowledge that images exist and are viewed also forms a dimension of victimisation (see §1.4.3). Table 1.1 and Table 1.2 show, in the form of a diagram with examples, how the terms online, offline, hands-off and hands-on are each related to child pornography and sexual violence against children. Table 1.1 shows that perpetrators of child pornography are currently making full use of new technologies in order to view or produce material (see also §1.4.1.3)<sup>99</sup> and that various criminal offences may be interrelated. Different child pornography ‘source offences’ – phenomena and offences that may form the basis of the production of the material, such as child sex tourism, child prostitution, abuse in domestic settings and trafficking in human beings – were also connected with child pornography in the past. However, ICT has created new phenomena and challenges due to the fact that, as Koops writes, this is where ‘sex, kids and crime in cyberspace’ converge.<sup>100</sup> Nowadays, for example, child abuse material can be produced or manipulated (in its entirety) by computers (virtual child abuse material). Youngsters also make sexual material themselves<sup>101</sup> and such material can also be

96 Moran, 2010.

97 See Article 240b of the Dutch Criminal Code and §1.4.1.2

98 Taylor & Quayle, 2003.

99 The claim that every form of ‘new’ media will ultimately be used for sexual purposes (Shallit’s First Law of New Media) also seems to hold true in the case of child abuse material. Examples of this include: *Man beschuldigd van kinderporno via ps3* [Man charged with child pornography offences via PS3 (Playstation 3)], ITG, 16 March 2009, available at: [www.inthegame.nl/nieuws/man-beschuldigd-van-kinderporno-via-ps3%E2%84%A2/](http://www.inthegame.nl/nieuws/man-beschuldigd-van-kinderporno-via-ps3%E2%84%A2/) (viewed 28 June 2011); reply from ‘trotseMamavan2’ on [forum.viva.nl](http://forum.viva.nl) indicates potential child abuse material via [www.chatroulette.com](http://www.chatroulette.com), see [www.forum.viva.nl/forum/Actueel/Gisteren\\_bij\\_dwdd\\_chatroulette\\_Geprobeerd\\_en\\_gelachen/list\\_messages/74176/5](http://www.forum.viva.nl/forum/Actueel/Gisteren_bij_dwdd_chatroulette_Geprobeerd_en_gelachen/list_messages/74176/5) (viewed 28 June 2011).

100 Koops, 2009.

101 See §1.4.3 for an explanation of the phenomenon known as ‘sexting’.

viewed online without a user having the material in his/her possession.<sup>102</sup> (Online) grooming and the performance of sex acts in front of a webcam under coercion are also new phenomena in which perpetrators victimise individuals. This does not mean that the analogue world has become less important. In fact, the offline and online converge increasingly often, and the younger generations generally already regard them as a single world.<sup>103</sup> The examples from Table 1.2 make it clear that the boundary between child pornography and other sex offences are becoming less distinct as a result of ICT. Technology is not merely abused to commit child pornography-related offences, but for all forms of sexual violence against children.

**Table 1.1 Child pornography – online/offline and hands-on/hands-off**

Child pornography	Online	Offline
<b>Hands-on</b>	A suspect paid a woman in the Philippines to sexually abuse two children under the age of four years. This allegedly took place during a chat session in which the suspect was able to watch via the webcam. <sup>104</sup>	A 50-year-old man from Zuidwolde was suspected of having abused five children. The man allegedly used his children and their friends in the production of child abuse material. <sup>105</sup>
<b>Hands-off</b>	Around 730 files were found on the computer and a CD-ROM belonging to a man in February 2009. The 38-year-old was actively searching for child abuse material from 2005 to 2009, for which he also sometimes paid. <sup>106</sup>	It emerged from the official report of the findings concerning the reading material that five magazines containing child abuse material were found at the suspect's home. In total 23 abusive images of children were found in those magazines. <sup>107</sup>

<sup>102</sup> *Parliamentary Papers II2008/09*, 31 810 no.3, pp.3-4. Since January 2010, Article 240b of the Dutch Criminal Code also contains provisions to make 'gaining access to child abuse material by means of information and communication technology' a criminal offence. This tightening of legislation is deemed desirable, as the question arose as to whether action could be taken on the grounds of 'possession' in all cases. See also §1.3 with regard to recent legislative amendments.

<sup>103</sup> Movisie, 2011, p.66.

<sup>104</sup> *Twee Amstelveners in zedenzaak voor rechter* [Two citizens from Amstelveen appear in court on sexual abuse charges], De Telegraaf, 22 June 2011, available at: [www.telegraaf.nl/binnenland/10069533/\\_Amstelveners\\_voor\\_de\\_rechter\\_.html?p=2,1](http://www.telegraaf.nl/binnenland/10069533/_Amstelveners_voor_de_rechter_.html?p=2,1) (viewed 28 June 2001).

<sup>105</sup> *Vader verdacht van maken kinderporno* [Father suspected of making child abuse material], NOS, 14 December 2010, available at [nos.nl/artikel/205103-vader-verdacht-van-maken-kinderporno.html](http://nos.nl/artikel/205103-vader-verdacht-van-maken-kinderporno.html) (viewed 28 June 2011).

<sup>106</sup> Court of Arnhem, 15 March 2010, LJN: BL7418.

<sup>107</sup> Court of Zutphen, 20 October 2009, LJN: BK0673.

Table 1.2 Sexual violence against children – online/offline and hands-on/hands-off

Sexual violence against children	Online	Offline
<b>Hands-on</b>	<p>A man, intent on finding ‘power and thrills’, attempted to lure underage girls into his power via MSN chat rooms on the Internet. In order to make the girls carry out sex acts in front of a webcam, he frightened them by threatening to post photographs of them taken from the social networking site Hyves onto a sex website and in one case he actually did so. He was also able to retrieve their telephone numbers and he threatened to harm the girls’ parents or to set their house on fire. Only one girl allowed herself to become so afraid that she actually complied with the perpetrator’s perverse wishes in front of the webcam. In doing so, she was forced to perform sex acts with a hairbrush whilst naked, of which the perpetrator made images.<sup>108</sup></p>	<p>The Court of Arnhem sentenced a 58-year-old man to eighteen months imprisonment, six of which suspended, for the sexual abuse of (with certainty) at least nine boys in Bangladesh. The man was alleged to have committed these offences in a shelter for street children, one of which he had set up himself. The abuse was alleged to have taken place between January 2001 and August 2005.<sup>109</sup></p>
<b>Hands-off</b>	<p>In the period from 31 October 2007 to 21 November 2007 inclusive, the suspect made contact with girls via MSN under the name Olaf from his home in Veghel and used an e-mail address. He held conversations of a sexual nature with the girls. When questioned by the girls as to how old he was, he replied that he was 17/18 years old. He asked the girls to switch the webcam on. When the connection was made, a photograph of a boy with a cap appeared which was not a photograph of the suspect. The suspect had obtained that photograph from the Internet and used it to remain anonymous. On the webcam screen, the suspect allowed it to be visible that he was holding his genitals and was masturbating.</p>	<p>A suspect was guilty of the sexual corruption of three girls of 14 years of age. The offence was that he approached them suddenly when they went to relieve themselves in the woods and in their vicinity let his trousers down, took hold of his penis, showed it to them and shook it or waved it around. The individuals who reported the incidents stated that they were shocked at the behaviour of the suspect and/or were afraid. The suspect was therefore guilty of the offence against the three minors, which has been a criminal offence by virtue of Article 248d of the Dutch Criminal Code since 1 January 2010. The purpose of this Article is to protect minors and to tackle abnormal sexual and personal development.<sup>111</sup></p>

The examples in Table 1.1 and Table 1.2 show that the legal boundary between child pornography and other forms of sexual violence has become more blurred and consequently more complex.

### 1.3 Legal framework – Article 240b of the Dutch Criminal Code

This section contains a more detailed description of the legal framework concerning child pornography. For this purpose, we will first of all examine the rationale behind the criminal provisions of Article 240b of the Dutch Criminal Code – the protection of the child – and the broad context in which the phenomenon of child pornography, and the strategy to tackle it, must be viewed. This will be followed by a short description of international regulations, and the legislation in other countries will also be discussed briefly. We will conclude the section with a description of the most recent legislative amendments in the Netherlands and the legislative text as it currently stands.

#### *Rationale: protection of the child*

Child pornography is more than material that constitutes a criminal offence.<sup>108</sup> The protection of children from sexual violence forms the basis of the provisions that criminalise child pornography.<sup>109</sup>

In the Lanzarote Convention, child pornography is regarded as a form of sexual exploitation of children.<sup>110</sup> The purpose of the Convention, which was drawn up in 2007, is threefold: 1. to prevent and tackle the sexual exploitation and sexual abuse of children, 2. to safeguard the rights of children who are the victims of sexual exploitation and sexual abuse, and 3. to promote national and international cooperation in the fight against sexual exploitation and sexual abuse of children. The Convention is concerned with the protection of children in a broad sense. In addition to criminal provisions and provisions concerning sanctions, the Convention incorporates preventative and protective measures, procedural rules, intervention measures and measures that relate to national coordination and international cooperation. The Lanzarote Convention specifically refers to the sexual violence against children in which a digital element is involved. This is the first convention in which the regulations take account of technological developments against the background of providing general protection for children from sexual violence. The Convention therefore forms an important starting point in the protection of children from sexual violence and consequently also for the strategies for tackling child pornography.

In general, elements of sexual abuse, violence and/or sexual exploitation are found in child pornography.<sup>111</sup> Article 240b of the Dutch Criminal Code distinguishes the production, (forms of) distribution<sup>112</sup> and (forms of) intentional viewing<sup>113</sup> of child abuse material. When a distinction is made between

<sup>108</sup> Van der Hulst & Neve, 2008, p.51.

<sup>109</sup> Supreme Court, 7 December 2010, LJN: BO6446. For a detailed description of the legal framework concerning sexual abuse of children who are placed under the responsibility of the government in institutions and with foster parents, see J.J. Wiarda, 2011. The terms ‘child pornography’ and ‘sexual abuse’ do not actually appear as such in the Dutch Criminal Code.

<sup>110</sup> Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58. The Convention was ratified by the Netherlands on 1 March 2010 and entered into force in the Netherlands on 1 July 2010, Treaty Series 2010, 156.

<sup>111</sup> Bullens, 2007, p.432; O’ Donnell & Milner, 2007, p.69.

<sup>112</sup> In this report, distribution is understood to include the following: distribution, offering, open exhibition, import, transit, export and acquisition.

<sup>113</sup> In the present report, the elements ‘possession’ and ‘gaining access to’ from Article 204b of the Dutch Criminal Code are both incorporated in the term ‘intentional viewing’. This also concerns individuals who download material.

hands-on production on the one hand and hands-off viewing and distribution of such material on the other hand,<sup>114</sup> it is clear that the provisions making production an offence are based upon the fact that production involves sexual acts that could harm the child, either because involving the child in such behaviour is, in itself, harmful, or is harmful due to the publication of the material concerned.<sup>115</sup> The fact that child pornography in itself constitutes sexual abuse of children is also recognised internationally.<sup>116</sup> The production of child abuse material can exacerbate the (sexual) violence,<sup>117</sup> since the images emphasise the powerlessness and humiliation of the victim. In addition, in those cases that involve abuse, the abuse may increase in duration and severity due to the fact that the child is made to perform acts in front of the camera. In the literature, the intentional viewing and distribution of the material are regarded as constituting punishable offences due to the fact that a child is abused (by the publication of the material).<sup>118</sup> Victims of child pornography experience harmful consequences due to the permanent circulation of images on the Internet.<sup>119</sup> In addition, the legislator argues that children must be protected from behaviour or manifestations that contribute towards a sub-culture that promotes sexual abuse of children.<sup>120</sup> This view closely reflects the functions that child abuse material can fulfil as far as users are concerned (described in 1.4.1.3): it is used, amongst other purposes, to corrupt and blackmail children and to normalise a sexual interest in children amongst adults.<sup>121</sup> Further to this, the Implementation Provisions concerning child pornography [*Aanwijzing kinderpornografie*] also assume that both the child who is directly involved in the production of child abuse material and the child in general must be protected. That applies to children in the Netherlands as well as children elsewhere.<sup>122</sup>

### *Child abuse*

The phenomenon of child pornography and the strategy to tackle it must be viewed and approached in a broad context, since whenever child abuse material is found, it usually means that child abuse has taken place. Child abuse is all the actions of parents, or of other individuals with whom a child has a relationship of dependency, that constitute a severe harmful effect upon the child or a threat to the safety or welfare of the child.<sup>123</sup> Child abuse may take the form of sexual abuse.

114 Taylor & Quayle, 2003, pp.21-26; Bullens, 2007, p.432.

115 *Parliamentary Papers II* 2000/01, 27 245, no.299b, p.3, 8; Taylor & Quayle, 2003, p.24.

116 See for example Parliamentary Assembly of the Council of Europe, *Sexual Exploitation of Children: zero tolerance*, Resolution 1307 (2002).

117 O'Donnell & Milner, 2007, pp.69-70.

118 Taylor & Quayle, 2003, pp.24.

119 *Parliamentary Papers II* 2000/01, 27 745, no.3 p.4; Taylor & Quayle, 2003, p.24. See also §1.4.3.

120 See Explanatory Memorandum, *Parliamentary Papers II* 2000-01, 27 745, no. 3, p.4-5; Memorandum of Reply, *Parliamentary Papers I* 2001/02, 27 745, no.299b, p.3, 8.

121 O'Donnell & Milner, 2007, pp.73-75.

122 Implementation Provisions concerning child pornography [*Aanwijzing kinderpornografie*] (Article 240b of the Dutch Criminal Code), *Dutch Government Gazette*, 2 December 2010 no. 19121, p.1.

123 Article 1 sub-section m of the Youth Care Act defines child abuse as: “any form of interaction constituting a threat or violence of a physical or sexual nature against a minor, that the parents or other individuals with whom the minor has a relationship of dependency or of whom the minor is not independent, actively or passively impose, which causes or threatens to cause serious harm to the minor in the form of physical or psychological injury”. Youth Care Agency Conurbation of Amsterdam [*Bureau Jeugdzorg Agglomeratie Amsterdam*] et al. 2010.

### *UN Convention on the Rights of the Child*

All States are required to take suitable measures to protect children from all forms of physical or mental violence, injury or abuse, pursuant to the UN Convention on the Rights of the Child.<sup>124</sup> These measures not only concern statutory and administrative measures but also social and educational measures.<sup>125</sup> The UN Convention on the Rights of the Child, drawn up in 1989, was the first internationally binding agreement in which child pornography formed one of the subjects. Under the Convention, countries are obliged to protect children from all forms of sexual exploitation and sexual abuse, including the exploitation of children in prostitution and the use of children in abusive productions and material.<sup>126</sup>

When child abuse material is found, there may also be evidence of domestic violence, involving sexual abuse of children by someone in the household, such as a partner or former partners, family members or family friends. Child abuse and sexual child abuse are forms of domestic violence.<sup>127</sup>

Child pornography is in principle not a victimless crime. It is a product of the sexual abuse of children in the form of images. For that reason we also refer to perpetrators *and* victims in this report.<sup>128</sup> Child pornography must be tackled on the basis of the core concept that children must be protected from sexual violence and sexual abuse. In order to protect children, it is not only the judicial authorities which must tackle child pornography, but also other governmental bodies.

### *International regulations*

Concerns at UN level with regard to the availability and distribution of child abuse material over the Internet subsequently formed an important reason for the Optional Protocol to be drawn up in 2000, which prohibits the sale of children, child prostitution and child pornography.<sup>129</sup> Amongst other requirements, states must put in place provisions to make the production, distribution and possession of child pornography a criminal offence.<sup>130</sup> In the same period, the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999) was created.<sup>131</sup> Under the Convention, the worst forms of child labour not only include trafficking of children and the use of children for purposes of prostitution, but also the use, prostitution or provision of a child for

124 Article 19, paragraph 1 of the UN Convention on the Rights of the Child: “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.”

125 For details of the policy measures taken by the Ministry of Education, Culture & Science, see §2.4

126 Article 34 of the UN Convention on the Rights of the Child.

127 See [www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/wat-huiselijk-geweld-is](http://www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/wat-huiselijk-geweld-is) (viewed 30 May 2011). See also §2.4.2.

128 The central motivation behind the criminalisation of virtual child abuse material is that children must be protected, including from images that imply sexual abuse. See §1.4.1.1 for further details.

129 Optional Protocol on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child (New York, 25 May 2000), Treaty Series 2001, 63 and 130.

130 “Producing, distributing, disseminating, importing, exporting, offering, selling or possessing [for the above purposes] child pornography [...]”, Article 3, paragraph 1, sub-section c of the Optional Protocol.

131 ILO Convention, 1999.

the production of pornography or for pornographic performances. It is a short convention that, in a similar way to the Optional Protocol to the UN Convention on the Rights of the Child, not only requires Member States to put penal or other sanctions in place, but also to take measures to prevent these forms of child labour, and to provide assistance in these matters.<sup>132</sup> Other relevant conventions to which the Netherlands is also a signatory are the Convention on Cybercrime (2001)<sup>133</sup> and the Lanzarote Convention (2007)<sup>134</sup> of the Council of Europe.

Ratification of the Lanzarote Convention gave rise to the introduction of criminal legislation concerning corruption and grooming (Article 248d and 248e of the Dutch Criminal Code) in the Netherlands.<sup>135</sup> The terms ‘corruption’ and ‘grooming’ are discussed at various points in this report.

#### Corruption

Article 22 of the Lanzarote Convention stipulates that States must criminalise the act of intentionally causing a child below the age of consent to witness sexual abuse or sexual activities for sexual purposes (the corruption of children).<sup>136</sup> The child is not required to participate in the sexual activities in order to have such an activity constitute an offence (corruption). This penal provision is new, in comparison with existing international instruments. The aim of this provision is to protect the child from harmful influences upon their personal and sexual development, which in particular concern activities that aim to make a child susceptible to sexual exploitation or sexual abuse.<sup>137</sup>

#### Grooming

Article 23 of the Lanzarote Convention contains an obligation to criminalise making contact with children for sexual purposes. In the Convention this is understood to mean if an adult contacts and seduces a child under the age of consent on websites or chat rooms with the ultimate aim of sexually abusing that minor.<sup>138</sup> The behaviour of the perpetrator must materialise into a proposal to meet the child followed by a concrete action that aims to make that meeting a reality, according

132 Article 3 and Article 7 of the ILO Convention. Compare with Articles 8 and 9 of the Optional Protocol on the sale of children, child prostitution and child pornography to the Convention on the Rights of the Child (New York, 25 May 2000), Treaty Series 2001, 63 and 130.

133 Convention on Cybercrime, 2001.

134 Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58.

135 These provisions were introduced by law of 26 November 2009, Dutch Bulletin of Acts and Decrees 544 (in force since 1 January 2010).

136 “Each Party shall take the necessary legislative or other measures to criminalise the intentional causing, for sexual purposes, of a child who has not reached the age set in application of Article 18, paragraph 2, to witness sexual abuse or sexual activities, even without having to participate.”

137 Parliamentary Papers II 2008/09, 31 810, no.3, p.5.

138 Article 23 is entitled ‘Solicitation of children for sexual purposes’ and reads: “Each Party shall take the necessary legislative or other measures to criminalise the intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age set in application of Article 18, paragraph 2, for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting.”

to the Explanatory Report. Contact and communications made by an adult to a child exclusively on the Internet, irrespective of the intention and the content of the communication are not subject to criminalisation.

The international regulations concerning child pornography that are currently in place are not entirely unambiguous. For example, where the EU Framework Decision and the Convention on Cybercrime refer to visual images and depiction, the UN definition is broader in scope. In view of the fact that this instrument refers to ‘any representation by whatever means’, this could also encompass text and written material,<sup>139</sup> as well as audio material. In addition, the Convention on Cybercrime, the current EU Framework Decision and the Optional Protocol to the UN Convention on the Rights of the Child all define a child as an individual below the age of 18 years. However, countries may apply a lower age limit by virtue of the Convention on Cybercrime, although that limit must not be less than 16 years of age.<sup>140</sup> The Lanzarote Convention offers similar scope for exception with regard to the obligation to criminalise production and possession of child abuse material in which children are involved who are below the age of consent according to national law and who have produced or possess images with their consent and for their own use.<sup>141</sup> The various sources of international regulations also not only concern actual images but also realistic and simulated images of non-existent children – virtual child abuse material, but exceptions to these regulations are possible. After the enactment of the Lanzarote Convention in 2007, the European Commission eventually presented a proposal for a new directive with regard to tackling child pornography in March 2010.<sup>142</sup> The proposal of the European Commission is broader than the current EU Framework Decision<sup>143</sup> due to the fact that, just as the Lanzarote Convention, it not only concerns the tackling of sexual exploitation of children and child pornography, but also sexual abuse of children. The contents of the forthcoming directive have not yet been determined but may give rise to new legislation in the Netherlands in due course. Once it has been drawn up, the new directive will, for the time being, form the most recent development in international regulations concerning the tackling of child pornography, with the aim of harmonising the regulations.<sup>144</sup> In addition to striving to achieve uniformity, this development also demonstrates that the phenomenon of child pornography is being placed in a broader context, along with sexual abuse and sexual exploitation of children.

#### *Terminology in relation to child pornography*

The fact that child pornography is in itself a form of sexual abuse of children is recognised internationally<sup>145</sup> and in that regard such material tends to be described in terms of ‘abusive images’

139 Akdeniz, 2008, p.11.

140 Article 9, paragraph 3 of the Convention on Cybercrime.

141 Article 20, paragraph 3 of the Lanzarote Convention; see §1.4.3 with regard to ‘sexting’.

142 Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, COM (2010) 94 final.

143 Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 013, 20 January 2004.

144 The European Parliament stated in a press release on 12 July 2011 that the agreement was to be put to a vote in September 2011 and will subsequently need to be adopted by the Council of Ministers.

145 See for example Parliamentary Assembly of the Council of Europe, *Sexual Exploitation of Children: zero tolerance*, Resolution 1307 (2002).

instead of ‘pornography’. After all, the word ‘pornography’ seems to suggest that it is glamorising the obscene content in question.<sup>146</sup> This approach, which involves placing the term ‘child pornography’ within the context of abuse as much as possible, is also evident in the response of the European Parliament to the proposal for a new EU directive to combat sexual abuse, sexual exploitation of children and child pornography, submitted by the European Commission in 2010.<sup>147</sup> Child pornography is also regarded as a ‘souvenir’ of the sexual humiliation, molestation, abuse or assault of a child, for example in the United States of America.<sup>148</sup> It is also referred to in terms of ‘child pornographic exploitation’ in order to indicate that child pornography concerns a form of child exploitation.<sup>149</sup> Finally, the literature also employs the terms ‘child exploitation material’<sup>150</sup> and ‘child erotica’<sup>151</sup> for all material that is not child pornography as such but makes reference to children and also serves a sexual purpose for the user of this material.

#### *Legislation in other countries*

National legislation concerning child pornography varies between countries and certainly across the world. That indicates that countries may view the phenomenon of child pornography on the Internet in different ways, and may also have different views with regard to the severity and extent of this phenomenon. For example, according to the Special Rapporteur of the UN Human Rights Council, the manner of dealing with aspects such as age limits and subjects such as virtual child abuse material and grooming vary from country to country.<sup>152</sup> Because of the fact that the Internet provides a worldwide environment for the distribution of child abuse material, it is very important to achieve legal harmonisation of legislation between countries and it is possible that the problem will become greater if countries do not tackle sexual exploitation of children and child pornography.<sup>153</sup> An initial examination of responses to questionnaires from 45 countries of the Council of Europe in March 2011 also showed a number of gaps in national legislation with regard to child pornography. For example, some national legislation does not adequately define the various forms of sexual exploitation of children, or the phrasing is too general,

146 Akdeniz, 2008, p.11, referring to Save the Children Europe, which states that: “The term “child pornography” [...] undermines the seriousness of the abuse. It also tends to oversimplify what is a very complex social problem.” Save the Children Europe, 2006, p.4. See also [www.ecpat.nl](http://www.ecpat.nl) (viewed 4 July 2011).

147 See Proposal of the European Commission for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, COM(2010)94 final, 29 March 2010, p.10: ‘Child pornography, which consists of images of child sex abuse’. Where the European Commission refers to ‘sex abuse images’, the European Parliament seems to prefer the term ‘sex abuse material’; Draft report on the proposal for a Directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, 2010/0064 (COD), 24 January 2011, p.13.

148 ICMEC, 2010, p.2. See also Adler, 2001, pp.213-214: “[...] child pornography is a subset of the larger problem of child sexual abuse and[...] the two are inextricable”.

149 See for example Von Weiler et al., 2010.

150 Moran, 2010, p.70.

151 Lanning, 2010; Quayle & Taylor, 2001.

152 This also applies with regard to punishment, legal liability of ISPs, compensation for victims and the protection of their privacy. Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Ms. Najat M’jid Maala), UN Doc A/HRC/12/23, 13 July 2009, §53 et seq.

153 Akdeniz, 2008, p.8.

which in practice can result in a broad interpretation. The term ‘child pornography’ is not defined, is too vague or does not distinguish between adult pornographic material in general and child abuse material. It seems that European countries are taking clear-cut steps – as a result of the instruments of the Council of Europe and the EU – to criminalise both real-world and simulated acts, whilst this is still a highly controversial issue outside of Europe. Despite the fact that in many cases the perpetrators are individuals who are in close contact with children, the majority of the legislation analysed does not contain any specific penal provisions with regard to the abuse of a recognised position of trust or custody of a child or influence upon him/her, including within the family. The application of existing provisions is limited in some countries by controversial conditions, for example, that the victim is a female minor, that the act took place against the will of a minor, that the perpetrator must be at least 18 years of age, that violence or intimidation must have been involved, or that an ‘indecent act’ involving violence was committed.<sup>154</sup>

At present, there are still some countries that do not have any specific criminal legislation in place concerning child pornography. According to the most recent inventory drawn up by the International Centre for Missing & Exploited Children (ICMEC), this is the case in as many as 89 of the 196 countries that were studied.<sup>155</sup> Of the countries that do have any specific national legislation in place, 52 countries do not define the term ‘child pornography’ in a separate statutory penal provision, 18 countries do not include any computer-related (and particularly Internet-related) offences in their criminal legislation, and 33 countries have criminalised intentional possession without intent to distribute the material.<sup>156</sup> According to this inventory, only 45 countries have legislation in place that can actually be used to tackle child pornography, as they fulfil the criteria set by the ICMEC. The Netherlands is regarded as one of those countries. Only eight countries fulfil *all* the criteria set in this report, namely Australia, Belgium, Columbia, France, Italy, the Philippines, South Africa and the United States of America.<sup>157</sup> A fifth criterion concerns ISPs that are required to report child abuse material to the police or another mandated agency. In the Netherlands, ISPs are not obliged to report material, although a practice to report and remove child abuse material exists (see §3.8).<sup>158</sup>

#### Recent legislative amendments

In 2009, the maximum sentence in Article 240b, paragraph 2 of the Dutch Criminal Code was increased from six to eight years.<sup>159</sup> This created the possibility of deploying greater powers that are important in

154 C. Schulman, Council of Europe, ‘Working on ratification and implementation of the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (CETS No. 201) – progress to date’. ERA: Fighting Cybercrime and Child Pornography on the Internet, Lisbon, 17-18 March 2011.

155 The countries concerned include the Netherlands Antilles, certainly prior to the political changes that took place on 10 October 2010. ICMEC, 2010, p.25. Cf. Beech et al., 2008, in which the authors state, amongst other points, that in the approach taken by the ICMEC (that punishments for these types of offences must act as a deterrent and must therefore be imposed stringently) potential alternatives such as (clinical) treatment are not taken into account.

156 “Criminalizing the knowing possession of child pornography may not only curb industry growth but also prevent further incidents of sexual abuse.” ICMEC, 2010, p.3.

157 ICMEC, 2010, p.111.

158 ICMEC, 2010, p.25 no.61.

159 Entered into force on 1 July 2009, Act of 12 June 2009, Dutch Bulletin of Acts and Decrees 245.

effective detection on the Internet, particularly the ability to record confidential communication using a technical device in a home (Article 126l, paragraph 2 of the Dutch Code of Criminal Procedure).<sup>160</sup> To this end, the potential offence must carry a sentence of at least eight years. The powers thus deployed in detection may, for example, take the form of fitting a device to a suspect's computer in order to trace his/her communications with others. By increasing the sentencing term in this way, the legislator's aim was also to convey that the systematic production, distribution and possession of child abuse material are regarded as serious criminal offences. It should be noted in this regard that the amendment did not arise out of a necessity that emerged in legal practice to intrinsically re-evaluate the maximum sentence carried by child pornography offences. Furthermore, the recent evaluation of decency legislation has confirmed this.<sup>161</sup> In the view of the legislator, the criminal court has sufficient means to impose a sentence that is appropriate in the case in question.

A number of amendments were made to legislation as a result of the ratification of the Lanzarote Convention,<sup>162</sup> including amendments in relation to the penal provisions concerning child pornography. Since January 2010, Article 240b of the Dutch Criminal Code also criminalises the *obtaining of access* to child abuse material by means of information and communication technology.<sup>163</sup> This tightening of legislation was deemed desirable, as the question arose as to whether action could be taken on the grounds of criminal *possession* in all cases. It is now also possible to prosecute viewers in cases where it cannot be proven that they intentionally downloaded child abuse material to the temporary Internet files folder on the hard drive,<sup>164</sup> for example, but it can be proven that they obtained access with (conditional) intent to websites featuring child abuse material, whether in the form of images, hyperlinks or live webcam streams.<sup>165</sup> The amendments to criminal provisions concerning child pornography in Article 240b of the Dutch Criminal Code are partly the result of new technologies that have enabled those methods of production and distribution (see §1.2.3 and §1.4.1.2). The *offering* and *acquisition* of child abuse material also became criminal offences within the scope of the same legislative amendments.

#### Current definition under criminal law

Article 240b of the Dutch Criminal Code contains provisions that criminalise a variety of acts that relate to child pornography, though the word 'child pornography' does not appear as such in the Dutch Criminal Code. The number of criminal acts listed under Article 240b of the Dutch Criminal Code has expanded considerably over the past few decades. As we have already seen in previous sections, developments in both the domain of technology and in international agreements have formed the basis for the amendments to the provision. Over a period of 16 years, the sentence carried by child pornography offences has been increased from three months' imprisonment to (in principle) a maximum of eight

160 *Parliamentary Papers II* 2007/08, 31 386, no. 3, p.19.

161 Lünemann et al., 2006. See also §2.2.

162 Lanzarote Convention, 2007.

163 Act of 26 November 2009, Dutch Bulletin of Acts and Decrees 544, entered into force on 1 January 2010 (Dutch Bulletin of Acts and Decrees 2009, 578).

164 Prior to this legislative amendment, an individual could be convicted for viewing child abuse material via the temporary internet files folder (Van Koppen, 2009, p.99 et seq.)

165 See Koppen, 2009, p.99 et seq. with regard to the question of whether the viewing of child abuse material has been made a criminal offence by this legislative amendment. The element of *gaining access* implies an active act, a behaviour that demonstrates intent.

years' imprisonment if an offender makes a habit of committing an act described in Article 240b of the Dutch Criminal Code.<sup>166</sup> In addition, the (apparent) age limit of potential victims has been raised from sixteen to eighteen years of age.

The text of Article 240b of the Dutch Criminal Code reads as follows:

- A custodial sentence of up to four years or a fine of category five shall be imposed upon an individual who distributes, offers, openly exhibits, produces, conveys, exports, acquires or has possession of an image, or a data storage medium containing an image, of sexual conduct in which someone who has apparently not yet reached the age of eighteen years is involved or is apparently involved, or who obtains access to such material by means of a computer system or using a communications service.
- A custodial sentence of up to eight years or a fine of category five shall be imposed upon an individual who makes a profession from or a habit of committing one of the offences described in paragraph one.

However, the custodial sentences stipulated in Article 240b of the Dutch Criminal Code may be increased by one third in the event that the offence is committed by two or more persons acting in concert, or in the event that the offence is committed in a relationship of dependency. In the event that the offence results in serious physical injury or threatens the life of another individual, a custodial sentence of up to 15 years or a fine of category five may be imposed. If an offence as described in Article 240b of the Dutch Criminal Code causes death, such an offence carries a custodial sentence of up to 18 years or a fine of category five.<sup>167</sup> A community service order may also be imposed in place of a custodial sentence.<sup>168</sup> Sentences and orders that are imposed may also be suspended.<sup>169</sup>

<sup>166</sup> At least, in so far as this is covered in Article 240b of the Dutch Criminal Code. However, the penalty carried by an offence is partly stipulated under Article 248 of the Dutch Criminal Code.

<sup>167</sup> Article 248 of the Dutch Criminal Code. These aggravating circumstances that incur heavier penalties are also listed under Article 28 of the Lanzarote Convention as circumstances that the court must be able to take into account when determining the sanction to be imposed for criminal offences described in the Convention. See also Article 5 of the EU Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 013, 20 January 2004.

<sup>168</sup> A community service order consists of community service – undertaking unpaid labour – or a training order, or a combination of both, under Article 9 paragraph 2 of the Dutch Criminal Code. At the time of writing, the proposal to abolish the training order for individuals of full age as an independent community service order is being considered by the Upper House of Dutch Parliament, *Parliamentary Papers I* 2010/11, 32 169 no. A.

<sup>169</sup> A suspended sentence or order offers opportunities to work on behaviour modification and therefore to prevent any recidivism. However, that depends not so much on the duration of the suspended custodial sentence, for example, but actually upon the duration of the probationary period, which is generally two years. During the probationary period, the person convicted must comply with the special conditions, and is subject to supervision by the probation and after-care service. The threat of the suspended sentence being executed in the event of failure to comply with the special conditions serves as a deterrent. The special conditions that may be imposed as part of suspended sentences will be examined in greater detail in §3.6.2.

## 1.4 The nature of child pornography

The phenomenon of child pornography and related legislation and regulations have been subject to changes over the course of time. Today, the capacity of being a perpetrator and victimisation of individuals are not restricted to the analogue world, but also largely take place in the digital world. This section describes the nature of the phenomenon of child pornography in its current forms. The description of child pornography offences in Article 240b of the Dutch Criminal Code allows us to derive three aspects that can be used to describe the nature of child pornography, namely technology (§1.4.1), perpetrators (§1.4.2) and victims (§1.4.3). It will become clear from this description that child pornography is a complex phenomenon due to the considerable variation that exists with regard to these three aspects.

### 1.4.1 Technology

Technology is not the cause of child abuse material; it is the perpetrators who abuse technology in order to victimise individuals. However, child abuse material cannot be regarded as separate from technology, as the material itself is in fact a form of (visual) technology (§1.4.1.1). In addition, technological means enable certain behaviour, namely the production, distribution and possession of such abusive material (§1.4.1.1). Finally, such behaviour serves a variety of functions as far as perpetrators are concerned (§1.4.1.3).

#### 1.4.1.1 The nature of the material

*‘[...] an image, or a data storage medium containing an image, of a sexual act, in which an individual who has apparently not yet reached the age of eighteen years is involved or is apparently involved’*

This sub-section describes why the strict distinction between abusive material involving children and legal (adult pornographic) material<sup>170</sup> can be problematic in practice.<sup>171</sup> The sexual conduct, the external physical features that indicate age (‘apparent age’) and the extent to which the representation is realistic (‘apparently involved’) vary from image to image, which complicates the assessment of whether material constitutes child abuse material. This has also been referred to as the ‘grey area’ of child abuse material.<sup>172</sup>

#### ‘Image’

Although child pornography is in principle not a victimless crime, the material forms the express focus of Article 240b of the Dutch Criminal Code. The material that constitutes a criminal offence by virtue of the text of Dutch law is limited to visual material, specifically an ‘image’ or a ‘data storage medium

170 Legal pornographic material includes, for example, adult pornography and child erotica. The latter is a (non-legal) term that encompasses all material that is not child abuse material that makes reference to children and also serves a sexual purpose for the user of this material, such as children’s underwear (advertisements), accounts of child abuse and toys (Lanning, 2010, pp.85-89). See for example Court of Utrecht, 31 March 2011, LJN [National Case Law Number]: BQ0756.

171 Van der Zee & Groeneveld, 2007, pp.237-238.

172 Van der Zee & Groeneveld (2007, p.231) wrote on this subject: *‘The text of the Article [240b of the Dutch Criminal Code] may appear to be unambiguous. [...] However, it can be [difficult] to ascertain whether Article 240b of the Dutch Criminal Code has been violated, as this Article raises many questions. What is understood to be ‘sexual conduct’? What is meant by ‘has apparently not yet reached the age of 18 years’? How is it possible to determine how old someone is on the basis of just a photograph or a film clip? When is something deemed to be child abuse material? Is a photograph of children playing whilst naked considered child abuse material?’*

containing an image'. Audio, or sound clips, are not in themselves subject to criminal provisions. The same also applies to texts concerning the sexual abuse of children. Websites on which paedophiles and paedosexuals share views or describe sexual acts between adults and children do not constitute a criminal offence by virtue of Article 240b of the Dutch Criminal Code.<sup>173</sup> Similarly, accounts of sex featuring fictitious children do not constitute criminal offences by virtue of this provision. It appears as if the freedom of speech prevents this from being the case.<sup>174</sup>

The aim of the law is to criminalise behaviour in relation to the material. The behaviour may be directed towards the production, (forms of) distribution, possession or obtaining access to a (data storage medium containing an) abusive image involving a child. The elements that form part of the law and serve to qualify material as child abuse material are phrased clearly: the material in question must depict sexual conduct, in which a person who has evidently not yet reached the age of eighteen years is involved or is apparently involved.<sup>175</sup> The assessment of material on the basis of these elements is somewhat more complex in practice, however.

#### 'Sexual conduct'

The image concerned must be an image of 'sexual conduct'. A question that arises regularly within the judicial system is what exactly is meant by that term 'sexual conduct'.<sup>176</sup> This does not have to be actual physical abuse of a minor but could, for example, also be a photograph of the genitals of a minor, depending on the manner and situation in which the genitals of a minor are shown.<sup>177</sup> According to the Implementation Provisions concerning child pornography, the issue of whether or not the image concerned is an ordinary image of a (whether or not fully or partially naked) child in the family setting forms the dividing line between an image of a minor that constitutes a criminal offence and one that does not. An image that is in principle an ordinary image of a fully or partially naked child in the family setting depicts behaviour that is appropriate of a child of that age and the behaviour was recorded in an environment and in a context in which the child would normally be found. An unnatural pose and/or the addition of unnatural attributes render the image unnatural in appearance and (may) result in that image having to be designated as sexual conduct.<sup>178</sup>

In order to determine which material constitutes a criminal offence, the Implementation Provisions concerning child pornography are based upon the classification below, amongst other criteria.<sup>179</sup> Ma-

173 See for example *Parliamentary Papers II* 2010/11, Appendix to the Proceedings, no. 2286, in which the Minister states in response to parliamentary questions that a visit to a paedophile website in itself does not give rise to a concrete suspicion that an individual is guilty of crimes connected with child pornography or child abuse.

174 Leukfeldt et al., 2009.

175 See for example Court of Rotterdam, 31 March 2011, LJN: BP9776.

176 See for example Supreme Court, 7 December 2010, LJN: BO6446.

177 Supreme Court, 26 September 2000, NJ 2001, 61; See also the Implementation Provisions concerning child pornography, Dutch Government Gazette 2 December 2010 no. 19121.

178 *Parliamentary Papers II* 1994/95, 23 682, no. 5, pp.9-11.

179 The Implementation Provisions concerning child pornography also include aspects such as environment, nature and context of the image, on the basis of which it can be determined whether the material constitutes a criminal offence.

terial of category 3 and upwards is deemed to constitute a criminal offence.<sup>180</sup> The classification also demonstrates the considerable variation in sexual themes. Production and users' collections can also be classified into a narrative order (series).<sup>181</sup> Examples of this might be images in which children remove their clothes and/or gradually work towards specific sexual conduct.

- 1) (Indicative) Non-erotic and non-sexualised images showing minors in their underwear, swimming costumes, etc., from commercial leaflets or family environments, for example.
- 2) (Nudist) Images of naked or semi-naked minors in ordinary nudist settings and from legitimate sources.
- 3) (Erotica) Photographs of minors (playing) in an ordinary environment, taken surreptitiously and/or obviously on the basis of a sexual interest in minors, in which either the underwear forms the express subject of the image or the minor is fully or entirely unclothed and the nudity or the minor's genitals (whether or not covered) form the focus of the image.
- 4) (Erotic posing) Deliberately posed pictures of minors fully or partially clothed or naked, in sexualised or sexually provocative poses or circumstances, in which the emphasis is placed upon the nudity or the minor's genitals (whether or not covered).
- 5) (Explicit sexual activity) Images of minors fully or partially clothed or naked, involving the following:
  - Minors touching their own genitals or those of other minors, masturbating or involved in sexual intercourse with one another.
  - Minors being subject to assault, physical sexual penetration, masturbation, or oral sex acts in which an adult is involved, also including cases in which the minor performs such acts upon an adult.
  - An animal is involved in a form of sexual conduct with or by a minor.

The material in the aforementioned categories one (indicative material) and two (nudist material) do not constitute criminal offences. However, such images and many other types of material serve a sexual function in relation to children in the case of some individuals. Examples of such material might include advertisements in newspapers, paintings, correspondence between perpetrators or between perpetrators and children, children's toys and written accounts of sexual abuse of children.<sup>182</sup>

#### *'Apparent age'*

The objectified element of 'apparent age' implies on the one hand that the suspect's intention does not have to be directed towards age. A suspect is unable to argue that he/she was unaware that the individual on the image was a minor. Furthermore, this formulation means that the Public Prosecution Service does not have to prove the age of the person depicted in order to ascertain that the material concerns

180 One comparable scientific classification is COPINE 'Combating Paedophile Information Networks in Europe project.' This is an EU-funded research programme concerning child pornography and the actors involved (see §1.4.3 and Appendix 1).

181 Taylor & Quayle, 2003, pp.38-39.

182 In order to distinguish material constituting a criminal offence (child pornography) from material that does not, the latter is also referred to in the literature as 'child erotica'. The term 'child erotica' can give rise to confusion, however, in view of the fact that images that are deemed to be 'erotic' (category three) are regarded as child pornography constituting a criminal offence (Lanning, 2010; Quayle & Taylor, 2001).

child abuse material. In view of the fact that the identity (and therefore also the age) of most victims who are depicted is not known, age is generally assessed using the Tanner criteria.<sup>183</sup> These medical criteria provide an estimated age up to the age of fifteen on the basis of physical build and hair growth. This means in practice that in the identification and assessment of material in relation to which no other information regarding the age of the depicted individual is available, only material involving pre-adolescents and adolescents can be designated as constituting a criminal offence. The use of the Tanner Criteria and the formulation ‘apparent age’ in Article 240b of the Dutch Criminal Code offer fewer possibilities to protect children who appear to be of age (generally  $\pm 15$  to  $\pm 18$  year olds).<sup>184</sup> Such material is not classified as child abuse material if only the Tanner criteria are used for assessment. This problem occurs in the (commercial adult) pornography industry, amongst other domains. It is not apparent whether it involves a model of full age or a minor who appears to be of full age. The latter is a case of (post)adolescent child pornography, which from a legal perspective is covered by the term child pornography<sup>185</sup> and also incurs the appropriate criminal charges,<sup>186</sup> if the actual age of the victim is known. The opposite case – material whose production involves the use of an adult who appears to be pre-adolescent or adolescent<sup>187</sup> – is also a criminal offence in the Netherlands, as this material resembles child abuse material. In this case, it makes no difference what the depicted individual’s actual age is,<sup>188</sup> not even if it is proven later on that the individual concerned is an adult.<sup>189</sup>

#### ‘Apparently involved’

By adding the words ‘*schijnbaar betrokken*’ [apparently involved], the legislator indicated in 2002 that even material that is produced without the direct involvement of a real child is subject to this criminal provision. This legislative amendment came about as a result of the ratification of the Convention on Cybercrime that was created within the framework of the Council of Europe.<sup>190</sup> In addition to the situation in which the material forms a realistic representation of an abuse scenario, it is also possible for images to be manipulated and/or produced entirely using digital techniques. The legislator refers to both of these methods of production as ‘virtual child abuse material.’<sup>191</sup> When the legislative amendment was made in 2002, the legislator clearly anticipated that the boundary would be set in such a way as to include realistic, life-like images.<sup>192</sup> On this basis, it is sufficient for the Public Prosecution Service to assume that the depicted person resembles a child and that the impression of actual abuse is given.<sup>193</sup>

183 Lünnehan et al., 2006, p.75; Van der Zee & Groeneveld, 2007, p.236.

184 Van der Zee & Groeneveld, 2007, p.235-236.

185 *Parliamentary Papers II* 2001/02, 27 745, no.6, p.10.

186 Court of Alkmaar, 17 March 2011, LJN: BP8253.

187 Lanning (2010, p.83) refers to this material as simulated child pornography.

188 *Parliamentary Papers II* 2001/02, 27 745, no.3, p.4.

189 Supreme Court 18 November 2008, LJN: BF0170 (findings of Advocate-General Machielse).

190 Convention on Cybercrime (see §1.3)

191 *Parliamentary Papers II* 2000/01, 27 745, no. 3, p.4; Cf. Koops & De Roos, 2007, p.60: “it seems to be better to employ a more restricted designation where we are actually concerned with realistic images (as they are called in the Convention on Cybercrime) or more preferably images that cannot be distinguished from real-life, which the approach used in USA legislation.”

192 *Parliamentary Papers II* 2000/01, 27 745 no.1, p.2; Cleiren & Verpalen (ed.) *Tekst en Commentaar: Strafrecht* [Text and Annotations in Criminal Law], 2010, p.1127.

193 Lünnehan et al., 2006, p.40

Although legislative history has therefore demonstrated that the boundary was originally intended to be drawn at real, life-like images, it seems that the Public Prosecution Service is making efforts in any case to tackle the production, distribution and possession of virtual child abuse material, even if the images in question do not represent real life. The Implementation Provisions concerning child pornography, which entered into force on 1 January 2011, once again emphasise the core motivation for criminalising virtual child abuse material: “Children must be protected from images that imply sexual abuse, from behaviour that can be used to encourage or invite children to participate in sexual behaviour, and from behaviour that may form part of a sub-culture that promotes the sexual abuse of children”.<sup>194</sup> It is partly as a consequence of this notion that the initiative has been taken in case law to take this criterion in consideration and to also make non-life-like images subject to the criminal provision. In general, manipulated material cannot be distinguished from real-life material, as the former is often composed of various images and ‘pasted’ together using digital techniques. Material that is generated entirely using a computer does not (yet) appear life-like, due to the current state of technology. However, life-like material that is entirely computer-generated could form a new ‘grey area’ in detection in the future,<sup>195</sup> since it would be unclear whether the depicted individual is a real existent child who has been abused. The matter of whether acts in relation to virtual, non-life-like child abuse material constitute criminal offences has come up for discussion a number of times in the judicial system, but the number of judgments handed down in this field is still too few as to enable a consistent line of approach to be determined on the basis of case law.<sup>196</sup>

#### 1.4.1.2 The activities – ‘production’, ‘distribution’ and ‘possession’

*‘[...]distributes, offers, openly exhibits, produces, imports, conveys, exports, acquires or has possession of [...] or obtains access to such material by means of a computer system or using a communications service.’*

Technological developments have not only influenced the nature of the material itself. ICT simplifies the actions required in order to produce, distribute and possess/view the digital material due to the increase in the so-called three As: accessibility, affordability and anonymity.<sup>197</sup> The analogue context

194 Implementation Provisions concerning child pornography, Dutch Government Gazette, 2 December 2010, no.19121.

195 O’Donnell & Milner, 2007, pp.91-92. Leukfeldt et al., 2010, p.178.

196 See for example Court of Arnhem, 20 January 2005, LJN: AS3632; Court of Den Bosch, 4 February 2008, LJN: BC3225; Court of Zwolle, 19 August 2008, LJN: BE9444; Court of Den Bosch, 30 March 2010, LJN: BL8876; Court of Utrecht, 9 November 2010, LJN: BO3813; Court of Amsterdam, 17 December 2010, LJN: BO9296; Court of Rotterdam, 31 March 2011, LJN: BP9776.

197 O’Donnell & Milner, 2007, p.36; Taylor & Quayle, p.107. For example, individuals believe themselves to be anonymous on the Internet, due to the absence of social monitoring, other identities can be assumed and anonymous messages can be posted. Consequently, individuals are more anonymous to a certain extent than is the case in the real world. However, without advanced concealment techniques, computers can generally be traced. According to Stol (2010, p.8-19) this (perceived) anonymity enables the Internet to create new possibilities for abnormal behaviour: “As people are more anonymous on the Internet than in the physical world and as the Internet is less subject to monitoring, people behave more abnormally in cyberspace than they would offline. The question of whether people are in fact more anonymous online than offline and whether they actually have less reason to be afraid of monitoring online than they would offline is not of particular importance here. [...] If people believe that they are anonymous and if they believe that they are not being monitored, they subsequently behave as if that were the case.”

also continues to be of importance: where child abuse material is produced, it is generally the case that children are physically abused in the real world. This sub-section will examine the elements that relate to the hands-on context of child abuse material ('produces') and the digital context ('distributes', 'offers', 'acquires', 'possesses' and 'obtains access to') from a legal perspective.<sup>198</sup>

The production, distribution and possession of digital child abuse material take place using open and integrated computer systems, using communication systems<sup>199</sup> and within a variety of contexts (commercial and private). Various activities within this context present specific problems for efforts to tackle child pornography, such as encryption, which can be used to conceal the possession of child abuse images and films, and new payment methods that enable commercial distribution.

### 'Production'

Child abuse material is produced in a variety of contexts.<sup>200</sup> Firstly it is made for personal use, whereby the material is solely intended for the producer. The party who makes it may be someone from the victim's immediate environment such as a parent, guardian, (a friend of the) family or a carer. People also stay abroad temporarily (holiday) or permanently for the purpose of abusing children (what is known as child sex tourism) and to produce child abuse material from these activities.<sup>201</sup> A second context in which child abuse material is produced is that of production with intent to distribute the material further. This includes material that is produced with a view to distributing it within amateur networks, but also material that is produced and distributed for commercial purposes. If parties behind commercial websites produce child abuse material themselves, this material primarily originates from countries, in which the legislation and regulations and/or enforcement thereof are insufficient and in which poverty or other factors mean that large numbers of potential victims can be found. Such countries include Russia and other Eastern-European countries,<sup>202</sup> as well as various countries in South-East Asia and South America.<sup>203</sup> However, the majority of the commercial websites are involved in the *distribution* of existing material.<sup>204</sup> The proliferation of integrated computer systems on devices such as mobile telephones

198 The elements 'openly exhibits, [...], imports, conveys, exports' only concern the analogue context of child abuse material, see Van Koppen, 2009. Analogue child abuse material (hard copy photographs and magazines) also still exist, see Court of Zutphen, 20 October 2009, LJN: BK0673.

199 Open computer systems are laptop and desktop computers, but also servers of ISPs, for example. Integrated computer systems can be found in devices that contain (components of) computers, such as digital cameras and mobile telephones. Open and integrated computer systems are also often connected to communication systems, such as the Internet and wireless telecommunication systems. Ferraro & Casey, 2005, p. 79-97.

200 Taylor & Quayle, 2003, p.23.

201 Child sex tourism generally concerns countries where monitoring is limited, such as Thailand and Cambodia (KLPD- International Police Information Service [*Dienst IPOL*], 2008, p.88), but there are also indications that individuals from other countries have recently taken up residence in the Netherlands with a view to abusing children (Jahae, 2009, pp.186-198; *Medeverdachte zedenzaak wil verdenkingen niet horen* [Co-accused in sex abuse case did not want to hear details of suspected acts], De Pers, 17 June 2011, available at: [www.depers.nl/binnenland/576033/Richard-hielp-Robert-actief.html](http://www.depers.nl/binnenland/576033/Richard-hielp-Robert-actief.html) (viewed 15 August 2011).

202 ECPAT International, 2008.

203 Van Wijk et al., 2009

204 European Financial Coalition, 2010, p.15.

and means of connecting them to communication networks has also given rise to an expansion in the number of ways in which child abuse material can be distributed and produced.<sup>205</sup>

#### 'Distribution' and 'offering'

Commercial child pornography websites are generally set up and maintained by individual criminals and criminal organisations. However, we cannot rule out that preferential offenders (see §1.4.2) also become involved in the production and distribution of commercial child abuse material. This type of material accounts for a relatively small proportion of the total supply of child abuse material on the Internet,<sup>206</sup> which includes both so-called pay-to-view websites, where an individual may take out a subscription and is subsequently able to view child abuse material for a certain period of time, and websites where an individual may pay per file.<sup>207</sup> Commercial websites also face an economic problem, due to the fact that on the one hand, the vendor must keep his/her wares concealed, but on the other hand also needs to advertise the website. Once the blatant offering of material via websites became too risky, an alternative combination then emerged in the form of the website-newsgroup, in which the website consisted of a portal featuring advertisements and was backed up by a payment site. Advertising took place via the newsgroups in the form of newsgroup messages. Subsequently, the website-spam combination was also observed. This involved a similar type of website, however the advertising took place in the form of spam.<sup>208</sup> This immediately became the 'Achilles heel' of the commercial circuit: providers must reveal their location, otherwise they would not sell anything. A recent study by the European Financial Coalition concluded that the number of commercial websites that offer child abuse material has declined drastically and that the profits are minimal. However, various new payment systems and *modi operandi* have been observed. The rate of innovation within commercial circuit is high and that manifests itself in the form of displacement effects on the Internet, as well as in other ways. According to the National Threat Assessment [*Nationaal Dreigingsbeeld (NDB)*] from 2008,<sup>209</sup> there

205 See *Verkrachting gehandicapte deels wél bij Cordaan* [Rape of disabled (girl) did in fact partly take place at Cordaan], Parool, 26 March 2011, available at: [www.parool.nl/parool/nl/4048/AMSTERDAM-ZUIDOOST/article/detail/1865679/2011/03/26/Verkrachtiging-gehandicapte-deels-wel-bij-Cordaan.dhtml](http://www.parool.nl/parool/nl/4048/AMSTERDAM-ZUIDOOST/article/detail/1865679/2011/03/26/Verkrachtiging-gehandicapte-deels-wel-bij-Cordaan.dhtml) (viewed 22 July 2011); *Stiefvader kon het stiekem filmen van stiefdochter niet laten* [Stepfather could not desist from secretly filming stepdaughter], Noordhollands Dagblad, 3 February 2011, available at: [www.noordhollandsdagblad.nl/nieuws/stadstreek/article6189391.ece/Stiefvader-kon-het-stiekem-filmen-van-stiefdochter-niet-laten](http://www.noordhollandsdagblad.nl/nieuws/stadstreek/article6189391.ece/Stiefvader-kon-het-stiekem-filmen-van-stiefdochter-niet-laten) (viewed 22 July 2011).

206 Mitchell et al., 2011; European Financial Coalition, 2010.

207 European Financial Coalition (2010, p.18) provides four possible reasons as to why individuals purchase commercial child abuse material. Buyers may be inexperienced in seeking it and may not (yet) know how/that child abuse material can be obtained for free; some buyers are habitual collectors and want to be sure that they have complete series; buyers may believe that commercial websites provide greater security from discovery by investigative authorities than p2p exchange programmes; or buyers hope to receive new material from commercial websites.

208 Leukfeldt et al., 2009, p.26.

209 The National Threat Assessment (NDB) wrote that the decision was taken not to conduct any further investigation into the production and distribution of child abuse material as the organised nature (as far as the situation in the Netherlands is concerned) has been called into doubt. The NDB continued that in 2008, no research data was available to provide an impression of the nature and extent of amateur networks. It is a domain in which investigative authorities have difficulty in gaining an insight (KLPD – International Police Information Service [*Dienst IPOL*], 2008, pp.19, 92).

are no indications that groups in the Netherlands are involved in commercial production and distribution. The NDB also showed that there is little insight into the involvement of Dutch groups in the production of child abuse material in other countries. What is clear, however, is that Dutch payment processing companies are involved in processing the flow of funds<sup>210</sup> and that servers located in the Netherlands are being used to host child abuse material.<sup>211</sup>

Distribution within amateur networks, also known as ‘paedophile networks’, usually takes place within more or less organised networks or newsgroups that use protected areas of the Internet (see also §1.4.2). Within these networks, encrypted e-mail and files, group-based communication via chat channels such as Internet Relay Chat (IRC) and Microsoft Network Messenger (MSN) and peer-to-peer (p2p) exchange programs are used in which documents never actually appear on the network and are therefore more difficult to trace.<sup>212</sup> These p2p programs enable shared folders to be created (automatically) in which files can be shared with other users of an exchange program. From a legal perspective, material in this situation is supplied on the one side and acquired on the other.<sup>213</sup> It is not known what proportion of child abuse material is distributed on the Internet via which route and it is likely that p2p programs such as Gnutella and BitTorrent are the ones that are most popularly used for distribution purposes.<sup>214</sup> What is clear, however, is that the means of distribution is subject to change, partly due to the fact that the suppliers of child abuse material are responding to repressive measures and partly because new technical means are always emerging.<sup>215</sup>

#### ‘Possession’ and ‘obtaining access to’

Child abuse material in analogue format was and still remains fairly bulky<sup>216</sup> and a large quantity of hard-copy material occupies a considerable amount of space. With the introduction of ICT and the subsequent shift from analogue to digital, the access to and storage of child abuse material has been vastly simplified. It is frequently the case that individuals are tracked down who have many hundreds of thousands and sometimes even millions of digital images in their possession. Previously, large collections reflected the time and effort that someone had spent on them, but today large quantities are more likely to reflect the speed of an individual’s Internet connection.<sup>217</sup> Some perpetrators deliberately store large quantities of digital data relating to sexual violence against children on the computer.

210 KLPD – International Police Information Service [*Dienst IPOL*], 2008.

211 AK Zensur [*German Working Group Against Internet Blocking and Censorship*], 2010, p.7. This study refers to a Russian-language child pornography website with an Indian domain name (.in) that is hosted from within the Netherlands.

212 Van der Hulst & Neve, 2008, pp.51-52; O’Donnell & Milner, 2007, pp.36-40.

213 See Court of The Hague, 23 November 2010, LJN: BO4955. Prior to the legislative amendment of January 2010 (Act of 26 November 2009, Dutch Bulletin of Acts and Decrees 544, entered into force on 1 January 2010, Dutch Bulletin of Acts and Decrees 578), a legal precedent was set (Van Koppen, 2009, pp. 91-95) in which the court ruled that this form of supplying child abuse material constituted a form of (passive) distribution, see for example Court of Appeal of Den Bosch, 5 October 2005, Dutch Law Reports 2005, 558.

214 Liberatore et al., 2010.

215 Leukfeldt et al., 2009, p.26

216 Taylor & Quayle, 2003, p.199.

217 O’Donnell & Milner, 2007, pp.57-58.

Digital indications of the possession of child abuse material can also be found in all manner of other locations on the computer, such as folders created automatically by the operating system, the recycle bin, temporary Internet files and unallocated clusters. In addition to deliberate storage and intent, the power of disposal of the material on the part of a suspect forms a key legal concept in securing a conviction for possession of child abuse material.<sup>218</sup> This power of disposal is important due to the fact that with the appropriate knowledge and means, it is also possible to (temporarily) view, delete or conceal abusive material in the aforementioned less-accessible locations of a computer. Unemptied recycle bins soon allow power of disposal to be demonstrated, for example.<sup>219</sup> These files can be easily recovered by the user and with the appropriate knowledge and means it is also possible to retrieve files containing child abuse material on unallocated clusters.<sup>220, 221</sup> What is more, child pornography users, just as other computer users, companies and authorities, are increasingly taking security measures in order to obtain files anonymously by using masking IP addresses (proxy servers<sup>222</sup>) and/or encrypting files using encryption programs such as TrueCrypt. At present, it is in fact not possible or barely possible to break through such programs due to the technologies used (no backdoor), development structure (open sources) and security measures (plausible deniability).<sup>223</sup> Encryption is not only used in open and integrated computer systems but also in communication systems.<sup>224</sup> This raises another point: previously, computers were primarily centred around (hard) drives. Although the open computer systems (desktop or laptop computers) and increasingly the integrated computer systems (mobile telephone, e-reader) still function as data storage devices, these devices are now almost always network-oriented due to the use of Internet services such as e-mail, chat and p2p programs.<sup>225</sup> Computers are no longer isolated, but are connected to one another, and this means that child abuse material does not have to be in an individual's possession on his/her own computer; it can also exist remotely due to cloud computing, FTP servers, hosting sites and web-based e-mail accounts. Material can also be viewed on websites in real-life. This last form of intentional viewing of child abuse material is what the legislator sought to criminalise with the addition of 'zich toegang verschaft tot' [obtains access to] to Article 240b of the Dutch Criminal Code (see also §1.3).<sup>226</sup>

218 These factors have been taken from Van Koppen, 2009, pp.64-90.

219 Court of Maastricht, 23 May 2008, LJN: BD4797; Court of Den Bosch, 24 December 2008, LJN: BG9125.

220 This is the section of the hard drive that can no longer be accessed by a standard computer user and which contains deleted files that can be partially overwritten. Files that have been removed from the recycle bin are also found in the unallocated clusters.

221 See for example [www.recovermyfiles.com/data-recovery-software.php](http://www.recovermyfiles.com/data-recovery-software.php) (viewed 12 July 2011). Software also exists for the opposite purpose – the permanent deletion of data on unallocated clusters, see for example [www.whitecanyon.com/wipedrive-erase-hard-drive.php](http://www.whitecanyon.com/wipedrive-erase-hard-drive.php) (viewed 12 July 2011).

222 A proxy server enables access to the Internet without an individual's own IP address being visible on the Internet (KLPD – National Crime Squad, 2010, p.206, (not publicly accessible)).

223 See [www.truecrypt.org/faq](http://www.truecrypt.org/faq) for an explanation of the terms backdoor, open sources and plausible deniability (viewed 12 July 2011).

224 Solum, 2009, p.54. See for example encryption on Skype, [www.skype.com/intl/en/security/detailed-security/](http://www.skype.com/intl/en/security/detailed-security/) (viewed 12 July 2011).

225 Ferraro & Casey, 2005, p.91.

226 *Parliamentary Papers II* 2008/09, 31 810, no.3, pp.3-4. The legislator argues that online payment traffic or the discovery of passwords and log-in details, together with historical data concerning websites visited could provide proof that an individual intentionally obtained access to child abuse material.

### 1.4.1.3 Functions of child abuse material for perpetrators

As far as perpetrators are concerned, the production, distribution and possession of child abuse material can perform various functions. It may involve the production and/or possession for the individual him/herself, or making contact with other perpetrators, or with victims. This illustrates that material can also serve as a means or as a goal within the context of other offences such as coercion, grooming and trafficking in human beings.

#### *Individual perpetrators*

The viewing of abusive films or images may serve to elicit sexual arousal and provide gratification.<sup>227</sup> Another function for the individual user of child pornography is that viewing material may provide some justification or serve as a neutralisation technique with regard to an individual's own sexual preference for children.<sup>228</sup> If the children who are depicted are not crying or otherwise showing a negative emotion, it may create the impression that the children are involved in the sexual conduct 'voluntarily' and/or are experiencing pleasure from it, but also that the individual's behaviour is normal, in view of the fact that many other individuals are also involved in child abuse material. The production of material may also serve as a 'souvenir' of sexual abuse of children in the past.<sup>229</sup> In addition, the collection and organisation of images into collections and finding missing images within a series may serve an important function within the lives of perpetrators.<sup>230</sup> The time that an individual devotes to collecting child abuse material in the virtual world can also provide a means of escaping from unfulfilling relationships in the analogue world.<sup>231</sup> Child abuse material can even have a therapeutic effect, in that the collection of material can serve as a release for emotions such as anger, or as a means for individuals with a sexual preference for children to discover their sexual identity.<sup>232</sup>

#### *Perpetrators in contact with one another*

Child abuse material is also used as a means of communication, profit, exchange or access between perpetrators.<sup>233</sup> For example, the distribution and display of material to others give rise to mutual trust and as far as perpetrators are concerned this demonstrates to one another that they share the same interest. In this way, child abuse material facilitates social relationships between perpetrators.<sup>234</sup> The material may also provide access to perpetrator networks and provides a means of receiving new images or financial payment.<sup>235</sup>

227 Taylor & Quayle, 2003, p.23; Lanning, 2010, p.90.

228 O'Donnell & Milner, 2007, p.86.

229 O'Donnell & Milner, 2007, p.86.

230 Taylor & Quayle, 2003, p.83-86.

231 Taylor & Quayle, 2003, pp.89-90.

232 Taylor & Quayle, 2003, pp.90-91.

233 O'Donnell & Milner, 2007, p.87.

234 Taylor & Quayle, 2003, pp.86-89.

235 Lanning, 2010, p.91. A thriving commercial industry in child erotica (also) exists. There is a constant demand in the Netherlands for child erotica and pre-adolescent model websites capitalise on this, see [www.google.com/insights/search/#q=%22preteen%20torrent%22%2C%22preteen%20bbs%22%2Cpreteen%20model%2Cpreteen&cmpt=q](http://www.google.com/insights/search/#q=%22preteen%20torrent%22%2C%22preteen%20bbs%22%2Cpreteen%20model%2Cpreteen&cmpt=q) (viewed 24 May 2011).

### Perpetrators and victims

Child abuse material is also used by perpetrators to groom children as well as to blackmail potential victims.<sup>236</sup> In this way, it performs a function in *committing* other criminal acts, such trafficking in human beings, corruption and grooming.

### 1.4.2 Perpetrators

*'an individual who [...]*

Producers, distributors and possessors of child abuse material, as well as those who intentionally view such material, and perpetrators of sexual violence against children in general, form a very diverse group.<sup>237</sup> The categories described below are merely intended to provide the reader with some insight into the various forms of perpetrator that exist within the realm of child pornography. The reality is more complex, however, as perpetrator categories are not mutually exclusive and the sequence of actions within a *modus operandi* may vary in practice. In this report, we refer to perpetrators or offenders with a *preferential* or *exclusive* sexual preference for children and/or *situational* perpetrators or offenders.<sup>238</sup> A sexual preference for children need not manifest itself in criminal acts, however. In the event that a sexual offence is ultimately committed, the perpetrator may have passed through various stages prior to the criminal offence in which there was only an inner compulsion or urge to commit the offence.<sup>239</sup>

### Preferential and situational offenders

The literature on child pornography and other sex offences<sup>240</sup> distinguishes between two general types of offenders, namely preferential offenders and situational offenders. The preferential offender has a preferential or exclusive sexual inclination towards children,<sup>241</sup> whilst the situational offender commits an offence as a result of the opportunity to do so or other contextual factors<sup>242</sup>: *"the committed offender is the opportunity-maker,<sup>243</sup> the opportunistic offender<sup>244</sup> is the opportunity-taker"*.<sup>245</sup>

The literature has shown it is certainly not always the case that producers of child abuse material and particularly viewers have a preferential or exclusive sexual inclination towards children. According to

236 O'Donnell & Milner, 2007, p.86.

237 Lanning, 2010; Finkelhor, 2009.

238 Diagnostic terms such as 'paedophile' and 'paedophilia' from the Diagnostic and Statistical Manual of Mental Disorders IV-TR are avoided in this report as much as possible. Paedophilia is understood to refer to: having a sexual preference for children. Paedosexuality is understood to be: having sexual contact with children. Not all paedophiles are paedosexuals (not every individual with sexual feelings towards children also actually has sexual contact with children), but not all paedosexuals are paedophiles (not every individual that has sexual contact with children also has a sexual preference for children).

239 O'Reilly et al., 2007, p.59.

240 Lanning, 2010; Beech et al., 2008; Van Wijk, 2010.

241 Van Wijk, 2010.

242 Van Wijk, 2010.

243 Committed offender is used to refer to the preferential offender.

244 Opportunistic offender is used to refer to the situational offender.

245 Smallbone et al., 2008, p.41.

Lanning,<sup>246</sup> the answer to the question of whether viewers have a preferential inclination is usually found in the manner in which the material is collected and organised. Preferential offenders generally only collect child abuse material and other material related to children and their collections form a reflection of their sexual fantasies. Non-preferential possessors with paraphilic disorders and situational offenders may collect child abuse material in addition to legal forms of pornography. These individuals are also referred to as 'omnivores'<sup>247</sup> (in the sense of non-specific collectors) in relation to their pornography consumption. Child abuse material is not collected to the same extent as in the case of preferential offenders and the same degree of predictability does not apply.<sup>248</sup>

#### *Minors and female perpetrators*

The age of perpetrators of sexual abuse in general, and of producers of child abuse material and viewers in particular, varies.<sup>249</sup> Minors also commit sexual abuse against children,<sup>250</sup> an example of which may involve brothers or sisters committing sexual abuse.<sup>251</sup> In cases of sex offences, minors who perpetrate sexual abuse against children may also display other criminal behaviour and inadequate social skills,<sup>252</sup> but may also be victims of sexual abuse themselves.<sup>253</sup> A considerable proportion of the available material is made by minors themselves,<sup>254</sup> sometimes by means of 'sexting'.<sup>255</sup> In the case of sexting, minors who are voluntarily engaged in a sexual relationship have produced images of sexual conduct involving one another. This usually does not involve pre-adolescent children, but adolescents who display sexually experimental behaviour that is appropriate for their age. It may be the case, however, that the images are unintentionally distributed and fall into the hands of third parties and the (post) adolescent material may subsequently find its way onto (adult) pornographic websites. In such cases, individuals may be the producer, distributor and victim of child abuse material.<sup>256</sup> The gender of offenders can also vary: there are also women who sexually abuse children and/or view child abuse material.<sup>257</sup> The number of female offenders is probably less than the number of male offenders,<sup>258</sup> but incidences involving female offenders may be underreported.<sup>259</sup>

246 Lanning, 2010, p.79.

247 Van Wijk et al., 2009.

248 See for example Court of Utrecht, 25 May 2010, LJN: BM8000.

249 Lanning, 2010.

250 Van Wijk et al., 2009; Leukfeldt et al., 2009, p.158. Weesepeel, 2011; see §3.5.4.4 and §3.6.4.

251 Leuw et al., 2004.

252 Bartol & Bartol, 2005, p.369.

253 Lanning, 2010, p.48; Finkelhor et al., 1986, p.104.

254 For example, 46% of the images that were processed by the Victim Identification Team of the British CEOP organisation between 2008 and 2010 were produced by youngsters themselves. (H. White, Conference Indecent Images of Children, CEOP, 8 March 2011). See also Weesepeel, 2011

255 Mclaughlin, 2010.

256 Weesepeel, 2011, pp. 8-9.

257 Seigfried et al., 2008; Taylor & Quayle, 2003, pp.66-67; *Groep Zweedse vrouwen verdacht van kinderporno* [Group of Swedish women suspected of child pornography offences], AD, 6 September 2011, available at: [www.ad.nl/ad/nl/1013/Buitenland/article/detail/2434876/2011/05/20/Groep-Zweedse-vrouwen-verdacht-van-kinderporno.dhtml](http://www.ad.nl/ad/nl/1013/Buitenland/article/detail/2434876/2011/05/20/Groep-Zweedse-vrouwen-verdacht-van-kinderporno.dhtml) (viewed 27 July 2011).

258 See also §3.5.4.4

259 Taylor & Quayle, 2003, p.68.

### *Relationship between abuse and child pornography*

Determining the exact nature of the relationship between the viewing of child abuse material and actual physical abuse is complicated.<sup>260</sup> In any case, there seems to be a positive correlation<sup>261</sup> between hands-on perpetrators of child abuse and the possession of child abuse material on their computers.<sup>262</sup> However, we cannot conclude from this that committing acts of abuse constitutes a progression from the viewing of child abuse material. The most common hypothesis in the literature is that there is no *causal* relationship between the viewing of child abuse material and committing hands-on offences.<sup>263</sup> The viewing of such material by itself therefore does not by definition constitute a risk factor that leads to a hands-on sex offence: “*seeking child abuse material is the result of a sexual interest in children, not the cause of it.*”<sup>264</sup> A meta-analysis by Seto et al. (2010) indicated that approximately half of convicted viewers of child abuse images and films admitted to also having committed a hands-on offence. It also emerged from this study that a group of hands-off offenders attempted to contact minors over the Internet, but did not succeed in doing so<sup>265</sup> and therefore ultimately no hands-on offence was committed.<sup>266</sup> In addition, the study team concluded that a preferential sexual interest in children by itself does not have to lead to hands-on offences being committed. They also observed that the offenders who actually made their sexual desires become a reality probably also possessed the personality traits and were in such situational circumstances that facilitate abuse offences and criminal activity in general.<sup>267</sup> However, child abuse material could reinforce any sexual fantasies and needs to physically abuse children.<sup>268</sup> The viewing of abusive images and films could act as a means of normalising the sexual abuse of children and could reinforce the desire to actually commit sexual abuse offences.<sup>269</sup> The viewing of images in which children are being sexually abused may give rise to cognitive distortions, making it easier to cross the threshold of actual physical abuse.<sup>270</sup> Contact with other individuals with a sexual preference for children via the Internet could also serve to neutralise and legitimise the sexual abuse of children. Furthermore, the notion of increasing one’s regard within such an online sub-culture may also motivate perpetrators to commit a hands-on offence. These hypotheses have never been empirically verified, however.<sup>271</sup>

### *Relationship between perpetrator and victim*

Generally speaking, sexual abuse forms the basis for the production of child abuse material and perpetrators in cases of sexual abuse are also generally known to their victims. It is rarely the case that perpetrators are strangers to the victims and as a rule they are situational offenders.<sup>272</sup> It emerged from a study

260 Van Wijk et al., 2009.

261 A correlation is a relationship between two variables; however this does not mean that there is also a *causal* relationship between the two variables that were measured.

262 Seto et al., 2011; Bourke & Hernandez, 2009; Van Wijk et al., 2009.

263 Van Wijk et al., 2009; Endrass et al., 2009; Seto et al., 2011.

264 Lanning, 2010, p.108.

265 In other words, this activity did not lead to an actual meeting.

266 Seto et al., 2011.

267 Seto et al., 2011.

268 Quayle & Taylor, 2001; Taylor & Quayle, 2003, p.54.

269 Quayle & Taylor, 2001.

270 Taylor & Quayle, 2003, pp.54-55.

271 Wolak et al., 2008.

272 Leuw et al., 2004, p.110; Lanning, 2010.

of paedosexual delinquency by the WODC that the perpetrator was a complete stranger to the victim in less than 10% of all cases (642 committed paedosexual offences). In more than a third<sup>273</sup> of paedosexual offences that were committed, the perpetrator was a (step/foster) parent of the victim.<sup>274, 275</sup> In addition, individuals (other than parents) who are entrusted with the care of the child account for a large group of perpetrators.<sup>276</sup> Perpetrators who met their victim online are also known to one another, due to the fact that mere virtual contact created a relationship between the perpetrator and the victim.<sup>277</sup>

#### *Problematic Internet use*

There may be a relationship between the viewing of child abuse material and problematic Internet use. Some individuals use the Internet in order to avoid negative emotions, such as boredom, anxiety and depression. There are indications that this problematic Internet use can manifest itself in viewing abusive material and/or engaging in online grooming.<sup>278</sup> Taylor and Quayle have developed a 'model of problematic Internet use'.<sup>279</sup> This model supposes that various processes (such as gaining skills in using the Internet), cognitive-social factors (increased sexual arousal, few offline contacts) and problematic cognitive processes (sexual interest in children, low confidence) contribute towards problematic Internet use and this in turn forms a contributing factor in reinforcing the aforementioned aspects (a so-called escalation process).

#### *Modus operandi*

In sections §1.4.1.2 and §1.4.1.3 it becomes apparent that child abuse material is produced, distributed and viewed using various technological means and for a variety of reasons. Perpetrators go through different steps in order to obtain material<sup>280</sup> and this may take place in open and closed internet environments. The difference lies in the accessibility of these environments. Offenders can take the security measures listed in §1.4.1.2 in both open and closed internet environments in order to avoid discovery by investigative authorities, such as using a proxy server.<sup>281</sup> First of all (potential) perpetrators must be motivated to

273 Specifically 35.5%.

274 Specifically 9.3%. The perpetrators of other paedosexual offences that were committed who were known to the victims concerned: other family members (24%), friends/acquaintances (12%), co-residents in an asylum seekers' residence centre (9.3%), neighbours (4.8%), child-minders (4.1%), carers (1%) (Leuw et al., 2004, p.83)

275 Leuw et al., 2004.

276 For example, a child-minder, twice or thrice-removed family members (Lanning, 2010, p.5). It has also been the case that staff within an institutional context such as crèches or day nurseries sexually abuse children. In 2010, the Samson Committee began conducting an independent study of sexual abuse of minors who have been placed under the responsibility of the government in institutions or with foster families (period 1945-present). See [www.onderzoek-seksueel-kindermisbruik.nl/meldpunt/](http://www.onderzoek-seksueel-kindermisbruik.nl/meldpunt/) (viewed 6 September 2011) for public reports from the Committee that have been published to date, see also §3.2.4.

277 Quayle & Taylor, 2001.

278 Davidson & Gottschalk, 2011, p.43.

279 Taylor & Quayle, 2003, p.154-188.

280 Leukfeldt et al., 2009, Taylor & Quayle, 2006, pp.174-192.

281 A proxy server makes it possible to access the internet without a user's own IP address being visible on the internet (KLPD – National Crime Squad, 2010, p.206).

search for child abuse material or a provider of such material. This search begins with gaining knowledge of where (information concerning how to obtain) such images or films can be found. For example, an individual could enter terms related to child sexual abuse into general search engines such as Google or search functions in p2p programs. Child abuse material can be easily found using p2p programs such as Gnutella and BitTorrent and for this reason this is probably the most popular means of obtaining access to abusive material.<sup>282</sup> After being referred to specific open newsgroups or chat rooms<sup>283</sup> via general search engines, the potential offender finds him/herself in a pre-criminal situation.<sup>284</sup> Information in these open internet environments is generally legal, such as links to child pornography websites or the displayed overview of available child abuse material in p2p programs.<sup>285</sup> These open internet environments serve as a platform for discussions, where individuals with a preferential inclination towards children can meet to talk about their preferences with others.<sup>286</sup> The perpetrator may subsequently go on to commit the offence by clicking on and viewing links to child abuse material in the open internet environments, for example, or to download files containing child such material. The term 'criminal tactics' refers to the subsequent choices and actions of the offender when the offence is committed. The possibilities in terms of these tactics are determined by the characteristics of an internet environment. For example, the level of anonymity provided by an internet environment influences the offender's actions. An offender can learn to overcome such barriers and take measures to improve his/her *modus operandi*. Contacts in an open internet environment may also result in an individual gaining access to a closed internet environment in which new material can be exchanged. A newcomer must usually win the trust of the other members first before being granted access to material. These closed internet environments feature a rigid hierarchy that largely depends upon how often and how much new material is supplied by a specific member.<sup>287</sup>

#### (Online) sub-culture

In the virtual and analogue worlds there is a thriving sub-culture of individuals who share a sexual interest in children and such individuals have been forming organised groups even since the 1970s.<sup>288</sup> The advent of the Internet has also enabled like-minded individuals to meet one another online easily and anonymously,<sup>289</sup> but these individuals have continued to meet one another in the analogue world also.<sup>290</sup> A variety of topics are discussed within the sub-culture in open internet environments that concern marginalisation, sexuality, legislation and security.<sup>291</sup> The relationship with what they perceive to be the 'hostile' society that condemns their sexual preference is also a topic of frequent discussion. The offenders are aware that their behaviour and needs differ from an accepted norm and attempt to seek validation

282 Liberatore et al., 2010.

283 Jenkins, 2001, p.55.

284 The 'pre-criminal situation' can be distinguished from the 'pre-criminal opportunity'; this is the point at which an individual actually decides to commit a crime, for example starting to download child abuse material, see Taylor & Quayle, 2006, p.177.

285 Holt et al., 2010.

286 Holt et al., 2010.

287 Taylor & Quayle, 2003, p.87.

288 See §1.2.2.

289 Jenkins, 2001, p.64.

290 See *Van Meurs voor de rechter* [Van Meurs in court], Arnhem Dichtbij, 1 March 2011, available at: [www. arnhem-direct.nl/berichten/20110301\\_van\\_meurs\\_voor\\_de\\_rechter](http://www arnhem-direct.nl/berichten/20110301_van_meurs_voor_de_rechter) (viewed 14 July 2011).

291 Holt et al., 2010; Steel, 2009.

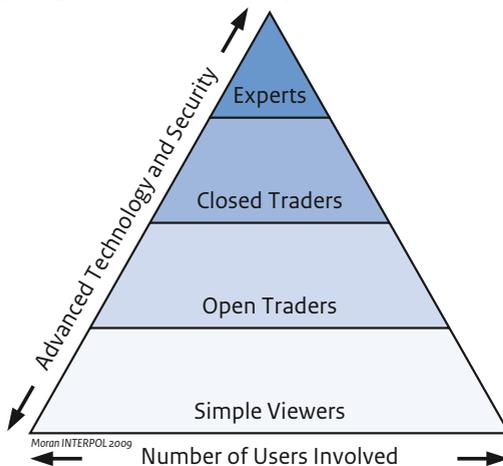
and justification for their behaviour online.<sup>292</sup> In this way, the online sub-culture fulfils a socio-emotional function as far as these individuals are concerned. It is a place where they are able to freely share their views. Aspects of their sexuality are discussed and (information relating to) child abuse material, sexual preferences, fantasies and events are shared. Legislation and regulations, and online and offline security measures to remain under the radar of the investigative authorities are also discussed.<sup>293</sup> Experienced collectors believe they are unassailable, judge the likelihood of arrest as low and have a low opinion of the (calibre of) investigative authorities.<sup>294</sup> It should be noted that some visitors to open Internet forums reject sex with children and the collection of child abuse material, as they recognise the harmful consequences for the child and therefore regard the abuse as being in conflict with the actual love for the child.<sup>295</sup>

#### Summary using a pyramid model

Moran illustrates his analysis of digital offenders in the pyramid model shown below (Figure 1.1).<sup>296</sup> The model provides an insight into the use of open and closed Internet environments, perpetrators' *modi operandi* and the relationship between hands-off and hands-on offences. It also shows why child pornography is a cybercrime in most cases and why it can also be a high-tech crime in exceptional cases. We can also add to the model that within each layer of offenders we can find individuals who themselves abuse children. Similarly, within the 'simple downloaders' layer (generally individuals who are discovered in investigations precisely because of their lack of technological knowledge in relation to obtaining digital child abuse material), the police also find perpetrators who have abused children and have produced images of this, but have not distributed them.<sup>297</sup>

Figure 1.1 Moran's pyramid model

#### Typology of Online Child Exploitation Material Users



292 Lanning, 2010, p.89.

293 Holt et al., 2010; Taylor & Quayle, 2003, pp.86-87.

294 Jenkins, 2001, pp.14-15.

295 Holt et al., 2010.

296 Moran, 2010.

297 Court of Zwolle, 17 June 2010, LJN: BM9626.

### *Simple viewers*

The pyramid shape indicates that there exists a large group of 'simple' viewers of child abuse material who attempt to access material in simple ways. Some of them are 'novice' viewers who are curious about child abuse images and/or child erotica. This group possesses little knowledge of ICT and therefore use the World Wide Web and general search engines in order to access child abuse images or (legal) child erotica<sup>298</sup> through internet environments (such as on legal modelling sites). If these individuals pay for material, this takes place through online payment facilities, such as credit cards or PayPal, as a result of which they also divulge their personal details. If the perpetrator is found higher up in the simple viewers layer (closer to the next group of open traders), more advanced technology, such as the Bulletin Board System (BBS), Usenet, Internet Relay Chat (IRC) or p2p networks will also be used.

### *Open traders*

The open traders group not only downloads and views child abuse material, but also distributes or supplies the material in open internet environments. This generally takes place in an unsecured way. Open traders use p2p, the BBS, IRC and websites. It is likely that online storage and upload services such as Yahoo, Flickr and Facebook are also used. Commercial suppliers also fall into the category of open traders.

### *Closed traders*

The perpetrators in this group are similar to open traders, but take various security measures in order to avoid discovery by investigative authorities. At this level communication takes place between individuals by e-mail and Instant Messenger, for example and private online communities are formed through communication. Access is granted once individuals are sufficiently trusted by members of the group. If trust has been built up between the members, correspondence by letter and conversations over the telephone can also take place. Members share material within the closed group that they have collected on the internet or produced themselves. If after a period of time member numbers become too great and/or the supply of new material declines, active members may leave the group and form new smaller closed groups.

### *Experts*

These small groups feature a clear-cut hierarchical division of roles and consist of individuals who have been active online for a long time already. Security plays an important role. Members are charged with the management of material and the delegation of roles to other members, online and offline security of the group, providing explanations regarding the use of technology or intelligence concerning investigative authorities. Members not only value self-produced child abuse material but also knowledge of the circumstances of production, such as the name of the victim and his/her emotional reaction.

This sub-section has provided an impression of the diversity amongst perpetrators. Although behaviour, *modus operandi*, age and gender may vary, all perpetrators contribute towards (creating or maintaining) the victimisation element of child pornography.

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298 Child erotica is a (non-legal) term that encompasses all material that is not child abuse material that makes reference to children and also serves a sexual purpose for the user of this material, such as children's underwear (advertisements), accounts of child abuse and toys, see Lanning, 2010, pp.85-89. See also, for example, Court of Utrecht, 31 March 2011, LJN: BQ0756.

### 1.4.3 Victims

Victims of child pornography are often victims of sexual violence.<sup>299</sup> The child is first of all a victim due to the sexual abuse that he or she has experienced, and in some cases this abuse may actually increase in duration and severity for the purpose of producing child abuse material.<sup>300</sup> This state of being a victim acquires a second dimension when this sexual abuse is recorded, in which case the child is also a victim of the fact that images of the abuse exist.<sup>301</sup> The victimisation exists in the fact that the child experiences the consequences of having featured as an object in the material. A great deal of research has been conducted in relation to victims of sexual abuse. A detailed study of the characteristics of sexual abuse of children in general, however, lies beyond the context of this report. By contrast, little is known about victims of child pornography.<sup>302</sup> This sub-section will focus upon what is known with regard to the aspects of victimisation that arise from child pornography. These include the situation in which the child is also a victim due to the fact that images were made of the abuse and are available. The consequences of the fact that images of the abuse exist can be severe and traumatic for the child and his/her family, and also result in a violation of their privacy.<sup>303</sup> With the advent of the Internet, this facet of the condition of being a victim is exacerbated further. After all, once the images have been posted on the Internet, victims and their parents must live with the permanence of the images,<sup>304</sup> in view of the fact that material that has been posted on the Internet is practically impossible to remove again for certain.<sup>305</sup> The activities entailing distribution, possession and viewing of the images produced victimise the children who feature in them due to the fact that they will continually figure as a sex object, and therefore these activities serve to continue the victimisation.<sup>306</sup>

#### *Virtual child abuse material and victimisation*

As we have already described in §1.4.1.1, images can also be manipulated using digital techniques, whereby an 'ordinary' image of a child becomes child pornography. Taylor et al. argue that this form of pseudo-photography constitutes a form of victimisation and must also be tackled as such.<sup>307</sup> The Dutch legislator refers to these methods of production as 'virtual child abuse material'<sup>308</sup> and criminalises it as such. The basic principle behind making the production of virtual child abuse material a criminal offence is its capacity to cause harm.<sup>309</sup>

299 Not all victims of child abuse material have been physically sexually abused. An example would be minors who voluntarily produce sexual images of themselves that are subsequently distributed on the Internet. Similarly, physical sexual abuse does not have to have taken place in the case of manipulated material that is composed of different images and have been 'pasted' together using digital techniques (see §1.4.1.1). See also Nyman, 2008, p.34.

300 See also §1.3.

301 Leary, 2007, pp.9-10; Taylor & Quayle, 2003, p.24; Nyman, 2008, p.6.

302 Van der Zee & Groeneveld, 2007, p.240.

303 Taylor & Quayle, 2003, p.24.

304 Nyman 2008, p.51; Taylor & Quayle, 2003, p.24.

305 Save the Children, 2006, pp.9-10; Taylor & Quayle, 2003, p.24.

306 See also Ost, 2009, p.118.

307 Taylor et al., 2001, p.104; Taylor & Quayle, 2003, p.38.

308 *Parliamentary Papers* 2000/01, 27 745, no. 3, p.4.

309 Lünemann et al., 2006; Implementation Provisions concerning child pornography, Article 240b of the Dutch Criminal Code, Dutch Government Gazette 2 December 2010, no. 19121.

Next, we will examine a number of aspects of the victimisation of children as a result of child abuse material. We will successively discuss the impact upon the victims and the characteristics of victims (age group, gender and ethnicity). Finally we will examine the (indirect) victimisation of the parents of victims of child pornography.

#### *The impact of child abuse material upon victims*

The identities of abused children who feature in child abuse material often remain unknown. Consequently, little is known about the impact on the victims caused by the fact that images depicting the abuse of these children are permanently circulating on the Internet.<sup>310</sup> In a recent German study<sup>311</sup> of this impact, amongst other aspects, all of the professionals who were interviewed expected that awareness of the existence of material depicting the sexual abuse will always result in additional psychological stress experienced by the victim. Although many victims are initially unaware of the permanent nature of the material in which they feature, this realisation, which often only occurs much later, gives rise to a feeling of complete loss of control, powerlessness, helplessness, shame and anxiety. Furthermore, it emerged from the study that victims are afraid that individuals who view the child abuse material in which they feature will believe that they performed or experienced the sexual acts voluntarily. The fact that many perpetrators coerce their victims into smiling whilst the recordings are being produced serves to reinforce this anxiety.<sup>312</sup> Children smiling in abusive material in which they feature acts as a means of neutralisation as far as viewers are concerned: they can consequently convince themselves that their viewing of these images is less deplorable, as the impression is created that the children enjoy featuring in these types of images.<sup>313</sup>

#### *Pre-adolescent victims*

Children up to five years of age are particularly vulnerable to becoming victims, as unlike older children they are more open to inappropriate requests, such as taking off their clothes for a photograph.<sup>314</sup> Very young children are unaware or less aware of the sexual context of what they are being requested to do, and consequently they are less likely to report it to an adult.<sup>315</sup> With regard to reporting the abuse, babies and toddlers in particular constitute a more vulnerable group within the pre-adolescent group, as they are not yet able, or are less able, to communicate verbally, and have greater difficulty in expressing their emotions than older children. It is therefore essential that both adults and care workers are alert to physical indicators and non-verbal communication by these children, in order to be able to detect if they are being sexually abused. If very young children demonstrate ('excessive') knowledge of sex or display sexual behaviour that is not typical of their age group, this forms a strong indicator of sexual abuse.<sup>316</sup> It is also highly desirable for care workers to be sensitive to such indicators. It is obvious that it is not easy to detect whether very young children are being sexually abused. The existence of images of the abuse, however, increases the likelihood of being able to do so, since images depicting the abuse provide evidence that it has taken place. This is why extensive sexual abuse of babies and toddlers in a

310 Nyman, 2008, p.9.

311 Von Weiler et al., 2010. See also §3.7 regarding the results of this study.

312 Taylor & Quayle, 2003, p.22; Nyman, 2008, p.37; Muir, 2005, p.41.

313 Taylor & Quayle, 2003, p.22.

314 Taylor et al., 2001, p.106.

315 Taylor et al., 2001, p.106.

316 Gunning et al., 2011, p.23.

day nursery in Amsterdam only came to light once images of this abuse were intercepted.<sup>317</sup> In the case of pre-adolescent victims in particular, who are after all less able to make a statement regarding the abuse, the existence of images of their abuse provides an opportunity for the abuse to be discovered, as a result of which they can be rescued from the situation (see 1.2.3 box text: Digital child abuse material and ICT as an opportunity). The fact that images of their abuse are circulating on the Internet does not form the central focus in the victimisation of pre-adolescent children, as most pre-adolescent children do not yet possess the cognitive capacity to be able to realise that images of their abuse may exist on the Internet and have consequently acquired permanence.<sup>318</sup> This realisation and the accompanying victimisation may develop later in life, however, and may still serve to traumatise the victim at that time.<sup>319</sup>

#### *Adolescent and post-adolescent victims*

Compared with pre-adolescent victims of child pornography, older children (12-18 years) are themselves involved in the production of abusive images more often than younger children.

#### *Sexting<sup>320</sup>*

A proportion of child abuse material that is available is produced by minors themselves.<sup>321</sup> In general this material is produced for the use of one specific individual<sup>322</sup> but due to certain circumstances it is subsequently distributed and so may end up on websites specifically concerned with child abuse material. These producers and victims are in most cases adolescents rather than pre-adolescent children. The production of images by children themselves is also known as 'sexting'.<sup>323</sup> Some authors also associate the term 'self-exploitation' with such activities,<sup>324</sup> which specifically concern images that youngsters produce of themselves or of one another within the context of an intimate (sexual) relationship. Cases of self-exploitation for commercial purposes have also been found.<sup>325</sup> In 2007, the American National Center for Missing and Exploited Children estimated that approximately 5.4% of the total supply of material featuring children that was currently circulating on the Internet could be regarded as self-produced.<sup>326</sup> This is primarily considered to be a consequence of the rise of 'webcam sex'.<sup>327</sup> Webcam sex may have taken place on a voluntary basis, but it does not alter the fact that it may be subsequently distributed without the consent of the individual who is depicted.<sup>328</sup> Images produced by the victims themselves but that are subsequently distributed by someone else, often as an act of retaliation, may have a traumatic effect upon the victims.

317 See §3.7.5 regarding the Amsterdam sexual abuse case.

318 Von Weiler et al., 2010; Nyman, 2008, p.22.

319 Von Weiler et al., 2010.

320 See also §1.4.2 regarding 'sexting' and also §1.5.2 regarding the extent of this phenomenon.

321 McLaughlin, 2010.

322 For example, a boy/girlfriend or sexual partner of the producer.

323 The word 'sexting' originates from a portmanteau formed from the word 'texting', which refers to the sending of text messages using a mobile telephone, and the word 'sex'. Since then, the term has become more widely used in parallel with the developments in the use of ICT and youth culture.

324 Leary, 2007, pp.2-51.

325 Leary, 2007, p.4.

326 Leary, 2007, p.19.

327 Quayle et al., 2008, p.63.

328 Quayle et al., 2008, pp.63-64.

Feelings of shame occur even more often in cases such as these, due to the fact that in many cases, the victims produced the images themselves.<sup>329</sup>

In contrast to young children, older children are more aware of the significance of the existence of images of their abuse, and this consequently makes them more concerned about the images.<sup>330</sup> This awareness is accompanied by feelings of shame and anxiety<sup>331</sup> and forms a heavy burden in cases where the victim wishes for closure with regard to the events.<sup>332</sup>

#### *Gender of victims of child pornography*

As was described above, little is known of the victims of child pornography. However, it is possible to deduce a number of physical characteristics of victims from child abuse material of which the existence is known. The COPINE<sup>333</sup> archive contains 150,000 child abuse images, of which more than half feature girls.<sup>334</sup> At the beginning of this century, 7% of the material featuring girls – amongst the images that depict an explicit sexual activity (category five according to the Implementation Provisions concerning child pornography)<sup>335</sup> – could be designated as new,<sup>336</sup> compared with 26% of the material featuring boys.<sup>337</sup> We have therefore seen a relatively greater increase in child abuse images involving boys as victims, compared with that involving girls. This finding is consistent with the claim that the majority of images previously involved girls, but at present they increasingly involve boys.<sup>338</sup> In the case of commercially produced child abuse material, the supply of material featuring boys is said to be now even greater than that involving girls.<sup>339</sup> This increase in boys becoming victims is also related to the advent of the Internet.<sup>340</sup>

#### *Ethnicity*

The large majority of children in the images in the COPINE<sup>341</sup> archive involving content of category five of the Implementation Provisions concerning child pornography were white children. Asian children appeared more often in images featuring erotic posing.<sup>342</sup> The year 2002 saw an increase in images featuring erotic posing that originated from commercial websites from South America and Eastern Eu-

329 Nyman, 2008, pp.36-37.

330 Nyman, 2008, p.22.

331 Muir, 2005, p.41.

332 Von Weiler et al., 2010.

333 The 'Combating Paedophile Information Networks in Europe project' is an EU-funded research programme in child pornography and the actors involved.

334 Taylor & Quayle, 2003, p.41.

335 See §1.4.1.1 of this report for an explanation of the different categories.

336 Images that are less than ten years' old are classified as 'new'.

337 Taylor & Quayle, 2003, p.41. Taylor & Quayle adhere to a different taxonomy, whereby categories seven to ten inclusive correspond to category five of the Implementation Provisions concerning child pornography. See also §1.4.1.1 and Appendix 1.

338 Van der Zee & Groeneveld, 2007, p.242.

339 Van der Zee & Groeneveld, 2007, p.242.

340 Muir, 2005, p.33.

341 See §1.4.1.1 and Appendix 1.

342 Taylor & Quayle, 2003, p.41.

rope.<sup>343</sup> What is striking is the absence of black children in child abuse material. The precise reason for this is unclear. It has emerged from interviews with perpetrators that many collectors have a preference for slim white children, whereby the genitals are clearly visible and secondary sexual characteristics have not yet developed.<sup>344</sup>

#### *Child sex tourism*

As already described in 1.4.2, many perpetrators of the production of child abuse material are known to their victims, in view of the fact that a large proportion of material is produced within the domestic circle.<sup>345</sup> However, images are increasingly cropping up that were made on location by child sex tourists.<sup>346</sup> Child sex tourism is the sexual abuse of minors by tourists<sup>347</sup> and encompasses three scenarios of abuse: (1) child prostitution; (2) non-prostitution-related paedosexual abuse and (3) the production of child abuse material.<sup>348</sup> The latter forms a frequently occurring element within the context of child sex tourism.<sup>349</sup> In a study conducted by ECPAT International, practically all respondents (minors working in the child sex tourism industry in Nepal and the Czech Republic) stated that they had been photographed naked at some point by one or more tourists or had been asked by one or more tourists to pose naked for them for the purpose of producing abusive material.<sup>350</sup>

#### *Parents as victims*

An element that often continues to be neglected in the literature on victimisation as a result of sexual abuse or child pornography is the (indirect) victimisation of the parents of child victims.<sup>351</sup> For example, family members may find themselves struggling with various psychological conditions, including depression, feelings of guilt, shame and symptoms of grief.<sup>352</sup> If the victims are very young, it is often expected that the traumatic impact upon the parents is greater than upon the child him/herself.<sup>353</sup> If a case concerns abuse that took place within the family, additional situational factors or 'stressors' come into play alongside the aforementioned traumatic effects, which exacerbate the trauma suffered by the non-offending parent(s). One example of this is the loss of a partner or family member (the abuser).<sup>354</sup> Furthermore, non-offending mothers or mother-figures in particular have to contend with criticism; they are regarded as passive and indifferent and they are frequently blamed for having allowed the abuse to take place.<sup>355</sup>

343 Taylor & Quayle, 2003, p.42.

344 Taylor & Quayle, 2003, p.41.

345 Van der Zee & Groeneveld, 2007, p.229.

346 Van der Zee & Groeneveld, 2007, p.229.

347 ECPAT Netherlands, 2002.

348 ECPAT International, 2010.

349 Muir, 2005, p.34.

350 Muir, 2005, p.34.

351 See also 3.7.5 regarding the impact upon and support provided to parents of victims in the sexual abuse cases of 'Benno L.' and 'Robert M.' (the Amsterdam sexual abuse case).

352 Tavkar, 2010, p.6.

353 Tavkar, 2010, p.17.

354 Tavkar, 2010, p.6.

355 Tavkar, 2010, pp.11-12.

Very little is known about the victimisation experienced by parents of victims of child pornography. In the Amsterdam sexual abuse case, a child psychologist, paediatrician and child psychiatrist were commissioned to produce a report on the effects upon children and their parents.<sup>356</sup> This report is to be completed by the end of 2011. It emerged from interviews with two staff members from the Amsterdam Municipal Health Service and with the lawyer of some of the parents of victims in the Amsterdam sexual abuse case that the dilemma concerning whether or not to view the images forms a factor that can cause stress for the parents of victims of child pornography. On the one hand, many parents want to know everything about the abuse down to the last detail (such as whether the child was awake or was in pain), whilst on the other hand the viewing of the images can be highly traumatic for them.<sup>357</sup> One consequence could be that the parents exhibit extremely cautious or stifling behaviour where their child is concerned, or that parents are unable to escape the image of the sexual activities that their child has experienced and therefore could come to view their child differently.<sup>358</sup>

A German study by Von Weiler et al. in 2010 included interviews with professionals concerning various aspects, including the effects upon the parents of victims of child pornography. It emerged from these interviews that in many cases the existence of images of the abuse of their child results in parents believing their child more easily.<sup>359</sup> The images are regarded as proof, and consequently parents will have less tendency to trivialise or deny the abuse that was committed.<sup>360</sup> Some professionals who were interviewed in the study by Von Weiler et al. noted that parents of victims of child pornography displayed a greater desire to have the perpetrator prosecuted.<sup>361</sup> The fact that images were produced of the abuse of their child and that money may have been earned from it enrages parents, according to the study. Many parents want to retrieve the material and some even go searching themselves for the images of their child on the Internet. Professionals believe that this can cause significant stress for parents.<sup>362</sup>

## 1.5 The extent of child abuse material

The phenomenon of child pornography can be divided into three separate aspects of varying scale: the perpetrators (§1.5.1), the victims (§1.5.2) and the ultimate content (§1.5.3).<sup>363</sup> The extent of these

356 *Robert M. zeven weken in Pieter Baan Centrum* [Robert M. to stay seven weeks in Pieter Baan Centrum], [nu.nl](http://nu.nl), 5 August 2011.

357 Information supplied verbally by R.A. Korver, a lawyer acting for a number of parents in the Amsterdam sexual abuse case, 9 June 2011.

358 Information supplied verbally by the team leader and psychiatrist/first-line physician of *Vangnet & Advies* [Safety Net & Advice Organisation], Amsterdam Municipal Health Service, 20 June 2011. See also §3.7.

359 Von Weiler et al., 2010.

360 Von Weiler et al., 2010.

361 Von Weiler et al., 2010.

362 Von Weiler et al., 2010.

363 After all: a single perpetrator may make victims of several individuals (producers) and possess and/or distribute multiple items of child abuse material (possessors and distributors). A single victim may be abused by multiple perpetrators and appear in multiple examples of child abuse material. An example of a child abuse image/film/etc. may depict multiple victims and be in the possession of many perpetrators.

three aspects is unknown and cannot therefore be expressed in figures. Statistical data concerning the number of known perpetrators (from the police or the Public Prosecution Service,<sup>364</sup> for example) and known victims (from care services, for example) only represent the tip of the iceberg and therefore do not yield any information about the extent of the phenomenon. Nevertheless, there is a demand for data that could provide pointers in relation to it. As Stol (2010) rightly notes: “In order to tackle a safety problem, we must begin to gather information about that problem. [...] The very first question to which we must find the answer is, of course: how often does this problem occur?”.<sup>365</sup> As the safety issue with regard to cyberspace is becoming more significant and more complex, whilst at the same time we know little about it, the Cybersafety lectureship was created at the NHL Hogeschool [NHL University of Applied Sciences] in 2008<sup>366</sup>. Within the scope of that faculty department, research was and is being conducted into this issue, as part of the three research programmes ‘trends in cybercrime’, ‘youth and cybersafety’ and ‘business and cybersafety’.<sup>367</sup> Interesting research findings have already been published in fields including the (overlapping) area of child pornography,<sup>368</sup> and more can be expected in the future.<sup>369</sup>

### 1.5.1 The number of perpetrators – safety in numbers

The number of individuals who are involved in child pornography (production, distribution, possession/viewing of child abuse material) is not known<sup>370</sup> and is potentially on the increase.<sup>371</sup> Even so, (disputable) estimates are published on a regular basis, and it is not uncommon for these figures to take on a life of their own.<sup>372</sup> It is precisely because little is known about these figures that many authors borrow information from one another and consequently statistics appear to be accurate (also known as the copycat effect<sup>373</sup>). However, certainly within the context of child pornography – a crime that is so closely associated with the constantly developing online world – this must be avoided, unless the context (in-

364 See §3.5.4 for statistical data concerning prosecuted suspects and convicted individuals in the Netherlands.

365 Stol, 2010.

366 Stol, 2010.

367 Stol, 2010.

368 One example is the publication by Leukfeldt et al. in 2010. This describes the findings of an exploratory study of five cybercrimes, including child pornography.

369 Stol, 2010.

370 Quayle et al., 2008, p.27.

371 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Ms. Najat M’jid Maalla), UN Doc A/HRC/12/23, 13 July 2009. In this report the Special Rapporteur stated that 750,000 ‘predators’ are connected to the Internet at any given time (it is not clear whether they are therefore searching for victims or child abuse material) and that hundreds of thousands of searches for child abuse material are entered on a daily basis. These findings are based upon a questionnaire that was drawn up and then completed by governments, international organisations, non-governmental organisations and the private sector in March 2009.

372 For that matter, this applies just as much to statistics concerning the number of victims and the extent of child abuse material.

373 Leukfeldt et al., 2010, p.254.

cluding points of note) in which the statistics originated is also clearly described.<sup>374</sup> The boxed text below provides one example of this.

Amongst other details, a publication produced on behalf of ECPAT International in 2008<sup>375</sup> cited the following estimate as an illustration: Between 50,000 and 100,000 paedophiles are involved in organised child pornography groups across the entire world, and one third of those operate from the United States of America. The reader is referred for further information to a manual written for the police in 2006,<sup>376</sup> which manual subsequently refers to a study published in 2001.<sup>377</sup> The latter publication shows the results of a two-year study (starting in 1999) of child pornography users on the basis of participating observation in newsgroups and on forums and message boards on the Internet. The following conclusion was amongst those that were drawn as a result of this study:

*“Confirming the general scale suggested here, Interpol, the international police agency, has suggested “that over 30,000 paedophiles are involved in organised child pornography rings in Europe, which began forming through the Internet.” I stress, though, that we are dealing with core activists, since casual browsers may be much more numerous.”<sup>378</sup>*

It continues:

*“Putting the different boards together, I would guess that the core population as of 2001 should be counted somewhere in the range of fifty to a hundred thousand individuals, though that is a very loose figure. It is also a global number: perhaps a third of these are located in the United States. Given the phenomenal expansion of the Internet since the mid-1990s, we can assume that this figure is changing very rapidly, and certainly expanding.”<sup>379</sup>*

The above clearly illustrates the hazard in repeatedly borrowing statistical data without bearing in mind/citing the source and context of those figures.<sup>380</sup>

It is obvious that we are in even less of a position to make a judgment based upon statistics with regard to the number of perpetrators in the Netherlands in proportion to the number of perpetrators in other countries. However, one indication is that in large-scale international investigations of child pornography, the Netherlands always features in the global top ten whenever the numbers of suspects and/or suspected web addresses are examined.<sup>381</sup>

374 It can also be the case that statistics are borrowed that are not published *without* context, but are completely unjustly placed into a *new* context. It goes without saying that such use is incorrect.

375 Quayle et al., 2008, p.27.

376 Wortley & Smallbone, 2006, p.13.

377 Jenkins, 2001, p.74.

378 Jenkins, 2001, p.74.

379 Jenkins, 2001, p.74.

380 For that matter, the figure from Interpol that Jenkins cites in his 2001 publication was also borrowed from yet another source (not Interpol).

381 Written information from KLPD, *Team Beeld en Internet*, 4 February 2011.

Despite the fact that the number of perpetrators is unknown, it is in any case important to realise that there are too many perpetrators to be able to prosecute them all under criminal law.<sup>382, 383</sup> This can also be called ‘safety in numbers’, which is something that many a perpetrator is aware of.<sup>384</sup> It may be clear that a means of tackling the issue purely under criminal law will never be sufficient. Alternative methods of dealing with the problem<sup>385</sup> and the involvement of the private sector in combating child abuse material<sup>386</sup> therefore form very important developments.

### 1.5.2 The number of victims

As is the case with numbers of perpetrators, the number of victims of child pornography is unknown.<sup>387</sup> For that reason, this sub-section will examine the scope of the three areas that overlap with the scope of child pornography victims, specifically: the number of victims of child sexual abuse,<sup>388</sup> the number of minors who have been contacted by individuals online for sexual purposes<sup>389</sup> and the extent of ‘sexting’.

#### *The number of victims of child sexual abuse*

The sexual abuse of children forms a global problem of considerable proportions.<sup>390</sup> However, statistical findings from different (particularly retrospective<sup>391</sup>) studies vary significantly from one another.<sup>392</sup>

382 Even if they could theoretically be (partly) identified.

383 The shortcomings in the capacity of the criminal justice process to tackle child pornography are discussed in detail in §3.4.3. However, even if this capacity was expanded, it will not be feasible to deal with all perpetrators.

384 Jenkins, 2001, p.71.

385 See §3.5.1.

386 See §3.8.

387 Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Ms. Najat M’jid Maalla), UN Doc A/HRC/12/23, 13 July 2009. In this report the Special Rapporteur stated that estimates of victims of child pornography range from 10,000 to 100,000. These findings are based upon a questionnaire that was drawn up and then completed by governments, international organisations, non-governmental organisations and the private sector in March 2009.

388 The proportion of victims of child sexual abuse who are also victims of child pornography is potentially larger than expected (see §3.3.2.3).

389 Contact on the Internet for sexual purposes does not mean by definition that a child also ultimately becomes a victim of child pornography, but a relationship may exist between these two events.

390 Stoltenborgh et al., 2011.

391 In retrospective studies, adult respondents are asked to report their experiences as victims of sexual abuse in their childhood. In such cases events are likely to be underreported as respondents may not be able to remember everything from their childhood and/or do not wish to report everything. An additional disadvantage is that this type of study cannot generate any information about the current generation of children.

392 This has proved to be the case in multiple meta-analyses performed on hundreds of retrospective studies of victimisation as a result of child sexual abuse all over the world: Finkelhor, 1994; Putnam, 2003; Creighton, 2004; World Health Organisation, 2005; Stoltenborgh et al., 2011.

This is specifically the result of the variation in definitions,<sup>393</sup> representativeness of the random sample and the research method that was used.<sup>394</sup> One example may serve as an illustration: when Finkelhor compared 19 (specifically North-American and Canadian) studies between 1983 and 1994, it emerged that 2% to 62% of women and 1% to 16% of men had experienced child sexual abuse.<sup>395</sup>

Table 1.3 shows a selection of relevant results from the most recent retrospective study of child sexual abuse in the Netherlands.<sup>396, 397</sup>

It emerged from the study that 20% of Dutch women and 4% of Dutch men, according to their own perception, experienced a form of sexual violence (excluding solely offensive remarks) prior to age of 16. If we examine experience of at least one of the forms of sexual violence listed in the table, these figures even increase to 31% of women and 9% of men in 2009.

Furthermore, the forms of sexual violence listed as third and fourth in Table 1.3 are of particular interest from the perspective of child pornography. In this context, it would be interesting in follow-up studies to include more questions concerning sexual violence in relation to the Internet/ICT, and to report the results in greater detail (for example relating them to the age of respondents).<sup>398</sup>

393 For example, the age limit varied in each study (younger than 16 or younger than 18 years of age) and it is sometimes the case that child sexual abuse is defined as including hands-off offences and/or abuse by peers (or spouses in cases where a minor is already married), but is, in other studies, defined as *excluding* these aspects.

394 Consider, for example, the difference between face-to-face in-depth interviews and an online questionnaire (Creighton, 2004). It has been found that the more the questions in a study are concerned with victimisation as a result of sexual abuse, the more often respondents have reported that they were victims of this (Finkelhor, 1994).

395 Finkelhor, 1994.

396 Bakker et al., 2009.

397 In 2006 and 2009, Rutgers Nisso Groep (since 2011 Rutgers Nisso Groep forms Rutgers WPF jointly with the World Population Foundation) conducted a study of sexual health in the Netherlands within the scope of the Monitor of sexual and reproductive health, care requirements and use of care provision (SRGZ), funded by ZonMw (Netherlands Organisation for Health Research and Development) and the Ministry of Public Health, Welfare and Sport. As part of this periodic study, an online questionnaire was used to ask about aspects including experience of sexual abuse amongst Dutch citizens. In 2009, the random sample consisted of 6,428 respondents between the ages of 15 and 70, which, after weighting by age, gender, education level and degree of urbanisation was representative of the Dutch population. In this study, experience of sexual violence prior to 16 years of age constituted sexual abuse. The broad, psychological definition of 'experience of sexual violence' was used, which was based upon the victim's perception. This therefore concerns behaviour of a sexual nature that violates the victim's norms and boundaries. Everyone who reported having experienced such behaviour themselves, with the exception of those who experienced solely offensive remarks, were counted as victims (Rutgers Nisso Groep, 2006 and Bakker et al., 2009).

398 It should be noted that the sexual preference for children and the extent to which that preference is manifested in behaviour will also be investigated in the next study (*Niet iedere pedoseksueel is pedofiel* [Not every pedosexual is a paedophile], Volkskrant, 27 July 2011). This is of particular interest within the context of the 'Stop It Now!' project to be set up in the Netherlands, amongst other initiatives (see §3.2.2 & §3.3.1.1).

Table 1.3 Experience of sexual abuse by gender

Forms of sexual violence experienced prior to the age of 16	Women N=3.207	Men N=3.221
Being touched or grabbed in an injurious manner	23%	6%
Coercion into undressing	8%	3%
Producing recordings/images of a sexual nature and/or showing recordings/images to others against one's will	2%	1%
Being made to show one's breasts, buttocks or genitals (in a real-life situation or on the Internet) against one's will	16%	5%
Being touched under one's clothing against one's will	17%	4%
Coercion into touching another person under his/her clothing	8%	3%
Coercion into masturbation	4%	3%
Coercion into performing manual sex acts ('fingering' or masturbation)	7%	3%
Coercion into performing oral sex acts	5%	2%
Attempted rape	9%	2%
Rape	6%	2%
Other	3%	1%
<i>Experience of at least one of the above forms of sexual violence prior to the age of 16</i>	31%	9%
<i>Experience of at least one of the above forms of sexual violence prior to the age of 16 according to one's own perception (excl. acts solely involving offensive remarks)</i>	20%	4%

Source: Bakker et al., 2009, p.91.

#### *The number of minors who have experience of contact made online for sexual purposes*

Various studies, both internationally and nationally, have shown that it is not uncommon for minors/youngsters to have experience of being contacted on the Internet for sexual purposes (whether desired or undesired, by acquaintances or strangers, including peers).<sup>399</sup> To illustrate, we have briefly quoted several results here from the Youth Internet Safety Surveys (YISS),<sup>400</sup> which is often used as a source of reference, and from a study of the sexual experiences of Dutch children on the Internet from 2006.<sup>401</sup>

399 Finkelhor et al., 2000; Wolak et al., 2006; CEOP, 2008; de Graaf & Vanwesenbeeck, 2006; Kuyper et al., 2009; Kuyper et al., 2011; *Meldpunt Kinderporno op Internet* [the Hotline Combating Child Pornography on the Internet], 2009.

400 Finkelhor et al., 2000; Wolak et al., 2006.

401 De Graaf & Vanwesenbeeck, 2006.

The following emerged from the YISS surveys:

**YISS-1 (2000)**<sup>402</sup>: in the year prior to the interviews, one in five (19%) of the minor respondents was contacted online for sexual purposes,<sup>403</sup> 3% of whom were contacted in an aggressive manner.<sup>404</sup>

**YISS-2 (2006)**<sup>405</sup>: a follow-up survey five years later showed that these figures had changed to one in seven (13%), 4% respectively.

Table 1.4 shows a selection of relevant results from the study of desired and undesired sexual experiences of Dutch youngsters on the Internet from 2006.<sup>406</sup>

**Table 1.4 Online sexual experiences by gender**

Forms of online sexual experiences in the past year	Boys	Girls
Receiving questions of a sexual nature	72%	83%
- If applicable: responding to such questions	77%	31%
Requested to perform a sexual act in front the webcam	40%	57%
- If applicable: complying with such requests	39%	11%
Being recorded on the webcam whilst posing/acting in a sexual manner	3%+3% <sup>411</sup>	4%+2%
Being requested to agree to meet someone whom he/she met on the Internet	66%	72%
Actually arranging to meet someone whom he/she met on the Internet	54%	42%

Source: De Graaf & Vanwesenbeeck, 2006

Amongst other findings, it emerged from the research that most youngsters in the random sample had experienced having been asked questions of a sexual nature online. It was also frequently the case that

402 Finkelhor et al., 2000. In the period August 1999 – February 2001 interviews were conducted by telephone with 1,501 youngsters between ten and seventeen years of age (representative national random sample in USA) who regularly use the Internet (at least once per month in the six months preceding the interview).

403 Definition of ‘contact for sexual purposes’: the request to participate in sexual activities/discuss sex/ provide personal sexual details although this is undesired, or if requested to do so by an adult, whether or not desired.

404 Definition of ‘aggressive sexual contact’: contact for sexual purposes with the aim of making contact offline such as arranging to meet one another/contact by telephone/contact by post (sending money or gifts).

405 Wolak et al., 2006. The telephone interviews were conducted in the period March – June 2005 with 1500 youngsters between ten and seventeen years of age who regularly use the Internet.

406 Methodological details of the study: the random sample consisted of 10,905 respondents from twelve years of age and older, who were recruited on popular websites aimed at young people and who had completed an electronic questionnaire. Girls accounted for 79% of respondents, whilst boys accounted for 21%. Not all respondents were minors, approximately one quarter was 18 years of age or older.

407 Three percent stated this was possible, but they did not know for sure. This was also the case for the +2% figure for girls.

the youngsters had received requests to perform a sexual act in front of the webcam and it was not uncommon for such requests to be complied with.

#### *The scale of 'sexting'*<sup>408</sup>

It is not possible to judge the scale of the phenomenon of 'sexting'. The results of various studies<sup>409</sup> vary significantly due to differences in the definition that is applied, incomparable respondent groups and the research methods that are used.<sup>410</sup> For this reason it is important that research is conducted into sexting in the future. In such studies, it would be advisable to refer to the analysis of five studies of sexting from 2008 and 2009, and to take on board the recommendations that were made as a result of the analysis.<sup>411</sup>

### 1.5.3 The volume of child abuse material

The volume of child abuse material that is available on the Internet is on the increase.<sup>412</sup> However, figures in this regard are unknown,<sup>413</sup> but at the same time they are also irrelevant in the context of the borderless and expanding online world.<sup>414</sup>

Databases in which child abuse material is stored by the police (the National Child Pornography Database of the KLPD and the International Child Sexual Exploitation (ICSE) Image Database of Interpol) are currently unable to provide an idea of the scale of material identified by the police, contrary to what could perhaps be assumed. No attention will be devoted to this aspect in this sub-section either (for further information regarding the databases mentioned see §3.4.2) and for this reason only a few statistics will be shown. These concern data with regard to suspected child abuse material that was reported to Internet hotlines. It should be noted, superfluously, that these figures are not an attempt to indicate the actual volume of the material available on the Internet.

#### *The scale of suspected child abuse material reported to Internet hotlines*

The first Internet hotline to report child abuse material was set up in the Netherlands in 1996 – the *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet].<sup>415</sup> This was fol-

408 For a description of the phenomenon of sexting, see §1.4.2 and §1.4.3.

409 For example: Lenhart, 2009 (one of the five studies of the scale of sexting that was included in the meta-analysis by Lounsbury et al., 2011); Livingstone et al., 2011 (not included in the meta-analysis by Lounsbury et al., 2011).

410 Lounsbury et al., 2011.

411 Lounsbury et al., 2011. The following proposal was made with regard to the issue of defining the term: 'youth-produced sexual images'. This means: images of minors (younger than 18 years) produced by minors, which could be/are subject to provisions criminalising child pornography.

412 US Department of Justice, 2010; Baines, 2008.

413 US Department of Justice, 2010; Report of the Special Rapporteur on the sale of children, child prostitution and child pornography (Ms. Najat M'jid Maalla), UN Doc A/HRC/12/23, 13 July 2009. In the latter report, the Special Rapporteur stated thousands of new photographs and videos were uploaded onto the Internet every week and it was estimated that 200 new images come into circulation every day. These findings are based upon a questionnaire that was drawn up and then completed by governments, international organisations, non-governmental organisations and the private sector in March 2009.

414 Baines, 2008.

415 For further information regarding *Meldpunt Kinderporno op Internet*, see §3.3.1.1.

lowed by a variety of similar initiatives in other countries. In 1999, INHOPE – the international umbrella network of Internet hotlines – was created, of which 39 hotlines spread across more than 34 countries were members in 2010.<sup>416</sup> INHOPE hotlines work in collaboration in order to tackle child abuse material on the Internet.<sup>417</sup> Statistical data from INHOPE and a number of individual members of INHOPE are shown in the boxed text as an illustration.

*INHOPE*<sup>418</sup>

- In the period September 2004 (18 hotlines) to December 2006 inclusive (27 hotlines), 900,000 reports were received from the public and a total of 1,900,000 reports were made (including reports generated by the hotlines themselves).<sup>419</sup>
- In the period September 2005 to June 2010 inclusive (37 hotlines), an average of 60,200 reports were sent in total per month to INHOPE hotlines from members of the public.<sup>420</sup> During the last quarter of 2006 a further 35,000 reports were sent (and 91,000 including reports generated by the hotlines themselves).<sup>421</sup>

*The CyberTipline of the National Center for Missing & Exploited Children (NCMEC) (Internet hotline in the United States of America)*

During the week of 31 January 2011, the CyberTipline received 3,456 reports, which brought the total number of reports received since its establishment in March 1998 to 906,449.<sup>422</sup>

*The Internet Watch Foundation (IWF) (Internet hotline in the United Kingdom)*

In 2010 the IWF received 43,190 reports of suspected child abuse material, of which 39% (16,739) was also deemed to be considered as such by the IWF.<sup>423</sup>

*Meldpunt Kinderporno op Internet [Hotline Combating Child Pornography on the Internet] (Internet hotline in the Netherlands)*

*Meldpunt Kinderporno op Internet* received 9164 reports in 2010, of which 2,602 reports were ultimately deemed to actually involve child abuse material according to *Meldpunt Kinderporno op Internet* (this concerned 32% of the total number of reports after adjustment for the quantity of content that was reported twice). Please refer to §3.3.1.1 for further statistics relating to *Meldpunt Kinderporno op Internet*.

416 INHOPE, 2010.

417 They send reports of child abuse material to one another via the INHOPE network. For a detailed description of how the network operates, see §3.3.1.1.

418 Since 2010, INHOPE has been working with the INHOPE Report Management System (IHRMS) in which reports of child abuse material received by hotline members are recorded. However, not all hotlines were connected to this system in 2010 and consequently no published statistical data is available as yet regarding the total number of reports that were sent to INHOPE members in 2010.

419 INHOPE, 2007.

420 See [www.inhope.org](http://www.inhope.org) (viewed July 2011).

421 INHOPE, 2007.

422 Factsheet CyberTipline, available at: [www.missingkids.com/en\\_US/documents/CyberTiplineFactsheet.pdf](http://www.missingkids.com/en_US/documents/CyberTiplineFactsheet.pdf) (viewed July 2011).

423 Internet Watch Foundation, 2011.

## 1.6 Conclusion

The following conclusions have been drawn with regard to the phenomenon of child pornography. These conclusions have formed the guiding principle for the investigation of policy and practice and the results of this investigation will be presented in the following chapters.

### *Variation in the area of child pornography*

The phenomenon of child pornography encompasses perpetrators, victims and technology (consisting of abusive material involving children on the one hand and technology, primarily ICT, which makes it possible to produce, distribute and possess such material, on the other hand). Each of these elements varies considerably, and the nature of perpetrators, victims or material is not clear-cut. The commercial child pornography circuit differs from the amateur circuit as far as perpetrators, victims and material are concerned, and the behaviours may vary as well. The issue surrounding adolescent or post-adolescent victims is different to that involving pre-adolescent victims, and the perpetrators, as well, do not form a homogenous group. Some individuals only view child abuse images, whilst other users of such material also physically abuse children themselves. This variation has implications for the way in which it is tackled. If policy and implementation are to be successful, they must reflect the diversity that exists in that area.

### *Sexual abuse in the digital and analogue worlds*

At present, child abuse material actually takes the form of digital material. Technological developments rapidly succeed one another and will almost always influence the phenomenon of child pornography. What is more, online aspects increasingly feature in other forms of sexual violence against children. Perpetrators and potential perpetrators, as well as victims, use ICT intensively. Whilst perpetrators frequently use ICT in the production, distribution and possession of child abuse material, underage victims can also be found in cyberspace. The offline and online worlds often converge into one as far as they are concerned, and this means that both worlds must be taken into account in legislation, policy and implementation. Technological, empirical and legal expertise and associated means must be sufficient to keep pace with the recent developments in the digital domain. ICT sometimes presents a challenge, yet it can also provide a means of preventing and tackling child pornography.

### *Time and space*

The issue of child pornography exists at various levels. It is not bound by time or space. Individuals have produced and viewed child abuse images since visual technology (photography) came into existence, and with the techniques that exist today, it is likely that child abuse material – even very old material – will still be available for a very long time to come. Space is hardly a factor at all: in the past, individuals who sexually abuse children and other perpetrators have always been able to find their victims. However, ICT has added a new dimension to the phenomenon, namely cyberspace, which enables perpetrators, victims and material to come directly into contact with one another anywhere and at any time. It is important that continuity is achieved in tackling child pornography and in this regard it is highly likely that a similar issue exists in other countries in relation to the strategy to tackle it. As far as efforts to prevent and tackle child pornography in the Netherlands are concerned, it will sometimes be desirable to seek international cooperation, but this also means that we can examine whether experiences in other countries can be of benefit to the strategy to tackle the issue in the Netherlands.

### *Extent of the phenomenon of child pornography*

The extent of the phenomenon of child pornography – perpetrators, victims and material – is unknown. As far as the number of perpetrators and the quantity of child abuse material are concerned, it may be

argued that the extent of the problem is increasing and that it cannot be tackled by criminal law alone. This means that we must seek a strategy to tackle child pornography both within and beyond the criminal justice process. It is not known what proportion of minor victims of sexual abuse are also victims of child abuse material, nor can any judgments be made with regard to the numbers of minors who are victims of phenomena such as sexting and contact made online for a sexual purpose (grooming). It is therefore necessary to investigate these areas in the Netherlands in order to develop evidence-based policy and implementation.

#### *Relationship between child pornography and sexual violence*

Child pornography is closely associated with other forms of sexual abuse or sexual violence against children that is perpetrated in both analogue and digital worlds. The legal framework has been useful in defining the area of investigation – Article 240b of the Dutch Criminal Code defines child pornography itself – but it is not the only perspective that can be used to address the subject. If strategies to tackle child pornography and to protect children from all forms of sexual violence are to be effective, these must be interlinked with regard to policy and implementation. In the next two chapters, we will explain the extent to which this is the case.

### 2.1 Introduction

Chapter 1 states that when material constituting child pornography is discovered, it usually means that sexual violence against children is taking place or has taken place: child abuse material is more than simply information constituting a criminal offence. The criminalisation of child pornography has its foundations in the protection of children from sexual abuse. Children need to be protected by putting an end to the abuse and by providing assistance. Although child abuse material is primarily of a digital nature, the offenders and victims exist in both the offline and online worlds, meaning that the phenomenon of child pornography has both analogue and digital components relating to a sexual offence.

This chapter will focus on the policy initiatives that are intended to protect children from sexual violence, as well as upon the policy strategy for dealing with child pornography. What is relevant here is the question as to what extent the digital component and the aspect child pornography play a role in (or is integrated into) the policy for combating sexual violence against children. International developments and events in other countries, and the extent to which these have influenced developments in terms of policy in the Netherlands, will be discussed. This chapter begins with an overview of policy developments in the Netherlands in the areas mentioned above, and provides an insight into the measures that have been taken over the past decades, which, in part, form the foundations for the current policy. A number of relevant programmes that have since come to an end (some of these were concluded some time ago now), could still serve as inspiration for the policy that is to be developed today.

Following a description of the developments that have taken place since the early 1980s, the current policy agenda will be explained, and the activities that the various ministries are currently developing – individually or jointly, in a number of combinations – will be examined in detail. The main idea behind this is that the task of tackling child pornography needs to be carried out from the perspective that children need to be protected from sexual violence. This not only comprises a task for the Ministry of Security and Justice in terms of combating child pornography, but also for other government bodies in terms of protecting children. Policy with regard to measures for tackling child pornography needs to form an integrated component of the policy with regard to measures for combating sexual violence against children. This does not therefore merely involve (repressive) measures to tackle the production, distribution and possession of child abuse material, but it also encompasses preventive measures. For example, policy that is directed towards the safe use of the Internet by children may also be able to have an indirect effect on preventing the production of child abuse images.

## 2.2 Policy developments since the early 1980s

This section will describe developments to policy instigated by various (government) bodies, which have been directed towards combating child pornography and sexual violence against children. Other committees and working groups, often appointed by a ministry, as well as international conferences and agreements, have also played a role in the development of policy. A government-wide initiative (the NAPS) was intended to expand the existing measures directed towards tackling sexual violence against children, but ended prematurely after a lengthy introductory period.<sup>1</sup>

This section starts with the situation in the mid-1980s, a period in which debate about child pornography first arose.<sup>2</sup> In July 1984, the Amsterdam police force raided sex shops and seized any child abuse material that was present. In November 1984, hearings related to child pornography were held in the United States by the Senate Permanent Subcommittee on Investigations, chaired by Senator Roth. In these hearings, the Netherlands was accused of contributing to the production of child abuse material, and for that reason, the topic became a cause of discussion.<sup>3</sup> In the early 1980s, the development of child pornography legislation was also beginning to take shape.<sup>4</sup> The commotion surrounding child pornography was not the only relevant aspect. In 1982, the so-called Kijkduin Conference on sexual violence against women and girls took place, and this marked the start of government interventions in the area of sexual violence against children.<sup>5</sup>

The government began to take responsibility. The first policy document on 'sexual violence against women and girls' was published in 1984.<sup>6</sup> From that time onwards, the issue of 'sexual violence' began to be incorporated, one step at a time, into government policy, and it was not only the Directorate for the Co-ordination of Emancipation Policy of the Ministry of Social Affairs and Employment that was involved with this matter; the Ministry of Justice and the Ministry of Health, Welfare and Sport (the Ministry of Health, Welfare and Culture at the time) also became involved<sup>7</sup>. Since then, the topic has remained part of the government's agenda, although this has, of course, been accompanied with ups and downs and a variety of viewpoints in terms of vision and approach that existed between the various ministries.<sup>8</sup> As will become apparent, the approach employed for tackling child pornography was predominantly repressive, and predominantly a matter for the co-operating organisations within the judicial domain.

### *Child Pornography Working Group*

In June 1985, partly as a result of the comments from the United States, the Minister of Justice at the time appointed a Child Pornography Working Group, under the leadership of the public prosecutor De Wit. The working group was assigned the task of cataloguing information about child pornography in

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- 1 The National Action Plan for Combating Sexual Abuse of Children (NAPS) ended in 2002, see further on in this section.
  - 2 Prior to 1986, separate legislation on child pornography did not exist, and this is partly the reason why action was hardly ever taken to combat it.
  - 3 Van Koppen, 2009.
  - 4 See *Parliamentary Papers II*1981/82, 17100, no. 21 and *Parliamentary Papers II*1983/84, 18 542 no. 1-2, amongst others; see also §1.2.2, first box text, 'Developments in legislative history.'
  - 5 Stichting Ambulante Fiom, Rutgers Nisso Groep, TransAct, 2006.
  - 6 *Parliamentary Papers II*1983/84, 18 542 no. 1-2.
  - 7 Stichting Ambulante Fiom, Rutgers Nisso Groep, TransAct, 2006.
  - 8 Römken, 2010.

the Netherlands, detecting any channels of distribution within the Netherlands, and investigating the origins and destination of child abuse material that had been identified.<sup>9</sup> In its investigation report<sup>10</sup> of August 1986, the working group concluded, amongst other things, that there was no indication of the existence of the production of child pornography, in so far as the abuse of children with the intention of producing child abuse images on a commercial scale was concerned.<sup>11</sup> Child abuse material was only discovered sporadically. The final conclusion drawn by the working group was that their findings did not warrant a comprehensive, more detailed investigation into child pornography being carried out.

However, the working group did make a number of recommendations with regard to effectively detecting and collecting material evidence, including the recommendation that the policy for detection and prosecution should be uniform throughout the Netherlands.<sup>12</sup> The recommendation that the police should consider the possible existence of child abuse material when they encounter cases involving the sexual abuse of children, and that the searching of premises should be considered at the earliest stage possible, was particularly interesting. The policy for detection and prosecution should be based on these starting points.<sup>13</sup>

The Committee's conclusions that the production of child abuse material did not take place or hardly ever took place, and the information that these conclusions had been adopted by the government, were hardly based on fact. In the 1970s and the early 1980s, the foundations had been laid for the (continued) existence of the distribution, production and possession of child abuse material. This subculture did not disappear overnight, see §1.2.2. Nevertheless, the content of the report constituted sufficient reason for the national government to take limited measures to combat the distribution, production and possession of child abuse material.

#### *The period from 1986 onwards*

From 1986 onwards, there was no clear indication of the number of cases of child pornography. The Minister of Justice indicated that the National Criminal Intelligence Service [*Centrale Recherche Informatiedienst*] did not have a comprehensive national overview of the number of child pornography cases in 1987. The number of cases that came to light was very low. Those cases that were known did not have a background that was directly commercial.<sup>14</sup> No investigations were carried out into the production, distribution and possession of child abuse material: investigative authorities usually became aware of the presence or distribution of images constituting child pornography following a report of sexual abuse with minors. In 1988, this involved 106 cases, for example. In that year, the National Criminal Intelligence Service was approached by the police five times for assistance in the identification of material constituting child pornography that had been discovered.<sup>15</sup>

9 Van Koppen, 2009. See also the discussion about this in the House of Representatives, *Parliamentary Papers II* 1984/85, questions received, 4 December 1984.

10 De Wit, 1986.

11 *Parliamentary Papers II* 1994/95, 23 682, no. 5.

12 *Parliamentary Papers II* 1994/95, 23 682, no. 5. This Parliamentary Paper refers to the Dutch Government Gazette, 1987, 144.

13 Ultimately, this recommendation was not included in the current Implementation Provisions concerning sexual offences.

14 *Parliamentary Papers II* 1988/89, 20800chapter VI, no. 6.

15 *Parliamentary Papers II* 1990/91, 21 800 VI, no. 10.

From 1993-1994, a change took place with regard to how child pornography was viewed. The House of Representatives called for adequate action to be taken. The approach at that time was mainly based on criminal provisions other than the Article against child pornography, because the law made the necessary coercive measures possible for those offences, which were not permitted by virtue of Article 240b of the Dutch Criminal Code.<sup>16</sup> Furthermore, detection and prosecution was (and is) particularly labour-intensive, which was not proportionate to the low sentence carried by the offence at the time, namely a custodial sentence of three months. Detection was therefore assigned a low priority.<sup>17</sup> Article 240b of the Dutch Criminal Code was amended in 1996: the custodial sentence carried by the offence was increased from a period of three months to four years. Furthermore, in order to be able to combat the commercial trade in child abuse material more effectively, the Article was supplemented by a clause regarding the penalization of individuals who make a habit or profession of committing the criminal offences. In addition to this, a step was taken towards making the simple possession of child abuse material a criminal offence. Up until then, this had not constituted a criminal offence.<sup>18</sup>

In the meantime, an increasing number of initiatives were being carried out in order to keep up with online developments. In 1996, the *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet] was launched.<sup>19</sup> Material constituting child pornography that had been discovered online on a specific website or in a certain message could be reported by contacting the Hotline. Computer specialists were employed at the National Criminal Intelligence Service, and inter-regional teams specialising in computer crime were also active in this field. Links were then established with other specialists, such as those specialising in cases concerning sexual offences, who were employed as investigators at regional police forces. In the opinion of the Minister of Justice, the responsibility for enforcing legislation relating to public decency on the Internet should form part of ordinary criminal investigations.<sup>20</sup>

#### *Child Pornography and Child Prostitution Working Group*

The first World Congress against Commercial Sexual Exploitation of Children in Stockholm (Sweden) in September 1996 and the unrest surrounding the Dutroux case in Belgium in 1996 constituted reason for additional attention to be devoted to combating child pornography and the sexual exploitation of children.<sup>21</sup> Towards the end of 1996, two meetings took place, resulting in the formation of the Child Pornography and Child Prostitution Working Group.<sup>22</sup> The working group consisted of experts from the police, judicial authorities, institutions providing assistance and research institutions, and it was apparent that it had a great deal of practical experience with the issue of child pornography and child

16 De Roos, 2000. An important consideration when increasing the sentence carried was the widening of the opportunity to apply coercive measures and special investigative powers.

17 *Parliamentary Papers II 1993/94*, 23 682, no. 4.

18 *Parliamentary Papers II 1993/94*, 23 682, no. 3. See also second box text 'Developments in legislative history' §1.2.2.

19 See §3.3.1.1 for further information about the *Meldpunt Kinderporno op Internet*.

20 *Parliamentary Papers II 1997/98*, 25 078, no. 6.

21 Child Pornography and Child Prostitution in the Netherlands Working Group, 1998.

22 Child Right Worldwide and TransAct were initiators of this working group and ultimately responsible for the content of the report '*Kinderporno en kinderprostitutie in Nederland. De stand van zaken*' [Child pornography and child prostitution in the Netherlands. The state of affairs], which was published in 1998. The Ministry of Justice supported the working group financially.

prostitution. According to the working group, the problem was due to the fact that the various experts and parties that were involved in tackling child pornography and child prostitution worked in relative isolation.<sup>23</sup>

The working group presented a number of recommendations.<sup>24</sup> Its main recommendation was to achieve a coherent and effective approach to the issue of combating the sexual exploitation of children. Furthermore, it recommended that the expertise possessed by professionals in the matter of child pornography and child prostitution should be increased. The centralised recording (see §3.3) of cases of sexual abuse was said to be necessary for successful detection. The police did not always investigate reports, and, in addition, did not possess sufficient knowledge of the Internet. Convicted sex offenders – in relation to possible future contacts with children – should also be recorded.<sup>25</sup> One of the conclusions drawn was that up until that point, activities directed towards tackling child pornography and child prostitution could be described as incident-driven. To ensure a coherent and effective approach to the issue of tackling child pornography, the working group considered it important for the government to set up a policy document in due course.<sup>26</sup>

#### *National Action Plan for Combating Sexual Abuse of Children*

On 19 April 2000, the National Action Plan for Combating Sexual Abuse of Children (NAPS) was presented to the House of Representatives.<sup>27</sup> This plan had a lengthy start-up period. It originally came into existence as a result of the [United Nations](#) Convention on the Rights of the Child that came into force in the Netherlands in March 1995. In this [United Nations](#) Convention, all states that were parties undertook to take measures to protect children from all forms of physical or psychological abuse.<sup>28</sup> Secondly, this action plan elaborated on a number of agreements that were made in 1996 in Stockholm at the (previously-mentioned) first World Congress against Commercial Sexual Exploitation of Children.<sup>29</sup>

The next step was the practical development of a national plan of action. For this purpose, in 1997, the Parliamentary Standing Committee on Justice<sup>30</sup> conducted a round table discussion with various organisations and institutions about the memorandum with regard to the approach towards tackling sexual violence and abuse.<sup>31</sup> This discussion did not lead to manifest conclusions.<sup>32</sup> In December 1998,

23 Child Pornography and Child Prostitution in the Netherlands Working Group, 1998.

24 The working group had also developed a leaflet for anyone who, for professional purposes, was involved with children and young people and suspected that a child had been made a victim of child pornography and/or child prostitution, *Parliamentary Papers* II 1998/99, 26690, no. 2.

25 See also *Parliamentary Papers* II 1998/99, 26200 VI, no. 35; See §3.6.3.2.

26 *Parliamentary Papers* II 1998/99, 26 690, no.2.

27 This is not related to the previously-mentioned Child Pornography and Child Prostitution in the Netherlands Working Group.

28 Ministry of Justice, 2000.

29 *Parliamentary Papers* II 1996/97, 25 078, no. 1.

30 *Parliamentary Papers* II 1996/97, 25 078, no. 3.

31 *Parliamentary Papers* II 1996/97, 25 078, no. 1.

32 However, discussion did take place with regard to virtual child child abuse material, the severity of the sentence, the quantity of child abuse material present, the difference between 'having a supply of child abuse material as opposed to 'possessing child abuse material, the degree of familiarity with the phenomenon in society, and the effect of material on behaviour.

the Minister for Justice sent a letter to the House of Representatives on the subject of the (commercial) sexual exploitation of children, and in spring 1999, approval was granted to present the integral document 'Combating sexual abuse of and sexual violence against children' to the House of Representatives.<sup>33</sup> This document was intended to provide a boost to the various initiatives and to provide an overview of the state of affairs regarding the tackling of this issue, and also served as an initiative for the National Plan of Action. One of the conclusions was that mutual co-operation between the departments and between departments and non-governmental and international organisations was necessary.<sup>34</sup>

One of the priorities of the NAPS was to prevent sexual abuse, including child prostitution. Within the scope of a chain-oriented approach, early identification would mean that abuse could be prevented from taking place or continuing to take place, and that any further suffering on the part of the victims could be prevented. Furthermore, stimulating regional co-operation was just one of the spearheads in the implementation of the NAPS.<sup>35</sup>

The final report of the National Action Plan for Combating Sexual Abuse of Children was reflected in the results that were achieved.<sup>36</sup> Amongst other things, the National Police Services implemented a digital archive of material constituting child abuse material, which included more than a million images (§3.4.2). The Amsterdam-Amstelland regional police force had developed the KIDS system (Identification and Tackling of Child Pornography Couriers and Child Sex Tourism, by means of multi-disciplinary cooperation at Schiphol), which made it possible to link images of perpetrators with victims. The police established a national co-ordinator consultation group for the exchange of operational information, which convened a few times each year.<sup>37</sup> In April 2001, a brochure was published regarding the sexual abuse of children.<sup>38</sup> This brochure, produced jointly by the Netherlands Institute of Social Sexuological Research and the Ministry of Justice, was intended for parents and people who work with children. On 15 December 2001, the website [www.seksueelkindermisbruik.nl](http://www.seksueelkindermisbruik.nl) became operational.<sup>39</sup> Amongst other things, the website was a digital knowledge centre for organisations that were actively involved in the efforts to tackle child pornography. In November 2002, the Minister for Justice at the time sent the final report of the NAPS to the House of Representatives. Although this marked the end of the NAPS, the

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33 *Parliamentary Papers* II 1996/97, 25 078, no. 8.

34 *Parliamentary Papers* II 1996/97, 25 078, no. 2.

35 Ministry of Justice, 2000.

36 Ministry of Justice, 2002a.

37 In addition to this, the final report contains a number of proposals for a follow-up, including the establishment of an easily-accessible public reporting centre for child abuse material within the police; the creation of a national digital detection functionality for child abuse material, which carries out surveillance and investigations on the Internet on a structural basis, and which is also involved in the preparation of projects for the purpose of detection investigations in the regions; and the establishment of a development team for special digital methods for detection. According to the final report, research was also carried out into the way in which the mutual collaboration between the forces can be made more intensive, so that the necessary but very costly technical resources can be optimally employed.

38 *Parliamentary Papers* II 2002/03, 26 690, no. 12.

39 This website is no longer in use.

Minister stated that he would continue to devote attention to efforts to combat the sexual abuse of children, together with the State Secretary of the Ministry of Health, Welfare and Sport.<sup>40</sup> The NAPS ended in December 2002, without an evaluation having taken place. The framework for cooperation that was created through the NAPS was no longer maintained after 2002.<sup>41</sup>

#### *Joint Provisions to Tackle Child Pornography*

The Policy Plan of the Dutch Police Force (1999-2002) emphasised the need to improve the quality of the work carried out by the police, including tackling child pornography and child prostitution in a more targeted manner. This led to a national initiative, the Joint Provisions to Tackle Child Pornography (GVAK, 1999-2001), intended to support the regional police forces and the district court public prosecutor's offices.<sup>42</sup> The GVAK formed one of the first structural initiatives. This project ensured that the issue of tackling child pornography was included on the police agenda, and fulfilled a driving function, for example by getting supraregional police forces off the ground.<sup>43</sup> A digital archive became operational, perpetrators could be linked to victims via a computer system, a national consultation was convened, professional development was arranged in the form of courses, and measures were put in place to increase the level of expert knowledge amongst sex offence detectives.<sup>44</sup> The programme also provided for the establishment of a child pornography coordination centre. One of the aims of this centre was to develop techniques for the detection of child abuse material on the Internet.<sup>45</sup> The activities of the GVAK that ceased after July 2001 had, in part, become a component of the police forces and the National Registration Institute service.<sup>46</sup>

#### *Yokohama*

In December 2001, the second World Congress against Commercial Sexual Exploitation of Children took place in Yokohama. During this congress, it became clear that despite the efforts made over the preceding five years, the number of children who had become victims of commercial sexual abuse over the world had increased.<sup>47</sup> In a similar manner to the concerns stated in the investigation report 'Child pornography on the Internet in the Netherlands'<sup>48</sup>, worries were expressed with regard to the increasing extent of child abuse material on the Internet.<sup>49</sup>

40 *Parliamentary Papers II 2002/03*, 26 690, no. 12.

41 The final report concluded with the remark that continued attention needed to be devoted to the phenomenon of 'sexual abuse,' a message that was also made apparent in the second World Congress against Commercial Sexual Exploitation of Children in Yokohama, referred to below. ECPAT-NL and DCI also urged for a follow-up to NAPS. Source: NRM3, p.120.

42 *Parliamentary Papers II 1998/99*, 26 690, no. 2.

43 Groeneveld, 2000.

44 *Parliamentary Papers II 2000/01*, 27 400, no. 2.

45 Erents et al., 2003.

46 Public Order and Safety Inspectorate, 2003.

47 *Parliamentary Papers II 2002/03*, 26 690, no. 12.

48 Profit for the World's Children Foundation, 2001. Profit for the World's Children is an NGO and published the report 'Child pornography and the Internet in the Netherlands' of its own accord. The report was produced with assistance from experts and was presented to members of the House of Representatives and ECPAT-NL at the start of December 2001.

49 See §1.5.3.

### *Meldpunt Kinderporno: government or no government?*

The years between 2002 and 2005 were characterised by a discussion about the *Meldpunt Kinderporno op Internet* [the Hotline Combating Child Pornography on the Internet].<sup>50</sup> A parliamentary question was asked as to whether the responsibility for a hotline combating child pornography should not be borne by the government.<sup>51</sup> The Hotline, launched in 1996 by Internet Service Providers, was and is a private foundation.<sup>52</sup> In 2005, the Ministers for Justice and Economic Affairs announced that they were launching their own *Meldpunt Cybercrime*, [Cyber Crime Reporting Website], alongside the Hotline Combating Child Pornography on the Internet. This became operational in February 2006. Citizens could report child abuse material as well as terrorism to this hotline. The Hotline Combating Child Pornography on the Internet also remained operational. By that time, citizens had two hotlines at their disposal to which they could report.<sup>53</sup>

### *Evaluation of the sexual offences legislation*

In 2006, an evaluation of the tightened sexual offences legislation was published; this evaluation had been carried out on behalf of the Ministry of Justice.<sup>54</sup> The evaluation report discussed the tightened sexual offences legislation in general. Child pornography formed a part of this.

### *Evaluation of the sexual offences legislation*

In 2006, the amendments to the sexual offences legislation from 2002 were evaluated, which led to the following findings. Sentences for virtual child abuse material were hardly ever imposed, doubts arose as to the legitimacy of the criminalisation of this practice, and a lack of clarity emerged as to what exactly constituted 'virtual child pornography'.<sup>55</sup> Cases involving victims whose apparent age was between 16 and 18 years were not being pursued. This led to the question of whether this group was unprotected.<sup>56</sup> ICT developments led to problems for detection. Digital methods of detection were necessary in order to supplement the traditional methods. The level of knowledge possessed by the police and the Public Prosecution Service, as well as the judiciary, needed to be increased.<sup>57</sup> The number of cases reported increased. The likelihood of prosecution and trial for offences that fell under Article 140b of the Dutch Criminal Code increased. There were fewer decisions not to prosecute by reason of unlikelihood of conviction, and fewer acquittals. A number of problems in terms of evidence, such as the requirement that the victims must be apparently under sixteen years of age, were solved by increasing the age. The general conclusion was that the revised child pornography stipulation had reduced problems in

50 Van Koppen, 2009.

51 Question from Member Gerkens (Socialist Party) to the ministers for Interior and Kingdom Relations and Justice about a child pornography reporting centre. *Parliamentary Papers II 2003/04*, Appendix 2156.

52 See §3.3.3.1 for more information about the *Meldpunt Kinderporno op Internet*.

53 Van Koppen, 2009. See also §3.3.3.2 – box text: *Meldpunt Kinderporno op Internet* compared with *Meldpunt Cybercrime*.

54 Lünemann et al., 2006. The investigation was carried out by the Verwey-Jonker Institute on behalf of the Scientific Research and Documentation Centre and the Ministry of Justice. The period of the investigation began in June 2005 and ended in March 2006.

55 Lünemann et al., 2006.

56 Lünemann et al., 2006, p.156.

57 Lünemann et al., 2006, p.157.

terms of evidence. However, this was not necessarily only due to the legislation; the increased severity of the material, the increase in the number of methods of detection, the prioritisation of the Implementation Provisions concerning child pornography [*Aanwijzing kinderpornografie*] and the changing social views could also have played a role. Individuals who possess child abuse material were easier to detect than individuals who produce such material – the latter group was hardly addressed, despite being made a priority by the Public Prosecution Service. The viewing of child abuse images without possessing images did not fall within the description of the offence.<sup>58</sup>

#### *Lanzarote Convention*

In 2007, new legislation came into effect within the Council of Europe in Strasbourg for the protection of children against sexual exploitation, sexual abuse and child pornography. Ratification of the – final – Lanzarote Convention<sup>59</sup> – led to a number of legislative amendments, including those relating to the criminalisation of child pornography, see §1.3. For further details relating to the significance of this Convention for policy, see §2.3 below.

#### *Rio de Janeiro*

From 25 to 28 November 2008, the third World Congress against Commercial Sexual Exploitation of Children took place in Rio de Janeiro. Representatives from the Ministry of Foreign Affairs, including the Ambassador for Human Rights, and from the Ministry of Justice took part in this, and the Netherlands used this opportunity to present the preventive measures that it had taken both nationally and internationally in that area. The Netherlands also emphasised the necessity for interdisciplinary and inter-sector collaborations.<sup>60</sup> The world congress resulted in the Rio de Janeiro Pact against commercial exploitation of children. In addition to various NGOs, more than 125 countries were involved in the realisation of the Rio de Janeiro Pact.

#### *Interim state of affairs*

The preceding brief outline of developments over the past decades illustrates the fact that the tackling of child pornography is almost entirely regarded as a task that falls within the remit of the police and the judicial authorities. These developments also illustrate the fact that the process of tackling this issue got off to a relatively slow start. Various memoranda and policy texts concluded that co-operation between the departments, and between departments and non-governmental and international organisations,<sup>61</sup> was necessary, in addition to the establishment of a programme of measures involving a number of co-operating organisations<sup>62</sup> and the stimulation of regional co-operation (NAPS). In the coming chapters, the extent to which this has been achieved will be indicated and we will discuss whether the responsibility for tackling child pornography is still primarily perceived as a responsibility of judicial partners alone.

58 Lünemann et al., 2006, pp.154-165.

59 Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote Convention, 25 October 2007, Treaty Series 2008, 58.

60 Report on human rights, 2008, see also *Parliamentary Papers II* 2008/09, 31 700 V, no. 19.

61 *Parliamentary Papers II* 1998/99, 26 690, no.2.

62 *Parliamentary Papers II* 2002/03, Appendix 3704.

### 2.3 The significance of the Lanzarote Convention

The Lanzarote Convention was ratified on 1 March 2010 and entered into force in the Netherlands on 1 July 2010.<sup>63</sup> The Ministers for Justice, Youth and Families and Foreign Affairs signed the Act to indicate that the protection of the child from sexual violence can not only be the responsibility of a single ministry. The Explanatory Memorandum<sup>64</sup> opened with the sentence, “*Opgroeïende kinderen verdienen ons aller bescherming*” [Children who are growing up deserve to be protected by us all]. According to the Explanatory Memorandum, the Convention aims to protect children from sexual abuse in broad terms, and covers a large number of topics that relate to this protection. The material behaviours that constitute an offence are all stated within the scope of the same principles. Therefore, this means that the provisions relating to criminal offences and sanctions, preventive and protective measures, procedural stipulations, intervention measures and measures that relate to co-ordination and international co-operation not only relate to sexual abuse as such, but also apply to the issue of combating child pornography. Article 10 of the Convention also obliges parties to bear responsibility for co-ordination between the various institutions that are responsible for preventing and combating the sexual exploitation and sexual abuse of children. Amongst others, such co-ordination lies within the responsibility of the Ministry of Justice and the programme ministry for Youth and Families.<sup>65</sup> It will also become apparent from the chapters below that these ministries have also developed the greatest number of initiatives. The Explanatory Memorandum also lists a number of these initiatives, such as the Child Abuse Reporting and Counselling Centres<sup>66</sup> and the Action Plan to Tackle Child Abuse.<sup>67</sup> Nevertheless, in order to achieve success in combating child abuse, efforts are required on the part of all the authorities, institutions and professionals involved, as well as close co-operation, which also needs to extend to the tackling of child pornography.<sup>68</sup>

Such co-operation is necessary, but a first step towards this involves creating awareness. Not all ministries feel a sense of responsibility for tackling child pornography, for example. This becomes apparent from the response of the programme minister for Youth and Families at the time (responsible for the RAAK [Reflection and Action Group to Tackle Child Abuse]) to questions regarding child pornography from Member of Parliament Verdonk.<sup>69</sup> He writes that whenever people from a child’s circle of family, friends and professionals observe signs or suspect that a child is a victim of child pornography, they can of course report this to the Child Abuse Reporting and Counselling Centre,<sup>70</sup> whereby the standard course of action may then be pursued, which may include the involvement of the Child Care and Protection Board and the police. He continues by stating that the task of tackling child pornography does, however, necessitate a specific programme of measures. Due to the emphasis placed on detect-

63 Treaty Series, 2010, 156.

64 *Parliamentary Papers II 2008/09*, 31 808, no.3, p.1.

65 *Parliamentary Papers II 2008/09*, 31 808, no.3, p.7.; now the Ministry of Security and Justice, and the Ministry of Health, Welfare and Sport.

66 BNRM has investigated the ‘digital antenna’ of the Child Abuse Counselling and Reporting Centres; see §3.3.2.3

67 See §2.5.2 for a description of this Action plan.

68 *Parliamentary Papers II 2008/09*, 31 808, no. 3, p.7.

69 Ms. Verdonk asked questions about combating child pornography and whether or not child pornography is a form of child abuse.

70 See §3.3.2.3 for identifying reports by the Child Abuse Counselling and Reporting Centre.

ing individuals who produce, trade in and consume (often those who possess) material constituting child pornography, the task of tackling child pornography primarily falls under the responsibility of the Minister of Justice.<sup>71</sup>

Holding a ministry responsible for the task of tackling child pornography is based on the assumption that an underlying market and networks of producers and consumers are involved in child pornography *as opposed to sexual abuse within families*.<sup>72</sup> This is not true; see §1.4.2, from which it emerges that in many cases, the production of child abuse material takes place *within* families or within dependency relationships.

Other ministries are also taking initiatives to develop policies aimed at combating and preventing child abuse, combating and preventing sexual violence (in dependency relationships), promoting the ability to defend oneself against sexual approaches and promoting sexual health, creating safe day-care centres, and increasing children's knowledge about digital safety. Amongst other things, this is usually based on immediately combating or preventing sexual violence against children. Work is almost always carried out on an inter-departmental basis.<sup>73</sup> Initiatives sometimes start out in the form of programmes implemented by a single ministry, and other departments join in at a later stage, whereas other programmes are implemented on a government-wide basis. One such initiative is the initiative of the Ministry of Justice with regard to domestic violence, that later went on to form part of the governmental policy.<sup>74</sup>

The Lanzarote Convention specifically mentions sexual violence against children, in which a digital component is involved. This was the first convention in which technological developments were taken into consideration in the legislation, from the background of the general protection of children from sexual abuse.

In the following chapters, it will become apparent as to which policy initiatives have a digital or analogue component and the extent to which aspects relating to child pornography are taken into consideration in this context. Although the task of tackling child pornography needs to be integrated into the programme of measures towards combating sexual violence against children – both for the sake of the effectiveness of the measures for combating sexual abuse as well as for the sake of the effectiveness of the measures for tackling child pornography – it will come to light below that the connection between the digital and analogue aspects can barely be recognised in policy.

## 2.4 Security and Justice<sup>75</sup>

The Ministry of Security and Justice is the initiator of, and is specifically responsible for, policy and measures for tackling child pornography. This is evident from various programmes, such as the Programme of Improvements in Tackling Child Pornography, the *Korpsmonitor* [Police Corps Monitor on Child Pornogra-

71 *Parliamentary Papers II 2006/07*, 31 001, no.16.

72 *Parliamentary Papers II 2006/07*, 31 001, no.16.

73 For example: the Ministry of Economic Affairs is the initiator of the '*Digivaardig & Digibewust*' campaign, which takes place in collaboration with the Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations, see §2.8

74 Ministry of Justice, 2002b.

75 The policy initiatives of the police are described below.

phy] and the policy implemented by the police with regard to combating child pornography overall, see also §3.4. The underlying principle is the enforcement of Article 240b of the Dutch Criminal Code. The measures initiated by the Ministry of Security and Justice are primarily digital in nature. Nevertheless, the ministry also uses ‘analogue’ measures to tackle sexual violence against children, which have been implemented in the form of the domestic violence programme.

### 2.4.1 Security and Justice: the digital dimension

Over the past years, the Ministry of (Security and) Justice has implemented a variety of measures in order to combat child pornography. Co-operation between the Ministry of (Security and) Justice, the Public Prosecution Service and the police on the one hand, and the *Meldpunt Kinderporno op Internet* [hereafter: Hotline Combating Child Pornography on the Internet] and *ECPAT Nederland* [End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes] on the Internet on the other hand, was intensified. Increasingly, use is being made of the knowledge and expertise of the above-mentioned Hotline (as well as the knowledge and expertise of ECPAT Nederland) for the formation of policy.<sup>76</sup> In addition to this, increasing levels of support are being provided to private institutions such as the Hotline Combating Child Pornography on the Internet, which in addition to information, provides a forum where private individuals and companies can report child abuse material, alongside the channels that already existed for this purpose within the police service.<sup>77</sup>

#### *Filtering and blocking*

The Ministry of (Security and) Justice was also involved in supporting self-regulation and public-private sector partnerships (see also §3.8). The parties that were immediately involved (predominantly the ISPs) explored how an ‘Internet filtering of child pornography platform’ could be achieved.<sup>78</sup> In 2008, the Minister of Justice made arrangements with the main ISPs with regard to the filtering and blocking of child abuse material. They agreed that they would further extend the technical facilities to filter and block child pornography. On formation of the Internet Safety Platform, the ISPs, the Hotline Combating Child Pornography on the Internet and the government agreed to extend the tasks of the aforementioned Hotline by producing a blacklist. The ISPs would use this blacklist for the purpose of filtering and blocking.<sup>79</sup> Arrangements were also made at a later date for the countries from which websites could be blocked. In 2011, the Internet Safety Platform informed the minister that the blacklist that had been created was so small that blocking websites featuring child pornography would not be effective. The effort involved would not be relative to the anticipated effect. International consultations revealed that the provision of child abuse material on the Internet had increased significantly. In autumn 2011, the company Leaseweb launched a pilot with regard to the filtering of images of sexual abuse of children that were uploaded. In particular, the aspects relating to security and operations were further explored.<sup>80</sup>

#### *Financial measures*

Representatives from the Ministry also entered into discussions with the Dutch Banking Association [*Nederlandse Vereniging van Banken, NVB*] with regard to the possibility of exchanging information about the

76 Minister of Justice, Progress on the issue of combating child pornography, 4 June 2009.

77 Ministry of Justice, 2010.

78 Minister of Justice, Progress on the issue of combating child pornography, 4 June 2009.

79 Minister of Justice, Progress on the issue of combating child pornography, 21 December 2009.

80 *Parliamentary Papers II* 2009/10, 32 123 VI, no.120 and *Parliamentary Papers II* 2010/11, 32 500 VI, no.75.

course of payment flows and the technology employed in this process surrounding the provision of services on or via the Internet, in relation to child pornography. The NVB was willing to co-operate in order to facilitate measures to tackle the exchange of child abuse material on the Internet.<sup>81</sup> In spring 2009, the European Commission provided support to the initiative of the United Kingdom and Italy with regard to setting up a European Financial Coalition (EFC). The EFC wanted to be fully operational as of September 2010.<sup>82</sup> From the report on the first phase of the EFC, it appears that private parties – mainly financial institutions – are willing to work together with the public organisations. Various working groups have defined best practices that are necessary for concrete partnerships.<sup>83</sup>

#### *Progress reports*

In the plenary debate that took place in February 2009, the Minister promised that he would provide a twice-yearly report on how the endeavour to tackle child pornography was progressing.<sup>84</sup> Since then, four letters have been written (4 June 2009, 21 December 2009, 16 July 2010 and 4 March 2011). Amongst other things, the letters provided an overview of the number of pending cases. This number of pending cases (see also §3.4) is liable to change. In June 2001, there were 605 pending cases, this number had risen to 991 by September of the same year and had subsequently fallen to 770 at the end of the year.

#### *The Dutch National Rapporteur on Trafficking in Human Beings*

Since 1 October 2009, the Netherlands has had a National Rapporteur on Child Pornography. This monitoring role has been added to the mandate of the National Rapporteur on Trafficking in Human Beings. The Minister of Justice at the time had assigned this role, following recommendations from a number of different organisations. In the Decree Establishing the National Rapporteur, its field of investigation is described, but in addition to this, the Decree emphasises that the National Rapporteur on Trafficking in Human Beings is able to implement this field of investigation at its own discretion.<sup>85</sup>

#### *Task Force to tackle child pornography and child sex tourism*

On 6 November 2009, the Task Force to tackle child pornography and child sex tourism was established by the Minister of Justice.<sup>86</sup> In addition to the Ministry of Security and Justice, the Ministry of Interior and Kingdom Relations, the Ministry of Foreign Affairs, the police, the National Police Services Agency and the Public Prosecution Services, a number of ISPs are also involved in this Task Force. The aim of the Task Force is to reduce the production, distribution and possession of material constituting child pornography and to combat child sex tourism. The Task Force analyses the problem areas with regard to the combating of child pornography in order to subsequently come up with solutions. The Ministry of Security and Justice has sought co-operation with various parties by involving them in the Task Force. Although it is important for the police and judicial parties to promote public-private sector partnerships, the Task Force's agenda primarily appeared to be focusing on the aspect of detection in the combating of child pornography.

81 Minister of Justice, Progress on the issue of tackling child pornography, 4 June 2009.

82 Minister of Justice, Progress on the issue of tackling child pornography, 21 December 2009.

83 Minister of Justice, Progress on the issue of tackling child pornography, 4 March 2011. See also §3.8.

84 *Parliamentary Papers II 2008/09*, 31700 VI, no.54.

85 See Introduction for details of the formation and the area of activity of the Rapporteur.

86 Minister of Justice, Progress on the issue of tackling child pornography, 16 July 2010.

### *Programme of Improvements in Tackling Child Pornography*

Further to the previously-mentioned evaluation of the sexual offences legislation<sup>87</sup> in 2006, the Parliamentary Standing Committee on Justice of the House of Representatives, urged the Minister of Justice to establish organisational measures aimed at improving the measures to tackle child pornography.<sup>88</sup> Subsequently, the police,<sup>89</sup> in consultation with the Public Prosecution Service, analysed the problem in more detail, which resulted in the Programme of Improvements in Tackling Child Pornography (PVAKP).<sup>90</sup> By implementing the programme of improvements, the Ministry of Justice strove to take the measures to tackle child pornography to the next level. This programme ran for two years, entering into force in December 2008.<sup>91</sup>

The Programme of Improvements in Tackling Child Pornography concluded that the approach to this issue was not a dynamic one because it did not prioritise the measures adequately enough, and because there was insufficient capacity available for the number of cases. What is more, the programme pointed out that there was a one-sided focus on individuals who possess child abuse material, that insufficient co-operation had been taking place between investigative bodies, and that the investigative process appeared to lack effectiveness and efficiency.<sup>92</sup> The Programme of Improvements in Tackling Child Pornography also included a number of sub-topics, such as: the development of innovative technological measures; the development of a structural chain-oriented programme, including the implementation of a barrier model; the professionalization of sex offence detectives; the development of a national database; and research into the use of special investigative powers [*Bijzondere opsporingsbevoegdheden*, BOB].<sup>93</sup>

Towards the end of 2010, the Programme of Improvements in Tackling Child Pornography presented a plan to re-launch a second phase. The first phase of the Programme of Improvements had set various measures in motion. The number of pending cases had remained constant, amongst other things, due to the inflow of cases from international investigations, which could not be influenced. This was one of the reasons that the desired shift of focus in detection – from those who possess child abuse material to those who produce it, and the identification of victims – had not fully succeeded in getting off the

87 Lünemann et al., 2006.

88 National Project on Child Pornography, 2008.

89 The Child Pornography dossier formed part of the Sexual Offences portfolio (at that time). This portfolio had a portfolio holder within the Board of Chief Commissioners, who was supported by the Sexual Offences Expert Group. Due to the co-ordinating role that was assigned to the National Police Services Agency with regard to the plan to tackle child pornography, the Deputy Chief of the National Police Services Agency was also involved in this initiative. The sexual offences portfolio holder and the Chief of the National Police Services Agency are both members of the Investigative Board. At the beginning of 2008, discussions were held by this Board as well as the Board of Chief Commissioners regarding the desired intensification of the efforts to tackle a number of phenomena. Child pornography is just one of these phenomena, and by putting forward this pilot proposal, the portfolio holder wants to give content to more intensive efforts to tackle child pornography (National Project on Child Pornography, 2008).

90 Programme of Improvements in Tackling Child Pornography, 2011.

91 Ministry of Justice, 2010.

92 Programme of Improvements in Tackling Child Pornography, 2011.

93 Ministry of Justice, 2010.

ground, and the available capacity for investigation was primarily being used to eliminate the number of pending cases.<sup>94</sup>

PVAKP1 came to an end, and the programme team proposed re-launching the programme as PVAKP2. In March 2011, the Minister for Security and Justice gave a positive decision on this proposal, after which the re-launch was implemented.<sup>95</sup> However, it emerged from the aims of the Task Force, amongst other things, that this alone would not be sufficient in order to bring about the desired shift in focus. The Public Prosecution Service and the police are drawing up a proposal for a national structure and direction in order to effectively tackle child pornography.<sup>96</sup>

### The Korpsmonitor

The Programme of Improvements in Tackling Child Pornography was assigned the task of monitoring the progress made amongst the regional police forces<sup>97</sup> in the efforts to tackle child pornography. In 2008, a survey was carried out, the *Korpsmonitor Kinderporno* [Police Corps Monitor on Child Pornography]. This involved a baseline measurement. The conclusions formulated included the following: the formation of structural (supra) regional co-operation was promising; the continually increasing number of pending cases was taking its toll on the capacity of almost all police forces to carry out digital investigations, and it appeared to be effective to include digital investigators as staff in sex offence departments on a structural basis. A number of bottlenecks were also identified. First of all, the organisation of efforts to combat child pornography within the police forces had become fragmented. In addition to this, the police were faced with a constant flow of work. Shifting the priority from tackling the 'simple' possession of child abuse material to tackling its production had proved to be a complicated process.

The *Korpsmonitor Kinderporno* indicated that the issue of tackling child pornography involves combating a wide-ranging social problem that does not only concern judicial matters. The effectiveness of the work carried out by the police could be increased by involving more organisations in the efforts to tackle this offense. Rotterdam Rijnmond was provided as an example, where work is carried in collaboration with the Regional Institute for Outpatient Mental Healthcare, the Municipal Health Service, Social Services, the crisis centre, Probation and After-care Services, women's shelters, the Support Centre *Geweld achter de voordeur* [Violence behind closed doors], the Salvation Army, Young People's Information Point, Child Care and Protection Agency, Child Abuse Counselling and Reporting Centres, Youth Care Agency, Victim Support, *Kinder- en jongerenrechtswinkel* [Legal Advice Centre for Children and Young People], Citizens Advice Bureaus, *Prostitutie Maatschappelijk Werk* [Social Work for Prostitutes], JOS(S) lawyers (lawyers from *Juridische Opvang Slachtoffers Seksueel Geweld* [Legal Support for Victims of Sexual Violence]) and the Hotline Combating Child Pornography on the Internet.<sup>98</sup>

In the spring of 2011, the second *Korpsmonitor Kinderporno* Police Forces State of Affairs 2010 was published.<sup>99</sup> One intention of the measures to tackle child pornography, namely shifting the focus from

94 *Parliamentary Papers II* 2010/11, 32 500 VI, no.86. See also §3.4.

95 Programme of Improvements in Tackling Child Pornography, 2011.

96 *Parliamentary Papers II* 2010/11, 32 500 VI, no.86. See also §3.4.

97 Programme of Improvements in Tackling Child Pornography, 2009.

98 Programme of Improvements in Tackling Child Pornography, 2009.

99 Programme of Improvements in Tackling Child Pornography, 2011.

individuals who possess child abuse material to individuals who produce such material, had once again failed to be achieved. Achieving this shift in focus was still presenting difficulties in many regions. In regions that placed a focus on the production of material, the focus of investigations shifted to abuse. In other regions, this was not the case, partly as a result of a lack of capacity. The second monitor also stressed the importance of co-operation with other partners in the chain.

#### 2.4.2 Domestic violence

Up until this point, initiatives have been described that are directed solely towards tackling child pornography, and these have predominantly involved measures taking effect in the digital world. However, the production of child abuse material usually also involves sexual violence against children. Sexual violence may form a component of domestic violence – a topic that also falls within the remit of the Ministry of Security and Justice. The coming passages will devote attention to this topic, which has a predominantly analogue perspective.

Domestic violence is violence that is committed by an individual from the family circle surrounding the victim. That circle may comprise partners and ex-partners, family members, relatives and family friends. It involves various forms of violence, such as assault and threats of violence, but also stalking and sexual violence (including forced sex, forcing sexual acts to be performed, and rape).<sup>100</sup>

The results of an investigation<sup>101</sup> carried out by order of the Ministry of Justice in 1997 formed the basis for the plan to tackle domestic violence. From this investigation, it emerged that 27% of those interviewed had at one stage been a victim of domestic violence that manifested itself on a weekly or daily basis. However, the intensity of the violence seemed to be higher amongst women than men. In addition to this, violence directed towards women took a sexual nature more often than the violence directed towards men. Only 12% of the victims had reported the violence to the police, and in only half of these cases was a report eventually followed up by an investigation.<sup>102</sup>

In 2000, a national project ‘To prevent and combat domestic violence’ [*Voorkomen en bestrijden huiselijk geweld*] was launched, which set out to form a link between policy frameworks. The approach that was chosen produced the following results, amongst others.<sup>103</sup> The organisations that were taking part in the project were encouraged to promote, within their own ranks, the measures to tackle domestic violence. A large, national network also came into existence. The responsibility for tackling domestic violence was not limited to a single ministry. The Minister for Health, Welfare and Sport had made ‘domestic violence’ a topic of the collective prevention policy for health. The Ministry of Justice, the Ministry of Health, Welfare and Sport and the Ministry of Education, Culture and Science had also developed specific products themselves, such as self-defence training sessions, brochures and the website for domestic violence.

In 2002, the topic of domestic violence formed part of government policy by means of the government memorandum ‘*Privé geweld, publieke zaak*’ [*Private violence, public matter*].<sup>104</sup> The memorandum dealt

100 *Parliamentary Papers II* 2010/11, 28 345, no.109.

101 Van Dijk et al., 1997. See also Römken, 2000.

102 Ministry of Justice, 2002b.

103 Ministry of Justice, 2002b.

104 Ministry of Justice, 2002b.

with the cooperative efforts to tackle domestic violence, and described the ways in which domestic violence can be tackled, in an integrated manner and in collaboration with the various disciplines, in which tasks and responsibilities were clearly established for the Public Prosecution Service and the police. All of this resulted in an increase in the number of intervention programmes, an increase in publicity, and the provision of information via the Internet, as well as more structural policy developments.<sup>105</sup> In the period that followed, various progress reports on the topic of domestic violence emerged. In 2006, Bureau Beke published the report '*Binnen zonder kloppen – Omvang, aard en achtergronden van huiselijk geweld in 2005 op basis van landelijke politiecijfers*' [Entry without knocking – Extent, nature and background of domestic violence in 2005 on the basis of national police statistics]<sup>106</sup>. This report also stated the number of children who had been victims and witnesses of domestic violence: 2,567 children under 18 years of age had actually been victims of domestic violence themselves and one in ten children had witnessed domestic violence. Within this group, 57.2% of children had been a victim of sexual abuse. Following an investigation into the links between cruelty to animals and domestic violence, the Task Force *Huiselijk Geweld en Dierenmishandeling* [Task Force on Domestic Violence and Cruelty to Animals] was established in 2009.<sup>107</sup> This Task Force intended to elaborate on the recommendations from the research and to stimulate new partnerships in order to create greater awareness of the topic.<sup>108</sup>

In January 2011, the Minister of Security and Justice sent a letter to the House of Representatives<sup>109</sup> regarding the findings of an investigation into domestic violence and a response to the phenomenon. In almost 75 percent of the cases of manifest domestic violence, physical violence (65%) or sexual violence (8%) was involved. Child abuse was not specifically included in the findings. The letter also referred to current developments within the framework of the measures to tackle child abuse, which are specifically directed towards children as victims or witnesses of domestic violence. A possible connection with online sexual violence against children is not mentioned in this letter.

## 2.5 Health, Welfare and Sport

The Ministry of Health, Welfare and Sport now has a number of policy programmes that are (in)directly involved in tackling sexual violence against children. First of all, the Ministry employs the overarching topic of sexual health. Amongst others, this topic consists of programmes aimed at the prevention of sexual coercion. Secondly, the Ministry is responsible for the Regional Plan to Tackle Child Abuse. Child abuse also covers sexual violence against children. The two 'analogue' pillars will be singled out below.

### 2.5.1 Sexual health

On 27 November 2009, the State Secretary for Health, Welfare and Sport sent a letter to the House on the topic of 'Sexual health'. Amongst other things, the letter contained a description of the actions the Ministry was undertaking in terms of combating sexual violence (towards children), and contained information about sexual education, preventing sexual coercion and protection (for example with regard to victims of 'loverboys').<sup>110</sup>

105 Römken, 2010.

106 Ferwerda, 2006.

107 Enders-Slegers & Janssen, 2009.

108 *Parliamentary Papers II* 2009/10, 28 345, no.106.

109 *Parliamentary Papers II* 2010/11, 28 345, no.109.

110 *Parliamentary Papers II* 2009/10, 32 239, no.1.

The State Secretary explicitly referred to problems surrounding sexual coercion: eighteen percent of the girls and four percent of the boys had encountered some form of sexual abuse before their sixteenth birthday.<sup>111</sup> There were still many young people who lacked sufficient knowledge about sexuality, which signified to the Ministry of Health, Welfare and Sport that these young people needed to be informed. Children who are provided with information in a positive atmosphere are more able to defend themselves against sexual abuse. As is also laid out in the letter from the Ministry of Health, Welfare and Sport, schools also have a role to play in as far as sexual education is concerned. Although schools do have some leeway within core objectives in order to devote attention to sexual education, sexual and relationship education as such is not compulsory. The government is able to provide sufficient teaching packs and educational campaigns for young people.<sup>112</sup> This letter does refer to the Internet as a source of information for young people about sex and sexual behaviour, but it does not refer to online sexual violence and possible measures to tackle this offense.

As of 2010, the State Secretary extended the Safe Sex campaign<sup>113</sup> to include a campaign that was called 'Sexual Resiliency'. The intention of this supplementary campaign was to ensure that young people were ready and competent in the matter of relationships and sexuality (the promotion of sexual interaction competences), in order to prevent problems such as sexual coercion and unwanted pregnancies, with an additional focus upon the sexual education of boys.<sup>114</sup>

Together with the Minister for Justice and the Minister for Youth and Families<sup>115</sup>, the Ministry of Health, Welfare and Sport formulated a coherent plan to combat sexual violence, which was to prevent young people within voluntary organisations from becoming victims of sexual abuse or undesired behaviours.<sup>116</sup> The Ministry subsidised the project 'Combating sexual intimidation 2009-2010' of the NOC\*NSF (Netherlands Olympic Committee Netherlands Sports Federation) specifically in so far as application of the project to sport was concerned. This project envisaged a comprehensive system for the prevention and tackling of sexual intimidation in the field of sport.

111 Rutgers Nisso Group & STI AIDS Netherlands, 2005. See also §1.5.2.

112 *Parliamentary Papers II* 2009/10, 32 239, no.1.

113 The Safe Sex campaign has been underway since 1987. In 1987, a little flower and bee were chosen, because at that time, sex was still more of a taboo topic. In 1993, the slogan 'Ik vrij veilig of ik vrij niet' [Safe sex or no sex] was launched. The knowledge centre SOA AIDS NL (SOA = Seksueel overdraagbare aandoening, or Sexually transmitted infection [STI]) named that as the first campaign in the mass media. *Campagne veilig vrijen viert vierde lustrum* [Safe sex campaign celebrates its fourth anniversary], Trouw, 10 August 2007.

114 *Parliamentary Papers II* 2009/10, 32 239, no.1.

115 The public campaign 'Kindermishandeling, wat kan ik doen?' [Child abuse, what can I do?], which was initiated in 2009 by the Ministry of Youth and Families and is currently being implemented by the Ministry of Health, Welfare and Sport, also exists. The campaign is directed towards recognising signs of child abuse (including the sexual abuse of children), for example by using the indication test that was launched on 20 June 2011 (*Site wijst op kindermishandeling* [Site indicates child abuse], Spits, 21 June 2011). In addition to this, the campaign is directed towards undertaking action following identification, in which regard contacting a Child Abuse Counselling and Reporting Centre forms the most obvious step. See also §3.3.2.

116 *Parliamentary Papers II* 2007/08, 31 200 VI, no.43. See also §3.2.

The Ministry of Health, Welfare and Sport also supported the national ‘Partnership to Tackle Sexual Violence.’ This partnership was launched in January 2009 by Movisie, the Rutgers Nisso Group and the Fiom (national organisation offering psychosocial help, information and advice regarding intended or unintended – or teenage – pregnancy, among other issues), as partners in the field and as centres of expertise, in order to work together to provide an impetus to the improvement in the prevention of and tackling of sexual violence. In autumn 2009, the Ministry of Health, Welfare and Sport and the Ministry of Education, Culture and Science provided an additional financial incentive for new Partnership activities.

As previously described, the Ministry of Health, Welfare and Sport took the initiative, together with the Minister for Justice and the Minister for Youth and Families, to lay down the reporting code ‘domestic violence and child abuse’ in the form of legislation.<sup>117</sup> In addition, there must be an immediate and safe shelter for all victims of violence in dependency relationships, therefore also for victims of sexual violence. Finally, early, quick and effective assistance must be available so that victims and perpetrators – regardless of the nature of the violence – are able to lead lives that are free of violence.<sup>118</sup>

Recently (2010), the Ministry of Health, Welfare and Sport, together with the Ministry of Education, Culture and Science invested in the sexual education of boys via the programme ‘Sexual health of young people’ of the ZonMw, *Nederlandse organisatie voor gezondheidsonderzoek en zorginnovatie* [Netherlands Organisation for Health Research and Development]<sup>119</sup> and the new campaign ‘Maak seks lekker duidelijk’ [‘Make sex perfectly clear’]. The Ministry of Health, Welfare and Sport extended the financial support for the Partnership to Tackle Sexual Violence up until the end of 2011. Providing reception facilities and assistance to girls who are victims or who risk becoming the victims of loverboys via the project Asja II, carried out by the treatment and expertise centre Fier Fryslân, were extended by one and a half years by the Ministry of Security and the Ministry of Health, Welfare and Sport.<sup>120</sup>

## 2.5.2 Regional Plan to Tackle Child Abuse

Combating child abuse was one of the priorities of the Ministry of Youth and Families at the time. In June 2007, the Minister for Youth and Families sent a plan of action<sup>121</sup> to the House of Representatives, partly on behalf of the Minister of Justice, concerning measures to combat child abuse, entitled ‘*Kinderen veilig thuis*’ [Children safe at home]. This plan of action comprised four main aims, namely preventing parents from abusing their children, identifying cases of child abuse, putting a stop to child abuse, and limiting the harmful consequences of child abuse. Additional attention was devoted to improving identification and

117 From a Parliamentary letter (*Parliamentary Papers II* 2010/11, 28 345, no.114) of 23 June 2011, it appears that the reporting code has still not yet been laid down in law.

118 *Parliamentary Papers II* 2009/10, 32 239, no.1.

119 ZonMw – *de Nederlandse organisatie voor gezondheidsonderzoek en zorginnovatie* [Netherlands Organisation for Health Research and Innovation in Care].

120 *Parliamentary Papers II* 2010/11, 32 710 XVI, no.1.

121 This action plan came into existence with the co-operation of many parties and was primarily written for all partners involved in tackling child abuse. The definition of child abuse from the Youth Care Act was employed in the action plan, see also §1.3.

co-operation between the various co-operating authorities.<sup>122</sup> The plan of action stated that co-operating organisations should not work consecutively to one another, but rather in co-operation with one another.

In this plan, municipalities were assigned a key role. As directors of the local policies for young people, they are capable of determining how increased prevention, the strengthening of the powers of families and the co-operation between professionals can actually be achieved.<sup>123</sup> By 2011, all municipalities must have a Youth and Family Centre (*Centrum voor Jeugd en Gezin* [CJD]). The municipalities are working on realising this goal. The Youth and Family Centres fulfil a key role in improving support to young people and families.<sup>124</sup> The formation of the Youth and Family Centres encourages co-operation between the co-operating organisations that are acting on behalf of young people.

An initiative that links in with this was the introduction of a seamless regional plan to combat child abuse, the Regional Plan to Tackle Child Abuse.<sup>125</sup> The Regional Plan to Tackle Child Abuse primarily involves local policy, as the name suggests. The Ministry of Health, Welfare and Sport is the driving force behind this plan, and the municipalities fulfil a key role. The regional plan is primarily 'analogue' in nature. This approach is based on the initiative of the Reflection and Action Group against Child Abuse [*Reflectie- en Actiegroep Aanpak Kindermishandeling* (RAAK)]. The RAAK-approach is directed towards co-operation between professionals in thirty five central municipalities.<sup>126</sup> The intention is that the measures embedded in this approach will encourage the authorities involved, such as municipalities, the Youth Care Agency, Municipal Health Services and schools to work together more effectively.

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122 The focus upon establishing an integrated youth policy is certainly not new, see for example *Parliamentary Papers II 1994/95*, 23 900 XVI, no.55. In this context, the State Secretary for Health, Welfare and Sport highlighted the importance of an integrated youth policy. Intensive consultations with the various involved parties were carried out for this purpose. The State Secretaries for Health, Welfare and Sport, for Justice, for Education, Culture and Science and for the Interior and Kingdom Relations were consulted with regard to the broad approach of the integrated youth policy.

123 The Ministry for Youth and Families, 2010.

124 The Ministry for Youth and Families, 2010.

125 Expressions in the field of RAAK may sometimes lead to confusion. RAAK primarily stands for *Reflectie- en Actiegroep Aanpak Kindermishandeling* (RAAK) [Reflection and Action Group against Child Abuse]. RAAK considers itself to be a group of representatives which, on behalf of the child by means of political lobbying, is responsible for improving the provision of assistance within society and the quality of education. The action group was established in January 2000 by Prof. van Dantzig, amongst others. This is the group that, in 2002, took the initiative to tackle child pornography through more effective and efficient deployment of existing institutions. The text originates from 'History of RAAK 2000-2010', written information from a Member of the Board of RAAK, 17 February 2011.

126 The central municipalities implement policy and are financially responsible for their region. In the Netherlands, the central municipalities are responsible for shelters for women and addicts. Source: Regional Plan to Tackle Child Abuse website, [www.aanpakkindermishandeling.nl](http://www.aanpakkindermishandeling.nl) (viewed 3 May 2011). In July 2008, the directors of 35 central municipalities, the provinces and the large town regions signed the Declaration of Action for the Plan to Tackle Child Abuse, together with the Minister for Youth and Families. Directors of the central municipalities formulated the agreement that they would make arrangements regarding a regional and combined conclusive plan to tackle child abuse. These arrangements were formulated with municipalities in their region, regional partners and their province(s) and metropolitan regions.

The core element of this Regional Plan to Tackle Child Abuse<sup>127</sup> involved a co-ordinated and integrated provision of proven effective working procedures and methodology for all stages within the care continuum, namely from prevention to diagnosis and intervention in the event of suspicion or identification of actual child abuse. The 35 central municipalities were asked to make conclusive arrangements between local and regional partners with regard to combating child abuse. They were also requested to actively offer training and educational programmes to professionals. The central municipality formed the driving force behind the introduction of these measures, partly by means of appointing a regional co-ordinator. The municipalities formulated a regional plan of action, and links with the province were sought. The regional plan of action comprised a protocol for all professionals. The Netherlands Youth Institute (NJI)<sup>128</sup> provided a model protocol for this. The NJI bridged the gap between the Ministry and the central municipalities and provided (via implementation advisors) support to the regional co-ordinators. The NJI not only supported the regions, but it also published a variety of progress reports and impact evaluations. On behalf of the programme ministry for Youth and Families, the institute also attended to the co-ordination of the plan of action Children safe at home.

The State Secretary for Health, Welfare and Sport recently presented the final report 'Regional Plan to Tackle Child Abuse' by the NJI, and the final report 'Impact Evaluation of the Regional Plan to Tackle Child Abuse', by the Berenschot and Verwey-Jonker Institute, to the House of Representatives.<sup>129</sup> A great deal has been achieved; municipalities and institutions have started to make progress. Within the regions, an ever-increasing group of involved parties have formulated co-operative agreements and have laid these down in regional action protocols and agreements.<sup>130</sup> The report also states that up until that point, the emphasis had been placed on organisational aspects as opposed to actual practice.<sup>131</sup> The NJI indicates that many regions have cited, as outcome, an improved integrated procedure to combat child abuse through cooperation among the Youth and Family Centres, the local care network, and the use of measures to tackle domestic violence. The State Secretary also reports that embedding the Regional Plan to Tackle Child Abuse within the current developments and existing structures in the regions is a permanent point of attention. At this point, it is important to seek alignment with the development of Youth and Family Centres and plans to tackle domestic violence.<sup>132</sup> No attention is devoted to online sexual violence against children in the policy documents regarding the Regional Plan to Tackle Child Abuse.

## 2.6 Education, Culture and Science

In general, education can fulfil a role in combating sexual violence against children. This could consist of projects that inform children of the dangers posed by the Internet. The Minister for Education, Culture and Science made 350,000 euros available as a one-off financial incentive to enhance the campaign

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127 The action programme '*Kinderen veilig thuis*' [Children safe at home] (therefore) acted as a stimulus for the Regional Plan to Tackle Child Pornography.

128 The programme Ministry had assigned the Netherlands Youth Institute the role of supporting the regions in the implementation of the RAAK-approach.

129 *Parliamentary Papers II* 2010/11, 31 015, no.65.

130 Attempts were also made to ensure that this relates to developments with regard to the impending reporting code for domestic violence and child abuse.

131 Berenschot & Verwey-Jonker Institute, 2011.

132 *Parliamentary Papers II* 2010/11, 31 015, no.65.

called ‘Sexual Resiliency’, with respect to how to use media wisely, gender and culture aspects, aspects related to sexual information and resilience for boys, projects aimed at schools, and parenting support.<sup>133</sup> Sexual resiliency, in all its aspects, was one of the topics that were addressed in information packages for teachers, leaflets and other initiatives that were financed by the Ministry.

Schools play an important role in the early identification of concerns surrounding the development of children. For this reason, the Minister for Education, Culture and Science prepared the legislative proposal ‘*Zorg in en om school*’ [‘Care in and around school’].<sup>134</sup> According to the minister, this draft legislation would legally guarantee co-operation between education and the co-operating organisations in the area of youth (for example in Care and Advice teams) as well as the task of the school in the field of early identification.<sup>135</sup> The Minister of Justice also mentioned his intention to lay down the reporting code ‘domestic violence and child abuse’ in the form of legislation, together with the Minister of Health, Welfare and Sport and the Minister for Youth and Families.<sup>136</sup> The Ministry of Education, Culture and Science does appreciate the digital component of sexual violence against children, particularly when it involves programmes such as how to use media wisely.

## 2.7 Social Affairs and Employment

Subsequent to the Amsterdam sexual abuse case, the municipal authorities of Amsterdam appointed a committee (the Gunning Committee, named after its chairperson), see §3.7.5. The Committee conducted an independent investigation into the question as to what lessons can be learnt from the Amsterdam sexual abuse case. In accordance with its assignment brief, the investigation was limited to the situation in day-care centres. The reason for the additional attention for day-care centres was based on the fact that the main suspect in the Amsterdam sexual abuse case worked at a day-care centre.<sup>137</sup> The Minister of Social Affairs and Employment and the Minister of Security and Justice elaborate on the recommendations of the Gunning Committee.<sup>138</sup> In the letter of 11 July 2011, they announced a number of measures, including the continuous screening of employees in the area of childcare. If a report of a relevant criminal offence, such

133 *Parliamentary Papers II* 2009/10, 32 239, no.1. This letter also states that the Minister for Health, Welfare and Sport extended the Safe Sex campaign to include a campaign on sexual resiliency. A sum of 80,000 euros a year was made available for this campaign. The intention of this supplementary campaign was to ensure that young people were ready and competent in the matter of relationships and sexuality (the promotion of sexual interaction competences), in order to prevent problems such as sexual coercion and unwanted pregnancies.

134 There is currently a recommendation of the Council of State, but considering that it is possibly superfluous, taking the legislative proposal ‘appropriate education’ into consideration, the decision has been made to wait before proceeding with the legislative procedure. The influence of the original legislative proposal ‘care in and around school’ can be found in the legislative proposal ‘appropriate education’ at two points, namely where it concerns the role of the municipalities in the care plan, and the role of other (youth) care providers; verbal information Ministry of Education, Culture and Science, 23 August 2011.

135 *Parliamentary Papers II* 2010/11, 28 345, no.109.

136 *Parliamentary Papers II* 2009/10, 32 239, no.1.

137 The suspect did work at day-care centres, but these are not the cause of sexual abuse of children. For this reason, devoting additional attention to day-centres is arbitrary.

138 *Parliamentary Papers II* 2010/11, 32 500 VI, no.117.

as child abuse, arrives at the Criminal Records System of the Ministry of Security and Justice, the employer is informed of this. In future, judicial data needs to be retrieved from European Member States, in order to prevent people who have been convicted of a sexual abuse offence elsewhere in Europe from working with children again, for example in the Netherlands.<sup>139</sup> An additional 3 million euros were also set aside for supervision and enforcement in childcare. The vast majority of the recommendations from the Gunning Committee were aimed at the childcare organisations themselves. That is where the responsibility for the safety and quality of childcare primarily lies.<sup>140</sup> Nevertheless, many of the recommendations of the Gunning Committee are equally relevant for other sectors in which adults work with children.<sup>141</sup>

## 2.8 Economic Affairs, Agriculture and Innovation

The Ministry of Economic Affairs fulfils a role in combating and preventing sexual violence against children in a number of different ways. In particular, this takes place in the area of the safe use of the Internet by minors. The Certificate in Safe Internet Use [*Diploma Veilig Internet*, DVI] is a joint initiative of the Ministry of Economic Affairs, *Stichting Kennisnet*, *Stichting ICTopSchool*, *Stichting de Kinderconsument* and *Stichting Technika 10 Nederland*. The parties signed an agreement and jointly developed a teaching pack specifically relating to Safe Internet Use.<sup>142</sup> In 2006, the Ministry of Economic Affairs launched the Digibewust campaign in collaboration with Ministry of Justice and the Ministry of The Interior and Kingdom Relations in order to increase awareness of the risks that exist in the digital realm and to encourage the safe use of the Internet. In 2009, this campaign was re-launched and given the name '*Digivaardig en Digibewust*.' [Digitally Skilled and Digitally Aware]<sup>143</sup>

At the end of 2009, the Platform for Internet Safety, mentioned previously in this chapter, was launched. This Platform is a collaboration between the government, represented by the Ministry for Economic Affairs and the Ministry for (Security and) Justice, and partners from the private sector. In 2009, the Platform worked on organising the efforts to tackle the distribution of child abuse material on the Internet, amongst other things.<sup>144</sup> The Notice and Take-down Code of Conduct was also one of the measures that were introduced. This prescribes how private partners and businesses in the online sector deal with a report of unlawful content on the Internet, such as child abuse images.<sup>145</sup> Since 1 May 2007, the Ministry for Economic Affairs has been directing the National Infrastructure for Tackling Cybercrime [*Nationale Infrastructuur ter bestrijding van Cybercrime*, NICC]. The intention of the NICC programme is to develop a single, integrated programme of measures to promote ways of working safely in the digital sphere in the public

139 On 29 June 2011, the Member States of the European Union came to an agreement with regard to the text of the EU Directive for the combating of child pornography, sexual exploitation of children and child pornography. The Netherlands has attempted to make it possible for data exchange with regard to sexual abuse offences in other countries to take place as a matter of course. 'Certificate of Good Conduct Developments' Ministry for Security and Justice press release, 21 July 2011, see also §3.6. The Directive is not yet in force, see §1.3.

140 *Parliamentary Papers II* 2010/11, 32 500 VI, no.117.

141 It is notable that little attention has been devoted to the child pornography aspect of the sexual abuse committed by Robert M.

142 *Parliamentary Papers II* 2005/06, 29 326, no.6.

143 ECP-EPN, annual report 2008-2009.

144 ECP-EPN, annual report 2009-2010.

145 Notice and Take-down Code of Conduct, 2008.

and private sectors, or a single and conclusive National infrastructure to combat Cybercrime, including child pornography.<sup>146</sup> The Ministry for Economic Affairs, Agriculture and Innovation is also (indirectly) involved in addressing the digital aspects of sexual violence against children.

## 2.9 Conclusion

### *Broad and narrow frameworks*

Various frameworks currently exist that are (in)directly aimed at combating (sexual) violence – in the context of which the production of child abuse material is able to take place. Frameworks have been put in place that explicitly combat child pornography, such as the police and judicial authorities (narrow framework). Frameworks also exist that may be able to implicitly combat the production of child abuse images, for example programmes such as Domestic Violence and the Regional Plan to Tackle Child Abuse (broad framework). However, differences can also be detected within these broad frameworks. The Domestic Violence framework is based on bringing organisations together on the basis of cohesion in terms of content, and may therefore prevent potential compartmentalisation. In contrast to this, the Regional Plan to Tackle Child Abuse is a territorial arrangement, which sets out to achieve horizontal interlinking within the region, and in which central municipalities form the bridge to the national government.

### *Digital and analogue frameworks*

The measures for tackling child pornography are based on narrow judicial grounds. However, the combating of child pornography is being implemented extensively, partly by means of programmes such as Domestic Violence, Sexual Health, programmes for schools, the Regional Plan to Tackle Child Abuse and the prevention of sexual violence against children in day-care centres, which fall, in part, under the responsibility of the Ministry of Social Affairs and Employment. Elements of the issue of tackling child pornography (the digital aspects of sexual violence against children, the digital environment of those who produce and possess child abuse material and the online worlds of perpetrators and victims) are barely integrated into the programmes aimed at combating sexual violence against children. Combining programmes that combat sexual violence with the judicial approach towards tackling child pornography may serve to increase effectiveness. Within frameworks such as Domestic Violence and the Regional Plan to Tackle Child Abuse, parties co-operate intensively, but for the time being, hardly any connections have been made with the efforts measures to tackle child pornography.

### *Connections*

Until the measures to tackle child pornography have been integrated into the wide-ranging approach regarding the combating of sexual violence against children, co-ordinated efforts in combating the sexual abuse of children, as referred to in the Lanzarote Convention, cannot essentially be achieved. Until a connection is formed between the analogue and digital worlds, a difference which is very vague<sup>147</sup> for children, and one in which the dividing line between online and offline sexual violence becomes blurred,<sup>148</sup> caveats need to be added with regard to the extent of the protection of children. Children need to be the focus of attention in both the real world and the digital world, and for these children, those two worlds form one single world.

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146 NICC, 2007.

147 See §1.2.3.

148 See Table 1.1.

## 3 Implementation

### 3.1 Introduction

In Chapter 1 we described the variation that exists amongst perpetrators, victims and technology in relation to the phenomenon of child pornography. The picture that this creates is therefore a multi-faceted one. That diversity within the phenomenon must be reflected in policy and implementation. However, the fact that child pornography is closely associated with – and sometimes forms part of – other types of sexual violence against children, also has implications for policy and implementation. Although child abuse material exists primarily in digital format, perpetrators and victims exist in both the offline and online worlds, and consequently the phenomenon of child pornography has both an analogue and a digital element.

The previous chapter provided an overview of the government’s policy agenda over the past decades, which sought to create cohesion between the strategy to tackle child pornography, specifically based upon Article 240b of the Dutch Criminal Code (as it currently stands), and the policy that aims to protect children from sexual violence, (whether or not) as a form of child abuse. In terms of policy, the strategy to tackle child pornography is based upon a narrow legal framework, whilst the efforts to tackle sexual violence are implemented on a broader scale. However, elements of the strategy to tackle child pornography (the digital aspects of sexual violence against children, the digital environment used by the producer and possessor of such material, and the online world of both perpetrators and victims) hardly ever form an integral part of the programmes that aim to tackle sexual violence against children. Yet it is imperative that every effort is made to achieve cohesion and coordination between the different programmes, and that the digital element is also included, if an effective policy in relation to children’s (sexual) safety is to be achieved.

As far as protecting children from sexual violence is concerned, the focus upon the digital element also forms one of the cornerstones of the Lanzarote Convention.<sup>1</sup> This Convention is comprehensive and multi-disciplinary in nature. In addition to criminal provisions and provisions imposing sanctions, it incorporates preventative and protective measures, as well as measures that ensure national coordination and international cooperation.<sup>2</sup> The added value primarily lies in the fact that in ensuring the

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1 The adoption of this Convention was reason for the Netherlands to adapt its public decency legislation, whereby digital aspects concerning the protection of children’s sexual integrity played a relevant role (see §1.3 with regard to Article 240b of the Dutch Criminal Code, corruption and grooming).

2 Article 10 of the Lanzarote Convention.

protection of children from sexual exploitation and sexual abuse through the enforcement of criminal law, the Convention takes into consideration the progressive digitalisation of society and the development of technology. The express aim of the Convention is to protect children from the negative effects of such technologies, such as new forms of abuse that can occur in the digital world.<sup>3</sup> By virtue of this Convention, it is clear that an integrated approach to tackling sexual violence against children – one which includes the digital aspects – is what is required.

*The Landelijke Expertgroep Digikids [Digikids National Expert Group] of the Dutch police provides a role for the juvenile police in cyberspace, and applies three pre-conditions in this regard, namely police awareness and communication towards young people (digital awareness), online availability of the police in order to carry out its core duties (digital accessibility) and the competence of the police to actually be able to carry out these duties (digital competence).<sup>4</sup> Other organisations in sectors such as youth care services could also apply these pre-conditions relating to the digital world in their contact with children.<sup>5</sup>*

The present chapter will describe the implementation of the strategy to tackle child pornography, viewed partly in the broader context of protecting children from sexual violence. As far as the implementation itself is concerned, it is possible to distinguish between a number of processes, which will be described below. The order in which these processes will be described corresponds with the findings from Chapter 1. It is, after all, in Chapter 1 that the various stages of becoming a perpetrator or victim, and the *modus operandi* to produce and obtain material, are discussed. The processes that form part of the strategy to tackle child pornography can be identified in each stage of becoming a perpetrator or victim. For example, primary and secondary prevention projects focus upon preventing individuals from becoming perpetrators or victims, and preventing material from being produced, even before criminal acts have been committed (§3.2). Whenever (preparatory) activities are identified, any acts by perpetrators, victimisation of children, and related material must be reported to the relevant authorities (§3.3). We will then go on to describe the repressive approach: detection (§3.4), prosecution and trial (§3.5), and after-care for and monitoring of perpetrators, and focus upon the convicted sex offenders §3.6). After-care and monitoring are not only in place to serve the perpetrator him/herself, but also aim to uphold the safety of society and to prevent others from becoming victims. The aspects relating to child pornography are explained in the most detail in the sections in which we describe the repressive process. This comes as no surprise, as the action taken by the police, the Public Prosecution Service, the judiciary and (in part) the probation and after-care service is per definition based upon Article 240b of the Dutch Criminal Code. In §3.7 we will discuss the support provided to victims. This process involves providing care for victims of child pornography. This consists of support for minors experiencing the consequences of sexual abuse and of the forms of online sexual violence, including the distribution, possession and viewing of images in which they feature.

3 Execution of the Convention of the Council of Europe on the Protection of Children Against Sexual Exploitation and Sexual Abuse of 25 October 2007 (Treaty Series 2008, 58), *Parliamentary Papers II 2008/09*, 31 810, no.3

4 'Subsidy application for the Action Plan 'Towards a digital competence in the police force in their role to protect youth', *Expertgroep Digikids*, 19 August 2011 (not publicly available).

5 For a description of how they operate, see §3.8.3.1.

### *The Lanzarote Convention*

The Lanzarote Convention contains an instruction in relation to practically all of the processes described in the subsequent sections. In this regard the Convention applies a number of principles that apply equally to all forms of sexual exploitation and sexual abuse stated in the Convention, including child pornography. With regard to the treatment of victims, this means that a victim must be prevented from revictimisation. This is particularly relevant in relation to issues such as the protection of the victim's identity when child pornography is reported (§3.5.2):

“Each Party shall adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate.”<sup>6</sup>

Most paragraphs will therefore make reference to the Articles and principles of the Convention.

We will also examine the extent to which cohesion exists between these different processes. As previously stated, child pornography must be viewed in the broader context of sexual violence against children. For that reason the processes will also be viewed within this broader context where necessary. This chapter will therefore not only examine specific interventions in relation to child pornography, but also the extent to which any abusive context is taken into account in the current forms of intervention in relation to sexual violence against children. As far as certain elements are concerned, it is not always easy to distinguish between cases that involve child pornography and those that do not within the broad context of sexual violence against children.

By its very nature, child pornography exists as an international phenomenon. It is therefore essential to seek international cooperation to tackle this issue. We will focus upon this international aspect in the section on detection, and also provide recommendations with regard to making specific agreements. Similar issues also exist in other countries. In this chapter, examples from other countries will be examined in greater detail, and the relevance of those examples to actual practices being implemented in the Netherlands will be explained.

Finally, we will also devote special attention to public-private sector partnerships, which play an essential role in tackling child pornography (§3.8). This section will describe the initiatives that have already proved successful in this area and the ideas on how the partnership could develop further. A large proportion of child abuse material exists on the Internet, which is primarily the domain of the private sector.

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6 Article 30 of the Lanzarote Convention. See also Article 31 (1) of the Convention: “Each Party shall take the necessary legislative or other measures to protect the rights and interests of victims, including their special needs as witnesses, at all stages of investigations and criminal proceedings, in particular by: [...] **c** enabling them, in a manner consistent with the procedural rules of internal law, to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented, directly or through an intermediary, and considered”; and “**e** protecting their privacy, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification”. See also §3.5.2.

## 3.2 Prevention

### 3.2.1 Introduction

The prevention of child pornography is evidently closely related to the prevention of sexual abuse of children.<sup>7</sup> After all, material constituting child pornography cannot be produced without the sexual abuse of children having taken place.<sup>8</sup> The present sub-section will look at the aspect of prevention. Although the prevention of sexual abuse of children will also be discussed, the prevention of child pornography will form the focus of this discussion.<sup>9</sup> There seems to be no doubt about the most important aim in the prevention of sexual abuse of children: it is to prevent potential perpetrators from abusing a child in the first place. It would seem therefore that potential perpetrators and victims are the most obvious target groups when implementing measures to prevent the sexual abuse of children. However, in view of the fact that the sexual abuse of children takes place within specific situational contexts and social ecosystems and is influenced by these factors, the literature takes a broader approach as a basis for the prevention of this type of abuse.<sup>10</sup> This approach gives rise to four target groups for the implementation of preventative measures: perpetrators, victims, situations and communities. Smallbone et al. describe three prevention levels within each target group.<sup>11</sup> Primary prevention aims to prevent individuals from becoming perpetrators and victims by means of general information provision, and the raising of awareness among these target groups as a whole. This type of preventive measure is geared towards each of the four target groups as a whole. By contrast, secondary prevention is specifically concerned with those individuals, groups and locations that pose a risk within the four target groups.<sup>12</sup> In comparison with primary prevention, secondary prevention has the advantage (in theory) that the measures are aimed at the individuals and situations who/that require them.<sup>13</sup> Tertiary prevention is concerned with intervention measures for individuals, groups and situations *after* sexual abuse has already taken place.<sup>14</sup> This type of measure aims to prevent abuse from continuing or being repeated. Tertiary prevention measures relate to early identification and the limitation of the harm done to victims. In view of the fact that the classification into three prevention levels is commonly used within the domain of criminology, this classification will also form the starting point in the present report, albeit that this sub-section will be limited to the discussion of the primary and secondary prevention levels within the four stated target groups. This section will therefore only be concerned with prevention measures in relation to individuals and situations where sexual abuse has not yet taken place. Wherever tertiary prevention is primarily concerned with identification, after-care and monitoring, measures that fall under this prevention level will be discussed in §3.3 and §3.6. Although quite a great deal of attention has

7 See Article 4 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58; *Parliamentary Papers II* 2008/09, 31 808, no.3, p.5.

8 There are a number of exceptions to this, for example sexual abuse is not always involved in virtual child pornography and sexting. See §1.3 and §1.4.3.

9 This refers to prevention of child pornography in the broadest sense of the word: preventing children from becoming victims of child pornography as well as preventing the production, distribution, possession, etc. of child abuse material.

10 Smallbone et al., 2008, p.198.

11 Smallbone et al., 2008, chapter 10.

12 Smallbone et al., 2008, p.48.

13 Smallbone et al., p.204.

14 Smallbone et al., 2008, p.49.

been paid to the prevention of sexual abuse of children, the extent to which many preventative measures actually prevent such abuse is not known. The greatest challenge with regard to prevention of sexual abuse of children seems to lie in the way knowledge and expertise are translated into a policy of evidence-based prevention.<sup>15</sup> In the present sub-section, we will discuss a number of prevention measures, geared towards both the real and virtual worlds, with regard to each of the four prevention target groups, namely perpetrators, victims, situations and communities. Although it goes without saying that these prevention measures are broader in scope than the prevention of child pornography, in most cases they aim to prevent the sexual abuse of children, and child pornography may form an element in such a situation. In particular, we will examine the (proven) preventative effect of the preventative measures to be discussed.

### 3.2.2 Prevention measures aimed at perpetrators<sup>16</sup>

The criminalisation of child abuse and child pornography is a form of primary prevention that affects perpetrators. However, the preventative effect of the increase in the maximum sentences has not been demonstrated.<sup>17</sup> After all, as far as many potential perpetrators are concerned, the immediate prospect of gratification is far more compelling than the distant and indefinite risk of being subject to sanctions under criminal law.<sup>18</sup> Moreover, experienced child abuse material collectors believe they are unassailable, judge the likelihood of arrest as low, and have a low opinion of the (calibre of) investigative authorities.<sup>19</sup> Many preventative measures are focused on tertiary prevention with regard to perpetrators<sup>20</sup>; such measures include prosecution, punishment<sup>21</sup> and the prevention of recidivism. The most important aim of this tertiary type of prevention is to prevent known perpetrators from being able to continue their activities or from re-offending. Interventions that aim to prevent recidivism are discussed in §3.6. The focus of secondary prevention is placed upon individuals who are at higher risk of sexually abusing children, but who have not yet committed such an offence. The problem with preventative measures aimed at perpetrators is that the focus upon convicted perpetrators seems to be at the expense of prevention with regard to individuals who are at higher risk of committing their first sexual offence against children but have not yet done so.<sup>22</sup> In response to Parliamentary questions<sup>23</sup> on this subject, the Minister for Public Health, Welfare & Sport cited a statement from the Dutch Association of Psychologists (NIP), which ascertained that the support that is currently available is primarily put into action when a paedophile<sup>24</sup> has already committed an offence. “Support

15 Smallbone et al., 2008, p.215; Finkelhor, 2009, pp.169-188; interview with Clemens Hosman in Movisie, *Experts over ontwikkelingen en trends in seks en sexueel geweld* [Experts on developments and trends in sex and sexual violence] (2010), pp.82-83.

16 Article 7 of the Lanzarote Convention obliges Parties to the Convention to ensure that individuals who fear that they will commit one of the offences specified in the Convention have access to intervention measures, see the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58; *Parliamentary Papers II* 2008/09, 31808, no.3, pp.6; see also §3.3.1.

17 Finkelhor, 2009, pp.175-76; Smallbone et al., 2008, p.200.

18 Smallbone et al., 2008, p.200.

19 Jenkins, 2001, pp.14-15. See also §1.4.2.

20 See §1.4.2 for further information regarding perpetrators.

21 Prosecution and punishment are discussed in §3.5.

22 Smallbone et al., 2008, p.205; Finkelhor, 2009, p.169.

23 *Parliamentary Papers II* 2010/11, 1801 and *Parliamentary Papers II* 2010/11, 1802.

24 See §1.4.2 regarding the distinction between paedophilia and paedosexuality.

can prevent a great deal of harm at an early stage, both for the victims and the perpetrators”, explained the Director of the NIP.<sup>25</sup> The Minister for Public Health, Welfare & Sport stated in response to this that although expert care is available for paedophiles who do not receive this care in a forensic capacity, it has proved very difficult in practice to ensure that this target group receives treatment, due to the “immense taboo” that exists in relation to this disorder.<sup>26</sup> Although the current prevention measures in the Netherlands are not (yet) geared towards these risk groups, plans are in place to introduce three secondary prevention measures aimed at perpetrators in the Netherlands. These potential measures will be discussed in the present sub-section.

### Helplines

In the United Kingdom and Ireland, adults who have concerns about their own or another individual’s sexual thoughts or behaviour can consult the anonymous helpline (by telephone and e-mail) of the Stop it Now! organisation (described in §3.3.1.1 for help and advice. Almost a quarter<sup>27</sup> of the clients of Stop it Now! who call on their own behalf have not yet committed a sexual offence (online or offline).<sup>28</sup> Tailored advice is provided to these clients, which aims to prevent children from being sexually abused or online behaviour from getting out of control. The fact that 85% of these potential abusers are not known to the authorities<sup>29</sup> emphasises the importance of an anonymous helpline of this type for this risk group. The De Waag forensic clinic and *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet] are planning to introduce the British concept in the Netherlands in early 2012.<sup>30</sup> Just as in Great Britain, the aim of an anonymous helpline and therapy sessions must be to prevent potential perpetrators from committing an offence.

### Preventing underage victims from becoming perpetrators

Perpetrators of child sexual abuse have in a number of cases been victims of abuse themselves in the past. For this reason, support for children who have been sexually abused can play an important role in the secondary prevention of perpetrators.<sup>31</sup> In the First Progress Report on tackling child pornography, March 2011,<sup>32</sup> the then Minister of Justice wrote that more time is needed in order to ascertain the extent to which prevention of the development of capacity to become a perpetrator is explicitly addressed in the treatment programmes for underage victims.

25 See the NIP website, [www.psynip.nl/nieuwsberichten/website/hulpverlening-aan-pedofielen-schiet-te-kort](http://www.psynip.nl/nieuwsberichten/website/hulpverlening-aan-pedofielen-schiet-te-kort) (viewed 10 August 2011).

26 *Parliamentary Papers II* 2010/11, 1802. For that matter, it seems that no policy exists for reaching and treating individuals with a sexual preference for children who have not yet committed any abuse.

27 Twenty-three percent of the adults who called on their own behalf in the period June 2005 to November 2009 stated that they had not yet committed a sexual offence. Of this group, 19% were concerned about their offline behaviour (hands on sexual abuse of children), whilst 4% were concerned about their behaviour on the Internet (child pornography). Stop it Now! Helpline Report 2005-2009.

28 For a more detailed description see §1.2.2.

29 Stop it Now!, 2010, p.17.

30 Information supplied verbally by *Meldpunt Kinderporno op Internet*, 17 March 2011; information supplied verbally by Stop it Now! during a working visit, 9 March 2011; Ministry of Justice, First Progress Report 2011 on the tackling of child pornography, 4 March 2011; *Preventatieve hulp voor potentiële pedoseksueel* [Preventative help measures for potential paedosexuals], *Algemeen Dagblad*, 28 June 2011.

31 Smallbone et al., 2008, p.205.

32 The progress in tackling child pornography, 4 March 2011. *Parliamentary Papers II* 2010/11. 32 500 VI, no.86.

### Certificate of Good Conduct<sup>33</sup>

Individuals who wish to work with children are often required to submit a certificate of good conduct (*Verklaring Omtrent het Gedrag* (VOG)) and references.<sup>34</sup> The Gunning Committee, which conducted an investigation further to the Amsterdam sexual abuse case, found that new staff members are not being screened carefully enough.<sup>35</sup> The Committee identified opportunities in a number of areas to tighten this procedure,<sup>36</sup> for example by checking certificates and making it compulsory to verify references. The *Brancheorganisatie Kinderopvang* [Childcare Sector Organisation] is currently drawing up a procedure that includes conditions that should be fulfilled in selecting a candidate.<sup>37</sup> One of the conditions will be that enquiries must always be made with regard to references from previous employers, placements or training courses. With regard to the certificate of good conduct, the Committee recommends that all staff must be asked to provide an updated certificate of good conduct every two years.<sup>38</sup> However, in their letter of 11 July 2011, the Minister for Social Affairs & Employment and the Minister of Justice indicated that the government prefers a form of screening whereby authorities continue to monitor employees in the childcare sector, in order to ascertain whether a new relevant criminal offence has been entered in the Criminal Records System under the name of such an employee.<sup>39</sup> At the time of writing this report, the method and form of screening were still being investigated by the government, in consultation with the childcare sector. The Gunning Committee also issued a recommendation to the Minister of Security and Justice to investigate the possibilities for enabling bodies that issue certificates of good conduct to access information regarding convictions for criminal offences in other countries.<sup>40</sup> On the basis of this recommendation, the State Secretary for Security and Justice has advocated joint efforts at a European level to improve the way in which information is shared. The agreement on the Directive on combating sexual exploitation of children incorporates measures to ensure that information about convictions is also exchanged across borders.<sup>41</sup>

33 See also §3.6.3.2; Article 5, paragraph 3 of the Lanzarote Convention requires that Parties to the Convention ensure that individuals who have been convicted of sexual abuse of children do not have access to professions that involve frequent contact with children, see the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58; *Parliamentary Papers II* 2008/09, 31808, no.3, pp.5-6.

34 From 1 January 2012, the *Stichting Beroepsbeoefenaren Natuurlijke Gezondheidszorg* (RBNG) [Foundation of Natural Health Practitioners] made a Certificate of Good Conduct (VOG) compulsory for all 8000 therapists listed on its register. Without that certificate, therapists cannot be listed on the RBNG register and healthcare insurers will not provide reimbursement for treatment. According to the Director, the Amsterdam sexual abuse case concerning the children's day nursery Het Hofnarretje formed the immediate reason for the measure, source: ANP, 5 September 2011.

35 Gunning et al., 2011, p.11.

36 Gunning et al., 2011, p.11.

37 *Parliamentary Papers II*, 2010/11, 32 500 VI, no.117.

38 Gunning et al., 2011, p.146.

39 *Parliamentary Papers II* 2010/11, 32 500 VI, no.117.

40 Gunning et al., 2011, p.146.

41 *Europees akkoord informatie-uitwisseling seksueel kindermisbruik* [European agreement on exchange of information concerning child sexual abuse], [www.rijksoverheid.nl](http://www.rijksoverheid.nl), 29 June 2011; *Europees akkoord over informatie pleger zedenmisdrijf kinderen* [European agreement on information about perpetrators of child sex offences], *Blik op Nieuws*, 29 June 2011.

### 3.2.3 Prevention measures aimed at victims

The aim of primary and secondary prevention strategies is to minimise the risk that children will become victims of sexual abuse. The Lanzarote Convention obliges the Parties to the Convention to provide children with information concerning the dangers of sexual exploitation and sexual abuse, and in this way protect children and enable them to take defensive action.<sup>42</sup> Little is known about the efficacy of prevention programmes for potential victims of sexual abuse, however.<sup>43</sup> Although studies of the efficacy of prevention programmes usually show that children's knowledge and awareness have improved, there is little proof that prevention programmes actually change children's behaviour.<sup>44</sup> Furthermore, the social sciences community has expressed criticism of the fact that the responsibility for the prevention of sexual abuse is placed upon children.<sup>45</sup> Smallbone et al. have concluded that adults must ultimately bear responsibility for the safety of children.<sup>46</sup>

#### *Prevention measures aimed at parents of very young children*

One area for attention with regard to the prevention of sexual abuse of children concerns the target group of children aged 0-6 years of age.<sup>47</sup> This target group is too young for prevention programmes to be set up.<sup>48</sup> However, measures to prevent abuse in this vulnerable group of young children can be geared towards the parents instead of the potential victims. The Gunning Committee, which conducted an investigation of abuse at children's day nurseries, made several recommendations to parents, such as screening and making enquiries regarding references from child-minders using Internet child-minding services.<sup>49</sup> In addition, the Commission recommended that educational materials should be developed for parents, and that such material should, amongst other things, be geared towards preventing their child from becoming a victim of abuse.<sup>50</sup> Although the Gunning Committee focused exclusively upon children's day nurseries, many of the recommendations are also relevant to other sectors in which adults work with children.

The purpose of most prevention programmes geared towards children is to teach them three aspects: 1) definitions of sexual abuse and the ability to recognise undesirable sexual behaviour; 2) strategies to avoid risky situations and to protect themselves against sexual advances of perpetrators; 3) the message that victims must confide in an adult in the event of inappropriate behaviour or sexual abuse.<sup>51</sup>

42 Article 6 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58, *Parliamentary Papers II* 2008/09, 31 808, no.3, p.6.

43 See studies such as Finkelhor, 2009; Smallbone et al., 2008; Quayle et al., 2008; Kaufman et al., 2006; Interview with [Clemens] Hosman in *Movisie* (2011), p.82.

44 Quayle et al., 2008; pp.95-96; Smallbone et al., 2008; p.37.

45 Smallbone et al., 2008, pp.140-142.

46 Smallbone et al., 2008, p.137.

47 See also §1.4.3 regarding very young victims of child pornography.

48 See also Simon & Zgoba, 2006, p.86.

49 Gunning et al., 2011, p.143.

50 Gunning et al., 2011, p.150.

51 Smallbone et al., 2008, p.138.

### Prevention in the real world

An inventory of existing initiatives and projects concerning the protection of one's sexual integrity by the *Internationaal Informatiecentrum en Archief voor de Vrouwenbeweging* (IIAV) [now known as Aletta – Institute for Women's History] and Rutgers Nisso Groep revealed that a large and reasonably varied number of intervention programmes exist in the Netherlands in relation to the protection of one's sexual integrity, which programmes aim to serve the needs of the national, regional or local population.<sup>52</sup> The majority of interventions broadly focus upon defending one's integrity, but what is striking is that almost none of the 79 projects that were studied<sup>53</sup> are explicitly geared towards prevention of sexual coercion and sexual violence.<sup>54</sup> Moreover, it is not always clear whether the projects also expressly seek to change behaviour.<sup>55</sup> The IIAV and Rutgers Nisso Groep therefore recommended that specific attention must be paid to protection of sexual integrity, preferably with the aim of practising changes in behaviour.<sup>56</sup>

### Prevention in the virtual world

In its annual report of 2008, *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet] reported an increasing trend in the number of children who rendered themselves victims, for instance by producing and sending photographs or video files of a sexual nature by telephone or the Internet.<sup>57</sup> The Centre also conducted a study of the chatroom behaviour of 1000 young people between the ages of 12 and 18 years. Although the youngsters indicated that they were aware of the dangers of chatting to strangers, 18% of boys and 23% of girls stated that they had once agreed to meet someone in real life with whom they had become acquainted on the Internet.<sup>58</sup> The fact that youngsters are aware of the dangers associated with chatting, yet do not always act accordingly, is consistent with the findings of other studies into the preventative effect of awareness campaigns, which showed that there is little evidence that prevention programmes influence behaviour.<sup>59</sup>

It is obvious that prevention programmes geared towards protecting one's sexual integrity must (also) focus upon the online behaviour of children and young people. However, only seven projects of the 79 intervention programmes that were studied by IIAV and Rutgers Nisso Groep focused on promoting media literacy.<sup>60</sup>

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52 Meulmeester et al., 2008. For an overview of current policy programmes, see §2.4 and later in this report.

53 These concerned 35 generic projects and interventions of which prevention of sexual coercion forms a substantial or identifiable component, and 44 specific interventions that are aimed at a specific target group or a specific element of sexual coercion.

54 Meulmeester et al., 2008, pp.105-106.

55 Quayle et al., 2008, pp.95-96 and Smallbone et al., 2008, p.137 draw the same conclusion with regard to prevention projects in other countries.

56 Meulmeester et al., 2008, p.106.

57 *Meldpunt Kinderporno op Internet*, 2009, p.24. See also §1.4.3 for further information in relation to the phenomenon of sexting.

58 *Meldpunt Kinderporno op Internet*, 2009.

59 Quayle et al., 2008 cite three studies that show that whilst knowledge has increased thanks to the prevention programmes in question, young people's behaviour has not been influenced, pp.95-96.

60 These concerned the websites: [www.mediawijsheidkaart.nl](http://www.mediawijsheidkaart.nl), [www.kinderconsument.nl](http://www.kinderconsument.nl), the sub-page 'Veiligheid' [Safety] on [www.kennisnet.nl](http://www.kennisnet.nl), [www.surfsafe.nl](http://www.surfsafe.nl), [www.iksufveilignl.nl](http://www.iksufveilignl.nl) (viewed 22 August 2011) and the educational pack 'Online grooming' of *Stichting k.o.e.i.* [Children, Parenting, Education and Internet Foundation].

Projects in the field of media literacy involve two areas of focus: 1) the raising of young people's awareness of sexualised images, and making them more able to take defensive action against such material, and 2) the protection of sexual integrity: the prevention of 'cybersex', online dating, and online grooming.<sup>61</sup> Three of these seven projects address the awareness of sexualised images.<sup>62</sup> The report asks the question of whether more intervention programmes should focus upon the use of new media and the risks that they pose to young people.<sup>63</sup> It is obvious that the answer to this question is yes. In view of the fact that the Internet forms a significant part of the environment in which children and young people live, it seems logical that prevention projects in relation to sexual violence should also expressly concern themselves with the dangers associated with online behaviour, including child pornography.<sup>64</sup> The police and the *Kindertelefoon* [Children's Telephone] service have taken the first steps to create a recognisable online profile and to provide information concerning Internet safety, amongst other initiatives (§3.8.3.1). Other organisations that play a role in protecting children from sexual violence could also enter into collaborative partnerships with privately-owned entities in order to be able to educate children.

### 3.2.4 Situational prevention

The aim of situational prevention is to eliminate or reduce undesirable behaviour within certain situations by identifying and changing elements that encourage or allow misconduct.<sup>65</sup> One of the most important reasons for abusing children, as far as perpetrators are concerned, is that they have the opportunity to do so.<sup>66</sup> The purpose behind situational prevention is to remove or reduce this opportunity. In general, sexual abuse of children takes place within three types of environments: in the public space, within an institutional context (children's day nursery, youth care and foster care facilities, sport club) and in the domestic setting.<sup>67</sup> Public spaces where children could potentially be abused include public toilets, isolated areas, shopping centres, swimming pools, parks, playgrounds, schools and amusement arcades.<sup>68</sup> As far as child pornography is concerned, however, the Internet is the most important public space where this offence can be committed. The Internet is primarily the domain of the private sector; for this reason, a public-private sector partnership is essential, in order to prevent sexual abuse of children via the Internet. Language filters form one example of methods of situational prevention specifically aimed at the Internet. These and other forms of online prevention, often within a context of public-private partnership, will be explored further in §3.8.

In view of the fact that the circumstances within the institutional context are the most suitable for situational prevention measures,<sup>69</sup> we will examine this form of situational prevention in greater detail.

61 Meulmeester et al., 2008, p.15.

62 Meulmeester et al., 2008, p.96.

63 Meulmeester et al., 2008, p.97.

64 See §2.8 for the '*Digivaardig en Digibewust*' [Digital skills and Digital awareness] campaign.

65 Smallbone et al., 2008, p.155.

66 Smallbone et al., 2008, p.160. See also 1.4.2 regarding the distinction between preferential and situational offenders.

67 Smallbone et al., 2008, p.161.

68 Smallbone et al., 2008, p.163.

69 Smallbone et al., 2008, p.202.

### *Situational prevention within an institutional context*<sup>70</sup>

Organisations that specifically target their activities at children are classed as organisations within an institutional context. Examples of such organisations include sport clubs, children's day nurseries, schools and young offenders' prisons. Perpetrators within the institutional context<sup>71</sup> are usually volunteers or staff members of the organisation concerned.<sup>72</sup> The 'Toolkit in veilige handen' [Toolkit in safe hands] relating to prevention of sexual abuse of minors in the volunteer effort sector was developed by the Association of Dutch Voluntary Effort Organisations [Vereniging Nederlandse Organisaties Vrijwilligerswerk] in conjunction with the social development organisation Movisie, NOC\*NSF [Dutch Olympic Committee\*Dutch Sport Federation] and Scouting Nederland.<sup>73</sup> The toolkit contains a 13-step plan for making organisations safe. Many of the thirteen steps focus upon situation prevention measures, such as introducing a code of conduct, drawing up a risk analysis and creating a safe environment. The toolkit can be downloaded free of charge, and features other tools such as a model code of conduct, which explicitly makes reference to the criminalisation of child pornography.<sup>74</sup>

### *Images*

Amongst their other findings, the Gunning Committee established that, with respect to day nurseries, there were far too many opportunities for adults to be alone with children.<sup>75</sup> Further to this consideration, the Committee made a number of recommendations suitable for application within the institutional context. For example, it has proposed that day nurseries should draw up a code of conduct, in which it is stipulated that photographs shall only be edited on and distributed from the computer at the day nursery, via a secure Internet application, and that parents must provide written permission for photographs of their child to be used.<sup>76</sup> However, the Committee does not advocate the systematic use of cameras in group rooms, on the one hand because this will be less conducive to spontaneity with respect

70 Article 9 of the Lanzarote Convention calls upon the Parties to the Convention to involve the private sector and civil society in the development and implementation of policy to tackle sexual exploitation and sexual abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58; *Parliamentary Papers* 2008/09, 31 808, no.3, p.6.

71 This also includes foster care. For further information regarding sexual abuse in youth care institutions and in foster care, see the progress reports by the Samson Committee: [www.onderzoek-seksueel-kin-dermisbruik.nl/documenten/](http://www.onderzoek-seksueel-kin-dermisbruik.nl/documenten/) (viewed 22 August 2011). In its fourth public report, the Samson Committee's findings included the following: "Perpetrators of sexual abuse in the institutions are – in most cases – the professionals, and in foster families, they are the foster fathers." See Samson (2011), Fourth public report p.3.

72 Smallbone et al., 2008, p.167.

73 See the website *In veilige handen*, [www.inveilgehanden.nl](http://www.inveilgehanden.nl) (viewed 1 July 2011).

74 See the website of *Vereniging Nederlandse Organisaties Vrijwilligerswerk*, [www.nov.nl/NOV/docs/In\\_veilige\\_handen/In-veilige-handen-2/Bijlage6-InVeiligeHanden-modelgedragscode-medewerkers.pdf](http://www.nov.nl/NOV/docs/In_veilige_handen/In-veilige-handen-2/Bijlage6-InVeiligeHanden-modelgedragscode-medewerkers.pdf) (viewed 1 July 2011).

75 Gunning et al., 2011, p.11. This conclusion relates to the day nurseries in question in Amsterdam. However, the recommendations of the Gunning Committee are aimed at the childcare sector as a whole: "The task of the committee of inquiry is to investigate all facts and circumstances in relation to the question of how the (potential) abuse of children was able to take place in the day nurseries concerned and via the Internet child-minding service(s) concerned. The investigation will also focus upon childcare in general." Gunning et al., 2011, p.9.

76 Gunning et al., 2011, p.147.

to how staff and children interact with one another, and because a camera cannot cover every corner, whilst on the other hand cameras could pose an additional risk if the images fall into the wrong hands.<sup>77</sup>

#### *Four eyes principle*

One of the recommendations made by Gunning et al., concerns the tightening of the ratio of professionals to children. The Committee observed that the presence of a single adult per group posed a significant risk to the safety of children.<sup>78</sup> However, in the current system it is possible, for a few hours each day, to deviate from the rule that two professionals work with a group. The specific recommendation is that there must be two adults at all times who have the children in a group within view or within earshot.<sup>79</sup> Means of reinforcing the four eyes principle further include the removal of structural obstacles, for instance by fitting glass walls in group rooms. It should be noted in this regard that it is important to achieve an effective balance between the advantages of this type of preventative measures, and the risk of arousing unfounded suspicion in relation to physical and emotional contact between adults and children.<sup>80</sup> The Gunning Committee also recommended that a baby monitor is placed permanently in sleeping areas, even if a staff member remains with the children.<sup>81</sup>

#### *Registration system*

At the end of June 2011, the Dutch Data Protection Authority agreed to a registration system for members of volunteer organisations who had been subject to sanctions for sexually inappropriate behaviour.<sup>82</sup> The registration system enables organisations to prevent individuals from moving from one organisation to another if they are caught having committed sexual abuse. The registration forms an addition to the certificate of good conduct<sup>83</sup> in view of the fact that the system reports all individuals against whom measures have been taken, even if they have not committed any criminal offences.<sup>84</sup> The Gunning Committee also examined the possibilities for a risk register, but one specifically focused on day nurseries. Details such as dismissal from a day nursery and complaints or reports that could be connected with sexual abuse could be included in such a register,<sup>85</sup> which therefore largely corresponds with the registration system for volunteer organisations. There are some disadvantages associated with a registration system or register, however. For example, the register may contain false positives, whilst at the same time it offers no definite guarantee that every individual who poses a risk is listed in the register. Despite these disadvantages, the Committee deemed the preventative effects of such a register to be significant enough, after all, to merit their recommendation for further investigation.<sup>86</sup>

77 Gunning et al., 2011, p.148.

78 Gunning et al., 2011, p.137. See also Smallbone et al., 2008, p.169; Gallagher, 2000.

79 Gunning et al., 2011, p.143. This is also known as the 'four eyes' principle, see pp.136-137.

80 See also Smallbone et al., 2008, p.169.

81 Gunning et al., 2008, p.169.

82 For further information regarding the registration system, see the NOV website [www.nov.nl](http://www.nov.nl) (viewed 1 July 2011).

83 See 3.2.2 regarding the certificate of good conduct.

84 Participating organisations must have disciplinary regulations in place. For further information regarding the disciplinary regulations for sport clubs and volunteer organisations, see the NOV website [www.nov.nl/125503/def/](http://www.nov.nl/125503/def/) (viewed 1 July 2011).

85 See also Smallbone et al., 2008, p.206 regarding the advantages of a register of this type.

86 Gunning et al., 2011, p.146.

### 3.2.5 Public prevention measures<sup>87</sup>

Awareness-raising campaigns and education are the most important forms of primary public prevention.<sup>88</sup> Evaluations of public awareness-raising campaigns have shown that the target groups in question were already aware of the fact that sexual abuse poses a serious problem in society, but that little was known about how to define and recognise the sexual abuse of children, and what steps to take in order to reduce the risks of abuse.<sup>89</sup> Public campaigns that only serve to increase awareness of sexual abuse of children and child pornography are therefore insufficient; Smallbone et al. argue that the emphasis must be placed upon specifying the nature of the problem and upon opportunities for parents to protect their child.<sup>90</sup> If no attention is paid to these aspects in public campaigns, there is the risk that the campaign may only increase the fear of abuse instead of achieving a preventative effect. A further area for attention is the fact that awareness-raising campaigns are sometimes overshadowed by the public's exposure to media reports of severe cases of sexual abuse, which focus upon the grave details of such abuse and result in the stereotyping of perpetrators.<sup>91</sup> Such reports can give rise to anxiety, whilst the public is not given the means to protect itself from abuse.<sup>92</sup>

#### *Public health model*

In the literature, the so-called public health model is described as a framework for public prevention.<sup>93</sup> The basic principle is that sexual abuse of children is not the exclusive domain of the judicial authorities, but it must be viewed within the broader context of public health. The emphasis in this approach is placed upon primary prevention, whereby situational and behavioural risks are identified, and whereby this information is used to inform the public and draw attention to these risks.<sup>94</sup> Such an approach, from the context of public health, is not (yet) used in the Netherlands. For example, the website of the Ministry of Public Health, Welfare & Sport contains information on social issues such as abortion, domestic violence and drugs, and the Ministry of Education, Culture & Science features a web-dossier on the emancipation of homosexuals on its website, but there is no information concerning paedophilia on either of the websites. Many misconceptions exist in relation to phenomena connected with sexual abuse, such as child pornography and paedophilia. As a result of the public reactions to major abuse cases, such as those surrounding the cases of 'Robert M.' and 'Benno L.', paedophiles can end up being forced into even greater isolation<sup>95</sup>. The absence of useful

87 Article 8 of the Lanzarote Convention obliges Parties to the Convention to run public campaigns in which information and advice is provided in relation to sexual exploitation and sexual abuse of children (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58. The government implements this in the periodic public campaign within the scope of the Action Plan to tackle child abuse, which targets the general public and is geared towards both children and people who live and work around children (see §2.5.2). The information campaign *Digivaardig & Digibewust* is also mentioned, which specifically draws attention to the dangers that exist to children on the Internet and in using other modern means of communication, *Parliamentary Papers II* 2008/09, 31 808, no.3, p.6; see also §2.8.

88 Smallbone et al., 2008, p.202. For an overview of policy programmes, see Chapter 2.

89 Smallbone et al., 2008, p.203.

90 Smallbone et al., 2008, p.193.

91 Smallbone et al., 2008, p.203. See also 1.4.2 for further information regarding perpetrators.

92 Smallbone et al., 2008, p.203.

93 Center for Sex Offender Management, 2007, pp.21.22.

94 Kaufman et al., 2006, p.104.

95 Broadcast by RTL Nieuws, 1 January 2011.

information and the negative attitude of the public towards paedophilia could make the existing barriers for paedophiles to seek help even greater.<sup>96</sup> In order to overcome these obstacles and actually achieve a preventative effect, it is important that myths in relation to perpetrators of sexual abuse are dispelled, and that the public are educated as to the nature of victims and perpetrators.<sup>97</sup>

### 3.2.6 Conclusion

#### *Evidence-based prevention policy*

The two greatest challenges we face in the prevention of child pornography and the closely associated wider phenomenon of sexual abuse of children involve the translation of knowledge and expertise into evidence-based prevention policy on the one hand, and prevention at each of the three prevention levels on the other hand. It should therefore be recommended that an all-encompassing evidence-based prevention strategy must be developed, which will combine primary, secondary and tertiary prevention measures.

#### *Prevention measures concerning perpetrators*

Prevention measures in the perpetrators target group currently focus upon those who already have convictions, and far less upon prevention with respect to individuals who are at higher risk of committing a sexual offence against children for the first time, but have not yet done so. A very promising measure that (also) targets individuals who have not yet committed offences entailing production, distribution or possession of child abuse material, or sexual abuse of children, will be the introduction of the British-initiated helpline Stop it Now! in the Netherlands in 2012.

#### *Prevention measures concerning victims*

In the context of the prevention of sexual abuse of children, a great deal of emphasis is placed upon the (potential) victims. This is not entirely without contention, however. The social sciences community has expressed criticism of the fact that the responsibility for prevention of sexual abuse is placed with children,<sup>98</sup> whilst adults are the ones who should bear responsibility for children's safety.<sup>99</sup> In addition, little is known of the actual preventative effect of prevention programmes targeted at children, and many programmes pay no attention to new media and the risks that these pose to young people. All prevention projects concerned with sexual abuse must therefore expressly address the dangers associated with online behaviour, including those in relation to child pornography.

#### *Situational prevention*

As far as many perpetrators are concerned, an important reason for abusing children is that they have the opportunity to do so.<sup>100</sup> The purpose of situational prevention is to remove this opportunity or to reduce the number of opportunities. The Gunning Committee has proposed a number of measures with regard to situational prevention, which include measures to implement the four eyes principle

96 Center for Sex Offender Management, 2007b, p.21. For further information regarding perpetrators and victims, see §1.4.2 and §1.4.3.

97 Center for Sex Offender Management, 2007b, pp.21-22.

98 Smallbone et al., 2008, pp.140-142.

99 Smallbone et al., 2008, p.137.

100 Smallbone et al., 2008, p.160. See also §1.4.3 on the distinction between preferential and situational offenders.

and a registration system for staff of day nurseries. Although the Gunning Committee concerned itself exclusively with day nurseries, it could or should also be possible to apply such measures in other sectors in which people work with children.

#### Public prevention

A fourth target group that can form the focus of prevention measures is the general public. Although the general public are well aware of the phenomena of child sexual abuse and child pornography, many misconceptions exist in relation to perpetrators and victims of such offences. Moreover, detailed reporting of major abuse cases can give rise to anxiety amongst the public, whilst they are not given the means to protect themselves and their children from abuse. To this end, it could be useful to take an approach such as that of a public health model, in which sexual abuse of children is viewed within the broader context of public health. Such a model can focus upon education and the identification of risks, and it can also target perpetrators. The absence of accurate information and the attitude of the public towards paedophilia can make the existing barriers for paedophiles to seek help even greater. In order to overcome these obstacles and actually achieve a preventative effect, it is important that the public is informed of the nature of victims and perpetrators. As yet, no such approach is used in the Netherlands.

### 3.3 Identification & recording

In the previous paragraph (§3.2), we discussed the primary and secondary prevention of sexual violence against children, including child pornography. During that particular discussion, the prevention of sexual violence is focused upon up to the point at which sexual violence – offline and/or online<sup>101</sup> – actually took place. From that point onwards, it is important to prevent recidivism and revictimisation from occurring, or in other words, to ensure that tertiary prevention measures are taken, in accordance with Smallbone's prevention model.<sup>102</sup> The identification of sexual violence against children and, more specifically, child abuse material, forms a part of tertiary prevention that is strongly emphasized. After all, if sexual violence is not noticed, it is not possible to take any intervention measures in order to prevent further violence. Tertiary prevention therefore begins with recognising the indicators and further to this, reporting them to the appropriate authorities. In this section we will explain these measures with regard to the situation in the Netherlands. In this regard we will also examine the extent to which the authorities involved are 'digitally aware', 'digitally accessible' and 'digitally competent', as these all form requisites that will enable the authorities to connect with the present living environment of children/young people.<sup>103</sup> The interventions that are used – as a result of indicators being reported – in order to prevent further sexual violence will be discussed in the section on after-care and monitoring (§3.6).

This section will focus exclusively on the stage of identification within the scope of tertiary prevention of child pornography, or in a broader context, of sexual violence against children. Identification can take place with respect to perpetrators, victims and/or content, and this section is structured according to these distinctions. In §3.3.1, the identification of perpetrators will be described, and in §3.3.2 we will look at the identification of victims. Both sub-sections aim to answer the following questions:

101 See §1.2.3, Table 1.1 & Table 1.2.

102 See §3.2.1 for a description of Smallbone's prevention model.

103 Subsidy application for the Action Plan 'Towards a digital competence in the police force in their role to protect youth', *Expertgroep Digikids*, 19 August 2011. See §3.8.3.1. for further information.

- Who are the potential identifiers of perpetrators or victims?
- To what extent are the identifiers able to recognise indicators of the actions of a perpetrator or of a situation where an individual has become a victim?
- To which authorities are identifiers able to report the indicators that they have noticed?

We will then show the statistical data from the stated authorities to whom such indicators can be reported, if available. This will enable us to gain an impression of the number of reports concerning sexual violence against children/child abuse material in the Netherlands. Section §3.3.3 will examine the identification of abusive content. This type of identification does not necessarily have to take place in the immediate environment of the perpetrators and/or victims, but will in particular take place on the Internet. As a result, the range of potential locations in which child abuse material can be identified is relatively large in comparison with the numbers of perpetrators and victims. The authorities to whom identified content can be reported will also be discussed, as well as the available data. Finally, in §3.3.4 we will present the summary and conclusions with regard to the identification and registration of child abuse material in the Netherlands. For details of a number of initiatives focusing upon the identification of child abuse material that have been developed by public and private parties, please refer to §3.8.

### 3.3.1 The identification of perpetrators

We can, in any case, distinguish between two groups of individuals (apart from the police) who may function as potential identifiers of situations where acts may have been committed by perpetrators:

- The perpetrators themselves, and
- Individuals in the perpetrators' immediate environment<sup>104</sup>

To date, little or no resources have been devoted in the Netherlands towards raising awareness within society of how to recognise indicators of situations where acts (potentially) have been committed by perpetrators, and what to do in such an event. The extent to which (potential) perpetrators themselves and individuals in close proximity to perpetrators are able to recognise indicators as such is not known, nor do we know whether or how identifiers act if they suspect that acts have been committed.

#### *Where can 'perpetrator identifiers' report indicators that they have found?*

Perpetrators of sexual violence against children/child pornography who are not yet known to the authorities, or potential perpetrators who are concerned about their own thoughts and/or (future) behaviour (online)<sup>105</sup> do not yet have anyone to whom they can turn in the Netherlands.<sup>106</sup> Individuals in the United Kingdom and Ireland can contact the Stop it Now! project, as well as other initiatives. The De

<sup>104</sup> The immediate environment also refers to the online environment.

<sup>105</sup> This therefore also concerns secondary prevention in accordance with Smallbone's prevention model (see §3.2.1).

<sup>106</sup> In this context see Article 7 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58. This Article requires States to do the following: "Each Party shall ensure that persons who fear that they might commit any of the offences established in accordance with this Convention may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed." The Explanatory Memorandum states with regard to this Article that means of intervention and treatment already exist in the mainstream mental healthcare sector in the Netherlands (*Parliamentary Papers II, 2008/09*, 31 808, no.3, p.6). However, these do not seem to be sufficient and are specifically geared towards the treatment of individuals who have already committed acts of sexual violence against children (offline or online).

Waag outpatient forensic centre and the Hotline Combating Child Pornography on the Internet<sup>107</sup> are currently involved in setting up a similar project in the Netherlands.<sup>108</sup> For this reason, in section §3.3.1.1 we will focus our attention on Stop it Now! UK & Ireland, including the numbers of reports they have received.<sup>109</sup> It goes without saying that individuals in close proximity to perpetrators who notice indicators of sexual violence against children/child pornography can pass on this information to the police. In that regard, the police is therefore one of the authorities to which individuals can report indicators of situations where acts may (potentially) have been committed; furthermore, the police also identify such cases themselves. Further information relating to reports of child pornography to the police and the identification/detection of potential cases by the police can be found in §3.4.2. However, it is often the case that identifiers living or working in close proximity to perpetrators have a family connection or friendship with the perpetrator, and the act of reporting him/her to the police is a major step, which may be too difficult to take. What they *can* do, however, is report the information anonymously to *Stichting M.* [Report Crime Anonymously] and in future they can also potentially contact the Netherlands' version of Stop it Now!. We will describe *Stichting M.* [Report Crime Anonymously] and the annual numbers of reports that it receives in §3.3.1.2.

### 3.3.1.1 Stop it Now! UK & Ireland

Stop it Now! UK & Ireland<sup>110</sup> is one of the projects run by The Lucy Faithfull Foundation and was established in 2002. The activities of Stop it Now! are based upon the aforementioned prevention model of Smallbone<sup>111</sup> and these activities therefore focus upon the primary, secondary and tertiary prevention of sexual violence against children, whereby the emphasis is placed upon the secondary and tertiary prevention of the (potential) capacity to be a perpetrator. That is why we already mentioned the project in §3.2.2. As early identification<sup>112</sup> by Stop it Now! is regarded as one of the most important aspects in the prevention of first or repeated offending, we decided to discuss the project in this section instead of in the section on after-care and monitoring of perpetrators (§3.6). For adults who are concerned about

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107 The Hotline Combating Child Pornography on the Internet is also charged with handling reports of (potentially) abusive content involving children and handling reports from victims of online abuse via [Helpwanted.nl](http://Helpwanted.nl). It is therefore important that this new task will be undertaken strictly separately from its other duties, in order to prevent (the appearance of) a conflict of interests.

108 It is expected that this project will be launched in 2012. Information supplied by Hotline Combating Child Pornography on the Internet, 17 March 2011; information supplied verbally by Stop it Now!, working visit on 9 March 2011; Ministry of Security & Justice, First Progress Report on tackling child pornography, 4 March 2011; 'Toezicht nodig voor zedenplegers' [Monitoring necessary for sex offenders], *Dagblad de Pers*, 25 May 2011.

109 In applying these statistical data to the situation in the Netherlands, it should be noted that the population of the United Kingdom and Ireland in 2009 was four times as great as the population of the Netherlands (approximately 65.5 million compared with 16.5 million). Other factors such as differences in density of Internet use or availability (which influences online behaviour – and child pornography) between the countries must also be taken into account (see §1.2.3).

110 See [www.stopitnow.org.uk](http://www.stopitnow.org.uk) (viewed 8 September 2011).

111 See §3.2.1.

112 The identification of criminal acts that may potentially be committed in the future (sexual violence against children – offline or online) before it has occurred (secondary prevention) or before it is repeated (tertiary prevention).

their own or another individual's sexual thoughts and/or behaviour,<sup>113</sup> Stop it Now! also offers a free anonymous<sup>114</sup> helpline (telephone or e-mail), which provides a safe place to speak in confidence, receive advice and to make a decision as to what action must be taken.<sup>115</sup> The helpline can be contacted Monday to Thursday between 9.00 am and 9.00 pm and on Friday between 9.00 am and 7.00 pm. Stop it Now! also offers help to individuals who have contacted them, such as in the form of therapy.<sup>116</sup>

### *Croga*

Croga is a free and anonymous 'self-help website'<sup>117</sup> especially for individuals who are concerned about their own sexual behaviour online<sup>118</sup> and wish to seek help in that regard. It is a partnership between Stop it Now!, the Lucy Faithfull Foundation and two Universities<sup>119</sup> and is also funded by the EU. Croga provides information concerning child pornography on the Internet and also concerning the consequences for the perpetrator and the victim, identifies problematic online behaviour on the part of the individual who visits the site and assists the individual in changing this behaviour. The website is regarded by Stop it Now! as a very valuable tool, but one that has become very outdated. In addition to an update of the Croga website, Stop it Now! also advocates a Croga service especially for family members and friends of perpetrators.<sup>120</sup>

### *Recording of data by Stop it Now!*

Stop it Now! received more than 20,000 telephone calls between June 2002 and January 2011. In 2010 it received an average of 354 telephone calls per month – from 147 different individuals – and 111 e-mails.<sup>121</sup>

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- 113 These might be individuals who have not yet committed a criminal offence, but are concerned about their thoughts/(future)behaviour – offline or online (secondary prevention); individuals (whether or not known to the authorities) who have already committed acts of sexual violence against children – offline or online (tertiary prevention); or family members and friends of (potential) perpetrators (both secondary and tertiary prevention).
- 114 If an individual who contacts the helpline supplies personal details, Stop it Now! may involve the police, particularly if it is strongly suspected that a child is in danger.
- 115 For that matter, Finkelhor notes the following with regard to a hotline for (potential) perpetrators. The confidentiality offered to (potential) perpetrators when they contact the hotline is difficult to reconcile with the current retaliatory climate that exists within society and it is difficult to justify on ethical grounds. (Finkelhor, 2009).
- 116 Both group therapies – for example those especially for individuals who have only committed sex offences online (offences such as viewing child abuse images on the Internet and grooming without intending to actually meet the minor) or especially for family members and friends of perpetrators – and therapy on an individual basis.
- 117 See [www.croga.org](http://www.croga.org) (viewed 8 September 2011). The website is currently available in English, Spanish, Italian and Polish. A translation into Finnish is also underway.
- 118 This concerns behaviour such as viewing child abuse material on the Internet or grooming or the need to do so.
- 119 University College Cork, Ireland and Universidad de Almeria, Spain.
- 120 Information supplied verbally by Stop it Now!, working visit on 9 March 2011. In Belgium, a website is available for parents, children or partners of sex offenders, see [www.familievan.be](http://www.familievan.be) (viewed 8 September 2011).
- 121 Information supplied verbally by Stop it Now!, working visit on 9 March 2011.

Table 3.1 shows how many different people contacted the Stop it Now! helpline in the period of June 2005 to November 2009 inclusive (4.5 years). It also shows the reasons why individuals contacted the helpline.

**Table 3.1 Number of individuals who contacted the Stop it Now! helpline (June 2005 to November 2009 inclusive)**

Reason for contacting Stop it Now!	Numbers of different individuals		
	N	% (of sub-category)	% (of total)
Adult calling on his/her own behalf	1.960 <sup>122</sup>	100%	35%
- Sexual offence committed offline	436	22%	
- Concern regarding thoughts offline	368	19%	
- Sexual offence committed online	1.080	55%	
- Concern regarding behaviour online	76	4%	
Adult calling with regard to another adult	1.497 <sup>124</sup>	100%	27%
- Partner of individual concerned	≈466 <sup>125</sup>	31% (35% <sup>126</sup> )	
- Parent or step-parent of individual concerned	≈240	16% (18%)	
- Ex-partner of individual concerned	≈120	8% (9%)	
- Child of individual concerned	≈107	7% (8%)	
- Friend of individual concerned	≈107	7% (8%)	
- Brother or sister, or brother/sister-in-law or step-brother/ sister of individual concerned	≈93	6% (7%)	
- Other relationship to the individual concerned <sup>123</sup>	≈200	13% (15%)	
- Relationship to individual concerned unknown	165	11%	
Adult calling with regard to a minor	311 <sup>127</sup>	100%	6%
Miscellaneous <sup>128</sup>	1.866 <sup>129</sup>	100%	33%
<b>Total</b>	5.634 <sup>130</sup>	N/A	100%

Source: Stop it Now!, 2010

- 122 They contacted the helpline on 6,043 occasions in total, which equates to 50% of 11,975 – the total number of telephone calls (including e-mails) in the period June 2005 to November 2009 inclusive.
- 123 Including: acquaintances, other family members, neighbours and colleagues of the individual concerned or strangers.
- 124 They contacted the helpline on 3,013 occasions in total, which equates to 25% of 11,975.
- 125 The Helpline report does not state absolute numbers. The absolute numbers have been calculated on the basis of the given percentages and for this reason the figures provided here concern estimates instead of exact numbers.
- 126 This percentage is stated in the Helpline Report, however, we have taken 1,332 to be 100% here, i.e. exclusive of the 'unknown' category.
- 127 They contacted the helpline on 533 occasions in total, which equates to 4% of 11,975.
- 128 Including: adults who are concerned about a (potential) victim, professionals, victims who have since become adults, individuals who require general information and children.
- 129 They contacted the helpline on 2,386 occasions in total, which equates to 20% of 11,975.
- 130 They contacted the helpline on 11,975 occasions in total.

Over the total period of 4.5 years, 5,634 different people contacted the Stop it Now! helpline 11,975 times. Thirty-five percent of individuals contacted the helpline due to concerns about their own thoughts or behaviour, offline or online. This figure concerns men in particular (98%), who contacted the helpline three times on average.<sup>131</sup> They account for half (50%) of all calls and e-mails to Stop it Now!. The majority of (potential) offline perpetrators had not yet been arrested or come into contact with the authorities.<sup>132</sup> The reverse was true in the case of (potential) online perpetrators.<sup>133</sup> Twenty-seven percent of individuals contacted the helpline due to concerns about the behaviour of another adult. This group largely consisted of women (80%)<sup>134</sup> who usually were partners, family members or friends of the individual concerned. These individuals accounted for 25% of all contact made to Stop it Now! Only 6% of individuals contacted the helpline due to concerns about the behaviour of a minor,<sup>135</sup> which represents 4% of all contact with the helpline. The majority of this group consisted of parents of the child concerned, of which 79% were women. The minors concerned were usually boys, amongst whom the age group of 13-15 years old is the most represented.<sup>136</sup>

The number of different individuals who have contacted Stop it Now! has increased over the years<sup>137</sup> and the number of adult individuals who have contacted the helpline due to concerns about themselves has even doubled in the time span shown. Online behaviour – particularly child abuse material and grooming – also plays an increasingly significant role within this group.<sup>138</sup> Whenever Stop it Now! or the subject of sexual violence against children features in the media, the number of telephone calls to the helpline increases markedly for some time. This suggests that if there were greater and continuous publicity, the helpline of Stop it Now! would even be used much more often than at present.<sup>139</sup>

### 3.3.1.2 *Stichting M. [Report Crime Anonymously]*<sup>140</sup>

*Stichting M.* [hereafter: Report Crime Anonymously] is an independent foundation that aims to involve citizens in tackling crime. It receives financial support from parties including the Ministry of Security and Justice, the Ministry of the Interior and Kingdom Relations, the Dutch Association of Insurers and the Board of Chief Officers of Police. Report Crime Anonymously provides a free hotline (0800-7000) on which, by calling the hotline, individuals can provide information anonymously

131 Stop it Now!, 2010, p.17.

132 Stop it Now!, 2010, p.17.

133 The police and the probation service are making an increasing number of referrals to Stop it Now! (Stop it Now!, 2010).

134 Stop it Now!, 2010, p.26.

135 In the sense of the child as a perpetrator. The helpline is not intended for victims – they are referred to other organisations.

136 Stop it Now!, 2010, p.17.

137 From around 275 individuals (contacting the helpline on around 410 occasions) in the period June to August 2005 inclusive to around 425 individuals (contacting the helpline on around 970 occasions) in the period September to November 2009 inclusive. Stop it Now!, 2010, pp.12-13.

138 From around 75 calls/e-mails in the period June to August 2005 inclusive to around 390 calls/e-mails in the period September to November 2009 inclusive (Stop it Now!, 2010, p.21).

139 Information supplied verbally by Stop it Now!, working visit on 9 March 2011; Stop it Now!, 2010, p.17.

140 See [www.meldmisdadanoniem.nl](http://www.meldmisdadanoniem.nl) (viewed 8 September 2011).

(in Dutch, English or German) about crimes, including child pornography. The hotline can be contacted Monday to Friday between 8.00 am and 12.00 am and at the weekend and on public holidays between 10.00 am and 6.00 pm. The reports are forwarded by Report Crime Anonymously to partners in the public and private sector, such as the police. The reported information can be investigated by these partners and on average, action (including arrests) can ultimately be taken in one in every nine cases.<sup>141</sup>

#### Recording of data by Report Crime Anonymously

Table 3.2 shows the number of reports concerning child pornography received by Report Crime Anonymously for the years 2009 and 2010. These concern 'addressable' reports that have been sent to the police forces by the foundation.

**Table 3.2** Number of reports of child pornography to Report Crime Anonymously (2009-2010)

	2009	2010
N	44	55

Source: Stichting M. (information supplied at the request of BNRM)

In 2009, 44 reports of child pornography were made anonymously. This therefore equates to an average of three to four reports per month<sup>142</sup> and this trend continued up to and including November 2010. In December 2010, the foundation in fact received as many as 18 anonymous reports. The total number of reports in 2010 therefore rose by more 25% compared with 2009 (N=55<sup>143</sup> compared with N=44). This sudden increase can be explained as being the result of media reporting of the Amsterdam sexual abuse case. Further to this case, *Report Crime Anonymously* received far more reports than usual of sexual violence against children and child pornography. Unfortunately, it is not known whether any follow-up action was taken with regard to the reports of child pornography that were forwarded onwards by *Report Crime Anonymously*. There is therefore still potential for the police to increase the amount of feedback that they provide to *Report Crime Anonymously*. Feedback was only received in relation to three cases out of all reports of child pornography that were forwarded in 2009 and 2010 (N=99).

### 3.3.2 The identification of victims

We can distinguish between three groups of individuals who could act as potential identifiers:

- Victims themselves
- Individuals from the personal environment of the victims (personal circle of family, friends, neighbours)
- Professionals working in close proximity to victims

The Netherlands government has made efforts to increase awareness amongst the latter two groups with regard to identifying children who have been victims and how to act after having identified them.

<sup>141</sup> Based on feedback in 31% of cases.

<sup>142</sup> Range: one report in April 2009 and seven reports in July 2009.

<sup>143</sup> Range: zero reports in August 2010 and 18 reports in December 2010.

*The identification of children who have been victims by individuals in victims' personal environment*<sup>144</sup>

In this context, the public campaign 'Kindermishandeling, wat kan ik doen?' [Child abuse: what can I do?] is worth mentioning. This campaign was launched in 2009 by the Ministry for Youth and Family and is currently being run by the Ministry of Health, Welfare and Sport. The campaign is geared towards helping people recognise the signs of child abuse (including the sexual abuse of children), using means such as the online indicator identification test, which was launched on 20 June 2011.<sup>145</sup> The campaign also focuses upon what action to take after identification, whereby the most obvious course of action is to contact a Child Abuse Counselling and Reporting Centre (AMK). However, with regard to this public campaign, Unicef argues that there are still too many instances in which child abuse is not noticed.<sup>146</sup> As a result of the campaign, the Netherlands Government Information Service [Rijksvoorlichtingsdienst]/ Public Relations and Communications Service [Dienst Publiek en Communicatie] commissioned a study into the likelihood and manner of reports made by persons in close proximity to the potential victims or perpetrators of child abuse (not professionals).

*The building blocks for the 'Kindermishandeling' campaign*<sup>147</sup>

Between April and May 2010, Motiveaction conducted research – within the scope of the 'Kindermishandeling, wat kan ik doen?' campaign – into the issue of why so few suspicions of child abuse are reported, and into the areas in which the most significant doubts and uncertainties lie in this regard. The research specifically focused upon persons in close proximity to potential victims of child abuse who are not professionals. The final random sample consisted of 831 members of Stempunt.nu between 16 and 70 years of age who had completed a questionnaire online. Amongst other findings, it emerged from the research that practically all those in close proximity to potential victims would take action if they suspected child abuse.<sup>148</sup> The interests of the child and the sense of duty to take action constitute important factors in such a case. However, many respondents stated that they would only take action if they were certain that child abuse had taken place, even though in more than half of cases in which child abuse was suspected it eventually turned out that it had indeed taken place.<sup>149</sup> The respondents were generally quite familiar with some of the indicators of child abuse, but by no means with them all. For example, only 42% of respondents counted sexually provocative behaviour by a child as potential indicators of child abuse. The respondents were not particularly aware of who they could contact to report the signs of child abuse that they

144 In this context, see Article 8 of the Lanzarote Convention. This Article requires States to take the following action: "Each Party shall promote or conduct awareness raising campaigns addressed to the general public providing information on the phenomenon of sexual exploitation and sexual abuse of children and on the preventive measures which can be taken."

145 *Site wijst op kindermishandeling* [Website helps to indicate child abuse] Spits, 21 June 2011.

146 Unicef Netherlands & Defence for Children, 2011, p.23.

147 Motiveaction, 2010.

148 Only 1% indicated that they would take no action. This group increases to 6% when only the more passive course of action 'keeping an eye on the situation' is placed under the 'no action' category. NB. It is conceivable that social desirability forms a factor in answering this question.

149 18% (N=150) of the total 831 respondents have once had suspicions that a child had been abused. In 57% of cases (N=86), this suspicion ultimately proved to be correct, according to their own statements. The suspicion was only proved wrong in 6% (N=9) of cases and in 30% (N=45) of cases it never became clear as to whether or not the suspicion was well-founded.

had observed. Of the 679 respondents who did have (something of) an idea as to what they could do, only 20% (N=136) cited the AMK.

*The identification of children who have been victims by professionals in close proximity to victims*<sup>150</sup>

A variety of means exist to assist professionals in recognising indicators of victimisation, and the Flags system is one example of these. The list of sexual behaviours enables professionals (and parents) to identify sexual behaviour exhibited by a minor as healthy or in fact inappropriate.<sup>151</sup> In addition, groups of professionals who may be able to spot indicators of child abuse, including sexual abuse of children, often work with a reporting code<sup>152</sup> or a protocol derived from such guidelines.<sup>153, 154</sup> Child Abuse Counselling and Reporting Centres are also listed as the most important authorities to contact once indicators of abuse have been identified. It is claimed that research has shown that (health/social) care workers and teachers who work with a reporting code are three times as likely to intervene as colleagues who do not have such a code available.<sup>155, 156</sup> It is expected that the Dutch Domestic Violence and Child Abuse Reporting Code (Compulsory Use) Act [*Wet verplichte meldcode huiselijk geweld en kindermishandeling*] will enter into force shortly.

150 In this context see Article 5 of the Lanzarote Convention. This Article requires states to take the following action: “1. Each Party shall take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities” and “Each Party shall take the necessary legislative or other measures to ensure that the persons referred to in paragraph 1 have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility mentioned in Article 12, paragraph 1.” The Explanatory Memorandum states with regard to this Article that promoting expertise on the part of professionals and volunteers who work with children forms a specific area of attention as part of the RAAK strategy (within the scope of Action Plan to tackle Child Abuse) (*Parliamentary Papers II*, 2008/09, 31 808, no.3, p.6). For further information regarding the RAAK strategy, see §2.5.2.

151 Movisie, 2011.

152 For several examples, see publications by the Ministry of Public Health, Welfare and Sport, 2009; KNMG, 2008.

153 For example: the Schools and Safety House [*Centrum School en Veiligheid*] refers to the Child Abuse Protocol for all professionals who work with children up to 19 years of age and/or their parents (Youth Care Agency Conurbation of Amsterdam, Amsterdam Child Abuse Counselling and Reporting Centre, Noord-Holland Youth Care Agency, Noord-Holland Child Abuse Counselling and Reporting Centre, 2010).

154 Partly as a result of the RAAK programme and the RAK strategy. For further information regarding these strategies, see §2.5.2.

155 Unicef & Defence for Children, 2011, p.23.

156 One of the provisional conclusions of the Samson Committee is that when children reported what had happened to them (sexual abuse), no action was taken further to the indications given by the child, in two thirds of the cases. It is claimed that this situation has not actually improved over the years. This observation will be examined in greater detail in academic sub-studies, which will explicitly study how government authorities have responded to signs of sexual abuse (see the fourth public report of the Samson Committee, available at: [www.onderzoek-seksueel-kindermisbruik.nl/documenten/openbareberichten/](http://www.onderzoek-seksueel-kindermisbruik.nl/documenten/openbareberichten/) (viewed 8 September 2011).

*Dutch Domestic Violence and Child Abuse Reporting Code (Compulsory Use) Act*

A legislative proposal<sup>157</sup> is currently under consideration in which professionals working in the sectors concerned with healthcare, care for the elderly, care for the disabled, youth care, social support, education, and childcare, as well as in the judicial sector, are required to work in accordance with a reporting code whenever they encounter indicators of domestic violence or child abuse (including sexual violence) in the course of their work.<sup>158</sup> The reporting code consists of a step-by-step plan that outlines the best course of action for a professional in the event that he/she suspects domestic violence or child abuse. In the basic model of the domestic violence and child abuse reporting code, the second step involves consultation with colleagues and consulting the AMK if minors are concerned. Ultimately, if the professional him/herself is unable to provide sufficient protection, he/she should report the minor to the AMK.<sup>159</sup> This compulsory reporting code therefore does not make it mandatory for professionals to report issues. Professionals are not required to report indicators to an AMK but they are required to follow a step-by-step plan, as part of which they are able to assess themselves whether it is necessary to report the issue to the AMK. Professionals who are normally bound by professional confidentiality (such as paediatricians/doctors etc.) are entitled to report their observations however,<sup>160</sup> which enables doctors to supply information to the Youth Care Agency (particularly the AMK) without the consent of the individual concerned “if this can be considered necessary in order to put an end to a child abuse situation or to investigate a reasonable suspicion of child abuse”.<sup>161</sup>

If a professional suspects that child abuse, including sexual violence, has taken place, he/she must also consider whether to file a report in the reference index of young people at risk (VIR), as well as acting in accordance with a reporting code or protocol. By registering a child in the VIR, different indicators can be gathered in one place and follow-up actions can be coordinated. Registration in the VIR therefore forms part of the Basic model of the domestic violence and child abuse reporting code, and the Gunning Committee has also recommended that it should be used more often.<sup>162</sup>

157 See [www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/hulp-bieden/toolkit-meldcode](http://www.rijksoverheid.nl/onderwerpen/huiselijk-geweld/hulp-bieden/toolkit-meldcode) (viewed 8 September 2011): “This concerns the proposed policy. It is expected that the Domestic Violence and Child Abuse Reporting Code Act will enter into force at the beginning of 2012. Its entry into force is subject to approval by the Lower and Upper Houses of Dutch Parliament and publication in the Dutch Bulletin of Acts and Decrees.”

158 It should be noted that the Dutch Data Protection Authority (CBP) has expressed criticism concerning the draft legislative proposal. The CBP generally subscribes to the decisions made in the legislative bill with regard to how tools are used, but it objects on the requisite legal grounds to provisions in the legislative bill that concern the processing of personal data and the rights of individuals concerned. For details of the objections of the CBP, see [www.cbpreweb.nl/Pages/adv\\_z2011-00174.aspx](http://www.cbpreweb.nl/Pages/adv_z2011-00174.aspx) (viewed 8 September 2011).

159 Ministry of Public Health, Welfare and Sport, 2009. Incidentally, domestic violence and/or child abuse perpetrated by professionals lie beyond the scope of the basic model. The Gunning Committee (quoted in §3.2.3 and §3.2.4 amongst others) is investigating this issue in detail, however.

160 See Article 53, paragraph 3 of the Dutch Youth Care Act [*Wet op de Jeugdzorg*].

161 KNMG, 2008.

162 Gunning et al., 2011, p.150.

### Reference index of young people at risk (VIR)

Chapter 1a: National reference index [Landelijke verwijzindex] was added to the Dutch Youth Care Act with effect from 1 August 2010. The reference index of young people at risk (VIR) is an electronic system that brings together, in one place, reports of risk indicators received from care workers with respect to young people of up to 23 years of age.<sup>163</sup> The use of the reference index is a contributing factor in achieving more effective collaboration between care workers and municipalities.<sup>164</sup> The VIR is a risk identification tool. There must, therefore, be indications that a genuine issue exists, before professionals decide to file a report to the reference index.<sup>165</sup> The text of the Act is formulated as follows: *“An individual authorised to report issues may report a juvenile to the reference index without the consent of the juvenile or his/her legal representative, and if necessary, may breach the duty to confidentiality that applies by virtue of his/her position or profession, in the event that he/she reasonably suspects that as a result of one or more of the risks<sup>166</sup> listed below, the healthy and safe development of the juvenile into adulthood is actually under threat.”<sup>167</sup>*

At this point, we will look at some of the conclusions of Unicef and a number of independent committees of inquiry with regard to the aforementioned identification of victims by professionals.

With regard to the identification of victims by professionals:

- *“In order to improve awareness and identification amongst professionals, their training must systematically devote attention to the ways in which child abuse can be identified.”<sup>168</sup>*
- The Samson Committee<sup>169</sup> concluded for now<sup>170</sup> that: *“intensive training is required to enable care workers to recognise the indicators of sexual abuse”.*<sup>171</sup>
- The Gunning Committee<sup>172</sup> stated the following: *“The Committee concluded that staff of day nurseries often fail to recognise the signs or do not take the appropriate action. The same is also true of parents and others in the child’s network, and this also applies in equal measure to general practitioners and other care authorities.”<sup>173</sup>*

163 See [www.rijksoverheid.nl/nieuws/2010/07/09/verwijzindex-voor-risicojongeren.html](http://www.rijksoverheid.nl/nieuws/2010/07/09/verwijzindex-voor-risicojongeren.html) (viewed 8 September 2011).

164 *Wet Verwijzindex risicojongeren van kracht op 1 augustus 2010* [Reference Index (Young People at Risk) Act enters into force on 1 August 2010], [rijksoverheid.nl](http://rijksoverheid.nl), 9 July 2010, available at: [www.rijksoverheid.nl/nieuws/2010/07/09/verwijzindex-voor-risicojongeren.html](http://www.rijksoverheid.nl/nieuws/2010/07/09/verwijzindex-voor-risicojongeren.html) (viewed 8 September 2011).

165 A guide for professionals is available for this purpose, available at [www.meldcriteria.nl](http://www.meldcriteria.nl) (viewed 8 September 2011).

166 Such as child abuse, including sexual violence against the juvenile.

167 Article 2j of the Dutch Youth Care Act.

168 Unicef & Defence for Children, 2011, p.23.

169 The Samson Committee is currently investigating the sexual abuse of minors who have been placed under the responsibility of the government in institutions or with foster families, for further information, see [www.onderzoek-seksueel-kindermisbruik.nl](http://www.onderzoek-seksueel-kindermisbruik.nl) (viewed 8 September 2011).

170 The definitive findings of the investigation are expected to be published in mid-2012.

171 *Misbruik jeugd slecht herkend* [Child abuse is frequently left unrecognised], De Telegraaf, 20 June 2011.

172 The Gunning Committee conducted investigations into the Amsterdam sexual abuse case.

173 Gunning et al., 2011, p.137.

With regard to taking action once victims have been identified by professionals:

- *“It is imperative that all groups of professionals who work with children are aware of their responsibility to identify child abuse and to act immediately if they suspect that child abuse has taken place”. [...] “It is important that every group of professionals who work with children should have a reporting code available to them as soon as possible”.*<sup>174</sup>
- In this context, the Gunning Committee recommended the following: *“If sexual abuse of children, within or outside of the day nursery, is suspected, this must result in contact with the authorities that possess expertise in this area. The AMK is the most obvious one. The Committee does not advocate an obligation to report issues, but rather a duty to consult the AMK for advice.”*<sup>175</sup>

To summarise: significant steps have already been taken with regard to the identification of victimisation resulting from sexual violence against children, and with regard to the appropriate action taken subsequently by persons in close proximity to potential victims, both in the child’s personal sphere and in a professional capacity. However, it is important that these actions are continued, and that the programme of measures is developed further. Unicef has also made the following conclusion: *“Prevention of child abuse can only be achieved if the government, experts and professionals involved take an active position, and if society as a whole adopts a vigilant attitude.”*<sup>176</sup> It should be noted in this regard that sexual violence against children is increasingly related to ICT, so it is important that those living and working in close proximity to children also take account of potential indicators of victimisation in the digital world.<sup>177</sup>

#### *Where can ‘identifiers of victims’ report the indicators they have observed?*

Victims of sexual violence against children/child pornography can contact organisations such as *Kindertelefoon* (§3.3.2.1), anonymously if desired, and *Helpwanted.nl* (§3.3.2.2) specifically in the case of online abuse. At the time of writing, the *Digivaardig & Digibewust* programme (ECP-EPN) is involved in developing an online ‘reporting button’ for victims of online abuse in conjunction with organisations including the Hotline Combating Child Pornography on the Internet and the *Kindertelefoon*.<sup>178</sup> Further information can be found in the sub-section on *Helpwanted.nl*. Individuals in close proximity to victims, both in the personal sphere and in a professional capacity, who observe indicators of sexual violence against children/child pornography can contact a variety of organisations. The Child Abuse Counselling and Reporting Centre (AMKs) is the most obvious port of call.<sup>179</sup> We will therefore look at this organisation in detail in §3.3.2.3. The three aforementioned authorities (*Kindertelefoon*, *Helpwanted.nl* and the AMKs) record the reports that they receive concerning indicators of, amongst other things, sexual vio-

174 Unicef & Defence for Children, 2011, p.23.

175 Gunning et al., 2011, p.138.

176 Unicef & Defence for Children, 2011, p.23.

177 Nyman, 2008.

178 Ministry of Security and Justice, First Progress Report 2011 on tackling child pornography, 4 March 2011; Hotline Combating Child Pornography on the Internet, 2011; information supplied verbally by ECP-EPN, 16 May 2011; *Digivaardig & Digibewust* programme (information received in writing at the request of BNRM, 17 June 2011).

179 Indicators can also be reported to (or noted by) other authorities, such as the Youth Care Agencies. In some cases, these authorities subsequently report such indicators to an AMK, but this is certainly not always the case.

lence against children. We will examine the extent to which attention is also paid to child abuse material in later sub-sections.

### 3.3.2.1 The Kindertelefoon service<sup>180</sup>

The *Kindertelefoon* service was established in 1979 and forms part of the Youth Care Agency. It is an organisation that offers children between the ages of eight and eighteen someone to contact free of charge by telephone<sup>181</sup> or via the chatroom/MSN, in order to talk – anonymously, if so desired – about issues and problems, including sexual violence. The *Kindertelefoon* service currently has 18 branches in the Netherlands, and is staffed by volunteers who have all followed the same course of training at the *Kindertelefoon* Academy. The service can be contacted 365 days a year from 2.00 pm to 8.00 pm, and provides children with information or advice, or offers support. In 2008, *Kindertelefoon* began an active policy of referrals to the Youth Care Agency whenever a child is at risk and consents to the referral.<sup>182</sup>

#### *Recording of data by Kindertelefoon*

In 2009, *Kindertelefoon* received 298,537 calls, held 115,271 chat sessions and its website<sup>183</sup> was viewed 1,721,751 times. Of all telephone and chatroom conversations, 141,112 were deemed serious,<sup>184</sup> which equates to just 34% of the total number of conversations. Girls contact *Kindertelefoon* more frequently than boys<sup>185</sup> and the age group twelve up to and including fifteen years is the most represented. Eight percent of all children who were genuine callers to *Kindertelefoon* talked about ‘violence’ and this mainly involves physical abuse, but sexual violence also falls into this category. Information about child pornography is not available.

The *Kindertelefoon* service is a member of Child Helpline International (CHI), the international network of child helplines. The publications of the CHI in 2010 included Violence against children: Fourth Child Helpline International Report, which provided information concerning all cases of abuse and violence<sup>186</sup> that were reported by children to 62 helplines (57% of all CHI members, including *Kindertelefoon* in the

180 Landelijk Bureau Kindertelefoon [National Office of Kindertelefoon], 2010.

181 Since 2009, it has been possible to call free of charge using a mobile telephone, which resulted in a substantial increase in the number of calls (unfortunately the number of ‘non-serious’ calls also increased).

182 “Children and young people who find themselves at risk and contact the Kindertelefoon service are carefully transferred to a member of staff of the Youth Care Agency by means of a group call. This may only take place once the child has provided his/her consent to this and waives his/her anonymity. A professional care worker at the Youth Care Agency takes over the conversation and the child is given help straight away, in order to ensure safety.” (National Office of Kindertelefoon, 2010).

183 See [www.kindertelefoon.nl](http://www.kindertelefoon.nl) (viewed 8 September 2011).

184 82,184 telephone conversations and 58,928 chatroom conversations. It is regularly the case that people call or chat for ‘non-serious’ purposes, these are in particular ‘silent calls’ (potentially children who are afraid to talk), test calls or are in fact ‘non-serious’ conversations.

185 The ratio of girls to boys is approximately 2:1 in telephone conversations and 3:1 in chat conversations.

186 This can be divided into physical abuse, harassment, sexual abuse, emotional abuse, neglect and physical punishment.

Netherlands) in 2009. Information about reports of online abuse<sup>187</sup> was also gathered from 13 helplines, including *Kindertelefoon* in the Netherlands. Table 3.3 shows a selection of relevant figures taken from the aforementioned research by CHI.

**Table 3.3 Reports of abuse and violence and online abuse**

	62 helplines		13 helplines		Kindertelefoon	Of contact made to Kindertelefoon		Of contact made to helplines
	N	%	N	%		N	%	%
<b>Abuse and violence</b>	250.484	100%	N/A	N/A	26.580 <sup>188</sup>	100%		11%
<b>Sexual abuse</b>	39.513	16%	N/A	N/A	4.958	19%		13%
<b>Online abuse</b>	N/A	N/A	2.255	100%	298	100%		13%

Source: Child Helpline International, 2010 and additional information supplied by CHI at the request of BNRM

In 2009, 4958 cases of sexual abuse were reported to *Kindertelefoon*, which equates to 19% of all reports relating to abuse and violence that are sent to the organisation. Unfortunately there is no information available with regard to child abuse material in the reports of sexual abuse. The 298 reports of online abuse sent to *Kindertelefoon* all relate to online harassment.

Table 3.4 shows the gender and age distribution of the children who reported incidences of sexual abuse to *Kindertelefoon* in 2009.

187 This can be divided into online harassment, harmful sexual content, harmful violent content, other harmful content, contact with sexual ‘predators’, online coercion to do something, requests for information relating to online abuse and other issues related to online abuse.

188 When this figure is compared with the Annual Report 2009 of *Kindertelefoon* (National Office of Kindertelefoon, 2010), the following striking finding emerges. According to the annual report, 141,112 serious reports were made, of which 8.1% related to sexual abuse and 12.2% related to harassment. This would equate to approximately 28,646 reports, which is likely to include the 298 cases of online harassment. If we take these away, we end up with 28,348 reports of abuse and violence in accordance with the definition from the Violence against children report (Child Helpline International, 2010), whilst according to this research 26,850 children have reported these incidents to *Kindertelefoon*. This difference can probably be explained by the fact that some children report both sexual abuse and harassment. These children are counted in both the ‘violence’ and ‘harassment’ categories in the annual report of *Kindertelefoon* (National Office of Kindertelefoon, 2010), whilst they are only included once in the ‘abuse and violence’ category in the Violence against children report (Child Helpline International, 2010).

Table 3.4 Reports of sexual abuse to the Kindertelefoon service by gender and age

	Male	Female	Unknown	Total	
	N	N	N	N	%
0-6 years	0	0	0	0	-
7-9 years	17	54	1	72	1%
10-12 years	155	746	50	951	19%
13-15 years	427	2.513	125	3.065	62%
16-17 years	194	494	18	706	14%
18+	40	71	2	113	2%
Unknown	10	36	5	51	1%
<b>Total N</b>	843	3.914	201	4.958	
<b>Total %</b>	17%	79%	4%		100%

Source: Child Helpline International, 2010 and additional information supplied by CHI at the request of BNRM

Reports of sexual abuse are received by *Kindertelefoon* more frequently from girls than is the case with regard to other problems that are reported (the ratio of girls to boys is approximately 4:1 in this case). The greatest number of cases are found in the age group 13-15 years, just as is the case for other issues. A fifth of reports come from children below that age.

### 3.3.2.2 Helpwanted.nl<sup>189</sup>

In mid-2007, [Helpwanted.nl](http://Helpwanted.nl) was set up as part of Hotline Combating Child Pornography on the Internet as a result of the considerable number of reports that the Hotline received from young people. These reports related to sexual abuse on social profile sites and via chat rooms and the webcam. [Helpwanted.nl](http://Helpwanted.nl) enables young people between the ages of twelve and eighteen years to report online sexual abuse using a report form and to do so anonymously if they wish. They can also ask questions directly by e-mail or during a chat session.<sup>190</sup> [Helpwanted.nl](http://Helpwanted.nl) also provides information on the safe use of the Internet, and provides the names of care agencies that children and young people (and parents) can contact if they are harassed on the Internet. The website therefore not only has the role of identifying issues but also has an informative role (primary and/or secondary prevention).

#### *Recording of data by Helpwanted.nl*

Table 3.5 shows the number of reports<sup>191</sup> to [Helpwanted.nl](http://Helpwanted.nl) for the years 2008 to 2010 inclusive.

189 *Meldpunt Kinderporno op Internet*, 2009, 2010a, 2011.

190 This six-month pilot scheme was started at the end of 2010. The chatroom facility has since been extended and it is possible to chat Monday to Friday from 2.00 pm to 6.00 pm. [Helpwanted.nl](http://Helpwanted.nl) is also regularly involved in virtual worlds (such as [GoSuperModel.nl](http://GoSuperModel.nl) and once per week in Habbo).

191 These figures only include reports made using the report form on the website.

**Table 3.5** Number of reports to [Helpwanted.nl](#)

	2008	2009	2010	Total
<b>N</b>	255	171	327	753

Source: *Meldpunt Kinderporno op Internet, 2009, 2010a, 2011* (Annual Reports 2008 to 2010 inclusive)

In 2008, the campaign ‘*Cyberlokkers laten niet los*’ [Cyber-predators do not give up] generated a great deal of publicity for [Helpwanted.nl](#). Several campaigns were also run in 2010 and the effects are clearly evident in the figures.

Not all reports that are received by [Helpwanted.nl](#) (exclusively) relate to online sexual abuse.<sup>192</sup>

- In 2008, 47% of all reports involved online sexual abuse and 5% involved encountering child abuse material.
- In 2009, 43% of all reports involved sexual abuse via a chat facility and 10% involved encountering child abuse material.
- In 2010, 25% of all reports involved webcam-based abuse and 2% involved encountering child abuse material.<sup>193</sup>

#### *Online Reporting button for young people*

European Commissioner Neelie Kroes advocates the use of a virtual emergency button for young people. In the Netherlands this measure is currently under development.

#### *Online reporting button<sup>194</sup>*

The initiators of the online reporting button in the Netherlands are the Hotline Combating Child Pornography on the Internet and the *Digivaardig & Digibewust* programme.<sup>195</sup> Various organisations are currently working on the development of the online reporting button.<sup>196</sup> There are a variety of organisations in the Netherlands to which young people can report issues on the Internet and which provide help to them. In order to ensure visibility whilst at the same time preventing fragmentation, a variety of bodies are joining forces to produce a jointly-run online portal for young people who experience issues on the Internet and need help to overcome them. The national online reporting button

192 Some examples of other types of reports: cyber-harassment, infringement of an individual’s right to control use of the image of him/her, hacking and so forth.

193 The decrease in these relative figures is in particular a result of the substantial increase in the number of reports purely concerning cyber-harassment in this year.

194 *Digivaardig & Digibewust* programme (information supplied in writing at the request of BNRM, 17 June 2011).

195 They jointly form the national Awareness Center in the Netherlands, which is partly subsidised by the European Safe Internet Programme run by European Commissioner Kroes.

196 *Meldpunt Kinderporno op Internet*, [Pestweb.nl](#), *Meldpunt Discriminatie*, the police (with [vraaghetdepolitie.nl](#), the online information source for young people) and *Kindertelefoon*. Other parties such as [Hyves.nl](#), [Habbo.nl](#), [gosupermodels.nl](#) and Microsoft (Windows Live Messenger) are also involved. The organisations aim to involve possible other relevant parties in this initiative, such as reporting centres, care agencies or online platforms for young people.

provides a central entry point that enables young people to seek specific help. The parties involved hope to be able to launch a basic version of the online reporting button in the autumn of 2011. This button can be downloaded as an application and is suitable for the major Internet browsers. Whenever a young person clicks on the reporting button he/she is taken to a website where he/she can submit a specific request for help and be referred to a care agency, which can be contacted (usually anonymously) by telephone, e-mail or chat facility (depending on the service provided by the body concerned).<sup>197</sup> The basic version will then be gradually developed further. A reporting button will also be developed that websites can embed into their own content. This will enable young people to click directly on the reporting button whenever they visit a website in order to call for help with their issue.

### 3.3.2.3 Child Abuse Counselling and Reporting Centre<sup>198</sup>

There are 21 Child Abuse Counselling and Reporting Centres (AMKs) in the Netherlands that form a point of contact of the Youth Care Agencies. Anyone who knows of or suspects an incidence of child abuse,<sup>199</sup> including sexual violence, may contact an AMK. The AMK can provide advice that may be followed by a consultation, or it can launch an investigation. In the case of the former, the individual who has contacted the AMK remains responsible for taking further action. If the AMK launches an investigation, a notification report is deemed to have been made, and the responsibility lies with the AMK. If it emerges from the investigation by the AMK that child abuse has taken place, the AMK will ensure that the necessary assistance and protection is provided. Reports of child abuse to the AMK are most frequently (and increasingly) sent by professionals working in close proximity to minors<sup>200</sup> (such as educational institutions, doctors, hospitals, youth healthcare institutions, the police<sup>201</sup> and so forth).

#### *Recording of data by the Child Abuse Counselling and Reporting Centres*

In 2009, the AMKs dispensed advice in relation to sexual abuse<sup>202</sup> on more than 1,740 separate occasions<sup>203</sup> and lent support in more than 750 cases<sup>204</sup> in a consultation concerning sexual abuse.<sup>205</sup> In

197 It is important that this 'behind-the-scenes' system for the reporting button is well organised. Young people must receive a response to a report within a short time. It is therefore imperative that the parties running this call button initiative coordinate their activities with one another and are able to clearly distinguish between their respective roles. The organisations must also effectively embed this additional means of seeking help into their organisation so that they are able to respond appropriately to the request for help.

198 *MOgroep Jeugdzorg*, 2010.

199 Other forms of child abuse that are mentioned include: physical abuse, physical neglect, psychological violence, affective neglect, bearing witness to domestic violence, Münchhausen syndrome by proxy, educational neglect and miscellaneous/other (*MOgroep Jeugdzorg*, 2010).

200 In 2006, these reports accounted for approximately two thirds of all reports, and in 2009 approximately three quarters of the total number of reports.

201 The police, for example, report children to the AMK who have been witnesses to domestic violence. However, the police can also identify victims of sexual abuse and child pornography as part of their surveillance activities on the Internet (such as in Habbo). Further information about this can be found in §3.8.3.1.

202 This figure equates to 5.36% of 32,501 (*MOgroep Jeugdzorg*, 2010).

203 Whether or not in combination with a different form of child abuse (*MOgroep Jeugdzorg*, 2010).

204 This figure equates to 7.26% of 10,364 (*MOgroep Jeugdzorg*, 2010).

205 Whether or not in combination with a different form of child abuse (*MOgroep Jeugdzorg*, 2010).

the same year, the AMKs launched more than 400<sup>206</sup> investigations into sexual abuse.<sup>207</sup> Unfortunately, further information in relation to the advice, consultations and reports of sexual abuse is not available from the youth care organisation *Jeugdzorg Nederland*.<sup>208</sup> When they receive reports of sexual abuse, the AMKs do not record whether images of this abuse potentially exist. This means there are no statistics relating to child abuse material in this regard. However, images of sexual abuse add a further dimension to victimisation<sup>209</sup> that should be a focus of attention and that should have implications with regard to the care to be provided.<sup>210</sup> This aspect has been the subject of research conducted in Germany.

#### *Care and Treatment of Child-Victims of Child Pornographic Exploitation (CPE) in Germany*<sup>211</sup>

From October 2004 to September 2007, the 'Innocence in Danger' organisation conducted research into the treatment of victims of child pornography in Germany. All care organisations in Germany that specialise in assisting children who are victims of sexual abuse were contacted within the context of the research. One of the conclusions of the research was that due to uncertainty and a significant lack of knowledge, care workers fail to address the issue of images in cases of sexual abuse, so it is likely that many victims of child pornography remain unnoticed. Despite this, care workers recognise that victims of sexual abuse who also feature in images that have been made of them are traumatised even further, and required specific care in relation to this.

Anyone who is responsible for children's welfare (in a professional capacity) must have knowledge of their living environment. Today, minors make frequent use of the Internet and experiment online with regard to aspects of sex and relationships. There are risks associated with behaviour of a sexual nature online, and these risks can increase the likelihood of sexual abuse. For this reason, it is important that 'digital indicators'<sup>212</sup>, including those of child pornography, are noticed by AMK staff. BNRM conducted an exploratory investigation in order to find out the extent to which child pornography, and more broadly speaking, 'digital indicators', lie within the field of vision of the staff of AMKs. The results of this exploratory investigation will be outlined next. Please refer to Appendix 2 for an explanation of the investigation.

#### *Results of the exploratory investigation of AMKs*

When cases of sexual abuse are reported, it is not standard practice for staff of Child Abuse Counselling and Reporting Centres (AMKs) to ask whether images were also made of the abuse. A number of AMKs

206 This equates to 2.45% of 16,574 (*MOGroep Jeugdzorg*, 2010).

207 Whether or not in combination with a different form of child abuse (*MOgroep Jeugdzorg*, 2010).

208 Further information is only available in relation to the total number of occasions on which advice was dispensed, consultations and reports (such as the number of children who formed the subject of reports (a single report may, after all, concern several children), the children's age, gender and domestic situation etc.) (*MOgroep Jeugdzorg*, 2010).

209 See §3.7.

210 For that matter, as yet there are no care services in the Netherlands that are specifically specialised in this additional dimension of victimisation, see §3.7.

211 Von Weiler et al., 2010. For further results of this study, see §3.7.3.

212 These could include: abnormal sexual behaviour by the child in chatrooms, on social networking sites, in front of a webcam or material of a sexual nature produced by the child him/herself (sexting, see §1.4.3 for further information).

stated explicitly that whilst this not standard practice, such questions are asked if there is reason to do so. At most AMKs, child abuse material has been reported occasionally/incidentally, without questions being asked in this regard by the AMK staff member. The estimates of the annual number of reports to each AMK that involve child abuse material range from zero to thirty.<sup>213</sup> Three AMKs did not quote any figure as they did not have them available.

When sexual abuse is reported, some AMK staff members ask (if there is reason to do so) if there are any 'digital indicators' that could constitute grounds for suspicion. *"Questions are asked, but this seems to depend on the concerns that are reported and the age of the child in question. If the report concerns adolescents' behaviour online (chatting using the webcam, arranging to meet online friends, etc.), staff are attentive with regard to asking questions regarding 'digital indicators'. In the case of reports of (suspicions of) sexual abuse, particularly involving younger children, it is not standard practice to ask whether images could have been produced. However, staff are aware of the need to ask whether (child) pornography is being viewed or in an individual's possession, if this seems relevant."*

In the case of most AMKs, someone has at some point specifically reported 'digital indicators', without questions being asked in this regard by the AMK staff member.<sup>214</sup> The estimates of the annual number of reports of sexual abuse to each AMK that involve 'digital indicators' range from zero to fifty.<sup>215</sup> Six AMKs did not quote any figure, as they did not have any available, but two AMKs noted that the number is on the increase. *"4 to 5 times per year. Once it concerned suspicions that younger children were being abused (those cases are usually passed swiftly to the police) and once per year it involves boys and girls (predominantly girls) who unsuspectingly display themselves."*

The knowledge of AMK staff regarding potential 'digital indicators' of sexual abuse varies among the separate AMKs, as well as among the individual staff members. Various branches stated that some staff already possess sufficient knowledge of these indicators, but this certainly cannot be said for all staff. This is usually the result of (too) little experience with the Internet. Most AMKs do not yet pay full attention to this subject in the sense of a course or training. Some AMKs noted in this regard that this should form an area for attention in the future, and one AMK indicated that *Jeugdзорг Nederland* could also potentially play a role in training, specifically with regard to the national basic course for AMKs. However, unfortunately not all AMKs recognise the importance of this aspect.<sup>216</sup> One AMK in which the subject is already being given full attention stated: *"Further efforts to promote expertise are still necessary, as 'social*

213 Three AMKs stated that such reports are never made (zero per year). Eleven AMKs estimate the annual number of reports involving child abuse material to be between one and thirty, and nine stated that there were no more than ten cases per year (incl. 'not many' and 'a few').

214 One AMK mentioned schools in particular as reporting parties in this context.

215 One AMK stated that such reports are never made (zero per year). Ten AMKs estimate the annual number of reports of sexual abuse involving 'digital indicators' to be between one and fifty, and eight stated that there were no more than ten cases per year (incl. 'a few', 'probably a small number' and 'it is sometimes the case that reports are made as a result of communications by children/young people on social media (or for example an expectant mother who offered her child for sale on the Internet), but no reports were received of information regarding chatroom content or images of/involving youngsters.

216 For example, it has been claimed that there is no demand for it/that AMK staff conduct investigations in families and not on the Internet, etc.

*media' are developing extremely rapidly.*" In response to the question 'what is action is taken<sup>217</sup> by AMK staff in the event of a report involving child abuse material', most AMKs briefly described the action protocol for reports of sexual abuse. This seems to indicate that the existence of images of the sexual abuse of a child is usually not recognised as a specific request for help. One AMK therefore indicated that no policy was in place that explicitly related to child pornography. Practically all AMKs stated that they contact the police. Some expressly stated in this regard that they encourage the individual reporting the matter to make a statement, and if this is not successful, they state that the AMK itself will file a report. Within this context, one AMK cited the protocol<sup>218</sup> that Youth Care Agencies, the police and the Public Prosecution Service have recently agreed upon, which is intended to result in more cases being reported to the police by AMKs in the future. The protocol contains cooperative agreements that simplify the process of sending reports to the police by the AMKs. A standard report form is now being used, and information is regularly shared between police officers and care workers, which will benefit criminal investigations and care provision.<sup>219</sup> In addition, many AMKs stated that arrangements are made for appropriate care if necessary. However, not one single AMK stated in this regard that specific care provision is offered with regard to sexual abuse involving the production of images. One AMK noted the following: *"We assess whether assistance is required, but it is often necessary to leave matters as they are for the purpose of the police investigation, and to avoid the interference of care provision in the reporting stage."* Hopefully, improvements in how information is shared between the police and the care authorities will ensure that these types of situations will arise less frequently in the future (see the aforementioned protocol).

The following aspects were also cited by a number of AMKs:

- Ensuring safety/providing protection for victims ('Signs of Safety')
- The joint handling of a report of sexual abuse
- Seeking (compulsory) treatment for the perpetrator
- Conducting an investigation of suspected sexual abuse<sup>220</sup>  
*"An investigation of sexual abuse always involves questioning parents regarding access to pornography on the Internet/TV/in printed form, the examination of children (or sending them for examination) for indicators or verbal expressions of sexually inappropriate behaviour."*
- Collaboration with several cooperating partners in the event of more than one victim being involved  
*"In cases involving multiple victims, we will also seek collaboration with the municipality in sexual abuse scenarios and in scenarios in which the Municipal Health Service is involved."*

#### Concluding remarks

- Child pornography as an additional dimension in victimisation as a result of sexual abuse is not yet being sufficiently acknowledged within AMKs. It is not standard practice for AMK staff members to ask whether such material could be involved. It is quite conceivable that child abuse material

217 Both with regard to care provision and the police.

218 The protocol 'Reports of child abuse sent by Youth Care Agencies to the Police and the Public Prosecution Service', signed on 12 April 2011.

219 *Integrale aanpak kindermishandeling jeugdzorg, politie en OM* [Youth care sector, police and Public Prosecution Service adopt an integrated approach towards tackling child abuse], ANP Perssupport, 12 April 2011, available at: [new.perssupport.nl/apssite/persberichten/full/2011/04/12/Integrale+aanpak+kindermishandeling+jeugdzorg+politie+en+OM](http://new.perssupport.nl/apssite/persberichten/full/2011/04/12/Integrale+aanpak+kindermishandeling+jeugdzorg+politie+en+OM) (viewed 8 September 2011).

220 For that matter, every AMK investigates sexual abuse if such a case has been reported.

could be involved in far greater numbers of sexual abuse cases than expected. Furthermore, there is no specialised care provision available in this context, and the Netherlands could potentially draw on expertise in this area from other countries.<sup>221</sup> Child abuse material can also serve as supporting evidence/confirmation of suspicions that abuse has taken place.<sup>222</sup>

- There is also still room for improvement with regard to the acquisition of knowledge by AMK staff in relation to child abuse material, and more broadly speaking, ‘digital indicators’ of sexual abuse. What is required in order to achieve this is that AMK staff members recognise the importance of this, but unfortunately that is not yet always the case at many AMKs. It is also important that the knowledge acquired is kept up to date.
- Considerable progress has already been made as far as improving collaboration between AMKs and the police is concerned, which has resulted in the protocol ‘Reports of child abuse sent by Youth Care Agencies to the Police and the Public Prosecution Service’. Hopefully we will be able to see the success of this collaboration in the future.

### 3.3.3 The identification of content

The most important identifiers of abusive content are Internet users. Individuals who are (undesirably) confronted with (suspected) child abuse material on the Internet can report it to the privately-run Hotline Combating Child Pornography on the Internet (§3.3.3.1) or the Cyber Crime Reporting Website run by the police (§3.3.3.2).

#### 3.3.3.1 The Hotline Combating Child Pornography on the Internet<sup>223</sup>

The Hotline Combating Child Pornography on the Internet [*Meldpunt Kinderporno op Internet*] was officially opened in 1996 and has been a member of INHOPE, the international network of hotlines, since its establishment in 1999.<sup>224</sup> The principal role of the Hotline is to handle reports of suspected child abuse material on the Internet. The reports received by the Hotline come from two sources:

- Internet users can report suspected criminal content on the Internet via the website<sup>225</sup> whilst remaining anonymous if desired.
- Counterpart hotlines that are affiliated with the INHOPE network forward reports if they concern child abuse material<sup>226</sup> being hosted on a server in the Netherlands. The Hotline records all reports in its database, and these have also been recorded in the INHOPE database since January 2010. The reported content is classified in accordance with the Implementation Provisions concerning child pornography<sup>227</sup> in order to assess whether the material in question constitutes a criminal offence/child pornography.<sup>228</sup> Investigations are conducted with regard to all material constituting criminal offences to find out from which country the material was distributed. If it concerns child abuse material hosted in another country, the Hotline forwards the report to its counterpart Hotline in

221 Such as the USA (CACs) and Sweden (Barnahus), see §3.7.2.

222 See §1.2.3 – boxed text: Digital child abuse material and ICT as an opportunity.

223 *Meldpunt Kinderporno op Internet* 2006, 2007, 2008, 2009, 2010a, 2011 (annual reports 2005 to 2010 inclusive).

224 For further information regarding INHOPE, see §1.5.3.

225 See [www.meldpunt-kinderporno.nl](http://www.meldpunt-kinderporno.nl) (viewed 8 September 2011).

226 According to the national legislation in the country concerned that sends the report.

227 See §1.4.1.1.

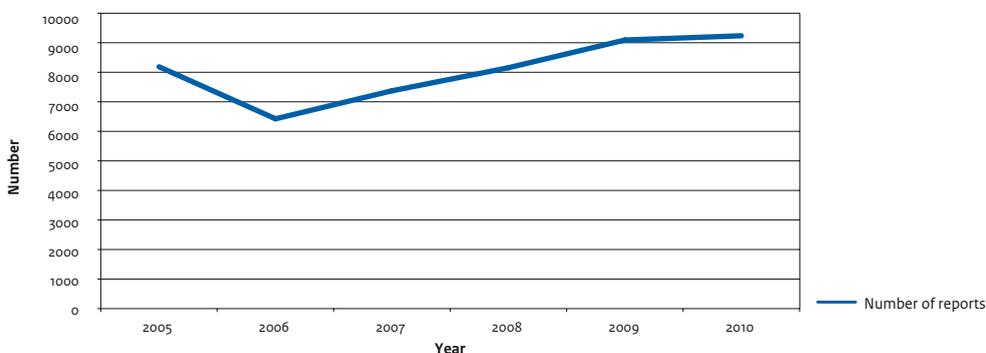
228 The police are consulted in the event of any doubt.

the country concerned via the INHOPE database.<sup>229</sup> If it concerns child abuse material hosted in the Netherlands, the Hotline notifies the police. The Hotline also then verifies whether the material has actually been removed, and sends a reminder to the National Police Services Agency (KLPD) after five days. In the event that the content has not been removed after a week, the Hotline sends a notice to the Internet service provider. In the UK, the counterpart hotline Internet Watch Foundation (IWF) contacts the ISPs directly, rather than via the police. The content is then removed within a few hours.<sup>230, 231</sup>

#### *Recording of data by Hotline Combating Child Pornography on the Internet*

Figure 3.1 shows the trend in the number of reports (including content reported in duplicate) received by the Hotline Combating Child Pornography on the Internet in the period 2005-2010.<sup>232</sup>

**Figure 3.1 Annual number of reports to the Hotline Combating Child Pornography on the Internet – including content reported in duplicate (2005-2010)**



In 2006, the Hotline began using a different report form. This offers a likely explanation of the fall in the trend that can be seen in that year. Every year since 2006 has seen an increase in the number of reports, up to 9,164 reports in 2010. These are not all unique, though, as it may be the case that different reports relate to the same content.<sup>233</sup> The continuous increase in the number of reports can probably be explained by the following factors: the exponential growth in the number of Internet users, the ever-expanding INHOPE network,<sup>234</sup> the rise in the amount of child abuse material on the Internet and the

229 If no counterpart hotline exists in the country concerned, the report is forwarded to the police who then contact the police force in that country.

230 Internet Watch Foundation, 2020, 2011 (annual reports 2009 and 2010).

231 See 3.8.3.2 – boxed text: Perspective regarding the removal of material.

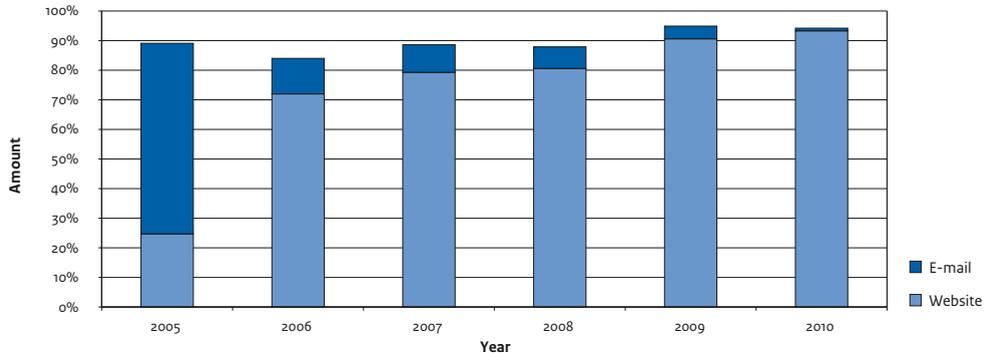
232 Please refer to Appendix 4, Table B4.1 for the table with a complete and detailed overview of these data.

233 Information supplied verbally by Hotline Combating Child Pornography on the Internet, 17 March 2011.

234 The proportion of reports sent from INHOPE is increasing over time. To illustrate: in 2007, one tenth of all reports were sent from INHOPE and this rose to one third in 2010 (see Appendix 4, Table B4.1). This considerable increase emphasises the importance of hotlines working in an international partnership.

rising profile of the Hotline. Figure 3.2 shows the trends in reports of suspected child abuse material in the two main places where such material is found that were received<sup>235</sup> by the Hotline in the period 2005-2010.<sup>236</sup>

**Figure 3.2 Annual reports – including content reported in duplicate – according to place where found**



[In the time-scale shown, the majority of all suspected child abuse material reported was found on websites or received by e-mail – between 84% in 2006 and 95% in 2009. The proportion of suspected material received by e-mail was greatest up to and including 2005<sup>237</sup>. However, since 2006, e-mail has only played a small role (which is still declining) – from 12% in 2006 to 1% in 2010. It is possible that e-mail is being used less and less as a means of distributing child abuse material. However, the introduction of the new report form on the Hotline website could (partially) account for this fall in the trend.<sup>238</sup> Other places where material has been found include newsgroups, chat rooms and peer-to-peer programs, for example.

Figure 3.3 shows the proportion of unique reports that actually involve child abuse material (according to the Hotline Combating Child Pornography on the Internet) compared with the total number of unique reports, i.e. not including content reported in duplicate, shown for the years 2007 to 2010 inclusive.<sup>239</sup> This information was not available for previous years.

<sup>235</sup> Including content reported in duplicate.

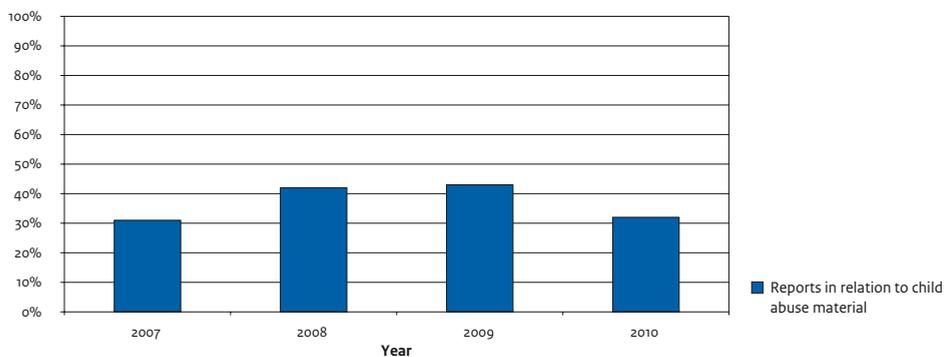
<sup>236</sup> Please refer to Appendix 4, Table B4.2 for the table with a complete and detailed overview of these data.

<sup>237</sup> This in fact also includes the years 2001-2004 not shown here (*Meldpunt Kinderporno op Internet*, 2003, 2004, 2005 (annual reports 2002 to 2004 inclusive)).

<sup>238</sup> Information supplied verbally by *Meldpunt Kinderporno op Internet*, 12 April 2011.

<sup>239</sup> Please refer to Appendix 4, Table B4.2 for the table with a complete and detailed overview of these data.

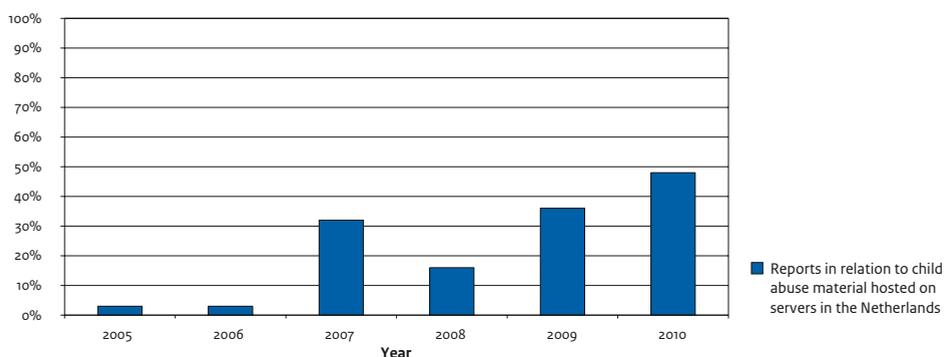
**Figure 3.3** Proportion of unique reports relating to child abuse material compared with the total number of unique reports (2007-2010)



The annual proportion of reports actually involving child abuse material varies in the period shown between 31% (N=2,336) and 43% (N=3,787). Other reports, for example, involved material that does not constitute a criminal offence, such as child erotica, child nudity, adult pornography and so forth. Some of the material concerned in the reports in each year could not be found or was inaccessible – between 15% in 2008 and 2009 and 31% in 2007.

Figure 3.4 shows the proportion of unique reports of child abuse material distributed from the Netherlands compared with the total number of unique reports of child abuse material for the period 2005-2010.<sup>240</sup>

**Figure 3.4** Proportion of unique reports of child abuse material on servers hosted in the Netherlands compared with the total number of unique reports of child abuse material (2005-2010)



In 2007, reports of child abuse material mostly related to material hosted in other countries and the proportion hosted in the Netherlands was no more than 3%. Over the past few years, however, material

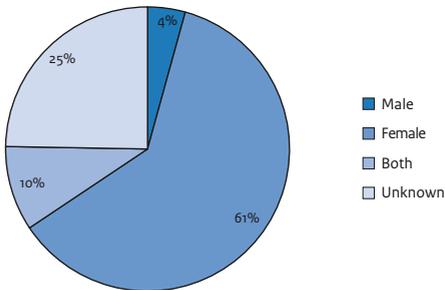
<sup>240</sup> Please refer to Appendix 4, Table B4.2 for the table with a complete and detailed overview of these data

on servers in the Netherlands is being reported far more frequently – in 2010 the proportion hosted on servers in the Netherlands rose to as much as 48% (N=1,260).<sup>241</sup> A large proportion of child abuse material hosted in the Netherlands is supplied via upload services.<sup>242</sup>

The Hotline forwarded the 1,260 reports it received in 2010 relating to child pornography hosted on servers in the Netherlands to the police. The police contacted the hosting providers in these cases<sup>243</sup> in order to have the material removed and ultimately drew up five official reports in relation to suspects of Dutch<sup>244</sup> nationality.<sup>245</sup>

The Hotline Combating Child Pornography on the Internet supplied information at the request of BNRM in relation to the victims who were depicted in the reported child abuse material on servers in the Netherlands. Figure 3.5 and Figure 3.6 show the gender and age distribution of those victims.

**Figure 3.5 Gender distribution amongst victims depicted in the incidences of child abuse material on servers in the Netherlands that were reported in 2010**



Source: additional information supplied by Meldpunt Kinderporno op Internet at the request of BNRM.

Girls (61% + 10%) featured more frequently in child abuse material on servers in the Netherlands that was reported in 2010 (N=1,260) than boys (4% + 10%).

241 Servers in the United States of America account for a quarter of the child abuse material that was reported and servers in Russia host 13% (*Meldpunt Kinderporno op Internet, 2010*).

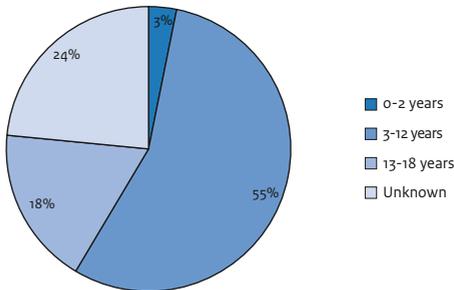
242 *Meldpunt Kinderporno op Internet, 2010*.

243 Excluding the cases in which the material was removed in the meantime or in which no material constituting a criminal offence (featuring children) was found.

244 The owners of the sites in question often reside in other countries and do not hold Dutch nationality (*Meldpunt Kinderporno op Internet, 2010b; Parliamentary Papers II 2010/11. 32 500 VI, no.106*).

245 *Parliamentary Papers II 2010/11, 32 500 VI, no.106*.

**Figure 3.6 Age distribution amongst victims depicted in the incidences of child abuse material on servers in the Netherlands that were reported in 2010**



Source: additional information supplied by Meldpunt Kinderporno op Internet at the request of BNRM.

The pre-adolescent three to twelve years age group is the most represented (56%).<sup>246</sup>

### 3.3.3.2 The Cyber Crime Reporting Website<sup>247</sup>

The Cyber Crime Reporting Website [*Meldpunt Cybercrime*] is a point of contact operated by the police to which child pornography (including contacting children for sexual purposes), child sex tourism or terrorism on or via the Internet with its source in the Netherlands can be reported. It started life as a project in 2007 set up as a result of an initiative of the Ministry of Justice and the Ministry of the Interior and Kingdom Relations and the National Coordinator for Counterterrorism and Security. Since November 2009 it has formed part of the KLPD. Information submitted to the Cyber Crime Reporting Website does not constitute an official report. Information submitted via the website arrives at the intake unit of the KLPD (112 emergency service), where the reports are viewed 24 hours a day, 7 days a week. Individuals who submit notifications (citizens) classify them as ‘child pornography’, ‘child sex tourism’, ‘incitement to hatred and terrorism’ or ‘other’. The staff of the intake unit verify this and indicate the urgency level. The information submitted is then sent to the back-office for the content to be processed. Cases of child pornography involve *Team Beeld en Internet* [the Images and Internet Team] of the Department of International Police Information [*Dienst IPOL*]. This team contacts ISPs, social networking sites and so forth in order to ensure that criminal content is removed as soon as possible (‘notice and take-down’). Finally, the information is sent to a regional police force, which conducts the investigation from that point onwards.

<sup>246</sup> These age groups are derived from the labels ‘infant’, ‘pre-pubescent’ and ‘pubescent’ as recorded by hotlines via INHOPE. It is possible that in other countries, different age groups may apply to these labels and consequently Figure 3.6 may present a somewhat distorted picture.

<sup>247</sup> See [www.meldpuntcybercrime.nl](http://www.meldpuntcybercrime.nl) (viewed 8 September 2011); information supplied verbally by *Meldpunt Cybercrime*, 4 May 2011.

### Recording of data by the Cyber Crime Reporting Website

Table 3.6 shows the number of reports to the Cyber Crime Reporting Website in relation to child pornography<sup>248</sup> for the years 2008 to 2010 inclusive. These child pornography reports largely concern grooming-related cases.<sup>249</sup>

**Table 3.6** Number of reports of child pornography to *Meldpunt Cybercrime*

	2008	2009	2010	Total
N	536	430	401	1.367

Source: *Meldpunt Cybercrime* (information supplied at the request of BNRM)

The figures clearly show that the Cyber Crime Reporting Website [*Meldpunt Cybercrime*] drew greater attention in 2008 than in the two successive years. However, recent or current events, such as the Amsterdam sexual abuse<sup>250</sup> case, also had an effect upon the number of reports made. For example, roughly twice as many reports made were in relation to child pornography in the months December 2010 and January as the number of reports in the preceding months.<sup>251</sup>

### *Meldpunt Kinderporno op Internet compared with Meldpunt Cybercrime*

- *Meldpunt Kinderporno op Internet* is an independent privately-run hotline that can be contacted anonymously (2,602 reports in 2010 relating to abusive material involving children and constituted a criminal offence, of which 1,260 concerned material hosted on servers in the Netherlands). This hotline forms part of the international umbrella network INHOPE and focuses its activities upon providing information.

248 On the basis of broad categorisation by staff at the emergency service (unit intake). Please note: one report may consist of information relating to multiple offences. On the other hand, it is also possible that different reports may be made in relation to the same offence. Those reported in duplicate are in fact only noticed by *Team Beeld en Internet* [the Images and Internet Team] (back-office) and not in the intake stage.

249 *Meldpunt Cybercrime* does not record cases in sub-categories within the child pornography category and for this reason we do not know exactly how many reports within the child pornography category relate to grooming etc. *Meldpunt Cybercrime* will record more details in the future, however and will re-categorise all reports from 2007 onwards in order to create greater insight into the nature of the reports. The provisional analysis showed that 80% of the reports of child pornography from March 2007 to March 2011, inclusive, involve a form of grooming. In 15-20% of cases, 'actual' reports of child pornography involve abusive content featuring children that the police also deem to constitute a criminal offence (material suspected to be child pornography by citizens does not always correspond with the definition of child pornography under criminal law. It is also regularly the case that the reported material can no longer be found on the stated Internet site). Information supplied verbally and in writing by *Meldpunt Cybercrime*, 4 May, 24 and 27 June 2011.

250 For further information about this case, see §3.7.5.

251 Sixty-six reports involving child pornography were made in December 2010 compared with at least 20 and up to 39 reports of child pornography in the months January to November 2010 inclusive. Sixty-two child pornography-related reports were made in January 2011. NB. Additional funds are currently being invested in order to raise the profile of *Meldpunt Cybercrime*.

- *Meldpunt Cybercrime* is a police hotline where reports are viewed 24/7 and which, in principle, cannot be contacted anonymously (401 reports of child pornography in 2010, which mostly related to grooming). The ultimate aim of the reporting centre is to become a generic police hotline that citizens can contact by digital means for all types of reports (relating to cybercrime).<sup>252</sup>

### 3.3.4 Conclusion

The identification of child abuse material forms an important part of the tertiary prevention of child pornography. The material can be identified in relation to perpetrators, victims or content.

#### *Identification of perpetrators*

Perpetrators themselves and individuals in their immediate proximity are able to provide or notice indications of abuse having been committed. To date, no attention has been devoted to recognising the potential for abuse to be committed and how to act accordingly. Attention must be paid to these aspects. The Stop it Now! project that is to be set up in the Netherlands plays an important role in this context. However, the Hotline Combating Child Pornography on the Internet, which is involved in launching this project in conjunction with the De Waag outpatient forensic centre, must ensure that it fulfils this new role (the identification of perpetrators) but keeps a strict separation between this and its other duties (the identification of content and, via [Helpwanted.nl](http://Helpwanted.nl), identification of victims). Individuals in close proximity to perpetrators can also report indicators that they have noticed to *Report Crime Anonymously*. There is still additional potential for the police to increase the amount of feedback that they provide to *Report Crime Anonymously*.

#### *Identification of victims*

Victims, individuals from their personal environment and professionals who directly come into contact with victims can report or notice indications that children may have been abused. Significant steps have already been taken with regard to the identification of victimisation as a result of sexual abuse against children and the subsequent action taken by those in close proximity to victims, both in a personal and professional context. It is important that publicity campaigns that have been developed are continued, and that they also pay attention to indicators that exist in the digital media. In addition, it is expected that the forthcoming Domestic Violence and Child Abuse Reporting Code (Compulsory Use) Act will be able to ensure that professionals will no longer be lacking in means to take action. The use of a reporting code will result in more frequent intervention in the event of any suspicions. Individuals in close proximity to victims, both in the personal and professional sphere, have many bodies which they can contact, and the most obvious ones would be the AMKs. BNRM conducted an exploratory study that showed that the additional dimension of victimisation as a result of child abuse material is generally not recognised or acknowledged. It is not standard practice for AMK staff members to ask questions in relation to child pornography in cases of sexual abuse. No specific care provision is available in relation to this aspect either. Staff of AMKs do not have sufficient knowledge of child pornography and more broadly speaking, of the digital indicators of abuse, due to shortcomings in training. It is important that more attention is paid to this aspect. Victims themselves are able to contact organisations such as *Kindertelefoon*. Unfortunately, *Kindertelefoon* does not record details of child pornography in cases of sexual abuse against children. A positive development, however, is that the organisation now actively refers children to Youth Care Agencies. In addition, it is now possible for victims to send a report, specifically

252 Information supplied verbally by *Meldpunt Cybercrime*, 4 May 2011.

in cases of online abuse, to [Helpwanted.nl](https://www.helpwanted.nl). Victims will also soon be able to use an online ‘reporting button’, which is currently being developed within the scope of the *Digivaardig & Digibewust* programme. It is important in this regard that the ‘behind-the-scenes’ aspects of the reporting button initiative are well-organised.

#### *Identification of content*

Internet users may also encounter child abuse material on the Internet, and they can report this content that they have identified to the privately-run Hotline Combating Child Pornography on the Internet and/or the Cyber Crime Reporting Website run by the police. It is important that abusive content that has been reported is removed by ISPs as soon as possible. In order to ensure that this happens, the agreements between the Hotline Combating Child Pornography on the Internet and the police must be revised. The British counterpart hotline, the Internet Watch Foundation, may serve as an example in this regard. It may be possible to consider expanding the remit of the Hotline Combating Child Pornography on the Internet, for example to extend to monitoring and/or shutting down forums and networks – possibly within the scope of the Stop it Now! project (see also §3.8.4).

### **3.4 Detection**

#### **3.4.1 Introduction**

This section will outline the working process in relation to the detection of child abuse material. A description will be given of the organisation that has been put in place within the police force in relation to the detection of producers, distributors and possessors of child abuse material, and the working methods of the various police divisions will be explained. The strategy to tackle child pornography involves a number of complicating factors, however, such as a continuous influx of cases from other countries and the unknown nature of a case before it is investigated (does it only involve possession of child abuse material or are there indications that point to production and therefore abuse?). Such factors make it difficult to assign priority to certain investigations at an early stage. These complicating factors will also be discussed.

At the time of writing this report, various developments are underway with regard to the way in which detection is organised. First of all, the new structure of the future national police force is under development. The police have also collaborated with the Public Prosecution Service (OM) in order to investigate what improvements could be made to the current strategy to tackle child pornography. One of the results of that collaboration was the Programme of Improvements in Tackling Child Pornography. This section will describe the current working method and will attempt to formulate points for improvement on the basis of that current working method. Nevertheless, we will also examine the new structure, in so far as this is clear at the present time. Finally, we will indicate which elements will certainly need to be included in the new structure in order to improve the effectiveness of detection activities.

#### **3.4.2 Working method in detection**

Images that constitute child pornography serve an important function in detection: after all, characteristics of perpetrators, victims and their surroundings in the images provide important indications that increase the likelihood of detection. If child abuse material is found on a computer, this may constitute grounds for a major investigation involving the rescue of victims and the arrest of perpetrators. Material not only contains indications for use in detecting offences listed in Article 240b of the Dutch Criminal

Code, it can also serve as evidence that the abuse actually took place. The provision of evidence can often prove difficult in sexual abuse cases.<sup>253</sup>

In accordance with the Implementation Provisions concerning child pornography, the identification of victims and perpetrators of sexual abuse and the production of child abuse material must form the primary focus in the detection of this material and the prosecution in such cases. Possession of child abuse material (and child erotica) may serve as cases with a chance of conviction for potential abuse and production.<sup>254</sup> In practice however, it is not possible or scarcely possible to assess the nature of the investigation in the first stage (does it involve a distributor, producer, or a possessor of child abuse material?). The nature (distribution, production or possession) of the case under investigation can only be established later on, once all data storage media have been read. It is therefore not an easy task to prioritise those investigations that offer the greatest likelihood of identifying victims. The forthcoming sections will describe how the investigative authorities deal with this issue.

#### *Images and Internet Team KLPD/IPOL*

The Images and Internet Team [*Team Beeld en Internet*, hereinafter referred to as TBI] operated by the KLPD/IPOL acts as an information hub within the entire detection chain. The purpose of the TBI is to identify victims and trace the perpetrators of child pornography.<sup>255</sup> Staff in the team manage the National Child Pornography Database, investigate reports of child abuse material on the Internet and coordinate information relating to child pornography and paedosexual offences.<sup>256</sup> The division also has access to various national and international databases, which enable data to be combined and investigations to be conducted at national and international level into potential links to other investigations.<sup>257</sup> The (unprocessed) indicators of child abuse material are received by the TBI, in addition to all other indicators in relation to such material, such as a suspect who has committed an act of sexual abuse and is also potentially in possession of child abuse material. Cases are received through a total of five points of entry, which are as follows:

- a. Hundreds of requests for investigation arrive from other countries every year, and these also give rise to hundreds of investigations (see later in this section).
- b. The TBI also receives and handles reports of distribution of child abuse material on the Internet in the broadest sense of the term. The Hotline Combating Child Pornography on the Internet<sup>258</sup> also supplies these reports, sending more than one thousand reports every year.<sup>259</sup>
- c. The TBI conducts its own investigations into child abuse images and paedosexual networks. As part

<sup>253</sup> Van Wijk & Nieuwenhuis, 2011.

<sup>254</sup> Implementation provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette, 2 December 2011, no. 19121.

<sup>255</sup> Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette, 2 December 2011, no.19121.

<sup>256</sup> Van der Zee & Groeneveld, 2007.

<sup>257</sup> Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette, 2 December 2011, no.19121.

<sup>258</sup> The Hotline Combating Child Pornography on the Internet is a privately-run initiative.

<sup>259</sup> National Child Pornography Expertise Centre [*Landelijk Expertisecentrum Kinderporno*], Public Prosecution Service and Police, 2010 (not publicly available).

of these investigations, it uses a variety of judicial information sources and images, as well as information from regional police forces and investigative authorities in other countries.<sup>260</sup>

- d. Many reports are sent in by the Police Cyber Crime Reporting Website and these give rise to several dozen investigations annually, see also §3.3.3.2.<sup>261</sup>
- e. Investigations are passed directly to regional sexual offences divisions by means of official reports.<sup>262</sup> These investigations may, for example, be the result of a report of sexual abuse, in which it emerged from a video-recorded interview that the perpetrator recorded the sexual abuse. Computer repair companies that discover child abuse images on a computer also call in the police. These investigations of child abuse material should also be reported to the TBI, but this is not always the case.<sup>263</sup>

The TBI makes an initial assessment and takes account of the extent to which the case involves an organisation (the presence of a network), the potential magnitude of the case, whether or not the images were produced recently and the suspect's online environment. A coordinator from the National Child Pornography Database assesses whether a case does indeed involve child abuse material. If the images are old, it is quite likely that the sexual offence (the sexual abuse) may have become barred by limitation. In such a case, there is little point in launching a criminal investigation into abuse. If images have been produced recently, however, the investigation is given priority, as in such a case it is likely that the victim is still being abused. On the basis of the findings, the coordinator draws up what are known as official assessment reports, which contain details of the subject matter of the material, the identification of victims, a statement as to whether the images fulfil the criteria in order to constitute a violation of Article 240b of the Dutch Criminal Code, and a determination as to whether the images are known in the National Child Pornography Database.<sup>264</sup> The Internet identities and any credit card numbers are recorded. These details make it possible to ascertain whether the individuals concerned have distributed or downloaded child abuse material. A demand for information is then used to derive name and address details from the Internet identity or the credit card number. These details enable a suspect to be identified, and an official report of this criminal investigation is produced.<sup>265</sup> The images involved are also secured.<sup>266</sup> The report of the technical investigation and the official report pertaining

<sup>260</sup> Every year, these sources give rise to hundreds of investigations by the Dutch police (regional and supra-regional) and several thousand investigations in other countries that are transferred to the police services responsible in other countries via Interpol and Europol. See Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette, 2 December 2011, no.19121.

<sup>261</sup> National Child Pornography Expertise Centre, Public Prosecution Service and Police, 2010 (not publicly available).

<sup>262</sup> National Child Pornography Expertise Centre, Public Prosecution Service and Police, 2010 (not publicly available).

<sup>263</sup> The Implementation Provisions concerning child pornography state that investigations for information must be submitted to the mainstream (regional) steering and evaluation team within the police force's jurisdiction.

<sup>264</sup> Van der Zee & Groeneveld, 2007.

<sup>265</sup> In many cases, a subscription holder was identified who was later found not to be the suspect. Information supplied in writing by TBI, 5 September 2011.

<sup>266</sup> National Child Pornography Expertise Centre, Public Prosecution Service and Police, 2010 (not publicly available).

to the images are combined, and this is sent to the North and East Netherlands Supraregional Crime Squad (BR-NON) desk, where the cases are distributed to the relevant parties, or if immediate action is required, it is sent immediately to the regional unit.<sup>267</sup> The majority of these cases are taken up and dealt with by the regional units.<sup>268</sup>

*The National Child Pornography Database*<sup>269</sup>

The National Child Pornography Database is managed by the TBI. A new database was brought into use in May 2011, as the old version was no longer adequate.<sup>270</sup> The new database serves as a tool to provide greater efficiency in detection and to prevent any unnecessary duplication of work.<sup>271</sup> Its aim is not to show the scale of the child abuse material that has been seized by the police. The new database was supplied empty, and input will come from the regional units. Three connections were in place in July 2011 (Rotterdam, Utrecht and Twente) from which images could be uploaded. Images are classified as ‘child pornography’, ‘child pornography with explanation’ or ‘other’. The first classification concerns images that are undoubtedly child pornography (images featuring pre-adolescent victims and involving penetrative sex or touching of genitals) and the second classification involves other abusive material featuring children and constituting a criminal offence in accordance with the Implementation Provisions concerning child pornography.<sup>272</sup> When an image is uploaded from a regional unit that does not yet appear in the database, the investigator is required to assess the images. This image is then placed in the temporary storage portal of the database. An image is only assigned the relevant classification and included in the database when that image has been assigned the same classification by three different investigators from three different regional units. This ensures that a reliable database is created with material that serves the purpose.<sup>273</sup> At the present time, 50,000 images have been added to the database. In the future, the technical means will be available to include video material, as well as specific information relating to images such as characteristics and identification of victims and suspects.<sup>274</sup>

267 Programme of Improvements in Tackling Child Pornography, 2011.

268 National Child Pornography Project, 2008.

269 Information supplied verbally by KLPD, Images and Internet Team [*Team Beeld en Internet*], 11 July 2011.

270 The old database consisted of images without specific information. For example, no distinction was made between abusive images involving children and other images. The technical capabilities of this old database were very limited in and consequently it was not possible to link it to other relevant information (emerging in the future). Furthermore, input from the regional units into the database was not logical due to the fact that the images had to be delivered manually.

271 The database may contribute towards achieving clarity in relation to the ‘grey area’ between material that constitutes a criminal offence and that which does not.

272 The distinction between ‘child pornography’ and ‘child pornography with an explanation’ is made partly in view of potential legislative changes and international comparisons. In the future there must be no doubt with regard to classification in the ‘child pornography’ category. A court could then convict an individual on the basis of the fact that an image falls into this category without having to assess the images itself.

273 The fact that an image does not yet appear in the database provides important information. It is potentially new material involving new victims or material that has not (yet) been distributed or is longer being distributed.

274 Some examples include new labels such as ‘virtual child pornography’, part of a series, ‘grey area’, etc.

The workload of the TBI in particular was placed on the agenda in the *Korpsmonitor 2010*<sup>275</sup> [police forces monitor]. The TBI expressed its intention to invest (more) in infiltration, undercover purchasing (of material) and Internet investigations, the labour-intensive means known as BOB.<sup>276</sup> (see §3.4.3). However, due to the workload, the shortage in capacity and the necessity to perform primary duties such as international collaborative activities, the TBI hardly ever manages to carry out this intention.<sup>277</sup>

#### *Regional police forces*

The regional police forces receive cases for investigation from the North and East Netherlands Supra-regional Crime Squad (BR-NON). Regional units also receive cases from community police officers, computer companies and via their own investigations.<sup>278</sup> In individual cases involving a sexual offence/sexual abuse, the suspect's computer is seized and after the data on the computer has been read, it may emerge that the suspect had (had) child abuse material in his/her possession. This may constitute a reason for further investigation into potential victims or into the suspect's possible participation in a network in which images are exchanged. The seizure of data storage media – if an investigation provides reason to do so – is, incidentally, not a standard procedure.<sup>279</sup>

The 25 regional police forces conduct criminal investigations of child pornography. Practically all police regions have commercial sex offences divisions, which are concerned with all sexual offences in which a commercial purpose plays a significant role, such as child pornography, forced prostitution and trafficking in human beings. Coordinators of child pornography matters have also been appointed in all regions who maintain contact with TBI and the other regions.

#### *'Landelijke Proeftuin Zambezi'*

The *Landelijke Proeftuin aanpak Kinderpornografie* [National Testbed to Tackle Child Pornography], known as the Zambezi project, was set up within the Rotterdam-Rijnmond police force. The team worked closely with the detective agency *Digitale Opsporing* and the Public Prosecution Service and developed new working methods and processes that were made available at a national level. The parties also investigated the limitations of legal frameworks and the opportunities to begin (new) forms of collaborative partnerships with companies and institutions. New software was also developed by the Netherlands Forensic Institute (NFI) in collaboration with the digital working group within the 'test bed', which processes all data seized from suspects (on hard drive, DVD, etc.).<sup>280</sup> The 'test bed' must primarily be regarded as a favourable environment that enables the investigation, prosecution and punishment of *mala fide* individuals involved in child pornography.<sup>281</sup>

275 Programme of Improvements in Tackling Child Pornography, 2011. The monitor contains data for the year 2010 and was published in 2011.

276 Special investigative powers.

277 Since summer 2010, this is being given greater priority, but at the expense of reports received by the organisation. Information supplied in writing by TBI, 5 September 2011.

278 Programme of Improvements in Tackling Child Pornography, 2011.

279 See Implementation Provisions concerning the detection and prosecution in relation to sexual abuse (2010A26), Dutch Government Gazette 2010, no. 19123, which provide no instructions in relation to seizure of data storage media.

280 Programme of Improvements in Tackling Child Pornography, 2009.

281 WODC, 2010.

The team in the ‘test bed’ also worked on alternative means of settlement under the name “Doing Nothing is Not an Option” [*Niets Doen Is Geen Optie*] (INDIGO) (see §3.5.1), such as mandatory care provision for individuals who view child abuse material. Such a case would not immediately give rise to criminal proceedings. Not only is the aim to settle these cases more efficiently, but to solve them more effectively. This applies to first offenders in particular. Mandatory care provision provides an opportunity to dissuade those who possess material from becoming involved with child pornography again, thereby limiting the number of criminal cases as a result. This method of working can also have a preventative effect.<sup>282</sup>

It is clear the workload is continuously increasing and that according to the authors of the *Korpsmonitor* 2009, the current configuration is inadequate.<sup>283</sup> This has been confirmed once again in the *Korpsmonitor* 2010.<sup>284</sup> Experiments such as those performed in the Zambezi test bed provide an insight into the future.<sup>285</sup> One effect of the Zambezi test bed is that the digital process in Rotterdam is sufficiently organised. New digital developments arising from the test bed and the investigation in the digital domain are set to become reality in the very near future.<sup>286</sup> The test bed has since come to an end.

There is a great deal of variation amongst the regional police forces and it is therefore not easy to provide a description of an average regional force. In some regions, the subject is given priority, whilst in others hardly any attention is paid to it. The technical facilities likewise vary.<sup>287</sup> No working processes have been developed in relation to child pornography. Many regional police forces make some use of standardised working processes. However, some regional forces make a contribution towards developing standard procedures, such as Twente (having developed an items seizure module and a standard official report) and Rotterdam (having developed a prioritisation model and a standard procedure for investigations in the digital domain). Many of the activities are undertaken at the individual investigator’s discretion.<sup>288</sup> It is also the case that six different structures exist within the 25 regional police forces. Some forces, such as TIJN,<sup>289</sup> Limburg-Zuid, Rotterdam and Amsterdam, for example, have a specialised child pornography team (in which sex offence investigators are tasked solely with investigating cases of child pornography). Other forces have a centralised sexual offences division at a single site, where all sex offence investigators work on cases of child pornography and are supported in this work by police officers that specialise in this field (Haaglanden, Hollands-Midden, Gelderland-Zuid and Kennemerland). It is therefore not possible to produce a clear-cut picture of all organisational forms. Finally, the focus of each regional force’s activities varies. Five of the 25 regional forces focus upon victim identification. They regard child pornography as a by-product of sexual abuse (TIJN) and/or intend to put a stop to the offence by tracing the victim (Amsterdam) and removing as many victims from the circuit as possible (Rotterdam).

282 *Parliamentary Papers II* 2010/11, 32 500 VI, no. 75.

283 Programme of Improvements in Tackling Child Pornography, 2009.

284 Programme of Improvements in Tackling Child Pornography, 2011.

285 Programme of Improvements in Tackling Child Pornography, 2009.

286 Programme of Improvements in Tackling Child Pornography, 2011.

287 Van der Zee & Groeneveld, 2007.

288 Programme of Improvements in Tackling Child Pornography, 2011.

289 Partnership of Twente, IJsselland, Noord-Oost Gelderland.

The authors of the *Korpsmonitor* 2009<sup>290</sup> concluded in general that in the majority of regions, the child pornography investigation process has been configured in such a way as to keep the influx of cases under control. Police forces do not examine all the images that are found to check whether they contain indications that may possibly lead to a conviction. It is usually sufficient to examine the number of images that is sufficient for the purpose of securing a possible conviction. This method of working limits the likelihood of finding victims, and the producers and distributors are not identified.<sup>291</sup> The sex offence investigators are, of course, not tasked with tackling child pornography alone; this area forms only a part of the full range of cases dealt with by a (youth and) sex offences division.<sup>292</sup>

#### *Supraregional Crime Squad Teams*

Since 2004 the supraregional crime squad teams (BRTs) have been tackling serious forms of crime that extend beyond the jurisdiction of a regional police force. The BRTs take the form of joint partnerships between (two or more) neighbouring forces. Since 2009, four BRTs have been (partly) run by the BR-NON for two years and have been deployed in the reduction of pending cases of child pornography in conjunction with the regional police forces.<sup>293</sup> The reason for this was to settle the dozens of cases known as 'Astral', which involved downloaders who had purchased child abuse material using their credit cards.<sup>294</sup> Only part of a BRT is concerned with tackling child pornography. The regions that form part of the BRT seconded three digital domain investigators and two child pornography investigators, who continue to work at their place of work within the region.

It emerged from the *Korpsmonitor* 2010 that the BRTs have little expertise in relation to sex offence cases and/or child pornography cases, and that they make use of support from sex offence investigators from the regional police forces in cases of this type.<sup>295</sup> Searching for victims does not form part of the procedure, and this has been a conscious policy choice. These teams were allegedly continuing to be deployed until the strategy to tackle child pornography (and its focus) were organised at a national level in order to change the way in which pending cases are managed.<sup>296</sup> The BRTs will no longer focus upon tackling child pornography in the future.<sup>297</sup>

#### *Team High-Tech Crime of KLPD NR*

The Team High-Tech Crime (THTC) of the National Crime Squad (NR), which forms part of the National Police Services Agency (KLPD), is involved at a national level in conducting criminal investigations into – and implementing measures to tackle – high-tech crime, especially that which is associated with serious, organised crime and innovative forms of high-tech crime or incidents with a significant international element.<sup>298</sup> The term 'high-tech crime' refers to cases under investigation that pose a threat to a vital

290 Programme of Improvements in Tackling Child Pornography, 2009.

291 Programme of Improvements in Tackling Child Pornography, 2009.

292 Reports from the coordinators' consultation, February 2011. See also *Parliamentary Papers II* 2010/11, 32 500 VI, no. 75, p.28.

293 Minister of Security and Justice, Progress Report on tackling child pornography, 4 March 2011.

294 See [www.om.nl/onderwerpen/verkeer/@153755/bovenregionale/](http://www.om.nl/onderwerpen/verkeer/@153755/bovenregionale/) (viewed 23 August 2011).

295 Programme of Improvements in Tackling Child Pornography, 2011.

296 Minister of Security and Justice, Progress Report on tackling child pornography, 4 March 2011.

297 *Parliamentary Papers II* 2010/11, 32 500 VI, no. 102.

298 Van der Hulst & Neve, 2008.

interest (national security and economy) and/or that involve organised crime (particularly the more serious forms).<sup>299</sup> The team, together with the existing Computer Forensics team [*Digitale Recherche*] (*Team Digitaal & Internet* of the National Crime Squad), has been operational since 1 January 2007.

The aim is to conduct two to four major investigations into high-tech crime per year. The team acts as a point of contact for partners within the Netherlands and in other countries, and is available 24 hours per day. The team provides an administrative report, if applicable, in all major investigations, and develops new innovative methods of detection. The KLPD periodically informs the Minister of Security and Justice of the results achieved by the team.<sup>300</sup>

A multi-disciplinary team from the KLPD under the management of the team leader of the THTC took part in the investigation in relation to the Amsterdam sexual abuse case. The work of the sex offences division in Amsterdam included analysing the (child abuse) images found, in order to identify the victims, and for the purpose of the (detection and) prosecution of Robert M. and his partner. The TBI contributed its knowledge and expertise, and seconded some of its staff to the multi-disciplinary team. This created an opportunity structure that was tailored to the investigation of the extensive Amsterdam sexual abuse case. There were sufficient indications present to suggest that Robert M. was maintaining a network with like-minded individuals. As a result of this the multi-disciplinary team focused primarily upon mapping out the network of Robert M; it was not so much the child abuse material that formed the starting point, but rather the e-mail and chatroom traffic. The analysis of the e-mail and chatroom traffic was used to reveal the individuals with whom Robert M. had contact, and what had been exchanged. This method was pre-eminently perpetrator-orientated. It is not yet definite how the working method of the multi-disciplinary team will ultimately be embedded (see also §3.4.4).<sup>301</sup>

#### *Child abuse material on anonymous, heavily concealed websites*

In an investigation on the Internet, the National Crime Squad found large quantities of child abuse material on anonymous online meeting places and hidden websites. The investigation was conducted as a result of the emergence of the Amsterdam sexual abuse case. The National Crime Squad of the National Police Services Agency (KLPD) assembled a multi-disciplinary investigation team in order to map out the (international) network of the suspected sex offender Robert M. The investigation team consisted of digital technology experts from the National Crime Squad, the Specialist Criminal Investigations Applications Department (DSRT), the Amsterdam-Amstelland police force, sex offence specialists from the Department of International Police Information, and detectives from other KLPD services. The Internet security firm Fox IT supplied technical advice, infrastructure and assistance to the investigation team. It emerged in this investigation that Robert M. used hidden places, known as 'hidden services', on the Internet. In doing so he used the Tor network, a worldwide network that enables users to surf the Internet anonymously. The hidden services that were investigated consisted of websites, forums and other hidden meeting places where child abuse material is exchanged. Visitors to these sites also communicated in chat channels about the abuse of children and the production and distribution of child abuse material. Under the responsibility of the National Public Prosecutor's Office of the Public Prosecution Service, and with

299 Van der Hulst & Neve, 2008.

300 *Parliamentary Papers II* 2007/08, 29 628 and 28 824, no. 68.

301 Information supplied verbally by the Team Leader of the High-Tech Crime Unit (KLPD), 4 July 2011.

the permission of the examining judge at the Court of Rotterdam, the detectives entered twelve hidden services by breaking through the security facility. A total of more than 220,000 images and videos of child abuse were found in the investigation. The most important aim in tackling child pornography is to find and put a stop to the abuse of children and to arrest the producers of the images or videos. In this investigation the police wanted to make it clear that neither anonymity within the Tor network nor boundaries between counties will constitute any hindrance to the detection of child abuse material.<sup>302</sup>

#### *International investigations: Europol and Interpol*

Due to its distribution via the Internet, child abuse material often exists on an international scale, and the commercial production of such material often involves a form of organised crime. For this reason, criminal investigations are usually conducted on an international scale. Interpol<sup>303</sup> and Europol<sup>304</sup> facilitate and coordinate international investigations into networks, and therefore play a role in tackling child pornography.<sup>305</sup>

At Interpol, a specific team is charged with international coordination activities, and specialist meetings are frequently organised in which information and knowledge is exchanged.<sup>306</sup> In 2001, Interpol began building a database of images from solved cases. This database is used to identify children who are (or have been) victims of sexual abuse and child pornography. The TBI receives a great deal of information via Interpol in relation to cases found regarding child pornography that is connected to the Netherlands.<sup>307</sup>

At Europol, tackling child pornography forms the subject of one of the current analytical work files (AWF). National police services across practically the entire world are involved in tackling child pornography in the same way as TBI. Just as is the case in the Netherlands, cases are brought against suspects in those countries by other countries. The case details are sent to those countries via the appropriate channels. If investigations uncover international networks, this may result in Europe-wide proceedings (by Europol) or sometimes worldwide (by Interpol and/or Europol). International meetings are convened in which information is exchanged and agreements are reached with regard to (joint) courses of action. The TBI attends such meetings and coordinates cooperative action in close consultation with the National Public Prosecutor's Office and the regional police forces involved.<sup>308</sup> However, the *Korpsmonitor 2010* stated that cooperation with international partners is limited.<sup>309</sup> The services of Interpol, Europol and

302 [www.om.nl/actueel-o/nieuws-persberichten/@156657/kinderporno-anonieme/](http://www.om.nl/actueel-o/nieuws-persberichten/@156657/kinderporno-anonieme/) (viewed 5 September 2011).

303 Van der Zee & Groeneveld, 2007.

304 Van der Zee & Groeneveld, 2007.

305 Van der Zee & Groeneveld, 2007.

306 *Parliamentary Papers II 2005/06*, 30 300 VI, no. 139.

307 Van der Zee & Groeneveld, 2007.

308 *Parliamentary Papers II 2006/06*, 30 300 VI, no.139.

309 Programme of Improvements in Tackling Child Pornography, 2011. This is contradicted by a member of staff of TBI. TBI often works in collaboration with partners in other countries such as Interpol and Europol on an almost daily basis. It is not always clear whether this is the case as far as the regional police forces are concerned. Information supplied in writing by TBI, 5 September 2011.

Eurojust<sup>310</sup> are used occasionally. With respect to international investigations, information is exchanged now and then with police organisations in other countries.<sup>311</sup>

#### *The International Child Sexual Exploitation (ICSE) Image Database<sup>312</sup>*

In March 2009, the Interpol Child Abuse Image Database (ICAID) was replaced, after eight years of use, by the Interpol International Child Sexual Exploitation (ICSE) Image Database. The ICSE Image Database is a tool that prevents work being carried out in duplicate, and serves to identify victims and perpetrators. Member States supply the material for the database. This data concerns material in which the perpetrators and/or victims have already been identified, or material which the country in question (TBI in the case of the Netherlands) regards as important, for example if a case is international in nature.

Material that matches the following description<sup>313</sup> is included in the database:

1. *Material or any image or movie or other media which forms part of a series which is in contravention of the definition as set out in Article 20 – of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007 “...any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.”*
2. *Any other material which, in the opinion of the member state or investigator, it is necessary to place in the database.*

Statistics relating to the extent of the material in the database is not available. Not all of the material matches the description of child pornography offences in the various countries. Video material that has been broken up into many separate images is also included in the database and this creates a distorted picture.<sup>314</sup> However, information is being provided in relation to the number of identified victims and perpetrators since the creation of the ICAID in 2001. The state of affairs on 1 August 2011 was as follows: 2,345 identified victims from 41 countries (85 of which are from the Netherlands<sup>315</sup>) and 1,324 identified perpetrators from 41 countries (52 of which are from the Netherlands<sup>316</sup>).

#### *Royal Military Constabulary (KMar)*

The Royal Military Constabulary (Schiphol District) has a commercial sex offences unit which deals with tackling child pornography. The emphasis within this unit with regard to the detection of child abuse

310 Eurojust Factsheet, [www.eurojust.europa.eu/childprotect\\_cases.pdf](http://www.eurojust.europa.eu/childprotect_cases.pdf) (viewed 30 June 2011).

311 Programme of Improvements in Tackling Child Pornography, 2011.

312 Information supplied in writing by Interpol, July 2011; Interpol, 2010; Interpol, 2011; Information supplied verbally by TBI, 11 July 2011.

313 In view of the fact that text, for example, could be covered by this definition, the description is likely to be adapted.

314 The EU has made funding available in order to develop the database to enable video material to be stored in video format in the future, for example.

315 The Netherlands is ranked as the eighth most common country of origin (after the United States of America (840), Canada (232), Germany (178), Sweden (152), Norway (132), the United Kingdom (114) and France (103)). These 85 victims with Dutch nationality were not involved in the Amsterdam sexual abuse case. These case details have not (yet) been passed on to Interpol (information supplied in writing, 1 September 2011).

316 The Netherlands is ranked as the fifth most common country of origin (after the United States of America (539), Canada (148), Germany (125) and France (63)).

material by KMar Schiphol is placed upon dealing with common incidents as well as implementing a proactive approach that forms part of the KIDS action weeks in the context of child sex tourism. KIDS action days are held at Amsterdam Airport Schiphol on a fairly regular basis. KIDS serves to recognise and tackle child pornography couriers and child sex tourism by means of multi-disciplinary collaborative efforts at Schiphol. The KIDS Strategy involves close cooperation between Schiphol Customs and TBI of IPOL, with various units from KMar, namely Border Control, Computer Forensics, Child Pornography assessment team and the Youth and Sex Offences Team. During the KIDS action days, passengers arriving directly from countries known for a child sex tourism industry and/or countries where child abuse material is produced are subject to additional checks by the collaborating authorities.<sup>317</sup> The Royal Military Constabulary at Amsterdam Airport Schiphol made three arrests in 2010, primarily due to the possession, importation, carrying in transit or export of child abuse material.<sup>318</sup> For example, a 68-year-old Irishman was caught with child abuse material in January 2010. The man arrived on a flight from Bangkok. DVDs and CDs containing child abuse videos and images were found in his hand luggage, as well as children's lingerie.<sup>319</sup>

So far, we have described the various divisions of the police force that are involved in tackling child pornography. However, a number of complications also exist in the work carried out by the police, which will be explained in more detail.

### 3.4.3 Complications

The strategy to tackle child pornography is subject to several complications that have more or less emerged over the previous sections. The focus in criminal investigations, the number of pending cases, prioritisation of investigations and issues in detection all form bottlenecks. On the basis of the aim to find and rescue victims, efficacy (specifically the extent to which that aim is achieved) is low as a result of these bottlenecks.<sup>320</sup>

#### Focus

In practice, downloaders form the focus of detection activities, which is at the expense of attention to perpetrators of child abuse, producers and commercial distributors, but also at the expense of attention for the victim.<sup>321</sup> The *Korpsmonitor Kinderporno* 2010 examined the focus in each regional police force. Five of the twenty-five regional forces focus upon victim identification, as we described earlier. They regard child pornography as by-product of sexual abuse (TIJN) and/or intend to put a stop to the offence by tracing the victim (Amsterdam) and remove as many victims as possible from the circuit (Rotterdam). The victim is placed at the centre of activities, which translates into the approach and chosen course of action in detection activities.<sup>322</sup>

#### The research by Moran

One option could be to apply the findings of research conducted by Moran. The study by Moran (see §1.4.2) showed that perpetrators of high-tech crime are found within the group of perpetra-

317 Programme of Improvements in Tackling Child Pornography, 2009.

318 *Parliamentary Papers II* 2010/11, 32 500 VI, no.75.

319 *Op jacht naar kinderporno* [On the trail of child pornography], *De Pers*, 18 January 2010.

320 The Amsterdam sexual abuse case forms an exception to this.

321 National Child Pornography Project, 2008.

322 Programme of Improvements in Tackling Child Pornography, 2011.

tors of child pornography, and that it is precisely within this group of perpetrators that material produced relatively recently is exchanged.<sup>323</sup> This finding can form the basis of investigation: the approach and the activities must primarily focus upon the perpetrators of high-tech crime and less upon 'simple' downloaders.

The police and the Public Prosecution Service are working on shifting the focus in tackling these crimes from the viewers and possessors of images of child sexual abuse (downloaders) to the victims, and to the prosecution and detection of producers and distributors.<sup>324</sup> That is easier said than done, however. First of all, this approach requires more capacity. A criminal investigation focusing on the abuse will take approximately four times longer than an investigation of a downloader.<sup>325</sup> The computer specialists need to analyse the images far more closely when focusing on the abuse aspects.<sup>326</sup> This creates a problem if capacity remains at the same level.

#### Pending cases

The police and the Public Prosecution Service are also faced with the scale of pending cases. This is the total of all cases that are being handled plus the number of cases that are not yet being handled, counted from the time of receipt.<sup>327</sup> At the end of the third quarter of 2010, there were 991 pending cases. At the end of the fourth quarter of 2010, this fell to 770 cases.<sup>328</sup> This fall can suddenly be reversed as a result of an influx of new investigations from other countries. The *Korpsmonitor* 2010 showed that the average number of pending cases each year is approximately 700.<sup>329</sup>

The pending cases are mainly made up of investigations initiated in other countries. Between 800 and 1000 cases are received annually<sup>330</sup> and the Financial Coalition Against Child Pornography<sup>331</sup> in the USA forms the source of a large number of cases, as credit card companies supply information in relation to potential downloaders of child abuse material.<sup>332</sup> In the third quarter of 2010, 359 requests for legal assistance were received from other countries.<sup>333</sup> It is generally expected that the number of cases from other countries will increase.<sup>334</sup>

323 Moran, 2010.

324 Minister of Security and Justice, Progress Report on tackling child pornography, 4 March 2011.

325 Programme of Improvements in Tackling Child Pornography, 2009.

326 Programme of Improvements in Tackling Child Pornography, 2009.

327 Programme of Improvements in Tackling Child Pornography, 2009.

328 Minister of Security and Justice, Progress Report on tackling child pornography, 4 March 2011.

329 Programme of Improvements in Tackling Child Pornography, 2011. Appendix B, p.50.

330 Information supplied verbally by IPOL, 20 April 2011.

331 The Financial Coalition Against Child Pornography is an international association created by banks, credit card companies and Internet companies who have taken up the fight against producers and their clients on the Internet. *Parliamentary Papers II* 2005/06, 30 300 VI, no.139.

332 *Parliamentary Papers II* 2010/11, 32 500 VI, no.75.

333 *Parliamentary Papers II* 2010/11, 32 500 VI, no.75.

334 *Parliamentary Papers II* 2010/11, 32 500 VI, no.75. This is not the experience of TBI. They occasionally receive investigations in which credit card details emerge. The most recent investigations date back more than two years (Astral). Commercial child abuse material, for that matter, only accounts for a small part of the total number of cases. Information supplied in writing by TBI, 5 September 2011.

The possible reason for the workload is the fact that not all cases can be dealt with. In the view of the authors of the Programme of Improvements in Tackling Child Pornography, the existence of the pending cases is primarily a consequence of a shortage of capacity.<sup>335</sup> They argue that, with the current resources, it is possible to handle around 700 investigations focusing on possession of material constituting a criminal offence. This means that an average of 100 to 300 cases are left unopened every year.<sup>336</sup> On average 1.3% of the total police capacity is used in tackling sex offence cases, including child pornography. The Twente and Gelderland-Midden regional police forces deploy the highest capacity, at 2.1%.<sup>337</sup>

#### *Prioritisation, evaluation and steering*

Activities are prioritised at the beginning of the investigation (as well as investigations that originate from other countries) upon intake or when a report arrives.<sup>338</sup> Prioritisation is determined by means of structured consultations with the Public Prosecutor (OvJ), the Liaison Officer for Victims of Sexual Abuse (ZAO) and/or via a case consultation. The case list is sent fairly frequently to the Public Prosecution Service, usually in addition to the (case) consultation.<sup>339</sup> Investigations within the regional police force must be supplied for information purposes to the mainstream (regional) steering and evaluation team as a minimum requirement.<sup>340</sup>

The usual bottlenecks occur during prioritisation, evaluation and steering. It is not easy to prioritise activities in the investigations, as in most cases it is only possible to ascertain that a specific Internet identity is involved in the uploading or downloading of images, and it is not possible to determine whether the suspect could be a producer or is only in possession of material. The focus of the investigation is unknown *a priori*. It remains a complex task during the course of the investigation, as well – to distinguish between possessors and producers.<sup>341</sup> A prioritisation model is necessary in the investigation that can be used to weigh up factors as early as possible in the detection process. Tools are also necessary in order to ensure objectivity in doing so. These tools are not yet widely available, but they must be developed (further). A prioritisation model has already been used on an experimental basis in the Zambezi test bed that was recently rounded off (§3.4.2).<sup>342</sup>

A variety of models are used by the regions for the purpose of prioritisation and setting criteria. The weight assigned to criteria usually depends upon the viewpoint of the detective handling the case. The

335 National Child Pornography Project, 2008.

336 Programme of Improvements in Tackling Child Pornography, 2009.

337 Programme of Improvements in Tackling Child Pornography, 2011. The authors also reported that no exact figure can be provided for the capacity that has been made available for tackling child pornography due to the considerable diversity and differences amongst organisational forms that sex offence divisions take.

338 Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette 2 December 2010, no.19121.

339 Programme of Improvements in Tackling Child Pornography, 2011.

340 Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette 2 December 2010, no.19121.

341 National Child Pornography Expertise Centre, Public Prosecution Service and Police, 2010 (not publicly available).

342 Programme of Improvements in Tackling Child Pornography, Business case for tackling child pornography.

choices in this regard seem to be arbitrary. In addition, cases are almost never handled by evaluation and steering teams; this only happens in a large-scale investigation, in cases of anxiety in society, in the case of a particular suspect, or as soon as a case workload exceeds the available working capacity. Guidance is hardly ever given.<sup>343</sup>

As a rule, cases of child pornography are taken into account in prioritising sex offence cases, except in those regions that have organised child pornography investigation activities in separate divisions (Rotterdam, Amsterdam, Limburg-Zuid, TIJN). As far as all other regions are concerned, this means that child pornography cases are not weighed up against one another, but also in comparison with other sex offence cases. It is therefore sometimes the case that certain child pornography cases are categorised as less important than cases such as rape.<sup>344</sup>

The following bottlenecks exist in prioritisation: it is unclear *a priori* what the nature of the case is, which consequently makes it difficult to prioritise cases; the tools are unavailable or weighting is assigned arbitrarily, child pornography cases lose out to other sex offence cases, and the regional police forces try to keep the workflow at a manageable level. The reason for this primarily lies in the specific nature of child pornography cases: what the police ultimately find out (possession or production) is unknown from the start.

#### *Bottlenecks in detection*

One of the bottlenecks in detection is a shortage of time. There is insufficient capacity to be able to carry out all tasks, and consequently this adversely affects the use of labour-intensive special investigative powers. The TBI, for example, wishes to invest more in proactive investigation on the Internet such as infiltration and undercover purchasing.<sup>345</sup>

A further bottleneck in detection is the lack of means to infiltrate networks in which recently produced images are exchanged. It is suspected that the most severe forms of abuse take place within these networks. In order to gain access to such networks, a person is required to supply new material. The police would like to infiltrate such networks but they are restricted. First of all, such networks are protected by digital security measures with passwords, which makes it difficult to gain access. Secondly, the nature of the images that are exchanged is not clear and there must be a reasonable suspicion in order to infiltrate a network.<sup>346</sup> Thirdly, the police does *not want* to exchange any material in order to infiltrate a network: after all, this means that victims who are recorded in images will be brought into circulation again.<sup>347</sup>

It is possible that the police will not find and/or seize all the child abuse material related to a case. Such material is not always found in the possession of a suspect, in view of the fact that these images can be protected by means of encryption, stored on the 'Internet' (file hosting or online file storage), or hidden in the house; or an individual may use a pre-paid mobile Internet service, which enables him/her to remain anonymous. In addition, not all data storage media are seized and this very much depends on

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343 Programme of Improvements in Tackling Child Pornography, 2011.

344 Programme of Improvements in Tackling Child Pornography, 2011.

345 Programme of Improvements in Tackling Child Pornography, 2011.

346 Presentation by a staff member of TBI, 19 May 2011.

347 Presentation by a staff member of TBI, 19 May 2011.

whether the police take action on the grounds of Article 110 of the Dutch Code of Criminal Procedure or Article 551 of the Dutch Code of Criminal Procedure.<sup>348</sup>

All manner of investigation activities may be employed in a search carried out pursuant to Article 110 of the Dutch Code of Criminal Procedure, for example taking photographs in the dwelling. Thorough searches for indicators may also be carried out to support the investigation. This Article therefore offers more possibilities than Article 551 of the Dutch Code of Criminal Procedure. However, it is sometimes difficult to obtain permission from the examining judge for a search on the grounds of Article 110 of the Dutch Code of Criminal Procedure, particularly if it concerns older cases. In some regions, the means offered by Article 551 are therefore chosen. In that case, the main occupant is ordered to surrender the data storage medium. The main occupant must then be prepared to lend his/her cooperation and comply with the demand. (Other) search activities are not possible in that case, however. If the suspect refuses to cooperate, the activities at the scene are halted and the examining judge may yet be called in. This situation hardly ever occurs, according to the regional police forces (such as Utrecht).<sup>349</sup> The advantages of invoking Article 551 of the Dutch Code of Criminal Procedure are first of all that this option is less labour-intensive and therefore places less of a burden upon capacity. Nevertheless, although the investigation is less thorough, evidence can still be gathered, the victim's identity can be searched for and interventions can be taken in relation to the perpetrator. The experiences of the investigating officers involved has taught us that in most cases, when faced with a demand pursuant to Article 551 of the Dutch Criminal Code, suspects lend their cooperation and also make a statement.<sup>350</sup> A possible disadvantage of action taken pursuant to Article 551 is that, particularly where a large team is involved in the action, the degree to which the main occupant freely lends his/his cooperation is open to question.

#### *Efficacy of detection*

During the investigation, the process of detection should focus on the identification of the victims and the perpetrators of sexual abuse, and the production of child abuse material. The extent to which these aims are achieved can be deduced from the number of victims that have been traced.

The national child pornography monitor 2009 showed that the regional police forces processed 893 cases in 2008. A little more than 40 victims of sexual abuse and of the production of child abuse material were

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348 In the event that it is suspected that a criminal offence described in Article 240b of the Dutch Criminal Code has been committed, there are two types of powers available to the police and the Public Prosecution Service that may result in the seizure of items such as data storage media. A search can be carried out in a dwelling under the guidance of an examining judge pursuant to Article 110 of the Dutch Code of Criminal Procedure (Article 97 can be invoked in urgent cases). In addition, in the event of a criminal offence as described in Article 240b of the Dutch Criminal Code, Article 551 of the Dutch Code of Criminal Procedure provides the officers stated in Article 141 of the Dutch Code of Criminal Procedure with powers to demand the surrender of items for seizure and to proceed to seize all items capable of storing data (Implementation of Provisions concerning child pornography, paragraph 4.3). Many regional police forces invoke multiple legal grounds for seizure of items, whereby they act in accordance with the case in question, as has been shown in the *Korpsmonitor* 2010, p.20.

349 Programme of Improvements in Tackling Child Pornography, 2011, p.20.

350 Information supplied verbally by the national Public Prosecutor in relation to child pornography.

traced in total in those 893 criminal investigations. The number of victims was not stated in the most recent monitor for 2010. It has emerged that the victims of child pornography who had been identified were, in approximately half of the cases, chance findings which were discovered on the basis of a report of sexual abuse. The victim stated in that case that recordings had been made of the abuse, or that the suspect appeared in the images. A small number of identifications were the result of investigation work carried out on the Internet in the meantime.<sup>351</sup> Many victims were identified further to the Amsterdam sexual abuse case, but this case was of exceptional scale and unprecedented in nature, so it cannot be representative of the number of victims identified via the Internet. We may therefore have cause to question the efficacy of the detection of victims via the Internet.

The aforementioned complications are (partly) acknowledged by the police and the Public Prosecution Service, and it is partly for that reason that the Minister of Security and Justice has announced a new structure in relation to the strategy to tackle child pornography. The outlines of that new structure are described below and the new structure should resolve the aforementioned complications.

#### 3.4.4 The new structure

In the spring of 2011, the Minister of Security and Justice sent a letter to the House in which the new structure to tackle child pornography was presented.<sup>352</sup> In the short term, a national child pornography steering team made up of representatives from the Public Prosecution Service and the police will be created, which will weigh up and prioritise the centrally-prepared investigations and then assign them to the units that carry out the investigations. The investigations will not be assessed further at regional level. The focus, as well as the monitoring activities, will be maintained by the national steering team. A jointly-run (police and Public Prosecution Service) child pornography and child sex tourism expertise hub will also be created, which will focus on building and strengthening networks of experts within the police and Public Prosecution Service. A national team to tackle child pornography will be created; its tasks will include information coordination, intelligence and detection duties (including making contributions in international cases). The national steering team assigns cases to the regional units. The focus is firmly placed upon perpetrators in the Netherlands and the detection of victims of abuse.

This new structure was described in greater detail in the report *Kinderporno Aangepakt* [Child Pornography Tackled] of the Programme of Improvements in Tackling Child Pornography in early June 2010. This report contains a proposal for the creation of the organisation to tackle the issue at a national level, and forms part of the documentation that was provided to the Lower House by the Minister of Security and Justice. The new strategy to tackle child pornography consists of two primary lines of action:

- One geared towards tackling actual abuse; specifically a task for the regional police force.
- One geared towards tackling the recording of abuse: the child abuse material; specifically at national level.

A national unit will focus upon tackling child pornography using tactical and technical expertise. That particular unit will take the form of a centrally-managed organisation consisting of a single national unit and ten decentralised units. An independent division will concentrate exclusively upon the management

351 National Child Pornography Expertise Centre, Public Prosecution Service and the Police, 2010 (not publicly available).

352 *Parliamentary Papers II* 2010/11. 32 500 VI, no.102.

and undertaking of four expertise-based roles (innovation, communication, coordination, information), the overall management of the entire workflow, facilitating prioritisation at national level, evaluation and steering activities, complying with all quality control measures and monitoring. The processing of material will be organised at a central national level.<sup>353</sup> The national division concentrates its activities on the processing of child abuse material and provides support to the regional units in handling cases involving downloaded material.

The regional police forces (decentralised units) will concentrate on tackling the abuse of children and the identification of victims, tackling the production, distribution and possession of child abuse material and undertaking a more in-depth investigation into suspects. The investigations of child sexual abuse and child pornography will be conducted jointly with the sex offence investigation team and using the expertise of the future regional units in the digital domain.

With this approach, regional cases are tackled first at a regional level (with a view to shifting the focus to rescuing victims), although monitoring will also take place at a national level at the same time. The work process that aims to tackle the production of child abuse material is carried out at a regional level as much as possible. The regional force must link the investigation of cases of sexual abuse and cases of child pornography. The concept that child pornography constitutes an associated offence and offers evidence in cases of abuse, forms a crucial starting point in this regard. The regional child pornography teams will operate in conjunction with investigations of abuse already underway, and will seize the data storage media if possible.<sup>354</sup>

The strategy to tackle child pornography uses a nationally-applicable model in prioritising, evaluating and managing cases, at both national and regional level. The model serves as a basis for the policy that is determined by the portfolio holder for Sex Offences within the Board of Police Chief Constables and the Board of Procurator-Generals, which both form part of the national steering and evaluation teams.<sup>355</sup> As part of this, other means of settling cases are also considered. Teams of staff members with different capacities are being created, which is the aim. What is needed in order to achieve this is tactical capacity, staff that specialise in the field of Sex Offences and Digital Expertise, as well as general management and administrative resources.

### 3.4.5 Conclusion

#### *Prioritisation*

In general, we can conclude that the majority of the regional police forces and the BRTs focus their activities on the processing of investigations without carrying out a more detailed investigation into the abuse. The TBI prioritises its work in conjunction with the national coordinating public prosecutor in child pornography cases, but this prioritisation has neither been standardised nor described. The

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353 There should also be capacity to do this at a regional level.

354 Programme of Improvements in Tackling Child Pornography, 2011. *Kinderporno aangepakt. De organisatie van de aanpak van kinderporno bij de Politie* [Child Pornography Tackled. The organisation of the strategy used by the police to tackle child pornography].

355 Improvements in Tackling Child Pornography, 2011. *Kinderporno aangepakt. De organisatie van de aanpak van kinderporno bij de Politie*.

activities in relation to tackling child pornography that are carried out by the multi-disciplinary team of the KLPD under the management of the team leader from the THTC are temporary in nature, and are primarily focused upon perpetrators, which has added a further dimension to the entire work process.

#### Focus

Child abuse material in the hands of the police is proof that sexual abuse has taken place. The focus in the criminal investigation must still be upon victim identification, however. That is also the case in theory, but practice has shown that this approach is successful in only a few cases. The police have little information *a priori* in relation to a potential perpetrator and it is often nothing more than an Internet identity. The information that they obtain is only an IP address at which activities connected with child pornography take place. It is not known whether (a) victim(s) is/are involved at this point. However, the police are confronted with hundreds of proposals for investigation every year. It is consequently difficult to achieve the shift in focus from tackling possessors to actually tackling the producers. As a result of this difficulty, searching for victims of sexual violence via the Internet is not very effective.<sup>356</sup> Conversely, every victim who is found means that the effort expended is justified and the new structure may perhaps offer a solution.

#### Method of working and organisation

A number of possible suggestions could provide a solution to the aforementioned bottlenecks. First of all, the new structure should certainly combine sex offence specialisms with digital and tactical expertise. The use of additional capacity is essential in this regard. The Minister of Security and Justice has announced that additional capacity will be made available to tackle child pornography.<sup>357</sup> The way in which this capacity is to be divided up must be taken into account. The pooling of expertise and competencies could also improve efficacy. The multi-disciplinary team of the KLPD under the management of the team leader from the THTC used a perpetrator-orientated approach (analysis of e-mail and chatroom traffic of perpetrators) and the TBI employed a primarily victim-orientated policy (mostly analysis of the images).<sup>358</sup> Perpetrator and victim-orientated detection activities should be combined at a single site, in which the competencies in the digital domain should be merged with sex offence specialisms. Perpetrator networks must be fully investigated, as part of which the children appearing in images of sexual abuse must also be taken into account.

#### Seizure of data storage media

Secondly, parties must seek alignment with cases of sexual abuse, in which data storage media must *always* be seized. After all, seeking to identify victims via the Internet is not always effective and it frequently occurs by chance.<sup>359</sup> The Implementation Provisions concerning child pornography now state that when forms of sexual violence against children are reported, the possibility that child abuse material may have been produced must be taken into account at all stages of the investigation, and a search must be carried out, *if possible*. Although an Appendix<sup>360</sup> of the current Implementation Provisions concerning public decency

356 However, the investigation of the Amsterdam sexual abuse case began with found images, and gave rise to new investigations into abuse that actually did take place.

357 *Parliamentary Papers II* 2010/11, 32 500, no.106.

358 TBI also carries out investigations of perpetrators on the Internet.

359 In the 1980s, it was also recommended that when the police encountered a case of sexual abuse involving children, they should be prepared for the possibility that child abuse material had been produced and that they were required to conduct a search of the dwelling at the earliest possible stage (see 2.2 and §3.5.1).

360 Appendix 2, content of an informative interview.

offences refer to digital data storage media within the context of an informative interview, no reference is made to seizure.<sup>361</sup> By emphasising the importance of seizure of data storage media in both the Implementation Provisions concerning child pornography and the Implementation Provisions concerning public decency offences, the efficacy of detection can be improved and the focus can actually be shifted to the abuse.

Thirdly, more information regarding the efficacy of detection needs to be collected. For example, the number of victims that were found via the Internet is practically unknown. For that reason, details of victims must be recorded. As a result, we will have greater insight into the efficacy of detection, which may have implications for the policy to be implemented.<sup>362</sup>

#### *Pending cases*

The current number of pending cases forms a burden for the police and the judicial authorities. The proposed new structure does not (yet) offer any insight into the way in which the pending cases could be worked through, except for the alternative means of settling cases.<sup>363</sup> No analysis of the nature of the pending cases is available and consequently it is almost impossible to draft a policy. The minimal capacity available has also been designated as a cause for the pending cases. This is the issue, however, as the number of pending cases should increase if 100 to 300 cases are received every year. This is not happening, though, as although the number of pending cases cannot be controlled, it is nevertheless relatively stable and even decreases now and then. An investigation of the inflow and outflow of the pending cases could provide an insight into this situation. The existence of pending cases may potentially be the result of the low priority that is assigned to child pornography cases, the working method being used, or the influx of investigations from other countries. The assumption that a shortage in capacity forms the cause of the pending cases is partly unfounded. A potential solution could be to develop an international prioritisation model. To this end, the possibilities for making international agreements in this regard could be explored further.

### 3.5 Prosecution and trial

In this section, we will firstly discuss the prosecution of child pornography offences, and the subsequent trials. Sentences and orders are the subject of §3.5.3, whereby we must take into account that in terms of the sentence carried, Article 240b of the Dutch Criminal Code does not distinguish between different forms of conduct, such as the possession, distribution or production of child pornography. A separate section is then devoted to statistics regarding prosecutions, decisions not to prosecute, sentences and convictions. In addition to this, we will also address the characteristics of suspects and convicted perpetrators. Finally, this section will set out a number of trends that can be ascertained from the statistics.

#### 3.5.1 Prosecution

For the detection and prosecution of child pornography offences, the Implementation Provisions concerning child pornography govern all actions undertaken by the police and the Public Prosecution

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361 Dutch Government Gazette, no.12123.

362 The *Korpsmonitor* 2011 states the following: “One area for attention with regard to registration and monitoring concerns rescued and/or identified victims. In order to record these numbers more effectively, it is important that an unequivocal definition of (the types of) victims is provided.”

363 The question remains as to the extent to which this applies with regard to old cases.

Service.<sup>364</sup> In addition, the Implementation Provisions concerning the detection and prosecution in relation to sexual abuse ('Implementation Provisions concerning public decency offences') also play a significant role. The latter Implementation Provisions contain policy rules with regard to the detection and prosecution of sexual abuse in general and sexual abuse within dependency relationships, as well as policy rules regarding the treatment of people who report sexual offences.<sup>365</sup> The previous Implementation Provisions concerning child pornography of 2007, which were in force until the end of 2010, placed a greater emphasis on pre-adolescent pornography, child pornography involving violence, child pornography involving an 'obvious dependency relationship' and the large-scale distribution and commercial production of (post)adolescent child pornography. The latest Implementation Provisions, which came into effect on 1 January 2011, no longer make this distinction. The distinction between children and adolescents has been deliberately removed from the new Implementation Provisions, because the impact of child abuse is high for children of all ages.<sup>366</sup> The national coordinating public prosecutor in child pornography cases states that "the number of cases in which adolescents are involved is increasing, in part due to the introduction of webcams and mobile telephones."<sup>367</sup> In the current Implementation Provisions, a number of assessment criteria are discussed extensively in order to be able to determine whether any given material constitutes a criminal offence, as referred to in Article 240b of the Dutch Criminal Code.<sup>368</sup> The new Implementation Provisions concerning child pornography (2011) do state that in the detection and prosecution of child pornography offences, the primary focus should be on

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- 364 Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010A025, Dutch Government Gazette, 2 December 2010, no.19121.
- 365 The Implementation Provisions concerning the detection and prosecution in relation to sexual abuse (2010A026, Dutch Government Gazette 2010, no. 19123) contain regulations that apply *mutatis mutandis* to child pornography cases, unless stated otherwise in the Implementation Provisions concerning child pornography. The care of victims is the subject of a separate paragraph in the Implementation Provisions concerning public decency offences, in which reference is made to the Implementation Provisions concerning the care of victims (2010A029), Dutch Government Gazette 2010, no. 20476.
- 366 Public Prosecution Service, 2011, available at: [www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045\\_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx](http://www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx) (viewed 20 June 2010). See also §1.4.3.
- 367 Sexting involves the sharing of sexually explicit images by means of electronic technology (mobile telephone, internet), see §1.4.3. The Implementation Provisions concerning child pornography do not include an implementation provision with regard to the phenomenon of sexting. Nevertheless, in view of the growth in the extent of this phenomenon, this deserves consideration, see also Weesepoel, 2011.
- 368 The latest Implementation Provisions also differ from the previous Implementation Provisions on a number of other points. This is related to the fact that the legislation regarding the approach towards combating child pornography has been adjusted several times over the past years in terms of the sentence carried, and has been extended as a result of new legislation regarding the criminalisation of grooming. Abusive images involving children are distributed primarily via the Internet. The Implementation Provisions therefore also place a great emphasis on the handling of seized material, Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), Dutch Government Gazette, 2 December 2010, no.19121. Furthermore, it is striking that the Implementation Provisions concerning public decency offences do not make reference to the seizing of data storage media or material, whereas it is precisely in cases of sexual abuse that this can provide important indications which may increase the likelihood of detection.

the victims, the perpetrators of sexual abuse and the production of abusive images involving children. Possession of child pornography (and child erotica) can serve as an indication that can be used to detect possible abuse and production.<sup>369</sup> With regard to priorities, the Implementation Provisions report that this plays an important part in identifying the victims, and that it is difficult to estimate the severity of an investigation into child pornography in its initial stages (see §3.4.3).

A Child Pornography Expertise Centre has been established within the Public Prosecution Service; this centre is under the direction of the national coordinating public prosecutor in child pornography cases. The Expertise Centre is administered by the Rotterdam district public prosecutor's office. In addition to this centre, there also exists a Victims of Sexual Abuse Liaison Officers Platform, chaired by the deputy chief public prosecutor of the Rotterdam district public prosecutor's office, who is also chair of the Sexual Abuse Committee. The way in which child pornography is tackled forms part of this committee. The child pornography portfolio is not held at the National Public Prosecutor's Office.<sup>370</sup> At the College of Procurators General, the sexual abuse and child pornography portfolios are assigned to different Procurators General.

#### *Alternative methods of settlement*

The government and the House of Representatives are in agreement that by shifting the focus towards individuals suspected of the sexual abuse of children and towards the production and distribution of abusive material involving children, attention must still be given to cases involving downloaded material that involve the possession of, or the gaining of access to, child abuse material. The Minister for Security and Justice hereby states that other methods of dealing with the problem must be employed for this, including extrajudicial methods.<sup>371</sup> Investigations into child abuse material remain complex and time-consuming.<sup>372</sup> Before a case comes up for a hearing, the Public Prosecution Service also has opportunities to settle the case itself. On the basis of the Public Prosecution Service Settlement Act, the Public Prosecution Service is able to issue a punishment order, which contains orders with which the convicted perpetrator must comply.<sup>373</sup> If (behavioural) orders are also issued with the punishment order, the probationary period can be a maximum of one year.<sup>374</sup> Out-of-court settlements also

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369 Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), Dutch Government Gazette 2 December 2010, no.19121, p.2.

370 The involvement of the High-Tech Crime unit of the National Public Prosecutor's Office in the current investigation into the Amsterdam sexual abuse case by the Team High-Tech Crime of the National Crime Squad forms an exception to this.

371 Letter from the Minister for Security and Justice of 10 June 2011, *Parliamentary Papers II* 2010/11, 32 500 VI, no.106.

372 According to the Public Prosecution Service, the number of cases reported to the police has increased on a yearly basis, Public Prosecution Service, 2011, available at: [www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045\\_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx](http://www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx) (viewed 20 June 2010). Cf. §3.4.3. In the Progress Report of March 2011, the Minister indicates that the total number of pending cases stabilises each year at around 750 cases, with two peaks above this. First Progress Report 2011 on the tackling of child pornography, *Parliamentary Papers II* 2010/11, 32 500-VI, no.86.

373 The Public Prosecution Service Settlement Act, Dutch Bulletin of Acts and Decrees, 2006, 330, entered into force on 1 February 2008.

374 Article 257a, paragraph 3(e) of the Dutch Code of Criminal Procedure.

occur.<sup>375</sup> In addition to this, the Public Prosecution Service also has the opportunity to postpone the decision as to whether prosecution will have to take place, for a certain amount of time, subject to a number of set conditions: a conditional decision not to prosecute. This route of conditionally not prosecuting also provides the Public Prosecution Service with opportunities to settle cases. The Child Pornography Expertise Centre is therefore seeking new methods of dealing with as many cases as possible by means of the *Niets Doen Is Geen Optie* (INDIGO) [Doing Nothing is not an Option] initiative.<sup>376</sup> The intention behind this is to allow sufficient time and attention for complex and serious cases, without allowing suspects of relatively light cases to end up receiving minimal attention. For these cases, which involve the possession of and the gaining of access to child abuse material, alternatives to prosecution are then sought.<sup>377</sup> The project such as the one taking place in Rotterdam still needs to be evaluated. Alongside this, a barrier model is currently being developed in order to be able to intervene at the ‘front-end’ of the problem and thus to prevent possible child pornography offences.<sup>378</sup> (See §3.8.4).

A plan for the Public Prosecution Service with regard to combating child pornography is expected to be established after the summer, partly in light of recent police developments (see §3.4.4). The Public Prosecution Service, the Ministry of Security and Justice, the police and other partners in the chain have expressed the intention to increase the effectiveness of their efforts to combat child pornography. For this purpose, joint frameworks for a new plan of action have been formulated. This will have consequences for the police with regard to its structure, and it will in any case have consequences for the Public Prosecution Service with regard to the way in which operation, prioritisation and prosecution of child pornography cases are implemented. Whilst maintaining the role and responsibility of each party, the Public Prosecution Service and police both formulate a plan of action, aimed at achieving uniformity, using different forms of settlement, pooling the knowledge held by the police and Public Prosecution Service in a joint expertise centre, and investing in innovation and research. The implementation of this plan is taking place in close collaboration with the partners in the chain. The plan of action for the Public Prosecution Service is expected to be completed after the summer of 2011.<sup>379</sup>

### 3.5.2 Trial

Each year, between 250 and 300 criminal cases are settled at court, in which cases charges are made on the basis of Article 240b of the Dutch Criminal Code, some of which occur alongside other offences.<sup>380</sup> In principal, child pornography cases are in the first instance settled by all courts. In 2009, the Cyber-crime Centre of Excellence was set up at the Court of Appeal in The Hague, which not only maintains

375 Article 74 of the Dutch Criminal Code. See §3.6.2.

376 INDIGO forms part of the Zambezi ‘testbed’. See §3.4.2.

377 Public Prosecution Service, 2011, available at: [www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045\\_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx](http://www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx) (viewed 20 June 2010)

378 Child pornography tackled, appendix to the letter from the Minister for Security and Justice of 10 June 2011, *Parliamentary Papers II* 2010/11, 32 500 VI, no.106.

379 Written information from the secretary of the Project, reinforcing the measures to tackle of child pornography at the Public Prosecution Service, 21 July 2011.

380 According to the Council for the Judiciary, the courts handled more than 150 cases in 2009, in which a charge was made exclusively for child pornography on the basis of Article 240b of the Dutch Criminal Code, see: [www.rechtspraak.nl/Recht-in-Nederland/ThemaDossiers/kinderporno/Pages/Veelgestelde-vragen.aspx](http://www.rechtspraak.nl/Recht-in-Nederland/ThemaDossiers/kinderporno/Pages/Veelgestelde-vragen.aspx) (viewed 16 June 2011).

an (internal) case law database with regard to child pornography cases, but also serves as a helpdesk for courts in the rest of the country.<sup>381</sup>

In criminal cases related to child pornography, images are not included in the dossier as standard, as the Public Prosecution Service wants to minimise the risk of the material being further distributed. Instead of including images in the dossier, the police describe what is depicted on the material in an official report, and explain why the material constitutes a child pornography offence. The sample images (in principle, a maximum of 25) that have been selected are made available to the public prosecutor in a form that is to be decided on in consultation with the public prosecutor, who treats them as documentary evidence, and who is able to show these to the members of the session prior to the session or during the session, if necessary. These exhibits are not added to the dossier and the public prosecutor regains possession of them after the session.<sup>382</sup> A new method of describing images in an official report and a standard form of indictment are currently being implemented. The aim of these measures is to enable an entire collection to be described in a more effective manner.<sup>383,384</sup>

#### *Victims in criminal proceedings*<sup>385</sup>

Images of victims will remain in circulation on the Internet, and for this reason the possibility of linking a name with an image must be prevented as much as possible. For victims of child pornography, anonymity is always of great importance, and therefore the identity and personal details of victims need to be protected as much as possible.<sup>386</sup>

381 The Knowledge Centre consists of two justices and a secretary, and a number of external experts, including scientists, provide support.

382 Implementation Provisions concerning child pornography (Article 240b of the Dutch Criminal Code), Dutch Government Gazette, 2 December 2010, no.19121, p.7.

383 See for example Court of Rotterdam, 31 March 2011, National Case Law Number: BP9776 (On behalf of the suspect, it has been put forward that the summons is partly invalid, because it is insufficiently factual with regard to this point. It is suggested that the description of sexual behaviours is too general. However, according to the court's judgment, the factual content of the photos and films is described in sufficient detail. "It's almost impossible to describe the content any more explicitly.").

384 No research has been carried out in the Netherlands as to the extent to which the sentences imposed for child pornography by judges who see the images themselves differs from judges who do not see the images, see: [www.rechtspraak.nl/Recht-In-Nederland/ThemaDossiers/kinderporno/Pages/default.aspx](http://www.rechtspraak.nl/Recht-In-Nederland/ThemaDossiers/kinderporno/Pages/default.aspx) (viewed 14 April 2011).

385 §1.4.2 contains information about victims of child pornography and §3.7 contains information regarding the provision of care to victims.

386 In response to the proposal of the European Commission for a new Directive on combating sexual abuse, the sexual exploitation of children and child pornography, the European Parliament has tabled an amendment that entails that EU Member States are required to guarantee the right to the protection of the privacy and images of underage victims, and to prevent the public distribution of information about them that is able to lead to their identification, because children must be protected against any type of infringement of their privacy, Draft European Parliament Legislative Resolution on the proposal for a Directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, Committee on Civil Liberties, Justice and Home Affairs (Rapporteur: Roberta Angelilli), 2010/0064(COD), 24 January 2011, p.28.

The Amsterdam sexual abuse case surrounding Robert M. is a recent example of the above-mentioned problem. In the Dutch newspaper 'Trouw', amongst others, the lawyer of parents of a number of victims explained that many parents regret having reported the offences. Regardless of the cost, parents want to keep their children's names out of the media and out of the case notes relating to criminal proceedings, in order to ensure that this won't follow them around for the rest of their lives.<sup>387</sup> Although the Public Prosecution Service has recognised this problem, in practice it remains difficult to ensure that the images remain anonymous. In the first instance, the Public Prosecution Service indicated that it was worried that it would offend the victim's parents if their child was reduced to a number.<sup>388</sup> However, in the end, the decision was made to give the images numbers, as an attempt to maintain the anonymity of victims in the criminal proceedings.

At the moment, however, there is no statutory or other provision to guarantee the complete anonymity of victims in criminal proceedings in situations such as this, and as such to protect the identity and personal details of victims. The way in which this can be achieved, without this being in conflict with Article 6 of the European Convention of Human Rights, must be investigated.<sup>389</sup> Furthermore, parents or carers can face the dilemma of whether or not to tell the child concerned about what happened to them.

During the substantive hearing of the criminal case, victims of serious crimes are able to make a statement regarding the consequences that they have suffered as a result of the offences. In the Amsterdam sexual abuse case, discussion arose as to whether parents of underage victims are able to exercise this right to speak on behalf of their children in the criminal case. Exercising the right to speak depends on the age of the victim. Only children over the age of twelve are able to exercise this right themselves, and children younger than twelve cannot make use of this right.<sup>390</sup> Since July 2011, the State Secretary for

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387 *Spreekrecht kan na kindermisbruik helend werken* [After child abuse, the right to speak can be healing], Trouw, 17 June 2011, pp.1-2.

388 *Ibidem*.

389 For this, a link can be sought with Article 8 of the EU Council Framework Decision [no.2001/220/JHA](#) of 15 March 2001 on the status of the victim in criminal proceedings (Pb EG 2001, L82/1). This provision concerns protection of privacy of victims. All Member States take the protection of victims from publicity and possible threats and intimidation by the perpetrator very seriously, and they usually provide various types of protection, Lauwaert 2011, p.88. In May 2011, the European Commission submitted a motion for a directive concerning minimum standards for victims of crime, *Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime*, COM (2011) 275 final to replace the current Framework Decision. This proposal includes a provision regarding the protection of privacy, whereby a best efforts obligation is established in order to ensure that judicial authorities are able to take measures during a hearing to safeguard the *privacy* and images of victims and their families. In addition to this, the Member States must encourage national media to take self-regulatory measures, as a result of which they too will protect the privacy of victims and their families.

390 Article 51e, paragraph 1 of the Dutch Code of Criminal Procedure in conjunction with 51e, paragraph 3 of the Dutch Code of Criminal Procedure. See also *Wetsvoorstel tot uitbreiding spreekrecht van slachtoffers en nabestaanden* [Legislative proposal for extension of the right to speak of victims and family members] (7 July 2011), available at: [www.defenceforchildren.nl/p/21/2149/mo89-mc21](http://www.defenceforchildren.nl/p/21/2149/mo89-mc21) (viewed 8 July 2011).

Security and Justice has been preparing a legislative proposal in which the parents of children younger than twelve can exercise the right to speak on behalf of their child.<sup>391</sup>

The question is whether parents of victims of child pornography should also be granted an independent right to speak.<sup>392</sup> The abuse of their child, who at a young age is certainly entirely dependent on them, can already, in itself, be particularly traumatising for them. The fact that images of the abuse have been made, aggravates the traumatic impact (see §1.4.3 and §3.7) and brings with it dilemmas that increase stress upon the parents. On the one hand, parents want to know what has happened to their child, but on the other hand, seeing the images can negatively influence the relationship between parent and child.

The circulation on the Internet of images of a child being abused can in itself be regarded as sexual violence, and as victimisation that repeatedly manifests itself, time after time. Another important question is how justice can be done to victims when it is assumed that they will be victimised time and time again as a result of the distribution of child abuse material (re-victimisation), and what the consequences would be if it were possible for them to receive compensation.

### 3.5.3 Sentences and orders

Article 240b of the Dutch Criminal Code stipulates a custodial sentence of a maximum of four years in principle, or a maximum of eight years in principle if making a profession or a habit of, for example, possession of child abuse material, is involved.<sup>393</sup> In terms of the sentence carried, Article 240b of the Dutch Criminal Code does not differentiate between different behaviours, such as the possession, distribution and production of child abuse images.<sup>394</sup> The custodial sentences stipulated in Article 240b of the Dutch Criminal Code can be increased by one third in the event that the offence is committed by two

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391 Press report, 6 July 2011, available at: [www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/07/07/teeven-dader-gaat-betalen.html](http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/07/07/teeven-dader-gaat-betalen.html) (viewed 24 August 2011). See also *Parliamentary Papers II* 2010/11, Appendix to the Proceedings, no. 247. The text from the proposal (dated 6 July 2011) is available at: [www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/15/voorstel-van-wet-en-memorie-van-toelichting-uitbreiding-spreekrecht-slachtoffers-en-nabestaanden-in-het-straftproces.html](http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2012/02/15/voorstel-van-wet-en-memorie-van-toelichting-uitbreiding-spreekrecht-slachtoffers-en-nabestaanden-in-het-straftproces.html) (viewed 22 July 2011).

392 A victim is an individual who has suffered a disadvantage as a direct consequence of a criminal offence; see Article 51a paragraph 1 of the Dutch Code of Criminal Procedure: “An individual who has suffered financial damage or another disadvantage as a direct consequence of a criminal offence is considered to be a victim.”

393 In 2009, the maximum sentence in Article 240b, paragraph 2 of the Dutch Criminal Code was increased from six to eight years, Act of 12 June 2009, Dutch Bulletin of Acts and Decrees 245, entered into force on 1 July 2009. Article 248 of the Dutch Criminal Code partly determines the penalty carried.

394 See the difference in the lowest maximum sentences possible by virtue of the current EU Framework Decision and by virtue of the proposal of the European Commission for a new EU Directive. In the proposal for a new directive, the European Commission considers, amongst other things, that in so far as it concerns child pornography, production, which usually involves approaching and having sexual contact with the child, is more serious than other offences such as distributing or offering abuse material, which in turn are more serious than possessing or accessing child abuse material, Proposal for a Directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, and repealing Framework Decision 2004/68/JHA, COM (2010) 94 final, p.7.

or more persons acting in association, or in the event that the offence is committed within a dependency relationship. In the event that the offence results in serious bodily injury or if danger to the life of another person can be feared, a custodial sentence of a maximum of 15 years or a fine of the fifth category can be imposed. If an offence as described in Article 240b of the Dutch Criminal Code results in death, the penalty carried by the offence is a custodial sentence of a maximum of 18 years or a fine of the fifth category.<sup>395</sup> It is also possible to impose a community service order instead of a custodial sentence.<sup>396</sup> Suspended sentences and orders can also be imposed.<sup>397</sup>

Additional penalties can also be imposed alongside the main sentences. A judgment can be pronounced, requiring the deprivation of certain rights.<sup>398</sup> If the offence, for example in the case of child pornography, has been committed within the scope of the convicted individual's profession, the individual can also be removed from this profession.<sup>399</sup> Some cases are known in which this penalty was imposed, but this did not happen – or this did not happen *solely* – on the basis of an infringement of Article 240b of the Dutch Criminal Code.<sup>400</sup>

395 Article 248 of the Dutch Criminal Code. These circumstances that increase the penalty are also stated in Article 28 of the Lanzarote Convention as circumstances that the court must take into consideration when determining the sentence to be imposed for the criminal offences described in the Convention. See also Article 5 of the EU Framework Decision, Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 013, 20 January 2004.

396 A community service order consists of a working order – undertaking unpaid work – or a training order, or a combination of the two, Article 9, paragraph 2 of the Dutch Criminal Code. At the time of writing, the proposal that the training order for those of full age ceases to exist as an independent community service order, is before the Upper House, *Parliamentary Papers I* 2010/11, 32 169 no. A.

397 A suspended sentence or order provides opportunities to work on changing behaviours and to prevent possible reoffending. However, this depends not so much on the duration of – for example – the suspended sentence as on the duration of the probationary period. As a rule, this probationary period is two years. During the probationary period, the individual who has been convicted has to adhere to the special conditions and is under rehabilitation supervision. The threat of enforcement of the suspended sentence in the event of non-compliance with the conditions functions as a deterrent. The special conditions that can be imposed in the case of suspended sentences, will be described in more detail in §3.6.2.

398 This can concern holding an office, serving in the armed forces, acting as a defence lawyer or court-appointed administrator, Article 251, paragraph 1 of the Dutch Criminal Code in conjunction with Article 28, paragraph 1, subsection 1 of the Dutch Criminal Code.

399 Article 251, paragraph 2 of the Dutch Criminal Code. See also Article 28, paragraph 1, subsection 5 of the Dutch Criminal Code.

400 Cf. Court of Amsterdam, 12 October 2005, National Case Law Number: AU4229 (suspect is convicted of being guilty of the death of a baby following cardiological intervention, and of the fact of making a habit of having child abuse material in his possession. Amongst other sanctions imposed: the special condition of suspended removal from the profession of doctor for a period of three years with a probationary period of three years); Court of Den Bosch, 19 June 2001, LJN:AB2182 (suspect is convicted for possession of child abuse material, committed several times, sexual abuse of a patient and sexual abuse of a pupil. Amongst other sanctions imposed: the special condition of suspended removal from the profession of GP for a period of four years.

A recent investigation reveals that deprivation of certain rights is demanded and imposed primarily in cases of sex offences and fraud.<sup>401</sup> The investigation also brings to light the fact that judges and public prosecutors are often unfamiliar with the possibilities for deprivation of rights. In cases in which the Public Prosecution Service requested removal from the profession or removal from office, this was granted in 88% of all sexual abuse cases (67 cases). This investigation concerned sexual abuse cases in which removal from the profession or removal from office was requested between 1995 and 2008. The same investigation also revealed that hardly any checks take place on whether the removal has been enforced. An explanation for this is that it is hard to find judgments in which a removal has been imposed, as a result of which professional organisations are not often aware of this and therefore do not take appropriate measures. The Education Inspectorate carries out most checks for removals, in particular by means of the requirements for a Certificate of Good Conduct.<sup>402</sup> In sexual abuse cases, professions in the healthcare sector form the largest group for which the Public Prosecution Service demands removals and that these are imposed by the court.<sup>403</sup>

Exact figures regarding the number of removals from a profession in cases concerning child pornography are not known. Restrictions in terms of profession and voluntary work are also imposed as a special condition on individuals convicted in sexual abuse cases that also concern an infringement of Article 240b of the Dutch Criminal Code. This special condition is then associated with a probationary period, during which supervision can be exercised in order to determine compliance with this condition (see §3.6.2).<sup>404</sup>

Another additional penalty that can be imposed is the confiscation of objects, for example, which were used to help commit the offence.<sup>405</sup> It is often the case in child pornography cases that certain objects are seized and that the court subsequently confiscates these. These objects can include computers, telephones and recording equipment (see §3.5.4.2 below).

*'Profession or habit' circumstance, which carries an increased penalty*

Those who make a profession of committing one of the child pornography offences or those who make a habit of committing such offences can be sentenced to a higher penalty: a custodial sentence of a maximum of eight years or a fine of the fifth category.<sup>406</sup> When does the situation of 'profession or

401 Malsch et al., 2009.

402 See §3.2.2. for more detailed information about this.

403 Malsch et al., 2011.

404 See for example Court of Utrecht, 9 February 2011, National Case Law Number: BP3760 (sexual abuse of an underage boy, grooming, showing abusive material concerning children to minors, and the possession of child abuse material. Amongst other sanctions imposed: the special condition of the prohibition of work – both professional and voluntary – involving children, for a probationary period of three years); Court of Den Bosch, 18 February 2011, National Case Law Number: BP4903 (judgment relevant to Articles 240b, 244 and 246. Amongst other sanctions imposed: the special condition includes the suspect not being allowed to give singing or piano lessons at their own home for a probationary period of three years.).

405 See Articles 33 and 33a of the Dutch Criminal Code.

406 Not so long ago, in 2009, the maximum sentence for the professional or habitual possession, production, distribution, etc. of child abuse material was increased from six to eight years. An important consequence of altering the maximum sentence is the ability to implement greater investigative powers that exist by virtue of the Code of Criminal Procedure.

habit', which carries an increased penalty, exist? Can it simply involve the mere possession of 100,000 images, for example, or does it have to involve downloading images repeatedly over a certain period of time? Case law indicates that three aspects play a role here: the systematic character of the possession, the intensity (the quantity of images) and the duration of possession.

In 2007, the Court of The Hague ruled that it can be described as a habit if 'one is used to doing something repeatedly over a long period of time'<sup>407</sup> The Court provides a linguistic explanation for this. It is not a requirement that this activity was undertaken for a commercial purpose.<sup>408</sup> In 2008, the Court of Dordrecht ruled that habitual cases involve a systematic character.<sup>409</sup> The suspect had already been downloading child abuse material for three years and had regular contacts with whom he shared material. In a case handled by the Court of Zutphen, the suspect was occupied with child abuse material almost every day, and this was sufficient reason for the court to assume it was habitual.<sup>410</sup> It can also be the case that the suspect has held a subscription for a website relating to child pornography for a longer period of time. This can also prove the systematic character of the behaviour.<sup>411</sup> It is also possible that an individual is sentenced for possessing a small number of images. In establishing a habit, the intensity and duration of the possession of images are also taken into consideration.<sup>412</sup> This also comes to the fore in the case of the Supreme Court from December 2010. In this, the Supreme Court considers, amongst other things, that:

'From the evidence put forward, the Court has manifestly and not incomprehensibly reasoned that over the proven period of almost three years, the suspect repeatedly downloaded, saved and stored images and films in many folders, on two hard drives and on hundreds of DVDs and that he expanded and added to his collection of those images and data storage media over the course of this period, resulting in a collection that comprised approximately 41,213 multimedia files concern-

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407 The Court of The Hague, 17 April 2007, National Case Law Number: BA3188. Cf. Court of Leeuwarden, 26 March 2009, National Case Law Number: BH9199. In this case, the court rules that the circumstance of paragraph 2 which carries an increased penalty does not apply. Over a period of (under) a year, the suspect also imported images of child abuse, after which he saved them onto the hard drive and other data storage media. At the time that the computer concerned was seized, the extent of the collection became clear. The court was of the opinion that the evidence available was insufficient to demonstrate that the duration, frequency and intensity with which the images were used constituted a habit.

408 See also Court of Appeal of Amsterdam, 12 October 2005, National Case Law Number: AU4229.

409 Court of Dordrecht, 14 October 2008, National Case Law Number: BF8894.

410 Court of Zutphen, 18 April 2007, National Case Law Number: BA3253.

411 Court of Leeuwarden, 30 May 2006, National Case Law Number: AY5820.

412 See Van Koppen, 2009, pp.95-96. See Court of Rotterdam, 22 October 2009, National Case Law Number: BK1007 (the court rules that, taking into consideration the statement from the suspect that he visited child pornography websites increasingly often and for increasingly long periods of time, as well as taking into consideration the quantity of images and the structured way in which the suspect had saved these in different folders, it is an established fact that the suspect made a habit of the possession of images). See also Court of Middelburg, 18 February 2010, National Case Law Number: BL4440. Cf. Court of Groningen, 10 March 2011, National Case Law Number: BP7372 (the court rules that the 'possession of images of child pornography for a lengthy period of time and a limited degree of distribution' alone were insufficient to enable one to regard this as a habit).

ing child pornography. Based on this, the Court was able to determine that the suspect “made a habit,” as referred to in Article 240b of the Dutch Criminal Code, of possessing those images and data storage media, within the meaning of the second Paragraph of that stipulation.<sup>413</sup>

In his conclusion, the Advocate-General Vellinga states, amongst other things, that possession is a condition that does not lend itself to plurality, but that the habitual possession of an image or data storage medium may already exist in the possession of multiple abusive images or multiple data storage media with (a) child pornography image(s). The designation as a habit can also be revealed through the duration of the possession or the way in which possession came about. It may be the case that the suspect collected the images bit by bit and that he therefore came into possession of more and more new images, thereby indicating that he made a habit out of collecting, and therefore possessing abusive images; according to the Advocate-General *loc. cit.*, the evidence employed concludes that the suspect collected the multimedia files concerned in parts. 41,213 multimedia files were discovered in this case, stored on a large number of different media. Storing that amount of data cannot happen at once, neither taking into consideration the number of multimedia files nor taking into consideration the fact that these were stored on various media. From the evidence put forward, it was therefore decided that the suspect did not take possession of the files all at once, according to the Advocate-General. The proven facts – making a habit – can therefore be deduced from the evidence employed alone. Making a habit of possession of child abuse material can also be proven by the circumstance that the suspect not only collected those images, but also *organised* them. By occupying himself with his possession in such a way, the suspect expresses that he not only obtained and saved images from the Internet, but that by organising his collection, he accentuated the continuation of the possession, thereby keeping it alive, certainly when taking into consideration the extent of the collection and the time that it must have taken to organise the collection, according to the Advocate-General.

A sentence for profession or habit can also be imposed if it concerns possession of, for example, 100,000 images alone or downloading images repeatedly over a certain period of time.

#### *Public Prosecution Service Guidelines for Demands*

The Criminal Procedure Guidelines in cases concerning child pornography (hereinafter: the Guidelines)<sup>414</sup> provide a framework for the Public Prosecution Service for the formulation of demands. As a starting point, both the Guidelines as well as the Implementation Provisions concerning child pornography adopt the view that it is necessary to protect both the child who is directly involved in the production of child abuse material, as well as children in general. This applies to children in the Netherlands, but also to those abroad. A large amount of material is produced in countries where this can take place with very little risk, and this is subsequently distributed, certainly by means of the Internet, all over the world in a very short period of time. In addition to the distinction that is made between possession, distribution and production of child abuse material, which each carry their own sentence in the Guidelines, these Guidelines also take account of three specific factors: the nature of the images, the age of the victims, and the period of time during which the activities took place. When taking account of the nature of the images, the poses of the children are relevant, as is the question as to whether the images show acts of sexual abuse, actual penetration or photos that are

413 Supreme Court, 7 December 2010, National Case Law Number: BN8215, legal ground 2.4.

414 Child pornography guidelines, Dutch Government Gazette, 24 April 2007, no.79, extended to 31 October 2011, Dutch Government Gazette, 23 March 2011, no.4983.

violent in other respects. When taking the age of the victims into account, the younger the victims are, the higher the demands are with regard to the sentence to be handed down. According to the Guidelines, child abuse material involving children under the age of twelve must carry the most severe sentences. In determining the period during which the activities took place, a distinction is made between a short period of time and a lengthy period of time. According to the Guidelines, a short period of time is understood as being a maximum of one year. Finally, the Public Prosecution Service also looks at reoffending, in the event that the suspect has already been sentenced for sexual abuse. The starting point, for prosecuting the possession of child abuse material as a predicate offence, is a demand of 120 points, which means a custodial sentence of 120 days. According to the National Child Pornography Expertise Centre, a part of the sentence is, in practice, demanded as a suspended sentence in the majority of cases, due to the importance of modification of behaviour; a special condition during a probationary period allows for rehabilitation supervision and treatment.<sup>415</sup>

*Special session regarding the possession of child abuse material*

In order to call attention to the severity of the offences, the Public Prosecution Service organises so-called special sessions. At the end of 2010, such a session was held at the Court of The Hague, in which six suspects stood trial for the possession of child abuse material. The Public Prosecution Service is of the opinion that due to this fact, the suspects are partly responsible for maintaining the production and distribution of such material. According to the Public Prosecution Service, a working order or suspended custodial sentence does not do justice to the severity of the offences, which is why the Public Prosecution Service demands a non-suspended sentence in principle.<sup>416</sup> It emerges from the judgments that the court has not followed this demand in all instances.<sup>417</sup>

415 Written information from the Child Pornography Expertise Centre, 11 August 2011. See §3.6.2. for more detailed information about this.

416 Press Release of the Public Prosecutor's Office of The Hague, 'Special session regarding the possession of child abuse material', 5 November 2010, available at: [www.om.nl](http://www.om.nl) (viewed 20 June 2011).

417 Court of The Hague, 26 November 2010, National Case Law Number: BO5186 (working order of 180 hours, six months suspended and a probationary period of five years, of which ten months non-suspended and six months suspended had been demanded. In particular, the court considered the fact that the suspect had the images in his possession for just a short period of time); BO5185 (the suspect had the images in his possession for over seven years. He had also paid for the images. In this instance also, the prosecutor demanded a non-suspended custodial sentence of eight months, and eight months suspended. The judge also imposed a community service order of 240 hours, with a suspended custodial sentence of nine months and a probationary period of five years. In this case, the court took into consideration the fact that the man was voluntarily undergoing therapy and that a custodial sentence would interfere with this therapy); BO5184 (acquittal); BO5183 (suspect had a relatively small collection of child erotica in his possession. Partly due to this reason, the judge did not follow the prosecutor's demand for ten months' non-suspended, six months' suspended and a probationary period of five years. The suspect was sentenced to a working order of 180 hours, six months suspended with a probationary period of three years); BO5163 (the suspect had searched for material for over two years, and had also found it: almost one thousand five hundred images. But with regard to this suspect, it also primarily concerned child erotica and not 'hard-core' child abuse material. The judge did not follow the public prosecutor's demand of eighteen months' custodial sentence of which six months suspended with a probationary period of five years, in this case either. The court considered a community service order (180 hours) and a suspended sentence of six years with a probationary period of three years to be sufficient). The judgment with regard to the final suspect has not been published.

*Reference Points of the National Consultative Committee for the Chairmen of Criminal Law Sectors*

The reference points of the National Consultative Committee for the Chairmen of Criminal Law Sectors are intended to insure that sentences are imposed on suspects in as uniform a manner as possible. The reference points with regard to Article 240b of the Dutch Criminal Code were established in January 2011.<sup>418</sup> The reference point for possession, acquisition and accessing child abuse material by means of an automated action or through the use of a communication service, is a suspended custodial sentence of six months and a community service order of 240 hours. The reference point for distribution, offering, open exhibition, import, transition and export of child abuse material is a non-suspended custodial sentence of one year. For the production of such material, this is a non-suspended custodial sentence of two years. In cases that involve making a profession or habit of committing such offences, the reference points are correspondingly higher.<sup>419</sup> Production of child abuse material usually occurs in concurrence with other sexual offences. These behaviours carry a sentence that is considerably higher (a custodial sentence of six to twelve years) than that demanded with respect to the sole production of material as referred to in Article 240b, paragraph 1 of the Dutch Criminal Code, where the sentence carried is a custodial sentence of a maximum of four years, unless circumstances as referred to in Article 248 of the Dutch Criminal Code are involved. If, for example, it is charged and proven that the offence involves production of child abuse material in addition to sexual abuse of a child under the age of twelve years, the custodial sentence can be a maximum of sixteen years.<sup>420</sup>

Factors that increase or reduce the sentence include the number of images (physical or digital), the period of time over which the collection of images was built up, the age of the victim, the nature of the image(s), the type of image (for example real or virtual production), the professionalism (e.g. commercial purpose, intention to make a profit), reoffending (recidivism), and the danger of repetition. The suspect's willingness – or not, as the case may be – to change behaviour, recognition of problematic behaviour, and insight into problematic behaviour are also factors that are able to increase or decrease the severity of the sentence. Factors that increase the severity of the sentence include, amongst others, the issue of whether the offence was committed within a dependency relationship, for example an offence involving the underage child of the suspect, or involving a victim who is not – or is hardly – able to determine its will in that regard or to make it known or to provide any resistance against it, for example as a result of the underdeveloped mental capacities of the victim.<sup>421</sup>

418 See [www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Agenda-van-de-Rechtspraak-2011-2014/Documents/20110211\\_OrientatiepuntenenafsprakenLOVS.pdf](http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Agenda-van-de-Rechtspraak-2011-2014/Documents/20110211_OrientatiepuntenenafsprakenLOVS.pdf) (viewed 16 June 2011).

419 A one-year, non-suspended custodial sentence in the event of making a profession or habit of possession, a non-suspended custodial sentence of two years in the event of making a profession or habit of distribution, open exhibition, import, transit and export of child abuse material; a non-suspended custodial sentence of four years in the event of making a profession or habit of production of such material, reference points of the National Consultative Committee for the Chairmen of Criminal Law Sectors [www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Agenda-van-de-Rechtspraak-2011-2014/Documents/20110211\\_OrientatiepuntenenafsprakenLOVS.pdf](http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Agenda-van-de-Rechtspraak-2011-2014/Documents/20110211_OrientatiepuntenenafsprakenLOVS.pdf) (viewed 16 June 2011).

420 No more than a third above the highest maximum if it involves a combination of multiple acts, Article 57 of the Dutch Criminal Code.

421 Other circumstances that increase the sentence apply if the offence was preceded by or goes hand in hand with torture or a serious violent offence; and if the abuse was committed by two or more associated individuals, in accordance with Article 248 of the Dutch Criminal Code.

### Community Service Order

In the Public Prosecution Service Implementation Provisions concerning community service orders, suspects of child pornography are in any case excluded from a basic community service order.<sup>422</sup> The reference points of the National Consultative Committee for the Chairmen of Criminal Law Sectors are based on a community service order, but this is in addition to a suspended custodial sentence of six months, only in those cases which involve the acquisition or possession of, or the gaining of access to child abuse material. It does occur that basic community service orders are imposed for offences as referred to in Article 240 of the Dutch Criminal Code (see §3.5.4.2).

Since 2009, there has been discussion surrounding a legislative proposal to limit the possibilities to impose a community service order for serious sexual abuse offences and violent offences and in the event of re-offending.<sup>423</sup> The legislative proposal begins by proposing to make it no longer possible to impose a community service order in sentences on the basis of, including others, Article 240b of the Dutch Criminal Code, unless in combination with suspended or non-suspended sentences or orders that involve deprivation of freedom. The choice of, amongst other offences, child pornography was inspired by the desire to highlight the severity of this offence and to emphasise the importance of the protection that this stipulation intends to provide to minors. In sentences for Article 240b of the Dutch Criminal Code, basic community service orders cannot be imposed, according to the explanation,<sup>424</sup> regardless as to whether or not the offence resulted in a serious infringement of the victim's physical integrity.

In November 2010, the Minister for Security and Justice submitted a government amendment, which amended two parts of the legislative proposal. First of all, the court would no longer be able to impose a community service order in combination with a (suspended or non-suspended) sentence or orders that involve deprivation of freedom. Secondly, the discretionary capacity of the Public Prosecution Service in the case of the enforcement of a (partly) failed community service order would disappear, so that in the future the Public Prosecution Service would *be required* to order the enforcement of alternative detention for those cases. As stated, this government amendment proposes abolishing the possibility of imposing a community service order in combination with a suspended or non-suspended sentence or orders that involve deprivation of freedom for serious sexual abuse offences and violent offences and in the event of

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422 Implementation Provisions concerning community service orders 2008Ao25, Dutch Government Gazette 2008, no.235. In the event of suspects of serious violent offences or sexual abuse offences, a custodial sentence is expressly considered, possibly an entirely or partially suspended sentence, but not a basic community service order, "In any case, suspects of serious violent offences or sexual abuse offences – in which a custodial sentence of six or more years has been imposed and which involve a serious infringement of physical integrity – are excluded from a basic community service order. In these cases, the suspect should always be summoned." In addition to these violent offences or sexual abuse offences, those suspected of having committed offences contrary to Article 240b of the Dutch Criminal Code, amongst others, which carry a sentence of less than six years, should also be excluded from a basic community service order. "Those suspects should also be summoned."

423 *Parliamentary Papers II* 2009/10, 32 169, no.2.

424 *Parliamentary Papers II* 2009/10, 32 169, no.3, p.10.

re-offending,<sup>425</sup> and therefore to scrap it entirely. The government indicates in this regard that it does not consider it appropriate 'to the character of the community service order that this could actually be imposed in the case of a sentence for a serious sexual abuse offence or violent offence, as referred to in the present legislative proposal.' In a response, the Dutch Probation Service argued that by removing the possibility of imposing a community service order in combination with a suspended sentence, the ability of courts to impose a sanction that is appropriate for the criminal offence and for the offender is reduced, including and partly for the prevention of repeat offences and therefore new victims.<sup>426</sup> The Council for the Judiciary also points out obstacles in practice, and thereby states that limiting the freedom of the courts to determine the punishment could frequently lead to sentences being imposed that are not proportional to the offence committed.<sup>427</sup> "Furthermore, the proposal means that the specific opportunities that community service orders provide for the realisation of modification of behaviour and reducing repeat offending, can no longer be of use."<sup>428</sup> In March 2011, an amended legislative proposal finally emerged, which stated that a community service order would no longer be possible unless, and only if, it is imposed in combination with a *non-suspended* sentence or orders that involve deprivation of freedom.<sup>429</sup> It is, in this case, only possible to combine the community service order with a sentence of no longer than six months.<sup>430</sup>

At the time of writing, the legislative proposal is under discussion in the Senate of the Dutch Parliament.<sup>431</sup> The government is of the opinion that keeping open the possibility to combine the community service order with a suspended custodial sentence would leave the door too widely open for punishments in which the community service order would become too dominant and whereby the suspended custodial sentence imposed alongside it would be subordinate to the community service order. 'That, in itself, is in conflict with the premise that the community service order is not a suitable sentence for serious cases of sexual abuse and violent abuse.'<sup>432</sup>

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425 *Parliamentary Papers II* 2010/11, 32 169, no.9. See also the press release from the Ministry for Security and Justice 'Streep door taakstraf bij ernstige zeden- en geweldsmisdrijven' [Getting rid of community service orders in serious sexual abuse offences and violent offences], 18 November 2010.

426 Letter from the Dutch Probation Service to the members of the VKC for Security and Justice, 7 February 2011, [www.reclassering.nl](http://www.reclassering.nl) (viewed 16 June 2011). See also *Parliamentary Papers I* 2010/11, 32 169 no. B, p.4.

427 See [www.rechtspraak.nl](http://www.rechtspraak.nl) (viewed 16 June 2011).

428 The Council for the Judiciary has, in addition, stated that it is against restricting community service orders for cases concerning child pornography because this could limit judicial freedom, which could in turn damage the quality and the suitability of the criminal procedure. The court should allow scope for customisation, website of the Council for the Judiciary: [www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Wetgevingsadvisering/Adviezen%202011/brief-nota-van-wijziging-taakstraffen-2-2-2011.pdf](http://www.rechtspraak.nl/Organisatie/Raad-Voor-De-Rechtspraak/Wetgevingsadvisering/Adviezen%202011/brief-nota-van-wijziging-taakstraffen-2-2-2011.pdf) (viewed 16 June 2011).

429 Amendment of the Van Toorenburg, *Parliamentary Papers II* 2010/11, 32 169 no. 12. In the present amended proposal, it is also proposed to make it no longer possible to impose a community service order, unless it is imposed in combination with a non-suspended sentence or orders that involve deprivation of freedom – in the event of sentences for offences described in Article 248a of the Dutch Criminal Code (seduction of a minor) and 248c of the Dutch Criminal Code (presence at sex shows in the company of a minor).

430 See Article 9, paragraph 4 of the Dutch Criminal Code.

431 *Parliamentary Papers I* 2010/11, 32 169 no.A.

432 *Parliamentary Papers I* 2010/11, 32 169 no.C.

### 3.5.4 Prosecution and trial in figures

A large “dark number” of instances of child pornography exist. This means that the number of child pornography cases known to the police does not represent the total number of instances of child pornography in society. Depending upon the available capacity and upon indications that increase the likelihood of detection, amongst other things, a certain number of the child pornography cases known to the police are successfully concluded and forwarded to the Public Prosecution Service. This section contains statistical information regarding the cases of child pornography that are registered with the Public Prosecution Service and the child pornography cases that are settled in first instance or on appeal. This concerns:

- Information originating from the Public Prosecution Service in §3.5.4.1 (regarding the prosecution of suspects), §3.5.4.2 (regarding the trial of suspects in first instance) and in §3.5.4.4 (regarding background characteristics of suspects and individuals sentenced in first instance).
- Information originating from the Investigation and Policy Database of Judicial Documentation in §3.5.4.3 (regarding the trial of suspects on appeal).

The different items of data in this section do not represent a cohort. After all, not all cases registered with the Public Prosecution Service are concluded by the Public Prosecution Service in the same year in which they are registered, or settled in first instance or on appeal. It should also be noted that the formulation of the section of the law concerning child pornography does not, unfortunately, make it possible to differentiate, on the basis of subsections, between the possession, distribution and production of child abuse material. The statistics that originate from the Public Prosecution Service and the Investigation and Policy Database of Judicial Documentation do not therefore provide information about this distinction, which is a very relevant one.<sup>433</sup>

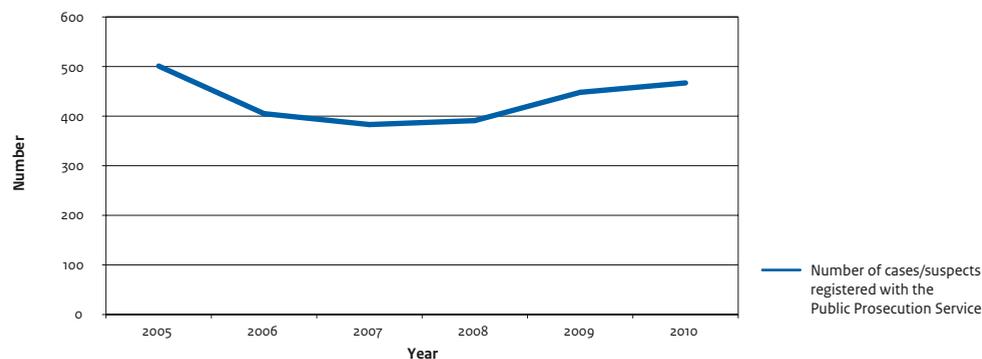
#### 3.5.4.1 Prosecution in figures

##### *Number of child pornography cases registered with the Public Prosecution Service*

Figure 3.7 shows the trend with regard to the annual number of child pornography cases registered with the Public Prosecution Service against individual suspects in the period between 2005 and 2010.<sup>434</sup> The term ‘child pornography cases’ refers to cases in which child pornography definitely plays a role. It is often the case that these cases also involve other offences, in addition to child pornography.

433 Finally: When interpreting quantitative data, the specific context in which the data was collected must always be taken into consideration, as well as various factors that may influence the data. For the research justification, refer to Appendix 2: Justification of the research methods employed: 2. Public Prosecution Service data & Investigation and Policy Database Judicial Documentation research. The explanation of the figures displayed in this section, the additional tables presented in Appendix 4 and the statistics that are applicable to this can be found in Appendix 2.

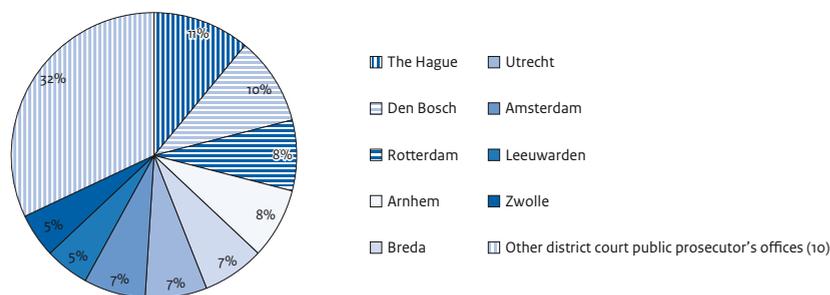
434 Please refer to Appendix 4, Table B4.5 for the table containing the complete summary of this data (including index figures and the growth in relation to the previous year).

**Figure 3.7** Number of cases registered with the Public Prosecution Service (2005-2010)

During the period displayed, a total of 2595 cases were registered with the Public Prosecution Service. The annual number of registered cases varies between 383 in 2007 and 501 in 2005. A marked increase can be seen in the years 2009 and 2010 in relation to the three preceding years.<sup>435</sup> According to the Public Prosecution Service, this recent increase is the result of a more intensive approach to tackling child pornography that the Public Prosecution Service has been taking since 2009.<sup>436</sup>

#### Cases registered in each district court public prosecutor's office

Figure 3.8 displays the district court public prosecutor's offices at which the cases were registered over the total period from 2005 up to and including 2010.<sup>437</sup>

**Figure 3.8** Cases registered in each district court public prosecutor's office (total 2005-2010)

435 These figures differ to a limited extent from the figures that were published in the Public Prosecution Service 2010 Annual Report. The differences are probably the result of different reference dates and possibly other marginal selection criteria. The figures in the Public Prosecution Service 2010 Annual Report are not based solely on Article 240b, but are also based on classifications (verbal information from the Public Prosecution Service, May 2011).

436 Public Prosecution Service, 2009.

437 Please refer to Appendix 4, Table B4.6 for the table containing the complete summary of this data (including detailed information with regard to the other ten district court public prosecutor's offices).

The total percentage of cases registered at the different public prosecutor's offices varies between 2% (Dordrecht) and 11% (The Hague). For each public prosecutor's office, the percentage fluctuates each year. The total top 5 consists of The Hague (292), Den Bosch (250), Rotterdam (206), Arnhem (205) and Breda (177). A large proportion of the child pornography cases conducted by the region or supregion originates from the Department of International Police Information (IPOL) (TBI) (see §3.4.2)

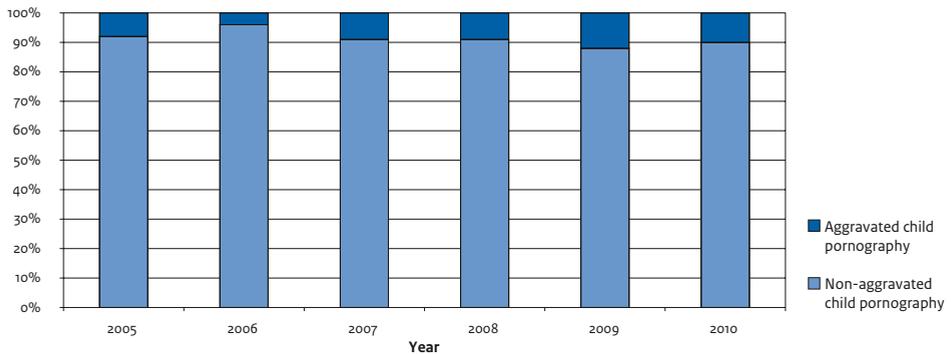
#### Nature of the registered cases

Figure 3.9 displays the annual number of cases over the period from 2005 to 2010, broken down into non-aggravated and aggravated child pornography offences.<sup>438</sup>

The term 'aggravated child pornography' includes:

- Making a profession or habit of child pornography.<sup>439</sup>
- Child pornography that is committed in association with another party/other parties.<sup>440</sup>
- Child pornography that involves the abuse of authority.<sup>441</sup>
- Child pornography that results in serious bodily injury.<sup>442</sup>
- Child pornography that results in death.<sup>443</sup>

**Figure 3.9 Nature of the registered cases (2005-2010)**



438 Please refer to Appendix 4, Table B4.7 for the table containing the complete summary of this data.

439 Article 240b paragraph 2 of the Dutch Criminal Code, whether or not in conjunction with paragraph 1 (for child pornography offences committed before 2004, this concerned paragraph 3 instead of paragraph 2).

440 Article 240b paragraph 1 and/or paragraph 2 in conjunction with Article 248 paragraph 1 of the Dutch Criminal Code.

441 Article 240b paragraph 1 and/or paragraph 2 in conjunction with Article 248 paragraph 2 of the Dutch Criminal Code.

442 Article 240b paragraph 1 and/or paragraph 2 in conjunction with Article 248 paragraph 3 of the Dutch Criminal Code.

443 Article 240b paragraph 1 and/or paragraph 2 in conjunction with Article 248 paragraph 4 of the Dutch Criminal Code.

The majority of cases involve non-aggravated child pornography (91% on average). The cases relating to aggravated child pornography mainly involve making a profession or habit of child pornography. Three instances occurred in which child pornography was committed in association with another party/other parties and one instance occurred in which child pornography involved an abuse of authority (all in 2010). The remaining circumstances that result in an increased penalty did not occur.

As previously stated, it is not possible to ascertain from the statistics whether the prosecution or trial was carried out as a result of the possession, distribution or production of child abuse material. However, there is strong evidence to suggest that the majority of criminal cases over the past years concerned the possession of such material.<sup>444</sup> Research into this matter points in the same direction.<sup>445</sup> The *Verbeterprogramma* [Programme of Improvements]<sup>446</sup>, the *Korpsmonitor* [Police Corps Monitor on Child Pornography] for 2009<sup>447</sup> and 2011 appear to confirm this impression.<sup>448</sup> If this assumption – that most cases involve the possession of child abuse material – is correct, the high percentage of cases of non-aggravated child pornography is probably striking, considering the fact that proving the circumstance of making a profession or habit of the possession of child abuse material, which increases the sentence, appears to be quite a simple matter. This is possible, for example, on the basis of the material that is uncovered, especially if this consists of a large quantity or if it relates to repeatedly downloading material over a certain period of time (see §3.5.3). However, it is possible that in this case, the statistics provide a distorted view and that in reality prosecution takes place more often under the condition that increases the penalty subject to Article 240b paragraph 2 of the Dutch Criminal Code. This discrepancy could then be the consequence of an incomplete registration.<sup>449</sup>

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444 Based on the analysis of 274 judgments on [www.rechtspraak.nl](http://www.rechtspraak.nl) concerning 2008 and 2009 based on the search term ‘240b’ in the period from 2000 up to and including 2009. J.J. Oerlemans, ‘Een verborgen wereld: kinderpornografie op internet’ [A hidden world: child pornography on the Internet], FJR (Tijdschrift voor Familie- en Jeugdrecht) [Journal for Family and Juvenile Law], issue 10, October 2010, pp.236-243,239. The research project was carried out in the context of a thesis by the same author entitled *Kinderpornografie op internet. Dweilen met de kraan open* [Child pornography on the Internet. Mopping up the water while the tap is still turned on] Celsus Juridische Uitgeverij 2010. It should be noted here that this research project only took case law that had been published into consideration.

445 Lünemann et al., 2006, p.108.

446 *Landelijk Project Kinderporno* [National project to tackle child pornography], 2008, p.14.

447 *Programma Verbeteren Aanpak Kinderporno* [Programme of Improvements in Tackling Child Pornography], 2009, p.20.

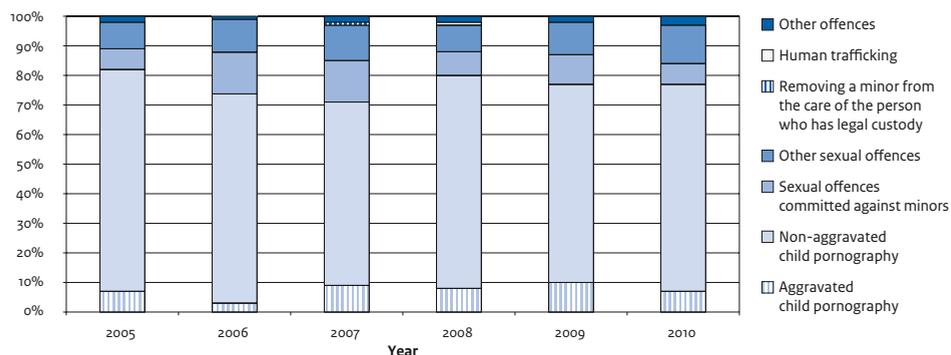
448 *Programma Verbeteren Aanpak Kinderporno* [Programme of Improvements in Tackling Child Pornography], 2011, p.9. The focus for tackling child pornography is not clear. Four variants exist, which contain some degree of variation: focus on the victims (five of the 25 police forces), focus on abuse/distribution/production (seven police forces), focus on possession/distribution (nine police forces) and four police forces stated no clear focus, see §3.4.3.

449 Notably, if cases were only registered on the basis of the first subsection of 240b of the Dutch Criminal Code and not on the basis of Article 240b paragraph 2 of the Dutch Criminal Code. However, it is not possible to verify the precise manner in which cases are registered at a later stage.

### Registered cases by gravest offence

One case may involve multiple offences. Figure 3.10 provides an overview of the gravest offence recorded for each child pornography case that is registered.<sup>450</sup> The gravest offence is considered to be the offence that carries the most severe penalty.<sup>451</sup> The term does not assess the offence in qualitative terms.

Figure 3.10 Registered cases by gravest offences (2005-2010)



On average, child pornography (aggravated or non-aggravated) is the only offence registered, or the gravest offence registered, in 77% of cases. In the event that an offence that is graver than child pornography is also suspected, this usually concerns a sexual offence (21%), often involving a minor (10%).

### Registered cases and preventive detention

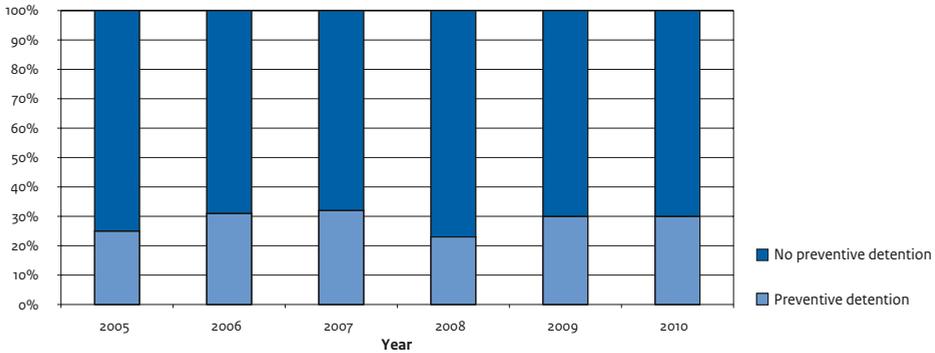
Figure 3.11 shows the proportion of suspects registered with the Public Prosecution Service in the period between 2005 and 2010 that were being held in preventive detention at any time.<sup>452</sup> However, this does not mean to say that the suspect was (still) in preventive detention when the court session took place.<sup>453</sup>

450 Please refer to Appendix 4, Table B4.8 for the table containing the complete summary of this data.

451 In the event of a combination of offences which carry the same penalty, child pornography shall be classified as the gravest offence. If, following this, multiple offences that carry the same penalty still exist, the offence that is stated first shall prevail.

452 Please refer to Appendix 4, Table B4.9 for the table containing the complete summary of this data.

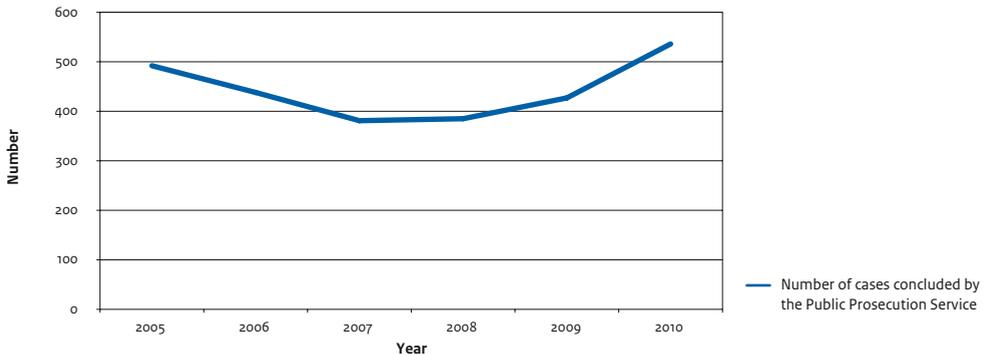
453 Preventive detention can, during the course of its term, be suspended or revoked. This data does not, therefore, provide information with regard to the number of suspects that were still being detained preventively when the judgment was pronounced. In this case, it concerns formal preventive detention (therefore the decision to enforce preventive detention, regardless of whether this was actually implemented), and the issue of whether or not the suspect was taken into police custody was not taken into consideration.

**Figure 3.11 Registered cases and preventive detention (2005-2010)**

On average, a suspect is taken into preventive detention in 28% of the registered cases. This proportion varies annually between 25% and 32%.

#### *Number of cases concluded by the Public Prosecution Service*

Figure 3.12 shows the development of the number of cases concluded by the Public Prosecution Service over the past five years.<sup>454</sup> The number of cases registered and the number of cases concluded in a year do not form a cohort, meaning that the figures cannot be compared with each other.

**Figure 3.12 Number of cases concluded by the Public Prosecution Service (2005-2010)**

In the period between 2005 and 2010, the Public Prosecution Service concluded 2659 child pornography cases. The annual number of cases concluded varies between 381 in 2007 and 536 in 2010. In 2009, but

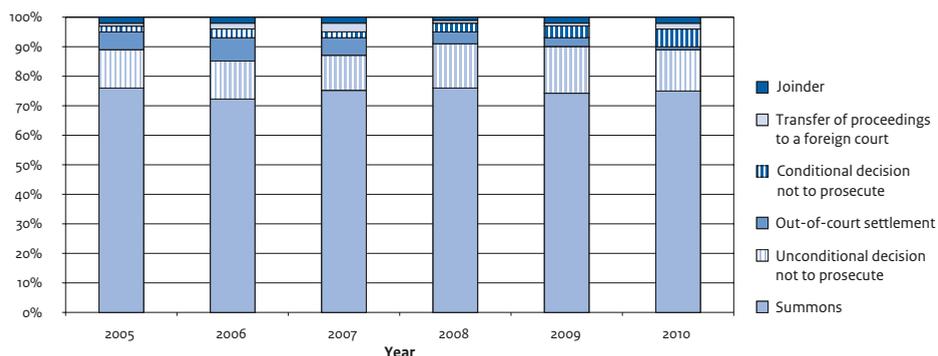
<sup>454</sup> Please refer to Appendix 4, Table B4.10 for the table containing the complete summary of this data (including index figures and the growth in relation to the previous year).

predominantly in 2010, a considerable increase can be seen.<sup>455</sup> According to the Public Prosecution Service, this recent increase is the result of a more intensive approach to tackling child pornography that has been implemented since 2009.<sup>456</sup>

#### Concluded cases by type of settlement

Figure 3.13 shows the ways in which the Public Prosecution Service concluded cases in the period between 2005 and 2010.<sup>457</sup>

**Figure 3.13 Concluded cases by type of settlement (2005-2010)**



On average, the Public Prosecution Service decides to issue a summons in three quarters of all cases<sup>458</sup>, <sup>459</sup> and the unconditional decision not to prosecute is taken in 14% of cases. The remaining types of settlement concern 11% of all cases on average. Besides this, a decrease in the number of out-of-court settlements can be seen (from 8% in 2006 to 1% in 2010) as well as an increase in the percentage of conditional decisions not to prosecute (from 2% in 2005 to 6% in 2010). This is an interesting development, considering the fact that conditional decisions not to prosecute can (partly) be employed as an instrument of influence. (see §3.6.2).

<sup>455</sup> These figures differ to a limited extent from the figures that were published in the Public Prosecution Service 2010 Annual Report. The differences are probably the result of different reference dates and possibly other marginal selection criteria. The figures in the Public Prosecution Service 2010 Annual Report are therefore not based solely on Article 240b, but are also based on classifications (verbal information from the Public Prosecution Service, May 2011).

<sup>456</sup> Public Prosecution Service, 2009.

<sup>457</sup> Please refer to Appendix 4, Table B4.11 for the table containing the complete summary of this data.

<sup>458</sup> Please note: it can be the case that the decision is made to issue a summons exclusively for offences other than child pornography. The condition applied to 'Settled by the Public Prosecution Service' does not set requirements for this.

<sup>459</sup> These figures differ to a limited extent from the figures that were published in the Public Prosecution Service 2010 Annual Report. The differences are probably the result of different reference dates and possibly other marginal selection criteria. The figures in the Public Prosecution Service 2010 Annual Report are therefore not based solely on Article 240b, but are also based on other classifications. Besides this, 'summons' also includes 'joinder' in the Public Prosecution Service Annual Report (verbal information from the Public Prosecution Service, May 2011).

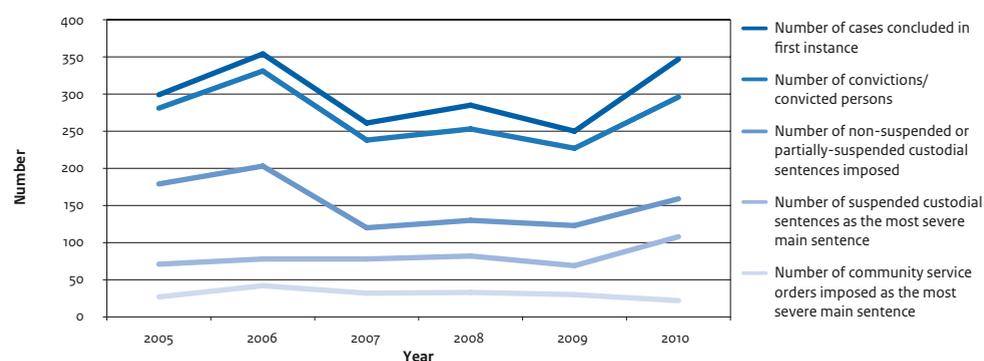
### 3.5.4.2 Cases concluded in first instance in figures

Research has not yet been carried out with regard to possible differences between the sentence demanded by the Public Prosecution Service and the sentence imposed by the court.<sup>460</sup> It has also not been examined whether or not increasing the sentence for child pornography cases has affected the sentences imposed, and if so, how. In 2009, the maximum sentence in Article 240b paragraph 2 of the Dutch Criminal Code was (as a rule) increased from six to eight years.<sup>461</sup>

#### *Number of cases concluded in first instance*

Figure 3.14 shows the development of the number of cases concluded in first instance in the period between 2005 and 2010.<sup>462</sup>

**Figure 3.14** Number of cases concluded in first instance (2005-2010)



Over the period displayed, the court concluded 1796 child pornography cases in first instance. The annual number of cases concluded varies between 250 in 2009 and 354 in 2006. A decrease in one year alternates with an increase the following year. The most significant increase occurred in 2010 (39% increase in comparison with 2009). This is probably the result of the increase in the number of cases registered with and concluded by the Public Prosecution Service in 2009 and 2010.

#### *Cases settled in first instance by type of settlement*

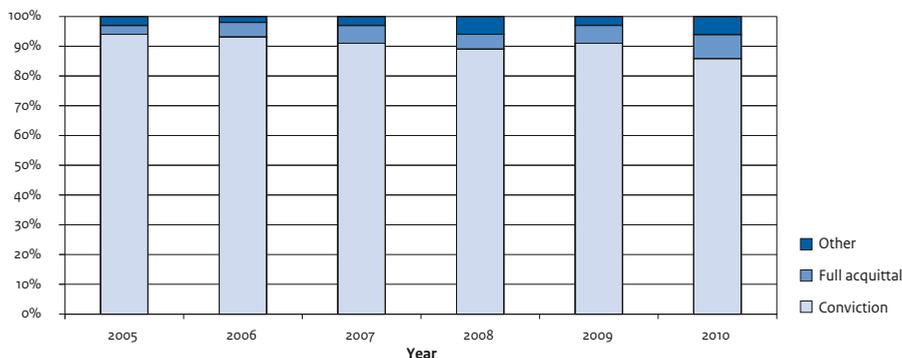
Figure 3.15 shows the decisions made by the court with regard to the type of settlement for cases settled in first instance in the period from 2005 to 2010.<sup>463</sup>

<sup>460</sup> Not by the Council for the Judiciary either, frequently asked questions about child pornography, [www.rechtspraak.nl](http://www.rechtspraak.nl) (viewed 14 April 2011).

<sup>461</sup> Act of 12 June 2009, Dutch Bulletin of Acts and Decrees, 245, entered into force on 1 July 2009.

<sup>462</sup> Please refer to Appendix 4, Table B4.12 for the table containing the complete summary of this data (including index figures and the growth in relation to the previous year).

<sup>463</sup> Please refer to Appendix 4, Table B4.13 for the table containing the complete summary of this data.

**Figure 3.15 Cases settled in first instance by type of settlement (2005-2010)**

On average, 91% of the cases settled in first instance led to a conviction<sup>464</sup>,<sup>465</sup> and 6% resulted in full acquittal. Other types of settlement hardly took place at all (3% of the total altogether). It is striking that in 2010, fewer sentences were imposed (85%) and more full acquittals took place (8%) in comparison with the previous years, relatively speaking. It is possible that this can be (partly) explained by the fact that the Public Prosecution Service has recently been taking more cases to court, with the intention of creating case law with regard to the 'grey area' between the material that does and does not constitute a criminal offence.<sup>466</sup> However, without carrying out further research, it is not possible to state what the possible causes of this development could be.

#### *Convictions in first instance by severity of charges*

Figure 3.16 provides an overview of the gravest registered offence charged, per child pornography case, that resulted in a conviction in first instance.<sup>467</sup> The offence that carries the most severe penalty is considered to be the gravest offence.<sup>468</sup> This term does not provide a qualitative assessment of the offence.

464 Please note: it can be the case that an offender is convicted for other offences than the offence of child pornography. Unfortunately, the Public Prosecution Service data does not provide reliable information with regard to convictions for – in any case – child pornography.

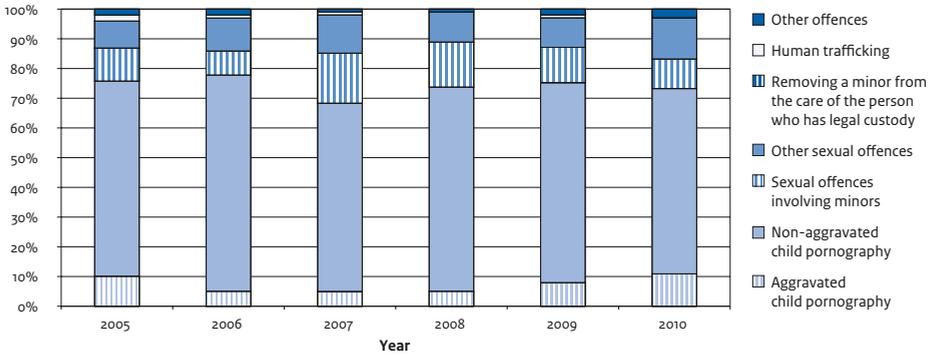
465 These figures differ to a limited extent from the figures that were published in the Public Prosecution Service 2010 Annual Report. The differences are probably the result of different reference dates and possibly other marginal selection criteria. The figures in the Public Prosecution Service 2010 Annual Report are therefore not based exclusively on Article 240b, but are also based on classifications (verbal information from the Public Prosecution Service, May 2011).

466 Public Prosecution Service, 2011. See also §1.4.1.1

467 Please refer to Appendix 4, Table B4.14 for the table containing the complete summary of this data.

468 In the event of a combination of offences which carry the same penalty, child pornography shall be classified as the gravest offence. If, following this, multiple offences that carry the same penalty as each other still exist, the offence that is reported as being charged first shall prevail.

**Figure 3.16 Convictions in first instance by severity of charges (2005-2010)**

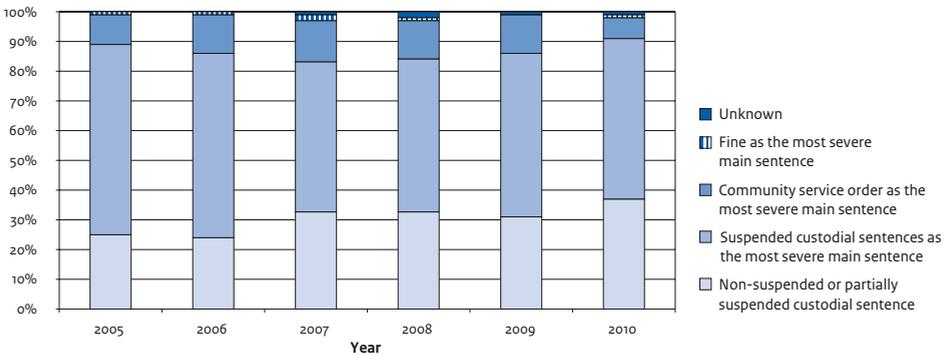


On average, in 74% of the cases that led to a conviction, child pornography (non-aggravated or aggravated) was the only – or the gravest – offence. In the event that an offence that is graver than child pornography was also committed, this usually concerns a sexual abuse offence (23%), often involving a minor (12%).

*Convictions in first instance according to sentence imposed*

Figure 3.17 provides an overview of the main sentences that were imposed in the cases that resulted in a conviction in the period from 2005 to 2010.<sup>469</sup>

**Figure 3.17 Convictions in first instance according to sentence imposed (2005-2010)**



On average, a custodial sentence<sup>470</sup> was imposed in 87% of the cases in which the offender was convicted. This involves a fully suspended custodial sentence (57%) more often than a non-suspended or a partially suspended custodial sentence (30%). In 65% of the cases, the imposition of a community service order was involved, and in 12% of cases, the community service order is the most severe main sentence imposed. The combination of a fully suspended custodial sentence with a community service order occurs most often – a

<sup>469</sup> Please refer to Appendix 4, Table B4.15 for the table containing the complete summary of this data.

<sup>470</sup> Either a custodial sentence or youth detention.

total of 796 times (49%).<sup>471</sup> Fines are hardly ever imposed – 42 times in total, 17 times of which this is the most severe main sentence (1%). The percentage of non-suspended or partially suspended custodial sentences has increased over the past years, from 24% in 2006 to 37% in 2010. At the same time, a community service order was imposed as the most severe sentence less often in 2010 (7% in comparison with an average of 12% in the period between 2005 and 2009). This tendency towards more severe sentences is possibly linked with the altered perception of the severity of the offence of child pornography (see §1.2). The suspended custodial sentence imposed as the most severe main sentence fluctuates between 51% in 2007 and 64% in 2005.

For the 1615 cases in which the offender was convicted in the period from 2005 to 2010, a selection of orders and additional penalties were also examined.<sup>472</sup> In 14 cases (1%), placement under a hospital order was imposed in the case of an adult offender, and three times (0%) an order for placement in a young offenders' institution was imposed in the case of an offender who was a minor. A number of judgments involved placement under a hospital order exclusively with regard to child pornography offences, and one single case involved placement under a hospital order solely with regard to the possession and distribution of child abuse material (and therefore did not relate to the production of material).<sup>473</sup> In these situations, under certain circumstances, placement under a hospital order can also be required in the interest of the safety of others or for the safety of society in general.<sup>474</sup> Furthermore, 104 cases (6%) involve an order to provide compensation.<sup>475</sup> 449 cases (28%) involved the removal of items from circulation, and one case (0%) involved a confiscation order. The additional penalty of 'forfeiture' was imposed in 94 cases (6%).

*Non-suspended or partially-suspended custodial sentences handed down in the first instance according to term category*

Figure 3.18 provides an overview of the term of the non-suspended component<sup>476</sup> of the custodial sentences imposed in the cases in which a judgment involving a non-suspended or partially suspended custodial sentence was handed down, between 2005 and 2010.<sup>477</sup>

471 The National Consultative Committee for the Chairmen of Criminal Law Sectors' reference point for possession, acquisition and accessing child abuse material by means of an automated process or through the use of a communication service, is a suspended custodial sentence of six months and a community service order of 240 hours, see §3.6.2 following this.

472 Please refer to Appendix 4, Table B4.16 for the table containing the complete summary of this data.

473 Two examples of judgments in which placement under a hospital order was imposed solely for the offence of child pornography: Court of Rotterdam, 9 December 2009, National Case Law Number: BK6022 (Dirk-Jan P. – production, distribution and possession of child abuse material) and Court of Dordrecht, 12 May 2009, National Case Law number: BI3715 (distribution and possession of child abuse material).

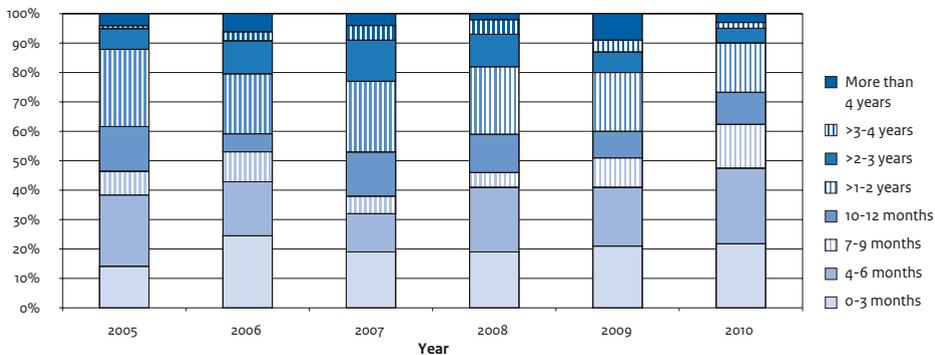
474 Article 37a, paragraph 1(2) of the Dutch Criminal Code. Cf. Public Prosecution Service, 2010: *Kinderporno intensiever aangepakt* [Child pornography tackled more intensively], which states that the court declared in 2009 for the first time that the offence that solely concerns the possession of abusive material concerning children is also an offence which provides a risk to the inviolability of persons.

475 This does not mean that orders to provide compensation are imposed *per se* for victims of child pornography. It is equally possible that in a child pornography case, an offender is convicted for an offence other than child pornography, and that the order for compensation is imposed in relation to that other offence.

476 The suspended component of the partial and full custodial sentences is not displayed here. The fully suspended custodial sentences are therefore also excluded here.

477 Please refer to Appendix 4, Table B4.17 for the table containing the complete summary of this data.

**Figure 3.18 Non-suspended or partially-suspended custodial sentences handed down in the first instance according to term category (2005-2010)**

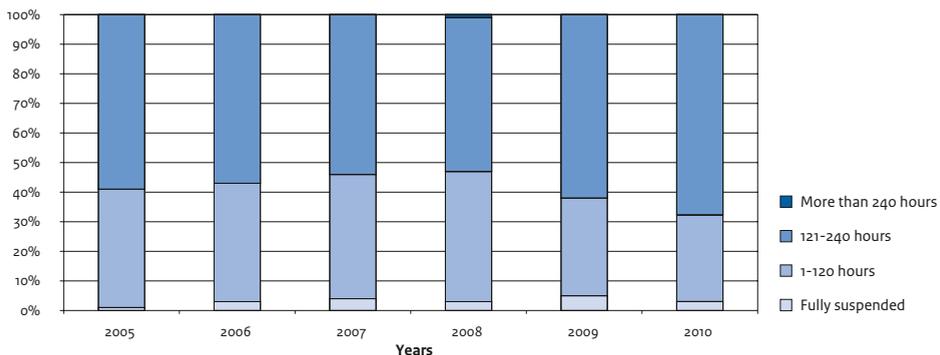


Usually (in 62% of cases), non-suspended community service orders of no longer than a year are imposed. On average, 16% of cases involve non-suspended community service orders of more than two years. It is striking that non-suspended custodial sentences with a shorter term were imposed more often in 2010 than in the preceding years. However, this is not necessarily in contradiction with the previously-stated trend towards more severe sentences. It is possible that in cases in which a community service order would usually have been imposed in the past, it is now more often the case that a non-suspended sentence with a relatively short term or a partially suspended custodial sentence is imposed. BNRM has not carried out any further research into this. In 2009 and 2010, the community service orders did indeed – more often than in preceding years – have a longer term (see figure 3.19).

#### *Community service orders handed down in first instance according to term category*

Figure 3.19 provides an overview of the term of the community service orders that were imposed in the cases in which a sentence was handed down which – in any case – involved a community service order<sup>478</sup> in the period from 2005 to 2010.<sup>479</sup>

**Figure 3.19 Community service orders handed down in first instance according to term category**



<sup>478</sup> Whether or not in combination with another (more severe) main sentence.

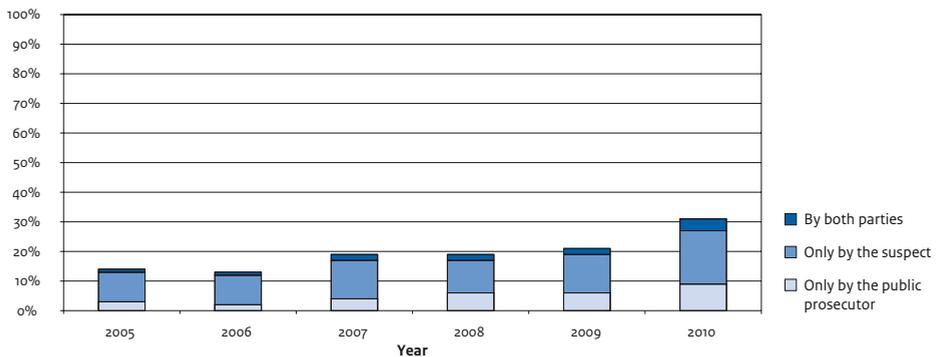
<sup>479</sup> Please refer to Appendix 4, Table B4.18 for the table containing the complete summary of this data.

Usually (in 59% of cases), non-suspended community service orders have a term of between 121 and 240 hours. 38% of cases involve a shorter term, and 32 cases involve a fully suspended community service order. In 2009 and 2010, community service orders with a longer term were imposed more often than in preceding years.

#### *Cases settled in first instance in which an appeal was lodged*

Figure 3.20 shows the development of the percentage of cases settled in first instance in the period between 2005 and 2010 per year in which an appeal was lodged, in relation to the total number of cases settled in first instance.<sup>480</sup> The party which lodged the appeal is also displayed.<sup>481</sup>

**Figure 3.20** Cases settled in first instance in which an appeal was lodged (2005-2010)



An appeal was lodged in 351 (20%) of the total 1796 cases settled in first instance. This was usually (partly) lodged by the suspect (12% by the suspect +2% by both the suspect as well as the public prosecutor). In the period between 2005 and 2009, the percentage of cases in which an appeal was lodged varies between 13% in 2006 and 22% in 2009. In 2010, both the public prosecutor and the suspect lodged an appeal in a considerably greater number of cases than in the previous years, in 31% of cases. It is possible that this is partly the result of previously-stated recent developments (fewer prosecutions and more severe sentences).

### 3.5.4.3 Cases settled on appeal in figures

#### *Number of child pornography cases settled on appeal*

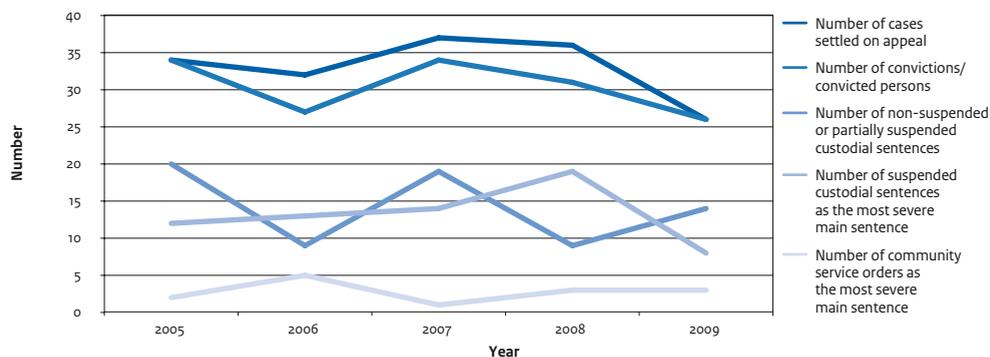
Figure 3.21 shows the development of the number of cases settled on appeal in the period from 2005-2009.<sup>482,483</sup>

480 The figures have been corrected to take into account appeals that were lodged at a later stage.

481 Please refer to Appendix 4, Table B4.19 for the table containing the complete summary of this data.

482 Please note: for the figures relating to higher appeal originating from the Investigation and Policy Database Judicial Documentation, figures only up to and including the year 2009 are displayed (see Appendix 2: Justification of the research methods employed: 2. Public Prosecution Service data & Investigation and Policy Database Judicial Documentation research.)

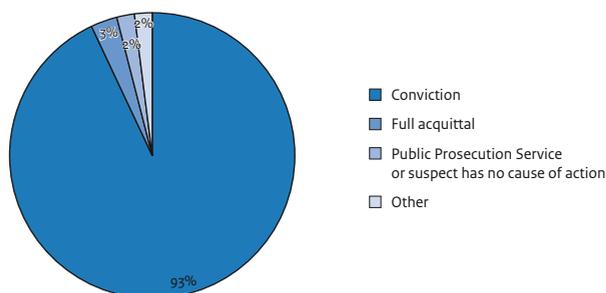
483 Please refer to Appendix 4, Table B4.20 for the table containing the complete summary of this data (including index figures and the growth in relation to the previous year).

**Figure 3.21** Number of cases settled on appeal (2005-2009)

In the time frame displayed, 165 child pornography cases were settled by the court on appeal. The number of cases settled each year is roughly 30-35. In 2009, the lowest number of cases were settled (N=26), but this number will probably have increased by a subsequent reference date.<sup>484</sup>

#### Cases settled on appeal according to settlement type

Figure 3.22 shows the decisions with which the court settled the cases on appeal in the period between 2005 and 2009.<sup>485</sup>

**Figure 3.22** Cases settled on appeal according to settlement type (total 2005-2009)

More than 90% of all cases settled on appeal led to a conviction<sup>486</sup> and 3% led to full acquittal.

<sup>484</sup> See Appendix 2: Justification of the research methods employed: 2. Public Prosecution Service data & Investigation and Policy Database Judicial Documentation research.

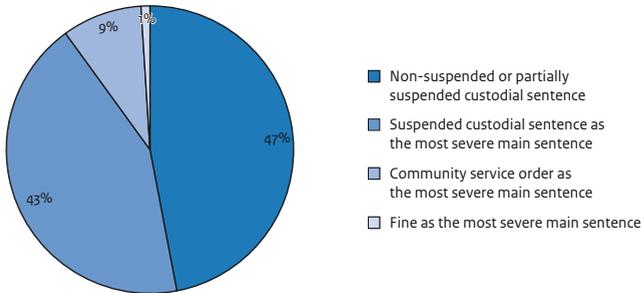
<sup>485</sup> Please refer to Appendix 4, Table B4.21 for the table containing the complete summary of this data.

<sup>486</sup> Please note: it may be the case that an offender is convicted exclusively for other offences than that of child pornography. Unfortunately, the Public Prosecution Service data does not provide reliable information with regard to convictions for child pornography in any case.

### Convictions on appeal according to sentence imposed

Figure 3.23 provides an overview of the sentences that were imposed in the cases settled on appeal that resulted in a conviction in the total period from 2005-2009.<sup>487</sup>

**Figure 3.23 Convictions on appeal according to sentence imposed (total 2005-2009)**

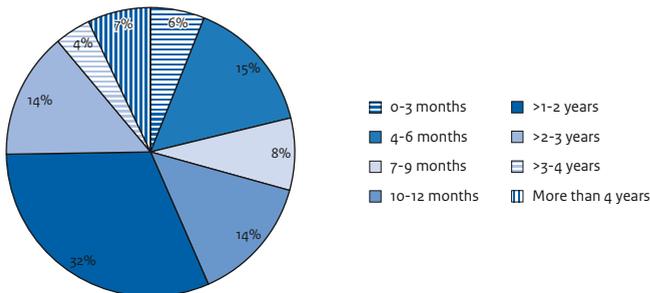


On average, a custodial sentence is imposed in 90% of all cases in which a judgment is handed down on appeal.<sup>488</sup> This involves a fully non-suspended or a partially suspended custodial sentence (47%) slightly more often than a fully suspended custodial sentence (43%). 53% of the cases involve a community service order being imposed and in 9% of cases, the community service order was also the most severe main sentence imposed. The combination of a fully suspended custodial sentence with a community service order occurs most often – 59 times in total (39%). In comparison with the sentences imposed in first instance,<sup>489</sup> more severe main sentences are imposed on appeal. A possible explanation for this is that the more serious cases more frequently lead to an appeal. BNRM has not investigated this in further detail.

### Non-suspended or partially suspended custodial sentences handed down on appeal according to term category

Figure 3.24 provides an overview of the term of the non-suspended component of the non-suspended or partially suspended custodial sentences in the cases in which an appeal was lodged between 2005 and 2009.<sup>490</sup>

**Figure 3.24 Non-suspended or partially suspended custodial sentences handed down on appeal according to term category (total 2005-2009)**



487 Please refer to Appendix 4, Table B4.22 for the table containing the complete summary of this data.

488 Either custodial sentence or juvenile detention.

489 See Figure 3.17.

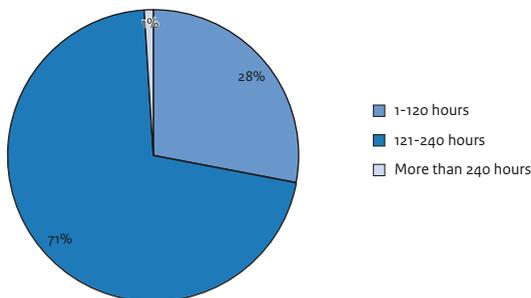
490 Please refer to Appendix 4, Table B4.23 for the table containing the complete summary of this data.

In 44% of all cases, the non-suspended component of the custodial sentence is no longer than one year. In a quarter of cases, it involves a term of more than two years. In comparison with the term of the non-suspended custodial sentences imposed in first instance,<sup>491</sup> custodial sentences with a longer term are imposed more often on appeal. This also applies to the term of the community service orders (see Figure 3.25 in comparison to Figure 3.19). In this case it is also possible that this can be explained by the assumption that more serious cases more frequently lead to an appeal.

#### *Community service orders handed down on appeal according to term category*

Figure 3.25 provides an overview of the term of the community service orders that were imposed in the cases in which an offender was convicted between 2005 and 2009.<sup>492</sup>

**Figure 3.25 Community service orders handed down on appeal according to term category (2005-2009)**



The majority of cases (71%) involve non-suspended community service orders of between 121 and 240 hours. 28% of the cases involve a shorter term, and suspended community service orders are not imposed on appeal.

### 3.5.4.4 Characteristics of suspects and persons convicted

#### *Number of suspects and persons convicted*

Please refer to Figure 3.7 (Number of cases registered with the Public Prosecution Service) for details of the development in the annual number of suspects registered with the Public Prosecution Service. The development in the number of individuals sentenced in first instance can be seen in Figure 3.14 (Number of cases concluded in first instance – second line from the top: Number of convictions/convicted persons).

#### *Gender of suspects and persons convicted*

Almost all the suspects as well as the individuals sentenced are men (98% and 99% respectively).<sup>493</sup>

<sup>491</sup> See Figure 3.18.

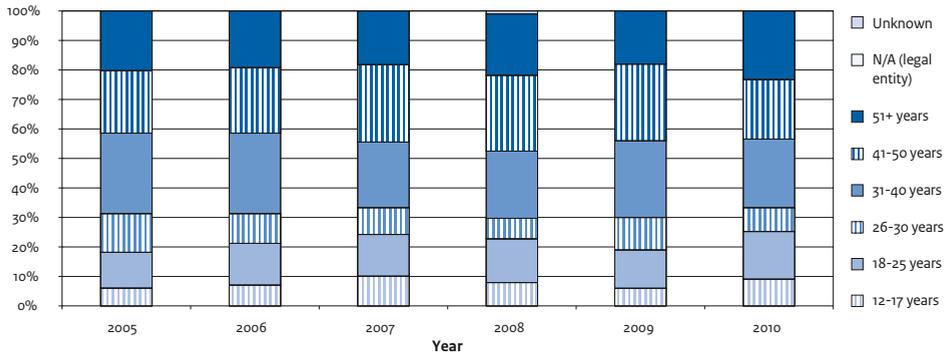
<sup>492</sup> Please refer to Appendix 4, Table B4.24 for the table containing the complete summary of this data.

<sup>493</sup> Please refer to Appendix 4, Tables B4.25 and B4.26 for the tables containing the complete summary of this data.

### Age of suspects and persons convicted

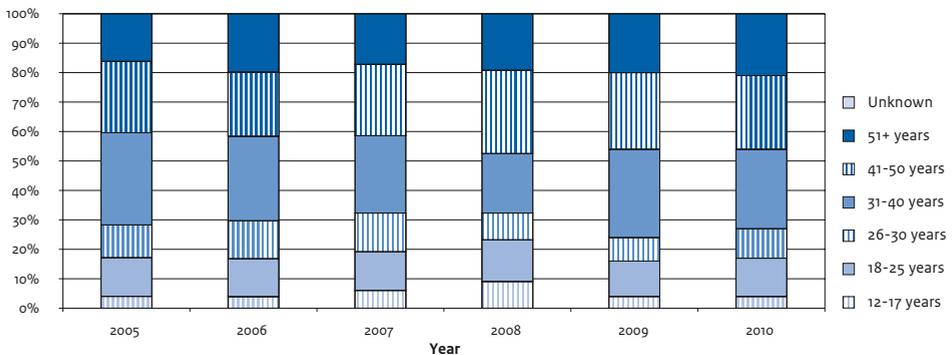
Figure 3.26 provides an overview of the age distribution of suspects registered with the Public Prosecution Service in the period between 2005 and 2010. Figure 3.27 shows the distribution with regard to persons convicted in first instance.<sup>494</sup> The age is determined by the date that the first registered offence was committed.

Figure 3.26 Age of suspects (2005-2010)



On average, approximately one third of the suspects are younger than 31 years of age. Minors make up eight percent of the suspects. The remaining suspects – the other two thirds – are therefore older than 30 years of age, whereby it is striking that a considerable proportion (20%) is older than 50 years old. For more information with regard to perpetrators, please refer to §1.4.2.

Figure 3.27 Age of persons convicted (2005-2010)



The distribution of the ages of convicted persons is roughly the same as that of suspects. The biggest difference with regard to suspects is that the percentage of minors is on average 3% lower amongst suspects (5% in comparison to 8%).

<sup>494</sup> Please refer to Appendix 4, Tables B4.27 and B4.28 for the tables containing the complete summary of this data.

### 3.5.5 Trends

The following trends emerge from the figures collected.

*An increasing number of prosecutions and trials are being carried out for offences concerning child pornography*

The annual number of child pornography cases registered with the Public Prosecution Service increased in 2009 and 2010. This also applies to the number of child pornography cases settled by the Public Prosecution Service. This trend is visible with regard to the courts in first instance in 2010. According to the Public Prosecution Service, these recent developments are the result of a more intensive approach towards tackling child pornography.

*In particular, convictions are being handed down for non-aggravated child pornography*

The vast majority of child pornography cases registered at the Public Prosecution Service involve non-aggravated child pornography (91%). This is striking, considering the fact that it is relatively easy from a legal point of view to prove the circumstance of making a profession or habit of possession of child abuse material, which increases the penalty. However, it is possible that these figures provide a distorted view of the reality as a result of incomplete registration.

*Child pornography offences often also involve other sexual offences*

If a graver offence than child pornography is involved in the same child pornography offence that is registered with the Public Prosecution Service (23%), this almost always involves a sexual offence, usually involving a minor. This also applies to child pornography cases in which suspects are sentenced by the courts in first instance.

*Conditional decisions not to prosecute are being made occasionally, but increasingly often*

In the period between 2005 up to and including 2010, the percentage of conditional decisions not to prosecute increased from 2% to 6%. This is an interesting development, considering the fact that conditional decisions not to prosecute can (partly) be employed as an instrument of influence.

*Relatively speaking, fewer prosecutions took place in 2010*

The percentage of prosecutions in first instance in 2010 was lower than in the preceding years (85% compared to an average of 92% in the period between 2005 and 2009.) It is possible that this can – partly – be explained by the fact that the Public Prosecution Service is taking less obvious forms of child pornography to court more and more often. These less obvious forms of child pornography can include virtual child pornography or child pornography involving adolescents. The Public Prosecution Service is also taking cases to court with the intention of creating case law with regard to the ‘grey area’ between the material that does and does not constitute a criminal offence.

*In most cases, a suspended custodial sentence with a community service order is imposed*

In the event that a sentence is imposed in first instance, a fully suspended/ custodial sentence in combination with a community service order is imposed in half of all cases. On appeal, this figure is approximately 40%. In first instance as well as on appeal, this is the most prevalent combination of main sentences imposed in child pornography cases.

*Increasingly severe sentences are being imposed*

In the period between 2006 up to and including 2010, the proportion of non-suspended or partially sus-

pended custodial sentences increased from 24% to 37%. At the same time, a community service order was imposed as the most severe main sentence less often (7% in comparison with an average of 12% in the period between 2005 and 2009.) It is possible that this tendency towards more severe penalties is linked to the altered perception of the severity of the offence of child pornography. Furthermore, the term of the non-suspended component of the custodial sentences imposed was shorter in 2010. However, this does not have to be in contradiction with the previously-stated trend towards more severe sentences. It is possible that in cases in which a community service order would usually have been imposed in the past, it is now more often the case that a non-suspended sentence with a relatively short term or a partially suspended custodial sentence is imposed. The community service orders imposed in 2009 and 2010 carried a longer term more often.

*It is very rare that detention under a hospital order or placement in a young offenders' institution is imposed*

In the total period of time between 2005 and 2010, placement under a hospital order was imposed in 14 cases (1%) for an adult offender and an order for placement in a young offenders' institution was imposed three times (0%) for an offender who was a minor. A number of judgments involved placement under a hospital order exclusively with regard to child pornography offences, and one single case involved placement under a hospital order solely with regard to the possession and distribution of child abuse material (and therefore did not relate to the production of such material). In these situations, under certain circumstances, placement under a hospital order can also be required in the interest of the safety of others or for the safety of society as a whole.

*Appeals were lodged more often in 2010*

It is possible that the above-mentioned developments (fewer convictions and more severe sentences) result, in part, from the fact that appeals were lodged more often by the suspect and/or the public prosecutor in 2010 (31% in comparison with an average of 17% in the period between 2005 and 2009).

*More severe and longer sentences are imposed on appeal than in first instance*

In both the first instance as well as on appeal, a large majority of prosecutions regarding child pornography cases resulted in a custodial sentence being the most severe main sentence imposed (87% in first instance and 90% on appeal). This involves a custodial sentence with a non-suspended component more often on appeal (47% non-suspended, 43% suspended), whilst in first instance, this involves a fully suspended custodial sentence more often (30% non-suspended, 57% suspended). Besides this, the custodial sentences with non-suspended components have longer terms on appeal than in first instance (first instance: 62% no longer than one year and 16% over two years; on appeal: 44% no longer than one year and 25% over two years). This also applies to the term of the community service orders. A possible explanation for this is that the more serious cases lead to appeal more often.

*Perpetrators who are convicted and stand trial are men of all ages*

Almost all of the suspects and persons convicted are men. One third of the suspects are younger than 31 years old (whereby 8% of the suspects and 5% of the perpetrators who are prosecuted are minors) and one fifth of the suspects are older than 51 years old.

### 3.5.6 Conclusion

#### *National Public Prosecutor's Office*

At present, the prosecution of child pornography offences in first instance is carried out exclusively at district court public prosecutor's offices. Considering the scope and complexity of some cases, it is necessary to consider whether this type of case should not also be made part of the remit of the National Public Prosecutor's Office, so that the National Public Prosecutor's Office can play a guiding role in extensive, complex and cross-border cases and can also be involved in the development of innovative detection methods.

#### *Diversity of conduct which constitutes a criminal offence*

Article 240b of the Dutch Criminal Code covers various forms of conduct, ranging from gaining access to and possession of child abuse material to the production and distribution thereof. The formulation of the section of the law does not, from the statistical material, lay out how prosecution and trial relate to the various forms of conduct. A formulation consisting of various categories should be taken into consideration. It is possible that the new forthcoming EU Guideline provides occasion for re-examination of the formulation of the current provision of penalties.

#### *Determination of the punishment*

The above distinction is also relevant for the process of imposing sentences. In practice, the court usually imposes a suspended custodial sentence in combination with a community service order. From the figures, there appears to be a clear tendency towards imposing more severe sentences: the proportion of non-suspended or partially suspended custodial sentences increased in the period between 2006 and 2010 and in 2010, a community service order was imposed less often as the main sentence. At present, it is still unclear if, and to what extent, the possibilities for imposing community service orders will be limited in the future for cases involving a breach of Article 240b of the Dutch Criminal Code. Limiting the possibilities to impose a community service order, particularly if this would no longer be possible in combination with suspended sentences, would in any case provide courts with fewer opportunities to tailor the sentence to the individual case. In this context, possibilities for influencing behaviour by means of supervision on the basis of conditions imposed for a suspended prosecution, for example, must also be taken into consideration.

#### *Alternative means of settlement*

In June 2011, the government stated in a letter to the Lower House that other methods of settling cases must be sought. This mainly concerns the possession of child abuse material. The distinction between the different forms of conduct is also relevant here. However, the rationale behind abolishing or limiting the possibility to impose a community service order ('stricter sentencing') does not seem to correspond with the alternative means of settlement which the Public Prosecution Service and (also) the government are seeking, namely for those offences contrary to Article 240b of the Dutch Criminal Code which are relatively mild cases, such as the possession of a small quantity of material where the suspect has not had any previous involvement with judiciary in this field.

#### *Victims in criminal proceedings*

The handling of criminal cases with regard to identified victims of child pornography raises a number of – relatively – new questions. In addition, the issue involves victims who are, by definition, particularly vulnerable, as they are always children. There is currently no statutory or other provision to

guarantee the complete anonymity of victims in criminal proceedings in situations such as this, and as such to protect the identity and personal details of victims. The way in which this can be achieved, without this being contrary to Article 6 of the European Convention of Human Rights, must be investigated. An important question concerns the issue of how justice can also be done to victims, when it is assumed that they will become victimised time and time again as a result of the distribution of child abuse material (revictimisation), and what the consequences would be if it were possible for them to receive compensation. This should be investigated in more detail. Whether parents, *as such*, should be regarded as victims and whether they should, for example, also be granted the right to speak in this capacity – and not just as a representative of their child – is currently under discussion. The judge in the Amsterdam sexual abuse case is expected to deliver a judgment about this issue in the near future.

### 3.6 After-care for and supervision of sex offenders<sup>495</sup>

#### 3.6.1 Introduction

In almost all cases, sex offenders who are convicted return to society. This sometimes arouses very intense emotions amongst the general public, based on the – sometimes justified – fear that children will once again be victimised. The group of offenders that commit sexual violence against children is, however, heterogeneous, and the likelihood of re-offending varies.<sup>496</sup> Nevertheless, it is apparent that paying attention to the after-care and supervision of sex offenders who have returned to society, the tailoring of these activities, and the framework in which they are applied, all form a vital link that can prevent sex offenders from re-offending. The Lanzarote Convention<sup>497</sup> states that paying attention to perpetrators is an essential component of an integrated approach to the tackling of sexual violence against children.<sup>498</sup>

Compulsory supervision takes place within a legal framework. However, this is not the only framework within which (after-)care, treatment and supervision take place.<sup>499</sup> The partners within the judicial do-

495 In this section, after-care and supervision are discussed with regard to offenders of sexual violence against children in general, in view of the fact that it is not easy to make a clear distinction between offenders of different forms of sexual violence against children. However, special attention should be paid to the specific challenges that are associated with the internet usage of those individuals who view child abuse material.

496 See §1.4.2 about perpetrators. In view of the maximum sentence on the grounds of a sexual offence in connection with the system of cumulation of penalties, there will come a time in almost all cases when the sex offender will return to society.

497 Articles 15-17 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58.

498 *Parliamentary Papers II* 2008/09, 31 808, no.3, pp. 9-10.

499 See §3.3 for the British Stop It Now! treatment programme, whereby those who view child abuse material are able to come forward themselves, and the possibilities on the basis of the Municipalities Act that will be discussed in further detail in §3.6.2.

main are not the only ones who play a role in this regard or who are able to assume a role.<sup>500</sup> Below, the legal framework within which after-care and treatment take place will firstly be explained. In §3.6.5, information will be presented in figures relating to after-care and supervision implemented by the Dutch Probation Service<sup>501</sup> in relation to sex offenders who are sentenced (in part) for offences contrary to Article 240b of the Dutch Criminal Code.

After-care for and supervision of sex offenders are forms of tertiary prevention, and comprise a number of interventions that are applied after a sexual offence has taken place.<sup>502</sup> The aim is to prevent re-offending, or to limit this, and thereby help prevent people from becoming victims.<sup>503</sup> These possible interventions, the starting points that apply in this regard, and the form and extent to which these interventions are implemented form the essence of this section.

From the reports concerning returning offenders of sexual violence against children in Amstelveen<sup>504</sup>, Eindhoven<sup>505</sup>, Loppersum<sup>506</sup>, Weesp<sup>507</sup> and Wijk bij Duurstede<sup>508</sup>, the image that emerges is that interventions made by authorities vary throughout the country and/or are not always attuned to one another. The mayor of Breda responded to notification from the Public Prosecution Service regarding the release of a convicted sex offender and his return to society in the following manner: *"It is not sufficient to simply inform [...] I can be aware of it, but then what? Certain measures need to be put into place with regard to that man. We need to supervise paedosexuals who return to society in a more effective manner."*<sup>509</sup>

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- 500 The following parties are involved in the provision of after-care to former detainees: municipalities, penal institutions, the Ministry of Security and Justice, Safety Houses, Employee Insurance Agency, Centre for Work and Income and community organisations such as housing associations and care institutions.
- 501 The figures were provided to the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings by the Dutch Probation Service, partly involving figures from the Salvation Army and the Netherlands Institute for Psychological Care and Addiction Care.
- 502 Tertiary prevention involves interventions with persons, groups and situations *after* sexual abuse has already taken place. Tertiary prevention is aimed at preventing the continuation or repetition of abuse. Measures involved in tertiary prevention relate, for example, to early detection and limiting harm to victims. See Smallbone et al., 2008, p.49, and §3.2.
- 503 Other interventions that can lead to prevention are covered in further detail in §3.2.
- 504 *Weesp wil veroordeelde pedofiel niet terug in buurt* [Weesp does not want convicted paedophile to return to the area], RTV N-H [Radio + TV North-Holland] 14 April 2011, [www.rtvnh.nl/nieuws/55810/Weesp+wil+veroordeelde+pedofiel+niet+terug+in+](http://www.rtvnh.nl/nieuws/55810/Weesp+wil+veroordeelde+pedofiel+niet+terug+in+) (viewed 9 August 2011).
- 505 *'Pedo Eindhoven onvindbaar en zonder toezicht'* [Eindhoven paedophile untraceable and unsupervised], EénVandaag, 13 November 2009, [www.eenvandaag.nl/weblogs/post/33226](http://www.eenvandaag.nl/weblogs/post/33226) (viewed 10 August 2011).
- 506 *'Mogelijk provincieverbod pedofiel Loppersum'* [Possible provincial ban for Loppersum paedophile] RTV Noord, 28 September 2010, [www.rtvnoord.nl/nieuws/nieuws.asp?pid=95047](http://www.rtvnoord.nl/nieuws/nieuws.asp?pid=95047) (viewed 10 August 2011).
- 507 *'Belachelijk dat pedo terugkeert!'* [It's ridiculous that a paedophile is returning to society!], De Telegraaf, 21 April 2011, [www.telegraaf.nl/binnenland/9596960/\\_\\_\\_Belachelijk\\_dat\\_pedo\\_terugkeert\\_\\_\\_](http://www.telegraaf.nl/binnenland/9596960/___Belachelijk_dat_pedo_terugkeert___).html (viewed 22 June 2011).
- 508 *'Wijk bij Duurstede verdeeld over pedofiel'* [Wijk bij Duurstede prosecutes paedophile], RTV Utrecht, 18 December 2009, [www.rtvutrecht.nl/nieuws/224610](http://www.rtvutrecht.nl/nieuws/224610) (viewed 10 August 2011).
- 509 Local government, 30 January 2009/week 5, p.12.

As explained in Chapter 1, the term ‘child pornography’ is not clear or unambiguous; neither in relation to perpetrators, abusive material concerning children or victims, nor in relation to conduct. This means that interventions can be equally unclear, as will be described on the basis of two problems that have been observed in relation to offenders, namely the issue of offenders who have been convicted for sexual violence against children and who return to society in the same municipality or region where the offence was committed, and the problematic usage of the Internet by those who have been convicted for viewing child abuse material.<sup>510</sup> On the basis of these points, we will clarify the necessity for an integrated approach towards after-care and supervision, the elements of which this must consist, and the extent to which this is already the case in the Netherlands. Attention will also be paid to experiences in other countries which could be used as examples for the development of an integrated approach in the Netherlands.

The extent to which attention is paid to an integrated approach or to which an integrated approach is employed varies for each region and each authority. The findings from the *Korpsmonitor 2010* also illustrate this point. Approximately half of all police regions seek cooperation with authorities that provide help and treatment for suspects, such as *Het Dok*, *De Waag*, *de Reclassering* [the Probation Service] and *Algemeen Forensische Psychiatrie* [General Forensic Psychiatry] (AFP), in the form of referral by the general practitioner or judicial authorities.<sup>511</sup> Best practices in this regard need to be collected and promoted. Carrying out research into the desirability of an integrated framework regarding convicted perpetrators of sexual offenses against children and the centralised direction of this system, such as exists in the United Kingdom, will form part of the recommendations.

### 3.6.2 Legal framework

Various opportunities exist within the legal framework to enable the provision of supervision to suspects and perpetrators of sexual abuse offences, including those involving child pornography. It is also important to outline the legal possibilities that are available in so far as after-care is concerned. The opportunities to provide supervision that are presented in this section focus primarily on supervision and after-care within the legal framework. This framework also has its limits. In the event that a custodial sentence is imposed with a term longer than four years, no part of this may be suspended, and special conditions cannot therefore be associated with this. Supervision and after-care are therefore also not possible in this form.<sup>512</sup>

Supervision of a convicted sex offender can also no longer be provided after execution of the sentence. Experts have already stated in the past that given the current legal framework, it is not possible in the Netherlands to extend a period of supervision in the event that a (treatment) indication exists for this, and that special legislation for the compulsory treatment and after-care of sex offenders seems

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510 In Chapter 1, the way in which technology has affected the nature of child abuse material is explained. The Internet can play a problematic role in the lives of those who view child abuse material (see §1.4).

511 Programme of Improvements in Tackling Child Pornography, 2011, p.24; see also §3.4.

512 Article 14a of the Dutch Criminal Code. In the event that a custodial sentence is ordered with a maximum term of two years, the court is able to order that the sentence is not carried out, either with regard to the whole sentence or for a part of it. If the custodial sentence that is ordered has a term of more than two years and a maximum of four years, only a part of the custodial sentence may be imposed as a suspended sentence.

necessary from a preventive point of view.<sup>513</sup> In this context, the State Secretary for Security and Justice has indicated the need to investigate whether it would be possible to extend the current supervision to life-long supervision following the completion of treatment under placement under a hospital order.<sup>514,515</sup>

In Germany, a similar regulation is already established in the law. Although it is a general rule that supervision can take place for a minimum of two and a maximum of five years,<sup>516</sup> it appears that the possibility has been created for the court to provide supervision for an unlimited time if the convicted perpetrator has committed a certain sexual offence, such as the sexual abuse of children<sup>517</sup>. The purpose of the law seems to be that this unlimited period of supervision can only be imposed by the court if the convicted perpetrator has been sentenced to a custodial sentence for a minimum of two years or has been placed in a psychiatric hospital or is being treated for addiction. Furthermore, concrete facts or indications must exist to suggest that without supervision, the convicted perpetrator would represent a threat to society because he (or she) could be able to

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513 Van Marle & Mulder, 2007.

514 A legislative amendment is currently being prepared in order to make it possible to provide life-long supervision following intramural treatment of those placed under a hospital order who have committed a sexual offence. The government has stated that research into permanent supervision of sex offenders who have concluded treatment under placement under a hospital order should be carried out. In order to be able to arrive at a responsible implementation of this life-long supervision, it is necessary to gain greater insight into the target group of sex offenders for whom this order is intended, and into the possibilities for the implementation of this supervision. For the purpose of the intended legislative amendment, the *Directie Sanctie- en Preventiebeleid (DSP)* [Directorate for Sanctioning and Prevention Policy] and the *Directie Wetgeving (DW)* [Directorate for Legislation] have asked the Scientific Research and Documentation Centre to provide an overview of various legal frameworks for life-long supervision such as those that have been designed in a number of other countries. Besides this, it is important to gain insight into the scope and background characteristics of the group of sex offenders who were placed under a hospital order who were (recently) released into society. In order to be able to arrive at an effective implementation of the supervision, it is relevant to examine the methods of supervision and after-care that could be employed for the implementation of life-long supervision. [www.wodc.nl/onderzoeksdatabase/permanent-toezicht-op-zedendelinquenten.aspx](http://www.wodc.nl/onderzoeksdatabase/permanent-toezicht-op-zedendelinquenten.aspx) (viewed 7 September 2011)

515 See also: press release ‘*TBS-ers met zedenverleden levenslang onder toezicht*’ [Those placed under a hospital order with a history of sexual abuse under life-long supervision], Ministry of Security and Justice, 4 February 2011. The legislative amendment elaborates on the research into the permanent supervision of sex offenders already announced in the coalition agreement. The research will focus on the way in which supervision must be implemented and the categories of sex offenders to which the measure should apply: [www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/02/04/tbs-ers-met-zedenverleden-levenslang-onder-toezicht.html](http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/02/04/tbs-ers-met-zedenverleden-levenslang-onder-toezicht.html) (viewed 22 June 2011). The information from this website seems to suggest a somewhat broader approach than the description of the research by the Scientific Research and Documentation Centre.

516 Article 68c, paragraph 1 of the *Strafgesetzbuch* [German Criminal Code].

517 All sexual offences for which supervision for an unlimited time applies are reported in Articles 174-174c, 176-180, 181a and 182 of the *Strafgesetzbuch*.

once again commit serious offences.<sup>518</sup> In order to limit this risk of re-offending, during supervision there exists the opportunity, amongst others, to prevent the convicted perpetrator from having contact with a certain group of people (such as children) or from visiting certain places.<sup>519</sup>

Various means (of settlement) exist, within which (special) conditions can be imposed. The Public Prosecution Service has the opportunity to postpone the decision as to whether prosecution will have to take place for a certain amount of time, subject to certain set conditions: a suspended decision not to prosecute.<sup>520</sup> The Public Prosecution Service is also able to issue a punishment order, which can specify behavioural changes; in that case, the probationary period can last a maximum of one year.<sup>521</sup> Conditions can also be imposed – by the court – for suspending the pre-trial detention<sup>522</sup> and imposing a sentence or order, or for extending the probationary period.<sup>523</sup> Convicted perpetrators are able to be released on parole, in which case certain conditions with regard to their behaviour can also be imposed.<sup>524</sup> The Public Prosecution Service oversees the observance of the conditions. The probation and after-care service can be instructed by the court to provide help and support to the convicted perpetrator to enable him/her to adhere to the conditions.<sup>525</sup> In practice, it is therefore often the case that probation and after-care supervision involves the convicted perpetrator having to comply with instructions from the probation and after-care service. If a condition is not complied with, the court is able, at the request of the Public Prosecution Service, to order that the sentence that was not executed should still be executed, or – whether or not subject to maintenance or amendment of the conditions – order that a part of the sentence that was not executed should still be executed.<sup>526</sup> This functions as a deterrent or as a helping hand to the convicted perpetrator, to ensure compliance with the conditions. For sex offenders who are minors, a different system of (suspended) sentences and orders applies, despite the fact that the conditions that influence behaviour and supervision are, in essence, also relevant to this group of perpetrators.<sup>527</sup>

518 Article 68c, paragraph 3(2) of the *Strafgesetzbuch*.

519 Article 68b of the *Strafgesetzbuch* states all measures that may be imposed during supervision.

520 Article 167, paragraph 2 of the Dutch Code of Criminal Procedure.

521 Article 257, paragraph 3(e) of the Dutch Code of Criminal Procedure. The Public Prosecution Service Settlement Act entered into force on 1 February 2008, Dutch Bulletin of Acts and Decrees, 2006, 330.

522 Article 80 of the Dutch Bulletin of Acts and Decrees.

523 Article 38 of the Dutch Criminal Code. The law has recently been amended by the Act of 1 July 2010 for the amendment of the Dutch Criminal Code and the Dutch Code of Criminal Procedure in connection with the order for placement under a hospital order with conditions (Amendments to placement under a hospital order with conditions), Dutch Bulletin of Acts and Decrees. 2010, 270, entered into force on 1 September 2010, Dutch Bulletin of Acts and Decrees. 2010, 308.

524 Article 15a, paragraph 2 of the Dutch Criminal Code. The probationary period commences on the day of the conditional release, Article 15c, paragraph 1 of the Dutch Criminal Code. The probationary period of a special condition is determined by the Public Prosecution Service, but is at the most the same as the period for which conditional release is granted, Article 15c, paragraph 3 of the Dutch Criminal Code. This means that the supervision of special conditions remains limited to this period.

525 Article 14d of the Dutch Criminal Code.

526 Article 14g, paragraph 1 of the Dutch Criminal Code.

527 Article 77b of the Dutch Criminal Code; see also Article 77w of the Dutch Criminal Code, the order that influences behaviour. In §3.6.4, youth offenders are discussed in more detail.

### Conditions

When suspended sentences are imposed, general<sup>528</sup> conditions are then imposed, and special conditions that are linked to an associated probationary period may also be imposed. During the probationary period, the convicted perpetrator must comply with the special conditions, and is subject to probation and after-care supervision. The list of possible special conditions available under the law is non-exhaustive. In practice, the behavioural condition<sup>529</sup> is employed, amongst other things, for the enforcement of a street ban, the enforcement of outpatient treatment and compliance with instructions from probation and after-care in a general sense. Instruction from probation and after-care services can also include outpatient treatment, such as attending a day programme at a clinic or undergoing treatment at a department of the Netherlands Institute for Psychological Care and Addiction Care, in so far as and for as long as the probation and after-care staff considers this to be necessary.<sup>530</sup> An obligation to undergo such treatment can therefore either be included in the judgment itself, or can be left to the probation and after-care services for further implementation.

### Term of probationary period

The maximum term of the probationary period for a suspended sentence is two years for the special conditions relating to bail and the behavioural condition. For all other conditions (payment of damages, admission to a care institution and paying a sum of money into the Criminal Injuries Compensation Fund), the maximum term of the probationary period is three years. Since the Maximum Sentences (Renew) Act entered into force on 1 February 2006, a probationary period with a maximum term of ten years may be imposed in certain cases for all conditions, in the event that it is necessary to seriously take into account the likelihood that the convicted perpetrator will once again commit an offence that is directed towards, or will present a risk to, the physical inviolability of one or more persons.<sup>531</sup> This possibility has been included in the law in order to be able to monitor the convicted perpetrator for a longer period of time, for example in certain cases of sexual abuse or for cases involving offenders with psychological disturbances. This long probationary period will be particularly important for certain behavioural conditions such as outpatient treatment or instructions from probation and after-care services.<sup>532</sup>

### Conditions for convictions for child pornography

In cases involving child pornography, the individual may have been charged with the production of child abuse material or with having committed sexual abuse. Besides treatment, the special condition in the form of a contact ban or street ban can then be imposed, for example, with a probationary period which may last up to ten years. In case law involving other sexual offences in addition to acting in breach of

528 The general condition is that the convicted perpetrator does not commit a criminal offence prior to the end of the probationary period. This condition applies by law; see Article 14c, paragraph 1 of the Dutch Criminal Code. Examples of special conditions include the payment of compensation, admission to a care institution, bail, payment to the Criminal Injuries Compensation Fund or other special conditions such as a behavioural condition, Article 14c, paragraph 2 of the Dutch Criminal Code.

529 Article 14c, paragraph 2(5) of the Dutch Criminal Code.

530 Cleiren & Verpalen (ed.), *Tekst en Commentaar Strafrecht* [Text and Commentary on Criminal Law], 2010, Article 14c, paragraph 2(5) of the Dutch Criminal Code, p.90, with reference to Supreme Court, 26 June 1984, Dutch Law Reports 1985, 139 and Supreme Court, 2 October 2001, Dutch Law Reports 2002, 187.

531 Article 14b, paragraph 2 of the Dutch Criminal Code.

532 Cleiren & Verpalen (ed.), *Tekst en Commentaar Strafrecht* [Text and Commentary on Criminal Law], 2010, Article 14b of the Dutch Criminal Code, p.83.

Article 240b of the Dutch Criminal Code, other special conditions can be imposed, such as not being allowed to carry out (voluntary) work aimed at children, not being permitted to affiliate with a scouting organisation, not being allowed to use social networking sites to approach minors<sup>533</sup> and not being allowed to give singing or piano lessons at home.<sup>534</sup> Judgments have also been known in which a convicted perpetrator has had to make a contribution to ECPAT. In one of these cases, a suspect was sentenced to a community service order of 240 hours and a suspended custodial sentence with a term of six months, with a probationary period of three years for the possession of child abuse material. Because the court judged that a working order and a suspended custodial sentence would not suffice, it imposed the special condition for the suspended custodial sentence, amongst others, that the suspect must “be forced to transfer a sum of 5,000 euros to Defence for Children-ECPAT in Amsterdam.”<sup>535</sup>

In cases involving child pornography, some judgments are also known in which a computer ban or internet monitoring has been imposed as a special condition.<sup>536</sup> These are drastic measures. In one case that stood before the Court of Zutphen, the Public Prosecution Service requested the special condition that the police would be able to digitally inspect the data storage media of the suspect at any time, but the court chose not to follow this request: “In view of the implementation of this in practice and the possible breach of fundamental rights associated with this, the court rules that there are too many objections.” However, the court was of the opinion that the same effect could be achieved by imposing the special condition that the suspect would have to comply with the instructions from probation and after-care services. In this case, the suspect was placed under a conditional order, including the condition that he would not be allowed to have possession of a computer, unless approval for this was granted first.<sup>537</sup>

The right to access the Internet is also the subject of discussion within the European Union. Complete prohibition of access to the Internet should only be permitted if this is ‘appropriate, proportionate and necessary within a democratic society’,<sup>538</sup> and must specifically respect the pre-

533 Court of Utrecht, 9 February 2011, National Case Law Number: BP3760.

534 Court of Den Bosch, 18 February 2011, National Case Law Number: BP4903.

535 Court of Middelburg, 2 December 2009, National Case Law Number: BL9868. See also: Court of Rotterdam, 5 August 2010 (not published), in which a conviction was made for the possession of child abuse material, whereby a working order of 240 hours and a suspended custodial sentence of 12 months with a probationary period of 5 years were imposed, with a payment of 2,500 euros into the Defence for Children-ECPAT fund as a special condition.

536 Court of Amsterdam, 15 April 2008 (not published) (ban on having an internet connection during the probationary period); Court of Zwolle 16 February 2010, National Case Law Number: BL7167 (allowing probation and after-care services to monitor computer and internet use); Court of Almelo, 4 June 2010, National Case Law Number: BM7070 (monitoring of computer for presence of child abuse material, carried out by the vice squad); Court of Utrecht 9 February 2011, National Case Law Number: BP3760 (monitoring of the computer by probation and after-care services and a ban on the use of social network sites to approach minors).

537 Court of Zutphen, 8 July 2009, National Case Law Number: BJ1986.

538 *Europa-Nu*, “Europees Parlement akkoord met telecom-pakket na regeling voorwaarden afsluiten gebruikers internet” [European Parliament agrees with telecom package following regulation regarding conditions for disconnecting internet access for users], [www.europa-nu.nl/id/vigwc5z8wmxo/nieuws/europees\\_parlement\\_akkoord\\_met\\_telecom?ctx=vhxlds22ipzk&start\\_tabo=20](http://www.europa-nu.nl/id/vigwc5z8wmxo/nieuws/europees_parlement_akkoord_met_telecom?ctx=vhxlds22ipzk&start_tabo=20) (viewed 30 June 2011).

sumption of innocence and the right to privacy.<sup>539</sup> On 19 April 2011, the European Commission sent a notification to the European Parliament, the Council and the European Economic and Social Committee and the Committee of the Regions. In this notification, the Commission did not announce any new measures, but did emphasise the importance of the timely implementation of the measures contained in Directive 2009/140/EC in amendment of Directive 2002/21/EC regarding a joint policy with regard to net neutrality.<sup>540</sup> A fixed definition of net neutrality does not exist, but since 25 May 2011,<sup>541</sup> within the field of telecom, Member States have been obliged “to promote the capacity of end users to gain access to information and to distribute this or to make use of applications and services of their choice.”<sup>542</sup> The Special representative of the United Nations also highlights the importance of the Internet in the matter of freedom of opinion in his report:<sup>543</sup> “The Internet is an indispensable tool for realizing a range of human rights, combating inequality, and accelerating development and human progress.”<sup>544</sup> He expresses serious concerns about the way in which access to the Internet is sometimes denied on the basis of some examples of national legislation in which a ban for use of the Internet can be imposed.<sup>545</sup> He concludes that not allowing users access to the Internet is always contrary to the right of freedom of opinion. Member States must be obliged to make the Internet accessible and affordable for everyone. By imposing a ban on access to the Internet as a special condition, the fact must be taken into consideration that access to the Internet is formulated as a fundamental right in international bodies and it is determined that any restriction of this would, by definition, be contrary to the right to freedom of opinion, amongst other things.

#### *Legislative proposal for special conditions*

In 2010, a legislative proposal for the Amendment of the Dutch Criminal Code was put forward in connection with amendments to the regulation of the suspended sentence and the regulations governing releases on parole.<sup>546</sup> The legislative proposal provides for amendments to a number of points, including the establishment of a (non-exhaustive) list of special conditions in legislation. It also creates the opportunity for rapid action to be taken in the event that conditions are not complied with.<sup>547</sup> Besides this, the intention of the legislative amendment is also to ensure that the authority of probation and after-care services to issue instructions as a special condition is anchored more firmly in the

539 EU Telecoms Reform: 12 reforms to pave way for stronger consumer rights, an open Internet, a single European telecoms market and high-speed internet connections for all citizens, Memo/09/568, 18 December 2009.

540 COM (2011) 222 final, EU Official Journal. C189/13.

541 The date of implementation for Directive 2009/140/EC is namely 25 May 2011.

542 See Article 8, paragraph 4(g) of the Directive 2009/140/EC.

543 Report of the UN Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression, UN Doc A/HRC/17/27, 16 May 2011.

544 Report of the UN Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression, UN Doc A/HRC/17/27, 16 May 2011, §85.

545 Report of the UN Special Rapporteur on the promotion and protection of the right of freedom of opinion and expression, UN Doc A/HRC/17/27, 16 May 2011, §49.

546 *Parliamentary Papers II*, 32 319.

547 The legislative proposal also provides for the training order in the suspended sentence; the training order should be revoked as an independent community service order.

judgment. In the future, this amendment should prevent the situation in which, in the judgment, a special condition stating merely 'compliance with the instructions from probation and after-care services' is deemed sufficient. On the one hand, this amendment serves the interests of legal certainty, and on the other hand, the intention is to contribute to the effectiveness of probation and after-care supervision. According to the government, the judgment – and therefore, to a significant extent, the conditions – need to be described as specifically as possible. The legislative proposal sets out to reflect current practice as much as possible, especially with regard to the special conditions in the form in which they can currently be imposed, which in some instances only involves a codification. The legislative proposal provides for an extension to the list of special conditions, which remains non-exhaustive. This list includes a location *ban*, amongst other things. In the event of a location ban, the convicted perpetrator is not allowed to go to a certain place or the surrounding area, for example if the offender lives in the vicinity of a victim (this condition is regularly imposed in the event of sexual abuse in particular). A location ban is usually imposed in combination with electronic monitoring. Besides this, the list also provides for a location *order*. An example of this is the imposition of house arrest. Another possibility is that the convicted perpetrator is not allowed to leave the Netherlands without the approval of probation and after-care services. This can be the case in the event that the suspect has committed criminal offences abroad. This special condition can be imposed in the case of child sex tourists.<sup>548</sup> Besides this special condition, the list also includes the opportunity to impose an obligation to report and outpatient treatment. The list does not include any explicit conditions that are specifically associated with monitoring computer use and access to the Internet. Partly in light of international developments, such as those outlined above, more detailed research is required in order to reveal the extent to which imposing these conditions would be contrary to fundamental rights, the effects that such special conditions could have, and whether or not imposing these special conditions would also be able to be implemented in terms of capacity, both of the police and of probation and after-care services.

The proposed special conditions also differ from the proposed *legal measure* of an exclusion order, contact ban or an obligation to report<sup>549</sup> in the sense that they have different purposes. Whereas the suspended sentence with special conditions is intended to permanently influence the behaviour of the convicted perpetrator, the legal measure is intended to restore the system of law and order that has been breached. The legal measure is specifically intended for those cases in which the court does not wish to or is not able to influence behaviour through the imposed sanction, but does want to restore the legal order by a restriction of freedom. Special conditions have a greater scope than the legal measure, as their focus is on exerting a lasting influence on behaviour. This is therefore also the reason why, in the legislative proposal, there is no provision for supervision of the probation and after-care services in connection with the legal measure.<sup>550</sup>

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548 See also *Parliamentary Papers II* 2010/11, 32 319 no. 7, note with reference to the report, p.20. No judgments can be found on [www.rechtspraak.nl](http://www.rechtspraak.nl) in which a *de facto* ban on travel has been imposed.

549 For which a legislative proposal has been submitted, namely Amendment of the Dutch Criminal Code and the Dutch Code of Criminal Procedure in connection with the implementation of a legal measure restricting freedom (legal exclusion or contact order), *Parliamentary Papers II*, 32 551. An amended proposal of law was sent to the Upper House on 26 April 2011 and is currently being dealt with, *Parliamentary Papers I*, 2010/11, 32 551 no. A.

550 *Parliamentary Papers II* 2010/11, 32 319 no.7, note with reference to the report, p.6 (2 February 2011).

### Exclusion order by the mayor

A municipality also has the opportunity to impose an exclusion order on the basis of Article 172, paragraph 3 of the Municipalities Act. This provision rules that the mayor has the authority, in the event of a breach of public order or serious concern with regard to the creation of such a breach, to take measures that are necessary to maintain the public order. An exclusion order can also be imposed on the basis of the corresponding general municipal by-law. This enables a mayor to prohibit someone from taking up residence in a particular place. In order to impose an exclusion order, a number of conditions must be complied with. The exclusion order may only be imposed in the event that the circumstances (disturbance of public order) so require. The order must also be intended to end the disturbance of public order or to limit the consequences of this disturbance. What is more, the term of the exclusion order must be associated with the duration of the disturbance of public order. The term of the order may not be disproportionately long.<sup>551</sup> With regard to the exclusion order on the basis of Article 172, paragraph 3 of the Municipalities Act, a maximum of three months seems to be applied. In the event that orders that limit freedom are set aside by the court, including exclusion orders, this tends to be due to previously-stated conditions not being taken into consideration. According to the Minister of the Interior and Kingdom Relations, the problem was not due to the possibilities that exist under the law, but to how these powers were applied.<sup>552</sup> It is not always the case that it is the individual who is returning to society who is responsible for disturbing public order through his/her own behaviour. The response that is anticipated from the neighbourhood in relation to his/her presence can also give cause to take action.<sup>553</sup> In order to be able to take adequate steps if this is necessary, a mayor must, however, have access to relevant information (see §3.6.3.2 below). On the basis of the information that is available, the mayor must then make an assessment.

The mayor of Eindhoven banned a convicted sex offender (van der V.) from living in Eindhoven. On the basis of this decision, Van der V. raised an objection and ultimately lodged an appeal at the administrative tribunal. The administrative tribunal decided in his favour and judged that the exclusion order imposed by the mayor constituted a disproportionate infringement of his freedom

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551 See letter dated 4 June 2009 from the Minister of the Ministry of the Interior and Kingdom Relations to the Lower House regarding research into the effectiveness of legal instruments in relation to inconvenience and deterioration p.2-3, *Parliamentary Papers II*, 2009/09, 28 684 no.227: as soon as the (imminent) disturbance is over, the order must be revoked, with reference to Administrative Jurisdiction Department of the Council of State, 9 June 2004, AB 2005, 331. In principle, the order must immediately counteract the disturbance, with reference to Administrative Jurisdiction Department of the Council of State, 17 November 2004, AB 2005, 410. In the application of the exclusion order, the statutory regulations may not be deviated from unless it appears from the competence that space has been left for this – Article 172, paragraph 3 of the Municipalities Act does not provide such space. In future, imposing the measure must comply with the requirements of subsidiarity and proportionality.

552 See letter dated 4 June 2009 from the Minister of the Ministry of the Interior and Kingdom Relations to the Lower House regarding research into the effectiveness of legal instruments in relation to inconvenience and deterioration p.2-3, *Parliamentary Papers II*, 2009/09, 28 684 no.227.

553 Explanatory memorandum to the Decree of 22 June 2011, regarding the amendment of the Judicial Data Decree, associated with the provision of judicial data to the mayor upon the return of former detainees to society and reinforcing screening in the taxi sector.

of movement as regards its scope and duration.<sup>554</sup> The Court of Den Bosch considered, amongst other things, that the imminent threat of disturbance of public order can be used to justify the limitation of (fundamental) rights, including the right to freedom of movement. “There must exist a reasonable balance between the general importance of counteracting an imminent disturbance of public order as a result of the plaintiff’s unsupervised return to society and the unsupervised stay of the plaintiff in Eindhoven prior to the obligatory probation and after-care supervision commenced in the probationary period on the one hand, and the importance of respecting the plaintiff’s (fundamental) rights on the other hand (including the right to freedom of movement). As a general starting point, it must be assumed that an exclusion order is not permitted to last any longer than is strictly necessary, and that the area to which the ban relates must be limited as much as possible. Because the imminent disturbance of public order does not stem from the plaintiff but from a third party, the interest in respecting his rights must be assigned a greater weight than would have been the case in the event that the threat had originated from him.”<sup>555</sup> Van der V. is now alleging that he has suffered damage as a result of the exclusion order and has taken civil action against the municipality of Eindhoven.<sup>556</sup>

The possibilities of supervision and after-care that have been described above concern the judicial and administrative framework. Below, the substantive conditions with which effective tertiary prevention must comply will be described.

### 3.6.3 Integrated approach, after-care for and supervision of offenders<sup>557</sup>

No specific framework has yet been formulated in the Netherlands for the *integrated* after-care and supervision of sex offenders. However, the literature points to the importance of an integrated approach to tackling offenders of sexual violence against children<sup>558</sup> and in doing so, distinguishes between starting points (§3.6.3.1) and phases (§3.6.3.2). Various examples of these starting points being employed can also be found in the regions. On the basis of different phases that are relevant within an integrated approach, the extent to which diverse actors are involved or could be involved in the implementation of

554 Court of Den Bosch, 5 August 2010, National Case Law Number: BN3313.

555 The administrative court considered “In the future, the differing interests must be considered in light of the respondent on the basis of the authority assigned in Article 172, third paragraph of the Municipalities Act. This authority includes a limited order to be able to act quickly in urgent situations and was not called into being in order to drastically restrict (fundamental) rights. The democratic legitimisation for this is lacking. Furthermore, a drastic restriction of (fundamental) rights is not apparent and foreseeable on the basis of Article 172, third paragraph of the Municipalities Act.

556 See [www.nu.nl/binnenland/2541220/verbannen-pedoseksueel-eist-schadevergoeding.html](http://www.nu.nl/binnenland/2541220/verbannen-pedoseksueel-eist-schadevergoeding.html) (viewed 28 June 2011).

557 The emphasis in this sub-section lies, where possible, on those who have committed a child pornography offence (in this case, individuals who produce, distribute and possess child pornography). However, literature regarding the after-care and supervision of this specific group is not present to a large extent. More is known about interventions for convicted sex offenders with regard to children. The Dutch literature regarding interventions and implementing organisations that has been employed mainly applies to a wider group of offenders than solely those who have committed child pornography offences. For reasons of clarity, this group will be referred to using the general term ‘offender.’

558 Smallbone et al. 2008, pp.209-212.

an integrated approach will be outlined. It is important to gain an insight into – on the one hand – the way in which the various regions can benefit from one another’s knowledge and experience, and on the other hand, the steps that can be undertaken to ensure that a case is dealt with in a clear and integrated manner, bringing together the interests of all parties involved. Examples from other countries will also be discussed, which may be of benefit to the approach to be implemented in the Netherlands.

### 3.6.3.1 Starting points

The Action Plan to Tackle Child Abuse states that the application of criminal law for tackling (sexual) abuse of children must be aimed at putting an immediate stop to the abuse, preventing re-offending by means of targeted interventions, and restoring the standard that has been breached. This cannot be achieved exclusively through punishment of the offender. The interests of the child must be key. From this point of view, criminal law may be implemented in order to guide offenders towards the use of assistance services for offenders. This may be achieved by imposing special conditions in the event of a suspended sentence or a conditional decision not to prosecute, or in the event of suspension of pre-trial detention (see §3.6.2 above). The criminal law then functions as a deterrent. Application of criminal law is specifically applicable if the mental and/or physical integrity of the victim who is a minor is seriously under threat, considering the nature of the harm (in any case in the event of grievous bodily harm) and/or the frequency (systematic nature) of the violence. Criminal action is one of the possible routes that can be taken following the reporting of serious abuse, if necessary in combination with one of the other routes also being applied: voluntary or compulsory assistance (for child and perpetrator) or a child protection measure.<sup>559</sup> The Center for Sex Offender Management (CSOM) in the United States formulated a number of starting points specifically for convicted sex offenders, which link in with this notion and should be applied to all phases of an integrated model, namely: specialised knowledge and training, raising public awareness, monitoring and evaluation and cooperation.<sup>560</sup> In practice in the Netherlands, these starting points are represented individually in the form of various initiatives. The importance of interconnectivity between all of the starting points, and the necessity of a central executive administration in order to enable an integrated approach, are especially evident in the establishment of the Safety Houses and scenario teams (see the box ‘Safety Houses’ at the end of this section).

The Center for Sex Offender Management (CSOM) was founded in 1996. Since then, the Center has been developing and collecting best practices from national and local jurisdiction in the United States. Besides this, the CSOM arranges training sessions and provides technical assistance to all relevant actors who are involved with after-care and supervision of sex offenders. Five starting points formulated by the CSOM for an integrated approach towards sex offenders, and related examples from practice in the Netherlands are outlined below.

#### *Focus on the victim*

When providing after-care and supervision to an offender, the victim must be taken into consideration first of all. This means that the interests of victims play a clear role in decisions regarding the interests of offenders. Strategies with regard to after-care and supervision should not overlook the requirements of victims, re-traumatise them or have a negative impact on them in any other way. This balancing of interests can create troublesome dilemmas. The possibility exists – especially in cases where offenders are

<sup>559</sup> See *Parliamentary Papers II*, 2006/07, 31 015, no.16.

<sup>560</sup> Center for Sex Offender Management, 2007a; see [www.csom.org](http://www.csom.org) (viewed 17 June 2010).

involved who have committed a hands-on offence upon a victim, such as sexual abuse or the production of child abuse material – that if offenders re-establish themselves in the same neighbourhood, the victim will run the risk of being confronted with the offender. After all, it is often the case that sex offenders and victims know one another (see §1.4.2 and §1.4.3). However, a new place of residence for a convicted sex offender can also present risks. It is possible that institutions and individuals with an identifying role will lose sight of him, resulting in a failure of supervision, which means that it is possible for a repeat offence to occur. As outlined in the box below, scenario teams, such as those in Friesland, attend specifically to the requirements of (potential) victims in the event of social unrest regarding sex offenders. The deployment of dual-track or multiple-track teams also works to safeguard the interests of the victim.<sup>561</sup>

#### *Specialised knowledge and training*

Specialisation, knowledge and training are important. As far as specialised knowledge and monitoring are concerned, the probation and after-care service is, just like its partners in the criminal justice process – the police, and the Public Prosecution Service – constantly increasing the extent of its specialism in sexual abuse.<sup>562</sup> This is evident in the facilitation of separate sexual abuse programmes (COSA)<sup>563</sup> and programmes in which there is attention for the specific issues involved with regard to sex offenders.<sup>564</sup> However, it will prove a challenge for supervising bodies and caseworkers to obtain and maintain knowledge about the digital aspects that, from the nature of the case, have a necessary role in the behaviour of offenders, and that must therefore also receive the necessary attention in the supervision and treatment of these offenders.

#### *Raising public awareness*

The reactions from members of society towards sex offenders in cases involving victims who are minors are understandable, but are sometimes based on inaccurate perceptions and incorrect information. It is important to provide the public with information, and this can take place on a national or local level.

561 See §3.7.3 for more information about the dual-track or multiple-track teams. The Tilburg multiple-track team is a case consultation in which partners in the chain carry out an analysis of a case of sexual violence, on the basis of which a well-considered scenario is drawn up for three tracks, namely the offender, the victim and the involved party, within the frameworks of Sentence, Civil and Assistance. It is then determined by whom the actions are to be implemented, and it is discussed whether or not coordination with more tracks is necessary (written information from the Tilburg Safety House, 22 July 2011).

562 This emerges from the certification of vice detectives in the police, specialised public prosecutors relating to sexual abuse cases in the Public Prosecution Service, amongst others. Probation and after-care services also strive to deploy the most experienced probation and after-care workers for the supervision of sex offenders (verbal information from the chair of the Board of Management of the Dutch Probation Service, 27 April 2011). This is not yet applicable to youth probation and after-care, which is taken care of by the Youth Care Agencies.

563 See COSA box in §3.6.3.2.

564 A new form of supervision has been arranged for those placed under hospital orders who remain as outpatients: Forensic Psychiatric Supervision. What is new about this form of supervision is that the Forensic Psychiatric Centre and the probation and after-care service are no longer only responsible for part of the course of the offender returning to society, but, from their expertise, are collectively involved in the supervision of the treatment of those placed under a hospital order during the whole course of the process of the offender's return to society, see Harte et al., 2010.

On a local level, information can remove prejudices, but it can also increase vigilance whenever there is need to do so. In Wijk bij Duurstede, a working group was established following unrest after it emerged that a sex offender who had been convicted of sexual violence against children was living in the Horden district. This working group consisted of local residents, supplemented by an official from Crisis Management and a special educational expert from the Municipal Health Service. After some time, the working group established that peace had been restored in the neighbourhood.<sup>565</sup>

#### Monitoring and evaluation

Interventions depend entirely on their effectiveness. Many of the interventions stated below have not (yet) been evaluated in the Netherlands. However, developments have been set in motion in order to comply with the important 'What Works' principles. For some time now, the probation and after-care organisations have been undertaking initiatives in order to comply with these principles as much as possible.<sup>566</sup> It is also important that initiatives be monitored and evaluated in the future, and that best practices are collected and shared. An example of this is the web report '*Nazorg ex-gedetineerden*' [After-care of former detainees], which includes the experiences of municipalities with returning offenders in a general sense.<sup>567</sup>

#### Cooperation

The final underlying starting point for an integrated approach is cooperation. Cooperation goes further than the mere contact between obvious actors as supervising bodies and those in charge of the case. Cooperation is possible with each individual and authority that has an influence on or is affected by the conduct of the offender. The Action Plan to Tackle Child Abuse reports that it is of great importance that a clear and simple structure must be in place, in order to support the decision-making process about the steps that are to be undertaken in the event of (sexual) abuse of children and to determine its implementation. In this structure, besides the Public Prosecution Service, the other cooperating organisations – including the police, the Youth Care Agencies/Child Abuse Counselling and Reporting Centres and the Child Care and Protection Agency – must all be assigned a role in order to make a correct assessment regarding the application of criminal law, on the basis of adequate access to information. In order to make criminal action possible, it is desirable to set up clear frameworks for detection, prosecution, criminal proceedings, victim assistance and local cooperation.<sup>568</sup>

Similar multidisciplinary joint associations in the Netherlands include Safety Houses and scenario teams. The other starting points described for an integrated approach come to the fore in the Safety Houses and Municipal Health Service scenario teams discussed below. Various Safety Houses are still currently under establishment and/or have no experience of the issue of sexual abuse.<sup>569</sup> The Safety Houses are aimed at

565 'Gemeente praat met de Horden over pedofiel' [Local council talks with residents of de Horden about paedophile], *De Weekkrant*, 14 April 2011 [www.deweekkrant.nl/pages.php?page=1724039](http://www.deweekkrant.nl/pages.php?page=1724039) (viewed 22 August 2011).

566 Poort & Eppink, 2009, p.41.

567 See [www.vng.nl/smartsite.dws?id=92816](http://www.vng.nl/smartsite.dws?id=92816) (viewed 20 June 2011) and '*Samenwerkingsmodel Nazorg volwassen (ex-gedetineerde burgers, gemeenten – Justitie)*' [Cooperation model for After-care of adults (former detainees who are residents, municipalities – Justice)]' (VNG, 2010).

568 *Parliamentary Papers II*, 2006/07, 31 015, no.16

569 It emerged that some Safety Houses still have no experience with sex offenders, following the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings sending a notice to various Safety Houses in June 2011. See Capgemini (2010, pp.33-39) for specific challenges faced by Safety Houses.

different groups of offenders, such as ‘lover boys’ and ‘multiple offenders’.<sup>570</sup> (Convicted) sex offenders do not constitute a separate group of offenders. Experiences of sex offenders are possibly included in the ‘former detainees’ group of offenders.

### *Safety Houses*

In Safety Houses, authorities – local councils, the police, the Public Prosecution Service, the Child Care and Protection Board, and probation and after-care organisations and welfare agencies – work together in one location for the purposes of detection, prosecution and the provision of assistance. The partners in the chain point out problems, devise solutions, and implement these solutions together. Work processes are coordinated, so that criminal law and care complement each other. Efforts are made to change behaviour, reduce the likelihood of re-offending and improve the quality of life of the (sex) offender. Work is carried out with a specific focus on the offender, area and problem.<sup>571</sup> Safety Houses got off the ground on a local level and are consequently tailored to specific local situations.<sup>572</sup> The first Safety House in the Netherlands (in Tilburg) specifically sought to connect with victims by including ‘the provision of adequate care to victims’ in its objectives.<sup>573</sup> Safety Houses are also able seek a connection with the Regional Action Plan against Child Abuse (RAK, see §2.5.2)<sup>574</sup>. Organisations and institutions provide a contribution to the operation of the Safety House from their own tasks and responsibilities. During the cooperative activities in the Safety House, specific problems can become apparent to certain partners during implementation or in legislation and regulations. It remains the responsibility of the partner(s) concerned to take the necessary measures to deal with these problems.<sup>575</sup> A designated partner within the chain is responsible for supervising the implementation. This can present problems, in practice, because it is possible that the demands and understandings of the organisations that are involved may differ. The Tilburg Safety House is striving for a clear supervision of the implementation by means of a pilot.<sup>576</sup> One party creates the master plan and the other parties provide a particular part of the product.<sup>577</sup> Such clear division of roles and supervision that is more centralised has aspects in common with the British Multiple-Agency Public Protection Arrangements (MAPPA) described in §3.6.3.2, where the probation and after-care organisations are the ones that make decisions about the way in which sex offenders are supervised. Furthermore, the Tilburg Safety House has put together a scenario team, to be deployed whenever there is a threat of social unrest in a sexual abuse case.<sup>578</sup> These scenario teams exist in various regions.<sup>579</sup> (The working procedure of) the scenario team in Friesland is described below.

570 See [www.veiligheidshuizen.nl/achtergrond](http://www.veiligheidshuizen.nl/achtergrond) (viewed 16 August 2011).

571 See [www.veiligheidshuizen.nl/achtergrond](http://www.veiligheidshuizen.nl/achtergrond) (viewed 26 July 2011).

572 See [www.veiligheidshuizen.nl/achtergrond/inrichting](http://www.veiligheidshuizen.nl/achtergrond/inrichting) (viewed 26 July 2011).

573 Tilburg Care and Safety House, 2010, pp.13, 19.

574 Berenschot & Verwey-Jonker Instituut, 2011, pp. 22, 37, 43.

575 See [www.veiligheidshuizen.nl/achtergrond/inrichting/Rollen](http://www.veiligheidshuizen.nl/achtergrond/inrichting/Rollen) (viewed 26 July 2011).

576 Ministry of Justice, 2009, p.5.

577 Ministry of Justice, 2009, p.7.

578 Tilburg Care and Safety House, 2010, p.21.

579 See, for example: ‘Scenario seksuele kindermishandeling en maatschappelijke onrust’ [Scenario for sexual child abuse and social unrest] from GGD Noord- en Midden Limburg at: [www.seksueelgeweld.info/doc/al-lescenarios290606concept.doc](http://www.seksueelgeweld.info/doc/al-lescenarios290606concept.doc) (viewed 26 July 2011).

### *Friesland scenario team*

Since 2006, municipalities in Friesland have had scenario teams at their disposal. These teams are multidisciplinary and support local authorities, the Public Prosecution Service and the police in their efforts to limit social unrest.<sup>580</sup> Depending on the type of case, a specific team of specialists is compiled that takes the various interests involved in the crisis into consideration. For example, in the case of sexual offences involving young children, the Municipal Health Service not only takes the social commotion in the village into account, but also takes the individual provision of assistance to the young victims into consideration. The advantages and disadvantages of specific interventions are weighed up for each situation. Various interests play a role in this. For example, an informative meeting can help reduce unrest amongst parents. At the same time, a large meeting can give children the impression that there is something really serious at hand, because all the parents have been gathered together in a hurry. This presents the risk that the children will consider the crisis to be increasing in size rather than decreasing in size. A standard scenario is available for the return of sex offenders to society. But it is also possible, in situations where a criminal investigation is underway and a large amount of uncertainty exists in the society regarding the facts, that the scenario will also provide results. Based on past experiences, steps are set in motion from the time of the report/declaration up to the end of the hearings of witnesses, the phase between the hearing and possible arrest of suspects, up to and including the conclusion of the investigation and up to the legal proceedings and the possible release of suspects.<sup>581</sup>

### 3.6.3.2 Phases in the integrated approach

Each of the phases described below represents a period or an area requiring special attention during and for the purpose of after-care and supervision of offenders. These relate to detection, prosecution and trial, diagnosis and recommendations, treatment, supervision, and registration and notification, respectively. The interventions described here form the sum total of measures and the actors that are responsible for them, which, when taken together, would be able to contribute to an integrated approach, and are required to do so.<sup>582</sup> Within each of the phases, various actors may have different interests that sometimes go hand in hand, but are sometimes conflicting. For example, informing mayors with the intention of combating social disruption can sometimes stand in the way of the supervision of sex offenders. The enforcement of sentences may also hinder treatment that has already been set in motion. Including perpetrators on registers in order to serve the interests of victims may violate the rights of convicted perpetrators. As part of the discussion of the various elements, we will also examine how much attention is devoted to problematic internet use by perpetrators of child pornography.

580 The following definition is employed in Friesland as a working definition of social unrest for serious violent offences: "Severe concern and emotional responses by (various) groups of people as a result of a shocking event – a serious violent offence – in which there is a risk of escalation, disturbance of public order and safety, and an increase in the problems related to this event."

581 This text is largely based on Partoer CMO Fryslan & GGD Fryslan (2006) and [www.burgemeesters.nl/scenarioteams](http://www.burgemeesters.nl/scenarioteams) (viewed 26 July 2011).

582 Center for sex offender management, 2007a; Center for sex offender management, 2007b. Smallbone (2008, p.210) states the following as offender-oriented, tertiary prevention strategies: identification and detection, specific deterrence, general and selective incapacitation, and rehabilitation.

### *Detection, prosecution and trial*

In the previous chapters 3.4 and 3.5, detection, prosecution and trial were discussed in depth. There are three reasons – that are further elaborated on in the present sub-section – as to why the initial contact with the law constitutes an important phase of an integrated approach of after-care and supervision regarding the offender. First of all, concentrating on (increasing) the chance of catching sex offenders who have not yet been convicted forms a successful preventive strategy, see box ‘Perspective on offender-oriented, tertiary prevention’.<sup>583</sup> Secondly, contact with the law may form a reason to implement further interventions in the realm of after-care and supervision (see §3.6.2 above). Thirdly, digital and analogue data can be collected during detection – as put forward below – that may be important for probation and after-care services, in order to provide advice about the risk of re-offending, and/or important for those providing treatment, to enable them to provide therapy or implement interventions that will influence behaviour.<sup>584</sup>

### *Perspective on offender-oriented, tertiary prevention*

The literature outlines a number of remarks on the extensive implementation of interventions that are aimed at *convicted* sex offenders. Finkelhor<sup>585</sup> concludes that no research has yet been carried out into the effectiveness of the current tertiary, offender-oriented preventive measures. Increasing the chance of catching sex offenders should therefore produce a more effective preventive result than placing the focus on the existence of re-offending.<sup>586</sup> According to Finkelhor, focusing too specifically on offenders who have already been prosecuted only resolves a small part of the problem: “Thus even strategies that are 100 percent effective in eliminating recidivism among known offenders would reduce new victimizations only a little.”<sup>587</sup> For these reasons, Finkelhor proposes a number of areas requiring special attention that are applicable to offender-oriented prevention strategies: detection should focus on offenders who have not been previously detected and tertiary prevention strategies directed at (the 25% of) high-risk offenders.<sup>588</sup> What is more, tools should be developed in order to detect high-risk offenders and low-intensity strategies should be devised for low-risk offenders.<sup>589</sup>

583 Posters on the BBS lead one to suspect that more experienced collectors of child abuse material perceive themselves as being unassailable, estimate the chance of being caught as low and have a low opinion of (the quality of) detection institutions, see Jenkins, 2001, pp.14-15.

584 Finkelhor, 2009, pp.169-194.

585 Finkelhor, 2009, pp.169-194.

586 It is established that the majority of the sexual offences are committed by people who are not known to the police. In the Netherlands, the police prioritise re-offending (for child pornography cases with no indication of production and/or hands-on abuse). Those who view child abuse material who have already been convicted for a sexual abuse offence are detected, prosecuted and stand trial sooner under similar circumstances than viewers who do not have a criminal record, although hands-on abusers can most certainly be found within this group of non-convicted offenders (see §1.4.2 and §3.4.3).

587 Finkelhor, 2009.

588 Uniformly applying interventions without differentiating between offenders is not a desirable strategy in preventing the further victimisation of individuals. Providing intensive treatment to convicted offenders with a low risk of re-offending may even be counterproductive, see Van Horn, 2007, pp.339-340. The explanation for this is that those sex offenders who are treated intensively copied the behaviour of the offenders with a high risk of re-offending, with whom they were in the same group for therapy.

589 Finkelhor also states that investments should be made in (the development of) prevention programmes that are aimed at (potential) victims who are minors (see §3.2).

Initiatives have already been developed in the Netherlands that correspond with the areas requiring special attention that have been stated. The 'Initiatief Niets Doen is Geen Optie' ['Doing Nothing is not an Option' Initiative] (INDIGO) of the Rotterdam-Rijnmond police district forms an example of low-intensity interventions that are applied to low-risk viewers of child abuse material.<sup>590</sup>

#### *Diagnosis and recommendations*

The aim of diagnosis by probation and after-care or behavioural experts is to be able to make an assessment of, on the one hand, the risk that the offender will re-offend, and on the other hand, the risk of harm to victims and society, and to be able to establish the possibility of influencing the offender's behaviour. On the basis of such a diagnosis, a recommendation is formulated.<sup>591</sup> A basic requirement when putting interventions into place is that the offenders (are able to) bear responsibility for their own behaviour.<sup>592</sup> They must be responsive to interventions (responsiveness). Their behaviour has to change as a result of – and following – the use of the interventions. As long as behavioural change cannot be achieved, the risk of re-offending continues to exist.<sup>593</sup>

It emerges from the literature that the likelihood of reoffending (recidivism) is highest amongst those with a preferential or exclusive predilection for children.<sup>594</sup> The highest percentages of recidivism are found amongst the group with a homosexual preference for boys in the pre-adolescent years. The group of unmarried men whose victims are boys outside of their family has a re-offending percentage of 77% over a period of 30 years.<sup>595</sup> The combination of sexual offences that have been committed in the past and an excessive consumption of alcohol also seem to have a predictive value.<sup>596</sup> The lowest likelihood of re-offending is found amongst offenders who have committed incest.<sup>597</sup>

590 The intention of Indigo is to be able to take action without having to pursue the whole course of detection and without having to take the criminal prosecution route. A group of suspects that were selected commenced treatment. A number of others had a 'good chat' with the police, whereby they were issued with a cautionary notice. If it appears that something is wrong with an IP address again, or if new information emerges, an individual may still be prosecuted, see [www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045\\_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx](http://www.jaarberichtom.nl/jaarverslag-2010/typeinfo.cijf/aDU1045_Landelijke-expertisecentrum-kinderporno-vroegtijdig-ingrijpen.aspx) (viewed 20 June 2011). See also §3.5.1.

591 Poort, 2009, pp.27-28; Poort & Eppink, 2009, pp.48-55. A diagnosis involves determining the likelihood of an individual re-offending as well as determining the risk of injury. The risk of injury does not only involve the likelihood of personal injury (for others), but also the severity of that injury (in short: risk of injury = likelihood of personal injury x severity of personal injury).

592 This does not apply to sex offenders with psychological and psychiatric disorders.

593 Poort & Eppink, 2009, p.13.

594 Lanning, 2010, p.52.

595 Leuw et al., 2004.

596 Finkelhor, 1984, pp.115-16.

597 Leuw et al., 2004. It seems that those who commit incest are usually situational offenders, because they only make use of the availability of their younger family members. They re-offend less often if the family situation that facilitated and fostered the abuse in the first place no longer exists. This does not necessarily mean that it is not possible that abuse may take place frequently and over a long period of time; it is merely intended to provide information about the likelihood of repeat offences following discovery, prosecution and trial.

These risks need to be determined. Such a risk assessment therefore also forms part of a diagnosis. In order to be able to carry out these risk assessments, the probation and after-care services use the actuarial risk assessment instruments Risc and Static-99<sup>598</sup> in order to estimate the risk of re-offending. The higher the likelihood of re-offending, the more intensive the interventions should be in terms of time and scope. In this process, it is not the offence itself, but the person, who is central. It may be the case that more interventions are desired for a hands-off offender who possesses child abuse images and who has a high risk of re-offending and causing harm<sup>599</sup>, than are required for a hands-on offender who has committed incest.<sup>600</sup> Therefore, the importance of an accurate diagnosis and recommendations is great. Risk assessment with respect to those who possess or view child abuse material is still quite a challenge. At present, no risk assessment instruments exist that are able to effectively differentiate between those who view child abusive material who pose a threat for committing a hands-on offence, and those who do not.<sup>601</sup> The risk assessment instruments Risc and Static-99 look at historical and statistical risk factors surrounding hands-on offences, see also §3.6.5 (Table 3.10).<sup>602</sup> In this process, the assessor also looks at dynamic risk factors by, for example, carrying out discussions with the offender and going over reports.<sup>603</sup> Digital data of offenders, such as collections of child abuse material and other memorabilia (offender/offender and offender/victim communication), can be useful for diagnosis and treatment advice. This information can provide useful insights into the offender's behaviour, and it is important that this information is included by the police in the report, so that the probation and after-care services can use it for risk assessment.<sup>604</sup>

### Treatment

Article 16 of the Lanzarote Convention<sup>605</sup> prescribes that suspects as well as convicted perpetrators must have access to treatment programmes. For suspects, access to measures is voluntary and must not have any negative consequences with regard to the right to a fair trial and, in particular to the presumption of innocence.<sup>606</sup> With regard to the treatment of adult offenders, the Convention only makes reference to outpatient behavioural interventions and therapies. Outpatient treatments for sex offenders<sup>607</sup> are generally provided by forensic outpatients' departments. Specific programmes have been formulated for

598 Van Horn, 2007, pp.337-348.

599 Court of Den Bosch, 2 December 2003, National Case Law Number: AN9804.

600 Court of Zutphen, 26 October 2010, National Case Law Number: BO1758.

601 Taylor et al., 2001, p.199. The same difference is important for offenders who groom children online with a view to actual hands-on abuse in the (offline) real world, and those who groom children online, but where the (intended) result is not actual physical contact. See Table 1.1 and Table 1.2 for explanations of the definitions 'hands-on' and 'hands-off'.

602 Van Horn, 2007, pp.337-348. Static factors conducive to crime appear to be strong predictors of re-offending. However, they cannot be influenced. Such static factors surely need to be considered in the diagnostic process, but in selecting an intervention, dynamic factors that can be influenced must predominantly be sought, as these can be changed, see Poort & Eppink, 2009, pp.44-45.

603 Van Montfoort consultancy firm & the Dutch Probation Service, 2004, p.16.

604 Taylor et al., 2001: pp.209-210; Davidson & Gottschalk, 2011, pp.154-157.

605 Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58.

606 *Parliamentary Papers II*, 2008/09, 31808, no.3, p.9.

607 See §3.6.4 about youth offenders.

youth sex offenders, paedosexuals and sex offenders with intellectual disabilities,<sup>608</sup> and this is also the case for individuals who view child abuse material.<sup>609</sup> The literature recommends treating individuals who view child abuse material (hands-off) in a separate group, as the risk of 'contamination' with the hands-on group is present.<sup>610</sup> Bringing low-risk offenders and high-risk offenders (or offenders with a high risk of re-offending) together can also pose a risk, because it is possible that the first group of offenders may copy the behaviour of offenders with a high risk of re-offending with whom they were in the same group for therapy.<sup>611</sup> In cases involving the wider group of offenders of online sexual violence against children (therefore offenders who carry out online grooming in addition to individuals who view child abuse material), it appears that this group differs from those who commit sexual violence against children offline.<sup>612</sup> However, no separate treatments are available for that group of offenders in the Netherlands. A number of authors conclude that this is also not necessary, providing that existing treatments also provide for the treatment needs of offenders committing online sexual violence against children.<sup>613</sup>

The motivation of offenders to change is relevant to the success rate. The judicial framework often gives the impetus for this motivation, but it sometimes occurs voluntarily. Article 7 of the Lanzarote Convention<sup>614</sup> prescribes that signatories must guarantee that people who fear that they will subject children to sexual violence also have access to intervention and treatment programmes.<sup>615</sup> An example of such an intervention is the British Stop It Now! treatment programme, whereby those who view child abuse material are able to come forward themselves (see §3.3.1.1). Treatment centres in the Netherlands are also already receiving applications from individuals who view child abuse images.<sup>616</sup> In such cases, treatment can take place face-to-face, but also anonymously, by telephone or via the Internet. An entire online self-help programme can be found at: [www.croga.org](http://www.croga.org). Although these types of self-help programmes are not able to replace face-to-face treatment, they can make an important contribution in the case of those of

608 Van Beek, 2007, pp.325-326.

609 Centre for outpatient forensic psychiatry De Waag offers 'group treatment for individuals who have downloaded child pornography', see: [www.dewaag-utrecht.nl/pool/3/documents/6%20-%20KPD%20def.%20-%20ogr%20beh%20kinderpornon%20downloaders%20apro8%20kleur.pdf](http://www.dewaag-utrecht.nl/pool/3/documents/6%20-%20KPD%20def.%20-%20ogr%20beh%20kinderpornon%20downloaders%20apro8%20kleur.pdf) (viewed 22 June 2011).

610 Taylor et al., 2001, pp.209-210.

611 Van Horn, 2007, pp.339-340; see also Court of Alkmaar, 24 February 2009, National Case Law Number: BH3936.

612 Davidson & Gottschalk, 2011, pp.163-167.

613 Davidson & Gottschalk, 2011, pp.171-172. Specific treatments for online offenders have been developed outside of the Netherlands. In the United Kingdom, where similar Internet offences made up a third of the total number of sexual offences in 2006, the Internet Sex Offender Treatment Programme (i-SOTP) was developed. A project exists in Basel in which individuals who view child abuse images but have not committed a hands-on offence are regarded as individuals with problematic Internet usage. The therapy also places a focus on problems such as loneliness, boredom and unfulfilled sexual needs.

614 Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58.

615 *Parliamentary Papers II*, 2008/09, 31808, no.3, p.6.

616 For example, the 'group treatment for individuals who have downloaded child pornography' at the Centre for outpatient forensic psychiatry De Waag. [www.dewaag-utrecht.nl/pool/3/documents/6%20-%20KPD%20def.%20-%20ogr%20beh%20kinderpornon%20downloaders%20apro8%20kleur.pdf](http://www.dewaag-utrecht.nl/pool/3/documents/6%20-%20KPD%20def.%20-%20ogr%20beh%20kinderpornon%20downloaders%20apro8%20kleur.pdf) (viewed 22 June 2011).

fenders who want to stop.<sup>617</sup> Since child pornography offenders come together online for various reasons and with different intentions (see §1.4.1.3 and §1.4.2) – also in Dutch-language internet forums<sup>618</sup> – these self-help strategies should be brought to the attention of offenders in those environments, if suitable, because it is possible that offenders may be in one of the early stages of delinquent conduct and would be receptive to therapy. Self-help strategies could also be displayed in the list of results from search engines whenever search terms relating to child pornography are entered.<sup>619</sup>

### *Supervision*

Supervision is a combination of monitoring of and guidance for offenders, to ensure that they adhere to the special conditions.<sup>620</sup> The probation and after-care services monitor offenders to see whether they are adhering to the special conditions, and provide guidance at the same time.<sup>621</sup> The MAPPA model is an example of integrated monitoring, which is in force in England and Wales.

### *Multiple-Agency Public Protection Arrangements (MAPPA)*

In England and Wales, the so-called MAPPA system exists for the supervision of sex offenders, and the probation and after-care services play a central role within the system. Since 2003, the role of the probation and after-care service has been embedded and reinforced by means of so-called MAPPA legislation.<sup>622</sup> The probation and after-care service works with so-called Multiple-Agency Public Protection Panels (hereinafter: MAPPPs). These panels make decisions about the way in which supervision is implemented in the case of a specific sex offender. The probation and after-care service is tasked with assessing which sex offenders present the highest risk and pose the greatest threat. A personal plan of supervision and guidance is formulated for each sex offender. The MAPPPs help the sex offender to rehabilitate, by helping him/her find a job and accommodation. The probation and after-care service also carries out home visits. The greater the risk of re-offending, the greater the intensity of the guidance and supervision. The probation and after-care service remains in charge of the guidance and supervision of the offender, but works together with a range of institutions for this purpose, such as social services, educational institutions and housing associations.<sup>623</sup>

Monitoring is the tool that is used to ensure that the (special) conditions are observed and to observe any threat that these conditions may be breached, whereas guidance is a tool that is used to change behaviour. The means and methods of monitoring include discussions between the supervisor and the offender, and monitoring via his/her informal and formal networks, amongst other things.<sup>624</sup> Research

617 Davidson & Gottschalk, 2011: p.175; Taylor & Quayle, 2006: p.187.

618 See [www.depers.nl/binnenland/568911/De-oneindige-beerput.html](http://www.depers.nl/binnenland/568911/De-oneindige-beerput.html) (viewed 22 June 2011)

619 When entering the search term 'boylover,' associated with child pornography, into the search engine [Google.nl](http://Google.nl), the search results refer to numerous sites where sex with children is discussed. The program Google Adwords could be used to place a sponsored link to self-help strategies above the search results, whenever an individual googles terms relating to child pornography.

620 Poort, 2009, p.9. The nature and duration of the special conditions are described in §3.6.2.

621 Poort, 2009, p.19.

622 UK Criminal Justice Act 2003, sections 325-327.

623 UK Ministry of Justice (2010). Multi-Agency Public Protection Arrangements Annual Report 2009/10. Ministry of Justice Statistics Bulletin, pp.1-2.

624 Poort, 2009, pp.41-42.

reveals that monitoring on its own is not effective and may even have an adverse effect. As a complementary component of supervision, guidance is essential if this is to be carried out effectively.<sup>625</sup> For this reason the following aspects of guidance are important: the relationship between the supervisor and the individual under supervision, 'listening and talking', building up and maintaining an individual's network, helping the individual to obtain accommodation and work and to maintain a relationship, and case management.<sup>626</sup> Formal contact that does not involve informal monitoring as part of it does not appear to be an effective way of reducing re-offending. Convicted perpetrators benefit from the involvement of their immediate social and personal environment.<sup>627</sup> This outlines the importance of a project such as COSA, which is described in the box below.

### COSA

*The Circles of Support and Accountability (COSA) were developed in Canada in 1994. The Dutch Probation and After-care Services are currently engaged in projects aimed at introducing this method for the re-integration of sexual abuse offenders. The intention behind the activities of intensively supporting offenders and supervising their re-integration into society is to reduce the likelihood of re-offending. In COSA, the offender is the core member. An informal network – consisting of three to five volunteers – forms an inner circle around the core member. The members concentrate on supporting the offender both practically as well as emotionally. By maintaining close and informal contact with the offender, the intention is to be able to identify behaviour that indicates that the offender is likely to re-offend at an early stage. Further to this, supervision of the offender is increased by the involvement of volunteers. The outer circle is formed by professionals such as the police and the probation and after-care services. The volunteers therefore form a type of interface between the offender and the professionals. The professional outer circle is responsible for the supervision and implementation of the rehabilitation of the core member. An employee from probation and after-care services fulfils the role of circle coordinator, and is responsible for the operation of the inner circle and the sharing of information within the circles. It is a requirement that the offender is willing to take part in COSA and enters into a corresponding contract with the volunteers. The contract obliges the offender not to commit any more offences and not to keep any secrets.<sup>628</sup> The group of sex offenders who are eligible for this has an average to high likelihood of re-offending following detention or treatment.<sup>629</sup> Research in Canada has established that by applying the COSA method, the likelihood of re-offending amongst sex offenders is 70 percent less.<sup>630</sup> In England, pilot studies in Hampshire and Thames Valley have observed a significant reduction in re-offending.<sup>631</sup> The close interrelationship with MAPPA (see box above) is characteristic of the English COSA projects. The MAPPPs are ultimately responsible for supervising the sex offenders. In the Netherlands, it is possible that the pre-requisites for the development of an approach similar to the COSA organisational model used in England are already in place. As a result of the establishment of Safety Houses (see Safety Houses box in §3.6.3.1), an infrastructure for regional cooperation is being developed that is similar to the English MAPPA.<sup>632</sup> Furthermore, a COSA pilot study has been launched in various cities in the Netherlands. Cities where this has been implemented included Rotterdam, Breda and, from the end of 2012, Maastricht. The expectation is that*

625 Poort, 2009, p.18.

626 Poort, 2009, p.18.

627 Poort, 2009, p.18.

628 Caspers, 2010.

629 Caspers et al., 2010.

630 Wilson et al., 2007.

631 Bates et al., 2007.

632 Hoing et al., 2009.

*community-based interventions such as COSA will be able to contribute to the reduction of re-offending amongst sex offenders.<sup>633</sup> The Dutch Probation and After-care Services believe that the possibility for long-term probation and after-care supervision is necessary for the successful application of these interventions (see §3.6.2).<sup>634</sup>*

With reference to problematic Internet usage, special conditions can also be enforced to restrict access to the Internet, see §3.6.2. Technical means can also be used to try to counter the viewing of child abuse images or videos. Software is in use that monitors the computer for language and content.<sup>635</sup> On the one hand, whether or not such solutions make sense is debatable. Clinical psychologists doubt whether special conditions and therapies that are based on the full or partial absence of the Internet are desirable, since it is possible that this may send out a message to the convicted offender that he/she is not able to have any control over his/her behaviour.<sup>636</sup> In the society of today, it is barely possible to restrict Internet traffic completely. At the same time, this will increasingly turn out to be a bogus solution: the Internet is increasingly being offered (for free) at locations that the public has access to, such as on-board trains, in catering establishments and shops. Tablets and (pre-paid) mobile telephones enable easy access to child abuse material, which is almost impossible to monitor. In addition to these practical drawbacks, judicial drawbacks surrounding the restriction of access to the Internet are also referred to, including a possible breach of the freedom of expression, as stipulated in Article 10 of the European Convention on Human Rights.<sup>637</sup> On the other hand, supervision is one of the main tasks of the probation and after-care service, and that supervision should therefore not be limited to the analogue world.

#### *Registration and notification*

There are various ways in which the registration of convicted sex offenders can contribute to increasing public safety. It is possible that registration in itself may already be exerting a preventive effect, since convicted sex offenders know that various institutions already have their eye on them.<sup>638</sup> Various institu-

633 Finkelhor, 2009.

634 Dutch Probation Service, 2010, p.17.

635 See: [www.securus-software.com/pdf/monitoringoffenders.pdf](http://www.securus-software.com/pdf/monitoringoffenders.pdf) (viewed 22 June 2011); in addition to this, the company Info-Excellente is developing an Internet Control-desktop (ICD). The ICD can be used within each variation of supervision alongside other technological facilities, such as the electronic ankle band for example. The ICD is a desktop containing hardware and software that ensures that the individual placed under supervision is able to use the Internet without Wi-Fi or wire connection. An internal key logger ensures that the test assessments are logged. The software that is supplied examines the data that is generated from this for keywords and websites visited.

636 Taylor & Quayle, 2003, p.209.

637 Gercke, 2009, p.71; see also: 'Human Rights Guidelines for Internet Service Providers' from 2008 from the Council of Europe.

638 See also Article 37 of the Lanzarote Convention regarding the collecting and storing of national data – with regard to the identity and genetic profile (DNA) – about convicted sex offenders. On the basis of the DNA Testing (Convicted Persons) Act (Dutch Bulletin of Acts and Decrees, 2004, 465) and the Decree of 10 December 2007, regarding the amendment of the list of violent and sexual offences to which the DNA Testing (Convicted Persons) Act applies (Dutch Bulletin of Acts and Decrees, 2007, 513), cellular material is taken from a convicted perpetrator due to an offence as described in Articles 240b, 242 up to and including 247, 248a, 248b and 273f of the Dutch Criminal Code, for the purpose of determining the DNA profile and the incorporation of this into a DNA database.

tions use registration systems for the implementation of their tasks in the phases described above. Police records containing information about the offenders that come from the police are useful when carrying out criminal investigations, and the probation and after-care services consult various registration systems for their own risk assessment purposes.<sup>639</sup> Furthermore, registrations are used for prohibition and notification.<sup>640</sup> The intention of prohibition is that the freedom (of movement) of the convicted sex offender is restricted, for example, preventing his/her involvement in certain professions (see §3.5.3 and §3.6.2). A Certificate of Good Conduct is also obligatory for some positions, see §3.2.2, primarily for professions that involve regular contact with children, and particularly those professions which involve a dependency relationship.<sup>641</sup> The Ministry of Education, Culture and Science has stipulated, for example, that a primary school teacher, a childminder and those who provide supervision between school hours, must submit a Certificate of Good Conduct.<sup>642</sup> No statutory obligations apply to many other sectors. It may, however, be agreed that a Certificate of Good Conduct must be requested, and some organisations do this of their own accord.<sup>643</sup> In order to be able to assess whether an individual has come into contact with the criminal justice system, the Central Agency for Certificates of Good Conduct [*Centraal Orgaan Verklaring Omtrent het Gedrag*] (COVOG) makes use of various registers. The only documents used for this purpose are Dutch judicial documents, such as the Criminal Records System [*Justitieel Documentatie Systeem*] (JDS), police data and information from the Public Prosecution Service and the probation and after-care services.<sup>644</sup> The intention is that in the future, it will be possible to retrieve judicial information from European Member States, so as to prevent individuals who have been convicted for a sexual abuse offence elsewhere in Europe from being able to work with children again, for example in the Netherlands.<sup>645</sup> At the same time, registrations can be used to notify individuals and institutions. Since 1 January 2005, certain groups of victims and/or relatives have had the opportunity to be kept informed of progress in

639 Van Montfoort consultancy firm & the Dutch Probation Service, 2004:16. For example an extract from the Central Judicial Documentation Register [*Centraal Justiteel Documentatieregister, CJD*] and data from the Client Monitoring System [*Cliënt Volg Systeem, CVS*] (the system used by probation and after-care services) and/or Implementation programmes for preventive detention and other orders and sentences [*Tenuitvoerleggingprogramma preventieve hechtenis en overige maatregelen en straffen, TULP*] (the system used by the prison system)

640 Van Marle & Mulder, 2007: p.351.

641 *Parliamentary Papers II* 2008/09, 31808, no.3, pp.5-6.

642 See 'Wat is een Verklaring Omtrent het Gedrag (VOG) en wanneer heb ik een VOG nodig?' [What is a Certificate of Good Conduct and why do I need a Certificate of Good Conduct?], *Rijksoverheid* [Central government], [www.rijksoverheid.nl/onderwerpen/verklaring-omtrent-het-gedrag/vraag-en-antwoord/wat-is-een-verklaring-omtrent-het-gedrag-vog-en-wanneer-heb-ik-een-vog-nodig.html](http://www.rijksoverheid.nl/onderwerpen/verklaring-omtrent-het-gedrag/vraag-en-antwoord/wat-is-een-verklaring-omtrent-het-gedrag-vog-en-wanneer-heb-ik-een-vog-nodig.html) (viewed 17 August 2011).

643 *Parliamentary Papers II* 2008/09, 31808, no.3, pp.5-6.

644 See 'Onderzoek naar strafbaar gedrag' [Research into behaviour that constitutes a criminal offence], *Rijksoverheid* [Central government] [www.rijksoverheid.nl/onderwerpen/verklaring-omtrent-het-gedrag/onderzoek-naar-strafbaar-gedrag](http://www.rijksoverheid.nl/onderwerpen/verklaring-omtrent-het-gedrag/onderzoek-naar-strafbaar-gedrag) (viewed 17 August 2010).

645 On 29 June 2011, the Member States of the European Union reached agreement about the text of the EU Directive on combating sexual abuse, sexual exploitation of children and child pornography. Efforts have been made from the Netherlands in order to make it possible, by means of this Directive, that data exchange about sexual offences in other countries takes place as a matter of course. 'Ontwikkelingen VOG' [Developments regarding Certificates of Good Conduct], press release from the Ministry of Security and Justice, 21 July 2011. The Directive is not yet in force, see §1.3.

relation to the judicial measure that was imposed.<sup>646</sup> This applies in the case of victims/relatives of offenders for whom one of the following judicial measures has been imposed: placement under a hospital order and placement in a young offenders' institution. As of 1 January 2011, the group of victims and/or relatives of victims of offences which convey a right to speak, or offences for which a custodial sentence of more than eight years can be imposed, also have the opportunity to be kept informed of the course of the judicial measure that was imposed.<sup>647</sup> The aim of this provision of information is to prevent unexpected encounters between victims and/or relatives and the offender concerned.

Citizens sometimes see it as their responsibility to warn local residents, or – if this takes place via the Internet – the general public, about (alleged) offenders of sexual violence against children. This form of notification and forms of institutionalised community notification such as is the case in the United States may have an adverse effect on the possibilities for supervision<sup>648</sup> and re-integration.<sup>649</sup> It may also increase the likelihood that a sex offender will try to remain out of sight. The Administrative Ex-Prisoner Information Service [*Bestuurlijke Informatie Justitiabelen*] (BIJ), previously known as the Provision of Administrative Information to Municipalities regarding Ex-Prisoners [*Bestuurlijke Informatie Gemeenten inzake Ex-gedetineerden*] (BIVGEG), differs from the preceding flows of information that relate to the prevention of re-offending, as its activities are aimed at the prevention of social unrest.<sup>650</sup> BIJ informs mayors if an individual who has committed a sexual abuse offence is returning to the municipality. This pilot study is described below.

#### *Administrative Ex-Prisoner Information Service*

The intention behind the Administrative Ex-Prisoner Information Service is to improve the availability of information to mayors, hence improving the possibility to take action.<sup>651</sup> Within the Pilot<sup>plus</sup> of the Administrative Ex-Prisoner Information Service<sup>652</sup>, the flow of information about sex offenders<sup>653</sup> and those who have committed serious violent offences who are returning to a municipality is being tested, and attempts are being made to gain an insight into how the flow of information functions within a municipality. 76 municipalities are taking part in this Pilot<sup>plus</sup>, including the 36 largest municipalities. The municipalities that are taking part receive a notification from the Legal Information Service [*Justitiële Informatiedienst*] two months before the offender<sup>654</sup> returns to the municipality. This notification can be supplemented by information from the National Police Services [*Korps Landelijke Politiediensten*]. On the basis of this information and in the interests of

646 See [www.om.nl/onderwerpen/slachtofferzorg/detentieverloop\\_en/](http://www.om.nl/onderwerpen/slachtofferzorg/detentieverloop_en/) (viewed 19 August 2011).

647 See [www.om.nl/onderwerpen/slachtofferzorg/detentieverloop\\_en/](http://www.om.nl/onderwerpen/slachtofferzorg/detentieverloop_en/) (viewed 19 August 2011).

648 Van Marle & Mulder, 2007, p.352, Center for Sex Offender Management, 2007b, p.351; Bogaerts & Van der Woude, 2008.

649 See text in the COSA box above.

650 Appendix to *Parliamentary Papers II* 29 452, no.131.

651 Ministry of Security and Justice, 'Project *Bestuurlijke Informatie Justitiabelen (BIJ) Actieplan Pilot<sup>plus</sup> 2011*', [Administrative Ex-Prisoner Information Service Project, Pilot<sup>plus</sup> Action plan 2011], 4 January 2011, p.5

652 The Pilot<sup>plus</sup> is an extension to the earlier Pilot 2009.

653 Including offenders of child pornography.

654 In addition to sex offenders and offenders who have committed seriously violent offences, individuals placed in young offenders' institutions and individuals placed under a hospital order are also included in the pilot study. Mayors are also informed of leave.

maintaining public order and ensuring safety, the mayor is able to take measures. An example of a measure that can be taken within this framework involves accommodating the offender elsewhere within the municipality in order to prevent the victim from being confronted with the offender. The Pilot<sup>plus</sup> is being evaluated in the second half of 2011, and if the outcome is positive, the provision of information to municipalities will be implemented on a national scale in 2012.<sup>655</sup>

### 3.6.4 Youth offenders

It is not only adults who are guilty of child pornography offences; an average of 8% of the suspects and 5% of the convicted perpetrators are minors.<sup>656</sup> As already described in §1.4.2, child pornography offences committed by minors may involve the production, distribution and possession of material involving children, obtained by sexting for example, and in addition to this, they may also be involved in hands-on sexual abuse, also towards younger children. In the same way as adult offenders, the group of offenders of sexual abuse towards children is not heterogeneous, and the likelihood of re-offending varies.<sup>657</sup> The form and extent of after-care and supervision of young offenders of sexual violence against children must naturally be brought into line with this. The current sub-section does not contain an exhaustive description of after-care and supervision measures for offenders who are minors and young adults. However, it does briefly describe two aspects with regard to young offenders, namely the treatment of young sex offenders, and the youth probation and after-care services.

#### *Residential specialist treatment of young sex offenders*

The sexual behaviour of some young sex offenders is extremely inappropriate, whereby it is often the case that serious underlying psychopathology is involved. In order to limit re-offending as much as possible within this group, (residential) treatment that is designed specifically to meet the needs of the offender is necessary in many cases. Since the end of the 1980s, Avenier<sup>658</sup> has focused on developing treatment for youth sex offenders. The target group on which Avenier focuses is boys aged twelve and over who have committed one or more sexual offences (hands-on or hands-off) and are subject to an increased or a (very) increased risk of re-offending.<sup>659</sup> In general, these young people are characterised by a negative self image, inadequate skills and depressive symptoms. In addition to this, they are often victims of bullying and have sometimes even been abused themselves. Although these young sex offenders have committed serious sexual offences, on the basis of the above characteristics, they are often considered to be 'pathetic' children, meaning that the risks that they pose to their surroundings are underestimated. Although in the eyes of their family and friends, treatment within a secure setting that is focused on the sexual behaviour that is extremely inappropriate will sometimes seem too severe an intervention, Avenier believes that the underlying psychopathology is serious, and that early

655 *Parliamentary Papers II* 2010/11, 32 500 VI, no.97.

656 See §3.5.4.4, Figure 3.26 and Figure 3.27.

657 Van Wijk, 2010, pp.42-55. See also §1.4.2.

658 Avenier is an institution for intensive youth care for approximately 360 young people between the ages of 12 and 18. The Anker site in Harreveld, previously the Harreveld Young People's Centre, provides youth care Plus (secure phase) with a high level of monitoring. Young people with various problems can come here. Within the safety of the secure environment, they are able to work on their problems. There are two groups specifically aimed at young people with sexual problems. See [www.desprengen.nl/nl/p4cd2955ac7c2a/locatie-anker.html](http://www.desprengen.nl/nl/p4cd2955ac7c2a/locatie-anker.html) (viewed 26 August 2011).

659 Schotel-van der Veer, 2009, p.10.

and targeted intervention has a preventive effect.<sup>660</sup> The primary objective of the specialist treatment of young people with serious sexual problems is to reduce the likelihood of re-offending by working on the development of the young people.<sup>661</sup> Treatment on offer is aimed towards the undesired sexually inappropriate behaviour and the underlying psychopathology, whereby much attention is paid to recognising risk factors, teaching alternative behaviours, and introducing or creating protective factors. Therapy takes place in group sessions as well as individually. Up until 2010, young people with serious sexual problems placed under criminal and civil law were assigned to an Avenir programme and treated at the Anker site. Since the division between youths placed under criminal and civil law was introduced, boys who have been convicted under criminal law for committing a sexual offence and have received an order for placement in a young offenders' institution, can be placed in the Den Hey-Acker judicial youth institution. Den Hey-Acker has separate groups for young people with serious sexual problems.<sup>662</sup> Young people who display serious sexual problems but who have not been issued with a treatment order on the grounds of a criminal conviction can be placed in one of two groups for young people with serious sexual problems at the Anker secure youth care centre, on the basis of an authorisation for placement in secure youth care or under guardianship.<sup>663</sup> It is highly important that treatment of young sex offenders continues to exist, and that this is also considered and approached as a question of public healthcare.

#### *Juvenile Probation and After-care Services*

If, within the youth justice system, suspended sentences with a special condition are imposed, the Juvenile Probation and After-care Service is assigned responsibility for supervision and counselling within the scope of a help and support measure.<sup>664</sup> The process of after-care can, for example, start at the time at which the young person is granted release from the pre-trial detention, is imposed with a suspended sentence or order, receives an order to influence behaviour or leaves a judicial institution for young offenders. The Juvenile Probation and After-care Service forms part of the Youth Care Agency. A separate chapter in the Handbook on the juvenile probation and after-care method is devoted to young people who have committed sexual offences.<sup>665</sup> Treatment, often in the form of group sessions, sets out to address the deficits and needs displayed in the behaviour of specific offenders, and attempts are made to provide the young people with strategies to prevent relapse.<sup>666</sup> It is striking that in the Handbook on the juvenile probation and after-care method, not a single reference is made to the role of the Internet on criminal behaviour, or on the relationship between sexual abuse and child pornography. Although problematic online behaviour may be discussed in contact with clients and their parents in individual cases, there has been no mention until now of structurally embedding the digital component in the treatment.<sup>667</sup>

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660 Schotel-van der Veer, 2009, p.2.

661 Schotel-van der Veer, 2009, p.11.

662 See [www.dji.nl/Organisatie/Locaties/Justitiele-jeugdinstellingen/Den-Hey-Acker/index.aspx](http://www.dji.nl/Organisatie/Locaties/Justitiele-jeugdinstellingen/Den-Hey-Acker/index.aspx) (viewed 3 August 2011).

663 See [www.desprengen.nl/nl/p4cffa84e9fa3d/professionals.html](http://www.desprengen.nl/nl/p4cffa84e9fa3d/professionals.html) (viewed 3 August 2011).

664 Article 77aa, paragraph 2 of the Dutch Criminal Code. The juvenile probation service forms part of a Youth Care Agency.

665 Vogelvang, 2005, p.183.

666 Vogelvang, 2005, pp.183-184.

667 Verbal information from the Juvenile Probation Service, 1 June 2011.

In contrast to probation and after-care for adults, the juvenile probation and after-care service does not record the type of offence. This means that it cannot be discovered whether or not, and if so, the extent to which the juvenile probation service is involved with clients who have committed a child pornography offence and the interventions that were implemented in order to prevent clients from re-offending. Such a registration, similar to the one used by the probation and after-care service for adults, would therefore be desirable. Due to the fact that many young adults who receive help and support from the adult probation and after-care service, to help them observe the conditions of a suspended sentence, do have a history of involvement with the juvenile probation service, a good inter-connection between the juvenile probation and after-care service and the adult probation and after-care service is necessary. This point was emphasised by the State Secretary for Security and Justice in his letter of 25 June 2011 and in addition to this, he announced that the adult probation and after-care service will further extend the specific attention it devotes to young adults. Furthermore, a new order entered into force on 1 July 2011; as of that date, the juvenile court can, alongside the juvenile probation and after-care service, also designate the adult probation and after-care service as being responsible for the support of the implementation of the behavioural order.<sup>668</sup>

### 3.6.5 Probation and after-care – quantitative data

This sub-section contains statistical information about adult<sup>669</sup> clients who were registered at the probation and after-care services<sup>670</sup> due to child pornography offences (amongst others) in 2010.<sup>671</sup>

In 2010, 52 individuals were registered in the client monitoring system of probation and after-care services for child pornography offences (amongst others).<sup>672</sup> 27% (N=142) of these individuals had also committed another sexual offence.<sup>673</sup> Table 3.7 displays the context in which the 525 clients with offenses related to child pornography were registered for one of the three probation and after-care components. It is possible that one client is registered for multiple reasons. In this case, 789 probation and after-care cases are involved with regard to 525 individuals.

668 [www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/06/30/wetten-die-per-1-juli-2011-in-werking-treden.html](http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/06/30/wetten-die-per-1-juli-2011-in-werking-treden.html) (viewed 22 August 2011).

669 The Juvenile Probation and After-care Service does not make registrations centrally on the level of the criminal offence.

670 Either the Dutch Probation and After-care Services, the Salvation Army or the Netherlands Institute for Psychological Care and Addiction Care. Together, these three probation and after-care components comprise the probation and after-care services and make joint use of a single Client Monitoring System. The Dutch Probation and After-care Service has provided the figures at the request of BNRM.

671 For the research justification, refer to Appendix 2: Justification of the research methods employed: 3. Probation and after-care research. The explanation of the figures displayed in this chapter, the additional table presented in Appendix 4 and the statistics that are applicable to this can be found in Appendix 3.

672 An offence code is missing in 26% (48,074) of all recorded probation and after-care assignments in 2010. It is therefore possible that child pornography is involved in more cases than the 525 clients that are stated. Furthermore, on the basis of the offence code, no distinction is made between the possession, distribution and production of child abuse images.

673 In the event that at least one of the maximum of five recorded criminal codes in the client monitoring system concerns at least one of the following criminal codes: '239', '242', '243', '244', '245', '246', '247', '248', '249', '250'. These numbers refer to the relevant Article numbers of the Dutch Criminal Code.

**Table 3.7** Number of unique clients with offenses related to child pornography, grouped according to the various reasons for registering with probation and after-care services in 2010

Reason for registering with probation and after-care services (categories are not mutually	Number of unique clients with offenses related to child pornography <sup>674</sup>	
	N	% (525=100%)
Referrals for assistance at an early stage	111	21%
Requests for advice	325 <sup>676</sup>	62%
- court session	321	61%
- other <sup>675</sup>	40	8%
Supervision	140 <sup>677</sup>	27%
- suspended sentence	116	22%
- order for suspension	19	4%
- conditional decision not to prosecute	8	2%
- placement under a hospital order/order for placement in a young offenders' institution	2	0%
Coordination of community service order	135	26%
Behavioural interventions	1	0%
Referral to care provision	31	6%

Source: *The Dutch Probation and After-care Services* (information provided at the request of BNRM)

In 2010, the police registered 111 different people at probation and after-care services as a result of them being taken into custody for the offence of child pornography (amongst other things).<sup>678</sup> This does not

674 The total of the number of unique clients with offenses related to child pornography from the various registration categories is not the same as the total number of probation and after-care assignments (743 in comparison to a total of 789 probation and after-care assignments). This is explained by the fact that a person may not only be included in various categories, but may also come up more than once within the same category.

675 For example: re-integration plan (N=8), suspension report/court in chambers (N=7), bringing the suspect before the supervisory judge (N=7), additional advice for the court session (N=6), preparation for detention under a hospital order with conditions (N=5) etc.

676 The total number of unique clients with offenses related to child pornography that were registered with the probation and after-care service due to a request for advice (amongst other things) (N=325) is not the same as the total of the sub-categories stated (N=361) for the same reason as previously stated (one person can come up more than once within the same category and in various sub-categories).

677 The total number of unique clients with offenses related to child pornography that were registered with the probation and after-care service due to supervision (amongst other things) (N=325) is not the same as the total of the sub-categories stated (N=140) for the same reason as previously stated (one person can come up more than once within the same category and in various sub-categories).

678 The police registers all persons taken into police custody with the probation and after-care service. The probation and after-care service then decide whether or not to implement a visit to assist the suspect at an early stage (dependent on various factors, including time/capacity and arrangements made on a district/local level).

mean that the probation and after-care services arranged a visit to assist at an early stage for all of these people. In any case, most clients with offenses related to child pornography (62%) requested advice – usually with regard to the court session.<sup>679</sup> For just over a quarter of clients with offenses related to child pornography (27%), help and support was requested from the probation and after-care services in order to assist with observance of the conditions imposed (supervision<sup>680</sup>). This usually took place within the scope of a (partially) suspended sentence, as a part of which special conditions are imposed by the court. An order for suspension was sometimes (N=19) involved with regard to pre-trial detention and occasionally with regard to a suspended sentence (N=8) or supervision due to placement under a (youth) hospital order<sup>681</sup> (N=2). In 2010, 135 clients with offenses related to child pornography (26%) were issued with a community service order (amongst other things) due to a child pornography offence.<sup>682</sup> The probation and after-care services are responsible for the coordination of community service orders that have been imposed. One client requested behavioural intervention, and 31 clients with offenses related to child pornography requested to be referred to care provision.

Tables 3.8 and 3.9 show the gender and age distributions of the 525 clients with offenses related to child pornography at the time of intake by the probation and after-care service (2010).

679 One single time with regard to a decision that was to be made about the pre-trial detention or the decision not to prosecute. The component of probation and after-care services provides advice on the basis of a diagnosis that they compile with the help of a RiSc (Risk Assessment Scale) or Quickscan.

– With the help of the RiSc, the employee from probation and after-care services determines the degree of the likelihood of re-offending, which factors increase the likelihood of re-offending and which interventions are necessary in order to reduce the likelihood of this. In the case of sex offenders, the Static-99 is used as an addition to the RiSc. The probation and after-care organisations employ RiSc for extensive research (see [www.reclassering.nl](http://www.reclassering.nl) (viewed 10 June 2011)).

– With the help of QuickScan, the employee from probation and after-care services can determine the likelihood of reoffending in a short time, the extent of responsiveness to behavioural change and whether or not it makes sense to initiate a course of probation and after-care. The probation and after-care organisations employ the QuickScan as a first screening (see the Dutch Probation Service website, [www.reclassering.nl](http://www.reclassering.nl) (viewed 10 June 2011)).

680 The Public Prosecution Service is responsible for supervising the observance of conditions (see §3.5). Nevertheless, supervision by the probation and after-care service is usually the case.

681 In the event of imposing a placement under a hospital order with conditions or – if it involves a minor – a conditional placement in a young offenders' institution.

682 The number of individuals that were sentenced in child pornography cases in 2010 in which (amongst other things) a community service order was imposed was 12 (suspended custodial sentence with a community service order) + 142 (suspended custodial sentence with a community service order) + 22 (community service order) = 176 people (Source: Public Prosecution Service data, see §3.5.4). A possible explanation for the fact that this number does correspond exactly with the number of people that were registered with the probation and after-care services in 2010 for a community service order due to child pornography offences (amongst other things) (135 according to probation and after-care services and 176 according to data from the Public Prosecution Service) is that not all of the judgments from 2010 have become final yet.

**Table 3.8 Gender of clients with offenses related to child pornography (2010)**

	N	%
<b>Male</b>	425	81%
<b>Female</b>	5	1%
<b>Unknown</b>	95	18%
<b>Total</b>	525	100%

Source: The Dutch Probation Service (information provided at the request of BNRM)

**Table 3.9 Age of clients with offenses related to child pornography during intake (2010)**

	N	%
<b>18-25 years</b>	54	10%
<b>26-30 years</b>	46	9%
<b>31-40 years</b>	137	26%
<b>41-50 years</b>	145	28%
<b>51+</b>	143	27%
<b>Total</b>	525	100%

Source: The Dutch Probation Service (information provided at the request of BNRM)

Most of the clients with offenses related to child pornography who registered with probation and after-care services in 2010 and whose gender was recorded were men. The male/female ratio is 85:1. Approximately one fifth of the clients are under 30. Just over half is aged between 31 and 50 and 27% are older than 51. This gender and age distribution roughly corresponds with the gender and age distribution of persons convicted in the first instance in 2010 (see §3.5.4.4), although fewer women are undergoing probation and after-care, relatively speaking.

Of the 525 clients with offenses related to child pornography who were registered with probation and after-care services in 2010, sufficient RISC (Risk Assessment Scales) data was recorded for 453 clients.<sup>683</sup> Table 3.10 shows some of this data.

683 Export from 1 May 2011: the most recent and satisfactory RISC has been selected for each client. NB: these 453 unique people were registered with the probation and after-care services due to: 82 referrals for assistance at an early stage, 294 requests for advice, 137 supervision orders, 116 community service orders, 1 behavioural intervention and 31 guided referrals to care.

Table 3.10 Selection of the RISC scores of clients with offenses related to child pornography in 2010

No.	Selected RISC questions	Number of unique clients with offenses related to child pornography	
		N	% (100%=453)
1.6	A previous conviction is involved (adult criminal law)	165	36%
2.8	Reason for the offence (categories are not mutually exclusive):		
	- Sexual motivation	347	77%
	- Addiction, fulfilment of needs	42	9%
	- Emotional state	115	25%
	- Seeking sensation	65	14%
3.2	Client does not have permanent accommodation	36	8%
4.5	Client is currently unemployed	144	32%
6.2	Experience of close (partner) relationships from (young) adulthood onwards.	206	45%
	- Had one or more close relationships	148	33%
	- Had good and not-so-good relationships	91	20%
	- Stuck in destructive patterns		
6.3	Current partner and family relationships		
	- Mutual relationships	216	48%
	- Relationships with some problems	157	35%
	- Destructive relationships that are damaging to the parties involved	78	17%
10.1	Client has difficulties keeping going	294	65%
10.2	Client has psychological problems	235	52%
11.1	Client is socially awkward/inept	300	66%
11.5	Client does not adequately understand the problem	312	69%
12.4	Client has no understanding of the behaviour that constitutes a criminal offence	91	20%
12.5	Client is not motivated to change	38	8%

Source: The Dutch Probation and After-care Service (information provided at the request of BNRM)

Over one third (36%) of the clients with offenses related to child pornography for whom RISC data is available have already been convicted in the past as an adult. For more than three quarters of the clients (77%), sexual motivation gave rise to the offence. The emotional state played a role for a quarter of the clients. 84 times (19%), the combination of sexual motivation and emotional state were involved.<sup>684</sup> For two clients, sensation was the only reason for the offence, but this did play a role for 65 people altogether. Addiction is the only reason for the offence for five clients, but this also played a part for 37 other clients. Just 8% of the clients do not have permanent accommodation and approximately a third are currently unemployed. A fifth of the clients are stuck in destructive patterns and 17% are currently in

<sup>684</sup> 40 of the 84 cases involved a combination with other categories.

a destructive relationship. The majority of clients (65%) have difficulties keeping going and half (52%) have psychological problems. 66% are socially awkward/inept and 69% are unable to understand the problems they have. A fifth have no understanding of their own criminal behaviour and 8% are not motivated to change. Please refer to Appendix 4, Table B4.29 for more RISC data with regard to these 453 clients with offenses related to child pornography.<sup>685</sup>

### 3.6.6 Conclusion

#### *The judicial limits for the possibilities of supervision*

The possibilities for supervision that have been presented in this chapter focus specifically on supervision and after-care within the judicial framework. This framework also has its limits. In the event that a custodial sentence is imposed with a term longer than four years, no part of this may be suspended and special conditions cannot therefore be associated with this. Supervision and after-care are therefore also not possible in this form.<sup>686</sup> Supervision of a convicted sex offender can also no longer be provided after execution of the sentence. Unless placement under a hospital order has been imposed, if a convicted perpetrator has served their sentence or if the VI period has expired, it is not now possible to enforce supervision and treatment within a judicial framework. From a scientific point of view, it is regretted that there is no longer a compulsory framework for supervision and treatment. It is also interesting that the State Secretary for Security and Justice has now indicated the need to carry out research into the possibility of extending life-long supervision to the supervision of sex offenders who have completed their course of treatment under a hospital order.<sup>687</sup>

#### *Current approach towards after-care and supervision*

An integrated approach surrounding convicted sex offenders is lacking. Probation and after-care, the police, the Public Prosecution Service, municipalities, penal institutions, the Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations, scenario teams, Safety Houses, the Employee Insurance Agency, the Centre for Work and Income and community organisations such as housing associations and care institutions all play a role within the after-care and supervision of (convicted) sex offenders, and conflicts are sometimes unavoidable. For example, an exclusion order issued by a municipality to prevent social unrest can, at the same time, hinder probation and after-care supervision. At the same time, the institutions involved in the implementation are confronted with the complexity of the phenomenon of child pornography, incomplete policies and problems in the implementation itself. In the course of their day-to-day work, these institutions have to deal with analogue and digital aspects of convicted offenders, various types of offenders (high and low likelihood of re-offending, individuals who view as well as those who produce child abuse material) and other dimensions of time and space (convicted offenders who commit criminal offences online at night or who travel to other countries for long periods of time). The lack of a uniform national framework for the matter of after-care and supervi-

685 This table also indicates how many values are missing per question.

686 Article 14a of the Dutch Criminal Code. In the event that a custodial sentence is ordered with a maximum term of two years, the court is able to order that the sentence is not carried out, either with regard to the whole sentence or for a part of it. If the custodial sentence that is ordered has a term of more than two years and a maximum of four years, only a part of the custodial sentence may be imposed in the form of a suspended sentence.

687 See §3.6.2.

sion of convicted offenders means that the regions need to learn how to deal with the above challenges themselves; a number of (successful) initiatives have been described in this chapter.

#### *Initiatives in the region*

Collaborative associations such as Safety Houses, scenario teams and dual-track or multiple-track teams exist in individual regions in the Netherlands, in which involved institutions come together. Those involved on the front line of such initiatives frequently state that the British supervision system, MAPPA, is desirable, whilst in the same breath referring to the Dutch Safety Houses and Dutch implementation of the COSA project. Central control by the probation and after-care service is a component of MAPPA on a case-level. The starting points formulated by the American Center for Sex Offender Management (see below) also seem to be of value to the Dutch situation; these starting points are encountered in the implementation in various regions. The Amsterdam sexual abuse case is an example of sharing best practices, where lessons learnt from the sexual abuse case of the swimming teacher from Den Bosch turned out to be valuable when it was a matter of informing parents and victims and preventing social unrest. The Action Plan to Tackle Child Abuse also propagates co-operation and an integrated approach. However, this plan is aimed specifically at children, and states the importance of co-operation with organisations aimed at offenders, but this is, as yet, not widely found in the region.

#### *An integrated approach*

An integrated approach is desirable and must be required to fulfil a number of conditions. The integrated character of the approach should become apparent through the coordination of all processes, organisations involved, judicial frameworks and requirements, in order to promote a focus on the victim, the monitoring and evaluation of interventions, specialised knowledge and the training of employees, raising public awareness and co-operation between organisations. The integrated character of the approach should also emerge from a programme of measures that takes shape on both a national as well as a regional level. This also means mutual coordination between the regions: the problem does not disappear if the offender moves house or if an exclusion order is imposed, it simply moves elsewhere. A national programme and/or expertise centre as part of the Dutch Probation and After-care Services, as in the United States, could form a national policy framework, and can serve as a key link between policy and implementation, can collect best practices in the region and can link up with similar programmes and expertise centres within detection and prosecution (Programme of Improvements in Tackling Child Pornography) in order to promote such an integrated approach. It is important that the specific problems surrounding youth sex offenders are also included. It is therefore not only a matter of youth sex offenders in the criminal justice chain but also those offenders who are treated under the forms of civil law. The organisation, registration and generation of expertise within the juvenile probation and after-care services are also matters that require attention.

## **3.7 Victim assistance**

### **3.7.1 Introduction**

This report is focused on child pornography within the wider context of sexual violence against children. The most important factor in that regard is protecting children from sexual abuse.<sup>688</sup> A necessary com-

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<sup>688</sup> The protection of children from sexual violence is also the rationale of the criminalisation of child pornography in Article 240b of the Dutch Criminal Code, see §1.3.

ponent of this is providing assistance to victims of child pornography. This assistance is related to the various forms within which the phenomenon of child pornography arises. It is important to distinguish between the production of child abuse material on the one hand and the distribution, possession and viewing of such material on the other hand.<sup>689</sup> Children can be victims of sexual abuse, whereby an aspect of child pornography is involved due to the fact that visual material of this abuse is also produced. In addition to this, children may become victims as a result of the distribution, possession and viewing of material constituting child pornography. The individual becomes a victim when he/she experiences the consequences of being forced to act as an object in the material that constitutes child pornography.<sup>690</sup>

An important part of providing assistance to victims of the production of material constituting child pornography involves the overall provision of assistance to victims of abuse. Within the scope of this report, it is only possible to provide an overview of this. This is the reason why the focus is placed on the provision of assistance for the elements specifically associated with being a victim of child pornography. An important point that requires attention when providing assistance is to take account of the consequences of the persistent existence of images and the distribution, possession and viewing of images. Another central point is offering assistance to children in the age group from twelve to eighteen years who are victims of various types of digital sexual violence by means of the Internet, particularly in so far as this involves material constituting child pornography. Furthermore, it is also important to pay attention to the aspect of being a victim with respect to the parents of children involved.<sup>691</sup> The abuse of their child, who at a young age is certainly entirely dependent on them, can be particularly traumatising for them. If images of the abuse are made, they may in time come to realise the permanency of the situation that involves their child being a victim.<sup>692</sup>

In the case of very young victims, child abuse images can sometimes be the only evidence that abuse has taken place. This material, as well as other digital indications of sexual abuse such as chat conversations and links to websites, are not only important when it comes to detection, but also for the provision of assistance, in order to be able to interpret signs of sexual abuse more effectively.<sup>693</sup>

One example of a case which prominently involves both sexual abuse as the production of child abuse material, and the possession and subsequent distribution of those images, is the Amsterdam sexual abuse case. In this case, the provision of assistance was involved from the very beginning and therefore played a very important role. On the basis of this case, the extent in which the aspect relating to child pornography received attention in the provision of assistance to parents and children will be discussed. At the end of this chapter, some conclusions will be drawn.

### 3.7.2 Provision of assistance to victims of sexual abuse

As the production of material constituting child pornography almost always involves sexual abuse, the provision of assistance is aimed at the consequences of this abuse in particular. Sexual abuse is a type

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689 See also §1.3 and §1.4.2.

690 See also §1.4.3.

691 With the exception of parents who are also offenders.

692 Von Weiler et al., 2010.

693 See also §3.3.

of child abuse.<sup>694,695</sup> Assistance can be sought from medical and standard basic facilities<sup>696</sup> and Victim Support.<sup>697</sup> Specific facilities also exist for victims of sexual violence and abuse who are minors.<sup>698</sup> In addition to this, assistance can also be received for example at one of the referral-based top specialist trauma centres for children and young people<sup>699</sup>. The ways in which provision of assistance is organised in the Netherlands, the various types of co-operation and examples from other countries that can provide a guide for the establishment of integrated provision of assistance will be discussed below.

The Health Council of the Netherlands included the topic of child abuse in its programme for 2011,<sup>700</sup> in which it indicated that in some cases children are severely traumatised as a result of abuse, including sexual abuse. The Council emphasised the fact that this places high demands on the care on offer and the provision of assistance, but that politicians and victims and their families have referred to a lack of effective treatment and supervision. In a report on child abuse that was subsequently published<sup>701</sup>, the Council referred to the fact that substantial investments have been made in the prevention, identification and reporting of child abuse over the past years, which have resulted in an increased awareness of the severity and complexity of this major social problem. With regard to dealing with the consequences of child abuse, the Council established, however, that few proven effective methods of treatment exist throughout the world, and that in the Netherlands, the provision of assistance is also fragmented. In the report, the Council presented a model for a multi-disciplinary approach to both the diagnosis (assessment) as well as the treatment of victims of child abuse,<sup>702</sup> which involved a large number of assessments, associated with the various aspects and domains which, in the opinion of the Council, also need to be involved in both the assessment and the treatment.

#### *Integrated approach towards tackling child abuse*

In its 2011 report on child abuse, the Council states that an integrated approach towards child abuse and co-operation between various institutions within this framework are essential. A number of examples of multi-disciplinary co-operation and integrated programmes from other countries are described in the box below.

694 The Youth Care Act describes the sexual abuse of children as a form of child abuse, see §1.3. The protocol of the Youth Care Agencies and the Child Abuse Counselling and Reporting Centre of Amsterdam and North-Holland cites child pornography as a form of child abuse.

695 Various organisations exist that focus upon child abuse, such as the Child Abuse Counselling and Reporting Centres and the confidential doctors for child abuse.

696 Such as the family doctor, Municipal Health Service, Netherlands Institute for Psychological Care and Addiction Care and the Reflection and Action Groups to Tackle Child Abuse.

697 Victim Support provides judicial, practical and emotional support to victims of abuse, road accidents and disasters, and also plays an important role in making referrals to emergency organisations; [www.slachtofferhulp.nl](http://www.slachtofferhulp.nl) (viewed 22 August 2011).

698 An example of this are the 'Elker' groups in Groningen that help children in the 4-12 and 12-24 age groups, and their parents to come to terms with the sexual abuse.

699 Designated as such by the National Centre for Chronic Traumatization in Early Childhood [*Landelijk Centrum voor Vroegkinderlijke Chronische Traumatisering, LVCT*].

700 The Health Council of the Netherlands, 2010, p.19.

701 The Health Council of the Netherlands, 2011.

702 The Health Council of the Netherlands, 2011, pp.48-49.

### *Children's Advocacy Centre*

The Children's Advocacy Centre model (CAC)<sup>703</sup> originated outside the Netherlands and forms a good example of multi-disciplinary co-operation in combating sexual violence against children. This model includes a facilities programme, which involves representatives from various disciplines making mutual decisions about the investigation, the prosecution of offenders and the care of victims in the event of child abuse. The model was developed in the United States and implemented at over 600 locations there and was, as a rule, tailored to the local circumstances. Based on the CACs, six locations have also been established in Sweden, as part of a pilot backed by the Swedish government.<sup>704</sup> These locations, named Barnahus, take care of co-operation between social services, the police, the Public Prosecution Service, specialists in forensic medicine and the psychiatric services. The collaboration takes place from the start of the research up to and including the provision of assistance and after-care to victims of sexual violence, amongst other things. As starting points, the Barnahus centres apply a child-oriented approach, a child-friendly environment, multi-disciplinary co-operation, all experts under the same roof, the limiting of the number of interviews with children and a better quality of the investigation. Amongst other things, this results in a greater number of decisions to prosecute.

### *CEOP<sup>705</sup>*

The Child Exploitation and Online Protection Centre (CEOP) in the United Kingdom is dedicated to eradicating the sexual abuse of children, including online abuse. A comprehensive approach is employed for this purpose. The Centre is part of the police force in the UK and works in close collaboration with other investigation services, including those from other countries, to catch sex offenders. In addition to this, the CEOP Centre works closely with organisations from the field of youth protection, such as the National Society for the Prevention of Cruelty to Children, as well as international technology companies such as Serco and Microsoft. CEOP collects information about offenders, victims and technological developments, and makes these available in the form of programmes and training sessions.

Many examples of collaborative partnerships in the field of child abuse exist in the Netherlands.<sup>706</sup> The final report on the Regional Plan to Tackle Child Abuse cites, amongst others, a care team operating in the region of Nijmegen, consisting of the Youth Care Agency, social services, the Netherlands Institute for Psychological Care and Addiction Care for Youths, the police (youth and sexual abuse cases) and Youth Healthcare. The role of the team is to co-ordinate and provide assistance in complex cases of child (sexual) abuse. The approach employed by the team is directed towards the whole family.<sup>707</sup> Other examples cited in the final report include the Groningen co-operative partnership against sexual violence<sup>708</sup>, in which various institutions that provide assistance work together in the city and province

703 [www.nationalcac.org](http://www.nationalcac.org) (viewed 22 August 2011).

704 Åström, K., & Rejmer, A., 2008.

705 [www.ceop.police.uk](http://www.ceop.police.uk) (viewed 26 August 2011).

706 In this connection, see also §3.6, which includes a description of forms of collaboration within the framework of the supervision and guidance of sex offenders.

707 Kooijman et al., 2011.

708 [www.shginfo.nl](http://www.shginfo.nl) (viewed 22 August 2011).

of Groningen, and the Sexual Abuse Support Centres of the Municipal Health Service in Amsterdam<sup>709</sup> and The Hague<sup>710</sup>.

Besides these examples, the so-called Dual-track or Multiple-track Team can also be cited, which operates in Amsterdam and is also specifically geared towards sexual abuse. In this team, representatives from various organisations work together to provide advice about the approach, in a broad sense, for tackling sexual abuse. Each professional can put a question to the team about suspected child abuse. The basic idea is that assistance must be provided along multiple tracks at the same time: to the victim, the (non-abusing) parents, and the offender.<sup>711</sup> Parties involved in this include, amongst others, the Child Abuse Counselling and Reporting Centre, the Youth Care Agency, the police, the Child Care and Protection Board, as well as the institutions that offer assistance, which include Amsta, De Bascule, the Netherlands Institute for Psychological Care and Addiction Care InGeest, MEE Amstel and Zaan, and PuntP. The *Korpsmonitor Kinderporno*<sup>712</sup> states that in a number of police districts, collaborations with institutions that offer assistance take place as a matter of procedure, but does not explicitly state what form these collaborations takes. After being asked about this within the scope of this report, a representative from one of the Sexual Abuse Teams from the Utrecht regional police force indicated that the police simply refer victims of sexual abuse who are youths to the Trauma Centre of the *Wilhemina Kinderziekenhuis* (Children's Hospital of the University Medical Centre Utrecht).<sup>713</sup> According to the representative from the police, this usually takes place as a result of interventions from the Youth Care Agency or one of the Christian assistance organisations, such as Steps. The representative also indicated that victims of sexual abuse offences in Utrecht are usually assigned a so-called JOSS-lawyer.<sup>714</sup> However, a structure for collaboration with organisations that provide assistance is not included in the report on Child Pornography arising from the *Korpsmonitor*, which includes a proposal for creation of a national organisation to combat child pornography and child sex tourism.<sup>715</sup>

In addition to collaborative partnerships such as those stated above, a number of initiatives also exist that aspire to a more far-reaching collaborative partnership, in which various experts intend to achieve a complete provision of assistance under one roof. Two initiatives are described in the box below.

One of the examples cited in the report from the Health Council of the Netherlands concerns the Multi-disciplinary Centre for Child Abuse in Friesland (in formation). The initiator, Fier Fryslân, states that the aim is to achieve an integrated approach with various experts under the same roof.<sup>716</sup> The care institution has announced that the team would have to be made up of experts from the Child Abuse Counselling and Reporting Centre, the Domestic Violence Counselling and Support Point, the

709 [www.gezond.amsterdam.nl/Geestelijke-gezondheid/Seksueel-geweld](http://www.gezond.amsterdam.nl/Geestelijke-gezondheid/Seksueel-geweld) (viewed 22 August 2011).

710 [www.denhaag.nl/home/bewoners/to/Regionaal-Steunpunt-Seksueel-Geweld-RSSG.htm](http://www.denhaag.nl/home/bewoners/to/Regionaal-Steunpunt-Seksueel-Geweld-RSSG.htm) (viewed 22 August 2011).

711 TMT, 2010.

712 Programme of Improvements in Tackling Child Pornography, 2011.

713 Verbal information, representative of one of the Sexual Abuse Teams from the regional police force, Utrecht, 18 May 2011.

714 *Juridische Opvang Slachtoffers Seksueel Geweld* [Legal Support for Victims of Sexual Violence]

715 Programme of Improvements in Tackling Child Pornography, 2011.

716 Project: 'Het mishandelde kind centraal stellen' [Placing the focus on the abused child], Fier Fryslân, 2011.

Youth Care Agency, youth services, therapists specialised in trauma and system treatments (Youth section – Netherlands Institute for Psychological Care and Addiction Care), the Child Care and Protection Board, guardianship, a forensic paediatrician (hospital) and a forensic interviewer from the police. According to Fier Fryslân, it is intended that a lawyer, a developer of methodology and a (special) professor will be associated with the centre, and that the Dutch Forensic Institute and the Netherlands Youth Institute, the addiction services or the Netherlands Institute for Psychological Care and Addiction Care will also be involved, if necessary.

In 2012, a specialised Sexual Violence Centre will be launched in Utrecht for victims of all ages who have been indecently assaulted or raped. According to protocol, various disciplines will also work together under one roof in this centre: the police, (forensic) doctors, nurses and psycho-social assistance.<sup>717</sup> The Centre was inspired by CEOP in Great Britain and the CACs in Sweden (see box above).

Combining care for offenders with the provision of assistance to victims is characteristic of a number of the initiatives described above. In this connection, the Tilburg Safety House<sup>718</sup> can also be cited. This is a collaborative association consisting of a large number of organisations, in which safety and care are combined under one roof through a family-based approach, involving a combination of measures in the form of criminal law, care for offenders and the provision of assistance to victims.<sup>719</sup> From the perspective of after-care for offenders of sexual abuse as well, the perspective of the victim is taken into consideration, and the outcome is the combination of care for offenders and the provision of assistance to victims.<sup>720</sup>

### 3.7.3 Provision of assistance to victims of sexual abuse within the context of child pornography

With regard to the focus of this report, it is important to establish whether or not the provision of assistance to victims of sexual abuse who are minors is also aimed at providing assistance to victims of offences related to child pornography. No recent research has been carried out into practice in the Netherlands with regard to this point. A study was, however, carried out in 1998 by the working group Child pornography and child prostitution in the Netherlands.<sup>721</sup> On the matter of the treatment of victims of child pornography, this report began by remarking that at that time, the provision of assistance to victims of sexual abuse in general left a lot to be desired, and that up until that point, there existed few opportunities for supervising and providing therapy for young children who were victims of sexual abuse, either in a family setting, or elsewhere. Supervision and therapy were usually limited to regular forms of therapy, even though it had already emerged from scientific research that only therapy that is specifically directed at abuse is effective, according to the report. The report also indicated that the provision of assistance to the parents of abused children still did not form a part of the assistance on offer. The working group subsequently described the situation for the victims of child pornography as even worse: at that time, nothing was known about treatment of these victims, and even fewer opportunities for treatment were available.

717 [www.umcutrecht.nl/zorg](http://www.umcutrecht.nl/zorg) (viewed 22 August 2011).

718 Midden Brabant Care and Safety House, one of the many Safety Houses in the Netherlands.

719 [www.tilburg.veiligheidshuis.org](http://www.tilburg.veiligheidshuis.org) (viewed 24 August 2011); See §3.6.3.1 for a more detailed description of this Safety House.

720 See §3.6.

721 Working group on Child Pornography and Child Prostitution in the Netherlands, 1998.

Within the scope of detection, BNRM carried out research into the extent to which the Child Abuse Counselling and Reporting Centres included the aspect of child pornography as part of their role in detection. It emerged that child pornography was still barely recognised as an additional dimension of being a victim of child abuse, even within Child Abuse Counselling and Reporting Centres.<sup>722</sup> As far as the provision of assistance is concerned, BNRM spoke with a number of key figures and analysed a number of programmes. It emerged, for example, that the provision of assistance is not being put forward explicitly in the context of child pornography in the initiatives described above. In its recommendations on Child Abuse, the Health Council of the Netherlands did not refer to either a digital component or to an aspect relating to child pornography within the context of providing assistance to victims of sexual abuse.<sup>723</sup> Child pornography is not listed in the plans for the Multi-disciplinary Centre for Child Abuse in Friesland.<sup>724</sup> The Centre for Sexual Violence that is currently being established in Utrecht considers child abuse images to be an important topic, when asked, but will, in the first instance, focus solely on providing first-line assistance to victims of sexual abuse, without involving a possible aspect relating to child pornography in that regard.<sup>725</sup> There is no evidence of treatment of cases involving victims of child pornography on the website of the specialised institutions offering assistance that participate in the Dual-track or Multiple-track Team in Amsterdam.<sup>726</sup>

The websites of certain key organisations such as the Child Care and Protection Board and the Municipal Health Service devote just as little attention to child pornography. The vision document produced by the Netherlands Institute for Psychological Care and Addiction Care for the Netherlands Institute for Psychological Care and Addiction Care for Youths<sup>727</sup> also fails to name child abuse material. The head from one of the Sexual Abuse teams from the Utrecht regional police force who was interviewed indicated that his team was, in most cases, involved with one-off experiences of sexual abuse; the few cases involving child abuse material with a victim had usually been related to cases of incest, without material having been distributed, or to accusations of the possession of child abuse images within the scope of divorce problems. He reported that his team considers the production of child abuse material to be subsidiary to the abuse, and also primarily considers the victim as being a victim of the sexual offence. According to the head of the sexual abuse team, the referral for assistance, and also the assistance itself, are focused on this.<sup>728</sup>

Recently, research in the form of an audit was carried out in Germany<sup>729</sup>, in which professionals in the provision of assistance to victims of sexual abuse were asked about their experiences with child pornography. In their responses, the respondents only drew on their own actual experience with child pornography to a limited extent: a substantial part of the findings are based on estimations derived from their expertise. Despite this limitation, this research project did produce valuable information.

722 See §3.3.2.3.

723 The Health Council of the Netherlands, 2011, p.68.

724 Project: 'het mishandelde kind central stellen' [placing the focus on the abused child], Fier Fryslân, 2011.

725 Written information, 27 June 2011.

726 [www.amsta.nl](http://www.amsta.nl), [www.debascul.com](http://www.debascul.com), [www.meeaz.nl](http://www.meeaz.nl), [www.puntp.nl](http://www.puntp.nl) (viewed 22 August 2011).

727 Netherlands Institute for Psychological Care and Addiction Care, 2011.

728 Verbal information (provided by the head of one of the Sexual abuse teams from the Utrecht regional police force) 18 May 2011.

729 Von Weiler et al., 2010.

One of the conclusions that can be drawn from the audit is that child abuse material does not play a (major) role in most treatments provided to the victims of abuse. Most care providers indicated, amongst other things, that they have hardly had any contact, or have had no contact whatsoever, with child pornography. During therapy for sexual abuse, any material that may have been produced of this abuse was rarely discussed. The care workers estimated the direct consequences of the abuse as being more acute and more severe, and had usually not even thought about the possible existence of images. Furthermore, the care workers expressed doubts about the permissibility of bringing up the possibility that footage of the abuse was made, due to the risk of this resulting in further traumatising the child and their parents. In some cases, they indicated that they personally sense a barrier to start doing this, or that they consider it to be the responsibility of the authorities involved in detection.

According to the care workers, in the cases in which the existence of images was brought to the fore, this was not a priority for many victims during the course of the treatment, because the victims were not yet aware of the implications of this, and because other matters such as unleashed emotions or problematic family relationships had required greater attention. According to the care workers, young children are not able to take stock of the consequences of the existence of images, and parents only slowly start to gain an understanding of the permanency of this aspect of being a victim and the implications that it entails.

### 3.7.4 Provision of assistance to victims of the distribution, possession and viewing of child abuse material

It is not only the production of material constituting child pornography that creates victimhood, but also the distribution and possession of such material. Research carried out in Germany into the provision of assistance to revealed that the existence of visual material of the abuse leads to additional problems for victims at a later stage in their lives: the images themselves give rise to shame and feelings of guilt, and the fact that the images have been distributed and can no longer be deleted from the Internet leads to feelings of powerlessness. The care workers also indicated that victims can be afraid of the perception, on the part of others, that they voluntarily participated in the realisation of the images. The study clearly explains that for the above reason, victims find it very difficult to achieve closure.<sup>730</sup>

Specific assistance needs to be provided for these types of victims. The German care workers who were interviewed who deal with victims of sexual abuse presumed that a component relating to child pornography often leads to a more far-reaching dissociation and a greater likelihood of post-traumatic stress syndrome (PTSS), and that additional diagnostic and treatment competencies are necessary for this, which they usually do not possess. The majority indicated that they have no knowledge of the way in which victims deal with the permanent character of victimhood, and do not therefore possess the treatment techniques for this. The information provided revealed that care workers also develop feelings of powerlessness and hopelessness whenever they devote attention to the permanent character of victimhood during treatment. They are also unable to comply with the most important request for help of victims, namely the removal of the material.<sup>731</sup>

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730 Von Weiler et al., 2010.

731 Ibidem.

It is necessary that assistance is also available for children aged between twelve and eighteen who have become victims of sexual violence on or via the Internet, including the distribution, possession and viewing of child abuse material. This may involve, for example, material that was produced by the children themselves, but distributed by others, or situations in which children were made to produce material of themselves via the Internet, or to allow this material to be produced by others via a webcam.<sup>732</sup>

Some reporting sites and chat sites are available on the Internet for children in the older age group, such as Help Wanted<sup>733</sup>, Ikzيتindeshit<sup>734</sup> and Internetsoa, which explicitly name the topic of online sexual violence. Other sites aimed at this age group, such as Question-zone,<sup>735</sup> Hulpmix and Pratenonline<sup>736</sup> do not do this. It is likely that children who have become victims of online sexual violence via the Internet find answers to questions on such online services, and specifically on the websites that devote attention to this subject. Of course, the extent to which these websites can actually be used to find a way to provide adequate assistance is not yet known.

### 3.7.5 The Amsterdam sexual abuse case

In the foregoing, the provision of assistance has been approached from the point of view of care workers who are involved with children who are victims of sexual abuse. The point under discussion was whether or not care workers also take possible online sexual violence into consideration<sup>737</sup>, for example by bringing up the issue of whether or not images of the abuse were also made and distributed, and if so, whether assistance is also provided for this aspect of being a victim. Two recent major sexual abuse cases included a significant child pornography component, in the sense that images of the sexual abuse were produced. In the case of Benno L., it emerged that the images were made for personal possession.<sup>738</sup> However, in addition to the production and possession of images, the Amsterdam sexual abuse case<sup>739</sup> also involved the distribution of these images.<sup>740</sup> The following sections will consider how this aspect was addressed within the scope of the provision of assistance.

#### *Prelude: the Benno L. case*

After it became clear that it was possible that the Benno L. case involved the abuse of children on a large scale, the decision was made to involve the Regional Medical Care Organisations [*Geneeskundige Hulpver-*

732 See §1.4.3.

733 The Hotline Combating Child Pornography on the Internet and the Kindertelefoon, where children and adults can report online sexual abuse: [www.helpwanted.nl/links.htm](http://www.helpwanted.nl/links.htm), [www.kindertelefoon.nl](http://www.kindertelefoon.nl), [www.meldpunt-kinderporno.nl/melding/](http://www.meldpunt-kinderporno.nl/melding/) (viewed 22 August 2011).

734 Site that refers users to the services provided by Victim Support: [www.ikzيتindeshit.nl/12tot18jaar/?pageID=139&lb=True](http://www.ikzيتindeshit.nl/12tot18jaar/?pageID=139&lb=True) (viewed 22 August 2011).

735 This is a site run by Korrelatie: [www.question-zone.nl](http://www.question-zone.nl) (viewed 22 August 2011).

736 This is a site run by the Regional Institute for Outpatient Mental Healthcare: [www.pratenonline.nl](http://www.pratenonline.nl) (viewed 22 August 2011).

737 See also Table 1.1 and Table 1.2 in §1.2.3.

738 At least, no indications have been found to suggest that L. also distributed the images.

739 The Amsterdam sexual abuse case.

740 See §1.4.2 for the various forms of being a victim.

leningsorganisatie in de Regio]<sup>741</sup> in the three-way consultation. From this consultation, it was subsequently decided that the psycho-social provision of assistance to victims should be regarded as the dominant topic.<sup>742</sup> The organisation of large-scale assistance was put into the hands of the Regional Medical Care Organisations, Victim Support and the Netherlands Institute for Psychological Care and Addiction Care. Much attention was devoted to involving and informing the parents of the children who may have been involved. Although the organisations involved constantly endeavoured to put the needs of victims and parents first, parents criticised the fact that they were not always the first to be informed about new facts and circumstances. Tension arose between the Ministry of Justice and the municipalities regarding the level of openness to be observed, and between the Ministry of Justice and the Regional Medical Care Organisations regarding the extent to which discussions with victims could take place within the field of the provision of assistance, taking the possible consequences of this for detection into consideration.<sup>743</sup>

#### *The organisation of the provision of assistance*

The Amsterdam sexual abuse case also extended the three-way consultation to a four-way consultation, in which the Municipal Health Service was involved in addition to the mayor, the police and the Public Prosecution Service. This consultation prioritised the provision of information to parents and the provision of assistance. Following careful preparation and selection over a number of days, the parents were invited to closed meetings, where they were informed of the suspected abuse of their children and were offered help. The case was only made public after this had taken place.<sup>744</sup> The Municipal Health Service organised and co-ordinated the provision of assistance. The Sexual Abuse Support Centres of the Municipal Health Service in Amsterdam supervised the process of the provision of assistance. The actual assistance was provided by the Municipal Health Service departments Youth Health Care, *Vangnet Jeugd* [Youth Safety Net] and *Vangnet Advies* [Advice Safety Net] and various regional assistance organisations such as Arkin, the Netherlands Institute for Psychological Care and Addiction Care InGeest and the Salvation Army. The trauma centre for Child and Family in Amsterdam, which was specialised in abuse and maltreatment, was also involved in the case; this centre was set up by the Netherlands Institute for Psychological Care and Addiction Care InGeest and the Academic Medical Centre, University of Amsterdam.<sup>745</sup>

In order to respond to questions that parents may have about changes to the behaviour of their child, or physical or psychosomatic complaints, a central telephone number was opened, linked to a call centre. The Municipal Health Service then took care of allocating the appropriate types of assistance. Individual diagnostics, group treatment and individual treatment were offered to children, and personal supervision to parents. The Municipal Health Service also informed all GPs about the main aspects of the case. All parents who indicated that they required assistance were assigned a so-called family detective. This official from the police was also able to put the parties involved in touch with the appointed care workers. The family detective remained available for as long as the parents were involved in the criminal proceedings, and Victim

741 [www.ggdhartvoorbrabant.nl](http://www.ggdhartvoorbrabant.nl) (viewed 9 September 2011).

742 COT [Crisis Research Team], 2010.

743 It is feared that witnesses may be influenced; COT [Crisis Research Team], 2010.

744 *Hoe de Amsterdamse Zedenzaak aan het rollen kwam* [How the ball got rolling in the Amsterdam sexual abuse case] Volkskrant, 17 March 2011.

745 Site of the Municipal Health Service in Amsterdam: [www.gezond.amsterdam.nl](http://www.gezond.amsterdam.nl) (viewed 22 August 2011).

Support would take over this role after that.<sup>746</sup> For the provision of assistance, use was made of the assistance on offer in Amsterdam. The care that was provided was not specifically arranged with the intention that it would cease again when the individual's involvement in the criminal proceedings came to an end. The Mayor and Aldermen of Amsterdam announced that the victims and parents involved would be able to receive assistance for many years in order to process their experiences. They also indicated that the intensive emergency assistance would be continued until after the criminal proceedings had been completed.<sup>747</sup>

#### *Provision of assistance with regard to victims of child pornography*

Discussions were carried out with employees from the Amsterdam Municipal Health Service, in order to determine how the provision of assistance in the context of child pornography was handled in the Amsterdam sexual abuse case.<sup>748</sup> Amongst other things, they reported that the Municipal Health Service actually had no previous experience of cases in which child abuse material played a part. At the most, material constituting child pornography was found in a flat by coincidence; referring this to the police was then sufficient. As far as this is concerned, the Amsterdam sexual abuse case certainly forms an exception. The employees indicated that they had experienced difficulties with many cases of abuse, but that the employees had not been aware of the fact that child abuse images could have played a part in this. They reported that in the event of abuse, children in Amsterdam were examined physically, psychologically and forensically; a so-called direction group comprising experts on sexual violence against children from the Municipal Health Service, the Netherlands Institute for Psychological Care and Addiction Care and the Academic Medical Centre, University of Amsterdam, where an assessment is made regarding the help that is necessary. According to the employees, the essence of the Municipal Health Service's involvement in this involves referral to a care provision. According to the employees, communication with the parents formed an important factor. They indicated that, partly on the basis of experiences from the Benno L. case, the decision was made to always inform the parents of possible victims of new facts or developments first of all. A screening of the parents and employees of the day nurseries involved took place in order to determine the extent to which treatment was required.

Furthermore, the employees stated that the decision was made to make use of the regular treatment on offer in Amsterdam, essentially consisting of a number of modules, in the Amsterdam sexual abuse case as well. However, they referred to the fact that the aspect of child pornography had also been new for these care workers. In this connection, the employees also asked what the distinctive elements or signals are of a case of abuse of which images have been made.<sup>749</sup> In sexual abuse cases, the provision of assistance is specifically aimed at disrupting the family as little as possible, according to the employees from the Municipal Health Service: the impact of the abuse on the children is, in the main, linked to the question as to the extent to which parents remain capable of providing a safe environment for the child. In the Amsterdam sexual abuse case, it was therefore recommended, for example, for the parents not to see the images of their children.<sup>750</sup> On the one hand, parents want to know what has happened to

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746 Mayor and Aldermen of Amsterdam, municipal council report, 13 January 2011.

747 Mayor and Aldermen of Amsterdam, municipal council report, 13 January 2011.

748 Team leader and psychiatrist/first-line medical practitioner, Vangnet & Advies [Safety net & Advice], Amsterdam Municipal Health Service, 20 June 2011.

749 See §3.3.2 for the identification of victims of sexual abuse.

750 This presents a very difficult dilemma for parents, because on the one hand, they want to know everything in detail (e.g. Was the child in pain? Was the child awake?)

their child, but on the other hand, seeing the images can negatively influence the relationship between parent and child.

The Municipal Health Service employees also stated that this case forms a reason to be more alert to child abuse material in other files. They considered it desirable to raise awareness amongst Municipal Health Service employees and care workers regarding the opportunity to pick up more indications of possible child abuse material. According to them, this process would not be entirely straightforward: they refer to the fact that picking up indications of sexual abuse against children in general is still problematic. Furthermore, the employees indicated that there are limitations to the number of tasks with which care workers in the field can be burdened.

The Mayor and Aldermen of Amsterdam ordered the Gunning Committee to carry out research into the Amsterdam sexual abuse case. However, the research assignment did not involve the aspect of provision of assistance.<sup>751</sup>

### 3.7.6 Conclusion

#### *Recognising the dimension of being a victim of child pornography offences*

Considering the various aspects involved in being a victim of child pornography offences, the provision of assistance is necessary in relation to the consequences of both the production of child abuse material, as well as the distribution, possession and viewing of that material. Production usually always involves sexual abuse. General and specialist facilities are available to provide such assistance, for young children, older children and parents of children. However, the provision of assistance is barely designed for the possibility that the abuse takes place within the context of child pornography. There is little awareness of the possibility that the sexual abuse of children goes hand in hand with the production of images of this abuse, and that this forms an additional dimension of being a victim of sexual abuse, which requires integrated treatment.

#### *Lack of specific knowledge*

Associated with this, little is also known about the consequences of the distribution and possession of child abuse material for the children who are victims of this and for their parents, and few programmes of assistance exist that are directed at these aspects of being a victim. In more general terms, there is only a limited amount of specific knowledge about being a victim of sexual violence via the Internet, and about the inter-relatedness that may exist between sexual abuse and online sexual violence. Besides a few reporting and chat sites on the Internet, little in the way of assistance is on offer for victims of online sexual violence in the age group from twelve years upwards.

#### *Online/offline connection*

The system of care provision needs to form connections between offline and online forms of being a victim of sexual abuse, and expertise needs to be built up with regard to effective methods and techniques for the treatment of the consequences of online sexual violence.

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751 Gunning et al., 2001. The assignment read: "...to investigate all facts and circumstances with reference to the question as to how the (possible) abuse of children in the day nurseries concerned and via the Internet child-minding service(s) concerned could have taken place..."

## 3.8 Public-private sector partnerships in the Netherlands in the matter of child pornography

### 3.8.1 Introduction

The nature of the Internet means that (comprehensive and central) control is not possible and that technological developments succeed one another at an extremely rapid pace. In tackling child pornography on the Internet, the government is faced by challenges involving capacity, knowledge and resources.<sup>752</sup> The private sector is supporting the government in its public role of tackling child pornography, on international<sup>753</sup>, European<sup>754</sup> and national<sup>755</sup> levels. Public-private sector partnerships (PPS) form a means to accomplish this. A public-private sector partnership in the field of safety is based on the collaboration between private and public parties, with an approach that involves a clear distribution of responsibilities, tasks and competences on the basis of mutually-agreed objectives; a hierarchical relationship between the parties does not exist.<sup>756</sup> The common intention of public and private actors involved in tackling child pornography is clear: to prevent and combat child pornography and victims of this offense. In §3.8.2, it will emerge that public-private sector partnerships are, in practice, unmanageable in their efforts to tackle child pornography, as various actors are involved who all have different views on tackling child pornography on the Internet. A consultative body that brings together the whole arena of the forces at play that are concerned with this problem, such as was established at the time that the possible blocking of websites concerning child abuse material was intended, would therefore be desirable. In §3.8.3, the fact that collaborations in the Netherlands and other countries also exist that do not involve such forums, will be described. Although the precise direction that public-private partnerships will take in order to tackle child pornography has not been formulated, this will be derived from current collaborations and literature. For this reason, a possible focus on public-private partnerships and associated strategies will be described in §3.8.4. This focus and the associated strategies complement the focus of the police, the Public Prosecution Service and the Ministry of Security and Justice. The potential of public-private partnerships in the matter of child pornography is large. For this reason, it is advisable to safeguard and further develop Dutch public-private sector partnerships in this field (§3.8.5).

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752 The number of pending child pornography cases has been high for many years (§3.4; *Parliamentary Papers II*, 2010/11, 32 500 VI, no.102), knowledge regarding digital technology falls short in certain governmental divisions. (Stol, 2010, p.71; Programme of Improvements in Tackling Child Pornography, 2011, p.17).

753 'The Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents'. Third World Congress against Sexual Exploitation of Children and Adolescents 2008, Rio de Janeiro, Brazil, 25-28 November 2008, see: [www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII\\_Outcome\\_Document\\_Final.pdf](http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf) (viewed 29 August 2011).

754 Article 9 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), Lanzarote, 25 October 2007, Treaty Series 2008, 58 [www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak\\_eurocommissaris\\_malmstrom?ctx=vh1alzift7wj](http://www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak_eurocommissaris_malmstrom?ctx=vh1alzift7wj) (viewed 31 May 2011).

755 Programme of Improvements in Tackling Child Pornography, 2011, p.36.

756 Definition taken from Pel et al., 2002, p.7.

### 3.8.2 Interplay of forces in public-private sector partnerships

Public-private sector partnerships are able to make a substantial contribution towards the tackling of child pornography. As described below, the partnerships can cause tension between the different forces at play – comprising the government, private sector, NGOs and Internet community – as these actors have their own views as to which model of Internet governance should be used to combat child pornography on the Internet.

#### *Internet governance*<sup>757</sup>

The Internet provides many positive opportunities for users, but can also have negative consequences, such as the distribution of child abuse material. Combating cybercrime and illegal content – including child abuse material – is a matter of Internet governance.<sup>758</sup> One of the functions of Internet governance is to develop a policy that is focussed on the users of the Internet and not on the technology as such. Since the Internet now has an international, cross-border character, Internet governance takes place via multilateral actors, including international organisations.<sup>759</sup>

Multiple models of Internet governance currently exist side by side.<sup>760</sup> The ‘cyber authority’ model is based on the notion that there need to be central points in order to keep the Internet clean. These services could, for example, disconnect individual computers or parts of the Internet or put these ‘into quarantine’.<sup>761</sup> Another approach is the ‘self-cleaning Internet’ model, which involves a community of volunteers systematically recording and monitoring threats and vulnerabilities. Since Internet participants gain insights – and trouble – into and from these harmful elements, they also develop and implement countermeasures themselves.<sup>762</sup> In addition to this, the ‘model of economic market forces’ exists, based on the idea that Internet governance can be best achieved by market mechanisms and private partners.<sup>763</sup>

In addition to legislation and regulations, a variety of ideas exist within the realm of government, which link in with the first model, such as blocking child abuse material and the (possible) establishment of

757 Mathiason et al. (2004, p.8) defines Internet governance as follows: “collective action, by governments and/ or the private sector operators of the networks connected by the Internet, to establish agreements about the standards, policies, rules, and enforcement and dispute resolution procedures to apply to global internetworking activities.”

758 Report of the Working Group on Internet Governance, 2005, p.6.

759 Mathiason et al., 2004, pp.10-11. A similar formal institution is the Internet Corporation for Assigned Names and Numbers (ICANN), which is responsible for issuing top-level domain names such as .nl and .com. The issuing of the .xxx domain name by ICANN is directed specifically at (adult) pornographic websites, so that it is easier to monitor such websites, see ‘Why ICANN’s Approval of the XXX domain is an important precedent’ by Milton Mueller, 19 March 2011, [blog.internetgovernance.org/blog/\\_archives/2011/3/19/4775146.html](http://blog.internetgovernance.org/blog/_archives/2011/3/19/4775146.html) (viewed 7 June 2011).

760 Solum, 2009.

761 [www.nligf.nl/index.php/agenda/Po/publiek\\_debat\\_internet\\_governance\\_controleren\\_of\\_vertrouwen](http://www.nligf.nl/index.php/agenda/Po/publiek_debat_internet_governance_controleren_of_vertrouwen) (viewed 24 May 2011).

762 [www.nligf.nl/index.php/agenda/Po/publiek\\_debat\\_internet\\_governance\\_controleren\\_of\\_vertrouwen](http://www.nligf.nl/index.php/agenda/Po/publiek_debat_internet_governance_controleren_of_vertrouwen) (viewed 24 May 2011).

763 Solum, 2009, pp.75-86.

international,<sup>764</sup> European<sup>765</sup> and national<sup>766</sup> cyber security centres. Private parties do not want legislation and regulations and interventions against child pornography to affect their services on the Internet and create high costs, but wish them to come into being because the market wants them to.<sup>767</sup> At the same time, digital civil rights movements and the Internet community are involved in the debate on Internet governance. They are generally propagating ideas based on the principle of a ‘self-cleaning Internet’. These actors are not represented in consultative bodies, such as the Internet Safety Platform, but are actively considering various ideas for measures to tackle child pornography.<sup>768</sup> From the discussion about blocking websites involving child abuse material, it comes to the fore that this interplay of forces in the area of Internet governance also plays a role in the combating of child abuse material on the Internet.

### *Interplay of forces*

The Dutch public-private sector partnership recently received a new impetus from the idea of blocking websites involving abusive content. The blocking of websites involving child abuse material was part of the desire to arrive at a more comprehensive approach towards combating the production and consumption of child abuse material, see the ‘Filtering and blocking’ box below. The Ministry of Security and Justice, the Ministry of Economic Affairs and ECP-EPN<sup>769</sup> assigned the Andersson Elffers Felix consultancy firm the task of exploring the possibilities in order to arrive at a new public-private sector partnership model for combating child pornography on the Internet. The research outlines a frame of reference for blocking child abuse content, which can also serve as a broader and more comprehensive form of collaboration.<sup>770</sup> The frame of reference briefly describes the forces at play with regard to the combating of child pornography on the Internet. The government, private partners and social organisations feature amongst these forces at play. The consultancy firm concluded that between the parties

764 ‘VS wil wereldwijde aanpak van cybercrime’ [US wants global approach to tackle cybercrime] Tweakers, 17 May 2011, [tweakers.net/nieuws/74484/vs-wil-wereldwijde-aanpak-van-cybercrime.html](http://tweakers.net/nieuws/74484/vs-wil-wereldwijde-aanpak-van-cybercrime.html) (viewed 31 May 2011).

765 ‘Toespraak eurocommissaris Malmström (binnenlandse zaken) over cyber-crime’ [Speech by the European Commissioner Malmström (Home Affairs) about cyber-crime], European Commission, 22 February 2011, [www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak\\_eurocommissaris\\_malmstrom?ctx=vh1alzift7wj](http://www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak_eurocommissaris_malmstrom?ctx=vh1alzift7wj) (viewed 31 May 2011).

766 ‘Nationale Cyber Security strategie gepresenteerd’ [National Cyber Security strategy presented] [www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/02/22/nationale-cyber-security-strategie-gepresenteerd.html](http://www.rijksoverheid.nl/documenten-en-publicaties/persberichten/2011/02/22/nationale-cyber-security-strategie-gepresenteerd.html) (viewed 31 May 2011).

767 The use of technology to filter child abuse material by ISPs – in addition to social responsibility – will also be prompted by clients of ISPs and ISPs themselves, which do not wish to suffer financial loss as a result of negative publicity.

768 See [www.bof.nl/?s=kinderporno](http://www.bof.nl/?s=kinderporno), (viewed 31 May 2011).

769 ECP-EPN is a platform where the government, the business world and civil society organisations exchange knowledge and work together to promote the development of the Dutch information society. Various projects, investigations and debates unite parties and put the social meaning of ICT on the agendas of the government, the business world and civil society organisations. In this way, the platform achieves breakthroughs and creates the pre-conditions as a result of which opportunities can be utilised and threats can be removed; see [www.ecp.nl](http://www.ecp.nl) (viewed 14 June 2011).

770 Andersson Elffers Felix, 2009.

that are part of the forces at play, “a natural tension [exists] between the normative and operational approach to tackling child pornography on the Internet.”<sup>771</sup> This tension seems to be able to be explained by the fact that the public-private partnership concerns aspects of Internet governance. Although there is consensus between the forces at play that sexual violence against children needs to be tackled, there does not seem to be any agreement as to how this common objective should be achieved. It is clear that all relevant parties assume a role and need one another in order to arrive at an effective programme of measures. Andersson Elffers Felix writes, “The public-private sector partnership model is also aimed at combining the normative and operational interests with one another and thereby optimising the opportunities for collaboration.”<sup>772</sup>

The partnership model proposed by the consultancy firm that would enable these parties to come together became the ‘Working Group on Blocking Child Pornography’ of the Internet Safety Platform, administered by ECP-EPN.<sup>773</sup> In this working group, only those parties that were able to play a possible role in the blocking of child abuse material came together, such as the police, Internet Service Providers (ISPs) and the Hotline Combating Child Pornography on the Internet. Scientists, politicians and digital civil rights movements that were not represented in the Platform were very critical about the blocking of websites featuring child pornography.<sup>774</sup> In the end, it did appear that there was no longer any reason to block websites. The number of websites to be blocked had decreased by such an amount that there were no longer any sites – or hardly any sites – to be blocked.<sup>775</sup> In fact, the public-private partnership can be hailed as a success in this case: despite the ‘natural tension’, the involved parties actively contributed, resulting in the joint conclusion that there were insufficient grounds to enforce the blocking of websites featuring child abuse material.

771 “The operational approach is based on combating child pornography efficiently and effectively in accordance with the (statutory) standard that has been set. The police assume an operational role in the combating of child pornography on the Internet, as do private partners such as ISPs. The operational approach is under pressure from the normative approach to change and to meet the normative approach to a greater degree. This pressure has resulted in new developments, such as a national project for the combating of child pornography launched by the police, for example, and an intensification of the Public Prosecution Service’s efforts in handling child pornography files. In this way, the police and private partners carry out their work in a social context, that they partly influence themselves. The tension between the normative and the operational approach therefore results from the fact that these two domains are not completely separated. The responsibility for combating child pornography on the Internet floats around between the different forces at play. [...] The way in which the forces are distributed means that there will always be multiple parties that require one another in order to arrive at an effective programme of measures. The new partnership model therefore also aims to combine the normative and operational interest, thereby optimising the opportunities for collaboration,” Andersson Elffers Felix, 2009, pp.14-15.

772 Andersson Elffers Felix, 2009, pp.14-15.

773 [www.ecp-epn.nl/werkgroep-blokkeren-kinderporno](http://www.ecp-epn.nl/werkgroep-blokkeren-kinderporno) (viewed 1 June 2011).

774 See for example Callanan et al., 2009; ‘Europees akkoord: beelden kindermisbruik niet blokkeren maar verwijderen’, [European agreement: do not block images of child abuse, but remove them] GroenLinks, 28 June 2011, [www.europa.groenlinks.nl/Europees+akkoord%3A+beelden+k+indermisbruik+niet+blokkeren+maar+verwijderen](http://www.europa.groenlinks.nl/Europees+akkoord%3A+beelden+k+indermisbruik+niet+blokkeren+maar+verwijderen) (viewed 10 August 2011); ‘Alternatieve aanpak bestrijding afbeeldingen seksueel kindermisbruik’, [Alternative approach to combat images of the sexual abuse of children], Bits of Freedom, 12 April 2011, [www.bof.nl/live/wp-content/uploads/briefinternetfilter120411-def.pdf](http://www.bof.nl/live/wp-content/uploads/briefinternetfilter120411-def.pdf) (viewed 10 August 2011).

775 *Voortgang blokkeren kinderporno* [Progress in blocking child pornography] *Parliamentary Papers II*, 2010/11, 32 500 VI, no.86.

### Filtering and blocking

Following relatively lengthy discussions, initiatives concerning filtering and blocking have died out. Filtering is the process of determining which items within a flow of traffic must be blocked. Blocking involves actually blocking a flow of traffic. Filtering can take place either at the border (centrally), or prior to delivery by the ISP (de-centrally).<sup>776</sup> The National Police Services already experimented with this concept in 2006. This experiment is described in a study carried out by the Scientific Research and Documentation Centre [Wetenschappelijk Onderzoek- en Documentatiecentrum] in 2007 and 2008.<sup>777</sup>

The Van der Staaij-Rouvoet<sup>778</sup> motion requested an investigation into the further possibilities of blocking and filtering on the Internet. This motion resulted in the implementation of an investigation.<sup>779</sup> The researchers state that they found no factual basis for the assumption that filtering and blocking would prevent access to child abuse material in an effective manner. They also refer to the fact that filtering and blocking are not effective in preventing the exchange of material. Newsgroups and peer-to-peer applications are the current exchange channels. At most, blocking results in a small barrier for beginner searchers for child abuse material. It does not prevent access to such material.<sup>780</sup>

In 2008, on the basis of this investigation, the Minister of Justice encouraged private parties to self-regulate. The government needs to tackle the sexual abuse of children, especially via the criminal route. All available capacity is required for this.<sup>781</sup> The private parties were subsequently requested to take action to prevent the distribution of images. In response to this, various ISPs promised to come up with a self-regulating initiative. For this purpose, they sought collaboration with the Hotline Combating Child Pornography on the Internet. The system consists of a black list of websites that is compiled by this hotline, and that is implemented by the ISPs. This did not turn out to be feasible. On 22 November 2010, the Internet Safety Platform, comprising private partners and the Ministry of Economic Affairs, Agriculture and Innovation and the Ministry of Security and Justice, sent a letter to the Minister for Security and Justice. The Platform announced that the black list is so small that blocking of websites is an ineffective provision. The efforts involved are not in proportion to the desired effect.<sup>782</sup> In the meantime, the supply of child abuse images has moved to less accessible parts of the Internet. The need to prevent individuals from being inadvertently confronted with such images – the intention behind blocking – had been removed. The Minister of Security and Justice decided to follow the advice from the Platform. In the meantime, the police and the hosting-provider Leaseweb have made arrangements to launch a pilot, in which the uploading of child abuse material can be prevented (filtering).<sup>783</sup>

776 *Parliamentary Papers II*, 2005/06, 30 300 VI, no.139.

777 *Parliamentary Papers II*, 2010/11, 32 500 VI, no.86.

778 *Parliamentary Papers II*, 2005/06, 30 300 VI, no.16.

779 *Parliamentary Papers II*, 2007/08, 28 684 and 31 200 VI, no.166, research carried out by the Scientific Research and Documentation Centre, Filtering child pornography on the Internet. An exploration of techniques and regulations in the Netherlands and abroad.

780 *Parliamentary Papers II*, 2007/08, 28 684 and 31 200 VI, no.166.

781 *Parliamentary Papers II*, 2010/11, 32 500 VI, no.86.

782 *Parliamentary Papers II*, 2010/11, 32 500 VI, no.86.

783 *Parliamentary Papers II*, 2010/11, 32 500 VI, no.86.

Since the blocking of child abuse material in the Netherlands was not implemented, the Internet Safety Platform no longer has an active working group that promotes public-private partnerships in the field of child pornography. It follows from §3.8.3 that this does not mean that the parties cited above – the government, intermediate-level social organisations and the private sector – are not currently developing any PPS initiatives or are not able to do so.

#### *Challenges faced by public-private sector partnerships*

Public-private sector partnerships provide opportunities to tackle child pornography, but also face challenges that prompt a clearer distribution of responsibilities, tasks and competences. The relevance of recognising and acknowledging the interests of the involved parties in order to arrive at effective public-private sector partnerships comes to the fore above.<sup>784</sup> In the case of child pornography, this involves vulnerable victims, calculating offenders and material that constitutes a criminal offence. This means that public-private sector partnerships are only possible after carefully assessing all relevant interests, whereby the interest of the victim must be paramount. The appointment of community and security managers at various Internet companies and collaborations with the police in the event of abuse illustrate that this is actually taking place in practice. Each time, a new assessment must be made as to which tasks that strictly lie within the governmental domain would be suitable for a shared responsibility within public-private sector partnerships, or for transferring responsibility to private partners. Police surveillance on Habbo (see box §3.8.3.1 and the Internet Safety Platform are examples of instances where the government is actively investing in its own digital knowledge and resources. Such investment also applies to the safeguarding of the fundamental rights of Internet users. Not only civil rights organisations and the academic world have referred to this point,<sup>785</sup> but this is also an explicit request of the government itself with regard to the combating of Internet-related offences.<sup>786</sup> Wherever the governmental tasks are left to self-regulating capacity of the private sector, the role of the government as the party that bears ultimate responsibility must exert a guiding influence.<sup>787</sup>

### **3.8.3 Concrete (actions of) public-private sector partnerships**

In this sub-section, various interventions undertaken by public-private sector partnerships, which involve the prevention and/or combating of digital child abuse material, will be discussed. However, as shown in the ‘National Cyber Security Strategy’ box below, it emerges that public-private sector partnerships also exist in other fields that are relevant to the issue of tackling child pornography.

#### *National Cyber Security Strategy*

In February 2011, the impetus was given to form a National Cyber Security Strategy (NCSS), one of the main points of which was that “child pornography must be tackled by public and private

784 Pel et al., 2002; Knibbe, 2002.

785 Various researchers and interest groups believe that the opportunity for legal control must exist in the application of the statutory NTD regulation, see: [www.bof.nl/live/wp-content/uploads/brandbrief.pdf](http://www.bof.nl/live/wp-content/uploads/brandbrief.pdf) (viewed 16 June 2011).

786 See ‘Kamer: eerst privacyonderzoek, dan wetgeving’ [Court: first privacy investigation, then legislation], Webwereld, 2 June 2011, [webwereld.nl/nieuws/106864/kamer--eerst-privacyonderzoek--dan-wetgeving.html](http://webwereld.nl/nieuws/106864/kamer--eerst-privacyonderzoek--dan-wetgeving.html) (viewed 29 Augustus 2011); [www.tweedekamer.nl/ao\\_repo/vj/20110601\\_Nationale%20Veiligheid.pdf](http://www.tweedekamer.nl/ao_repo/vj/20110601_Nationale%20Veiligheid.pdf) (viewed 16 June 2011).

787 See also European Digital Rights, 2011.

parties in a more integrated manner”.<sup>788</sup> The NCSS seems to focus predominantly on the combating of new forms of crime that could not have come about without ICT (“new tools, [for] new crimes”, such as measures to tackle botnets) and to a lesser extent on conventional forms of crime that were carried out with the help of ICT (“old crimes, new tools”, such as forms of terrorism). The government intends to bring together public and private parties in a National Cyber Security Centre, which is yet to be founded. It would be desirable if measures for tackling child pornography – and online sexual violence against children in more general terms – were also included within the remit of the NCSS, similarly to the way in which the topic of child pornography already fits within the National Infrastructure for tackling cybercrime (NICC)<sup>789</sup> and of the European Cybercrime Centre<sup>790</sup>, which is yet to be founded. Public-private sector partnerships, including NGOs, will also assume an explicit role in the latter, European-wide, centre. The knowledge and experience of parties participating in the NCSS may be very valuable for the purpose of tackling child pornography. These could include products and insights gained from the research projects Recognition of Digital Information and Fingerprinting [*Herkenning Digitale Informatie en Fingerprinting, HDleF*]<sup>791</sup> and Terrorism on the Internet<sup>792</sup> [*Terrorisme op Internet*], which were carried out by the National Coordinator for Counterterrorism and Security [*Nationaal Coördinator Terrorismebestrijding en Veiligheid, NCTV*].

The majority of public-private sector partnerships involve companies and NGOs working together with government services. Partnerships consisting of companies amongst themselves, or partnerships between companies and NGOs, are less common. These usually involve information and awareness-raising projects, which are described in §3.2. The list is not complete, but the actions described below show that much is already being done in the field of public-private sector partnerships in relation to child pornography. There is, however, a lack of coherence with regard to a number of points. Where possible, public-private sector partnerships need to be built on existing initiatives and if necessary, new initiatives could be developed, for example with regard to measures for tackling (post) adolescent child pornography and the involvement of the Internet community. The cross-border character of many public-private sector partnerships means that it is necessary to place considerable emphasis upon international co-operation. For almost all forms of public-private sector partnerships, it is the case that the actions that result from this are most effective if they are co-ordinated on an international level.

788 *Nationale Cyber Security Strategie: Slagkracht door samenwerking* [National Cyber Security Strategy: Power through partnership], Appendix to *Parliamentary Papers II* 2010/11, 26643 no. 174.

789 See [www.cpmi.nl/informatieknooppunt/de-nationale-infrastructuur-ter-bestrijding-van-cybercrime-nicc](http://www.cpmi.nl/informatieknooppunt/de-nationale-infrastructuur-ter-bestrijding-van-cybercrime-nicc) (viewed 1 June 2011).

790 ‘*Toespraak eurocommissaris Malmström (binnenlandse zaken) over cyber-crime*’ [Speech by the European Commissioner Malmström (Home Affairs) about cyber-crime], European Commission, 8 February 2011, [www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak\\_eurocommissaris\\_malmstrom?ctx=vh1alzf7wj](http://www.europa-nu.nl/id/vimphneganvo/nieuws/toespraak_eurocommissaris_malmstrom?ctx=vh1alzf7wj) (viewed 31 May 2011).

791 See [www.nctb.nl/onderwerpen/terrorismebestrijding/Fingerprinting/](http://www.nctb.nl/onderwerpen/terrorismebestrijding/Fingerprinting/), (viewed 23 August 2011).

792 See [www.nctb.nl/onderwerpen/terrorismebestrijding/terrorisme\\_op\\_het\\_internet/](http://www.nctb.nl/onderwerpen/terrorismebestrijding/terrorisme_op_het_internet/), (viewed 23 August 2011).

### 3.8.3.1 Private sector

The interests of the private sector differ greatly from those of the authorities and intermediate-level social organisations.<sup>793</sup> Companies are primarily concerned with their own financial interests.<sup>794</sup> This aspect also arises in public-private sector partnerships relating to child pornography: legislative proposals concerning data retention not only give rise to criticism from digital civil rights movements, but storing large quantities of data gives rise to resistance from ISPs (Internet service providers) for commercial reasons. At the same time, offering safe (private) Internet environments can be a unique selling point for companies, and can, in this way, result in an approach in which money can actually be generated.

#### *Social network sites and software developers*

Millions of people in the Netherlands have accounts with Social Network Sites (SNSs), such as Hyves, Facebook, Gosupermodels, Habbo and MSN (chat). Various SNSs employ strategies in order to safeguard their Internet environment from child pornography (offenders).<sup>795</sup> A large number of sites are working together with NGOs and authorities in this process. An example of an integrated public-private sector partnership applied to SNSs is described in the 'Police on Habbo' box text. SNSs can also work together with other companies (for example software developers) and/or the police in order to clean up Internet environments. In this way, a partnership between Facebook, Microsoft and the American National Center for Missing and Exploited Children (NCMEC) has resulted in the use of PhotoDNA on this SNS, which is the largest in the world. Using known images from NCMEC's database, this system searches for child abuse material on Facebook profiles.<sup>796</sup> In the past, networks of offenders have in fact been discovered on Facebook.<sup>797</sup> However, the number of images involving child sexual abuse that have been discovered using PhotoDNA over the 550 million profiles on Facebook is unknown.<sup>798</sup> Hyves, the Dutch social network site, provides advice to its members with regard to Internet safety, and works together with NGOs<sup>799</sup> in this regard. Hyves also has an emergency button, which users can use to warn community managers in the event that they discover offensive content. This indicates that these online communities are based on a reasonable self-cleaning capacity and that online communities that do not have a self-cleaning capacity<sup>800</sup> – such as the former boylover.

793 Taylor & Quayle, 2006, p.191.

794 Knibbe, 2002, p.36.

795 See for example [www.nl.gosupermodel.com/support/safety.jsp](http://www.nl.gosupermodel.com/support/safety.jsp) (viewed 25 May 2011).

796 PhotoDNA links in with the theory of technological enforcement and CSR in the business sector. The technology was developed by Microsoft and Dartmouth College and given to the National Centre for Missing and Exploited Children. See [www.microsoft.com/en-us/news/presskits/photodna/](http://www.microsoft.com/en-us/news/presskits/photodna/) (viewed 26 May 2011).

797 'International child porn ring on Facebook cracked by police', The Huffington Post, 27 August 2010, [www.huffingtonpost.com/2010/08/27/facebook-child-porn\\_n\\_696728.html](http://www.huffingtonpost.com/2010/08/27/facebook-child-porn_n_696728.html) (viewed 10 August 2011).

798 Previously, the same technology brought up 1000 and 1500 matches on Skydrive and Bing respectively (neither of which are SNSs) [blogs.technet.com/b/microsoft\\_blog/archive/2011/05/19/500-million-friends-against-child-exploitation.aspx](http://blogs.technet.com/b/microsoft_blog/archive/2011/05/19/500-million-friends-against-child-exploitation.aspx), (viewed 26 August 2011).

799 [www.hyves.nl/veilighyven/](http://www.hyves.nl/veilighyven/) (viewed 27 May 2011).

800 See Stol, 2010, pp.20-21 for responses to behaviour that transgresses moral standards in cyberspace.

net<sup>801</sup> – require other interventions, such as a criminal investigation or an intervention originating from welfare services, see §3.6.

Public-private sector partnerships can also be found within the software industry. An example of this is the previously-mentioned PhotoDNA. Commercial filter programmes that make use of existing child pornography databases from the police and hotlines are also on the market. Such products – examples of situational prevention – are aimed at places of work and hotels, for example, in order to combat child pornography in those environments.<sup>802</sup>

#### *Habbo*

Habbo is an international online game chatting community owned by Sulake, a Finnish company. Habbo is a very large virtual community for young people in the Netherlands, attracting 1.2 million unique visitors each month. Habbo is mainly aimed at children between the ages of 12 and 18. In order to take part, you need to create a ‘Habbo’: a virtual character with which you walk around a hotel.<sup>803</sup> In order to provide a safe online environment for the Habbos, the company uses a combination of social and physical safety. Members under the age of 16 need their parent’s permission. Moderators<sup>804</sup> are present seven days a week. The moderators are able to issue a warning to members who violate the rules, remove them from a room or, if necessary, remove them from the Internet environment. An account or IP can be blocked in order to prevent unwanted individuals from gaining access. ‘Habbos’ also have the opportunity to alert a moderator. Moderators can also follow users’ chat messages without the users being aware of this. If necessary, Habbo refers children who make a report to the correct institutions. Habbo is then able to provide the involved institutions with chat logs and IP addresses. All conversations in the hotel run through a language filter before they appear on screen. This filters out sexual remarks and other unsuitable use of language, and moderators are warned in the event of suspicious use of language. The intention behind this application is to safeguard the safety of the Habbos.<sup>805</sup> In addition to this, Habbo provides its users with information about the safe use of the Internet in general, and about the safe use of Habbo in particular. The intention behind this provision of information is to increase social safety.<sup>806</sup> Habbo works together with other parties quite a lot, by means of an ‘infobus’, where partners from the cooperating organisations can find the answers to any questions that they may have. The Hotline Combating Child Pornography on the Internet and the police are examples of parties that make use of this service. The police carry out surveillance of Habbo Hotel in this manner (see box below).

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801 ‘More than 200 children identified and rescued in worldwide rescue operation’, Europol, 16 March 2011, see [www.europol.europa.eu/content/press/more-200-children-identified-and-rescued-worldwide-police-operation-465](http://www.europol.europa.eu/content/press/more-200-children-identified-and-rescued-worldwide-police-operation-465) (viewed 19 August 2011).

802 See for example [www.netclean.com/eng/](http://www.netclean.com/eng/) (viewed 27 May 2011).

803 Verbal information during the National Rapporteur on Trafficking in Human Beings’ visit to Habbo on 21 April 2010.

804 ‘Moderators’ are paid supervisors.

805 Written information received from the community co-ordinator of Habbo on 23 August 2011.

806 [www.habbo.nl](http://www.habbo.nl).

*Police surveillance of Habbo & Digikids National Expertise Group*

In addition to its own moderators, the multi-player game Habbo also makes use of the police in order to maintain a safe online environment. This involves police surveillance on the Internet, without criminal offences and/or making use of investigative powers coming into play (Internet research). With the advent of Internet surveillance, a new task for the police has been created, which calls for prudence. The behaviour of the police officers is constantly regulated and made visible.<sup>807</sup> Online surveillance is different to surveillance in the analogue world. It is not possible to stop and question someone on the Internet, for example. The objective for the police on Habbo is to determine what the online role of the police should be and to gauge the effect of the police presence on Habbo, but also to gain an insight into the problems that are present amongst young people and to gain experience in the field of chatting. On the one hand, the 'Infobus' provides information twice a month about various subjects such as loverboys and the safe use of the Internet. On the other hand, personal contact takes place by means of a notice board, e-mail and chat, but also while the digital 'community police officer' is on patrol in the online community.<sup>808</sup> Internet surveillance on Habbo seems to be an important, easily accessible way for young people to get in touch with the police. In this way, sexual abuse cases in both digital and analogue worlds have come to light.<sup>809</sup> This initiative forms part of the Digikids National Expertise Group of the Dutch police, which publishes recommendations concerning the role of the Dutch police with regard to the online safety of young people. The expertise group takes, as its starting point, the importance of three preconditions for the police action in cyberspace, namely raising awareness amongst the police and communicating to young people (being digitally aware), the online accessibility of the police in order to carry out its main tasks (being digitally-accessible) and the competency of the police to be able to implement these tasks in practice (being digitally-competent).<sup>810</sup> In this way, the group of experts is carrying out preparatory work to clearly show whenever the content of chat conversations between individuals (children and parents or children amongst themselves) would give companies reason to contact the police.<sup>811</sup> The three conditions, namely of being digitally-aware, digitally-accessible and digitally-competent, appear relevant to all organisations involved with young people. The *Kindertelefoon* service, run by the Youth Care Agency, has also been present in the 'Infobus' since the summer of 2010.<sup>812</sup> Similar organisations that provide assistance to victims would be able to enter into similar partnerships with private parties.

*Infrastructure of the Internet*

ISPs are already contributing to the efforts to combat child pornography, for example by co-operating in investigations carried out by investigative authorities and by removing child abuse material following notification of it, see box 'Prospect of removal'. These obligations arise indirectly from the Convention

807 Stol, 2010, p.69.

808 'Habbo' presentation 'Internet Surveillance – Young People' 17 June 2011 in Ossendrecht.

809 *Spreekuur op Habbo* [Habbo consultation], Right!, April 2011.

810 'Subsidy application for the purpose of Action plan "Naar een digibekwame politële jeugdtaak" [Towards a digitally competent police task for young people], Digikids Expertise Group, 19 August 2011 (not public)

811 Verbal information from the Digikids National Expertise Group, 8 September 2011.

812 'De Kindertelefoon in de Infobus!' [The Kindertelefoon in the Infobus], Habbo, 6 July 2010, [www.habbo.nl/articles/1399-de-kindertelefoon-in-de-infobus/in/category/safety](http://www.habbo.nl/articles/1399-de-kindertelefoon-in-de-infobus/in/category/safety) (viewed 9 September 2011).

on Cybercrime of the Council of Europe<sup>813</sup> and the Electronic Commerce Directive of the EU<sup>814, 815</sup>. Since ISPs now facilitate access to the Internet for many consumers, there is increasing pressure on the ISPs to take measures, of their own accord, to prevent the distribution of child abuse material.<sup>816</sup> Preventive measures that have been proposed include the recording of the identity of the operator of a website and the installation of filters when uploading content, which are both to be carried out by hosting providers, and measures such as data retention, the recording of users, blocking access to websites containing child abuse material, and blocking the distribution of documents containing such material, which are to be carried out by access providers.<sup>817</sup> Certain proposals are already being applied. For example, ISPs are already limiting access to certain newsgroups within Usenet.<sup>818</sup> On the one hand, ISPs are regarded as organisations that may be able to fulfil a key role in tackling child pornography,<sup>819</sup> whereas on the other hand the measures stated above may violate fundamental rights of users, may not be effective and/or may entail high costs.<sup>820</sup> The character of the Internet (see §1.2.3) makes clear that self-regulating measures on behalf of ISPs are most effective whenever they are applied on an international level as opposed to on an individual or national level. This type of international partnership should also be able to contribute to the identification of mala fide ISPs<sup>821</sup>. In addition to ISPs, the Internet Corporation for Assigned Names and Numbers (ICANN) also plays a role in managing the (technical) infrastructure of the Internet.<sup>822</sup> For this reason, following remarks from an Interpol employee that the identity details (Whois) are not always accurate<sup>823</sup>, ICANN and Interpol have announced a partnership to improve Internet safety and combat cyber-crime, including, among other offenses, that of child pornography.<sup>824</sup> The manner in which this partnership will be compiled is not yet known. In addition to this, ICANN has recently introduced the.xxx extension for (adult) pornographic websites. It is expected that this exten-

813 See Articles 16 and 18-20 of the Cybercrime Convention of the Council of Europe.

814 The removal of child abuse material following notification is based on Article 14 of the EU Electronic Commerce Directive. This is often the case in the event of a notice and take-down policy, see Van Eijk & Van Engers, 2010, p.35.

815 Van Eijk & Van Engers (2010, p.38) write: “Governments have played a clearly stimulating role in the development of the current reporting system, and also provide (financial) support. As a rule, there is positive consensus for the existing system of internet service providers with relation to child abuse material. However, in so far as cases of a more drastic nature are concerned, such as filtering, it follows from national law that a statutory basis is necessary (see the discussion in the Netherlands regarding filtering). However, the drastic nature of filtering, as such, can mean that it is desirable to place it within a more clearly-defined legal framework, for example for reasons of legal certainty.”

816 Taylor & Quayle, 2003, pp.202-203.

817 Gercke, 2009, pp.65-72; Hecht, 2008, p.89.

818 The newsgroups that, when together, form Usenet are not actually part of the Internet, see Jenkins, 2001, pp.54-57.

819 Taylor & Quayle, 2006, pp.188-189.

820 Gercke, 2009, pp.65-72.

821 Taylor & Quayle, 2003, p.203.

822 Solum, 2009, pp.48, 59-61.

823 ‘Child abuse cop slams ICANN’, The Register, 17 March 2011, [www.theregister.co.uk/2011/03/17/child\\_abuse\\_cop\\_slams\\_icann/](http://www.theregister.co.uk/2011/03/17/child_abuse_cop_slams_icann/) (viewed 12 August 2011).

824 ‘INTERPOL and ICANN advance cooperation on Internet security after historic first meeting’, Interpol, 23 May 2011, [www.interpol.int/Public/ICPO/PressReleases/PR2011/PRO43.asp](http://www.interpol.int/Public/ICPO/PressReleases/PR2011/PRO43.asp) (viewed 12 August 2011).

sion – which is used on a voluntary basis – will contribute to a form of Internet governance.<sup>825</sup> As it is expected that the administrators of these sites need to comply with conditions that set out that measures should be actively taken to combat child abuse material, the extension may be able to contribute to its reduction.<sup>826</sup>

#### *Financial and mobile phone service providers*

The challenges faced by those involved in tackling child pornography include the new methods of payment on the Internet and the transition from the use of ‘home PCs’ (desktops) to ‘mobile PCs’ on GSMs (see §1.4.1.2). The European Financial Coalition against Commercial Sexual Exploitation of Children Online (EFC) is a European public-private sector partnership, in which (inter)national investigative authorities and companies from various sectors are putting a stop to child abuse material that is produced and distributed commercially. In addition to the Dutch police force and the Ministry of Security & Justice, financial service providers – such as credit card companies and suppliers of pay systems – and software developers, as well as lawyers and NGOs, are involved in the EFC. The EFC is also seeking involvement with similar initiatives from investigative authorities, such as Circamp, which is a European partnership.<sup>827</sup> One of EFC’s objectives is to analyse the nature and extent of material that is produced and distributed on a commercial basis, and to devise interventions to decrease the demand and availability of such commercial child abuse material.<sup>828</sup>

The Mobile Alliance against Child Sexual Abuse Content (MACSAC) was founded in 2008 by members of the GSM Association (GSMA) in order to combat child pornography via mobile telephones and networks. The alliance intends to achieve this by preventing users from accessing websites featuring child abuse material, applying a notice and take-down regulation (NTD) to services of members of the alliance and by promoting the use of hotlines.<sup>829</sup> The potential is huge: the members of the alliance have hundreds of millions of users. Telephone service companies in operation in the Netherlands are also members of MACSAC. The Mobile Alliance demonstrates that it is also possible for various collaborative associations to work together. The alliance cooperates with the American Financial Coalition against Child Pornography, for example. GSMA, the co-ordinating organisation, is a partner of the British Internet Watch Foundation (IWF) and works together with INHOPE, the co-ordinating organisation of hotlines.<sup>830</sup>

825 ‘Why ICANN’s Approval of the XXX domain is an important precedent’, Milton Mueller, 19 March 2011, [blog.internetgovernance.org/blog/\\_archives/2011/3/19/4775146.html](http://blog.internetgovernance.org/blog/_archives/2011/3/19/4775146.html) (viewed 12 August 2011).

826 See ‘18 March 2011 Draft Rationale for Approving Registry Agreement with ICM’s for XXX sTLD’, ICANN, 18 March 2011, [www.icann.org/en/minutes/draft-icm-rationale-18mar11-en.pdf](http://www.icann.org/en/minutes/draft-icm-rationale-18mar11-en.pdf) (viewed 12 August 2011).

827 See [circamp.eu/](http://circamp.eu/) (viewed 10 August 2011).

828 European Financial Coalition, 2010.

829 [www.gsmworld.com/our-work/public-policy/mobile\\_alliance.htm](http://www.gsmworld.com/our-work/public-policy/mobile_alliance.htm), (viewed 30 May 2011). NTD regulations describe how private individuals and companies in the online sector deal with complaints (notice) regarding illegal content, such as child abuse images, on the Internet. The response to such a complaint usually involves the material being taken down by a party that is responsible for this (take down). An example of a voluntary NTD regulation can be found on [www.ecp-epn.nl/werkgroep-notice-and-takedown](http://www.ecp-epn.nl/werkgroep-notice-and-takedown) (viewed 14 June, 2011).

830 See [www.gsmworld.com/documents/GSMA\\_Inhope\\_07\\_09\\_10.pdf](http://www.gsmworld.com/documents/GSMA_Inhope_07_09_10.pdf).

The above European and international partnerships were capable of joining together relevant actors and express various strategies, such as socially responsible undertakings and the removal of child abuse material ('data minimisation'). No specific public-private sector partnerships have been found for other technological developments – such as cloud computing.

#### *Affiliate marketing, traffic brokering and search engines*

Various actors and services exist within the online adult industry, of which the sale of pornography is one example. By means of pornographic websites, companies are able to earn money in a number of other ways and these business models also seem to apply to sites that operate in the 'grey area' of (child) pornography, such as modelling websites.<sup>831</sup> There are also indications that revenue models and organisational structures of standard websites are similar to those of websites which clearly feature child abuse material.<sup>832</sup> Free websites also have revenue models. Research reveals that both paid and unpaid websites consist of networks, in which consumers are referred to other websites.<sup>833</sup> Service companies that provide affiliate marketing,<sup>834</sup> specialised adult search engines and traffic brokering, play an important role within these networks. The essence of this is that legal and illegal content providers need to make their location known, because they would not sell anything otherwise,<sup>835</sup> and at the same time, consumers are actively searching for material *online*.<sup>836</sup> It is the above-mentioned service providers who fulfil a key role in bringing together supply and demand. These service providers have probably included the stipulation in their conditions that they shall not link traffic to child pornography and/or child erotica websites,<sup>837</sup> but research reveals that affiliated programs and traffic brokers do not usually monitor websites for content or do not verify the identity of the applicant.<sup>838</sup> What is more, child abuse thumbnails are sometimes placed on TGP(CI) sites<sup>839</sup> – an affiliated marketing technique – in order to

831 The grey area includes images in which it is unclear as to whether the material constitutes child pornography due to questions surrounding the age of the child that is depicted, the sexual conduct that is depicted (whether or not this constitutes child abuse material) and/or is sufficiently realistic, see §1.4.1.1.

832 European Financial Coalition, 2010, pp.9-10.

833 Wondracek et al., 2010.

834 "The term 'affiliate' has taken on a special meaning within the realms of internet marketing. In this context, an affiliate is a partner who, for a certain fee, ensures a flow of visitors to the website of the affiliate merchant, the advertiser, by means of links on his/her website. Thousands of affiliate programs exist that provide the correct means of achieving this. In the Netherlands, we also speak of partner programs." [affiliate.uwstart.nl/](http://affiliate.uwstart.nl/), (viewed 26 August 2011).

835 Leukfeldt et al., 2009, p.26.

836 Taylor & Quayle, 2006, pp.175-182.

837 For example [clickcashmoney.com/index.html](http://clickcashmoney.com/index.html) (viewed 26 August 2011).

838 Wondracek e.a., 2010, p.9.

839 TGP stands for Thumbnail Gallery Post and TGP(CI) stands for Thumbnail Gallery Post (Circle Jerk). TGP and TGP(CI) are both websites featuring multiple thumbnails – small images – that can be clicked on by users of these websites. The user would then expect to arrive at a website where the thumbnail can be viewed in large (sometimes for a fee) or where a series of similar photos can be found. TGP(CI) sites do not refer the user to the corresponding image, but to another TGP instead. The revenue model of these TGP(CI) sites is to generate a large amount of traffic (visitors) (and to sell these to TGP sites) and advertising revenue from banners, see [www.web.archive.org/web/20071023200733/www.cozyacademy.com/classrooms/tgp/](http://www.web.archive.org/web/20071023200733/www.cozyacademy.com/classrooms/tgp/) (viewed 10 August 2011).

create a shocking effect and to encourage a higher percentage of clicks on the link (and in this way to generate a profit).<sup>840</sup> General search engines, such as Microsoft's Bing and Google, are also able to fulfil a role in stopping searches by perpetrators of child pornography. The above-named companies employ a zero tolerance policy with regard to child abuse material.<sup>841</sup> However, it emerges from Google Insights for Search that the search engines are, nevertheless, indeed used by people who are searching for child abuse material, considering the fact that entering search terms related to child pornography or child erotica still forms part of the interests of Dutch users of Google.<sup>842</sup> In addition to this, it appears that Google's filter technology seems to utilise only the Latin alphabet.<sup>843</sup>

#### *The 'Duty to Ascertain', and the online adult industry*

With reference to the task of tackling (post) adolescent child pornography<sup>844</sup>, Cabinet Members Arib and Gerkens submitted a motion to ensure that minors who look like they are of age are not used by the adult industry for the production of commercial adult pornography.<sup>845</sup> One idea to combat this situation was the introduction of a duty to ascertain certainty (an obligation to obtain certainty about a situation), which must provide for regulations, whereby operators of websites that offer adult pornography must be able to demonstrate that the models who are displayed have reached the age of eighteen. This idea was declined by the Minister for Security and Justice on the basis of the argument that the existing instruments provided under criminal law are sufficient.<sup>846</sup>

840 [www.asacp.org/?content=webmaster](http://www.asacp.org/?content=webmaster) (viewed 24 May 2011). Similar thumbnails and written advertising links that claim to link to child pornography websites do not usually do so. Instead, the links send visitors to legal websites featuring child models and adult pornography, see European Financial Coalition, 2010.

841 [www.docs.google.com/support/bin/answer.py?hl=en&answer=148505](http://www.docs.google.com/support/bin/answer.py?hl=en&answer=148505) (viewed 24 May 2011).

842 [www.google.com/insights/search/#q=%22preteen%20torrent%22%2C%22preteen%20bbs%22%2Cpreteen%20model%2Cpreteen&cmpt=q](http://www.google.com/insights/search/#q=%22preteen%20torrent%22%2C%22preteen%20bbs%22%2Cpreteen%20model%2Cpreteen&cmpt=q) (viewed 24 May 2011). The Netherlands is in the world top 10 for various search terms.

843 In April 2011, an intern at BNRM searched for the term 'child pornography' in the Cyrillic script on [www.google.nl](http://www.google.nl) for documents involving the issue of tackling child pornography in Russia. Consequently, numerous hits referred to material constituting child abuse material. Following reports by BNRM to the Hotline Combating Child Pornography on the Internet, the reporting centre also actually seemed to find child abuse material.

844 Adolescent and post-adolescent child pornography is material that depicts minors who look like they are of age, see Lanning (2010, p.83) and §1.4.1.1.

845 *Parliamentary Papers II*, 2007/08, 28 684, no.143.

846 The Minister argued that the actual age of the involved person does not need to be proven in all cases for the penalisation of child pornography; Article 240b of the Dutch Criminal Code is based on the *apparent age* of the depicted person. Action may even be taken against images of persons of age who appear to be minors on the image. The Public Prosecution Service has taken the position that a duty to ascertain is neither necessary nor desirable. The Public Prosecution Service referred to various adverse effects: the detection and prosecution of child pornography offences could even be made more difficult as a result. Resulting in part from consultation with the Public Prosecution Service, it has been concluded that even without the statutory implementation of a duty to ascertain, the objectives of the motion can still be complied with in a suitable manner (see *Parliamentary Papers II*, 2010/11, 32211, no.31 and *Parliamentary Papers II*, 2009/10, 32 123 VI, no.79).

The vice detective who developed the idea of the duty to ascertain won the Police Innovation Prize for this idea. From a study trip that this detective made to the US – where a similar version of the duty to ascertain exists – it emerged that, in practice, the government appears to encounter great difficulties in enforcing this measure. A shift from commercially-produced adult pornography to amateur pornography is currently underway, whereby the amateur models cannot be traced. Back in the Netherlands, the detective organised a meeting with certain representatives from the Dutch adult industry. It emerged that a number of existing businesses already carry out checks on the age of models. It also emerged that the professional pornography industry in the Netherlands – just like the same industry in the US – is faced with competition from amateurs and from professional producers from Eastern European countries.<sup>847</sup> If the enforcement of legislation – in this case the duty to ascertain – by the government only appears to be symbolic, then the self-regulation of the Dutch adult industry by means of a trade organisation, for example, is possibly a step in the right direction towards combating adolescent and post-adolescent child pornography. Certain trade organisations of the adult industry exist in the US<sup>848</sup>, one of which is specifically directed not only towards combating adolescent and post-adolescent child pornography, but also towards removing all forms of child pornography from the online adult industry. This Association of Sites Advocating Child Protection (ASACP) maintains a hotline, works together with the American National Center for Missing and Exploited Children, and brings together efforts from the branch regarding this topic by sharing best practices and setting requirements for the ASACP membership.<sup>849</sup> In the meantime, the ASACP has also expanded its working activities to Europe.<sup>850</sup>

### 3.8.3.2 Intermediate-level social organisations

In this section, the term ‘intermediate-level social organisations’ refers to NGOs and the online community. Intermediate-level social organisations can also contribute to public-private sector partnerships in the area of child pornography, primarily in the fields of identification and information. In contrast with NGOs, the online community is not yet involved in public-private sector partnerships, although active involvement of the online community would be able to provide opportunities.

#### NGOs

On both international and national levels, various NGOs are focused on the prevention and detection of child pornography. In this way, NGOs provide the online community (children and parents) with information about the use of the Internet. These NGOs and the projects that they carry out are described in §3.2. In addition to investigative authorities, NGOs run hotlines, such as the Hotline Combating Child Pornography on the Internet. Reports of child abuse material that arise from this monitoring role are then passed on to the police (see §3.3.3). It further emerges from these partnerships – for example EFC and MACSAC – that NGOs fulfil a role as expertise centres about the nature of child abuse material on

847 ‘The Future of Online Adult Entertainment: Surging Demand, the Rise of Free Porn and the Emergence of New Business Models’, Research and Markets, December 2009, [www.researchandmarkets.com/reports/1195592/the\\_future\\_of\\_online\\_adult\\_entertainment\\_surging](http://www.researchandmarkets.com/reports/1195592/the_future_of_online_adult_entertainment_surging), (viewed 26 August 2011).

848 For example the Free Speech Coalition, see [www.freespeechcoalition.com/](http://www.freespeechcoalition.com/) (viewed 31 May 2011).

849 [www.asACP.org/index.php?content=aboutus](http://www.asACP.org/index.php?content=aboutus) (viewed 24 May 2011).

850 ‘ASACP Continues European Expansion with London Outreach’, ASCAP, 5 May 2011, [www.asACP.org/index.php?content=news&item=932,ASACP+Continues+European+Expansion+with+London+Outreach](http://www.asACP.org/index.php?content=news&item=932,ASACP+Continues+European+Expansion+with+London+Outreach) (viewed 24 May 2011).

the open Internet, where companies probably go without specific knowledge in the area of the sexual abuse component of child pornography.

#### *Prospect of removal*

The current working methods of the Hotline Combating Child Pornography on the Internet are described in §3.3.1.1. Reports of child abuse material that are made by the online community are received by the reporting centre and subsequently passed on to other institutions (associate reporting centres of INHOPE or the National Police Services). In the event that the content is hosted in the Netherlands and is not removed within a week, the hotline sends a notification to the provider.<sup>851</sup> That seems to work in practice. Material is almost always removed following a notification being issued to the provider. A more pro-active approach, such as the one employed in the United Kingdom – by immediately removing the material as soon as possible following notification – would be able to relieve the burden upon the police, whilst not affecting the police’s objective to identify new victims. If the Hotline Combating Child Pornography on the Internet and its colleagues in other countries were able to respond to reports immediately, the most visible material – material on upload services and commercial sites that is noticed by the online community, which subsequently reports this to the reporting centre – would be able to be disrupted in a way that is probably more effective than a lengthy criminal investigation with an uncertain outcome. This most visible market consists of sites that usually only recycle pre-existing material or material that constitutes child pornography that is already known,<sup>852</sup> and/or that display child pornography of the lightest category,<sup>853</sup> a part of which is hosted in the Netherlands.<sup>854</sup> This is, in brief, material that the police, with their limited capacity, do not regard as a priority.<sup>855</sup> Part of this material will then disappear; another part will probably re-locate to less accessible online environments<sup>856</sup>, on which police investigations may subsequently focus. In any case, child pornography will be more difficult for viewers to find.<sup>857</sup> Research reveals that the opportunities to remove child abuse material – even in cases where material from other countries is being hosted – are sufficient. Internet service providers (ISPs) remove such material relatively quickly.<sup>858</sup> The European Electronic Commerce Directive (2000/31/EC) states that Internet providers are liable for any unlawful material belonging to their

851 The Hotline Combating Child Pornography on the Internet always tries to determine the origins of an image. Whenever distribution takes place from a different country and that country has a reporting centre, this hotline forwards the information to a colleague reporting centre that is associated with INHOPE. If distribution takes place from the Netherlands or from a different country and that country does not have a reporting centre, the reporting centre forwards this information to the National Police Services, see §3.3.3.1 and Andersson Elffers Felix, 2009, p.37.

852 European Financial Coalition, 2010, p.10.

853 It then involves sites that display images within category 3 and 4 of the Implementation provisions concerning child pornography, as described in §1.4.1.1. Implementation provisions concerning child pornography (Article 240b of the Dutch Criminal Code), 2010, A025, Dutch Government Gazette, 2 December 2011, no. 19121.

854 See Figure 3.4 in §3.3.3.

855 Programme of Improvements in Tackling Child Pornography, 2011.

856 European Financial Coalition, 2010, p.10.

857 Taylor & Quayle, 2006, pp.175-176.

858 AK Zensur, 2010.

customers if they are aware of its existence.<sup>859</sup> Where it concerns ISPs in countries that do not fall under the Directive and/or do not want to implement a voluntary NTD<sup>860</sup>, requests for mutual legal assistance are sufficient in most cases.<sup>861</sup> ISPs that do not (want to) remove child abuse material (consequentially) do indicate that criminal investigations carried out by the police are, nevertheless, desirable.<sup>862</sup> Existing arrangements with the National Police Services need to be changed in order to achieve this pro-active approach according to the British model. The European Commission argues that the response time of the police should be reduced to a maximum of two days.<sup>863</sup>

#### *Internet community*

Various reporting centres that are described in this report are based on citizen participation. The reporting of indications to the Child Abuse Counselling and Reporting Centre, *Stichting M.* [Report Crime Anonymously], *Meldpunt Kinderporno op Internet* [Hotline Combating Child Pornography on the Internet] and *Meldpunt Cybercrime* [Cyber Crime Reporting Website] are based on the principle that citizens can also play a part in combating child abuse material. Showing the public a photo of an unknown victim on the television also touches on this point. This explicitly involves the participation of citizens in the detection process, where the police or Ministry of Justice take the initiative, as opposed to detection by the citizens themselves.<sup>864</sup> Various individuals report that they are searching for (perpetrators of) child pornography offenses, for reasons not of a sexual nature, and in so doing are taking part in civilian detection.<sup>865</sup> Civilian detection has drawbacks in principle and in practice. Detection is primarily a police matter, which requires professional knowledge and expertise. In addition to this, the privacy of potential suspects is under threat, as civilians are not bound by the privacy guidelines that apply to government bodies.<sup>866</sup> In addition, accusations can take place that prove to be false accusations.

### **3.8.4 Direction of public-private sector partnerships in the Netherlands**

Since the blocking of websites involving child pornography has not been enforced in the Netherlands, the Internet Safety Platform no longer has an active working group that promotes public-private sector partnerships and gives them direction. At the same time, it is unclear as to how current interventions from public-private sector partnerships link in with the focus formulated by the police, the Public Prosecution Service and the Ministry of Security and Justice, and as to how these interventions fit in with the overarching focus of the effort to combat child pornography in the Netherlands.

859 Stol et al., 2008, pp.85-86. The liability referred to here is purely reactive: Article 14 of the EU Electronic Commerce Directive safeguards ISPs from the duty to pro-active supervision.

860 [www.ecp-eqn.nl/werkgroep-notice-and-takedown](http://www.ecp-eqn.nl/werkgroep-notice-and-takedown) (viewed 24 May 2011).

861 'Beperkte omvang internetfilter bewijs symbolpolitiek' [Limited scope of Internet filter proves symbolic policy], Bits of Freedom, 28 June 2010, [www.bof.nl/2010/06/28/beperkte-omvang-internetfilter-bewijs-symbolpolitiek/](http://www.bof.nl/2010/06/28/beperkte-omvang-internetfilter-bewijs-symbolpolitiek/) (viewed 1 June 2011); see also Stol et al., 2008, pp.85-87 and Bonnici, 2008, pp.72-73.

862 Sommer & Brown, 2011, p.30; Taylor & Quayle, 2003, p.203.

863 Written information from Information Society and Media project officer, Directorate-General, eContent & Safer Internet from the European Commission to the Hotline Combating Child Pornography on the Internet,, 11 April 2011.

864 Cornelissens & Ferweda, 2010, pp.25-26, 33.

865 Lanning, 2010, p.125.

866 Cornelissens & Ferweda, 2010, p.26.

The Ministry of Security and Justice, the Public Prosecution Service and the police have developed a clear focus with regard to the judicial approach to tackling child pornography. In summary, this focus consists of a victim-oriented approach, which tackles hands-on producers of child abuse material in addition to removing victims from their situation of victimisation. Within the scope of this judicial focus, public-private sector partnerships are stated as an important prerequisite for tackling child abuse material on the Internet, but the direction that public-private sector partnerships could take in order to contribute towards putting a stop to child pornography has not been further developed.<sup>867</sup>

In connection with the judicial focus on child pornography, a possible focus on public-private sector partnerships and associated strategies can be derived from the literature and the interventions described in §3.8.3. This focus on public-private sector partnerships could be directed at the accessibility of child abuse material, identifying offenders and victims, and generating knowledge and resources to combat child pornography. Related strategies for achieving this focus include making the private sector and NGOs responsible for ‘sweeping clean’ the Internet environments, allowing the Internet community to participate in detection, encouraging citizens to take responsibility for the use of technology, and encouraging companies to operate in a socially responsible fashion whenever they offer digital services and products. A clear focus, with associated strategies, can also provide direction to the (further) development of a barrier model for child pornography.

#### *Barrier model for child pornography*

In 2009, the Minister for Justice established a Task Force to tackle child pornography and child sex tourism in order to combat child sex tourism and the production, distribution and downloading of material constituting child pornography.<sup>868</sup> One of the Task Force’s main tasks is to support the programme-based approach by means of a barrier model. A barrier model is an instrument used to promote an integrated and multi-disciplinary partnership for the tackling of child pornography, by exploring, amongst other things, whether other parties that are not currently involved would be able to play a role. The integrated identification of possible interventions for the combating of child pornography is key. After the barrier model had been initially set in motion by the Ministry of the Interior and Kingdom Relations at the time, the responsibility for the further development of this model was taken over by the Programme of Improvements in Tackling Child Pornography [*Programma Verbeteren Aanpak Kinderporno*]. The Programme of Improvements in Tackling Child Pornography expects the barrier model to make a contribution in tackling the problem head-on, by promoting collaborative actions, implemented together with partner organisations, and thereby preventing possible child pornography. In addition to this, it is assumed that the model will influence the working process and methods of completion of the process. The Programme of Improvements in Tackling Child Pornography additionally stated, in

867 The response of the Korpsmonitor 2010 to the question as to when the (national) plan for tackling child pornography could be regarded as successful was, ‘when [...] such a public-private partnership exists that would enable us to develop a preventive programme and tackle the problem head on’, *Programma Verbeteren Aanpak Kinderporno* [Programme of Improvements in Tackling Child Pornography], 2011, p.36.

868 Decision of the Minister of Justice of 6 November 2009, no.5627198/09, concerning the creation of the Task Force *Aanpak Kinderporno en Kindersekstoerisme*. Dutch Government Gazette, 2009, no.17325, 17 November 2009.

a written communication, that ‘a complete palette of strategies to combat child pornography will significantly increase the overall effectiveness. The experiences gained from the Amsterdam sexual abuse case as well as the development of intervention strategies provide a valuable contribution to the further improvement of the process of tackling child pornography and of the associated barrier model.’<sup>869</sup>

#### Focus

The number of child pornography cases that involve possession with no concrete evidence of abuse<sup>870</sup> is so great that the police cannot act on all of them.<sup>871</sup> The current shift of focus of the police, the Public Prosecution Service and the Ministry of Security and Justice involves these parties using a victim-oriented approach to place a focus on perpetrators of child pornography offenses with a high risk of hands-on abuse, as well as upon identifying victims.<sup>872</sup> However, the problem of the sheer number of hands-off viewers will continue to exist for as long as the material remains so easy to obtain and distribute via the Internet, see §1.4.1.2.<sup>873</sup> Besides this, the government cannot keep an eye on all movements on the Internet, and for this reason, other parties have been assigned to detect instances of abuse. Finally, research reveals that there is sometimes a lack of digital knowledge and experience within the government.<sup>874</sup> The focus of public-private sector partnerships needs to be complementary to the focus of the police, the Public Prosecution Service and the Ministry of Security and Justice, in addition to providing an answer to the problem outlined above.

Public-private sector partnerships could therefore focus more emphatically on the accessibility of (old) material in open Internet environments. The literature considers reducing the accessibility, as a type of situational prevention, which may be able to reduce the number of perpetrators of child pornography offenses.<sup>875</sup> It could be discussed whether the government would be able to assume a facilitating role in this – as the example of PhotoDNA demonstrates – by providing the private sector and NGOs with the hash codes of known material, for example, with the intention of removing this known material. In so far as offenders, victims and new material are concerned (usually from less easily-accessible Internet environments, see §1.4.1.2), the NGOs, companies and the Internet community could fulfil a supporting role for the purpose of criminal detection by actively identifying, registering and reporting the existence of such material. Various social networking sites (SNSs) in the Netherlands have already formulated safety policies and appointed individuals – community managers – to implement this policy, whereby abuse is reported to the police. Finally, private parties, NGOs, the scientific domain and the Internet community can contribute to the improvement of knowledge and the provision of (technological) resources to organisations with or without a public responsibility, such as the police,

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869 Programme of Improvements in Tackling Child Pornography, 2011, p.24.

870 These usually relate to cases that only involve low-value evidence such as IP-addresses, see Liberatore et al, 2010 and §3.4.

871 See §3.4.

872 Alternative means of settlement (whether or not pertaining to criminal law) probably ensue for other perpetrators of child pornography, see §3.5.1.

873 Taylor & Quayle, 2006. In addition to this, victims of child pornography suffer harm as a result of the permanent existence of the images, see §3.7 and Von Weiler et al., 2010.

874 Stol, 2010.

875 Taylor & Quayle, 2006, pp.175-176.

probation and after-care services, and services that provide assistance, but also interventions by NGOs and the business sector themselves.<sup>876</sup>

### Strategies

A possible strategy that is (mainly) applicable to reducing the accessibility of (old) material constituting child pornography is sweeping Internet environments clean of child abuse material and related content (for example search terms related to child pornography) as much as possible by removing or adding data. This strategy is based on the situational factors that are related to searching, the pre-criminal situation and the tactics of individuals who view child abuse material,<sup>877</sup> and child pornography as data for the Internet<sup>878</sup> (see §1.4.2).

Various interventions that are described in §3.8.3 are focused on removing child abuse material as much as possible once it has been identified, such as online communities and ISPs applying the voluntary and statutory NTD regulations. In the discussion about whether or not to block child abuse material, the motto 'don't block, but remove' is often used.<sup>879</sup> Removal is based on data minimisation: material needs to be removed from the Internet. Data related to child pornography, such as search terms related to child pornography on search engines and links to material constituting child pornography, should also be removed, where possible, by companies, NGOs and the Internet community. Data maximisation is the opposite of data minimisation. Internet environments where material cannot be removed are sometimes suitable to add data to.<sup>880</sup> The motto here is, 'If you have a needle, create a haystack!'<sup>881</sup> Private parties and NGOs are able to participate in certain Internet environments in the same way as consumers of child abuse material. They are able to add data by supplying large numbers of files and/or reference with titles related to child pornography, which in actual fact simply contain a warning or refer to self-help programmes such as [croga.org](http://croga.org) or Stop it Now!. In addition to this, not only the quantity but also the nature of the data is important in data maximisation. NGOs and organisations that provide assistance could draw attention to self-help programmes in open Internet environments where offenders

876 This does not necessarily involve obligations of ISPs to participate in a criminal investigation or commercial product development by the private sector demanded by the police, see 'NFI en NCIM Groep sluiten partnership' [NFI and NCIM Group form a partnership], Dutch Forensic Institute, 4 August 2011, see [www.nederlandsforensischinstituut.nl/nieuws/2011/nfi-en-ncim-groep-sluiten-partnership.aspx?cp=68&cs=18251](http://www.nederlandsforensischinstituut.nl/nieuws/2011/nfi-en-ncim-groep-sluiten-partnership.aspx?cp=68&cs=18251) (viewed 10 August 2011). Such interventions are not included in the previously-stated definition of public-private sector partnerships.

877 Taylor & Quayle, 2006, pp.169-195.

878 Van der Hulst & Neve, 2008, pp.50-51.

879 'Europees akkoord: beelden kindermisbruik niet blokkeren maar verwijderen' [European agreement: do not block, but remove images of child abuse], GroenLinks, 28 June 2011, [www.europa.groenlinks.nl/Europees+akkkoord%3A+beelden+kindermisbruik+niet+blokkeren+maar+verwijderen](http://www.europa.groenlinks.nl/Europees+akkkoord%3A+beelden+kindermisbruik+niet+blokkeren+maar+verwijderen) (viewed 10 August 2011).

880 Data maximisation is also used within the scope of detection of material constituting child pornography on peer-to-peer networks. Liberatore et al. (2010) developed a method that places unique identifying tags in the storage space of a downloader of child abuse material on peer-to-peer networks. This technology is now being used by institutions involved in detection in 49 states in the USA.

881 Presentation 'Informatie, privacy en veiligheid' [Information, privacy and safety] by B.J. Koops (University of Tilburg) 21 January 2011 in the Hague.

(in the early stages) of child pornography come together,<sup>882</sup> because they are still in a preliminary stage of delinquent behaviour and would probably be receptive to therapy (see §3.4).<sup>883</sup> However, examples of data maximisation in the field of child pornography are yet to be found.<sup>884</sup> These NGOs and organisations, or the police, could also devise strategies in order to be able to monitor similar Internet environments – such as newsgroups – and to interfere with them if necessary.<sup>885</sup>

One of the focal points proposed above is that parties other than the police are able to fulfil an identifying role for the purpose of criminal detection, which involves these parties being able to provide the government with (digital) knowledge and resources. A strategy that links in with the focal point stated above is to actively inform relevant actors about child pornography and to involve them in the tackling of child pornography. The Internet community is already identifying material, offenders and victims.<sup>886</sup> Use is already being made of citizen participation in tackling child pornography, but other initiatives that actively involve public-private sector partnerships in the Internet community are yet to be found. Crowd sourcing is an example of citizen participation, based on the assumption that a group of people as a whole always know more than a few experts.<sup>887</sup> The development of a child pornography barrier model is an example that would lend itself to crowd sourcing. Websites such as [tweakers.net](http://tweakers.net), [webwereld.nl](http://webwereld.nl) and [security.nl](http://security.nl) see hundreds of thousands of visitors from the Netherlands each day who have a (professional) interest in topics related to ICT.<sup>888</sup> It is likely that innovative ideas will originate from professions such as software developers, Internet entrepreneurs, online marketers, traffic brokers and security officers. Problems that arise in criminal investigations involving child pornography could be presented to the Internet community in an abstracted manner, in the same way in which cold cases and ongoing cases are put online.<sup>889</sup>

A subsequent potential strategy is to increase the personal responsibility of companies and the Internet community, similar to the way in which the previously-mentioned Association of Sites Advocating Child Protection is attempting to do so. The private sector is introducing new technologies to the public. How-

882 See also §3.6.3.2. The online subculture is an important component for people with a preferential or exclusive predilection for children. These people come together to discuss their sexual preferences on various open (Dutch-language) forums, see §1.4.2.

883 Taylor & Quayle, 2006, p.187.

884 Possibly that experiences gained from the entertainment industry with regard to preventing content from similar Internet environments may be able to contribute, see [www.newswise.com/articles/view/504833/](http://www.newswise.com/articles/view/504833/) (last viewed 25 May 2011).

885 See 'Inhoud pagina: Kinderporno op anonieme, diep verborgen websites' [Content page: Child abuse material on anonymous, well hidden websites], Public Prosecution Service, 31 August 2011, [www.om.nl/actueel-o-nieuws-persberichten/@156657/kinderporno-anonieme/](http://www.om.nl/actueel-o-nieuws-persberichten/@156657/kinderporno-anonieme/) (viewed 8 September 2011).

886 In fact, the Hotline Combating Child Pornography on the Internet is receiving reports that way, see §3.1.

887 Cornelissens & Ferweda, 2010, p.29.

888 The involvement of these ICT professionals in the combating of child pornography emerges, amongst others, from responses that can be found on various websites for ICT experts, see for example [www.tweakers.net/nieuws/71304/hoofdverdachte-in-kinderpornozaak-zou-encryptie-expert-zijn.html](http://www.tweakers.net/nieuws/71304/hoofdverdachte-in-kinderpornozaak-zou-encryptie-expert-zijn.html)

889 [www.politieonderzoeken.nl](http://www.politieonderzoeken.nl), [www.politie-rotterdam-rijnmond.nl/gezocht/cold-cases.aspx](http://www.politie-rotterdam-rijnmond.nl/gezocht/cold-cases.aspx) and [www.nationale-recherche.nl](http://www.nationale-recherche.nl) (viewed 30 May 2011).

ever, this also brings with it a responsibility for the services and products to be safe. Socially responsible undertakings on the Internet are listed as providing a significant contribution to the prevention and combating of child pornography on the Internet.<sup>890</sup> The first initiatives to bring this about have already been set in motion. It is now important to roll out these codes of conduct, such as the Principles of safe Internet use<sup>891</sup> and *De juiste klik* [The Right Click]<sup>892</sup> and to encourage companies to implement these codes of conduct. In addition to this, the Internet community could bear responsibility itself for protecting users from child abuse material. The fact that businesses, individuals, NGOs and governments develop products and offer these (free-of-charge) does not only emerge from the examples in §3.8.3, but also from the Dutch browser designed for children, ‘mybee.nl’ and the search engine designed for children, ‘meester-sipke.nl’. These resources ensure that children up to the age of eleven only have access to safe websites for children, and that they are, in this way, less able to quickly come into contact with unwanted persons (grooming) and content (child abuse material). This all fits in with the theory of technological enforcement: large numbers of citizens have connected with technology; the government should therefore make use of the fact that citizens like to use technology and provide them with information technology with which they can help to prevent and combat child pornography.<sup>893</sup> As emerges above, concrete actions can, in practice, overlap with various strategies: standard privacy settings for children on SNSs are based on data minimisation, for example, and therefore form an example of socially responsible undertakings.<sup>894</sup>

### 3.8.5 Conclusion

#### *Direction of and interplay of forces in public-private sector partnerships*

As described in the sub-sections above, there are various public-private sector partnerships existing in the Netherlands and in other countries that are in the process of undertaking a variety of initiatives in order to combat child pornography. A possible focus and associated strategies can be derived from these interventions. It is therefore advisable to secure public-private sector partnerships – once again – within a platform, where the various forces at play can come together and can jointly give direction to this partnership.

Since the blocking of child abuse material in the Netherlands was not implemented, the Internet Safety Platform of ECP-EPN no longer has an active working group that promotes public-private sector partnerships in the field of child pornography. However, research carried out by Andersson Elffers Felix refers to

890 Hecht, 2008; Taylor & Quayle, 2006, p.192; Henriques, 2008.

891 ‘Principles for the safer use of connected devices and on-line services by children’, Draft 18 April 2011, Digital Agenda Assembly, 16-17 June 2011, Brussels.

892 [www.meldpunt-kinderporno.nl/files/The%20Right%20Click-%20eNACSO-%20FINAL-Dutch-01072010.doc](http://www.meldpunt-kinderporno.nl/files/The%20Right%20Click-%20eNACSO-%20FINAL-Dutch-01072010.doc) (viewed 26 May 2011).

893 The theory of technological enforcement is based on the principle that technology primarily regulates the behaviour of the people who actually use it. According to Stol, this was also the case when the Dutch police centrally blocked child abuse material in 2007. The project was very time-consuming for the detectors who would rather have spent this time detecting perpetrators of child pornography offenses. In addition to this, there was no serious indication to assume that this technological measure had a regulatory effect on the behaviour of those individuals using the Internet to search for child abuse material. Stol, 2010, pp.65-70.

894 See [www.childnet.com/downloads/YIGF-2010-statement-of-beliefs.pdf](http://www.childnet.com/downloads/YIGF-2010-statement-of-beliefs.pdf) (viewed 27 May 2011).

the importance of the existence of consultative bodies, in which relevant parties come together. A similar consultative body could boost and give direction to public-private sector partnerships, and at the same time develop new initiatives and reinforce existing initiatives. One central point could also be a point of contact and assembly for public-private sector partnerships and best practices from other countries. The Internet Safety Platform of ECP-EPN, which hosts the Blocking Child Pornography and Notice and Take-down working groups<sup>895</sup>, is an obvious choice to give direction to public-private sector partnerships. In order to prevent initiatives from interfering with the focus of the police or overlapping with the barrier model that is currently being developed, co-ordination with the Programme of Improvements in Tackling Child Pornography is desirable. It may well be that alongside the current Internet Safety Platform and the Programme of Improvements in Tackling Child Pornography, the National Cyber Security Centre provides opportunities to encourage public-private sector partnerships with regard to child pornography. In considering how to tackle child pornography, it should be noted that it is necessary to involve the Internet community on a more structural basis.

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895 See [www.ecp-epn.nl/platform-internetveiligheid](http://www.ecp-epn.nl/platform-internetveiligheid) (viewed 23 August 2011).



### 4.1 Core message

The Introduction concludes with the core message of the report. This is repeated here:

*Children are entitled to protection from all forms of sexual violence. The approach towards tackling child pornography must form part of an integrated approach towards tackling sexual violence against children. Connections, coordination and monitoring form essential elements of that approach.*

The Dutch government has the task, and the express intention, to do its part in protecting children from sexual violence. This task arises from – among other legislation – the aforementioned Lanzarote Convention on the protection of children against sexual exploitation and sexual abuse. Protection from child pornography also falls within the scope of this protection. The extent of the issue means however that such protection cannot solely be provided by a repressive approach, in which only the police, Public Prosecution Service and the Minister for Security and Justice bear responsibility. Prevention of offenses, identification and registration of offenders and ex-perpetrators, after-care for offenders, provision of assistance to victims and collaborations with private parties also form essential elements of the process. The task of coordinating the implementation of the Lanzarote Convention has been assigned to the Ministry of Security and Justice and the Ministry of Health, Welfare and Sport. It is clear that these Ministries have also developed the greatest number of initiatives in order to protect children from sexual violence. As a phenomenon, child pornography cannot be regarded separately from sexual violence; it would therefore be illogical to artificially separate the two in terms of policy. The findings in the previous chapters show that such a separation does in fact exist. This is regrettable, and results in situations where interventions are rendered less effective. The programmes carried out by the coordinating ministries need to be combined, and these ministries should jointly realise measures to combat sexual violence against children, including child pornography. Partnerships with other governmental bodies, institutions and professionals involved should also be sought. Knowledge of the complex phenomenon, as provided in the first chapter, is relevant when implementing the strategy and collaboration.

On the basis of the above, it would seem logical to arrive at an integrated policy for the protection of children from sexual violence. Strictly speaking, this falls outside the scope of the reporting task with regard to child pornography. A consideration of measures to combat child pornography outside the framework of the measures for tackling sexual violence would do no justice to the reporting task. The obvious importance of connections between the implementation processes and the many actors involved constitute sufficient reason to recommend the government to implement an integrated programme of measures, coordinated by the responsible ministries. Independent monitoring would also form part of that process. In order to ensure continuity, all of this should be enshrined in law.

The foundations for the core message have been set out in the previous chapters.

Hereafter, the findings with regard to policy and implementation will first of all be outlined, as described in Chapters 2 and 3. Problem areas and points for improvement will be listed and the possibilities to form connections between actors and processes will be explained.

Finally, the core message will be set out in specific terms.

## 4.2 Where do matters stand at present?

### 4.2.1 Child pornography as a complex phenomenon

The phenomenon of child pornography encompasses perpetrators, victims and technology (consisting of abusive material involving children on the one hand and technology, primarily ICT, which makes it possible to produce, distribute and possess such material, on the other hand). Each of these elements varies considerably, and the nature of perpetrators, victims or material is not clear-cut. The commercial circuit differs from the amateur circuit as far as perpetrators, victims and material are concerned, and the behaviours may vary as well. The issues that confront adolescent or post-adolescent victims are different to those involving pre-adolescent victims, and the perpetrators, as well, do not form a homogenous group. Some individuals only view child abuse material, whilst other users of such material also physically abuse children themselves. This variation has implications for the way in which child pornography is tackled. If policy and implementation are to be successful, they must reflect the diversity that exists in that area.

At present, child pornography actually takes the form of digital child abuse images. Technological developments are rapidly superseding one another and will almost always influence the phenomenon of child pornography. What is more, online aspects increasingly feature in other forms of sexual violence against children. Perpetrators and potential perpetrators, as well as victims, use ICT intensively. Under-age victims can also be found in cyberspace. The offline and online worlds often converge into one as far as they are concerned, and this means that both worlds must be taken into account in legislation, policy and implementation. Technological, empirical and legal expertise and the associated means must be sufficient to keep pace with the recent developments in the digital domain. ICT sometimes presents a challenge, yet it can also provide a means of preventing and combating child pornography.

The issue of child pornography is not bound by time or space. Individuals have been producing and viewing child abuse material since visual technology (photography) came into existence, and with the techniques that exist today, it is likely that child abuse material – even very old material – will still be available for a very long time to come. Space is hardly a factor at all: in the past, individuals who sexually abuse children have always been able to find their victims and other perpetrators. However, ICT has added a new dimension to the phenomenon, namely cyberspace, which enables perpetrators, victims and material to come directly into contact with one another anywhere and at any time. It is important that continuity is achieved in tackling child pornography, and in this regard it is highly likely that a similar issue exists in other countries in relation to the strategy used to tackle the problem. As far as efforts to prevent and tackle child pornography in the Netherlands are concerned, it will sometimes be desirable to seek international cooperation, but this also means that we can examine whether experiences in other countries can be of benefit to the strategy used to tackle the issue in the Netherlands.

The extent of the phenomenon of child pornography – perpetrators, victims and material – is unknown. As far as the number of perpetrators and the quantity of child abuse material are concerned, it may be argued that the extent of the problem is increasing. This means that we must seek a strategy to tackle child pornography both within and beyond the criminal justice process. It is not known what proportion of minor victims of sexual abuse are also victims of child pornography, nor can any judgments be made with regard to the numbers of minors who are victims of phenomena such as sexting and contact made online for a sexual purpose (grooming). It is therefore necessary to investigate these areas in the Netherlands in order to develop and implement evidence-based policy.

Child pornography is closely associated with other forms of sexual abuse or sexual violence against children that is perpetrated in both the analogue and digital worlds. The legal framework has been useful in defining the area of investigation – Article 240b of the Dutch Criminal Code defines child pornography itself – but it is not the only perspective that can be used to address the subject. The actual problem involves protecting children from sexual violence. In order to achieve this, however, an effective understanding of the phenomenon is indispensable.

#### 4.2.2 The government agenda

For the purpose of this report, the policy responses of the government to the development of the phenomenon of child pornography have been investigated. Attention has been devoted to policies that are explicitly directed towards child pornography, but also to programmes that are directed towards child abuse in more general terms, including sexual violence against children, as well as the various programmes in the field of domestic violence. Sexual violence against children also forms a part of this issue. The extent to which the programmes mentioned are, or could be, of indirect importance in tackling child pornography has also been considered. From this point of reference, it appears that the policy only partially reflects the development, complexity and context of the phenomenon of child pornography.

Current policy has been examined, but the way in which the governmental policy has developed over the past decades and the extent to which lessons can be learnt from prior policies have also been analysed. What is striking is that with regard to child pornography, a major focus has been placed upon an incident-driven policy. The only integrated programme to address the sexual abuse of children, in which child abuse material formed a component, was the National Action Plan for Combating Sexual Abuse of Children (NAPS). The NAPS ended in December 2002. After 2002, the framework for cooperation that was created through the NAPS was no longer maintained, in the sense that child pornography was no longer integrated into a programme aimed at combating sexual violence against children. Continuity with regard to this component was therefore absent. The intention of the NAPS was to integrate the measures for tackling child pornography, but as a result of the NAPS ceasing to exist, it seems as if the digital and analogue strands of the policy have come apart. Within the policy, child pornography tends to be branded as cybercrime and is therefore merely to be dealt with by the judicial authorities. The Minister for Youth and Families emphasised this in response to Parliamentary questions from Member of Parliament Verdonk,<sup>1</sup> with the remark that this topic primarily falls within the remit of the Ministry of Justice.<sup>2</sup>

1 *Parliamentary Papers II 2006/07*, 31 001, no.16.

2 The name of the Ministry of Justice was changed into Ministry of Security and Justice in October 2010.

In the period following this, the Ministry of (Security and) Justice assumed responsibility for, and took the initiative in, the task of combating child pornography. As seen in various programmes, this seems to be directed towards the implementation of measures, or the improvement of existing measures to tackle child pornography, such as the Programme of Improvements in Tackling Child Pornography, the *Korpsmonitor* and the policy implemented by the police with regard to the approach towards tackling child pornography in general. The starting point for this is the enforcement of Article 240b of the Dutch Criminal Code. This approach, initiated by the Ministry of (Security and) Justice, is primarily a digital approach and is primarily based on repressive measures. Nevertheless, this ministry also employs an analogue and (partly) preventive approach towards combating sexual violence against children, as a component of the domestic violence programme.

Other ministries are also taking initiatives to develop policies aimed at combating and preventing child abuse, combating sexual violence (in dependency relationships), promoting the ability to defend oneself against sexual approaches and promoting sexual health, creating safe day-care centres, and increasing children's knowledge about digital safety. Amongst other things, this involves immediately combating or preventing sexual violence against children. Work is almost always carried out on an inter-departmental basis. Initiatives sometimes start out in the form of programmes implemented by a single ministry, and other departments join in at a later stage, whereas other programmes are implemented government-wide. An example of the latter is the initiative of the Ministry of Justice with regard to domestic violence that later went on to form part of the governmental policy. In addition to the Ministry of Security and Justice, the Ministry of Health, Welfare and Sport, as coordinating ministry in this field, also instigates a great many initiatives.

The Sexual Health Programme, the Regional Plan to Tackle Child Abuse, and educational programmes at schools and day-care centres can also be listed as examples of programmes aimed at the prevention of sexual violence. The Ministry of Security and Justice, and the Ministry of Health, Welfare and Sport, as well as the Ministry of Education, Culture and Science, the Ministry of Social Affairs and Employment, and the Ministry of Economic Affairs, Agriculture and Innovation are involved in these programmes. These broad, integrated programmes do not generally devote much attention to the digital aspects of sexual violence against children that have developed in recent years, nor is a great deal being done to investigate the opportunities that the digital world presents for preventing and combating child pornography.

No effective connection between the judicial, explicit approach towards tackling child pornography and the more wide-ranging initiatives with regard to the prevention and further tackling of sexual violence has been formed. In this respect, a comprehensive policy framework, in which analogue and digital developments in the context of sexual violence against children are connected, does not yet exist. This means that this aspect of the policy is fragmented. As a result, the complexity of the phenomenon of child pornography is also insufficiently represented in policy.

Policy initiatives with regard to child pornography seem to be incident-driven, and there appear to be gaps in the continuity of the policy. This point is illustrated by the way in which the previously-stated NAPS disappeared without a sound. Nevertheless, the existing governmental initiatives show great promise. The process of linking together the various programmes is the area in which progress can be made. Initiatives have also already been developed in the practical implementation programmes that seek to form such connections, and these have been described as best practices in the previous chapters.

## 4.2.3 Implementation

### 4.2.3.1 General

On a practical level, the complexity of the phenomenon of child pornography, and the variety of forms that it is able to take, present considerable challenges for the implementation of measures for the prevention and combating of child pornography. This report set out to examine the status of the issue in terms of the constituent processes that can be distinguished from one another in this connection. These processes include prevention, registration and identification, detection, prosecution and trial, after-care and supervision of offenders, and the provision of assistance to victims. The ways in which these processes are implemented have been investigated and analysed, encompassing various programmes that are underway and are directed towards perpetrators and victims of domestic violence, child abuse, sexual health and sexual violence. From this analysis it has emerged that in practice, little attention is devoted to aspects related specifically to child pornography, such as digital forms of sexual violence against children and the inter-relatedness of the online and offline worlds of offenders and victims. The situation with regard to the repressive implementation processes, such as detection, prosecution and trial and probation and after-care, in which Article 240b of the Dutch Criminal Code is, of course, the guiding principle for the actors, is a different one. However, even in these processes, the connection between online and offline sexual violence can sometimes be incomplete.

As child pornography takes place within the wider context of sexual violence against children, and due to the fact that the practical implementation of the relevant approach is, in many cases, not specifically directed towards child pornography, a considerable part of this process involves the implementation of programmes against sexual violence, with no specific context that relates to child pornography.

For interventions in the digital domain, the government is, in part, dependent on collaborations with private parties. Bearing this in mind, the extent to which public-private sector partnerships have been taking shape has been investigated.

Finally, the investigation also focused on the extent to which connections have been formed between and within the processes where this is necessary, and on the issue of whether or not links exist between policy and implementation, with which policy can be translated into practice and vice versa. Many of the problem areas found in the processes of implementation seem to be related to the complexity of the phenomenon and the fragmentation in terms of policy.

### 4.2.3.2 Prevention

The prevention of child pornography is evidently closely related to the prevention of sexual abuse of children. After all, material constituting child pornography cannot (usually) be produced without the sexual abuse of children having taken place. Potential perpetrators and victims therefore would appear to form the most obvious target groups of measures designed to prevent the sexual abuse of children. However, as the sexual abuse of children takes place within, and is influenced by, specific situational and social contexts, amongst other things, the literature takes a broader approach as a basis for the prevention of sexual abuse of children. This approach gives rise to four target groups for the implementation of preventative measures: perpetrators, victims, situations and communities. Primary prevention aims to prevent individuals from becoming perpetrators or victims by means of general provision of information, and the raising of awareness among these target groups as a whole. This type of preventive measure is geared towards each of the four target groups as a whole. By contrast, secondary prevention is

specifically concerned with those individuals, groups and locations that pose a risk within the four target groups. In comparison with primary prevention, secondary prevention has the advantage (in theory) that the measures are aimed at the individuals and situations who/that require them. Finally, tertiary prevention is concerned with intervention measures for individuals, groups and situations *after* sexual abuse has already taken place. This type of measure aims to prevent abuse from continuing or being repeated. Tertiary prevention measures relate to early identification and the limitation of the harm done to victims, for example. These aspects will be discussed later.

Prevention measures within the perpetrators target group currently focus upon those who already have convictions, and far less upon prevention with respect to individuals who are at higher risk of committing a sexual offence against children for the first time, but have not yet done so. A very promising measure that (also) targets individuals who have not yet committed offences of production, distribution or possession of child abuse material or sexual abuse of children will be the introduction of the British-initiated helpline Stop it Now! in the Netherlands in 2012.

With respect to the prevention of sexual abuse of children, a great deal of emphasis is placed upon the (potential) victims. This is not entirely without contention, however, especially in relation to young children. Adults should bear responsibility for children's safety. Little is known of the actual preventive effect of prevention programmes targeted at children, and many programmes devote no attention to new media and the risks that these pose to young people. All prevention projects concerned with sexual abuse must therefore expressly address the dangers associated with online behaviour, including those that relate to child pornography.

As far as many perpetrators are concerned, an important reason for abusing children is that they have the opportunity to do so. The purpose of situational prevention is to remove this opportunity or to reduce the number of opportunities. The Gunning Committee has proposed a number of measures with regard to situational prevention, which include measures to implement the four eyes principle and a registration system for staff at day nurseries. Although the Gunning Committee concerns itself exclusively with day nurseries, it could or should also be possible to apply such measures in other sectors in which people work with children.

A fourth target group that can form the focus of prevention measures is the general public. Although the general public are well aware of the phenomena of child sexual abuse and child pornography, many misconceptions exist in relation to perpetrators and victims of such offences. Moreover, detailed reporting of major abuse cases can give rise to anxiety amongst the public, whilst they are not given the means to protect themselves and their children from abuse. To this end, it could be useful to take an approach such as that of a public health model, in which the sexual abuse of children is viewed within the broader context of public health. Such a model can focus upon education and the identification of risks, and it can also target perpetrators. The absence of accurate information and the attitude of the public towards paedophilia can make the existing barriers for paedophiles to seek help even greater. In order to break through this barrier and to actually achieve a preventive effect, it is important that the public is informed of the nature of victims and perpetrators. As yet, no such approach is used in the Netherlands.

The two greatest challenges we face in the prevention of child pornography and the closely associated wider phenomenon of sexual abuse of children involve the translation of knowledge and expertise into

evidence-based prevention policy on the one hand, and prevention at each of the three prevention levels on the other hand. It should therefore be recommended that an all-encompassing evidence-based prevention strategy is developed that consists of a combination of primary, secondary and tertiary prevention measures.

#### 4.2.3.3 Identification and registration

The identification of child abuse material forms an important part of tertiary prevention of child pornography. The material can be identified in relation to perpetrators, victims or content.

Perpetrators themselves and individuals in their immediate environment are able to provide or notice indications of abuse having been committed. To date, there have still been no specific concrete measures taken with respect to the recognition of potential offenders, and the immediate actions to take following such recognition. The Stop it Now! project that is to be set up in the Netherlands plays an important role in addressing the lack of activities in that regard. However, the Hotline Combating Child Pornography on the Internet, which is involved in launching this project in conjunction with the De Waag outpatient forensic centre, must keep this new role (the identification of perpetrators) strictly separate from its other duties (the identification of content and, via [Helpwanted.nl](https://www.helpwanted.nl), identification of victims). Individuals in close proximity to perpetrators can also report indicators that they have noticed to *Stichting M* [Report Crime Anonymously]. There is still potential for the police to increase the amount of feedback that they provide to Report Crime Anonymously.

Victims, individuals that form part of their family or friends, and professionals who directly come into contact with victims can report or notice indications of children having been abused. Significant steps have already been taken with regard to identifying situations involving individuals who have become victims of sexual abuse against children and the actions that should be taken by those in close proximity to the victims, both in a personal and professional context. It is important that the public campaigns that have been developed are continued, and that these campaigns also pay attention to indicators in digital media. In addition, it is expected that the forthcoming Compulsory Reporting Code for Domestic Violence and Child Abuse can ensure that professionals no longer lack the means to undertake activities. The use of a reporting code will probably result in more frequent interventions in the event of any suspicions. Individuals in close proximity to victims, both in the personal and professional sphere, have many bodies which they can contact, and the most obvious ones would be the AMKs [Child Abuse Counselling and Reporting Centres]. BNRM conducted an exploratory study that showed that the additional dimension of victimisation as a result of child abuse material is generally not recognised or acknowledged. It is not standard practice for AMK staff members to ask questions in relation to child abuse material in cases of sexual abuse. No specific care provision is available in relation to this aspect either. Staff of AMKs do not have sufficient knowledge of child pornography and, more broadly speaking, of the digital indicators of abuse, due to shortcomings in training. It is important that more attention is paid to this aspect. Victims themselves are able to contact organisations such as *Kindertelefoon*. Unfortunately, *Kindertelefoon* does not record details of child pornography in cases of sexual abuse against children. A positive development, however, is that the organisation now actively refers children to Youth Care Agencies. In addition, it is now possible for victims to send a report, specifically in cases of online abuse, to [Helpwanted.nl](https://www.helpwanted.nl). Victims will also soon be able to use an online 'reporting button', which is currently being developed within the scope of the *Digivaardig & Digibewust* [Digitally Skilled and Digitally Aware] programme. It is important in this regard that the 'behind-the-scenes' aspects of the reporting button initiative are well-organised.

Internet users may (unwillingly) encounter child abuse material on the Internet and they can report this content that they have identified to the privately-run Hotline Combating Child Pornography on the Internet and/or the Cyber Crime Reporting Website run by the police. It is important that material that has been reported is removed by ISPs as soon as possible. In order to ensure that this happens, the agreements between the Hotline Combating Child Pornography on the Internet and the police must be revised. The British counterpart hotline, the Internet Watch Foundation, may serve as an example in this regard. It may be possible to consider expanding the remit of the Hotline Combating Child Pornography on the Internet, for example to extend to monitoring and/or shutting down forums and networks – possibly within the scope of the Stop it Now! project.

#### 4.2.3.4 Detection

Child abuse material in the hands of the police forms the evidence that sexual abuse has taken place. The focus in the criminal investigation must still be upon victim identification, however. That is also the case in theory, but practice has shown that this approach is successful in only a few cases. The police have little information *a priori* in relation to a potential perpetrator, and it is often nothing more than an internet identity. The information that they obtain is only an IP address at which activities connected with child pornography take place. It is not known whether (a) victim(s) is/are involved at this point. However, the police are confronted with hundreds of proposals for investigation every year, and consequently it is difficult to achieve the shift in focus from tackling possessors to actually tackling the producers. As a result of this, searching for victims of sexual violence via the Internet is not very effective. Conversely, every victim who is found means that the effort expended is justified. It is hoped that the new police structure may perhaps offer a solution.

The new structure should certainly combine sex offence specialisms with digital and tactical expertise. The use of additional capacity is essential in this regard. The Minister for Security and Justice has announced that additional capacity will be made available to tackle child pornography. The way in which this capacity is to be divided up must be taken into account. The pooling of expertise and competencies could also improve efficacy. The multi-disciplinary team of the KLPD under the management of the team leader from the Team High Tech Crime uses a perpetrator-oriented approach (analysis of e-mail and chatroom traffic of perpetrators), which has added an additional dimension to the working process. The *Team Beeld en Internet* [Images and Internet Team] employs a primarily victim-orientated policy (mostly analysis of the images). Perpetrator and victim-orientated detection activities should be combined at a single site, in which the competences in the digital domain should be merged with sex offence specialisms. Perpetrator networks must be fully investigated, as part of which the children appearing in images of sexual abuse must also be taken into account. Lessons learnt from the successful collaboration in the Amsterdam sexual abuse case can be applied in this regard.

A solution will also need to be found to two important challenges to the new police structure. The first challenge involves prioritisation. In general, we can conclude that the majority of the regional police forces and the BRTs focus their activities on the processing of investigations without carrying out a more detailed investigation into the abuse. The TBI prioritises its work in conjunction with the national coordinating public prosecutor in child pornography cases, but this prioritisation has been neither standardised nor described. The second challenge is the number of pending cases which forms a burden for the police and the judicial authorities. The proposed new structure does not (yet) offer any insight into the way in which those cases could be worked through, other than adopting the alternative means of settling cases. No analysis of the nature of the pending cases is available, and consequently

it is almost impossible to draft a policy. The minimal capacity available has also been designated as a cause for the number of pending cases. This is the issue, however, as the backlog of cases should increase if an additional 100 to 300 cases are received every year. This is not happening, though; although the number of pending cases cannot be controlled, it is nevertheless relatively stable, and even decreases now and then. An investigation of the inflow and outflow of the pending cases could provide an insight into this situation. The existence of pending cases may potentially be the result of the low priority that is assigned to child pornography cases, the working method being used, or the influx of investigations from other countries. The assumption that a shortage in capacity is the cause of the backlog of cases is partly unfounded. A potential solution could be to develop an international prioritisation model. To this end, the possibilities for making international agreements in this regard could be explored further.

Two challenges that need to be dealt with, regardless of changes to the police structure, involve the effectiveness of victim identification. For this purpose, parties could seek alignment with cases of sexual abuse, in which data storage media must *always* be seized. After all, seeking to identify victims via the Internet is not always effective and it frequently occurs by chance. The Implementation Provisions concerning Child Pornography now state that when forms of sexual violence against children are reported, the possibility that child abuse material may have been produced must be taken into account at all stages of the investigation, and a search must be carried out, *if possible*. By emphasising the importance of seizure of data storage media in both the Implementation Provisions concerning Child Pornography and the Implementation Provisions concerning Public Decency Offences, the efficacy of detection can be improved and the focus can actually be shifted to the abuse. Secondly, more information regarding the effectiveness of detection needs to be collected. For example, the number of victims that were found via the Internet is practically unknown. For that reason, details of victims must be recorded. As a result, we will have greater insight into the effectiveness of detection, which may have implications for the policy to be implemented.

#### 4.2.3.5 Prosecution and trial

Article 240b of the Dutch Criminal Code encompasses various forms of conduct, ranging from gaining access to and possession of child abuse material to its production and distribution. The formulation of the section of the law does not, from the statistical material, lay out how prosecution and trial relate to the various forms of conduct. A formulation consisting of various categories should be taken into consideration. It is possible that the new forthcoming EU Directive provides occasion for a re-examination of the formulation of the current provision of penalties.

The above distinction between various forms of conduct is also relevant for imposing sentences. In practice, the court usually imposes a suspended custodial sentence in combination with a community service order. From the figures, there appears to be a clear tendency towards imposing more severe sentences: the proportion of non-suspended or partially suspended custodial sentences increased in the period between 2006 and 2010 and in 2010, a community service order was imposed less often as the main sentence. At present, it is still unclear if, and to what extent, the possibilities for imposing community service orders will be limited in the future for cases involving a breach of Article 240b of the Dutch Criminal Code. Limiting the possibilities to impose a community service order, particularly if this would no longer be possible in combination with suspended sentences, would in any case, provide courts with fewer opportunities to tailor the sentence to the individual case. In this context, possibilities for influencing behaviour by means of supervision on the basis of conditions imposed for a suspended sentence, for example, must also be taken into consideration.

In June 2011, the government stated in a letter to the House of Representatives that alternative methods of settling cases must be sought. This mainly concerns the possession of child abuse material. The distinction between the different forms of conduct is also relevant here. However, the rationale behind abolishing or limiting the possibility to impose a community service order ('stricter sentencing') does not seem to correspond with the alternative means of settlement which the Public Prosecution Service and (also) the government are seeking, namely for those offences contrary to Article 240b of the Dutch Criminal Code which are relatively mild cases such as the possession of a small quantity of material where the suspect has not had any previous involvement with the judiciary in this field.

Not all child pornography cases are the same. Considering the scope and complexity of some cases, it is necessary to consider whether this type of case should not also be made part of the remit of the National Public Prosecutor's Offices, so that the National Public Prosecutor's Office can play a guiding role in extensive, complex and cross-border cases and can also be involved in the development of innovative detection methods. At present, the prosecution of child pornography offences in the first instance is carried out exclusively at district court public prosecutor's offices.

The handling of criminal cases raises a number of –relatively – new questions with regard to identified victims of child pornography. This involves victims who are, by definition, particularly vulnerable, as they are always children. There is currently no statutory or other provision to guarantee the complete anonymity of victims in criminal proceedings in situations such as this, and as such to protect the identity and personal details of victims. The way in which this can be achieved, without this being contrary to Article 6 of the European Convention of Human Rights, must be investigated. An important question is how justice can also be done to victims when it is assumed that they will become victim time and time again as a result of the distribution of child abuse material (revictimisation), and what the consequences would be if it were possible for them to receive compensation. This should be investigated in more detail. The judge in the Amsterdam sexual abuse case is expected to deliver a judgment in the near future regarding the question as to whether parents of victims who are minors should be able to exercise the right to speak in criminal proceedings on behalf of their child. Since July 2011, the State Secretary for Security and Justice has been preparing a legislative proposal in which the parents of children younger than twelve can exercise the right to speak on behalf of their child. Whether parents, *as such*, should be regarded as victims and whether they should, for example, also be granted the right to speak in this capacity – and not just as a representative of their child – should also be investigated.

#### 4.2.3.6 After-care and supervision

The opportunities to provide supervision that are presented in this report focus primarily on supervision and after-care within the judicial framework. This framework also has its limits. In the event that a custodial sentence is imposed with a term longer than four years, no part of this sentence may be suspended, and special conditions cannot therefore be associated with this sentence. Supervision and after-care are therefore also not possible in this form. Supervision of a convicted sex offender can also no longer be provided after execution of the sentence. Unless placement under a hospital order has been imposed, if a convicted perpetrator has served their sentence or if the conditional release period has expired, it is not currently possible to enforce supervision and treatment within a judicial framework. From a scientific point of view, it is regretted that there is no longer a compulsory framework for supervision and treatment. It is also interesting that the State Secretary for Security and Justice has now indicated the need to carry out research into the possibility of extending life-long supervision to the supervision of sex offenders who have completed their course of treatment under a hospital order.

An integrated approach with respect to convicted sex offenders is lacking. Probation and after-care, the police, the Public Prosecution Service, municipalities, penal institutions, the Ministry of Security and Justice and the Ministry of the Interior and Kingdom Relations, scenario teams, Safety Houses, the Employee Insurance Agency, the Centre for Work and Income and community organisations such as housing associations and care institutions all play a role within the after-care and supervision of (convicted) sex offenders, and conflicts are sometimes unavoidable. For example, an exclusion order issued by a municipality to prevent social unrest may, at the same time, hinder probation and after-care supervision. At the same time, the institutions involved in the implementation are confronted with the complexity of the phenomenon of child pornography, incomplete policies and problems in the implementation itself. The lack of a uniform national framework in the matter of after-care and supervision of convicted offenders means that the regions need to learn how to deal with the above challenges themselves.

Collaborative associations such as Safety Houses, scenario teams and dual-track or multiple-track teams already exist in individual regions in the Netherlands, in which involved institutions come together. Those involved on the front line of such initiatives frequently state that the British supervision system, MAPPA, is desirable, whilst in the same breath referring to the Dutch Safety Houses and Dutch implementation of the COSA project. Central control by the probation and after-care service is a component of MAPPA on a case-level. The starting points formulated by the American Center for Sex Offender Management also seem to be of value to the Dutch situation and are encountered in the implementation in various regions. Lessons learnt in Den Bosch in the previously-mentioned sexual abuse case of the swimming teacher Benno L. were shared with authorities in Amsterdam for the purpose of informing parents in the Amsterdam sexual abuse case. The Action Plan to Tackle Child Abuse also propagates co-operation and an integrated approach. However, this plan is aimed specifically at children, and states the importance of co-operation with organisations aimed at perpetrators, but this is, as yet, not widely found in the various regions.

An integrated approach is desirable, and must be required to fulfil a number of conditions. The integrated nature of the approach should become apparent through the coordination of all processes, organisations involved, judicial frameworks and requirements. This coordination should promote a focus on the victim, the monitoring and evaluation of interventions, specialised knowledge and the training of employees, raising public awareness and co-operation between organisations. The integrated nature of the approach should also emerge from policy that takes shape on both a national and regional level. This also means mutual coordination between the regions: the problem does not disappear if the offender moves house or if an exclusion order is imposed, it simply moves elsewhere. A national programme and/or expertise centre as part of the Dutch Probation Service, as in the United States, could form a national policy framework, can serve as a key link between policy and implementation, can collect best practices in the region and can link up with similar programmes and expertise centres within detection and prosecution (Programme of Improvements in Tackling Child Pornography) in order to promote such an integrated approach. It is important that the specific problems surrounding youth sex offenders are also included. It is therefore not only a matter of youth sex offenders in the criminal justice chain but also those offenders who are treated under the forms of civil law. The organisation, registration and generation of expertise within the juvenile probation service is also a matter that requires attention.

#### 4.2.3.7 Victim assistance

Considering the various aspects involved in being a victim of child pornography offences, the provision of assistance is necessary in relation to the consequences of both the production of child abuse material, as well as the distribution, possession and viewing of that material. Production almost always involves sexual

abuse. General and specialist facilities are available to provide such assistance, for young children, older children and parents of children. However, the provision of assistance is barely designed for the possibility that the abuse takes place within the context of child pornography. There is little awareness of the possibility that the sexual abuse of children goes hand in hand with the production of images of this abuse, and that this forms an additional dimension of being a victim of sexual abuse, which requires integrated treatment.

Associated with this, little is also known about the consequences of the distribution and possession of material that constitutes child pornography for the children who are victims of this offense, and for their parents, and few programmes of assistance exist that are directed at these aspects of being a victim. In more general terms, little is specifically known about being a victim of sexual violence via the Internet, or about the inter-relatedness that may exist between sexual abuse and online sexual violence. Besides a few reporting and chat sites on the Internet, little in the way of assistance is on offer for victims of online sexual violence in the age group from twelve years upwards.

The system of care provisions needs to form connections between offline and online forms of being a victim of sexual abuse, and expertise needs to be built up with regard to effective methods and techniques for the treatment of the consequences of online sexual violence.

#### 4.2.3.8 Public-private sector partnerships

Various public-private sector partnerships existing in the Netherlands and in other countries are in the process of developing a variety of initiatives in order to combat child pornography. A possible focus and associated strategies can be derived from these interventions. It is therefore advisable to secure public-private sector partnerships – once again – within a platform, where the various forces at play can come together and can jointly give direction to this partnership.

Since the blocking of child abuse material in the Netherlands was not implemented, the Internet Safety Platform of ECP-EPN no longer has an active working group that promotes public-private sector partnerships in the field of child pornography. A similar consultative body could boost and give direction to public-private sector partnerships, and at the same time develop new initiatives and reinforce existing initiatives. One central point could also form a point of contact and assembly for public-private sector partnerships and best practices from other countries. The Internet Safety Platform of ECP-EPN, which hosts the Blocking Child Pornography and Notice and Take-down working groups, is an obvious choice to give direction to public-private sector partnerships. In order to prevent initiatives from interfering with the focus of the police or overlapping with the barrier model that is currently being developed, co-ordination with the Programme of Improvements in Tackling Child Pornography is desirable.

It may well be that alongside the current Internet Safety Platform and the Programme of Improvements in Tackling Child Pornography, the National Cyber Security Centre can provide opportunities to encourage public-private sector partnerships with regard to child pornography. The Internet community should also become more structurally involved in the efforts to tackle child pornography.

### 4.3 Connections

In the foregoing sections, conclusions have been presented with regard to the constituent processes that form part of the implementation of the child pornography policy. However, not everything has been covered here. It is also necessary to investigate the extent to which connections have been made between

and within the processes, where this is necessary. Furthermore, it is also important that links exist between policy and implementation, through which policy can be translated into practice and vice versa.

#### *Connections between policy and implementation*

There are, in any case, several good examples of the latter connections – the links that now exist between policy and implementation. The Programme of Improvements in Tackling Child Pornography, developed following a joint analysis of the problems in the approach to this issue by the police and the Public Prosecution Service, fulfils an important role for the practical implementation of the repressive approach. The Internet Safety Platform, administered by ECP-EPN, is an example of an organisation in which the government's policy was able to be translated into practice and vice versa, in this case with reference to public-private sector partnership initiatives in the field of ICT.

#### *Connections within and between processes*

Many collaborative initiatives have been developed over the years, which have resulted in effective connections being formed. So-called scenario teams exist, which respond by initiating the provision of assistance within a region in the event that (it is suspected that) serious child (sexual) abuse has taken place, as experience proves that situations involving serious child (sexual) abuse are very complex and require all institutions to work closely together. Consequently, connections are formed within the assistance services. However, such scenario teams do not operate in all regions. Multi-disciplinary teams also exist, which form connections between the processes. An example of this is the Tilburg Safety House. Here, a large number of organisations work together under one roof, combining an approach that is in-keeping with criminal law, attention and care for perpetrators, and the provision of assistance to victims. Safety Houses are not aimed at sex offenders in all regions. The Youth and Family Centres also play an important connecting role. The protocol 'Reports of child abuse sent by Youth Care Agencies to the Police and the Public Prosecution Service' is a fine example of cooperation between an organisation that provides assistance and the police.

#### *Connections between the approach towards combating child pornography and the approach towards combating sexual violence*

Despite the positive examples of connections described above, it is apparent that the connections that exist between the approach towards tackling child pornography and the approach towards tackling sexual violence are still insufficient, not only in so far as the policy agenda is concerned, but also in the various implementation processes in general. In the provision of assistance to victims of sexual violence and in the after-care for convicted sex offenders, the understanding that the sexual violence in question can, in part, also have comprised behaviours that constitute a criminal offence in relation to child pornography, is lacking. In simple terms, this means that these two notions in these processes are, wrongly, not considered in parallel with one another. The route linking sexual abuse to child pornography is, therefore, not pursued. Vice versa, the route leading from child pornography (child abuse material) to sexual abuse is not always pursued either. In particular, this is often the case in the many cases in which sufficient information is available in order to take a suspect to court for possession of child abuse material. The case is then dealt with and the suspect may be prosecuted, with no further investigations being carried out into the possibility of sexual abuse. In this case, it is not so much a lack of understanding, but rather a lack of capacity and priority that stand in the way of pursuing the route towards the offender and the victim of the underlying sexual abuse.

## **4.4 Specification and recommendations**

The above findings present an image of a complex phenomenon that is extremely extensive and which cannot be controlled solely by repressive means. Important steps have been taken to give substance to

the protection of children against sexual violence, and connections are being sought between policy frameworks as well as various implementing bodies. However, the path towards tackling child pornography is not synchronous with the path towards protecting children. This is not right, and can and must be improved. The report concludes with recommendations for the government, as well as with two figures, in which the foregoing is displayed in concrete terms.

***It is recommended that:***

- ***An integrated approach to tackle sexual violence against children be provided, into which the programme of measures to tackle child pornography is fully integrated.***
- ***Clear coordination be provided, in order to give substance to the integrated approach and to implement it.***
- ***An independent monitoring mechanism be established.***
- ***Continuity be safeguarded.***

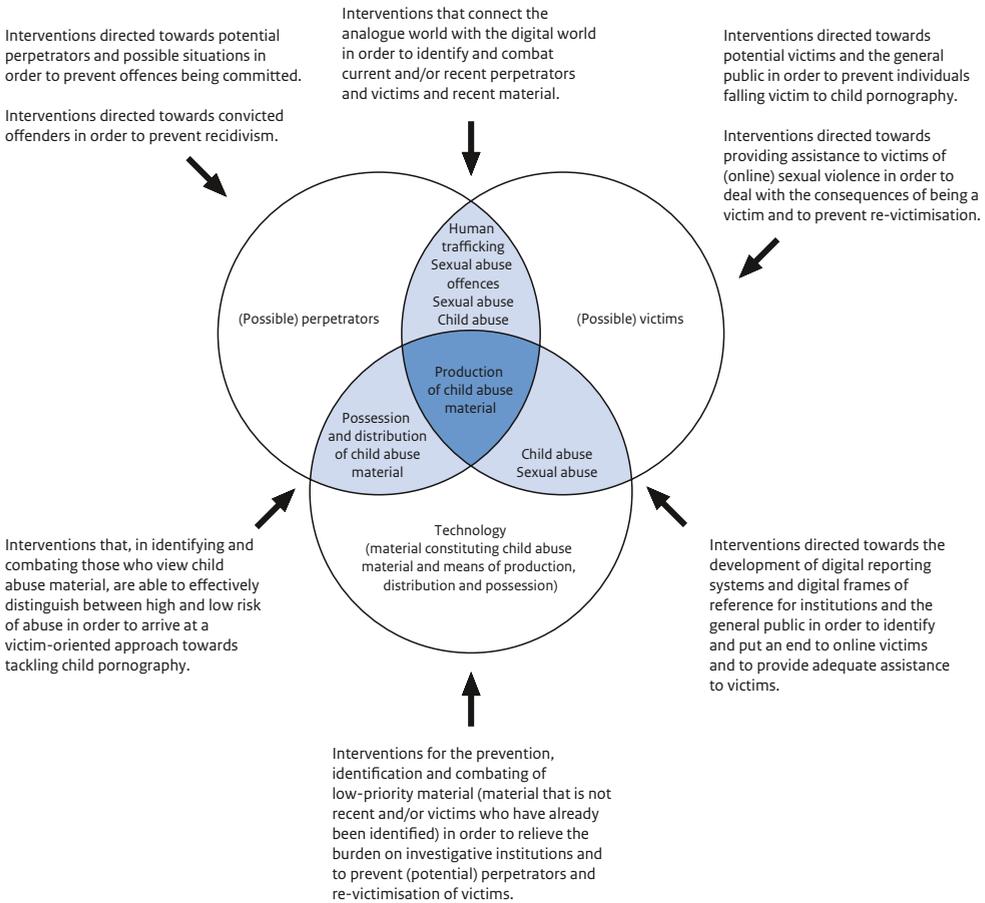
In the Introduction, an incomplete model (Figure 0.1) was used to show how the three aspects of child pornography – perpetrators, victims and technology – relate to one another. In the Intervention model, the connections with other forms of sexual violence against children are also made visible. The capacity of being a perpetrator, the situation of victimhood and the factor of technology converge in the dark-blue area in the form of the production of child abuse material. The light-blue areas indicate the routes by which such activity is identified and addressed. The sections of the circles that do not overlap with another circle represent a situation in which no actual perpetrator or victim or recently-produced material is found, but which concerns old child abuse material and the capacity of being a potential perpetrator or a potential victim, which includes the potential for recidivism of perpetrators and re-victimisation of victims. The Intervention model represents the focus and the perspective of the reporting task in relation to child pornography. The core focus is the protection of children from sexual violence. The production of child abuse material almost always goes hand in hand with such violence. A perspective which takes child pornography into account may prove useful in protecting children from sexual violence.

In the Intervention model (Figure 4.1), which has now been completed, the findings from Chapters 2 and 3 have been linked back more closely with the three aspects of child pornography – perpetrators, victims and technology. The types of intervention that could, together, form an integrated approach have been filled in, so that all aspects of child pornography are covered.

The Connections model (Figure 4.2), presented hereafter, subsequently specifies the interventions that could contribute to this and comprises specific recommendations that are connected with this.

In effect, the Connections model reflects the integrated approach in so far as policy, implementation and connections, analogue and digital aspects, and international and regional aspects are concerned, therefore giving substance to the approach. It provides an insight into the areas where and the levels at which the approach needs to be integrated. It links in with the Intervention model, which illustrates where interventions are needed to address the basic aspects of perpetrators, victims and technology. The Connections model is a concrete extension of the Intervention model, and indicates which parties would be able to implement which interventions at which points in time and where the added value of collaboration and connections can be found. Whereas the Intervention model provides the routing in more abstract terms, the Connections model is intended as a practical guideline.

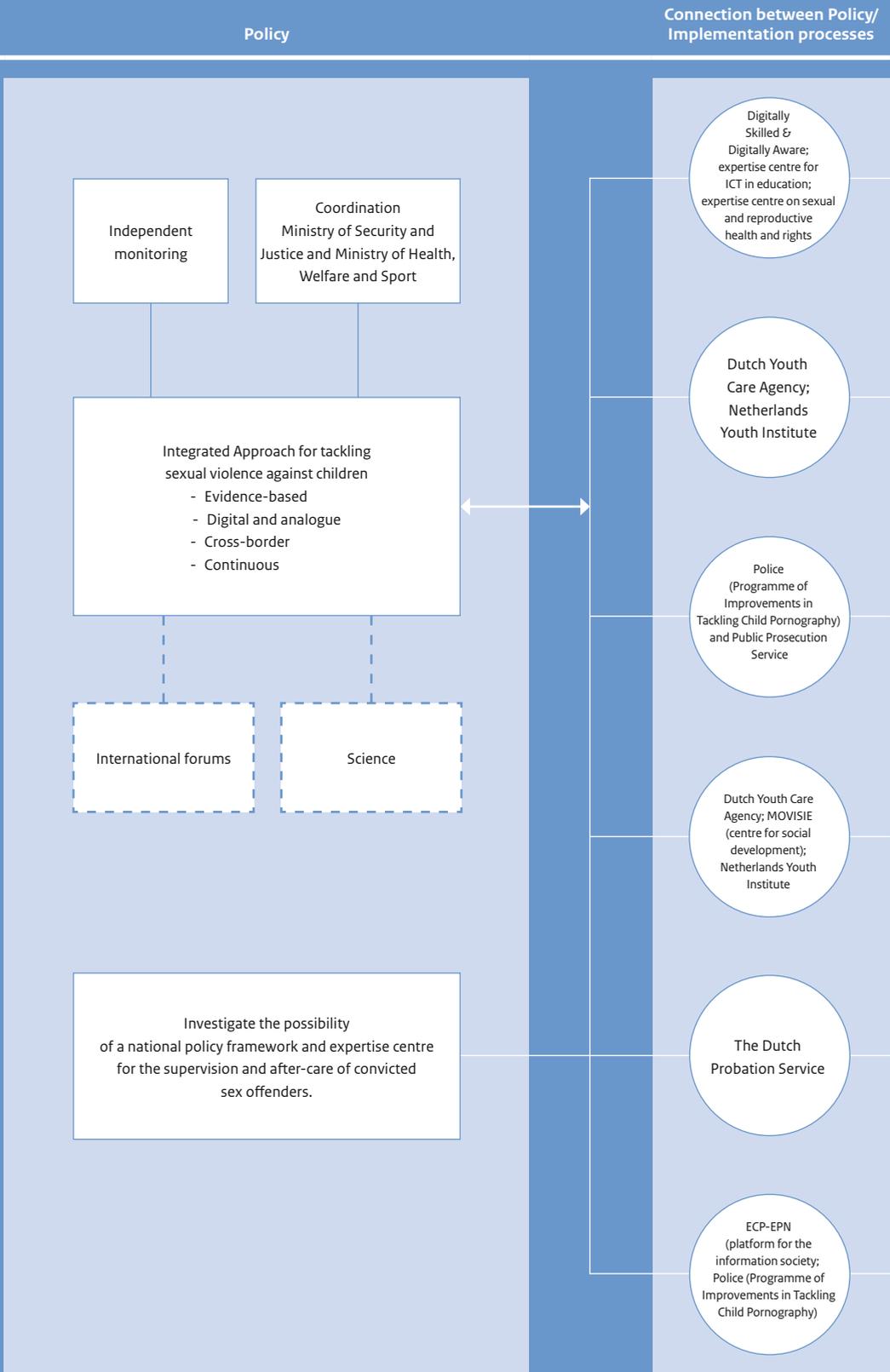
Figure 4.1 Intervention model



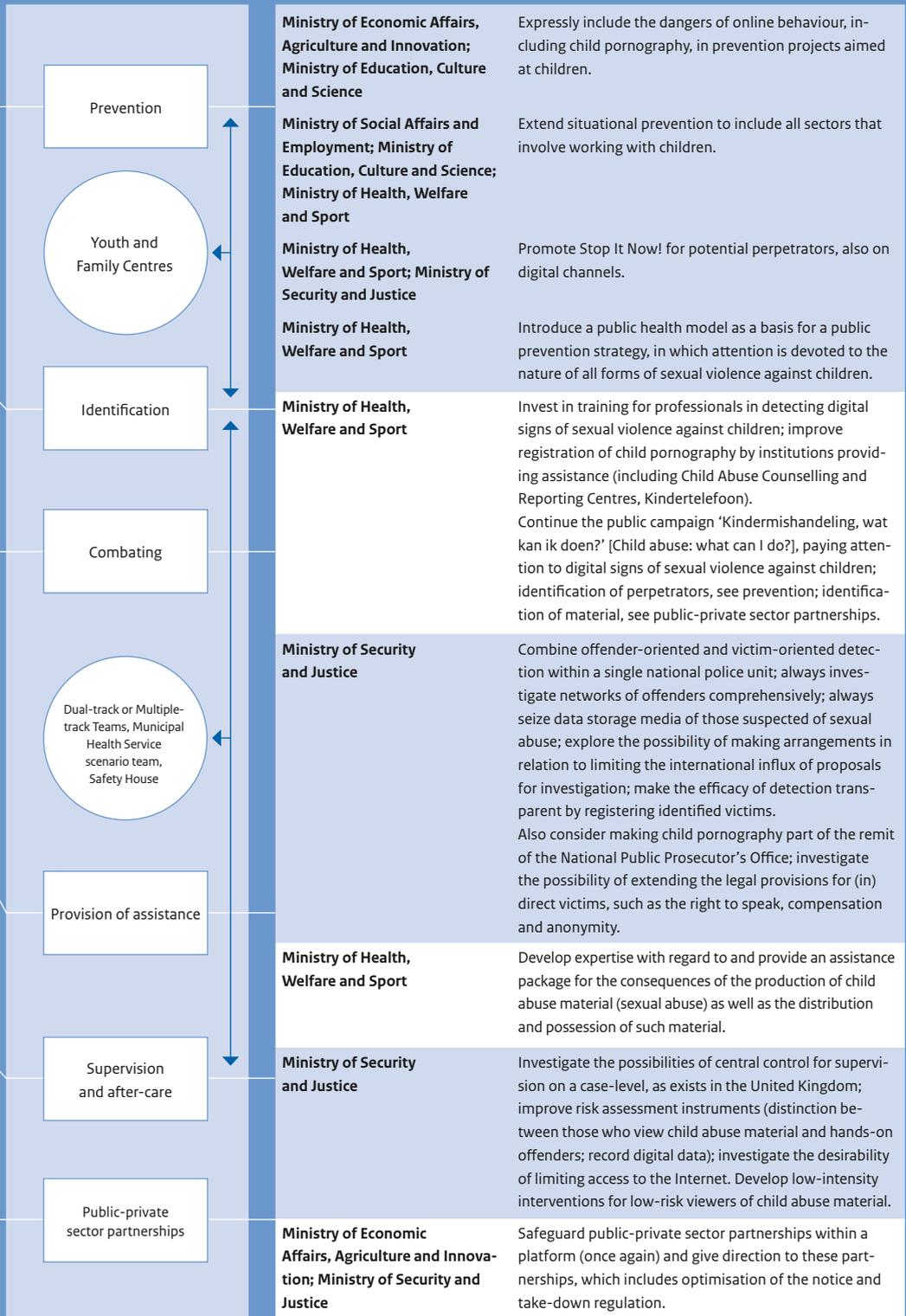
The left column of Figure 4.2 (see following page) displays the actions in the field of policy, coordination, research and international collaboration. The middle column lists a number of important organisations and initiatives that act as links between policy and implementation. These translate policy to implementation, and vice versa. The right column displays the most urgent actions for implementation, arranged according to the individual constituent processes, as well as the ministries that are involved. This column also displays a number of organisations that serve as models for the connections that have already been formed between the various processes. Going from left to right, the model connects the policy actions with the implementation actions, and going from right to left, the relationship between the implementation actions and the policy is conveyed. Finally, the implementation column lists a number of additional organisations that form connecting links between the constituent processes.

Child pornography is a form of sexual violence against children. Connections, coordination and monitoring form the core elements of tackling child pornography. This report intends to provide a point of reference in the implementation of this programme.

Figure 4.2 Connections model



## Implementation processes





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# Appendix

Appendix 1: COPINE scale

Appendix 2: Justification of research methods used

Appendix 3: Explanatory notes to tables, figures and statistics

Appendix 4: Supplementary tables



# A1 COPINE scale

Level	Name	Description of Picture Qualities
1	<b>Indicative</b>	Non-erotic and non-sexualised pictures showing children in their underwear, swimming costumes, etc. from either commercial sources or family albums; pictures of children playing in normal settings, in which the context or organisation of pictures by the collector indicates inappropriateness
2	<b>Nudist</b>	Pictures of naked or semi-naked children in appropriate nudist settings, and from legitimate sources.
3	<b>Erotica</b>	Surreptitiously taken photographs of children in play areas or other safe environments showing either underwear or varying degrees of nakedness.
4	<b>Posing</b>	Deliberately posed pictures of children fully, partially clothed or naked (where the amount, context and organisation suggests sexual interest).
5	<b>Erotic Posing</b>	Deliberately posed pictures of fully, partially clothed or naked children in sexualised or provocative poses.
6	<b>Explicit Erotic Posing</b>	Emphasising genital areas where the child is either naked, partially or fully clothed.
7	<b>Explicit Sexual Activity</b>	Involves touching, mutual and self-masturbation, oral sex and intercourse by child, not involving an adult.
8	<b>Assault</b>	Pictures of children being subject to a sexual assault, involving digital touching, involving an adult.
9	<b>Gross Assault</b>	Grossly obscene pictures of sexual assault, involving penetrative sex, masturbation or oral sex involving an adult.
10	<b>Sadistic/Bestiality</b>	<p>a. Pictures showing a child being tied, bound, beaten, whipped or otherwise subject to something that implies pain.</p> <p>b. Pictures where an animal is involved in some form of sexual behaviour with a child.</p>

Source: Taylor & Quayle, 2003



## A2 Justification of research methods used

### 1 The AMK study

#### Objective

The intention of the exploratory study was to gain an insight into the expertise possessed by AMK (*Advies-en Meldpunt Kindermishandeling* [Child Abuse Counselling and Reporting Centre]) employees and the way in which they deal with cases of sexual abuse in relation to child pornography and other 'digital signs' of the sexual abuse of children.

#### Research question

To what extent are AMK employees attentive to child pornography (and on a wider scale, 'digital signs' of the sexual abuse of children)? This primary research question was investigated on the basis of the following set of questions:

1. When reports involving the sexual abuse of children are made, is it *routine* for AMK employees to ask whether images of this abuse were made?  
(Closed question: yes/no)
2. Have reports ever been made in which child pornography was specifically mentioned, but where AMK employees *had not* asked about this?  
(Closed question: yes/no)
3. Approximately how many reports involving child pornography are made each year?
4. How do AMK employees deal with cases of child pornography? Both in terms of the provision of assistance as well with regard to the police.
5. Do AMK employees have sufficient knowledge of the possible 'digital signs' of the sexual abuse of children? Possibly as a result of following courses, training sessions etc.
6. When reports involving the sexual abuse of children are made, do AMK employees also go on to ask about possible 'digital signs' of this abuse that would be able to support the suspicion of abuse?  
(Closed question: yes/no)
7. Have reports involving the sexual abuse of children ever been made, in which 'digital signs' of such abuse were specifically mentioned, but where AMK employees *had not* asked about this?  
(Closed question: yes/no)
8. Approximately how many reports of the sexual abuse of children are made each year, in which (amongst other things) 'digital signs' of such abuse are involved?

### Research method

For the purpose of this research and with support from the youth care organisation *Jeugdzorg Nederland*, BNRM approached all access managers of the 21 AMKs in the Netherlands and the *Stichting Gereformeerd Jeugdwelzijn Amersfoort*<sup>1</sup> [Foundation for Dutch Reformed Church Youth Welfare Amersfoort] and requested them to complete the set of questions stated above. The following 18 AMKs responded to this request: Friesland, Groningen, Drenthe, Overijssel, Gelderland, Flevoland, Utrecht, Noord-Holland, Rotterdam Noordoever, Haaglanden, Zuid-Holland, West-Brabant, Midden-Brabant, Zuidoost-Brabant, Noordoost-Brabant – Den Bosch, Noordoost-Brabant – Oss/Uden, Noord- and Midden-Limburg and Zuid-Limburg. The Noord- and Midden-Limburg and Zuid-Limburg AMKs completed one set of questions between them, meaning that the research is based on 17 completed sets of questions, which are considered representative of all AMKs in the Netherlands.

## 2 The Public Prosecution Service data and Investigation & Research and Policy Database for Judicial Documentation study

### Research method

The information in §3.5.4.1, §3.5.4.2 and §3.5.4.4 is based on data from the Public Prosecution Service; this is the national pool of data that contains information from the district court public prosecutor's offices and courts about the prosecution and trial of suspects and convicted perpetrators in the first instance. The total pool of data from the Public Prosecution Service enables the cases to be selected in which (amongst others) the offence of child pornography has been recorded (Article 240b of the Dutch Criminal Code). The secondary analyses of the subcategory of data concerning 'child pornography' were carried out by the Statistical Information and Policy Analysis Division [*Statistische Informatie en Beleidsanalyse (SIBA)*] of the Research and Documentation Centre [*Wetenschappelijk Onderzoeken Documentatiecentrum (WODC)*]. This also applies to the information derived from the Research and Policy Database for Judicial Documentation (§3.5.4.3). The Research and Policy Database for Judicial Documentation is a database intended for academic research, and the development and monitoring of policy. The database is updated periodically with information from the Criminal Records System [*Justitieel Documentatiesysteem (JDS)*].

### Comments regarding the statistics

It is possible that the data presented in §3.5.4 originating from the subcategory of data concerning 'child pornography' does not concern all individuals suspected and convicted of child pornography offences. In individual cases, it is sometimes the case that when charges are made for multiple offences, only the first offence is registered in the Public Prosecution Service records.<sup>2</sup> In addition to this, data from the Public Prosecution Service is not up to date and is therefore incomplete, in particular with regard

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- 1 This is not an AMK, but a Christian youth care organisation that operates nationally. In exactly the same way as AMKs, it provides a point of contact for youth care (in this case: Christian youth care) and was therefore also included in this research.
  - 2 Incidentally: only primary offences for which charges are made are included in data recorded by the Public Prosecution Service. However, considering the fact that it is highly unlikely that a charge is made for an offence relating to child pornography as an alternative to another criminal offence, this is not important for the child pornography offences that have been recorded.

to recent statistics. The Research and Policy Database for Judicial Documentation has an even greater backlog to deal with. In this instance, the reference date that has been set for statistics from the Public Prosecution Service, as well as those from the Research and Policy Database for Judicial Documentation, is January 2011. It is also necessary to consider that the statistics from the Public Prosecution Service that represent the year 2010 will probably be higher at a subsequent reference date. With regard to the figures from the Research and Policy Database for Judicial Documentation, the decision was taken to disregard the year 2010. The Public Prosecution Service is currently involved in the transition from COMPAS, the old recording system, to the new Integrated Process System [*Geïntegreerd Processysteem Strafrecht (GPS-systeem)*]. Data from the Public Prosecution Service is fed into COMPAS as well as the Integrated Process System.<sup>3</sup> However, a transitional phase in recording always carries the risk of additional contamination of data. The statistics for 2009 and 2010 have been affected by this, making them more difficult to compare to data from previous years.<sup>4</sup>

### 3 The probation study

#### *Research method*

The information in §3.6.5 and in Appendix 4 Table B4.29 is derived from the joint client monitoring system of the three probationary institutions in the Netherlands; the Dutch Probation Service [*Reclassering Nederland*], the Salvation Army [*het Leger des Heils*] and the Netherlands Institute for Psychological Care and Addiction Care [*GGZ Nederland*]<sup>5</sup>. In the client monitoring system, the suspects and convicted perpetrators who are registered with the probation and after-care services in connection with child pornography offences (amongst other offences<sup>6</sup>) can be selected. The analyses with regard to the ‘clients with offenses related to child pornography’ were carried out by the Dutch Probation Service at the request of BNRM.

#### *Comments regarding the statistics*

It is possible that the number of clients with offenses that were, in any case, related to child pornography – as stated in the statistics – who were registered with probation and after-care services in connection with child pornography in 2010 does not include only those suspects and convicted perpetrators who were ultimately referred to the probation and after-care service in connection with a child pornography offence (amongst other offences). In fact, the client monitoring system only allows you to make a choice based on the first three numbers of an article number. In this way, child pornography (Article 240b of the Dutch Criminal Code) falls under offence number ‘240’. However,

3 By 2010, the Integrated Process System was already the biggest supplier of the Public Prosecution Service data.

4 As a result of this situation, there appears to be a larger decrease in the number of cases than was actually the case.

5 This is the professional organisation for psychological care and addiction care in the Netherlands.

6 In the event that ‘240’ is present in at least one of the maximum of five recorded offence codes in the client monitoring system. Incidentally: if a case involves more than four different offences in addition to child pornography that are more serious than child pornography, the offence code for child pornography will therefore not be recorded. However, situations such as this will very rarely arise.

the cases selected in this instance could also relate to Article 240 of the Dutch Criminal Code (publicly displaying an indecent image or object or sending an indecent image or object without being asked to do so), or Article 240a of the Dutch Criminal Code (showing an image that is harmful to people under 16 years of age to a person under 16 years of age). It is important that this is taken into consideration. However, for reasons of clarity, when offence code '240' is used in §3.6.5, only child pornography will be discussed.<sup>7</sup>

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7 NB: In 2010, there were 36 cases that were recorded with the Public Prosecution Service and 16 cases that were concluded by the court in the first instance, in which Article 240 of the Dutch Criminal Code and/or Article 240a of the Dutch Criminal Code were involved, but where Article 240b of the Dutch Criminal Code was not involved (source: data from the Public Prosecution Service). It is not clear how many of these cases were ultimately referred to the probation and after-care services.

# A3 Explanatory notes to tables, figures and statistics

## 1 Explanatory notes to tables

This report contains a number of tables. Several remarks that are of importance when interpreting these tables are given below. As a result of numbers being rounded off, the sub-percentages in the tables do not always add up to 100%. Of course, the total does really amount to 100% and is therefore also listed accordingly. If numbers are displayed in a column of a table, the letter 'N' (for 'number') is used in the header of the corresponding table. If a ranking is given in a column of a table, the letter 'R' (for rank) is used in the header of the corresponding table. In the tables, a dash (-) is used to indicate that the number is zero, and likewise to indicate that the corresponding percentage is 0%. If the number is higher than zero, but the percentage ends up at 0% after rounding off, 0% is displayed instead of a hyphen.

## 2 Explanatory notes to figures

This report contains a number of tables that are based on the supplementary tables from Appendix 4. Several remarks that are of importance when interpreting these figures are given below. If a development is represented in absolute terms (numbers), a line graph is used. If multiple lines are displayed on one graph, this represents developments that can be compared against each other. If a development is represented in relative terms (proportions), a histogram is used. If an overview (over a certain period in time) is represented, a pie chart is used.

## 3 Explanatory notes to statistics

Some tables provide an index figure. The index figure is used to show the degree to which the number – of suspects for example – has changed in a certain year in relation to a base year. The year that has been taken as a base year is stated in the header of the table. This year is set to 1.0. An index figure greater than 1.0 displays an increase in relation to the base year, and an index figure lower than 1.0 displays a decrease.



## A4 Supplementary tables

### 1 Supplement to §3.3.3.1 The Hotline Combating Child Pornography on the Internet

Tables B4.1 up to and including B4.4 provide a complete and detailed overview of the statistical data originating from the annual reports of the Hotline Combating Child Pornography on the Internet, which form the basis for the figures in §3.3.3.1. Please refer to Appendix 3 for the explanatory notes to the tables displayed in this appendix.

**Table B4.1 Annual number of reports to the Hotline Combating Child Pornography on the Internet – including content reported in duplicate (2005-2010)**

	2005		2006		2007		2008		2009		2010	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>Number of reports - via INHOPE</b>	8.185	100%	6.423	100%	7.427	100%	8.155	100%	9.029	100%	9.164	100%
	?	?	?	?	744	10%	1.204	15%	2.460	27%	3.013	33%

Source: Hotline Combating Child Pornography on the Internet, Annual reports 2005 to 2010 inclusive

**Table B4.2 Annual reports – including content reported in duplicate – according to place where found (2005-2010)**

	2005	2006	2007	2008	2009	2010
<b>Website</b>	25%	72%	79%	81%	91%	93%
<b>Email</b>	64%	12%	9%	7%	4%	1%
<b>News group</b>	1%	1%	2%	2%	1%	2%
<b>Chat</b>	1%	3%	3%	3%	2%	2%
<b>Peer-to-Peer</b>	4%	8%	5%	3%	2%	1%
<b>Other<sup>1</sup></b>	5%	4%	3%	1%	1%	1%
<b>Total</b>	100%	100%	100%	100%	100%	100%

Source: Hotline Combating Child Pornography on the Internet, Annual reports 2005 to 2010 inclusive

<sup>1</sup> Including questions, supposed child pornography received by telephone and in 2005, including reports of supposed child pornography where the reported place where found is not accessible.

**Table B4.3** Proportion of unique reports according to the type of content reported, compared with the total number of unique reports<sup>2</sup> (2007-2010)

	2007	2008	2009	2010
<b>Child pornography</b>	31% <sup>3</sup>	42% <sup>4</sup>	43% <sup>5</sup>	32% <sup>6</sup>
<b>Child erotica</b>	6%	7%	5%	5%
<b>Child nudism</b>	1%	3%	3%	2%
<b>Adult pornography</b>	19%	20%	22%	27%
<b>Not found/accessible</b>	31%	15%	15%	19%
<b>Other<sup>7</sup></b>	12%	13%	12%	15%
<b>Total</b>	100%	100%	100%	100%

Source: Hotline Combating Child Pornography on the Internet, Annual reports 2005 to 2010 inclusive

**Table B4.4** Proportion of unique reports of child pornography on servers hosted in the Netherlands, compared with the total number of unique reports of child pornography<sup>8</sup> (2005-2010)

	2005		2006		2007		2008		2009		2010	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>Child pornography - on servers hosted in the Netherlands</b>	3.216	100%	2.632	100%	2.336	100%	3.356	100%	3.787	100%	2.602	100%
	88	3%	71%	3%	750	32%	532	16%	1.373	36%	1.260	48%

Source: Hotline Combating Child Pornography on the Internet, Annual reports 2005 to 2010 inclusive

- 2 i.e. excluding content reported in duplicate.
- 3 31% of reports involve unique content constituting a criminal offence, equating to 2,336 reports (see Table B4.4). In total, there were therefore approximately 7,535 unique reports (excluding content reported in duplicate). This is remarkable, considering the fact that there were fewer reports of child pornography, including content report in duplicate, in 2007 (7,427 in Total, see Table B4.1)
- 4 42% of reports involve unique content constituting a criminal offence, equating to 3,356 reports (see Table B4.4). In total, there were therefore approximately 7,990 unique reports (excluding content reported in duplicate). This means that in 2008, there are approximately 8,155 (see Table B4.1) – 7,990=165 reports in duplicate.
- 5 43% of reports involve unique content constituting a criminal offence, equating to 3,787 reports (see Table B4.4). In total, there were therefore approximately 8,807 unique reports (excluding content reported in duplicate). This means that in 2009, there were approximately 9,029 (see Table B4.1) – 8,807=222 reports in duplicate.
- 6 32% of reports involve unique content constituting a criminal offence, equating to 2,602 (see Table B4.4). This means that in 2010, there were approximately 9,164 (see Table B4.1) – 8,131=1,033 reports in duplicate.
- 7 Including questions.
- 8 i.e. excluding content reported in duplicate.

## 2a Supplement to §3.5.4.1 Prosecutions in figures

Tables B4.5 to B4.11 provide a complete and detailed overview of the available data from the Public Prosecution Service involving the child pornography cases registered with the Public Prosecution Service and the child pornography cases concluded by the Public Prosecution Service between 2005 and 2010. Please refer to Appendix 2 for the justification of the research methods employed and Appendix 3 for the explanatory notes to the tables displayed in this Appendix and the statistics that are applicable to this.

**Table B4.5** Number of cases/suspects registered with the Public Prosecution Service (2005-2010)

	Number of cases/suspects registered with the Public Prosecution Service (N)	Index figure (2005=1,0)	Percentage growth in relation to the previous year
2005	501	1,0	40% <sup>9</sup>
2006	405	0,8	-19%
2007	383	0,8	-5%
2008	391	0,8	2%
2009	448	0,9	15%
2010	467	0,9	4%
<b>Total</b>	2.595	N/A	N/A

Source: Data from the Public Prosecution Service (reference date: January 2011)

**Table B4.6** Cases registered in each district court public prosecutor's office (2005-2010)

	2005		2006		2007		2008		2009		2010		Total		Top 5 R
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
<b>Alkmaar</b>	21	4%	15	4%	12	3%	11	3%	10	2%	14	3%	83	3%	
<b>Almelo</b>	15	3%	13	3%	11	3%	8	2%	11	2%	9	2%	67	3%	
<b>Amsterdam</b>	9	2%	13	3%	27	7%	34	9%	31	7%	56	12%	170	7%	
<b>Arnhem</b>	52	10%	40	10%	35	9%	30	8%	25	6%	23	5%	205	8%	4
<b>Assen</b>	9	2%	6	1%	18	5%	13	3%	18	4%	18	4%	82	3%	
<b>Breda</b>	43	9%	27	7%	29	8%	29	7%	30	7%	19	4%	177	7%	5
<b>Den Bosch</b>	72	14%	39	10%	37	10%	48	12%	29	6%	25	5%	250	10%	2
<b>The Hague</b>	41	8%	44	11%	39	10%	38	10%	59	13%	71	15%	292	11%	1
<b>Dordrecht</b>	15	3%	8	2%	3	1%	10	3%	1	0%	9	2%	46	2%	
<b>Groningen</b>	23	5%	10	2%	17	4%	16	4%	26	6%	17	4%	109	4%	
<b>Haarlem</b>	18	4%	17	4%	22	6%	18	5%	16	4%	23	5%	114	4%	
<b>Leeuwarden</b>	34	7%	10	2%	11	3%	17	4%	29	6%	25	5%	126	5%	
<b>Maastricht</b>	6	1%	28	7%	17	4%	19	5%	9	2%	24	5%	103	4%	
<b>Middelburg</b>	20	4%	17	4%	6	2%	9	2%	17	4%	17	4%	86	3%	
<b>Roermond</b>	19	4%	11	3%	8	2%	17	4%	5	1%	5	1%	65	3%	
<b>Rotterdam</b>	19	4%	40	10%	34	9%	26	7%	38	8%	49	10%	206	8%	3

<sup>9</sup> In 2004, 359 cases of child pornography were registered with the Public Prosecution Service.

	2005		2006		2007		2008		2009		2010		Total		Top 5 R
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	
<b>Utrecht</b>	35	7%	28	7%	21	5%	18	5%	55	12%	19	4%	176	7%	
<b>Zutphen</b>	26	5%	15	4%	23	6%	16	4%	15	3%	21	4%	116	4%	
<b>Zwolle</b>	24	5%	24	6%	13	3%	14	4%	24	5%	23	5%	122	5%	
<b>Total</b>	501	100%	405	100%	383	100%	391	100%	448	100%	467	100%	2.595	100%	

Source: Data from the Public Prosecution Service (reference date: January 2011)

Table B4.7 Nature of the registered cases (2005-2010)

		2005		2006		2007		2008		2009		2010		Total	
		N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Non-aggravated child pornography</b>	240b paragraph 1	462	92%	388 <sup>10</sup>	96%	349	91%	355	91%	395	88%	421	90%	2.370	91%
	240b paragraph 2	39	8%	17	4%	34	9%	36	9%	53	12%	42	9%	221	9%
<b>Aggravated child pornography<sup>11</sup></b>	240b in conjunction with 248 paragraph 1	-	-	-	-	-	-	-	-	-	-	3	1%	3	0%
	240b in conjunction with 248 paragraph 2	-	-	-	-	-	-	-	-	-	-	1	0%	1	0%
	240b in conjunction with 248 paragraph 3	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	240b in conjunction with 248 paragraph 4	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	<i>Sub-total (aggravated child pornography)</i>	39	8%	17	4%	34	9%	36	9%	53	12%	46	10%	225	9%
<b>Total</b>		501	100%	405	100%	383	100%	391	100%	448	100%	467	100%	2.595	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

- 10 In one instance, it is unclear whether it was a case of non-aggravated or aggravated child pornography, because no paragraph number was recorded. The decision has been taken to categorise this case as non-aggravated child pornography.
- 11 In the case of Article 248 of the Dutch Criminal Code, it has been examined whether or not this Article – which brings with it an increased penalty – has occurred in the same offence exclusively with Article 240b paragraph 1 and/or paragraph 2 of the Dutch Criminal Code.

Table B4.8 Registered cases by gravest offence (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Aggravated child pornography <sup>12</sup>	34	7%	14	3%	33	9%	30	8%	46	10%	34	7%	191	7%
Non-aggravated child pornography <sup>13</sup>	376	75%	282	70%	239	62%	280	72%	298	67%	326	70%	1.801	69%
Sexual offences committed upon minors <sup>14</sup>	35	7%	56	14%	54	14%	32	8%	44	10%	32	7%	253	10%
Other sexual offences <sup>15</sup>	44	9%	44	11%	47	12%	37	9%	51	11%	61	13%	284	11%
Removing a minor from the person who has custody <sup>16</sup>	-	-	1	0%	2	1%	-	-	-	-	1	0%	4	0%
Human trafficking <sup>17</sup>	2	0%	2	0%	-	-	4	1%	2	0%	1	0%	11	0%
Other offences <sup>18</sup>	10	2%	6	1%	8	2%	8	2%	7	2%	12	3%	51	2%
<b>Total</b>	<b>501</b>	<b>100%</b>	<b>405</b>	<b>100%</b>	<b>383</b>	<b>100%</b>	<b>391</b>	<b>100%</b>	<b>448</b>	<b>100%</b>	<b>467</b>	<b>100%</b>	<b>2.595</b>	<b>100%</b>

Source: Data from the Public Prosecution Service (reference date: January 2011)

- 12 Here, aggravated child pornography consists exclusively of ‘making a habit or profession of child pornography’ (Article 240b Paragraph 2 of the Dutch Criminal Code, whether or not in combination with Paragraph 1). In two instances, Article 248 (paragraph 1 in one instance and paragraph 2 in the other – both in 2010) is recorded as the gravest offence. However, in view of the fact that this is recorded on a case level (and therefore not on an offence level), it is not possible to determine whether Article 248 appears within the same offence as child pornography. As such, it is conceivable that the circumstances of Article 248 that attract a more severe penalty relate to a sexual offence other than child pornography. This may be a sexual offence committed upon a minor, but may also be a sexual offence committed upon an adult. Therefore, these two cases have been categorised under ‘other sexual offences.’
- 13 Article 240b paragraph 1 of the Dutch Criminal Code.
- 14 Articles 244, 245 and 249 of the Dutch Criminal Code.
- 15 Articles 242, 243, 246, 247 (may also apply to offences committed upon minors) and 248 of the Dutch Criminal Code (may also apply to offences committed upon minors and may also involve aggravated child pornography).
- 16 Article 279 of the Dutch Criminal Code.
- 17 Articles 250a, 273a and 273f of the Dutch Criminal Code.
- 18 Violent offences (a total of 16 times): Articles 141, 287, 288, 289 and 302 of the Dutch Criminal Code; offences against property (a total of 15 times): Articles 311, 312 and 317 of the Dutch Criminal Code; drug-related offences (a total of ten times): Articles from the Opium Act; forgery of documents (a total of four times): Articles 225 and 226 of the Dutch Criminal Code; arson (a total of four times): Article 157 of the Dutch Criminal Code; participation in a criminal organisation (one time in total): Article 140 of the Dutch Criminal Code; deprivation of liberty (one time in total): Article 282a of the Dutch Criminal Code.

Table B4.9 Registered cases and preventive detention (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Preventive detention</b>	126	25%	127	31%	123	32%	89	23%	133	30%	140	30%	738	28%
<b>No preventive detention</b>	375	75%	278	69%	260	68%	302	77%	315	70%	327	70%	1.857	72%
<b>Total</b>	501	100%	405	100%	383	100%	391	100%	448	100%	467	100%	2.595	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

Table B4.10 Number of cases concluded by the Public Prosecution Service (2005-2010)

	Number of cases concluded by the Public Prosecution Service (N)	Index figure (2005=1,0)	Percentage growth in relation to the previous year
<b>2005</b>	492	1,0	58% <sup>19</sup>
<b>2006</b>	438	0,9	-11%
<b>2007</b>	381	0,8	-13%
<b>2008</b>	385	0,8	1%
<b>2009</b>	427	0,9	11%
<b>2010</b>	536	1,1	26%
<b>Total</b>	2.659	N/A.	N/A.

Source: Data from the Public Prosecution Service (reference date: January 2011)

Table B4.11 Concluded cases by type of settlement (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Summons<sup>20</sup></b>	373	76%	318	73%	290	76%	291	76%	319	75%	403	75%	1.994	75%
<b>Unconditional decision not to prosecute</b>	64	13%	55	13%	44	12%	58	15%	67	16%	74	14%	362	14%
<b>Out-of-court settlement</b>	31	6%	35	8%	21	6%	14	4%	11	3%	7	1%	119	4%
<b>Conditional decision not to prosecute</b>	11	2%	15	3%	6	2%	13	3%	16	4%	30	6%	91	3%
<b>Transfer abroad</b>	5	1%	8	2%	13	3%	4	1%	6	1%	12	2%	48	2%
<b>Joinder</b>	8	2%	7	2%	7	2%	5	1%	8	2%	10	2%	45	2%
<b>Total</b>	492	100%	438	100%	381	100%	385	100%	427	100%	536	100%	2.659	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

<sup>19</sup> In 2004, 311 child pornography cases were concluded.

<sup>20</sup> This may or may not relate to child pornography.

## 2b Supplement to §3.5.4.2 Cases concluded in first instance, in figures

Tables B4.12 to B4.19 provide a complete and detailed overview of the available data from the Public Prosecution Service regarding the child pornography cases concluded in the first instance between 2005 and 2010. Please refer to Appendix 2 for the justification of the research methods employed and Appendix 3 for explanatory notes to the tables displayed in this Appendix and the statistics that are applicable to this.

Table B4.12 Number of cases concluded in the first instance (2005-2010)

	Number of cases concluded in the first instance (N)	Index figure (2005=1,0)	Percentage growth in relation to the previous year
2005	299	1,0	58% <sup>21</sup>
2006	354	1,2	18%
2007	261	0,9	-26%
2008	285	1,0	9%
2009	250	0,8	-12%
2010	347	1,2	39%
Total	1.796	N/A.	N/A.

Source: Data from the Public Prosecution Service (reference date: January 2011)

Table B4.13 Cases settled in the first instance, by type of settlement (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Conviction <sup>22</sup>	281	94%	331	94%	238	91%	253	89%	227	91%	296	85%	1.626	91%
Full acquittal	10	3%	16	5%	15	6%	14	5%	16	6%	29	8%	100	6%
Consolidated cases	7	2%	6	2%	6	2%	13	5%	3	1%	9	3%	44	2%
Public Prosecution Service has no cause of action	1	0%	1	0%	1	0%	2	1%	2	1%	2	1%	9	1%
Summons invalid	-	-	-	-	-	-	-	-	2	1%	6	2%	8	0%
Discharge from further prosecution	-	-	-	-	-	-	1	0%	-	-	2	1%	3	0%
Conviction without the imposition of any penalty or other order	-	-	-	-	1	0%	1	0%	-	-	1	0%	3	0%
Referral to other forum	-	-	-	-	-	-	1	0%	-	-	2	1%	3	0%
Total	299	100%	354	100%	261	100%	285	100%	250	100%	347	100%	1.796	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

<sup>21</sup> In 2004, 189 cases were concluded in the first instance.

<sup>22</sup> This may or may not relate to child pornography.

Table B4.14 Convictions in the first instance by severity of charges (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Aggravated child pornography<sup>23</sup></b>	28	10%	18	5%	11	5%	13	5%	17	8%	32	11%	119	7%
<b>Non-aggravated child pornography<sup>24</sup></b>	183	65%	236	72%	150	64%	171	68%	152	68%	184	63%	1.076	67%
<b>Sexual offences committed upon minors<sup>25</sup></b>	31	11%	27	8%	39	17%	38	15%	27	12%	28	10%	190	12%
<b>Other sexual offences<sup>26</sup></b>	26	9%	37	11%	30	13%	26	10%	23	10%	42	14%	184	11%
<b>Removing a minor from the person who has custody<sup>27</sup></b>	1	0%	1	0%	1	0%	-	-	-	-	-	-	3	0%
<b>Trafficking in human beings<sup>28</sup></b>	5	2%	2	1%	2	1%	1	0%	2	1%	-	-	12	1%
<b>Other offences<sup>29</sup></b>	6	2%	7	2%	3	1%	3	1%	4	2%	8	3%	31	2%
<b>Total<sup>30</sup></b>	280	100%	328	100%	236	100%	252	100%	225	100%	294	100%	1.615	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

23 Article 240b paragraph 2 of the Dutch Criminal Code, whether or not in combination with paragraph 1.

24 Article 240b paragraph 1 of the Dutch Criminal Code.

25 Articles 244, 245 and 249 of the Dutch Criminal Code.

26 Articles 242, 243, 246 and 247 (this may also apply to offences committed upon minors).

27 Article 279 of the Dutch Criminal Code.

28 Articles 250a, 273a and 273f of the Dutch Criminal Code.

29 Violent offences (a total of ten times): Articles 141, 287, 288, 289 or 302 of the Dutch Criminal Code; offences against property (a total of nine times): Articles 311, 312 and 317 of the Dutch Criminal Code; drug-related offences (a total of six times): articles from the Opium Act; forgery of documents (a total of three times): Article 225 of the Dutch Criminal Code; arson (a total of two times): Article 157 of the Dutch Criminal Code; deprivation of liberty (one time in total): Article 282a of the Dutch Criminal Code.

30 The totals do not correspond exactly with the numbers of convictions in accordance with Table B4.13. This difference can be explained by the fact that Table B4.13 is based on the cases in which Article 240b of the Dutch Criminal Code appears at the time that the case is registered with the Public Prosecution Service and that this table is based on the cases in which Article 240b of the Dutch Criminal Code also actually appears on the charge.

Table B4.15 Convictions in the first instance, according to sentence imposed (2005-2010)<sup>31</sup>

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Non-suspended custodial sentence, community service order and fine	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-suspended custodial sentence and community service order	-	-	-	-	1	0%	-	-	1	0%	-	-	2	0%
Non-suspended custodial sentence and fine	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-suspended custodial sentence	13	5%	25	8%	23	10%	23	9%	25	11%	25	9%	134 <sup>32</sup>	8%
Partially suspended custodial sentence, community service order and fine	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Partially suspended custodial sentence and community service order	11	4%	14	4%	13	6%	6	2%	10	4%	12	4%	66 <sup>33</sup>	4%
Partially suspended custodial sentence and fine	-	-	-	-	1	0%	1	0%	-	-	-	-	2	0%
Partially suspended custodial sentence	47	17%	39	12%	40	17%	52	21%	33	15%	71	24%	282 <sup>34</sup>	17%
<i>Sub-total (non-suspended or partially suspended custodial sentence)</i>	71	25%	78	24%	78	33%	82	33%	69	31%	108	37%	486	30%
Suspended custodial sentence, community service order and fine	1	0%	2	1%	1	0%	-	-	-	-	-	-	4	0%
Suspended custodial sentence and community service order	155	55%	178	54%	101	43%	109	43%	111	49%	142	48%	796 <sup>35</sup>	49%

31 A non-suspended or partially suspended custodial sentence is regarded as the most severe main sentence. After that comes an entirely suspended custodial sentence, followed by a community service order and ultimately a fine.

32 In two cases, this involves youth detention (2006: one, 2010: one).

33 In five cases, this involves youth detention (2007: three, 2009: one, 2010: one).

34 In five cases, this involves youth detention (2005: one, 2008: two).

35 In eleven cases, this involves youth detention (2005: four, 2006 to 2009 inclusive: one each, 2010: three).

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Suspended custodial sentence and fine</b>	4	1%	5	2%	1	0%	3	1%	-	-	1	0%	14	1%
<b>Suspended custodial sentence</b>	19	7%	18	5%	17	7%	18	7%	12	5%	16	5%	100 <sup>36</sup>	6%
<i>Sub-total (suspended custodial sentence as the most severe main sentence)</i>	179	64%	203	62%	120	51%	130	52%	123	55%	159	54%	914	57%
<b>Community service order and fine</b>	-	-	3	1%	1	0%	-	-	1	0%	-	-	5	0%
<b>Community service order</b>	27	10%	39	12%	31	13%	33	13%	29	13%	22	7%	181	11%
<i>Sub-total (community service order as the most severe main sentence)</i>	27	10%	42	13%	32	14%	33	13%	30	13%	22	7%	186	12%
<b>Fine</b>	2	1%	4	1%	4	2%	3	1%	1	0%	3	1%	17	1%
<b>Unknown</b>	1	0%	1	0%	2	1%	4	2%	2	1%	2	1%	12	1%
<b>Total</b>	280	100%	328	100%	236	100%	252	100%	225	100%	294	100%	1.615	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

**Table B4.16 Orders and additional penalties imposed in the first instance (2005-2010)**

		2005	2006	2007	2008	2009	2010	Total <sup>37</sup>	
		N	N	N	N	N	N	N	%
<b>Orders with regard to adult offenders</b>	Placement under a hospital order	-	1	2	3	6	2	14	1%
	Placement in a psychiatric institution	-	-	-	-	-	-	-	-
	Institution for habitual offenders	-	-	-	-	-	-	-	-
<b>Orders with regard to youth offenders</b>	Placement under a hospital order	-	-	-	-	-	-	-	-
	Placement in a Young Offenders' Institution	1	-	1	-	-	1	3	0%
<b>Orders with regard to victims</b>	Compensation	16	22	17	23	7	19	104	6%

36 In seven cases, this involves youth detention (2005: two, 2006 to 2010: one each).

37 The percentages are compared with the total number of 1,615 cases (100%) that resulted in a conviction being made.

		2005	2006	2007	2008	2009	2010	Total <sup>37</sup>	
		N	N	N	N	N	N	N	%
Other orders	Removal of items from circulation	96	95	57	67	60	74	449	28%
	Confiscation	-	-	-	-	1	-	1	0%
Additional penalties	Forfeiture	21	16	18	13	9	17	94	6%

Source: Data from the Public Prosecution Service (reference date: January 2011)

**Table B4.17 Non-suspended or partially-suspended custodial sentences handed down in the first instance according to term category (2005-2010)**

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
0-3 months	10	14%	19	24%	15	19%	16	19%	15	21%	24	22%	99	20%
4-6 months	17	24%	14	18%	10	13%	18	22%	14	20%	28	26%	101	21%
7-9 months	6	8%	8	10%	5	6%	4	5%	7	10%	16	15%	46	9%
10-12 months	11	15%	6	6%	12	15%	11	13%	6	9%	12	11%	58	12%
>1-2 years	19	26%	16	20%	19	24%	19	23%	14	20%	19	17%	106	22%
>2-3 years	5	7%	9	11%	11	14%	9	11%	5	7%	5	5%	44	9%
>3-4 years	1	1%	2	3%	4	5%	4	5%	3	4%	2	2%	16	3%
More than 4 years	3	4%	5	6%	3	4%	2	2%	6	9%	3	3%	22	4%
Total <sup>38</sup>	72	100%	79	100%	79	100%	83	100%	70	100%	109	100%	492	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

38 The totals do not correspond exactly with the numbers of non-suspended or partially suspended custodial sentences imposed in accordance with Table B4.15 (a total of 486 in relation to the total of 492 in this table). This difference can be explained by the fact that in some instances, the exact sentence imposed was not recorded, even though it is known that a custodial sentence with a non-suspended component of known duration was imposed.

**Table B4.18 Community service orders handed down in the first instance according to term category (2005-2010)**

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Suspended community service order or unknown term</b>	2	1%	6	3%	6	4%	5	3%	7	5%	6	3%	32	3%
<b>1-120 hours</b>	78	40%	95	40%	63	42%	65	44%	51	33%	52	29%	404	38%
<b>121-240 hours</b>	114	59%	135	57%	80	54%	78	52%	95	62%	119	67%	621	59%
<b>More than 240 hours</b>	-	-	1	0%	-	-	1	1%	-	-	-	-	2	0%
<b>Total<sup>39</sup></b>	194	100%	237	100%	149	100%	149	100%	153	100%	177	100%	1,059	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

**Table B4.19 Cases settled in the first instance in which an appeal was lodged (2005-2010)**

Appeal lodged	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>None</b>	257	86%	309	87%	212	81%	231	81%	196	78%	240	69%	1,445	80%
<b>By the public prosecutor</b>	9	3%	7	2%	11	4%	18	6%	16	6%	32	9%	93	5%
<b>By the suspect</b>	29	10%	34	10%	33	13%	31	11%	32	13%	62	18%	221	12%
<b>By both parties</b>	4	1%	4	1%	5	2%	5	2%	6	2%	13	4%	37	2%
<b>Total</b>	299	100%	354	100%	261	100%	285	100%	250	100%	347	100%	1,796	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

## 2c Supplement to §3.5.4.3 Cases settled on appeal in figures

Tables B4.20 to B4.24 provide a complete and detailed overview of the available data from the Research and Policy Database for Judicial Documentation about the cases involving child pornography settled on appeal between 2005 and 2009. Please refer to Appendix 2 for the justification of the research methods employed and Appendix 3 for the tables displayed in this Appendix and the statistics that are applicable to this.

39 The totals do not correspond exactly with the numbers of non-suspended or partially suspended custodial sentences imposed in accordance with Table B4.15 (a total of 1,054 in relation to 1,059). This difference can be explained by the fact that in some instances, the exact sentence imposed was not recorded, even though it is known that a community service order of known duration was imposed.

Table B4.20 Number of cases settled on appeal (2005-2009)

	Number of cases settled on appeal (N)	Index figure (2005=1,0)	Percentage growth in relation to the previous year
2005	34	1,0	62% <sup>40</sup>
2006	32	0,9	-6%
2007	37	1,1	16%
2008	36	1,1	-3%
2009 <sup>41</sup>	26	0,8	-28%
Total	165	N/A.	N/A.

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

Table B4.21 Cases settled on appeal according to settlement type (2005-2009)

	2005		2006		2007		2008		2009		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Conviction <sup>42</sup>	34	100%	27	87%	34	92%	31	86%	26	100%	152	93%
Full acquittal	-	-	1	3%	2	5%	2	6%	-	-	5	3%
Public Prosecution Service or suspect has no cause of action	-	-	2	6%	-	-	1	3%	-	-	3	2%
Other <sup>43</sup>	-	-	1	3%	1	3%	2	6%	-	-	4	2%
Unknown	-	-	1	3%	-	-	-	-	-	-	1	1%
Total	34	100%	32	100%	37	100%	36	100%	26	100%	165	100%

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

Table B4.22 Convictions on appeal according to sentence imposed (2005-2009)

	2005		2006		2007		2008		2009		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
Non-suspended custodial sentence, community service order and fine	-	-	-	-	-	-	-	-	-	-	-	-
Non-suspended custodial sentence and community service order	-	-	-	-	-	-	-	-	-	-	-	-

40 In 2004, 21 cases of child pornography were settled on appeal.

41 In view of the backlog that the Research and Policy Database for Judicial Documentation has, it is expected that by a subsequent reference date, notably the year 2009, a further increase will have occurred.

42 Whether or not for child pornography.

43 Including the verdict of guilty, without imposing a sentence or order.

	2005		2006		2007		2008		2009		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>Non-suspended custodial sentence and fine</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Non-suspended custodial sentence</b>	8	24%	3	11%	10	29%	3	10%	3	12%	27	18%
<b>Partially suspended custodial sentence, community service order and fine</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Partially suspended custodial sentence and community service order</b>	2	6%	-	-	2	6%	1	3%	1	4%	6	4%
<b>Partially suspended custodial sentence and fine</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Partially suspended custodial sentence</b>	10	29%	6	22%	7	21%	5	16%	10	38%	38	25%
<i>Sub-total (non-suspended or partially suspended custodial sentence as the most severe main sentence)</i>	20	59%	9	33%	19	56%	9	29%	14	54%	71	47%
<b>Suspended custodial sentence, community service order and fine</b>	-	-	-	-	-	-	1	3%	-	-	1	1%
<b>Suspended custodial sentence and community service order</b>	11	32%	13	48%	13	38%	15	48%	7	27%	59	39%
<b>Suspended custodial sentence and fine</b>	1	3%	-	-	-	-	-	-	1	4%	2	1%
<b>Suspended custodial sentence</b>	-	-	-	-	1	3%	3	10%	-	-	4	3%
<i>Sub-total (suspended custodial sentence as the most severe main sentence)</i>	12	35%	13	48%	14	41%	19	61%	8	31%	66	43%
<b>Community service order and fine</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Community service order</b>	2	6%	5	19%	1	3%	3	10%	3	12%	14	9%
<i>Sub-total (community service order as the most severe main sentence)</i>	2	6%	5	19%	1	3%	3	10%	3	12%	14	9%
<b>Fine</b>	-	-	-	-	-	-	-	-	1	4%	1	1%
<b>Total</b>	34	100%	27	100%	34	100%	31	100%	26	100%	152	100%

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

**Table B4.23 Non-suspended or partially suspended custodial sentences handed down on appeal, according to term category (2005-2009)**

	2005		2006		2007		2008		2009		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>0-3 months</b>	2	10%	-	-	-	-	-	-	2	14%	4	6%
<b>4-6 months</b>	4	20%	2	22%	3	16%	1	11%	1	7%	11	15%
<b>7-9 months</b>	1	5%	2	22%	1	5%	2	22%	-	-	6	8%
<b>10-12 months</b>	3	15%	2	22%	3	16%	-	-	2	14%	10	14%
<b>&gt;1-2 years</b>	4	20%	2	22%	8	42%	1	11%	7	50%	22	31%
<b>&gt;2-3 years</b>	4	20%	-	-	1	5%	4	44%	1	7%	10	14%
<b>&gt;3-4 years</b>	1	5%	1	11%	1	5%	-	-	-	-	3	4%
<b>More than 4 years</b>	1	5%	-	-	2	11%	1	11%	1	7%	5	7%
<b>Total</b>	20	100%	9	100%	19	100%	9	100%	14	100%	71	100%

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

**Table B4.24 Community service orders handed down on appeal according to term category (2005-2009)**

	2005		2006		2007		2008		2009		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
<b>1-120 hours</b>	4	27%	4	24%	5	31%	4	20%	5	45%	22	28%
<b>121-240 hours</b>	11	73%	12	71%	11	69%	16	80%	6	55%	56	71%
<b>More than 240 hours</b>	-	-	1	6%	-	-	-	-	-	-	1	1%
<b>Unknown</b>	-	-	1	6%	-	-	-	-	-	-	1	1%
<b>Total</b>	15	100%	18	100%	16	100%	20	100%	11	100%	80	100%

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

## 2d Supplement to §3.5.4.4 Characteristics of suspects and persons convicted

Tables B4.25 to B4.28 provide a complete and detailed overview of the available data from the Public Prosecution Service involving the suspects and persons convicted in the first instance between 2005 and 2010. Please refer to Appendix 2 for the justification of the research methods employed and Appendix 3 for the explanatory notes to the tables displayed in this Appendix and the statistics that apply in that regard.

Table B4.25 Gender of suspects (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Male</b>	495	99%	397	98%	376	98%	379	97%	437	98%	455	97%	2,539	98%
<b>Female</b>	6	1%	7	2%	7	2%	9	2%	10	2%	11	2%	50	2%
<b>N/A (legal entity)</b>	-	-	-	-	-	-	-	-	1	0%	1	0%	2	0%
<b>Unknown</b>	-	-	1	0%	-	-	3	1%	-	-	-	-	4	0%
<b>Total</b>	501	100%	405	100%	383	100%	391	100%	448	100%	467	100%	2,595	100%

Source: Research and Policy Database for Judicial Documentation (reference date: January 2011)

Table B4.26 Gender of persons convicted (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Male</b>	277	99%	324	99%	237	100%	253	100%	220	98%	291	99%	1,602	99%
<b>Female</b>	2	1%	3	1%	-	-	1	0%	4	2%	4	1%	14	1%
<b>Unknown</b>	1	0%	-	-	-	-	-	-	-	-	-	-	7	0%
<b>Total<sup>44</sup></b>	280	100%	327	100%	237	100%	254	100%	224	100%	295	100%	1,617	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

Table B4.27 Age of suspects (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>12-17 years</b>	32	6%	28	7%	38	10%	32	8%	27	6%	43	9%	200	8%
<b>18-25 years</b>	58	12%	57	14%	54	14%	60	15%	56	13%	73	16%	358	14%
<b>26-30 years</b>	67	13%	42	10%	35	9%	26	7%	48	11%	38	8%	256	10%
<b>31-40 years</b>	136	27%	111	27%	85	22%	90	23%	117	26%	109	23%	648	25%
<b>41-50 years</b>	107	21%	89	22%	100	26%	100	26%	116	26%	94	20%	606	23%
<b>51+ years</b>	101	20%	76	19%	70	18%	81	21%	82	18%	109	23%	519	20%
<b>N/A (legal entity)</b>	-	-	-	-	-	-	-	-	1	0%	1	0%	2	0%
<b>Unknown</b>	-	-	2	0%	1	0%	2	1%	1	0%	-	-	6	0%
<b>Total</b>	501	100%	405	100%	383	100%	391	100%	448	100%	467	100%	2,595	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

44 The totals do not correspond exactly with the numbers of convictions according to B4.13. This difference can partly be explained by the fact that Table B4.26 is based both on convictions as well as guilty verdicts without sentences or measures being imposed.

Table B4.28 Age of persons convicted (2005-2010)

	2005		2006		2007		2008		2009		2010		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>12-17 years</b>	12	4%	14	4%	15	6%	22	9%	10	4%	12	4%	85	5%
<b>18-25 years</b>	35	13%	41	13%	31	13%	35	14%	26	12%	39	13%	207	13%
<b>26-30 years</b>	32	11%	41	13%	31	13%	23	9%	18	8%	29	10%	174	11%
<b>31-40 years</b>	87	31%	94	29%	61	26%	52	20%	67	30%	79	27%	440	27%
<b>41-50 years</b>	68	24%	71	22%	58	24%	72	28%	58	26%	74	25%	401	25%
<b>51+ years</b>	46	16%	66	20%	41	17%	49	19%	45	20%	62	21%	309	19%
<b>Unknown</b>	-	-	-	-	-	-	1	0%	-	-	-	-	1	0%
<b>Total<sup>45</sup></b>	280	100%	327	100%	237	100%	254	100%	224	100%	295	100%	1.617	100%

Source: Data from the Public Prosecution Service (reference date: January 2011)

### 3 Supplement to §3.6.5 Probation and after-care – quantitative data

Table B4.29 provides a complete and detailed overview of the available RISC data that the Dutch Probation and After-care Services provided at the request of BNRM with regard to the child pornography clients registered with the probation and after-care services in 2010. Please refer to Appendix 2 for the justification of the research methods employed and Appendix 3 for the tables displayed in this Appendix and the statistics that are applicable to this.

Table B4.29 Selection of the RISC scores of the child pornography clients in 2010

No.	Selected RISC questions	Number of unique child pornography clients	
		N	% (453=100%)
<b>1.2</b>	Does it involve execution of the sentence, non-compliance with the terms and conditions of probation and/or converting a suspended sanction into a non-suspended sanction? (17 missing values)	19	4%
<b>1.5</b>	Number of times convicted under juvenile criminal law (up to 18 years)	12	3%
	- 1 of 2 times - 3 or more times (1 missing value)	7	2%

45 The totals do not correspond exactly with the numbers of convictions in accordance with B4.13. This difference can partly be explained by the fact that Table B4.28 is based both on convictions as well as guilty verdicts without sentences or measures being imposed.

No.	Selected RISC questions	Number of unique child pornography clients	
		N	% (453=100%)
1.6	Number of convictions after 18 years of age		
	- 1 of 2 times	118	26%
	- 3 or more times (no missing values)	47	10%
1.7	The terms and conditions of probation were not complied with or the community service order imposed was not completed (1 missing value)	20	4%
1.9	Various offences and/or a serious offence in their criminal history		
	- 2-4 more minor offences (no sexual offences)	59	13%
	- At least 1 serious offence (i.e. sexual offence) and/or more than 4 minor offences (no missing values)	57	13%
2.7	Other perpetrators were involved in the offence (51 missing values)	38	8%
2.8	Reason for committing the offence (categories are not mutually exclusive):		
	- Sexual motivation	347	77%
	- Financial motivation	3	1%
	- Addiction, satisfying needs	42	9%
	- Emotional state	115	25%
	- Discrimination or feelings of hatred	-	-
	- Thrill seeking	65	14%
	- Power / powerlessness	33	7%
	- Group pressure	3	1%
- Other (51 missing values)	33	7%	
2.9	Criminal behaviour was stimulated by (categories are not mutually exclusive):		
	- Alcohol use	23	5%
	- Pornography	178	39%
	- Improper use of medication or failure to take medication	3	1%
	- Psychiatric problems	56	12%
	- Emotional state	131	29%
	- Drugs	16	4%
	- Recent trauma	8	2%
	- Group pressure	6	1%
	- Other (133 missing values)	50	11%

No.	Selected RISC questions	Number of unique child pornography clients	
		N	% (453=100%)
3.2	Current living situation		
	- Permanent accommodation	414	91%
	- Temporary accommodation	26	6%
	- No permanent place of residence/homeless (3 missing values)	10	2%
4.4	Work experience and employment history		
	- Has always worked in principle	347	77%
	- Has worked most of the time	84	19%
	- Has never worked/unclear employment history (1 missing value)	21	5%
4.5	Current work situation		
	- Currently employed	307	68%
	- Is looking for work or has work on an irregular basis	65	14%
	- Is unemployed or not available for work (2 missing values)	79	17%
6.2	Experience of close (partner) relationships from (early) adulthood		
	- Has had one or more close relationships	206	45%
	- Has had positive and not-so-positive relationships	148	33%
	- Stuck in destructive patterns (8 missing values)	91	20%
6.3	Current relationships with partner, family and relatives		
	- Mutual relationships	216	48%
	- Relationships with some problems	157	35%
	- Destructive relationships that are harmful to the parties involved (2 missing values)	78	17%
10.1	Has difficulty keeping going		
	- Can handle troubles well	156	34%
	- Feels under pressure	218	48%
	- Feels overburdened (3 missing values)	76	17%
10.2	Psychological problems		
	- No psychological problems	208	46%
	- Psychological problems that are unrelated to the offence	128	28%
	- Longer-term psychological problems (10 missing values)	107	24%
10.3	Self image		
	- Normal self image	154	34%
	- Wishes that certain aspects were different	221	49%
	- Very negative self image or unrealistic self image (4 missing values)	74	16%

No.	Selected RISC questions	Number of unique child pornography clients	
		N	% (453=100%)
11.1	Social and interpersonal skills		
	- Socially competent	151	33%
	- Socially awkward	219	48%
	- Socially incompetent (2 missing values)	81	18%
11.2	Impulsiveness		
	- Thinks things through	226	50%
	- Sometimes impulsive	182	40%
	- Impulsive (6 missing values)	39	9%
11.5	Understanding of the problem		
	- Acknowledges there are problems	130	29%
	- Acknowledges there are some problems but does not recognise them consistently	240	53%
	- Denies that there are any problems (11 missing values)	72	16%
12.4	Understanding of and attitude towards themselves and their criminal behaviour		
	- Has an understanding of criminal behaviour	128	28%
	- Has some understanding of criminal behaviour	202	45%
	- Has no understanding of criminal behaviour (32 missing values)	91	20%
12.5	Inclination to change		
	- Would like to change	211	47%
	- Is somewhat willing to change	184	41%
	- Is not motivated to change (20 missing values)	38	8%

Source: The Dutch Probation and After-care Services, reference date 1 May 2011

An overview of the descriptions (in accordance with RISC Manual, user version 1.0, 2004) from the RISC questions selected by the BNRM, of which the results were available, is displayed below.

## Scale 1 Criminal history

<b>1.2 Does it involve execution of the sentence, non-compliance with the terms and conditions of probation and/or converting a suspended sanction into a non-suspended sanction?</b>	
<b>1.5 Number of times convicted under juvenile criminal law (up to 18 years)</b>	
Score 0	0
Score 1	1-2
Score 2	≥ 3
<b>1.6 Number of convictions after 18 years of age</b>	
Score 0	0
Score 1	1-2
Score 2	≥ 3
<b>1.7 Non-compliance with terms and conditions of probation or non-completion of the community service order that was imposed</b>	
Score 0	No, that did not happen
Score 2	Yes, that did occur
<b>1.9 Various offences in criminal history and/or a serious offence in criminal history</b>	
Number of different articles/types of offences for which convictions have been made. Scale A contains the serious offences, whereas scale B contains the less serious offences. Scale A takes precedence over Scale B in judgments. In each case select the primary offence.	
Score 0	First conviction and/or just one category is applicable
Score 1	2-4 categories from Scale B are applicable
Score 2	One of the categories below from Scale A is applicable and/or at least 4 different categories from B are applicable
<b>SCALE A</b>	
<b>SCALE B</b>	
Murder/homicide/attempted murder/involuntary manslaughter or injury (Art. 036/134/287/288/289/290/291/307)	Vandalism (Art. 350/352/354)
Assault (Art. 300/301/302/303)	Drug or alcohol-related offence (Art. 002/003/20P/30P/453)
Violent offence (Art. 141/285/300/308)	Theft and/or burglary (art. 310/311/312)
Sexual offence (Art. 239/242/243/244/245/247/248/249)	Crimes against public authority or public order (Art. 180/181/182/183/188)
Arson (Art. 157/158)	Offence against property (other than theft/burglary) (Art. 317/321/326/328)
Abduction/deprivation of liberty (Art. 278/279/284)	Traffic offence (Art. 018/025/026/030/032/033/037/33A)
Firearms offence (Art. 26W/9VW/6VW/701)	Forgery of documents (Art. 188/225/226/227/231)
	Receiving stolen goods (Art. 416/417)
	Other offences (Art. 90/91/128/174/207/255/261/801/J45/J47/UIT/WOTS)

## Scale 2 Analysis of current offence and pattern of offending

<b>2.7 Other perpetrators involved in the offence</b>	
Yes/No. Number of others involved. Influence of the group (peers, offender easily incited to act, member of a gang)	
<b>2.8 Reason for committing the offence</b>	
Indications, facts and sources of motivation and the reason for the offence. Indicate which motives play a role. Select points that you are able to substantiate on the basis of 'hard evidence' (indications of 'proof' in the case file).	
<b>A</b>	Sexual motivation (e.g. sexual offence, sexual behaviour, forensic evidence)
<b>B</b>	Financial motivation (e.g. robbing, burglary and handling stolen goods, 'occupational offender')
<b>C</b>	Addiction, satisfying needs (e.g. offending in order to fund drug use, gambling)
<b>D</b>	Emotional state of offender (e.g. depression, stress, anxiety, obsessive thoughts, anger, jealousy)
<b>E</b>	Discrimination or feelings of hatred towards certain groups (e.g. ethnic groups, minorities, women, religious groups)
<b>F</b>	Seeking sensations/Thrill seeking (e.g. creating excitement, alleviating boredom)
<b>G</b>	Power/powerlessness
<b>H</b>	Group pressure (e.g. influence of a gang, being provoked by the group etc.)
<b>I</b>	Other
<b>2.9 Criminal behaviour was further stimulated by:</b>	
<b>A</b>	Alcohol use
<b>B</b>	Pornography
<b>C</b>	Improper use of medication or failure to take medication
<b>D</b>	Psychiatric problems
<b>E</b>	Emotional state
<b>F</b>	Drugs
<b>G</b>	Recent trauma (e.g. divorce, unemployment)
<b>H</b>	Group pressure (e.g. influence of a gang, being provoked by the group etc.)
<b>I</b>	Other

## Scale 3 Accommodation and living

<b>3.2 Current living situation</b>	
<b>Detention or:</b>	
<b>Score 0</b>	Permanent accommodation (rented accommodation, own home, long-term co-habiting), Sheltered accommodation/Psychiatry/Hostel for Homeless People/Help for the Homeless Accommodation provided by Netherlands Institute for Psychological Care and Addiction Care (GGZ) or National Association for Organised Primary Care (LVG)
<b>Score 1</b>	Temporary accommodation/short-term resident/night shelter (bed, bath, bread)
<b>Score 2</b>	No permanent place of residence/homeless/no own permanent accommodation (yet)

## Scale 4 Education, work and learning

4.4 Work experience and employment history	
Score 0	Offender is in employment and does not leave one job without having their eye on another one. Has never been sacked due to unsatisfactory performance. May have had some gaps in their employment history, but those are 'gaps' outside of their control e.g. due to reorganisation, illness, family responsibilities. Has then made attempts to find work again.
Score 1	Offender has work most of the time. Sometimes leaves one job with no prospect of another one. Has been sacked, but usually finds something else.
Score 2	Has never worked. Has an unclear working history. Often leaves a job for no reason or with no prospect of another one. Has been sacked a number of times. Has been sacked one or more times due to unsatisfactory performance, not showing up for work, or for other reasons attributable to themselves.
4.5 Current work situation	
Score 0	Works full time or part time, employed on a permanent basis or through an employment agency, whether or not in combination with other responsibilities (family responsibilities, following a probationary programme or education). Follows a full time or part time education in combination with other responsibilities (family responsibilities, following a probationary programme etc.).
Score 1	Is looking for work or has work on an irregular basis.
Score 2	Unemployed or not able to work (e.g. as a result of other problems, physical or psychological).

## Scale 6 Relationships with partner, family and relatives

6.2 Experience of close (partner) relationships from (early) adulthood	
Score 0	In the past, the offender has had one or more close friendships or relationships with a partner. These were characterised by positive feelings, equality and reciprocity. Also score 0 if the offender consciously decides to be single, but appears capable of entering into a relationship.
Score 1	The offender has a past involving positive as well as not-so-positive relationships. He/she only has experience of short-term, close relationships and actually desires a long-term relationship. He/she has made an unfortunate choice of partner in the past, seems to realise this and wants to do something about it.

<b>Score 2</b>	<p>Offender is stuck in destructive patterns: partner relationships up until now have been characterised by physical, emotional or sexual abuse. The offender explains this themselves or admits this in discussion or the assessor establishes this. The offender has an unfortunate choice of partner (e.g. a partner who mistreats or abuses them or who suffers from an addiction).</p> <p>In the most recent relationship that was described, the offender was the party who mistreated or abused the other partner (this may also include sexual abuse). Most relationships are short-term, superficial and do not last very long. There is clear evidence that relationship problems are associated with the offence. Or the offender is single and badly wants a relationship (that also applies to offenders who are not capable of entering into a relationship).</p>
<b>6.3 Current relationships with partner, family and relatives</b>	
<b>Score 0</b>	<p>The current relationships are reciprocal, mutually sustaining and show care for one another. The partners, family members and relatives respect one another. The relationships are strong and presumably serve a protective function in preventing recidivism. Partner, family members and/or relatives will support the offender and help prevent recidivism. Also score 0 if the offender is single, has little contact with their family, but is satisfied with this and experiences the quality of contacts as good.</p>
<b>Score 1</b>	<p>Some problems are present within the current relationships with partner, family and/or relatives, but there is a certain degree of respect and care for one another and everyone tries their hardest to make things work out as well as possible. Also score 1 if the offender is single and is not entirely happy about this and/or does have some contact with their family and relatives but would like this to be improved.</p>
<b>Score 2</b>	<p>The relationships with their partner, family and/or relatives are destructive and are harmful to (one of the) involved parties. The relationships and the offending behaviour are connected to one another. Also score 2 if the offender is single, regards that as a major problem, is willing to do a lot to change that and is unhappy because he/she doesn't have a partner.</p>

**Scale 10 Emotional well-being****Schaal 11 Patterns of thinking, behaviour and skills**

<b>11.1 Social and interpersonal skills</b>	
Capable of sizing up social situations and acting accordingly, but this also includes the way in which the offender interacts with other people.	
<b>Score 0</b>	In social terms, offender acts in accordance with what is to be expected of him/her, with regard to age, background, life experience and education. Is capable of judging social situations, entering into relationships. Offender is able to acknowledge and recognise the feelings of others (e.g. victim).
<b>Score 1</b>	Offender is socially awkward. He/she does not always assess social situations well and occasionally forgets to value the feelings of others (e.g. victim).
<b>Score 2</b>	In social terms, offender is not able to stand on his/her own two feet, is socially incompetent. He/she does not understand social situations well and does not act as expected in these situations. He/she is not capable of imagining how another person (e.g. victim) feels. Behaviour may vary from extremely shy and withdrawn to bordering on the aggressive, maintains eye contact for too long, continually interrupts the conversation, dominant behaviour.
<b>11.2 Impulsiveness</b>	
Thinks first before acting. Acting on the spur of the moment without thinking about the consequences for themselves or others. Always seeking new experiences.	
<b>Score 0</b>	Offender does not act impulsively, but thinks things through. Considers things before taking action.
<b>Score 1</b>	Offender acts impulsively in some situations and not in others. Unable to concentrate on one thing for long before looking for something else. Does have some insight into their own behaviour, but does not have any real control over it.
<b>Score 2</b>	Offender acts impulsively in most situations. Offender does not think about their actions, not even afterwards. Only pays attention to themselves and what they achieve with that action. Only wants to do new and exciting things. Has no insight whatsoever into cause/effect relationships and their own role in this.
<b>11.5 Understanding of the problem</b>	
Being aware of problems and problem areas. Also being aware of matters that contribute to the continued existence of the problem.	
<b>Score 0</b>	The offender acknowledges problems and is able to provide good examples of the part that they themselves play in these, but also of matters that are important in contributing to the continued existence of the problem.

<b>Score 1</b>	The offender does acknowledge some problems but is not consistent in explaining them or in recognising the part that they play in the continued existence of the problem. The offender is able to effectively differentiate between main issues and side issues when reporting problems.
<b>Score 2</b>	The offender denies the existence of problems that he/she unable to deal with. Attributes problems to factors that are completely out of their own personal control. The offender indicates that the problems were caused by factors related to the past. He/she has no perception of the possibility that the same problem could happen again in the future.

### Scale 12 Attitude

<b>12.4 Understanding of and attitude towards themselves and their criminal behaviour</b>	
How does the offender see the offence, what are the causes and consequences and what were their motives?	
<b>Score 0</b>	Offender displays an understanding of the criminal behaviour, understanding of their motivation to commit the offence, and is able to lay down the cause/effect relationships that led to the offence. The offender recognises their own role in this and wants to prevent offences in the future.
<b>Score 1</b>	The offender has some understanding of the criminal behaviour and their motives. He/she recognises the role that they played, but also partly blames other factors.
<b>Score 2</b>	The offender has no understanding of the criminal behaviour or of the motives. He/she does not lay down any cause/effect relationships and has no self-insight. He/she may have either committed the offence consciously or it happened to them, but they do not recognise their own role in this is not recognised.
<b>12.5 Inclination to change</b>	
Motivation to change and willingness to use opportunities to change.	
<b>Score 0</b>	Offender really wants to change and use the opportunities that are available to him/her. Is realistic in their ideas about this. Mainly internally motivated.
<b>Score 1</b>	Offender is somewhat willing to change. There are limited opportunities to change. Above all, the offender requires support and encouragement. Is somewhat internally motivated but will mainly need external motivation.
<b>Score 2</b>	Offender is not motivated to change and/or does not see a single opportunity to change, does not want to change. If a change is to be achieved, this will need to be instigated by external motivation.





Postal address  
P.O. Box 20301  
2500 EH The Hague  
The Netherlands  
T +31 (0)703704514  
[www.bnrm.nl](http://www.bnrm.nl)

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