The legal protection of children and adolescents from crime and violence mediated by ICT

A look into the penal framework in 10 countries of Latin America

Análisis of findings from a study carried out by REDNATIC, October 2013

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Context

Argentina
Chile
Colombia
Costa Rica
El Salvador
México
Paraguay
Perú
Uruguay
Venezuela

Main selection criteria:
the existence of national policies or programs oriented to democratization of ICT and/or its incorporation as tools for social progress in the framework of poverty/social exclusion alleviation programs
Penal Codes and special laws regulating the protection of children and adolescents, where...

- the use of ICT is expressly referred to or may be fairly deducted from, or...
- the healthy development of their sexuality is protected, or...
- their personal rights – image, identity, name – are protected
Methodological steps

1. Exhaustive online research national international legal data bases
2. Compaired analysis
3. Consultation with key institutional and social actors at country level
Main findings

Only Venezuela reports a chapter under a special law – Special Law against Cyber Crime, of 2011- addressing the protection of children against commercial sexual exploitation mediated by ICT.

At any one time this could...

- be syndicated as a practice contradicting the principle of restrictive interpretation, very often to criminal legislation, and always claimed and applied to the benefit of the accused party.
- be subjected to the discretionality of law operators in positions of power within the system that enable them to decide on the issue.
- prove to be insufficient to respond to the dynamics of the ICT universe, and its continued and accelerated evolution.

The other 9 countries resort to extensive interpretation of penal norms enacted for the protection of sexual crimes.
Easy Little boy... don’t cry. Your address is? littlejohn@gmail.com

MAKING THIS SIDE OF THEIR WORLD, A BETTER PLACE!!!!!
So little done... so much to do

The rights of the child approach is not there yet...

The breaching of fundamental rights (privacy, free expression and information, dignity) are not considered.

Sexual indemnity is the only value partially protected. Even here legal protection diminishes as the age of the victim(s) goes up...
Establish explicit protection via Chapter under the Criminal Code (Punitive approach)

Introduce a dedicated chapter under special laws – legislation against cybercrime (Citizen security approach)

Ways forward...

Promote a knowledge-based, fresh-new, special integral legislation for the protection of children rights against violence and crime mediated by ICT

Encompassing prevention, attention (victims), sanction (offenders); assigning institutional mandates; providing for public funding (Child rights approach)
Where we are and where might we be heading, in Costa Rica...
We are here...

- Law Project No. 18230 introduced to Congress late 2011, drafted by PANIAMOR, research-based, aimed to reform Penal Code substantially.

- Revised text --strengthened from its original version through serious of institutional consultations 2012-2013-- expected to be known by the new legislative body October 2014, with full support of all but one of the parties represented.

- High possibilities for the country to have a good penal legislation addressing the issue by the end of 2014.
Where might we be heading...

• Take advantage of the July-September impass to draft, in consultation with key political and social partners, a new Project of law “Special integral law for the protection of children and adolescents rights to a safe, responsible and productive use of the information and communication technologies.”

• Mobilize support within the Legislative Congress to substitute law reform initiatives before the current law project reaches votation stage

• Start a new advocacy strategy and expect to have a much better piece of legislation approved by 2015...
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