European data collection on sexual offences against minors

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Research background (1)

› EC co-funded research projects (1)
  › 1998 (96/STOP/003): IRCP
    › systematic gathering & administration of data on
      › missing minors
      › minor victims of THB or sexual exploitation of children
      › perpetrators of sexual offences against minors
    › feasibility of further elaboration and implementation of international recommendations 96/STOP/003
  › 2002 (2001/GRP/024): IRCP
    › blueprint for an EU criminal records database (including a European disqualification register)
Research background (2)

› EC co-funded research projects (2)
    › 1st component: actual extent phenomenon (missing and) sexually exploited children
  › new project proposal (to be introduced): IRCP
    › elaboration methodological roadmap for the collection, administration and dissemination of reliable statistics (and legal information) on sexual exploitation children, missing minors (persons) and trafficking in human beings
  › all projects with participation of
    › national LE and NGO experts
    › international LE actors (Interpol, Europol, Eurojust)
    › international organisations (EC, Council EU, CoE)


› need for establishment of
  › international database missing minors
  › international monitoring centre for sexual exploitation of and trade in children
  › international database child pornographic materials
  › international legal database
  › European criminal records database
  › international database sex-offenders
  › international DNA-database
2000/STOP/116 (2001)

- final recommendations (+ implementation strategies)
  - international/European database on missing persons
  - reliable statistics and legal information
    - EU monitoring centre on sexual exploitation of children and trafficking in human beings
  - EU/international database on child pornographic images
  - (EU network of national DNA databases)
  - suspected and convicted sex-offenders
    - (EU database on pending investigations)
    - EU reference database on suspected and convicted sex offenders
    - EU criminal records (and disqualifications) database

International/European database missing persons

- purpose/scope
- data to be stored
- organisation/management database
  - criteria for inclusion data
  - access
- data protection
- options
  - SIS (II)
  - Interpol
- proposed solution/strategy
Purpose/scope

› trace/find missing persons
  › worrying disappearances of minors and adults, which may include
    › runaways (minors, mentally ill, ...)
    › criminal abduction (by 3rd person)
    › parental abduction (minors)
    › missing unaccompanied migrant children
    › lost, injured, otherwise missing persons
  › could be victims of THB
› ease/take away worries (e.g message home)
› allow family mediation (parental abduction)
› facilitate LE investigation/prosecution
  › through forensic investigation
  › links with databases unidentified corpses, child porn images, dna sexual offenders

Data to be stored

› identity missing persons
  › name(s), nationality, age, place of birth, gender, ...
› additional identification items
  › photographs (basic + age progressed)
  › DNA, dental records, x-ray-pictures, ...
  › medical data (medication needed, ...)
› possible location
› circumstances disappearance
› action requested
  › communication residence
  › deliver message
  › temporary custody in view of transfer/return
  › ...

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Organisation/management database

- criteria for inclusion data
  - ‘worrying’ disappearance
  - international definition required
  - no immediate notification (48h buffer)
    - vast majority missing minors/persons recovered
- access
  - for operational purposes (limited)
    - law enforcement authorities member parties
    - Europol (analysis trafficking/child pornography)
    - indirectly: NGO’s qualifying for cooperation with LE
      - Childoscope
  - for epidemiological exploitation (open)
    - EU monitoring centre THB/sexual exploitation minors
    - LE, policy-making, NGO’s, research

Data protection

- vital to respect European data protection acquis
  - CoE Convention No 108 and R (87) 15
  - EC Directives (95)46 ...
- right to information, correction, deletion
  - term for deletion: SIC 3 years too short?
- purpose limitation principle
  - no use of data stored for other purposes than foreseen
  - no risk of discrimination persons working in prostitution
- no sensitive data but in the interest data subject
- confidentiality?
  - including right (minor/+16 year) data subject to
    - run away - not be returned home
    - e.g. leave anonymous ‘message home’ to notifying NGO
Option: SIS

- **advantages**
  - art. 97 SIC: notification data missing persons with aim of
    - for adults: communicating place of residence
    - for minors: taking into temporary custody
      - quid minors above age of (sexual) consent?
    - SIS II: transmission photographs, fingerprints (+ DNA, X-Rays, ...?)
  - **disadvantages**
    - no search tool (only hit/no hit)
    - access restricted to border/police/custom checks or other LE services
    - no transfer Schengen data to national LE databases allowed
    - no transfer data to private organisations (NGO's) allowed
    - no links with other databases possible (corpses; child porn, ...)
    - geographical scope too narrow (even after new EU MS will join in)
    - data (items) included insufficient

Option: Interpol

- **advantages**
  - CIS – EAS – ASF – ...
  - world-wide geographical area of distribution
  - possibility to include all relevant data (items)
  - possible links with
    - database child pornographic material
      - reference/checksum database (Interpol)
      - analysis database (Europol, via bilateral agreement)
    - database of unidentified corpses (Interpol)
  - **disadvantage**
    - weak legal basis for data collection/protection
    - = main problem to overcome
  - **solution**
    - strength Interpol + appropriate data protection
Proposed solution/strategy

› database located at Interpol
  › large area of distribution
  › links with other databases
› Interpol mandated through CoE Convention
  › principles of data protection legislation
  › advantage: accession by non-Member States
  › stepping stones (for sufficient political support)
    › common position EU MS
    › inter-institutional request European Commission
› national level
  › national central body (within LE) for administering data on missing persons and exchanging data with international database
  › access for NGO’s via national body
    › protocol (based on international standard protocol?)
  › comparable data registration

Reliable statistics and legal information

› EU monitoring centre on sexual exploitation of children and trafficking in human beings
  › national focal points
    › gather all relevant information from governmental and private organisations
    › uniform data collection
  › cooperation with wide range of institutions active in the field of sexual exploitation of children and THB
  › unrestricted access
    › for governmental organisations/institutions, LE services, private organisations, scientific institutions, ...

- extent phenomenon (missing &) sexually exploited children
  - state of the art in EU MS
    - all national available figures on (missing and) sexually exploited children
      - uniform research/data collection definitions (infra)
    - insight in way national data collection is organised (infra)
    - shortcomings and weaknesses applied working methods
  - in order to
    - ameliorate organisation data collection
  - long-term objective
    - establishment EU monitoring center on missing and sexually exploited children
    - ensure centralization and administration of fundamental reliable and comprehensive data

Uniform research/data collection definitions (1)

- child: every human being below the age of 18 (UN CRC)
- sexual exploitation generic concept (separate from THB)
  - basis: EU FD sexual exploitation children & child pornography
  - no distinction ‘commercial’ exploitation vs ‘abuse’
- subcategories (1)
  - sexual assault: engaging in sexual activities with a child
    - below the age of consent
    - above the age of consent, where either
      - use made of coercion, force or threats
      - money/other forms of remuneration/consideration given as payment in exchange for child engaging in sex
      - abuse is made of a recognised position of trust, authority or influence over the child
    - use of parental/other faminly authority: incest
Uniform research/data collection definitions (2)

- subcategories (2)
  - child prostitution
    - coercing or recruiting a child into prostitution, profiting from or otherwise exploiting a child for such purposes
  - child pornography (1)
    - production, distribution, dissemination, transmission, supplying, making available, acquisition and possession of child pornography, i.e. pornographic material that visually depicts or represents either
      - a real child involved or engaged in sexually explicit conduct, including lascivious exhibition genitals/pubic area of a child
      - a real person appearing to be a child involved or engaged in the aforementioned conduct
      - realistic images of a non-existent child involved or engaged in the aforementioned conduct

Uniform research/data collection definitions (3)

- subcategories (3)
  - child pornography (2)
    - however: exclusion from criminal liability allowed where
      - real person appearing to be a child was in fact 18 years of age or older at the time of depiction
      - in the case of production and possession, images of children having reached the age of sexual consent are produced and possessed with their consent and solely for their own private use
      - child pornography consisting of realistic images of a non-existing child produced and possessed by the producer solely for his or her private use, as far as no pornographic material involving a child or a real person appearing to be a child has been used for the purpose of its production, and provided there is no risk for the dissemination of the material
    - child pornography on Internet (CoE Cybercrime Convention)
Uniform research/data collection definitions (4)

- subcategories (4)
  - sex tourism
    - = same conduct as under ‘sexual assault’
    - with a child in another country than the country of origin of the perpetrator
  - trafficking in children
    - based on: EU FD trafficking in human beings
    - recruitment, transportation, transfer, harbouring, subsequent reception of a child, including exchange or transfer of control over that child
    - for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography

National organisation data collection

- system of registration on different levels (police/judiciary/health/prevention/NGO’s …)
- centralized or decentralized
- exchange/sharing data between LE/NGO/GO …
- since when is data collection organized, period of time
- electronic data collection or not?
- anonymous/personal data?
- in terms of victims: age groups/gender
- in terms of offenders: gender/convicted or suspect
- in terms of cases: pending/settled cases
- differences for various forms of sexual exploitation
- how to avoid double counting?
Just a few findings ... (1)

› in general more data available on sexual exploitation (minors) than on missing minors
› various definitions LE/NGO’s/GO’s
› relatively big difference of year(s) of reference between and within MS
› data from justice authorities in most MS not available or difficult to access
› apparent lack of detail/precision data stored by various actors
› information largely decentralised/fragmentary
› almost no info on pending/completed cases/convictions
› data on offenders
  › very basic
  › breakdown mostly limited to gender and age

Just a few findings ... (2)

› sex tourism almost not covered in police/judicial/NGO statistics
› child pornography
  › victim identification and victim-related information rare
  › frequently no distinction in statistics as to whether internet-related or not
› important differences between MS regarding
  › private/public crime
  › (para-)judicial settlement
  › legality vs opportunity
› state of the art phenomena
  › figures and data in general largely unavailable
  › most national reports show rough estimates only
  › at present impossible to give credible estimates
  › still: unique overview & essential basis for future progress
New project proposal (to be introduced)

- previous project has served as first basis for insight in (chaos of) data collection 15 MS only
  - Agis proposal extension to 10 new MS
- profound methodological preliminary study required for EU/international monitoring function
  - elaboration methodological roadmap
    - for the collection, administration and dissemination of reliable statistics (and legal information)
    - on sexual exploitation children, (missing minors) and trafficking in human beings
  - irrespective of question which organisation/international body should be entrusted with monitoring task
    - = tough political decision
  - Daphne?

EU/international database child pornography

- pool of investigators monitoring Internet child porn at Europol
  - currently no proper mandate
  - lack of fully uniform definitions
- child porn image database
  - various expert meetings Europol-Interpol-G8 ...
  - competition
- 3 sorts of international databases for 3 types of functionalities
  - reference database
  - checksum database
  - analysis/intelligence database
Reference database

- duplication of efforts to be avoided (EU, Interpol, G8)
- necessity to also allow participation NON-EU countries
- international database
  - Interpol + further G8 implementation
- questions
  - how to ensure that database is fed?
  - obligation for EU MS to get their act together
    (establishment national units & obligation to feed to
     Europol, which could share images with Interpol on basis
     bilateral agreement & other way around)
- real-time access for checking pictures?

Checksum & Analysis/intelligence database

- checksum database
  - allowing for states to directly check in checksum database
    whether materials seized contain materials registered in
    checksum database as child porn
  - direct access
  - Interpol/G8
- analysis/intelligence database
  - Europol = only logical location
    - awf’s
  - necessity to also have the actual images
    - to be retrieved from international database for non-EU
      MS on basis Europol-Interpol bilateral agreement
  - necessity to have the case information
Summary (1)

- EU « cocoon »
  - obligation to establish national specialized units in MS
  - obligation to filter & send images & case information to Europol (in view also of exchange images with Interpol)
  - possibility to participate in/ask for analysis work at Europol
  - proposal for analysis/intelligence database at Europol
    - actual images and extensive case information (victims, perpetrators, scenery, ...)
    - aimed at victim and offender identification
    - Copine project?
    - through permanent awf with full participation 25 MS?
    - or specific additional legal basis required?
  - same question for pool of investigators monitoring Internet child porn at Europol

Summary (2)

- international image database at Interpol
  - Europol acting as a focal point on behalf of EU MS as regards input in & retrieval from international Interpol image database
    - as far as exchange of actual images is concerned
    - basis: bilateral inter-institutional agreement
  - limited mandate NGO’s
    - communication URL addresses child porn sites
    - no storage and/or transmission child porn material
EU DB on suspected/convicted sex-offenders

- European reference database
  - of persons suspected of having committed, being prosecuted for or having been convicted for sexual offences against children

- aim
  - optimising law enforcement cooperation and coordination of pending investigations and prosecutions concerning sexual offences against children

- IRCP-Europol draft Council decision
  - hereafter

IRCP-Europol draft Council decision

- entirely based on encoded information
- checksums of convicted and suspected offenders
  - safeguarding privacy rights and data protection rules
  - no needless obstruction offender’s re-socialisation/integration

- responsibilites of Europol
  - conversion and storage numerical codes
  - hit: notification ENUs and Eurojust
  - + possibility to check persons of EIS in reference database
  - possible first shared Europol/Eurojust database

- responsibilities for Europol’s National Units (ENUs)
  - centralisation, conversion and transmission of information
  - informing competent authorities
EU criminal records (& disqualification) DB

- addressing 2 goals EU ‘Mutual Recognition Plan’
  - (individualisation of) sanctions
  - disqualifications related to criminal acts
- additional goals
  - facilitate work EU LE bodies
  - restrict vulnerability certain professions/sectors
  - ‘active alert’ system as possible patch to the ECR
    - equivalent value as formal request for
      - execution sentence
      - supervision conditionally convicted/released
    - comparable to SIS Article 95 notice/Interpol red notice
- not limited to sexual offences against children
- general scope

Approach

- 3 options in EU ‘Mutual Recognition Plan’
  - bilateral exchange of information
  - network of national registers
  - centralized criminal records database
- preferred option (combined approach)
  - improving bilateral exchange by EU initiative
    - structural
      - frequency higher than annually (monthly?)
    - case-based
      - EU model form (draft FD European Evidence Warrant)
  - detailed information to remain decentralized
  - central index system: labelling-technique
  - use of existing IT facilities (Europol, SIS, EJN, Eurojust)
Access

› authorities concerned with criminal investigations
  › MS
  › EU-bodies (Europol, Eurojust, Olaf)
  › third bodies (Interpol) and states (various scenario’s)
› employers in vulnerable professions
  › which?
  › public professions (police, judiciary, government, …)
  › educational professions/working with children
  › medical professions
  › financial professions
  › transportation offences
  › trustworthy telecommunication professions
› through EU-certificate of non-prior conviction
  › disclosure related to profession

Questions and discussion