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LEGISLATIVE SUMMARY

Bill C-22:

An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service

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Legislative Summary of Bill C-22

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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CONTENTS

LEGISLATIVE SUMMARY OF BILL C-22: AN ACT RESPECTING THE MANDATORY REPORTING OF INTERNET CHILD PORNOGRAPHY BY PERSONS WHO PROVIDE AN INTERNET SERVICE

1 BACKGROUND

1.1 PURPOSE OF THE BILL AND PRINCIPAL AMENDMENTS

Bill C-22, An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service, was introduced in the House of Commons on 6 May 2010 by the Minister of Justice, the Honourable Robert Douglas Nicholson. It is identical to the former Bill C-58, which died on the *Order Paper* when Parliament was prorogued on 30 December 2009.[1]

Following after former bills C-46 and C-47[2] on legal access and the modernization of Canadian criminal law to keep pace with new technologies, Bill C-22 is intended to fight Internet child pornography by requiring Internet service providers (ISPs) and other persons providing Internet services[3] (e.g., Facebook, Google and Hotmail) to report any incident of child pornography. This requirement includes the following:

- If a person providing Internet services is advised of an Internet address where child pornography may be available, the person must report that address to the organization designated by the regulations (duty to report Internet address – clause 3).
- If a person has reasonable grounds to believe that the Internet services operated by that person are being used to transmit child pornography, the person must notify the police (duty to notify police officer – clause 4) and preserve the computer data (preservation of computer data – clause 5).

On 21 October 2010, the House of Commons Standing Committee on Justice and Human Rights made three amendments to the bill:

- **deletion of the short title of the bill ("Protecting Children from Online Sexual Exploitation Act") (deletion of clause 1);**
- **clarification of the definition of "Internet Service" in the English version of the bill to ensure that it includes only the provision of "services" such as Internet access, content hosting and electronic mail, and not, for example, the actual sending of electronic mail (clause 2);[4] and**
- **limitation on the application of similar legislation in provinces and other countries (clause 10). In its initial version, clause 10 of the bill provided that any person who reported information under the laws of a province or foreign jurisdiction would be deemed to have complied with all of the obligations of Bill C-22 (duty to report the Internet address [clause 3]; duty to notify a police officer [clause 4]; and preservation of computer data [clause 5]). Under the amended provision, such a person would be deemed**

to have complied only with clause 3 (duty to report the Internet address) . Therefore, if, for instance, provincial legislation does not include an obligation similar to the obligation provided in clause 4 of the bill, the person would still be obliged to fulfill the duty to notify a police officer if he or she has reasonable grounds to believe that the Internet services operated by that person are being used to transmit child pornography.

1.2 Similar Provincial and International Measures

In June 2008, the Legislative Assembly of Manitoba passed a law requiring all persons to report to Cybertip.ca[5] any material that could constitute child pornography.[6] Ontario passed a similar law in December 2008.[7] The United States[8] and Australia[9] adopted laws in 2002 and 2005 respectively imposing this requirement on ISPs. In addition, Bill C-22 provides that any person who has reported information under the laws of a province or foreign jurisdiction is deemed to have complied with the **duty to report the Internet address provided in clause 3 of the bill** (clause 10).

1.3 Internet Child Pornography in Canada

1.3.1 Current Legislation

Section 163.1 of the *Criminal Code* (the Code), passed in 1993, prohibits the production,[10] distribution,[11] sale[12] and possession[13] of "child pornography."

"Child pornography"[14] is defined as follows:

- the visual representation of explicit sexual activity with a person who is or who is depicted as being under the age of 18;[15]
- the visual representation, for sexual purposes, of persons under the age of 18; or
- any written material advocating or counselling sexual activity with a person under the age of 18.

Internet child pornography takes the form of images, sound recordings, videos, drawings or accounts of sexual assaults on persons under the age of 18. In 2002, Bill C-15A[16] amended subsection 163.1(3) of the Code, which prohibits the distribution of child pornography, by introducing the terms "transmits" and "makes available" to prohibit the distribution of child pornography online. The bill also added subsections 163.1(4.1) and (4.2) to the Code, making it an offence to deliberately access child pornography (by visiting a website, for instance).

Bill C-15A also provided for a special warrant in relation to Internet child pornography. Under section 164.1 of the Code, if there are reasonable grounds to believe that child pornography is accessible through an ISP's computer system, a judge may order the ISP to provide the necessary information to identify and locate the person who posted it. In addition, the judge may order the ISP to remove the Internet child pornography in question.

With regard to sentencing, child pornography offences are considered hybrid offences: the prosecutor may choose whether the accused should be charged with an indictable offence or be liable to a summary conviction. The offences of producing, distributing and selling child pornography, if treated as indictable offences, are punishable by a maximum prison term of 10 years and a minimum term of one year; on summary conviction, they are punishable by a maximum prison term of 18 months and a minimum term of 90 days. The offences of possession and viewing of child pornography on a computer are punishable, for indictable offences, by a maximum prison term of five years and a minimum term of 45 days, and on summary conviction by a maximum term of 18 months and a minimum term of 14 days.

1.3.2 Statistics

According to Statistics Canada, which gathers data on all types of child pornography (not Internet child pornography alone), child pornography offences have increased significantly in Canada, from 55 offences in 1998 to 1,408 in 2008.[17]

It is currently estimated that there are over five million child sexual abuse images on the Internet.[18] According to analysis by Cybertip.ca, from 2002 to 2009, 57.4% of the images on Internet sites containing pornographic images of children were of children under the age of 8, 24.7% were of children aged 8 to 12, and 83% were of girls.[19] Over 35% of the images analyzed showed severe sexual assault. Children under the age of 8 were most often subject to sexual assault (37.2%) and extreme sexual assault (68.5%).[20] Older children were usually shown naked or in an obscene pose.[21]

The Cybertip.ca study shows that Internet sites containing child pornography are hosted in close to 60 countries.[22] The following table from this study shows that Canada is one of the top child pornography website host countries.

Table 1 – Top 5 Child Pornography Website Host Countries
(Based on an Analysis of 12,696 Website Incidents)

Rank	Country	Percentage of sites (%)
1	United States	49.2
2	Russia	20.4
3	Canada	9.0
4	Japan	4.3
5	South Korea	3.6

Source: Kelly Bunzeluk, *Child Sexual Abuse Images – Analysis of Websites by Cybertip.ca*, Canadian Centre for Child Protection, November 2009, pp. 11 and 44.

1.3.3 Movement of Child Pornography Sites

All the child pornography files posted on a Web page are not necessarily hosted in the same location. For instance, image A may be hosted in Canada while image B on the same Web page may be hosted in the United States. The Web page itself might be hosted in yet another country, such as Japan. Similarly, an illegal site can hide the host's location through an anonymous proxy server or by server rerouting. Identical

sites may also be simultaneously located on different URLs.[23] In such cases it can be very difficult to remove the child pornography and, even if the site is closed down, the offensive material may still be accessible on the Internet.[24]

Moreover, illegal sites regularly change location in order to avoid being shut down. In a period of 48 hours, Cybertip.ca counted 212 Internet protocol (IP) addresses[25] in 16 countries for a single website.[26] A website can also change location in just a few minutes by utilizing a network of personal computers as zombies.[27] These zombies provide the content of the website or relay the content hosted on another server. Cybertip.ca recommended that when zombies are detected, ISPs running the networks to which these computers are connected should be able to suspend service for those computers until the infected computers are restored.[28]

2 DESCRIPTION AND ANALYSIS

2.1 Duty to Report the Internet Address (Clause 3)

Any person may inform an ISP or other person providing Internet services that a website, a host page (e.g., a Facebook page) or an email appears to contain child pornography. The ISP or other person providing Internet services must then report the address of the site, page or email in question as soon as possible to an organization designated by the federal government. For example, under Manitoba law, the designated organization is the national reporting agency, Cybertip.ca.

2.2 Duty to Notify a Police Officer (Clause 4)

After being notified by a member of the public or an agency that child pornography may appear through Internet services that it provides, the ISP or other person providing the Internet services may have reasonable grounds to believe[29] that child pornography is being transmitted through its services. It may also reach this conclusion on its own. When this is the case, the ISP or person providing the Internet services must notify the police as soon as possible.

The bill does not indicate exactly what kind of information the ISP or other person providing Internet services must report to the police. Presumably, it would be "computer data" as broadly defined in subclause 2(1) of the bill: "representations, including signs, signals or symbols that are in a form suitable for processing in a computer system." US law, for example, provides that the ISP or other person providing telecommunications services must provide to the police the content being transmitted (e.g., child pornography files) and information about the individual or Internet site that appears to be the source of the child pornography (IP address, URL, email address, postal address, date and time of transmissions and geographic location of the computers and servers in question).[30]

2.3 Preservation of Computer Data (Clause 5)

The ISP or other person providing Internet services that notified the police must keep the computer data relating to the child pornography offence for 21 days. After that, this computer data (except the data they normally keep for their business activities) must be destroyed, unless the police have obtained a court order to keep the data.[31]

2.4 No Disclosure (Clause 6)

Reports and notifications made under this bill must remain confidential. For example, an ISP must not inform a person that the police have been notified about that person.

2.5 No Authority to Seek Out Child Pornography, and Immunity (Clauses 7 and 8)

Viewing child pornography online is a criminal offence.[32] Bill C-22 does not authorize – much less require – anyone to seek out child pornography (clause 7). At the same time, if a person complying in good faith with the provisions of Bill C-22 notifies the authorities where child pornography may be available, that person may not be subject to civil proceedings (clause 8). For example, civil proceedings cannot be brought against an ISP that has notified the police that an Internet site on the network operated by that ISP appears to contain child pornography.

NOTES

1. Bill C-58, An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (2nd Session, 40th Parliament), was sent to the House of Commons Standing Committee on Justice and Human Rights on 27 November 2009 after second reading.
2. Bill C-46: An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (short title: Investigative Powers for the 21st Century Act), 2nd Session, 40th Parliament; and Bill C-47: An Act regulating telecommunications facilities to support investigations (short title: Technical Assistance for Law Enforcement in the 21st Century Act), 2nd Session, 40th Parliament. Both bills died on the *Order Paper*.
3. Subclause 2(1) of the bill defines “Internet services” as “a service providing Internet access, Internet content hosting or electronic mail.” The same subclause also defines a “person” as “an individual, a corporation, a partnership or an unincorporated association or organization.”
4. **In the English version, the initial definition of “Internet Service” read, “Means Internet access, Internet content hosting or electronic mail.” The amended definition reads, “Means *a service providing* Internet access, Internet content hosting or electronic mail” (emphasis added).**
5. The Government of Canada, public agencies, the private sector and non-profit groups launched Cybertip.ca in September 2002. Designed to protect children against all forms of online sexual exploitation, this national site allows the public to report child pornography, luring, child prostitution, child sex tourism and child trafficking. The notifications received by Cybertip.ca are forwarded to the police.

6. *The Child and Family Services Amendment Act (Child Pornography Reporting)*, S.M. 2008, c. 9, new subsection 18(1.0.1) of the amended Act. For more information, see Government of Manitoba, "New Law Obliges All Manitobans to Report Child Pornography – Public Awareness Campaign Launched by Province: Mackintosh," News release, 15 April 2009.
7. *Child and Family Services Statute Law Amendment Act*, 2008, c. 21, new subsection 72(1.1) of the amended *Child and Family Services Act*, R.S.O. 1990, c. 11.
8. *Sexual Exploitation and Other Abuse of Children*, 18 USC, c. 110, s. 2258A. This law applies not only to ISPs but also to any person providing telecommunications services.
9. *Criminal Code Act 1995*, s. 474.25.
10. Subclause 163.1(2) of the Code.
11. Subclause 163.1(3) of the Code.
12. Subclause 163.1(3) of the Code.
13. Subclause 163.1(4) of the Code.
14. Subclause 163.1(1) of the Code.
15. This could be a person over the age of majority who is depicted as being under the age of 18. The definition apparently also includes the use of software to obtain image montages or videos depicting persons under 18.
16. *Criminal Law Amendment Act, 2001*, S.C. 2002, c. 13.
17. The rate per 100,000 people increased from 0.18 in 1998 to 4.23 in 2008 (Statistics Canada, CANSIM, Table 252-0051).
18. Office of the Federal Ombudsman for Victims of Crime, *Every Image, Every Child: Internet-Facilitated Child Sexual Abuse in Canada*, n.d., p. 5.
19. Kelly Bunzeluk, *Child Sexual Abuse Images – Analysis of Websites by Cybertip.ca*, Canadian Centre for Child Protection, November 2009, pp. 9 and 36. This report pertains exclusively to images found on Internet sites and excludes all other forms of child pornography as defined in the *Criminal Code* (such as videos).
20. These include bestiality, bondage, torture and the use of weapons.
21. Bunzeluk (2009), p. 38.
22. Ibid., p. 11.
23. The URL (Uniform Resource Locator) is the exclusive address of a Web page or a Web document on the Internet.
24. Bunzeluk (2009), p. 43.
25. The Internet protocol address is a unique identification number made up of four series of numbers separated by dots; it identifies a computer connected to the Internet.
26. Bunzeluk (2009), p. 63.
27. A zombie is a computer that has been infected and is used by a third party (a pirate), unbeknownst to the owner, to carry out various illicit operations.
28. Bunzeluk (2009), p. 62 (recommendation 12).
29. In stipulating "reasonable grounds to *believe*," the legislator has chosen a higher legal threshold of proof than is required when "reasonable grounds to *suspect*" is specified.
30. *Sexual Exploitation and Other Abuse of Children*, c. 110, s. 2258A(b).

31. Bill C-46 (2nd Session, 40th Parliament) included a new order to preserve computer data (new section 487.013 of the Code). Bill C-46 died on the *Order Paper* when Parliament was prorogued on 30 December 2009.

32. A person who has viewed child pornography online may nonetheless wish to report the site to Cybertip.ca, which accepts anonymous tips.