



# New technologies and adoption

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## The impact of new technologies on the adoption process

In this day and age, in which new technologies – including all the recent developments and social networks (Internet, e-mail, Facebook, Skype, DNA tests, etc)<sup>1</sup> – are plentiful, a snapshot seemed necessary to the ISS/IRC, in order to assess the impact of the latter on the world of adoption. Accordingly, the ISS/IRC originally prepared this paper in 2013. Since then, the Committee on the Rights of the Child focused its 2014 General Discussion Day on the issue of Digital Media and Children’s Rights<sup>2</sup>. The Permanent Bureau of The Hague Conference on Private International Law has included the topic of modern technologies in the provisional draft agenda for the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention, which will meet in June 2015. The Permanent Bureau asked ISS/IRC to update this paper in light of the responses to a questionnaire circulated by the Permanent Bureau (hereinafter, ‘the questionnaire’)<sup>3</sup> in preparation for the Special Commission meeting.

In many respects, new technologies have considerably improved adoption procedures, in particular, by making communication easier among the various actors, by reducing the costs and by allowing for access to wider information, just to mention a few positive developments. However, this progress also comes with some risks (direct contact between adoptees and their biological family via Facebook, the sharing of incorrect information on

<sup>1</sup> For further details, see Editorial, Monthly Review N° 173, June 2013.

<sup>2</sup> See <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2014.aspx>

<sup>3</sup> ‘Questionnaire on the practical operation of the 1993 Hague Intercountry Adoption Convention’, drawn up by the Permanent Bureau, Prel. Doc. No 2 of October 2014 for the attention of the Special Commission of June 2015 on the practical operation of the 1993 Hague Convention, available at <http://www.hcch.nl>, under Intercountry Adoption Section, and then Special Commissions (hereinafter, Questionnaire’).

some procedures in countries of origin, the risk to the adopted children's privacy, etc.) and deviations - such as the practice of "rehoming"<sup>4</sup> in USA - which Central Authorities (CAs), accredited adoption bodies (AABs) and other competent authorities must overcome through the awareness-raising, capacity-building and prevention measures directed at adoptive families.

In order to assess these positive impacts and these challenges, the ISS/IRC decided to launch, mid-2013, a survey aimed at undertaking an assessment of the situation, at promoting the exchange of different experiences and offering tools to all the actors involved in adoption (hereinafter "the survey"). The ISS/IRC is therefore pleased to present below the results of this survey, which several members of the network have generously contributed to. In particular, the ISS/IRC thanks the CAs of Australia, Belgium, Burkina Faso, Cyprus, Finland, Guinea, Italy (CA and AABs), Sweden, Switzerland, as well as the Australian and Dutch Branches of the ISS, the German ISS correspondent and the South African NGO Engo. As noted above, this study was updated in March/April 2015 on the basis of replies to the questionnaire submitted by the Hague Conference on Private International Law in the framework of the 2015 Special Commission (questions 42-49).<sup>5</sup> ISS/IRC and the Hague Conference wish to express their sincere appreciation to all States and experts who responded to the survey and questionnaire.

This synthesis first addresses the legal framework relating to the resort to new technologies as well as the means of supervision that exist at the international and regional levels and in those countries having contributed to survey and the questionnaire. Secondly, it examines the role of new technologies, nowadays, throughout the adoption process, by putting the emphasis on the benefits and risks linked to their use. Finally, it takes stock of the progress in terms of training and awareness-raising of all adoption actors in this field.

## **I Legal framework and supervision mechanisms of the resort to new technologies**

### **1. Applicable laws regarding privacy and data protection**

#### **At the international and regional levels**

At the international level, the main human rights instruments include provisions relating to the protection of personal data and privacy. A list of the latter is available in the Resolution on Digital Education for All, adopted at the 35<sup>th</sup> International Conference of Data Protection and Privacy Commissioners, held in September 2013<sup>6</sup>. Among these instruments, it is worth mentioning the 1948 Universal Declaration of Human Rights (articles 25 and 26), the 1966 International Covenant on Economic, Social and Cultural Rights (article 17) and the United Nations Convention on the Rights of the Child (article 16).

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<sup>4</sup> *Americans use the Internet to abandon children adopted from overseas*, Reuters investigates, 9 September 2013, <http://www.reuters.com/investigates/adoption/#article/part1>.

<sup>5</sup> Questionnaire, *supra* fn. 3.

<sup>6</sup> Resolution on Digital Education for All, adopted at the 35<sup>th</sup> International Conference of Data Protection and Privacy Commissioners, available in English at: [http://www.cnil.fr/fileadmin/documents/approfondir/dossier/international/docs/7.Digital\\_education\\_resolution\\_EN.pdf](http://www.cnil.fr/fileadmin/documents/approfondir/dossier/international/docs/7.Digital_education_resolution_EN.pdf).

In relation to the fight against cybercrime, it appears that the only international convention that exists to date on this issue is the 2001 Convention on Cybercrime, also known as the Budapest Convention on Cybercrime, drafted by the Council of Europe with active contributions from international observers<sup>7</sup>.

At regional level, the 1990 African Charter on the Rights and Welfare of the Child protects the child against any violation of his/her private life in its article 10. In Europe, a European Convention was adopted in 1981, entitled Convention 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data as well as its Additional Protocol. Furthermore, EU Directive 95/46/CE<sup>8</sup> is also a reference text on the protection of personal data. This Directive 'sets up a regulatory framework, which seeks to strike a balance between a high level of protection for the privacy of individuals and the free movement of personal data within the European Union (EU). To do so, the Directive sets strict limits on the collection and use of personal data and demands that each Member State set up an independent national body responsible for the protection of these data'. It is worth mentioning that these rules are about to be harmonised at European level, as two new instruments have recently been adopted by the Committee on Civil Liberties of the European Parliament<sup>9</sup>.

In Latin America, the Montevideo Memorandum on Digital Exclusion of Youth was adopted on 28 July 2009<sup>10</sup>. This document addresses the protection of personal data and private life on social networks and the Internet, and is aimed, in particular, at children and adolescents. It issues a certain number of recommendations, divided into four main areas: the prevention and education of children and adolescents by the States and educational institutions, the legal framework and the application of laws, public policies and, finally, the businesses.

### **At the national level**

Most countries having contributed to the survey have a law on the protection of personal data **of a general nature**: the 1990 *General law for data protection issues* in Germany, the 1988 *Privacy Act* in Australia<sup>11</sup>, the *Law of 8 December 1992 on the protection of private life in the treatment of personal data* in Belgium, the *Law N° 010-2004 of 20 April 2004 on the protection of personal data* in Burkina Faso<sup>12</sup>, the 1998 *Personal Data Act* (among others<sup>13</sup>)

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<sup>7</sup> See <http://conventions.coe.int/Treaty/EN/Treaties/Html/185.htm>.

<sup>8</sup> For further information, see:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:en:HTML>

<sup>9</sup> For further information, see: <http://www.net-iris.fr/veille-juridique/actualite/32175/protection-des-donnees-personnelles-dans-ue-adoption-de-la-reforme.php>.

<sup>10</sup> Available in Spanish at: <http://www.pantallasamigas.net/proteccion-infancia-consejos-articulos/proteccion-de-datos-personales-y-privacidad-para-los-menores-en-las-redes-sociales-memorandum-de-montevideo.shtm>.

<sup>11</sup> This law includes, in its section 14, a list of 11 principles that must be respected by the authorities in charge of gathering, using and disclosing personal data, as well as by those persons wishing to access personal data. These principles have been replaced, in March 2014, by new personal data protection principles. For further information on this reform, see: Office of the Australian Information Commissioner, <http://www.oaic.gov.au/>.

<sup>12</sup> This law applies to automated or non-automated treatments of personal data, contained or that may appear in the files, which responsible person is established on the territory of Burkina Faso, or if not established on the latter, resorts to treatment means located on the territory of this country, except for data that is only used for transit purposes (Art. 8).

<sup>13</sup> See also: the *Data Act* (1973), the *Debt Recovery Act* (1974) and the *Credit Information Act* (1973).

in Sweden, the 1998 *Data protection Act* in the United Kingdom<sup>14</sup>, the 2014 *Personal Data Act* in Norway<sup>15</sup> and, finally, the *Swiss Federal Law on data protection (LPD)* of 19 June 1992. Quebec<sup>16</sup> and France<sup>17</sup> also have this kind of law.

Furthermore, some countries mention the existence of texts aimed, more precisely, at **child protection and adoption**. Thus, in Italy, for example, a *Code on the Internet and children* was published in 2004, as well as *Law N° 38 of 6 February 2006 on pedophilia and child pornography via the Internet*. In this respect, Switzerland has an *Order on measures of protection of children and young people and on the strengthening of children's rights*<sup>18</sup>. In addition, some laws relating to children, such as the *Angolan Law N° 25/12 of 22 August 2012*, include an article (art. 30) relating to the protection of children in relation to the media and the Internet.

In relation to **adoption**, the *Adoption and Children Act*, adopted in 2002 in the United Kingdom, provides a framework for the advertisement of adoptable children via the Internet and *The Adoption Agency (Scotland) Regulations of 2009*<sup>19</sup> obliges adoption agencies to create case records for children and prospective adoptive parents (hereinafter, PAPs) and for the reports contained within these records to be treated as confidential. Germany, on the other hand, adopted specific rules, which address, in particular, the protection of so-called sensitive personal data in the context of adoption<sup>20</sup>.

In Colombia, Article 77 of the *Code on Children and Adolescents (CCA)* provides for the establishment of an information system, aimed at creating a register of children and adolescents, whose rights are at risk. It is worth mentioning that this article states that this information system will also include a special register for the adoption programme. The CCA ensures, in addition, the confidentiality of the information relating to children and families in the process of adoption (Article 75)<sup>21</sup>.

The CA of the Dominican Republic – as well as the CA of Peru – provide, through their websites, a link to the domestic legislation applicable on this issue and state that the law on adoption provides for the confidentiality of information<sup>22</sup>. The Peruvian CA also mentions the existence of a Dropbox, which enables South American countries to access their respective regulations, in particular in this field.

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<sup>14</sup> See: <http://www.legislation.gov.uk/ukpga/1998/29/contents>.

<sup>15</sup> See: <http://www.datatilsynet.no/English/Regulations/>.

<sup>16</sup> See: *Loi sur la protection des renseignements personnels et les documents électroniques*, <http://laws-lois.justice.gc.ca/fra/lois/P-8.6/index.html>.

<sup>17</sup> See : *Loi 78-17 du 6 janvier 1978 dite "Loi Informatique et Libertés"*, <http://www.cnil.fr/documentation/textes-fondateurs/loi78-17/>. Implementation laws at: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006052581&dateTexte=20090319>.

<sup>18</sup> See: <http://www.admin.ch/opc/fr/classified-compilation/20092333/index.html>.

<sup>19</sup> See: <http://www.legislation.gov.uk/ssi/2009/154/contents/made>.

<sup>20</sup> §9d *AdVermiG*, available at: <http://dejure.org/gesetze/AdVermiG/9d.html>.

<sup>21</sup> See: *Ley 1098 de 2006, Código de la Infancia y la Adolescencia*, [http://www.secretariasenado.gov.co/senado/basedoc/ley\\_1098\\_2006.html](http://www.secretariasenado.gov.co/senado/basedoc/ley_1098_2006.html).

<sup>22</sup> See: <http://www.conani.gov.do> (Dominican Republic) and <http://www.mimp.gob.pe> (Peru).

As for the Italian CA, it manages adoption procedures within the framework of the rules set by the *Code on Digital Administration*, adopted at national level in 2005 and applicable to all public administrations in the country. In Australia, each State and Territory has its own legislation relating to restrictions in terms of publication of information disclosing the identity of persons involved in an adoption (the child, but also the adoptive parents and their family as well as the biological parents). These restrictions vary from one State or Territory to another<sup>23</sup>. Belgium (French Community) and Western Australia for their part mention the prohibition imposed in their adoption legislation on adoptions not supported by an authorised service (CA, AAB).

Moreover, the Filipino CA has adopted two resolutions, the first one explicitly prohibiting the uploading to the Internet of photos and identifying information of Filipino children by foreign adoption agencies and child-caring institutions to safeguard the right to privacy of the children. In cases of special needs children, only useful information that will enable the PAPs to make an informed consent may be uploaded to the Internet. The second resolution deals with the advertisements identifying child-caring agencies as beneficiaries in the Internet depicting demeaning conditions of Filipino children in order to influence a person to provide donations. The uploading of such advertisements on the Internet using Filipino children as means to solicit donation is prohibited and shall be a ground for suspension or revocation of the child caring agencies' accreditation<sup>24</sup>.

Finally, Belgium (French Community), France and Switzerland state that violations linked to the resort to new technologies fall under the scope of application of their general legal mechanisms and, in particular, of their criminal law<sup>25</sup>.

## 2. Supervision

### At the international and regional levels

At the international level, the measures provided for by the above-mentioned Convention on Cybercrime are applicable in domestic law to all criminal inquiries and procedures relating to offences defined in this instrument. Furthermore, by becoming Parties to this Convention, States have committed themselves to adopt, in accordance with their domestic legislation, laws, which define a certain number of offences, as well as their attempt at a commission.

With regards to supervisory bodies at the international and/or regional level, these have been difficult to identify. Some initiatives may be mentioned, such as the IMPACT (International Multilateral Partnership Against Cyber Threats) Centre in Malaysia, the first global and international partnership against cyberthreats (the headquarters of the Global Cybersecurity Agenda programme, launched in 2007 by the International

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<sup>23</sup> For further details, see: ISS/IRC, *Access to origins: The right and its terms of access*, November 2011.

<sup>24</sup> See ICAB's resolutions: BR 045-37 s 2009 and BT 054-46 s 2010.

<sup>25</sup> For example, articles 91<sup>quarter</sup> and 391<sup>quinquies</sup> of the Belgian Criminal Code punish those persons, who have obtained or tried to obtain an adoption in violation of legal provisions [...], as well as any person, who has been an intermediary to an adoption without being an accredited AAB [...]. In Switzerland, a civil or criminal procedure is provided for, in accordance with the rules of ordinary law, depending on the offence, as well as a complaint to the Federal Commissioner for data protection (<http://www.edoeb.admin.ch/datenschutz/00618/00802/00812/index.html?lang=fr>).

Telecommunication Union), or the ENISA (European Union Agency for Network and Information Security). Moreover, in the framework of the Convention on Cybercrime, the competent authorities in this field have to be registered at the Secretary General of the Council of Europe. This convention also promotes international cooperation and mutual assistance between contracting States through the conclusion of multilateral agreements, or in their absence, other equivalent procedures.

### **At the national level**

Some surveyed countries have a control and supervisory body for the application of laws relating to the protection of personal data and cybercrime, which may intervene in situations linked to adoption. In particular, the following may be identified: the Office of the Australian Information Commissioner at federal level in Australia, the Data Protection Supervisor at federal level and in the *Länder* in Germany, the Information Technology and Freedoms Commission in Burkina Faso, the Commissioner for Personal Data Protection in Cyprus, the Agency for the Regulation of Postal Services and Telecommunications in Guinea, The National Commission on Information Technology and Freedoms (CNIL, for its acronym in French) in France, as well as the Data Inspection Board<sup>26</sup> in Sweden. In Switzerland, several bodies may be involved in cases of discovery of fraudulent practices, such as the Coordination Unit against the Trafficking in Persons and Smuggling of Migrants<sup>27</sup>, the National Cybercrime Coordination Unit<sup>28</sup> and the Reporting and Analysis Centre for Information Assurance<sup>29</sup>.

In addition to these supervisory bodies, the CAs – as mentioned by Italy and the Netherlands – also play a role in the supervision of any fraudulent practice, through the resort to new technologies. In Italy, despite the absence of a norm imposing on accredited bodies to denounce fraudulent practices to the CA, when fraudulent practices have been reported or denounced to the CA, or when the CA comes to know about a fraudulent practice, it has always been made sure that all necessary steps concerning the case were taken, for example by publishing alerts on our website. When the AAB that has supported the PAPs is at fault, the Netherlands mention the possibility of contacting the special complaints commission relating to the work and methods used by AABs. In Switzerland, an unauthorised intermediary activity may be reported to the supervisory authority of intermediaries in adoption matters<sup>30</sup>.

Furthermore, some CAs undertake a form of occasional supervision of existing adoption-related blogs/fora. Belgium (French Community) states that it consults them periodically in order to be aware of any potential difficulties, or even beginning of illegal procedures. In this case, it tries to transmit the correct information through a member of the forum at stake, or encourage the members to initiate contact with it. On the other hand, Quebec's CA has a technical research professional in charge of 'information watching', who responds and follows-up on the requests received. It has already been the case that a member of the team

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<sup>26</sup> See: <http://www.datainspektionen.se/in-english/about-us/>.

<sup>27</sup> See: <http://www.ksmm.admin.ch/ksmm/fr/home.html>

<sup>28</sup> See: <https://www.cybercrime.admin.ch/kobik/en/home.html>.

<sup>29</sup> See: <http://www.melani.admin.ch/index.html?lang=en>.

<sup>30</sup> See: Federal Justice Department, [https://www.bj.admin.ch/content/bj/en/home/themen/gesellschaft/internationale\\_adoption.html](https://www.bj.admin.ch/content/bj/en/home/themen/gesellschaft/internationale_adoption.html).



responds directly to a person announcing publicly or on its website an inadmissible adoption project. This person is then warned by the CA, which encourages him or her to contact it in order to redirect his or her initial project. Most of the time, these are famous people, artists. In Italy, the CA does not have any specific supervisory mechanism for blogs/fora, but undertakes rounds/checks. The practice of Italian AABs varies greatly: whilst some undertake no control of blogs/fora, others have a specific person in charge of this task.

## II The role of new technologies in the adoption process and potential risks

### 1. Communication among the various actors

The resort to the Internet, in particular to e-mails, to audiovisual support, such as Skype or Webex, or even to social networks, such as Facebook, has widely improved and facilitated the communication among the various adoption actors, whether in terms of time or in costs.

#### Communication with prospective adoptive parents (PAPs) and adoptive families

On the one hand, the CAs, as well as the ISS Branches having contributed to the survey, mentioned resorting to e-mails to communicate with PAPs and adoptive families at the various stages of the adoption procedure. The CA of Tasmania in Australia, for example, uses Skype to talk to PAPs throughout the adoption process. As for most Italian AABs having replied to the questionnaire, they mentioned a use of Skype to keep in touch with the prospective adoptive parents during their stay in the country of origin, as well as with their own representative in this country. They also stated using the Internet to continue supporting the PAPs during the waiting period. Finally they also resort to social networks to share news and events relating to the AAB and to involve more actively the PAPs in the activities of the AAB. It is interesting to mention that the Norwegian AAB *Adopsjonsforum* has established an online hub aimed only at PAPs, and which requires a username and password. Applicants may find useful information, documents and forms in the framework of their adoption procedure through the latter.

On the one hand, the CA of Colombia resorts to videoconferences to undertake interviews with PAPs, who reside abroad, in order to go into further details on some aspects of their application. Once approved, the families receive a code of access, which enables them to check online their situation on the waiting list.

The Peruvian CA has an information system for the national registration of adoptions (Sistema Informático del Registro Nacional de Adopciones, SIRNA), which allows families to register for information sessions and workshops that are offered, and to monitor their file if they decide to proceed after the preparation stage. This system also automatizes the process of registration and the control of the support provided.

The Central Authority of the Philippines mentioned during the Special Commission on the practical operation of the 'HC-1993' to rely on new technologies (such as Skype, video conferences, etc.) in order to facilitate the contacts between PAPs and the child, after the matching decision was made, and prior to the PAP's trip to the child's country of origin, with the supervision of a professional. This aspect has notably been included in the final observations of the Special Commission (see p. 25).

As for post-adoption follow-up, the CA of Guinea mentioned resorting to the Internet for the submission of post-adoption reports by some adoptive families. In the framework of searches for origins entrusted to it, ISS's Australian Branch stated that its social workers resort to Skype to undertake some interviews with adoptive or biological families living outside the Australian territory.

### **Communication of CAs with their domestic and international partners**

On the other hand, new technologies have considerably improved the communication of CAs with their domestic and international partners (other CAs). Some of them, such as the Guinean CA, resort to the Internet, and in particular to e-mails, in the context of exchanges among CAs, as provided for by articles 5 and 7 of the HC-1993 (the suitability of PAPs, the authorisation of entry and permanent residence of the child in the receiving country, information on applicable laws in the country and the functioning of the Convention). Moreover, the CA of the Flemish Community of Belgium mentions using Internet in the framework of the researches conducted to find new collaborations.

As for the CA of Burkina Faso, it stated that it frequently resorts to the Internet to notify, directly or indirectly, some administrative information to AABs and partner CAs, as well as to submit duly signed and scanned correspondence in urgent cases. According to the Danish Central Authority, confidential and sensitive information should be forwarded to and from secure e-mail addresses only. As an instance, the AABs' contact persons in the States of origin should have a certificate to send/receive encrypted e-mails from the Danish AABs, just as it is important that the PAPs can receive encrypted e-mails from AABs.

On the other hand, each year, ISS receives from CAs an important number of requests sent by e-mail. These exchanges are an opportunity for ISS to provide information to CAs on the legal and practical aspects of adoption procedures, and in particular, to warn them as to potential risks in a given country.

#### **BENEFITS**

- ❖ Improvement of communication among adoption actors throughout the adoption procedure, in particular with those located abroad.
- ❖ Promptness in the treatment of emerging issues.
- ❖ Better management of each stage of the adoption and its implementation.
- ❖ Reduction in costs and work time.
- ❖ Better preparation of PAPs and a more positive management of the waiting period.
- ❖ Ongoing support of the families, in particular during their stay in the country of origin and after the adoption, in relation to any need that may arise. Furthermore, the professionals' access to numerous online resources and services makes it possible to respond better to some of the families' requests/needs.

#### **RISKS**

- ❖ General risk of hacking. Thus, ISS's correspondent in Germany states that it periodically secures, as much as possible, its system, thanks to the intervention of a specialised IT technician.
- ❖ Risk that persons directly contact foreign bodies and arrange adoptions without an



authority/body being involved, thus jeopardising the children affected (private or independent adoptions).

- ❖ Attacks launched via some personal and aggressive blogs relating to adoption, for example by activist biological mothers against adoptive parents.
- ❖ Risk of not being able to ascertain the information that is being disseminated on blogs/fora relating to adoption.
- ❖ The interviews of PAPs undertaken via videoconferences may make the analysis and oral communication more difficult if there are technical problems, and if a translator is required, difficulties of comprehension may arise.

## **2. Development in the research, exchange and preservation of information**

Thanks to the Internet, diverse information relating to adoption may be widely shared at limited costs on websites or potential Facebook pages, set up by CAs or those ISS offices having contributed to the survey.

### **Information provided on the CAs' websites**

Websites developed in a more or less detailed manner by CAs indeed make it possible to convey a considerable quantity of information to a general audience, and in particular to PAPs. Disparities are, however, noticeable from one website to another with regards to the nature and scope of these informations. Although some websites – such as the one of the U.S. Department of State or that of the French Mission de l'Adoption Internationale – provide very detailed data on countries of origin via country factsheets, which describe, for example, the adoption procedures in the country at stake, recent events and potential decisions relating to the risks or ongoing suspensions; others merely provide very general data.

The Belgian (French Community) CA deliberately limits the information provided on its website, in order to give priority to the human support to the PAPs at every stage of the procedure (mandatory preparation, suitability, framing of the matching, post-adoption support). On the contrary, Quebec puts emphasis on its willingness to provide, via the Internet, as much information and references as possible on intercountry adoption, i.e. to disseminate updates relating to the AABs' status, to open and active countries, as well as important news on events having an impact on the treatment of files or on the development of practices. Quebec's CA states that its website has been conceived for the population at large and for adoption actors in particular. Furthermore, it offers to subscribers a tool called *Cybernouvelles*, which intends to disseminate more technical and professional information. Concerning the countries of origin, they often propose detailed websites; Vietnam for instance has recently developed a website providing numerous information on adoption - domestic and intercountry -, applicable laws, adoptable children, foreign AABs, etc.

Through its website, the CA of Western Australia provides information to adoptive parents as well as to parents, who wish to initiate an abandonment. In relation to the first, the Internet is used, in particular, to inform adoptive parents as to the available support services.

It is worth highlighting that the CAs consult each others' websites, in order to obtain information, and periodically refer to other sites, such as the one of the Hague Conference or that of ISS, including blogs, as stated by the Swiss CA. Through this means, for example, the receiving countries' CAs manage to obtain information on the countries of origin of the adopted children, on the procedure that is applicable in these countries, or even on the practice of other receiving countries in relation to the latter.

### **Transmission of information in the framework of the adoption procedure**

The survey has demonstrated that some actors use the Internet to share **information on the child**. Thus, the CA of Burkina Faso states that the local representatives of AABs resort to the Internet to send pictures and documents relating to the child to their heads in the receiving country. The consulted Italian AABs also mentioned resorting to video conferences in order to assess the health situation of the child proposed for adoption. They even mention resorting to Skype for the preliminary meeting between the PAPs and the child they have been matched with; this is also the case in Andorra, upon a request from the country of origin. It is worth mentioning that the Filipino CA provides for the possibility to resort to Skype to initiate the contact between an older child and his/her PAPs, in the presence of a social worker of the institution caring for the child.

Some CAs of countries of origin, such as India or China, impose the resort to IT programmes posted on their site in the framework of the adoption procedure. For example, some **data on PAPs** must be provided by the AAB online.

In relation to the **use of scanned documents** in intercountry adoption cases, State practice in this area is mixed according to the responses to the questionnaire.<sup>31</sup> Some States use and/or accept scanned documents alone while a number of others use and/or accept them only if the original documents follow. Other States do not use and/or accept scanned versions at all, requiring originals only. States that use scanned versions do so not only for Article 17 c) agreements and Article 23 certificates of THC-1993, but also for various other documents, e.g., the Article 16 report on the child, birth certificates, post-adoption reports, etc.

Practice is also mixed with regard to authentication of scanned documents. Some States have no authentication requirements while others require that the underlying original documents be authenticated, e.g., through legalisation or apostillisation.

States report that they secure records received in scanned form either by maintaining them in electronic storage or by printing them and maintaining a hard copy in the relevant case file (in some cases, both are used). In light of the significant variation in practice in this area, the Special Commission may wish to consider whether guidance on the use of scanned documents would be useful for States.

Finally, the CA of the Australian Capital Territory resorts to the Internet to research information aimed at helping families in the context of **post-adoption support**, for example, when the family tries to trace the child's background or to build his or her family tree.

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<sup>31</sup> Questionnaire, *supra* fn. 3.

### BENEFITS

- ❖ Awareness-raising of the public at large (including the media) on the situation of adoption and its realities.
- ❖ The possibility for the PAPs to get to know the field of intercountry adoption – thanks to the websites of some CAs, such as the one of Quebec – and to better target their questions during the interview with an adoption adviser.
- ❖ Sharing of information with PAPs and adoptive families on a periodic basis, enabling a gain in time and costs.
- ❖ Applicants may proceed with their registration online from anywhere in the country (Peru) and be informed on the progress of their adoption procedure as it occurs.
- ❖ Continuous update of information in adoption matters, thanks to new technologies.
- ❖ Access to very wide information, including at international level, on interesting practices undertaken, in particular, in other countries.
- ❖ Prompter treatment and submission of files (the digitisation and submission via e-mail of original certified documents or the agreement to proceed with the adoption procedure allow to progress faster, whilst awaiting the subsequent submission through postal mail).
- ❖ More exact dissemination of important information relating to the treatment of files thanks to tools, such as the subscription to the *Cybernouvelles* (Quebec's CA) or the SIRNA (Peru).
- ❖ Systematic registration of individual and collective data relating to the children and creation of an individual file for each child and family, as stated by the CA of Burkina Faso.
- ❖ Digital archiving of data enabling their preservation and offering the possibility to the child to access his/her origins in the future.

### RISKS

- ❖ Adoptive parents' use of social networks, such as Facebook, to post pictures of the child they have adopted, without worrying about the issue of confidentiality and respect of the latter's private life. ISS's correspondent in Germany, as well as the CAs of Western Australia and Quebec, warn the PAPs as to the existence of a given risk and recommend them not to place such pictures on social networks.
- ❖ Risk of access and smuggling of data that is considered confidential by unauthorised individuals, for purposes other than adoption (pornography, for example).
- ❖ Adoptive parents' access to incorrect information that may confuse them and create false expectations. Such information may come from unofficial websites, but also from the websites of some CAs or AABs, which do not update their information on countries, therefore concealing, for example, the announcement of a moratorium, or providing incorrect information relating to the cost of an adoption in a given country.
- ❖ Online registration of PAPs for an adoption procedure, thereby generating an absence of reflection and, sometimes, a prompt abandonment of the project. In order to remedy this situation, the Belgian (French Community) CA, which used to advance this type of registration, now requires an initial phone contact to obtain the registration form, which is a contact that allows for an assessment of the request,

enabling the provision of general explanations on the current development of adoption.

- ❖ Risks also linked to the confidentiality of the personal data of PAPs, which will be posted on databases and may be downloaded. Thus, protection systems must be established (firewalls, passwords, restricted areas, etc). Furthermore, some countries, such as Sweden request applicants (or other recipients), as a measure of precaution, their authorisation before sending personal information by e-mail.
- ❖ Loss of data due to technical problems.

### **3. The resort to search engines, social networks and the Internet in the search for origins**

The resort to new technologies in the context of searches for origins is also very widespread, as demonstrated by the replies provided to the survey.

**The authorities and bodies, which were consulted and which may be called upon in order to support persons having initiated a search for origins**, state that they, first, resort to some useful websites in order to undertake the search for biological parents, for example. In the United Kingdom or New Zealand, some specific websites make it possible to obtain a birth, death or marriage certificate (Ancestry.com in the United Kingdom or Electoral Roll online in New Zealand).

Furthermore, some organisations, such as ISS's Australian Branch, state that they resort to search engines (Google, Yahoo, etc) or to social networks (Facebook or LinkedIn) to undertake their research. ISS Australia also has a Facebook profile to search for adoptees or members of the biological family. In this same country, incidentally, a study entitled *When Government Uses Social media to Find and Contact its Citizens: Navigating the Issues*<sup>32</sup> has been commissioned on this issue by FIND (Family Information Networks and Discovery, state of Victoria) to ANZOG (Australia and New Zealand School of Government). This study concludes, among other issues, that the government must only resort to social networks in order to locate and contact citizens if the appropriate procedures and guidelines have been established. Unfortunately, the latter remain limited in Australia. A document relating to general policies and procedures on the use of Facebook as a search tool has, however, been drafted by Damon Martin, on behalf of the New South Wales Committee on Adoption and Permanent Care<sup>33</sup>.

This search procedure through social networks faces other limitations, in particular linked to the laws on the protection of private life, such as in Australia where, unlike in the United Kingdom and New Zealand, the archives relating to birth, death and marriage certificates cannot be made public.

As for ISS's Branch in the Netherlands, when it resorts to new technologies to find additional information on the persons looked for, it states that it never contacts the latter by e-mail for

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<sup>32</sup> Charet, L., Draper, S., Harper, E., Prinzi, J., Smith, M. and Thomas, J., *When Government Uses Social Media to Find and Contact its Citizens: Navigating the Issues*, ANZSOG Work Based Project, November 2011.

<sup>33</sup> Martin, D., *Social Media use policy and Guidelines for pre and post adoption professionals*, NSW Committee on Adoption and Permanent Care INC, 2013.

the first time without a prior obtention of their consent, in particular, via postal mail or phone.

In addition, this same ISS Branch mentions the existence of a specific website aimed at adult adoptees, who have initiated a search for origins. This website ([www.zoekenaarfamilie.nl](http://www.zoekenaarfamilie.nl)) holds information on trips to the countries of origin, as well as on the latter's legislation, and offers a forum, through which adoptees may exchange various information.

Although they were not consulted in the framework of the present survey, adoptees and adoptive or biological parents do also resort to social networks to search for information on their origins – a situation that raises some serious concerns. On this issue, the CAs of Germany, Quebec and the Philippines have informed adoptees and adopters of the risks of resorting to social networks in order to research origins: they discourage direct contacts via these means and highly recommend the intervention/counselling provided by competent professionals. The Turkish Civil Code, on the other hand, states in its Article 314 that if the biological family intends to access information included in the adoption file through social networks, necessary measures are taken to protect the adoptees and the adopters<sup>34</sup>. In addition, the CA of the Dominican Republic mentions that it assists adoptees wishing to search for their biological family through social networks.

Finally, the CA of Monaco mentions the case of some adoptive parents, who have adopted a child in a non-Hague State, and who have contact with the biological family thanks to social networks. The CA of Monaco states that these conversations wished for by the biological and the adoptive family appear to be satisfactory. It considers that they provide an opportunity for the child to maintain a bond with his/her biological family and country of origin.

#### BENEFITS

- ❖ Facilitation of the work, in particular of professionals, when locating persons looked for.
- ❖ Access, via some websites such as the one of the CA of Quebec, to information relating to the various stages of a search for origins, and awareness-raising of the public in relation to risks, such as that of undertaking a search without the involvement of third-party professional.

#### RISKS

- ❖ Attempts to locate and contact the adopted child directly by his/her biological parents, via social networks – or *vice versa* – without the intervention of a professional third-party. These processes may lead to complex situations, such as a potential pressure imposed by the biological parents on the child, or a rejection of the child by the latter, the discovery of difficult elements, such as the death of a parent or the presence of a fraudulent element in the adoption procedure.
- ❖ Easy access to professionals of private services, who offer support in searches for

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<sup>34</sup> Article 314, Turkish Civil Code: « Adoptee's access to the information on the file is regulated by legislation. On an attempt of biological family's access to the file, they are informed about the file. However if the biological family tries to unveil the file information on social media, necessary precautions are taken to protect both the adoptee and adoptive ».

origins, and who risk leading persons towards intermediaries, who may sometimes not be very ethical or professional.

#### 4. The impact of new technologies on the adoption of children with special needs

New technologies also play a role in the adoption of children with special needs, as much in relation to the proceedings as in the procedure prior to them.

The Internet enables to obtain information on the profile of children with special needs, as highlighted by the CAs of Tasmania and the Australian Capital Territory. The CA of Tasmania also mentions the resort to ‘photolistings’ in order to search for families for these children – a practice also developed in other countries, such as the United Kingdom, the United States of America or Canada<sup>35</sup>.

The Bulgarian Ministry of Justice states that it resorts to this process for children, in relation to whom no adoptive parent has expressed an interest or whose adoption has been rejected. This list does not, however, include any photograph, nor personal data on the child.

The Filipino CA, called Intercountry Adoption Board (ICAB), also resorts to this new technology in order to find families for adoptable children with special needs (children over the age of six years, groups of at least three siblings, children with multiple and complex medical problems, etc). It holds an electronic list with photographs, the background and the characteristics of the children. However, on the one hand, the identity of a child is not revealed and, on the other hand, access to these ‘photolistings’ is limited to CAs and AABs and requires a password<sup>36</sup>.

In this same state of mind, in Lithuania, a project based on an audiovisual support was launched by the parent-child centre ‘I and We’. The latter’s objective is to raise the awareness of Lithuanian PAPs in relation to the adoption of children having curable illnesses. Videos are therefore shown to the PAPs in order to help them better understand what the concept ‘special needs’ entails, and to promote, when this is in the child’s best interests, the latter’s domestic adoption<sup>37</sup>.

As for the adoption procedure of these children in itself, the latter may take place online, as is the case in the framework of the Chinese programme ‘China Online Special Needs Adoption program’<sup>38</sup>. Furthermore, the CA of Belgium (French Community) mentions the

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<sup>35</sup> See: Ionova, M., ‘Adoption advocates debate use of photo database of children’, The Star, August 2013, [http://www.thestar.com/news/gta/2013/08/09/adoption\\_advocates\\_debate\\_use\\_of\\_photo\\_database\\_of\\_children.html#](http://www.thestar.com/news/gta/2013/08/09/adoption_advocates_debate_use_of_photo_database_of_children.html#).

<sup>36</sup> See: ICAB, <http://www.icab.gov.ph/special-home-finding> and Attorney-General’s Department, Australian Government,

<http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Pages/Philippines.aspx>.

<sup>37</sup> For further information, see: Special Issue of the Monthly Review, February-March 2012.

<sup>38</sup> For further information on this programme, see: Australian Government, <http://www.ag.gov.au/FamiliesAndMarriage/IntercountryAdoption/CountryPrograms/Documents/Intercountry%20adoption%20from%20China%20-%20Online%20Special%20Needs%20Program%20-%20Eligibility%20criteria.pdf> as well as <http://chinaadopttalk.com/2010/08/18/new-special-needs-policy-from-ccaa/> for details on the implementation of this specific procedure.



periodic resort to audiovisual forms of support by one AAB to observe older children or children with special needs, in order to assess their potential psychosocial and emotional adoptability, in cooperation with a specialist psychomedical team.

#### BENEFITS

- ❖ Use of audiovisual materials of observation allowing to film the child in his/her day-to-day life (reactions when faced with different situations and known/unknown stimuli) and to assess his/her attachment and integration ability in a new family. This technique has enabled the adoption of some older children, or children with special needs, in relation to whom this risk would not have been taken without this support and the in-depth analysis it allows for.
- ❖ Awareness-raising of PAPs as to the realities relating to the adoption of children with special needs, in order to overcome some myths or preconceived ideas.

#### RISKS

- ❖ Risk of violating the child's private life, given the absence of sufficient safeguards to protect his/her personal data. The access to audiovisual materials or photolistings presenting children with special needs must be restricted and strictly limited to CAs and AABs, at the risk of jeopardising the child. Photolistings with free access should be prohibited<sup>39</sup>.
- ❖ Violation of the child's dignity in the absence of control/of a specific framework relating to the manner, which his/her disability is being exposed in.

### 5. The resort to DNA tests aimed at a recognition of paternity or the search for origins

Australia and the Netherlands are the only countries, which contributed to the survey, that state that they resort to DNA tests in the framework of their activities. In Australia, these tests are used in order to confirm the identity of the child's biological father, in domestic as well as intercountry adoptions. Indeed, as stated by the CA of the Australian Capital Territory, there exists in the country a requirement according to which all efforts to identify and locate the child's biological father must be undertaken and evidence of these attempts must be submitted to the competent tribunal. These DNA tests may only be undertaken with the consent of the affected parties.

As for the ISS Branch in the Netherlands, it states that it resorts to DNA tests in cases of search for origins, whether or not it is linked to an adoption. In accordance with its experience, it is often difficult, or even impossible, to trust old files, and it may occur, sometimes, that only a DNA test can confirm the identity of the biological father or mother. The cost of these tests nowadays being reasonable in the Netherlands, the Branch advises its clients, who have initiated searches abroad, to resort to them. In the United States of America, private providers offer to adoptees this type of service to piece together their family tree and to trace the members of their biological, nuclear and extended family. As in any search for origins, it is worth being careful in relation to the support that is necessary for the persons involved in this type of procedure. Indeed, complex situations may emerge and

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<sup>39</sup> See Chapter 3.8 « Internet and advertising », Guide N° 2 under the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, <http://www.hcch.net/upload/adoguide2en.pdf>.

affect these individuals, as, for example, a refusal of contact or a refusal of maintaining the contact, the discovery of a tragic event, such as the death of the person(s), who are being looked for<sup>40</sup>.

Furthermore, the resort to DNA tests in order to set up a database, which may allow adoptees to find their biological parents in the future, is currently being debated in Australia. In particular, this country's CA is reflecting on the development of a tool aimed at assisting adoptees and biological parents, who wish to resort to DNA tests to determine their family bonds.

Finally, DNA tests are also resorted to in order to prevent or remedy the consequences of fraudulent practices during or prior to the adoption procedure. In such cases, DNA tests may be used to avoid illegal adoptions, thanks to the identification of the children and of the biological mothers wishing to relinquish their children for adoption (prevention), to reunite the victims with their family (reparation), as well as to obtain key information *a posteriori* for the police and the judiciary on the origins and the means employed to commit an offence. In Guatemala, the CA (*Consejo Nacional de Adopciones, CNA*), jointly with the *Fundación de Antropología Forense*, has developed a project<sup>41</sup>, which consists in resorting to DNA tests in order to ascertain the identity of those parents, who have expressed a wish to relinquish their children for adoption, as well as that of the children themselves. The aim of this project is to fight against the theft of children for adoption purposes – a widespread phenomenon in Guatemala in the past. Moreover, a programme entitled *DNA-Prokids*<sup>42</sup> was launched by the University of Granada in Spain, in order to fight against the trafficking of children in Latin America and in Spain, through the genetic identification of the victims and their families.

The resort to DNA tests raises numerous issues, as evidenced by the multiple debates relating to this practice. The ISS/IRC is well aware of the need to further the research in this field before being able to express its opinion.

#### BENEFITS

- ❖ Possibility of raising doubts and getting more information about the biological parents of adopted children.
- ❖ Prevention and reparation of fraudulent activities, which may have occurred during or prior to the adoption procedure.
- ❖ Facilitation of the adoptees' access to their origins.

#### RISKS

- ❖ The high costs of these tests, set by some agencies, which offer their services to adoptees, who wish to rebuild their family's line of descent.

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<sup>40</sup> 'Three decades after adoption, DNA test reveals painful truth', *The Baltimore Sun*, 12 October 2009, [http://www.adoptioninstitute.org/newsletter/2009\\_10.html#dna](http://www.adoptioninstitute.org/newsletter/2009_10.html#dna); 'With DNA Testing, Suddenly They Are Family', *The New York Times*, 23 January 2012, [http://www.nytimes.com/2012/01/24/us/with-dna-testing-adoptees-find-a-way-to-connect-with-family.html?\\_r=3&hp=&pagewanted=all&](http://www.nytimes.com/2012/01/24/us/with-dna-testing-adoptees-find-a-way-to-connect-with-family.html?_r=3&hp=&pagewanted=all&).

<sup>41</sup> See CNA, *Se harán pruebas de ADN a niños en estado de adopción*, <http://www.cna.gob.gt/portal/noticiaadn260510.html>.

<sup>42</sup> For further information on this programme, see: <http://www.dna-prokids.org/>.

- ❖ The reliability of these tests, sometimes, is not ensured, and may therefore lead to disastrous situations (in particular, in Guatemala, numerous cases of child theft used to occur in the past, even when a DNA test was done on the person having relinquished the child for adoption)<sup>43</sup>.
- ❖ The absence of the obtaining of the child's consent and, therefore, a violation of his fundamental rights.
- ❖ The resort to DNA tests in the framework of a search for origins without professional support: direct contact with the identified person(s) may generate difficulties.

### III Training and awareness-raising of professionals and families in relation to the use of new technologies

#### 1. Training of professionals

The training of professionals in relation to the use of new technologies does not yet appear to be very widespread, as evidenced by the limited replies to this question.

Among the ISS network, the German correspondent mentioned the existence of basic trainings for professionals on the use of e-mails and the potential problems linked to the protection of personal data that may arise from it. In such a context, it is accepted that some delicate information, such as social relations, may never be sent by e-mail. The German CA, on the other hand, states that courses and training are provided to authorities and agencies at the regional and local levels, and that exchanges of experiences occur in working groups.

ISS's Dutch Branch, on the other hand, stated that the resort to new technologies is included in the general training of social workers, as well as of any person involved in searches for origins, including the secretaries. The material used for it is Eileen Fursland's publication *Social networking and contact: How social workers can help adoptive families* (BAAF, 2010)<sup>44</sup>, which offers a number of recommendations for professionals, such as:

- Ensuring that all information on adoptees is being kept safely during the first stages of the matching and after that;
- Giving priority to a potential meeting with the child or adolescent, in order to explain to him the physical and emotional issues of a direct contact;
- Tell the child that the professional will help him, with his/her adoptive parents' consent, to contact his/her biological parents (if there is no risk) and that, as far as it is appropriate, you will arrange a supervised meeting in a protected place for him;
- In some cases, the contact with biological parents may be a risk for the adoptee and the professional must therefore not encourage the latter. An assessment of

<sup>43</sup> See: Siegel, E., *Finding Fernanda*, 2013, presented in ISS/IRC's Monthly Review of January 2013. See also: International Commission Against Impunity in Guatemala, *Report on Players Involved in the Illegal Adoption Process in Guatemala since the Entry into Force of the Adoption Law*, [http://www.cicig.org/uploads/documents/informes/INFOR-TEMA\\_DOC05\\_20101201\\_ES.pdf](http://www.cicig.org/uploads/documents/informes/INFOR-TEMA_DOC05_20101201_ES.pdf)

<sup>44</sup> This publication was presented in ISS/IRC's Monthly Review of January 2012. For sale in English at: <http://www.baaf.org.uk/bookshop/social-networking-and-contact>.

the risks will have to be undertaken in such situations, in order to determine if contact should take place and in which ways;

- Teach the adolescents how to protect their private data on social networks, for example: by resorting to the means that enable them to protect their private data as far as possible, by not publishing any information that may enable someone to identify them, by reminding them that a person may use, on Facebook, a name that is not his or hers or pretend to be another person.

In this same line, the South African NGO Engo has an accredited training centre, which provides, among others, a basic IT training for professionals.

In Burkina Faso, the consequences of the use of new technologies are addressed during the training sessions aimed at social workers on those aspects linked to the psychosocial and educational care of children deprived of a family.

In Australia, the Tasmanian CA states that guides (confidential internal handbooks), as well as special websites, are delivered to professionals in order to guide them in this field. Among these websites, it is worth highlighting that of the Australian federal CA ([www.ag.gov.au/intercountryadoption](http://www.ag.gov.au/intercountryadoption)) and other internal websites that are not accessible to the public. In New South Wales, internal guidelines are disseminated among the personnel of the CA, in order to regulate their access to Facebook, as well as the regulations of use of the latter for personal purposes (see II.3).

Staff of the CAs of the Dominican Republic and Peru benefit from training on the resort to new technologies. In the Province of Ontario (Canada), the protection of personal data and the respect to private life is one of the topics addressed in the annual training; this aspect is addressed in further details with recently-accredited AABs and other actors.

Finally, in other countries and regions, such as Switzerland, Quebec, Cyprus, Guinea, there is a lack of this type of training or these are unknown to the CAs having replied to the questionnaire. In Italy, it merely appears that internal training is offered by some AABs. This lack was observed in Finland at a training on adoption and social networks in the spring of 2013. This training was an opportunity to improve the knowledge of professionals in this field, the idea being to widen this experience to a greater number of professionals as well as to adoptive parents, to adult adoptees and to adolescents.

## **2. Training of prospective adoptive parents**

The use of new technologies has become, according to the Italian AABs that were consulted, an additional tool in the preparation of PAPs (see I.2).

Some CAs (Australia, Cyprus, Quebec, New Zealand, etc) have even included this topic in their programmes of preparation of PAPs. Furthermore, in the Dominican Republic, in psycho-educational workshops, the PAPs receive training on the management of sensitive topics and information relating to the origins of the adopted child. PAPs are therefore led to reflect on the use of new technologies in this field. Others, such as the Belgian (French Community), Swedish and Chilean CAs, raise the awareness of the PAPs in relation to new

technologies, without having systematically included this topic in their programme. The Peruvian CA, on the other hand, offers training in this field to families interested in adoption. It is worth mentioning that the Norwegian AAB *Adopsjonsforum* offers a course online in Spanish for PAPs, who wish to adopt in Latin America. Applicants are always informed of the risks linked to the use of new technologies, such as the fact of sharing information through social networks.

In the framework of this awareness-raising, the topics mentioned throughout this document are addressed (reliability of information posted on different websites/blogs, risks linked to the resort to social networks in searches for origins, issues of confidentiality, etc) and recommendations are issued as to trusted reference websites that PAPs may consult (according to the Australian CAs having contributed to the survey).

Furthermore, during preparation sessions, it may occur that countries resort to audiovisual support materials to address, in particular, some topics, such as the attachment, the child's life prior to adoption or the potential abuses in adoption<sup>45</sup>. Some films or documentaries<sup>46</sup> on the realities of intercountry adoption and of some countries of origin, for example, may indeed have a greater impact on the adoptive parents than the wider public.

Finally, tools aimed at adoptive families have been developed, particularly in Australia, the United Kingdom or the United States of America, in order to advise or guide those, who wish to resort to new technologies and, in particular, to social networks for a search for origins.

In **Australia** (New South Wales), the Post Adoption Resource Centre<sup>47</sup> offers thematic factsheets, in particular on the use of Facebook in the framework of a search for origins. Practical advice is provided, such as:

- During the initial contact with the biological parents undertaken by letter or through a third-party mediator, they must be asked whether they agree to share information via Facebook;
- The identity of biological parents must be ascertained by resorting to birth, death and marriage registries;
- A specific Facebook account for the exchange of information with biological parents should be created;
- Should one find on Facebook a person with the same name as that of the one looked for, contact must not be initiated with the latter via Facebook, it is neither the appropriate place nor the appropriate means;
- On the account, the necessary functions to protect private data should be set up, in particular through the creation of a 'friends only' section;
- It should be ascertained that personal data (e-mail, phone) are not available to other Facebook users;

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<sup>45</sup> For example, ISS Australia's use of Dr. Karyn Purvis's DVD on attachment.

<sup>46</sup> For example:

- the movie *Va, vis et devient* by Radu Mihaileanu, 2005;

- the movie *Mercy Mercy, A portrait of a true adoption* by Katrine W. Kjaer, 2012 (<http://mercymercy.dk/>);

- the documentaries *Adopte-moi* by Gilles de Maistre, 2008 (<http://www.vodeo.tv/documentaire/adopte-moi-1-4>).

<sup>47</sup> Véase: Jane Adams, PARC, NSW Australia, [www.benevolent.org.au](http://www.benevolent.org.au).

- One must think before posting comments on your Facebook account; once posted, there is no second opportunity;
- It must not be forgotten that what is posted on Facebook may be seen by other relatives and friends – a situation that may become inappropriate if the latter are not aware of the reunion.

In the **United Kingdom**, the Guide *Facing up to Facebook, a survival guide for adoptive families*<sup>48</sup>, drafted by Eileen Fursland (BAAF, 2010), is directed at adoptive parents in order to prepare them and prepare their children for the use of social networks.

In particular, this guide advises adoptive parents to:

- Tell their child his or her story, as openly and honestly as possible;
- Tell their child that they will help him or her to contact and/or meet his or her biological family, if he so wishes;
- Remember that the information provided on the Internet is permanent and cannot be withdrawn;
- Request the adoption agency to organise a meeting between their child and a social worker, who will explain the implications and risks of a meeting and the importance that the latter take place in a safe and neutral environment;
- Explain to the child that his or her siblings may not necessarily be ready to know this situation;
- Remind the child that they will always be there for him or her.

In the **United States of America**, a recent report published by the Donaldson Adoption Institute and entitled *Untangling the web*<sup>49</sup> suggests a series of issues to reflect on in order to ensure the reliability of the service provided on the Internet (pp. 52-54).

Amongst these:

- What are the titles and credentials of those offering services? Are they consistent with commonly recognized training and experience in the field?
- Does the service have accreditation or other recognition from regulatory bodies or from other appropriate groups? If the site assists with intercountry adoption, it should have Hague accreditation. Sites that provide legal services should have attorneys that are members of the bar and licensed in the jurisdiction in which the adoption will take place.
- Is information about costs and about the agency's financial operation clear and straightforward? If there are fees for services, are they clearly stated and assessed?
- Is the agency or service licensed?
- What is the site's privacy policy?

<sup>48</sup> This publication was presented in ISS/IRC's Monthly Review of January 2012. For sale in English at: <http://www.baaf.org.uk/bookshop/facing-facebook>.

<sup>49</sup> Howard, J.A., *Untangling the web – The Internet's transformative impact on adoption, Policy and Practice Perspective*, Evan B. Donaldson Adoption Institute, December 2012, [http://www.adoptioninstitute.org/publications/2012\\_12\\_UntanglingtheWeb.pdf](http://www.adoptioninstitute.org/publications/2012_12_UntanglingtheWeb.pdf).



## Conclusion

The power of new technologies is enlightening, as evidenced by the results of this Circular, as well as the above-mentioned report *Untangling the Web*, according to which '[a] Google search of "adoption search" yields over 13 million results. Many of the online search services and supports are free or low-cost, often staffed by people with personal connections to adoption'<sup>50</sup>. Furthermore, the disclosure to the wide public of some failures in the adoption system through documentaries, as was the case in Colombia or Denmark, has resulted in governments undertaking reforms of their adoption system.

Although, in general and as demonstrated by this brief survey, new technologies are very useful tools to improve adoption procedures, their use requires – in particular, in the children's best interests – a legal, policy and practical framework, training and support for professionals and affected families. Although technology is an efficient form of support for the families, it cannot replace human contact, which is essential to guide and advise them in their individual project.

In order to transform the dangers and risks linked to new technologies into opportunities, the ISS/IRC suggests, below, some useful advice and recommendations to ensure, as far as possible, the protection of all the actors involved in adoption, starting with the children.

### @ Advice/Recommendations @

**@ Launch awareness-raising campaigns, such as** the national **seminar** aimed at raising the awareness of social actors, organised by the Information Technology and Freedoms Commission in Burkina Faso on the implications of the protection of the personal data and private life of orphans and other children vulnerable in a digital age, in particular in the fields of adoption and sponsorship of children, in which photographs are often used to look for sponsors. Furthermore, some CAs, such as in Italy, Quebec or Sweden, raise the awareness of adoption actors and the wider public in relation to the use of new technologies **by posting information/warnings on their websites.**

**@ Establishment of digital and physical spaces, aimed at educating and informing children, adolescents and their parents** such as the Spanish website *PantallasAmigas* (<http://www.pantallasamigas.net/index.shtml>), which mission is the promotion of a healthy and safe use of new technologies and the development of a reasonable digital citizenship among children and adolescents, or the section *Les dangers d'internet* ([http://www.droitsenfant.fr/principaux\\_dangers.htm](http://www.droitsenfant.fr/principaux_dangers.htm)), created on the French website *Les droits de l'enfant*.

**@ Include provisions aimed at providing a framework for the resort to new technologies and the protection of children's rights in this field in the laws/regulations relating to child protection and adoption,** such as the law in the United Kingdom entitled *Adoption and Children Act, 2002*, which provides a framework for the advertisement of

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<sup>50</sup> See, for example: [www.adoptesearch.info](http://www.adoptesearch.info), [www.the-seeker.com/angels](http://www.the-seeker.com/angels) and [www.boards.ancestry.com/topics.adoption.adoption](http://www.boards.ancestry.com/topics.adoption.adoption).

adoptable children via the Internet.

**@ Establish control/supervision mechanisms internally within the CAs or in close connection** with the latter (Swiss supervisory authority of intermediaries in adoption matters, special commission for complaints relating to the work and methods used by AABs); inform on **complaints mechanisms** (resort to competent jurisdictions/bodies in case of violations of the legislation on adoption or general law, or those punished by Criminal Law).

**@ Promote the establishment of mechanisms of prevention and support to victims – in particular, children and adolescents – of violations of personal data or cybercrime.**

**@ Develop the knowledge of professionals** through the holding of **conferences**, such as the one organised in Finland in the spring of 2013 on adoption and social networks. It was the first conference aimed at increasing the knowledge of professionals on this issue. Furthermore, the latter should be incorporated into the **trainings** of professionals relating to adoption; develop training tools as well as tools regulating the use of new technologies for professional purposes, in particular through the publication of **internal guidelines**, such as in New South Wales (Australia), for example (see p. 15).

**@ Include the issue of the resort to new technologies in adoption in programmes for the preparation of prospective adoptive parents<sup>51</sup>**, as is already the case in Australia, Cyprus, and Quebec; **develop and disseminate tools** aimed at raising the awareness and educating adoptive families, such as those presented in III.2; transmit, to adoptive families, some basic rules relating, for example, to the selection of a website (p. 17) or the recommendations to comply with in the context of a search for origins (for example, the CA of Quebec<sup>52</sup>).

**@ Maximise the protection of personal data, and in particular of the child**, through the transmission of basic rules to the users in this field: ascertain the presence of sections such as ‘legal disclaimer’ or ‘protection of privacy’ on websites aimed at addressing violations to the child’s private life (this is the case, for example, when some parents tell the story, or even post pictures of the adopted child on blogs or fora); establish tools allowing to limit the access to some data, such as, for example, the creation of a specific Facebook account, that is restricted through a limited access for a reduced list of persons; set up confidentiality contracts that must be adhered to by the user.

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<sup>51</sup> The following article demonstrates the crucial need of preparation of PAPs, The Guardian, *How social networking sites threaten the security of adopted children*, May 2015, [http://www.theguardian.com/lifeandstyle/2015/may/23/how-social-networking-sites-threaten-the-security-of-adopted-children?CMP=share\\_btn\\_link](http://www.theguardian.com/lifeandstyle/2015/may/23/how-social-networking-sites-threaten-the-security-of-adopted-children?CMP=share_btn_link)

<sup>52</sup> See: *Informations destinées aux personnes adoptées à l'étranger à la recherche de leurs origines*, available at <http://www.adoption.gouv.qc.ca/download.php?f=d12b42e0fedc4f91ea363cfb1c05fd88>.

*'Care with personal initiatives*

*In the search of origins, the consent for the disclosure of one's identity and contact with another person is the basis for the reunion process. Any attempt at directly getting in touch with the looked-for parent entails risks, given the potential implications that this may have for the latter, if he or she does not expect it, if he or she is not prepared, and if he or she has not consented to the reunion. In some situations, given the cultural or religious characteristics or circumstances, the mother, who once relinquished her child for adoption, may suffer considerable consequences if her family circle becomes aware that she once had a child without having been informed. There may be a mistake as to the person and direct contacts may cause unfortunate situations. Individuals contacted throughout the search could also be tempted to take advantage of your situation and your vulnerability. Furthermore, specialists in searches for persons abroad, with all the skills they may have, do not necessarily know our legislation and could, through their actions, put you at risk of violating the law here, but also elsewhere'. [Unofficial translation]*

**@ Ascertain the information disseminated on blogs/fora** through the presence of a moderator, in order to ensure that the comments are correct.

**@ Promote a certain vigilance by CAs**, in particular thanks to the appointment of a person within the team responsible for reacting to certain incorrect information disseminated via blogs/fora or the identification and reporting of irregular practices occurring on the web (Quebec, some Italian AABs). One of the Swiss ACs suggests that CAs set up adoption fora managed by independent and trained professionals, who are competent in the field of intercountry adoption.

**@ Globally, promote the development and harmonisation of international instruments aimed at fighting cybercrime, at protecting personal data – in particular that of children and adolescents – and at promoting cooperation in this field.**

## Questions for participants to consider in preparation for the Special Commission meeting

In light of the above, participants are kindly requested to consider the following questions for discussion during the Special Commission meeting:

### Communication/exchange of information

The resort to the Internet, in particular to e-mails, audiovisual support such as Skype or Webex, or even to social networks such as Facebook, has widely improved and facilitated the communication among the various adoption actors, in terms of time or in costs. Furthermore, thanks to the Internet, diverse information relating to adoption may be widely shared on websites or potential Facebook pages, set up by CAs.

#### Communication/exchange of information with prospective adoptive parents (PAPs)

- Does your country offer prospective adoptive parents the possibility to communicate through new technology channels during all the stages of the adoption process and particularly during the waiting period before the matching? In what ways can this be further developed? What limits or boundaries should be established?
- Do you think that sufficient measures are put in place by the adoption authorities/bodies to prevent and fight against the risks when PAPs use new technologies (private/independent adoption through certain fraudulent websites, access to non reliable information)?

#### Communication/exchange of information between CAs and adoption actors (AABs, PAPs and other professionals)

- What standards should be implemented to ensure that the way the information is exchanged by e-mail is secure (encrypted e-mail)?
- Should a CA communicate solely via the information on its website or via contact with staff (partial/total registration online, etc.)? What balance must exist to ensure that there remains human contact whilst maintaining maximum access to information?
- In light of the significant variance in practice, what guidance could be useful on the use of scanned documents for States?

#### Information about the Child

- What guarantees/limits should be established on the use of new technologies in order to respect the transmission of information about the child and contact (pictures, preliminary contact/meeting between PAPs and the child via Skype, assessment of child health situation, etc.)?
- Concerning the use of photolisting, particularly for children with special needs, is this practice adequately and systematically controlled (restricted access to CAs and AABs, strict prohibition of public access to these photolisting, password, nature of

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|  | information transmitted on this photolisting – no picture, no personal data)? What additional guarantees are necessary to protect the children and their rights?  |
| <b>Supervision and training</b>  |   |
| <b>Legal framework and control</b>   | <ul style="list-style-type: none"> <li>• What form of control/supervision on the use of new technologies in the adoption context have you implemented (resort to an IT technician, round/check of the blog/forum by a nominated person at the CA, etc.)?</li> <li>• What protections do you have on the use of new technologies in adoption in the adoption legislation of your country (e.g. the UK Adoption and Children Act of 2002, which provides a framework for the advertisement of adoptable children via the Internet)?</li> </ul>  |
| <b>Training of professionals and families</b>  | <ul style="list-style-type: none"> <li>• What training on the use of new technologies in the framework of their daily work with adoptive families and other professionals/bodies do the adoption professionals in your country have access to?</li> <li>• Is the theme of new technologies systematically included in the preparation of the PAPs? If not, why not?</li> <li>• What internal standards and/or international guidance on the use of new technologies to prevent the potential risks exist in your country (violation of privacy, hacking, non-reliable information, private adoption arrangements, etc.)?</li> </ul> |
| <p style="text-align: center;"><b>Conclusions and Recommendations adopted by the Fourth Meeting of the Special Commission on the practical operation of THC-1993</b></p> <p><i>38. The SC recognized that the use of modern technologies:</i></p> <p><i>a. has improved the intercountry adoption process, in particular by making communication easier amongst the various actors and making the process more expeditious. It recommended that Contracting States consider the possibility of scanning and sending documents by e-mail, transferring the paper documents by conventional methods thereafter if required;</i></p> <p><i>b. may be a helpful tool in the matching process (e.g., the use of short videos of children);</i></p> <p><i>c. may facilitate contact between the prospective adoptive parents and the child after the matching, noting the need for appropriate support.</i></p> <p><i>39. The Special Commission (SC) C acknowledged the need to raise awareness of the risks associated with the use of modern technologies, including social media, and encouraged the training of professionals and the education of families.</i></p> <p><i>40. The SC expressed concern regarding the disclosure of sensitive personal data through the use of modern technologies, particularly concerning children. It recommended that Contracting States take appropriate measures to protect personal data and reminded them of Article 31 of the Convention in this regard.</i></p> |   |

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