



# **Caught in the web**

## **Wildlife trade on the Internet**

# Contents

Executive summary	ii
Summary of recommendations	iv
<b>1. Wildlife trade on the Internet</b>	<b>1</b>
1.1. Results of IFAW's 2004–05 investigation	2
1.2. A one-week snapshot: counting the costs	3
1.3. Other evidence of the problem	5
1.4. The implications for animal welfare	6
1.5. Growing use of the Internet for trading and associated problems	7
<b>2. The legal framework</b>	<b>9</b>
2.1. Endangered species	9
2.2. Animal welfare	10
2.3. Contract law and Internet trading	13
2.4. International regulation of Internet trading	15
2.5. EU regulation of Internet trading and the liability of ISPs	17
<b>3. Overview of current enforcement efforts and voluntary action</b>	<b>19</b>
3.1. Efforts by NWCIU and Defra	19
3.2. Voluntary actions by auction sites	20
<b>4. Regulation and enforcement in other areas of crime</b>	<b>23</b>
4.1. Self-regulation, reporting mechanisms and user information	24
4.2. Adapting national law to reflect contemporary issues	25
4.3. International law and enforcement cooperation	27
4.4. Liability of ISPs in other areas of crime	27
4.5. Access to data	29
<b>5. Conclusion</b>	<b>33</b>
<b>6. Recommendations</b>	<b>34</b>
6.1. National	34
6.2. International	35
6.3. Site owners and ISPs	36
Acronyms	41

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African elephant numbers plummeted from 1.3 million to as few as 625,000 during the 1970s and 1980s due to poaching to supply a rampant illegal ivory trade. Many populations are still threatened by poaching for ivory today. Right: Confiscated carved ivory products in Kenya.

# Executive summary

The Internet has revolutionised our lives and opened up huge opportunities for doing business and communicating. However, it also provides increased opportunities for the unscrupulous or the criminal to operate, taking advantage of the unregulated and impersonal nature of transactions.

The trade, both legal and illegal, in live and dead animals (including body parts) is increasing and the Internet is coming to play a central role in the activities of illegal traders. This trade has devastating implications for both wildlife conservation and animal welfare. Whole species risk being wiped out by over-exploitation. Millions of animals caught up in the trade suffer immensely and many die, resulting in yet more being taken from the wild.

For this report, IFAW UK monitored the nature and scale of wildlife trade on the Internet over several months. We found that, each week, thousands of animals and animal parts – from live primates to stuffed polar bears, from giant ivory tusks to tiny dried seahorses – are being offered for sale on the Internet. IFAW found a shocking array of species for sale in which all commercial trade is legally prohibited or strictly regulated. Within an intensive one week survey, we found over 9,000 wild animal products and specimens and live wild animals for sale, predominantly from species protected by law. A further 122 traders were identified, each advertising an unspecified number of items – often in sizeable quantities. Our survey was limited to certain species and products, so the figures cited here represent only the tip of the iceberg of Internet trade in protected species.

Illegal wildlife trade is now an arrestable offence in the UK and some aspects of the trade are classified as serious and organised crime. However, the increasing use of the Internet to organise illegal wildlife trade poses new challenges to legislators and enforcement agencies. The Government, the intelligence service and other enforcement agencies in the UK have recognised the problem and have already devoted resources to tackling it, although these are insufficient to deal with the apparent scale of the trade. Even establishing the actual scale of wildlife crime is complicated by the lack of truly reliable data and this is particularly the case in relation to Internet trade. A series of reports have called for a better understanding of how much illegal trading is organised over the Internet to assist in taking concerted action to disrupt criminal activity.

The legal framework that applies to Internet trade in wildlife, including live animals, spans national, regional and international legislation relating to endangered species, animal welfare and Internet trading. Contemporary international law has fallen behind in its consideration of commercial Internet activity. Specific laws to combat abuses are not yet well developed at the international level, although there is a recognition that concerted action is best taken globally.

Some individuals are taking advantage of this situation to perpetrate illegal wildlife trade. Whether or not traders are aware that they are breaking the law, the negative impact on endangered species and on the welfare of individual animals is the same. However, it is also currently far too difficult for those buyers and sellers wishing to act within the law to check what can be legally sold or to report suspect items. The information that is available is often inadequate and difficult to access. Auction sites on which wildlife is traded have taken very limited voluntary action to inform users or to facilitate reporting of potentially illegal wildlife items. The lack of information available on auction sites may be in part a consequence of the lack of gravity accorded to wildlife crime in general. This situation must be remedied urgently through statutory regulation.

Attempts have been made to address the use of the Internet to commit or facilitate other types of crime. This report considers options for regulation and enforcement that have been applied in the areas of child pornography, online pharmacies and defamation. These provide valuable models for more effective and relevant regulation of wildlife trade.

Good cooperation between enforcement agencies, both nationally and internationally, has delivered notable successes. Explicit campaigns enabling and encouraging users to report instances of ‘suspect’ material posted allow enforcement authorities to gain a far wider reach. International organisations have identified the need for closer connections between international law and domestic laws to further a more effective response to the diverting of drugs via Internet pharmacies. Better inter-agency cooperation and a better coordinated response from legislators would be useful in the fight against illegal wildlife trade organised on the Internet.



Species for sale: a selection of the types of wildlife products for sale online.

# Summary of recommendations

## IFAW recommends that the UK government and enforcement agencies, in particular Defra and the National Wildlife Crime Intelligence Unit, take the following steps:

- Provide easy access on the Defra website to user-friendly information about the legal requirements for Internet wildlife trading and launch a public awareness campaign targeting Internet users who may otherwise unwittingly buy animals or products illegally;
- Improve the legal framework relating to Internet wildlife trading, including a legally-binding code of practice for Internet auction sites and other sites where wildlife is sold;
- Undertake research into and monitoring of the extent of the illegal Internet wildlife trade to secure reliable data for greater understanding of volume, trends and effective responses;
- Establish and promote a hotline for easy reporting of any suspicious trade by Internet users;
- Promote the concept of wildlife crime as a “serious crime” in light of the Criminal Justice Act 2003 and the new COTES regulation;
- Take the lead internationally in implementing the recommendations to all governments and enforcement agencies outlined below.

## IFAW recommends that governments and enforcement agencies worldwide:

- Ensure sufficient enforcement capacity (trained and equipped staff) to address this problem at a national level and to further international cooperation on wildlife crime, in particular organised crime;
- Establish close cooperation with Interpol’s Wildlife Crime Working Group and Ecomessage, Interpol’s reporting system for wildlife crime;
- Support a Resolution to the 14th Conference of the Parties to CITES proposing an international action plan to tackle this issue;
- Develop and implement an EU action plan to reduce illegal wildlife trade on the Internet within the EU, including introduction of an EU wide ban on the advertising of Annex A and B specimens to the general public;
- In the USA, develop and implement an action plan to reduce illegal wildlife trade on sites based in that country.

## IFAW recommends that the owners of sites on which wildlife may be traded:

- Provide easy access for site users to user-friendly information on the legal requirements for Internet wildlife trading and actively promote awareness of this issue among their users;
- Establish an effective reporting mechanism to allow users to report any suspicious items easily and receive prompt feedback on action taken;
- Establish close cooperation with appropriate enforcement agencies in order to facilitate reporting of suspicious items for investigation;
- Devote sufficient resources to ensure regular and detailed monitoring of site content for illegal wildlife items and to enable rapid and appropriate action to be taken in relation to any suspicious items;
- Cooperate fully with the government, enforcement agencies, other relevant authorities and NGOs in efforts to reduce illegal wildlife trade.

# 1. Wildlife trade on the Internet

The Internet has revolutionised our lives over the last decade and opened up huge opportunities for novel means of doing business and communicating. However, it also provides increased opportunities for the unscrupulous or the criminal to operate, taking advantage of the unregulated and impersonal nature of transactions.

The trade, both legal and illegal, in live and dead animals (including body parts) is increasing, and much of it involves endangered species.<sup>1</sup> The illegal trade in wildlife, timber and other natural resources is already estimated to be worth billions of pounds every year, surpassed only by the illicit trade in drugs and arms.<sup>2</sup> The Internet is coming to play a central role in the activities of illegal wildlife traders worldwide, as they become more organised and develop more sophisticated techniques.

This illegal trade has devastating implications for both wildlife conservation and animal welfare. Entire populations of certain species – even, in some cases, the whole species – risk being wiped out by over-exploitation. Millions of animals caught up in the trade suffer immensely during hunting, capture and, in the case of live trade, transport and captivity. Many die, resulting in yet more being taken from the wild to replace those lost.

Sadly the current legal framework and enforcement efforts are inadequate to deal with this appalling situation and protect the species and individual animals involved. A more effective response is essential. Accordingly, this report presents the results of a preliminary investigation by IFAW into Internet wildlife trade and examines the nature of Internet trading in general and the legal framework in which it currently takes place. It considers areas of Internet-related crime where more effective regulation and enforcement are already in place and draws lessons for strategies and enforcement techniques that could be employed to tackle the use of the Internet for the illegal trade in wildlife.



IFAW found a range of traditional medicines made from endangered species for sale on the Internet. Products shown here come from tigers, rhinos, Tibetan antelope and elephants.

## 1.1. Results of IFAW's 2004–05 investigation

In November 2004, IFAW UK began to monitor the nature and scale of wildlife trade organised on the Internet. The case studies that appear throughout this report document just a fraction of the items that IFAW found over a three-month period, from November 2004 to the end of January 2005. The survey explored the types of wildlife products and live animals advertised on the Internet, the number and types of websites involved, how easy it was to gain information on the legality of certain items from the website and/or seller, and the mechanisms for reporting suspicious items established by the websites themselves. The survey was conducted from a UK perspective, using only information available in English and accessible from the UK. However, the global nature of the Internet inevitably means that many of the sites and sellers identified by IFAW were based outside the UK.

Each week thousands of animals and animal parts – from live primates to stuffed polar bears, from giant ivory tusks to tiny dried seahorses – are being offered for sale in chatrooms and on auction sites, classified advertisement pages and wholesalers' and private traders' sites. Among the animals being offered for sale, IFAW found a shocking array of species in which all commercial trade is prohibited or strictly regulated. These included some of the world's most endangered species: a live "hand-reared" two-year old Siberian tiger, with a price tag of US\$70,000; live Amazonian parrots, peregrine falcons and serval cats; a live "green turtle" which the seller claimed was captured from a southeast Asian rainforest; a live "pet" lion, advertised "at any price"; tiger-bone tonic pills and other traditional Asian medicines containing derivatives from black bears, leopards and rhinos; elephant ivory products; and shark fins. The range of wildlife products available was alarming and seemingly unlimited.

Just as the types of sites used for this trade are varied, so too are the sellers. Those noted ranged from individuals hoping to make money on a one-off item, to others, possibly professional traders and companies, who had many similar items available and indeed seemed to have a regular supply – for example, one man selling elephant skin wallets claimed he could easily get more from his supplier in Thailand. Many sellers seem to be fully aware that they are acting illegally and deliberately mislead potential buyers.

Clearly not all buyers and sellers are knowingly breaking the law. IFAW's investigation found that the information available on many public trading sites regarding the restrictions on wildlife trade is either non-existent or inadequate. Until such information is made more accessible to the users of such sites, people will unwittingly continue to trade illegally or may find it easier to ignore the law. Professional traders who are ignorant of the law may also unwittingly purchase illegal goods from organised criminals seeking to launder their goods onto the market.

Some of those contacted claimed that an item was antique, but were subsequently unable to produce the necessary documentation. Others, including the trader of live chimpanzees, were contacted by email anonymously to ask whether paperwork was required, but then were only willing to proceed further using the telephone instead of email. Classified advertisements from some sites often had systems that ensured only paid-up users of the site could make further enquiries into certain items. Such practices may help people acting outside the law to escape detection.

Many of the sites offering wildlife items are based in the USA. Some of those offering protected species correctly replied to our queries by stating that their goods could not be exported to the UK without proper documentation. Others advertised the fact that they "welcomed international bidders" and one US site proclaimed that they had just "discovered" a method of shipping primates worldwide.

IFAW reported many of these items, in particular those that were clearly illegal, to relevant enforcement authorities for investigation.

## 1.2. A one-week snapshot: counting the costs

As part of IFAW's investigation, we conducted an intensive survey over one week in January 2005 to gain an understanding of the volume of Internet trade. The results were astonishing. We found over 9,000 wild animal products and specimens and live wild animals for sale, predominantly from species protected by law. The majority of these were offered for sale by private individuals. A further 122 traders advertised unspecified numbers of items. If each of these traders had just 20 items, this would add thousands of items to the total number available.

These figures were all the more striking because the survey was restricted to trade in just five types of products and live animals: live primates, elephant products, turtle and tortoiseshell products, other reptile products and wild cat products. Every effort was made to record only species in which commercial trade is controlled or prohibited, but it was impossible to verify the authenticity and legal status of each item for sale. Any obvious fakes or 'faux' items (such as plastic 'tortoiseshell' products) were discounted, even though advertising them as real may still be an offence. All elephant ivory was counted, although some may have been legally traded if the ivory was genuinely antique and supplied with correct documentation. On the basis of IFAW's 2004 report 'Elephants on the High Street' (see section 1.3), it is likely that almost all of the ivory being offered for sale would have lacked this documentation.

Within one week, IFAW found the following:

**Elephant products** – 5,527 individual elephant products and 11 traders. Items listed for sale included: skin/leather products such as boots, wallets, purses, footwear and bags; bone products such as carvings, jewellery, a Mah-jong set and fans; and ivory products such as jewellery, boxes, chess sets, ornaments, and expensive sculptures, including one with an asking price of US \$18,000. Ivory items also ranged from the more traditional (piano keys) to the clearly contemporary (such as the ivory "functional" telephone with a touch-tone pad).



Elephant ivory, bone, skin and leather products - like this "footstool" - are commonly available on the Internet.

**Primates** – 146 live animals for sale on 15 websites, including baboons, capuchins, marmosets, vervets, tamarins, squirrel monkeys, bushbabies, lemurs, rhesus macaques and gibbons. We found up to 52 individuals advertising unspecified numbers of live primates for sale, so the total number of primates available over the Internet at any one time would be much higher. Juveniles from many species were on sale – some advertised before they were even born. Four baby chimpanzees were offered on one USA-based site, while a seller in London was offering a seven-year-old gorilla. Commercial trade in any primate species is either prohibited or subject to strict controls.

**Turtle and tortoise shells** – 526 turtle products for sale and 25 listed traders or exporters. The term 'tortoiseshell' is commonly used to refer to the shells of turtles; all sea turtles and many species of freshwater turtles are endangered. The products found included ornaments, handbags, jewellery, vanity sets, stuffed animals, and loose shells for crafts. Whole shells of the highly endangered hawksbill turtle were offered for sale on eBay™.

**Other reptile products** – 2,630 items made from reptiles for sale as well as 15 traders offering a vast array of products. Many importers and exporters advertised handbags, belts, wallets, watchbands, shoes and accessories, as well as taxidermy items and skulls. Species included crocodiles, alligators and endangered snakes such as the Cobra. This haul came from just four websites. Commercial trade in reptile products is subject to varying degrees of control depending on the species involved. This in itself creates confusion for consumers and law enforcement officials, who may find it difficult to distinguish between species and therefore to determine what restrictions on trade apply.

**Wild cat products** – 239 products, in addition to 10 traders who boasted of the variety of goods they could obtain for a prospective buyer. Common species listed included African big cats – lion, cheetah and leopard – as well as bobcat, lynx, ocelot, serval, caracal and puma. Works of taxidermy accounted for many offers, although claws, skins, skulls and bags were also advertised.

In narrowing the research to the above categories, other types of Internet wildlife trade, such as live birds, live reptiles and traditional Asian medicines containing animal parts, had to be omitted. These omitted categories represent a significant volume of trade, so it is likely that the figures cited here represent only the tip of the iceberg of Internet trade in protected species.

**Summary of one-week snapshot:**

Type of product or live animal	No. of items found	No. of additional traders found
Live primates	146	52
Elephant products	5,527	11
Turtle and tortoiseshells	526	25
Other reptile products	2,630	15
Wild cat products	239	10

### Gorilla

“A Gorilla currently needs a new home due to relocation of owner”, the classified ad reads (27 January 2005).<sup>3</sup> “It is located in London, UK. The asking price is £4,500. It is 7 years old and is currently in good shape. Health certificate also available.”

Gorillas are among the most highly endangered species on the planet. Mountain gorillas number just 650, while other sub-species such as Western lowland gorillas and their Eastern cousins survive in small fragmented populations. Habitat loss, bushmeat hunting and the captive live trade have devastated this slow-growing species.

Like all Great Apes, gorillas are listed on CITES Appendix I, prohibiting all international commercial trade by Parties. This case is particularly disturbing because of the welfare implications involved. Gorillas need highly specialist care and it is extremely unlikely the physiological and behavioural needs of an individual animal can be met in captivity. IFAW referred this case straight to the London Metropolitan Police Wildlife Crime Unit for investigation.



Mountain gorillas are threatened by habitat loss, poachers and trade in their meat and parts.

### 1.3. Other evidence of the problem

It is now widely acknowledged that the Internet is being used to facilitate illegal trade in wildlife and that this increasing problem poses new challenges to legislators and enforcement agencies.

In March 2004, IFAW published a report entitled ‘Elephants on the High Street: an investigation into ivory trade in the UK’, which documents how vast quantities of ivory are sold illegally over the Internet, within the UK and internationally, with little or no monitoring or enforcement by relevant authorities.<sup>4</sup> The report concludes that there is widespread ignorance of laws restricting the ivory trade, and that traders who are aware of the legal restrictions can easily find ways to get around them with little chance of detection.

In its 2004 report entitled ‘Handle with care’, the Royal Society for the Protection of Animals (RSPCA) in the UK states that it “has long had concerns about the availability of exotic pets from unscrupulous breeders via the internet, a medium which is considerably more difficult to monitor” [than pet shops].<sup>5</sup>

In April 2004, TRAFFIC Europe (a wildlife trade monitoring network) published a document that identifies Internet trade as one of the main smuggling methods and techniques and reports that German enforcement authorities have noted an increase in the amount of Russian caviar being offered for sale illegally over the Internet.<sup>6</sup>

In October 2004, the UK House of Commons Environmental Audit Committee (EAC) published a report on wildlife crime that noted “the significant switch to the internet as the preferred method for trading in protected and endangered species”.<sup>7</sup> The EAC based its conclusions on written and oral evidence from government officials, enforcement agencies and non-governmental organisations (NGOs), all of which is publicly available. As part of its written evidence to the committee, TRAFFIC cited a 2000 study of the parrot trade on the Internet carried out by the French NGO *Conservatoire des Espèces Psittacines* (Conservatory for Parrot Species). The study found that over a two-year period the number of websites offering parrots for sale increased nearly tenfold (from 10,930 to 99,542) and that there had also been a dramatic increase over that period in ‘hits’ on particular sites. The study was unable to draw a conclusion as to the number of birds being offered illegally, although it was noted that many of the advertisements requested that communication should be undertaken offsite – that is, through other means such as email or fax.

The jaws and other derivative ‘souvenir’ parts of shark species listed in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) have been observed for sale on auction sites, prompting a spokesman for the USA-based NGO WildAid to state that “Internet trading sites ... seem to have provided convenient platforms for wildlife traders to buy/sell products made from threatened or endangered animals”.<sup>8</sup> WildAid also noted that certain products were described in such a way as to suggest that there are no special requirements for trade.



Amazonian Parrot.

## 1.4. The implications for animal welfare

The suffering caused by the Internet trade in live animals (wild and otherwise) has not been as widely recognised and documented as the threats to biodiversity posed by the use of the Internet for wildlife trade. Yet any transfer of live animals, whether endangered or not, inevitably affects the welfare of the individual animals. The fact that many animals die during capture, holding or transport, or due to poor conditions and treatment in captivity, means that higher numbers are taken in order to compensate for such foreseeable losses. For example, the majority of reptiles kept as pets die within the first year of captivity because their owners do not know how to care for them – leading to a continual demand for the species concerned.<sup>9</sup>

The organised nature of illegal wildlife trade also has serious implications for animal welfare. The CITES Enforcement Expert Group states that “organised crime and organised criminal networks are using sophisticated poaching and smuggling techniques”.<sup>10</sup> Organised crime groups routinely demonstrate disregard for the welfare of the live ‘commodity’ they are smuggling, whether this be people or animals. Smuggling, by its very nature, requires animals to be concealed, and their welfare is less important to the smuggler than the need to smuggle them successfully across a border. Many of the techniques employed by smugglers to capture and trade the animals ignore welfare concerns and frequently inflict great suffering to individual animals or result in the death of the animals.

The case of Raymond Humphrey<sup>11</sup> provides a shocking example of the appalling cruelty and waste that wildlife smuggling can involve. In 2000, he was stopped by UK Customs with twenty-three birds of prey from Thailand stuffed into cardboard tubes with their beaks tied shut and packed into two suitcases. Six of the birds had already died and another died the following day. When the suspect’s home was searched, other live and dead animals were discovered. He was sentenced to six and a half years in prison.<sup>12</sup>

### Peregrine falcons

This peregrine falcon work of taxidermy was advertised on eBay™ for £170 on 28 January 2005 and was described by its seller as a “beautiful” and “rare” bird of prey.<sup>13</sup>

All wild British birds, their eggs and nests are protected by law.<sup>14</sup> Birds of prey such as peregrine falcons, buzzards and goshawks are illegally taken from the wild and end up being traded – live and dead - across the country. These rare birds are targeted by egg collectors and can fetch a high price on the falconry market. It is only legal to keep a live peregrine falcon if it has been bred in captivity, and has been registered with Defra. A stuffed specimen can only be sold with proof that it was lawfully acquired and with an Article 10 certificate.



A wild peregrine falcon in Scotland.



A taxidermy peregrine falcon found for sale on eBay™.

The increasing number of individuals involved in the trade in live animals, as a result of its being facilitated by the Internet, also contributes to animal suffering. Offers for sale by amateur hobbyists or criminal opportunists take place on a far greater scale than was previously possible and this may have led to increased demand for certain species. This demand leads in turn to a growing volume of unregulated trade, involving a greater number of people who are unqualified to ensure the well-being of the animals traded. Under UK law, commercial sellers of live animals must be licensed yet this seems unlikely in the case of Internet sellers. Monitoring and enforcement of such sellers is difficult and resource-intensive. Inevitably, animals will suffer ill-treatment or neglect under these unsatisfactory conditions.

Online sales to under-age customers are also a problem. The ability of the seller to check whether the buyer is of the legal requisite age to buy a live animal (currently 12 years in the UK) is seriously compromised in online sales, and a seller who fails to verify the buyer’s age may thus be unwittingly committing an offence.

The welfare issues raised by the trade in live animals are beginning to gain recognition. For example, the regulation of the Internet trade in pet animals is suggested in the Animal Welfare Bill currently before the UK Parliament – see section 2.2.

## 1.5. Growing use of the Internet for trading and associated problems

More and more people around the world are logging on to the potential of the Internet. A recent report showed that Internet use is overtaking watching television as the UK’s favourite pastime.<sup>15</sup> Now that initial scepticism over the issues of data security and fraud has begun to fade, trading over the Internet appears to be growing faster year on year than high street trade. In the UK, Internet sales reached a value of around £40 billion in 2003, representing a 108% increase from the previous year.<sup>16</sup> It is unquestionable that there has been a similar growth in the use of the Internet to facilitate sales between individuals, whether through public trading sites such as auction sites and bulletin boards, or via the private websites of ‘hobbyist’ entrepreneurs. For example, eBay™ has 50 million items on its site, with around 5 million added each day.<sup>17</sup>

The Internet is now a global marketplace, a forum for the buying and selling of goods and services anywhere in the world.<sup>18</sup> Application and enforcement of trade-related laws are hampered by the relative anonymity available to individuals, the large number of small-scale traders and the difficulties of monitoring the vast amount of electronic traffic.

As a result, fraud and other types of crime are commonplace and the usual trading standards are not always obviously applied. Such standards typically include consumers’ statutory rights, the regulation of the sale of illegal or offensive material, and rules for the advertising or description of products. The challenge facing national governments is to apply the legal framework in a way that does not hamper legitimate uses of the Internet, but which is able to regulate effectively the conduct of those using it.

A study by the European Consumer Centre Network<sup>19</sup> notes nearly 1,900 e-commerce cases reported to it over ten months in 2003, of which nearly 600 involved complaints or disputes. Most of the Internet traders to whom complaints referred were based in Europe – although, rather worryingly, in 12% of cases the trader’s location could not be established. This virtual anonymity allows the illegal trader to evade discovery and thus any enforcement action. A total of 3% of complaints related to fraud, and it is notable that most of these cases related to the offer of goods for sale on Internet auction sites. This is indicative of a wider problem in relation to auction sites, where the anonymity of the sellers makes it difficult to ascertain their credentials.

The UK's National Criminal Intelligence Service (NCIS) has defined the concept of criminal communications and notes that "serious and organised criminals have always sought fast and secure means of communicating with each other. Email, Internet chat rooms and instant messaging offer new options, as do web-based and client server mail accounts, websites and message boards. These methods can be used to coordinate criminal activity, locate victims, and to make new criminal contacts, as well as to procure goods and services related to the criminal enterprise. They provide speed of communication and relative anonymity. There is evidence that some serious and organised criminals are exploring use of the Internet to communicate. For example, drugs traffickers are using Internet chat room facilities to discuss, negotiate and arrange supply of drugs."<sup>20</sup> This description can easily be applied to illegal Internet-based wildlife trade.

NCIS also notes: "The range of crimes that can be committed, either through or with the support of hi-tech tools and techniques, is limited only by the imagination and capability of the criminals and the adequacy of the protection that is in place."<sup>21</sup>

With the growing number of traders and consumers, and the difficulties of enforcing the law, the need to tackle the use of the Internet to trade illegally in wildlife grows more and more acute. Whether or not traders are aware that they are breaking the law, the negative impact on endangered species and on the welfare of individual animals is the same.



The Tibetan antelope faces extinction due to poaching for its highly prized fine wool.

## 2. The legal framework

The legal framework that applies to Internet trade in wildlife, including live animals, spans national, regional and international legislation relating to endangered species, animal welfare and Internet trading. This section considers the legal framework that applies in the UK, drawing on relevant European and international law.

### 2.1. Endangered species

The Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 (CITES) is a legally binding framework that regulates trade in listed species between countries.<sup>22</sup> At the time of writing, 167 governments are party to the convention and are obliged to comply with its provisions. Commercial trade in species listed on CITES Appendix I is prohibited, although some trade is permitted under certain circumstances, while commercial trade in species listed on CITES Appendix II is controlled and monitored through a system of export permits.

In the EU, CITES is implemented by Regulations EC/338/97 and EC/1808/2001 (the Regulations), which provide a stricter regime than CITES itself and are the basis for UK law.<sup>23</sup> The Regulations include Annexes A to D, which correspond to the CITES Appendices, although there are differences, such as the inclusion of some species not listed in CITES. Species listed on Annex A are considered the most endangered: commercial trade in these species from, to and within the EU is generally prohibited, although some trade is permitted under certain circumstances. Trade within the EU is regulated by sale certificates issued under Article 10 of Regulation EC/338/97 ('Article 10 certificates'). Species listed on

#### Tibetan Antelope

We found shahtoosh shawls for sale on an Indian-based website on 19 January 2005.<sup>24</sup> These expensive shawls are made from the wool of the Tibetan Antelope. Prices were not advertised but we were told on enquiry that shawls started from £450. The woman seller told us via email that she could arrange for the shahtoosh to be "delivered to you in UK".

The Tibetan Antelope is highly endangered and up to five animals must be killed to make just one shahtoosh shawl. Today, it is estimated that numbers have fallen to just 75,000 due to poaching to satisfy the demands of the international fashion market.

The Tibetan Antelope is listed on CITES Appendix I. Despite increased international enforcement efforts to crack down on the illegal trade, it appears that some traders - like our Indian seller - remain determined to flout international law. A UK buyer could have the item confiscated and face a heavy fine or even jail sentence if caught importing shahtoosh into the country. In India, it is also strictly prohibited to trade in shahtoosh, and those who breach the law face between three and seven years' imprisonment and a hefty fine.<sup>25</sup>



A luxury shahtoosh shawl seized by police in London.

Annex B may be commercially traded when imported or obtained within the EU in accordance with Regulation EC/338/97; export and re-export permits are required at the point of exit from the EU. These controls do not apply to trade within or between EU member states. Finally, species listed on Annexes C and D have the fewest restrictions placed on them.

The Regulations are supplemented by domestic legislation in each EU Member State, which creates criminal offences and specifies the penalties for those offences. In the UK this legislation is the Control of Trade in Endangered Species (Enforcement) Regulations (COTES – Statutory Instrument 1997/1372) and the Customs and Excise Management Act 1979 (CEMA).

COTES specifies a number of criminal offences, which are triggered when the EU Regulations are breached within the UK. Most of these offences relate to the fraudulent use of permits or certificates, or to the contravention of conditions specified in the documentation. A broad offence covers the purchase, sale or advertising of Annex A or Annex B specimens that have been imported or acquired unlawfully. Penalties for COTES offences range from a maximum of three months' imprisonment and a £5,000 fine in a Magistrates' Court to a maximum two-year prison sentence and/or an unlimited fine in a Crown Court. The Criminal Justice Act 2003 provides for a maximum five-year prison sentence, to be implemented in a new COTES Regulation that is currently being finalised. This increased maximum sentence will make the offences 'arrestable offences' under the Police And Criminal Evidence Act 1984, a status that brings with it greater police powers to assist investigations and prosecutions.

CEMA is used by HM Customs and Excise to regulate imports and exports to or from the UK. The penalties under CEMA can be significant: a maximum seven-year prison sentence and/or an unlimited fine.

However, the penalties provided by law are rarely used as the judiciary do not treat wildlife crime with due gravity. With few such crimes being prosecuted, they remain a novelty in many courts and have so far attracted only minimal sentences. For example, in 1997 the Metropolitan Police Wildlife Crime Unit seized 138 shahtoosh shawls with a retail value of £353,000 from a shop in London. The company involved were fined just £1,500 and ordered to forfeit the shawls; they were not given a prison sentence.

Both pieces of legislation permit the seizure and confiscation of specimens as well as, in the case of COTES, the seizure of items used to commit an offence. This would presumably include computers if the police suspected that they had been used in the course of committing the offence.

## 2.2. Animal welfare

At the level of international law, there is very limited reference to animal welfare, except in relation to farmed animals. In the EU, the Treaty of the European Community was amended in 1997 to include a 'Protocol on protection and welfare of animals', the essence of which states: "In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage."<sup>26</sup>

The International Air Transport Association (IATA) has Live Animal Regulations that specify the minimum requirements for the international transport of animals. These Regulations have been incorporated into EU legislation through Regulation EC/338/97 in conjunction with Directive 95/29/EEC relating to the protection of animals during transport. The IATA Regulations have also been adopted by CITES and the World Organisation for Animal Health (OIE).<sup>27</sup>

The UK has a mature system of animal welfare legislation developed since the 19th century, spread over a variety of Acts of Parliament supplemented by regulations, and applying to both farmed and non-farmed animals. The current basis of animal welfare legislation in England and Wales is the Protection of Animals Act 1911 (the 1911 Act). In Scotland, the equivalent legislation is contained in the Protection of Animals (Scotland) Act 1912.

The 1911 Act attempts to protect domestic animals and captive wild animals from cruelty or unnecessary suffering. However, the Act only applies in cases of deliberate cruelty to animals; it does not state how animals should be cared for and therefore does not effectively protect animals.<sup>28</sup> Over time a complementary body of law has evolved to fill this gap. For example, the Welfare of Animals (Transport) Order 1997 includes positive duties to ensure the prevention of suffering or to take appropriate steps to avoid injury and unnecessary suffering to transported animals.

The Pet Animals Act 1951 (the 1951 Act) requires any person in the business of selling animals as pets to be licensed: animal welfare standards must be met before a licence can be issued (section 1(3)). This requirement applies to any premises belonging to a dealer where vertebrate species are sold as pets, even if the trade is organised on the Internet. It is also an offence under the 1951 Act to sell to children under the age of 12 and this would also apply to

### Giraffe

IFAW investigators found a "sweet natured" giraffe advertised for sale on US site GotPetsOnline.com on 11 January 2005.<sup>29</sup> The advert read: "This is a very sweet natured animal. He is 2 years old and has never been bad tempered with me. he has never been in the wild so he was born in captivity. i have put way too much work and caring love in him for him just too be abandoned and left alone. a good caring loving home is a MUST. thank you for your interest in him." [sic] It was advertised for US \$15,000.

Although not endangered, giraffes in countries like Kenya are falling victim to increased levels of poaching to supply the bushmeat trade. Crude snares fashioned from telegraph wires are hung from trees at certain heights to ensnare giraffes by their necks while grazing. Giraffes are savannah animals, and at up to 4 metres high are biologically adapted to their natural habitat. It is highly questionable whether the needs of these tree-top grazers can be adequately met by private "pet" owners. The welfare implications for individual animals kept in captivity are acute.



Even the tallest of African mammals, the giraffe, is not exempt from the exotic pet trade.

selling on the Internet. As with most similar offences, the penalties are limited to Magistrates' Courts, with a maximum penalty for the majority of the offences of £500 and/or three months' imprisonment. Other powers granted to local authorities enable them to cancel licences and to disqualify offenders from having a pet shop in future.<sup>30</sup>

The Animal Welfare Bill, currently being considered by Parliament, proposes a new duty that would enable enforcement action to be taken in circumstances where an animal would be likely to suffer, instead of waiting until some suffering has already taken place, as is currently the case. The Bill also provides a relatively clear definition of cruelty that would apply wherever a person by their act or omission causes an animal to suffer. An offence would be committed if a person either knew or reasonably should have known that an act or omission would cause an animal to suffer.

Offences of cruelty under the Bill are proposed to become arrestable offences, with the result that powers of entry and search of premises would apply automatically upon the arrest of an offender. People convicted of a cruelty offence would be subject to a prison sentence of up to 51 weeks and/or a fine of up to £20,000. In relation to the lesser offence of failing to ensure the welfare of animals, a maximum fine of £5,000, but an equivalent term of imprisonment, could be imposed. An offender could be deprived of the particular animal to which the charges related, or could be disqualified from keeping any animal for a specified period of time.

## Live chimps

IFAW investigators discovered four infant chimpanzees advertised for sale on 16 December 2004 on a US website called WildAnimalWorld.com,<sup>31</sup> which features pictures of chimps dressed up like living dolls. The asking price for the four animals was US \$60,000 for a male and \$65,000 for a female. No doubt to deter less than serious buyers, and possibly to avoid written evidence or correspondence traceable back to the trader, the site stipulated that offers were only acceptable over the telephone.

In February 2005, Kenyan customs officials seized a shipment containing 6 baby chimps, believed to be less than 18 months old, destined for the international exotic pet market. One baby had died and the remaining five were suffering in appalling conditions. The removal of chimps from the wild often involves the slaughter of the mother and other family members. It is estimated that for every chimp (and gorilla and bonobo) that enters the market place, up to ten others have died.<sup>32</sup> Orphaned infant primates that are sold into the pet trade are often byproducts of the illegal bushmeat trade.

Chimpanzees, so closely related to humans that our DNA differs by just over one percent, are highly endangered in the wild due to habitat loss, the bushmeat trade and poaching for live animals for the exotic pet trade. Down from an estimated one to two million a century ago, chimps today number as few as 150,000 in the wild.<sup>33</sup> They are protected from international commercial trade through a CITES Appendix I listing. Anyone caught importing a wild-caught chimp into the UK for commercial purposes is likely to face criminal charges, as they would be breaching EU law.



Wild caught juvenile chimpanzee sold as a pet in the Democratic Republic of Congo, about to be smuggled to Russia.

The regulation of the Internet trade in pet animals is being specifically considered in the context of the new Animal Welfare Bill.<sup>34</sup> Annex D of the draft Bill states: "It seems reasonable that if animals are being sold from sites in England and Wales then [businesses] should be expected to comply with minimum welfare conditions. A possible option would be a statutory code of practice applying to all internet sales." This is a positive proposal, especially since a statutory code of practice would be legally binding. However, it is also noted that the Government's policy in this area is still "to be agreed" (see Annex L); and the Government elsewhere recognises "the difficulties in regulating Internet activity and accept[s] that the production of regulations and a code within a year may prove too ambitious a timescale".<sup>35</sup>



Infant chimps, many orphaned by the bushmeat trade, often end up being sold as pets.

## 2.3. Contract law and Internet trading

In general, the law is reactive to new problems, rather than taking a proactive stance. This has been true in the case of the challenges presented by the Internet, which encompass a variety of crimes – from hacking and the creation or placing of viruses, which may be termed 'new crimes with new tools', to the facilitation of 'traditional crimes' by the new technology. Illegal trading on the Internet may be considered a traditional crime committed with new tools.

The legal framework for Internet trading is based on normal internationally shared principles of contract law, supplemented by specific regulations relating to problematic aspects of the trade. Any consideration of contract law is based on the premise that the contract is subject to certain terms and conditions, whether express (terms actually agreed between the parties) or implied (by reference to applicable legislation, for example that relating to consumer protection).

Contract law is generally assumed to be a reflection of a laissez-faire idea of trade between consenting individuals free to determine the extent of their obligations. The majority of related legislation is concerned with the protection of the consumer and this holds true for the Internet trading environment.

The nature of Internet trading means that the buyer and seller are often located in different countries. In such circumstances it is important from a legal perspective to determine where the contract is made, and how and when it is concluded. The latter point is more straightforward, in that once the goods have been supplied and the payment received, the contract is complete. In terms of the 'where', a site's terms may specify the governing law for the contract, although otherwise it is implied that the contract is made where it is 'accepted', in practical terms, where the seller is located. As this report is not concerned with consumers' rights per se, issues such as misdescription of the product, non-performance, and a buyer's rights will not be considered further. The exception here is that misdescription of the product may have serious implications for the buyer. For example, the seller may claim that a worked piece of ivory is of a certain age and therefore falls within the exemption for antiques (defined as items carved before 1947), but if this is not the case and the delivery is intercepted, the buyer may be charged with an offence.

## Live primate trade – welfare and conservation concerns

IFAW's investigation revealed a staggering 146 individual live primates for sale on the Internet over a one-week period in January 2005 - part of the 'exotic' pet trade. Some websites offered unspecified numbers of primates for sale, so the total number available online is likely to be much higher. Our researchers uncovered 11 specialist primate sites and a further 13 sites selling primates as pets; the websites ranged from classified ad pages devoted to primate traders and breeders to online chatrooms where members of the public freely traded their pet primate.

This trade has very serious conservation and welfare implications. All wild primate species are threatened and as such are listed on either CITES Appendix I or II. Primates are being captured from the wild and smuggled abroad in often appalling conditions. The stress of capture, restraint, transportation and holding at their destination mean that many do not survive the journey. The number of animals removed from the wild rarely equals the number that makes it to market.

Intelligent and social animals, primates require a level of specialised care that was seldom specified in the sales descriptions. Popular primates for sale in the UK include marmosets, capuchins, squirrel monkeys and tamarins. One seller contacted in Wales was offering a pair of "breeding" cotton-headed tamarins for £1900 on classified site ad-mart.co.uk.<sup>36</sup> IFAW investigators were incorrectly advised that no Article 10 certificate was needed, as donation papers would suffice. As cotton-headed tamarins are listed on CITES Appendix I and EU Annex A, trade requires an



Cotton-top tamarins are endangered and commercial trade is tightly regulated under international law. Selling these primates without correct documentation is illegal.

Article 10 certificate, the approval of which is at the discretion of Defra. The keeping of most primate species, with the exception of marmosets, bush babies and slow lorises, also requires a Dangerous Wild Animals licence.

Many sites are guilty of promoting the false impression that monkeys can be treated like dolls or human babies. In the US, traders calling themselves 'Monkey Mom', and their primates 'monkids', add to this misconception. So rife is this trade that it has spawned a subsidiary market in monkey accessories. Clothes, nappies, bottles, feeding syringes, shampoos and conditioners, leashes, jewellery and toys are just some of the monkey products available over the web. Online communities and message boards such as Monkey Matters and other membership societies help foster the sense of an online community of monkey "moms".<sup>37</sup>

The online accessibility of primate species in chat rooms and on message boards offers often completely inexperienced people, including many teenagers, the opportunity to buy and sell live animals.

"Hey my name is Jessica and i just turned 17 years old and mom and dad says i can have a pet monkey but i don't really have that much money but i have always dreamt of having one so if you are willing to sell a cheap monkey i am wanting to talk plz email it would be a childhood dream come true... [sic]"<sup>38</sup> (21 December 2004)

"Hello my name is Emily. I want a cheap or free small monkey, Sex doesn't matter. ... I asked for one for Christmas but house burnt down so now we are poor. I still have heated cage. Would like free monkey. Sad and lonely."<sup>39</sup> (20 December 2004)



Spider monkey dressed as a baby as made public on rainbowprimates.com

IFAW fears that many of those purporting to want a monkey are woefully unequipped to deal with the considerable welfare needs of a captive primate. There is also no way of distinguishing between captive bred and wild caught animals by the online description provided, leading to concerns over the conservation of these animals in the wild. The greater the demand for these animals, the greater the levels of poaching, as smuggling becomes a profitable enterprise.

As for the making of the contract, in basic terms a contract is made when one party accepts the offer of another party to supply goods or services for payment. Whether that contract is 'legal' (i.e. valid) depends on there being a valid offer,<sup>40</sup> acceptance of that offer, and consideration (exchange of goods and/or money, or promises to make such an exchange), as well as both parties having the intention to create a legal relationship and the necessary capacity to enter into the contract. For example, a person seeking to sell a CITES-listed species without the relevant import and export permits would not have the capacity to supply that specimen and so any contract would not be legal; while a contract for the sale of an animal by a pet dealer to a child under 12 would not be legal because the 1951 Act prohibits such sales and thus the child does not have the capacity to enter into it.

## 2.4. International regulation of Internet trading

Contemporary international law, while well developed in relation to cross-border jurisdiction in contractual disputes, has fallen behind in its consideration of commercial Internet activity. Specific laws to combat abuses are not yet well developed at the international level, although there is a recognition that concerted action is best taken globally.

The G8 group of nations has considered the issue, and has established the 'Lyon Group' to find effective ways to fight transnational crime, including high-tech crime.<sup>41</sup> Computer-related crime was considered at the 11th UN Congress on Crime Prevention and Criminal Justice in April 2005; the discussion paper published prior to the Congress notes that "traditional legal approaches may not be effective in dealing with such contemporary manifestations of transnational organized crime. The eleventh Congress will provide an opportune forum to highlight the need for developing more concerted strategies to curb the problem" and proposes measures to be taken nationally and internationally.<sup>42</sup>

The UN Commission on International Trade Law (UNCITRAL) has so far adopted two texts in relation to e-commerce, dealing with the substitution of electronic protocols for paper-based concepts such as 'signatures' and 'originals'.<sup>43</sup> As with a considerable number of legal instruments adopted or in development in the field of e-commerce around the world, the international community is seemingly concerned with providing the necessary legal framework to promote the use of e-commerce, rather than establishing a basis for effective regulation.

However, UNCITRAL did consider aspects of e-commerce and so-called cyber-fraud as part of a wider review of commercial fraud in 2003 and 2004,<sup>44</sup> observing that one type of fraud involves the forgery of documentation to facilitate/enable a transaction to take place.<sup>45</sup> UNCITRAL noted specifically that “the Internet played an important role in the growth of commercial fraud because it enabled fraudsters to increase their reach or profits”.<sup>46</sup> This assessment of the role of the Internet in increased fraud can be easily extrapolated to other areas of crime – the UK’s NHTCU (see section 4. of this report) recognises this fact and the novel threat that the Internet poses when opportunists seize on a new environment.

Nonetheless, beyond recognition of the problem and attempts to define it, there are very few coordinated and effective measures in international law to tackle Internet crimes in relation to trade.

The Council of Europe Convention on Cybercrime, which entered into force in July 2004, is the first international treaty on crimes committed via the Internet, including illegal trade.<sup>47</sup> It is open for signature by member states of the Council of Europe and non-member states. As of 22 March 2005, nine states had ratified the Convention and 32 other states were signatories, including non-European states such as Canada, Japan, South Africa and the USA. It aims to address issues such as international cooperation on enforcement, noting that “criminals are increasingly located in places other than where their acts produce their effects. However, domestic laws are generally confined to a specific territory” (paragraph 6). As a general principle of international law, a state is not permitted to enforce its criminal law in another state’s territory without the host state’s permission. Where such permission exists, usually as a result of a bilateral treaty between the states concerned or on an *ad hoc* basis, extradition may be requested, as may police assistance, but there is no guarantee of cooperation.

A state may prescribe certain conduct as criminal for its nationals while abroad.<sup>48</sup> A state may even criminalise conduct committed by a non-national outside its own territory in limited circumstances. This is the case in relation to terrorism, where states including the USA formulate laws on the basis of harm, real or threatened, to their nationals. The problem, however, and one characteristic of all legal systems, is that while a state may have the ability to prescribe criminal activity beyond its borders, its ability to enforce such legislation is limited, in law at least, to its own territory.

As a response to this, the Convention attempts to establish a common minimum standard of relevant offences so that offenders cannot merely move to a state where a lower standard is enforced. It includes a minimum list of offences involving ‘computer crimes, such as hacking and data security issues; computer-based fraud and forgery; child pornography; and copyright infringements. Parties to the Convention are required to introduce appropriate and proportionate sanctions in their national legislation.

The Convention also envisages a common set of procedural rules for criminal investigation. It requires Parties to have the ability to collect and keep data in electronic form such as email communications cached by an Internet service provider (ISP). The Explanatory Report to the Convention notes that “one of the major difficulties in combating crime in the networked environment is the difficulty in identifying the perpetrator and assessing the extent and impact of the offence”.<sup>49</sup> It also notes that electronic evidence may be easily destroyed and that secrecy may therefore be necessary to ensure the success of an investigation. This obviously raises concerns in relation to data protection and civil liberties, although the Convention does recognise the need for certain rights of disclosure on traffic information that is seized or preserved. Additionally, it is provided by article 21 that the interception of data will be permitted when investigating a range of “serious” offences as prescribed by national law. In the UK context the scope of this definition is questionable: it is unclear for instance whether it would include all the serious and organised crime that NCIS is tasked to consider, which includes certain wildlife crimes.

The Convention envisages that international cooperation should take place among the Parties “to the widest extent possible” (article 23). Importantly, article 23 provides that cooperation is to be extended to all crimes involving

computers and gives the example of an ‘ordinary crime’ actually committed without the use of a computer but involving electronic evidence, for example, to facilitate the crime. Such a situation would bring the increased data interception and seizure powers into play. There are also provisions in relation to extradition, as well as a stipulation that mutual assistance should permit states to secure evidence in other states (for example by using information held on foreign servers).

While the Convention sets out some radical concepts with the potential to boost law enforcement capability, it must be noted that, despite being a signatory, the UK has not yet ratified the Convention, so its provisions are not at present effective in the UK. The EU’s (admittedly much narrower) legislation has been incorporated into UK law but ratification of this Convention would further strengthen the UK’s capacity for action in this area.

## 2.5. EU regulation of Internet trading and the liability of ISPs

ISPs operate in a variety of ways to enable the use of the Internet by those who subscribe to their services. The ISP may be merely a means to transmit messages; it may hold data temporarily in order to facilitate its traffic; or it may provide the platform to host a particular website. In each case, the degree of ISP liability is slightly different, although in essence establishing wrongdoing depends on the level of knowledge that the ISP had of the content of the data transmitted or held. Legislation governing ISPs is evolving along with the Internet itself. Traditional issues surrounding the level of knowledge and consequent responsibility of publishers have been adapted to online publications – including newsgroups and chatrooms – with the general rule being that ISPs are not liable for content posted by others on a site they host.

The EU has sought to place limits on the extent of liability by means of the E-Commerce Directive,<sup>50</sup> which is implemented in the UK through the Electronic Commerce (EC Directive) Regulations 2002.<sup>51</sup> The intention is to remove disparities between member states’ legal frameworks, avoid over-regulation and promote the freedom of the internal market. Three types of Internet service provision are identified, and the liability of ISPs over a range of legal issues, including defamation and obscenity, is limited according to the extent of their activity:

- **Mere conduits** (article 12) – The ISP will not be liable for a simple transmission within a communication network provided that the ISP: does not initiate the transmission; does not select the receiver of the transmission; and does not select or modify the information contained.
- **Caching** (article 13) – The ISP will not be liable in circumstances where it automatically and temporarily stores intermediate information so that the onward transmission is made more effective. A court or other administrative authority may however order that the information be removed. Additional limitations require that the ISP does not modify the information, and that it acts promptly to remove or bar access to the information as soon as the original information has been removed or the ISP has been ordered to remove it.
- **Hosting** (article 14) – This is an arrangement in which the ISP stores information belonging to a service user. It includes the hosting of third parties’ websites, and may even extend to web-based email services. Once more, the ISP is considered to be exempt from liability for the information held, provided that it lacks actual knowledge of illegal activity or information. Should it become aware of such information, the immunity from liability is lost unless it acts promptly to remove or disable access to the information.

The effect of this Directive is to place the primary responsibility for the content of a website on the site owner. The owner is seen as distinct from the ISP, having active control over the content of the site and being in a position to regulate content which is criminal or otherwise subject to liability (for example, in sites hosting chatrooms, a moderator may act to filter out any inappropriate material).

## Elephants

A gruesome 'antique Elephant foot ashtray' was advertised for sale at £50 on auction site eBay™ on 1 November 2004.<sup>52</sup> The seller claimed the item was antique but confessed to having no documentation or proof.

This item was just one of thousands of elephant hair, leather or ivory products we found for sale online during our 3 month investigation. The ivory trade was most prolific, with items ranging from tiny pieces of carved jewellery to huge carved "Chinese emperor" elephant ivory tusks – priced at US \$5,500.



Carved ivory jewellery comes at a great cost - elephants must be killed to supply the deadly trade.

Elephants in Africa and Asia are endangered, victims of rampant poaching for the ivory trade. African elephant numbers plummeted from an estimated 1.3 million to 625,000 during the 1980s because of widespread ivory poaching.<sup>53</sup> Fuelled by the demand for their sought-after "hard" ivory, poaching has significantly changed the population dynamics of Asian elephants, which are estimated to number just 35,000 to 50,000 in the wild. Forest elephants in Central and West Africa are also vulnerable because of poaching for ivory and bushmeat, combined with habitat loss.

To halt the widespread slaughter of elephants for their ivory, CITES introduced a global trade ban in 1989. This measure is largely credited with saving both African and Asian elephants from the unsustainable commercial exploitation that was devastating entire populations and threatening the long-term survival of the world's largest land mammal.

In the UK, it is illegal to sell carved ivory unless it is antique (defined as pre- 1947) and accompanied by documentation to prove the piece's age. Any uncarved ivory or ivory dated later or of unknown age requires an Article 10 certificate from Defra.

Under the terms of the UK's Criminal Justice Act to be implemented in 2005, the most serious offences in breach of these rules could incur a penalty of up to five years in prison.

## 3. Overview of current enforcement efforts and voluntary action

### 3.1. Efforts by NWCIU and Defra

The use of the Internet to facilitate illegal wildlife trade has been recognised by the Government and enforcement agencies in the UK as a growing problem that needs to be addressed. Resources have already been devoted to this but as yet are insufficient to deal with the apparent scale of the problem. Even establishing the actual scale of wildlife crime is complicated by the lack of truly reliable data and this is particularly the case in relation to Internet trade.

The EAC (see section 1.3.) considered this issue in detail. A TRAFFIC representative giving evidence to the EAC noted that communications undertaken by email, bulletin boards, chatrooms and websites were becoming the norm and that currently available monitoring and enforcement practices were allowing the illegal Internet trader to stay well ahead of the enforcement effort. The Department for Environment, Food and Rural Affairs (Defra) admitted in its evidence that this was a "relatively new issue" for it, but one which it had "started on". Defra stated that it has a member of staff constantly monitoring the Internet, particularly eBay™. This monitoring has seen some results. In early 2004 a sperm whale tooth was found for sale on eBay™: it was an unworked item and there was no record of the necessary certificate being issued. Defra passed the information to the police and the seller was given a police caution and the tooth confiscated.<sup>54</sup> In the view of the EAC, this type of monitoring, leading to this sort of result, should become more common. However, Defra explained that "the sheer volume of websites and the volume of transactions taking place on these websites makes systematic compliance testing very difficult to achieve and extremely costly in resource terms".

The EAC was told that the National Wildlife Crime Intelligence Unit (NWCIU) is also taking action in this area: collaborating with auction sites; working proactively to develop actionable intelligence from information obtained from such sites; and monitoring wildlife sales on other types of sites.

The EAC voiced a concern that these efforts were not sufficient and recommended that additional resources should be forthcoming to assist in a more systematic approach. This recommendation must be seen in light of the call, within the same report, for a more systematic means of collecting data on wildlife crime in general (paragraph 13 of the EAC report).



A caiman crocodile handbag confiscated in the UK by HM Customs and Excise



Dwarf caiman crocodiles are victims of wildlife trade because of their scaly skins, commonly used in bags, shoes and ornaments.

The report recommended that contributions to a centralised database should be on the basis of consistent and comparable data (paragraph 26). If, as the EAC suggested, wildlife crimes become so-called 'recordable offences' (so that the police must keep statistics on them) the impetus towards better monitoring and therefore better-targeted enforcement may gain momentum.

### 3.2. Voluntary actions by auction sites

There is currently a boom in the number and use of Internet auction sites and these have been identified as being one forum where wildlife products may be illegally offered for sale. To protect consumers and prevent accusations of facilitating illegal trade, IFAW believes that sites should provide comprehensive information about the law on the sale of prohibited and controlled items. However, this is generally not the case, particularly in relation to wildlife trade.

A recent survey of the terms and conditions of 37 UK-based auction sites<sup>55</sup> found that, out of the 28 sites open to trade in wildlife products: 18 of the sites contained only general references to the law on this issue; five sites had no information in relation to the sale of prohibited items; and only five sites made reference to animals and animal products. Of these five, leading the way is eBay™, which provides a two-page explanation of what animals and wildlife products are not permitted to be listed for sale. Two sites, CQout and shopperbag auctions, are less comprehensive than eBay™ but do provide examples of wildlife and wildlife-derived products. The remaining two sites refer only to a prohibition on listing live animals.

eBay™ also refers visitors to the Defra website. However, relevant information on Defra's website is not easily accessible for the average consumer and there is no facility to search by species.

By comparison with the above, every site visited contained references to prohibition of materials that might be considered obscene or defamatory. It is undoubtedly true that the laws relating to wildlife trade are relatively complex, and those responsible for these sites may not be aware of or fully understand them. However, this is no justification for the inadequate information provided on most sites.

IFAW believes it is currently too difficult for buyers and sellers to check what can be legally sold. Simple explanatory paragraphs detailing how CITES regulates and prohibits trade in endangered species should be available in a clear and straightforward manner on every site that offers wildlife for sale.

Another solution might be to devise a user-friendly Defra website to which all auction sites and other trading sites could direct their users. The link should be devised so that potential buyers have no choice but to read the information before browsing for wildlife. For those wanting more in-depth information the Defra site could have a direct link to the CITES website or a similar source where users can search for the legal status of a particular type of animal using their common name. This measure, of course, would only be effective in relation to UK-based sites and similar measures should be adopted in all countries.

There is also a need for site owners to encourage and facilitate the reporting by site users of illegal wildlife listings, particularly where the site provides off-site chatroom facilities. IFAW found a lack of standardised user reporting mechanisms across the range of websites visited, and encountered potential difficulties for buyers who wanted to report suspicious items to UK-based auction sites. Ad-mart.co.uk is an online classified site that has a direct link from the item page to an "Alert Admin" reporting mechanism. IFAW found this approach user-friendly and believes that it could be used as a model for best practice. Users should also be able to report items directly to a law enforcement agency.

eBay™ states that it will remove any illegal listing that it becomes aware of within 24 hours of notification and that in appropriate circumstances it may forward the listing to the "relevant law enforcement agency for action".<sup>56</sup> Reporting mechanisms such as this could be formalised, with sites encouraged, or required, to remove and report suspect listings

as a measure of best practice. In addition, the Internet Watch Foundation (see section 4.1. of this report) could be encouraged to ask for any suspect postings to be reported to it for investigation, as they are in relation to obscene materials. As with other areas of self-regulation, it is important that site owners take on board the message that if they do not take action where appropriate, legislation may be introduced to oblige them to act.

IFAW put eBay™'s user reporting mechanism to the test. We found that the relevant page was not easy to locate, as it was housed on the 'help' section of the site rather than being linked directly from the page featuring the sale item. Furthermore, only registered users were able to use the reporting mechanism. Wildlife was not a listed category of prohibited or controlled goods, so anyone trying to report an endangered species for sale would have to select "prohibited item not listed" and then be forwarded to another form. This form simply calls for the item number, and has no space for any accompanying written explanation of why the item is being reported.

IFAW reported three hawksbill turtle shell items on sale. In the first case, IFAW reported the item four times over four days before an automated email acknowledgement was received and the item was removed from the site the same day. A second hawksbill shell was removed within 48 hours of IFAW sending a report; eBay™ failed altogether to remove a third item, which was sold over 48 hours after IFAW's notification. Whether the sellers were informed of the decision to remove the first two items, or cautioned, is unknown.

#### Hawksbill turtle

A Hawksbill turtle shell was sold on eBay™ in February 2005 for US \$102.50.<sup>57</sup> Although a highly endangered species, the seller proudly claimed that he had shot the animal himself. The seller's caption brashly declared: "I don't see a problem with shooting an animal so long as it is eaten. As they would kill us and eat us if they could."

Hawksbill turtles are critically endangered worldwide. A slow-growing and long-lived marine species, they are threatened by habitat degradation and commercial exploitation particularly due to the trade in their shells. The ornate shells are used in the manufacture of jewellery, ornaments and other objects, known in South East Asia and Japan as 'bekko' products.

Hawksbills are protected from international trade by a CITES Appendix I listing. Anyone caught trading in Hawksbills – and we found four for sale during our research - are clearly breaking the law and face steep fines or even imprisonment in the UK.



Hawksbill turtles are often killed for their beautiful and distinctive shells.

eBay™ distances itself from any responsibility for items offered for sale, stating on its site: “Although we are commonly referred to as an auction web site, it is important to realize we are not a traditional ‘auctioneer’. As a result, we have no control over the quality, safety or legality of the items advertised, the truth or accuracy of the listings, the ability of the sellers to sell items or the ability of the buyers to pay for items.”<sup>58</sup> IFAW considers this position to be inadequate and believes that in the case of items that are clearly illegal, such as hawksbill turtle shells, site owners should be required by law to take more proactive measures to prevent trade.

The lack of information available on auction sites may also be a consequence of the lack of gravity accorded to wildlife crime in general. This is a common criticism in the UK, raised by the EAC report and other reports.<sup>59</sup> The situation has improved in recent years and initiatives such as the establishment of the NWCUI, the provisions of the Criminal Justice Act 2003 and the development of sentencing guidelines provide firm ground for more effective enforcement in future. However, the problem of illegal wildlife trade continues to grow, facilitated by use of the Internet, and must be tackled with due gravity and adequate resources.

## Seahorses

We found many seahorse skeletons for sale on eBay™. One advert read: “This species has been reared in captivity and was recently added to the CITES II list. As such, no more specimens can be harvested from the wild. What does this mean to you - THIS COULD BE YOUR LAST CHANCE TO OWN ONE OF THESE LITTLE BEAUTIES!”<sup>60</sup>

We also found seahorses for sale online in Chinese Teapills (a type of traditional medicine, used to treat a variety of illnesses), without any of the above caveats.<sup>61</sup>

At least twenty of the known 33 species of seahorses in the world are at risk of extinction. Living in some of the most fragile and threatened marine ecosystems in the world, they are under pressure from habitat degradation and destruction. The unregulated trade in live seahorses for aquariums and the trade in dried seahorses for traditional Asian medicine is also having a devastating impact on existing populations.<sup>62</sup>

Seahorses were listed on CITES Appendix II in 2002 meaning that the international trade is controlled through a system of permits.

Purchasing one of the “little beauties” advertised in the UK without proper documentation would mean the buyer was breaking the law.



Live sea horse (above), sea horse skeleton advertised on eBay™ (right)

© Ken Lucas / Visuals Unlimited

## 4. Regulation and enforcement in other areas of crime

The use of the Internet to carry out illegal wildlife trade clearly presents new challenges for legislators and enforcement agencies. Attempts have however been made to address the use of the Internet to commit or facilitate other types of crime. This section outlines options for regulation and enforcement that have been applied in the areas of child pornography, online pharmacies and defamation. These provide valuable models for more effective and relevant regulation of wildlife trade.

Paedophile activity, such as the online exchange of images or the use of chatrooms as venues where children may be accessed, provides a clear example of how an existing crime has adapted to the ‘opportunities’ provided by the Internet. The law has been quick to respond and there have been notable enforcement successes.<sup>63</sup>

The use of the Internet in relation to the sale and supply of drugs falls into two distinct, but linked, categories: illicit drugs, and prescription-only medicines and unlicensed drugs. In the UK, restrictions are imposed on all dealings with medicines. Some relaxation of the rules is permitted for people importing medicines for personal use although an offence is committed if the products are then sold.<sup>64</sup> The Internet has facilitated the use of this exemption so that prescription-only medicines and drugs not licensed for sale in the UK may be legally ordered online despite the fact that no prescription exists.<sup>65</sup>

The online supply of drugs has many similarities with the Internet trade in wildlife. These include: legislation controlling domestic and transboundary aspects; a system of legal classifications applied to different species and different drugs; existence of a legal market for certain drugs and certain species; facilitation of trade through better, more secure and anonymous communications; involvement of serious and organised crime;<sup>66</sup> and the sizeable profits that are to be made by criminals. Direct synergies between organised crime, drug smuggling and illegal wildlife trade have also been documented.<sup>67</sup>

The postal system, either in its traditional form or in the shape of international courier services, is often the vehicle for transmission in both cases, and has been considered by the Drug Enforcement Administration (DEA) in the USA as presenting a particular problem.<sup>68</sup> The International Narcotics Control Board (INCB) also notes the difficulties in policing the huge amounts of post, and refers to Thai authorities noticing a large upturn in the amounts of what should be prescription-only drugs being sent from Thailand around the world.<sup>69</sup> IFAW’s 2004 report on ivory trade in the UK mentioned above draws similar conclusions in relation to the use of the postal system in the illegal wildlife trade.

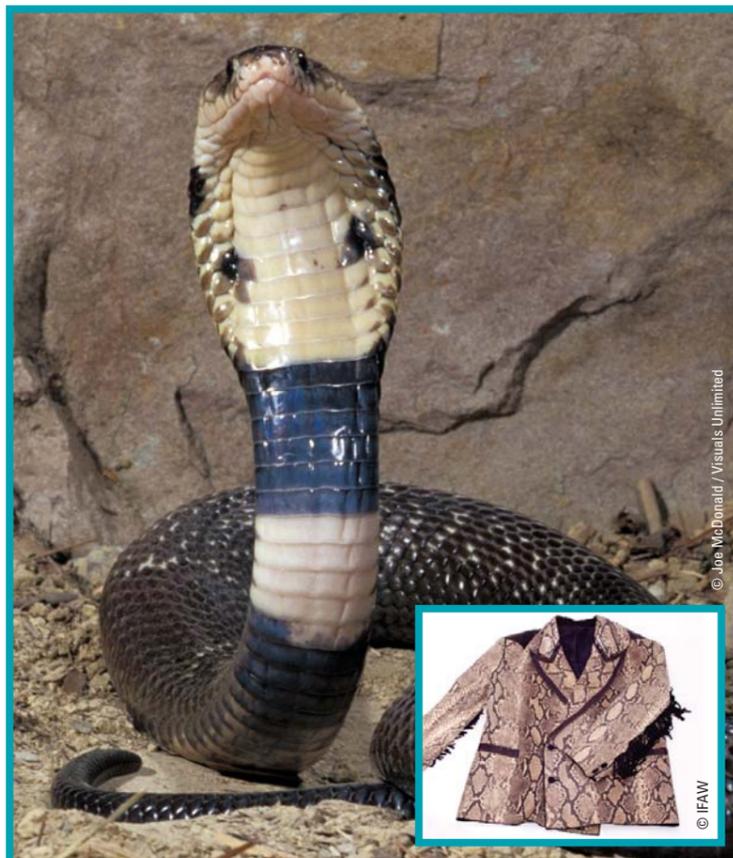
The extensive reach of information available on the Internet, and the immeasurable potential for access to it, also presents particular problems for those seeking to protect their reputations. A significant amount of available material is unreliable and may be (sometimes maliciously) inaccurate, giving rise to accusations of defamation. In the UK, existing libel law fits awkwardly with a rapidly changing environment. Traditionally an untrue statement that causes injury to an identifiable person must be published to a third party in order for it to be actionable. “Publication” merely requires that the information is communicated to a third party; and every time the libel is communicated again a fresh cause of action arises. A proliferation of message boards or online chatrooms means that a libel may be spread on the Internet very quickly and across borders. It is therefore unsurprising that defamation was one of the first areas where the liability of online services was called into question judicially.

In 2001, the National High Tech Crime Unit (NHTCU) was established in the UK to tackle the growing number and scope of computer-based crimes. It is a multi-agency unit comprising law enforcement experts including investigative officers, forensic experts, computer consultants and support staff from the National Crime Squad, NCIS, customs and other law enforcement agencies. It is involved in investigations, intelligence, and tactical, technical and forensic support. Although there is no specific mention of illegal wildlife trade on the NHTCU website, its focus is on “serious and organised crime”, which includes some illegal wildlife trade.

## 4.1. Self-regulation, reporting mechanisms and user information

In many countries, self-regulation has been one of the favoured responses internationally to child pornography and abuse, in part because pressure to self-regulate is often accompanied by a threat of more costly and intrusive Government regulation as an alternative.<sup>70</sup> In the UK, the Internet Watch Foundation (IWF) was established in 1996. Funded by ISPs and supported by Government and enforcement agencies, the IWF provides hotlines for the public to report child and other pornography, and claims successes in its approach.<sup>71</sup>

In response to a report by the Internet Crime Forum (ICF),<sup>72</sup> in March 2001 the Home Office also established the Internet Task Force for Child Protection on the Internet, comprising representatives from Government, the police, industry, and child welfare organisations.<sup>73</sup> The Task Force has published a series of guides for young people, parents and carers, and the industry, to encourage safe use of the Internet and easy reporting of abuse. Considering this initiative along with the work of the IWF and internationally coordinated efforts, it appears that a robust response has been adopted to what is universally perceived to be the worst social problem involving the Internet.



Commercial trade in Asian cobras is prohibited. Right: snakeskin fashion items, like this cobra skin jacket, are commonly traded on the Internet illegally.

In the USA, the DEA has taken steps to deal with online supplies of drugs, whether through online pharmacies, or from sites either within the USA or abroad that offer drugs, or their precursor chemicals, for sale. Their approach seems to have involved a combination of spoof websites and high-profile awareness-raising to persuade the public to report any suspicious sites via a specially dedicated link. In its first six months of operation, DEA received 810 tip-offs through this hotline.<sup>74</sup>

Overt investigation or reporting mechanisms in this area are limited. There is a warning on the website of the UK’s Medicines and Healthcare Products Regulatory Agency (MHRA) against the purchase of prescription-only medicines on health grounds;<sup>75</sup> but the site offers no obvious means of reporting sites that are offering for sale or advertising any prescription-only medicines in breach of legal requirements.

## 4.2. Adapting national law to reflect contemporary issues

Both legislators and the courts in the UK have shown a willingness to adapt existing offences to meet the perceived threat that Internet child pornography brings with it, as well as defining new offences relevant to the online environment. For example, making or possessing indecent photographs of children is an offence by virtue of the Protection of Children Act 1978 and the Criminal Justice Act 1988. The legislation covers the creation or possession of images and has been amended so that downloading images of child pornography from the Internet constitutes ‘making’ photographs<sup>76</sup> – an amendment which has been upheld by the Court of Appeal.<sup>77</sup> It was noted in that judgment that the statutes were originally amended because it was felt that the law as it stood was unable effectively to counter the “less desirable developments in computer technology”. Additionally, the Court felt that even if the images had been accessed via a website outside UK jurisdiction, downloading or printing them in the UK created material that may not have been available otherwise.

In the case of *R v Waddon*<sup>78</sup> the Court of Appeal confirmed a ruling that publication of obscene material occurred when the material was transmitted from the UK to USA-based websites and then subsequently when it was downloaded by police in the UK: “Since both the sending and the receiving took place within the jurisdiction, in my view, it matters not, that the transmission in between times may have left the jurisdiction.”<sup>79</sup> At the time the case represented the largest online pornography success for the UK police. A police spokesman stated that the website had been deliberately set up in the USA to try to avoid UK laws, and noted that the ruling had implications for all manner of crimes that may be perpetrated via the Internet.<sup>80</sup>

Efforts to tackle the problem of so-called ‘grooming’ have resulted in the creation of an offence due to Internet activity.<sup>81</sup> Section 15 of the Sexual Offences Act 2003 allows for the imposition of a ten-year maximum jail term in circumstances where adults attempt to befriend children with a view to later abusing them. Although it is not a solely Internet-related crime,<sup>82</sup> the use of the Internet in relation to this activity was noted by the then Home Secretary, David Blunkett, as a motivation for creating the offence.<sup>83</sup>

The ‘grooming’ offence is committed when a person meets with a child under the age of 16, having communicated with them on two or more occasions, with the intention of committing a relevant offence.<sup>84</sup> Foreign nationals travelling to the UK to follow up a series of Internet-based communications are liable for arrest, as are those travelling from the UK after communication with a foreign national. However, the offence is not explicitly limited geographically. It seems plausible that a non-UK resident could commit the offence outside the UK in respect of a non-UK resident victim: however this has yet to be tested. If it were the case, it would represent quite a shift in relation to the application of the criminal law extra-territorially. Gillespie notes that this is appropriate as the Internet “is totally anonymous in terms of not only physical characteristics, but also geographical scope”.<sup>85</sup>

Other jurisdictions have also adopted specific offences in relation to the use of technological means to commit ‘traditional’ types of crime. Under USA drug law, for example, it is an offence to use a communications facility to facilitate the illegal sale of a controlled substance. Guidance from the DEA<sup>86</sup> confirms that this would apply to the Internet, with site owners and consumers liable to a potential four-year prison sentence and a US\$30,000 fine.

In the UK, the advertising of prescription-only medicines to the public is prohibited – a particularly useful method of reducing demand. However, the placing of the greatest liability on the supplier, as opposed to the consumer, is one area of potential weakness given the wider access to the drugs that the Internet provides. Advertising of prescription-only medicines is allowed in other countries, but a UK offence occurs if the site can be accessed in the UK;<sup>87</sup> and so, subject to jurisdiction, the site owner could be prosecuted – though it is more likely that the ISP would be required to

remove the site. In the UK, a breach of the advertising ban can result in a two-year prison sentence and an unlimited fine. Enforcement action has been taken in this area; figures cited by Thompson<sup>88</sup> suggest that some UK based online pharmacies have been shut down by ISPs on request from the MHRA, and 12 referrals have been made to other government agencies or overseas enforcement bodies. The prohibition on advertising to the public is a technique that should be applied in the case of wildlife trade to advertising of Annex A and B specimens to the public.

## Tigers

Despite their status as one of the most endangered species on the planet, IFAW found tigers – dead and alive – for sale over the Internet. A tiger skin bag found for sale on eBay<sup>TM</sup> was reported twice by IFAW but the item was not removed.<sup>89</sup> It sold for £21. Made from genuine tiger skin, the seller claimed, “this is your chance to grab a very rare bag indeed”.



Girl petting a tiger cub as made public on [www.wildanimalworld.com](http://www.wildanimalworld.com). IFAW has obscured the child's face to protect her identity.

One US website had a variety of exotic mammals and primates for sale, including tiger cubs available for purchase from Texas. Male and female cubs, from just 2 weeks old were advertised at US \$1,500 each. The site, Wildanimalworld.com, invited people to “contact us by phone with questions regarding requirements for purchasing endangered animals”.<sup>90</sup> Another site advertised a live 2-year old Siberian tiger (described as a “hand reared orphan”) for US \$70,000.<sup>91</sup>

There are an estimated 10,000 tigers in captivity in the US, double the number left living in the wild in the entire world. Since 1990, tigers have killed 11 people and injured 60 others in the US. Fast disappearing from the wild, tigers are threatened by poaching to supply world markets, loss of habitat and population fragmentation.

Penalties for commercially trading in this CITES Appendix I listed species are high; a person caught buying a tiger product in the UK would have the item confiscated and could face a steep fine and prison sentence, and someone caught importing or exporting tiger products without proper documentation faces a maximum penalty of up to seven years in prison and/or an unlimited fine.



Tigers have almost been hunted to extinction. Recent increases in poaching have reduced the entire population in India to as few as 2,000 individuals.

## 4.3. International law and enforcement cooperation

Initiatives such as the UK's IWF only operate within a UK context and are not effective in removing content from ISPs' servers based in other countries. This has prompted the view that national-level Internet monitoring has limited value, as “the few problems created by the Internet remain global ones and thus require global solutions”.<sup>92</sup>

International cooperation appears to be a lot more mature and established in attempts to tackle child pornography and abuse than in any other area of Internet crime. The level of agreement and the potential for coordinated enforcement actions shows a determination to overcome the obstacles posed by the global nature of the Internet. The Virtual Global Task Force, launched in January 2005, provides a model of international cooperation.<sup>93</sup>

Several international conventions exist that oblige the signatory states to establish legal machinery to prevent the unauthorised manufacture and distribution of commonly abused drugs, which may include common prescribed substances.<sup>94</sup> The provisions typically require states to cooperate through offers of mutual assistance and extradition proceedings. Specific offences must be created to criminalise the possession and supply of drugs both within a state and in relation to cross-border supply or smuggling. The postal system, as already mentioned, is specifically noted as a means for illicit traffic and states are required to take steps to tackle this. However, differences between states' laws and approaches remain. For example, there is no licensed medical use of diamorphine (heroin) in the USA, whereas in the UK it is a licensed and acceptable medicinal product.

These differences have permitted a rise in online pharmacies, and the INCB has recently concluded that it is necessary to tackle the issue head on.<sup>95</sup> It notes that the Internet is becoming an important route for trafficking by online pharmacies and that there is “a practically unlimited number of customers”. It also expresses some frustration that only a few countries have taken legal action, despite the fact that the issue has been raised repeatedly over the last decade.<sup>96</sup> It notes further that even where legislation exists, different laws and regulations across the world make it difficult consistently to identify and prevent the use of the Internet for this trade.<sup>97</sup> This is particularly the case where a pharmacy changes its ISP because the original ISP is located in a country where effective laws to prevent the site from operating are in force.

## 4.4. Liability of ISPs in other areas of crime

In relation to child pornography and abuse, the basic offences that could be committed by a site owner or a subscriber to a Usenet<sup>98</sup> group who may post links or attachments containing illegal material are contained in section 2 of the Obscene Publications Act 1959. There is a statutory defence that applies to an ‘innocent’ publisher, which would operate to exonerate the ISP in a situation where it had not examined the content of the material and where there were no reasonable grounds for suspecting that it contained obscene material.

The offence of aiding and abetting has been put forward<sup>99</sup> as a possible legal sanction in circumstances where an ISP has inadvertently facilitated a crime through a chat service or Usenet group that it operates. However, unless the ISP is a willing participant with full knowledge that what is being done or attempted is criminal, it is unlikely that it could be held liable as an accessory.

In the area of defamation, the law recognises that the ISP is in an unenviable position and reflects the idea that, at least initially, it should not be forced to accept liability for others' wrong-doing in relation to sites it may host. A distinction is drawn between those actively and passively involved in publication. Active publishers can include authors, editors,

publishers, printers and distributors: any of these could be liable. A passive publisher is defined as being a conduit and is generally not liable if it is able to prove: that it did not know that the publication concerned contained defamatory material; that it was not aware of circumstances indicating that the publication could have contained a libel; or that it demonstrated no negligence on its part in not knowing this.<sup>100</sup>

In UK law, the Defamation Act 1996 modernised the defence of ‘innocent publication’ and made it applicable to contemporary technology and thus available to ISPs.<sup>101</sup> It suggests that an ISP cannot be held to be the author, editor or publisher of a defamatory statement. Additionally, the Act exempts an individual from this definition if he or she is merely the operator or provider of access to the communications system over which the material is transmitted or made available, by a person over whom he or she has no effective control.<sup>102</sup> Clearly, both exceptions would apply to ISPs. However, if for example the ISP hosted a particular newsgroup, or was in a position to make amendments to what was posted, it would not be seen to be only passive and this defence would not be available.

The Act was quickly tested before the courts and the decision remains the most authoritative statement in English law to date in relation to Internet defamation. The case of *Godfrey v Demon Internet Ltd*<sup>103</sup> concerned a defamatory statement about the claimant that was posted on a newsgroup by an impostor in the USA but purported to be from the claimant. The claimant advised Demon that the post was untrue and requested that it remove it. It did, but only ten days later and as part of its usual destruction of material. The judge was clear in holding that the defendant was an active publisher on the basis that the defendant had chosen to store the newsgroup on its servers and was able to ‘obliterate’ posting to the newsgroup. It was accepted that the defendant would not have been liable if it had acted reasonably within the terms of the defence. This decision, although not overruled, has been overtaken by the EU E-Commerce Directive, outlined in section 2.5 above.

## Polar bear

IFAW found a “Victorian” polar bear taxidermy specimen for sale for £200 on eBay™. The seller claimed it was antique, a questionable proposition considering “its fur is in fabulous condition, soft and undamaged.” IFAW contacted the seller asking whether there was any documentation and was told there was “no paperwork due to its age”. Yet despite this lack of proof, the seller was happy to “guarantee that it is a genuine Victorian item.”

There are only about 22,000 polar bears living in the wild, and the threat of habitat loss and global warming, combined with hunting and poaching for their highly prized pelts, mean their future is far from certain. Polar bears are listed on Appendix II of CITES, meaning their international trade by Parties is regulated under a system of permits. A person caught buying polar bear products in the UK without a proper permit could have the item confiscated and in some cases face prosecution.



Habitat destruction and global warming threaten polar bears' existence. Trade in their skins is yet another threat.

The Law Commission has raised serious concerns in relation to the freedom of speech in this area, given that when a disgruntled person notifies an ISP that material provided by the ISP is defamatory, the ISP will be obliged to remove it or risk legal action – even though it may be unclear whether the material is actually defamatory.<sup>104</sup> Freedom of expression is protected in law by the European Convention on Human Rights (ECHR), subject to the right to impose restrictions necessary to protect peoples’ reputations (Article 10(2)). In essence, the law seeks to draw a boundary on the potential liabilities of operators in circumstances where they can demonstrate that they have exercised a reasonable degree of care. The fact that an ISP will have no idea whether material alleged to be defamatory is in fact so puts it in a difficult position, as if the material proves not to be defamatory, the ISP could be accused of censorship. The prudent ISP would tend to remove the material, indeed in most cases the entire site, and only reinstate it once satisfactory assurances had been received from the site owner.

Fortunately, there is no such difficult judgment involved in interpreting whether protected wildlife species may be advertised, even though the law relating to the trade in protected species is not straightforward. In the case of the hawksbill turtle shell advertised on eBay™, this was clearly illegal and the ISP would be obliged to remove the item if it was notified of its existence. It is not obvious, however, even within the general law, whether it is implicit that the ISP needs to have been made aware of illegal content in order for it to be liable, or whether it should be put under a positive duty to actively search for and remove such content. The way the law is constructed currently suggests the former.

## 4.5. Access to data

The current approach to UK law enforcement in relation to the Internet also involves the use of significant powers of investigation offered by the Regulation of Investigatory Powers Act 2000 (RIPA) and the Anti-terrorism, Crime and Security Act 2001 (ACSA). These require the cooperation of those involved in the movement and storage of data. ACSA permits private communication service providers (CSPs) (which include telephone companies and WAP<sup>105</sup> providers as well as ISPs) to voluntarily retain data on their users’ communications for national security purposes, and to permit access to that data by security, intelligence and law enforcement agencies. This access is to be permitted by reference to a code of practice.<sup>106</sup> This would allow CSPs to retain data that would otherwise bring them into conflict with the Data Protection Act 1998. After consultation on this subject it was concluded that a voluntary approach might not be the best way forward and that a scheme underpinned by legislation was preferable.<sup>107</sup> ACSA contains a provision for the scheme to be made compulsory.<sup>108</sup>

Currently subscriber information data and details of numbers/email addresses called/contacted by a subscriber may be retained for up to 12 months.<sup>109</sup> Other data, such as email and ISP data may be retained for up to six months; while web activity log data, which details the websites accessed by a subscriber to a particular ISP, and through which the connection to another site is made, may be retained for four days.

One of the triggers for the power to intercept is the “purpose of preventing or detecting serious crime”.<sup>110</sup> ‘Serious crime’ for the purposes of RIPA is defined as an offence for which a person over the age of 21 and without previous convictions could reasonably be expected to be imprisoned for three years or more; one which entails the use of violence or the involvement of a number of persons in pursuit of a common purpose; or one which results in substantial financial gain.<sup>111</sup> Organised wildlife crime fits well within the parameters of this requirement.

In addition, RIPA<sup>112</sup> further defines the purposes for which relevant agencies may request access to data. ACSA adds to this by providing a clearer statement on determining the lawful basis for the retention of data by CSPs, but this does not affect the access framework and safeguards set out in RIPA.<sup>113</sup> It has been observed that the combined effect of these two Acts is to facilitate large-scale ‘snooping’.<sup>114</sup> However, such ‘snooping’, in the view of the Home Office, adequately reflects the balance to be struck between expedient investigation and protection of individual rights.<sup>115</sup>

At the EU level, provisions for the interception and retention of data for a limited period exist in Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.<sup>116</sup> Article 15 provides that member states may enact laws necessary to safeguard national security, defence and public security, and for the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system. However, these rights are limited by the need to comply with the European Convention on Human Rights (ECHR), for example in respect of proportionality and necessity. Such provisions may well be useful in relation to the targeting of serious and organised crime, including illegal wildlife trade – although the extent of these powers is currently uncertain, as there is debate at EC level as to what degree of interference by any agency in personal communications data should be permitted.

In November 2004, a European Commission working party adopted an opinion on the storage and retention of data available within public communications networks for the prevention, detection and prosecution of criminal acts.<sup>117</sup> This was in response to a draft EU decision, the essence of which is to reflect the balance between the rights of privacy, especially those set out in article 8 of the ECHR, and retention of communications data. To conform with article 8(2) of the ECHR, the following conditions must be satisfied: there should be a legal basis to any interception; the measure should be needed in a democratic society; and it should follow one of the legitimate aims of the convention.



A leopard skin hangs for sale among other animal skins in Quing Ping Market in China.

There is considerable difficulty in matching the requirements of the ECHR to the need for interception and subsequent retention of traffic data (which may include times, dates and places of Internet use) for the purposes of law enforcement. In the case of *Klass v Federal Republic of Germany* it was determined that there must be a “pressing social need” to carry out secret surveillance on personal communications and that, even in relation to terrorism, states may not adopt whatever measures they deem appropriate.<sup>118</sup> In this case it was felt that long-term retention of data (i.e. for longer than six months) was disproportionate and that the law enforcement agencies involved had failed to provide evidence requiring more robust measures.<sup>119</sup> The European Commission working party felt that traffic data should only be kept for a short time and when “necessary, appropriate and proportionate in a democratic society”.<sup>120</sup> Overall, the working party was convinced that mandatory retention of data as proposed in the draft EU decision was not acceptable within the legal framework of Directive 2002/58/EC on privacy and electronic communications.



Leopards, like most big cats, are killed for their parts and fine coats, which can fetch high prices on international markets.

Different opinions remain in relation to the amount of time for which countries consider data should be retained. The UK Parliament’s All-Party Internet Group<sup>121</sup> (APIG) considered the effect of the domestic legislation in the context of EC perspectives and the Convention on Cybercrime. It noted that UK law enforcement agencies were often asking for information to confirm identity via a subscription record, but in some cases traffic data was required. APIG’s report reflects the uncertainty that surrounds data retention in terms of the costs involved and the frequency of requests to access the data, and observes that this represents a resource issue for some police forces. It considers that this should perhaps be overcome given that the information in question can be of such importance.

APIG’s report makes a variety of recommendations, including the continuation of links with industry and work at the EU level to reconcile the competing arguments. It is somewhat ironic, however, that the legislative and enforcement system is at present left in a state of limbo. APIG also urged the Home Office to consider the international aspect of the Convention on Cybercrime more systematically.<sup>122</sup>

Despite the uncertainty, there are certain basic principles that can be discerned. Essentially the use of the powers of data interception and storage are subject to the necessary protection of an individual’s essential rights and freedoms, which is however overridden by the serious crime definition. At the same time, however, it seems obvious that a ‘new method of committing an old crime’ requires a new, or more tailored, enforcement response. What is permitted will depend on the balance between investigative expediency and human rights concerns – as illustrated by the comparative areas considered in this report:

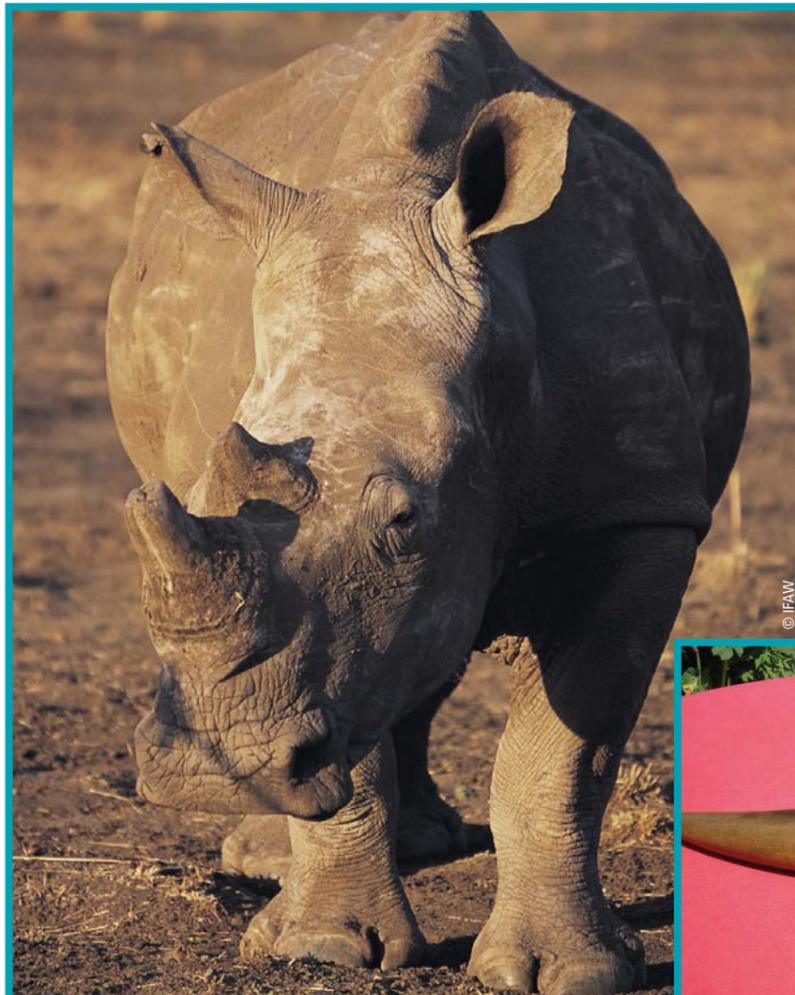
- **Child pornography and abuse** – As this has been of major concern to authorities around the world, it is unsurprising that retention of and access to data for the purposes of combating such crime should be seen to fit within the restrictions contained within the ECHR. The basis for action is sufficiently ‘serious’, and the use of data interception and retention techniques would be considered routine.
- **Defamation** – It is unlikely, particularly given the potential restriction of the right to free speech that differing attitudes to a given publication might entail, that there would be the necessary compliance with the requirements of the ECHR. However, certain forms of ‘hate-speech’ – defamatory categories that might incite religious or racial hatred – could perhaps be included.
- **Online pharmacies** – It is unclear whether the necessary ECHR tests would be satisfied, although in the case of the UK the MHRA does have a desk officer at NCIS and close links with Customs.<sup>123</sup> Drug supply is undoubtedly serious and organised crime, and in that regard the assumption is that enforcement agencies would seek to use the powers available to them.

In the case of illegal wildlife trade, retained data must be a potentially useful law enforcement tool and enforcement agencies should seek to obtain such data. In many cases illegal wildlife trade fits within the serious crime definition and access to data should fit within ECHR requirements.

The use of data interception and storage techniques is complementary to other forms of investigation, but it is likely to become more important given the growing use of the Internet. Being able to identify a trader through the use of subscription data, for example, can at least enable some follow-up work to be undertaken. Access to known criminals'/reasonably suspected individuals' trading records could assist effective enforcement while at the same time protect legitimate users and traders from being considered as disreputable or dishonest.

## Rhinos

A rhino foot-stool was advertised for sale on the US website of traders calling themselves "Vintage Louis Vuitton" dealers.<sup>124</sup> The company claimed to have all the necessary documentation but when we tried to follow-up with an email query, the website was no longer available. We also found rhino horns in the form of whole trophies, carved dagger handles and ground-down powder – presumably for use in traditional Asian medicines – as well as stuffed rhino feet. They were being traded from websites all over the world, including the UK, Israel and Germany.



The rhino-foot stool trader was no longer advertising when we went to report it in March 2005 to the NWCIU.

Rhinos have been facing a crisis for the last two decades. All five remaining species of rhino are threatened with extinction. There are only 11,300 white rhinos, 3,600 African black rhinos, 2,500 Indian/Nepalese, 300 Sumatran and 60 Javan rhinos left.<sup>125</sup> Rhinos are listed on CITES Appendix I and are therefore protected from all commercial trade by Parties.

All rhino species are endangered, largely due to poaching for their valuable horns. Rhino horn for sale on eBay™.

## 5. Conclusion

Internet wildlife trade is flourishing. A wide variety of species is on sale, many of which are prohibited from being traded commercially under national and international law or are subject to strict controls. Enforcement efforts, however, are only in their infancy, enabling illegal Internet traders to remain several steps ahead. Information for consumers on wildlife whose trade is prohibited or regulated is generally inadequate or non-existent, as are mechanisms for reporting suspicious items for sale.

There is a widespread lack of knowledge concerning the scale and impact of Internet trade in endangered and protected wildlife species. It is unquestionable, however, that the Internet will grow in importance as a means to organise and conduct this trade and perpetrate wildlife crime. A series of reports have called for a better understanding of how much illegal trading is organised over the Internet: concerted action to disrupt it would be difficult without some way of systematically assessing the nature and scale of the trade itself. In view of the response in other areas of crime or civil wrong, the law is likely to be reactive, although a proactive response would be more effective.

Overzealous regulation of the Internet would undoubtedly devalue its benefits and highly valid concerns are voiced in relation to certain proposals for enforcement that might compromise people's liberties. It is clear, however, that at both EU and UK levels self-regulation is the default position on a range of issues, and regulation through legislation or by the enforcement agencies is not perceived as a priority. Sadly, this appears to be the case with illegal wildlife trade.

It is equally clear that time is running out for those highly endangered species threatened by continuing illegal trade. International and domestic legislation protects many species and this body of law will have to adapt quickly to new technologies if it is to be effective in saving species from overexploitation for commercial trade.

Lessons from other areas of crime and other regulation of Internet content suggest that effective cooperation between enforcement agencies, both nationally and internationally has delivered notable successes. Explicit campaigns enabling and encouraging users to report instances of 'suspect' material posted enables enforcement authorities to gain a far wider reach. International organisations such as the INCB have identified the need for closer connections between international law and domestic laws to further a more effective response to the diverting of drugs via Internet pharmacies.<sup>126</sup> Better inter-agency cooperation and a better coordinated response from legislators is no doubt essential in the fight against the illegal wildlife trade organised on the Internet.

As a society we are only beginning to understand our rights and obligations as far as the Internet is concerned. The law is in an evolutionary state as it attempts to ensure that the medium can be used safely and freely, without providing unregulated space for criminality. Yet certain actions can, and should, be taken immediately by governments, enforcement agencies, ISPs, site owners, consumers and traders to stop illegal wildlife trade on the Internet.



Could time be running out for the great white shark? Commercial fishing, habitat degradation and hunting for its fins place the survival of the species at great risk. Right: Shark fins fetch high prices on the International market.

## 6. Recommendations

### 6.1. National

**IFAW recommends that the UK government and enforcement agencies, in particular Defra and NWCIU, take the following steps:**

#### Information dissemination

- Provide easy access on the Defra website to user-friendly information about Internet wildlife trading for ISPs, site owners and consumers;
- Launch a public awareness campaign targeting Internet users who may otherwise unwittingly buy animals or products illegally;

#### Legislation

- Introduce a legally-binding code of practice for Internet auction sites and other sites where wildlife is sold, including making a minimum level of information available to their users, and actively promoting this information, so that there can be no doubt as to the legal requirements necessary for trading in endangered species or any live animals;
- Place a ban on advertising to the general public Annex A or B specimens, similar to the ban imposed on advertising prescription-only medicines on UK websites. Legitimate traders who wish to advertise should be licensed in the same way as pet shop owners: this would potentially have the effect of deterring 'casual browsers';
- Ratify the Council of Europe's Convention on Cybercrime;
- Take forward the proposal for a statutory code of practice on Internet pet sales as part of the Animal Welfare Bill;

#### Enforcement

- Undertake greater research and monitoring into the extent of the illegal Internet wildlife trade in order to secure reliable data with which to inform understanding of volume, trends and effective responses;
- Promote the use of a hotline on the basis of the IWF model for easy reporting of any suspicious trade by Internet users. Advertising of the hotline details could be mandatory on auction sites and those of any legitimate trading or specialist organisation dealing with wildlife specimens;
- Approach the IWF to discuss the possibility of using its expertise to include the illegal wildlife trade among the areas that the public can report to it;
- Instruct ISPs to conduct regular monitoring of sites that they host and remove any suspect sites;
- Promote the concept of wildlife crime as a "serious crime" in light of the Criminal Justice Act 2003 and the new COTES regulation;
- Develop a closer working relationship between enforcement agencies, NGOs and other interested parties specifically on illegal Internet trade in wildlife as a means to coordinate efforts and establish trends or novel areas of threat;
- Establish bilateral cooperation on this issue with US Fish and Wildlife Service to monitor the content of USA-based sites and take coordinated enforcement action in cases of suspected illegal wildlife trade between the UK and the USA.

### 6.2. International

**IFAW recommends that governments and enforcement agencies worldwide:**

- Establish a mechanism for international cooperation among relevant law enforcement agencies to tackle illegal Internet wildlife trade;
- Support a Resolution to the 14th Conference of the Parties to CITES proposing an international action plan to tackle the use of the Internet for illegal wildlife trade in cooperation with the Interpol Wildlife Crime Group;
- Ensure sufficient enforcement capacity (trained and equipped staff) to address this problem at a national level and to further international cooperation in particular organised crime;
- Establish close cooperation with Interpol's Wildlife Crime Working Group and Ecomessage, Interpol's reporting system for wildlife crime;
- Develop and implement an EU action plan to reduce illegal wildlife trade on the Internet within the EU, including introduction of an EU wide ban on the advertising of Annex A and B specimens to the general public;
- In the USA, develop and implement an action plan to reduce illegal wildlife trade on sites based in the USA;
- As Party states to the Convention on Cybercrime, include among the minimum list of offences other transnational forms of crime that are facilitated by the Internet and specifically to include wildlife crime.



Lion numbers have plummeted from an estimated 200,000 to just 23,000 in the past twenty years. Yet people still kill these kings of the animal kingdom for trophies and furs.

## 6.3. Site owners and ISPs

IFAW recommends that the owners of sites on which wildlife may be traded take the following steps:

- Recognise the serious and organised nature of illegal wildlife trade and review current internal policies and practices to address this area of crime accordingly;
- Provide easy access for site users to user-friendly information on the legal requirements for Internet wildlife trading;
- Actively promote awareness of this issue among their users;
- Establish an effective reporting mechanism to allow users to report any suspicious items easily and receive prompt feedback on action taken by the site owner in relation to reported items;
- Establish close cooperation with appropriate enforcement agencies in order to facilitate reporting of suspicious items for investigation;
- Devote sufficient resources to ensure regular and detailed monitoring of site content for illegal wildlife items and to enable rapid and appropriate action to be taken by the site owner and enforcement agencies in relation to any suspicious items, including those reported by site users;
- Cooperate fully with the government, enforcement agencies, other relevant authorities and NGOs in efforts to reduce illegal wildlife trade.

IFAW recommends that ISPs hosting sites on which wildlife may be traded take the following steps:

- Conduct regular monitoring of sites hosted and investigate any sites on which there is evidence of illegal wildlife trade, removing such sites as necessary;
- Encourage site owners to implement the recommendations outlined above;
- Cooperate fully with the government, enforcement agencies, other relevant authorities and NGOs in efforts to reduce illegal wildlife trade.

## Endnotes

- <sup>1</sup> Cook, Dee, Roberts, Martin, and Lowther, Jason (2002) 'The International Wildlife Trade and Organised Crime: A review of the evidence and the role of the UK' WWF UK
- <sup>2</sup> 'Opening Speech by His Excellency Dr. Thaksin Shinawatra, Prime Minister of Thailand' at the 13th Conference of the Parties to CITES, 2 October 2004, accessed 1 April 2005  
[www.cites.org/eng/news/meetings/cop13/Thai\\_PM\\_open.shtml](http://www.cites.org/eng/news/meetings/cop13/Thai_PM_open.shtml)
- <sup>3</sup> <http://www.altpet.net/adoptlink1u.shtml>
- <sup>4</sup> IFAW (2004) 'Elephants on the High Street: an investigation into ivory trade in the UK', March 2004  
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- <sup>5</sup> RSPCA (2004) 'Handle with care'
- <sup>6</sup> Theile, S., Steiner, A. and Kecse-Nagy, K. (2004), 'Expanding borders: New challenges for wildlife trade controls in the European Union' TRAFFIC Europe, Brussels, Belgium
- <sup>7</sup> House of Commons Environmental Audit Committee 'Environmental Crime: Wildlife Crime, Twelfth Report of Session 2003-04', HC605 paragraph 17  
[www.publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/605/605.pdf](http://www.publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/605/605.pdf)
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- <sup>9</sup> Humane Society of the United States 'Live Reptile Trade', accessed 1 April 2005  
[www.hsus.org/wildlife/issues\\_facing\\_wildlife/wildlife\\_trade/live\\_reptile\\_trade/](http://www.hsus.org/wildlife/issues_facing_wildlife/wildlife_trade/live_reptile_trade/)
- <sup>10</sup> CITES Secretariat 'Enforcement Matters', Annex 1 'Statement of the CITES Enforcement Expert Group', CoP13 Doc.23 p. 6. See also WWF UK 2002, above.
- <sup>11</sup> Pitt, R (2002): some recent cases – paper presented at Defra Wildlife Inspectors Annual Seminar, Bristol
- <sup>12</sup> Partnership for Action Against Wildlife Crime 'Recent Prosecutions, CITES specimens – smuggling', accessed 30 March 2005 [www.defra.gov.uk/paw/prosecutions/default.htm](http://www.defra.gov.uk/paw/prosecutions/default.htm)
- <sup>13</sup> <http://cgi.ebay.co.uk/ws/eBayISAPI.dll?ViewItem&category=67212&item=7129786720&rd=1>, item number 7129786720
- <sup>14</sup> The Wildlife and Countryside Act 1981
- <sup>15</sup> uSwitch 'Broadband surfing catching TV popularity' 17 February 2005, accessed 30 March 2005  
[www.uswitch.com/news/](http://www.uswitch.com/news/); and BBC News Online 'Broadband challenges TV viewing' 3 December 2004, accessed 30 March 2005 [www.newsvote.bbc.co.uk/1/hi/technology/4065047.stm](http://www.newsvote.bbc.co.uk/1/hi/technology/4065047.stm)
- <sup>16</sup> Office for National Statistics (2003) 'Value of E-trading by non-financial sector UK businesses, E-commerce survey of business, 2003'
- <sup>17</sup> Devin Comiskey, E-commerce guide "Live from San Josè: eBay™ and Paypal Aim to Boost SMBs" 22 June 2005, accessed on 4 July 2005, see [www.ecommerceguide.com/essentials/ebay/article.php/3514556](http://www.ecommerceguide.com/essentials/ebay/article.php/3514556)
- <sup>18</sup> Smith, Graham (2001) 'Internet Law and Regulation' 3rd Edition, Sweet & Maxwell, p. 435
- <sup>19</sup> European Consumer Centre Network (2004) 'The European Online Marketplace: Consumer Complaints, a summary and analysis of consumer complaints reported to the European Consumer Centre Network'  
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- <sup>20</sup> NCIS (2003) 'United Kingdom Threat Assessment of Serious and Organised Crime 2003' section 8 'Hi-tech crime'  
[www.ncis.co.uk/ukta/2003/threat08.asp](http://www.ncis.co.uk/ukta/2003/threat08.asp)
- <sup>21</sup> NCIS (2003)
- <sup>22</sup> The text of the treaty is available at [www.cites.org/eng/disc/text.shtml](http://www.cites.org/eng/disc/text.shtml)
- <sup>23</sup> The text of the Regulations is available at [www.europa.eu.int/comm/environment/cites/legislation\\_en.htm](http://www.europa.eu.int/comm/environment/cites/legislation_en.htm) - at the time of writing, a new Regulation was being finalised to replace Regulation EC/1808/2001, to be published in mid-2005.
- <sup>24</sup> <http://business.vsnl.com/naqashshawls/>, accessed 19/01/05
- <sup>25</sup> This punishment is prescribed in India's domestic wildlife law entitled The Wildlife (Protection) Act, 1972
- <sup>26</sup> Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Protocol annexed to the Treaty of the European Community - Protocol on protection and welfare of animals. Official Journal C 340, 10 November 1997 p. 0110
- <sup>27</sup> IATA 'Live Animal Regulations', accessed 1 April 2005 [www.iata.org/ps/publications/9105.htm](http://www.iata.org/ps/publications/9105.htm)
- <sup>28</sup> Radford, Mike, (2001) 'Animal Welfare Law in Britain: Regulation and Responsibility' Oxford University Press p. 288
- <sup>29</sup> [http://www.getpetsonline.com/cgi-bin/Eware/view\\_ads.cgi?fcad\\_id=13055](http://www.getpetsonline.com/cgi-bin/Eware/view_ads.cgi?fcad_id=13055), item number 13055
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- <sup>31</sup> [www.wildanimalworld.com](http://www.wildanimalworld.com)

- <sup>32</sup> Bushmeat Crisis Task Force, "Bushmeat Orphans and Primate Sanctuaries", Fact Sheet, April 2003
- <sup>33</sup> JGI Chimp Central website, [www.janegoodall.org/chimp\\_central/chimpanzees](http://www.janegoodall.org/chimp_central/chimpanzees)
- <sup>34</sup> [www.official-documents.co.uk/document/cm62/6252/6252.pdf](http://www.official-documents.co.uk/document/cm62/6252/6252.pdf)
- <sup>35</sup> House of Commons Environment, Food and Rural Affairs Committee 'Draft Animal Welfare Bill: Government Reply to the Committee's Report, Fourth Special Report of Session 2004-2005', 3 March 2005
- <sup>36</sup> [www.ad-mart.co.uk](http://www.ad-mart.co.uk), accessed 04/01/05
- <sup>37</sup> For example, see [www.monkeymaddness.com/classifieds](http://www.monkeymaddness.com/classifieds) and [www.monkeymatters.com](http://www.monkeymatters.com)
- <sup>38</sup> [www.monkeymatters.com/trellix/messages.htm](http://www.monkeymatters.com/trellix/messages.htm), Monkey Matters chatroom, accessed 5 January 2005
- <sup>39</sup> [www.monkeymatters.com/trellix/messages.htm](http://www.monkeymatters.com/trellix/messages.htm), Monkey Matters chatroom, accessed 5 January 2005
- <sup>40</sup> It should be noted that an advertisement is not, in law, an offer to sell the particular goods. Part of the reason for this is that an advert or circular could not be supposed to be intended to bind its author to sell an unlimited number of some products to anyone answering the advertisement. This can be seen in the case of *Partridge v Crittenden* [1968] 2 All ER 421, a case involving the prosecution of the defendant under the provisions of the Protection of Birds Act 1954, which created an offence of 'offering for sale' certain live species of birds, of which the Bramblefinch was one. The Defendant advertised Bramblefinches in a trade magazine at 25 shillings each, and was ultimately acquitted, as he had not 'offered' the birds for sale. However in relation to COTES offences this is overcome to a degree by the expressed restriction on commercial use of the species, which includes the offer to sell. The issue remains live, however, for those species that are not subject to such a definition.
- <sup>41</sup> See for example [www.homeoffice.gov.uk/inside/g8/](http://www.homeoffice.gov.uk/inside/g8/) and [www.mofa.go.jp/policy/i\\_crime/high\\_tec/conf0105-4.html](http://www.mofa.go.jp/policy/i_crime/high_tec/conf0105-4.html)
- <sup>42</sup> 'Eleventh United Nations Congress on Crime Prevention and Criminal Justice - Discussion Guide' UN General Assembly 11 February 2003 A/CONF.203/PM.1, Part II/1/E, pages 12-14 and Part II, Workshop 6, pages 59-61 [www.unodc.org/pdf/crime/congress11/203\\_PM1\\_e.pdf](http://www.unodc.org/pdf/crime/congress11/203_PM1_e.pdf)
- <sup>43</sup> 'UNICTRAL Model Law on Electronic Signatures 2001', UN General Assembly resolution 56/80, and 'UNICTRAL Model Law on Electronic Commerce', UN General Assembly resolution 56/162, both available at [www.uncitral.org/english/texts/electcom/ecommerceindex.htm](http://www.uncitral.org/english/texts/electcom/ecommerceindex.htm)
- <sup>44</sup> UNCITRAL, 36th Session, 'Possible future work related to commercial fraud – note by the Secretariat', Vienna July 2003 A/CN.9/540; UNCITRAL, 37th Session, 'Report on UNCITRAL Colloquium on International Commercial Fraud Note by the Secretariat', New York July 2004 A/CN.9/555
- <sup>45</sup> UNCITRAL 2003, paragraphs 20-25. Concern has been expressed via the CITES Secretariat that CITES forms are sometimes forged.
- <sup>46</sup> UNCITRAL 2004, paragraph 24
- <sup>47</sup> European Treaty Series No. 185, Budapest, 23 November 2001, available at [www.conventions.coe.int](http://www.conventions.coe.int)
- <sup>48</sup> For a comprehensive recent discussion of this and related concepts, see O' Keefe, Roger, (2004) 'Universal Jurisdiction – Clarifying the Basic Concept', *Journal of International Criminal Justice* 2004 2.3 (735), Oxford University Press
- <sup>49</sup> Paragraph 133, [www.conventions.coe.int/Treaty/en/Reports/Html/185.htm](http://www.conventions.coe.int/Treaty/en/Reports/Html/185.htm)
- <sup>50</sup> Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (2000 OJ L 178/1) (the E-Commerce Directive). Full text and explanatory notes available via [www.europa.eu.int/comm](http://www.europa.eu.int/comm)
- <sup>51</sup> Statutory Instrument 2002 No.2013 [www.legislation.hmso.gov.uk/si/si2002/20022013.htm](http://www.legislation.hmso.gov.uk/si/si2002/20022013.htm)
- <sup>52</sup> <http://cgi.ebay.co.uk/ws/eBayISAPI.dll?ViewItem&category=67212&item=7111145064&rd=1>, item number 7111145064
- <sup>53</sup> "The Ivory Trade and the Future of the African Elephant: Summary of the Interim report of the Ivory Trade Review Group" in *Pachyderm* no.12, 1989. <http://www.iucn.org/themes/ssc/sgs/AfESG/pachy/pdfs/pachy12.pdf>
- <sup>54</sup> Defra Wildlife Licensing & Registration Service (2004) 'The CITES Bulletin – Bulletin no.20: December 2004' p.7 and Roy Pitt, Defra Global Wildlife Division, personal communication
- <sup>55</sup> Undertaken on behalf of IFAW on 22 January 2005 using a list of 37 general (non-specialist) UK based auction sites listed on [www.auctionlotwatch.co.uk/auctions.html](http://www.auctionlotwatch.co.uk/auctions.html). Nine of the 37 sites specialised in items that could not include wildlife products or live animals.
- <sup>56</sup> [www.pages.ebay.co.uk/help/policies/wildlife.html](http://www.pages.ebay.co.uk/help/policies/wildlife.html)
- <sup>57</sup> <http://cgi.ebay.com/ws/eBayISAPI.dll?ViewItem&category=1467&item=5553798599&rd=1&ssPageName=WDVW>, item number 553798599
- <sup>58</sup> eBay™ User Agreement, accessed 15 April 2005 <http://pages.ebay.com/help/policies/user-agreement.html>
- <sup>59</sup> Lowther, Jason, Cook, Dee, and Roberts, Martin, (2002) 'Crime and Punishment in the wildlife trade', WWF UK and TRAFFIC; Environmental Law Foundation and the Magistrates Association (2002) 'Costing the earth: guidance for sentencers'
- <sup>60</sup> <http://cgi.ebay.com/ws/eBayISAPI.dll?ViewItem&category=3898&item=7121857328&rd=1>, item number: 7121857328, accessed 10/01/05
- <sup>61</sup> [http://www.1stchineseherbs.com/Ha\\_%20Ma\\_Bu\\_Shen\\_Wan\\_chinese\\_formulas.htm](http://www.1stchineseherbs.com/Ha_%20Ma_Bu_Shen_Wan_chinese_formulas.htm), accessed 23/11/04
- <sup>62</sup> <http://www.projectseahorse.org>
- <sup>63</sup> For example 'Perverts used Internet to hide from law', *The Times* 3 September 1999, and 'Operation Ore link in suicide of navy chief', *The Times* 11 January 2005
- <sup>64</sup> Medicines Act 1968, section 13
- <sup>65</sup> Concern was originally focused on the sale of the drug Viagra - see for example Childs, M., Ellison, L., and Prayle, D., (1998) 'Drugs and the Internet', *New Law Journal* Vol. 148 No. 6868, pp. 1840-1842; see also Thompson, 'Buying Medicines on the Web: what is legal and what is not', *The Pharmaceutical Journal* 2003 Volume 271 No. 7262, p.202
- <sup>66</sup> For example the International Narcotics Control Board (INCB) Annual Report 2003 available at [www.incb.org/e/](http://www.incb.org/e/)
- <sup>67</sup> 'The International Wildlife Trade and Organised Crime: A review of the evidence and the role of the UK' WWF UK 2002, above
- <sup>68</sup> INCB 2003
- <sup>69</sup> INCB 2003, para. 119, para 122.
- <sup>70</sup> For example, see Price and Verhulst 'In search of Self: Charting the course of self-regulation on the Internet in a global environment' in Marsden, Christopher T., (Ed.) (2000) 'Regulating the Global Information Society' Routledge, London, pp.57-79
- <sup>71</sup> For example [www.iwf.org.uk/media/news.102.htm](http://www.iwf.org.uk/media/news.102.htm)
- <sup>72</sup> [www.internetcrimeforum.org.uk/](http://www.internetcrimeforum.org.uk/)
- <sup>73</sup> [www.homeoffice.gov.uk/crime/internetcrime/taskforce.html](http://www.homeoffice.gov.uk/crime/internetcrime/taskforce.html)
- <sup>74</sup> [www.usdoj.gov/dea/pubs/pressrel/pr121504.html](http://www.usdoj.gov/dea/pubs/pressrel/pr121504.html)
- <sup>75</sup> [www.medicines.mhra.gov.uk/inforesources/saleandsupply/internet.htm](http://www.medicines.mhra.gov.uk/inforesources/saleandsupply/internet.htm)
- <sup>76</sup> 1978 Act, section 1(1)(a), and 1988 Act, section 160. Both Acts have been amended by the Sexual Offences Act 2003, the basic effect of which is to make the age below which an offence is committed 18 as opposed to 16. The reference to pseudo-images has been amended by section 84(4) of the Criminal Justice and Public Order Act 1994. For a good introduction to the area see: Stevenson, Kim, Davies, Anne, and Gunn, Michael (2004) 'Blackstone's Guide to the Sexual Offences Act 2003' Oxford University Press, especially chapters 4 & 8
- <sup>77</sup> *R v Bowden*, *The Times* 10 November 1999; digital images are also to be treated as equivalent to photos – e.g. *R v Fellows*, *R v Arnold*, [1997] 2 All ER 548, [1997] 1 Cr App Rep 244, [1997] Crim LR 524 - Court of Appeal, Criminal Division
- <sup>78</sup> Court of Appeal (Criminal Division), 6 April 2000 – the case was concerned with the interpretation of section 2(1)(3)(b) of the Obscene Publications Act 1957; see also *R v Perrin* [2002] EWCA Crim 747, 22/03/02 (Court of Appeal- Criminal Division)
- <sup>79</sup> Extract from judgement of Hardy J at first instance
- <sup>80</sup> BBC News Online 'Police hail Net porn ruling' 1 July 1999, accessed 30 March 2005 [www.news.bbc.co.uk/1/hi/sci/tech/382152.stm](http://www.news.bbc.co.uk/1/hi/sci/tech/382152.stm)
- <sup>81</sup> BBC News Online 'Internet paedophiles face crackdown' 19 November 2002, accessed 30 March 2005 [www.news.bbc.co.uk/1/hi/uk\\_politics/2490497.stm](http://www.news.bbc.co.uk/1/hi/uk_politics/2490497.stm)
- <sup>82</sup> See for example, Gillespie, Alisdair A. (2004) 'Tackling Grooming', *Police Journal* PJ 77(239): '...the Internet does not create any new stages in this cycle but does, arguably, allow the cycle to be quickened. The principal reason for this is that the Internet is anonymous...'
- <sup>83</sup> 'Protecting The Public: Strengthening the Law on Sex Offenders and Sex Offences' Home Office Press Release 309/2002, 19 November 2002
- <sup>84</sup> Defined widely in section 15(2)(b) to cover most sexual offences
- <sup>85</sup> Gillespie, above.
- <sup>86</sup> DEA – 191N available via [www.dea.gov/fed\\_regs/notices/2001/fr0427.htm](http://www.dea.gov/fed_regs/notices/2001/fr0427.htm)
- <sup>87</sup> Medicines (Advertising) Regulations 1994, Statutory Instrument 1994 / No.1932.
- <sup>88</sup> Thompson (2003) above.
- <sup>89</sup> <http://cgi.ebay.co.uk/ws/eBayISAPI.dll?ViewItem&item=8172424714>, item number: 8172424714
- <sup>90</sup> <http://www.wildanimalworld.com/>, accessed 16/12/05
- <sup>91</sup> [http://www.getpetsonline.com/cgi-bin/Eware/view\\_ads.cgi?fcad\\_id=9373](http://www.getpetsonline.com/cgi-bin/Eware/view_ads.cgi?fcad_id=9373), item number 9373
- <sup>92</sup> Akdeniz, Y., 'Child pornography on the Internet', *New Law Journal* Volume 148 No. 6833 p 451, 27 March 1998. However, the Prime Minister has insisted that the UK has 'perhaps the best regime for tackling child pornography' Prime Minister's Questions, Hansard 13 October 2004 Column 280
- <sup>93</sup> [www.virtualglobaltaskforce.com](http://www.virtualglobaltaskforce.com) - the Taskforce comprises enforcement agencies from Australia, the UK, Canada and the USA, and Interpol.
- <sup>94</sup> UN Single Convention on Narcotic Drugs 1961; UN Convention on Psychotropic Substances 1971; and UN

Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988

- <sup>95</sup> 'INCB Targets Illicit Sales of Drugs on Internet Pharmacies' United Nations Information Service press release UNIS/NAR/862, 18 October 2004
- <sup>96</sup> Switzerland, for example, does not permit the supply of drugs via the post in any circumstances unless a permit is issued by a competent authority (this is regardless of the fact that the recipient may have a valid prescription for them).
- <sup>97</sup> 'UN Warns of Dangers of Drugs Sold on the Internet', British Medical Journal, 9200440 328:603, 13 March 2003 – the report cited a finding that a raid on one USA-base Internet pharmacy revealed that 90% of the drugs sold by mail order were internationally controlled prescription drugs
- <sup>98</sup> For more information on Usenet, see for example [www.usenethq.com/](http://www.usenethq.com/): 'Usenet is a network of computers connected together. This network of computers allows millions of users to talk to each other, and to post and download attachments. Usenet is older than the world wide web and is still the biggest and the best method of P2P file sharing.'
- <sup>99</sup> See for example, Joint, Andrew, 'Paedophiles and their use of on-line chat facilities', New Law Journal Volume 152 No. 7053 p1602, 25 October 2002
- <sup>100</sup> The leading judgment on the issue is *Vizatelly v Mudies's Select Library Ltd* [1900 ] 2 QB 170
- <sup>101</sup> Section 1(1)(a) essentially reflects the common law defence – but permits the defence to a person who is not the author, editor, publisher; that they took reasonable care in relation to the publication and did not have reason to believe that the publication was defamatory
- <sup>102</sup> Section 1(3)(e)
- <sup>103</sup> *Godfrey v Demon Internet Ltd.* [1999] All ER 342
- <sup>104</sup> Law Commission (2002) 'Defamation and the Internet: a Preliminary Investigation', Scoping Study No. 2, December 2002 – available at [www.lawcom.gov.uk](http://www.lawcom.gov.uk)
- <sup>105</sup> WAP is the Wireless Application Protocol and relates to devices such as mobile phones, pagers and two-way radios.
- <sup>106</sup> The code of practice is not yet in place; a consultation paper was issued in March 2003 'On a Code of Practice for Voluntary retention of Communications Data'.
- <sup>107</sup> Gaspar, Roger, 'NCIS Submission to the Home Office; Looking to the Future: Clarity on Communications Retention Law' 21 August 2000, cited in Walker & Akendiz, pp162-163.
- <sup>108</sup> ACSA section 104
- <sup>109</sup> Retention of Communications (Code of Practice) Order 2003, Annex A
- <sup>110</sup> RIPA section 5
- <sup>111</sup> RIPA sections 81(3)(a) & (b)
- <sup>112</sup> Part 1, Chapter 2
- <sup>113</sup> Explanatory Notes to the Anti-Terrorism, Crime And Security Act 2001, HMSO
- <sup>114</sup> Walker and Akendiz, p. 162.
- <sup>115</sup> Internet Task Force for Child Protection on the Internet [www.homeoffice.gov.uk/crime/internetcrime/taskforce.html](http://www.homeoffice.gov.uk/crime/internetcrime/taskforce.html)
- <sup>116</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, (OJ 2002 L 201/37) effective from 31 October 2003
- <sup>117</sup> Opinion 9/2004. Proposal presented by France, Ireland, Sweden and Great Britain, Document of the Council 8958/04 of 28 April 2004, 11885/04/EN available via [www.europa.eu.int/comm/privacy](http://www.europa.eu.int/comm/privacy)
- <sup>118</sup> [1977] ECHR Series A, No. 28
- <sup>119</sup> In that connection the working party also referred to the scheme set out in the Convention on Cybercrime, which required data collection to be swift and dealt with quickly 'The Convention... provides only for individual secure storage on the "fast freeze – quick thaw" model, which by contrast with the view of the four proposing governments is entirely adequate for the prevention or prosecution of criminal offences' p. 4
- <sup>120</sup> Opinion 9/2004, p. 4
- <sup>121</sup> APIG 'Communications Data: Report of an Inquiry by the All Party Internet Group', January 2003
- <sup>122</sup> APIG, paragraphs 191-195
- <sup>123</sup> Personal Communication MHRA Senior Investigator
- <sup>124</sup> <http://64.233.183.104/search?q=cache:EB-pBgqKHeYJ:www.nvo.com/louisvuitton/hemingwayexoticskins+hemingway+exotic+skins&hl=en>
- <sup>125</sup> International Rhino Foundation [www.rhinos-irf.org/rhinoinformation/extinction/index.htm](http://www.rhinos-irf.org/rhinoinformation/extinction/index.htm)
- <sup>126</sup> INCB Annual Report for 2004, E/INCB/2004/1, at para 177

## Acronyms

<b>ACSA</b>	Anti-terrorism, Crime and Security Act 2001
<b>APIG</b>	All-Party Internet Group
<b>CEMA</b>	Customs and Excise Management Act 1979
<b>CITES</b>	UN Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>COTES</b>	Control of Trade in Endangered Species (Enforcement) Regulations
<b>CSP</b>	Communications Service Provider
<b>DEA</b>	Drug Enforcement Administration
<b>Defra</b>	Department for Environment, Food and Rural Affairs
<b>EAC</b>	Environmental Audit Committee
<b>ECHR</b>	European Convention on Human Rights
<b>EU</b>	European Union
<b>IATA</b>	International Air Transport Association
<b>ICF</b>	Internet Crime Forum
<b>IFAW</b>	The International Fund for Animal Welfare
<b>INCB</b>	International Narcotics Control Board
<b>ISP</b>	Internet Service Provider
<b>IWF</b>	Internet Watch Foundation
<b>MHRA</b>	Medicines and Healthcare Products Regulatory Agency
<b>NCIS</b>	National Criminal Intelligence Service
<b>NGO</b>	Non-governmental organisation
<b>NHTCU</b>	National High-Tech Crime Unit
<b>NWCIU</b>	National Wildlife Crime Intelligence Unit
<b>RIPA</b>	Regulation of Investigatory Powers Act 2000
<b>TRAFFIC</b>	Trade Records Analysis of Fauna and Flora in Commerce
<b>UK</b>	United Kingdom of Great Britain and Northern Ireland
<b>UNCITRAL</b>	UN Commission on International Trade Law
<b>USA</b>	United States of America

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