

## CHILD PORNOGRAPHY ON THE INTERNET: WHEN THE “IMAGES” MATTER

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### ABSTRACT

The most recent case that has come to the attention of the Malaysian public and which has caught the nation by surprise was the recent arrest of Richard Huckle. According to the various reports Huckle is a British paedophile who has admitted to committing various degrees of sexual attacks on Malaysian children. These children are said to be as young as six months of age. Investigations found over 20,000 indecent images on his computer. The enforcement authorities are tracing these children who might have come into contact with Huckle to offer them psychiatric treatment. The above is one case that has been detected thus far. It is submitted that child pornography on the Internet has been in existence for many years, even though undetected.<sup>1</sup> It is very rare to find images on child pornography on the Internet until late 1960s. However, with the advent of the Internet the market has grown in leaps and bound and many countries in the world have some legislation to address the problem. The question on defining what amounts to “child pornography” and surrounds child pornography is less than clear cut.<sup>2</sup> The main objective of this paper therefore is to examine what amounts to “child pornography on the Internet” and secondly to look into the importance of when a seemingly harmless “image” becomes a threat to a child.<sup>3</sup>

Key words: Child Pornography; Paedophilia, Child Law; Images

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### Introduction

Images and other depictions of sexual abuse of children have existed long before the advent of the Internet. For instance, the printing press, photography and films have assisted in the creation and distribution of pornographic material including child pornography.<sup>4</sup> However, the Internet has most certainly led to an increase in the production and distribution of sexual images of children. In the pre-Internet days, the distribution of child pornography material was done mainly via the post. Individuals who wished to view the material would need to actively seek it out, bring it into their homes or have it delivered in physical form as magazines, videos, photographs etc., and risk detection at every stage.

With the Internet, distribution is generally carried out by electronic mail and pictures can be posted into newsgroups and social networking sites for the public to view. Images now can be downloaded in a matter of seconds or minutes.<sup>5</sup> Pornographic magazines may no longer need to be in circulation as these images are already available on websites. Hence, the increase in the production and distribution of child pornographic images on the Internet indicate an increase in the sexual abuse of children, either for purposes of producing the images, fulfilling the sexual fantasies of the users who have sought out the images. Also due to the high demand for child pornography there is an increase in the distribution of child pornographic material either for purpose of sale or trade by people without any sexual interest in children.<sup>6</sup>

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<sup>1</sup> Jenkins, Phillip, *Beyond Tolerance: Child Pornography on the Internet*, (New York: New York University Press: 2001) pp. 28-30.

<sup>2</sup> Ulrich, Sieber, “Control Possibilities for the Prevention of Criminal Content in Computer Network: Part 1”, (1999) 15(1) *Computer Law & Security Reports* 34 at 34 -35.

<sup>3</sup> Sampson, Adam, *Acts of Abuse: Sex Offender and the criminal Justice system*, (London: New York: Routledge, 1994) pp. 24 -31.

<sup>4</sup> Cooray, Manique, “Child Pornography on the Internet: Challenges in Addressing the Growing Problem” [2014]2 CLR 19.

<sup>5</sup> Ferraro, Monique Matteil & Egoan Casey, *Investigating Child Exploitation and Pornography: The Internet Law and Forensic Science*, (California: Elsevier, Inc 2005) pg. 10 address the issue of sexual exploitation of children and the evolution of visual technology.

<sup>6</sup> Cooray, Manique “Child Pornography on the Internet and the Elusive World of Paedophiles” [2014] 5 MLJ xxxiv.

The objective of this paper is to examine the importance of these images used for child pornography offences and the impact that such an image might have on the child once the images are circulated on the Internet. For this purposes, the discussion begins by examining what amounts to child pornography and the different interpretations in existence. Thereafter, the paper analyses the importance of the images in child pornography offences, and the various kind of pictures that are available.

### **What amounts to Child Pornography?**

Based on the standards set under international law, the United Nations Convention on the Rights of the Child 1989 (“UNCRC”) which provides an international framework for determining the substantive content of child rights and adult responsibilities, identifies child pornography as a violation against children.<sup>7</sup> The UNCRC requires that countries which are parties to it implement measures to prevent the exploitative use of children in pornography.

The Convention categories the rights of children into four broad categories:

- (i) Survival rights which are fundamental to the basic survival of children;
- (ii) Development rights which are fundamental to the healthy development and well- being of children;
- (iii) Protection rights which ensure that children are treated fairly and not abused and exploited; and
- (iv) Participation rights which empower children, enable them to participate in everyday life and allow them to determine their own future.

Similarly, the European Union Council Framework Decision on combating the sexual exploitation of children and child pornography and the Convention on Cybercrime 2001 are clear examples of some of the measures taken by the Internet industry and law enforcement agencies at an international level in dealing with child pornography. Despite the notable efforts taken by many countries to regulate child pornographic material, child pornography remains a serious issue.

The question of what constitutes child pornography is extraordinarily complex. Standards that are applied in each society or country are highly subjective and are contingent upon differing moral, cultural, sexual, social, and religious beliefs that do not readily translate into law.<sup>8</sup> Even if we confine ourselves to a legal definition of child pornography, the concept is elusive. Legal definitions of both “child” and “child pornography” differ globally and may differ even among legal jurisdictions within the same country.

### **Importance of the Picture in Child Pornography**

In many ways, what sets child pornography apart from other types of sexual abuse of children is the image of the child or children which is a permanent record of the sexual abuse of a child. Whichever form it takes, the only way child pornography can be produced is through the sexual exploitation of children.<sup>9</sup> By exchanging pictures on the Internet in paedophilic networks, paedophiles justify their sexual attraction to children as either “normal” or by fraternising personally or on the Internet with other children. Paedophiles further use pictures depicting sexual images of other children to encourage reluctant children to freely participate according to the instructions given.<sup>10</sup> These pictures are also used to ensure the lifelong silence of the victimised child. It may be argued that, child pornography does not only involve the abuse of the individual child victim depicted, but it can also be used to perpetuate the sexual exploitation of other children who have not been pornographically exploited.

The distribution of that depiction repeats the victimisation infinitively long after the original deed has taken place. This has the potential to haunt the victim throughout his or her adult life.<sup>11</sup> The exploited children carry the shame of their “participation” in the production of pornography.

In an article titled “Typology of paedophile picture collections,” Max Taylor, a professor of Applied Psychology at the University College Cork, Ireland, states that paedophiles are most likely to collect any of the following:<sup>12</sup>

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<sup>7</sup> Cooray, Manique “Application of traditional rules on reservation to treaties and its impact on offences against children: the position in Malaysia” *The Law Review* 2014 at 592.

<sup>8</sup> In *Moonen v. Film and Literature Board of Review* [2002] 2 NZLR Court of Appeal it was held that the question is what effect the availability of the photographs would have on children and young persons and society’s attitude to them.

<sup>9</sup> Tate, Tim, “The Child Pornography Industry: International Trade in Child Sexual Abuse”, *Pornography: Women, Violence & Civil Liberties*, Ed., Catherine Itzin, (Oxford: Oxford University Press, 1992) pp. 203-216.

<sup>10</sup> Elliott, Michele, “Images of Children in the Media: ‘Soft Kiddie Porn’”, *Pornography: Women, Violence & Civil Liberties*, Ed., Catherine Itzin, (Oxford: Oxford University Press, 1992) pp. 217-221 at 218.

<sup>11</sup> Mathew, Ben, “Limitation periods and Child Sexual Abuse cases: law, psychology, time and justice”, (2003) 11 *Torts Law Journal* at 218- 243.

<sup>12</sup> Max, Taylor et al., “Typology of Paedophile Picture Collections”, (2001) 74 *Police Journal* 97.

- (a) erotica (pictures that do not involve either nudity or sexual behaviour of children, they may simply be pictures of children; neither the production of such images nor their possession is considered illegal);
- (b) nudity (nude photographs of children which may not be considered illegal because the images only become sexual depending on the viewers interpretation); and
- (c) explicitly sexual pictures (these pictures may range from pictures focusing on genital areas of a child posing in a sexually explicit way).

The above typology highlights the importance of the relation between the user and his collection of images and the importance of the types of image when formulating a legal definition of child pornography. The account also serves to summarise the more general picture of adult sexual interest in children and child pornography that is available on the internet. For Taylor *et al*, the degree of pathology of the paedophile is measured by the size and nature of the collection of images and by the degree of victimisation that such a collection demonstrates.

Apart from actively collecting, there are also other reasons for obtaining child pornography. It is necessary to know the different reasons for obtaining the material as a means to understanding the degree of involvement or proximity to the actual sexual abuse of a child and to bridge the gap between the offender and with that child.<sup>13</sup>

Firstly, there is a form of gratification from looking at child pornographic pictures with no link to actual child sexual abuse. The argument as expounded by some researchers is that looking at child pornography for self-gratification is qualitatively different from and a lesser harm than child sexual abuse as claimed by others. Some researchers argue that looking at child pornography is different from committing child sexual abuse and that the former does not necessarily imply a causative link to the latter. Despite these research findings, other articles make it clear that looking at child pornography in itself constitutes a sufficient and punishable crime as it further leads to a question of supply and demand.<sup>14</sup>

Secondly, there is a form of looking for gratification with a direct link to child sexual abuse. It is argued that those who look at child pornography are the same people who commit child sexual abuse.

### **Conclusion**

The future use of Internet will be determined by the next generation who have been born in to a digital society and begin to think, work, play and learn in fundamentally different ways from the earlier generations. The “best interest of the child” as advocated by the United Nations Convention on the Rights of the Child are universal. They include the right to survival, to healthy development and to protection from any form of abuse. These rights are of international standards. Thus while technology advances and adult society mulls over its obligations towards children, the value that goes into protecting children on the Internet cannot be over emphasised at present times.

It is the very nature of the crime which makes child pornography on the Internet a growing concern not only for an individual country but for countries around the world. Issues concerning the protection of children from online sexual predators have been prominent in political and media debates in recent times. Despite many attempts by various Governments, the problem of child pornography on the Internet still exists and has become an issue of international proportion.

Each time a child pornographic picture is accessed, it victimises the individual child concerned as the picture is proof of a deliberate act of sexual abuse of a child. It must, however, be noted that comparative research on the relationship between possession of abusive material and direct abuse of children is limited. They do however suggest an association.<sup>15</sup>

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<sup>13</sup> Carr, John, *Child abuse, child pornography and the Internet* (London: National Children’s Home (NCH), 2003) pp. 7-9.

<sup>14</sup> Demetriou, Christina and Andrew Silke, “A Criminological Internet Sting: Experimental Evidence of Illegal and Deviant Visits to a Website Trap”, (2003) 43 *Brit.J.Criminol* 213 at 219-220.

<sup>15</sup>Collins, P, “Child Sexual Abuse and the Paraphilias”, *Medical and Legal Aspects of Child Sexual Exploitation*, Ed., Cooper, S. et al (Saint Louis: GW Medical Publishing, 2005).