

Chapter 70

Online Child Pornography

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ABSTRACT

This entry provides an examination of the past and present prevalence and issues surrounding online child pornography in the United States. Legal definitions of child pornography are explained, followed by an analysis of the current empirical knowledge on the topic, as well as the legal and legislative history. Finally, a brief discussion of the future research directions on the topic will be discussed.

INTRODUCTION

In the United States, child pornography is defined as sexually explicit pictures or films involving youth under the age of 18 (Gillespie, 2010; Klain, Davies, & Hicks, 2001). However, dependent upon the state, the age of consent in the United States is generally 16. The United States Code, Chapter 110 defines the illegal act of production of child pornography to constitute the following:

“advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by

any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

1. An obscene visual depiction of a minor engaging in sexually explicit conduct; or
2. A visual depiction of an actual minor engaging in sexually explicit conduct;”

Determination of what age is the cutoff for “child” has been contested in the medical and psychological field, as the development and maturation of certain organs is considered. Jenkins (2001) argued that categorizing a teenager

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and prepubescent child in the same category in regard to development and sexual maturity is erroneous, as understanding of sexual behavior is comprehended on two different levels depending on the age.

The exact legal definition of this child pornography has been the subject of debate in the Supreme Court since the early 1980s (Marcum, Higgins, Ricketts, & Freiburger, 2011). The Court found that this material must “visually depict sexual conduct by children below a specified age” (*New York v. Ferber*, 1982), and it is not protected by the First Amendment as it is “related to the sexual abuse of children” (*New York v. Ferber*, 1982, p. 764). In *Ashcroft v. Free Speech Coalition* (2002), the Court declared a federal statute unconstitutional that declared possession and production of child pornography with technologically created images illegal. Therefore, the virtual child pornography was not considered actual child pornography as no real children were harmed in the production of the material. The United States currently stands alone in this ruling, as other countries such as Australia and Canada deem it illegal to use material depiction of a child (Gillespie, 2010). However, a few years after *Ashcroft*, in *United States v. Williams* (2008), the Court upheld a statute that deemed it illegal to pander this material with the intention of leading others to believe it was actual minors in the pornographic material.

According to Wall (2007), online production of child pornography is classified as a “hybrid” crime, which is a crime that falls between traditional and true cyber crimes. These are traditional that are expanded through the use of the Internet. Jenkins (2001) and Akdeniz (2002) both assert that even though pedophiles have been using computers since the early 1980s to communicate with distributors of child pornography, it was not until the 1990s that a moral panic resulted from the increased production of sexually exploitative materials of children. Due to the ease in use of the Internet, the prevalence of child pornography online is notable. Furthermore, as the Internet has

far-expanding reach, as an individual or group can produce and destroy child pornography at the click of a mouse anywhere in the world (Copine Project, 2003). Perpetrators are able to make the material more widely available with less possibility of apprehension due to the difficulty in tracing the origin of the picture (Wells et al., 2007). Expert producers and collectors use code to sell sexually explicit material with children so to reduce the threat of apprehension (O’Donnell & Milner, 2007).

As a final note, according to 18 U.S.C. § 2252, a person can only be charged with possession or production of child pornography if individuals “receive, transport, ship, distribute, or possess child pornography “knowingly” (Harvard Law Review, 2009, p. 2208). Therefore, an offender must have the mens rea to commit the crime, rather than being an unknowing recipient or possessor of the material. Individuals can obtain this material through unsolicited spam emails, pop-ups and viruses.

The Prevalence and Usage of Child Pornography

While there is no typical profile of an online child pornography offender (McCarthy, 2010), they generally are white males between the age of 25 and 50 years old, usually employed and fairly intelligent (Bourke & Hernandez, 2009; Webb, Craissatti, & Keen, 2007). In most research, more than half of the offenders in the study are in some form of a relationship (Burke et al., 2002; Webb et al., 2007). There are contradictory findings in regard to antisocial orientation in these offenders. For example, Seto and Eke (2005) found this to be a significant characteristic, while Wolak et al. (2005) contrasted these findings. Furthermore, Webb et al. (2007) found that 26% of their sample of offenders had a sexual abuse history and 41% had contact with mental health services. In addition, Galbreath et al. (2002) found 21% of their sample to suffer from major depression.

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