

Disconnecting Child Pornography on the Internet: Barriers and Policy Considerations

Rebecca Ayers Loftus, Faculty Associate, Arizona State University at the Polytechnic

Abstract

Access to child pornography via the Internet is easier than ever before. While most scholars and policymakers agree that this media is both pervasive and destructive to our society, we have yet to come to a consensus on how to eliminate this threat to children worldwide. This examination reviews barriers the international community must overcome to effectively respond to the exploitation of children whose sexual abuse is chronicled by websites and Internet distribution. Anonymity, lack of agreement on relevant definitions, poor resource allocation, inconsistent enforcement, and new dangers are examined. To truly attack the problem of child pornography, however; a coordinated response of education, collaboration, standardized legislation, and resource allocation is required.

Introduction

The Internet has opened a virtual Pandora's box of sexually explicit images, including child pornography. New and improved technologies such as digital cameras and editing software have made it easier to produce and distribute child pornography (Meier, 1999; Ong, 2005; Schell et al, 2007). And while there is disagreement as to the utility and legality of sexually explicit images of adults, most would agree that there is no acceptable argument in favor of legalizing depictions of children forced to engage in sexual activity or poses.

Child pornography can be seen as a higher degree of crime than simple child sexual abuse in that the sexual abuse is chronicled by photographs or videotape, for the perpetrator or whomever he/she chooses to view again and again. In this, the images are a permanent record of the child's abuse (New York v. Ferber, 1982; Medaris and Girouard, 2002). Yet, the harm in child pornography is not limited to the inherent injury to its victims. Indeed, the harm can be extended to how the material is used by sexual predators, who may show sexually explicit photos of children to potential victims in an effort to break down barriers and desensitize them to sexual activity (Adler, 2001; Medaris and Girouard, 2002; Ong, 2005).

What constitutes "child pornography" is difficult to articulate given the vagaries of the law. In New York v. Ferber, the US Supreme Court established that child pornography is not

protected under the First Amendment and that it should be prohibited because of the harm sustained by victims during its production (1982) as well as the serious long-term consequences for victims' self-esteem (Ong, 2005). In the wake of *NY v. Ferber*, the US Congress enacted the 1984 Child Protection Act, which defined child pornography in very broad terms (Adler, 2001). Another Supreme Court ruling allowed states to prohibit depictions of child nudity if there was "graphic focus on the genitals" (*Osborne v. Ohio*, 1990), thereby making possession of child pornography illegal (Adler, 2001).

Current US statute defines child pornography as "a visual depiction of a minor engaged in sexually explicit conduct" (18 U.S.C. 2256 [8]). On a global level, though, definitions vary from region to region, country to country. Erotica, degrading pornography, violent pornography – there is no consensus on key terms relating to this area (Fisher and Barak, 2001). What is considered illegal material in one country may be legal in others (Burke et al, 2002). Moreover, statutes have to be written very carefully because if they are too broad and far-reaching, they can be struck down as infringements on citizens' rights (Schell et al, 2007). Akdeniz warns that regulations intended to protect children should not include categorical prohibitions against Internet use to distribute material in areas where the material is readily available to adults in other forms (2001). Some have opposed Internet regulation by the government arguing that that it should be self-regulated by site owners, parents, and international cooperation (Cassanova et al, 2000).

Definitional issues also include what constitutes a child and what constitutes pornography (Burke et al, 2002; Kleinhans, 2004; Krone, 2004; Jewkes and Andrews, 2005; Oswell, 2006). In the US, the minimum legal age for sexual activity can range from 14 to 18 (Kleinhans, 2004). As well, the age of majority varies from one country to another, and different countries have

different standards as to what constitutes obscenity or pornography (Cassanova, 2000; Kleinhans, 2004; Ong, 2005; Oswell, 2006). For example, while the US considers computer generated sexually explicit images of children legal, they are illegal in the UK (Kleinhans, 2004; Oswell, 2006), Hong Kong (Ong, 2005), and Canada (Bailey, 2007). Further, not all countries prohibit sexually explicit images of children (Cassanova, 2000). Moreover, cultural mores may preclude an open discussion of issues such as sexual abuse, sex, and pornography, which may delay passage of legislation banning child pornography (Ong, 2005).

New Threats

Internet child pornography presents a number of challenges that traditional printed material does not. For example, the Internet allows offenders the luxury of anonymity (Burke et al, 2002; Medaris and Girouard, 2002; Thompson, 2005), and it is possible that this ability to remain unknown may be a contributing factor to the increased number of child porn consumers who may not otherwise seek this type of material (Burke et al, 2002). Additionally, the anonymity of the Internet allows adults to create online profiles indicating they are children, thereby giving them easier access to children (Ong, 2005).

Compounding the problem is the relative ease in which online predators can utilize anonymous proxy servers, many of which are free and located in other countries. Proxy servers allow a single computer connected to the Internet to act for one or more other computers. By using a proxy server, an individual's online criminal activity appears to have been committed by the proxy server (Luders, 2007).

However, law enforcement efforts to track online offenders are aided by anonymity as well. In the same way potential predators can pretend to be children when online, it is relatively

easy for an undercover agent to masquerade as a child in chat rooms or social networking sites (Friel, 2006).

Another new challenge in addressing the problem of child pornography is that sexually explicit material is relatively cheap and easy to produce (Bailey, 2007; Schell et al, 2007) and access (Burrus, 2006; Bailey, 2007). Experts worry Internet accessibility is leading to the abuse of more children (Mitchell et al, 2005; Friel, 2006; Mueller, 2006) by creating a demand for new victims or moving from fantasy or voyeuristic activity to hands-on offenses against children (Medaris and Girouard, 2002). In addition, this increased accessibility to online child pornography seems to be desensitizing predators (Friel, 2006; Mueller, 2006; Schell et al, 2007); images are showing younger children and more violent/graphic acts against them. (Friel, 2006; Mueller, 2006). Alarming, many experts agree that pornography plays a role in recruiting and controlling new victims by not only making children believe sex between adults and children is normal, but using the images taken of the victim as potential blackmail to ensure the victim's silence (Medaris and Girouard, 2002). Moreover, some online pornographers are taking extra measures to prevent detection, such as using file-sharing networks and encrypted web pages, anonymous proxy servers, using stolen credit cards (Mueller 2006; Luders, 2007), and traveling to foreign countries to abuse children (Mueller, 2006).

Not only are online predators using the computer to locate potential victims, they are using the technology to locate other like-minded individuals. Computers allow pedophiles to communicate with each other to locate victims as well as to exchange and distribute sexually explicit images. For pedophiles, this online community assigns status based on the quantity and quality of their photograph collections. This collecting behavior adds credibility to the

argument that sexually explicit images of children are both trophies and commodities (Quayle and Taylor, 2002).

As increasing numbers of children use the Internet on a regular basis, the potential of unwanted sexual solicitations also increases (Medaris and Girouard, 2002; Mitchell et al, 2007). Offenders may take advantage of the trusting nature of children by eliciting personal information and developing online relationships for the purpose of luring them away from home for sexual purposes (Medaris and Girouard, 2002). Mitchell et al found one in four youths who use the Internet received requests for sexually explicit photos, thus involving children to self-produce their own pornography (2007). Additionally, it is estimated that children between the ages of 12–17 are among the largest consumers of pornography (Meier, 1999).

Resource allocation

As many countries focus law enforcement resource allocation on efforts to investigate terrorism, referrals for prosecuting suspected terrorists have increased (Friel, 2006). Despite the threat of terrorism, organizations must find a balance between allocating resources for counterterrorism with the need for analyzing data in child exploitation cases (Mueller, 2006). Internet child pornography cases are complicated and time consuming endeavors and often require networking with other jurisdictions (Krone, 2004). Often, by the time investigators have successfully traced the administrator of suspected child porn websites, the sites have moved elsewhere on the Internet. In addition, particularly sophisticated web administrators can make their sites appear to be administered from overseas or can hide the true Internet protocol (IP) address in order to conceal their online identities (Luders, 2007).

For many years, a number of law enforcement agencies have relied on free software programs to help track IP addresses of suspected online predators, there is no obligation for the programs to work accurately, there is no technical support, and the evidence obtained using freeware is not always admissible in court. However, more recently, some agencies are using a network analyzer program to capture and display user IP addresses, which alleviates some of the problems of freeware (Thompson, 2005).

Like many other businesses, Internet child porn sites advertise to potential new clients. While the advertisements assist law enforcement in locating the sites, many sites use a complex system of registering users so that only paying customers are linked to the illegal material, often masking the true location of the content. Additionally, some sites use third party collection sites to receive customer payments. While US companies have been willing to assist law enforcement with customer records, foreign companies have not been as cooperative (Luders, 2007).

The US Federal Bureau of Investigation (FBI) offers training on their Image Scan software, which allows investigators to identify, isolate, and store images from a suspect's computer onto a portable "jump" drive. Not only is this training offered to law enforcement within the US, it is offered to partner agencies in other countries as well (Mueller, 2006).

Additionally, in response to the increasing threat of online sexual predators, the Internet Crimes Against Children Task Force Program was launched in the US in 1998. The program assists state and local law enforcement agencies develop strategies for addressing issues related to sexually-motivated cyber crimes, including training and technical assistance, investigative and forensic elements, victim services, and public education (Medaris and Girouard, 2002).

However, without sufficient resource allocation, efforts to investigate online child pornographers struggle. In police agencies without adequate technological skills or the funding

to procure advanced equipment for conducting forensic computer examinations, many cases are potentially overlooked (Gillen, 2003; Medaris and Girouard, 2002).

Public Policy Issues

Given the definitional issues of what constitutes a child or child pornography, one of the most important policy issues of this problem is formulating a uniform, cross-cultural definition or guidelines on what constitutes child pornography. In doing so, the legal response worldwide can be more effective and both purveyors and consumers can be held legally accountable for the harm they cause. Cassanova recommends an emphasis on protecting children in enacting legislation as this focus typically supersedes right to privacy and free speech issues (2000). Moreover, legislation should include provisions that allow for prosecution of child pornography producers, distributors, sellers, and consumers in their home countries for materials produced, distributed and sold in other countries (Akdeniz, 2001; Ong, 2005).

A key element in capturing sexual predators is collaboration (Krone, 2004; Jewkes and Andrews, 2005) between international, federal, state, and local law enforcement agencies (Medaris and Girouard, 2002; Friel, 2006; Mueller, 2006). International support is a necessary element as the technology branches across national boundaries. Internet child pornography is a global threat. Consequently, international cooperation is a necessity (Mueller, 2006). Police agencies, particularly small agencies or those rural areas that might not have the resources to have trained staff must be willing to ask for assistance from agencies with staff specially trained to conduct this type of investigation.

Collaboration with the private sector can also be a key component in fighting child pornography (Ong, 2005; Schell et al, 2007). Not only can private citizens help the police in

reporting suspected online predators, but private industry may be helpful in developing strategies for tracking offenders. For example, a collaboration between a Toronto Police detective, the Royal Canadian Mounted Police, and Bill Gates (former CEO of Microsoft, Inc.) resulted in a specially developed software program known as CETS (Child Exploitation Tracking System), which can make inquiries of information stored in computers worldwide (Schell et al, 2007).

Another element for policymakers as well as the media is to ensure the message of prevention and detection is given to the public, especially parents (Mueller, 2006), teachers, educators, and child caregivers (Ong, 2005). It has been argued that it is the parents' responsibility—not the government's—to monitor what their children are accessing on the Internet as well as those with whom their children are communicating on the Internet (Akdeniz, 2001). However, while public awareness is increasing, many parents and children remain unaware of the potential dangers of disclosing personal information to the people they meet online (Medaris and Girouard, 2002). Parents may not identify web cameras and chat rooms as potentials for child abuse (Mueller, 2006). And, parents may not be aware that online predators have approached their children with unwanted sexual solicitations or requests to take sexual pictures of themselves. However, the message needs to be transmitted to both children and adults; people need to be aware that these types of requests are illegal and should be reported to the police (Mitchell et al, 2007). Public service announcements and training for parents on tactics utilized by online predators can be useful tools in helping the public understand how these criminals operate (Mueller, 2006). But the bottom line is that parents need to be more proactive in monitoring their children's Internet use, including keeping the computer in a public area of the house instead of the bedroom, teaching children how to protect their personal information,

discouraging the use of webcams, and talking to children about those with whom they communicate online (Enough is Enough, 2007).

In addition, efforts should be made to partner with Internet service providers in reporting illegal content. By saving and providing this data to law enforcement, Internet service providers can play a crucial role in successfully prosecuting online predators (Quayle and Taylor, 2002; Mueller, 2006). In the US, coordination between Federal law enforcement agencies and Internet service providers has been a relatively smooth process, but more agencies should have access to child pornography related tips to the National Center for Missing and Exploited Children (NCMEC). And, some statutes restrict sharing these tips with state and local agencies (GAO, 2002).

Conclusion

Clearly, there is much work to be done to truly remove the accessibility of online child pornography. But, increasing numbers of parents and children are becoming aware of the potential dangers of the Internet and how to protect against online predators. Additionally, law enforcement officers are developing skill sets to investigate and coordinate efforts to track and apprehend online offenders. Such coordination is essential in reducing the risk of an offender having advance notice that the police have arrested co-conspirators and may be on the way to arrest him. Finally, policymakers must develop standardized responses to persons arrested for this behavior. Laws addressing the production, distribution, and possession of child pornography vary from state to state and country to country, allowing offenders “safe” pockets from which they can operate. Coming to an agreement on what constitutes child pornography and

developing similar consequences for those who choose to engage in this activity would remove safe havens for offenders.

Child pornography is an insidious, devastating, and abusive act toward the youth of the world. However, with further educational endeavors, increased resource allocation to police agencies, and a more coordinated, standardized response from policymakers, we can move forward in pulling the plug on child pornography.

References

- Adler, A. (2001). The perverse law of child pornography. *Columbia Law Review*, 101 (2): 209-273.
- Akdeniz, Y. (2001). Governing pornography and child pornography on the Internet: the UK approach. Cyber-Rights, Protection, and Markets: A Symposium. *University of West Los Angeles Law Review*, 247-275.
- Bailey, J. (2007). Confronting collective harm: technology's transformative impact on child pornography. *University of New Brunswick Law Journal* 56: 66-102.
- Burke, A., Sowerbutts, S., Blundell, B., and Sherry, M. (2002). Child pornography and the Internet: policing and treatment issues. *Psychiatry, Psychology and Law*, 9 (1): 79-84.
- Burrus, J. H. (2006). Fighting Internet-based obscenity and child pornography. Statement before the Senate Committee on Commerce, Science and Transportation, January 19, 2006.
- Cassanova, M., Solorsh, D., Solorsh, L., Roy, E., and Thigpen, L. (2000). The history of child pornography on the Internet. *Journal of Sex Education and Therapy*, 25 (4): 245-251.
- Enough is Enough. (2007). Rules 'N ToolsSM Guidelines for Internet Safety. Retrieved January 31, 2008 through the Office of Juvenile Justice and Delinquency Prevention at <http://enough.org/inside.php?id=KXQN5947I>
- Fisher, W., and Barak, A. (2001). Internet pornography: a social psychological perspective on Internet sexuality. *The Journal of Sex Research*, 38 (4): 312-323.
- Friel, B. (2006). The war on kiddie porn. *National Journal*, 38 (12): 40-41.
- Gillen, S. (2003). Lack of resources threatens success of Internet child pornography probe. *Community Care*, issue 1487: 6.
- Jewkes, Y. and Andrews, C. (2005). Policing the filth: the problems of investigating online child pornography in England and Wales. *Policing and Society*, 15 (1): 42-62.
- Kleinhans, C. (2004). Virtual child porn: the law and the semiotics of the image. *Journal of Visual Culture*, 3 (1): 17-34.
- Krone, T. (2004). A typology of online child pornography offending. *Trends and Issues in Crime and Criminal Justice; Australian Institute of Criminology* (279).
- Luders, W. (2007). Child pornography web sites: techniques used to evade law enforcement. *FBI Law Enforcement Bulletin*, 76 (7): 17-21.
- Medaris, M. and Girouard, C. (2002). Protecting children in cyberspace: the ICAC Task Force Program. *Office of Juvenile Justice and Delinquency Prevention Juvenile Justice Bulletin*, January.
- Meier, E. (1999). Child pornography, the Internet, and congressional activity. *Pediatric Nursing*, 25 (6): 661.
- Mitchell, K., Finkelhor, D., and Wolak, J. (2005). The Internet and family and acquaintance sexual abuse. *Child Maltreatment*, 10 (1): 49-60.
- Mitchell, K., Finkelhor, D., and Wolak, J.D. (2007). Online requests for sexual pictures from youth: risk factors and incident characteristics. *Journal of Adolescent Health*, 41: 196-203.
- Mueller III, R. S. Child pornography and the Internet: protecting the most vulnerable among us. Address delivered to the Project Safe Childhood Conference, Washington, D.C., December 5, 2006.
- New York v. Ferber, 458 U.S. 747 (1982).

- Ong, R. (2005). Child pornography and the Internet in Hong Kong. *Rutgers Computer and Technology Law Journal*, 32(1): 81-108.
- Osborne v. Ohio, 495 U.S. 103 (1990).
- Oswell, D. (2006). When images matter: Internet child pornography, forms of observation and an ethics of the virtual. *Information, Communication and Society*, 9 (2): 244-265.
- Quayle, E. and Taylor, M. (2002). Child pornography and the Internet: perpetuating a cycle of abuse. *Deviant Behavior: an Interdisciplinary Journal*, 23: 331-361.
- Schell, B. H., Martin, M. V., Hung, P. C. K., and Rueda, L. (2007). Cyber child pornography: a review paper of the social and legal issues and remedies – and a proposed technological solution. *Aggression and Violent Behavior*, 12: 45-63.
- Sexual Exploitation and Other Abuse of Children, 18 USC § 2256 (8). 2008.
- Thompson, C. (2005). Taking off the masks: software helps police uncover criminals who operate online. *American City and County*, March 1, 22.
- United States General Accounting Office. (2002). Combating child pornography: Federal agencies coordinate law enforcement efforts, but an opportunity exists for further enhancement. (GAO Report No. GAO-03-272). Washington, D.C.: U.S. General Accounting Office.

Published by the Forum on Public Policy

Copyright © The Forum on Public Policy. All Rights Reserved. 2008.