

Child Pornography: An International Perspective¹

CHILD PORNOGRAPHY: AN INTERNATIONAL PERSPECTIVE

EXECUTIVE SUMMARY

Child pornography is a problem of international proportion. The global community has recognised that children are at risk from those who engage in the production, exhibition, distribution, and consumption of child pornography and that children can suffer serious negative effects as a result of pornographic exploitation. The United Nations Convention on the Rights of the Child (UNCRC), which has been ratified by an overwhelming majority of the nations of the world, identifies child pornography as a violation against children and requires that nations who are parties to the convention take measures to prevent the exploitative use of children in pornographic materials. Despite the notable efforts of many nations, child pornography remains a serious issue.

Challenges to any study of international child pornography include: 1) the lack of any uniform definition of what child pornography entails; 2) lack of data regarding the production and distribution of child pornography in many parts of the world, particularly Africa and Latin America; and 3) shifting global patterns of production and consumption of child pornography.

Furthermore, the development of home video equipment and computer technology has revolutionised the international production and distribution of child pornography. Rapidly expanding international access to increasingly inexpensive technology has transformed child pornography into a sophisticated cottage industry. Computer alteration of images and the potential for creating computer generated pornography pose formidable challenges for courts and law enforcement officials throughout the world.

This paper begins by providing a definition of child pornography, examining the scope of the problem, and describing the characteristics of both victims and exploiters. It presents a discussion of the uses of child pornography and of the effects that child pornography may have on both child victims and on potential and actual offenders.

The paper also identifies some of the major centres of global production and consumption of child pornography and spends considerable time discussing the impact of computer technology on the production and distribution of material that sexually exploits children. The remainder of the paper is dedicated to a discussion of individual national strategies designed to counter both traditional and computer child pornography through regulatory measures. While only a small number of countries can be surveyed due to space considerations, this paper assumes that child pornography is a pressing problem on local, national and international levels and that all nations have an important part to play in the solution.

I. DEFINITION OF CHILD PORNOGRAPHY

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. 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.

The legal definition of a "child" varies among nations. The UNCRC defines a child as a person under 18 years of age. This definition, however, is far from being universally adopted. For example, in all Australian States and Territories, child pornography legislation defines "child" as a person under 16 years of age. In Canada (Penal Code Sec. 163), a minor, for purposes of child pornography, is a person under 18 years of age. In various jurisdictions of the United States (U.S.), minors as young as 15 may legally consent to sexual activity with an adult. However, that same adult could not create, distribute, or possess a visual record of that activity because federal child pornography statutes (18 U.S.C. 2252, 2256) define a minor as any person under that age of 18 years.

Despite national differences, some international bodies have been able to arrive at common definitions of child pornography, most of which focus on visual, rather than written material. The Council of Europe defines child pornography as "any audiovisual material which uses children in a sexual context."² International Criminal Police Organisation (INTERPOL) delegates define child pornography as "the visual depiction of the sexual exploitation of a child, focusing on the child's sexual behaviour or genitals."³

For the purposes of this paper, recognizing that each country's legal definition of "child" may be different, the term "child pornography" will refer to a "sexually explicit reproduction of a child's image."⁴ Child pornography is to be distinguished from "child erotica" which is "any material relating to children that serves a sexual purpose for a given individual."⁵ Child erotica includes such items such as toys, games, children's clothing, sexual aids, manuals, drawings, catalogues, and non-pornographic photographs of children. Child erotica is not illegal but is frequently used by prosecutors as corroborating evidence in cases against child molesters⁶ or child pornographers.

The definition of child pornography, in some countries, is harm-based. For example, U.S. law, which is characterised by an elaborate commitment to the protection of free speech, has addressed the issue of child pornography from the perspective of preventing harm to child victims rather than censoring expression. Child pornography is criminalised in the United States because it represents "the permanent record of the sexual abuse or exploitation of an actual child."⁷ The Films, Videos, and Publications Classification Act (1993) promulgated in New Zealand makes similar reference to child pornography as a "permanent recording of the exploitation of children or young persons for sexual purposes." The approaching technological capacity to produce lifelike computer generated pornography will challenge such harm-based definitions of child pornography.

II. SCOPE OF THE PROBLEM

Child pornography is an international phenomenon. Most of the data that exists regarding the extent and nature of the problem has focused on North America and Northern Europe--regions which have played a key role in the production, distribution and consumption of child pornography.⁸ In developing countries, the reality of child pornography is dwarfed by the magnitude of other problems such as poverty, infant mortality, illiteracy, hunger, and disease and often there is little reliable data on the subject. Nonetheless, the pornographic exploitation of minors is a phenomenon that exists throughout the world.

1. Identifying the Victims

Girls and boys of all ages, including infants, are used to produce pornography around the world. Estimates of the number of children worldwide involved in child pornography range from thousands to hundreds of thousands. While impossible to obtain accurate data, a perusal of the child pornography readily available on the international market indicates that a significant number of children are being sexually exploited through this medium.

As to the gender of the victims, Federal Bureau of Investigation (FBI) personnel estimate that over 50% of all child pornography seized in the United States depicts boys rather than girls. Canadian Customs puts that figure at 75% for Canada.⁹ In contrast, in Japan, it is female minors that are predominantly exploited in pornographic material. The gender of the child victims displayed via computer networks is constantly in flux and difficult to determine with any precision.

In most countries, street children, poor children, juveniles from broken homes, and disabled minors are especially vulnerable to sexual exploitation and to being seduced or coerced into the production of pornographic material. These children, however, are not the only victims. Sex exploiters frequently target neighbourhood children or those with whom they have contact through their vocation or avocations. Additionally, pornographic activity is a common part of life for teen prostitutes. Finally, in many countries, including developed nations, child victims may come from homes where their own parents use them to create child pornography or where their parents offer them to others for the same purpose.

Sex rings, which involve the simultaneous sexual exploitation of more than one child but are not necessarily commercial, exist in many countries and frequently involve the use of children in the creation of pornographic material. In the United States, they consist largely of loosely organised child abusers. According to one 1989 study, 31 sex rings were identified by police in the United Kingdom over a two year period in a geographically defined population of 710,000.

2. Identifying the Exploiters

Child exploiters and pornographers represent a cross-section of the larger community including highly esteemed members of the population. Furthermore, they frequently seek occupations that bring them into habitual contact with children. Producers (including photographers, publishers and creators of home videos), middlemen (including procurers and parents), distributors, (including advertisers and those who trade) as well as child pornography collectors, are included in the category of exploiters.

Paedophiles constitute a significant sector of the offenders. The American Psychiatric Association defines paedophilia as a disorder in which an adult's primary sexual attraction is to prepubescent children, generally age 13 and under.¹⁰ Because this is a psychiatric diagnosis, and because it is impossible to fix pubescence at any exact age, law enforcement agents often employ a broader definition of paedophilia to include adults with a sexual preference for individuals legally considered children.¹¹

Some paedophiles are attracted to children of the same sex, but the majority of paedophiles are heterosexual. Additionally, it is important to note that not all paedophiles are child molesters and that many child molesters are not paedophiles--even under a broad definition. The term "preferential child molester" can be used to distinguish those paedophiles who act on their impulses and sexually abuse children from those who simply fantasize about sexual activity with children.

Child pornography serves significant purposes for both paedophiles and child molesters. Preferential child molesters often possess large collections of child pornography that are meticulously catalogued and carefully guarded. They, however, are not the only ones who produce or consume child pornography. A much broader segment of the population is interested in pornography featuring pubescent children in their teens. Additionally, with the emergence of the use of computers to traffic in child pornography, a new and growing segment of producers and consumers is being identified. They are individuals who may not have a sexual preference for children, but who have seen the gamut of adult pornography and who are searching for more bizarre material.

III. GLOBAL PRODUCTION AND CONSUMPTION OF CHILD PORNOGRAPHY

The worldwide flow of pornography is difficult to describe with any precision but a brief examination of some of the major international production centres offers a sense of the global supply and demand.

In Asia, Japan is the most important centre for the commercial production of child pornography, producing a significant and increasing amount of "teen pornography" that depicts young Japanese girls in sexually explicit poses in teen magazines.¹² Japan also produces millions of erotic comics that are targeted at young students and readily available in vending machines in most Japanese cities. Japanese child pornography reflects a special appeal for sex with Japanese girls who are often depicted in school uniforms. Pornography involving pre-pubescent children is also available commercially in Tokyo.

Japanese child pornography is distributed in Asia and worldwide. U.S. law enforcement officials in California report seizing material depicting the exposed genitals of pre-pubescent Japanese children. Canadian Customs reports that pornographic materials involving Japanese children are found in the possession of crew members of Japanese cruise ships. Japanese child pornography is also circulating on the Internet.

The Yakuza, Japanese organised crime, previously controlled the sex industry in Japan. Some commentators report that tough Japanese anti-mob laws, however, have loosened the Yakuza's grip in recent years.¹³

The early 1970s marked the heyday of commercial production of child pornography in the Western world. Denmark, Holland, and, to a lesser extent, Sweden, were the main centers of production in Europe. Most of the children depicted were caucasian. Many who were featured in European child pornography magazines were photographed in the United States and the photos were published in magazines assembled abroad. Some of the material produced in Europe during the 70's, however, included children from India and Mexico and one series included black children from Africa.¹⁴ By the mid-70's, commercially distributed child pornography became widely available in the United States and Europe.

The late 1970's and early 80's brought increased governmental regulation, first in the United States and later in Europe. As a result, commercial distribution is no longer a major means of circulating such material. The majority of child pornography disseminated internationally is, in fact, exchanged between paedophiles and child molesters without any commercial motive. Furthermore, while there is evidence that organised crime is involved in adult pornography, the same is not generally true in regard to child pornography.¹⁵

"The overwhelming majority of child pornography seized in the United States has not been produced or distributed for profit ... Instead, the cost must be measured in terms of the sexual exploitation of children represented by child pornography, and the sexual abuse of children to which child pornography is a central contributing factor. It is not necessary to view child pornography as a hugely lucrative, organised crime-controlled underground in order to appreciate the scope of the damage to society caused by this reprehensible practice."¹⁶

While it is true that the availability of commercial child pornography has declined, there are those who continue to profit from its production and distribution. Commercial production and consumption still exists in both Europe and the United States, as well as in Japan.

Additionally, "amateur" pornographic material is being produced in many countries including Mexico, the Philippines, and Brazil (often utilising street children) for importation into North America.¹⁷

A further source of child pornography distributed worldwide is that created by sex tourists who travel to other countries to have sex with minors. Most of the child victims of sex tourism reside in the developing nations of the world. In March 1996, a court in Thailand convicted a German national of child molestation and production of pornography for commercial purposes; he was involved in a child pornography ring which exploited Thai children.¹⁸ Until approximately two years ago, a sizable portion of the pornography seized in Sweden and in the Netherlands was produced by sex tourists

visiting Asia. Some of that material has now been replaced by child pornography produced in Eastern Europe.¹⁹ Members of the military assigned to other countries have also played a role. According to the U.S. Justice Department, military personnel stationed in Guam and the Philippines have been prosecuted for possession of child pornography. Often the same personnel have participated in the production of the material.

The development of new technology has made a tremendous impact on the international production and distribution of child pornography. The first important leap in technology was the video camera. Video cameras and camcorders are now less expensive and are relatively common in many homes in industrialised countries. Because the recording media does not have to be commercially processed, and can be easily duplicated, individuals enjoy complete privacy. As a result, amateur pornographic videos have become increasingly common.

In the United Kingdom, detecting the possession and distribution of pornographic home videos featuring children continues to be an important priority of law enforcement officials. Likewise, most of the new child pornography currently seized by the U.S. Postal Service is still contained in homemade videos. U.S. officials believe, however, that with the advent of advanced technology, it will be just a matter of time before this amateur materials will be available on the Internet.

IV. THE INTRODUCTION OF COMPUTER TECHNOLOGY

Computer technology has transformed the production of child pornography into a sophisticated global cottage²⁰ industry. Anyone who has access to a computer and a modem potentially has access to commercial on-line services and to the Internet, a remarkable global network of nearly 30 million persons joined by computers. Among many other things, such access means that it is possible both to send and receive pornography. The Internet is becoming an increasingly significant factor in child sexual exploitation and the development of increasingly inexpensive personal computers and modems has given ascent to what is rapidly becoming the most important exchange medium for child pornography.

A brief review of the new computer technology and its possibilities will offer an idea of the revolution that has occurred.

- Pictures can be scanned and video clips can be captured into a computer without any loss of quality either over time or when copies are made. It is now possible to attach these images and video clips to e-mail text. Non-colour digital cameras are available in the United States for US\$99 and colour scanners (devices that can convert photographs, slides, negatives, and text into computer characters) for US\$200. A video capture device is available for US\$129. This device makes it possible to record images from a video camera or a VCR directly into the computer. A new generation of "Internet dedicated" computers are being developed with a targeted price of US\$500.
- Anonymity is available on the Internet. A user can manufacture virtually any identity and route a message from Pennsylvania, through Australia, to Germany and then to Kansas where it would be impossible to determine the origination. It is also possible to re-route e-mail and images through what are referred to as "anonymous remailers." These take incoming messages and remove the source address, assign an anonymous identification code number with the remailer's address, and forward it to the final destination. Responses to the anonymous messages are then similarly encoded and the responder likewise remains anonymous. The most popular of these "remailers" among on-line paedophiles is located in Finland.
- The industry is experiencing a rapid development in cheap, user-friendly encryption software which is employed by child pornographers. Decoding the files is often extremely difficult for

law enforcement agencies.

- The Internet can be used to make contacts with other paedophiles and child molesters and is used to distribute home made and commercial child pornography around the world. An individual may now trade and/or sell images of almost any kind from one end of the world to the other.
- Even if law enforcement officials discover the image, the ability to distribute it may not be impaired. Once an image is introduced on the Internet, it can be downloaded by any number of users and can be reproduced repeatedly without any loss of quality.
- Advanced technology is making transmission increasingly faster. High speed modems of 28,800 bits per second (BPS) are currently available but soon it will be possible to boost that capacity to 550,000 BPS via high speed modems using cable television wire. This is significant because transmission and downloading of images can be time consuming and therefore costly.
- Computer bulletin boards can be set up exclusively to exchange information about sexual interest in minors or specifically to allow for running conversations by computer on such subjects. Monitoring of such sex oriented bulletin boards has indicated that these boards receive thousands of calls. In most countries, neither licences nor registration for bulletin boards is required.
- Letter writing by paedophiles, extensive in the past, is now being replaced by much more rapidly transmitted computer conversations.²¹
- Computers now come with built in microphones and speakers and will soon be routinely equipped with cameras. Monitors also frequently come with built-in speakers and microphones. This equipment will enhance the capacity for production and distribution of home videos.
- Images can now be altered by computer. For example, it is not difficult to add objects to an image. One can also delete objects or parts of a photo. An individual may superimpose a child's face on an adult's body, erase pubic hair or facial hair, and reduce and minimise breasts so as to make adult images look like children.
- While it is still impossible to create entirely computer generated images that appear lifelike, it is, however, possible to insert digital images of a person into a video in which they have not appeared. Technology will soon be able to facilitate the creation of lifelike child pornography without using any real children at all.

Furthermore, on-line capability greatly increases the possibility of extended contact--up to hundreds of hours--with children, by child molesters or paedophiles. Sex exploiters have easy access to children via computer--especially lonely or troubled teens--by tuning into chat sessions, such as Internet Relay Chat, and making contact with children. The most commonly used technique for seducing the child into sexual activity is by capitalising on the child's natural need for attention, affection and approval. According to the FBI and other law enforcement agents, a small but rising number of these computer relationships end up with actual contact and sexual activity with the teen.

The problem of computer child pornography involves persons who have the time, the resources, the intelligence and perhaps a compulsion to acquire expertise in the technology. They are from every walk of life. Children in many developed countries are some of the most sophisticated computer operators. They have grown up with computers and have often far surpassed their parents in expertise. These children already have fairly easy access to computer child pornography and are potentially accessible through the Internet and some commercial on-line services to those who wish to sexually exploit minors. In addition, software programs which are designed to block children's access to questionable material are capable of being defeated by children who have acquired advanced computer skills.

Computerised child pornography is of the highest concern in industrialised countries where computers have become commonplace in schools, in the workplace and in the home. Access to computers, however, is increasing globally. In Australia, according to a 1995 survey, only about 10% of Australian residences had the necessary computer and modem for obtaining child pornography on line. Nonetheless, Australian law enforcement officials agree that as computers become more available and user-friendly and as the computer literate population steadily rises, the use of home computers to produce and distribute child pornography will increase.

V. USES OF CHILD PORNOGRAPHY

Experts cite several reasons why individuals collect child pornography.²²

1. **Arousal and gratification:** Individuals use pornography to stimulate their sexual drive and to aid in sexual stimulation. Some may only fantasise and others may use it as a prelude to actual sexual activity with minors.
2. **Validation and justification of paedophile behaviour:** The paedophile uses pornography to convince him/her self that their behaviour or obsession is not abnormal, but is shared by thousand of other sensitive, intelligent and caring people.
3. **To lower a child's inhibitions:** Child abusers use pictures of other children having sex to assist in the seduction of a child and encourage reluctant children to freely participate. Images are often used as a way to show a child what the offender wants the child victim to do. Pornography may be used under the guise of "sex education" to create sexual arousal in the child.
4. **Preservation of the child's youth:** Child pornography ensures that there will always be an image of the child at the age of sexual preference.
5. **Blackmail:** Sexually explicit images are used to ensure the lifelong silence of the victimised child by threatening to show the pictures to parents, peers or others. Child victims will not always report pictorial records--even if they report sexual abuse--because they may be ashamed of what happened to them as well as of their participation in the pornography.
6. **A medium of exchange:** Child pornography is used as a means of establishing trust and camaraderie with other paedophiles and molesters and as proof of their good intentions when establishing contact with other exploiters. It is a medium of communication with fellow exploiters in public and private sex markets.
7. **Access:** Some exploiters exchange pornography to gain access to other markets and to other children.
8. **Profit:** Although most do not sell child pornography, there are some paedophiles and child molesters who sell home-made videos and photos on a one-to-one basis. Some child exploiters sell their self-produced materials to finance trips overseas to popular sex tourist destinations.

Arguably then, child pornography does not merely involve the abuse of the individual child victim depicted, but rather can be used to perpetuate the sexual exploitation of other children who have not been pornographically exploited. Furthermore, child pornography serves to desensitise society and to send a message that children are legitimate sex partners.

VI. THE CONNECTION BETWEEN CHILD PORNOGRAPHY AND CHILD SEX ABUSE CRIMES

Considerable controversy exists within the social and behavioural science community about the negative effects, if any, of child pornography upon the behaviour of potential or actual offenders. The main reason for the debate is that it is virtually impossible to conduct research in the laboratory using standard scientific methods which yield statistically reliable results. The constraints of ethical research, false reporting, interviewer distortion and a whole host of other problems contribute to the difficulty of acquiring scientific results. Many researchers have come to the conclusion that there is no sound scientific basis for concluding that exposure to child pornography increases the likelihood of sexual abuse of children. Others have suggested that there is a consistent correlation between the use of pornography and sexual aggression. Some social scientists interpret the research to indicate that the use of child pornography is a precursor to other sex crimes and that child pornography is fuel to feed the obsession of paedophilia;²³ others conclude that it is a safety valve that prevents such crimes.²⁴

Law enforcement agencies also have differing opinions. In 1995, several Australian law enforcement agencies testified in hearings on organised paedophile activity that "there was a significant likelihood that a person in possession of child pornography was also involved in sexually abusing children."²⁵ This view is not universally accepted, even in Australia.²⁶ It is well documented that paedophiles may possess extensive collections of child pornography. However, not all paedophiles who collect or view pornography sexually molest children and not all of those who collect child pornography can be characterised as paedophiles.

What is clear, however, is that law enforcement agents have found that a significant number of arrested child molesters are in possession of child pornography. One detective in the Los Angeles Police Department estimated that of 700 child molesters arrested over 10 years for extrafamilial child sex crimes, more than half had child pornography in their possession and about 80% owned either child or adult pornography. From 1986 to 1988, an organisation called Childwatch in England found that of the 27 child molesters convicted, 23% were using their child victims to make pornography and nearly all of the child molesters had child pornography in their possession.

When discussing the relevance of child pornography to the sexual abuse of children, most experts note that it is important not to confuse the question of statistical line (i.e., whether some or many child sex offenders possess child pornography) with the separate issue of causality (i.e., whether possession of child pornography causes people to commit child-sex offenses). While taking pains to acknowledge that there was no evidence of causality, however, a U.S. Senate Subcommittee investigating child pornography came to the conclusion that "[c]hild pornography plays a central role in child molestations by paedophiles, serving to justify their conduct, assist them in seducing their victims and provide a means to blackmail the children they have molested in order to prevent exposure."²⁷

VII. EFFECTS OF PORNOGRAPHY ON CHILDREN

Many have argued that the distribution of obscene adult material is a victimless crime, that no one gets hurt and that what one does privately is his or her own business. In the case of child pornography, however, where a real child is videotaped or photographed, there is always a victim. The distribution of that depiction repeats the victimisation over and over again, long after the original misdeed took place. Likewise, when the face of a child is superimposed on a sexually explicit photo, even though that child never participated in any sexual act, the distribution of the altered image arguably produces a similar effect.

There are two ways in which children can potentially be harmed by child pornography--by being exposed to child pornography or by being filmed themselves. Children who are exposed to

pornography are in danger of being desensitised and seduced into believing that pornographic activity is "normal" for children.²⁸ It can provide a kind of modelling that may adversely affect children's behaviour and result in learning experiences which connect sex to exploitation, force, or violence.²⁹

The impact on the child victim who is exploited to produce pornography is often serious. Children can experience a myriad of symptoms including physical symptoms and illnesses, emotional withdrawal, anti-social behaviour, mood-swings, depression, fear and anxiety. In a study of children involved in sex rings, all of whom were sexually abused, 54.8% of the children were used in the creation of pornography. In these children, there was a significant relationship between involvement in pornography and a pattern of identification with the exploiter, along with deviant and symptomatic behaviour.³⁰

Children who are sexually abused or exploited may be at high risk of becoming perpetrators or abusers themselves.³¹ Those who have been photographed may take drastic measures, for example, burning the house where the pictures are located or stealing back the record of their exploitation. The media in some countries often confuses victims with perpetrators by publishing pictures of children who have been sexually exploited and blurring the faces of offenders. Those exploited children who enjoyed the attention or who were sexually stimulated carry special shame about their participation in pornography. It must be emphasised that whether minors acquiesced to sexual exploitation, profited from it, or enjoyed it, they are always the victims of an unlawful and often destructive act.

VIII. THE REGULATION OF CHILD PORNOGRAPHY

The easy availability of child pornography in the 70's led governments to respond by promulgating legislation that prohibited the production, sale and distribution of child pornography. Most notably, the United States, in 1977, passed strict laws against child pornography with heavy penalties.

In 1980, both Denmark and Sweden put child pornography legislation into effect and the Netherlands followed in 1986.

In 1984, the U.S. Department of State made diplomatic visits to the governments of Netherlands, Sweden and Denmark to enlist the assistance of these governments in eliminating child pornography. In the same year, an NBC documentary, *The Silent Shame*, exposed international trade in pornography and was instrumental in pressuring governments to become stricter in their enforcement. U.S. officials specifically credit this documentary with causing an immediate drop in foreign shipments during 1984.

Since the mid-80's, according to law enforcement officials in the U.S. and Canada, there has been a noticeable decline in the number of new children depicted in commercially distributed pornography.³² However, commercial material recently seized in the United States contained images of new prepubescent children from Mexico and Brazil. Some new commercial pornography material also involves underage teens. A U.S. television programme, *Hard Copy*, televised a report in February 1996 on underage girls from the U.S. and Europe who are being photographed in Holland by a company that produces the erotic *Seventeen* magazine. The girls, according to a pediatric specialist applying the Tanner scale,³³ ranged in age from 13 to 18.

Commercial production, while diminished, does however continue to exist and, as stated previously, is on the rise in Japan. Furthermore, the production of amateur child pornographic home videos is becoming increasingly popular--even in the commercial market. A review of child pornography legislation promulgated by different countries around the globe reveals something of a trend towards an increasing commitment to the protection of children from pornographic exploitation.

1. Laws Regulating the Production, Distribution and Possession of Child Pornography

The UNCRC provides a baseline international legal standard for the protection of children from sexual exploitation. Article 34, among other articles which prohibit the degrading treatment of children, explicitly requires countries to take "all appropriate national, bilateral, and multilateral measures to prevent ... the inducement or coercion of a child to engage in any unlawful sexual activity ... [and] the exploitative use of children in pornographic performances and materials." The United Nations Commission on Human Rights' *Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography* reinforces the UNCRC and international efforts to sanction those who exploit children for pornographic purposes.

1.1. Asia and the Pacific Rim

Article 175 of the Japanese Penal Code forbids the printed portrayal of adult genitals, intercourse and pubic hair. However, such representation of children's genitalia is not stringently regulated. Furthermore, Japanese commercial producers have created ingenious ways to avoid prosecution or law enforcement intervention by creating sexually explicit materials which just barely avoid depiction of forbidden body parts.³⁴

Several other Asian nations have recently adopted child pornography laws. In 1995, Taiwan passed a law criminalising the production of paintings, video tapes, photographs, CD-ROMs, "electronic signals" and other products depicting indecent conduct or sexual interaction involving persons under 18 years of age. The 1993 child protection law passed in the Philippines (Republic Act No. 7610) includes a provision which prohibits the employment or coercion of children under 18 years of age to perform in obscene exhibitions or indecent shows, whether live or video, or to model in obscene publication or pornographic materials. It also imposes sanctions on the sale or distribution of such materials.

Sri Lanka (Penal Code Sec. 286A) passed similar legislation in 1995 which protects children up to 18 years of age. In Cambodia, a draft proposal (Law on the Abolition of Child Trafficking and Prostitution, Art. 9 A i, ii, iii) for a law against child exploitation includes a provision which prohibits the production, possession, importation, exportation or advertisement of drawings, paintings, writings, photographs, or films which depict persons under 18 years of age in an indecent, obscene, or derogatory manner. The draft law also contain a confiscatory provision (Art. 9B).

In Australia, all States and Territories except New South Wales, have promulgated legislation which makes the mere possession of child pornography illegal. Legislation already existed which makes possession for the purposes of distribution, sale, or exhibition against the law. In 1995, the Australian Customs Service initiated a national intelligence project named *Amigo* enlisting the public in efforts to establish the nature and content of child pornography being trafficked in and out of Australia.³⁵

1.2. Europe

Legal measures designed to deal with pornography vary considerably among European countries with no common approach to production, distribution, or possession of pornographic material. In England and Wales, the law makes it a criminal offense to take, distribute, exhibit or possess even one "indecent" photograph of a child (Protection of Children Act 1978). The law defines a child as a person under 16. The determination of "indecency" is a matter for the court. In the Netherlands, the manufacture, dissemination, transport and export of pornography involving children under 16 is illegal (Criminal Code, Art. 240b, Sec. 1). In April 1995, the Code was amended to include stiffer sentences and to include sanctions for the mere possession of child pornography. Norway's penal code was amended in 1992. The section on child pornography applies directly to the introduction and possession of child pornography but not to the production of such.³⁶

Section 207a of the Austrian Penal Code, passed in July 1994, imposes criminal sanctions for both commercial and amateur production and distribution of child pornography as well as for possession and/or acquisition of the same. Germany also recently made possession of child pornography an offense under the German Penal Code. France's Penal Code (Penal Code Art. 227-23) forbids fixing, recording, or transmitting the pornographic image of a minor and the distribution of that image. None of the Eastern European countries, with the exception of Estonia (Penal Code Art. 200/3), however, have laws specifically directed at child pornography.

Many European countries have very rigid mail secrecy laws and mail can be interfered with only under extraordinary circumstances. Additionally, European postal authorities do not possess the police powers of U.S. postal inspectors. Some countries have very strict penalties against sexual intercourse with a child, but very light sentences or fines for child pornography. Furthermore, "sting" operations which are routine in the United States are not practiced in Europe.

1.3. North America

The U.S. is widely considered to be a major consumer of child pornography but it has also been among the most aggressive in dealing with perpetrators through the passage and enforcement of strict child pornography laws. These laws (18 U.S.C. 2251, 2251A, 2252, 2256) currently prohibit the production, receipt, distribution, possession, transportation, mailing and advertising of any "visual depiction" involving the use of a child under 18 years of age in sexually explicit conduct. Sexually explicit conduct includes sexual acts as well as the "lascivious exhibition of the genitals or pubic area of any person." A more recent law (18 U.S.C. 2258) makes it a felony for any person outside U.S. territory to produce or traffic in child pornography with the intent that the materials be imported into the United States--an extraterritorial application of U.S. law to non-U.S. citizens.

Canada has a very comprehensive child pornography law. Section 163 of the Penal Code makes it a crime to import, produce, print, or publish any child pornography which includes representations of children under 18 who are engaged in or who are depicted as engaged in explicit sexual activity. Furthermore, mere possession of child pornography is also now prohibited in Canada.

2. Regulation of Computer Pornography

Since the advent of computer manipulated child pornography, several countries have passed legislation supporting an expanded definition of child pornography which includes "simulated" child pornography (where the person depicted is considered an adult by law but is obviously portraying a child) or "pseudo" child pornography which can be computer manipulated or computer generated pornography. In the United Kingdom, the law explicitly prohibits "pseudo-photographs" which definition includes "data stored on a computer disc or by other electronic means which is capable of conversion into a photograph". (Criminal Justice and Public Order Act 1994 Sec. 7(8)(9)). In Austria, the law prohibits not only real child pornography, but also material that suggests to an objective spectator that its production involved the sexual abuse of a child/minor. Similar statutes in the Netherlands (Penal Code Sec. 240b) and in Canada (Penal Code Sec. 163) could be applied to computer generated pornography. In the United States, however, the current federal child pornography statutes and most state statutes apply only to depictions of actual children and not "pseudo" or computer generated pornography.³⁷ However, such "pseudo" child pornography may be prosecuted pursuant to federal obscenity statutes. INTERPOL, in their October 1996 General Assembly, plans to adopt a resolution that will recommend all countries enact legislation that criminalises child pornography and that such legislation should include "future forms of support such as computers and other virtual representations."

Other countries have taken steps to regulate the transmission of sexually explicit material on the

Internet. Recently, a Munich prosecutor in Germany demanded that CompuServe block access to sexually explicit news groups on the Internet from its on-line service. The government of Singapore has taken dramatic steps to regulate the Internet by demanding that all Internet servers be licensed by the government Singapore Broadcasting Authority.³⁸ This allows them to regulate not only pornography but all politically sensitive material. Chinese officials have warned against Internet pornography and have recently visited Singapore to study their system of regulation.

In the United States, the Telecommunications Act of 1996, signed into law in February 1996, makes it a felony to knowingly transmit "obscene or indecent material" over the Internet or on-line computer services if the material may be seen by children under 18. Immediately after the signing, civil liberty and free speech groups successfully sought a temporary restraining order to block its enforcement. In Australia, three States have introduced bills to censor material on the Internet. Because of the proliferation of inconsistent State and Territory laws, the Standing Committee of Attorneys General has agreed on the preparation of a draft bill suitable for a national scheme. The passage of such legislation in many countries is controversial because it directly challenges the right to freedom of expression which is highly valued, particularly by the computer on-line community.

3. Legal Issues Raised by the Regulation of Computer Child Pornography

Along with all the truly remarkable--even lifesaving--tasks which computers perform, the development of computers and the advent of on-line communication has introduced serious challenges into every area of the law. Many questions have yet to be answered. For example, in each nation across the globe, who is legally liable for material placed on a bulletin board system, an on-line service or on the Internet? The individual who introduces the material into the system, the systems operator, the producer of the material, and/or the person who downloads it? There are further questions. In the case of pornography transmitted by computer, the origination of the image may be in a jurisdiction in one part of the world where the image is legal but it may travel to another where the image is patently illegal. Should the global network be dominated by the strictest standard or the most tolerant? Furthermore, should not consenting adults be able to engage in e-mail interactive chat sessions which describe "objectionable" materials since these same communications might not be criminalised if they were face to face, by regular post, or by telephone?

The possibility of creating computer generated pornography has produced a myriad of additional legal issues that are difficult to resolve. Civil libertarians argue that if computer generated pornography involves no real child victim, laws based on protecting children would no longer apply and regulation would be an unwarranted restriction of free speech. They argue that because there is no absolute scientific data that demonstrates a causal connection between the use of child pornography and the commission of crimes against children, there is no reason to restrict its transmission on the Internet. They might also point out the difficulty of determining the "age" of a "child" depicted in a computer generated image.

Child advocates voice the position that the harm of child pornography extends far beyond the individual victim. They assert that children as a whole are the victims of computer generated pornography which displays child victims as sexual objects. Many law enforcement officers argue that the harm reaches beyond the individual child when pornography is used to seduce other children. They add that neglecting to prohibit computer generated child pornography could well re-establish the commercial trade--filling bookstores with computer generated images, desensitising society and fueling demand for such material. Additionally, if it becomes impossible to distinguish computer generated pornography from that which depicts an actual child, prosecution of "genuine" child pornography would become virtually impossible and child pornographers would be furnished with another avenue of defense.

IX. CONCLUSION

Child pornography is a real and pressing problem that exists on local, national and international levels. Directing educational campaigns and training towards parents, teachers, students, legislators, civil servants, child welfare agencies, the private sector and law enforcement personnel on a national level is an important step towards the solution. These local efforts must be supported by global cooperation of an enormous magnitude.

International exchange of information and training is vital. The INTERPOL Standing Working Party on Offences Against Minors, initiated in 1992, is a good example of the kind of collaboration which is necessary. Currently, the Standing Working Party includes law enforcement officials from 29 different countries who are actively collaborating in their efforts to prevent the sexual exploitation of children. "Operation Starburst," the first major international operation against individuals using the Internet to trade child pornography, is a further illustration of international cooperation. In 1995, this worldwide police operation resulted in the arrest of 15 offenders in Britain and a number of others in Hong Kong, Germany, South Africa, Singapore, Canada and the United States.³⁹

Many members of the international community have not yet adopted legislation which is directed specifically at child pornography despite a global trend towards regulation. All nations and international bodies, including funding agencies, must use their influence to encourage the promulgation of legislation that prohibits the production, exhibition, distribution and possession of child pornography. In the 1980's, tough enforcement of child pornography laws in the United States and Northern Europe led to a conspicuous drop in the international distribution of child pornography. Further progress can be made worldwide.

When crafting national or local legislation, a delicate balance needs to be reached between a legitimate concern for the protection of freedom of expression and the equally legitimate and pressing concern for the protection of society's children. Regulation of child pornography should not be used as an excuse to regulate free speech or information flow but rather regulation must be targeted at preventing the sexual exploitation of children who are among the most vulnerable members of society. Lawmakers should be careful to draft and adopt laws which attract the broadest possible popular backing so that law enforcement agents will be supported in their efforts to enforce the law.

Regulation of child pornography in the computer age presents special challenges that require considerable technical expertise. Law enforcement officials around the world require technical training. Governments must be willing to allocate funds for such training and the necessary equipment. The establishment of an international resource organisation which would employ a team of specialists in the areas of investigation, law enforcement, behavioural science, prosecution, law and computer technology could be an invaluable resource for the global community.

Finally, the protection of children must become a global priority and nations must commit their resources accordingly. This protection includes a firm commitment to the detection and prevention of sex crimes against children and to the treatment of children who have been sexually exploited. The World Congress has been called in order to promote such a goal and should provide a forum where countries affirm the norms for protection of children set forth in the United Nations Convention on the Rights of the Child.

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PANEL OF EXPERTS

Georgiann G. Cerese, Trial Attorney, U.S. Department of Justice

Shane Davie, Attaché, Australian Customs Service

J. Robert Flores, Senior Trial Attorney, U.S. Department of Justice

Romi Gyergyak, Second Secretary (Police Liaison), Australian Federal Police

Doris A. Hepler, Special Agent, Federal Bureau of Investigation (FBI)

Syed Arshad Husain, M.D., F.A.P.A., World Federation for Mental Health

Donald Huycke, Program Manager and Senior Special Agent, U.S. Customs Service

Kevin Ives, Detective Chief Inspector, Paedophilia Unit, New Scotland Yard

Barry Jay, Ph.D., World Federation for Mental Health

Deen Kaplan, Vice President of Public Policy, National Coalition for the Protection of Children and Families

Richard E. Laczynski, Special Agent, INTERPOL

Kenneth V. Lanning, Supervisory Special Agent, FBI Academy

Stephan P. Lear, Postal Inspector, U.S. Postal Inspection Service

Laura J. Lederer, Center on Speech, Equality and Harm, University of Minnesota

Marsha Liss, Trial Attorney, U.S. Department of Justice

Alfred O. Olsen, Chief of Police, Warwick Township Police Department

Thomas F. Polhemus, Detective, Fairfax County Police Department

James Reynolds, Detective Chief Inspector, Paedophilia Unit, New Scotland Yard

Ruben D. Rodriguez, Senior Analyst, National Center for Missing and Exploited Children

Terry Rudolph, Special Agent, Federal Bureau of Investigation (FBI)

R.P. (Toby) Tyler, Sheriff's Sergeant, San Bernardino County Sheriff's Department

Marilyn Young, Senior Intelligence Officer, Canadian Customs

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⁵ *Ibid.* p. 26.

⁶ Some experts distinguish "sexual molester" or "abusers" from "sexual exploiters" employing the term "sexual exploitation" to describe only commercial interactions or to distinguish extrafamilial abuse from that which occurs within the family. The terms "child molester" and "child abuser" will be used interchangeably in this paper to denote a significantly older person who engages in sexual activity with someone who is legally a child. The term "child exploiter" will include those who sexually molest children as well as those who sexually exploit children through the production, distribution, and/or collection of child pornography.

⁷ Lanning, *supra* note 3, at 24. As stated previously, it may be legally permissible to engage in sexual activity with a 16 or 17 year old in some jurisdictions. The filming of that encounter would be illegal under federal law but the depiction could not be considered a record of the abuse of a child.

⁸ "The U.S. market for child pornography is widely thought to be the most lucrative in the world." *Child Pornography and Pedophilia: Report Made by the Permanent Subcommittee on Investigations, U.S. Senate*, 99th Cong. 2d Sess. 34 (1986) [hereinafter U.S. Senate Report].

⁹ The data regarding childhood sexual abuse in most countries, including the U.S. and Canada, does not reflect the same predominance of boy victims. Virtually all studies have found higher sexual abuse rates for girls. Ann Wolbert Burgess & Christine A. Grant, *Children Traumatized in Sex Rings*, 4 (1988).

¹⁰ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV* 527-28 (1994).

¹¹ Lanning, supra note 3, at 2. This paper employs the broader law enforcement definition with the understanding that the definition may include a large number of individuals with an attraction to pubescent teenagers--a condition which is not considered a psychiatric disorder in most countries. Additionally, the broader definition does not concentrate attention on a sector which societies consider "abnormal" while ignoring a much larger segment of society that may participate in the production and consumption of pornography.

¹² Peter Constantine, *Japan's Sex Trade: A Journey Through Japan's Erotic Subcultures 184-88* (1993).

¹³ Ibid., pp. 13-14.

¹⁴ Telephone interview with R.P. (Toby) Tyler, Sheriff's Sergeant, San Bernardino County Sheriff's Department (March 1996).

¹⁵ Pornography produced using underage models resembling adults (sometimes referred to a "technical" child pornography), however, accounts for a small portion of pornography controlled by organised crime.

¹⁶ U.S. Senate Report, supra note 7, at 43.

¹⁷ The distinction between "amateur" and "commercial" child pornography is far from clear. Once child pornography enters the public sphere, even if by trade or gift, it becomes available to anyone who chooses to use it for monetary gain. Liz Kelly, et al., *Splintered Lives: Sexual Exploitation of Children in the Context of Children's Rights and Child Protection*, 16 (1995).

¹⁸ Letter from the International Cooperation In Criminal Matters Division, Office of the Attorney General, Thailand (March 20, 1996).

¹⁹ Telephone Interview with Helena Karlén, Swedish Save the Children (March, 1996)

²⁰ The term is used here to denote that technology has facilitated the production and distribution of child pornography in the home.

²¹ Despite increasing use of computers by paedophiles, according to the U.S. Postal Service, pornographers still rely heavily on the mails to exchange video tapes and computer diskettes.

²² U.S. Senate Report, supra note 7, at 10-12.

²³ *Child Pornography and Sexual Exploitation: European Forum for Child Welfare Position Statement*, 3 (Nov. 1993) [hereafter EFCW Position Statement] (citing studies that support this thesis).

²⁴ Kutchinsky, B., *The Effect of Easy Availability of Pornography on the Incidence of Sex Crimes: The Danish Experience*, *Journal of Social Sciences*, 29:3, 163-81 (1973); see Daniel Lee Carter, et al., *The Use of Pornography in the Criminal and Developmental Histories of Sexual Offenders*, *Journal of Interpersonal Violence* 207 (June 1987).

²⁵ *Organised Criminal Paedophile Activity: A Report by the Parliamentary Joint Committee on the National Crime Authority*, Parliament of the Commonwealth of Australia 36 (Nov. 1995) [hereinafter Australian Parliament Report].

²⁶ *Idem.*

²⁷ U.S. Senate Report, supra note 7, at 44.

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²⁹ James Check, Teenage Training: The Effects of Pornography on Adolescent Males, in Laura Lederer and Richard Delgado, eds., *The Price We Pay: The Case Against Racist Speech, Hate Propaganda and Pornography* 89-91 (1995).

³⁰ Ann Wolbert Burgess, et al., *Response Patterns in Children and Adolescents Exploited Through Sex Rings and Pornography*, *American Journal of Psychiatry* 141:5 (May 1984).

³¹ Note that there are those who reject the "cycle of abuse" theory because it is females who are more frequently sexually abused and yet males are responsible for the majority of child sexual abuse in most societies. See Kelly, et al., *supra* note 16, at 25-26.

³² Much of the currently circulating material contains images reproduced from publications published in the 70's and early 80's. U.K. law enforcement officials point out, however, that the mid-80's also marked the advent of the camcorder and a proportionate increase in the production of non-commercial amateur pornographic home videos involving new children.

³³ The *Tanner* scale is a scale for identifying the stages of development in pubescent children.

³⁴ Jack Seward, ed., *Japanese Eroticism* 6 (1993); Constantine, *supra* note 11, at 160-61.

³⁵ Australian Parliament Report, *supra* note 24, at 2-3, 38.

³⁶ Ellen Hamremoen, National Bureau of Crime Investigation (Nor.), *Contribution to Operational Case Feed-back* 3 (Nov. 1993). In order to prosecute for production of child pornography, Norwegian prosecutors resort to other sections of the penal code relating to inducing minors to sexual behaviour and contributing to acts of indecency. *Idem*.

³⁷ The state of Virginia, however, has passed a statute which criminalises simulated child pornography in which "a person who is depicted as or presents the appearance of being less than eighteen years of age in sexually explicit visual material is *prima facie* presumed to be less than eighteen years of age." (Code of Virginia 18.2-374.1). The same statute includes computer generated reproductions.

³⁸ "Singapore Sweeps Internet Clean", *Asia Times* (Mar. 8, 1996).

³⁹ "Internet Is Spreading Child Porn", *Glasgow Herald*, Nov. 21, 1995 at 7.