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## CHILD PORNOGRAPHY ON THE INTERNET

### Introduction

A trans-border medium such as the Internet that has no regard for frontiers and national states will inevitably result in conflicting opinions in public morality and ethics. Sexual deviation and variation in one country may not be tolerated in another country. For example, Italy is less tolerant to homosexuality, in contrast to Sweden that has a liberal view and even allows homosexual couples to marry (or enjoy the legal equivalent to marriage).<sup>1</sup> The same line of reasoning can apply to pornography and the law surrounding child pornography.

One might assume that there would be some international consensus between national states to protect children from the abuse of being the subject of pornography. However, it is apparent that this is not always the case and public moral standards are extremely diverse all over the world.<sup>2</sup> As a result, British authorities are trying to filter the vast amounts of pornography on the Internet as required by UK law, but, are unable to curbe its lawful production in foreign states where it is legal.

An example can be taken from Japan, which is the only industrialized country with a lawful child pornography industry that can legally produce, sell and distribute both hard and softcore images of children.<sup>3</sup>

This article will discuss the following:

- International consideration and moral standards that are reflected in various jurisdictions. The Internet does not adhere to national boundaries. It is impossible to isolate specific states with incompatible laws that may not be sufficient to protect minors from the illegal and harmful influences of child pornography on the Internet.<sup>4</sup>
- Practical problems in identifying a child or adult. Computer generated images can be manipulated and produce hybrid images. These images may not directly harm children, but there is a fear among law enforcement officials and parents that pornographic images of children may promote paedophilia and child abuse.<sup>5</sup>
- Technical problems of detecting international paedophile rings or syndicates. The efficiency of international collaboration between enforcement agencies and the widespread use of encryption that may hamper investigation or detection.
- Whether the 'moral panic' and fear of child pornography is justified or exaggerated by an overwhelming public hysteria. Statistics

should be gathered to evaluate the number of adult images compared to child images present on certain web sites. The accessibility, reliability and what these statistics reveal will be discussed.

- The role of Internet Service Providers in regulating legal pornography and the necessity to work in collaboration with the police to combat child pornography.<sup>6</sup>

### **Project Scope**

Research cited will attempt to distinguish between children and adults on several pornographic web sites and identify the source of the images. Part IV, s.84 of the Criminal Justice and Public Order Act 1994 (CJPOA) is an essential piece of legislation that deals with identifying images of children and pseudo-images of children. This piece of legislation will be used as a guide in identifying pornographic child images. Section 84(1)(8) states:

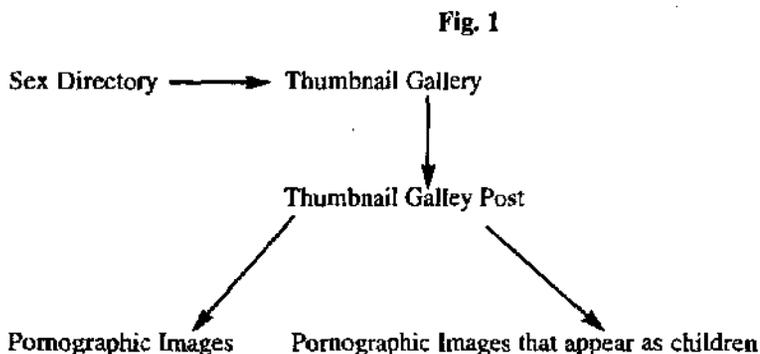
"If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated as all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some physical characteristic shown are that of an adult."

This section has a very wide meaning of the term pseudo-photographs. Pseudo-photographs are usually associated with digitally enhanced or manipulated images with the intention to give the impression that the image is of a child. The wording of this section seems to suggest the method in which an image is produced is irrelevant. What is relevant is the final impression the image gives to a viewer. The Act was designed to cover digital and computer manipulated images of adults that appear as children. However, s.84(1)(8), may apply to images that are of adults and are *not* digitally enhanced, but appear as children. For example, an 18-year-old adult may be portrayed as a young 13-year-old schoolgirl, by wearing a school uniform, or by naturally having small breasts, or shaved pubic hair to give an impression of a child, without relying on computer graphics or digital methods of manipulation.<sup>7</sup>

Although, this may be considered an arguable point, UK legislation that relates to child pornography and obscenity is designed to protect children in two ways. First, to protect children who are the subjects of pornography, as this is an obvious abuse of children's rights. The second aim is to stop distribution and possession of child pornography, as there is a fear that it may develop into paedophilia or some other form of child abuse. It is this second consideration concerning pseudo-photographs that s.84 of the CJPOA 1994 is designed to curtail.<sup>8</sup> Therefore, if an adult is portrayed as a child and the image is convincing enough s.84 may apply, as the image gives the impression of a child.

### Statistics

Primary research was gathered to detect and investigate the amount and scope of child pornography (or pseudo pornography) on the Internet. A sex directory on the world wide web was used to obtain a list of 10 Thumbnail Galleries (TNG). TNG are web sites that allow viewers to instantaneously link to Thumbnail Gallery Posts (TGP). A TGP is a web page that contains pornographic images, audio recordings or video recordings. For the purposes of this project only thumbnail posts that distribute images were evaluated to determine the number of child and adult images were present (see Fig.1).



TNGs are used to advertise pornographic web sites. If the viewer sees a link that appeals to him, eg bondage, he can view that TGP and view images with a bondage theme. The TGP are a form of advertisement that allow viewers to sample images and then give the viewer an opportunity to go to a pornographic web site that allows membership access at a price. TGP can be considered the equivalent to a "shop window" allowing a viewer limited access to a small number of images.

TNG can have anything between 10 to 200 links to TGP, and each TGP may contain anything between 5 to 50 images. Table 1a will show 5 Asian TNG and Table 1b will show 5 non-Asian TNG. This was done to investigate the availability of child pornography in web-sites that specialized in Asian pornography and compare this to the child images on TNGs that contained Asian links to TGPs, but did not specialize in Asian pornography. The reason for this is to gather statistics to research the hypothesis that Japan and other Asian countries are the main suppliers and distributors in child pornography.

**Table 1**  
Non-Asian TNG

Web-site (TNG)	No. of Links	No. of Images (overall)	No. of Child Images	Date *
Site 1	40	770	36	21/4/99
Site 2	92	1,386	49	4/5/99
Site 3	215	2,959	23	4/5/99
Site 4	76	6,156	43	28/4/99
Site 5	100	1,480	35	5/5/99
<b>Total</b>	<b>523</b>	<b>12,751</b>	<b>186</b>	

\* NB: the date is significant as TNG tend to update their links daily.

**Table 1b**  
Asian TNG

Web-site (TNG)	No. of Links	No. of Images (overall)	No. of Child Images	Date *
Site 6	26	559	97	24/4/99
Site 7	57	947	77	4/5/99
Site 8	20	121	23	3/3/99
Site 9	43	632	117	27/4/99
Site 10	27	570	69	27/4/99
<b>Total</b>	<b>173</b>	<b>2,829</b>	<b>383</b>	

### Statistical Analysis

The statistics clearly show that there are large amounts of child pornography on the Internet under the s.84 definition. Many of the links that had pornographic images of Asian children. This was true of both non-Asian and Asian TNG. The TNG also had links to Asians, Teens, Schoolgirls and Cheerleaders, which tended to contain images that gave the impression of children.

It seems clear that the type of TNG (Asian or Non-Asian) did not indicate the number of child images contained in their links. The links also never gave any indication to the number of child images the TNP contained. One link titled "Japanese Schoolgirls" constantly contained child images that were portraying obscene and indecent acts such as nudity, sex and bondage. This suggests that ISPs or police when trying to detect child pornography have no way of calculating the number of child images unless by accessing each link to a TGP and then inspecting each individual image. So in the case of Site 5 the ISPs or police will have to check all 100 TGP links to access 1,480 images in which 35 contained images that appeared as children.

The links gave access to a variety of TGP, including gay, lesbian, Asian, oral, anal, teens and schoolgirl categories. It became apparent

that child images were not just limited to Asian, teens and schoolgirl sections, although these sections usually contained the largest number of child impressions.

It is incredibly difficult to distinguish between whether an image contains a child or an adult. It is also impossible to classify the image as a) a child; b) a pseudo-image of a child; or b) or adult who appears as a child.

This was exceptionally difficult when dealing with the Asian physiology. The majority of images of Asians in the TGP appeared extremely young, although not so young as to be classed a child. Their physique tended to be very small builds in height and weight, but also included props such as schoolgirl uniforms, pigtails, shaven pubic hair and other make-up methods of distorting the image to appear young. The facial features could never give an exact idea as to the age, but generally one would estimate the average age to be approximately 12-16 on the majority of Asian child images.

The Caucasian female physiology tends to be a larger physique than Asian females. Non-Asian Schoolgirl links to TGP also contained girls with pigtails, shaven pubic hair and a schoolgirl uniform, but in many cases did not appear as a child due to a large breast size or facial features or build.

Ironically, the image in question may appear as an adult posing as a child, but is actually a child; or a child who appears as an adult. There is no way to be certain. This highlights the problems in evaluating images in effort to calculate whether they are adults or children.

A defect in gathering statistics in this method is that the content of each image was evaluated subjectively. This may result in inconsistencies and difference of opinion, as there is no objective test. This may also reflect on problems policing authorities may have in prosecuting a suspected possessor or distributor of child pornography, as they have to objectively prove that images give the impression of a child to a magistrate or 12-members of the jury.

The images in question may also be influenced by the presentation of the TGP. If a TGP is titled "Innocent Schoolgirls" or "Young Teenagers", it may influence the viewers impressions of the image. For example, if an image gives the impression of a young adult, but the TGP is titled "Illegal Young Teens", it may affect the viewer's judgment to the extent that he is actually looking at an adult, but his mental reasoning has been induced into thinking the image is of a child. This point may be outside the scope of s.84(1)(8), which focuses on the overall impression of the image rather than the web site or presentation of an image.

Finally, it is impossible to ascertain how many jurisdictions are involved, who should be liable and which law should be applied. If a TNG resides in the UK, but has a link with a TNP that resides in America, which contains child images supplied by Japan, but the children in the images come from Korea, whose law would regulate

such a scenario? Identifying the location of the TNG and TGP is technically possible, but in practice identifying the suppliers and the location of the children in specific images is doubtful and extremely difficult. Police operations that manage to obtain pictures and images of children from the Internet are often unsuccessful in identifying the location and whereabouts of the children in the recovered images.<sup>9</sup>

The information gathered raises several legal issues that need to be answered in order to remedy the child pornography on the Internet. These issues are:

- Who is legally liable for material placed on Internet?
- Where pornography is transmitted by computer and the jurisdiction that sends the material has a tower legal standard that the receiving jurisdiction which should prevail?
- Should the global network be dominated by the most strict law or the most lax?
- If child pornography is made without using a child should it be identified as illegal?<sup>10</sup>

#### **International Collaboration**

Countries that have weak laws or non-existent laws or are unable to enforce their laws are safe-havens for paedophiles and distributors of child pornography. Third world countries and former Soviet states are examples of countries that cannot effectively enforce obscenity and child protection laws.

Developed countries may have laws that prohibit distribution or child pornography, but may also contain loopholes, which make effective law enforcement difficult. For example, the Netherlands has loopholes in its laws concerning possession of child pornography. The law does prohibit 'stocking' child pornography. Stocking is defined as 10 or more items on certain a number of pages. The number of pages depends on the size of the items and the page.<sup>11</sup>

Another example can be highlighted from the TNG statistics are Japanese laws (or lack of laws) concerning child pornography. The origin of the child images cannot be confirmed, however many of them appeared as Japanese school children with distinct white and blue uniforms, which is unique to Japan.<sup>12</sup> Interpol estimate that at least 80 to 90% of child pornography is produced in Japan.<sup>13</sup> The research suggests that there are large amounts of child pornography supplied by Asian TNP, many of which end in 'jp'. The TGP may be from Japan, but is still very hard to identify the source of the image and the origin of the child in the image.

The international community heavily criticized Japan's lack of regulation and enforcement of child pornography. Japan is the only industrialized country in the world that hosts a perfectly legal child pornography industry. Japan's Parliament is aware that the international community is questioning (their standards of decency and a draft Bill has

been submitted. Unfortunately, the Japanese Government has been distracted by economic recession to give the draft the attention it deserves.<sup>14</sup>

Japanese law on child pornography is vague and is subject to general obscenity laws rather than specific child laws. The legislation does allow police authorities to prosecute distributors (but, not possessors) of child images that contain sexual organs. Many child porn sites skirt the law by using images that show abuse and torture of children without showing sexual organs. The sexual depictions of children are judged against standards that regulate adult pornography. An action under statute prohibiting "forced indecency" must be initiated by the child, adults or guardians within six months after the criminal act took place. Provisions of this nature clearly inhibit the laws usefulness.<sup>15</sup>

Despite the indefinite regulation in this area, Japanese Police have calculated up top 1,200 web sites that contain child pornography. Police have managed to identify some of the featured photos as children from Japan and Southeast Asia.<sup>16</sup>

Japanese culture has been considered excessively liberal in relation to pornography in general. The reasoning for this is based on two factors: first, a lack of sensitivity in Japanese culture to issues concerning women and children. Secondly, the post-war adoration for freedom of speech which is embedded into Japanese culture. Before World War II, Imperial Japan strictly controlled speech, which has made it politically unpopular to advocate limitations.

There are also economic factors that allow Japan's telecommunications industry to benefit from the distribution of child pornography. The National Police Agency (NPA) argue that private telecommunication companies such as Japan's Nippon Telegraph and Telephone Corporation (NTT), in which two-thirds are owned by Government who indirectly profit from child pornography. Superintendent Goto of Japan's National Police Agency, during the Lyon conference in May 1998, stated that out of 3,000 Japanese web sites 41% marketed child pornography, including 221 sites that distributed children under the age of 12.<sup>17</sup>

The NPA researchers also found that 365 pornography sites, including 188 that contained children under 18, using the NTT service called Q2. Customers use a special telephone number to reach the web site. The charges are collected by NTT as part of its routine billing. NTT passes the profit back to the web site, keeping 9% for itself. This naturally benefits the Government who owns two-thirds of NTT.<sup>18</sup>

The Japanese Government has always claimed that they intend to pass a child protection bill that will allow police authorities to prosecute possessors and distributors of child pornography after the recession.

Finally, there is additional research that suggests a latent relationship between economics and child pornography. After the collapse of the communist infrastructure in Eastern Europe a large number of women (not necessarily children) have left the former Soviet

states to work as prostitutes in western countries. As a result many children that remain within Eastern Europe have turned to prostitution out of financial necessity. A contrast can be made with Japan, which has a good economy (despite the recent depression) yet has high child prostitution among the middle-class children, who use the money they make from prostitution to indulge in designer clothes and other material possessions.<sup>19</sup>

### **Legal Consensus and Variation**

NPA was bombarded with criticism from 19 other countries during the Lyon conference for not effectively enforcing child pornography from Japan that is distributed on the Internet. Italy, Sweden, Belgium, France, Germany, Ireland, the Netherlands, the UK and the US all have legislation that specifically bans sexual depiction of children.<sup>20</sup> The wording of the legislation varies from country to country, but the essential consensus is a ban on child pornography and pseudo-photography. This is based on the reasonable assumption that child pornography may promote child abuse and paedophilia. Mr Justice Owen stated in the *Fellows and Arnold* Birmingham University case that:

"The pictures could fuel the fantasies of those with perverted attitudes towards the young and they might incite sexual abuse on innocent children."<sup>21</sup>

Although Japan's draft legislation does intend to cover images of both children and pseudo-images, as to conform to international standards of decency, there are variations in ethical opinion. Activists and law enforcement officials want both measures, as it is easier to enforce prosecutions on child pornography offences and simulated computer generated images of children that may result in child abuse. This calibre of legislation is also in touch with international standards of decency. However, in contrast there are free-speech campaigners that agree with the first provision relating to child pornography, but disagree with the second provision relating to pseudo-photography as its only basis is the assumption that child pornography is directly related to child abuse.

This argument has origins in the well-documented debate surrounding the media and its affects on crime and society. A parallel debate relating to violent films that induce violent reactions in certain individuals is equally disputed. An example can be made from Japanese produced movies that contain the most vivid violence and the most sexually explicit pornography (by international standards). Ironically, Japan has one of the smallest crime rates in the world.<sup>22</sup> All research that tries to identify a relationship between the media and crime has proved inconclusive.<sup>23</sup>

Another point argued by Japanese free-speech activists is the issue concerning pseudo-photographs of adults that are depicted as children

without computer manipulation. It is hard to reconcile being prosecuted for possessing or distributing pseudo-photographs of adults that appear as children, when it is not illegal to have a sexual relationship with an adult who has the characteristics that make her (or him) appear as a child. Therefore, there is a concern that these acts will be classed as crimes, but with no clearly identifiable victims.<sup>24</sup>

Although this line of reasoning has been argued in every single western country that has child pornography and pseudo-image laws it has not been successful. However, it is possible that Japanese society may react differently with particular reference pseudo-images. If this is the case the number of child images found on TNG will remain constant, as Japan appears to be the main producer of child pornographic images. The police authorities will find it difficult to distinguish a child, a pseudo-image of a child or adult who appears as a child.

### **Conclusion**

The role of Internet Service Providers (ISPs) is to independently regulate pornography on the Internet by filtering out pornography that is legally acceptable (although morally questionable). The regulation of pornographic sites, links and images, therefore, fall within the competence of the ISPs. However, investigating and detecting child pornography falls within the jurisdiction of the police authorities. This is a policy favoured by the UK Government in which Ian Taylor, the Science and Technology Minister, states:

"Our present position is that we would want to encourage the industry to develop a system of self-regulation which might address these areas of concern, rather than considering statutory options... UK ISPs must devise a Code of Practice to control access to illegal and unsuitable material or face increasing political pressure from curbing legislation."<sup>25</sup>

The police are therefore seen as a safety net that attempt to identify, detect and charge paedophiles, and distributors and possessors of child pornography. The police have been successful in variety of child pornography cases such as the *Fellows and Arnold* case, the case of *Father Adrian McLeash* and *Operation Starburst*.<sup>26</sup> Many of these cases involved substantial international cooperation and technical skill to track the suspect's movement and to break any encryption and codes to access stored evidence.

Yet despite the complexity of the above cases child pornography is easily available on the Internet. TNG contain a vast amount of pornography the majority of which can be classed as nothing more than distasteful. Nonetheless, there are still large amounts of child pornography in these galleries. The statistics above clearly show that child pornography does not appear in residual amounts, but in vast quantities. The bulk of which are young Asian children who appear to

originate from Japan.

TNG are easy to access, free and demand no adult check. Key word filters can also be ineffective in preventing other children in accessing TNG and TNP. For example, some have no sexually explicit wording that associate these sites with child pornography or regular pornography.

TNG fall midway between the police and ISPs' competence. Internet service providers should develop techniques to regulate TNGs in effort to identify and detect child images. TNG should be prosecuted by ISPs and be liable as distributors of child pornography. This is exceptionally hard as TNG are updated and changed on a daily basis, so links that provide access to child porn on one day may have gone the following day. ISPs, therefore, should develop monitoring, tracking and detecting techniques.

The policing authorities must develop international cooperation to encourage investigation between different national policing agencies. Interpol can be considered an engine to promote this kind of collaboration as it gives police forces from individual states an idea of the demands the international community expect. It becomes increasingly clear that developed countries (particularly in the west) dictate international standards of decency.

Although, the Lyon conference induced countries like Japan into drafting child protection legislation, whether that legislation is passed depends on the culture of the individual state. In order to establish a basic universal set of moral and ethical values larger international organisations such as the United Nations may be called on to pass declarations that may remedy the Internet's cultural and jurisdictional dynamics, that may lead to some form of legal uniformity.<sup>27</sup> However, in the absence of international collaboration and uniformed legislation on basic fundamental rights, child pornography will continue to flourish on the Internet.

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