

Child Pornography & Other Technology-Facilitated Crimes Against Children

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Objectives:

- Describe how technology is used to facilitate crimes
- Discuss trends and statistics
- Provide broad overview of types of technology-facilitated crimes against children

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The Internet...

Every Internet client service has been exploited for purpose of victimizing children.

E-mail, World Wide Web, i.m.-ing, Usenet newsgroups all used as dist/communication channels for abuse of children.

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What's Technology Got To Do With It?

- Enables predators to have virtual playgrounds: access to **real** children w/out much fear of being identified
- Ease of "tracking" victims via search engines, info posted by children.
- Grooming techniques used by predators aided by online profiles created by children - inside knowledge of potential victims' likes/dislikes, issues, etc.

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The Internet Sex Predator: (*some stats*) *

- Internet offenders posed as teenagers in only 5% of crimes studied
- Majority of cases: girls 13-15 targeted online by adults who made intention of sexual encounter clear.
- 75% of victims who met offenders face to face did so more than once.

- Predators use instant msgs, email, and chat rooms to develop relationships w/ victims. Victims see as "romances."
- Offenders target kids who are **willing** to talk to them.
- Most cases arise from risky on-line interactions, i.e. talking online to strangers about sex, having strangers on buddy lists.

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The Culture of the Internet:

Porn (adult) sites widely advertised online

TV deems Internet porn stars as celebrities

Sense that posing for sexually explicit pictures is acceptable, glamorous (Paris Hilton, Kim Kardashian, etc...)

More Stats**

75% of children: willing to share psnl info online about themselves / family in exchange for goods and services

1 in 5 teenagers who regularly log-on to the Internet have received unwanted sexual solicitation via the Web; Only 25% told a parent

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Tech.-Facilitated Child Exploitation

Offenses include:

- manufacture, dist., & possession of c.p
- online enticement of children by sexual predators
- trafficking of children for sexual purposes, i.e., prostitution
- sex tourism

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Child Pornography – Crimes

- Production
- Distribution
- Possession
- Pandering
- Grooming

Internet, Technology & CP

- Access to vast quantities of images
- Images instantly available
- Ease of production w/ digital cameras
- Ease of conversion / circulation of earlier magazine / film images
- Validation via user groups
- Exacerbation of Victimization
 - images circulate indefinitely
 - child is re-victimized each time image is viewed.

Characteristics of C.P. Collectors:

- Store images on computer media
- Collect as many images as they can
- Tend to organize collections
- Keep collections for a long time

CP on the Internet:

- Approx. 14 million cp websites, some containing up to 1 million cp images per site
- Over 20,000 cp images posted on the Internet every week
- 116,000 daily requests for cp on file sharing service Gnutella alone
- Images more disturbing, more graphic, and more sadistic than ever before..."

USDOJ project safe childhood guide

- Single web-site can maintain all content on *different computers in multiple jurisdictions*
- Criminals operating sites can do so from yet another jurisdiction.
- One might report unlawful Internet activity (i.e., existence of c.p. website) to a local agency far from **apparent** location of the site.

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* Study conducted by Crimes Against Children Research Center at the University of New Hampshire in Durham. (Janis Wolak, David Finkelhor, Kimberly Mitchell)

Study based on telephone interviews with 3,000 Internet users between ages of 10 and 17 done in 2000 and again in 2005.

Researchers also conducted more than 600 interviews with federal, state and local law enforcement officials in the U.S.

Reports and papers about study, contact info about authors may be found at www.unh.edu/ccrc

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** Comments made 5/22/06 by Herman Lam,
Deputy Gen. Mgr. Microsoft Hong Kong.

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Types of Production:

Covert – Hidden camera

Overt –

- coercion – use of parental authority, threats, blackmail
- manipulation – provide alcohol, drugs, romance
- payment – online accounts, wish lists, pay per image

CP Distribution:

Commercial v. Limited

Most CP producers engage in limited dist. to those w/ whom they have est. a trust

- Women pandering to men they know
- Rings of offenders who produce/trade images among themselves
- Offenders who use images to seduce youth, persuade to pose.

Regulation of Child Pornography:

- Pornography is protected speech
- **Obscenity** is **NOT** protected speech
 - *Miller v. CA.*
 - 3 prong test for obscenity
- Child Pornography is **NOT** protected Speech
 - May not dist. or mfctr. (N.Y. v. Ferber)
 - May not Possess (Osborne v. Ohio)
- States have great leeway in regulation of CP

Why prohibit CP?

- compelling state interest in safeguarding well-being of children
- distribution of CP intrinsically related to sexual abuse
- advertising / selling of CP: economic motive is part of abuse
- *de minimis* value of CP

Osborne v. Ohio

Permissible to Ban Possession & Viewing of CP.

**CHILD PORNOGRAPHERS
ALSO TAKE A CHILD'S
INNOCENCE, SELF ESTEEM
AND DIGNITY.**



- Permanent record of abuse
- Encourages possessors to destroy images
- Reduces use of images for "grooming."

WE'RE HERE BECAUSE THEY'RE OUT THERE.

“Child Pornography”

- **Visual depiction**
- of **sexually explicit conduct**, where –
 - production involves the use of a minor engaging in conduct; or
 - digital or computer-generated image is, or is indistinguishable from, a minor; or
 - Image created or modified to appear that an identifiable minor is engaging in the act.

“Sexually Explicit Conduct”

Sex Acts

(Actual or Simulated)

- Sexual intercourse
- Bestiality
- masturbation
- Sadistic or masochistic abuse
- graphic or simulated *lascivious exhibition* of genital or pubic area

What is “Lascivious Exhibition?”

Nudity not required

Non-exclusive factors *U.S. v. Dost*



- Focal point of image: child's genitalia or pubic region
- Sexually suggestive Setting
- Child in unnatural pose or inappropriate clothing
- Child fully or partially clothed, or nude?
- Depiction suggests coyness or willingness to engage in sexual activity
- Depiction intended to elicit sexual response in viewer.

C.P. Statutory Language

- Federal and state statutes proscribe the **knowing possession** of CP.
- Some state statutes prohibit **possession or control** of CP
- Only 3 states (Ohio, N.J. and Arkansas) criminalize the **viewing** of CP
- Recent Federal Amendment (Oct.8, 2008) Adds: "**or knowingly accesses with intent to view**" after "possesses."

What is Cache?



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- Speeds up repeat viewing of previously visited website
Computers automatically make a copy of data from website in form of **temporary Internet files**
- Data from temporary Internet files - stored in **cache**.
- When user re-visits site, computer compares date on website to date on previously stored temporary file.
- If date is same, computer displays the cached file on screen;
- If website has been updated, computer displays data from website.

• User can **view** CP on Internet without downloading images to hard drive.

• Images from website are located:

1. On the screen, and
2. In cache via copy that computer automatically made

• User can control thumbnail image on screen: enlarge, zoom in and out, rotate, print, etc.

Are images stored in cache, but not downloaded to computer “possessed?”

Split in Authority:
(Majority: “Yes.”)

U.S. v. Tucker - 10th Cir.

Said he didn’t knowingly possess images: computer automatically stored them in cache.

Admitted to *viewing* cp on computer but argued he didn’t possess it: never downloaded or copied **and** he deleted cache files.

Held:

He possessed images because he could **control** them: enlarge, copy, delete them; and

Images were in cache b/c he *purposefully visited* cp sites and **reached out** for them.

305 F.3d 1193 (10th Cir. 2002)

U.S. v. Romm (9th Cir. 2006)

Romm “knowingly possessed” images of cp in cache: He had **control** over images

While on screen, (and simultaneously saved to cache) he could enlarge, print, email, and save images

He could delete from cache.

455 F.3d 990 (9th Cir. 2006)

U.S. v. Bass (10th Cir. 2005)

Bass “knowingly possessed” cp images in cache despite stating he didn’t know images were automatically saved to cache.

Used programs to delete images from computer - WindowWasher and History Kill – must have known they were there!

411 F.3d 1198 (10th Cir. 2005)

Commonwealth v. Diodoro

PA. stat prohibits *possession* or *control* of CP.

- Appellant knowingly accessed CP sites / viewed CP on computer
- Did not save or download images
- Argued he couldn't knowingly possess images in cache since he didn't know images were automatically saved to cache.

Held:

- Accessing and viewing CP on website constituted control
- Reached out for images on sites, opened sites, closed sites
- When viewing images , he could download, print, copy. Etc

932 A.2d 132 (Sup. Ct. PA. 2007)

Images in Cache not "Possessed"

Must **know** images viewed are stored to cache

U.S. v. Kuchinski . 469 F.3d 853 (9th Cir. 2006)
D. *downloaded* 110 CP images, plus
18,000 images in cache

Held:

- Did not possess 18,000 images in cache
- Had no knowledge of cache files, therefore
- lacked access to / control over files in cache

U.S. v. Stulock

308 F.3d 922 (8th Cir. 2002)

D. charged w/ knowingly possessing CP 3 images in cache

Held:

D. did not possess images located in cache file

Must purposely save or download image:

- Viewing image from site on screen not enough
- fact that computer automatically saves images to browser's cache file not sufficient to est. possession.

Determining "Possession"

Different approaches yield different results:

•Dominion & Control:

Ct focuses on level of control user has over an image. Can he retain the image on screen? Enlarge it? Zoom in or out? Copy, Print, and Delete it?

•Seek and Obtain:

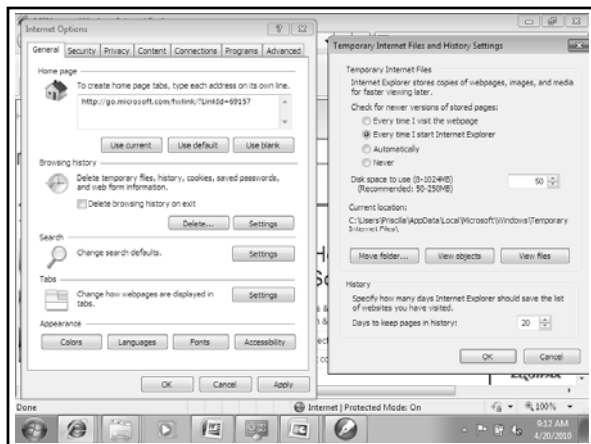
Ct looks at assertive steps taken by D. that led to viewing or downloading of CP. Often arises w/ images in cache files when D says he didn't intend to download images

•Knowledge:

how computers work, that there is cp on computer, etc.

•Deletion:

knowing possession of CP inferred by D's use of software to delete images.



Purposely Viewing & Knowing Possession:

- Monitoring software tracked D’s Internet browsing:
- repeatedly searched for cp websites
- navigated within these cp websites
- clicked on images of cp
- could control images of cp
- deleted cache
- Searched for Evidence Eliminator and Window Washer programs
- Searched Window’s Help Center for how to delete files associated with Internet browsing

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Ct. Held:

- D. affirmatively reached out for and obtained images, knowing the images would be of cp as shown by pattern of web browsing
- Can occur whether there is cache evidence or not
- Constructive possession – he could save, print or take other action to control the images

State v. Mercer, 782 N.W.2d 125 (WI App. 2010)

“Virtual” Child Pornography

Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)

At issue, provision of definition stating CP is a visual depiction that is, or *appears to be*, a minor engaging in sexually explicit conduct.

Ct. rejected “**appears to be** a minor” language

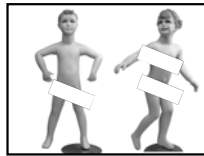
- VCP not a record of crime
- VCP creates no victim by its production
- No evidence VCP used for “grooming” or to whet appetites of pedophiles
- Overbroad: could include artistic works, young adults



New Language:

Digital / computer image that is or is **indistinguishable** from a minor

“Indistinguishable” – ordinary person would conclude depiction is of actual minor engaged in sexually explicit conduct



Is it a Real Child? (Jury Question)



- Picture itself
- NCMEC known images database
- What does suspect call pics? Title / labels on disks
- Website membership “Lolitagurls.com
- Volume of images
- Magazine images (predates morphing)

Expert testimony

- Pediatrician
- Digital imaging expert
- Expert on economics of technology
- Current technology does not allow creation of computer generated images indistinguishable from real

VCP can still be prosecuted as obscenity if it meets Miller standard.

State of Technology

Problems Creating Image of Person:

- correct form, proportions of body
- facial expressions
- color, texture of skin
- interaction of light with above ---

ECONOMICS OF TECHNOLOGY



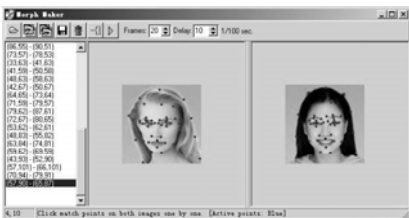
Morphed Images:

“...created or modified to appear that an **identifiable minor** is engaged in the act.”

<http://www.morphthing.com/#>

- *Ashcroft* declined to address constitutionality, but noted:
- Morphed images “implicate the interests of real children and are in that sense closer to *Ferber*.”





<http://wang.zhenzhou.googlepages.com/morph.htm>

Pandering

“knowingly...advertises, promotes, presents, distributes or solicits...any material or purported material in a manner that reflects the belief, or is intended to cause another to believe, that the material or purported material is, or contains, CP.”



U.S. v. Williams 128 S.Ct. 1830 (2008)

- Did not violate 1st Amendment (over breadth claim).
- Offers to give or receive what is illegal to possess have no social value - enjoy no 1/A protection.
- D. must believe the material was CP, or intend for the listener to believe it was CP.
- Gvt. can prohibit fraudulent offers *and* offers to provide illegal services.

“Grooming”

18 U.S.C. § 2252A(a)(6)

- Developing relationship w/ child w/ intent to have later sexual contact.
- common practice to lower defenses against inappropriate contact
- sets heightened prison terms for those who knowingly provide or offer CP to a minor w/ purpose to induce a child to participate in an illegal activity.

Thank You!

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