OVERVIEW OF TECHNOLOGY–FACILITATED CRIMES AGAINST CHILDREN

Michael Johnson
Counsel for National Programs
National Center for Justice and the Rule of Law

OBJECTIVES

• Identify the nature and scope of the problem regarding exploitation of children
• Describe how technology is used to commit or facilitate child exploitation crimes
• Discuss trends and statistics
• Provide broad overview of types of technology-facilitated crimes against children

TECHNOLOGY-FACILITATED CHILD EXPLOITATION

Offenses include:
• Child pornography
• Online enticement of children for sexual purposes
• Trafficking of children for commercial sexual purposes, i.e., prostitution
• Child sex tourism

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**What's Technology Got To Do With It?**

- Predators have access to real children with lessened fear of being identified
- Ease of “tracking” victims via search engines, and information posted by children.
- “Grooming” techniques used by predators aided by online profiles created by children - inside knowledge of potential victims’ likes/dislikes, issues, concerns.

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**The Role of the Internet**

- Permits access to vast quantities of pornographic images from around the world
- Makes pornography instantly available any time, any where
- Allows access with apparent anonymity in private
- Facilitates direct communication and image sharing among users

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**The Role of the Internet**

- Delivers material relatively inexpensively
- Provides high quality images in a wide variety of formats that do not deteriorate and can be conveniently stored
  - Pictures, videos, sound
  - Real time and interactive experiences
- Provides access to digital images that have been modified to create composite or virtual image (morphing)
The Role of Technology

- Digital technology has made facilitated the creation and retention of child pornography
  - Pornography much easier to produce and distribute with digital cameras
  - Advances in computer storage have contributed to the amassing of child pornography images
  - Images can be uploaded and downloaded with greater speed
  - Advances in file sharing techniques have enhanced distribution

Statistical Background

- Over 20 million IP addresses offering child pornography just through P2P networks
  - Material also through e-mail, chat rooms, website downloads
- 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

Statistical Background

- 1996-2007: 2062% increase in child exploitation investigations
- 2006-2009: 40% increase in prosecutions
- 2004-2008: 230% increase in documented complaints by state and local authorities concerning online enticement
**THE INTERNET SEX PREDATOR**

- 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

**SCOPE OF PROBLEM**

- 75% of children: willing to share personal 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

**CHALLENGES PRESENTED BY TECHNOLOGY- FACILITATED CRIMES**

- 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 such as existence of child porn website to a local agency far from apparent location of the site
CHALLENGES PRESENTED BY TECHNOLOGY-FACILITATED CRIMES

- Anonymity of internet makes offenders more difficult to locate, and emboldens their actions
- Offenders gather in online communities not only to share images, but to exchange information, chat, conduct surveys of members
  -- Communities effectively validate and normalized members behavior, and remove any sense of shame
  -- Desensitize those involved to the physical and psychological damage to children involved

Child PORNOGRAPHY

- Possession
- Trade
- Advertising
- Production
  of images that depict the sexual abuse of children

WHY PROHIBIT CHILD PORNOGRAPHY?

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

- Initial victimization during the abuse and production of the image
- Separate victimization knowing that images are readily and permanently accessible by other offenders who seek sexual gratification
  - Re-victimization with every viewing of image
  - Victims unable to achieve closure and more prone to feelings of helplessness

**Regulation of Child Pornography**

- Pornography is protected speech
- Obscenity is NOT protected speech
  - *Miller v. California*
  - 3 prong test for obscenity
- Child Pornography is NOT protected speech
  - May not distribute or manufacture (*New York v. Ferber*)
  - May not Possess (*Osborne v. Ohio*)
- States have great leeway to regulate Child Pornography

**Osborne v. Ohio**

- May Ban Possession & Viewing of Child pornography

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

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“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 United States 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

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CHARACTERISTICS OF COLLECTORS

• Store images on computer media
• Collect as many images as they can
  – Becomes significant to collect “full series”
• Tend to organize collections
• Keep collections for long time

WHAT IS “POSSESSION”?

• Divergence of view whether images stored in computer “cache” are possessed
  – Majority federal view: Yes
    • United States v. Tucker, 305 F.3d 1193 (10th Cir. 2002)
  – Minority federal view: No
    • United States v. Kuchinski, 469 F.3d 853 (9th Cir. 2006)

DETERMINING “POSSESSION”

• Different approaches yield different results:
  • Dominion & Control:
    – Court 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:
    – Court looks at assertive steps taken by Defendant that led to viewing or downloading of images. Often arises with images in cache files when Defendant claims he didn’t intend to download images
  • Knowledge:
    – How computers work
  • Deletion:
    – Knowing possession inferred by Defendant’s use of software to delete images

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WHAT IS “CACHE”? 

WHAT IS “CACHE”? 

“CACHE” FILES 

• Computer automatically makes 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.

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“Cache” Files

- User can view image without downloading 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 screen image
  - enlarge, zoom in and out, rotate, print

Statutory Language

- Federal/state statutes prohibit knowing possession
- Some state statutes prohibit possession or control
- 3 states (Ohio, N.J., Arkansas) criminalize viewing
- Federal Amendment (Oct. 8, 2008) adds:
  - “or knowingly accesses with intent to view” after “possesses.”

Commonwealth v. Diodoro
932 A.2d 132 (Sup. Ct. Pa. 2007)

- PA. stat prohibits possession or control
- Appellant knowingly accessed child porn sites/viewed Child Porn 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
**COMMONWEALTH V. Diodoro**  
932 A.2d 132 (Sup. Ct. Pa. 2007)

- **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

**Collectors Become Producers?**

- Global Symposium for Examining the Relationship between Online and Offline Offenses and Preventing the Sexual Exploitation of Children, April 2009
- Notable Points of consensus:
  - “Sufficient evidence of a relationship between possession of child pornography and the commission of contact offenses against children”
  - “Greater availability of child sexual exploitation materials has stimulated the demand and production of even more extreme, sadistic and violent images of children and infants”

**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
WHO ARE THE EXPLOITERS?

- NCMEC survey:
  - 69% of exploited children were abused by someone with whom they had a relationship
    - Parents (27%)
    - Neighbors/family friends (24%)
    - Relative, babysitter, coach, guardian's partner (18%)
  - 4% were victimized by someone with whom they had no prior contact

WHO ARE THE EXPLOITERS?

- NCMEC survey:
  - The remaining 27%
    - Online enticement 14%
    - Self produced 11%
    - Victim of Prostitution 2%

REPORTING OF ABUSE

- Exploited children rarely report abuse
  - Relationship with abuser
  - Shame
  - Guilt
  - Fear and humiliation
- Most abuse occurs in private, typically in the privacy of a home

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**LAW ENFORCEMENT SURVEY**

- NCMEC and National Strategy Report
  - Law Enforcement Officers report
    - Images involving prepubescent teens
    - Images involving violence and sadism

**CHILD PORN DISTRIBUTION**

- Most producers distribute to like-minded offenders with whom they have developed a relationship of trust, and with whom they exchange images
  - 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

**ENTICEMENT AND TRAVEL**

- National Strategy Report
  - 2004-2008 ICAC received:
    - 20,562 complaints of online enticement
    - 7,879 involved “travelers”
  - 25% of images come from online enticement (14%) and self production (11%)
“Traveler”

- Traveler investigation is one in which at least one person travels for the purpose of sexual contact with a minor
- Specific federal prohibition applicable
- Most “traveler” cases also involve online enticement which precedes the travel

“Traveler” Risks

- Kidnapping, rape, torture, murder
- Primary motivation for non-family abduction is sexual
  - 64% non-family abductions result in sexual abuse
  - 36% non-family abductions result in child’s death
    - National Strategy and MCMEC data

“Grooming”

- The manipulative process by which predators break down the child’s barriers and resistance
- Normalization of sexual activity
- Often involves introduction of child pornography to normalize sexual conduct between adult and child
“GROOMING”

- Affection
- Empathy
- Generosity
- Interest in music, video games, child’s toys
- Promotes inter-family conflict and alienation
- Introduce sex toys, demonstrate use
- May use fear and intimidation once compromise has been gained


- Developing relationship with child with intent to have later sexual contact
- Sets heightened prison terms for those who knowingly provide or offer child pornography to a minor with purpose to induce a child to participate in an illegal activity

“VIRTUAL” CHILD PORNOGRAPHY


At issue, definition of child pornography including “a visual depiction that is, or appears to be, a minor engaging in sexually explicit conduct”.

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Supreme Court rejected language “appears to be a minor”

- Virtual Child Pornography:
  - Not a record of crime
  - Creates no victim by its production
  - No evidence it is used for “grooming” or to whet appetites of pedophiles
  - Definition 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 the image?
  - Title/label on disks
  - Website membership “Lolitagurls.com”
- Volume of images
- Magazine images (predates morphing)
**HOW DO YOU PROVE THE IMAGE IS A REAL CHILD?**

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

**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

**YOUTHFUL OFFENDERS: AN OVERVIEW**

- Juvenile self-sexual exploitation
  - What is it?
- What efforts are being taken by states to address issue?

**JUVENILE SELF-SEXUAL EXPLOITATION**

Minors taking sexually explicit pictures of themselves or others, then transmitting images to others via cell phone or by internet posting

*(Dubbed “Sexting” by media)*
• Often forwarded by initial recipient without senders consent.
• Photo goes “viral,” reaching large audiences as it is forwarded from group to group.

PREVALENCE

2008 study of 653 teenagers 13-19 year olds:
20% had sent or posted nude or seminude pictures or videos of themselves
  • 71% girls & 67% boys sent image to boyfriend/girlfriend
  • 21% girls & 39% boys sent image hoping to attracting recipient
  • 75% knew it could have serious consequences

IS SEXTING A SERIOUS PROBLEM?

• On one hand . . .
  – Of the 2,100 children NCMEC has identified as victims of online porn, ¼ initially sent the images themselves, some for fun – some tricked by adults they met online.¹
• On the other hand . . .
  • Sexting is the modern way for teens to express budding sexuality – like spin the bottle.
  • Safer than traditional exploration of sexuality - no physical contact.²
**Societal and Personal Harms**

- Sexualizing/eroticization of minors encourages societal perceptions of children as sexual objects
- Leads to further abuse and exploitation
- Embarrassment
- Commercial exploitation
- Suicides

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**Why Sexting/Why now?**

Perfect storm...

- Exposure to increasingly younger sexualized “role models”
- Accessibility of technology
- Characteristics of tweens/teens

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**Role Models/Media**

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ACCESSIBILITY OF TECHNOLOGY

• Approximately 4 out of 5 teens have cell phones
• Nearly 50% children age 8 – 12 in United States own cell phones
  – On average, children get first cell phone between ages 10 – 11
• Teens send and receive 2878 texts/month
• Teens spend 31 hrs/wk connected to technology
  – 3.5 hrs per wk Instant Messaging friends
  – 2 hrs/wk on YouTube
TEENS AND TECHNOLOGY

• Teens text as much as or more than they talk on the phone
• 42% of teens surveyed say they could text blindfolded
• Nearly half of U.S. teens say their social life would end or be worsened without their cell phone

CHILD PORNOGRAPHY LAWS:

• All states prohibit acts of creating, possessing, & distributing images of children engaged in explicit sex acts
• No exceptions from criminal culpability when person creating, possessing, or distributing image is a minor

RANGE OF RESPONSES AMONG STATES

• Prosecution under existing Child Pornography laws
• Legislative responses – *i.e.*, amend Child Pornography laws to address “Sexting”
• Juvenile Diversion programs
**CHILD PORN PROSECUTION - CONSIDERATIONS**

- Are images CP under statute or case law?
- If “lascivious exhibition,” does it meet Dost criteria? If state doesn’t follow Dost, is image CP by their criteria?
- Was photo taken “consensually”?
- Is “victim” person who sent photo?
- Is victim willing to testify?
- What are societal goals?

**NEW JERSEY**

- March 2009
  - 14 y/o girl charged with possession & distribution of Child Pornography for posting approximately 30 nude photos of herself on MySpace for her boyfriend to view
  - SO registration for 15 years if convicted

**COLORADO**

- Couple, 17 & 15 exchanged cell phone images they recorded while engaging in consensual sex
- Mother found nude pictures of daughter’s boyfriend on daughter’s phone
- Judge ordered counseling
**Ohio**

- Cincinnati teen Jessica Logan committed suicide after boyfriend distributed nude pictures of her she had sent him via cell phone
  - No one charged

**Ohio (Cuyahoga Co. Juvenile Court)**

- 8 teens (14 - 17) caught trading nude cell phone pictures of themselves required to do community service & ask peers if they knew “sexting” was a crime.
  - 31 of 225 said they did
- Judge felt Child Pornography conviction and 20 year registration as Sex Offender too harsh for sending nude picture to boyfriend
- “These kids have no record, not even a parking ticket.”

**Miller v. Skumanick**

*605 F.Supp.2nd 634 (M.D. Pa. 2009)*

- Cell phone photos of 3 teenage girls seized at school
  - topless, underwear, swimsuits
- DA:
  - girls were accomplices to production of child pornography by allowing themselves to be photographed
  - Threatened prosecution under child pornography laws unless they participated in “education program”
- DCT granted preliminary injunction
MILLER V. MITCHELL
598 F.3d 139 (3rd Cir. 2010)

• CA upheld:
  – plaintiffs showed likelihood of success on claim that prosecution would be retaliation for right not to attend program

STATE LEGISLATIVE RESPONSES

• Ohio
  – Rejected proposal to reduce sexting by minor to misdemeanor
• New Jersey
  – Pending legislation to make sexting by minor eligible for pre-trial diversion

STATE LEGISLATIVE RESPONSES

  – Minor convicted of sexting to be adjudicated as a delinquent
  – No registration as Sex Offender
• Illinois (705 Ill. Comp. Stat. 405/3-40)
  – Sexting offense can support finding that “minor is in need of supervision”
  – May be ordered to obtain counseling
STATE LEGISLATIVE RESPONSES

• Nebraska (Neb. Rev. Stat. § 28-1463.03)
  – Affirmative defense
    • Defendant is under 18 years old
    • Visual depiction is only of defendant
    • Defendant reasonably believed depiction sent to willing recipient
    • Recipient was at least 15 years old

  – Maximum penalty for sexting by person under 17 reduced to 10 days in jail and/or $250 fine
  – Repeat offense maximum of 6 months jail and/or $750 fine

STATE LEGISLATIVE RESPONSES

• Colorado, Nebraska, and Utah
  – Distribution of child pornography by minor is reduced by one felony level from that applicable to an adult

3. Neison Mobilie Inc. 2009
Questions?