A Typology of Online Child Pornography Offending

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The Internet has increased the range, volume and accessibility of sexually abusive imagery, including child pornography. Child pornography depicts the sexual or sexualised physical abuse of children under 16 years of age. Australia has joined many other nations in an international effort to combat this multi-faceted global menace that combines both heavily networked and highly individualised criminal behaviour. This paper examines the typology of online child pornography offending, as well as law enforcement responses to the problem. This work is a result of a collaborative program between the Australian Institute of Criminology and the Australian High Tech Crime Centre.

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Child pornography existed before the creation of the Internet. It is not possible to say whether the advent of the Internet has fuelled the demand for child pornography and expanded an existing market, or whether it simply satisfies in new ways a market that would have existed in any event. It is clear, though, that the Internet provides an environment for the proliferation of child pornography and the creation of an expanding market for its consumption. This paper explores three important questions:

- What is online child pornography?
- Is there a typology of offending online?
- If so, what are the implications for law enforcement?

What is child pornography? A non-legal definition

As pointed out by Taylor and Quayle (2003), the legal definition of child pornography does not capture all the material that an adult with a sexual interest in children may consider sexualised or sexual. As they argue, understanding why child pornography is produced and collected requires us to think beyond the legal definition of child pornography. Based on a study of online content at the Combating Paedophile Information Networks in Europe centre (COPINE), Taylor and Quayle identified 10 categories of pictures that may be sexualised by an adult with a sexual interest in children. Material in some of these categories does not come within the legal definition of child pornography. For example, in the first category are non-erotic and non-sexualised pictures of children in their underwear or swimming costumes from commercial or private sources, in which the context or organisation by the collector indicates inappropriateness. The second category comprises pictures of naked or semi-naked children in appropriate nudist settings. The third category is of surreptitiously taken photographs of children in play areas or other safe environments showing underwear or varying degrees of nakedness.

Although material in the first category and some of the material in the second and third will not be caught by the legal definition of child pornography, all may be indicative of a sexual interest in children and are therefore potentially important in the investigation of child pornography offences.

The legal definition of child pornography

The Australian regime to regulate pornography (whether online or not) essentially relies on state and territory laws (for convenience referred to here as 'state laws'). The provisions prohibiting the possession of child pornography are listed in Table 1. There are also provisions against the manufacture, distribution or sale of child pornography with more severe penalties.

Child pornography is generally defined as material that describes or depicts a person under 16 years of age, or who appears to be less than 16, in a manner that would offend a reasonable adult. However, this legal definition can be difficult to apply (Grant et al. 1997) because of jurisdictional differences. For example, in some states there must also be the depiction of sexual activity by the child or some other person in the presence of the child. Difficulty also arises from the fact that child pornography laws usually require a judgment to be made whether material is offensive or not.

The state laws regarding child pornography intersect with federal censorship laws contained in the *Classification (Publications, Films and Computer Games) Act 1995* (Cwlth). In two jurisdictions (NSW and NT) the legal definition of child pornography also includes material that has been refused classification under this Classification Act.

The *Broadcasting Services Amendment (Online Services) Act 1999* (Cwlth) created a non-criminal process for reporting web sites that host material which would be refused classification (as well as X- and R-rated material that is easily accessible without adult verification). The Australian Broadcasting Authority (ABA) can issue a take-down notice to have Australian-based web sites remove this content. If the site is hosted overseas, the ABA can notify content filter developers to add it to their lists of offensive sites (Chalmers 2002).

Proposed national law

In June 2004 the Australian government introduced a Bill to enact federal laws, tied to the power to regulate telecommunications, covering child pornography and grooming (Attorney-General's Department 2004). The Bill defines child pornography in terms of the depiction of a child under 18 years of age and provides for a penalty of 10 years for possession of child pornography, and 15 years for online grooming.

Children actually or apparently under 16

It is not necessary to prove that a child depicted was in fact less than 16 years of age at the time the image was created. It is enough that they appear to be under that age. The legislation therefore applies to images of a person over the age of 16 who is made to appear younger than that. Standard medical indicators of the physical developmental stages of children may be used to assess whether an image depicts a child under the age of 16 (Censorship Review Board 2000).

Morphed images of children

The definition of child pornography may include morphed pictures. Taylor (1999) refers to such images as pseudo-photographs, and they are classified according to three types:

- digitally altered and sexualised images of bodies, such as a photograph of a child in a swimming costume where the costume has been electronically removed;

- separate images in one picture, such as a child's hand superimposed onto an adult penis; and

- a montage of pictures, some of which are sexual.

The ease with which a morphed collection can be put together, even without the capacity to digitally alter images, is illustrated by the case of convicted double murderer and serial rapist Lenny Lawson. Lawson was one of Australia's longest serving prisoners when he died in custody at the age of 76, three days after being transferred to a maximum-security unit. This transfer followed the discovery in Lawson's cell of a collection of video tapes which in part contained images from *Sesame Street* spliced with other program material to produce what was described by the prison psychologist as a collection of 'voyeuristic sexual fantasies and sexual perversion, often associated with children' (Mitchell 2004).

Creating fictitious children under 16

Child pornography can be created without directly involving a real person. The words 'describing or depicting' are capable of including text, images and three-dimensional objects. While these laws were initially framed in relation to photographs, videos and film, the language extends to cover the development of online pornography. The offence provisions do not require a real person to be described or depicted, and they include fictional characters in text or digitally created images of fictional characters.

In *Dodge v R* (2002) A Crim R 435, a prisoner in Western Australia who was serving a long sentence for sexual offences against children was convicted of further offences after writing 17 sexually explicit stories about adult males involved in

Table 1: Child pornography possession offences

Jurisdiction	Provision	Year	Maximum penalty
ACT	s 65, *Crimes Act 1900*	1991	5 years
NSW	s 578B, *Crimes Act 1900*	1995	2 years/100 penalty units
NT	s 125B, *Criminal Code*	1996	2 years/$20,000 corporate penalty
Qld	s 14, *Classification of Publications Act 1991*	1991	1 year/300 penalty units
SA	s 33, *Summary Offences Act 1953*	1992	1 year/$5,000
Tas.	s 74, *Classification (Publications, Films and Computer Games) Enforcement Act 1995*	1995	1 year/50 penalty units
Vic.	s 70, *Crimes Act 1958*	1995	5 years
WA	s 60, *Censorship Act 1996*	1996	5 years

Table 2: Categories of child pornography

Level	Description	COPINE typology
1	Images depicting nudity or erotic posing, with no sexual activity	Nudist (naked or semi-naked in legitimate settings/sources); Erotica (surreptitious photographs showing underwear/nakedness); Posing (deliberate posing suggesting sexual content); and Explicit erotic posing (emphasis on genital area)
2	Sexual activity between children, or solo masturbation by a child	Explicit sexual activity not involving an adult
3	Non-penetrative sexual activity between adult(s) and child(ren)	Assault (sexual assault involving an adult)
4	Penetrative sexual activity between adult(s) and child(ren)	Gross assault (penetrative assault involving an adult)
5	Sadism or bestiality	Sadistic/bestiality (sexual images involving pain or animals)

Source: Sentencing Advisory Panel 2002

sexual acts with young children (mostly boys aged less than 10). Dodge pleaded guilty to child pornography charges for supplying another prisoner with these stories and of possessing the stories himself. The appeal court noted that a prison sentence was required because the law sought to prevent access to child pornography. However, the fact that no child was involved in producing the material was taken into account in reducing the sentence from 18 to 12 months.

In contrast to the law in Australia, the United States' *Child Pornography Prevention Act 1996* was a federal law that sought to prohibit virtual child pornography. However the relevant provision was struck down for being too widely drafted. In *Ashcroft v Free Speech Coalition* (00-795) 535 US 234 (2002) the United States Supreme Court held that the section infringed the First Amendment right to free speech. The provision defined child pornography widely using the words 'appears to be' and 'conveys the impression' in relation to depicting a person under the age of 18. The Court found this wording too broad in the absence of any requirement in the same provision for the prosecution to prove that the material is obscene.

Artistic merit or scientific or other purpose
The question of artistic merit must be considered in relation to whether material is offensive to a reasonable adult person or not. In South Australia, a work of artistic merit is

exempted if there is not undue emphasis on its indecent or offensive aspects.

Material may not be classed as child pornography if it is held in good faith for the advancement or dissemination of legal, medical or scientific knowledge.

Possession for law enforcement purposes
Where not specifically exempted in the same legislative package, law enforcement officers rely on general powers of investigation and for the keeping of evidentiary material to retain child pornography for law enforcement purposes. Child pornography laws in NSW, Victoria, WA and NT allow a law enforcement officer to possess child pornography in the exercise or performance of a power, function or duty imposed by or under any Act or law.

Categorising child pornography

Police often distinguish between five categories of child pornographic images. The categories were originally developed in the United Kingdom based on the 10-point typology of such images developed by COPINE. These range from nudist shots and surreptitious eroticised underwear or semi-naked shots, through to penetrative sexual assault and sadism or bestiality (Table 2). While it may be beneficial for police to prioritise their investigations by reference to the seriousness of the images involved, the full extent of an offender's collection may not be known until an investigation is well under way.

As indicated above, not all material in the categories of nudist or erotica would fit the legal definition of child pornography. The courts must consider the context surrounding the making or keeping of material in deciding whether it is child pornography or not.

When it comes to assessing the severity of an offence of possessing child pornography, it is not enough to measure the number of images of various types involved. There are other indicators of seriousness, such as the offender's engagement with the material. This may include how long it has been held, the degree to which it is organised by the offender, how it was acquired, and whether it is a trophy of the offender's own sexual abuse of a child (Taylor & Quayle 2003).

How are offences committed online? A typology of offending

As noted by Taylor and Quayle (2003), the Internet provides the social, individual and technological circumstances in which an interest in child pornography flourishes.

- *Social*
  The Internet has been used to create a self-justifying online community for child pornography users.

- *Individual*
  Using the Internet, individuals can access material and communicate with others through a computer terminal providing an apparently private sphere for the expression of sexual fantasy.

- *Technological*
  Digital technology and the Internet make it possible for child pornography consumers to become obsessive collectors so that the collection of images becomes an end in itself. The Internet also provides a ready means to access material supporting increasingly extreme sexual fantasies. It can then be used to act out those fantasies with children in online interactions or in physical meetings arranged online.

Knowing the differences in how online child pornography offences are committed is vitally important to understanding and combating the problem of sexual exploitation of children. What follows is a

discussion of the typology of offending (summarised in Table 3). There is an increasing seriousness of offending, from offences that do not directly involve a child, to offences that involve direct contact with children, and from online grooming to physical abuse.

Browser

A browser may come across child pornography unintentionally (for example via spam) but then decide to keep it. This is an offence if it can be proved they formed the intention to possess the material. In the absence of a confession, this may be shown by surrounding circumstances, such as repeat visits to a site. Whether a person is an accidental browser or not is a question of fact.

Private fantasy

If a person has a private fantasy involving sex with a child, no offence is committed. If that fantasy is preserved as something more than a thought, then an offence may be involved. The representation of that fantasy in text or digital format on a computer may be sufficient to constitute the possession of child pornography even if the offender has no intention of sharing it with any other person. The case of Lenny Lawson, referred to above, is an example of a private fantasy collection in video format.

For the offender engaged in private fantasy the risk of exposure is low, but it could occur in a number of ways: by tip-off from someone else with access to the computer or data storage device; in the course of searching a computer for evidence of other offences; when a computer is being serviced; when a computer is stolen; or even when a computer has been accessed remotely by a third party.

Trawler

Among trawlers there is little or no security employed and minimal networking of offenders. Taylor (1999) lists three motivations. The sexually omnivorous user is oriented to a range of sexually explicit material of which child pornography is simply a part but not the focus. The sexually curious user has experimented with child pornographic material but has not pursued it. The libertarian is driven to assert a claim to be free to access whatever material they wish.

Non-secure collector

The non-secure collector purchases, downloads or exchanges child pornography from openly available sources on the Internet or in chat rooms that do not impose security barriers. Security barriers include passwords, encryption or the requirement to trade a minimum number of images. There is a higher degree of networking among non-secure collectors than among trawlers.

Secure collector

In contrast, the secure collector uses security barriers to collect pornography. In addition to encryption, some groups have an entry requirement that locks its members into protecting each other—each member is required to submit child pornography images to join. The W0nderland [sic] Club was one such international child pornography ring exposed in 1998. In order to join, members had to submit 10,000 child pornography images. Both open and private collectors may be driven by the desire to amass a

Table 3: A typology of online child pornography offending				
Type of involvement	**Features**	**Level of networking by offender**	**Security**	**Nature of abuse**
Browser	Response to spam, accidental hit on suspect site—material knowingly saved	Nil	Nil	Indirect
Private fantasy	Conscious creation of online text or digital images for private use	Nil	Nil	Indirect
Trawler	Actively seeking child pornography using openly available browsers	Low	Nil	Indirect
Non-secure collector	Actively seeking material often through peer-to-peer networks	High	Nil	Indirect
Secure collector	Actively seeking material but only through secure networks. Collector syndrome and exchange as an entry barrier	High	Secure	Indirect
Groomer	Cultivating an online relationship with one or more children. The offender may or may not seek material in any of the above ways. Pornography may be used to facilitate abuse	Varies—online contact with individual children	Security depends on child	Direct
Physical abuser	Abusing a child who may have been introduced to the offender online. The offender may or may not seek material in any of the above ways. Pornography may be used to facilitate abuse	Varies—physical contact with individual children	Security depends on child	Direct
Producer	Records own abuse or that of others (or induces children to submit images of themselves)	Varies—may depend on whether becomes a distributor	Security depends on child	Direct
Distributor	May distribute at any one of the above levels	Varies	Tends to be secure	Indirect

collection. As a result, extremely large numbers of images can be involved.

In a WA case, *R v Jones* [1999] WASCA 24, the court considered the size of a collection as an aggravating feature on sentencing: 'the degradation of the children is more serious because there is a larger number of images involved.' The defendant had 162,000 images on a CD-ROM. The appeal court took into account both the number of children involved and the number of images of each child as aggravating features. The original two-year suspended sentence was replaced with a gaol term of 18 months.

In an English case the offender, Andrew Tatum, was jailed for five years for possessing 495,000 indecent images of children. An indication of the obsessive nature of his collecting is that the images upon which his conviction was based counted for only about five per cent of his personal collection of more than 10 million pornographic images (The Age 2004).

Online groomer

The online groomer is a person who has initiated online contact with a child with the intention of establishing a sexual relationship involving cyber sex or physical sex. Child pornography is used to 'groom' the child—it is shown to the child to lower that child's inhibitions concerning sexual activity. The proposed Commonwealth law referred to above covers indecent material as well as pornographic pictures and text when communicated to a child for the purpose of making it easier to procure that child for sexual activity, or to make it more likely that the child will engage in sexual activity (Attorney-General's Department 2004). The same proposed law includes specific offences of procuring a child for sexual purposes and refers to sending communications with the intent of facilitating a meeting as a precursor to sexual activity.

The current Queensland legislation contains an anti-grooming provision. The first successful prosecution under this law led to the sentencing of an offender to nine months imprisonment in February 2004. The 26-year-old had tried to procure a 13-year-old girl for sex using an Internet chat room. The 'girl' was in fact a police officer involved in a sting operation (Townsend 2004). Western Australia is developing similar legislation (Gallop 2004).

Physical abuser

Physical abusers are actively involved in the abuse of children and use child pornography to supplement their sexual craving. The physical abuse may be recorded for the personal use of the abuser but is not intended to be further distributed. In cases of this type, a charge of making or possessing child pornography will usually be incidental to a charge for the physical abuse that has taken place.

Producer

The producer of child pornography is involved in the physical abuse of children. He or she provides images of that abuse to other users of child pornography.

Distributor

The distributor of child pornography may or may not have a sexual interest in child pornography. For example, the Western Australian case of *R v W* (2000) 27 SR (WA) 148 involved a child who was prosecuted for possessing child pornography with the intent to sell it. The offender had set up a web site offshore to make money from advertisers. The content of the web site included images and textual references to child pornography. The court held he was properly convicted.

Profiling offenders

To the categories listed above might be added the child user or the youthful user who pursues material reflecting their own level of sexual maturity or exposure by adults to child pornography. It has been reported that children under 10 who have been exposed to sexually exploitative material have themselves become users of it (including child pornography) and abusers of other children (Stanley et al. 2003).

Research in the United States shows that the typical person arrested for child pornography offences is a Caucasian male over the age of 26 years (Wolak et al. 2003). Little is known, however, about the characteristics of offenders in Australia. Even if there were consistent patterns of gender and age among offenders, it would be wrong to assume that offending fits a homogenous profile. The typology presented above shows that there are at least eight different ways of offending, with four of these having no direct contact with children, three involving either online or physical contact, and one where there may or may not be contact with children. There are also significant differences in the level of security applied and the degree of networking engaged in. More research is required to explore the ways in which these different types of offending are interlinked. The most important research issues to address are:

- How can victims be identified to prevent ongoing abuse or provide support in relation to past abuse?
- What effects are suffered by victims portrayed in child pornography?
- What is the extent of recidivism among child pornography offenders?
- What are the most effective ways of rehabilitating a child pornography offender?
- Does the use of child pornography follow a typical progress from the marginally pornographic to the most extreme images?
- Is there any causal link between use of child pornography and the physical abuse of children?

Implications for law enforcement

Police are devoting increasing attention and resources to combat child pornography and online sex offences. Investigations are necessarily complex and time consuming because they are often coordinated across jurisdictions, they involve networks of offenders using varying levels of security, and an individual offender must be linked to the misuse of a computer.

Perhaps the most important factor in law enforcement is the reliance on networks by many offenders. Concentrating on these linkages is likely to help address the problem of the proliferation of child pornography. Stopping the physical abuse of children requires an intensive investigation effort concentrating on finding new material and on cracking into the more secretive world of individual and networked producers.

Police may use stings to locate individual offenders. The greater long-term value in any sting operation may lie in exploding the view that the Internet is an anonymous domain in

which it is safe to offend. Such sting operations may need to operate on a number of levels to capture the various ways in which offences may be committed online.

- Police stings using false web sites target unsophisticated users (Cyberspace Research Unit 2003). By catching trawlers and deterring those who may be thinking of experimenting with child pornography, an admittedly low level of offending will be disrupted. The Australian High Tech Crime Centre has joined the Virtual Global Taskforce of police from the UK, US and Canada to run such sting operations and other coordinated activities (The Guardian 2003).

- Sting operations aimed at groomers are more finely targeted at those who represent a real threat in terms of contacting children and acting out their sexual impulses. Queensland police have been able to operate with an anti-grooming law in that state to locate and prosecute groomers. We do not know how prevalent grooming is, and stings of this type may rely on the police officer and the offender drawing on a 'shared fantasy' of the 'compliant and sexualised child' (Taylor & Quayle 2003).

Much more needs to be done to understand the problem of online child pornography. The literature on adults with a sexual interest in children 'fails to accommodate behaviour that relates to the new technologies' (Taylor & Quayle 2003). Not only does this failure impede the treatment of offenders, it also hampers the ability to prioritise matters for investigation and for prosecution. At this stage, we can speak of associations between risk factors and models of offending behaviour. Drawing on the work

by Taylor and Quayle (2003), the following are markers of serious online offending:

- possessing new or recent images, extreme images, or images associated with text;

- participating in an online community of offenders;

- trading in images; and

- cataloguing of images.

Investigators need to consider the extent to which an offender found with child pornography may be involved in other levels of offending. The development of predictive indicators of involvement would therefore be an important advance in combating child pornography.

In the meantime, law enforcement agencies must prioritise their investigation efforts. A useful scale of priorities has been developed in the UK in response to the flood of cases from Operation Ore. The top priority is given to cases involving convicted paedophiles and those with access to children, such as teachers and social workers. The second priority is given to cases involving people in positions of authority, for example police and magistrates. The third is for suspects not involved with children.

Conclusion

There is no doubting the importance of combating online child pornography in order to protect children from abuse. More research is needed to properly understand the problem, to fully assess the nature and scale of offending, to identify and protect victims and, ultimately, to ensure that our approach is both effective and just.

Acknowledgment

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