Cyberspace Crimes against Children

Mary Louise Steinmetz

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Cyberspace Crimes against Children

Abstract
Internet crime against children is a growing concern today for parents, educators and law enforcement alike as well as an all too frequent topic in the news. This thesis will discuss trends, history, and statistics regarding child pornography and online enticement of children. The paper will identify specific issues and unique characteristics encountered when attempting to deter, legislate and prosecute these crimes. Especially problematic and worrisome is the highly debated issues of morphed, virtual or computer generated images of children used in child pornography. Included are data from state and federal law enforcement agencies with cyber crime units, related organizations and actual cases. Trends in the courts in confronting this issue from both the perspective of the victims and the perpetrators will be examined. A timeline of past, current and pending statutes, legislation and case law both on the state and national levels will also be discussed and analyzed. The paper will identify strategies proposed by the legal system as well as those thoughts and beliefs of the author on how to deter this growing crime in cyberspace.

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By

Mary Louise Steinmetz

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ABSTRACT

Author: Mary Louise Steinmetz
Department: School of Technology Studies
Area: Legal Assisting Program
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Internet crime against children is a growing concern today for parents, educators and law enforcement alike as well as an all too frequent topic in the news. This thesis will discuss trends, history, and statistics regarding child pornography and online enticement of children. The paper will identify specific issues and unique characteristics encountered when attempting to deter, legislate and prosecute these crimes. Especially problematic and worrisome is the highly debated issues of morphed, virtual or computer generated images of children used in child pornography. Included are data from state and federal law enforcement agencies with cyber crime units, related organizations and actual cases. Trends in the courts in confronting this issue from both the perspective of the victims and the perpetrators will be examined. A timeline of past, current and pending statutes, legislation and case law both on the state and national levels will also be discussed and analyzed. The paper will identify strategies proposed by the legal system as well as those thoughts and beliefs of the author on how to deter this growing crime in cyberspace.
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INTRODUCTION

Crimes against children and child abuse and neglect are not new issues or problems. The use of the computer and the internet to commit these crimes, however, is a very new and unsettled area. Are existing laws adequate for policing these crimes in cyberspace, or is it necessary to create new laws specifically for the internet crimes? Lawmakers and prosecutors struggle to walk the fine line between adequately protecting children while not interfering too much with the adult rights to privacy and freedom from excessive government intrusion. Internet crimes against children are a fast-growing and unsettled area of law and this is particularly true of child pornography. The biggest debate seems to concern whether the "virtual" or "computer-generated" or "morphed" pictures of child pornography should be treated the same as those created from actual children or photos of children. Are they as harmful to children? Should the laws protect the children the same way, prosecute offenders the same and treat these crimes the same? It is my belief that they should be treated the same. In essence, if you abuse the image of the child, you abuse the child.

BACKGROUND

The two largest categories of Internet Crimes Against Children (ICAC) are online enticement of children and child pornography. In days gone by, predators of children would typically hang out in areas such as parks, malls, and schoolyards where large numbers of children can be found. Today the virtual "mother lode" for these offenders is cyberspace.¹ Children and teenagers are the fastest growing group of Internet users today

with an estimated 10 million kids online in 2001, 45 million in 2002, and an expected 77 million by 2005.\(^2\)

**GENERAL INFORMATION**

Not only are children and teens prime targets by sheer number, but they are typically vulnerable, naïve, trusting, curious, eager for attention and affection, and adventuresome to try new things. Older children are at an even higher risk as they are generally online unsupervised and are more apt to be in chat rooms and to engage in personal discussions. Children are also traditionally not considered to be reliable or credible witnesses in investigations and court proceedings. Predators take advantage of this and are many times willing to spend large amounts of time “grooming” and befriending a child and will travel long distances for the purposes of “sexual tourism.” This is also referred to as a “traveler case” and is generally defined as “travel with the intent to engage in sexual behavior for commercial gain and/or personal gratification.”

Internet crimes against children are many times mistakenly thought of as harmless or “victimless.” Children and teenagers can become victims of crimes in a number of ways, such as the production, manufacture, and distribution of child pornography, use of the Internet to expose children to pornography and encourage them to exchange it, and enticing children online for the purpose of engaging in sexual acts with them.\(^3\)


PROBLEMS UNIQUE TO THESE CRIMES

There are several factors that make internet crimes against children uniquely troublesome to lawmakers and law enforcement. Actual physical contact between the child and perpetrator is not necessary for the commission of the crime. Innocent pictures of a child downloaded onto the internet can be then digitally transformed into pornographic materials and distributed nationally or even globally without the victim's knowledge or permission. Once online these photos can remain there forever, making this a long-term victimization. Lack of jurisdictional boundaries and multiple victims makes cooperation and consistency in law a must for prosecuting these cases. They typically involve multiple jurisdictions on local, state, national and even international levels. Contributing to the problem is the fact that victims of these crimes often do not tell anyone or they may not even be aware they were victimized until a picture is discovered during an investigation by law enforcement. The privacy of the internet provides a false sense of secrecy, security and anonymity for both the victim and perpetrator.4

INTERNET SAFETY STATISTICS

- Only 1/3 of the households with Internet access are proactively protecting their children with filtering or blocking software.
- 75% of children are willing to share personal information online about themselves and their family in exchange for goods and services.
- Only 25% of the youth who encountered a sexual approach or solicitation told a parent.
- One in five U.S. teenagers who regularly log on the Internet say they have received an unwanted sexual solicitation via the Web. Solicitations were defined as requests to engage in sexual activities or sexual talk, or to give personal sexual information.
- One in 33 youth received an “aggressive” sexual solicitation in the past year. This means a predator asked a young person to meet somewhere, called a

young person on the phone, and/or sent the young person correspondence, money, or gifts through the U. S. Postal Service.
- One in 4 youth had an unwanted exposure in the past year to sexual material (pictures of naked people or people having sex).
- One in 17 youth were threatened or harassed online in the past year.
- 77% of the targets for online predators were age 14 or older. Another 22% were users ages 10 to 13.
- Of those solicited, 75% were not troubled youth, 10% did not use chat rooms, and 9% did not talk to strangers.
- Only 25% of the solicited children were distressed by the encountered and told a parent.
- Only 17% of youth and 11% of parents could name a specific authority, such as police, the FBI, CyberTipline, or ISP to which they could report an internet crime. Therefore, only a fraction of all episodes were reported.

Sources:
2. waynecounty.com/sheriff/predators.html

NATIONAL INTERVENTION and PREVENTION PROGRAMS

National Center for Missing and Exploited Children

According to the National Center for Missing and Exploited Children (NCMEC)'s CyberTipline, Citizen Reporting Online, (1-800-BE ALERT), there were 44,303 reports made between July 1, 1998 and June 30, 2001. Of this amount, 84% (over 37,000) were concerning child pornography and 9% (over 4,000) were reporting online child enticement. (See chart on following page) Today, “[t]he National Center for Missing and Exploited Children's CyberTipline logged a 39% increase in reports of possession, creation, or distribution of child pornography in 2004, the seventh consecutive year child-

6 National Center for Missing and Exploited Children (NCMEC). http://www.missingkids.com
pornography incidents have trended upward since the federally funded group set up its 24-hour hot line in 1998.\textsuperscript{7}


**FBI's Innocent Images National Initiative**

A 1993 investigation into the disappearance of a minor in Maryland led the FBI to two suspects who were discovered to have been exploiting male minors over a 25 year period. It was found, during this investigation, that the computer was being used as a tool for transmitting and sharing pornographic images of minors as well as enticing children. This led to the birth of the FBI’s Innocent Images National Initiative in 1995 to aid the FBI and Department of Justice (DOJ) in online child pornography and child exploitation

\textsuperscript{7}http://watchright.com/?itemid=337
(CP/CSE) investigations. It is an important component of the FBI's Cyber Crimes Program.

FBI reported an almost 2000% (1997%) increase in Innocent Images National Initiative cases opened between 1996 and 2002, from 113 to 2,370. Their task force has initiated over 5,700 investigations and convicted over 3,000 persons since their start in 1995. Today the “FBI ranks crimes against children on the internet second only to terrorism.”

The following four charts reflect data reported by this FBI initiative for the years 1996 to 2001:

![INNOCENT IMAGES NATIONAL INITIATIVE Fieldwide Statistical Accomplishments](http://www.fbi.gov/pressrel/candyman/barcharts.htm)

Source: [http://www.fbi.gov/pressrel/candyman/barcharts.htm](http://www.fbi.gov/pressrel/candyman/barcharts.htm)

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9 http://blog.watchright.com/?itemid=337
INNOCENT IMAGES NATIONAL INITIATIVE
Fieldwide Statistical Accomplishments

Source: http://www.fbi.gov/pressrel/candyman/barcharts.htm
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INNOCENT IMAGES NATIONAL INITIATIVE
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Source: http://www.fbi.gov/pressrel/candyman/barcharts.htm
FBI's Operation Candyman

FBI's Operation Candyman is named after an Egroup URL maintained by Yahoo with an estimated 7,000 members, including over 2,400 in foreign countries and 4,600 nationally that produce, distribute and exchange child pornography. Operation Candyman has executed over 266 searches, charged more than 89 people in over 20 states and conducted over 266 searches. Of the number arrested, 27 have admitted to prior molestation of over 36 children. If you think you can spot a child predator; think again. Those identified as subjects during this investigation came from occupations that included the following: foster care parent, Little League coach, teacher's aide, members of the clergy, law enforcement, military and educational fields.10

Office of Juvenile Justice and Delinquency Prevention (OJJDP)


Accomplishments of agencies participating in the above program over a two year period (as submitted by members for the March 2001 Monthly Performance Measures Report) include the following:

- Arrested more than 550 individuals for child sexual exploitation offenses
- Seized approximately 850 computers
- Served 627 search warrants and 1,338 subpoenas.


11 Public Law 105-119
Conducted forensic examinations of more than 1,500 computers for task force investigations and other law enforcement agencies.

Provided direct investigative assistance in more than 1,000 cases at the request of other law enforcement agencies.

Provided advice in 1,622 instances to other law enforcement agencies.

Reached thousands of children, teenagers, parents, educators, and other individuals through publications, presentations and public service announcements about safe Internet practices for young people.

In a practice exercise it was possible for a task force officer to arrange a meeting with a 13 year-old in only 45 minutes.


APPLICABLE FEDERAL STATUTES

- 18 USC 1201. Kidnapping
- 18 USC 1462. Importation or Transportation of Obscene Matters
- 18 USC 1465. Transportation of Obscene Matters for Sale or Distribution
- 18 USC 1466. Engaging in the Business of Selling or Transferring Obscene Matter
- 18 USC 1467. Criminal Forfeiture
- 18 USC 1470. Transfer of Obscene Material to Minors
- 18 USC 2241(a)(c). Aggravated Sexual Abuse
- 18 USC 2243. Sexual Abuse of a Minor or Ward
- 18 USC 2251(a)(b)(c). Sexual Exploitation of Children
- 18 USC 2251A(a)(b). Selling or Buying of Children
- 18 USC 2252. Certain Activities Relating to Material Involving the Sexual Exploitation of Minors
- 18 USC 2252A. Certain Activities Relating to Material Constituting or Containing Child Pornography
- 18 USC 2253. Criminal Forfeiture

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• 18 USC 2260(a)(b). Production of Sexually Explicit Depictions of a Minor for Importation into the United States 
• 18 USC 2421. Transportation Generally 
• 18 USC 2422. Coercion and Enticement 
• 18 USC 2423(a). Transportation of Minors with Intent to Engage in Criminal Sexual Activity 
• 18 USC 2423(b). Interstate or Foreign Travel with Intent to Engage in a Sexual Act with a Juvenile 
• 18 USC 2425. Use of Interstate Facilities to Transmit Information About a Minor 
• 42 USC 13032. Reporting of Child Pornography by Electronic Communication Service Providers 
• 42 USC 14072. Pam Lychner Sexual Offender Tracking and Identification Act of 1996 
• Source: Federal Bureau of Investigation-CAC (Crimes Against Children)- Federal Statutes (http://www.fbi.gov)

**APPLICABLE FEDERAL ACTS**

• Protection of Children Against Sexual Exploitation Act of 1977 
• The Child Pornography Act of 1984 
• Child Protection Act of 1984 
• Child Abuse Victim’s Rights Act of 1986 
• Child Protection and Obscenity Enforcement Act of 1988 
• Child Protection Restoration and Penalties Enhancement Act of 1990 
• Communications Decency Act of 1996 
• The Child Pornography Prevention Act of 1996 
• Child Online Protection Act of 1998 
• Protection of Children from Sexual Predators Act of 1998 
• Children’s Internet Protection Act of 2000 
• The Children’s Privacy Protection and Parental Empowerment Act (also known as the “Polly Klaas Bill.”

Source: National Center for Missing and Exploited Children (NCMEC)

**Immediate Legal Challenges to These Acts**

• The Federal Communications Decency Act of 1994 was declared unconstitutional by the U. S. Supreme Court. 

• The Child Pornography Prevention Act of 1996 (CPPA), 18 USC 2256, includes “virtual” children that “appear to be” a minor, engaging in sexually explicit conduct under Item B. This language was viewed as overly broad and vague
(appears to whom?) in *Free Speech Coalition v Reno*, 198 F 3d 1083, (CA 9, 1999). On April 16, 2002, the U. S. Supreme Court affirmed.

- The Child Online Protection Act of 1998 (COPA), 47 USC 231, was challenged as unconstitutional in *ACLU et al v Reno* (or Reno II). It was argued that worthwhile educational material would be denied along with pornography.


### More Legal Challenges

Legislators and lawmakers have served to establish guidelines and definitions for pornography and obscenity and for the general protection of children. Beginning with the Communications Decency Act of 1996, these laws were specifically tied to computer and Internet communications. Just as the early child labor laws were challenged for attempting to limit interstate commerce, laws that attempt to limit communications while attempting to protect children are immediately challenged on First Amendment grounds. This was the case with the Communications Decency Act of 1996 (CDA). This act was established to protect minors from pornography and obscene material on the Internet. A provision of the act applies specifically to minors and makes it illegal to “knowingly” transmit “obscene or indecent” material to minors, defined as persons under the age of eighteen.

This act was challenged in *Reno v ACLU* as a violation of free speech guaranteed in the First Amendment. The Court banned Section 223 (a) and (d) declaring that the language in these sections was unconstitutional, on the grounds that the terms “obscene” and “indecent” were not clearly distinguished from each other and were overly broad and

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13 47 USC 5

14 *Reno v ACLU*, 520 US 1113; 117 S Ct 1241; 137 L Ed 2d 324 (1997)
vague. The Court felt that Congress could ban “obscene” materials from minors, but not “indecent” materials. The Court also felt that the CDA suppressed not only speech harmful to minors, but also speech adults have a right to, as well as potential educational material of a sexually explicit nature and likened this to “burning the house to roast the pig.”

What is considered “obscene” by law was determined in *Miller v California* in 1973\(^{15}\) in the three-prong test still used today as follows: under *Miller* the trier of fact must prove that:

1. whether “the average person, applying contemporary *community standards*” would find the work, taken as a whole, appeals to the prurient interest,
2. whether the work depicts or describes, in a *patently offensive* way, sexual conduct specifically defined by state law,
3. whether the work, taken as a whole, *lacks serious literary, artistic, political, or scientific value*.

The Child Pornography Prevention Act of 1996 (CPPA)\(^{16}\) prohibits the use of computer technology to “knowingly produce child pornography that contains depictions of real children as well as ‘virtual’ or ‘fictitious’ children.” The language used in part (A) of Section 2256 “appears to be” and in (D) “conveys the impression” of a child proved troublesome to a California Court in the case of *Free Speech Coalition v Reno*\(^{17}\) as appearing too overly broad and vague (appears to be a child to whom?). Prior to this, two

\(^{15}\) *Miller v California*, 413 US 15; 93 S Ct 2607; 37 L Ed 2d 419 (1973)

\(^{16}\) 18 USC 2256

\(^{17}\) *Free Speech Coalition v Reno*, 198 F 3d 1083 (CA 9, 1999) and 220 F 3\(^{rd}\) 1113 (CA 9, 2000)
Federal Circuit Courts of Appeal previously had upheld and allowed this same language as constitutional in the Maine case of *US v Hilton*,¹⁸ and again in the Florida case of *US v Acheson*.¹⁹ A writ of certiorari was granted on January 22, 2001 and on April 16, 2002 the U.S. Supreme Court affirmed the 9th Circuit decision in *Ashcroft v Free Speech Coalition*.²⁰ The reasoning given by the Court was that the government “failed to show a causal link between computer-generated images of child porn and harm to actual children.”

In an attempt by legislators to pass a substitute to cover the sections of the Communications Decency Act (CDA) of 1996 that were ruled unconstitutional by *Reno v ACLU* the Child Online Protection Act of 1998 (COPA)²¹ was passed. This is sometimes referred to as “son of CDA” and was challenged in *Ashcroft v ACLU*,²² or the *Reno II* case. *Ashcroft* challenged the “community standards” provision defining obscenity, arguing that the government cannot constitutionally apply “contemporary community standards” to all of cyberspace. Certiorari was granted to the Supreme Court on May 21, 2001 and they reversed a decision of the lower court which stated that COPA was unconstitutional only because they felt the lower court erred in that “if the Court struck down COPA based solely on the “community standards” test, then all “all federal obscenity standards would likely also be unconstitutional if applied to the Web.”

¹⁸ *US v Hilton*, 167 F3d 61 (CA 1, 1999)
²¹ 47 USC 231
²² 122 S Ct 1700 (2002)
The Protection of Children from Sexual Predators Act of 1998\(^3\) further protects children from those who “knowingly use the Internet for commercial purposes harmful to minors or the use the Internet for purposes of engaging in sexual activities with minors.”

The Children’s Internet Protection Act (CIPA) of 2001, which threatens to take away funding from schools and libraries for non compliance, was also challenged as unconstitutional. The law requires technology departments to have Internet policies and blocking software in place or lose funding. The Philadelphia Eastern District court initially challenged the law in \textit{US v ALA & Multnomah County Public Library et al}, (May, 2002) as unconstitutional. The Philadelphia court opinion was appealed and reversed in \textit{US v American Library Association, Inc., et al}, (Feb. 2003). It was decided that strict scrutiny did not apply to library content decisions and that the filtering software requirements of CIPA were reasonable. It also argued that if the library has discretion to not include adult pornographic materials in written form for its shelves, the library has the same reasonable right to decide what it will provide to patrons via the computer.

Another Federal Act called the Children’s Privacy Protection and Parental Empowerment Act (also known as the “Polly Klaas Bill”) ensures that personal information about minors cannot be bought and sold without the parent’s knowledge and permission.

Liability extends to Internet Service Providers (ISPs) now under the Reporting of Child Pornography by Electronic Communications Service Providers Act.\(^{24}\) Locally in the State of Michigan (under then-Attorney General Jennifer Granholm) supported this law.

\(^{23}\) 18 USC 302

\(^{24}\) 42 USC 13032
STATE of MICHIGAN FIGHTS BACK

Closer to home, in Michigan courts, the “impossibility” defense was un成功的ly attempted in 2001 in the Michigan case of People v Thousand[^25]. An undercover police officer posing as a minor caught Christopher Thousand, the defendant, soliciting over the Internet to meet up with a “minor” for sexual activity. Thousand argued that since there was actually no minor, there was no crime committed. The Michigan Court in Thousand ruled that “this court has never relied upon the doctrine of the impossibility defense” and “only the preparation to engage in the activity was necessary” to prosecute the crime.

The State of Michigan, under then-Attorney General Jennifer Granholm, also successfully passed law that increased penalties for possession of child pornography to a 4-year felony (formerly a one-year misdemeanor) and allows for “virtual” and “computer-generated” or “morphed” child porn to be treated the same. In an attempt to prevent the attacks leveled at the federal statute of the CPPA of 1996 (Child Pornography and Prevention Act)[^26], extra language was included in the CPPA Act of 1996 stating that a defendant must “know or have reason to know” that the image “includes or is intended to appear to include a child or convey the impression that the material includes a child.”[^27]

State of Michigan, then-Attorney General Jennifer Granholm also teamed up with the Michigan State Police in 1999 to create Michigan’s first ICAC task force. In 2002 Granholm’s Attorney General’s office issues cease and desist orders against 3rd party

[^26]: 18 USC 110
[^27]: HB 5296, 2002 PA 629, Approved December 30, 2002 amending sec. 145c of 1931 PA 328, MCL 750.145c
billing companies catering to foreign fee-based child porn web sites who had been successfully getting around U.S. laws by trafficking their wares to U.S. credit card clients via U.S. affiliated billing companies.\textsuperscript{28}

Wayne County gained national attention by creating Michigan's 1\textsuperscript{st} County ICAC unit under then Sheriff Ficano. The current Sheriff Evans has picked up the ball and ran with it using the same ICAC team and successfully catching a perpetrator per week on average since January, 2003.\textsuperscript{29} This office also drafted the Michigan Internet Minimal Identifiers Act, after becoming frustrated with child pornographers successfully hiding behind free ISPs such as NetZero. This law would require free ISPs operating in the State of Michigan to identify subscribers and verify their customers' phone and credit card information.\textsuperscript{30}

\textbf{MORE UNSETTLED ISSUES}

Other important areas of law that are creating significant challenges for law enforcement are cyberstalking\textsuperscript{31} and issues of electronic evidence seizing and gathering and decryption.\textsuperscript{32}


\textsuperscript{29} Wayne County Sheriff Neighborhood News. http://www.waynecounty.com/sheriff.html


One question that has also been pondered in regards to protection of children versus Constitutional rights should be mentioned here and that is; why are children not afforded the same protections under the Constitution as adults? They are “people” and “citizens” too and deserve the same protections as adults. In my opinion, the decision of *Roe v Wade* (i.e. the disposability of an unwanted child via our “privacy” and our “liberty”) has created a negative attitude that children are expendable and disposable “things”. They are not; they are a precious gift; our future, our children. “Virtual”, “computer-drafted and/or generated” and “morphed” pornographic images of children should be treated the same as those that use actual children or photos of children. They are just as harmful to children. In my opinion, if you abuse the image of the child, you abuse the child. In fact, statistics show that the link between child pornography and child sexual abuse is very strong. *New York v Ferber* stated that the “link between child pornography is ‘intrinsically related’ to child sexual abuse.” Lawmakers have begun taking a serious look at this in Joint Resolution HJ RES 65 in the House of Representatives (July, 2003) where they proposed an amendment to the US Constitution respecting both real and virtual child pornography and the protection of children from harm on both federal and state levels. The burden of proof should be shifted to perpetrators/defendants to prove that the image is NOT depicting actual minors rather than the burden being on the government to prove that it IS depicting a minor as is currently the case. The “Protect Act” of Feb, 2003, sponsored by Senator Orin Hatch, a Utah Republican, supports this. The Protect Act S.151 became Public Law 108-21 as of

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*New York v Ferber, 458 US 747; 102 S Ct 3348; 73 L Ed 2d 1113 (1982)*
April 30, 2003. We also see some further effort to better protect children in the Child Obscenity and Pornography Prevention Act of 2003 (HR 1161).

CONCLUSION

It is obvious that this is still a highly unsettled area of law and continues to be a highly debated and very heated topic. In the meantime, we see more and more articles in the news concerning child abductions, exploitations and enticement using the internet. It is an understatement to say that internet crimes against children is an unsettled area of law. Law enforcement continue to struggle to keep up with the criminals while legislators walk the fine line between protection of children and too much government intrusion, safeguarded mainly in the First, Fourth, Fifth and Fourteenth Amendments.