# Online Child Pornography: A New Challenge for the Society

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ABSTRACT: Controlling online child pornography has always been a challenge for the global community. The introduction, growth, and utilisation of information and communication technologies (ICTs) have been accompanied by an increase in illegal activities. With respect to cyberspace, children's massive online presence and the rise of child pornography as a business are forcing all countries to adopt strong laws and collaborate internationally to tackle this threat. Recent online search trends indicate a manifold increase in the search for child pornographic material. Although there is a diversity of opinions on the definition of child pornography and the appropriate punishment, it is widely accepted that the Internet has exposed more children to pedophiles, mostly from poor countries. With respect to Egypt, almost 55% of the population has access to the Internet, and most Internet users access social networking sites. On such a basis, this article seeks to address and analyse the following issues: Firstly, the impact of ICTs on the spread of online child pornographic material and the techniques used by offenders. Secondly, an analysis of the existing legislative and regulatory framework and their efficiency in combating this form of organised crime will be provided, taking Egypt as a case study. Finally, the paper will conclude by discussing some recommendations that should be taken to protect children and society and minimise the risk of utilising ICTs in illegal criminal activities, especially with respect to child pornography.

KEYWORDS: Child pornography, Criminalization, Pedophiles, Sexual misconduct, Egypt

"[C] aring for our children. It's our first job. If we don't get that right, we don't get anything right. That's how, as a society, we will be judged"

President Obama

# 1. Introduction

The investigation of cybercrime and the gathering of appropriate evidence for a criminal prosecution, the science of "forensic computing", "digital forensics", or "cyber forensics", can be a challenging and complex issue (Walden 2007, 205). This is primarily due to the intangible and often transient nature of data, especially in a networked environment. The technology renders the process of investigation and recording of data for evidence extremely vulnerable to defense claims of errors, technical malfunction, prejudicial interference, or fabrication (ibid). Such claims may lead to a ruling from the court against the admissibility of such evidence. A lack of adequate training of law enforcement officers, prosecutors, and the judiciary will often exacerbate these difficulties. In many countries, substantial efforts have been made over recent years to address this training need, with the establishment of specialized facilities and courses, supplemented by training courses offered by the vendors of forensic applications and services (ibid). The true problem of the information and communications era, therefore, seems to be to decide exactly how much value should be attached to a given piece of information, especially when that information is stored electronically and digitally (Van der Merwe et al. 2008, 104). In the past, when law enforcement investigated a crime, the investigators who analyzed the evidence used to present it to the judge to assist him in making the correct decision. Criminal investigation training

courses always include some forensics to understand what prosecutors and judges require regarding evidence (Wang 2006, 217). The focus is on the collection and preservation of effective evidence. In other words, at a computer-based crime scene, the greatest attention must be given to specifying digital evidence. The major feature which distinguishes cyber-crime from conventional crime is that the evidence at the crime scene is represented in electronic form. This also makes it easier for the criminal to store, conceal, propagate, and remove the information and makes it is more difficult to identify him/her (ibid).

Though cybercrimes could be, and are, committed within states, the opportunities for a wider reach of victims, global attention, greater economic gain, etc., would influence a cybercriminal to widen his reach and perpetrate cybercrimes on a transnational level (Oshikhena 2019, 16).

In sexual offenses, the Internet may be involved in several ways resulting in many sources of digital evidence. It can be an instrumentality when it plays an important role in the commission of the crime, such as enticement of children to engage in sexual activity (Ferraro et al. 2005, 4). Besides, Durkin proposes how the Internet can be utilized by sex offenders to disseminate images for personal and/or commercial reasons; or to engage in inappropriate sexual communication with children and/or to locate children to abuse (Beech et al. 2008, 217). Lanning suggests that abusive images downloaded from the Internet may be used to desensitize and/or lower inhibitions in an offender or victim before or during an offense (ibid). However, the "stickiness" of data is attributable, in part, to the multiple copies generated by the communications process, particularly in an Internet environment, as well as how data is held and removed on electronic storage media. While the "stickiness" of data will work to the advantage of an investigator, data availability may not enable a successful prosecution where the defendant is unaware of its existence. Conversely, the widely held perception that data held on an ICT resource is transient may work to the advantage of a defendant, where he/she can raise doubt as to the existence or otherwise of relevant forensic data.

Child pornography began with the camera in the 19<sup>th</sup> century and has evolved with technology ever since. Before the 21<sup>st</sup> century, child pornography was expensive, difficult to acquire, and the produced images were for trading and personal collectors (Garcia 2016, 4).

Internet child pornography is unlike most crimes local police departments handle. Local citizens may access child pornography images produced and/or stored in another city or on another continent. Alternatively, they may produce or distribute images that are downloaded by people thousands of miles away. An investigation that begins in one police district will almost certainly cross jurisdictional boundaries. Therefore, most of the major investigations of Internet child pornography have involved cooperation among jurisdictions, often at an international level (Wortley and Smallbone 2012, 5).

Children may spend considerable time on the Internet for different purposes, including surfing gaming sites, YouTube, apps etc. This may further invite trouble as children may get in touch with unknown predators, including the paedophiles. Children may also become victims of the porn industry as their digital footprints, images, and other identifying data, including facial images, may be used by porn content creators (Prakash 2018, 347). Internet child pornography is only one of several problems related to either child abuse or the Internet. Other related problems not directly addressed by this article include Child Abuse: violence and fatalities, neglect, abandonment, exposure to hazardous materials (e.g., clandestine drug labs), trafficking of children and babies and illegal adoption agencies, juvenile runaways. Internet Crime: online solicitation of children for sexual activity (Schulz et al 2016), identity theft (sometimes known as phishing) and hacking (Wortley and Smallbone 2012, 5).

It is difficult to be precise about the extent of Internet child pornography, but all available evidence points to it being a major and growing problem. At any one time, there are estimated to be more than one million pornographic images of children on the Internet, with 200 new images posted daily (ibid p. 12). One offender arrested in the U.K. possessed

450,000 child pornography images. It has been reported that a single child pornography site received a million hits in a month. As noted above, one problem in estimating the number of sites is that many exist only for a brief period before they are shut down. Much of the trade-in child pornography takes place at hidden levels of the Internet. It has been estimated that there are between 50,000 and 100,000 pedophiles involved in organized pornography rings around the world, and that one-third of these operate from the United States (ibid).

This article takes as its theme child pornography within the context of the Internet. The article sets out to provide a critical assessment of Internet child pornography and its governance through Egyptian legal means. Section 2 opens by talking about the definition of child pornography; Section 3 is about the role of the Internet in promoting child pornography. Section 4 provides an analysis of the existing legislative and regulatory framework and their efficiency in combating this form of cross-border crime, taking Egypt as a case study. Section 5 discusses some recommendations to fight the use of the Internet in illegal activities, especially with respect to online child pornography. Finally, section 6 concludes by highlighting that if cyberlaw is to be effective in the fight against child pornography it has to directly and explicitly address modem technologies'role in the production and distribution of child pornography.

# 2. Defining child pornography

There is no settled definition of child pornography. What constitutes child pornography in one jurisdiction may not be classified as child pornography in another. Definitions of a "child" and "child pornography" may vary between legal jurisdictions in the same country.<sup>2</sup> The content of materials that may constitute child pornography is varied. Adults with a sexual interest in children may collect a range of pictures and other materials that depict children. Not all of these materials will constitute child pornography, and not all will be illegal. These materials can be broadly "categorised along a continuum from less explicitly sexual, through nudity to explicitly sexual. Three broad categories can be identified: (1) erotica, (2) nudity, and (3) sexually explicit materials (Shackel 1999, 145).

The first category, erotica, consists primarily of materials that do not involve either nudity or depiction of sexual behaviour, such as pictures of children in underwear or swimsuits. These materials are unlikely to fall within definitions of child pornography. The second category that can be identified involves materials that contain nudity in some form. Nudity per se is not illegal. However, some of these materials may be implicitly sexual and may make use of children in provocative poses. The more sexual materials in this category may fall within some legal definitions of child pornography. This category may be viewed as analogous to "softcore" pornography in adult pornography. The third category that can be identified consists of materials that are explicitly sexual. These materials may focus on particular areas of a child's body, such as the genital or anal areas or may portray children engaged in real or simulated sexual acts. In most jurisdictions, these materials will fall within the definition of child pornography and may be viewed as corresponding to the "hardcore" pornography associated with adult pornography (ibid).

Putting aside national differences, even international attempts to define child pornography have failed to yield a clear, unambiguous working definition. Child pornography is difficult to define "in a multi-national environment" where various cultural, moral, religious, and legal standards coexist. The complexity of defining child pornography has been intensified by the arrival of the Internet, which has destroyed national boundaries and introduced child pornography into a global society with no clearly defined social, sexual, or legal standards.

Professor Vitit Muntarbhorn as the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in 1990, defined "child pornography" as "the visual"

or audio depiction of a child for the sexual gratification of the user and involves the production, distribution, and use of such material." The International Police Organisation's (Interpol) Standing Working Party, established to deal with offences against minors, described "child pornography" as: "a consequence of sexual exploitation or abuse of a child. It can be defined as any means of depicting or promoting the sexual exploitation of a child, including written or audio material, which focuses on the child's sexual behaviour or genitals." Also, in her report dated 20 September 1995, the current Special Rapporteur for the Sale of Children, Child Prostitution, and Child Pornography, Ms. Ofelia Calcetas-Santos recognised that "[t]here can hardly be any better illustration of the complications brought about by the advent of modem technology than in the field of pornography, including child pornography." The Special Rapporteur concluded that: "in light of recent developments where the telephone or other audio devices are also being widely used for pornographic messages involving children, there is now a need to distinguish visual from audio pornography." Accordingly, the Special Rapporteur defined "visual pornography" as: "the visual depiction of a child engaged in explicit sexual activity, real or simulated, or the lewd exhibition of genitals intended for the sexual gratification of the user, and involves the production, distribution and or/use of such material."

"Audio pornography" was defined as "the use of any audio devices using a child's voice, real or simulated, intended for sexual gratification of the user, and involves the production, distribution and I or use of such material (ibid).

Despite these positive developments, more recent definitions of child pornography have nevertheless failed to embody the audio dimension of child pornography recognised in earlier definitions and emphasised by the Special Rapporteur, Ofelia Calcetas-Santos. It is submitted that Special Rapporteur Calcetas-Santos' definition of child pornography is currently the most apposite and should, as a minimum, be adopted in all international instruments and laws that deal with child pornography (ibid).

## 3. The role of the Internet in promoting child pornography

The Internet has escalated child pornography by increasing the amount of material available, the efficiency of its distribution, and the ease of its accessibility. Specifically, the Internet (Wortley and Smallbone 2012, 9):

- Permits access to vast quantities of pornographic images from around the world;
- Makes pornography instantly available at any time or place;
- Allows pornography to be accessed (apparently) anonymously and privately;
- Facilitates direct communication and image sharing among users;
- Delivers pornography relatively inexpensively;
- Provides images that are of high digital quality, do not deteriorate, and can be conveniently stored;
- Provides for a variety of formats (pictures, videos, sound), as well as the potential for real-time and interactive experiences;
- Permits access to digital images that have been modified to create composite or virtual images (morphing).

The Internet's role in child pornography can be divided into three cycles—the production, distribution, and downloading of images. In some cases, the same people are involved in each stage. However, some producers and/or distributors of child pornography are motivated solely by financial gain and are not sexually attracted to children (ibid).

#### 3.1. Production

This involves the creation of pornographic images. Collectors place a premium on new child pornography material. However, many images circulating on the Internet may be decades old, taken from earlier magazines and films. Images may be produced professionally, and, in these cases, often document the abuse of children in third-world countries. However, more commonly, amateurs make records of their own sexual abuse exploits, particularly now that electronic recording devices such as digital cameras and webcams permit individuals to create high quality, homemade images. With the advent of multimedia messaging (MMR) mobile phones, clandestine photography of children in public areas is becoming an increasing problem (ibid).

#### 3.2. Distribution

This involves the uploading and dissemination of pornographic images. These images may be stored on servers located almost anywhere in the world. Distribution may involve sophisticated pedophile rings or organized crime groups that operate for profit, but in many cases, it is carried out by individual amateurs who seek no financial reward. Child pornography may be uploaded to the Internet on websites or exchanged via email, instant messages, newsgroups, bulletin boards, chat rooms, and peer-to-peer (P2P) networks. Efforts by law enforcement agencies and Internet Service Providers (ISPs) to stop the dissemination of child pornography on the Internet have led to changes in offenders'methods. Child pornography websites are often shut down as soon as they are discovered, and openly trading in pornography via email or chat rooms is risky because of the possibility of becoming ensnared in a police sting operation (e.g., undercover police entering chat rooms posing as pedophiles or as minor children). Increasingly those distributing child pornography are employing more sophisticated security measures to elude detection and are being driven to hidden levels of the Internet (ibid).

## 3.3. Downloading

This involves accessing child pornography via the Internet. The images do not need to be saved to the computer's hard drive or to a removable disk to constitute downloading. In some cases, a person may receive spam advertising child pornography, a pop-up link may appear in unrelated websites, or he may inadvertently go to a child pornography website (e.g., by mistyping a keyword). However, in most cases, users must actively seek out pornographic websites or subscribe to a group dedicated to child pornography. In fact, it has been argued that genuine child pornography is relatively rare in open areas of the Internet, and, increasingly, those seeking to find images need good computer skills and inside knowledge of where to look. Most child pornography is downloaded via newsgroups and chat rooms. Access to websites and online pedophile groups may be closed and require paying a fee or using a password (ibid).

# 4. Responses to the problem of child pornography on the internet: Egyptian approach

In Egypt, Law No. 12 of 1996 on Child Rights amended by Law no. 126 of 2008 governs child pornography and child sexual abuse.<sup>3</sup> This law also guarantees the fulfillment of children's rights to live, grow and develop. Article 1 of the Law requires the state to be responsible for children's welfare and to guarantee the rights afforded to them in international conventions. Article 2 defines a "child" as a person under the age of eighteen. Article 3 ensures a child's right to life, survival, and development in a supportive family environment and to be protected from all forms of violence and injury; physical, mental, and sexual abuse;

and negligence and exploitation. Article 3(b) stipulates that children must be protected from all forms of discrimination based on their birthplace, parents, sex, religion, race, disability, or any other status, and must be guaranteed equal opportunity among children.

Article 89 prohibits to publish, show, or circulate any printed material or audio or visual productions on children's that addresses basic instincts or beautifies behavior contrary to society values, or leads them to delinquency.

Article 96 (6) stipulates that the child shall be considered at risk if he is exposed to a situation threatening the sound upbringing that should be made available to him, or in any of the following cases:...If the child is exposed in the family, school, care institutions, or other to violence, or acts contrary to public morals, or pornographic material, or commercial exploitation of children, or harassment or sexual exploitation, or the illegal use of alcohol or narcotic substances affecting the mental state.

Article 116- bis (a) stipulates that "Shall be imprisoned for a period of not less than two (2) years and a fine of not less than ten thousand (10,000) Egyptian pounds, and not exceeding fifty thousand (50,000) Egyptian pounds anyone importing, or exporting, or producing, or preparing, or viewing, or printing, or promoting, or possessing, or broadcasting pornographic material using children, or related to the sexual exploitation of children. Under article 113, any adult who neglects to look after a child, thereby placing the child at risk, is punishable by a fine. Also, under article 114, a child's guardian whose negligence in carrying out his or her duties toward the child compromises the child's safety or morals is punishable by a fine or imprisonment for three months to one year. Moreover, article 116 punishes an adult who induces a child to commit a misdemeanor, or assists or facilitates in the commission of one, with imprisonment for one to seven years.

Furthermore, Egypt has ratified the Convention on the Rights of the Child in 1990 and the Optional Protocol to the Convention on the Rights of the Child on children's sale, child prostitution and child pornography in 2002.

Finally, Internet Service Providers in Egypt are not liable for the pornographic material placed on their systems by a user, so long as the online host does not have "actual knowledge" of the activity. Upon obtaining such knowledge, the online host must act expeditiously to remove or to disable access to the pornographic material adopted.

According to article 7 of Cybercrime Law no. 175 of 2018, the Service Provider shall, upon a court decision, block any website or content constituting a cybercrime. In case of non-compliance, the Service Provider shall be punishable by a minimum of one-year imprisonment and/or a fine not less than 500,000 EGP and up to 1 million EGP. The law also provides for an aggravated penalty if such non-compliance resulted in the death of one or more persons.

#### 5. Recommendations

"An ounce of prevention is worth a pound of cure" (Benjamin Franklin)

There is no doubt that children must be able to participate optimally according to human dignity. Children must receive protection from acts of violence and discrimination online and offline (Suharti et al. 2019, 2). For those areas of the world where children have access to the Internet, especially where they have access without a requirement of supervision, both the positive and negative effects of this accessibility will likely become ever more evident (Bross 2005, 749). Surveys of parents suggest that they buy home computers and subscribe to Internet access to provide educational opportunities for their children and to prepare them for the information-age (Subrahmanyam et al. 2001, 8). However, most parents' greatest fear is that their child could be a victim of sexual abuse. Consequently, children are trained from an early age to fear strangers. Therefore, it's quite a paradox that approximately 80-90% of all

sexual child abuse is committed by someone close to the child. In the U.S.A., a study found that (55%) of children aged 12–15 stated that they did not tell their parents everything they did on the Internet. Yet, adults kept an eye on children's Internet use (91%), limited online hours (62%), and used software to filter or block questionable websites (32%); moreover, two-thirds (67%) of children surveyed had to ask permission to access the Internet (Cankaya et al. 2009, 1108). Several recommendations for disrupting sexual abuse of children and child pornography using the Internet can be mentioned. Some of these recommendations will be expressed in this section.

- It is recommended that policymakers acknowledge the complexity of child sexual abuse since this offense is unlikely to be efficiently prevented unless the diversity of the people who sexually exploit children or abuse them is fully taken into account.
- It is highly recommended that all national governments sign the Convention of Cybercrime and the Council of Europe Convention on Action against Trafficking in Human Beings.
- Since Internet Service Providers have a vital role in protecting children on the Internet, it is important that governments implement legislation where the self regulation of ISPs has failed.
- Justice and compensation to victims of sexual abuse remain an unresolved issue to be dealt with within a judicial system that takes account of the rights of the child's rights.
- National Governments should also fund research into the reactions and treatment of victims of child abuse. It is essential that governments raise societal awareness about the trauma children suffer through the production and distribution of child pornography.

## 6. Conclusion

The explosive growth in child pornography online is one of the most profound and complex problems that confront the world today. Cyberlaw has a fundamental role in regulating child pornography in a global society where national borders and boundaries are rapidly disappearing. In particular, cyberlaw must redress the impact of modem technologies, particularly computer technology and the advent of the Internet, on the trade-in child pornography. This paper has demonstrated that Egyptian Law has begun to recognise and acknowledge the formidable impact of technology on the legal regulation of child pornography and is accordingly attempting to address the emergent issues in various international fora.

If cyberlaw is to be effective in the fight against child pornography it has to directly and explicitly address modern technologies' role in the production and distribution of child pornography. To a large extent, the problems posed by advances in electronic technologies are new problems, and so new solutions will have to be explored.

## Endnotes

<sup>&</sup>lt;sup>1</sup> Transcript: President Obama at Sandy Hook Prayer Vigil, NAT'L PUB. RADIO (Dec. 16, 2012, 10:39 PM), Cohen, Beth and Newcombe, Pat, Prosecution of Child Pornography—The One-Eyed Judge by Michael A. Ponsor: A Book Review (2018). Western New England Law Review, Vol. 40, p. 159, 2018, Available at SSRN: https://ssrn.com/abstract=3192178.

<sup>&</sup>lt;sup>2</sup> For example under federal law in the U.S. child pornography is defined as "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or

produced by electronic, mechanical, or other means, of sexually explicit conduct," where (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct; (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or (C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct. Sexually explicit conduct is defined as actual or simulated (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or (v) lascivious exhibition of the genitals or pubic area of any person. *See* Duncan (2014).

The sexual abuse of children has long been a crime. *See* Dillof, Anthony. "Possession, Child Pornography and Proportionality: Criminal Liability for Aggregate Harm Offenses" (July 6, 2016). *44 Florida State University Law Review* 1331 (2018), Available at SSRN: https://ssrn.com/abstract=2811655.

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