

A Brief History of Child Pornography Laws

Child pornography is illegal and censored in most jurisdictions in the world. Ninety-four of 187 Interpol member states had laws specifically addressing child pornography as of 2008, though this does not include nations that ban all pornography. Of those 94 countries, 58 criminalized possession of child pornography regardless of intent to distribute (International Centre for Missing and Exploited Children, 2010). Both distribution and possession are now criminal offenses in almost all Western countries. A wide movement is working to globalize the criminalization of child pornography, including major international organizations such as the United Nations and the European Commission. (from Wikipedia, 2015)

For the past 20 years the Internet has seen an exponential rise in Internet sex crimes that include online child pornography, child solicitation, and solicitation leading to child contact.

- The number of arrests for child pornography offenses in the United States tripled from 2000 to 2009 (Wolak, Finkelhor, & Mitchell, 2011. *National Juvenile Online Victimization Project*).
- The number of online luring cases also increased during a similar period of time (United States - Wolak, et. al. 2008 and Canada – Loughlin, 2009).
- In the United States, online cases represent about 10% of the total number of sexual offense cases. (Choo, 2009; Loughlin & Taylor-Butts, 2009; Nicolas, Kershaw, & Walker, 2007)

Local, national, and international law enforcement have responded to growing threats to youth.

- Internet Crimes Against Children Task Force in the United States (<http://ojjdp.gov/programs/progsummary.asp?pi=3>)
- The FBI's cybercrime unit (<http://fbi.gov/about-us/investigate/cyber/cyber>). Their *Innocent Images Initiative* opened with 113 cases in 1996, which rose to 2,443 by 2007.
- Eric Holder announced the first national strategy on child exploitation prevention and intervention on Aug. 2, 2010.
- The U.S. Department of Justice (2010) identified over 20 million unique Internet protocol (IP) addresses accessing known child pornography files on peer-to-peer networks (using just 120,000 to 170,000 child porn files on their watch lists).
- Virtual Global Taskforce (2003), an international collaboration of police forces to combat online child sexual exploitation (<http://www.virtualglobaltaskforce.com>).
- Recently the Internet Corporation for Assigned Names and Numbers created a new category - .XXX – for designating sexually-explicit websites.

Child Pornography Laws

The Courts have responded with an expansion of laws related to online sex crimes.

- Prior to the 1970s, child pornography crimes were generally covered by obscenity laws.
- 1977 – Only 2 states had specific child pornography laws.
- 1978 – The introduction of the first federal child pornography law. The Federal Sexual Exploitation of Children Act prohibited the manufacture or commercial exploitation of obscene material involving persons under age 16. One result was that child pornography was no longer available in adult bookstores.
- The 1984 Child Protection Act made the depiction of sex involving a minor automatically obscene and outside of First Amendment protection. The Act also raised the legal age from 16 to 18, without concomitant changes in the legal ages of consent for sexual intercourse.
- American laws define child pornography as anything below age 18, with no distinction in categories. However, images of a prepubescent child is an aggravating factor.
- Written descriptions of sex with children are legal in the United States but not in Canada. (18 U.S.C. 2422 [1985], Criminal Code of Canada, R.S.C. Sec 172.1)
- Online sex offending cases produce high conviction rates – 95% or higher (Motivans & Kyckelhahn, 2007).

- U.S. Sentencing Commission data for federal child pornography sentences showed that in the late 1990s the average sentence was 3 years. A decade later this was 10 years and was comparable to those with contact offenses.

In the US, Federal sentencing guidelines recognize severity or culpability through increased penalties for:

- Children under the age of 12
- Depictions of sexually explicit activity
- Content depicting sadism or violence (but this can include any penetration)

The **Dost Test** outlined six considerations that need to be demonstrated at trial (US v. Dost, 1986):

- a. whether the focal point of the visual depiction is the child's genitals or pubic area
- b. whether the setting of visual depiction is sexually suggestive (e.g., lying down on a bed)
- c. whether the child is depicted in an unnatural pose or in inappropriate attire, considering the child's age
- d. whether the child is nude or clothed
- e. whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity
- f. whether the visual depiction is intended or designed to elicit a sexual response in the viewer.

The **COPINE scale** of severity of child pornography content (Taylor, Holland, Quayle, 2001)

- a. Nudity or erotic posing
- b. Solo masturbation or child-child sex
- c. Non-penetrative adult-child sex
- d. Penetrative adult-child sex
- e. Presence of other paraphilic content, such as bestiality or sadism

Child Pornography and Solicitation (Luring) Laws in the Countries

Where Most Online Offender Research Has been Produced*

Country	Child Pornography Law	Soliciting (luring) Law
Australia (Federal law)	Sexual depictions of person who are under age 18 or who appear to be so as judged by reasonable persons in the community (Krone, 2005)	Criminal Code Act 1995 sections 474.26 and 474.27 prohibit the use of a "carrier service" to communicate with the intent to procure a person under the age of 16 or expose such a person to any indecent matter for the purposes of grooming.
Canada	Sexually explicit visual content of someone under age 18 or depicted as under age; written or visual depictions that counsel sexual activity with someone under age 18. Exemption for artistic, educational, scientific or medical merit. (Criminal Code of Canada)	Electronic communication with a person believed to be a child for the purpose of facilitating the commission of sexual offences. Depending on the offence, the requisite age (real or believed) of the intended victim varies from 14 to 18 (Criminal Code of Canada)
United Kingdom	Depictions of persons under age 18. Sentencing Advisory Panel distinguishes between five types of child pornography content based on the COPINE typology: a) images depicting nudity or erotic posing; b) sexual explicit without adult, for example, masturbation or sexual interactions between children; c) nonpenetrating acts between adult and	In England and Wales, sections 14 and 15 of the Sexual Offences Act 2003 make it an offense to arrange a meeting with a child, for oneself or someone else, with the intent of sexually abusing the child. The meeting itself is also criminalized. The Protection of Children and Prevention of Sexual Offences (Scotland)

	child; d) penetrative acts between adult and child; and e) depictions incorporating sadism or bestiality.	Act 2005 introduced a similar provision for Scotland.
United States (Federal law)	Sexually explicit visual content of someone under age 18 or depicted as under age 18; obscene fictional depictions of someone under age 18 unless there is “literary, artistic, political, or scientific value.” Viewing child pornography without actively downloading and saving the image is illegal under federal law (PROTECT Act of 2003)	Luring a minor to cross state lines for sexual purpose or using electronic or other means to transmit contact information regarding a minor. Traveling to meet the minor met online would also violate federal law if one of the computers involved was in different state. (Sexual Exploitation of Children Act)

*Michael Seto, *Internet Sex Offenders* (2013), p. 14

Only a minority of child pornography possessors are producers.

- In one study, 12% of child pornography offenders were convicted for production (Eke et al, 2011, National Juvenile Online Victimization Project).
- Producers distributed their images in only about a quarter of cases (Wolak, Finkelhor, and Mitchell, 2011).
- Commercial production of CP is exaggerated. CP production is most often driven by the memorialization of sexual abuse for future fantasy/masturbation or blackmail (Risbisl & Quayle, 2012; Sheehan & Sullivan, 2010).
- Over half of producers are parents, guardians, or persons with care over the children photographed. Parents were 22%, other family members were 10%, and family friends were 47% (M. Collins, 2012; National Center for Missing and Exploited Children Report, 2012).