

Aggravating and Mediating Considerations

A “Continuum of Culpability”

This phrase is first described in written submissions to the US sentencing commission prior to its public hearing on federal child pornography sentencing guidelines on February 15, 2012. There’s a range of culpable behaviors, ranging from possession of child pornography (Receipt) - to distribution - to production.

- Legal and computer experts make a further distinction between *passive* and *active* distribution. Passive distribution refers to files that can be shared (perhaps inadvertently because a person was unaware of how the software works) in peer-to-peer file sharing networks, the highest volume method for distribution at this time. This is “*passive*” because often the possessor of the traded files doesn’t know that hundreds or thousands of files can be accessed through their personal computer sharing.
- In contrast, *active* distributors interact with other individuals, often through sites dedicated to pedophilic topics, and making contacts with other possessors in online forums and then arranging private trades of child pornography content.

Another possible legal distinction might be made between those who record secretly (called “*secretive producers*”) and those who record contact sexual offenses that they or their accomplices commit.

- Some researchers have proposed those who actively distribute should be held more culpable, then those who passively distribute, and then those who possess images without distribution.
- Researchers have also suggested that sentences should be more severe for those individuals who record their sexual offenses then for those who covertly produce images.

Offender Actions

Child Pornography

- Is the material primarily of children or adolescents?
- Are there sadistic elements?
- Is there solicitation?
- Is there attempted contact?
- Is there actual contact?
- Is there distribution?
- Is distribution passive or active?
- Is there production?
- Is it secretive production or recordings of actual offenses?

Soliciting

- Is there child pornography?
- Is there adolescent pornography?
- Were there elements of blackmail or threatening?

Contact Offenses

- Is the contact with a child or adolescent?
- Is there child pornography?
- Is there adolescent pornography?
- Were there elements of blackmail or threatening?