

Film and Publication Board



child pornography

...an internet plague

FAQ's





Chapters

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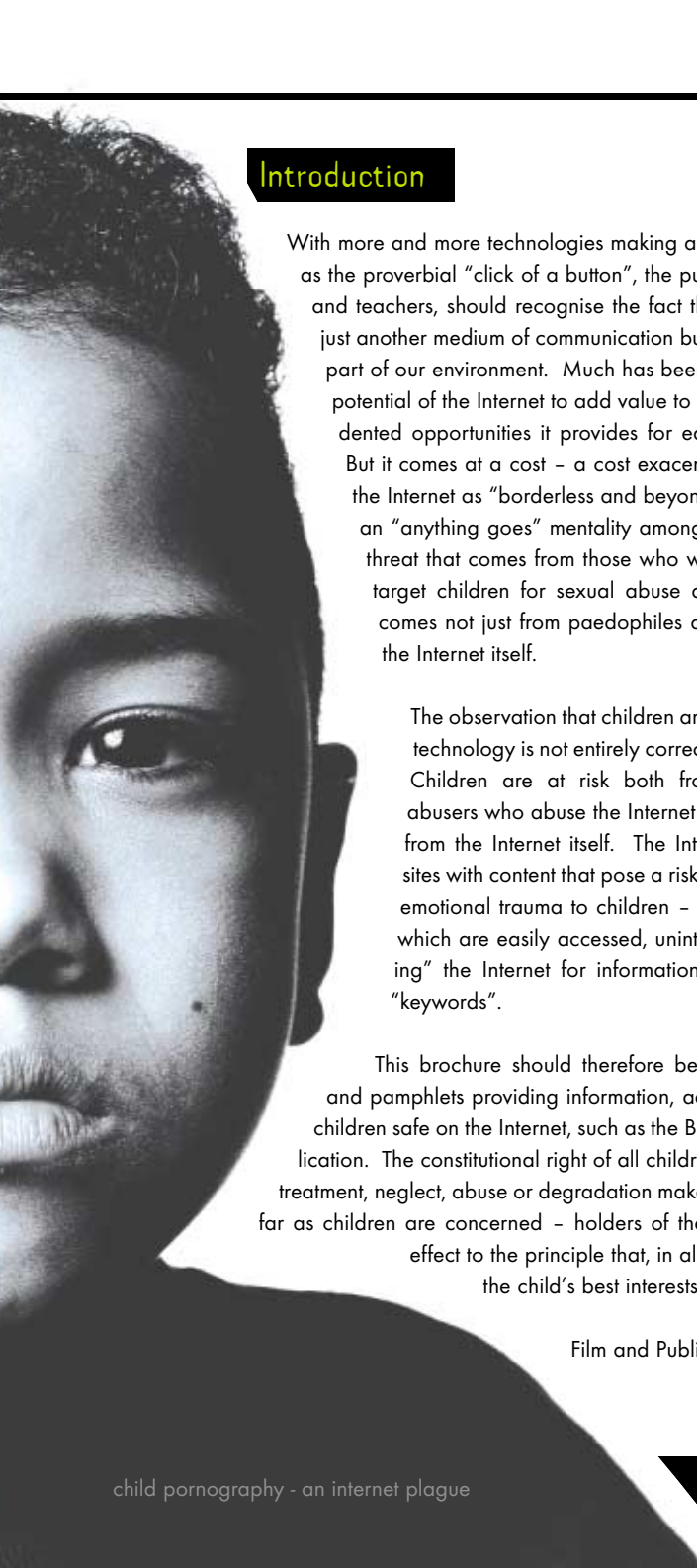
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Introduction

With more and more technologies making access to the Internet as easy as the proverbial “click of a button”, the public, and especially parents and teachers, should recognise the fact that the Internet is no longer just another medium of communication but very much an inescapable part of our environment. Much has been said and written about the potential of the Internet to add value to our lives: about the unprecedented opportunities it provides for education and entertainment. But it comes at a cost – a cost exacerbated by the very nature of the Internet as “borderless and beyond control” and encouraging an “anything goes” mentality among its users. The “cost” is the threat that comes from those who would exploit the Internet to target children for sexual abuse and exploitation. The threat comes not just from paedophiles and child molesters but from the Internet itself.

The observation that children are abused by people and not technology is not entirely correct with respect to the Internet. Children are at risk both from paedophiles and child abusers who abuse the Internet to target children as well as from the Internet itself. The Internet contains thousands of sites with content that pose a risk of developmental harm and emotional trauma to children – sites intended for adults but which are easily accessed, unintentionally, by children “surfing” the Internet for information or entertainment by using “keywords”.

This brochure should therefore be read with other brochures and pamphlets providing information, advice and “tips” on keeping children safe on the Internet, such as the Board’s “Internet Safety” publication. The constitutional right of all children to be protected from maltreatment, neglect, abuse or degradation makes all of us duty-holders in so far as children are concerned – holders of the constitutional duty to give effect to the principle that, in all matters concerning a child, the child’s best interests are paramount.

Film and Publication Board

1 What is child pornography?

- 1.1 Child pornography is not as difficult a concept as some have made it out to be, although there may be differences in the way it is defined in different countries. However, any differences that may exist relate to, mainly, two aspects:
 - the definition of “child”, and
 - the exclusion from the definition of the offence of child pornography any pictures created without using a real child and verbal descriptions.
- 1.2 Child pornography is, simply, evidence of the abuse of a child for the purpose of sexual exploitation and sexual gratification. It not only describes, in words or pictures, a serious crime against a child but constitutes, in and of itself, a criminal offence. In other words, the abuse or exploitation of a child for any sexual purpose is a criminal offence and any description or picture of such sexual abuse and exploitation is also a criminal offence. However, child pornography refers to descriptions or pictures of the sexual abuse and exploitation of a child and not to the actual act of abuse.
- 1.3 Mostly child protection practitioners, including law enforcement agencies, who have to deal with child pornography agree that the expression “child pornography” does not adequately describe the nature of this despicable crime against children. It is a misleading term because child pornography is not about “pornography” but, simply, the evidence of serious sexual assaults and abuse of children, including , as shocking as it sounds, the penetrative sexual assault of children as young as 6 months. Uninformed commentators on the subject, including members of the judiciary, have failed to grasp an essential truth about child pornography: that it cannot be produced without a child being sexually abused and that its creation and distribution leads to the sexual abuse of more children to satisfy the demand for such pictures. Child pornography is not pornography with child subjects and is an inappropriate term to describe the true nature and extent of sexually exploitive images of child victims. The correct term is “child abuse images”, which is a more accurate description of this plague in our society, as anyone who has had the misfortune to actually see such images would agree. There is no “pornography” in “child pornography” – there is only the sexual assault, torture, the maiming, brutalisation and even murder of young children.
- 1.4 In terms of South African law, “child pornography” is any picture, regardless of how it was created, or any description, of a real or imaginary person who is under the age

of 18 years, or is represented as being under the age of 18 years-

- engaged or involved in any form of sexual activity
- participating in or assisting another person to participate in any form of sexual activity, or
- any picture which shows, or any writing which describes, the body or any part of the body of a real or imaginary person under the age of 18 years in circumstances that amount to sexual exploitation or in a manner that makes it capable of being used for the purpose of sexual exploitation.

2 How serious or widespread is child pornography?

2.1 Child pornography is a highly secretive and clandestine activity. It is difficult to say, accurately, how widespread it is but we do have some indications from cases which have been investigated and prosecuted. One such case is that of the “Wonderland Club”, which was investigated and led to the arrest and prosecution of hundreds of members of this notorious “club”.

“Operation Cathedral” was the name given to the investigation of the “Wonderland Club”, an operation that involved over 1 500 police officers breaking down doors of the homes of suspects in 12 countries on 2 September 1998 – all at exactly the same time. It was described as the world’s largest child pornography network, and the police seized 750 000 images and over 1 800 digitised video clips of children being sexually abused and tortured. The images were so disturbing that all the police officers involved had to undergo compulsory debriefing with a psychologist because of the harm they might have suffered through viewing tens of thousands of images of abused children, many of them of infant toddlers. Police estimate that the number of images is much higher because they did not manage to identify and arrest all the members of the “club”. However, an indication of the number of images involved may be gained from the fact that, in order to join this “club”, you had to submit, to the “club”, 10 000 original images of child abuse.

2.2 Current estimates of the number of child abuse images available on the Internet runs into the millions. BT, a UK Internet service provider, recently reported that it blocks an average of about 35 000 attempts to access child pornography every day in the UK alone. It is estimated that there are over 20 000 Internet websites devoted exclusively to child abuse images, not including “adult porn” websites that may also

contain child pornography.

- 2.3 The proper question to ask is how many children have been abused to create the millions of child abuse images that may be found on the Internet? Do “smaller numbers” make this crime less abhorrent? The point is not that only one or two or even a hundred children have been abused and have had their lives destroyed permanently. The point is that a child has been abused, and others will continue to be abused, for the sexual gratification of the few perverted and depraved in our society. And for the millions of dollars in profits that many are making from the trade in this sordid business.

3 Who or what is a paedophile?

The Concise Oxford Dictionary defines the word “paedophile” as “sexual love directed towards children.” A paedophile is a person with a sexual attraction towards young children and come from all social, income, racial, gender, ethnic and age groups. Most paedophiles, generally, do not act aggressively or violently towards children but attempt to gain a child’s affection and interest by being friendly, especially towards children who are otherwise deprived of affection. According to the Australian National Institute of Mental Health 1998 report, the typical paedophile molests an average of 117 children, most of who do not report the offence. Paedophilia has been described as a form of paraphilia, which is a clinical term denoting sexual deviance, and paedophilia as sexual attraction to pre-pubescent children.

4 How do paedophiles and child molesters use child pornography?

- 4.1 Paedophiles and child abusers use child pornography-
- for sexual stimulation and gratification, which usually leads to masturbation and, in many cases, the actual sexual abuse of children
 - to groom and seduce children by lowering their inhibitions into accepting sex with adults as “normal, acceptable and pleasurable” acts and that “everybody is doing it”
 - to instruct children on how to perform specific sexual acts
 - to trade and exchange collections of child pornography, thus stimulating demand for more child pornography, and

- to blackmail and threaten children into silence about what is being done to them.

4.2 Child pornography is a multi-billion dollar industry. While accurate figures are difficult to come by, the case of Thomas and Janice Reedy, a Texas couple convicted on child pornography charges in 2001, offers an idea of the amount of money involved in the child pornography trade.

Thomas Reedy was a nurse who realised there was more money to be made in pornography and therefore set up an Internet adult pornographic business, called Landslide Productions. However, he soon realised that there was more money to be made from child pornography and within two years, his company had over 250 000 child pornography customers from across the world, including Pete Townshend, the legendary "pop" star, now serving a 3-year sentence in Vietnam for the sexual abuse of underage females. Between 1996 and 1999, Landslide Productions took in \$8.5 million from child pornography, compared to the \$1.5 million it took in from adult pornography! Incidentally, Thomas Reedy was sentenced to a total of 1 335 years imprisonment - 15 years on each of the 89 counts he was convicted of, while his wife was sentenced to 14 years imprisonment. It was reported that Thomas Reedy's sentence was reduced, on appeal, to 800+ years! Landslide Productions, the company Reedy formed, was sentenced to pay a fine of \$6 950 970.28 .

According to Quick Facts (2004), the child pornography industry is worth \$2-3 billion dollars and that in excess of 20 000 child abuse images are posted on the Internet each week.

5 Is it illegal to merely watch child pornography?

Watching child pornography could constitute the offence of possession, which is an offence in terms of section 27(1)(a)(i) of the Films and Publications Act, 1996 and any person convicted of such an offence could be sentenced to a maximum of 10 years imprisonment. But whether or not merely watching child pornography which was unsolicited, such as, for instance, opening an e-mail attachment not knowing that it contained child pornography, would constitute an offence depends on the particular circumstances of that act. If you stumble across child pornography by accident or unknowingly, and take immediate steps to either report that to the police, or the Film and Publication Board's "hotline" (0800 148 148), or erase it, you would not have committed an offence because you watched that image without any intention to actually watch child pornography, or even knowing that it was child pornography, and you took immediate steps to disassociate yourself from that image.

6 Why is child pornography illegal if I am simply watching it but take no part in creating or producing it?

- 6.1 Child pornography is inherently harmful to children and to society. Children's rights are not limited only to the rights set out section 28 of the Constitution - Children's Bill of Rights - but includes every right guaranteed to "every person". All children are entitled to the right to human dignity and the very existence of expressions which are degrading, demeaning and dehumanising, on their own, violate the dignity and equality rights of children. "Expression that degrades or dehumanises is harmful in and of itself as all members of society suffer when harmful attitudes are reinforced. The possibility that pornographic representations may be disseminated creates a heightened risk of harm."
- 6.2 Collectors of child pornography stimulate the demand not only for more child abuse images but for more violent images of younger and younger children. Child pornography, in effect, creates child pornography and leads to the abuse and torture of more innocent children.
- 6.3 The correlation between the collection of child pornography and the actual sexual abuse of children is sufficiently high to conclude that a collector will become a child abuser. In a study of persons arrested for computer-related offences against children in the US, 40% of those convicted were "dual offenders" - they were both collectors of child pornography and actual abusers of children .
- 6.4 Prohibiting the possession of child pornography is intended to reduce the market for such material. If the consumption of child pornography is reduced, the production and the abuse of children will be reduced. "The production of child pornography is fuelled by the market for it, and the market in turn is fuelled by those who seek to possess it. Criminalising possession may reduce the market for child pornography and the abuse of children it often involves."

7 Is it illegal to download child pornography from the Internet?

The Internet is the medium of choice for the distribution of child abuse images. If you download child pornography from the Internet, you would, in fact, be charged with two offences:

- possession, under section 27(1)(a)(i) of the Films and Publications Act, 1996, and
- creation in terms of section 27(1)(a)(ii).

You would then be facing a maximum of 10 years imprisonment on each count. Transmission via the Internet is in binary language, which is the language of computers, and consists of batches of zeroes and ones. The act of downloading, which is usually the action of “pointing and clicking”, creates, out of the digital information, an analogue picture. Each picture downloaded would amount to a separate creation. If you download 10 pictures, you would be charged with 10 counts of possession and 10 counts of creation, and could face a maximum of 10 years imprisonment for each count. Even ignoring the issue of the nature of transmission of information via computers, the ordinary meaning of “to create” is to bring into existence. Downloading a picture from the Internet is to bring into existence that picture.

8 Is it illegal to open an e-mail attachment that contains child pornography?

Not unless you knew that the attachment contained child pornography. If you knew that the attachment contained child pornography, or if you actually solicited child pornography via e-mail, you would be charged with the possession, as well as the creation, of child pornography in terms of section 27(1)(a) of the Films and Publications Act.

9 What must I do if I come across child pornography accidentally?

If you come across child pornography by accident and not because you actually went looking for it, you should report all the details of that to the Film and Publication Board’s “hotline” at 0800 148 148, or to the police.

10 Is it illegal to subscribe to a pornographic website that contains child pornography even if I am not downloading any pictures?

In terms of section 27(1)(a)(iii) of the Films and Publications Act, it is an offence to, “in any way take steps to procure, obtain or access” child pornography. Subscribing to a website which contains child pornography is to “take steps to access” child pornography and it is most certainly illegal.

11 Are writings or verbal descriptions of child pornography also illegal?

In terms of South African law, there is no distinction between visual representations and verbal descriptions of child pornography. Child pornography in any form – visual, verbal or audio – is illegal and constitutes a serious offence.

12 What about child pornography created without using an actual child, such as by drawing or by using computer graphics?

The Films and Publications Act does not distinguish between child pornography created by using actual children and those created out of one's imagination. South African law is not "victim-harm based" – child pornography is illegal regardless of the manner of its creation. As far as South Africa is concerned, material that is illegal does not simply become legal because it is created by a different means.

13 What must I do if I know or suspect that someone is involved with child pornography?

If you have information or suspicions about any person who is in possession of, or involved in any way with, child pornography, you must report that information or suspicion to the police. Failure to make such a report is itself an offence in terms of section 27(2)(a) of the Films and Publications Act, 1996. The legal obligation, on pain of prosecution, to report knowledge of child pornography is upon every person who comes by such knowledge, such as those who repair or service computers and those who provide Internet services and those who process and develop photographs.

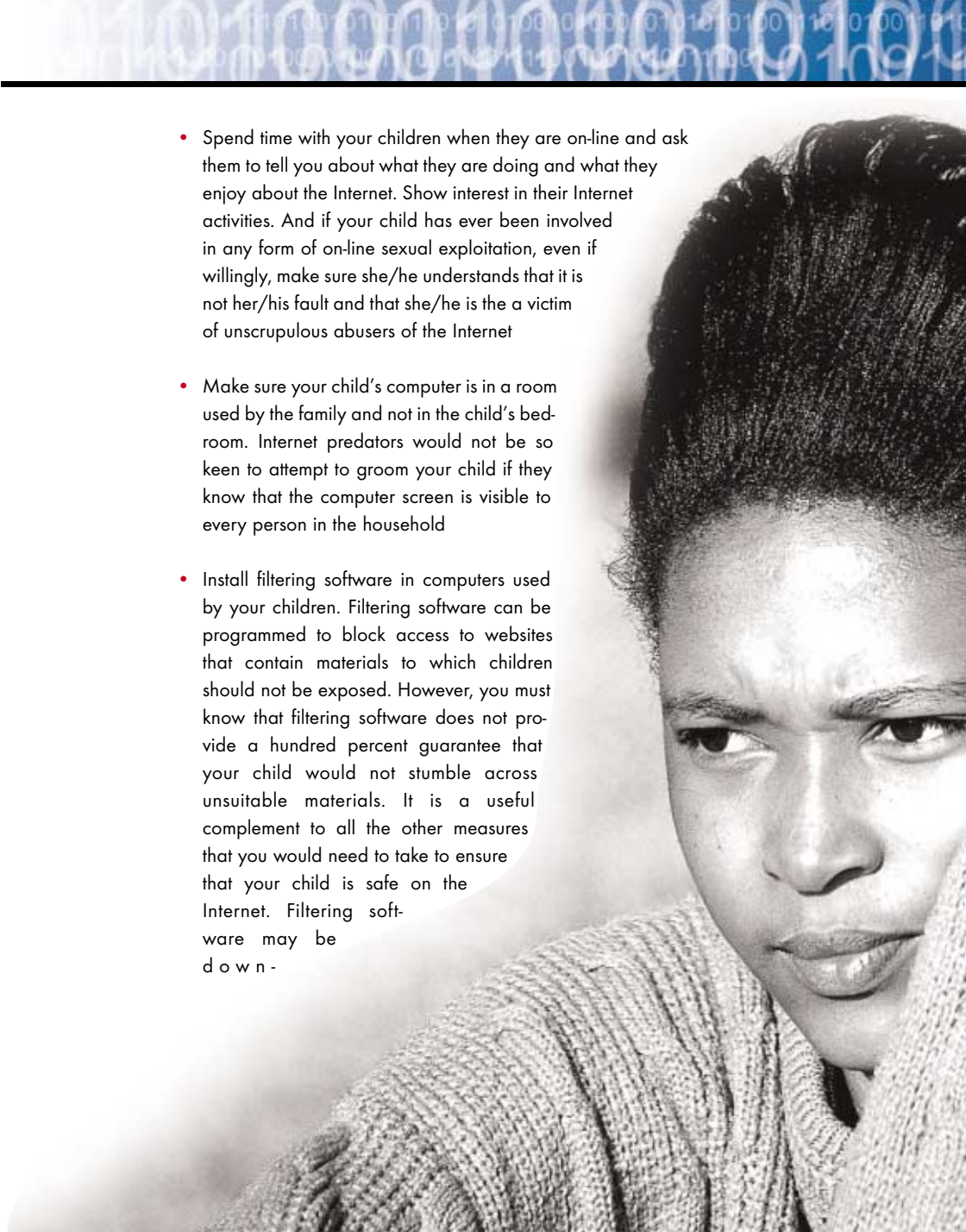
14 What can I do to help Government stop the creation, distribution and possession of child pornography?

The protection of children from maltreatment, abuse and degradation is not only a moral obligation but a constitutional obligation. You should unite with Government in its fight against child pornography. Making people around you aware of the existence of this terrible crime, of the risks that children are exposed to, of the traumatic impact of child pornography not only on the child-victim but to the family and friends of a child-

victim and to society itself, reporting knowledge or suspicions of persons involved in any way with the abuse and exploitation of children to the police, reporting incidents of unsolicited child pornography that you stumble across to the Board's "hotline" (0800 148 148) and persuading your Internet service provider to take all steps to block access to websites containing child pornography are some of the ways in which you can help Government in its fight to eliminate child pornography. Silence is a betrayal of all children, including your own.

15 How can I protect my child against becoming a victim of child pornography?

- 15.1 Children, especially younger children, are not suspicious of the motives of even strangers and are incapable of recognising danger signs. Talk to your child about paedophiles and child molesters and about "stranger danger". They should know to never get into a car with a stranger. Never accept gifts and sweets from strangers. Never trust any person they do not know offering rides or gifts or trying to be friendly. Your child must trust you enough to be able to talk to you about anything that makes her or him feel uncomfortable, especially if it concerns strangers. Remind your child, as a general rule, that nobody but a doctor is allowed to touch or examine her or his body. You owe it to your child to know enough about paedophiles and child abusers to protect her or him from becoming another victim.
- 15.2 In so far as protecting your child from becoming of a victim of Internet predators – computer sex offenders – the following tips may help-
- Train your child to be "cyber smart" so that they can recognise potential dangers and know how to avoid threatening situations. Talk to your children about sexual victimisation and the use of the Internet, especially chat rooms, by paedophiles and child molesters looking for child victims. Encourage your children to tell you if they receive messages which make them feel uncomfortable or threatened, especially messages of a sexual nature
 - Remember that your child might have access to the Internet outside your home, such as in a school or library or a friend's home or even the mobile cellular phone. The more your children know and understand about being "cyber smart", the safer their exploration of the Internet. Your supervision of your children's daily lives to ensure their safety in the real of-line world must apply equally to their lives in the on-line "cyber world"

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- Spend time with your children when they are on-line and ask them to tell you about what they are doing and what they enjoy about the Internet. Show interest in their Internet activities. And if your child has ever been involved in any form of on-line sexual exploitation, even if willingly, make sure she/he understands that it is not her/his fault and that she/he is the a victim of unscrupulous abusers of the Internet
 - Make sure your child's computer is in a room used by the family and not in the child's bedroom. Internet predators would not be so keen to attempt to groom your child if they know that the computer screen is visible to every person in the household
 - Install filtering software in computers used by your children. Filtering software can be programmed to block access to websites that contain materials to which children should not be exposed. However, you must know that filtering software does not provide a hundred percent guarantee that your child would not stumble across unsuitable materials. It is a useful complement to all the other measures that you would need to take to ensure that your child is safe on the Internet. Filtering software may be
d o w n -

loaded from the Internet. It is useful to talk to your Internet service provider or to someone who knows about filtering and parental control programmes. (You can find a directory of filtering software programmes at www.getnetwise.org/tools. You can get more information about filtering and blocking software at www.pin.org.uk/filtering.)

- You can also talk to your Internet service provider about rating systems that rely on website operators to indicate the nature of the materials on their websites. Internet browsers can be configured to allow children to visit only websites that are rated at a level that are suitable for children. However, remember that not all websites are submitted for rating
- Monitor your child's use of chat rooms. Make sure you know enough about chat rooms to advise your child about chat rooms which should be avoided. Direct your child to safe chat rooms, especially those which have been created for children.

And, most importantly, tell your children to-

- never arrange or agree to any face-to-face meeting with any person they met on-line
- never post to the Internet, or send to people they do not personally know, any pictures of themselves
- never give out any personal information about themselves, even if the information seems unimportant and innocent, to any person on-line
- never download pictures from an unknown source since there could be sexually explicit images
- never respond to messages on-line that are sexually suggestive, obscene, aggressive or harassing
- never believe as true anything that may be said by people on-line, especially about themselves because people on-line are not always who they pretend to be and paedophiles are particularly adept at pretending to be of the same age as your child
- never open e-mail attachments unless they know the person sending them and know what they contain

- never enter a private chat room
- Make sure you check your child's e-mails and that your child knows that you will do so. Assure your child that you will do so not because you do not trust her/him but to ensure that she/he is safe from those who could harm her/him. Better yet, share an e-mail address with your child so that you can monitor all messages. You should also check your phone bills for unusual amounts and unfamiliar phone numbers, and
- If your child receives messages or materials of a sexual nature, report all the details to the police.

16 How will I know if my child is being abused?

Parents often fail to recognise signs that their child is being sexually abused, even when the abuser is their partner or spouse. However, sometimes a child who is being abused will behave in a way that suggests sexual abuse.

- your child may avoid being alone with a particular person or family member
- your child may show unexpected fear of an adult
- your child may try to avoid socialising with adults
- your child may hint about being asked to keep secrets
- your child may behave aggressively or be more withdrawn
- your child may have difficulty in sleeping
- your child may be performing badly in school
- your child may exhibit sexually inappropriate behaviour, including the use of "sex language" which was not the case before
- your child seems to have the sort of sexual information which was not there before and which was not learnt from any person you know or from school
- your child complains about ailments and soreness that don't seem to have the expected medical explanation, and

- your child has definite symptoms of sexual activity, such as anal or genital soreness or unusual discharge.

If you notice any of the above signs or other symptoms that everything is not right with your child, talk to your child immediately and, if necessary, get professional help.

17 Are there other “film and publication” offences with respect to children?

In terms of the Films and Publications Act, exposing children to any form of pornography is a criminal offence. It may also constitute the common law offence of indecent assault. Failure to take steps to prevent a child from access to any pornographic materials under your control is also a criminal offence under the Act. A less serious, but an offence nevertheless, is allowing your child to watch a film or video or play a game or read a publication that is classified and rated for children older than your child.

18 Is child pornography also an offence in other countries?

Child pornography is an offence in almost every country in the world, although there may be differences in what amounts to “child pornography” or who is a “child” or the penalties upon conviction for a child pornography offence. Unfortunately, while child pornography is illegal in most countries, not all countries have laws which are specific to child pornography, relying, instead, on laws with general provisions against obscenity, for instance. Given the international nature of the trade in the production and distribution of child pornography, and the borderless nature of the Internet, there are efforts to introduce some harmonisation of international laws on child pornography to facilitate a global response to this crime. The fact that almost all child pornography exists on the Internet, and the Internet has no geographical boundaries, means that child pornography does not exist in any particular country but that it exists wherever there is a computer, a modem and a telephone line or satellite signal, or wherever there is a mobile cellular phone that allows access to the Internet.

19 What if I watch child pornography in another country, while I am on holiday, for instance?

In terms of the section 30A(a) of the Films and Publications Act, any South African citi-

zen or permanent resident who does anything outside South Africa which would constitute an offence in terms of that Act if done within South Africa, would be guilty of that offence as if it had been committed in South Africa and will be charged with that offence once she or he returns to South Africa, and liable to the penalties provided for in the Act.

20 Are there instances or circumstances when the possession of child pornography would not be an offence in terms of the Films and Publications Act?

The critical question is the purpose or reasons why a person would want to possess child pornography. There can never be any exemption from prosecution if the purpose is sexual exploitation or financial or other advancement or gain. However, a person in possession for the purpose of enforcing the laws against the creation, distribution or possession of child pornography, for instance, would not be committing an offence. A person in possession of child pornography for a genuine and true scientific or medical purpose may, in appropriate circumstances, be exempted from prosecution. In general, however, it would be better to assume that there can and will be no exemptions from prosecution for any person found in possession of child pornography. That is as far as possession is concerned. However, there can NEVER be any circumstances under which the creation or production of child pornography may be exempted from prosecution and severe punishment.

21 Are Internet service providers allowed to host or allow the distribution of child pornography on or through their services?

- 21.1 The short answer is a definite NO. No person or institution or organisation is allowed to distribute, or make possible the distribution, of child pornography. However, Internet service providers are not responsible for the content of what is transmitted through the services they offer and they are prevented by laws and contracts from intercepting transmissions without lawful authority, unless, of course, they have good reason to believe that an offence is being committed. But if an Internet service provider has knowledge that child pornography is being transmitted through the services being provided, or that a website hosted by the service provider contains child pornography, that service provider would be guilty of an offence if that knowledge is not reported to the police. It is irrelevant how an Internet service provider comes by or acquires such knowledge.


- 21.2 In terms of section 27A(1) of the Films and Publications Act, Internet service providers are required to take all reasonable steps to prevent access to child pornography by any person. Failure to do so would be an offence.
- 22 What about banks and financial institutions that process credit card transactions for payment for child pornography or for subscribing to websites containing child pornography?

The Films and Publications Act is very clear and unambiguous. If a bank or financial institution knows (or even ought to know), or has reason to suspect, that the transaction is payment either for child pornography or for a subscription to a website known to contain child pornography, then processing that transaction, with that knowledge or reasonable suspicion, would amount to a section 27(2)(a)(i) if that bank or financial institution does not report that knowledge or suspicion to the police as soon as possible and provide the police with all the relevant details when requested by the police. The critical question is : did the bank or financial institution know that payment was for child pornography or that it was a subscription to a website known to contain child pornography? If the answer is "yes", then section 27(2)(a)(i) of the Act would apply. Section 52 of the Financial Intelligence Centre Act, 2001 may also have application. In terms of this section, failure to report transactions which have no apparent business or lawful purposes is an offence.

23 What is harmful about child pornography?

"Look into the eyes of a child who has been sexually abused and you'll see pain - a pain that endures long after the bruises have healed. This pain is compounded by child molesters who create images of the sexual abuse and share them with other child molesters. They trade them in chat rooms and post them on thousands of Web sites. These people are making money from the pain and suffering of children."

- 23.1 Paragraph 3 above describes how paedophiles and child molesters use child pornography.
- 23.2 The aim of the prohibitions on the creation, distribution and possession of child pornography is to prevent harm to children and society itself-

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- The possession of child pornography contributes to the cognitive distortions of paedophiles by reinforcing their belief, and fuelling their fantasies, that sexual activities with children is acceptable
 - Child pornography cannot be produced without physically abusing a child. Children are sexually abused, physically tortured and suffer severe traumatic experiences in the creation of child pornography. The trauma and violation of the child's body, as well as the child's dignity, may stay with the child for as long she or he lives. Not infrequently, the experience initiates a downward spiral into the sex trade
 - Child pornography violates a child's right to life, well-being and security that is guaranteed by the Constitution and is the birthright of every child. In fact, child pornography threatens the physical and psychological security of all children since every child is vulnerable and is at risk.

23.3 This report by Michael S Malone of ABC News sums up what child pornography is all about-

"You may think you know what the child pornography industry is, but, no matter how cynical you are, you do not. Yes, it is naked children exposing themselves. But it is worse than that. It is adults having sex with children, even babies. But it is worse than that. It is the rape and torture of little children.

"But, as hard as it may be to accept, it is even worse than that. A couple of years ago, there was the arrest of an Italian-pederast ring that was taking orders from customers to kidnap Russian orphans according to pre-specified characteristics, like hair colour, then torture and kill them on camera for posting on the Web.

"This is the very heart of darkness. These are images that are more than shocking and repulsive. They kill your soul because you know that every poor child you see on these sites is dead, if not now at the hands of a sadist, then decades from now from drugs, alcoholism or suicide... The pictures first make you sick, then angry, and finally homicidal... This is not somebody else's problem but ours..."

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Hotline: 0800 148 148

Private Bag X2205
Houghton
2041

Published by the Film and Publication Board/2006