

CHILD PORNOGRAPHY INVESTIGATIONS

- 1 The Internet is an international “information highway”. Paedophiles usually operate through worldwide paedophile rings. Investigations must, therefore, cover both the national and international aspects of each case.
- 2 However, the two aspects must be treated as separate investigations to avoid the one aspect confusing the other. It would be preferable to have two teams of investigators – one to deal with the national aspect and the other to pursue the international aspect, with the prosecution authority coordinating both investigations.
- 3 It is very important to ensure that the investigation of the national aspect is properly documented. There must be no hitches that may be exploited by the defence. The priority is to secure a conviction – the international aspect must not weaken the case against a local accused.
- 4 It is important to look at all possible offences.

The starting point is the *Films and Publications Act*.

- Section 27(1)(a) for the creation, production and possession of publications containing visual presentations of child abuse images, and

- Section 27(1)(b) for the creation, distribution, production and possession of films containing scenes of child pornography.
- Section 28(1) for the distribution of publications containing visual presentations or descriptions of child pornography. (**Note** : A video clip on the Internet would be a film but a still image would be a publication.)
- Section 25(a) and (b) deals with the offence of distributing publications classified “XX” or “X18”. (Check with the Board for classification decisions.) **Note** that, for the purpose of section 25, the word “distribute” includes handing or displaying such a publication to a person under the age of 18 years. Arguably, leaving such a publication openly where they may be seen by children would amount to “displaying” and therefore “distribution”.
- Section 26(1)(a) and (b) deal with the offences of distributing or exhibiting films which have either not been classified or classified “XX” or “X18”. The word “distribute” here would include handing or exhibiting such films to a person under the age of 18 years. Check with the Board for classification decisions.

Look at other legislation dealing with children and sexual offences. For instance, following *S v J McNeil*, you could include the offence of indecent assault. (The mere presence of a child in a scene involving sexual activities will constitute indecent assault even if the child is not physically touched. See the paper on the *McNeil* case.)

- Statutory rape and incest should also be considered in appropriate circumstances.
- 5 In terms of the definition of “child pornography”, the “person” need not be either an actual person or actually under the age of 18 years. The “person” could be a computer-generated image or a “virtual” person (see, for instance, “pseudo photographs” in the UK) and may be over the age of 18 years but shown or depicted or represented as being under the age of 18 years.
 - 6 When examining the images, it is important to have photographs of the accused, their children and every room in their house in front of you. This will help to establish the role of an accused in the making or creation of the images. Even if the faces are “masked” or not clearly visible, background details of a room might help to establish that the images were created in the home of the accused.
 - 7 The house of an accused must be searched thoroughly – as in a drug-search. And every room should be photographed in detail. Servers and hard drives have been known to be hidden in ceilings or under floor boards. If the accused has a business address, that

premises must also be thoroughly searched and all computer equipment seized for forensic examination.

- 8 Ensure that a thorough forensic examination of all equipment is done. Details of e-mails are important. Complete information on e-mail caches, for instance, may have to be requested through the US *Patriot Act*, via the Legal Attache of the US Embassy. An e-mail cache will provide details of all e-mails sent and received.
- 9 There must also be a forensic examination of all bank accounts of an accused. All credit card transactions should be examined to establish evidence of subscriptions to child pornography web-sites. If the accused is involved in distribution, the evidence will usually consist of regular, small payments into his or her bank account.
- 10 All IP addresses should be identified. (Information on e-mail addresses may be obtained through, for instance, www.samspace.org.) Also follow-up all web-sites identified.
- 11 Look for encrypted files, hidden files, divided hard-drives and evidence of software, such as “PGP, “window washer” and “evidence eliminator” which may have been used to “clean” hard-drives.
- 12 Every video/DVD/VCD etc must be viewed from beginning to end. Paedophiles often use the middle of an “innocent” film to record child abuse materials.

- 13 Prepare "intelligence profiles" of every accused. Did he invite children to visit him ? Did neighbourhood children visit him ? Did he act as a "baby-sitter" for any children ? How does he spend his days ? Who are his friends ? Remember that leaving pornographic materials openly, where children could see them, is often part of the "grooming" process – part of the "normalizing of sexual behaviour" process – children will soon accept being involved in sexual activities as normal because they have seen it in films and magazines.
- 14 Important to ensure that every step of the investigation is properly documented and that files of materials defence is entitled to are prepared. Useful to have hard copies of the images for the magistrate or judge. Make sure there are back-up copies of all documents and materials.
- 15 Dealing with child abuse images is not a pleasant experience and could be traumatizing. Do not be fooled into thinking that you could cope with all this nasty stuff. Talk with professionals from time to time.

Iyavar Chetty
Cape Town, 2003