

## CHILD PORNOGRAPHY OR CHILD ABUSE MATERIALS? The reality of the sexual abuse and exploitation of children

*The discovery of the crime being perpetrated against our children must become part of our conscious awareness. What we do must have a single aim: to make the protection of children from sexual abuse and exploitation everyone's business. No individual can delegate to anyone else this responsibility that each one of us must acknowledge, accept and act upon wherever we may find ourselves. For the crime is not only the sexual abuse and exploitation of children: it is also the silence from those who should speak out but choose to avoid the sense of horror which should form the basis of everyone's perception of the world we are creating for our children. In the words of Professor Paulo Pinheiro (UN Study on Violence Against Children): "The global community has no excuse for saying that 'we didn't know' or 'we couldn't foresee' the exponentially<sup>1</sup> increasing violence caused to children in relation to new<sup>2</sup> information and communication technologies." Silence is a betrayal of all children.*

### What is Child Pornography?

In order to fight an enemy, one must first identify the enemy. The unfortunate truth about the war against the abuse and exploitation of children for sexual gratification is that the enemy has not been properly identified. In the *de Reuck*<sup>3</sup> case, for example, the Constitutional Court, basing itself on the dictionary definition of "pornography", identified "the

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<sup>1</sup> The 2006 Annual Report of the Internet Watch Foundation (IWF) reported a quadrupling of child abuse images on the Internet since 2004. More disturbingly, the IWF reports that the abuse is more sadistic and of younger children, including toddlers

<sup>2</sup> The Internet and, increasingly, mobile cellular phones

<sup>3</sup> CCT 5/03

*stimulation of erotic rather than aesthetic feelings" as an essential element of the definition of child pornography.*

What is the Constitutional Court saying? The ordinary meaning of "erotic" is the *arousal of sexual desire or feelings*. And "aesthetic" means *of or concerning beauty or good taste*. So, an image of a toddler being sexually abused, in the hands of a person who sees nothing but beauty and good taste in that image, is not child pornography? After all, whether or not it arouses "erotic" or "aesthetic" feelings depends on the subjective state of mind of the viewer. Here, the Constitutional Court identified the enemy as only that which arouses *erotic rather than aesthetic feelings in the reasonable viewer*. The fate of the child is irrelevant. Instead, *child pornography is defined with reference to the feelings it arouses in the reasonable viewer*. Who (more appropriately, "what") is a *reasonable viewer*? Any person who will watch images of the sexual abuse of a toddler cannot, in my opinion, be a *reasonable viewer*.

The acceptance of the court's position that the stimulation of the erotic rather than the aesthetic feelings is an essential element of child pornography amounts to saying that something illegal and abhorrent becomes legal and acceptable merely because it arouses aesthetic rather than erotic feelings even if it involves the abuse of children. Just as an illegal image does not become legal simply because it is produced by a different means, an illegal image does not become legal because it arouses aesthetic rather than erotic feelings. In *New York v Ferber*<sup>4</sup>, Justice O'Connor, in her concurring opinion, argued that *Ferber* does away with the third prong of the *Miller* obscenity test - that materials with a serious literary, scientific or educational value are not obscene - commenting that the state may ban sexually explicit materials regardless of the value society may place on them: "*Society's interest in any such material is irrelevant in*

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<sup>4</sup> 458 U.S. 747 (1982)

*protecting children from psychological, emotional and mental harm."* What is relevant, and satisfies the requirements of most definitions of child pornography, is whether or not the image depicts sexual conduct involving a child. Any other approach ignores the fact that child pornography, whether it arouses aesthetic or erotic feelings, is a product of child abuse and is itself a form of non-contact abuse and degradation of children. Every image of child pornography is, in the eyes of law enforcement officers, a crime scene – a scene of a child having being sexually abused.

The focus of the inquiry must be on the harm of the message of the representations and not on their manner of creation, or on the intent or identity of their creator or the feelings it arouses in the mythical *reasonable* viewer.

**The problems arise from a failure to understand "child pornography" in the context of the sexual abuse, brutalisation, torture and even murder of the child-victims, and the twinning of the words "child" and "pornography" in the definition of "child pornography".** (What would "baby shower" if it was defined by twinning the meanings of the words "baby" and "shower"?)

### **Abuse, sexual abuse and sexual exploitation**

"Child pornography" is evidence of the abuse of a child for the sexual gratification of paedophiles and perverts and constitutes the continuing sexual exploitation of that child. "Child pornography" is not only images of the sexual abuse of children but includes images of the torture, brutalisation and even murder of children. The evidence from the hundreds of thousands of images is that what paedophiles and perverts collect is not confined only to images of children engaged in sexual conduct. The depraved also find sexual gratification in images of children being

brutalised, raped, tortured and murdered. This is what Michael S Malone of ABC News said about child pornography:

*"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..."*

The expression "child pornography" suggests only images of children engaged in some form of sexual conduct. But images of the *sexual* abuse of children is only a part of what constitutes child pornography. Images of the physical abuse, torture and murder of children is also child pornography. For that reason, the preferred expression among law enforcement agencies is *child abuse materials*. That is what child pornography is really all about. The enemy is **child abuse materials**.

Iyavar (2004)

