Overview of Technology-Facilitated Crimes Against Children

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Objectives:

• Describe how technology is used to facilitate crimes
• Discuss trends and statistics
• Provide broad overview of types of technology-facilitated crimes against children

Technology-Facilitated Child Exploitation

Offenses include:

• manufacture, dist., & possession of c.p
• online enticement of children by sexual predators
• trafficking of children for sexual purposes, i.e., prostitution
• sex tourism, early marriage, etc.
What's Technology Got To Do With It?

- Enables predators to have virtual playgrounds: access to real children w/out much fear of being identified
- Ease of “tracking” victims via search engines, info posted by children.
- Grooming techniques used by predators aided by online profiles created by children - inside knowledge of potential victims’ likes/dislikes, issues, etc.

Statistics:

- Approx. 14 million cp websites, some containing up to 1 million cp images per site
- Over 20,000 cp images posted on the Internet every week
- 116,000 daily requests for cp on file sharing service Gnutella alone
- Images more disturbing, more graphic, and more sadistic than ever before…”

The Internet Sex Predator: (some stats) *

- Internet offenders posed as teenagers in only 5% of crimes studied
- Majority of cases: girls 13-15 targeted online by adults who made intention of sexual encounter clear.
- 75% of victims who met offenders face to face did so more than once.
• Predators use instant msgs, email, and chat rooms to develop relationships w/ victims. Victims see as “romances.”

• Offenders target kids who are **willing** to talk to them.

• Most cases arise from risky on-line interactions, i.e. talking online to strangers about sex, having strangers on buddy lists.

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**More Stats**

75% of children: willing to share psnl info online about themselves / family in exchange for goods and services

1 in 5 teenagers who regularly log-on to the Internet have received unwanted sexual solicitation via the Web; Only 25% told a parent

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**The Internet…**

Every Internet client service has been exploited for purpose of victimizing children.

E-mail, World Wide Web, i.m.-ing, Usenet newsgroups all used as dist/communication channels for abuse of children.

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Child Pornography & Other Technology Facilitated Crimes Against Children  
Prosecuting Cyber Crimes: The Fundamentals April 20-22, 2010  
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Challenges presented by technology-facilitated crimes:

• Single web-site can maintain all content on different computers in multiple jurisdictions

• Criminals operating sites can do so from yet another jurisdiction.

• One might report unlawful Internet activity (i.e., existence of c.p. website) to a local agency far from apparent location of the site.

* Study conducted by Crimes Against Children Research Center at the University of New Hampshire in Durham. (Janis Wolak, David Finkelhor, Kimberly Mitchell)

Study based on telephone interviews with 3,000 Internet users between ages of 10 and 17 done in 2000 and again in 2005.

Researchers also conducted more than 600 interviews with federal, state and local law enforcement officials in the U.S.

Reports and papers about study, contact info about authors may be found at www.unh.edu/ccrc.

** Comments made 5/22/06 by Herman Lam, Deputy Gen. Mgr. Microsoft Hong Kong.
**Internet, Technology & CP**

- Access to vast quantities of images
- Images instantly available
- Ease of production w/ digital cameras
- Ease of conversion / circulation of earlier magazine / film images
- Validation via user groups
- Exacerbation of Victimization
  - images circulate indefinitely
  - child is re-victimized each time image is viewed.

**Cultural Influences:**

Porn (adult) sites widely advertised online

TV deems Internet porn stars as celebrities

Sense that posing for sexually explicit pictures is acceptable, glamorous (Paris Hilton, Kim Kardashian, etc...)

**Child Pornography – Crimes**

- Production
- Distribution
- Possession
- Pandering
- Grooming
### Characteristics of C.P. Collectors:
- Store images on computer media
- Collect as many images as they can
- Tend to organize collections
- Keep collections for a long time

### Types of Production:
**Covert** – Hidden camera

**Overt** –
- coercion – use of parental authority, threats, blackmail
- manipulation – provide alcohol, drugs, romance
- payment – online accounts, wish lists, pay per image

### CP Distribution:
**Commercial v. Limited**
Most CP producers engage in limited dist. to those w/ whom they have est. a trust
- women pandering to men they know
- rings of offenders who produce/trade images among themselves
- offenders who use images to seduce youth, persuade to pose.
Regulation of Child Pornography:
- Pornography is protected speech
- Obscenity is NOT protected speech
  - Miller v. CA.
  - 3 prong test for obscenity
- Child Pornography is NOT protected Speech
  - May not dist. or mfctr. (N.Y. v. Ferber)
  - May not Possess (Osborne v. Ohio)
- States have great leeway in regulation of CP

Why prohibit CP?
- compelling state interest in safeguarding well-being of children
- distribution of CP intrinsically related to sexual abuse
- advertising / selling of CP: economic motive is part of abuse
- de minimis value of CP

Osborne v. Ohio
Permissible to Ban Possession & Viewing of CP.
- Permanent record of abuse
- Encourages possessors to destroy images
- Reduces use of images for “grooming.”
“Child Pornography”

- Visual depiction
  - of sexually explicit conduct, where —
    - production involves the use of a minor engaging in conduct; or
    - digital or computer-generated image is, or is indistinguishable from, a minor; or
    - Image created or modified to appear that an identifiable minor is engaging in the act.

“Sexually Explicit Conduct”

Sex Acts (Actual or Simulated)

- Sexual intercourse
- Bestiality
- Masturbation
- Sadistic or masochistic abuse
- Graphic or simulated lascivious exhibition of genital or pubic area

What is “Lascivious Exhibition?”

Nudity not required
Non-exclusive factors U.S. v. Dost

- Focal point of image: child’s genitalia or pubic region
- Sexually suggestive setting
- Child in unnatural pose or inappropriate clothing
- Child fully or partially clothed, or nude?
- Depiction suggests coyness or willingness to engage in sexual activity
- Depiction intended to elicit sexual response in viewer.
C.P. Statutory Language

- Federal and state statutes proscribe the *knowing possession* of CP.
- Some state statutes prohibit *possession or control* of CP.
- Only 3 states (Ohio, N.J. and Arkansas) criminalize the *viewing* of CP.
- Recent Federal Amendment (Oct. 8, 2008) Adds: “or knowingly accesses with intent to view” after “possesses.”

What is Cache?

- Speeds up repeat viewing of previously visited website.
- Computers automatically make a copy of data from website in form of *temporary Internet files*.
- Data from temporary Internet files - stored in *cache*.
- When user re-visits site, computer compares date on website to date on previously stored temporary file.
- If date is same, computer displays the cached file on screen;
- If website has been updated, computer displays data from website.
User can view CP on Internet without downloading images to hard drive.

Images from website are located:
1. On the screen, and
2. In cache via copy that computer automatically made

User can control thumbnail image on screen: enlarge, zoom in and out, rotate, print, etc.

Are images stored in cache, but not downloaded to computer “possessed?”

Split in Authority:
(Majority: “Yes.”)

U.S. v. Tucker - 10th Cir.

Said he didn’t knowingly possess images: computer automatically stored them in cache.

Admitted to viewing cp on computer but argued he didn’t possess it: never downloaded or copied and he deleted cache files.
**Held:**

He possessed images because he could *control* them: enlarge, copy, delete them; and

Images were in cache b/c he *purposefully visited* cp sites and *reached out* for them.

305 F.3d 1193 (10th Cir. 2002)

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**U.S. v. Romm** (9th Cir. 2006)

Romm “knowingly possessed” images of cp in cache: He had *control* over images

While on screen, (and simultaneously saved to cache) he could enlarge, print, email, and save images

He could delete from cache.

455 F.3d 990 (9th Cir. 2006)

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**U.S. v. Bass** (10th Cir. 2005)

Bass “knowingly possessed” cp images in cache despite stating he didn’t know images were automatically saved to cache.

Used programs to delete images from computer - WindowWasher and History Kill – must have known they were there!

411 F.3d 1198 (10th Cir. 2005)
Commonwealth v. Diodoro
PA. stat prohibits possession or control of CP.

- Appellant knowingly accessed CP sites / viewed CP on computer
- Did not save or download images
- Argued he couldn’t knowingly possess images in cache since he didn’t know images were automatically saved to cache.

Held:
- Accessing and viewing CP on website constituted control
- Reached out for images on sites, opened sites, closed sites
- When viewing images, he could download, print, copy. Etc

932 A.2d 132 (Sup. Ct. PA. 2007)

Images in Cache not “Possessed”
Must know images viewed are stored to cache

U.S. v. Kuchinski 469 F.3d 853 (9th Cir. 2006)
D. downloaded 110 CP images, plus 18,000 images in cache

Held:
- Did not possess 18,000 images in cache
- Had no knowledge of cache files, therefore
- Lacked access to / control over files in cache
U.S. v. Stulock
308 F.3d 922 (8th Cir. 2002)

D. charged w/ knowingly possessing CP 3 images in cache

_Held:_

D. did not possess images located in cache file

Must purposely save or download image:

- Viewing image from site on screen not enough
- fact that computer automatically saves images to browser’s cache file not sufficient to est. possession.

_Determining “Possession”_

_Different approaches yield different results:_

- **Dominion & Control:**
  Ct focuses on level of control user has over an image. Can he retain the image on screen? Enlarge it? Zoom in or out? Copy, Print, and Delete it?
- **Seek and Obtain:**
  Ct looks at assertive steps taken by D. that led to viewing or downloading of CP. Often arises w/ images in cache files when D says he didn’t intend to download images
- **Knowledge:**
  how computers work, that there is cp on computer, etc.
- **Deletion:**
  knowing possession of CP inferred by D’s use of software to delete images.
“Virtual" Child Pornography


At issue, provision of definition stating CP is a visual depiction that is, or appears to be, a minor engaging in sexually explicit conduct.

Ct. rejected “appears to be a minor” language

- VCP not a record of crime
- VCP creates no victim by its production
- No evidence VCP used for “grooming” or to whet appetites of pedophiles
- Overbroad: could include artistic works, young adults

New Language:

Digital / computer image that is or is indistinguishable from a minor

“Indistinguishable” – ordinary person would conclude depiction is of actual minor engaged in sexually explicit conduct
Is it a Real Child? (Jury Question)

- Picture itself
- NCMEC known images database
- What does suspect call pics? Title / labels on disks
- Website membership "Lolitagurls.com
- Volume of images
- Magazine images (predates morphing)

Expert testimony

- Pediatrician
- Digital imaging expert
- Expert on economics of technology
- Current technology does not allow creation of computer generated images indistinguishable from real

VCP can still be prosecuted as obscenity if it meets Miller standard.

State of Technology

Problems Creating Image of Person:
- correct form, proportions of body
- facial expressions
- color, texture of skin
- interaction of light with above ---
Morphed Images:

“...created or modified to appear that an identifiable minor is engaged in the act.”

http://www.morphthing.com/

- Ashcroft declined to address constitutionality, but noted:
  - Morphed images “implicate the interests of real children and are in that sense closer to Ferber.”
Pandering

“knowingly...advertises, promotes, presents, distributes or solicits...any material or purported material in a manner that reflects the belief, or is intended to cause another to believe, that the material or purported material is, or contains, CP.”

- Did not violate 1st Amendment (over breadth claim).
- Offers to give or receive what is illegal to possess have no social value - enjoy no 1/A protection.
- D. must believe the material was CP, or intend for the listener to believe it was CP.
- Gvt. can prohibit fraudulent offers \textit{and} offers to provide illegal services.

**“Grooming”**

18 U.S.C. § 2252A(a)(6)

- Developing relationship w/ child w/ intent to have later sexual contact.
- common practice to lower defenses against inappropriate contact
- sets heightened prison terms for those who knowingly provide or offer CP to a minor w/ purpose to induce a child to participate in an illegal activity.

**Youthful Offenders : An Overview**

- Juvenile self-sexual exploitation: What is it?
- What efforts are being taken by states to address issue?
Juvenile self-sexual exploitation:

Minors taking sexually explicit pictures of themselves or others then transmitting images to others via cell phone or by posting on Internet.

(Dubbed “Sexting” by media)

• Often forwarded by initial recipient w/out senders consent.
• Photos go “viral,” reaching large audiences as forwarded from group to group.

Juvenile self-sexual exploitation:

• Minors taking sexually explicit pictures of him / herself or another then transmitting image to others via cell phone or by posting on Internet
22% girls & 18% boys have e-sent or posted nude / semi nude images; 75% knew it could have serious negative consequences.

5.4% of images of CP on Internet are self-produced → hundreds of thousands of images. - *(NCMEC study)*

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**On one hand . . .**

Of the 2,100 children NCMEC has identified as victims of online porn, % initially sent the images themselves, some for fun – some tricked by adults they met online.¹

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**On the other hand...**

- Sexting is the modern way for teens to express budding sexuality – like spin the bottle.

- Safer than traditional exploration of sexuality - no physical contact.²
**Harms:**

- sexual exploitation
- embarrassment
- commercial exploitation
- suicides
- prosecution under CP laws

**Harms to society as a whole:**

- Sexualization / eroticization of minors encourages societal perceptions of children as sexual objects, which

- leads to further abuse and exploitation.

Is there a harm if the boyfriend or girlfriend who receives the image does not share it with others?
**Prevalence:**
2008 study - of 653 13-19 year olds:
20 % had sent or posted nude or seminude pictures or videos of themselves

- 71% girls & 67% boys sent content to BF/GF
- 21% girls & 39% boys sent content in hopes of attracting recipient.

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**Why Sexting / Why now?**
*Perfect storm…*

- Exposure to increasingly younger sexualized “role models”
- Accessibility of technology
- Characteristics of tweens / teens

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**1. Role models / Media**

- Miley Cyrus’s performance at Kids’ Choice Awards
- Britney Spears schoolgirl video (& others!)

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NCJRL.org
2. **Accessibility to technology:**

- About 4 out of 5 teens have cell phones.
- Nearly ½ kids age 8 – 12 in U.S. own cell phones.
- On ave. kids get 1st cell phone between 10 – 11.

[NCJRL.org](http://NCJRL.org)

• Teens text as much as or more than they talk on the phone.
• 42% of teens surveyed say they could text blindfolded.
• Nearly half of U.S. teens say their social life would end or be worsened without their cell phone.

[NCJRL.org](http://NCJRL.org)

3. **Characteristics of Tweens / Teens:**

- Instant gratification generation
- Brain still “under construction” until 20-something

[NCJRL.org](http://NCJRL.org)
**Teens...**

- Send and receive 2878 texts / month
- 31 hrs /wk connected to technology
  - 3.5 hrs per wk IMing friends
  - 2 hrs/wk on Youtube

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**Child Pornography Laws:**

- All states prohibit acts of creating, possessing, & distributing images of children engaged in explicit sex acts.
- No exceptions from criminal culpability when person creating, possessing, or distributing image is a minor.

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**CP laws:**

- In the past, adults exploited / victimized children to generating CP
- CP laws developed to prevent the exploitation of children used to create these displays
Did drafters of CP laws anticipate juveniles would be creating & distributing CP by taking pictures of themselves & disseminating via text msg?

Range of responses among states:

• Prosecution under existing CP laws
• Legislative responses – i.e., amend CP laws to address “Sexting.”
• Juvenile Diversion programs

CP prosecution - considerations:

• Are images CP under statute or case law?
• If “lascivious exhibition,” does it meet Dost criteria? If state doesn’t follow Dost, is image CP by their criteria?
• Was photo taken “consensually”?
• Is “victim” person who sent photo?
• Is victim willing to testify?
• What are societal goals?
New Jersey:

• March 2009 - 14 y/o girl charged with possession & distribution of CP for posting (for her BF) approx. 30 nude photos of herself on MySpace.
• State police CP task-force found / turned over to Passaic County Sheriff’s office
• SO registration for 15 years if convicted

Colorado:

• Couple, 17 & 15 exchanged cell phone images they recorded while engaging in consensual sex
• Mother found nude pics of daughter’s bf on daughter’s phone
• Judge ordered counseling

• CO. investigators consider each offense on case-by-case basis.
• Whether or not to press charges depends on factors such as:
  • age of people involved
  • nature of the images
  • Images distributed?
  • “malicious actions” involved?
Cincinnati teen Jessica Logan committed suicide after BF distributed nude pictures of her she sent him via cell phone.

No one charged.

Ohio  *(Cuyahoga Co. Juvenile Court)*

- 8 teens (14 - 17) caught trading nude cell phone pics of themselves required to do community service & ask peers if they knew “sexting” was a crime.
  
  31 of 225 said they did

- Judge felt CP conviction / 20 yr registration as SO too harsh for sending nude pic to bf.

  “These kids have no record, not even a parking ticket.”

**Miller v. Skumanick**  *(PA)*

- Phones confiscated in schools – photos of 3 teenage girls (topless, underwear, swimsuits)

- DA claimed girls were accomplices to production of cp – allowed themselves to be photographed

- Threatened prosecution under cp laws unless they participated in “education program”

- Dist ct granted girls’ motion for prelim injunctive relief.
Miller v. Skumanick

March 17, 2010 - 3rd Circuit heard appeal:

Plaintiffs showed likelihood of success on claims that prosecution would not be based on pc, but instead on retaliation for exercise of C. right not to attend program.

Sexting Laws:

Ohio

Senate Bill 103, if approved, changes underage sexting from a felony to 1st degree misdemeanor – no SO registration.

Vermont

Created sexting statute:
“Minor Electronically Disseminating Indecent Material to Another person”

• tried as juvenile
• no SO registration
• record expunged
New Jersey:

3 pieces of proposed legislation:

1. Teens caught sexting sent to educational program instead of facing criminal charges;

2. Schools required to educate parents and students about dangers of sexting;

3. Cell phone retailers required to create brochures detailing legal consequences of sexting.

Illinois:

(Measure pending in House)

Criminal offense to sell / distribute videotape or nude image of another person

• without written consent, and
• with the intent to damage a person’s reputation (Includes uploading images to Internet.)

• Punishable by up to a year in jail and $2,500 fine.

Nebraska:

New CP provisions allow an affirmative defense for minors who possess sexually explicit images of children 15 and older, as long as:

• the images are of only one child,
• were taken without coercion, and
• were not forwarded to anyone else.
In conclusion:

No uniformity among states as to how to address “sexting” issue -

- Prosecution under state’s existing CP laws
- New legislation aimed specifically at “sexting”
- Juvenile diversion programs, but see Skumanick

Thank You!

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3. 2008 poll by CTIA and Harris Interactive