

2017 Student Prize

The Editors of the Computers and Law Journal are pleased to announce that the winner of the 2017 Student Prize is Judith Latta for the article "The Exponential Growth of Child-Abuse via the Internet: A Call for Legislative Reform". Judith received a prize of \$1,000. We are pleased to publish the winning entry below.

The Exponential Growth of Child-Abuse via the Internet

A Call for Legislative Reform

By Judith Latta

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With the development of peer-to-peer networks and the dark web (a sub set of the deep web), child abuse activities are now mostly occurring in anonymous and encrypted environments largely out of reach of law enforcement bodies. Images are stored by the terabytes on personal hard drives and shared by the tens of thousands.⁴ For some people the anonymity seems to have ignited what may previously have been latent tendencies.⁵

Fueling the problem and driving it to new almost unthinkable dimensions is the issue of desensitisation and destabilisation.⁶ With the Internet as the catalyst, viewers are demanding more and more images and videos of abuse and torture of babies,⁷ toddlers and children.⁸

New trends such as customised child pornography and child rape are being created to order for the consumer, real-time child pornography whereby subscribers pay to watch is growing too.⁹

The old supply and demand relationship has been tamed on its head.¹⁰ The faster the Internet runs, the bigger the problem is becoming.

The number of children being abused is growing exponentially and a proportionally low rate of children are being rescued.¹¹

Legislation

A range of international Treaties and Protocols are in various stages of signature, ratification and accession.

The United Nations Convention on the Rights of the Child (UNCRC) has 140 parties but the Convention has *not* been ratified by the United States of America.¹² The United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography has *only nine* Parties.¹³

More than 38 countries including Australia have established extraterritorial laws. This means for example that Australia can now prosecute a person who commits a Child Sex Trafficking crime whilst abroad.¹⁴

Of the world's 196 countries only 104 have legislation specifically addressing child pornography. That is, 92 countries, including Russia,¹⁵ have no legislation relating to child pornography.¹⁶ Given the internationalisation of the Internet, these statistics suggest a bleak picture for law enforcement agencies.

A comparative review of Australian legislation relating to child pornography and child abuse materials reveals inconsistency between the jurisdictions. Impressively, Queensland has a comprehensive and modernised Criminal Code including the crime of distributing information about avoiding detection (via dark web Internet forums).¹⁷ This legislation is supplemented by an amended Act.¹⁸

The terms, Child Pornography, Child Abuse and Child Exploitation are used within the various state-based Australian legislation. As the terminology 'Child Pornography' has the potential connotation of sexualising the abuse of a child, a helpful first step towards harmonisation of Australian legislation could be to standardize the terminology used to describe the crime.

Moves are underway to encourage telecommunication companies (Telcos) and Internet Service Providers (ISPs) to proactively prevent, halt and report child sexual exploitation on their platforms. Current legislation requires carriers to 'do their best to prevent ... the commission of an offence',¹⁹ a curiously non-specific requirement. Current mandatory reporting requirements are rarely enforced as the standard requires actual knowledge of the Child Abuse images. Citing privacy

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concerns and the technical challenges of finding images of Child Abuse, the Telcos and ISPs are ‘laying low’. It is therefore not uncommon to see Telcos and ISPs shifting their business to a jurisdiction that has not legislated mandatory reporting.

Telcos and ISPs could take a broader role in addressing the issue including the enforcement of ‘Take Down Notices’²⁰ and data retention. If airlines are made responsible for what they carry then perhaps internet carriers should be too. Internet Hosting of child abuse materials is not covered under Australian state law, only by Commonwealth law. With the escalating prevalence of child abuse material hosted on the dark web, there is an argument that criminal prosecution could be enhanced if Hosting were to be covered under state law too.

Sentencing

Given the explosion in internet-related child abuse and torture, the role of sentencing²¹ as a matter of punishment, deterrence²² and community safety, is also worthy of review. While some argue that possession of child pornography does little or no harm,²³ there are widely held views that **possession** of child pornography has a serious impact on the victim and should therefore be classified as a serious crime.²⁴ By way of example it is useful to consider the legislation relating to the maximum year’s imprisonment for knowingly possessing child pornography, and how it was applied in recent cases.

Maximum Penalty for Knowingly Possessing Child Abuse Material in Australia.

State or Territory	Maximum Imprisonment Years
QLD	5 ²⁵ (child exploitation material)
NSW	5 ²⁶
ACT	7 ²⁷
VIC	10 ²⁸
TAS	?
NT	10 ²⁹
SA	5 ³⁰ (basic offence 1 st time)
WA	7 ³¹

The most recent review by the Sentencing Advisory Council,³² available to the writer, on the primary charge of ‘knowingly possessing child pornography’ was completed in 2008 on data from the years 2004-2007. Forty-six per cent (46%) of 197 offenders received non-custodial sentences including community-based orders and fifteen per cent (15%) were given immediate custodial sentences.

More recently, the Herald Sun³³ newspaper reported that a review of Sentencing Advisory Council data showed that 80 per cent (80%) of people jailed by magistrates for possessing child pornography in 2011-14 served less than 12 months’ jail. The higher courts sentenced fewer than

one per cent (1%) of people convicted of possessing child pornography to more than three years’ jail. Pressing factors include:

- the rapid escalation in the nature and extent of abuse being committed against babies, toddlers and children;
- possession of child abuse material creates a demand;
- the strong link between possession and contact-offending;³⁴
- the urgent need to protect the community (children).

Therefore, there is a need for possessors of child abuse material:

1. To be considered as complicit in the abuse and torture of children allowing for a maximum sentence of 20 years.³⁵
2. Who are capable of rehabilitation to receive sentences closer to the maximum allowable sentences. Such sentences would act as both a deterrence and punishment.
3. Who seemingly have no prospect of rehabilitation be imprisoned for much longer periods of time.

Consideration should also be given to the enactment of minimum mandatory sentences and per image sentencing.³⁶ Tougher sentencing is not a panacea, however it is one part of the solution for this growing crime of child abuse.

Extradition

It seems that law enforcement agencies are further hampered by the differences between jurisdictions in regard to extradition laws. Differences relate to definitions of child abuse material, thresholds for proof, legislation and sentencing provisions.

English man Richard Huckle used volunteering in Malaysia as a cover to rape and sexually abuse between 22 and 200 babies and children. He used the web site called the Love Zone, an encrypted network of paedophiles on the Dark Web that was protected by passwords and where users were anonymous. Members of Love Zone were required to post graphic material involving the abuse of babies to remain on the website.

Australia’s Task Force Argos tracked down the website, arrested its administrator and took over running the site which led to identification of Huckle. Perhaps deterred by Malaysia’s capital punishment laws,³⁷ there are allegations Australian and British police did not alert the Malaysian authorities.³⁸ Huckle continued committing crimes during much of 2014, until he went to the U.K. in December to visit his family, at which time he was arrested. He has been sentenced to 22 life sentences in a U.K. prison. Malaysian authorities may apply to extradite him.

The complexity of the dark web makes determining the right jurisdiction for the prosecution of a crime, challenging indeed.

Encryption

The issue of encrypted and password-protected devices and applications (apps) led to law enforcement agencies butting heads with manufacturers of smart phones.³⁹ The agencies are insisting they need access to the codes while the manufacturers have taken the stance they will not reveal encryption solutions for one device as to do so would be tantamount to allowing agencies access to all smart phones. British PM David Cameron has called for a ban on strong encryption. Manufacturers have countered with the argument by saying, 'There's no back door that can only be used by the good guys.'⁴⁰

Conclusion

If we choose to do nothing the demand for images of children being abused is likely to continue to grow

exponentially. Will our children be safe? What type of neighbours and neighbourhood will we have?

If we want to, we can make a difference. All each of us needs to do is lobby our politicians for legislative reform; for harmonisation of state-based legislation; for sentencing that is more reflective of the crime; and for internet carriers to take a more pro-active responsibility.

And, perhaps most importantly, keep an eye-out for the welfare of the children in our street.

In every image of child abuse, a child is hurting.⁴¹

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⁵ Jeremy Prichard, Paul Walters, Caroling Spiranovic, 'Internet subcultures and pathways to the use of child pornography.' (December 2011), 27.6, *Computer Law & Society Review*.

⁶ Mary L. Pulido, *Exploring Why Offenders View Internet Child Pornography*, (29 February, 2016, updated 29 February 2016), Huffington Post, <http://www.huffingtonpost.com/mary-l-pulido-phd/exploring-why-offenders-v_b_9330296.html>.

⁷ Internet Watch Foundation, *Annual Report, 2014*, Internet Watch Foundation, Annual Report, 2014, <<https://www.iwf.org.uk/accountability/annual-reports/2014-annual-report>>. Canadian Centre for Child Protection, *Child Sexual Abuse Images: Summary Report 1*, (November 2009).

⁸ Ian O'Donnell, Claire Milner, *Child Pornography: Crime Computers and Society*, (Wilan Publishing, 2007) 89.

⁹ Andrew Vachss, *Let's Fight This Terrible Crime Against Our Children*, PARADE, (19 February 2006), http://www.vachss.com/av_dispatches/parade_021906.html.

¹⁰ Richard Wortley, Stephen Smallbone, *Internet Child Pornography: Causes, Investigation, and Prevention* (Global Crime and Justice), (Praeger, 1st ed, 2012).

¹¹ Stephen Drill, David Hurley, Majority of people convicted of viewing child pornography walk free from Victorian courts, (4 August 2015), Herald Sun, <<http://www.heraldsun.com.au/news/law-order/majority-of-people-convicted-of-viewing-child-pornography-walk-free-from-victorian-courts/news-story/a8b9667b10b56dc77ea9f687b27e98b4>>. FBI, *Innocent Images National Initiative, Statistical Accomplishments*, (February 2006), Federal Bureau of Investigation, <<https://archives.fbi.gov/archives/news/stories/2006/february/innocent-images-statistics-1>>.

¹² Convention on the Rights of the Child, opened for signature 20 November 1989 UNTS 11.

¹³ United Nations Human Rights, *Status of Ratification Interactive Dashboard*, <http://indicators.ohchr.org/>.

¹⁴ Michael Pittaro, and Anthony Normore, *International Efforts by Police Leadership to Combat Human Trafficking*. (June 2016), FBI, <<https://leb.fbi.gov/2016/june/international-efforts-by-police-leadership-to-combat-human-trafficking>>.

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¹⁶ Charts Bin, *Legal Status of Child Pornography by Country*, (Last updated 7 years ago, accessed 12 January 2017) Charts Bin, <http://chartsbin.com/view/q4y>.

¹⁷ Criminal Code 1899 (Qld) 228A-D.

¹⁸ Criminal Code (Child Pornography and Abuse) Amendment Act 2005.

¹⁹ Telecommunications Act 1997 (Cth) s 313.

²⁰ Weixiao Wei, *Online Child Sexual Abuse Content: The Development of a Comprehensive, Transferable International Internet Notice and Takedown System*. Internet Watch Foundation, (accessed 15 January 2017), <https://www.iwf.org.uk/assets/media/resources/IWF%20Research%20Report_%20Development%20of%20an%20international%20internet%20notice%20and%20takedown%20system.pdf>. Bobbie Johnson, *Time taken to shut child abuse sites criticised*, (6 June 2008), The Guardian, <<https://www.theguardian.com/technology/2008/jun/06/internet.childprotection>>.

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²⁶ Crimes Amendment (Child Pornography) Act 2004 (NSW) No 95 s 91H (3).

²⁷ Crimes Act 1900 (ACT) 65 (1).

²⁸ Crimes Act 1958 (Vic) s 70.

²⁹ Criminal Code Act - Schedule (NT) 1 s 125B.

³⁰ Criminal Law Consolidation Act 1935 (SA) s 63A.

³¹ Criminal Code Act Compilation Act 1913 - Notes (WA) s 220.

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COMPUTERS AND LAW JOURNAL

2019 STUDENT PRIZE - \$1,000

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- writing clarity and argument structure; and
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