

Available online at www.sciencedirect.com**SciVerse ScienceDirect**www.compseconline.com/publications/prodclaw.htm**Computer Law
&
Security Review**

To block or not to block — European child porno law in question

Sylvia Kierkegaard

Law School, Southampton University UK & President, International Association of IT Lawyers, Denmark

ABSTRACT

Keywords:

Child pornography
Child sexual abuse
Grooming
Cybercrime convention
European Commission
proposal 2010/0064 (COD)
K. U. v Finland (2872/02)

The EU Commission has proposed a new Directive on combating sexual abuse, sexual exploitation of children and child pornography. The updated piece of legislation proposes to block access to child pornography websites. After months of negotiation, the Council, Parliament and Commission have agreed on a compromised text which generates more confusion and has been lambasted as meaningless. The compromised text is a result of powerful lobbying by Hollywood porno industry, Internet Service Providers and civil libertarians. The compromised text brings to highlight the tension between freedom of speech and protection of children.

© 2011 Sylvia Kierkegaard. Published by Elsevier Ltd. All rights reserved.

1. Introduction

There is something reprehensible when an adult gets his kicks looking at images of children in sexual situations and sickening pictures of dead babies. It is nauseating. And there is something truly scary when a society sees nothing wrong with a real or reel image of a male adult having sex with a toddler, a young girl hanging upside down and gagged while being sexually abused, or a pervert walking away free.

A society which is already in steep moral decline plunges further into an abyss of perversion that turns a country into the contents of a grave. It is morally repugnant when grown-up men and women have sunk to the level of child pornography and when liberal media, entertainers, politicians, and academia defend the right to access child pornographic site in the name of freedom of expression and prevention of crime. The theory is that pornography provides a “safe” outlet for paedophiles who would otherwise commit real life crimes against children.

Japan continues to be an international hub for the production and trafficking of child pornography. Child pornography is widely available at Japanese sex shops and border-line materials are sold at supermarkets and convenience stores. Images that can be legally possessed in Japan show real children being abused, raped and molested. Mangas (comic books) depicting brutal sex with children is also common. The ruling Democratic Party of Japan has refused to support legislation that would outlaw the possession of child pornography on the grounds that it would infringe individuals’ freedom of expression. This is a convoluted interpretation of human rights and freedom of expression.¹

Similarly disturbing is the survey analysis reported in 2009 suggesting that legalising child pornography could reduce sexual abuse and child prostitution. The study by Milton Diamond (a University of Hawaii professor, who retired in 2009) and colleagues — entitled *Pornography and Sex Crimes in the Czech Republic* — overlooks one important aspect: child pornography is itself a form of child sexual abuse.

¹ Kyoto will be the first prefecture in the country to create and enforce a ban on child pornography. See <http://www.japansubculture.com/2011/02/kyoto-prefecture-to-become-the-first-to-ban-child-pornography-but-is-it-enough/>.

A Dutch Catholic priest, who is serving in the board of an organisation that promotes paedophilia, was quoted as saying that such relationships aren't harmful.²

Traffic in online child pornography has exploded in recent years. The advent of new technology has made its circulation wider and has caused global alarm resulting in various national and international legislation to introduce measures to stop online child pornography. In 2009, a United Nations report by UNICEF estimated that there are more than four million websites featuring minors, including those of children aged less than two years, and it was said that more than 200 new images are circulated daily. The report warned that about 750,000 sexual predators are constantly prowling the Internet in a bid to gain contact with children and estimated that between 10,000 and 100,000 minors are victims of the child pornography network. The report assessed that the production and distribution of such images generates between \$3 billion and \$20 billion a year. These statistics continue to grow as technology becomes more advanced.³ While existing laws have been adapted or amended to cater for the rise of crimes on the internet and computer-generated child pornography, technological advances of the internet respects either international boundaries or criminal jurisdictions.

The EU Commission has proposed a new Directive on Combating sexual abuse, sexual exploitation of children and child pornography. The updated piece of legislation proposes to block access to child pornography websites. After months of negotiation, the Council, Parliament and Commission have agreed on a compromised text which generates more confusion and has been lambasted as meaningless. The compromised text is a result of powerful lobbying by Hollywood porno industry, Internet Service Providers and civil libertarians. The compromised texts bring to highlight the tension between freedom of speech and protection of children.

2. Child pornography in Europe

In 2002, a group of parents sexually molested and photographed their own children and swapped pictures over the Internet, forming what one man called "the club" Forty-five children were victimized. The parents then sent pornographic pictures of their children worldwide over the Internet. The investigation began when the international charity *Save the Children* found a picture on the Internet that appeared to show a child being molested and reported it to Danish authorities. This led to the arrest of Bente Jensen who was charged along with her husband and other parents from the United States and Europe (Germany, Switzerland, Netherlands and England). The children that were victimized ranged from age 2–14.⁴

² Shock after Priest endorses paedophilia. (2011) News 24. Available at <http://www.news24.com/World/News/Shock-after-priest-endorses-paedophilia-20110521>.

³ AFP (2008) Some 750,000 paedophiles prowling Internet: UN. Available at <http://www.breitbart.com/article.php?id=CNG.566c6d9cae728c5a9d3fc6f1e2b0e0c8.3f1>.

⁴ Bust of child porn 'club' alleges abuse by parents (2002). Available at http://lubbockonline.com/stories/081002/nat_081002064.shtml.

More recently, in a dramatic and successful operation, the European Law Enforcement Agency Europol smashed a worldwide paedophile network called 'boylover.net' following a three year investigation. The website attempted to operate as a discussion-only forum, where people could share their sexual interest in young boys without committing any specific offences. The forum had up to 70,000 members. Having made contact on the site, they would then use other channels, like e-mail, to exchange images and films of children being abused.

The operation against the heavily encrypted Amsterdam-based online forum uncovered 670 suspects and 230 child victims of abuse in more than 30 countries. In 2009, the UK's Child Exploitation and Online Protection (CEOP) Centre located the owner of the website and traced the server to Holland, involving the Zaanstreek-Waterland Police in the Netherlands and also bringing Europol into the investigation. The operation dubbed Operation Rescue was led by Britain's Child Exploitation and Online Protection Centre with cooperation from enforcement agencies in other countries. Between June 2008 and June 2009, Canadian, Italian, New Zealand and US law enforcement authorities all joined the investigation, as the scale of the international network became clear and suspects were identified in their jurisdictions. The website has now been taken down. Dutch authorities arrested Amir Ish-Hurwitz, the brains behind the internet forum Boylover.net.⁵ Amir I pleaded guilty to possession of child pornography and sexually abusing a 14-year-old boy in Brazil. He could face up to only three and a half years in prison.⁶ While three years imprisonment is too lenient a sentence for the horrendous crime committed by the Israeli-Dutch, it pales in comparison to the US' onerous enforcement of the child pornography possession law. 5200 Pentagon employees have purchased child pornography and have neither been prosecuted or even investigated.⁷ Under 18 U.S.C. Chapter 110, Sexual Exploitation and Other Abuse of Children, it is a federal and state crime to knowingly possess, manufacture, distribute, or access with intent to view child pornography. In addition, the Child Online Protection Act and the Children's Internet Protection Act also outlaw child pornography and cover media such as websites and other online forms of child pornography.

In March of 2011, Bosnian police seized around two million child pornography pictures and 7000 video clips during the arrest of a man accused of being in an international online abuse ring. However, he appeared not to be linked with the huge international paedophile ring centred in The Netherlands.

The distribution of pornographic images of children is no longer limited to mobile phones, magazines, videos and

⁵ Tyler, John (2011) Massive Dutch-run child pornography ring revealed. Radio Netherlands Worldwide. Available at <http://www.rnw.nl/english/article/massive-dutch-run-child-pornography-ring-revealed>.

⁶ Stanglin, D. (2011) Police bust major child porn ring in 30 countries. USA Today. Available at <http://content.usatoday.com/communities/ondeadline/post/2011/03/police-in-30-countries-bust-major-child-porn-ring/1>.

⁷ CNN Via MoxNews. (2011) Pentagon Employees Purchased Child Pornography. <http://www.sott.net/articles/show/221165-5200-Pentagon-Employees-PURCHASED-Child-Pornography>.

Download English Version:

<https://daneshyari.com/en/article/467049>

Download Persian Version:

<https://daneshyari.com/article/467049>

[Daneshyari.com](https://daneshyari.com)