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# Digital forensics: Understanding the development of criminal law in England and Wales on images depicting child sexual abuse

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## A B S T R A C T

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In 2015, offences surrounding the possession, distributing, creation and publication of images depicting child sexual abuse (IDCSA) are prevalent. As a result, it is well publicised that law enforcement and associated digital forensic organisations are incurring substantial case backlogs in this area. As more investigations of this type are faced, it is becoming increasingly essential for practitioners to maintain an understanding of current legislative developments, as a digital forensic investigation of suspected offences surrounding IDCSA does not just involve the blanket recovery of all digital imagery on a device. Governed by this complex area of law, practitioners must appreciate the intricacies of these offences, ensuring any examination policies are correctly defined whilst recovering information that will support criminal justice processes. In addition, as triage strategies are increasingly employed in an effort to speed up investigations, it is crucial to recognise the types of evidence that are of use to a prosecuting authority in order to ensure these examination techniques are both efficient and effective. This paper offers a comprehensive analysis of legislative developments for offences surrounding IDCSA in the United Kingdom, bringing together the disciplines of law and digital forensics. Evidence of value to a prosecution for these offences is also considered taking into account existing case law precedents in line with contentious areas including the Internet cache and unallocated clusters.

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## 1. Introduction

In April 2015, the Internet Watch Foundation (IWF) announced that due to the acquisition of new powers, the identification of websites hosting images depicting child sexual abuse (IDCSA) had increased by 137% (IWF, 2015). In addition, statistics obtained from the United Kingdom's Crown Prosecution Service (CPS) indicated that there have been almost 100,000 court hearings since 2009 involving those suspected of involvement with this form of illegal imagery. Looking further afield, the United

Nations Office on Drugs and Crime (2013) documented offences surrounding IDCSA as the second most encountered by law enforcement in Europe and North America and as a result, it is well documented that law enforcement agencies are frequently reporting case backlogs of up to and over a year (BBC News [Internet], 2014b).

Estimates suggest that approximately 54% of IDCSA is hosted in North America; 37% is hosted across Europe and Russia; 1% in Asia and less in South America highlighting the global problem posed (House of Commons, 2013). There can be no doubt that despite being one of the gravest offences that can

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be committed, maintaining global condemnation and widely prohibited, there remains a prevalent number of individuals worldwide who seek to obtain and trade in IDCSEA. Child offences have now reached such a heightened state of disgrace that even misinformed and propagandised information is enough to spark prejudicial public acts (Silverman and Wilson, 2002). Silverman and Wilson (2002) attribute the rise of public outrage against paedophilia and child offences to the abduction and murder of Sarah Payne in 2000 (BBC News [Internet], 2014c) and the campaigns by the News of the World, which followed in order to 'name and shame' convicted paedophiles. Similarly, the difficulty of identifying, preventing and punishing those who are involved with IDCSEA, have increased society's anxiety (Ryder, 2002). Acts of public violence, community unrest and vigilantism against potential suspects are regularly witnessed even in cases following negligent and erroneous media reports (Jewkes and Andrews, 2007).

### 1.1. Why images depicting child sexual abuse are regulated

At the heart of justifications for regulating IDCSEA is the need to prevent the original abuse depicted in any captured content, preventing the harm it causes both to the child and to society as a whole. Despite campaigns from groups such as the Paedophile Information Exchange (PIE) (BBC News [Internet], 2014a) and The Rene Guyon Society to justify sexual interactions with those legally deemed as children (Summit and Kryso, 1978), the devastating effects child sex abuse and resulting imagery depicting this have been recognised and can be summarised into the following two areas.

*Harm to the child:* As the creation of IDCSEA inescapably involves an act of sexual abuse, both mental and physical harm is caused to the child victim. As Ramirez (2014) indicates, often the abuse suffered by a child is not a singular event; it is one of a number, which can span across a number of weeks, months and years. Children involved in such acts are incapable of providing legal consent and therefore the pictures produced stand as a permanent representation of the abuse (Jenkins, 2003). Baroness, Lady Seccombe (House of Lords, 2000) elaborated, stating "such early experience of sexual activity often leaves deep emotional scars on a child which can damage future relationships. Furthermore, the child must live with the permanent knowledge that pictures of the abuse are still circulating". It is argued that every time the material is viewed in the future, is a continuation of the original abuse. Further, once a child victim has reached maturity and is able to fully comprehend what has happened the images depicting their abuse serve as permanent source of embarrassment and distress, knowing the material is in circulation, and the potential for it to resurface (House of Commons, 2002; Michaels, 2008). Finally, Jones (1998) reported that children who have been involved in IDCSEA have an increased likelihood of becoming involved in this material once they reach adulthood, repeating the offender cycle.

*Harm to society:* The majority of those within society have never seen IDCSEA or wish to view it. Failure to regulate IDCSEA may lead to a rise of easily accessible IDCSEA hosted on the Internet. This in turn may increase the chance of individuals stumbling across IDCSEA when browsing online, subsequently corrupting their stance on this material. In addition, failure to

condemn IDCSEA subsequently provides indirect justification for it, providing those involved with a greater audience in which to impose this material on. Failure to prohibit IDCSEA may intensify general curiosity surrounding the material, prompting individuals to actively search for IDCSEA in absence of any legislative deterrents. The problem this causes is two-fold. First, if demand, driven by curiosity increases, so does the volume of child abuse acts carried out in order to create new material. Second, concerns surround those who view IDCSEA and their underlying motive and potential to escalate their involvement in the abuse. If more individuals engage in possessing IDCSEA, as a consequence, Calder (2004) suggests there is an increased chance that those individuals will participate in the physical abuse of a child.

What was once an offence regulated by traditional policing techniques, now regularly requires the assistance of digital forensic (DF) experts due to the migration of photographic technology from tangible printouts to intangible digital data. As DF practitioners remain heavily involved in the extraction and interpretation of evidence in many cases both within the UK and internationally involving IDCSEA, it remains crucial for practitioners to maintain an understanding of current legal precedents. This article presents an analysis of IDCSEA offences in the United Kingdom (UK), discussing the central legislative and legal developments used to regulate this material. In addition, consideration is given to the types of DF evidence needed to support the prosecution of offences of possession and making, two complex areas of law in this area, and how DF investigations can be tailored to support the application of legal powers for these crimes.

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## 2. Preliminary comments: addressing terminology referencing illegal imagery

Before proceeding with discussions, it is necessary to consider the usage of terminology in this area, given that it incites controversial debate across multiple disciplines (Leary, 2007). Wortley and Smallbone (2012) refer to child sex abuse imagery as 'Internet Child Pornography' or ICP. Prichard et al. (2013) use the term child exploitation material. UK legislation prefers the term Indecent Image of a Child. Akdeniz (2013) and Seigfried-Spellar (2014) utilise the term child pornography, which is also used frequently in foreign legislative documents, seen with the Council of Europe's Convention on Cyber Crime. There is no globally accepted term for referencing child sex abuse imagery, however, there is a growing consensus that the inclusion of the word 'pornography' is objectionable, seeking only to trivialise the severity of the material (Leary, 2007), and this article provides support for this sentiment.

It is suggested that through an inclusion of the term 'pornography' when referring to child sexual abuse images, the illegal material is being unacceptably glorified, providing support for, or condoning such acts (Akdeniz, 2013). Similarly, the term pornography seeks to lessen the seriousness of the offence or the harm suffered by the victim (Wortley and Smallbone, 2012). As a term, pornography denotes consensual, acceptable and legal acts of sexual activity and using it in relation to child sexual abuse imagery provides connotations that such abuse

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