

## **Potential Consequences of Accessing Child Pornography Over the Internet and Who is Accessing It**

FRED S. BERLIN

*The Johns Hopkins University School of Medicine, Baltimore, Maryland*

DENISE SAWYER

*National Institute for the Study, Prevention and Treatment of Sexual Trauma, Baltimore,  
Maryland*

*It is important that children be protected from the exploitation that is intrinsic to the production of child pornography. It is likewise important that Internet users of all ages be made aware of the extremely dire consequences that they can face should they become involved in accessing it. This brief commentary presents a number of short vignettes documenting the tragic disruption in the lives of 5 men and their families (men who had otherwise been law-abiding decent individuals), as a consequence of having accessed child pornography. Some of those who had done so seemed to have been experiencing compulsive urges to act in such a fashion. Finally, this commentary addresses the question of whether the current extremely severe penalties associated with accessing child pornography over the Internet should, at least in some instances, be reconsidered—especially in light of research data suggesting that many of those who have acted in such a fashion may pose little actual risk to the community.*

### INTRODUCTION

According to Wikipedia, Cybersex is “a virtual sex encounter in which two or more persons connected remotely via computer network send each other sexually-explicit messages describing a sexual experience” (Wikipediadic-tionary, 2011). Often that will have occurred via an ongoing exchange of “chat” messages. Yet another form of Internet activity that in most instances

---

Address correspondence to Fred S. Berlin, 104 E. Biddle Street, Baltimore, MD 21202-2755. E-mail: FredSBerlinMD@comcast.net

(though not necessarily all) can be associated with erotic arousal involves the accessing, and sometimes exchanging, of pornographic visual imagery. Some of that imagery depicts children.

As a society, it is critical that we enact, and enforce, legislation that will assist in effectively protecting the most vulnerable amongst us; including our children. In that regard, it is important that children not be exploited physically, emotionally, or sexually—and utilizing children in the *production* of child pornography can potentially cause them varying degrees, and sorts, of harm.

To the extent that the act of viewing child pornography may increase the profit motive for its production, arguably those who pay a fee to be able to look at such images may inadvertently be enhancing the possibility that at least some children could be put at increased risk. However, much of the child pornography being viewed, and shared, over the Internet currently does not require a specified financial payment. In addition, some of it is of a virtual nature, involving computer-generated images, rather than images of an actual child.

A question can be raised about whether current legislation designed to protect children has sometimes inadvertently failed to protect other vulnerable populations who sometimes access child pornography; populations such as (a) the mentally retarded, or mentally ill, (b) some who have been the victim of a traumatic brain injury, (c) those who may simply be naively and harmlessly curious, or (d) those who may be biologically driven by aberrant sexual urges to engage in the voyeuristic viewing of child pornography. Finally, are the sanctions, and consequences, currently being imposed proportional to any actual harm that likely may have ensued as a result of having viewed, or even shared, images depicting child pornography?

The primary purposes of this brief commentary are to (a) look at how child pornography is being statutorily defined at both the state and federal levels, (b) to enhance an awareness among Internet users of the extremely severe consequences that can be imposed for viewing such images (consequences that many may know little about), (c) to provide a few clinical examples, for illustrative purposes, regarding the sorts of persons who are being prosecuted (some of whom are themselves quite vulnerable), (d) to briefly consider some of the factors that have contributed to the development of current sanctions related to this issue, and (e) to encourage thought and discussion about what might constitute the best possible approaches both clinically and legislatively, to the issue of child pornography.

It should be emphasized that some individuals appear to be experiencing compulsive urges to voyeuristically view such images, devoid of any motivation to actually approach a child sexually. In other words, in such instances, the act of voyeuristically, and often compulsively, viewing such

imagery over the Internet would appear to be an end in and of itself; rather than a means to some other end—such as actual sexual contact.

### HOW IS CHILD PORNOGRAPHY BEING DEFINED?

At the state level, child pornography has been defined somewhat differently across various jurisdictions. Some jurisdictions have made a distinction between child pornography and child erotica. However, for the most part, the term child pornography refers to any depiction of a child engaging in sexual acts; whether that child is alone, or with others. Suggestive pictures that focus upon a child's unclothed, or partially clothed, private or genital areas may likewise be construed as pornographic.

For reasons that will be further detailed, it is important to appreciate that at the federal level, anyone under the age of 18 is deemed to be a child with respect to portrayals of a pornographic nature. However, in some states, individuals over the age of 15 may not be deemed "minors" with respect to that issue. As a consequence, downloading a sexually suggestive photograph of a 17-year-old over the Internet may not be a crime in some states. At the same time, if that image has been transmitted electronically over the Internet across state lines, that could constitute a basis for prosecution at the federal level. For example, if a 16-year-old female in one state were to send a sexually explicit photograph of herself to her 18-year-old boyfriend in another state, she could be prosecuted for having produced (if she had taken the photograph of herself, or simply posed for it), and having distributed child pornography. Her boyfriend could be prosecuted (particularly if her parents were to complain) for both receiving and possessing, child pornography.

### POSSIBLE LEGAL CONSEQUENCES

When "probable cause" exists that a crime involving child pornography may have been committed, often a search warrant is executed at the suspected person's office or home. Such a search warrant is generally executed very early in the morning by a team of armed police officers, officers with weapons drawn.

Some individuals will have accessed child pornography via a file sharing system (e.g., Limewire). Such systems can allow computers at various locations to exchange a large volume of images with one another on an ongoing basis. These systems can act independent of the user in such a fashion that a person could possibly receive pornographic images of children without ever having specifically requested them from other users. Potentially, he could then be charged with the possession of child pornography. Each image received, and/or transmitted (including each image contained in a video) can constitute the basis for a separate and distinct criminal count. Under the

federal sentencing guidelines, the greater the number of images, the more severe the penalty—and any image that appears to be of a sadistic nature can further enhance the severity of the sanctions imposed (Federal Sentencing Guidelines Manual, 2009). In addition, under federal law, the fact that the Internet had been used to transmit and receive such images (which these days is almost always how they are transmitted) enhances the punishments even further.

Anyone prosecuted federally for an Internet-related child pornography violation (e.g., receiving and/or possessing child pornography) will almost certainly face the following consequences: (a) one or more felony convictions; (b) a period of incarceration of at least a few years in duration; (c) loss of voting rights; (d) placement on a “sex offender registry” (along with the associated embarrassment and public humiliation), and; (e) if in the United States legally with a green card (but not yet a citizen), deportation out of the country—possibly to a nation in which one has never previously resided, at the conclusion of one’s criminal sentence; (f) beyond that, if the individual prosecuted had owned a home in which he had committed the Internet offense, his computer and his home could be confiscated from him by the federal government; (g) he could also be fined financially; (h) if the pornographic image (or images) of any of the children that he had been viewing had been of someone whose identity had previously become known to the federal government (no matter who had taken those pictures, or how long ago that had been), he could be ordered to pay financial restitution to that identified individual for having viewed such an image.

As just noted, one almost certain consequence of being prosecuted federally for having accessed child pornography over the Internet is placement on to a “sex offender registry;” registries which are in most instances posted via the Internet for access to the general public. Among other things, persons on such a registry can be restricted insofar as where they are permitted to live (possibly even having to sell one’s own home if it is too close to a school). They can also be restricted from access to services such as Facebook, and compromised in their capacity to find new employment. Additionally, they can be restricted from taking their own children to that child’s school (or from visiting them there, or from attending PTA meetings there). Some states have proposed legislation requiring identification of one’s “sex offender registry” status on automobile license plates. The United States Department of Housing and Urban Development (HUD) bans a person from eligibility for federally assisted housing if he, or she, is subject to lifetime registration as a sex offender (HUD Statutes and Regulations). Some of those convicted of receiving or possessing child pornography must now register for a period of many years, remaining on such a registry long after they have served their time, and long after any period of parole and/or probation may have ended.

Of course, there is the added issue of public stigmatization and scorn (not only for themselves, but for their children, and other family members as well). Some children have been subjected to embarrassment (and even

taunting, or bullying) after classmates have discovered a picture of one of their parents on an Internet sex offender registry. Additional financial burdens may have ensued as a consequence of attorney fees, court costs, lost wages, and so on. In some instances, for those convicted of receiving and possessing child pornography, there has even been the risk of civil commitment to a locked “treatment facility,” involving a further deprivation of liberty, following the completion of their federal prison sentences (Petronik, 2002). Finally, because of the current federal sentencing guidelines (as well as because of the existence of minimum mandatory sentences), some individuals who have accessed child pornography over the Internet have received longer prison sentences than some actual hands-on sexual offenders, offenders who have been sentenced at the state level.

### WHO IS ACCESSING CHILD PORNOGRAPHY?

It would appear that large numbers of persons from a variety of backgrounds have both accessed, and sometimes exchanged, sexually explicit images that depict children (Galbreath, Berlin, & Sawyer, 2002). A subgroup of such persons are those who have had an interest in (and sometimes a past history of) actually approaching a child sexually. In addition to viewing child pornography, a number of persons in that subgroup will also have engaged in sexualized “chats” with children, and some will have previously been prosecuted for a sexual offense against a child (Seto, Hanson, & Babchishin, 2011).

Conversely, there would appear to be another subgroup of individuals with no documented history of ever having attempted to approach a child sexually (and with no evidence of an interest in wanting to actually do so), who nevertheless have manifested a pattern of viewing (sometimes compulsively) child pornography. When the confiscated computers of such individuals have been analyzed, no evidence has been found of sexually inappropriate “chats” with children, and in spite of any publicity that may have followed their arrests, no children will have come forward accusing them of any wrongdoing. Many will have had children of their own, who when interviewed by investigating authorities, will have stipulated that they had never been sexually abused by the parent in question.

### SOME CLINICAL EXAMPLES

In spite of the potentially dire consequences that are so often imposed criminally, as just noted there would appear to be a subgroup of individuals who view (sometimes compulsively) child pornography over the Internet who nevertheless do not seem to pose any appreciable risk to children in the community. The following five brief vignettes (all cases seen clinically by the senior author) are being presented for illustrative purposes. Some

identifying data have been modified slightly to ensure the anonymity of the persons involved—but no information has been changed in a way that might misrepresent the essence of their circumstances.

### Case #1

Mr. A was a 78-year-old man, who in his later years had developed a recurrent debilitating, but not life-threatening, illness. In spite of his illness, he had still functioned as the primary caretaker for his elderly wife, who had been even more ill than he had been. In order to occupy his time, he had decided to collect and maintain a variety of sorts of erotic depictions. When his computer had malfunctioned, he had taken it in for repair. After the repairmen had discovered the presence of a small number of pornographic images of children, legal authorities had then been notified, and Mr. A had been arrested.

Subsequently, he had then been sent to prison as a convicted felon; which in turn had required that his elderly wife move out of state with other family members. His name had also been placed on a “sex offender registry,” his computer had been confiscated, and he had been ordered to pay a substantial fine. Because his home had been in his wife’s name, as well as in his own, it had not been eligible for confiscation. The court did not order any mental health treatment, nor was it clear that any had been needed—at least, not prior to the distress that had been generated by the just noted sequence of events.

### Case #2

Mr. B was an 18-year-old gay male who had been using the Internet to view sexually posed images of 15- and 16-year-old boys. Clearly, that had been the sort of pornography that would have been of interest to many 18-year-old gay youngsters. Having been charged in federal court for downloading and possessing such images, he had subsequently been found guilty of having committed multiple felonies (i.e., receiving and possessing child pornography); convictions that had likely destroyed his future hopes of becoming an attorney. His name had also been placed on a “sex offender registry.” As an 18-year-old, he had been allowed to enter into a secure psychiatric treatment facility for 2 years as a probationary alternative to adult prison. It was unclear what psychiatric disorder he had been thought to have; a disorder that would require 2 years of treatment in a locked mental health facility.

### Case #3

Mr. C was a 22-year-old talented, bright, and well-educated young man with a promising future who had developed a compulsive urge to view child

pornography. There was no evidence that he had ever chatted online with any children, nor was there any evidence that he had ever attempted to approach a child sexually in any other fashion. Though he had been born in a South American country, his parents had brought him to the United States when he had been quite young—and he had never been out of the United States since that time. Although he had been in this country legally, and had been granted a “green card,” he had not yet taken the test required to become a United States citizen. He had had no prior criminal record.

Upon his arrest and conviction for receiving and possessing child pornography over the Internet, he had been incarcerated (as a felon), without being offered any psychological treatment. Upon release from prison, he will be deported back to his country of origin—a nation that he has not been in since early childhood, one in which he currently has only a few distant relatives.

#### Case #4

Mr. D, a man in his early twenties, had previously been the victim of a traumatic brain injury. As a residual consequence, his thought processes had become quite concrete—with little capacity to abstract. Since his brain injury, he had often felt lonely, and he had begun to spend an inordinate amount of time compulsively masturbating while looking at sexually explicit images on the Internet. A relatively small number of those images had involved children, and some of those images (without his full understanding) had been transmitted to others via a file-sharing system. As a consequence of the file sharing, he had been charged with “distributing” child pornography—even though he did not himself know the meaning of the word “distribution.” Currently, he is being assessed to determine whether he is “criminally responsible,” given his obvious mental impairments, and he is receiving treatment. However, even if he is found not to be criminally culpable for his actions, his name will almost certainly still be placed on a “sex offender registry.”

#### Case #5

Mr. E was a young man from a well-respected military family who had been in his senior year at a prestigious military academy. For many years, he had been aware of a compulsive desire to view child pornography. However, he had been both too embarrassed, and too afraid, to seek help while in the military, fearing that he would be dismissed from the service were he to do so. That had been because there is only limited doctor-patient confidentiality when one seeks psychological help from a service physician.

Having forgotten one evening to delete pornographic images of children that he had been compulsively viewing on his personal computer, a classmate who had inadvertently come upon them, in keeping with the service’s

“honor code” had then reported him. Subsequently court-martialed, without any treatment, he had then been sent to a military prison for a period in excess of 3 years. He had also been required to repay his entire (previously subsidized) tuition, and although as a senior he had been just a few months shy of graduation, he had been permanently expelled. Following the completion of his sentence, he will not only be a convicted felon, but his name will also be placed on a “sex offender registry”. All of this, of course, has resulted in great pain not only for him, but for his entire family.

## DIAGNOSIS

The current *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) does not categorize either sexual addiction, or sexual compulsion, as a disorder (American Psychiatric Association, 2000). However, when an individual’s actions are being driven by the presence of recurrent, abnormal sexual cravings (e.g., by cravings to repeatedly view child pornography), that individual can be diagnosed with a “Paraphilic Disorder Not Otherwise Specified.” The term Paraphilia is used to signify the presence of some sort of sexual abnormality—and clearly the average individual does not experience intense, recurrent urges about viewing pornographic images of either prepubescent children, or postpubescent adolescents. In that sense, to recurrently, and perhaps compulsively, experience such sexual urges can be thought of as “abnormal.”

The phrase “not otherwise specified” connotes the fact that the paraphilic disorder being diagnosed is not one of the eight more common paraphilias listed in the DSM. Having diagnosed a “Paraphilic Disorder Not Otherwise Specified,” one is then obligated to specify the exact nature of that condition.

For those who experience a compulsive desire to repeatedly view sexually explicit images of prepubescent children, the two primary components of their paraphilic disorder would be (a) voyeurism, and (b) pedophilia. Such a diagnosis is meant to distinguish such individuals from those who have a pedophilic disorder per se, persons who ordinarily experience urges to actually consummate a sexual act with a child (Berlin, 2011). In instances of the sort just noted here, the diagnosis of a Paraphilic Disorder Not Otherwise Specified should stipulate that the pedophilic component of the disorder is confined to a voyeuristic interest in viewing pedophilic images over the Internet. For the compulsive viewer of child pornography who has been diagnosed with such a paraphilic disorder, by definition the viewing (or voyeurism) is an end in and of itself, not a means to some other end.

It should be noted that the DSM considers sexual urges toward *prepubescent* children to be the hallmark of pedophilia, whereas the federal government defines anyone under the age of 18 as a child, with respect to

the matter of pornographic imagery. As indicated in the above-noted examples, not everyone who views child pornography does so in response to compulsive urges. The issue of how to psychologically treat individuals who have viewed child pornography, or whether they are all necessarily even in need of such treatment, is well beyond the scope of the present commentary.

#### WHY ARE THE PENALTIES FOR VIEWING CHILD PORNOGRAPHY (AS DEFINED STATUTORILY) SO HARSH?

Undoubtedly, many factors have played into the legislative decisions that have been taken to make the current penalties with respect to receiving, possessing, and/or exchanging images depicting child pornography so harsh. It should go without saying that children must be protected from the exploitation involved in producing such images. They may also need to be protected from the embarrassment and mental anguish that can sometimes ensue as they grow older as a consequence of knowing that those images may still be available online for others to see. That said, it had taken some time during the early years of the so-called “war on drugs” to begin to appreciate that some penalties (e.g., many years in prison for possessing an ounce of marijuana) had been disproportionately harsh. Just as not all drug offenders are the same, not all sex offenders are the same. Arguably, some of the statutes currently in effect regarding child pornography may be failing to adequately make certain important distinctions.

Much of the recent legislation related to sex-offending behavior has been influenced by widely publicized high profile cases, many of which have included the tragic kidnapping and murder of a child, cases that have had very little in common with those involving the receipt and possession of child pornography (Berlin, 2003; Scott & Gerbasi, 2003). Beyond that, there has been the false belief that as a group, sex offenders have an extremely high rate of recidivism, when in point of fact, the exact opposite is actually true (Greenfield, 1997). The use of demonizing, and often misleading, pejoratives (such as the term “sexual predator”) has served to further dehumanize anyone who might be drawn towards the viewing of child pornography. Politically, and legislatively, such persons have received little in the way of meaningful advocacy.

An early controversial *retrospective* study (which by definition cannot directly address the issue of subsequent recidivism) had looked at a group of men who had been incarcerated federally at a treatment facility in Butner, North Carolina on child pornography related charges (Bourke & Hernandez, 2009). The results of that study, which in part had involved the use of polygraph testing, had initially led some to believe that such individuals were at high risk of actually approaching children sexually. More recent *prospective*

research has concluded that the vast majority of individuals who have downloaded child pornography, and who have had no prior convictions for a sexual offense against a child, do not subsequently go on to commit hands-on sexual offenses (Endrass et al., 2009).

The prospective research just cited had involved a population of 231 men who had accessed child pornography over the Internet, either at work or at home. Only 1% (N = 2) of those men who had accessed child pornography had had a *prior* conviction for a hands-on sexual offense against a child. Having employed a very broad definition of *recidivism* (a definition which had included [a] ongoing investigations, [b] new charges, and [c] new convictions), the researchers had then found that only 0.8% (2 out of 231 men) in that study had, according to that definition, recidivated by committing a subsequent hands-on sexual offense of any sort over a 6 year follow-up period. Thus, there would appear to be a basis for questioning whether the very harsh penalties frequently being imposed for the receipt, possession, and/or transmission of child pornography should be reconsidered—questioning that is now being voiced by a number of federal judges who are often required (because of the presence of legislatively imposed mandatory minimum sentences) to order such penalties. One federal judge has even gone so far as to conclude that some such penalties are “cruel and unusual,” and therefore unconstitutional (United States of America vs. CR, United States District Court, Eastern District of New York).

### SOME CLOSING REMARKS

Children, and their parents, need to be made aware of the potential dangers that may exist on the Internet so that those children, to the extent possible, can be protected from them. At the same time, adults who would never knowingly harm a child should also be made aware of the extent of danger that they themselves may be in, should they (for whatever reason) attempt to access or view pornographic images of children over the Internet. As just noted, arguably one could legitimately question whether the current, extremely severe sanctions for doing so are either necessary or justified. Certainly one could attempt to make such a case at least in those instances in which the lives of entire families are being disrupted by such penalties in a way that seems to be out of proportion to any actual harm that may have been either intended, or done. One might even go so far as to contend that in some such instances, such penalties may be causing more harm than good, especially to innocent children in the families effected by such legislation.

Be that as it may, at least for now the laws are what they are, and in part this commentary has been intended to put Internet users on alert to the fact that that is so. Those with a compulsive urge to repeatedly view child pornography (as well as the naively curious) need especially to be

cautioned about the wrongfulness, and about the extent of the dangers involved, in continuing to act in such a fashion—and they should seek out professional help if they need it. Hopefully, some of the information presented here, along with some of the above-noted examples, will help to stimulate further thought, research, and discussion (and possibly even legislative action) with respect to these highly contemporary, emotionally charged, and very important, issues.

## REFERENCES

- American Psychiatric Association (2000). *Diagnostic and statistical manual of mental disorders, fourth edition, text revision*, Washington, D. C.
- Berlin, F. S. (2003). Sex offender treatment and legislation. *Journal of the American Academy of Psychiatry and the Law*, *31*, 510–513.
- Berlin, F. S. (2011). Pedophilia: Criminal mindset or mental disorder? *Journal of American Forensic Psychiatry*, *32*, 3–26.
- Bourke, M. L., & Hernandez, A. E. (2009). The “Butner Study” redux: A report on the incidence of hands-on child victimization by child pornography offenders. *Journal of Family Violence*, *24*, 183–191.
- Endrass, J., Urbaniok, F., Hammermeister, L. C., Benz, C., Elbert, T., Laubacher, A., & Rossegger, A. (2009). The consumption of Internet child pornography and violent sex offending. *BMC Psychiatry*, *9*, 43, available at <http://biocentral.com/1471-244x/9/43>.
- Galbreath, N. W., Berlin, F. S., & Sawyer, D. (2002). Paraphilias and the Internet. In Cooper, A. (Ed.), *Sex and the Internet: A guidebook for clinicians* (pp. 187–205). Philadelphia: Brunner-Routledge.
- Greenfield, L. A. (1997). Sex offenses and offenders: An analysis of data on rape and sexual assault. Washington, D. C., U. S. Department of Justice, Office of Justice Programs (NCJ-163 392).
- HUD Statutes and Regulations, 24CFR 960.24, 24CFR 982.553.
- Petronik, M. G. (2002). Managing unacceptable risk: Sex offenders, community response, and social policy in the United States and Canada. *International Journal of Offender Therapy and Comparative Criminology*, *46*, 483–511.
- Scott, C. L. & Gerbasi, J. B. (2003). Sex offender registration and community notification challenges: The Supreme Court continues its trend. *Journal of the American Academy of Psychiatry and the Law*, *31*, 494–501.
- Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending men with online sexual offenses. *Sexual Abuse: A Journal of Research and Treatment*, *23*, 124–145.
- United States of America vs. CR, United States District Court, Eastern District of New York, Memorandum and Order 09-CR-155, Retrieved on December 15, 2011 from [http://sentencing.typepad.com/files/us-v-cr-einstein-sentencing\\_memorandum-final.pdf](http://sentencing.typepad.com/files/us-v-cr-einstein-sentencing_memorandum-final.pdf).
- U. S. S. G. § 2×5.2, 2009 Federal Sentencing Guidelines Manual. *Wikipedia dictionary.com*. Cybersex. Retrieved June 27, 2011 from <http://en.wikipedia.org/wiki/Cybersex>.