

PROTECTING CHILDREN IN THE INTERNET AGE

New York Needs Tougher Laws to Combat Child Pornography, Internet Predators & Child Sexual Abuse



A Report from the New York State Senate Task Force on Critical Choices

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TABLE OF CONTENTS

Introduction	3
Recommendations	4
Child Pornography Is a Growing Problem	7
The Internet Has Become the Primary Vehicle for Child Pornographers	9
Internet Bulletin Boards Reaffirm Pedophilic Views	
The Proliferation of Child Pornography Web Sites and Pedophile Communities	
Peer-to-Peer Networks – The Newest Device for Child Exploitation	
Child Modeling and Exploitation	
Child Pornography and Sexual Abuse	13
Profile of a Child Pornography Possessor	
The “Dual Offender”	
Chat Rooms: A Favorite of Child Predators	
Grooming Children with Indecent Material	
Current Laws Are Not Keeping up with Technology	16
The Need for Multi-state Investigations	
The Charging and Sentencing of Child Victimiziers	
Conclusion	19
Endnotes	20

INTRODUCTION

The molestation and sexual exploitation of children has been identified as a major public health issue. One in four girls and at least one in ten boys are sexually abused in some way by the age of 18.¹ It is estimated that there are between 100,000 and 300,000 children sexually exploited annually through prostitution and pornography in the United States.²

Recent advances in computer technology have been aiding sexual predators, stalkers, child pornographers, child traffickers, and others with the intent of exploiting children, to commit their acts. Internet bulletin boards, chat rooms, private web sites, and peer-to-peer networks are being used daily by pedophiles to meet unsuspecting children. Equally troubling, is the fact that a greater number of teenagers today are using the Internet daily and many enter chat rooms, post personal information about themselves on bulletin boards and establish their own web sites.

Perhaps the most disturbing consequence related to the Internet has been the enormous increase in the production, sale, and dissemination of child pornography. While the possession or distribution of child pornography is illegal under federal law and in all 50 states, according to researchers and law-enforcement officials, this type of crime is increasing at an alarming rate, fueled largely by the capabilities of the Internet and modern technologies.

While some laws have been enacted to counter the spreading epidemic of online crimes against children, additional laws are needed to stem further spread and assist law enforcement with investigations. The increasing number and complexity of these cases, coupled with the rising sophistication of the perpetrators, have severely challenged those committed to addressing these crimes. Small, rural communities face serious constraints in responding to child abuse cases because of limited resources, training, and personnel with specialized knowledge of child abuse issues.³

Recent research funded by the National Center for Missing and Exploited Children found that more than half of child pornography possessors were “dual offenders,” meaning they had also had sexually victimized children. Since the sexual abuse was discovered at the same time as the possession of child pornography, there is a direct benefit to aggressively combating child pornography. Another relevant finding in the study was that the conviction rate for child pornography was nearly 100 percent—this contrasts sharply with the much lower rate of conviction for other crimes against children. Even in communities with vast resources, the task of investigating and prosecuting child abuse cases is overwhelming—there may be little or no physical evidence and the primary witness is often a child unable to withstand a trial.⁴

The recommendations in this report are based primarily on research in the field as well as extensive conversations with police investigators and district attorneys who have voiced their concerns about not being able to conduct timely investigations because our laws were written at a time prior to the Internet, when the drafters never anticipated the need for law enforcement to perform investigations for child abuse cases that may span several states.

RECOMMENDATIONS

- ❖ **Increase the Penalties for Promoting Child Prostitution** Today, children are being sexually exploited over the Internet for financial gain. The people exploiting these children are often those who should be caring for the children. Photos of these children are sent to people interested in sexually abusing children and arrangements are made from there. Penalties for prostitution offenses remain the same as they were when first defined in 1978. These penalties do not adequately reflect the seriousness of crimes involving the prostitution of our children.
- ❖ **Expand The Definition of “Indecent Material” to Include Text or Words** A common practice of child sexual predators is to engage the child in sexually explicit dialogue via the Internet chat rooms. This practice has been coined by experts as “grooming” and usually precedes the sharing of pornography with minors. Slight amendments to the current law would specifically make such sexual dialogue constitute indecent material.
- ❖ **Support Training for Law Enforcement in the Area of Computer Child Exploitation** Recent advances in the area of computer technology have made it difficult for law enforcement to keep up with the proliferation of child pornography being produced and distributed electronically. In order to combat this growing crime, greater resources need to be available to law enforcement, particularly in the area of computer crimes. New York State should make available to local law enforcement agencies training in combating child pornography and other crimes that exploit children.
- ❖ **Amend the Sex Offender Registry Law to Cover Crimes Committed in Other Jurisdictions** The SOR should be amended to include offenders convicted of sex crimes in another jurisdiction for which registration is required. The following crimes would be included: persons convicted of the federal crimes of coercion and enticement, transportation of minors, or use of interstate facilities to transmit information about a minor. Currently, if a defendant possesses child pornography (CP), he may have to register in New York State (NYS Corrections Law § 168(2)(d)). However, if he commits certain sex offenses under federal law, he may not have to register. All federal felons living in New York State convicted of having sex with a minor should have to register in New York.
- ❖ **Encourage Internet Service Provider Warnings** There is a belief by some Internet users that what they do over the Internet is anonymous and therefore not subject to any scrutiny. Internet service providers should make notifications that any trafficking of pornographic materials involving children will be promptly reported to law enforcement authorities. These warnings could be provided at junctures where the ISPs believe such material is likely to show up, such as pornographic sites that advertise “teens” and pedophilic chat rooms.
- ❖ **Increase the Penalties for CP Production** There is a huge discrepancy between the federal and New York State’s penalties for the production of CP. The State penalties for

the production of CP are quite lenient in comparison, allowing child pornographers to sometimes escape serving time.

- ❖ **Establish Penalties for Sexual Offenses Committed with the Aid of a Computer** The increased use of computers to commit crimes is alarming. Child sexual predators are regulars in chat rooms designed primarily for children and teens. They often pose as other teens or understanding and caring adults to acquire a child's trust prior to arranging a meeting. Specific penalties should be imposed when a predator uses a computer in order to commit a sex offense against a child.
- ❖ **Allow the admission of business records into evidence in Grand Jury proceedings via affidavit** Allowing the submission of business records into evidence with an affidavit would decrease the cost to witnesses and the state of prosecuting crimes by eliminating unnecessary travel costs associated with grand jury proceedings. Among other benefits, it would assist in the prosecution of child pornography cases and will provide better outcomes for victims of fraud and identity theft.
- ❖ **Require Out-of-State ISPs that do Business in New York to Honor Subpoenas for Subscriber Information** New York State law enforcement officials are often faced with a cumbersome and expensive process when attempting to obtain ISP subscriber information from other states. In some cases, not being able to obtain crucial information in a timely fashion may seriously hinder the full investigation and place children at risk. Several other states now have reciprocal agreements whereby they will honor a subpoena for information from another state.
- ❖ **Address Exploitive Child Modeling** In addition to hard core child pornography sites, there has also been an influx of exploitive child modeling websites containing pictures of underage girls wearing bikinis and other provocative clothing posing suggestively. These sites generally cater to pedophiles by exploiting children from 6 to 17 years of age and push the limit on what is currently legal. Laws should be enacted to limit this type of exploitation.
- ❖ **Allow Administrative Subpoena Power for Child Pornography via the Internet** It is a time-consuming process in some localities to obtain a grand jury subpoena in order to find the identity of a person using an email address or IP address. Providing a very limited power to specified law enforcement, such as the Superintendent of the State Police, could expedite the address verification of a child pornographer. A law similar to 18 U.S.C. § 3486 which permits law enforcement agencies to serve administrative subpoenas on ISPs to get basic subscriber information, would be useful for New York State investigations.
- ❖ **Aid Federal Investigations in NYS** Article 690 of the CPL does not specifically allow federal agents to apply for search warrants in New York. The fact that CP cases often cross jurisdictions makes it necessary for law enforcement officials in other states as well as federal investigators to access information in a timely manner.

- ❖ **Increase the Penalties for Sexual Offenses Against Children** The penalties for sexual offenses against children outlined in Article 130 of the Penal Law should be increased. There are numerous bills before the Senate that propose amendments to these provisions and establish increased penalties for sexually abusing a child.
- ❖ **Establish the Crime of Attempting to Lure or Entice a Child** While there are several crimes that address the criminal acts that generally occur after a child has been lured away, a new bill would establish a crime of luring a child regardless of whether the abuse took place.
- ❖ **Establish the Crime of Human Trafficking** A serious form of human trafficking involves involuntary sexual servitude, including forcing trafficking victims into prostitution. Trafficking has been exacerbated by the Internet with the promotion of "sex tours" in which children are victimized. Legislation needs to be enacted to punish human traffickers.

CHILD PORNOGRAPHY IS A GROWING PROBLEM

It is estimated that child pornography is a \$2 - 3 billion a year enterprise.⁵ In 2000, the FBI was managing nearly 3,000 cases of online child pornography, with about 2% of those cases dealing with online predators.⁶ 264 different hardcore child pornography magazines were produced and distributed in the U.S. in one month.⁷ An estimated 325,000 U.S. children are prostitutes, performers in pornographic videos, or have fallen victim to “commercial sexual exploitation.”⁸

Obscenity and child pornography are not protected by the First Amendment and do not fall within the area of constitutionally protected speech or press. The universal judgment that obscenity and child pornography should be restrained is also mirrored in the International Treaty first adopted in 1911 and now administered by the United Nations on behalf of the U.S. and over 100 nations.⁹ The modern law of obscenity begins with Roth v. United States (354 U.S. 476, 77 S.Ct 1304, 1957) in which the U.S. Supreme Court held that the First Amendment does not protect speech that is without any redeeming value or social importance. Obscenity and related crimes are defined in Article 235 of the New York State Penal Law.

Child pornography laws are fairly new. The federal government did not pass a law prohibiting child pornography until the 1970s, and in 1997 some states still did not have laws prohibiting its possession.¹⁰ New York enacted legislation before most states with passage of Chapter 910 of the Laws of 1977, which prohibited the possession or promotion of a sexual performance of a child. The legislative intent of the bill stated that “*The legislature further finds that the sale of these movies, magazines and photographs depicting the sexual conduct of children of our society to be so abhorrent to the fabric of our society that it urges law enforcement officers to aggressively seek out and prosecute the peddlers of children and the promoters of this filth by vigorously applying the sanctions contained in this act.*”

By the 1980s, federal authorities and state law enforcement believed the child pornography problem in the United States was under control and merchants of such illicit material were hounded by law enforcement officials to the point where it became difficult for child pornographers and pedophiles to locate and interact with each other. Isolated, they found it difficult to produce and distribute child pornography, or to locate and seduce victims. But a decade later, America is confronted with more organized societies of pedophiles, child pornographers, and child predators who use the information processing powers of computers and the Web to further their ability to break the law and create victims.

More than 200,000 images of children, including babies being sexually abused, were collected by New York State investigators from the Internet in 1997.

Even though states took an active role in stamping out child pornography, this type of exploitation was viewed by some as basically harmless, and terms like “kiddie porn” made the acts seem almost victimless, minimizing the devastating effects the trade has on the children involved. It was not until recently that law enforcement as well as researchers linked child pornography with the sexual abuse of children. A landmark case, *Ferber v. New York* (458 U.S. 747, July 2, 1982), affirmed the right of the State to limit the distribution of material depicting children engaged in sexual conduct because that conduct is abusive in nature. The court held that

the use of children in pornography “is harmful to the physiological, emotional, and mental health of the child,” adding that “prevention of sexual exploitation and the abuse of children constitutes a government objective of surpassing importance” to the right of free expression.¹¹

Web sites containing thousands of images of children in various degrees of nudity have been found and eradicated, but more appear at such an explosive rate that such sites are extremely difficult to control. More than 200,000 images of children, including babies being sexually abused, were collected by New York State investigators from the Internet in 1997.¹²

One child pornography sting operation, which derailed the Wonderland site operating mainly through the activities of child pornographers in the United States, Europe, and Russia, netted over one million images of child pornography, many involving the rape and torture of pleading children and other sadomasochistic activities.

In March of 2002, FBI investigators broke up an Internet child pornography ring that spanned 26 states in the United States and other nations as well. The FBI sweep found that 7,000 people registered e-mail addresses with the “Candyman” Internet discussion group that dealt exclusively in child pornography. The search engine Yahoo! hosting the site cooperated with FBI authorities, but some questioned whether Yahoo! should have known such a large discussion group of child pornography was using its site.¹³

Once an image is put onto the Internet, visitors from anywhere in the world can illegally reproduce the image repeatedly, putting it into circulation for extended periods of time or even indefinitely. Images can also be stored on computers in extraordinary numbers, making the regeneration of dismantled web sites a simple task. Finding and helping the children who are often coerced into helping make these deplorable productions remains difficult, and often impossible, given the international nature of the Web. The unfortunate trend of child pornography on the Internet seems to reveal that any unsuspecting child can become a victim with an act as simple as the uploading of a family photo by an unscrupulous friend of the family.

Child pornography on the Internet is available in various forms, ranging from pictures and short animated movies, to sound files and stories. Most pornographic content is widely available over the Web, allowing people to discuss sex, see live sex acts, and arrange sexual activities from computers. In addition, there are also bulletin boards and chat rooms dedicated to child pornography and adult-child sex. The primary use of the Internet and current technology by child predators to commit crimes against children adds to the already existing problem of crimes committed against our most vulnerable citizens.

THE INTERNET IS THE PRIMARY VEHICLE FOR CHILD PORNOGRAPHERS

The Internet is commonly regarded as a development of immense significance that will affect nearly every aspect of human culture and commerce in ways still only dimly discernible. It provides a unique forum for communication in that it allows hundreds of millions of individuals across the planet to communicate without ever seeing each other. Action at a distance becomes possible, as the pool of potential criminals capable of reaching children grows from local to international. And while most individuals met online are benign, those few who are not have a power to harm children that is magnified in scope many times over that of the traditional playground stalker.¹⁴

The use of current technology has provided numerous innovative opportunities for child victimizers to exploit and abuse children. In the past, a child predator would have to risk exposure by making face-to-face contact with a child, often in a public place. Today, Internet forums known as chat rooms, some devoted explicitly to the joining of child and adult for illegal acts, allow a perpetrator to disguise his true identity and more carefully groom a child for sexual acts.

The personal computer and Internet access have replaced magazines and videotapes as the primary means of distributing child pornography.

The Internet is not the only technological advance aiding in the production of child pornography and the exploitation of children. Computer and video equipment today allows thousands of digital photos to be stored on a single CD and movies to be transferred effortlessly over telephone lines.

Not so long ago, child pornographers had to find someone to develop their pictures or invest in equipment to carry out the work in-house. Today, digital cameras allow them to snap as many pictures as they wish without the hassle of buying, changing or developing film. Pictures can be uploaded onto a computer in seconds and shared with anyone having an email address or stored on a web site for effortless viewing. Additionally, color printers today are inexpensive and can quickly print a picture from a computer with photo quality, making it easy to assemble pornographic magazines in-house.

As computer technology advances, it seems that the methods of child sexual abuse are becoming increasingly brazen. For example, a fairly recent invention, the computer camera, is being used by child molesters to share their abuse with pedophiles over the Web. These devices simply mount to the computer monitor and record the activity in the room much like a video camera. As a child is being abused, others can view it live from their computers.

Internet Bulletin Boards Reaffirm Pedophilic Views

These are sites where ongoing discussions or “postings” on different themes are held via visitors posting opinions, requests, stories, pictures, and other forms of communication, and then returning at a later time to read the responses of others who use the bulletin board. These too have themes and represent a potential meeting ground for criminals to establish amicable

relations with children that they wish to exploit. One example is a man from Massachusetts who was indicted for raping a 12-year-old boy whom the man met on a computer bulletin board.¹⁵

In addition to the trading and or sale of child pornographic materials, pedophiles are using the Internet to share their views on “child sexuality,” rationalize the sexual abuse of children, and form support groups. This ability to network in large numbers only puts children at greater risk of exploitation and abuse. According to Chris Hatcher, Ph.D., a clinical psychology professor who studies child abductors and pedophiles, “virtual validation” achieved through pedophilic Internet groups may encourage someone with pedophilic desires to molest a child for the first time.¹⁶

The Proliferation of CP Web Sites and Pedophile Communities

Any search online may bring one to a variety of pornography web pages unintentionally or otherwise. Unfortunately, many such sites contain child pornography, which is strictly forbidden to be manufactured, sold, or distributed by law. If reported to law enforcement, child pornography web sites can be dismantled; however, this does not stop youths from accidentally accessing and being distressed by the contents of such a page, nor does it stop online criminals from creating and disseminating more child pornography at a prodigious rate. The ability to store massive amounts of information, including picture files, on a personal computer or server allows child pornographers to move the location of their sites if they are taken down. Law enforcement investigators have claimed they have seen what appeared to be the same site active again in another location (perhaps from abroad) shortly after it had been taken down. Some web sites are gateways to communication with online pedophile communities, some of which contain criminals, some of which do not. Since online dialogue cannot be prosecuted as readily as images can be, these sites are particularly problematic in that only a fraction of their visitors might be in violation of the law; the rest following their preferences are completely legal.

Fueling Fantasies and Validating Immoral Behavior

The virtual anonymity of the Internet has allowed those who support behavior that includes adult sex with children to become more vocal, espousing their twisted views. Pedophiles today use chat rooms, bulletin boards, web sites, and other Internet features to validate their beliefs that the children are not harmed by child-adult sex, that children are sexual and seductive, and that many children enjoy participating in sexual interactions. The following quote was taken from a pedophilic web site: *“The exaggerated statistics and lies about the extent of child pornography on the Internet has been the Trojan horse to suspend privacy rights and the freedom of speech for everyone. Sexually sick moral crusaders and totalitarian authorities have defined children’s bodies as obscene. They aren’t!”*

Distorted views like the one above have become commonplace in bulletin boards, chat rooms, and on personal and organization child pornography web sites. Twenty years ago people holding such beliefs were hard pressed to locate others with similar views. Today, in a few minutes on the Internet, they can find reaffirmation of their beliefs, no matter how unhealthy, immoral, or destructive they may be. Pedophiles can easily find confirmation that child pornography and adult-child sex are not immoral, are not harmful to children, and are not government’s business.

American law enforcement officials point to a direct link between voyeurism and abuse. In 36% of investigations undertaken by the U.S. Postal Service since 1997, pursuit of child pornography led to child molesters.¹⁷ Other studies have concluded that a significant percentage of child sexual abusers used child pornography to help them get prepared for an act of child molestation.¹⁸ In addition, evidence has revealed that child pornography can induce viewers to sexually abuse children¹⁹—more on this is discussed below.

Another troubling aspect of their behavior is the danger that the habitual consumption of child pornography can result in a diminished satisfaction with mild forms of pornography and a correspondingly strong desire for more deviant and violent material.²⁰ Furthermore, its use can drive one to act upon his impulses toward children. In a study of convicted child molesters, 77% of those who molested boys and 87% of those who molested girls admitted to the habitual use of pornography in the commission of their crimes.²¹

Peer-to-Peer Networks – The Newest Device for Child Exploitation

As if the difficulty of monitoring websites for CP is not enough, the rise of file-sharing “peer-to-peer” software allows computers to “talk directly to each other without using the Web, thus evading filtering software or ISP blockages. Commonly abbreviated as P2P, simply stated, a P2P network is any group of individual computers that can communicate with one another. For example, an individual can share any files on his computer with anyone else if they set up their computers to do so. The special software can be purchased at computer stores or downloaded from the Internet.

Since P2P networks don't always rely on the client-sever model (where you have to “login” to something) files can be shared freely. There is no company or service to shut down, as was the case with Napster. Therefore, there is nothing to control, so files can be shared without hindrance or oversight from any company, government entity or law enforcement.

Peer-to-peer networks are being used by child pornographers to easily and safely traffic CP. Pornography and child pornography are prevalent on peer-to-peer networks. According to recent reports, as much as 42% of peer-to-peer requests are for pornography. A recent GAO study found that simple keyword searches on a peer-to-peer network turned up hundreds of pornographic images of children.²²

Peer-to-peer networks are perhaps the most concerning of the new media used by child pornographers since they can be accessed by teens without parental awareness and are not easily blocked by parents or parental controls.

Child Modeling and Exploitation

In addition to hardcore child pornography sites, there has also been an arrival of exploitive child modeling websites containing numerous pictures of underage girls wearing bikinis and other provocative clothing posing suggestively. Sites of this nature compile pictures of girls as young as 7 posing in seductive positions on their beds wearing underwear. These sites are set up similarly to pornography sites with access to only a few photos available to view without

membership. A "members only" area can then be accessed for a monthly fee with "discreet" billing. In addition, the members chat and correspond with the child models. Since these pictures are not considered "pornographic," pedophiles cannot be prosecuted for viewing the modeling sites. However, these sites allow users to make contacts with pedophiles that may have knowledge of hardcore child pornography sites as well.

Congressional findings show that the use of children in the production of exploitive child modeling is a form of child abuse that can result in physical and psychological harm to the children involved. The child in these cases is not used to market products or services as legitimate child modeling does and the purpose of exploitive child modeling is to satisfy the demand of pedophiles.

Many businesses, individuals, or web sites claiming to sponsor child models purportedly used to sell products are in fact illegally marketing the underage models themselves, much of the time to pedophiles and online criminals. One example is a man who taught at a Brooklyn yeshiva who, posing as the head of a modeling agency, scammed teenage and preteen girls into posing naked for him to make videos. Other perpetrators are less flagrant, claiming to market for those businesses willing to pay for pictures of child models. In any case, the fact that exploitive child modeling is used by pedophiles to fuel fantasies opens the door to hardcore child pornography. While federal legislation has been proposed and is being considered, the problem remains.

CHILD PORNOGRAPHY AND CHILD SEXUAL ABUSE

Child pornography has been defined under federal statute as a visual depiction of a minor engaged in sexually explicit conduct. It is produced, collected, and used by pedophiles mainly for their own sexual arousal and gratification. Child pornographers and pedophiles come from all walks of life and many have occupations that provide them close contact with children. They may hold respected positions in a community and have concealed their interest in child pornography for years.²³ The United States Department of Justice estimates the child pornographic market to be worth \$2 to \$3 billion annually, making it one of the world's largest "cottage" or in-house industries.²⁴

Using a child for pornographic materials is a form of child abuse. On the surface, it may seem only exploitative to children but not harmful. However, it is often accompanied by direct sexual contact, emotional abuse, and physical abuse. In a recent study, 80% of the pictures confiscated by law enforcement showed children being sexually penetrated and 71% of the total pictures showed sexual contact between a child and an adult.²⁵ In most cases, child pornography is a permanent record of the sexual abuse of an actual child.

Profile of a Child Pornography Possessor

At this writing, there is not an extensive amount of research concerning the motivations of CP possessors. But with child pornography increasing, it is likely more attention will be focused on the motivational factors involved. Some recent research suggests that CP possessors include people who are:

- Sexually interested in prepubescent children (pedophiles), who use CP images for their personal sexual gratification;
- Sexually "indiscriminate," meaning they are constantly looking for new and different stimuli;
- Sexually curious, downloading a few images to satisfy their curiosity; and
- Planning to profit financially by selling the images over the Internet or establishing pay-per-view Web sites.²⁶

Those arrested for CP possession are a diverse group, with the exception of race and gender. Nearly 100% are males and 91% are white. Most were unmarried at the time of their crime, either because they had never married (41%) or because they were separated, divorced, or widowed (21%). Thirty-eight percent were either married or living with partners.²⁷

A significant percentage of those arrested for CP possession had access to minor children. Forty-two percent had adult or minor biological children, and 34% were living with minor children at the time of their crime. Forty-six percent had direct access to minors because they lived with them or had access through their job or an organized youth activity.²⁸

One of the most disturbing things about CP possessors is the age of the child victims in the pictures. In a recent report conducted for the Center for Missing and Exploited Children, the following results were recorded by arresting investigators. Of those arrested for CP possession:

- 83% had images of children between the ages of 6 and 12;
- 39% had images of 3 to 5 year-old children; and
- 19% had images of children younger than 3.

The “Dual-Offender”

Child pornography often exceeds naked pictures of children and usually involves youth engaged in sexual activities. Child pornography web sites and online catalogs have shown pictures of children as young as infants being sexually abused. One study by the Chicago police supports the contention that those who use child pornography are sexual abusers who engage in sexual activities with children. In almost 100% of their child pornography arrests in one year, detectives discovered evidence (e.g., pictures, films, videos) of adults engaging in sexual activities with children.²⁹

A recent report by the National Center for Missing & Exploited Children concluded that many CP possessors are what the authors termed “dual offenders.” These perpetrators sexually victimized children and possessed child pornography, with both crimes discovered during the same investigation.³⁰ Additional findings from this report call for a need to aggressively combat child pornography in order to prevent the sexual abuse of children. For example, 40% of the cases involving CP possession also involved child sexual victimization. Another 15% of offenders both possessed CP and attempted to sexually victimize a child. Therefore, 55% of CP possessors were dual offenders: i.e., possessing CP and sexually abusing children.

Fifty-five percent of those arrested for child pornography possession sexually abused or tried to sexually abuse children.

Chat Rooms: A Favorite of Child Predators

One of the most troubling uses of the Internet is to locate vulnerable children and begin their exploitation. There are many ways of achieving these goals; one is through the chat room. These online web sites allow visitors to exchange written information or files immediately, making simulated conversation quick and easy. Many chat rooms have themes such as music, sports, or other hobbies and while most visitors to chat rooms are legitimately interested in the topic of the room, experience and documented cases have shown that many pedophiles use chat rooms to fake their identities, and subsequently establish relationships of dubious nature with young children. Additionally, some chat rooms are devoted to themes that encourage such problematic relationships, like ones labeled “fanciers of older men.”³¹ Upon chancing into or curiously visiting these rooms, children can be immediately solicited into illegal sexual activities by older frequenters of the chat room.

A parent’s worst nightmare is the abduction of a child. The Internet has created new ways for child predators to make contact with children. Most incidents of sexual contact between adults and children involve seduction, rather than physical force.³² In many cases a child predator must use finesse to befriend a child who may be wary of strangers. By nature, children are very

curious and child predators figure this out quickly and take advantage of that human characteristic by gradually introducing children to pornography. Once the door has been opened, a predator will use pictures of other children engaging in sexual acts to convince the potential victim that it is natural and fun for children to participate in such acts. Even when they feel uncomfortable about participating, most children can be coerced, blackmailed, and/or manipulated by an adult. In addition to the use of pornography to entice children, drugs and alcohol are sometimes used by child pornographers to sedate children and make them more willing participants.

Grooming Children with Indecent Material

CP can be a coercive instrument used to seduce and abduct children. One habit of child predators online is to barrage children with indecent material while both are online, over Instant Messenger or through chat rooms.³³ Sometimes the goal is simply to irritate, frighten, or harass the victim, or for some pedophiles, to receive personal gratification for the act. Sometimes this will be part of a larger attempt to lure children into an illicit relationship by showing them pictures of other children engaging in sexual activities with adults.

Online predators will often attempt to use these images remotely to convince children to commit sexual acts, or in the worst of situations, to meet with the predator for engaging in sexual activities. One example of this activity is the case of a Westchester County man asking what he believed was a 13-year-old girl to meet him at a local mall for sex, after sending her pictures of an underage girl having sex with an adult. When he arrived at the proposed mall, the police arrested him. Sending indecent material to a child is illegal in New York State (Article 235 of Penal Law), but due to the sheer volume of indecent images sent across the Internet each day, this crime is becoming increasingly difficult to monitor.

We should no longer be looking in the bushes for a scary man in a trench coat”—Michelle Collins, National Center for Missing and Exploited Children.

New York State Law currently does not contain specific provisions to charge the child predator with the “meeting” itself, especially when he mistakenly meets an undercover police officer. Therefore, investigators often have to wait until indecent material is sent by the predator to move in for an arrest.

A common practice of child sexual predators prior to sending obscene pictures to children is to engage them in sexual conversation in chat rooms. This allows the predator to test the waters and see if he can raise the child’s curiosity. The vulgar language used by some child sexual predators is offensive enough to warrant specific charges even in the absence of the dissemination of indecent photos.

CURRENT LAWS ARE NOT KEEPING UP WITH TECHNOLOGY

A child pornography Web site bust can net authorities a large database of user names and credit card numbers, providing a basis to secure search warrants. The leads are then passed out for regional investigators to track down. Also, investigators can hover from chat room to chat room, watching for potential predators.

As Internet use among children and adolescents has increased substantially in recent years, lawmakers and law enforcement are concerned about the extent to which child sexual predators are using the Internet to commit crimes against children. The full incidence of juvenile online crime is difficult to measure for a couple of reasons. First, Internet crimes can often be committed without any witnesses, less a child victim often unable to withstand tough cross-examination in court. Second, sexual crimes against children are often unreported.³⁴

"As we become more effective in one area, they adapt and move in different directions." -- Monti Price, U.S. Homeland Security

The computer crime era has provided numerous advantages to criminals wishing to engage in hacking, identity theft and the abuse of children, and in many cases has left law enforcement at a distinct disadvantage. Internet-related child exploitation is relatively new but it has been the force behind the resurgence of child pornography. Given the millions of web sites and the ability of child pornographers to encrypt photographs or put them in a code, most police departments are ill-equipped to find such pornography.

Law enforcement must have strong measures to protect society against unlawful activity. However, with today's mode of criminal activity conducted online, substantive laws are not enough. Law enforcement, in cooperation with the private sector, must also be able to gather evidence, investigate, and prosecute these cases. Unfortunately, in some areas, the legal authority to do so and the necessary tools have not kept pace with current technology.³⁵ In addition, the sheer volume of computer-related crimes can tax the forensic budgets of many law enforcement agencies, making a lack of resources a hindrance as well.

"Cybercopping" refers to the act of officers patrolling the online world from computers, just as they would the real world from squad cars. The F.B.I. has been policing the Internet for several years, through its Innocent Images National Initiative established in 1995. Its agents pose as children on the Internet and when pedophiles arrange meetings with them, they are arrested.³⁶ In this way, many crimes can be prevented and dangerous individuals apprehended before they have a chance to hurt children.

To combat Internet crimes more effectively, a federally funded Internet Crimes Against Children Task Force has been established for New York. The Task Force joins the New York State Police, New York State Division of Criminal Justice Services (DCJS) and the New York State Attorney General's Office in an effort to combat Internet crimes against children. The New York State Police Computer Crime Unit handles about 200 cases a year and is expecting the number to climb as a greater number of localities are asking for assistance in investigating the growing number of computer crimes against children.

The Need for Multi-State Investigations

Internet Service Providers (ISPs) act as conduits for Internet subscribers, providing open access to the World Wide Web. ISPs offer a wide range of services to individuals such as high-speed connections for uploading or downloading documents and pictures, e-mail addresses for exchanging correspondence, chat groups, and bulletin boards. In addition, ISPs host individual web sites for people for a nominal fee. The multitude of services offered by ISPs has provided tremendous opportunities for those individuals, groups or organizations interested in sexually abusing children. However, like phone records or credit card receipts, emails and other types of Internet correspondence leave trails that can often be traced by trained law enforcement. During an investigation of this nature, where crimes may involve victims as well as criminals from multiple states, or countries for that matter, the authorities need to be able to act swiftly to obtain crucial evidence that may save a child.

The increased exploitation of children by way of the Internet has created numerous obstacles for law enforcement conducting investigations. Situations that pose problems for investigators in New York occur when both the child victim and the perpetrator reside in New York, but the ISP of the perpetrator is located in another state.

In many cases, the perpetrator has an account with an Internet Service Provider located in another state, such as AOL, which is located in California. An investigation by New York officials is sometimes prolonged for weeks or even months when trying to obtain crucial evidence in the way of Internet records across state lines. Sometimes Internet providers are forthcoming with the records when a child is deemed at risk, but in other cases, the investigation may be thwarted due to the inability to seize information quickly. When a perpetrator realizes he is being investigated due to the ISP shutting down his site, he is allowed time to destroy evidence and sometimes flee.

Further legislative activity is needed to assist investigators and prosecutors in protecting children when the perpetrator and/or his ISP information is located within the jurisdiction of another state.

New York State law does not allow New York State judges to issue warrants for ISP information in other states. Likewise, judges in other states are not allowed to issue warrants in New York for ISP records. The ability to obtain ISP information for investigations involving child pornography has been recognized by several other states. California, Florida, and Minnesota are among several states that now have reciprocal agreements whereby they will honor a subpoena for information from another state.

Under the Fourth Amendment to the U.S. Constitution, individuals are protected against unreasonable searches and seizures without warrant. These warrants must be based on probable cause, with specific descriptions of places and things to be searched and/or seized. The search warrant is an order in writing by a judge, grand jury (subpoena), or in some cases, a commanding police officer to seek the items/information described in the warrant. The search warrant in child abuse cases can serve as a means of identifying a child victim who is unable to come forward because of numerous reasons surrounding his or her age, the relationship to the abuser, or fear.

In New York State, the provisions with regard to warrants and the powers and duties of grand juries are specified in detail in Criminal Procedure Law.

The Charging and Sentencing of Child Victimizer

Since child pornography laws and even child prostitution laws, for that matter, are fairly recent, the penalties outlined in some states seem too lenient. In recent years, a number of states have passed legislation in an attempt to combat the growing problem—like New York did in 1996 by making possession of child pornography a Class E felony. But some prosecutors and lawmakers contend that laws which are supposed to protect children and punish predators are still not effective enough, due in large part to judicial discretion during sentencing and, in some cases, the inadequacy with regard to the minimal time served by offenders.

There is a huge discrepancy between the federal and New York State's penalties for the production of CP. The State penalties for the production of CP are quite lenient in comparison, allowing child pornographers to sometimes escape serving anytime. When given the choice between being prosecuted in federal court or in New York courts, the defendants often hope for the later.

In recent years, a number of states have created harsher penalties for child sexual abusers for a first offense. New York has enacted legislation mandating longer sentences for repeat sexual offenders, but a number of other offenses could be amended in order to confine child predators for a more reasonable amount of time. Those offenses would include the production of child pornography and offenses concerning child prostitution.

CONCLUSION

An unfortunate consequence of technological advancement is that child predators are utilizing these new developments to victimize children. The dissemination of child pornography was close to being wiped out in the 1980s as investigators were able to close down print shops and other businesses involved in the production. Today, this illegal and immoral activity is thriving and within reach of anyone with a computer and Internet access. It can be produced by anyone with common electronic equipment and access to children.

The recent surge in child pornography in the last decade and the effortless access validates the thoughts and behaviors of pedophiles, child pornographers and child sexual abusers concerning the use of children for sexual gratification and financial gain. Those who produce child pornography are supplying the market with images and videos of children that once put into circulation may be available on the Internet indefinitely as they continue to be downloaded, traded and sold. The non-producers of child pornography who nonetheless download, trade, or buy it, are also promoting the market.

Recent research demonstrating a link between child pornography possessors and child sexual abuse, warrants a call to aggressively pursue child pornographers. Lawmakers must ensure that investigators in the field are not hindered by antiquated laws enacted prior to the development of the Internet. New York State needs to amend its laws to assist its law enforcement as well as law enforcement in other jurisdictions dedicated to containing the spread of child victimization.

There is a great need for training and resources for law enforcement investigating computer-related crimes committed against children. Multi-jurisdictional investigations, undercover operations, and computer forensics in child pornography are issues that are confronting more law enforcement agencies as child pornography is growing. The recommendations at the front of this report will encourage greater cooperation between jurisdictions when conducting investigations and hopefully send a message that New York State is serious about combating child pornography.

ENDNOTES

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