

Child Pornography Law and Policy
Alisdair A. Gillespie
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**Book review by Sally Ramage, Editor, The Criminal Lawyer,
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Introduction

The author, Alisdair Gillespie, is a professor of criminal law at De Montfort University, in Leicester, England, United Kingdom. On the university website, Professor Gillespie states:

'My main area of current teaching and research is Criminal Law, in particular child abuse and the law. I also have an interest in the area of Criminal Evidence particularly in respect of covert surveillance.'

The author has written 13 chapters on the law relating to child pornography and quite correctly, he has introduced a comparative analysis of child pornography law from Australia, Canada and the United States federal law, since the Internet has made cross-border offences very commonplace. In chapter one, the author ponders the legal definition of 'child pornography' which is addressed in depth in chapters two to five. In chapters six to eight, the author explores the criminal offence of 'child pornography in several jurisdictions. Chapter nine dwells on the exploited children and considers to what extent they are actively involved in this criminal offence and chapters ten and eleven relate to sentencing after conviction. Chapter 12 explores how the police fight child pornography. The author uses chapter thirteen to draw together this study and to conclude the work.

Outdated definition?

The author reminds us of the conflict of opinion relating to the term 'child pornography', many believing that this term is outdated. He quotes from scholars such as Edwards (2000) and Taylor and Quale (2003) who conclude that child porn is there to provide sexual gratification 'for the producer and viewer. He informs that the (now defunct) government agency Child Exploitation and Online Protection Centre (CEOP) and the Internet Watch Foundation (IWF) prefer to use the term 'images of sexual abuse'. In this same scholarly detached vein, the term exploitation is debated and examined to see if it would better define 'sexual abuse'.

Meaningless Statistics

It is surprising to learn that in this electronic, computerised age, it has proved difficult to identify the precise number of people convicted of child porn. The court system

online allows one to collate such data across the country from the comfort of one's chair, at least for the past few years. The author does explore the statistics for the years 2003 to 2007 as per question–time answers, recorded in Hansard in 2009 and also to Akdeniz (2008) where analysis was made of statistics for the years 1993 to 2003.¹

It is not as if child porn offences are treated differently by different police jurisdictions in the UK. It may not be the case however, taking as an example the charge of ‘taking indecent photographs’ and ‘child porn’ and the author argues that the charge of ‘taking an indecent photograph’ should be treated separately to the charge of child porn. Gillespie states (at page 5):²

‘There is sufficient difference between protected material and indecent photographs of children to justify a separate analysis’

This gives rise to discussion as to the definition of the word ‘panic’. The fact remains that less than 1500 people were convicted in one year for committing the criminal offence of child porn and out of 67 million people, this small number belies the dangers lurking in the deepest criminal minds. Note that the organisation, ‘Women Against Pornography’ estimates that about 1.2 million children are annually exploited in commercial sex (child pornography and prostitution). The figure is actually twice this.³

Despite robust legislation in place

There is already robust legislation in place: Offences relating to Child Pornography of the Law Ratifying the Cybercrime Convention makes it an offence for a person to intentionally and without right:

- (i) Produce child pornography for the purpose of its distribution through a computer system;
- (ii) Offer or make available child pornography through a computer system;
- (iii) Distribute or transmit (emit) child pornography through a computer system;
- (iv) Promote child pornography through a computer system for oneself or for another;
- (v) Possess child pornography in a computer system or on a computer-data storage medium.

This Cybercrime Convention provides that a person who intentionally and without right, aids or abets the commission of any of the offences relevant to illegal access, illegal interception, data interference, system interference, misuse of devices, computer-related forgery, computer-related fraud, child pornography, commits offences related to infringements of copyright and related rights.⁴ There must be a line drawn at freedom of expression, as qualified in Article 10(2) of the United Kingdom Human Rights Act. Child pornography is illegal even if it may not be obscene because it is the sexual abuse of children and harms them. But although illegal, child pornography constitutes about seven percent of the pornography market, per the paper by M.G. Waters. So even if the making of it constitutes ‘freedom of expression’ this is no mitigation for the crime of child pornography which ‘depraves and corrupts’ as per the

¹ Akdeniz, Y. (2008) *Internet child pornography and the law*, Aldershot: Ashgate (ISBN 978-0-7546-2297-0)

² Note that the Criminal Justice and Immigration Act 2008, section 69 has extended the definition of indecent photographs in the Protection of Children Act 1978 (which creates offences relating to child pornography) to cover tracings of such photographs or pseudo-photographs. Sally Ramage, (2009) ‘The ambiguities of the law: SOA ss.66-67’, *Criminal Law News*, Issue 16, December 2009, page 2.

³ Sally Ramage, (2005) ‘Trafficking of women and children for pornography’, *Mondaq Legal Newsletter*, February 2005. <http://www.mondaq.com/>

⁴ Sally Ramage, (2012) ‘Data retention regulations’, *Criminal Law News*, Issue 39, January 2012, page 14.

Obscene Publications Act. It can lure children into sexual activity and instruct them. Young children who view such material may be led to believe that this is acceptable behaviour.⁵

Conclusion

In conclusion, this exploration of child pornography legislation has been very useful: the book is full of information. But the fact remains clear- not enough is done about child porn. One is reminded that Internet porn, in general, is wholly out of order. One need only 'Google' the words 'sex and strangulation' and instantly, with no fee payable, there is a choice of a glut of this very sick Internet pornography, the viewing of which led Vincent Tabak to kill architectural designer Joanna Yeates in Bristol on 19 December 2010. The criminal justice sector of the United Kingdom is grateful to Routledge, the publishers, and to the author, Professor Gillespie for making clear the loopholes, pitfalls, and status of the crime of child porn in this book. It is an urgent issue. Joanna Yeates' killer used strangulation porn freely available on the internet and although not child porn sends a very clear message to the authorities that pornography on the Internet, especially child porn, must be fiercely addressed immediately. As the author rightly states on page 9:

'However, others are less sure and suggest that the essence of a moral panic is missing'.

⁵ Schetsky, D. and Green, A. (1988) *Child sexual abuse: a handbook for health care legal professionals*, Pennsylvania: Brunner Routledge, Taylor and Francis Group, pp 154-157.