

CRIMINALISING FANTASIES: THE REGULATION OF VIRTUAL CHILD PORNOGRAPHY

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Abstract

Law enforcement agencies are currently concerned with the increasing availability of virtual child pornography. Virtual child pornography refers to computer-generated images where no real child is involved, but which nevertheless raise important ethical and legal issues. There is an ongoing debate whether the possession of virtual child pornography should be criminalised. As this paper will show the criminalisation of such images is a controversial issue with arguments for and against making it a criminal offence. This paper aims to contribute to the debate by offering a definition of virtual child pornography and considering the legal and policy arguments that are put forward as justifications for the regulation of such material. This paper contributes to the theoretical field of critical information systems research by highlighting how the main interest of critical research, namely emancipation can be furthered or hindered by legal developments. We will explore how the idea of emancipation can be applied in the area of virtual child pornography. Furthermore the paper aims to contribute to the debate of this topical issue and thereby support policy developments on a national and international level.

Keywords: Virtual child pornography, regulation, critical information systems research, emancipation

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1 INTRODUCTION

Recently there has been concern in the media that those with a sexual interest in children are ‘acting out’ their fantasies in virtual worlds such as Second Life. For example, in an area within Second Life, called ‘Wonderland’, young “children” were offering sex in a playground. The young children were in this context not real children, but graphical representations and the playground was a virtual playground created with computer software in this technological world. This incident demonstrates one form of virtual child pornography, namely computer-generated images (CGI), which is created wholly through computers and does not involve the abuse of real children but nevertheless raise important legal and ethical issues (Oswell, 2006). The term virtual child pornography refers to CGI, drawings, paintings and cartoons portraying sexual representation of children. It should be noted that ‘virtual child pornography’ and ‘pseudo-photographs’, also called ‘morphed images’, are not the same thing. Pseudo-photographs consist of a photograph or a collage of photographs manipulated with digital techniques (Taylor and Quayle, 2003). As Gillespie (2008) points out, the quality of virtual child pornography varies strongly but some of the CGI appear to be of ‘photo-quality’ and can hence appear to be very realistic. It also highlights the importance of placing virtual child pornography in its wider context where technological developments enable easy sophisticated production of this kind of material. In addition to the Second Life incidents concerns are expressed by the law enforcement agencies and welfare organisations about the increasing availability of virtual child pornography, which has given rise to the question whether the possession of this kind of material should be criminalised (Home Office, 2007). Ireland is one of the few countries to have introduced legislation specifically encompassing the production and possession of virtual child pornography (sections 5 and 6, Child Trafficking and Pornography Act 1998) although it has rarely been used in practice. The Swedish legislation regarding child pornography criminalises the production, distribution and possession of ‘virtual’ child pornography through its formulation ‘anybody that depicts a child in a pornographic image’, ‘distribute such image’ or ‘possess such image’¹. The UK government recently launched a consultation process suggesting that the law in England and Wales could be altered to criminalise possession of such material (Home Office, 2007). The government highlights in their report that there is no existing evidence suggesting a direct link between possession of this kind of material and the increased risk of sexual offending against children (Home Office, 2007) whereas some researchers (Quayle et al, 2008) have noted that virtual child pornography such as CGI can be used as part of the solicitation process and that the production, distribution and possession of child pornography, whether virtual or not, could be considered an exploitation of children. While most people agree that child pornography should be illegal there are critical voices raised about the criminalisation of virtual child pornography that does not demonstrate a direct link of harm to children (Williams, 2004). One of the main arguments in the debate regarding this issue is whether it is appropriate for the law to regulate peoples fantasies and imaginations through the creation of a ‘thought crime’ (Home Office, 2007) or whether this is a threat to the individual’s privacy and right of freedom of expression. Privacy and freedom of expression, although important civil liberties, have been in the focus of the civil liberties and technology debate for more than a century (Wong, 2005). One can however argue that they should not be considered as absolute rights and that they should be balanced with other rights, and not take the precedence over other rights, such as the right of the child not to be exploited or abused (Eneman, 2005).

The above references to current legislation and consultation processes in different countries show that virtual child pornography is considered an important issue. It seems to be intrinsically linked to the abuse of children, which is one of the most problematic areas of misuse of information and

¹ The prohibition of such depiction does not include drawings or paintings produced for artistic merit. For further information see the Swedish Code of Statutes, the Penal Code, Chapter 16, Crime against public order, 10 a §.

communication technologies (ICT). Virtual child pornography touches on deeply held moral convictions, where subjective opinion and moral position tend to dominate the debate rather than rational arguments (Taylor and Quayle, 2003; Sandywell, 2006; Luck, 2008;). This affects the way we perceive technology and its use in society with such tensions being evident in the desire for technology-related legislation (Gillespie, 2008) which means it is a playing field for social conflicts and negotiations. Even though we know that ICT is used for harmful content such as the dissemination of child pornography (Eneman, 2009; Gillespie, 2008), little academic research exists in relation to the use of ICT to produce and disseminate harmful content. The specific subject in this paper, virtual child pornography, has not previously been researched using a critical lens in the area of information systems or ICT. Adam (2005) emphasizes the importance of adding a critical perspective when discussing crimes against children such as child pornography, to avoid that subjective moral opinions take precedence over rationale arguments in the debate. Finally, it is an important area for critical investigations because it relies on a number of assumptions that are worth exploring and it is related to power relationships that call for a more detailed analysis. This paper addresses therefore the question of virtual child pornography from a critical angle (Stahl, 2008) and aims to contribute to the debate by offering a definition of virtual child pornography and considering the legal and policy arguments that are put forward as justifications for the regulation of such material.

This paper contributes to the theoretical field of critical information systems research (CISR) by highlighting how the main interest of critical research, namely emancipation (Alvesson and Deetz, 2000; Cecez-Kecmanovic, 2005; Stahl, 2008), can be furthered or hindered by legal developments. We will explore how the idea of emancipation can be applied in the area of virtual child pornography. This will entail a discussion of the stakeholders whose interests are touched upon. We will ask what emancipation can mean (Stahl, 2008) in the context of virtual child pornography and how the current legal framework and planned developments thereof are conducive to it. Furthermore the paper aims to contribute to the debate of this topical issue and thereby support policy developments on a national and international level. This paper is based on an analysis of the consultation paper (Home Office, 2007) examining whether England and Wales should criminalise possession of virtual child pornography. In our analyse of this document we have focused upon the arguments used for and against criminalising possession of virtual child pornography. This paper is organised as follows: in the next section the theoretical framework, critical information systems research (CISR), is presented with a focus on the theoretical concept of emancipation. Section three describes the phenomenon virtual child pornography. This is followed by a discussion in section four and then the paper is closed by a conclusion in section five.

2 THEORETICAL FRAMEWORK

An emerging research field within the IS discipline, relevant for this paper, is critical information systems research (CISR) (Howcroft and Trauth, 2005). CISR can be seen as a reaction to the mainstream IS research which tends to assume that technological innovation is 'inherently desirable' and beneficial to all (McGrath, 2005). The use of ICT for the creation of virtual child pornography is an illustrative example of how ICT can be used for harmful purposes and raises challenges for society (Gillespie, 2008). CISR is based on 'critical theory' (Klein and Huynh, 2004; Croon- Fors, 2006). 'Critical theory' is not a unified theory 'but rather a set of loosely linked principles' (Klecun, 2005), with a commonality 'to change the status quo and promote emancipation' (Alvesson and Deetz, 2000; Stahl, 2008). Critical IS researchers use a wide spectrum of critical social theories (for example Bourdieu, Foucault, Habermas) to critically question established assumptions about the technology, its use and its implications (Cecez-Kecmanovic, 2005, Willcocks, 2006). Engaging in CISR entails the study of the research object with the aid of concepts relevant to critical theory, for example domination, power, control, emancipation etc (Cecez-Kecmanovic, 2005). In addition to using relevant concepts, the research object should be placed in a wider historical, political, social and economic context (Alvesson and Deetz, 2000). By critically questioning 'social realities' and providing alternative insights how these 'realities' are historically, politically and socially constructed and

strongly shaped by asymmetries of power in society, we are able to move beyond established definitions and assumptions and can achieve emancipation from traditional existing structures (Cecez-Kecmanovic, 2005; Alvesson and Deetz, 2000). The central aim in critical IS research is its deep interest of emancipation (Stahl, 2008; Alvesson and Deetz, 2000). Stahl (2008) highlights however that there are fundamental problems involved with the critical intention to emancipate, for example when the research subjects don't prefer to be emancipated. The emancipatory perspective in this study refers to emancipation on a societal as well as an individual level.

It is important to note that there are numerous other critical movements that refer to particular areas of research. With regards to our topic of virtual child pornography which is sometimes subject to legislation, it is worth pointing out that an established tradition of critical studies in the area of law exists (cf. Kelman, 1987; Unger, 1986; Mansell et al., 1999). These critical legal studies have a similar interest in emancipation and build on a similar set of theories, but they often emphasise other aspects, which we cannot reflect in full in this paper. Our aim here is not to give a comprehensive review of the critical literature but to show that a critical angle can provide a better understanding of the social consequences of ICT. Using the central concept of emancipation and related critical topics, such as ideology or rationality, we hope to show that seemingly uncontentious issues such as legislation of a morally repugnant act such as the production or possession of virtual child pornography are in fact complex and deserve detailed attention. We use some of the thoughts of critical theory and investigate in how far they enlighten our understanding of virtual child pornography and its regulation. Our aim is not to come to a final judgment on whether or not virtual child pornography should be banned but rather to show how critical issues could be framed. The result of this will be a wider understanding of some of the problems associated with ICT use in society, which may influence public perception as much as policy making and further research.

3 WHAT IS VIRTUAL CHILD PORNOGRAPHY?

It is necessary to define what virtual child pornography is. This is not necessarily easy because, to an extent, "child pornography" itself is not readily defined, even within International law. The *UN Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* has perhaps the widest definition when it talks about any representation "by whatever means" of a sexual representation of a child. This could conceivably include non-visual depictions, for example text or audio files. This would tally with some definitions of child pornography produced by, for example, Interpol (see Gillespie, 2008). Other International instruments are more restrictive and focus on, for example, visual depictions (see, most notably, the *Council of Europe Convention on Cybercrime*, *Council Framework Decision 2004/68/JHA on Combating the Sexual Exploitation of Children and Child Pornography* and the *Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse*) and most legal systems similarly base themselves on visual depictions. Further problems with the definition of child pornography include the age of a child which has traditionally differed between jurisdictions (usually based on the age at which a child can consent to sexual intercourse). Whilst some international instruments continue to adopt this approach, others (most notably the *UN Optional Protocol* and *Council Framework 2004/68/JHA*) reject this approach and suggest that "child" should mean any child under the age of majority (universally set at 18 under the *UN Convention on the Rights of the Child*). When the *Council Framework* is fully implemented this will have the effect of standardising the age of a "child" to 18 across the member countries of the European Union (Gillespie, 2008 but see Gillespie, 2004 for a discussion on the propriety of such a change).

Until comparatively recently, visual depictions meant, in essence, photographs but the development of ICT blur the boundary between photographs and other forms of realistic visual depictions. Child Pornography has traditionally been seen as the record of child sexual abuse or exploitation of a real child (Taylor and Quayle, 2003) but advances in ICT meant that the depictions may not necessarily involve a real child or show it being abused. For example, morphed images became increasingly

recognised. A morphed image is where a real photograph is digitally altered. This can take a number of forms and may continue to involve the exploitation of a child. For example, the alteration could involve superimposing the face of a child onto an (adult) pornographic picture, or removing the image of a child (for example eating an ice-cream) and superimposing it onto a pornographic picture so as to make it look like the child is participating in a sex act. Such images can still be considered sexually exploitative since although no abuse has necessarily occurred to the child, it remains exploited since a recognisable picture of the child is displayed purporting to show it engaging in sexual activities.

A second form of morphing is to take an adult pornographic image and, using a graphic manipulation package, transform the image into a child. So, for example, the hips of the female could be slimmed, breast size be reduced and pubic hair airbrushed out or thinned. The resulting image would appear to show a child. Again, where it shows a recognisable person this could be said to be exploitative since a person recognising the person portrayed may think (wrongly) that the person posed sexually whilst a child.

Criminalising such exploitative images is perhaps less problematic since they amount to an interference in the personal integrity of the subject shown. However ICT also allows for the creation of purely-fictitious images. Complex and realistic Computer Generated Images (CGI) of children can be produced. Such images differ from morphed images in that a real person is never involved. Whilst it is, of course, conceivable that a real person could be modelled, it is equally likely that a person will simply create a representation of their desired body-type. Accordingly CGI child pornography cannot realistically be considered abusive since there is no 'real' child. It is submitted that the lack of exploitation allows for a differentiation to be drawn between morphed and CGI images. Accordingly for the purposes of this paper we will consider "virtual child pornography" to exclude morphed images, and instead to constitute solely those images that are wholly generated by a computer, i.e. a "virtual child".

The term "virtual child pornography" will be used because although the term "child pornography" has fallen out of favour with many law enforcement and child protection organisations, it remains a term readily used within International law (see the *UN Optional Protocol* and related European instruments discussed above). It is not necessary for us in this paper to define "pornography" save to state that we are concerned with images that purport to show a "child" involved in sexual activity or an image that focuses on the genitalia of a child (in other words, in effect adopting the definition used by the *UN Optional Protocol* (Article 2(c)).

3.1 Arguments for and against the criminalisation or legalisation of virtual child pornography

Now that a definition of virtual child pornography has been established it is possible to consider whether virtual child pornography should be criminalised. Most legal systems criminalise the production and dissemination of child pornography and, whilst some have argued to the contrary (see, for example, Ost, 2002), most systems also criminalise the possession of child pornography. Certainly in International law, all four international instruments identified above require member states to criminalise the production, dissemination and possession of child pornography.

The justification for criminalising child pornography is that it is inextricably harmful to children. The production of child pornography requires a child to be abused and those who possess the images are considered to be fueling the demand for the production of new images to be traded (Taylor and Quayle, 2003). Similar arguments exist for morphed images where it can be said that a child or other person will be exploited and that this can cause secondary harm through psychological distress (Palmer, 2005; Gillespie, 2008). However can the same be said to be true of virtual child pornography where there is no real person to be identified or caused either primary or secondary harm?

It is notable that International law differs in its treatment of virtual child pornography. Whilst the *UN Optional Protocol* undoubtedly includes virtual child pornography through its definition which encompasses the production of visual representations by any means and also expressly includes

simulated sex acts, other international instruments are less clear. For example, the *Council of Europe Convention on Cybercrime* expressly states that member States can decline to criminalise fictitious child pornography (Article 9.4), something replicated in the *Council Framework Decision* (Article 3.2(a), (c)) and *Convention on Sexual Exploitation on Children* (Article 20.3).

Some have argued that virtual child pornography can be harmful especially since it can be used, for example, in the grooming process (Quayle et al, 2006) but the question is whether this justifies the criminalisation of such images or whether it would be better to criminalise the *use* of such images. For example, if the concern is that such images can be used in the grooming process then surely the better strategy would be to criminalise grooming rather than the images? Certainly this argument is put forward by some who suggest that in the absence of evidence to the contrary, it is difficult to justify the criminalisation of the possession of images just on the basis that they *might* be misused (Williams, 2004). The counter-argument is that proving grooming is not necessarily easy (Gillespie, 2008) and that tackling the images rather than their use would, at least, allow them to be removed from circulation, thereby potentially preventing their use in grooming.

The tension that exists over the criminalisation of virtual child pornography can be best summarised as the competing interests of free speech and the protection of the individual (children). A difficulty in discussing this issue is identifying the precise meaning of these concepts. The European model of “free speech” is traditionally considered to be encapsulated within Article 10 of the *European Convention on Human Rights*, the “freedom of expression”. The other competing form is that contained within the United States Constitution, with the First Amendment being considered to be one of the most important constitutional safeguards.

Within Europe there has been no direct challenge to the criminalisation of virtual child pornography although challenges have been brought against various forms of pornography, including child pornography. The standard way of dealing with such matters was set out by the European Court of Human Rights (ECtHR) in *Handyside v United Kingdom* (1976) 1 EHRR 737 where it was held that a direct nexus of harm did not need to be shown in order to interfere with the right to freedom of expression, and that interference to uphold the morals of society would suffice where it was proportionate (see, also, *Müller v Switzerland* (1991) 13 EHRR 212). Others have suggested that criminalising the possession of pornography or providing an objective definition for pornography amounts to an interference with Article 8 of the ECHR but the ECtHR has again been relatively robust in rejecting such challenges (see, for example, *Wingrove v United Kingdom* (1997) 24 EHRR 1 and *O’Carroll v United Kingdom* (2005) 41 EHRR SE 1).

However the same is not true within North America. Perhaps the most notable case to rule on this matter was *Ashcroft v Free Speech Coalition* (2002) 122 S.Ct 1389 but the Supreme Court of Canada has also addressed this matter in *R v Sharpe* [2001] 1 SCR 45. The US Supreme Court held that legislation that purported to criminalise virtual child pornography was unconstitutional since it infringed the First Amendment. The Court held that virtual child pornography did not lead to any harm being caused to a child and rejected the suggestion that such material could encourage sex offenders to abuse children although, it should be noted, that this was in part because the US Government did not adduce cogent evidence to support such a link.

In terms of the law (for these purposes defined universally) it can be seen that there is no agreement as to whether virtual child pornography should be criminalised. In this paper we seek to set out the competing reasons why virtual child pornography should, or should not, be criminalised.

4 DISCUSSION

In this section we will critically analyse the emancipatory effects of the arguments, presented in the previous section, regarding criminalising or legalising virtual child pornography.

4.1 Emancipation as freedom from abuse for children

One of the arguments brought forward to support the criminalisation of virtual child pornography is that such images are used in the grooming process with real children (Quayle et al, 2006; Home Office, 2007). It is accepted that part of the “grooming” stage of the cycle of abuse (the cycle of abuse is a model that shows how an offender will seek to befriend a child so as to permit acquiescence to sexual acts: see Gillespie, 2008) may be to show children pornography to help “normalise” sexual activity (Taylor and Quayle, 2003). Virtual child pornography could be used to show images that purport to show children being happy to participate in such activity (in a way similar to the way it is known that morphed photographs do). This means that virtual child pornography could be used to harm and abuse real children. The US Supreme Court was, however, unconvinced by such approaches. It is questionable whether this argument justifies the criminalisation of such images or whether it would be better to criminalise the use of such images. Otherwise the criminalisation tends to be created on the basis that they might be misused (Williams, 2004).

Some authors have suggested that it is becoming increasingly difficult for law enforcement to differentiate between real, morphed and virtual child pornography (Edwards, 1995). If this is correct, then it could be argued that one reason for criminalising such material is to ensure that vital investigative time is not wasted in searching for victims that are not, in fact, real. It could also be difficult for successful convictions if the prosecutors have to prove for each image that it depicts a real and not a virtual child. It is suggested that this can create situations where the prosecuted can operate with impunity (Levy, 2002). A counter-argument is that the same sophisticated technology that can be used to create virtual child pornography, could also be used by law enforcement to distinguish between real and virtual child pornography. Another complex and important issue is how to determine the age of a fictional character. The risk of subjective interpretations of the age of a computer-generated representation is problematic.

Interestingly in *Ashcroft v Free Speech Coalition* the Supreme Court held that they accepted in principle that this could act as a justification for criminalising such material (2002) 122 S.Ct. 1389 at 1406). The Attorney-General had not, in that case, managed to identify a real case where such confusion had occurred but as technology develops it becomes easier to identify cases where such confusion occurs, potentially raising this as a live issue.

There are many things innocent in themselves...such as cartoons, video games and candy, that might be used for immoral purposes, yet we would not expect those to be prohibited because they can be misused. (*Ashcroft v Free Speech Coalition* (2002) 122 S.Ct. 1389 at 1402 per Kennedy J.)

Some would argue however that there is a difference between morally neutral 'things' such as cartoons and sweets and those that are morally 'doubtful', and that it is easier to justify an interference with the possession of such matters, this would seem to accord with the European model of the treatment of freedom of expression discussed later. However this does highlight the question as to whether the justification for criminalising such matters is based on a freedom of abuse or an interference to uphold the morality of society.

There have been cases where the police have been unable to prosecute because the suspects were only found in possession of drawings and cartoons: no illegal photographs or pseudo-photographs were discovered. As it is currently legal to possess this material (except from Ireland), the police then have to return it to the person in possession of it regardless of what it portrays. Making it a criminal offence allows the police to take the images away from the offender and out of public circulation.

Moreover, there is increasing concern among child welfare experts and the law enforcement that the problem will increase as technology becomes more sophisticated. There are already indications that

websites featuring animated images depicting child sexual abuse are on the increase. These are often hosted abroad, beyond our jurisdiction. As technology advances a gap in the law is starting to emerge.

4.2 Problematic empirical assumptions about relationship between VCP and abuse

It is also suggested that the possession and circulating of such images can legitimise and reinforce inappropriate perceptions of children, and while being unregulated, allow the development of a sense of social acceptance towards child sexual abuse. In addition, one could argue that virtual child pornography leads to secondary victimisation where victims of child abuse re-live their abuse when they are exposed to such images. There is however still a lack of empirical evidence showing any direct link between the possession of such images and sexual offending against children (Quayle et al, 2006). This means that we need more research about the connection between looking at computer-generated images and committing sexual abuse to be able to use that as argument for criminalising such images. Levy (2002) uses the following argument to support the legalising of virtual child pornography: "there is every reason to think that if virtual child pornography is legal, pornographers will abandon production of actual images of children in favor of it ... why take the risk of a jail term for producing actual pornography when a simulacrum can be produced legally?" One major problem with this argument is that it is not empirically underpinned. This viewpoint is relevant to our argument because it shows that the uncontentious aim of protecting children from abuse can easily be turned into an argument for the legalisation of virtual child pornography. The problem with this turn of the argument is that it relies on similar empirical assumptions as the opposing argument and that the empirical studies available do not conclusively support one or the other.

A particular difficulty in this area is deciding what the research and studies shows. The *Williams Committee* concluded that it was not possible to show any link between pornography and sexual violence beyond that which occurs in the making of the images (Williams, 1979). Whilst law enforcement officers, and those who work closely with them, believe that the link between the possession of pornography and further abuse of children is proven (Long, 2002), others believe that the link is more tenuous (Taylor and Quayle, 2003). Within the United States of America and Canada, this absence of a link was considered an important reason for questioning the legal justification for criminalising the possession of such material (*R v Sharp* [2001] 1 SCR 45 at [28]).

4.3 Emancipation through freedom of fear and moral convergence

While it is difficult to come to an unambiguous conclusion whether criminalising or legalising of virtual child pornography is more conducive to the freedom of children from abuse, a different argument can be made for the criminalising of virtual child pornography from the viewpoint of a shared moral point of view. It is difficult to deny that the vast majority of members of the public in most countries are morally opposed to virtual child pornography. The root of this opposition may be in a desire to protect children, but its expression is independent of such considerations. To put it differently, most people think that child pornography is repulsive, whether or not its production involved the abuse of real children. Criminalising virtual child pornography on this basis can be seen as an attempt to cast into law the moral perceptions that a populations holds. This is arguably one possible goal of legislation, which supports shared moral norms.

A related argument could then be that outlawing virtual child pornography can lead to freedom of fear of the very existence of such material. Parents may fear that their children view such material or that its existence may increase the probability of their children being abused. Other members of society may just find the thought of the existence repulsive and live a better life just because the possibility of its existence is reduced.

Following this type of argument, it is easier to understand why the UK government, for example, thinks that criminalisation of virtual child pornography may be justified by the "inappropriate feelings

towards children" that it may engender (Home Office 2007). The issue is no longer related to children and their protection but to a majority view of what is considered normal and appropriate.

The problems of this approach are easy to see. Moral preferences change over time and are culturally relative. There are numerous examples of sexual moralities (Foucault, 1998) that have changed drastically over time. Homosexuality can serve as an example of sexual practices that were seen as abjectly repulsive by a majority of the population and therefore outlawed. If moral convergence or consensus is the main reason of criminalising virtual child pornography, then one needs to understand that such preferences are subject to change over time and that regulations may change as a consequence.

4.4 Emancipation as expressed in freedom of speech and expression including in VCP

It has been noted that virtual child pornography could be considered an important aspect of freedom of speech. "[p]aedophilia may be a form of expression involving fantasies and imaginings which may be explicitly important to minority sexual groups, the paedophiles." (Akdeniz, 1997). Certainly such arguments would chime with judicial expressions of freedom of expression:

"[Article 10(1)] is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but particularly to those that shock, offend or disturb the State or any sector of the population. There is no point guaranteeing this freedom only as long as it is used in accordance with accepted opinion."
Otto-Preminger Institute v Austria (1995) 19 EHRR 34

It became clear in the case of *Ashcroft v. The Free Speech Coalition* that the issue of criminalising virtual child pornography is controversial. The court ruled that it would be a 'thought crime' to criminalise such images, since it is digitally created images without a real victim and therefore protected by freedom of expression. Freedom of expression therefore goes beyond the right to publish or hold "nice" images or information and should include material that society may object to. That said, freedom of speech and freedom of expression are both considered to be qualified rights but the key question that arises therefore is whether criminalising virtual child pornography can be said to be necessary and proportionate. Potential threat of individual or personal freedoms and 'criminalising an individual's imagination. (Potential infringement of an individual's right under Article 10 of the ECHR to freedom of expression although others pointed out, it is not an absolute right and as such may be balanced with other rights and interests as the child's right to be protected from sexual abuse.

4.5 Ideologies and Hidden Agendas

One of the issues that critical research is keenly aware of is the question of ideology and hidden agendas. Ideologies can be defined as one-sided perceptions of certain social realities that benefit some and disadvantage others (Freedon, 2003; Hawkes, 2003; McLellan, 1995). Ideologies are typically removed from critical discourses via a range of different mechanisms. Central among such mechanisms is the use of language in a way that renders it impossible for participants in discourses to question particular assumptions. In the case of virtual child pornography, one could argue that a central term that betrays ideological assumptions is the use of the term virtual child pornography itself. By using the term "child pornography" in conjunction with "virtual", it becomes very difficult to argue that the artefacts and the way they are produced can under any circumstances be acceptable. The strength of the moral argument against child abuse is such that even the attempt to ignore it is doomed to failure. We are thus witnessing a use of language that impregnates itself against questioning. "Virtual child pornography" carries strong moral connotations and thereby forces discourses in a particular direction. This hardening of discourses is an issue that critical research typically aims to expose. The use of language for ideological purposes is not confined to virtual child pornography. In

the area of ICT metaphors such as that of a "virus" for self-replicating programs or of "piracy" for the infringement of intellectual property regulations have been noted before (Klang, 2003; Stahl, 2007).

Luck (2008) highlights that there are ethical and moral aspects involved when discussing virtual child pornography. He argues that even though most people think 'murder' is wrong, 'virtual murder' in computer games is socially accepted since no 'real' person is actually 'murdered' within a computer game. Luck (2008) then applies this argumentation in the context of 'virtual paedophilia' and question if we should view 'virtual paedophilia' in the same way as with virtual murders since no 'real children are actually being abused in virtual child pornography. His conclusion is that there is a 'possible inconsistency in the social acceptance of virtual immoral acts' when comparing 'virtual murder' in computer games and 'virtual paedophilia'. This logic is questionable since Luck does not differentiate between "killing" and "murder", which are distinct concepts with different meanings. Murder is the unlawful killing of an innocent person. Virtual killing is normally premised on the basis that your player is a 'good' person (police, soldier or some other authority person etc) killing the 'bad' person. While Luck's argument may not hold due to conceptual inaccuracies, the question of consistency of treatment of moral and legal issues in virtual environments remains pertinent.

Notwithstanding the validity of Luck's argument, one can observe the use of language with regards to virtual child pornography that suggests that there are hidden agendas. A prime example of this is the UK consultation document (Home Office, 2007). It is clear that its proponents are in favour of outlawing virtual child pornography. The document is clear in that such an approach would be a departure from existing legislation: "A change to the definitions [of child pornography so as to include virtual material] [...] would be a significant shift in the thinking behind the existing legislation which was designed to protect real children from abuse" (p. 6). The report states this in the knowledge that its authors are "... unaware of any specific research into whether there is a link between accessing these fantasy images of child sexual abuse and the commission of offences against children,..." (p.1). The purpose is thus to penalise "inappropriate views about children" (p.1).

Despite this clear indication that the proposed legislation is one that aims to reinforce moral convictions, the authors nevertheless imply that it will contribute directly to the protection of children. In their foreword to the report, the authors say that "Technology has advanced to the point that photographs of real children being abused can be manipulated into cartoons or other depictions. Possession of these images is not caught under existing legislation..." (p. i).

What we are observing here is the use of rhetorical devices to achieve an aim. There is nothing fundamentally wrong with rhetoric but in this case it is used to promote legislative aims that would require an ethical and legal underpinning which is possibly at odds with established views. This is a typical instance of interest to critical research because it exemplifies the use of hidden agendas and ideologies for particular purposes. It would thus be an interesting exercise to investigate the history of the consultation document. Who launched it and what did they have to gain by it? This is a complex question that lies beyond the scope of this conceptual paper, but it is a question worth following up.

5 CONCLUSION

The aim of this paper has been to highlight some of the issues and open questions surrounding virtual child pornography. The topic was chosen because it is related to questions of use, misuse, and regulation of ICT. It is an interesting and highly emotional topic that is not often treated in much depth by information systems scholars, even though computer misuse is often seen as a major problem for the organisational use of ICT.

Using a critical lens we have argued that the topic of virtual child pornography requires detailed understanding of technology as well as its social, ethical, and legal context. The theoretical contribution of the paper is to show that critical ideas can help shed a better light on such issues. The central idea of emancipation may help to better understand some of the arguments surrounding questions such as the legalisation or criminalisation of virtual child pornography.

A critical reflection of research is typically seen as a hallmark of critical research. In this spirit, we need to acknowledge that the paper has not covered all possible angles. One aspect we have omitted was the economic one. Critical research typically aims to cover the social context of its topic and the economic environment is often seen as central for the explanation of social phenomena. It would certainly be plausible in the area of virtual child pornography given the dominance of adult pornography on the internet and its importance as a piloting technology for most e-commerce interactions.

Another possible improvement would be to provide a more fine-grained ethical analysis of the issues. If virtual child pornography is about moral beliefs, then the question of emancipation should cover the issue of ethical justification of such moral beliefs. The US supreme court arguably followed a utilitarian line of argument when it ruled that free speech was more important than the moral downsides of virtual child pornography. However, such a view would need to be analysed in more depth, which should lead to a more in-depth understanding of the meaning and realisation of virtual child pornography. Furthermore, there are empirical questions about the relationship between consumption of virtual child pornography and abuse of children. A critical piece of research would need to investigate in more depth how such relationships can be established and in what way empirical results can be used as a basis of legislation.

Despite these limitations, we nevertheless believe that this paper makes a substantial contribution to the debate surrounding virtual child pornography while, at the same time, having shown the relevance of critical research when applied to ICT.

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