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Crime investigations of 'child abuse material' - Challenges and opportunities posed by digital technology

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Introduction

Sexual abuse and sexual exploitation are some of the most awful acts that a child can be exposed to and constitute serious crimes (Eneman, 2005). The increased digitalisation of society has profoundly changed the circumstances for people with a sexual interest in children to engage in the production, distribution and consumption of child abuse material. In addition, digital technologies enable contact and communication with other like-minded individuals sharing the same sexual interest in children and also facilitate new forms of getting in contact with children (potential victims) (Davidson & Bifulco, 2018). Child abuse material (sometimes also referred to as child pornography) refers to documented material depicting the sexual abuse and/or sexual exploitation of a child (or children). The presence of child sexual abuse and child abuse material in our society constitute serious, global and growing challenges for law enforcement agencies, not least due to technological innovations and advancements.

Emerging technologies has allowed the production, distribution and consumption of child abuse material to evolve from a concealed and often expensive activity into something that today can be accessed easily, rapidly, anonymously and in many cases at no cost. Another unique and serious consequence with the use of digital technologies is that even in cases where the offender is caught, the victim identified and the criminal case successfully prosecuted, the harm to the victim i.e. the child involved continues since the material is circulating and remains accessible which leads to further re-victimisation (Eneman, 2010; Davidson & Bifulco, 2018).

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The use of these new technologies should by no means be seen as additional channels - the harnessing of digital technologies in relation to child abuse material has profoundly changed the nature of the problem, creating a new, more serious and complex situation.

The involved technologies could however be described as double-edged, since the technologies can be used (misused) for criminal activities such as production, distribution and consumption of child abuse material – and also be used by law enforcement agencies to detect and investigate these crimes. Law enforcement authorities are today using digital technologies for crime prevention, detection and investigations.

The overall purpose with this study is to explore the practices where crime investigations of child abuse material occur within the Swedish police authority. *This research in progress paper will reflect on what challenges and opportunities police officers do encounter when investigating child abuse material in relation to digital technology?* The involved technology will be investigated in relation to technological affordance (Faraj & Azad, 2012) and empirically the study is based upon qualitative interviews with 15 police officers (Czarniawska, 2008).

Legal Response

The legal responses to child abuse material vary greatly between different jurisdictions. The complex problems and challenges regarding legal and societal response towards child abuse material has however been recognized and placed upon the political agenda in many countries (Murray, 2016; Akdeniz, 2016). The fight against child sexual abuse which includes child abuse material is a priority for the European Union (EU). The European Parliament and the Council have both called for further concrete action to develop strong and comprehensive responses to these crimes - covering both offline and online context. The European Union, Council of Europe and United Nations have created international instruments that attempt to achieve a legal harmonization of national laws to more effectively reduce the distribution and availability of child abuse material (EU, 2020).

The current Swedish legislation (the Swedish Code of Statutes, the Penal Code, Chapter 16, Crime against public order, 10 a §) criminalises the creation, distribution and possession of 'child pornography', including fictitious 'child pornography' through its formulation 'anybody that depicts a child in a pornographic image', 'distribute such image' or 'possess such image'. The prohibition of such depiction does not include drawings or paintings produced for artistic merit. Swedish legislation has, compared with for example England and Wales, been slow to tackle the technological developments and challenges (Murray, 2016; Eneman et al, 2010). The creation and distribution of 'child pornography' was made an offence 1980 in Sweden. In the discussion of regulation related to 'child pornography' one should be aware of the Swedish debate that took place in the beginning of 1990s about the criminalisation of the possession of child pornography. This debate was dominated by arguments concerning important human rights, on the one side of the right of the child and on the other side anxiety regarding limitations on constitutional rights of freedom of expression. Similar tensions can be found in the ongoing debate regarding the introduction and use of technological regulation such as Internet filtering (also called Internet blocking) of

illegal and harmful content (HM Government, 2019; Eneman, 2019). The possession of 'child pornography' became a criminal offence in 1999 in Sweden. In 2010, Sweden extended the possession offence to also cover the act of viewing child pornography online (even when the files were not deliberately downloaded)..

A serious flaw with the Swedish legislation regarding 'child pornography' refers to its location in the Swedish Code of Statutes, the Penal Code, Chapter 16, 10 a §, which governs crimes against public order, Law (2010:399). I strongly suggest that the legal definition should be changed to replace the term 'child pornography' with for example 'child abuse material' and that the offence should be moved from 'Crime against public order' to the section with 'Sexual offences'.

Concluding Reflections

The aim of this paper was to reflect on what challenges and opportunities police officers do encounter when investigating child abuse material in relation to digital technology. The results from this study contributes to the existing research with empirical insights from the investigation practices within the Swedish Police authority. The police constitute an interesting and relevant case since we can learn how the logic that shapes the requirements of public authorities also affects and regulates the way the employees (police officers, digital forensics etc) organise themselves as a legal authority.

The concept of affordance (Faraj & Azad, 2012) acted as a valuable theoretical lens to better understand the features of the involved digital technologies – its potential affordances promoting or constraining interaction with human actions (Gibson, 1979). By using the concept of affordance to investigate the involved technologies and the Swedish police and its crime investigation practices of child abuse material, the results show that there are technological, organisational and legal dimensions regulating these practices.

The preliminary findings indicate that emerging technologies cause both challenges and opportunities for police officers when investigating crimes such as child abuse material.

Some of the most obvious challenges refer to the existence of child abuse material in our society and accordingly the large number of investigations often containing a huge volume of seized material (images and films). In addition, some of the offenders have become increasingly sophisticated in their use of technologies (including encryption and privacy-enhancing technologies etc), which cause even further challenges for police officers to detect and investigate these crimes. Many crime investigations of child abuse material are time-consuming due to a number of aspects such as large volumes of material (images and films) and the use of advanced technologies. Other challenges and dilemmas refer to prioritization and resources. The organisational context and conditions affect how the crime, and the related investigation work, is prioritized and allocated resources. Low priority could to some extent be explained by the legal definition of the offence, its location in the penal code and relatively low penal value. The result shows that there is a significant variation between different regions regarding clear instructions, routines and procedures on how to conduct investigation of child abuse material, which further indicates that the investigation work can be strongly dependent on individual police officers' professional discretion. New technologies

appear to pose complex challenges for the police officers. The results indicate that there is a significant variety and even a lack of adequate digital competence among the police officers and thus resources such as digital forensics plays a crucial role for the investigations.

The digital technologies enable possibilities such as the ability to use technological tools to detect and also as part of the investigation work. Today they use a number of technological tools such as software and databases to examine, sort, categorise the material and also for victim identification (database used for international collaboration). The ability to use technological tools to examine, sort, categorise and identify victims provides several positive effects such as time-saving investigations, improving the quality and also improving the work environment for the police officers – since the time they are exposed to this illegal and harmful material is reduced. Furthermore, child abuse material is a global challenge and crime - often including different jurisdictions – which on the one hand complicates investigations but on the other hand digital technologies provide features facilitating both national and international collaboration.

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