

WHEN IMAGES MATTER

Internet child pornography, forms of observation and an ethics of the virtual

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Abstract

The arrest of Peter Townshend, once lead guitarist for The Who, for downloading and possessing Internet child pornography and the publicity surrounding the case provides an initial point of discussion concerning the emergence of an ethics of the image that is not predicated on the actual evidential status of that image but on more virtual forms of observation. The discussion in this article focuses on three substantive aspects of this event – legislation in the UK and the US, expert psychological discourse, and public discussion in the UK press – in order to present a particular and situated rendering of forms of virtual observation. The context to this discussion concerns the notion that digital imaging technology presages a need for new legislation, law enforcement and social analytical frameworks for understanding and tackling the production, distribution and consumption of images of child sexual abuse.

Keywords Internet child pornography; actual and virtual; ethics; 26 forms of observation; regulation; digital imaging technology; witnessing

Introduction

In 1999 a postal inspector in Minnesota, in the US, uncovered the operations of Landslide Productions run by Thomas Reedy, a computer consultant, and his wife, Janice Reedy. A website from Texas provided access to a network of 5700 child pornographic sites, mainly based in Russia and Indonesia. The network covered over 60 countries across three continents, with 250,000 subscribers, making the couple over US\$1 million a month. US law enforcement agencies in an investigation entitled Operation Avalanche were able to

bring the pair to trial and gain a conviction. In 2002 these agencies passed to the UK National Crime Squad and the National Criminal Intelligence Service names of about 7000 UK residents who had paid via credit card to access the network of sites. Most of the names were male and many on the list had no previous criminal convictions. Operation Ore was initiated and was at that time the largest UK police investigation into internet child pornography.[1] By January 2003 1300 people had been arrested, including magistrates, hospital consultants, teachers and police officers.

On Saturday 11 January 2003, the UK press had got wind of a story concerning a well-known, but as yet unnamed, popular musician downloading child pornography from the Internet. The Daily Mail had been leaked the story by a police officer and had placed the news on its front page. On Sunday 12 January various newspapers reported that a well-known musician was under investigation. By Monday the Sun newspaper had gained an interview with the musician and was able to disclose on its front page, and at this time along with other newspapers, that Pete Townshend, once lead guitarist for The Who, had been brought in for questioning at Twickenham police station, West London. In a public statement Townshend revealed that he had come across some child pornography while surfing the Internet with his teenage son. Townshend claimed that on another occasion he had searched for information about a television documentary and had come across a list of child pornographic websites. He claimed that he only visited three or four sites and only used his credit card to access one particular site on one occasion. Throughout the case Townshend claimed that he had looked at the offending material in the interests of research for a book on child sexual abuse and Internet child pornography.

On Monday 13 January, Townshend was arrested under the terms of the Protection of Children Act 1978 on suspicion of making and possessing indecent images of children and of inciting others to distribute indecent images, but was shortly released on bail.[2] The UK press over these few days released reports of other public figures (a public school teacher, a local government official and a deputy prison governor) being investigated under Operation Ore and engaged in a widespread discussion of the issues of the case. On 7 May 2003 Townshend was cautioned by the police and placed on the sex offenders' register for five years. Although child abuse campaigners condemned the leniency of the punishment (*Guardian*, 8 May 2003), Townshend escaped the possibility of a drawn-out publicly aired trial, and law enforcement agencies were saved from a possible defeat and

the prospect of 'research' being seen by members of the public as a legitimate defence with regard to downloading child pornography from the Internet.[3]

I consider this event in terms of the emergence of a form of ethics of the image, an ethics of virtual observation. Rather than drawing out the 'virtual' from some of the more obvious works in the field (Deleuze 1988, 1994; Castells 1996; Levy 1996, 2001; Bergson 2004/1910) and mapping a resemblance between the theoretical and the empirical, my discussion focuses on three substantive aspects of this event concerning Internet child pornography – legislation in the UK and the US, expert psychological discourse, and public discussion in the UK press – in order to present a particular and more situated rendering of forms of virtual observation. The context to this discussion concerns the notion that digital imaging technology presages a need for new legislation, law enforcement and social analytical frameworks for understanding and tackling the production, distribution and consumption of images of child sexual abuse (cf. Akdeniz 1997; Oswell 1998, 1999). Central to my argument in this paper is that the construction of Internet child pornographic images as cultural artefacts and objects of concern has less to do with the *actual* evidential status of these images and more with the configuration of forms of observation that disclose the relations between scene of crime, image and user (creator, downloader, viewer) in terms of their virtuality. Forms of observation are split along lines of legality and illegality, normality and the pathology, and righteousness and condemnation.

The indecent photograph as cultural artefact

Although one might doubt its veridicality, research suggests that until the late 1960s it was rare to find children in pornographic material but by the late 1970s the market for this material had grown substantially and legislation has correspondingly been introduced to tackle the problem in a number of countries across the world.[4] The question of how to define 'child pornography', though, is less than clear cut. For example, different national and regional jurisdictions contain different ages of sexual maturity, different cultural notions of what constitutes an obscenity (or an image or text that might be seen to constitute an offence to the wider community) and different ways of framing the relation between legality and illegality. Agreement of definition across nation-states emerges within the context of supra-national agencies such as the Council of Europe, which defines

child pornography as 'any audiovisual material which uses children in a sexual context' (1993) or the International Criminal Police Organisation (INTERPOL), which defines it as 'the visual depiction of the sexual exploitation of a child, focusing on the child's sexual behaviour or genitals' (1995) (cf. Healy 1996).

Since the mid-1970s in the US, the UK and elsewhere an understanding of child pornography as the record of actual child sexual abuse has emerged and become widely used in legal discourse and the public discourse of law enforcement agencies and child protection charities: '[e]ach video or photograph records a criminal offence against a child' (Williams 1991, p. 88). The indecent photograph is seen to document an event, is seen to be transparent, and, in this sense, is no different from a family snapshot or a press photograph. Supposedly, the photograph says no more than the world it captures, 'a message without a code' (Barthes 1977/1961, p. 17). But the indecent photograph is not simply constructed as a recording of the real. It is also figured in terms of the subjectivity of the spectator, or more accurately the observer, in that it brings about: '[t]he type of consciousness the photograph involves is indeed truly unprecedented, since it establishes not a consciousness of the being-there of the thing (which any copy could produce) but an awareness of its having-been-there' (Barthes 1977/1964, p.44).⁵ This is not the place to review older debates about photographic realism, but claims regarding the affordances of new digital imaging technologies have questioned the referential status of the photograph and corresponding forms of observation. William Mitchell, in his discussion of the difference between 'traditional' photography and digital imaging technologies, talks about how a photograph constitutes a positionality for the witness; it frames the spatial and temporal coordinates of the witness of the event: '[p]hotographs like those of Cartier-Bresson make us catch our breath in amazement that the photographer was there, that he actually saw it, that he somehow seized the instant and framed the action' (Mitchell 1992, p. 188). In contrast, digital photography is seen to create 'an ontological aneurism – a blowout in the barrier separating visual fact and fancy'; it is seen to constitute 'an electronically assembled event [that] has ascertainable coordinates, and there is no flesh-and-blood photographer – alive or dead – to find' (ibid., p. 189). Mitchell has declared that '[t]oday, as we enter the post-photographic era, we must face once again the ineradicable fragility of our ontological distinctions between the imaginary and the real, and the tragic elusiveness of the Cartesian dream' (ibid., p. 225). Accordingly, the disturbance of this dream is seen to impact not just on the classical table and grid through which the image

records the real as ordered, but also on the positionality of the witness. The singular apex through which the observer had a vantage on the ordering of the real is certainly problematized. But much of this discussion has been framed in terms of an opposition between 'new' and 'old' technology. Kevin Robins has shown that 'old technologies (chemical and optical) have come to seem restrictive and impoverished, whilst the new electronic technologies promise to inaugurate an era of almost unbounded freedom and flexibility in the creation of images' (Robins 1995, p. 30). A number of contemporary critics, Robins included, have argued that this opposition is far from credible and that many of the features attributed to digital imaging technologies in fact have a longer lineage than is often credited (Lister 1995; Manovich 1995, 2001). Genealogies of perception, technologies of vision and classification are altogether more contingent in their historical connections (Foster 1988; Crary 1992).

Nevertheless, such claims concerning the affordances of digital imaging technologies frame many public responses to the issue of Internet child pornography. Zoe Williams, in her article 'Panic on the screens' for the Guardian, states:

If ...it's [an image of child sexual abuse] all photoshopped, then although it remains very unpleasant, it's nevertheless victimless.... But the technological advances of photography have effectively nixed its legitimacy as proof of reality; a photo is no more necessarily true now than a painting is. To become inflamed by images whose truth content is open to question seems irrational. (Williams 2003)

Williams distinguishes between 'photographs' that *record an event* and those that *produce an event as if it were real*. Moreover, she argues that any ethical response is dependent on the ontological status of that which is represented (and on the evidential or epistemological status of the photograph) such that the ethical response is one predicated on reason. The implications of her argument are twofold: that ethics is a rational enterprise and that child pornographic images that are produced *ex nihilo* through digital technology do not warrant an ethical response any more than a cartoon image of a wily coyote being flattened by an anvil. To some extent Williams's deflation of the status of the photographic image in the social epistemology of child sexual abuse and the equivalent deflation of this object's ethical value can be aligned with other commentaries that see Internet child pornography as a highly mediatized issue in which the scene of abuse circulates only as a

figural, de-objectified, entity.

There are those who are critical of public discourse around child sexual abuse and even more so of public concern over Internet child pornography. In the liberal (even libertarian) balancing of rights and liberties, crimes against the child (as they are with women and people of colour) are often given lower value than, for example, crimes against property.

The Daily Telegraph in its editorial column on 15 January made this clear:

Nobody denies that the sexual abuse of children is a revolting crime, or that those who ply for child pornography encourage that abuse. But many may think that, while burglaries and muggings are on the increase, the police have more pressing work to do than hunting for those who surf the Internet in search of filth.

Public discussion of child sexual abuse is seen to articulate a broader mediatized therapeutic culture. Mick Hume, in a piece entitled 'Scratch a rock star, and you're sure to find a victim trying to get out' for his column in *The Times*, wrote: '[w]hen the news headlines bizarrely announced that "Pete Townshend says he is not a paedophile", my first reaction was to wonder if there was anything sad celebrities would not do to get their picture in the papers' (13 January 2003). Hume was particularly concerned with the way in which police investigations into child pornography are 'conducted through the media'. For Hume, such public declarations say much about 'the sordid obsessions of contemporary culture' and the 'prevailing climate of prurient curiosity about child sexual abuse'. The public visibility of Internet child pornography and child sexual abuse 'risks destroying the self-image of society' (ibid.). On 15 January *The Times* in its editorial column argued that, although child sexual abuse is a serious crime, we should be wary of creating a 'moral panic'. The editorial comment in the *Daily Telegraph* of the same day likewise dismissed any public disclosure of concern about Internet child pornography: '[p]aedophilia is the bogeyman of the modern age'.

The contrast between a series of distal and proximal relations across user, image, scene of abuse and ethical response helps frame the contours of this event (cf. Cooper & Law 1995). The supposed closeness of the indecent photograph to the scene of abuse sets the tone of moral condemnation and call for action, just as the distance of image from abuse presages a more nonchalant response. But relations of closeness and distance are poor indicators of ethical responsiveness once we take into account the fact that all relations, however distal or proximal, are 'mediated'; we cannot judge an image according to its mediation or, to put it another way, mediation cannot constitute the measure of an ethical

response, only the relations of it. In the following sections I investigate this in more detail in relation to a series of specific legal, psychological and media discourses.

Legal discourses

In both US and UK legislative discourse, over and above the medium of production (photography, .lm, computer imaging), the ontological status of that which is represented provides a major focus of concern. Thus the US Child Pornography Prevention Act (CPPA) of 1996 states:

...‘child pornography’ means any visual depiction, including any photo-graph, .lm, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where –

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;

(B) such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct; or

(D) such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct. (2256 (8) 1996)

On 16 April 2002 the US Court of Appeals for the Ninth Circuit, in response to an appeal by the Free Speech Coalition and others, held that statements 2256 (8) (B) and 2256 (8) (D), of the federal code as stated above, were ‘overbroad’ and ‘unconstitutional’.[6] The Court considered three lines of argument with regard to 2256 (8) (B). First, it stated that the CPPA was ‘inconsistent’ with the decision of an earlier case, *Miller v. California* (413 US 15 1973): ‘[i]t extends to images that are not obscene under the Miller standard, which requires the Government to prove that the work in question, taken as a whole, appeals to the prurient interest, is patently offensive in light of community standards, and lacks serious literary, artistic, political, or scientific value’. Whereas the earlier ruling had construed the obscenity of an image in terms of a set of contextual factors, the CPPA, it was argued, would have allowed the possibility of prosecution on the basis of the image alone.

Second, the Court stated that *New York v. Ferber*, an earlier trial that established precedent in this area, provided no support for the CPPA. The Ferber decision prohibited the production, distribution and sale of child pornography on the grounds that ‘these acts

were “intrinsically related” to the sexual abuse of children’. This earlier decision, in the *Ferber* case, was based on the fact that the child pornography was seen to be ‘a permanent record of a child’s abuse, the continued circulation itself would harm the child who had participated’ and, moreover, ‘because the traffic in child pornography was an economic motive for its production, the State had an interest in closing the distribution network’. The Court argued that ‘[u]nder either rationale, the speech had what the Court in effect held was a proximate link to the crime from which it came’. The Court thus stated that ‘[i]n contrast to the speech in *Ferber*, speech that is itself the record of sexual abuse, the CPPA prohibits speech that records no crime and creates no victims by its production’.[7] The proximity or distance of the speech (photograph) from the scene of sexual abuse (event) thus constitutes an important point in the legal understanding of child pornographic images.

Third, the Court rejected the US Government’s argument in the CPPA that virtual child pornography may be used to seduce children. It stated that

Virtual child pornography is not ‘intrinsically related’ to the sexual abuse of children. While the Government asserts that the images can lead to actual instances of child abuse, the causal link is contingent and indirect. The harm does not necessarily follow from the speech, but depends upon some unquantified potential for subsequent criminal acts.

Thus, just as the court decided that virtual child pornography has no link to a crime of sexual abuse that has actually been committed, so too was the virtual image seen to have no necessary link to future cases of abuse (i.e. through groom-ing, through the effect of child pornographic images in creating child abusers, and so on). Moreover, as with adult pornography, virtual child pornography cannot be prohibited, it was argued, on the basis of its possible harm to some children or the possibility that some children may be exposed to it: the CPPA, it was stated, ‘runs afoul of the principle that speech within the rights of adults to hear may not be silenced completely in an attempt to shield children from it’.

In contrast to the US, legislation in the UK is clear that ‘indecent pseudo-photographs of children’ as much as ‘indecent photographs of children’ constitute a crime. Part VII of the Criminal Justice and Public Order Act 1994 simply inserts ‘or pseudo-photograph’ alongside ‘photograph’ in the relevant sections (chapter 37, subsections 2 and 3) of the Protection of Children Act of 1978.⁸ The Act defines a child as ‘a person under the age of

16' and it defines a pseudo-photograph in the following manner:[9]

(7) 'Pseudo-photograph' means an image, whether made by computer-graphics or otherwise howsoever, which appears to be a photograph.

(8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(9) References to an indecent pseudo-photograph include – (a) a copy of an indecent pseudo-photograph; and (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.

In UK legislation, the indecent photograph and the indecent pseudo-photograph are not identical but are treated as if identical. The crime of downloading child pornography is a *virtual* crime in the sense that irrespective of whether the downloaded images are records or not of actual abuse, they are treated as if they are so. The pseudo-photograph is constituted in the same terms as the photograph-as-document, even though its difference is marked. Both are deemed records of crimes, although in one case the crime is *virtual*, rather than *actual*.^[10] If the legal status of the indecent photograph rests on it being a record of a real crime, then the indecent pseudo-photograph equally constitutes the record of a real crime. It is not a question of possibility. This is a crime that has occurred in a virtual space. Just as when a stick is placed half in water it appears to bend at the point between water and air, the pseudo-photograph is real. It has reference and extension. The virtual image of the submerged part of the stick has all the observable features of the stick once removed fully from the water, but when you place your hand in the water the stick is not where it appears. You cannot touch it where you see it. For UK legislation there is no dispute about the original and the counterfeit; both are defined through the criterion of the virtual image, of the simulacra.^[11] As discussed in the previous section, the notion that all Internet child pornography documents a crime committed is one publicly adopted by law enforcement officers and child protection campaigners. Deputy Assistant Commissioner Carole Howlett, the Metropolitan Police head of child protection and spokesperson for the Association of Chief Police Officers on 351 Internet child abuse, has stated that: '[e]very sexual image of a child on that Internet is a child being physically and sexually abused and we cannot forget that' (*Guardian*, 15 January 2003). But such an equivalence (i.e. all Internet child pornography $\frac{1}{4}$ images of actual child sexual abuse) is clearly problematic in a court of law. If doubt can be raised as to the evidential status of the image (as an image of actual child sexual abuse), then the question can be raised as to whether the image is

an image of child sexual abuse at all.[12] Both US and UK legislative discourse, in their different ways, avoid such a problem. In both jurisdictions there is a distinction between actual images of child sexual abuse and virtual ones. However, where the US is keen to constitute only the former as illegal, the UK sees both as illegal. Thus whereas the US Ninth Court of Appeal understood the image as one only in relation to the primacy (and primariness) of a presumed referent, the Criminal Justice and Public Order Act of 1994 understands the image according to the image itself. The evidence is contained within the language of the image itself.[13] The image needs to appear to be a 'photograph' and hence needs to be encoded within the generic conventions of nineteenth-century realism. But also the form of observation presumes that the observer (as idealized in a court of law) is able to receive the 'impression conveyed' of a child (or rather a human figure with majority characteristics of those of a 'child' rather than an 'adult'). The 'photograph' becomes the measure of the real and its observation. In this sense, the implicit prioritization in UK law of virtual child pornography means that the crime of possession, making or distribution of child pornography (whether virtual or not) is a crime not only against a *particular* child, but against *all* children. It is a crime against *childhood as a universal*. [14]

Psychological expertise

Images of child pornography are distributed via credit-card access websites, through bulletin boards and encrypted emails, and more recently through peer-to-peer file sharing technologies (Jenkins 2001). These are not simply new ways of distributing child pornography but new configurations between producers, distributors and consumers, new forms of interaction between abusers and users, and new forms of abuse.[15] But despite the growing visibility of the scale and complexity of the problem, there is still relatively little research on Internet child pornography. Some of the most notable research comes out of the COPINE project based in the Department of Applied Psychology, University of Cork, under the directorship of Professor Max Taylor. I want to consider this research, not to offer a critique but to see how it shapes the problematic of Internet child pornography and how it differs from forms of articulation produced in legal discourse and, as we shall see in the following section, press reporting in the UK.

In an article entitled 'Typology of paedophile picture collections' (Taylor et al. 2001) a substantive argument is made that shifts understanding of Inter-net child pornography from a legal problem to a psychological one. Where in a legal framework the status of an image may be hazy – due to questions of national jurisdiction or to difficulties in attributing 'decency' or 'indecentcy' – and hence pose a problem with regard to legal prosecution, in the context of psychological expertise – that considers not so much the status of the image but the relation between the collection of images and the user – the pathology of abuse is a universal. Taylor et al. argue that 'an objective means of judging the nature of collections independent of legal provision would aid understanding and give a basis for international comparison'. More-over, they argue that 'by emphasizing a psychological approach to pictures attractive to adults with a sexual interest in children, rather than pictures legally defined as obscene, we can identify a range of discernibly different kinds of pictures only some of which may be illegal' (2001, p. 99).

In order to construct a psychological account of the problem – and one that provides the ground for appropriate law enforcement and legal judgement across jurisdictions – Taylor et al. constitute the problem in broader terms than found in legal discourse. They draw on Kenneth Lanning's behavioural analysis of child molesters (1992) for a distinction between *child pornography* and *child erotica*. Whereas the former is seen as explicitly sexual in terms of the content of the image, the latter may refer to any image that is used by an individual for sexual purposes: '[t]he significance of this distinction is to emphasize the potential sexual qualities of a whole range of kinds of photo-graphs (and other material as well) not all of which may meet obscenity criteria' (Taylor et al. 2001, p. 97). The distinction between pornography and erotica – often used in the context of debates about adult pornography to distinguish between material with a sexual use and material with an aesthetic use – is now used to extend the range of concern predicated on the underlying *personality of the individual user*. But for Taylor *et al.*, as for Lanning, the personality of the paedophile is disclosed not through direct investigation of the mind itself but through the manifestation of its motivated actions. It is the *collection of images* that provides symptomatic evidence of motivation and hence of the underlying personality. Thus, for example, supposedly innocent pictures of children may be read as 'erotic' and interpreted in the context of the collection as a whole.

Taylor *et al.*'s work on child sexual abuse and collections of child pornographic images builds upon, but also diverges from, earlier research that constructs the user of child pornography as a collector. Tim Tate in his research on child pornography states that: 'paedophiles don't simply view the material they collect, they catalogue and index it as well' (Tate 1990, p. 112 quoted in Quayle and Taylor 2002, p. 353). More systematically, Carl Goran Svedin and Kristina Back, in their research for the Swedish Save the Children charity (Svedin & Back 1996), have documented how users divide into different types of 'collector': the 'closet collector' who looks at child pornography but has no direct involvement in child sexual abuse; the 'isolated collector' who collects images and is involved in child sexual abuse; the 'cottage collector' who shares his collection of images with others, is involved in child sexual abuse with other adults but is not interested in financial gain; and the 'commercial collector' who produces, copies, distributes and profits from sales and exploitation. These collectors are also differentiated according to varying degrees of organization: from, on the one hand, groups involving an adult leader, a number of children but no exchange of children or pornographic material to other adults; and, on the other, groups of adults, well structured (normally as syndicates), involved in systematic abuse and exploitation of children for profit (Svedin & Back 1996, pp. 16, 20).[16]

The collection is seen to be symptomatic of the pathology of the individual, but also to be indicative of a series of broader social relations mediated within online environments. Collections of Internet child pornography are seen to be *collective endeavours*. Trading, swapping and selling construct forms of market and gift relations and corresponding forms of sociality. Those engaged in such exchanges collect *series* of images and construct forms of community on the basis of *possession or lack* of images within particular series (cf. Healy 1996; Svedin & Back 1996; Jenkins 2001; Quayle & Taylor 2002). For Taylor *et al.* collections 'are not accidents' but 'result from deliberate choices by an individual to acquire sexual material' (2001, p. 99).[17] The abusive image is the intentional outcome of the abusive personality: abusers make images of children abusive. But the abusive nature of the image and the pathological personality of the collector are only visible through the organization of the collection itself.

Over and above the ways in which the collectors themselves might classify the organization of their collections, Taylor *et al.* interpret the collection of pictures in terms of

a continuum ranging from 'accidental pictures involving either no overt erotic content, or minimal content ... to pictures showing actual rape and penetration of a child, or other gross acts of obscenity' (2002 , p. 100). The classification and ordering of typologies of images is not novel to COPINE research, but Taylor *et al.* have attempted to construct a scale that is indicative of the seriousness of motivation rather than the obscenity or indecency of the image per se.[18] COPINE's 10-point scale (1. Indicative, 2. Nudist, 3. Erotica, 4. Posing, 5. Erotic Posing, 6. Explicit Erotic Posing, 7. Explicit Sexual Activity, 8. Assault, 9. Gross Assault, 10. Sadistic/Bestiality) is constructed not in terms of legal definitions of the 'obscenity' or 'indecency' of individual images but in terms of the combination of elements within the collection and of 'a continuum of increased deliberate sexual victimization'.[19] Each image in a collection (inasmuch as it can only be interpreted in the structural context of the collection) is seen to constitute a form of victimization; the scale indicates the degree of victimization. Moreover, 'the function of picture collections for the offender is to repeatedly victimize the child concerned, and the victim status is exaggerated by continuing use' (Taylor *et al.* 2002 , p. 100).

For Taylor et al. the sexual use of an image of a child constitutes a victimization of that individual. Picture collections, the size of which also indicate the degree of psychological motivation and seriousness, allow the user 'instant access to the child (or a child) as victim' (ibid.).[20] It makes little difference whether the image is an 'actual photograph' or a 'pseudo-photograph'; both represent forms of victimisation (ibid., p. 104). Other researchers have argued that there is a clear distinction between those who view and use child pornographic images and those who actually physically abuse children. Philip Jenkins, in his investigation of bulletin boards and newsgroups addressed to users of child pornography, makes a broad distinction between two types of user: those 'who freely admit to being molesters, and those 'who admit to being sexually excited by child porn images, but actually condemn actual contact' (Jenkins, *Guardian*, 23 January 2003 ; see also Jenkins 2001). But for Taylor et al. there is no such distinction; the degree of pathology of the paedophile is measured in terms of the size and differential calculus of the collection, on the basis that such a virtual structure is actualized through its orientation toward the child as a virtual image: each time the catalogue is accessed, each time an image is used the virtual child is victimized.

Press reporting

In the UK press coverage surrounding the Townshend case, the issue was presented across a series of problem spaces concerning both the degree of gratification in looking at child pornographic images and the level of connection between such looking and actual child sexual abuse. A series of verbal nouns – clicking, looking, using, downloading, possessing, collecting, making and distributing – help to shape our understanding of the relation between observation and crime, looking and abuse, accident and purpose, and innocence and responsibility.

Firstly, at one end of the scale, an argument was made that looking at child pornography might induce a high level of gratification for some individuals but that this does not translate into actual abuse. In his once regular column for the *Guardian*, Rod Liddle stated that

There is no causal link between viewing child porn and abusing children. And even if there were, it would not be sufficient, within the philosophy of our juridical system, to simply assume that an unpleasant penchant for the former presupposes guilt of the latter. (Liddle 2003)

This was an argument rarely presented in the UK media. Much of the press most of the time made it clear that looking at child pornography in itself constituted a sufficient and punishable crime. As Mark Stephens, a lawyer who has advised the UK Internet Watch Foundation, stated: ‘it is wrong-headed, misguided and illegal to look at or download or even to pay to download paedophilic material and if you do so, you are likely to go to prison’ (*Guardian*, 13 January 2003).

Secondly, it was argued that those who look at child pornography are the same people that commit child sexual abuse: namely, that such gratificatory looking defines the psychology of the abuser, such that there is a clear correlation between the user of Internet child pornography and the child sexual abuser. Deputy Assistant Commissioner Howlett, of the Metropolitan Police, was quoted as saying that research on recent arrests in the USA for viewing or possessing child pornography has indicated that 30 per cent of those arrested had abused or were abusing children. In many press reports there was an assumption that those found in possession of child pornography are also child abusers.

Third, gratificatory looking at Internet child pornography was constructed not so much in terms of it being symptomatic of a pathology but of it being child abuse by proxy. As Shy

Keenan, spokeswoman for Phoenix Survivors group, wrote in an open letter to Townshend in *The Times*: '[t]he moment a person clicks that button, they may as well be molesting that child themselves' (14 January 2003). Jenni Murray, in a letter to the Guardian Q1 critical of Rod Liddle's piece, stated that: '[p]eople who look at such material for sexual gratification may well never progress to physical abuse, but the children in the photographs or films were abused on their behalf'. Similar to arguments more generally about ethical consumption, market relations are understood not in terms of the distance between buyer and seller, but in terms of their connectedness: '[w]here there is no demand there is no supply' (15 January 2003). Q1

Fourth, looking at Internet child pornography was constructed in terms of the absence of gratification, such that a disinterested observer witnesses abusive imagery in pursuit of knowledge. One 'professional researcher', Jan Rockett, in a letter to the *Guardian*, stated:

Primary research ...cannot be based on 'hearsay' and relies on original, not reported, evidence. All good primary researchers trespass into dubious areas. Whether those areas are dubious in the academic, social, legal or intellectual sense is irrelevant. The purpose of research is to discover the truth and push the boundaries. (14 January 2003)

This is the argument put forward by Pete Townshend himself: '[i]t's important police are able to convince themselves that, if I did anything illegal, I did it purely for research' (Sun, 13 January 2003). But over the course of the reporting of the case, police officers, children's charities, the Internet Watch Foundation and others reiterated the illegality of such looking. Bob McLachlan, ex-head of Scotland Yard's paedophile unit, even declared in the *Sun* that the defence of 'research' was a 'classic defence' of the paedophile (13 January 2003).

This particular problem space helped not simply to signal the illegality of any form of looking at Internet child pornography, but to construct a distribution of legal and illegal forms of observation across a distinction between expert and layperson. Libby Purves, in *The Times*, argued that: '[n]obody has to click except police researchers, server censors, or the few serious pro-fessional experts on this wicked trade. Clicking out of curiosity, for a frisson, is prurience' (14 January 2003). Purves states that if 'laymen' need to know about Internet child pornography, then they can go to 'serious books':

That's all we laymen need to know. It's a crime. It happens. It has to be jumped on. The police, and a few lawyers with strong stomachs, need to see the pictures. The rest of us – including artists and writers – have no business with them. In any case, the reality of the event is not contained in the

fleshy pixels: it is locked inside the heads of the young victims. (ibid.)

The distinction between expert and layperson is seen to constitute an important boundary between abuser and witness. The expert, with little justification, takes the position of the non-abuser. As with the witnessing of scientific fact, those who do so first hand play a part in authoring and authorizing those 'facts', whereas those who congregate on the outskirts are only able to read those 'facts' second-hand. Suffice it to say that this division, inasmuch as it is layered over one between adult and child, has a longer genealogy in the troubled history of children's legal testimony (cf. Smart 1989; Perry & Wrightsman 1991; Mortimer & Shepherd 1999).

These discourses do not simply provide a space through which a public can become informed about new types of crime. They constitute specifically popular – as distinct from expert – problematizations and configurations of forms of observation. They provide popular spaces within which one's relation to the specific crime of using, viewing, downloading, creating or distributing Internet child pornography can be orchestrated. The particular strengths or weaknesses of the gratification and connection between looking and abuse constitute particular configurations of proximal and distal but also necessary and contingent relationality.

Concluding thoughts on ethics

Across these sites – law, academic knowledge and the press – we see emerging a configuration of problems that are concerned with forms of virtual observation. These sites are not prescriptive and there are clearly other sites of problematization that might have been considered. Moreover, the forms of virtual observation are not consistent across these three sites. Each site has its own specificity that helps shape the nature of the formation. Across each of these sites the relations of virtual observation (distal/proximal, necessary/contingent, differential calculus/orientation) construct the problem of Internet child pornography as a problem about the referentiality of the image. In some formulations the virtual image refers to a scene of abuse that is real and our ethical response to this image is predicated on its reality, albeit a virtual reality. Although the evidential value of the virtual image is different from that of an actual image (and hence the forms of police investigation and legal prosecution are different), until an image can be said to correspond to an actual case of child sexual abuse all Internet child pornography can be

viewed as real. In this sense, the primary concern is not one of the effects of the image on others or one of the relations of power encoded in the image, but one of the virtual evidentiality of the image (i.e. on the image's capacity to refer to an objective reality that is both internal and external to the image). The ethical intensity of the virtual image lies precisely in its capacity to refer to a scene beyond itself.

Moreover, when the virtual image is taken seriously – when our ethical response is as if to a real crime of child sexual abuse – the image takes up the position of the 'modest witness' whose account of the scene is 'unadorned, factual, compelling' (Haraway 1997, p. 26; see also Shapin 1994). But the virtual photograph, as with the actual photograph, is not literally 'obscene' (i.e. standing in the way of the stage); rather it must take a position that is both endo-scenic and exo-scenic. The photograph must, in order to be 'authentic', be part of the scene that it records. It must be close to the scene, a necessary part of its development and constitutive of the scene. In this sense, the photograph, as endo-scenic, is performative (cf. Baudrillard 2000).[21] But the photograph must also be exo-scenic. In order for the photograph to circulate as evidence, to witness the event, it must stand outside the event itself. To act as a witness, to take on the authority of the witness as that which speaks for a silent other (cf. Agamben 1999), the photograph must take on a neutrality, an ethical distance. Hence the ambivalence of this constitutive moment. This is an ambivalence that is not novel to the virtual child pornographic photograph but one that has been discussed in detail in relation to the witnessing of the Shoah (cf. Felman 1992; Laub 1992a,b). The transition from living *inside* the concentration camp to witnessing *outside* is one that is deeply troubled, not least by the burden of truth: a truth that cannot be reduced to the 'factual'. As Dori Laub states, there is a problem as to how one can remove oneself 'sufficiently from the contaminating power of the event so as to remain a fully lucid, unaffected witness' (Laub 1992b, p. 81; see also Campbell 2002).

In all of this the child slips in and out of view. And despite the pull of a crude hermeneutic – for example, one which suggests that an ethics concerns one's relation to the child and not to the image – the solution is even cruder: the ethics lies in our relation to the image itself. Nevertheless, our orientation to the image is becoming increasingly problematic. As the visibility of these crimes proliferates so too do the range of different forms of 'witnessing' (legal, scientific, therapeutic) and the types of personnel assembled around these images (such as police investigators, psychiatric counsellors, lawyers, court

officials, those involved in child identification, computer experts, and so on). Cases are ordered; photographs are classified and placed in collections; images are used in the contexts of professional practice. The forms of observation are discrete and rarefied. Professional observations take place in bounded, exclusionary spaces and only certain actors are allowed to enter. These forms mirror the pathology under investigation. But, unlike the pathologized forms of observation discussed in the above sections, these practices of investigation, legal trial, research and therapy are not explicitly codified and open to public scrutiny. This is surprising given that child sexual abusers have historically taken advantage of the veils of secrecy that forms of authority might permit.[22]

Notes

1 The Greater Manchester Police has argued for the use of the phrase 'images of child sexual abuse', rather than 'child pornography', as the former is seen to be a more accurate denominator of the state of affairs depicted, given that the images 'depict rape and other forms of child abuse' (Carr 2003, p. 29). In the article I use both phrases as it is clear from the research that images which, in the context examined in this article, are viewed as 'child pornography' are not only images of abuse but also images of children in their daily activities that in other contexts could easily be viewed as innocuous and innocent (cf. Taylor et al. 2001).

2 As downloading Internet child pornography creates a copy of the image, it is interpreted as 'making' rather than simply possessing.

3 The Sexual Offences Act (2003) provides the defences of 'legitimate reason' accordingly: if it was necessary for a person 'to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world'; or if the person was a member of the Security Service or GCHQ, and it was necessary for them to make the photograph or pseudo-photograph for the exercise of any of the functions of the Service or GCHQ.

4 Although legislation curbing the production and distribution of child pornography was introduced in various European countries and in the US in the late 1970s and early 1980s, it was not until the early 1990s that possession of child pornography was made illegal. Possession of child pornography was made illegal in Norway in 1992, in Germany, France and Canada in 1993, Austria in 1994 and Denmark and Belgium in 1995. In the UK possession of child pornography was made illegal in 1988 (cf. Svedin & Back 1996).

5 The term 'spectator' carries the connotations of passivity, whereas the term 'observer', from its Latin etymology, refers not simply to perception, but also to the 'following of rules' (cf. Cray 1992). However, *observare* also means 'to keep with', 'to watch over', 'to protect', and 'to examine'. In this sense, it carries some of the ambivalences that are encoded within the problematic of forms of 'looking' at indecent

photographs of children.

6 The Court also stated that 2256 (8) (D) was overbroad and that it invited juries to assess material 'in light of the manner in which it is promoted': '[e]ven if a .lm contains no sexually explicit scenes involving minors, it could be treated as child pornography if the title and trailers convey the impression that such scenes will be found in the movie. The determination turns on how the speech is presented, not on what is depicted.' Moreover, the Court argued that the CPPA: 'bans possession of material pandered as child pornography by someone earlier in the distribution chain, as well as a sexually explicit .lm that contains no youthful actors but has been packaged to suggest a prohibited movie. Possession is a crime even when the possessor knows the movie was mislabeled.'

7 In addition, the US Court of Appeal for the Ninth Circuit stated that a photographic image of a real event could not be treated the same as a computer-generated (or virtual) image of an event. It was argued that if both images were identical, then commercial organizations distributing child pornography would distribute virtual images, not real ones: '[i]f virtual images were identical to illegal child pornography, the illegal images would be driven from the market by the indistinguishable substitutes. Few pornographers would risk prosecution by abusing real children if .ctional, computerized images would suffice.'

8 See also section 160 of Criminal Justice Act, 1988.

9 The US, for example, defines a child, in this context, as under 18 years.

10 In some respects, the pseudo-photograph corresponds with Deleuze's understanding of the virtual, 'The virtual is fully real in so far as it is virtual' (Deleuze 1994, p. 208). The virtual is not opposed to the real but to the actual. Thus virtual crimes are not possible ones; they are real but not actualized. In other respects, though, what I am attempting to describe differs from Deleuze's account.

11 Although UK legislation is framed according to the 'impression conveyed', it gives no guidance on how to understand such an 'impression'. I imagine that most child pornography traded and exchanged on the Internet is framed within the conventions of photographic and cinematic realism, but the 1994 Act makes no attempt to foreground or privilege particular aesthetic codifications over others (i.e. avant-garde or realist). The Act simply refers to the conveying of an impression of an act, not to the manner of that conveyance. It is for the individual court to consider whether the manner of conveyance (i.e. the aesthetic form taken) facilitates the conveyance of an impression of an act of abuse. Would a court decide that a virtual montage of child pornography conveyed an impression of child sexual abuse? Does animated child pornography constitute an offence?

12 Given the low numbers of actual children actually identified from Internet child pornographic images, there is a risk in presenting such an equivalence as grounds for legal argument. Notwithstanding this, there is also the question as to whether in construing such an equivalence there might be a mis-allocation of law

enforcement resources. In this sense, although images of child sexual abuse should, if found, form part of an investigation of actual child sexual abuse, it might be more appropriate to treat Internet child pornography as a distinct and separate phenomenon. It is clearly related to child sexual abuse but it has its own singularity and specificity.

13 Unlike the realist photograph whose veridicality can be judged according to its correspondence to the referent, no such epistemological splitting occurs with the virtual image. The referent is in the image.

14 Each image of a child being sexually abused is an image of all children. The qualities of 'childness' in the image are constituted with reference to 'childness' beyond the particular child in the image (i.e. to a series of uni-versal qualities, albeit ones that are open to social and historical change).

15 Nevertheless, the physical location of abuse is still to a large extent the home and the relation between abuser and abused is still to a large extent familial. In a very real sense, these technologies of abuse are 'domestic' technologies, despite being globalized.

16 A major concern of law enforcement agencies is the extent to which the latter form of commercial organization is growing and becoming dominant as a consequence of either lack of political will, inadequate legislation, poor policing or a combination of these factors within national jurisdictions (e.g. the US) and across particular regions of the globe (e.g. Southeast Asia and the former Soviet Union).

17 This typology of the abuser as collector contrasts with some popular conceptions of accidental downloading of Internet child pornography.

18 Taylor et al. make reference to the PICS (Platform for Internet Content Selection) and RSACi (Recreational Software Advisory Council) rating schemes and to a tripartite typology used by 'investigative agencies' that divide images into: (1) Indicative – material depicting clothed children, which suggests a sexual interest in children; (2) Indecent – material depicting naked children which suggests a sexual interest in children; (3) Obscene – material which depicts children in explicit sexual acts (Taylor et al.2002 ,p.98).

Q5

19 The Court of Appeal in November 2002 drew on a modified scheme from the Sentencing Advisory Panel that was itself based on the COPINE scale: (1) images depicting erotic posing with no sexual activity; (2) sexual activity between children or solo masturbation; (3) non-penetrative sexual activity involving an adult; (4) penetrative activity with an adult; (5) sadism or bestiality (quoted in Carr 2003, p. 14). The Court of Appeal also indicated that the degree of seriousness of the offence increased with regard to the proximity to, and responsibility for, the original abuse and that simple downloading constituted a lesser offence than wide-scale commercial distribution (Carr 2003, p. 14). However, unlike COPINE the Sentencing Advisory Panel clearly differentiates between 'indecent photographs' and 'indecent pseudo-photographs', such that

possession of the latter constitutes a lesser offence punishable by a .ne.

20 Taylor et al. do, somewhat contradictorily, distinguish between victimization through the use of images and actual abuse inasmuch as the former is seen to avoid 'complex and lengthy engagements' (Taylor et al. 2002, p. 100; see also O'Connell 2003).

21 Baudrillard argues that: '[t]hrough photography, it is perhaps the world itself that starts to act (qui passe à l'acte) and imposes its .ction. Photography brings the world into action (acts out the world, is the world's act) and the world steps into the photographic act (acts out photography, is photography's act)' (2000). Q4

22 It is important to imagine the child abuser not simply according to the stereotypical images of 1920s and 1930s public man (the school teacher, the scout leader, the sports coach and so on) or the image of the 'bad' father, uncle, grandfather of the 1980s, but to move beyond the critique of past good to an interrogation of present good men and women. As Nietzsche says: 'That which an age feels to be evil is usually an untimely after-echo of that which was formerly felt to be good – the atavism of an older ideal' (1966, p. 190).

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