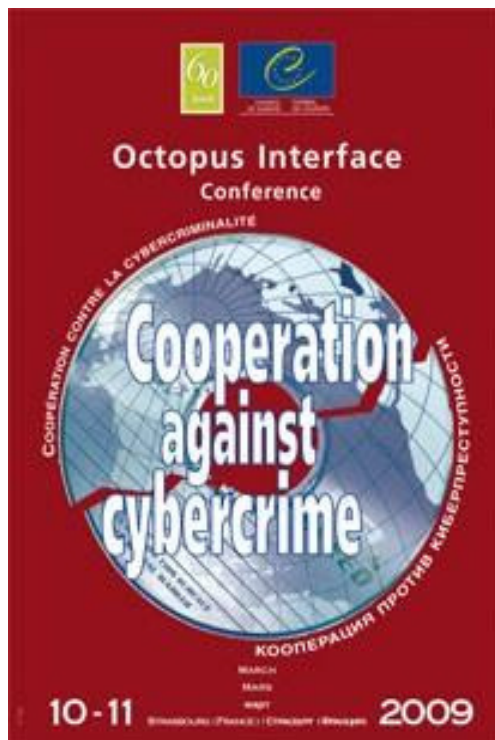


**COUNCIL OF EUROPE
OCTOPUS INTERFACE CONFERENCE-
COOPERATION AGAINST CYBERCRIME**

Strasbourg, Palais de l'Europe, 10-11 March 2009

Ivan Salvadori, LL.M.
University of Verona

www.ivansalvadori.blogspot.com
ivansalvadori@daad-alumni.de



CRIMINALISING THE POSSESSION OF CHILD PORNOGRAPHY

FEDERAL BUREAU OF INVESTIGATION (FBI)

Home | Site Map | FAQs

FEDERAL BUREAU OF INVESTIGATION

SEARCH

Contact Us

- Your Local FBI Office
- Overseas Offices
- Submit a Crime Tip
- Report Internet Crime
- More Contacts

Learn About Us

- Quick Facts
- What We Investigate
- Natl. Security Branch
- Information Technology
- Fingerprints & Training
- Laboratory Services
- Reports & Publications
- History
- More About Us

Get Our News

- Press Room
- E-mail Updates
- News Feeds

Be Crime Smart

- Wanted by the FBI
- More Protections

Use Our Resources

- For Law Enforcement
- For Communities
- For Researchers
- More Services

Innocent Images National Initiative

About The Program

- Overview
- History

Protecting Your Children

- Parent's Guide to Internet Safety
- National Sex Offender Registry
- Report Child Exploitation and Pornography:
 - Use our Cyber Tip Line or call 1-800-843-5678
 - Or contact FBI Crime Against Children coordinators in our Local Field Offices
- The Netsmartz Workshop Child Safety Website
- "Don't Believe the Type" Teen Safety Website
- FBI Miami's "Safe Online Surfing Internet Challenge"
- Keep Safe on Social Networking Sites

Initiatives and News

- The Innocent Images International Task Force
- Endangered Child Alert Program
- NAMGLA Takedown
- Innocent Images Turns Ten & Goes International
- "Travelers Advisory"
- More

More About Crimes Against Children

The FBI also works to protect children in the offline world. Follow the links for details:

- Crimes Against Children Webpage
- Child Abuse and Neglect Reporting Teams

How You Can Help

Help us find missing children and wanted sexual predators through our "Most Wanted" website.

- Wanted for Crimes Against Children
- Kidnappers and Missing Persons

ART. 9. par.1.e), CONVENTION ON CYBERCRIME



“Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- a) producing child pornography for the purpose of its distribution through a computer system;
- b) offering or making available child pornography through a computer system;
- c) distributing or transmitting child pornography through a computer system;
- d) procuring child pornography through a computer system for oneself or for another person;
- e) possessing child pornography in a computer system or on a computer-data storage medium”

CONVENTION ON CYBERCRIME: EXPLANATORY REPORT (n. 98)



*“The possession of child pornography in a computer system or on a data carrier, such as a diskette or CD-Rom, is criminalised in paragraph 1(e).
The possession of child pornography stimulates demand for such material.
An effective way to curtail the production of child pornography is to attach criminal consequences to the conduct of each participant in the chain from production to possession”*

THE BALANCE OF DIFFERENT LEGAL INTERESTS



**CHILDREN'S
PERSONALITY**

FREE SPEECH

THE MEANING OF THE TERM “POSSESSION”

“POSSESSION” IN THE REAL WORLD

- *Holding a thing*
- *Touching it*
- *Having it*
- *Excercise control over it*
- *Have pover over it*

.....

.....



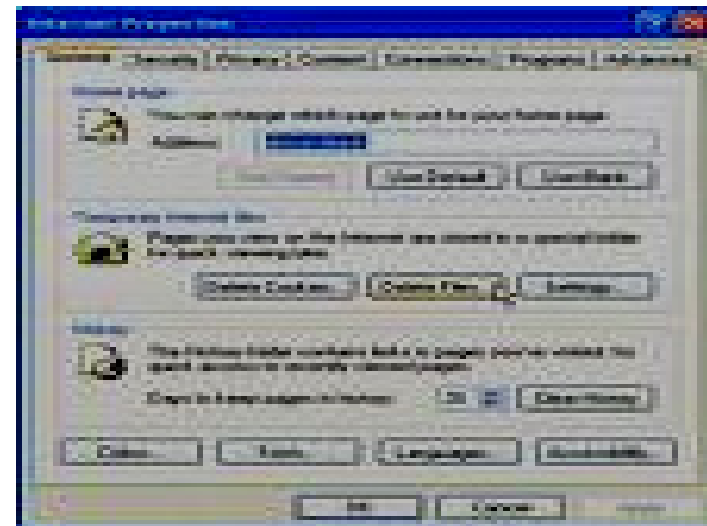
“POSSESSION” IN THE VIRTUAL WORLD



CHILD PORNOGRAPHY AND THE BEHAVIOUR OF THE USERS

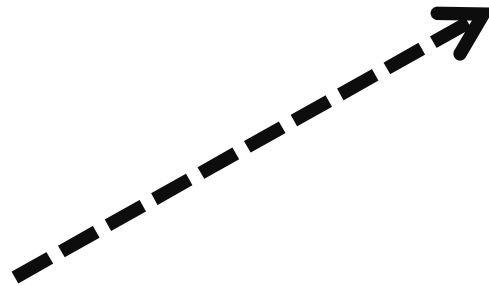
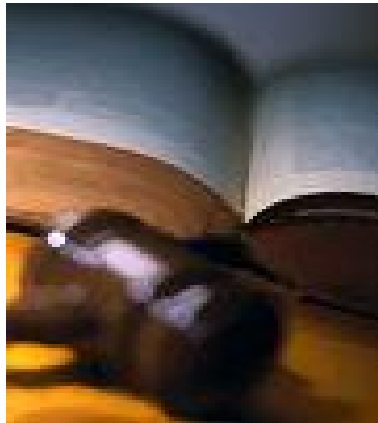


CHILD PORNOGRAPHY AND THE BEHAVIOUR OF THE USERS



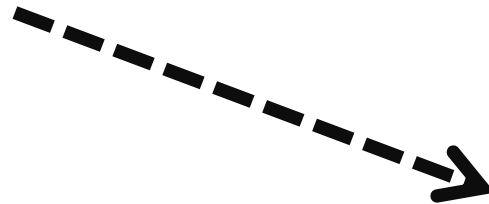
Temporary Internet files (“Cache”)

THE POSSESSION OF CHILD PORNOGRAPHY: COURTS' APPROCHES



THE MERE VIEWING OF
CHILD PORNOGRAPHY:

IS NOT A CRIME


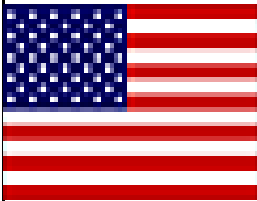
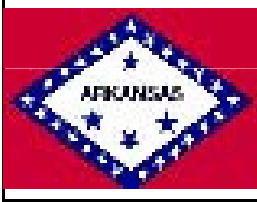
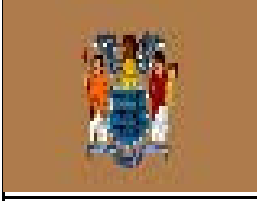
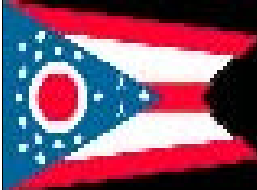


VIEWING CHILD
PORNOGRAPHY +
CACHE COPY:

IS A CRIME



MAKE A CRIME VIEWING CHILD PORNOGRAPHY?

	CANADA	Section 163.1(4.1), (4.2) of the Criminal Code
	UNITED STATES	18 U.S. Code § 2252(a)(4)
	ARKANSAS	Ark. Code. Ann. § 5-27-304(a)(2)(2006)
	NEW JERSEY	N.J. Stat. Ann. § 2C: 24-4(5)(B)(2005)
	OHIO	Ohio Rev. Code Ann. (A)(3)§2907.323 (A)(3)(2006)

ART. 20. par. 1.f), CONVENTION ON THE PROTECTION OF CHILDREN



Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:

- a) *producing child pornography;*
- b) *offering or child pornography;*
- c) *distributing or transmitting child pornography;*
- d) *procuring child pornography for oneself or for another person;*
- e) *possessing child pornography;*
- f) *knowingly **obtaining access**, through information and communication technologies, to child pornography*

CONVENTION ON THE PROTECTION OF CHILDREN: EXPLANATORY REPORT (n. 104)



“Paragraph 1 f is a new element introduced in this Convention. It is intended to catch those who view child images on line by accessing child pornography sites but without downloading and who cannot therefore be caught under the offence of procuring or possession in some jurisdictions. To be liable the person must both intend to enter a site where child pornography is available and know that such images can be found there. Sanctions must not be applied to persons accessing sites containing child pornography inadvertently. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offences were committed via a service in return for payment”

CRIMINALISING THE VIEW OF CHILD PORNOGRAPHY?



**CRIMINALISING
THE VIEW OF CHILD
PORNOGRAPHY**

**PRINCIPLE OF
PROPORTIONALITY**

**PROTECTION OF
LEGAL INTERESTS**

CRIMINALISING POSSESSION OF CHILD PORNOGRAPHY?



**CRIMINALISING
POSSESSION OF
CHILD PORNOGRAPHY**

**PRINCIPLES OF
CRIMINAL LAW**

Thank you for your attention.

Contact:

Ivan Salvadori, LL.M.

University of Verona

E-Mail:

ivansalvadori@daad-alumni.de

Blog:

www.ivansalvadori.blogspot.com

