

Prohibited Content

Premise

There is a wide range of illegal activities occurring online, arguably due to the uncensored nature of the Internet.^{[1],[2]} In most cases, there are differences and discrepancies in legal definitions and laws across major countries, which has resulted in law enforcement challenges.

This paper will explore some of the illegal activities found online, including child pornography, hate material and ideological violence, as well as related law enforcement challenges. In the spirit of full disclosure, it should be noted that this white paper has been commissioned and paid for by eSecureData Inc., a Canadian provider of [dedicated servers](#) and data center infrastructure hosting.

Child Pornography

Child pornography is illegal in most countries, and there are coordinated law enforcement efforts by Interpol and policing institutions of various governments.^[3] Fifty-one countries worldwide, including the United States, many countries in the European Union, and Canada, belong to the International Association of Internet Hotlines (INHOPE), a network of hotlines which deal with illegal online content and is committed to eradicating child sexual abuse from the Internet. The Hotlines offer a public and anonymous way for users to report suspected illegal Internet material. Once reported, the Hotlines will ensure that reported incidents are investigated and, if applicable, passed to the relevant Law Enforcement Agency, or the Internet Service Provider hosting the content.^[4]

One of the challenges facing policing efforts is the varying legal definition of child pornography in different countries. The basic definition of child pornography is “a picture that shows a person who is a child and engaged in or is depicted as being engaged in explicit sexual activity.” In many countries, child pornography is called “child sexual abuse material”, which reinforces that there is sexual abuse of real children occurring behind the images of child pornography.^[5]

Additional issues causing disagreement are the differing age of consent to sexual relations in each country, and whether or not artificially created images, or “virtual” child pornography would actually constitute child pornography, or whether an actual child would need to be involved.^{[6],[7]} Simulated child pornography that does not pass the [Miller test](#)^[8] was banned in the US when the [PROTECT Act](#)^[9] was signed in 2003. It is illegal in the European Union, and has unclear legal status in Australia.^[10]

Action against child pornography occurs in various jurisdictions. In the United States, child pornography is censored and is not considered protected speech, even if not obscene as per *New York v. Ferber*.^{[11],[12]} The UK openly blocks child pornography websites, and 98.6% of UK internet traffic uses a service called the child abuse image content list, which uses data provided by the Internet Watch Foundation to identify pages judged to contain child pornography and subsequently redirect to a “URL not found” page when such a page is found.^[13]

In Canada, Internet service providers Bell, Bell Aliant, MTS Allstream, Rogers, Shaw, SaskTel, Telus and Videotron announced “Project Cleanfeed Canada” in November 2006, which is the voluntary blocking of access to hundreds of alleged child pornography sites. The block site list is compiled from reports by users and investigated by cybertip.ca. Although there is no involvement from the authorities, the Canadian government expressed its approval of this initiative.^[14]

Paedophile Rings and Child Sexual Abuse Material Websites

The Internet has given rise to an online network of child pornography producers and sellers, and experts agree that this underground community is offering a steady supply of child pornography to meet a growing demand.^[15] Individual children are abused and exploited in the making and viewing of child pornography; however, the supply of and continuing demand for it arguably exploits and endangers children at large by portraying them as objects for sexual gratification.

One such aspect of the underground online community are paedophile rings, which involve groups of people collaborating online in different countries and jurisdictions to collect and distribute child pornography and child sexual abuse material. This activity can also involve sharing expertise on avoiding detection by the authorities, as well as planning for criminal activities involving children.

There has also been an increase of commercial child sexual abuse websites where user fees are charged. Previously, child sexual abuse websites were mainly created for the purpose of personal gratification and to satisfy the need to seek out like-minded individuals, rather than for commercial profit. Since websites can be hosted anywhere in the world, international cooperation is seen as crucial when dealing with these websites. Recent progress includes the European Financial Coalition and Financial Coalition Against Child Pornography which work together to bring the financial sector, Hotlines and child welfare groups to combat online commercial child sexual abuse material.^[16]

Hate Material and Ideological Violence

Online hate material, or hate speech, is communication disparaging an individual or group on the basis of nationality, race, religion or sexual orientation. The increase in websites promoting hate speech on the Internet is seen as cause for concern,^[17] particularly since the uncensored nature of the Internet provides perpetrators with the opportunity to promote their views globally. Investigating this hate content on the Internet is complex due to the fact that some offensive material is not actually illegal under criminal law, and that the criminal laws and court legal system responses vary depending on jurisdiction.^[18] Furthermore, in the United States in particular, hate speech can receive constitutional protection.^[19]

In the United States, the First Amendment to the Constitution guarantees freedom of speech to all Americans, even those with opinions that other find reprehensible. Furthermore, the Supreme Court has reaffirmed that the government cannot regulate Internet content to a greater extent than content in more traditional areas such as print or broadcast media. That being said, the First Amendment does not shield from libelous speech or speech that threatens or harasses other people. Content that expresses a clear intention or threat to commit an unlawful act against another specific person is likely to be criminally actionable.^[20]

In England and Wales, content that incites hatred on the grounds of race, religion or sexual orientation can be illegal. Website content can also be illegal when it threatens or harasses an individual or group, and is considered to be a hate crime if the content is posted based on hostility towards race, religion, sexual orientation, disability or gender identity. Illegal material could be words, pictures, videos or even music, and could include web pages with pictures, videos or descriptions that glorify violence based on race, religion, disability, sexual orientation or gender identity. Chat forums

where users ask other people to commit hate crimes could also be considered illegal.^[21]

In Canada, it is a criminal offence to advocate genocide, publicly incite hatred and willfully promote hatred against an identifiable group. Such a group is defined as individuals distinguished by colour, race, religion, ethnicity or sexual orientation.^[22] Online content is considered hate propaganda when it advocates genocide, public incitement of hatred or wilful promotion of hatred against an identifiable group.^[23]

The Criminal Code of Canada prohibits public distribution of hate propaganda; however, private speech is not covered, so long as statements are made only in private conversation. Since the Internet is a public network, it does fall under the Code provisions. The Broadcasting Act regulations prohibit the broadcast or distribution of programming that contains abusive comments about individuals or groups on radio, specialty services, broadcast television and pay television; however, Internet-based communications do not fall under the definition of “broadcasting.”^[24]

The real activities of groups identified as terrorists and individuals involved with ideological violence are less well documented, but it is generally accepted that such groups or individuals are increasingly using the Internet as a means of communication with each other, as well as the rest of the world, whether this be through the publication of propaganda or the use of online communication to coordinate attacks, raise funds or recruit new members to their cause.^[25] From a financial standpoint, the Internet provides global access for potential donors to fund their activities. Online fundraising for these groups has become commonplace to the point that some organizations can even accept online donations through PayPal.^[26]

Bomb-Making Instructions

Since hate crimes and terrorist activity are often associated with acts of extreme violence, such as bombings, one would think that distribution of bomb-making instructions would fall under the umbrella of prohibited internet content. In North America, it does not. In 1995, a bill was produced to the US Senate, making it illegal to distribute bomb-making information, carrying a penalty of a \$250,000 fine and 20 years in prison. The bill was passed two years later.^[27] However, the law only applies when the information is given out to assist with committing a federal crime. In other words, it isn't illegal to possess bomb-making instructions, but it is illegal to actually construct bombs. Furthermore, having materials at one's residence or on one's

computer can constitute hard evidence if an individual is ever under investigation for bomb-related activities.^[28]

In Canada, it is currently not illegal to post instructions on bomb making on the Internet, although manufacturing an explosive device is illegal. Inciting anyone to build or use an explosive device is illegal, as is aiding anyone in the construction or use of explosives.

Reporting Prohibited Internet Content

INHOPE encourages Internet users to report suspected illegal Internet material to their country's hotline so that the content can be investigated and, if applicable, reported to the relevant authorities.^[29] There is also the option of reporting content directly to the authorities, website administrator, or the hosting company, which could be a dedicated server.

In the case of suspected online terrorist activity, the FBI Tips and Public Leads page is set up for reporting suspected terrorism or criminal activity,^[30] as is the UK Home Office.^[32]

Footnotes

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- [8] "Miller Test." Wikipedia. Accessed October 25, 2017. http://en.wikipedia.org/wiki/Miller_test
- [9] "PROTECT Act of 2003." Wikipedia. Accessed October 25, 2018. http://en.wikipedia.org/wiki/PROTECT_Act_of_2003
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- [14] "Censorship in Canada – Internet." Wikipedia. Accessed October 21, 2017. http://en.wikipedia.org/wiki/Censorship_in_Canada#Internet
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- [17] "Hate Speech." International Association of Internet Hotlines. Accessed October 21, 2014. <http://www.inhope.org/gns/internet-concerns/overview-of-the-problem/hate-speech.aspx>
- [18] Ibid. (18)

[19] "Frequently Asked Questions About Hate Crimes and Hate on the Internet." Partners Against Hate. Accessed October 21, 2017. http://www.partnersagainsthate.org/about_hate_crimes/faq-html.html

[20] Ibid.

[21] "Internet Hate Crime." True Vision. Accessed October 21, 2014. http://www.report-it.org.uk/reporting_internet_hate_crime

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