

Internet Child Pornography and the Law: National and International Responses

By Yaman Akdeniz

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Although neither pedophilia nor child pornography are new phenomena, both have become more pronounced with the widespread use of the internet¹ The explosion of at-home internet use, especially over the last several years, has increased opportunities for accessing and disseminating child pornography, led to a proliferation of commercial activity involving child pornography, and contributed to a rise in the number of abusive images and videos of children available.² In response, governments around the world have enacted legal regimes specifically designed to combat child pornography as well as to address the problems emerging technology pose to its production, distribution, and handling.³

In *Internet Child Pornography and the Law*, Yaman Akdeniz⁴ provides a thorough overview of the problem of internet child pornography and its regulation at the national, international, and private levels through legal and non-legal means. Specifically, after surveying the laws and policies of England and Wales, the US, and Canada, Akdeniz explores the harmonization efforts at the levels of the European Union, Council of Europe, and the United Nations. Akdeniz then moves to an analysis of alternative regulation methods including Internet Service Provider (ISP) liability and other self-policing initiatives. Finally, Akendiz concludes by

¹ In 2008, for example, over 220 million Americans or 72% of the US population had access to the internet. Internet World Stats, Internet Usage and Population in North America, <http://www.internetworldstats.com/stats14.htm> (last visited Jan. 26, 2009). Furthermore, these numbers represent a 130% increase from 2000. *See id.*

² *See* YAMAN AKDENIZ, *INTERNET CHILD PORNOGRAPHY AND THE LAW* 6 (2008).

³ *See id.* at 9. Prior to these “specific” legal responses, sexually explicit material involving children was dealt with under more general obscenity and indecency laws. *See id.*

⁴ Yaman Akdeniz, LL.B., MA, Ph.D.; Lecturer, Faculty of Law, University of Leeds, UK; Founder and Director, Cyber-Rights & Cyber-Liberties (UK).

highlighting the shortcomings he sees in the current regulatory framework for dealing with internet child pornography.

The author begins by explicitly recognizing that governments have a compelling interest in protecting children from sexual abuse and exploitation. While Akendiz asserts that the availability and dissemination of child pornography over the internet could be substantially reduced through effective implementation, enforcement, and harmonization of child pornography laws, he is adamant that “panic-led policies” and moral reactionism must be avoided.⁵

Specifically, the author calls for informed debate as to the nature of child pornography related crimes and offenders and cautions against public and government distortion of the meaning of pedophilia. For example, he contends that those who solely view or download (i.e. “possess”) child pornography should not be necessarily cast as a sexual predator because no causal link has been shown to exist between viewing child pornography and active molestation.⁶ Furthermore, the author notes a trend towards including virtual images of children (as opposed to real children), and written material and drawings within the definition of child pornography, as in chapter 163.1 of the Canadian Criminal Code.⁷ Akendiz wonders whether real children are actually better protected from sexual abuse and exploitation.⁸ Thus, while acknowledging that child pornography should neither be condoned nor tolerated, Akendiz wonders whether actual children are better protected from sexual abuse and exploitation.⁹

Internet Child Pornography and the Law is divided into three parts. Part One comprises the bulk of the book and provides a comparative assessment of various national approaches to dealing with internet child pornography, namely those of England and Wales, the US, and

⁵ See AKDENIZ, *supra* note 2, at 13.

⁶ *Id.* at 280.

⁷ See AKDENIZ, *supra* note 2, at 141-42, 156-58.

⁸ *Id.* at 281.

⁹ *Id.* at 281.

Canada. The author does a very good job of tracing the history and development of the legislation and policies governing child pornography within these jurisdictions as well as explaining the current state of the law. Particular attention is paid to discussing landmark cases.¹⁰ For example, the author analyzes (and criticizes) the decision in *R. v. Bowden*, where a UK court of appeal held that the more serious offense of “making an indecent photograph” encompasses the act of downloading an already existing image of a child and printing or saving it to a disc, and goes on to discuss the impact the decision has had on child pornography prosecutions.¹¹

The reader is also well-served by Akdeniz’s extended treatment of “hot-button” issues. Namely, he addresses the subject of virtual child pornography (i.e. where no actual children are utilized) and freedom of expression—one of the most controversial areas in the child pornography legal regime. In discussing the relevant laws, the author does a nice job of reminding the reader that the oft cited rationale underlying the criminalization of child pornography is to protect actual children from harm. Given this, the author posits whether the legislation and policy in place hits or misses the mark and reserves judgment until the end of the book, allowing the reader to formulate their own opinion. Toward that end, legislative history, policy reports and papers, and social science findings on point are interspersed throughout giving the reader an informed and well-rounded overview of the subject.

In addition, the author examines unsettled and emerging areas of the law. For example, the issue of whether a deleted image constitutes possession is discussed at length. Equally as

¹⁰ See, e.g., *R. v. Porter* (2006), EWCA Crim. 560; *R. v. Bowden* (2000), 2 All ER 418; *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002); *R. v. Sharpe*, 2001 SCC 2 (Can.).

¹¹ See AKDENIZ, *supra* note 2, at 48-57. Akendiz argues that *Bowden* was a case which could and should have been treated as a case of possession. See *id.* at 51. He suggests the court of appeal’s decision blurs the distinction between simple possession offenses and the more serious offense of “making” under the UK’s Protection of Children Act of 1978. See *id.*

well addressed are affirmative defenses to child pornography charges, sentencing guidelines, and prosecution and conviction statistics. Finally, Akdeniz does a particularly good job of disengaging himself from the emotive nature of the subject which allows him to objectively assess the strengths and weaknesses of the laws. The only concern might lay with the average North American reader who may be more interested in an in-depth discussion of the laws of her home nation; if that is the case, such a reader will be disappointed as the laws of the UK, Wales, the European Union, and Council of Europe are disproportionately addressed in comparison to those of the US and Canada.¹²

After covering a selection of national laws and policies, Akdeniz moves to a discussion of efforts to fight internet child pornography at the supranational and international levels. Specifically, the author focuses on those of the European Union, the Council of Europe, and the United Nations. It is generally recognized that because the internet is not contained within one particular jurisdiction, effective policing and regulation of child pornography requires international cooperation. Akdeniz thus argues that the harmonization of legal standards amongst nations is essential to effectively combat internet child pornography because where domestic criminal laws vary, definitions of child pornography inconsistent, or specific child pornography legislation lacking, gaps in child protection laws make cross border enforcement operations difficult. Although the author's assessment of such initiatives is relatively grim – due to their (generally speaking) non-binding nature and Member States' slow response implementing them, he stresses that such efforts are nevertheless necessary. Again, although the initiatives undertaken by the European Union and the Council of Europe may be of lesser interest to readers in North America, Akdeniz makes clear that anyone desirous of eradicating internet

¹² This is not to say, however, that in the borderless world of internet child pornography that readers will not benefit from an exercise in international comparative legal analysis.

child pornography should be concerned with the legal and policy developments in Europe as it is one of the major producers and consumers of child pornography. That said, the author emphasizes that one of the more significant developments at the international level occurred with the passage of the UN Optional Protocol to the Convention on the Rights of the Child¹³—to which the US and Canada (and much of the rest of the world) are parties.

As internet-related technology continues to develop at a face pace, the law often lags a step behind. In light of this reality, Akendiz completes his well-rounded discussion of child pornography by analyzing alternative regulatory methods. Specifically, in Part Three, the author turns to Internet Service Provider liability and other self-regulatory initiatives. He discusses the possibility of holding ISPs liable for child pornography content, but ultimately discounts it as a viable option, arguing that rarely, if ever, do ISP's have knowledge of such illegal content. Akdeniz additionally argues that ISP self-regulation and co-regulation initiatives, such as user-generated notices to remove illegal content and the creation of tip hotlines have been more successful in alerting ISPs and the police to the presence of child pornography on the internet or on individuals' personal computers.

Internet Child Pornography and the Law provides a thorough and well-rounded overview of the legal mechanisms and policy initiatives in place to deal with the problem of internet child pornography. The comparative aspects of the book are particularly useful, as well as the focus on the international approaches and self-regulation initiatives, as the nature of the internet necessarily requires a cooperative and international response. The book avoids becoming bogged down in the emotional and moral aspects of the child pornography debate, and provides a critical assessment of the laws—a benefit for anyone (whether layperson or lawyer) interested in

¹³ See AKDENIZ, *supra* note 2, at 223; Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, available at <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

understanding the current state of the law and underlying policy rationales. Although the author expresses his distaste for panic-driven legislation and explains which provisions he believes to be such, his arguments are well-reasoned and not overbearing. While this book runs the risk of becoming outdated as the relevant law and technology continues to evolve and develop, the question the author continually poses as to whether real children are actually being better protected from sexual abuse and exploitation will always be at the forefront of the debate.