

## CHILD PORNOGRAPHY

### *The Act*

1 Child pornography is defined in the Act as including *any image, however created, or any description, of a person, real or simulated, who is, or who is depicted or described as being under the age of 18 years*

- *engaged in sexual conduct*
- *participating in or assisting another person to participate in, sexual conduct, or*
- *showing or describing the body or parts of the body of such a person in a manner or circumstances which, within context, amounts to sexual exploitation or in such a manner that it is capable of being used for the purpose of sexual exploitation.*

2 "Sexual conduct" is defined as including:

- *male genitals in a state of arousal or stimulation*
- *the undue display of genitals or of the anal region*
- *masturbation*
- *bestiality*

- *sexual intercourse, whether real or simulated, including anal sexual intercourse*
- *sexual contact involving the direct or indirect fondling or touching of the intimate parts of a body, including the breasts, with or without any object*
- *the penetration of a vagina or anus with any object*
- *oral genital contact, or*
- *oral anal contact.*

### *The elements that constitute child pornography*

3 In order to constitute child pornography for the purposes of the Act, there must be:

- an image or text, regardless of how it was created
- of a person, whether the person is real or fictitious or a product of the imagination
- who is actually under the age of 18 years or who is described or depicted as being under the age of 18 years
- engaged in sexual conduct or participating or assisting another person to participate in sexual conduct or

- which shows or describes the body or parts of the body of such person in a manner or in circumstances which, within context, amounts to sexual exploitation
- or in such a manner that it is capable of being used for the purpose of sexual exploitation.

4 Let us deal with each of the elements.....

- (i) image....what is an image
- (ii) text...“With her hair tied in a neat little bow and dressed only in diapers, the brand-name “Huggies” clearly visible, she crawls towards the man seated on the chair, his pants down to his ankles and his penis exposed and pointed towards her....she strains to take his penis into her mouth and gently sucks, with her eyes half closed....”
- (iii) “regardless of how it was created”...it could have been photographed, or photocopied or drawn or sketched or carved or morphed
- (iv) the person....it could be a real person or a product of the imagination
- (v) the age...the person could actually be under 18 or described or depicted as under 18...example of text...what does “depicted” mean...? It would refer to any material that

a reasonable person would see as representing a person under the age of 18 years. It does not matter what the intention of the creator or producer is...what matters is what a reasonable person would see it as

- (v) engaged...will person under the age of 18 years be regarded as “engaged” in if that person was a mere observer ? Indecent assault?
- (vi) sexual conduct....what is sexual conduct? It is defined but in general, it would refer to acts or conduct at the extreme end of sexually activity represented in graphic and unambiguous fashion. Representations of casual intimacy, such as kissing or hugging would not be covered by the term
- (vii) participating....again, requires more than mere observation or does it?
- (viii) Assisting...active? Like what?
- (ix) Another person...real person?
- (x) Describing the body in a manner that amounts to sexual exploitation, judged within context. “Amounts to” must be interpreted objectively...would a reasonable viewer, looking at the image or description, see the depiction or description as intending to cause sexual stimulation to some viewer or reader? Innocent pictures intended for a family album....?

- (xi) Capable of being used for the purpose of sexual exploitation...? Like “amounts to...” objective interpretation

7 The amendments removed “child pornography” as a classifiable element. The moment you suspect that this is child pornography, stop the classification process and refer that film to the Board for appropriate action.

*Any assistance from forensic science?*

Iyavar (2004).

5 Forensic scientists are often required to assess the age of a person from images. I am not sure how exact forensic science is when it comes to assessing age but some of the things that a forensic scientist will look at are the general physical appearance....“puppy fat”, little or no bodily hair, position of the nipples on the breast – the higher the nipples, the younger the person, and so on.

6 However, for the purpose of the Act, no need to determine or guess the age...all that is required is whether or not a reasonable viewer would see the depiction as that of a person younger than 18 years. For instance:

- Dressing in school uniform...intention may be to depict as a school child but may not appear so
- Hair style
- Baby wear
- Body language, etc

*What to do if you suspect child pornography....?*