

## PARAMETERS OF DEFINITION

Child pornography is an emotive issue and the international community is yet to succeed in establishing a definition acceptable to all jurisdictions. Among the issues usually raised, the following are the most common:

- 1 What type of behaviour is being depicted? The narrowest definition embraces only visual depictions of only real children engaged in explicit sexual activity. If the child in such a depiction is the product of one's imagination, and therefore no real child was harmed, there is no child pornography. (*Ashcroft v Free Speech Coalition*) But what about suggestive depictions of children engaged in other than sexually explicit behaviour, such as images of children in sexually suggestive poses, with exposed genitals, for instance? Or children used as "props" in sexual activity? (*S v McNeil*). Should child pornography be defined with respect to a viewer's response to the image, or the effect on the consumer, so that if it arouses, in the viewer or consumer, aesthetic rather than erotic feelings, it is not child pornography? (*S v Tascoe Luc De Reuck*) Who should be at the centre of child pornography laws – the child-victim or the possessor? What about descriptions of pornography? And what about child pornography created out of one's imagination for the sole purpose of personal and private use? (*R v Sharpe*)
- 2 Who is a child? In some cultures, adulthood is marked by a ritual, such as marriage, for instance, rather than the attainment of a certain chronological age. In other cultures, adulthood is a legal concept, defined by the legislature of the particular jurisdiction. There is, in most jurisdictions, a difference between

the legal age for sexual consent and the age at which one may participate in depictions of sexual conduct. Some jurisdictions define prohibited material only on the actual age of the person being depicted, while others include both actual and apparent age.

- 3 Should mere advocacy of sex with children be defined as child pornography? (*The North American Boy-Man Association*)
- 4 Is the term "child pornography" itself an accurate description of what is at issue? Many jurisdictions now prefer to use the term "child abuse images" or "child abuse materials" rather than "child pornography" for a number of reasons, including
  - (i) What is traded among paedophiles and collectors of child pornography is not just images of children involved in sexual conduct but images of children being tortured and even murdered. (*The Russian pederast syndicate* and the *Karla Homolka snuff films case*)
  - (ii) The expression "child pornography" is often defined by twinning the definitions of "child" and "pornography", leading to such absurd conclusions that depictions of children involved in sexual activity that appeals to the aesthetic rather than the erotic is not child pornography. The sexual penetrative assault of a six-month-old baby can arouse aesthetic feelings only in the mind of a pervert. (*The De Reuck case*) Try defining a "baby shower" or a "cry baby" that way!

(iii) The term “pornography” invites discussions on issues of art, erotica and freedom of artistic creativity – all of which have nothing to do with images of children being sexually abused.

5 The concept of “child pornography” excludes the whole context of child exploitation, such as child sex tours, child prostitution and child trafficking.