

Children's Charities' Coalition on Internet Safety



Mrs Lesley Dix  
Secretary  
Sentencing Advisory Panel  
Sentencing Guidelines Secretariat  
Room G11  
Allington Towers  
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London SW1E 5EB

12<sup>th</sup> January, 2005

FAO: Professor Martin Wasik

Dear Professor Wasik,

Please find attached a copy of a submission by CHIS in relation to sentencing in child pornography cases.

You will note that I have also attached a copy of a report written by me and published by NCH, in January, 2004. It is entitled "Child Abuse, Child Pornography and the Internet". Sadly I have just discovered that it is now out of print but more copies have been ordered. I would, of course, be happy to send additional copies when they come back from the printers, which should be within the next week or so. In the meantime I have taken the liberty of sending an electronic copy of the same report to Mrs Dix and I would be happy for that also to be distributed to any Panel Members who express an interest.

Yours sincerely,

John Carr  
Secretary

## **Sentencing in Child Pornography Cases**

Submission from CHIS

We are grateful for the opportunity to submit our views in relation to two particular aspects of sentencing concerning child abuse images.

### **Images or films of children engaged in penetrative sexual activity with each other**

The panel recommended that this type of image should be categorised as level two, whereas a similar image involving adult/child should be level 4. Within R v Oliver this difference in classification can and does dramatically affect sentence both in terms of punishment, and perceived risk in the future. Further, we would wish to register our concern at what appears to be downwards judicial drift, i.e. level two images are frequently being treated as being broadly similar to level one and we are sure that is not what the panel can have intended, particularly for sexual activity involving penetration.

The distinction between levels two and four has led to the bizarre but regular practice in court of advocates putting great reliance on whether or not an adult was involved in the particular penetrative act. This can be, and often is, the difference between a custodial sentence or some other disposal.

Even if it were possible to make such distinctions consistently and accurately, in the absence of any actual knowledge of what happened to the child or children involved, there is absolutely no intellectually coherent, medical or other scientific basis for the apparent belief that the harm being done to the child or children in one circumstance is any worse or necessarily different from the harm being done to the child or children in the other.

In fact one could argue that if it is accepted that two or more children are involved in a given image the seriousness of the abuse is aggravated because of the number of children being abused. Almost invariably, published and distributed images of children abusing each other including penetrative acts, has resulted from the coercion and organisation of an adult, and frequently there is an incestuous element.

Accordingly, we would invite you to give consideration to the re-classification of this type of image as level four.

### **Nature of the image as a predictor of risk**

In relation to any given defendant, the hierarchy should not be used as a rough and ready predictor of the likelihood of that person being a risk to children either in the present or future. It is entirely possible that someone found in possession of a relatively low number of level one images is a great risk to children, in terms of the probability of them committing actual sexual offences against children or the probability of them perpetuating the abuse of children by continuing to seek out, view and/or collect other abusive images. That is why we think each individual who falls to be sentenced in relation to child abuse images should be properly risk assessed by an appropriate person.

The key point here is that level one images, for example, are likely to present scenarios which are much closer to the possibility of fulfillment than, say, extreme or violent images within level five.

The above concerns are and have been strongly held by CHIS members for sometime and must be seen in the context of the Internet generally. I would invite your attention to the attached document produced by NCR last year. The firm view of CHIS could be supported by expert statements if that would be of assistance.

We have also had an opportunity to consider the submission presented by the Attorney General. CHIS agrees with and adopts the views, reasoning and argument presented in that document. On that basis our contribution has been more limited than might otherwise have been the case to avoid repetition.