

## Chapter 4

# CHILD PORNOGRAPHY OFFENDER BEHAVIOR

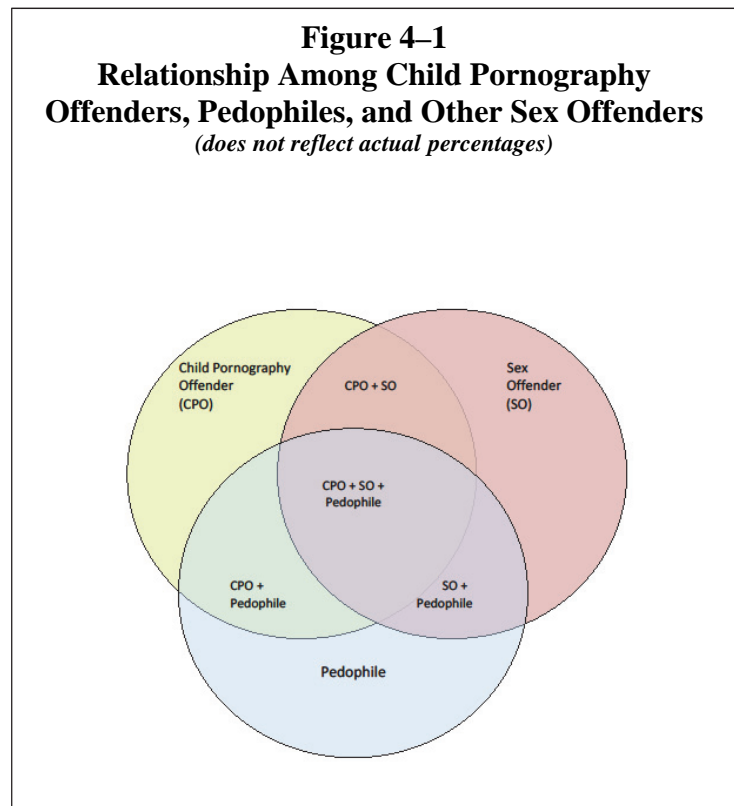
This chapter describes the social science research regarding the three broad categories of child pornographer behavior patterns: collecting behavior; participation in an online child pornography “community” (and the related concept of a child pornography “market”); and commission of criminal sexually dangerous behavior in conjunction with child pornography offending. Each of the sections in this chapter relates to one or more of those categories of child pornography offender behavior.

The first section of this chapter discusses the types of child pornography offenders. The second section explains motivations to collect child pornography. The third section describes the collecting behavior exhibited by child pornography offenders. The fourth section describes child pornography communities and illustrates the impact that these communities may have on child pornography offenders and on the child pornography “market.” The fifth section discusses the relationship between child pornography offending and other sex offending.

### A. TYPES OF CHILD PORNOGRAPHY OFFENDERS

In general, child pornography offenders can be classified based on their degree of sexual interest in children, their motivation to collect child pornography, and their tendency to engage in other sex offending. Some child pornography offenders meet the clinical diagnosis for pedophilia as defined and discussed below, and some child pornography offenders engage in other sex offending. However, not all child pornography offenders are pedophiles, and not all child pornography offenders engage in other sex offending. While there is overlap in these categories, each is separate and none is a predicate to any other. Figure 4–1 shows the relationship between child pornography offenders, other sex offenders, and pedophiles. Figure 4–1 is merely intended to depict these relationships and does not attempt to show actual ratios of the various groups.

Pedophilia is a clinical psychiatric diagnosis of a persistent sexual interest in sexually immature



children and can be manifested in thoughts, fantasies, urges, sexual arousal, or behavior.<sup>1</sup> Pedophiles may be sexually interested in infants and toddlers, prepubescent children,<sup>2</sup> pubescent children,<sup>3</sup> or all children, but most pedophiles do have a preference for victim age range and gender.<sup>4</sup> Only a small fraction of pedophiles have an exclusive sexual interest in children;<sup>5</sup> most

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<sup>1</sup> The fourth edition of the American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders Text Revision (DSM-IV-TR) provides a diagnosis of pedophilia as:

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A.

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS TEXT REVISION 572 (2000).

The current clinical diagnosis is sometimes used inclusively to describe an attraction to pubescent children (typically aged 11-14), a paraphilia sometimes called "hebephilia." See Ray Blanchard et al., *Pedophilia, Hebephilia, and the DSM-V*, 38 ARCHIVES OF SEX BEHAV. 335, 335 (2009). Because the strict definition of pedophilia would not include hebephilia, and to better address the differences between pedophilia, hebephilia, and the related disorders, the APA is currently in the process of revising the DSM-IV-TR and has proposed changing the diagnosis of pedophilia to "pedophilic disorder." In the forthcoming DSM-5 (May 2013), pedophilic disorder will be defined as:

- A. Over a period of at least 6 months, an equal or greater sexual arousal from prepubescent or early pubescent children than from physically mature persons, as manifested by fantasies, urges, or behaviors.
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or impairment in social, occupational, or other important areas of functioning.
- C. The individual must be at least 18 years of age and at least 5 years older than the children in Criterion A.

Proposed Revisions to the Diagnostic and Statistical Manual of Mental Disorders to be included in the DSM-V, <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=186#> (last visited May 9, 2012).

<sup>2</sup> Prepubescent refers to children who have not begun puberty. These children show no sign of development of secondary sex characteristics. See MedlinePlus, *Puberty & Adolescence*, <http://www.nlm.nih.gov/medlineplus/ency/article/001950.htm> (last visited Nov. 1, 2012).

<sup>3</sup> Pubescent refers to children who have started puberty. These children show some development of secondary sex characteristics such as initial breast development or evidence of pubic hair or armpit hair. Postpubescent refers to individuals who have completed puberty and have fully developed secondary sex characteristics. See MedlinePlus, *Puberty & Adolescence*, <http://www.nlm.nih.gov/medlineplus/ency/article/001950.htm>. As discussed in note 2, sexual interest in pubescent children who are starting to show signs of secondary sex characteristic but are not yet sexually mature is sometimes thought to be a separate paraphilia called "hebephilia." Blanchard, *supra* note 1, at 336.

<sup>4</sup> Ryan C. W. Hall & Richard C.W. Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 MAYO CLIN. PROC. 457, 459 (2007).

<sup>5</sup> Hall & Hall, *supra* note 4, at 459 (citing GENE G. ABEL & NORA HARLOWE, THE STOP CHILD MOLESTATION BOOK (2002), which found that only 7% of pedophiles were exclusive); see also Jennifer McCarthy, *Internet Sexual Activity: A Comparison Between Contact and Non-Contact Child Pornography Offenders*, 16 J. SEXUAL AGGRESSION 181, 187 (2010) (finding that in a sample of child pornography offenders, approximately half were pedophiles but only 12% were exclusively pedophiles).

maintain some sexual interest in adults as well.<sup>6</sup> Being married or having sexual relations with adults does not mean a child pornography offender is not also a pedophile.

Some researchers and clinicians believe that a clear majority of child pornography offenders who have committed their offenses over a period of time are pedophiles,<sup>7</sup> while others report that most child pornography offenders are not pedophiles.<sup>8</sup> While the prevalence of pedophilia among child pornography offenders is unclear, research in the area demonstrates that child pornography offenders, regardless of whether they meet the clinical definition for pedophilia, are much more likely to be sexually aroused by children than contact child sex offenders or the general population.<sup>9</sup>

Some but not all sex offenders who offend against children are pedophiles.<sup>10</sup> Among those sex offenders who offend against children, there are distinctions between those who commit incest offenses versus those who select non-related victims.<sup>11</sup> Sex offending may occur when an opportunity to offend appears in conjunction with the presence of risk factors in the potential offender.<sup>12</sup>

In addition to the disagreement over the percentage of child pornography offenders who are pedophiles, there is significant debate about the association between child pornography offending and other sex offending. This issue is discussed at length later in this chapter and Chapter 7.<sup>13</sup>

<sup>6</sup> A. Nicholas Groth & H. Jean Birnbaum, *Adult Sexual Orientation & Attraction to Underage Persons*, 7 ARCHIVES OF SEXUAL BEHAV. 175, 180 (1978); see also STEPHEN HOLMES & RONALD HOLMES, *SEX CRIMES: PATTERNS & BEHAVIORS* 110 (3d ed. 2009).

<sup>7</sup> See Michael C. Seto, James M. Cantor & Ray Blanchard, *Child Pornography Offenses Are a Valid Diagnostic Indicator of Pedophilia*, 115 J. ABNORMAL PSYCHOL. 610, 610–13 (2006) (finding 61% of child pornography offenders are pedophiles versus 35% of contact child sex offenders); Testimony of Gene Abel, M.D., Medical Director, Behavioral Medicine Institute, to the Commission, at 130–31 (Feb. 15, 2012) (“Abel Testimony”)

<sup>8</sup> See, e.g., Testimony of Richard Wollert, Ph.D., to the Commission, at 203 (Feb. 15, 2012) (“Wollert Testimony”) (stating that typical child pornography offenders are not pedophiles; rather, their illegal behavior is “more consistent with a learning theory explanation”). The social learning theory of deviant behavior suggests that crime can be learned through social interaction with people who favor criminal behavior. A social learning theory of child pornography offending suggests that rather than pre-existing pedophilic impulses, online communities that trade child pornography and the availability of child pornography motivate otherwise non-pedophilic individuals to become child pornography offenders. See Rob D’Ovidio et al., *Adult-Child Sex Advocacy Website as Social Learning Environments: A Content Analysis*, 3 INT’L J. OF CYBER CRIMINOLOGY 421, 421–22 (2009).

<sup>9</sup> Seto et al., *Child Pornography Offenses*, supra note 7, at 612–13.

<sup>10</sup> MICHAEL C. SETO, *PEDOPHILIA & SEXUAL OFFENDING AGAINST CHILDREN: THEORY, ASSESSMENT, & INTERVENTION* 5 (2008).

<sup>11</sup> Joseph A. Camilleri & Vernon L. Quinsey, *Pedophilia: Assessment & Treatment in SEXUAL DEVIANCE* 183, 191 (D. Richard Laws & William R. O’Donohue eds. 2d ed. 2008).

<sup>12</sup> See William L. Marshall, Geris A. Serran, & Liam E. Marshall, *Situational and Dispositional Factors in Child Sexual Molestation: A Clinical Perspective*, in *SITUATIONAL PREVENTION OF CHILD SEXUAL ABUSE* (Richard Wortley & Stephen Smallbone eds., 2006).

<sup>13</sup> See *infra* Sec. 4.E.; Chapter 7 at 169–181.

Researchers have attempted to classify child pornography offenders into different types based on their behavior and use of child pornography. Some researchers have categorized child pornography offenders based on their use of technology and other sex offending.<sup>14</sup> Others have focused on the offender's motivation for collecting child pornography.<sup>15</sup> Still others have focused on the offender's level of involvement in child pornography, involvement in a child pornography community, and the extent to which an offender is trying to evade detection.<sup>16</sup> Social science research suggests that, while categories can be helpful, the spectrum of child pornography offenders is not static; and child pornography offenders may move across a spectrum of behaviors, sometimes escalating into more serious child pornography behaviors or into other sexual offending.<sup>17</sup>

## B. MOTIVATIONS TO COLLECT CHILD PORNOGRAPHY

Child pornography offenders exhibit an array of motivations.<sup>18</sup> Research suggests that motivations vary and most offenders exhibit more than one motivation.<sup>19</sup> This section will address both the sexual and non-sexual motivations to collect and distribute child pornography.<sup>20</sup>

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<sup>14</sup> See generally Eileen M. Alexy, Ann W. Burgess & Timothy Baker, *Internet Offenders: Traders, Travelers, and Combination Trader-Travelers*, 20 J. INTERPERSONAL VIOLENCE 804 (2005).

<sup>15</sup> See L. Webb, J. Craissati & S. Keen, *Characteristics of Internet Child Pornography Offenders: A Comparison With Child Molesters*, 19 SEX ABUSE 449, 450–51 (2007) (citing Joe Sullivan & Anthony Beech, *Assessing Internet Offenders*, in CHILD SEXUAL ABUSE AND THE INTERNET: TACKLING THE NEW FRONTIER 69 (M. Calder ed., 2004)).

<sup>16</sup> See Tony Krone, *A Typology of Online Child Pornography Offending*, 279 TRENDS & ISSUES IN CRIME AND CRIM. J. 1, 4 (2004); Eva J. Klain, Heather J. Davies & Molly A. Hicks, *Child Pornography: The Criminal-Justice-System Response*, AM. BAR ASS'N CTR. ON CHILDREN AND THE L. FOR THE NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN 1, 4 (2001) (identifying “closet,” “isolated,” “traders,” “cottage,” and “commercial” collectors).

<sup>17</sup> Some research suggests that viewing child pornography causes some offenders to develop distorted attitudes about the sexuality of children, and these attitudes may act as a precursor to contact sex offending. Martin C. Calder, *The Internet: Potential, Problems, and Pathways to Hands-on Sexual Offending* in CHILD SEXUAL ABUSE & THE INTERNET: TACKLING THE NEW FRONTIER 2 (Martin C. Calder ed., 2004); Ethel Quayle & Max Taylor, *Child Pornography and the Internet: Perpetuating a Cycle of Abuse*, 23 DEVIANT BEHAV. 331, 335 (2002). With respect to the role of distorted attitudes in child sex abuse generally, see Theresa Gannon, Kirsten Keown & Devon L.L. Polaschek, *Increasing Honest Responding on Cognitive Distortions in Child Molesters: The Bogus Pipeline Revisited*, 19 SEX ABUSE 5, 6 (2007); Tony Ward & Richard J. Siegert, *Toward a Comprehensive Theory of Child Sexual Abuse: A Theory Knitting Perspective*, 8 PSYCHOL., CRIME & L. 319, 328 (2002).

<sup>18</sup> See Michael C. Seto, Lesley Reeves, & Sandy Jung, *Explanations Given by Child Pornography Offenders for Their Crimes*, 16 J. SEXUAL AGGRESSION 169, 175 (2010); Seto et al., *Child Pornography Offenses*, *supra* note 7, at 613; Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 16, at 332–333; see also KERRY SHELDON & DENNIS HOWITT, *SEX OFFENDERS & THE INTERNET* 242–45 (2007).

<sup>19</sup> McCarthy, *supra* note 5, at 184; Joe Sullivan & Anthony R. Beech, *Assessing Internet Sex Offenders* in CHILD SEXUAL ABUSE & THE INTERNET: TACKLING THE NEW FRONTIER 69 (Martin C. Calder ed. 2004).

<sup>20</sup> Although some child pornography offenders distribute, advertise, and traffic in child pornography for financial gain, see Anthony R. Beech et al., *The Internet and Child Sexual Offending: A Criminological Review*, 13 AGGRESSION & VIOLENT BEHAV. 216, 224–25 (2008), there are very few such offenders in the federal population. In fiscal year 2010, none of the 1,075 cases in which non-production defendants distributed child pornography involved a traditional *commercial* distributor (e.g., a commercial child pornography website operator); all distribution in the fiscal year 2010 cases was either gratuitous or involved bartering. See Chapter 6 at 149.

The typical federal child pornography offender has viewed child pornography over a period of time, most over months or years.<sup>21</sup> Some child pornography offenders claim that they initially encountered child pornography by accident, while searching for adult pornography rather than due to a preexisting pedophilic interest.<sup>22</sup> Regardless of the initial motivation, child pornography offenders are clearly motivated to *continue* intentionally to access child pornography.<sup>23</sup>

### 1. *Sexual Motivations to Collect Child Pornography*

Sexual interest in children and corresponding sexual gratification are significant motivators for most child pornography offenders.<sup>24</sup> Offenders often use the images to masturbate and to validate their sexual interest in children.<sup>25</sup> Some offenders also use images to “groom” or lower the inhibitions of potential victims.<sup>26</sup>

Among all child pornography offenders, pedophiles have the most direct sexual motivation to access child pornography. Other sexually motivated child pornography offenders may be sexually motivated and have indiscriminate deviant sexual interests that include sexual

<sup>21</sup> See Chapter 3 at 61.

<sup>22</sup> See, e.g., Belinda Winder & Brendan Gough, “*I Never Touched Anybody – That’s my Defence*”: A Qualitative Analysis of Internet Sex Offender Accounts, 16 J. SEXUAL AGGRESSION 125, 135 (2010).

<sup>23</sup> SHELDON & HOWITT, *supra* note 18, at 243–44 (noting that “there is no meaningful sense in which offenders ‘accidentally’ come across child pornography” when viewing adult pornography sites). A forensics review can also debunk an excuse that child pornography was accidentally viewed. See Testimony of James Fottrell, Child Exploitation and Obscenity Section, Criminal Division, U.S. Department of Justice, to the Commission, at 22–23 (Feb. 15, 2012) (on behalf of the U.S. Department of Justice) (“Fottrell Testimony”) (“[i]mages in particular folders sorted and organized . . . are not accidentally viewed; they are purposely sorted and organized in a particular manner”).

<sup>24</sup> Seto et al., *Child Pornography Offenses*, *supra* note 7, at 613 (“people are likely to choose the kind of pornography that corresponds to their sexual interests, so relatively few nonpedophilic men would choose illegal child pornography”). See also Abel Testimony, *supra* note 7, at 105–06 (“Why do heterosexual men buy Playboy? . . . To look at the pictures. Why? Because they’re interested in the pictures . . .”).

<sup>25</sup> Ethel Quayle & Max Taylor, *Paedophiles, Pornography & the Internet: Assessment Issues*, 32 BRITISH J. OF SOC. WORK 863, 866–67 (2002). Most analyses find that most child pornography offenders masturbate to the images. See, e.g., Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 16, at 338–39 (2002) (noting that in a qualitative sample of 13 offenders, 11 offenders masturbated using child pornography; one did not because he was unable to ejaculate, and one did not because he was excited by the “taboo”). However, at least one recent study found that only some offenders admitted to using child pornography to masturbate. See McCarthy, *supra* note 5, at 189; see also Olivia Henry et al., *Do Internet-Based Sexual Offenders Reduce to Normal, Inadequate & Deviant Groups?* 16 J. SEXUAL AGGRESSION 33, 34 (2010) (discussing various uses of child pornography to satisfy different sexual desires).

<sup>26</sup> See Melissa Wells, David Finkelhor, Janis Wolak & Kimberly J. Mitchell, *Defining Child Pornography: Law Enforcement Dilemmas in Investigations of Internet Child Pornography Possession*, 8 POLICE PRACTICE & RES.: AN INT’L J. 269, 271 (2007) (noting that offenders “may use child pornography to validate their sexual interest in children, to groom children and lower their inhibitions, or to blackmail victims or other offenders”); U.S. DEP’T OF JUST., NATIONAL STRATEGY FOR CHILD EXPLOITATION PREVENTION & INTERDICTION 31 (2010) (“NATIONAL STRATEGY”) (“[t]hroughout the grooming process, predators gradually introduce child pornography into their seduction methodology”).

interest in children.<sup>27</sup> Such individuals have a variety of sexual interests that may include sexual violence, bestiality, or other deviant sexual interests.<sup>28</sup> They may also engage in other risky or illegal sexual behavior separate from their child pornography offenses.<sup>29</sup> Finally, even those offenders who fail to meet a clinical diagnosis of pedophilia, may be sexually motivated by pedophilic interests and use the images for masturbation.

Some offenders who have used child pornography for sexual gratification report habituation to adult pornography and an increasing need to identify new and more extreme images in order to achieve sexual arousal. Some research posits that offenders who have masturbated to child pornography become desensitized to images that previously may have been horrifying to the offender.<sup>30</sup> Other research doubts this progression, noting that most child pornography offenders are selective about the age, gender, and sexual content of the images they preferentially collect.<sup>31</sup> Child pornography offenders also may develop or increase deviant sexual interests and distorted attitudes about children as appropriate sexual partners.<sup>32</sup> Such symptoms may serve to further socially isolate the child pornography offender and escalate his use of child pornography.<sup>33</sup>

## 2. *Non-Sexual Motivations for Collecting Child Pornography*

Non-sexual motivations for viewing child pornography include initial curiosity,<sup>34</sup> compulsive collecting behaviors,<sup>35</sup> avoidance of stress or dissatisfaction with life, and an ability

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<sup>27</sup> Henry et al., *supra* note 25, at 42–43.

<sup>28</sup> Testimony of Jennifer A. McCarthy, Assistant Director & Coordinator, Sex Offender Treatment Program, New York Center for Neuropsychology, to the Commission, at 110–11 (Feb. 15, 2012) (“McCarthy Testimony”).

<sup>29</sup> For example, some federal child pornography offenders in fiscal year 2010 engaged in contact sexual offenses, non-contact sexual offenses (such as voyeurism), or generally sexually deviant behavior such as collecting children’s underwear or engaging in bestiality. See Chapter 7 at 176–77.

<sup>30</sup> See Martin C. Calder, *The Internet: Potential, Problems and Pathways to Hands-on Offending*, in CHILD SEXUAL ABUSE & THE INTERNET: TACKLING THE NEW FRONTIER 17 (Martin C. Calder ed., 2004); see Wollert Testimony, *supra* note 8, at 203 (discussing desensitization).

<sup>31</sup> Ian A. Elliott & Anthony R. Beech, *Understanding Online Child Pornography Use: Applying Sexual Offense Theory to Internet Offenders*, 14 AGGRESSION & VIOLENT BEHAV. 180, 187 (2009); see also Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 17, at 333–34 (“many pedophiles are highly selective in their choice of material”).

<sup>32</sup> Cognitive distortions are attitudes or beliefs which tend to justify and excuse illegal or otherwise inappropriate behavior. See Caoilte Ó Ciardha, *A Theoretical Framework for Understanding Deviant Sexual Interest and Cognitive Distortions as Overlapping Constructs Contributing to Sexual Offending Against Children*, 16 AGGRESSION & VIOLENT BEHAV. 493, 494–500 (2011). The development of deviant sexual interest in children is further discussed *infra* section 4.D.3.

<sup>33</sup> Tony Ward & Anthony Beech, *An Integrated Theory of Sexual Offending*, 11 AGGRESSION & VIOLENT BEHAV. 44, 57 (2006) (“the consequences of sexually abusive actions can modify, entrench, or worsen the personal circumstances of an offender and in this way, increase or maintain the offending behavior”).

<sup>34</sup> See Henry et al., *supra* note 25, at 34.

<sup>35</sup> McCarthy Testimony, *supra* note 28, at 110–11.

to create a new and more socially successful identity (within an online community).<sup>36</sup> Some child pornography offenders appear to use child pornography as an escape from the real world.<sup>37</sup> One offender explained that his use of child pornography “was a fantasy world for me . . . and it was so different from the mundane existence I’d been leading. Here was something that was dangerous . . . it was exciting . . . it was new.”<sup>38</sup> Some research has noted the prevalence of socially inadequate and isolated males among child pornography offenders. This type of offender may rely on child pornography communities as a way to create a positive social identity and as a substitute for a real sex life.<sup>39</sup>

Problematic Internet use, also called compulsive Internet use,<sup>40</sup> may also partially explain why some offenders collect or distribute child pornography or escalate their behavior after initially viewing child pornography.<sup>41</sup> Research suggests that some individuals may be particularly vulnerable to problematic Internet use due to poor impulse control, emotional problems, lack of social and emotional outlets, and deviant sexual interests or beliefs.<sup>42</sup> These

<sup>36</sup> Ethel Quayle, Mary Vaughn & Max Taylor, *Sex Offenders, Internet Child Abuse Images and Emotional Avoidance: The Importance of Values*, 11 AGGRESSION & VIOLENT BEHAV. 1, 1–3 (2006). See also McCarthy Testimony, *supra* note 28, Tr. at 110–11; Testimony of Deirdre D. von Dornum, Assistant Federal Defender, Federal Defenders of N.Y., to the Commission, at 393–94 (Feb. 15, 2012) (on behalf of the Federal and Community Defenders) (“von Dornum Testimony”) (discussing a socially inadequate individual who developed an interest in child pornography).

<sup>37</sup> See Prepared Statement of Jennifer McCarthy, Assistant Director & Coordinator, Sex Offender Treatment Program, N.Y. Ctr for Neuropsychology, to the Commission, at 2 (Feb. 15, 2012).

<sup>38</sup> Ethel Quayle & Maxwell Taylor, *Model of Problematic Internet Use in People With a Sexual Interest in Children*, 6 CYBERPSYCHOL. & BEHAV. 93, 98 (2003) (quoting a child pornography offender).

<sup>39</sup> Henry et al., *supra* note 25, at 34 (“pathological Internet users are lonely and for these people the Internet helps to escape the unhappiness of real life, alter negative mood states and even change self-perception”) (internal citations omitted). There appears to be a subclass of child pornography offenders who have little or no sex life offline. *Id.* It is possible that in the Internet age, the greater sense of anonymity and the prevalence of child pornography images attracts new viewers including some socially inadequate individuals who may not have engaged in offline offending. Al Cooper, *Sexuality and the Internet: Surfing Into the New Millennium*, 1 CYBERPSYCHOL. & BEHAV. 187, 188–89 (1998).

<sup>40</sup> Problematic Internet (“PIU”) or compulsive Internet use (“CIU”) or are generally thought of as an inability to stop using Internet technologies without experiencing distress and where such use has resulted in a significant negative impact. Such behavior was clinically described by Kimberly Young, Ph.D. in 1996, and later refined by Nathan Shapira, MD, who suggested a three-pronged definition that the behavior was: (a) uncontrollable; (b) caused significant distress or impairment; and (c) occurred in the absence of other pathology that might explain the behavior. Nathan A. Shapira et al., *Psychiatric Features of Individuals with Problematic Internet Use*, 57 J. OF AFFECTIVE DISORDERS 267, 268 (2000).

<sup>41</sup> Some researchers refer to CIU of child pornography as an “addiction,” see Mark Griffiths, *Sex on the Internet: Observations and Implications for Sex Addiction*, 38 J. OF SEX RES. 333, 340 (2001) (finding limited evidence “that Internet sex addiction exists for a small proportion of users”), but most literature avoids the term addiction in the child pornography context. See, e.g., MAX TAYLOR & ETHEL QUAYLE, *CHILD PORNOGRAPHY: AN INTERNET CRIME* 174 (2003) (acknowledging that some use the term addiction but stating that “[t]he label of addiction may be seen as problematic however, and DSM-IV use instead the term dependence”) (internal citations omitted).

<sup>42</sup> Elliott & Beech, *supra* note 31, at 183–86; see also Dana Putnam, *Initiation and Maintenance of Online Sexual Compulsivity: Implications for Assessment and Treatment*, 3 CYBERPSYCHOL. & BEHAV. 553, 555 (2000) (discussing susceptibility to problematic Internet use); Bryant Paul & Jae Woong Shim, *Gender, Sexual Affect & Motivations for*

attributes, in combination, may make immersion in online child pornography an attractive option.<sup>43</sup> Such users report developing a problematic use that impedes a normal social and professional life. Problematic Internet pornography users report negative career outcomes, social isolation, and depression.<sup>44</sup>

### C. CHILD PORNOGRAPHY OFFENDER COLLECTING BEHAVIOR

This section discusses the types of collecting behavior in which some child pornography offenders engage, including the types of images and ancillary child-related objects some offenders collect, the way a some offenders organize their collections.<sup>45</sup> This chapter does not distinguish between photographs and videos, and refers to both as “images,” except where specifically stated.

#### 1. Child Pornography Collecting Activities

Child pornography offenders often amass large collections of child pornography with thousands or even hundreds of thousands of images and videos.<sup>46</sup> Some offenders have collected images over a series of decades and began in the pre-Internet era.<sup>47</sup> Child pornography offenders’ collections often contain a variety of images including legal but sexually suggestive child images,<sup>48</sup> sexually explicit poses, explicit sex acts, and images depicting violence,

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*Internet Pornography Use*, INT’L J. OF SEXUAL HEALTH 187, 196–97 (2008) (finding males more interested in Internet pornography generally and thus more susceptible to problematic Internet use).

<sup>43</sup> Quayle & Taylor, *Paedophiles*, *supra* note 25, at 867–73; *see also* Quayle et al., *Sex Offenders*, *supra* note 36, at 3.

<sup>44</sup> Michael P. Twohig & Jesse M. Crosby, *Acceptance and Commitment Therapy as a Treatment for Problematic Internet Viewing*, 41 BEHAV. THERAPY 285, 285 (2010). In particular, Internet pornography use harmed users’ relationships and families. *See, e.g.*, Jennifer P. Schneider, *Effects of Cybersex Addiction on the Family: Results of a Survey*, 7 SEXUAL ADDICTION & COMPULSIVITY 31, 31 (2000) (surveying 94 adults whose partners were engaged in Internet sexual activity and finding that problematic “cybersex activities were a continuation of pre-existing compulsive sexual behaviors”).

<sup>45</sup> Another collecting behavior, protecting the collection from discovery by law enforcement, is discussed in Chapter 3 at 56–59.

<sup>46</sup> *See, e.g.*, Sentencing Memorandum, *United States v. Dewey Burr*, No. 09-cr-308, ECF No. 26 (D. Or. July 23, 2010) (“A forensic review of the defendant’s computer and digital media storage devices have located over one million images of child pornography”); Peggy O’Hare, *Pilot Arrested on Child Porn Charges*, HOUSTON CHRON., July 1, 2010 (available at <http://www.chron.com/disp/story.mpl/metropolitan/7089813.html>) (“police investigators seized what they called the largest cache of child pornography ever discovered in Harris County, amounting to ‘millions of images’”).

<sup>47</sup> *See, e.g.*, NATIONAL STRATEGY, *supra* note 26, at 24–26 (“[t]hese offenders . . . often have been involved in collecting child pornography for years – many before the advent of the Internet”); PHILIP JENKINS, BEYOND TOLERANCE 48 (2001) (quoting child pornography offenders who had been collecting images for decades).

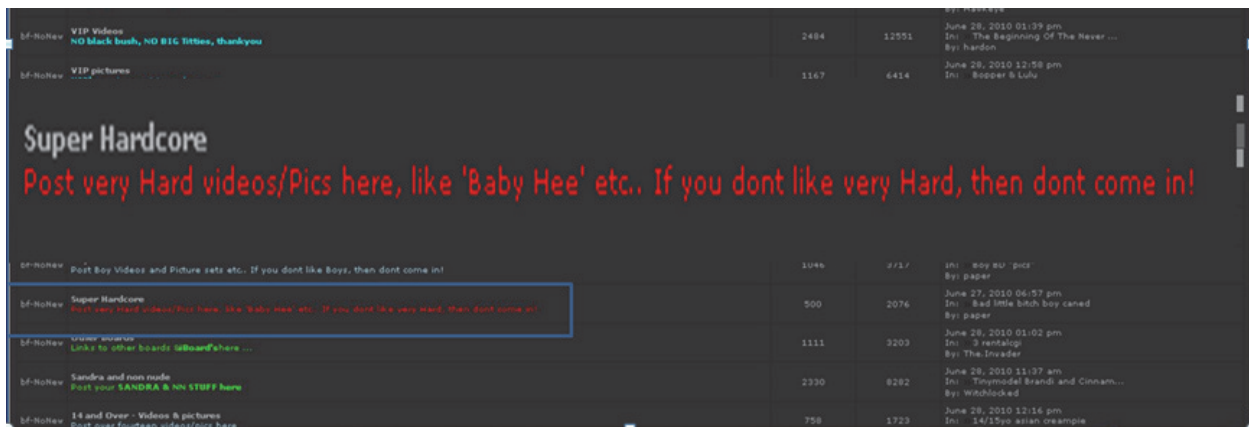
<sup>48</sup> Sexually suggestive child images, sometimes called “child erotica”, as described in Chapter 3 at 55, are not necessarily illegal and it may only be the inclusion of them within a collection of more explicit child pornography that suggests a deviant purpose. *See* Kenneth V. Lanning, *Child Molesters: A Behavioral Analysis*, NAT’L CTR. FOR MISSING & EXPLOITED CHILDREN 1, 65–66 (2001) (available at [http://www.missingkids.com/en\\_US/publications/NC70.pdf](http://www.missingkids.com/en_US/publications/NC70.pdf)). Research suggests that pedophilic contact child sex



humiliation, bondage, and bestiality. Some child pornography offenders are very discriminating and limit the kinds of images they will collect by gender, age, or sexual activity.<sup>49</sup> For example, one child pornography offender stated that his collection consisted of “just basically images of girls mainly. Girls actually having sex. And they had to look happy . . . I mean I wasn’t looking for rape or anything.”<sup>50</sup> One offender explained that he wouldn’t collect “[k]ids with animals . . . I got rid of that . . .”<sup>51</sup> Other child pornography offenders collect more fringe images; one offender described his method of finding new images as, “I’d go for the most extreme named ones possible . . . baby sex . . . child snuff or something.”<sup>52</sup> Figure 4–2, from a presentation given by a Department of Justice technology expert to the Commission, includes a screenshot of an area of a child pornography community that posted particularly violent images.

Figure 4–2 (cont’d on next page)<sup>53</sup>

DOJ Presentation: Screenshot of Rules of Child Pornography Community



offenders are more likely to collect and maintain collections of child pornography and sexually suggestive child images than other contact child sex offenders. *Id.* at 65–66.

<sup>49</sup> TAYLOR & QUAYLE, *supra* note 41, at 80.

<sup>50</sup> *Id.* at 82 (quoting a child pornography offender).

<sup>51</sup> SHELDON & HOWITT, *supra* note 18, at 110 (quoting a child pornography offender).

<sup>52</sup> TAYLOR & QUAYLE, *supra* note 41, at 168 (quoting a child pornography offender).

<sup>53</sup> See Prepared Presentation of James Fottrell, Child Exploitation and Obscenity Section, Criminal Division, DOJ, to the Commission (Feb. 15, 2012) (on behalf of the U.S. Department of Justice) (“Fottrell Presentation”).

Received: November 27, 2009 03:14 am

Super Hardcore, is babyshi, baby-he etc..

Its not k-girl, its not 'real lolita vol3'

Its very young kids, getting [REDACTED], and preteens in distress, and or crying, etc...  
Getting hit hard on the [REDACTED] with a belt and so on..

I cant believe some of you guys cant work it out for yourselves?

And 'pretend' bondage, 'pretend light whipping' is not super hardcore.

If the girl looks totally comfortable, shes not in distress, it does NOT belong in this section 😊

Offenders tend to collect material they find most sexually exciting, but some also collect for other reasons.<sup>54</sup> Some offenders keep images they do not find appealing in order to use them for trading at a later date. For example, a child pornography offender stated that “some of them I kept with the idea . . . [that] I might be able to use these sometime in the future perhaps for swapping with somebody else . . . .”<sup>55</sup> Other child pornography offenders collect compulsively to find rare images or are seeking to complete a series<sup>56</sup> of images.<sup>57</sup> The desire to complete a series is sometimes “particularly important where there is a narrative theme to a series, such as pictures showing a child gradually removing their clothes.”<sup>58</sup>

Many child pornography offenders expend considerable efforts to organize and categorize their collections.<sup>59</sup> Offenders often file images by gender, sexual activity, or the age of the child. For example, one offender stated that his collection “was very organized there were boys; there was girls . . . there would be boys posing on their own in a folder; boys in groups; boys soft as I put it; boys with erections.”<sup>60</sup> For some, cataloging is part of the pleasure of collecting; for others, it is simply a necessity to permit them usable to find a desired image either for personal use or for trading purposes.<sup>61</sup> Researchers have found that offenders engaged in

<sup>54</sup> Michael C. Seto & Angela W. Eke, *The Criminal Histories and Later Offending of Child Pornography Offenders*, 17 SEXUAL ABUSE: A J. OF RES. & TREATMENT 201, 202 (2005).

<sup>55</sup> TAYLOR & QUAYLE, *supra* note 41, at 185 (quoting a child pornography offender).

<sup>56</sup> A “series” is a group or set of child pornography images that are linked by a common element. It always contains at least one victim but may contain several victims and may include dozens or hundreds of images. A series typically contains less and more graphic images. Prepared Statement of Michelle Collins, Vice President, Exploited Children Division and Assistant to the President of National Center for Missing & Exploited Children, to the Commission, at 3–4 (Feb. 15, 2012) (“Collins Statement”).

<sup>57</sup> Ethel Quayle, *The Impact of Viewing on Offending Behavior*, in CHILD SEXUAL ABUSE AND THE INTERNET: TACKLING THE NEW FRONTIER 31 (Martin Calder ed. 2004).

<sup>58</sup> *Id.* at 31; *see also* JENKINS, *supra* note 47, at 103 (quoting a child pornography user who is searching for a particular subset of images within a series).

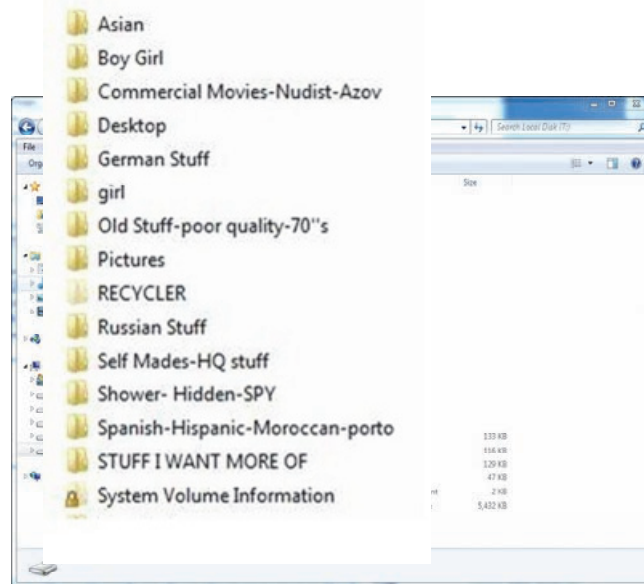
<sup>59</sup> Sarah Laulik, Jane Allam, & Lorraine Sheridan, *An Investigation Into Maladaptive Personality Functioning in Internet Sex Offender*, 13 PSYCHOL. CRIME & LAW 523, 527 (2007).

<sup>60</sup> SHELDON & HOWITT, *supra* note 18, at 105 (quoting a child pornography offender).

<sup>61</sup> Quayle, *The Impact of Viewing*, *supra* note 57, at 31.

more extensive trading activities are more likely to have particularly organized collections.<sup>62</sup> Figure 4–3, from a presentation given by a Department of Justice technology expert to the Commission, includes a screenshot from one child pornography offender’s computer showing the degree to which some offenders organize their collections.

**Figure 4–3<sup>63</sup>**  
**DOJ Presentation: Screenshot of Child Pornography Offender Collection**



Research suggests that the process of collecting images is enjoyable for some offenders regardless of whether all images are sexually exciting.<sup>64</sup> One child pornography offender explained “there was also the thrill in collecting them[.] You wanted to get a complete set so it . . . was a bit like stamp collecting as well.”<sup>65</sup> This collecting behavior may explain why some offenders devote countless hours to viewing child pornography.

Child pornography offenders, particularly pedophilic offenders, sometimes also collect ancillary child-related items.<sup>66</sup> For example, some offenders collect images of children in

<sup>62</sup> Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 17, at 354.

<sup>63</sup> Fottrell Presentation, *supra* note 53.

<sup>64</sup> Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 17, at 353–54.

<sup>65</sup> TAYLOR & QUAYLE, *supra* note 41, at 83 (quoting a child pornography offender).

<sup>66</sup> See Lanning, *Child Molesters*, *supra* note 48, at 85. Among the items seized after the arrest of a child pornography offender in 2009 were: sexually suggestive child photos and photos of girls on public beaches; adult female mannequins; child mannequins with pubic hair glued to pubic areas of the child mannequins; a large doll of a child approximately three years old; an infant baby doll with baby powder on it; a poster of celebrity children Mary Kate and Ashley Olson with handwriting on it; framed pictures of children in erotic poses or sexual poses; computer generated pictures of clothed celebrity children; and a Hannah Montana lamp with handwriting on it. Press Release, Wisconsin Dep’t of Justice, *Derks Pleads Guilty to 10 Counts of Possession of Child Pornography* (Mar. 14, 2011),

underwear or bathing suit advertisements,<sup>67</sup> nudist-style images of children,<sup>68</sup> or self-made non-pornographic pictures of neighborhood children.<sup>69</sup> Some offenders engage in pedophilic activities such as writing or collecting stories about sex with children, drawings, or cartoons.<sup>70</sup> Others collect information about sex offenders, articles on child psychology, or children's toys.<sup>71</sup> Such collecting activities may be related to sexual deviance and correlated with other sex offending.<sup>72</sup>

## 2. *Child Pornography Collections*

The legal definition of child pornography is relatively broad as it encompasses both “lascivious exhibition of the genitals or pubic area” and “sexually explicit conduct” involving a child under 18 years of age.<sup>73</sup> While this definition may include images of the “barely illegal” variety (*e.g.*, a fully sexually developed 16 or 17 year old), typical child pornography images contained in federal offender collections depict prepubescent children engaging in explicit sexual conduct.<sup>74</sup> The following two subsections describe child pornography images. The first subsection relies on research which has attempted to describe child pornography generally. The second provides a qualitative description of the types of images that are possessed by federal child pornography offenders as recounted in recent federal judicial opinions.

In general, the Commission here relies primarily on social science research and available judicial opinions. This is because the presentence reports (PSRs) prepared in preparation for sentencing of federal child pornography offenders vary in the detail provided with respect to the content of the child pornography offender's collection. While some PSRs describe an offender's collection with great specificity (*e.g.*, the victim age, gender, and sexual activity depicted), others describe enough information only to satisfy specific sentencing enhancements in the guidelines.<sup>75</sup> For that reason, the Commission cannot provide precise quantitative data based on PSR

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[http://www.doj.state.wi.us/absolutenm/templates/template\\_share.aspx?articleid=2449&zoneid=1](http://www.doj.state.wi.us/absolutenm/templates/template_share.aspx?articleid=2449&zoneid=1) (last visited Nov. 30, 2012).

<sup>67</sup> See Janis Wolak, David Finkelhor & Kimberly Mitchell, *Child Pornography Possessors: Trends in Offender and Case Characteristics*, 23 *SEXUAL ABUSE* 22, 31 (2011) (recording the frequency with which U.S. child pornography offenders were found to have possessed child erotica (including stories and images) and non-sexual images of children).

<sup>68</sup> See Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 17, at 341 (quoting one child pornography offender who collected nudist images because “[t]hese were the only pictures where I was sure that the kids weren't being hurt or coerced or anything”).

<sup>69</sup> Lanning, *Child Molesters*, *supra* note 48, at 68.

<sup>70</sup> *Id.* at 68, 119; Wolak et al., *Child Pornography Possessors: Trends*, *supra* note 67, at 31.

<sup>71</sup> Lanning, *Child Molesters*, *supra* note 48, at 68.

<sup>72</sup> See McCarthy, *supra* note 5, at 188–91.

<sup>73</sup> 18 U.S.C. § 2256(2) (2012).

<sup>74</sup> See Chapter 6 at 140–41 (noting that, in fiscal year 2010 non-production cases, 96.3% of offenders possessed child pornography depicting prepubescent minors or minors under 12 years of age and 74.2% possessed sado-masochistic images, which typically involve vaginal or anal penetration of a prepubescent child by an adult male).

<sup>75</sup> See, *e.g.*, USSG §2G2.2(b)(2) (enhancement for the possession of an image depicting a prepubescent minor).

descriptions of child pornography offenders' collections.<sup>76</sup> Nevertheless, the Commission has reviewed over 2,600 PSRs in USSG §2G2.2 cases in preparation for this report, and finds that the overwhelming majority of PSRs included reference to images depicting oral, vaginal, or anal penetration of a prepubescent child. The Commission further finds that a substantial minority of PSRs included reference to images depicting sexual acts involving infants or toddlers.

a. Child Pornography Image Data

Online child pornography offending is a global crime where the particular images may be collected and traded by offenders across the world. Once an image is in Internet circulation, there are no country-specific borders, and data collected in other countries regarding the content of images is likely to be applicable to U.S. offenders.<sup>77</sup> Some in law enforcement have suggested child pornography images are getting more graphic in general and that this trend suggests that offenders are demanding more extreme images featuring younger victims.<sup>78</sup> In recent years there has been an increase in the frequency with which particularly violent images and images of younger children are found in offender collections. It is unclear whether this trend relates to a relatively few commonly traded images available on peer-to-peer filesharing networks or new types of victimization.<sup>79</sup>

This section relies primarily on three sources which are based on detailed child pornography image data reported by law enforcement officials: (1) the National Juvenile Online Victimization Survey (Online Victimization Survey), (2) the Child Exploitation and Online Protection ("CEOP") database (a United Kingdom entity), and (3) the National Center for Missing & Exploited Children ("NCMEC").<sup>80</sup> Each of these sources has attempted to describe the types of child pornography images as they are currently being distributed and possessed. There are challenges associated with this endeavor: first, law enforcement does not have access to the entire universe of child pornography images; and second, the official organizations that

<sup>76</sup> Because PSRs did not routinely describe the ages of victims depicted in images or videos – other than describing them as “prepubescent” or under 12 years of age, in accordance with USSG §2G2.2(b)(2) – the Commission was unable to code precise data concerning the ages of the victims depicted.

<sup>77</sup> See *supra* Chapter 3 at 43 (discussing international scope of the offense).

<sup>78</sup> See, e.g., Fottrell Testimony, *supra* note 23, at 83–84 (noting “the prolific increase in the number of [images] of infants and toddlers”); Testimony of Steve DeBrotta, Assistant United States Attorney, Northern District of Indiana, to the Commission, at 236–239 (Feb. 15, 2012) (on behalf of the U.S. Department of Justice) (“DeBrotta Testimony”) (“[I]n 1996, there were no readily traded series on the Internet involving infants and toddlers . . . . There were none.”).

<sup>79</sup> See sec.C.2.a, *infra*.

<sup>80</sup> NCMEC is a private, 501(c)(3) nonprofit organization created in 1984. The mission of the organization “is to help prevent child abduction and sexual exploitation; help find missing children; and assist victims of child abduction and sexual exploitation, their families, and the professionals who serve them.” Nat’l Ctr. For Missing & Exploited Children, *National Mandate & Mission*, [http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en\\_US&PageId=1866](http://www.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_US&PageId=1866) (last visited Nov. 30, 2012). NCMEC provides information and resources to law enforcement, parents, and children (including child victims) as well as other professionals. NCMEC’s exploited children division has several programs that work with law enforcement to track child pornography images and identify and rescue child pornography victims where abuse is ongoing. For more information on NCMEC see <http://www.missingkids.com>.

collect images often do not report data on images unless they are widely distributed on the Internet.

The Online Victimization Survey relies on interviews with law enforcement individuals in over 2,500 United States agencies regarding the child pornography collections of arrested offenders. The Online Victimization Survey reports data from interviews conducted in 2000 and again in 2006.<sup>81</sup>

The Online Victimization Survey reports that most child pornography offenders possessed a variety of images depicting children of different ages. Data from the 2006 survey showed that 28 percent of offenders possessed at least one image of a child under three years of age. The Online Victimization Survey reports that in 2000 and 2006, more offenders collected child pornography collections featuring primarily female victims images than primarily male victim images.<sup>82</sup> Almost all offenders possessed graphic sexual images that focused on genitals or showed explicit sexual activity.<sup>83</sup> Images containing graphic sexual content, sexual penetration, and violence were slightly more common in 2006.

While most offenders in 2006 possessed both still images and videos (58% possessed at least one video), still images were more common.<sup>84</sup> There was evidence that a small number of 2006 offenders (5%) had viewed real-time images of child sexual abuse.<sup>85</sup>

Offenders also possessed related legal images and items. In 2006, more than two-thirds of offenders (68%) possessed at least some adult pornography<sup>86</sup> and 21 percent of offenders possessed nonsexual images of children.<sup>87</sup> A small number of offenders (11%) possessed written material about the sexual abuse of children.<sup>88</sup> Data from the Online Victimization Survey is presented in table format in Table 4–1 below.

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<sup>81</sup> Wolak et al., *Child Pornography Possessors: Trends*, *supra* note 67, at 31; Janis Wolak, David Finkelhor, & Kimberly J. Mitchell, *Child-Pornography Possessors Arrested in Internet-Related Crimes: Findings From the National Juvenile Online Victimization Study*, 44 (2005).

<sup>82</sup> Wolak et al., *Child Pornography Possessors: Trends*, *supra* note 67, at 31.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* This question was not asked of the 2000 cohort.

<sup>86</sup> *Id.* In 2000, 71% of offenders possessed some adult pornography.

<sup>87</sup> *Id.* This question was not asked of the 2000 cohort.

<sup>88</sup> *Id.* This question was not asked of the 2000 cohort.

**Table 4-1<sup>89</sup>**  
**Data from the Online Victimization Survey**

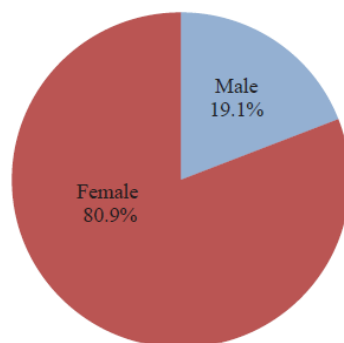
<b>Online Victimization Survey</b>	<b>2000</b>	<b>2006</b>
<b>Collection contained at least one image of a child:</b>		
Younger than 3	19%	28%
3-5	39%	46%
6-12	83%	86%
13-17	75%	67%
<b>Collection Contained Images Of Children Who Were:</b>		
Mostly Female	71%	69%
Mostly Male	14%	17%
Both	15%	15%
<b>Collection Contained At Least One Image Of:</b>		
Graphic Sexual Content	92%	94%
Sexual Penetration	80%	82%
Sexual Contact Between Child and Adult	71%	75%
Violence	21%	24%
<b>Collection Contained Videos:</b>		
At Least One Video	32%	44%
Only Videos	4%	3%
Evidence of Real-Time Images	*	5%
<b>Collection Contained Non-Illegal Items:</b>		
Adult Pornography	*	68%
Non-Sexual Images of Children	*	21%
Sexually Explicit Child Pornography Stories	*	11%

<sup>89</sup> Some questions were not asked of the 2000 cohort; those boxes are denoted with an asterisk.

The second study is an analysis of images submitted to the CEOP database. CEOP is a United Kingdom multidisciplinary entity charged by the Home Secretary with performing a similar function to that which NCMEC performs in the United States.<sup>90</sup> The CEOP database was created in 1998 to identify victims.<sup>91</sup> Images seized by law enforcement officials in the United Kingdom are sent to CEOP. This CEOP database analysis relied on a ten percent sample of the 247,950 images received by CEOP between 2005 and 2009.<sup>92</sup> Given that child pornography images can continue to circulate in perpetuity and these images were seized in recent years, it is likely these images remain in current distribution.

Most images in the CEOP database featured female victims. The CEOP database analysis found that 80.9 percent of images were of female victims, as seen in Figure 4–4 below.<sup>93</sup>

**Figure 4-4**  
**Gender of Victims in CEOP Database**



Images of males were likely to depict younger victims than images of females. The CEOP database analysis found that, of male victim images, 73 percent were of prepubescent males, 25 percent were of pubescent males, and 1.6 percent showed very young males under the age of two.<sup>94</sup> By contrast, the CEOP database found that of female victim images, 51.4 percent were of prepubescent females, 47.9 percent were of pubescent females, and 0.7 percent showed very young females under the age of two.<sup>95</sup> The age of female victims is shown below in Figure 4–5 and the age of male victims is shown below in Figure 4–6.

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<sup>90</sup> See *supra* Chapter 3 at 63–64 and *supra* note 80 (discussing NCMEC’s role in combating child pornography and identifying victims).

<sup>91</sup> Ethel Quayle & Terry Jones, *Sexualized Images of Children on the Internet*, 23 *SEXUAL ABUSE* 7, 7 (2011).

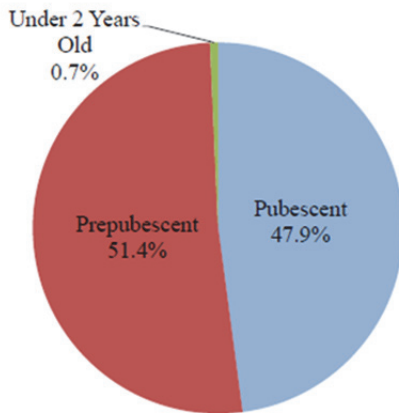
<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 14.

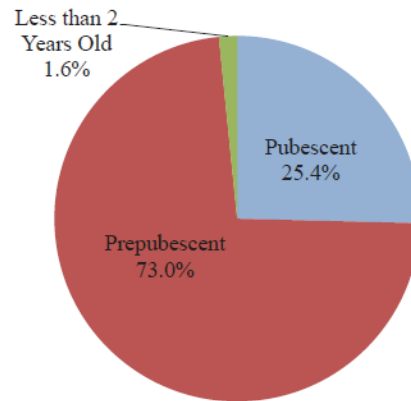
<sup>94</sup> *Id.* at 14.



**Figure 4–5**  
Age of Female Victims in CEOP Database



**Figure 4–6**  
Age of Male Victims in CEOP Database



The third data source comes from NCMEC. NCMEC maintains a database and works with law enforcement to identify child victims. As of February 15, 2012, NCMEC supported law enforcement officials in their identification of over 4,103 child pornography victims.<sup>96</sup> When federal or state law enforcement officials seize child pornography, many choose to send copies of the images to NCMEC.<sup>97</sup> In recent years, NCMEC has started to report some data about identified victims. NCMEC provides data regarding images of identified child victims that are “frequently submitted to NCMEC,” meaning they are images that are in circulation and repeatedly recovered by law enforcement.<sup>98</sup> The following data relates to images of identified victims frequently submitted to NCMEC.<sup>99</sup>

NCMEC identified victim data reflects that more female victims than male victims appear in the frequently submitted images. NCMEC reported that 57 percent of the victims were female, and 43 percent were male.<sup>100</sup> Most images depicted prepubescent children: Seventy-six percent of the victims were prepubescent children; 24 percent were pubescent children of which 10 percent were infants or toddlers.<sup>101</sup>

<sup>96</sup> Collins Statement, *supra* note 56, at 4.

<sup>97</sup> As discussed *supra* at 85, NCMEC is statutorily mandated to work with law enforcement to identify and rescue children. Federal and state law enforcement agencies are not mandated to remit images to NCMEC but many do as a matter of practice.

<sup>98</sup> Collins Statement, *supra* note 56, at 4.

<sup>99</sup> *Id.* at 4. No information is provided about victims who have not yet been identified or images that are not frequently submitted. *Id.* at 4–5.

<sup>100</sup> *Id.* at 4.

<sup>101</sup> *Id.*

Images depicted victims suffering a variety of sexual abuse. NCMEC reported that 84 percent of the victims had at least one image depicting oral penetration; 76 percent of the victims had at least one image depicting anal and/or vaginal penetration; 52 percent of the victims had at least one image depicting the use of foreign objects or sexual devices; 44 percent of the victims had at least one image depicting bondage or sadistic behavior; 20 percent of the victims had at least one image depicting urination or defecation; and four percent of the victims had at least one image depicting bestiality.<sup>102</sup>

b. Child Pornography Image Descriptions

Consistent with the child pornography image data reported by the Online Victimization Survey, CEOP, and NCMEC, judicial opinions contain descriptions of child pornography images. Judicial opinions reflect that some minor victims are depicted as compliant or even happy during the sexual acts,<sup>103</sup> while others are shown to be in pain and crying – occasionally as the result of sexual torture.<sup>104</sup> Images of bestiality and urination or defecation together with sexual activity involving minors, while not typical, are not uncommon.<sup>105</sup>

The following contains graphic descriptions of child pornography images contained in judicial opinions representative of descriptions of images contained in PSRs reviewed by the Commission.<sup>106</sup>

- “The images of the boys showed one of the boys being anally penetrated by the finger and penis of an adult male, a boy’s penis being manipulated by an adult hand, and a boy’s face covered with what appeared to be ejaculate fluid.”<sup>107</sup>
- “[I]mages involving prepubescent male and female children engaged in anal and oral sex, and/or vaginal penetration, with each other and/or with adults; . . . an image of a prepubescent female wearing a mask with her hands bound, while an

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<sup>102</sup> *Id.* at 5.

<sup>103</sup> The myth of a “compliant” victim is discussed more fully in Chapter 5. *See* Chapter 5 at 109–110.

<sup>104</sup> *See, e.g.,* *United States v. Mantanes*, 632 F.3d 372, 373 (7th Cir. 2011) (describing a “video, entitled ‘Kiki crying in pain while being ass [\*\*\*]ked’ depict[ing] a young female child screaming in pain as she is being raped”); *id.* at 374 (“One image depicts a close up of an infant female’s genitals. The infant’s genitals are pierced with a needle. Adult fingers are spreading the infant’s vaginal area. A caption at the top of the photograph reads ‘Two Years Little Girls Tortured with Needle.’”).

<sup>105</sup> *See, e.g., id.* at 373–74 (noting an “image depict[ing] an adult male’s penis urinating on a naked prepubescent female”); *United States v. Mohr*, 418 Fed. App’x 902, 903 (11th Cir. 2011) (“[F]orensic examination revealed 262 movies containing child pornography and 47 images of child pornography . . . . Some of the movies showed girls as young as six or eight in bondage or engaging in sex acts with an animal.”).

<sup>106</sup> *See supra* at 84–85 (Commission’s finding that a majority of PSRs included reference to images that depict oral, vaginal, or anal penetration of prepubescent children and a substantial minority depicted sex acts involving infants or toddlers). Because PSRs are nonpublic court documents, *see United States v. Martinello*, 556 F.2d 1215, 1216 (5th Cir. 1977), the Commission does not disclose portions of them or quote from them.

<sup>107</sup> *United States v. Baker*, 672 F. Supp. 2d 771, 772 (E.D. Tex. 2009).

adult male holds an inanimate object, which appears to be a dildo, in her mouth. The youngest children depicted in the images are approximately age four.”<sup>108</sup>

- “One example, among many, was a video file depicting a nude minor female being anally raped by a nude adult male while a nude adult female holds the minor female in place.”<sup>109</sup>
- “An examination of these files revealed that several depicted adult males penetrating and otherwise sexually abusing prepubescent children, some of whom were bound with rope and tape.”<sup>110</sup>
- “Five of the photographs depicted intercourse between adult men and girls ranging from five to twelve years old, digital penetration of a young girl, and two young girls masturbating each other. Two other photographs depicted an adult man with a child who appeared to be no more than three years old and a nude man with a young female whose genitalia was exposed.”<sup>111</sup>
- “The images of the infant showed her bound at the hands and feet by restraints, being anally penetrated by the penis of an adult male, and her face covered with what appeared to be ejaculate fluid.”<sup>112</sup>
- “Seventeen images depicted sexual intercourse between adults and infants and twenty-two images depicted violent sexual assaults on children involving rope restraints, rope gagging, dog collars, and vaginal and anal intercourse between children and adults . . . At least one of the videos . . . portrayed images of a prepubescent minor who was bound and tied with ropes to ceiling beams and tables while being sexually assaulted.”<sup>113</sup>
- “The webcam videos depict images such as a six or seven year old girl performing oral sex on an adult male; and vaginal penetration of a female (approximately age eight) by an adult male. The videos also depict digital penetration of females under the age of 12, by adult males.”<sup>114</sup>

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<sup>108</sup> United States v. Beckham, No. H-05-484, 2009 WL 2615817, at \*7 (S.D. Tex. Aug. 24, 2009).

<sup>109</sup> United States v. Miller, 665 F.3d 114, 117 (5th Cir. 2011) (internal quotations omitted).

<sup>110</sup> United States v. Maurer, 639 F.3d 72, 75 (3d Cir. 2011).

<sup>111</sup> United States v. Edens, 380 Fed. App’x 880, 882 (11th Cir. 2010).

<sup>112</sup> United States v. Baker, 672 F. Supp. 2d 771, 772-73 (E.D. Tex. 2009).

<sup>113</sup> United States v. Regan, 627 F.3d 1348, 1350-51 (10th Cir. 2010).

<sup>114</sup> United States v. Webb, 785 F. Supp. 2d 790, 793 (D. N.D. 2011).

- “One of the videos contained an adult male forcing a female minor, who appears to be crying, to perform oral sex on him.”<sup>115</sup>
- “[A]n image of a nude prepubescent female lying on her back with her legs being spread apart by a nude adult male while being vaginally penetrated by the adult male’s erect penis.”<sup>116</sup>

#### **D. CHILD PORNOGRAPHY “COMMUNITY” BEHAVIOR**

This section explains the role of socialization in child pornography communities, their structures, the way communities can contribute to an offender’s development of deviant sexual beliefs, and the contribution these communities can make to the child pornography “market.” Internet forums allow child pornography offenders to connect with one another, commiserate about their marginalized status in society, and validate and normalize their sexual interest in children.<sup>117</sup>

##### *1. Child Pornography Communities and Socialization*

Child pornography communities are varied. Some exist primarily as a means to find trading partners, while others are dedicated to furthering sexual interest in children.<sup>118</sup> Offenders’ engagement in child pornography communities also varies from casual users of a forum to those who establish trading forums and invite others to join to users who spend hours encouraging other individuals to produce new images.<sup>119</sup> Not all child pornography offenders are engaged in online communities. In particular, offenders who receive and distribute child pornography images via “open” P2P file-sharing networks may not communicate directly with

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<sup>115</sup> United States v. McElheney, 630 F. Supp. 2d 886, 896 (E.D. Tenn. 2009).

<sup>116</sup> United States v. Richardson, No. 4:11CR3116, 2012 WL 10382, at \*2 (D. Neb. Jan. 3, 2012).

<sup>117</sup> See Thomas J. Holt, Kristie R. Blevins & Natasha Burkert, *Considering the Pedophile Subculture Online*, 22 SEXUAL ABUSE 3 (2010); Amir Rosenmann and Marilyn P. Safir, *Forced online: Push Factors of Internet Sexuality: A Preliminary Study of Online Paraphilic Empowerment*, 51 J. OF HOMOSEXUALITY 71 (2006); see also *infra* at 93–99 (discussing child pornography communities).

<sup>118</sup> Compare Elaine O’Halloran & Ethel Quayle, *A Content Analysis of a “Boy Love” Support Forum: Revisiting Durkin and Bryant*, 16 J. SEXUAL AGGRESSION 71 (2010) (analyzing an online pro-pedophilic support group) with Francis Fortin, Panel Presentation at the Third Annual Illicit Networks Workshop (Oct. 3, 2011), *Usenet Newsgroups, Child Pornography & the Role of Participants*, THE INT’L CTR. FOR COMP. CRIMINOLOGY at 8–11, <http://www.erdr.org/textes/fortin.pdf> (analyzing three communities where images were made available).

<sup>119</sup> Fortin, *supra* note 118, at 5–11 (finding that fewer than 25% of child pornography group members were responsible for posting all images).

other offenders.<sup>120</sup> Nevertheless, online access to child pornography can contribute to development of distorted beliefs about children as sexual partners.<sup>121</sup>

Child pornography offenders' involvement in child pornography communities can be classified based on "the different socialization aspects of the activity."<sup>122</sup> The lowest level of such "socialization" involves an offender "acting alone to receive, collect, and share material online."<sup>123</sup> Such activity is typically done through the use of commercial websites offering child pornography for a fee or through anonymous, open P2P technologies discussed in Chapter 3.<sup>124</sup> Offenders who purchase images from commercial websites may have to reveal their identities and thus risk detection. An offender who does may not be involved in a trading community and "may even be an entry-level offender."<sup>125</sup> Similarly, open P2P file-sharing does not require much technological sophistication. More sophisticated offenders may remain in the comparatively safer confines of newsgroups or chat channels.<sup>126</sup>

"As the offender increases their desire for more specific material, they [often] begin to reach out and contact other individuals"<sup>127</sup> in "web-based forums" of individuals "who share the same interest."<sup>128</sup> They typically use interactive technologies such as Gigatribe, Instant Messaging, Newsgroups, email, social networking sites, and Internet-related chat rooms that

<sup>120</sup> As discussed previously, offenders are utilizing a variety of technologies to download and distribute images. This may occur via email, instant messaging, Internet relay chat (IRC), F-Serve, a closed group Bulletin Board System (BBS), newsgroup, or a closed group P2P server such as Gigatribe. *See* Chapter 3 at 43–60 (discussing offenders' use of technology).

<sup>121</sup> Ó Ciardha, *supra* note 32, at 494–500; Holt et al., *supra* note 117, at 4; D'Ovidio et al., *supra* note 8, at 428; Quayle & Taylor, *Paedophiles*, *supra* note 25, at 866–68.

<sup>122</sup> Fottrell Testimony, *supra* note 23, at 23.

<sup>123</sup> *Id.* at 23–24.

<sup>124</sup> *Id.* at 26; *see also* United States v. Darway, 255 F. App'x 68, 71 n.4 (6th Cir. 2007) ("[F]ile sharing software like Limewire [sic] is designed with the express purpose of passive distribution."); *cf.* United States v. Shaffer, 472 F.3d 1219, 1223–24 (10th Cir. 2007) (analogizing open P2P file-sharing programs like LimeWire to a "self-service gas station" at which the owner impersonally distributes gasoline).

<sup>125</sup> NATIONAL STRATEGY, *supra* note 26, at 28 (contrasting pay websites, which often recycle old images, with private trading groups that "have more extreme and new material and membership in some of these groups is strictly vetted by the offenders operating the groups").

<sup>126</sup> *Id.*; *see also* UNITED STATES GENERAL ACCOUNTING OFFICE, FILE-SHARING PROGRAMS: PEER-TO-PEER NETWORKS PROVIDE READY ACCESS TO CHILD PORNOGRAPHY 2 (2003) ("Child pornography is easily accessed and downloaded from peer-to-peer networks"). One very sophisticated child pornography ring "utilized a maze of rotating newsgroups and parallel newsgroup postings not only to communicate with one another but also to hide their communications from outsiders." United States v. McGarity, 669 F.3d 1218, 1230 (11th Cir. 2012).

<sup>127</sup> Fottrell Testimony, *supra* note 23, at 24; *see also* Testimony of Gerald R. Grant, Digital Forensics Investigator, Office of the Federal Public Defender, Western District of New York, to the Commission, Tr. at 34–44 (Feb. 15, 2012) ("Grant Testimony"); Testimony of Brian Levine, Ph.D., Professor of Computer Science, University of Massachusetts, Amherst, to the Commission, at 50–54 (Feb. 15, 2012) ("Levine Testimony").

<sup>128</sup> Fottrell Testimony, *supra* note 23, at 24; *see also* Grant Testimony, *supra* note 127, at 34–44; Levine Testimony, *supra* note 127, Tr. at 50–54.

“allow direct communication and trading of images or videos” with “like-minded peers.”<sup>129</sup> Such “on-line communities” dedicated to child pornography “validate [offenders’] behavior” and “provide encouragement” to continue offending.<sup>130</sup> As discussed further in the following section, child pornography communities are often hierarchical and provide opportunity to develop distorted attitudes towards children.<sup>131</sup>

While the culpability of child pornography offenders may vary depending on the extent of their immersion in an online community of offenders and their utilization of sophisticated technology to access and distribute child pornography, “there is no evidence that . . . dangerousness is necessarily correlated with technical savvy.”<sup>132</sup> Existing social science research is inconclusive regarding whether a child pornography offender’s community involvement is associated with an increased risk of committing other sex offenses.<sup>133</sup> As such, assumptions that an offender has engaged in other sex offenses should not be based merely on an offender’s technological savvy or his involvement in child pornography communities. However, as noted elsewhere in this chapter, the existence of such communities increases the likelihood that *other* community members may engage in sex offending to create new child pornography images for trading online.<sup>134</sup>

## 2. Structure of Child Pornography Communities

Online communities are often very organized. They facilitate the trading of images and the transmission of information and messages. They also provide a means to screen prospective trading partners and to include and exclude other individuals.<sup>135</sup> Online communities often show

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<sup>129</sup> Fottrell Testimony, *supra* note 23, at 24; *see also* Grant Testimony, *supra* note 127, at 34–44; Levine Testimony, *supra* note 127, at 50–54.

<sup>130</sup> Fottrell Testimony, *supra* note 23, at 24.

<sup>131</sup> *Id.* at 28.

<sup>132</sup> Robert J. Walls et al., *Effective Digital Forensics is Investigator -Centric*, In Proc. USENIX Workshop on Hot Topics in Security (HotSec), at 5 (2011); *see also* Austin F. Lee et al., *Predicting Hands-On Child Sexual Offenses Among Possessors of Internet Child Pornography*, 18 PSYCH., PUBLIC POL’Y & L. 644 (2012); Supplemental Statement of Dr. Michael Seto, Ph.D, Director of Forensic Rehabilitation Research, Royal Ottawa Health Care Group, to the Commission, at 1–2 (Apr. 25, 2012) (“Seto Supplemental Statement”).

<sup>133</sup> *Compare, e.g.*, Seto Supplemental Statement, *supra* note 132, at 1–2 (“There is no evidence that child pornography offenders who communicate online with other child pornography offenders are more dangerous in the sense of being more likely to sexually reoffend.”), *with* McCarthy, *supra* note 5, at 190 (study of 110 child pornography offenders, which found that offenders with a history of committing sexual contact offenses were more likely to have communicated with others about child pornography than child pornography offenders with no such histories of contact offenses).

<sup>134</sup> *See infra* at 96 (discussing the involvement of community members in encouraging other individuals to produce new images).

<sup>135</sup> Bryce G. Westlake, Martin Bouchard, & Richard Frank, *Finding Key Players in Online Child Exploitation Networks*, 3 POLICY & INTERNET 2, Art. 6, at 4 (2011). A screening process may be informal or it may be a formal process such as one used by sophisticated group which required new users to complete “certain tests designed to weed out potential law enforcement infiltrators.” *United States v. McGarity*, 669 F.3d 1218, 1230 (11th Cir. 2012). Some Internet pedophlic communities are public and do not require membership, these may serve as pathways for “[t]hose who are just recognizing their attraction to children . . . .” Holt et al., *supra* note 117, at 5.

a standard group dynamic. Offenders gain status and expertise vis-à-vis other community members by amassing large organized collections, distributing missing parts of image series, posting new images, and educating other members about technology.<sup>136</sup>

Some closed private groups are vetted and password-protected. Participants in such groups, who must actively seek access and acceptance and who “often dedicate significant amounts of time to a particular group to maintain membership,” are considered by many in law enforcement to be the most secretive, dedicated, and sophisticated offenders on the Internet.<sup>137</sup> This is often because “some private trading groups have more extreme and new material and membership in some of these groups is strictly vetted by the offenders operating the groups.”<sup>138</sup> For example, as seen below in Figure 4-7, adapted from a presentation by a Department of Justice technology expert to the Commission, some child pornography groups have explicit rules about content and demand that its members use security precautions.

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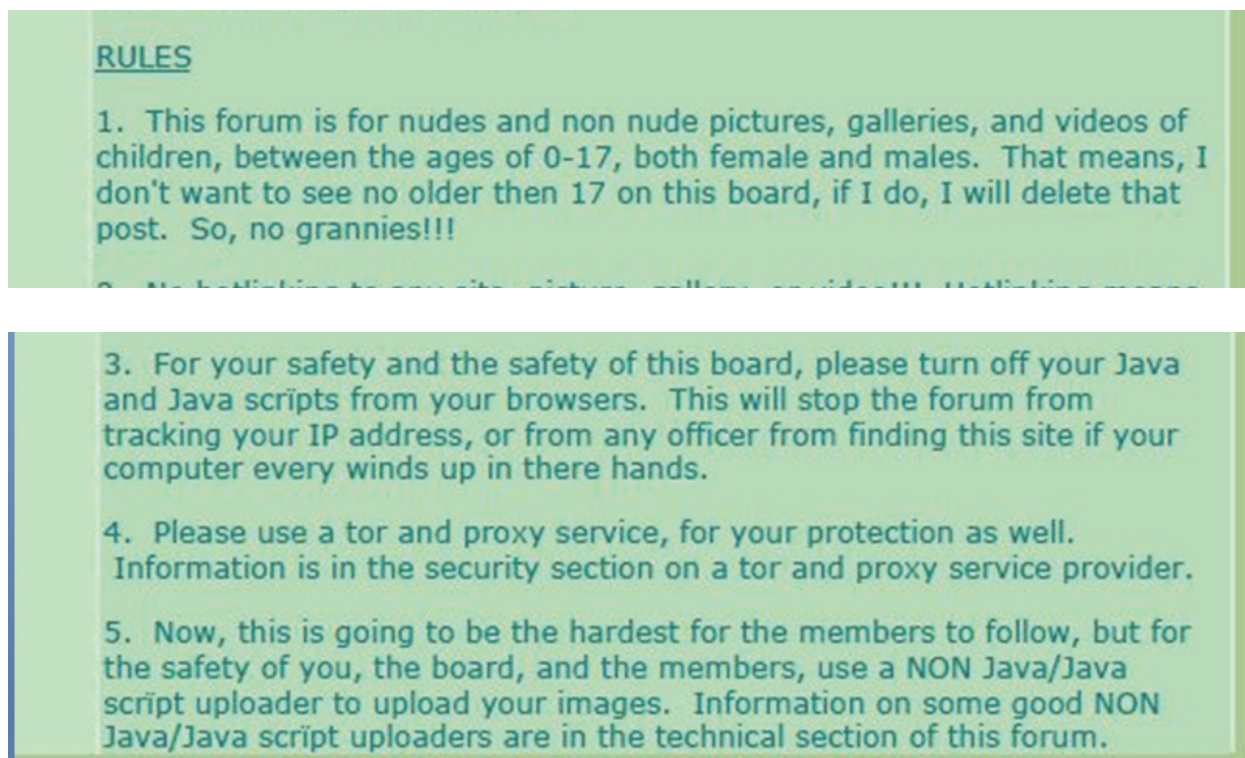
<sup>136</sup> TAYLOR & QUAYLE, *supra* note 41, at 128–135; Holt et al., *supra* note 117, at 15–22 (noting that communication about security is frequent in pro-pedophilic communities); JENKINS, *supra* note 47, at 94; *see also* Fottrell Testimony, *supra* note 23, at 24–25 (discussing how more experienced community members teach newer members about technology).

<sup>137</sup> *See* NATIONAL STRATEGY, *supra* note 26, at 28

<sup>138</sup> *Id.* at 28, 9 (describing global online communities in which members, “[r]ather than simply downloading or uploading images of child pornography to and from the Internet, . . . also use current technologies to talk about their sexual interest in children, to trade comments about the abuse depicted in particular images — even as images are shared real-time — to validate each other’s behavior, to share experiences, and share images of themselves abusing children as they do so”); *see also* YAMAN AKDENIZ, INTERNET CHILD PORNOGRAPHY AND THE LAW: NATIONAL AND INTERNATIONAL RESPONSES 7 (“[T]he major problem for the future is the availability of channels devoted to child pornography within the Internet Relay Chat, ICQ environment and on peer to peer (P2P) file sharing systems like Kazaa, and eDonkey.”).

Figure 4-7<sup>139</sup>

**DOJ Presentation: Screenshot of Rules of Child Pornography Community**



In addition to technological sophistication, child pornography communities value the production of new child pornography images. There is evidence that at least some child pornography offenders produce new child pornography in order to gain access to other child pornography images. One child pornography offender stated that individuals in his child pornography trading community “were reluctant to give me access to any of that material unless I could come up with any new material . . . it was then that I thought about . . . involving my daughter.”<sup>140</sup> One examination of three child pornography communities found a clearly defined hierarchy with producers, posters of new materials, and prolific re-posters at the top of the pyramid.<sup>141</sup>

<sup>139</sup> Fottrell Presentation, *supra* note 53.

<sup>140</sup> TAYLOR & QUAYLE, *supra* note 41, at 161; *see also* Testimony of Francey Hakes, National Coordinator Child Exploitation Prevention & Interdiction, to the Commission, at 382–84 (Feb.15, 2012) (on behalf of the U.S. Department of Justice) (recounting the case of an offender who was moved to produce increasingly violent child pornography images of a child in his control in order to have new images to trade).

<sup>141</sup> Fortin, *supra* note 118, at 6. The study also found that a small number of users were responsible for most posting of images and most community members were “leechers” and failed to post images, provide technological information, or even actively participate in community discussions. *Id.*



### 3. Child Pornography Communities and Deviant Beliefs

Child pornography communities seek to make the viewing of sexualized images of children acceptable and implicitly or explicitly condone sexual contact with children.<sup>142</sup> Typical cognitive distortions include denying that children suffer harm from sexual contact, suggesting that children receive a benefit, condemning those who condemn, and “appealing to higher loyalties,” for example, by likening the struggle for pedophile acceptance to a socially acceptable cause such as the advancement of civil rights.<sup>143</sup>

Child pornography communities can be social and supportive environments.<sup>144</sup> In these communities, a child pornography offender can develop relationships with others who share his interests. One child pornography offender posted on a child pornography community bulletin board, “[f]or many of us, this is our social life. We can discuss our feelings here and feel a part of something without fear of being condemned by society for our feelings and beliefs.”<sup>145</sup> Relationships in child pornography communities can be emotionally gratifying and may escalate the level of offending.<sup>146</sup> Offenders receive reinforcement and support by finding that others are trading images depicting sexual activity with children.<sup>147</sup> Research also suggests that online communities help child pornography offenders to develop positive feelings about their own deviant online sexual identities. As their online sexual identities become dominant, willingness to comply with cultural and societal norms may erode.<sup>148</sup> This process may explain why some

<sup>142</sup> TAYLOR & QUAYLE, *supra* note 41, at 107, 130–36; Dennis Howitt & Kerry Sheldon, *The Role of Cognitive Distortions in Paedophilic Offending: Internet and Contact Offenders Compared*, 13 PSYCHOL., CRIME & LAW 469, 478 (2007) (Internet offenders were significantly more likely to hold distorted views about sexual interest in children than non-Internet contact child sex offenders); Ó Ciardha, *supra* note 33, at 494–500.

<sup>143</sup> O’Halloran & Quayle, *supra* note 118, at 79; *see also* Holt et al., *supra* note 117, at 8; D’Ovidio et al., *supra* note 8, at 428. One child pornography support forum user posted “[n]ot all these children are ‘abused’ . . . many of them enjoyed or at least WANTED to participate in child porn.” O’Halloran & Quayle, *supra* note 118, at 78 (quoting a child pornography offender) (emphasis in original). Other offenders argue that pedophilia is very common and normal; for example, one offender stated “society will soon realize that there are too many of ‘us’ for them to keep trying to suppress . . . We are everywhere.” JENKINS, *supra* note 47, at 119.

<sup>144</sup> *See, e.g.*, Quayle, *The Impact of Viewing*, *supra* note 57. One child pornography offender opined that he felt alone and was reassured “you are not alone. We share your emotions. We are into kids, that’s why we are here.” JENKINS, *supra* note 47, at 106. Another child pornography support forum user posted, “I will gladly share any information, and to help anyone who might need it and at the same time, learn from others.” O’Halloran & Quayle, *supra* note 118, at 80.

<sup>145</sup> Fortin, *supra* note 118, at 5; *see also* CHILD PORNOGRAPHY, *supra* note 41, at 139 (quoting a child pornography offender who said “almost I got more satisfaction from actually just interacting with my . . . fellow paedophiles and just finding new computer stuff . . . [than] I did actually looking at the pictures”); *see also* Holt et al., *supra* note 117, at 10 (quoting a pedophilic forum users as stating “I am sooo glad I came across this board. I want to talk about so many things with others like me but I have never known anyone else like me . . .”).

<sup>146</sup> *See* TAYLOR & QUAYLE, *supra* note 41, at 180 (quoting a child pornography offender who stated “I was finding more explicit stuff on the computer . . . and thinking . . . it can’t be that bad . . . it’s there you know”).

<sup>147</sup> Quayle, *The Impact of Viewing*, *supra* note 57, at 33 (discussing the “normalizing” effect that communities may have on offenders).

<sup>148</sup> Rosenmann & Safir, *supra* note 117, at 78–79; Anne Burke et al., *Child Pornography and the Internet: Policing and Treatment Issues*, 9 PSYCH, PSYCHOL. & L. 79, 81 (2002).

researchers have found that some offenders progress from viewing child pornography to committing other sex offenses.<sup>149</sup> Other researchers, however, caution that inappropriate attitudes and beliefs have not been investigated sufficiently among child molesters to draw firm conclusions about the pathway from online child pornography offending to other sex offending.<sup>150</sup>

#### 4. *Child Pornography Communities and the Child Pornography “Market”*

In recent decades, criminal punishments for the production, distribution, receipt, and possession of child pornography in part have been based on the belief that such punishments will help “destroy” (or at least significantly reduce) the “market” for child pornography.<sup>151</sup> Critics have contended that recent changes in Internet technology have undercut the ability of the criminal laws to affect the “market.”<sup>152</sup>

To date, social science research has not addressed whether, or to what extent, criminal punishments have affected the commercial or non-commercial “markets” in child pornography since the advent of the Internet and P2P file-sharing. In view of the exponential growth in child pornography in recent years and the worldwide scope of offending, such research may be impossible to undertake.

The Commission’s analysis of fiscal year 2010 federal child pornography cases, which is discussed in Chapter 6, reveals that the typical §2G2.2 offender received and/or distributed child pornography using a P2P file-sharing program and not for financial gain.<sup>153</sup> Most offenders used open P2P file-sharing programs that did not require the offenders to trade images in order to receive new images or videos from another.<sup>154</sup> Approximately one quarter of federal offenders

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<sup>149</sup> Kimberly Young, *Profiling Online Sex Offenders, Cyber-Predators & Pedophiles*, 5 J. BEHAV. PROFILING 1, 12–13 (2005); TAYLOR & QUAYLE, *supra* note 41, at 186–87; Burke et al., *supra* note 148, at 79, 81 (noting that it is uncertain that child pornography offenders “will progress towards hands-on offences” but “the longer sexual fantasies are maintained and elaborated on, the greater the chance that the behaviour will be acted out in real life”).

<sup>150</sup> See e.g., Calder, *supra* note 17, at 2; Ward & Siebert, *supra* note 17, at 328.

<sup>151</sup> *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (noting the state’s interest in seeking “to destroy a market for the exploitative use of children”); *id.* at 110–11 (“[M]uch of the child pornography market has been driven underground; as a result, it is now difficult, if not impossible, to solve the child pornography problem by only attacking production and distribution. Indeed, [the] [s]tates have found it necessary to proscribe the possession of this material.”); see also NATIONAL STRATEGY, *supra* note 26, at 17–18 (“This growing and thriving market for child pornographic images is responsible for fresh child sexual abuse because the high demand for child pornography drives some individuals to sexually abuse children and some to commit the abuse for profit or status [on an on-line community].”).

<sup>152</sup> See, e.g., Prepared Statement of Deirdre D. von Dornum, Assistant Federal Defender, Federal Defenders of New York, to the Commission, at 47–48 (Feb. 15, 2012) (on behalf of the Federal and Community Defenders) (“Child pornography thrives in cyberspace independent of an organized marketplace. . . . Because child pornography is free, widely available and easy to produce, it is not subject to the normal laws of supply and demand. . . . For this reason, it is unlikely that harsh punishment of an end user will do anything to destroy the market for child pornography.”).

<sup>153</sup> See Chapter 6 at 153–54.

<sup>154</sup> See *id.*; see also *supra* note 124 and accompanying text (discussing “impersonal” P2P programs such as LimeWire).

received child pornography from commercial websites, thereby fostering the commercial market; however, no federal offenders prosecuted for distributing child pornography in fiscal year 2010 did so by operating a commercial website.<sup>155</sup>

The clearest example of a child pornography market appears to exist online where individuals trade with one another in a non-commercial manner in child pornography communities. In fiscal year 2010, the non-commercial child pornography market appeared most active in the approximately 25 percent of cases in which offenders engaged in “personal” distribution to another individual. These offenders engaged in behaviors including bartering images in Internet chat-rooms, trading via closed P2P programs such as Gigatribe, and participating in hierarchical child pornography communities.<sup>156</sup>

#### **E. RELATIONSHIP BETWEEN CHILD PORNOGRAPHY OFFENDING AND OTHER SEX OFFENDING**

This section describes social science research that has attempted to distinguish child pornography offenders who also have engaged in other sex offending from those child pornography offenders who have not.<sup>157</sup> While “little is known about which [child pornography]

<sup>155</sup> See Chapter 6 at 149.

<sup>156</sup> See *id.* The minority of offenders who use commercial websites may be shrinking. See *id.* (finding that 38.5% of offenders used commercial websites in fiscal year 2010 compared to 17.5% in the first quarter of fiscal year 2012).

<sup>157</sup> See, e.g., Richard Wollert et al., *Federal Internet Child Pornography Offenders – Limited Offense Histories and Low Recidivism Rates*, in *THE SEX OFFENDER: CURRENT TRENDS IN POLICY & TREATMENT PRACTICE* Vol. VII (Barbara K. Schwartz, ed. 2012) (based on a study of 72 federal child pornography offenders in the United States who were treated by the authors during the past decade, the authors found that 20, or 28%, had prior convictions for a contact or non-contact sexual offense); Wolak et al., *Child Pornography Possessors: Trends*, *supra* note 67, at 34 (finding, based on 2006 data from surveys of approximately 5,000 law enforcement officials throughout the United States, that 21% of cases that began with investigations of child pornography possession “detected offenders who had either committed concurrent sexual abuse [offenses] or been arrested in the past for such crimes”); Michael C. Seto, R. Karl Hanson & Kelly M. Babchishin, *Contact Sex Offending by Men With Online Sexual Offenses*, 23 *SEXUAL ABUSE* 124, 124, 135–136 (2011) (meta-analysis of 24 international studies, which found that approximately one in eight “online offenders” — the majority of whom were child pornography offenders — had an “officially known contact sex offense history,” but estimating that a much higher percentage, approximately one in two, in fact had committed prior contact sexual offenses based on clinical “self-report” data); Michael L. Bourke & Andres E. Hernandez, *The “Butner Study” Redux: A Report on the Incidence of Hands-On Child Victimization by Child Pornography Offenders*, 24 *J. FAM. VIOLENCE* 183 (2009) (study of 155 federal child pornography offenders in the United States who participated in the residential sex offender treatment program at FCI Butner from 2002–05; finding that 85% had committed prior “hands on” sex offenses); Jérôme Endrass et al., *The Consumption of Internet Child Pornography and Violent and Sex Offending*, 9 *BMC PSYCHIATRY* 43 (2009) (study of 231 Swiss child pornography offenders; finding that only 1.0% had prior convictions for “hands-on” sex offenses and an additional 3.5% had prior convictions for possession of child pornography); Caroline Sullivan, *Internet Traders of Child Pornography: Profiling Research – Update* (New Zealand Dep’t of Internal Affairs 2009) (finding that approximately 10% of 318 New Zealand child pornography offenders prosecuted from 1993–2007 “have been found to have criminal histories involving a sexual offence against a male or female under the age of 16 years”), [http://www.dia.govt.nz/pubforms.nsf/URL/InternetTradersOfChildPornography-ProfilingResearchUpdate-December2009.pdf/\\$file/InternetTradersOfChildPornography-ProfilingResearchUpdate-December2009.pdf](http://www.dia.govt.nz/pubforms.nsf/URL/InternetTradersOfChildPornography-ProfilingResearchUpdate-December2009.pdf/$file/InternetTradersOfChildPornography-ProfilingResearchUpdate-December2009.pdf) .

possessors are most likely to be abusers,”<sup>158</sup> the association between sex offending and child pornography offenses is important.

The Commission undertook a special coding project to determine what percentage of child pornography offenders sentenced under the non-production guidelines also previously committed other sex offenses.<sup>159</sup> The Commission looked for incidents of criminal sexually dangerous behavior (“CSDB”) in such offenders’ presentence reports. As defined by the Commission, for purposes of this report, CSDB comprises three different types of criminal sexual conduct:

- **“Contact” Sex Offenses:** any illegal sexually abusive, exploitative, or predatory conduct involving actual or attempted physical contact between the offender and a victim occurring before or concomitantly with the offender’s commission of a non-production child pornography offense;
- **“Non-Contact” Sex Offenses:** any illegal sexually abusive, exploitative, or predatory conduct not involving actual or attempted physical contact between the offender and a victim occurring before or concomitantly with the offender’s commission of a non-production child pornography offense; and
- **Prior Non-Production Child Pornography Offenses:** a non-production child pornography offender’s prior commission of a non-production child pornography offense if the prior and instant non-production offenses were separated by an intervening arrest, conviction, or some other official intervention known to the offender.

The results of the Commission’s CSDB research are discussed in Chapter 7.<sup>160</sup>

1. *Distinguishing Child Pornography Offenders Who Have Committed Other Sex Offenses*

Other researchers have focused on distinguishing child pornography offenders who also have committed other sex offenses from those child pornography offenders who have not done so. The limited research suggests there may be differences between child pornography offenders who engaged in other sex offenses and those who have solely engaged in child pornography collecting and trading activities. Studies identify “two major dimensions of risk — sexual

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<sup>158</sup> Wolak et al., *Child Pornography Possessors: Trends*, *supra* note 67, at 24.

<sup>159</sup> See Chapter 7 at 169-82.

<sup>160</sup> See *id.* at 182-206.

deviance and antisociality” that are associated with the subset of child pornography offenders who also commit sexual contact offenses.<sup>161</sup>

One study of a relatively small number of child pornography offenders compared offenders who had no known history of contact sex offending with offenders who were known to have committed contact sex offenses against children.<sup>162</sup> The study found that there were no statistical differences between the two groups in personal characteristics such as age, race, marital status, educational background, or history of themselves being victims of abuse.<sup>163</sup>

There were statistically significant differences in a variety of other characteristics, however. The child pornography offenders who had a known history of contact sex offending were more likely to have a criminal history including a sex offense, have a history of drug abuse, and to be diagnosed as a pedophile.<sup>164</sup> The study found that child pornography offenders who also committed contact child sex offenses were more likely to use child pornography for purposes of masturbation, save child pornography images to multiple devices, maintain larger collections of child pornography on average, and communicate with other child pornography offenders.<sup>165</sup> The study also found that child pornography offenders who also committed contact child sex offenses were more likely to view child “modeling” sites (which may not constitute child pornography), read sexually explicit stories about children, and engage in grooming behavior with minors (or law enforcement officers posing as minors).<sup>166</sup>

Another study examined three categories of offenders: child pornography offenders without a known history of contact child sex offending (child pornography-only offenders), contact child sex offenders who had no known history of child pornography offending (contact sex offenders), and child pornography offenders who were known to have committed contact child sex offenses (child pornography/contact offenders).<sup>167</sup> The demographic characteristics of the categories did not vary by age but varied by racial and ethnic breakdown, with the contact child sex offender group showing more racial and ethnic diversity.<sup>168</sup> The child pornography-

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<sup>161</sup> Angela W. Eke & Michael C. Seto, *Risk Assessment of Child Pornography Offenders*, at 156, 160, in *INTERNET CHILD PORNOGRAPHY: UNDERSTANDING AND PREVENTING ON-LINE CHILD ABUSE* (K. Ribisl & E. Quayle eds., 2012).

<sup>162</sup> McCarthy, *supra* note 5, at 181 (examining 110 offenders; 56 had no known history of contact sex offending and 54 had such a known history).

<sup>163</sup> *Id.* at 188.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.* at 188–91 (noting that half the non-contact offenders had a child pornography collection that was 252 images or fewer, while half the contact offenders had a child pornography collection that was 750 images or higher) *but compare* Chapter 7 at 169 (Commission’s coding project did not find a relationship between size of collection and incidence of CSDB).

<sup>166</sup> McCarthy, *supra* note 5, at 190.

<sup>167</sup> Lee et al., *supra* note 132, at 647.

<sup>168</sup> *Id.* at 648. Most offenders in all groups were Caucasian. 93% of child-pornography only offenders were Caucasian, 86% of child pornography/contact offenders were Caucasian, and 79% of contact sex offenders were Caucasian. *Id.*

only offender group had more education and a higher rate of employment than the other two categories.<sup>169</sup> The study found that “the key factor of the presence of a history of nonsexual antisocial behavior, from childhood into adulthood” accounted for much of the likelihood that an offender was either a contact child sex offender or a child pornography/contact offender, as opposed to a child pornography-only offender.<sup>170</sup>

## 2. Discussion of Causal Relationship Between Child Pornography and Other Sex Offending

Most current social science research suggests that viewing child pornography, in the absence of other risk factors, does not “cause” individuals to commit sex offenses.<sup>171</sup> Nevertheless, research has identified some correlation between viewing child pornography and sex offending,<sup>172</sup> and some child pornography offenders use child pornography images for “grooming”<sup>173</sup> or as a “blueprint” for contact child sex offending.<sup>174</sup> For some individuals child pornography exposure appears to be a risk factor for other sex offending as the child pornography may strengthen “existing tendencies in ways that may create tipping-point effects

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 654; *see also* Chapter 10 at 285–87 (discussing risk assessments of child pornography offenders). Antisocial behavior was measured by asking questions related to such matters as an offender’s history of committing violent offenses, childhood bullying behavior, and misconduct resulting in expulsion from school. *See Lee, supra* note 132, at 672.

<sup>171</sup> *See Lee et al., supra* note 132, at 646 (“When predisposition is present, pornography may increase risk. Absent predisposition, exposure to pornography alone is not likely to instigate an offense”); McCarthy, *supra* note 5, at 194 (“[P]ossessing child pornography, by itself, is not a causative factor in the perpetration of child sexual abuse and thus other factors need to be considered when evaluating the dangerousness of these offenders . . .”); Endrass et al., *supra* note 157, at 43 (finding that child pornography alone is not a risk factor for committing hands-on sex offenses for most offenders); Dennis Howitt, *Pornography and the Paedophile: Is it Criminogenic?*, 68 BRITISH J. OF MED. PSYCHOL. 15 (1995) (concluding after interviews with a small sample of contact child sex offenders that pornography has no simple direct causal effect on offending; some offenders had no contact with pornography before first offense, and were as likely, or more likely, to be aroused by everyday images of children); *see also* Webb et al., *supra* note 15, at 451 (reviewing research on the links between contacting offending and viewing child pornography and concluding that “as yet, there is no empirical support for a direct causal link between Internet sex offending and the commission of contact offenses”). Nevertheless, at least some child pornography offenders report that they are moved to commit contact sexual offenses in order to access new child pornography. *See TAYLOR & QUAYLE, supra* note 41, at 161.

<sup>172</sup> *See* Chapter 7 at 171–74 (discussing such research); *see also* Wolak et al., *supra* note 67, at 31 (the Online Victimization Survey reported that over 40% of child pornography offenders in the 2000 cohort had a history of sexually abusing minors); Michael C. Seto & Angela W. Eke, *The Future of Child Pornography Offenders*, 17 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 201, 201–210 (2005) (24% of a sample of arrested child pornography offenders had committed a prior contact sex offense).

<sup>173</sup> Grooming is a process of making a child more vulnerable to contact sex offending and “is defined as a variety of techniques used by a sex offender to access and control potential and actual child victims.” Lanning, *Child Molesters, supra* note 48, at 26–28.

<sup>174</sup> Quayle & Taylor, *Child Pornography and the Internet, supra* note 17, at 340 (quoting an offender who stated that, when he abused his victim, “I copied what I’d seen on the computer.”).

on behaviors if other risk factors are also present.”<sup>175</sup> Some research posits that for some higher-risk child pornography offenders, child pornography permits a progression predicated on deviant fantasy from viewing child pornography to other sex offending.<sup>176</sup>

One study attempted to evaluate whether there was a causal relationship between viewing deviant pornography, deviant fantasy, and the commission of sex offenses. The study found that “sexually deviant fantasies are highly related to actual commission of sexual offenses” but indicated that “the causal nature of this relationship cannot be determined by our data.”<sup>177</sup> The study noted that it was “unclear if (a) fantasies encourage the acting out of behaviors, (b) fantasies represent active reliving of previous acts, or (c) some third variable (*e.g.*, sex drive) independently generates both fantasies and behavior.”<sup>178</sup> The study found an association between sexually deviant fantasy and sex offending where the individual had a highly antisocial personality.<sup>179</sup>

### 3. *Child Pornography as an Alternative to Other Sex Offending*

Some child pornography offenders report that they used child pornography as an alternative to other sex offending.<sup>180</sup> For the vast majority of offenders, it is unlikely that viewing child pornography has a cathartic effect that would reduce the likelihood of other sex offending.<sup>181</sup> Related research on the impact of legal pornography on young people suggests that continued exposure “helps to sustain young people’s adherence to sexist and unhealthy notions

<sup>175</sup> Neil M. Malamuth, & Mark Huppín, *Drawing the Line on Virtual Child Pornography: Bringing the Law in Line With the Research Evidence*, 31 N.Y.U. REV. OF L. & SOC. CHANGE 773, 817 (2007); *see also* Lee et al., *supra* note 132, at 668 (finding that “CP offenders that do sexually assault children are distinguished by a much higher degree of antisociality compared to those that refrain from such crimes”); Drew A. Kingston et al., *Pornography Use and Sexual Aggression: The Impact of Frequency and Type of Pornography Use on Recidivism Among Sexual Offenders*; 34 AGGRESSIVE BEHAV. 341, 349–50 (2008); *see also* D’Ovidio, *supra* note 8, at 424 (finding adult-child sex advocacy web sites to be criminogenic); Quayle & Taylor, *Child Pornography and the Internet*, *supra* note 17, at 355 (finding Internet child pornography plays a key role in increasing sexual arousal to children).

<sup>176</sup> Burke et al., *supra* note 148, at 81; *see also* Young, *supra* note 149, at 12–13; TAYLOR & QUAYLE, *supra* note 41, at 186–87.

<sup>177</sup> Kevin M. Williams et al., *Inferring Sexually Deviant Behavior From Corresponding Fantasies: The Role of Personality and Pornography Consumption*, 36 CRIM. JUSTICE & BEHAV. 198, 206 (2009) (internal citation omitted).

<sup>178</sup> *Id.* at 206 (2009).

<sup>179</sup> *Id.* at 213 (noting that psychopathy as part of an antisocial personality may predispose individuals to a variety of antisocial outcomes).

<sup>180</sup> TAYLOR & QUAYLE, *supra* note 41, at 91 (quoting an offender who had committed contact sex offenses previously as stating that he used child pornography “rather than go off and offend again . . . rather than go out and find a victim”); Winder & Gough, *supra* note 22, at 134 (quoting an offender who had committed contact sex offenses in the past as distinguishing “just looking” from contact offending).

<sup>181</sup> SETO, *supra* note 10, at 68; *see also* Malamuth & Huppín, *supra* note 175, at 818 (“Although many people find this theory intuitively appealing and . . . potentially applicable for some pedophiles, in other areas of media research where this hypothesis has been extensively tested, it has not been supported.”).

of sex and relationships” and, rather than have a cathartic effect, pornography may increase sexually aggressive thoughts and behaviors.<sup>182</sup>

Another study indicated that offenders who considered their use of child pornography therapeutic or preventative were more unlikely to accept responsible for their actions.<sup>183</sup> Finally, some research reports that, for offenders who were already assessed as low risk for future sexual offending, frequency of pornography use does not appear to predict criminal recidivism.<sup>184</sup> However, for offenders at high risk for sexual offending, such research indicates that frequency of pornography use and deviant pornographic content (with children and/or violent content) is associated with higher reoffending rates.<sup>185</sup>

### C. CONCLUSION

- Child pornography offending, pedophilia, and other sex offending are related and overlapping classifications, but not all child pornography offenders are pedophiles or engage in other sex offending.
- Child pornography offender behavior can be broadly classified into three categories: collecting child pornography images, participating in online “communities” of offenders, and engaging in other sex offending.
- Child pornography offenders often amass large collections with thousands or even hundreds of thousands of images and videos. Offenders’ collections may contain a variety of images, including legal but sexually suggestive child images as well as sexually explicit images depicting violence, humiliation, bondage, and bestiality. Some child pornography offenders, particularly pedophilic offenders, collect ancillary child-related items. Such collecting activities may be related to sexual deviance and correlated with other sex offending.
- Most child pornography offenders have some degree of sexual interest in children, but some offenders are partially or completely motivated by other sexual and non-sexual reasons.

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<sup>182</sup> Michael Flood, *The Harms of Pornography Exposure Among Children and Young People*, 18 CHILD ABUSE REV. 384, 384, 392 (2009) (noting that men who are heavy users of violent pornography are more likely than others to report that they would sexually assault or harass a woman if they knew they could get away with it and they are more likely to actually commit acts of sexual coercion and aggression).

<sup>183</sup> TAYLOR & QUAYLE, *supra* note 41, at 81, 91.

<sup>184</sup> Kingston et al., *supra* note 175, at 346–347

<sup>185</sup> *Id.* at 350 (noting that “pornography exposure was a significant predictor of aggression when examined in confluence with other risk factors”); Lee, *supra* note 132, at 646 (“When predisposition is present, pornography may increase risk. Absent predisposition, exposure to pornography alone is not likely to instigate an offense”). It appears that “[m]en who are relatively high in risk for sexual aggression are more likely to be attracted to and aroused by sexually violent media and may be more likely to be influenced by them.” Neil Malamuth, Tamara Addison, & Mary Koss, *Pornography & Sexual Aggression: Are There Reliable Effects and Can We Understand Them?*, 11 ANNUAL REV. OF SEX RES. 26, 55 (2000).



- Offenders engage in a variety of collecting behaviors, some of which may relate to compulsive collecting rather than sexual interest. Many child pornography offenders expend considerable efforts to organize their collections. It appears that offenders who engage in more extensive trading are more likely to have particularly organized collections.
- Social science research establishes that child pornography images feature minor victims of all ages and depict many types of sexual conduct. Images of female victims are more commonly circulated than images of male victims.
- The Commission has reviewed over 2,600 PSRs in non-production child pornography cases in preparation for this report, and finds that the depiction of oral, vaginal, or anal penetration of prepubescent children is present in the overwhelming majority of PSRs that were reviewed. Sexual acts involving infants or toddlers, while not in a majority of PSRs, were depicted in a substantial minority.
- Purchasing child pornography through a commercial website (without use of identity-cloaking technology) is a behavior that is higher-risk for detection. Such offenders may be entry-level offenders.
- Some offenders are engaged in child pornography or pedophilic “communities.” Communities are varied. Some exist primarily as a means to find child pornography trading partners, while others are also dedicated to supporting sexual interest in children by buttressing deviant sexual beliefs or encouraging the commission of other sex offending. Child pornography communities make viewing of sexualized images of children acceptable and implicitly or explicitly condone sexual offenses against children.
- Child pornography communities can be social and supportive environments and can foster relationships among offenders. These relationships appear to support development of deviant sexual beliefs concerning children and validate and normalize child sexual exploitation.
- Child pornography communities often are hierarchical communities that value those with technological sophistication and those who are able to provide new images. Evidence suggests that at least some individuals begin producing child pornography in order to gain access to additional child pornography.
- Social science research is inconclusive regarding whether child pornography offenders’ involvement with such communities is a risk factor for the commission of contact sex offenses against children.
- Research has identified some correlation between viewing child pornography and other sex offending, but most current social science research suggests that viewing child pornography alone does not “cause” individuals to commit other

sex offenses absent other risk factors. Research suggests that deviant sexual beliefs and antisociality are the two primary risk factors for other sex offending.

- It is unlikely that viewing child pornography has a cathartic effect that would reduce the likelihood of other sex offending against children. In addition, offenders who considered their use of child pornography therapeutic or preventative were less likely to hold themselves responsible for their actions.