

Evaluating and Reducing Risk in Online Child Pornography Cases

Fred S. Berlin, MD, PhD

In their article on the subject of risk assessment of online child sexual exploitation offenders, Hirschtritt and colleagues highlight an important finding derived from an analysis of group data which concludes that the vast majority of individuals convicted for accessing child pornography online (and who have had no prior conviction for a contact sexual offense) are at low risk of becoming a contact, hands-on, sexual offender. This commentary is intended to complement their observations by emphasizing the importance of performing a comprehensive psychiatric-forensic evaluation when assessing risk. It argues that greater emphasis should be placed upon reducing any risk that may be identified rather than simply asserting its presence. While not arguing against legal sanctions, this commentary questions their severity in some instances based upon the above noted finding. This commentary suggests that effectively addressing the mental health needs of child pornography accessors and exploring methods of primary prevention should be considered aspects of risk reduction.

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In an article in this issue of *The Journal*, entitled “Risk Assessment of Online Child Sexual Exploitation Offenders,” the authors address a matter that has important clinical, public safety, and civil liberties implications.¹ In doing so, they define several characteristics that distinguish between “contact (hands-on) sexual offenders” against children, and “online non-contact (hands-off) offenders.” Despite making such a distinction, they nevertheless still categorize both groups as sexual exploiters.

The authors used the term “online (non-contact) offender” when referring to individuals who accessed (in their words, had “engaged in”) child pornography or “other child sexual exploitation materials” (Ref. 1, p 155) via the Internet. The precise nature of “other child sexual exploitation materials” was not clearly defined. The online offender group had had no known convictions for a prior hands-on sexual offense at the time of their child pornography related convictions. That online offender group did not include individuals who had attempted to solicit a

child (or to solicit a government agent purporting to be a child, or purporting to have access to child) via the Internet. Some hands-on contact offenders had also been convicted for accessing child pornography and were therefore classified as “mixed” (i.e., both contact and non-contact) offenders.

The authors had no direct contact with any of the reported-upon individuals; they reviewed studies and data that contained information about them. After reviewing that data, the authors concluded that most individuals who are charged with online offenses related to accessing child pornography (and who have not had a prior conviction for a contact offense against a child) are unlikely to engage in subsequent contact sexual offenses. That finding is important given the severity of the criminal sanctions often imposed for accessing, and sometimes sharing, child pornography via the Internet.

Criminal Sanctions for Online Access

In many jurisdictions, criminal sanctions for accessing and sharing child pornography online do not appear to be predicated upon recognition of the above noted finding. To the extent that this finding is accurate, it suggests that many accessors of child pornography do not pose a direct threat to children. Historically, one additional justification for severe sanctions had been the claim that accessors fuel the profit market for the production of child pornogra-

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Dr. Berlin is Associate Professor, Department of Psychiatry and Behavioral Sciences, The Johns Hopkins University School of Medicine; Director, National Institute for the Study, Prevention and Treatment of Sexual Trauma; Director, The Johns Hopkins Sex and Gender Clinic, Baltimore, MD. Address correspondence to: Fred S. Berlin, MD, PhD, 104 E. Biddle Street, Baltimore, MD 21202. E-mail: fredsberlinmd@comcast.net.

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phy, thereby posing an indirect threat to children. At present, however, most such images can be obtained with no direct cost to the consumer, and most such images are already in existence on the Internet.

An accessor of child pornography will often initially learn that he is under investigation when a search warrant of his residence is served at or before dawn by several armed government agents. At that time, his computer and other electronics will ordinarily be confiscated and forensically analyzed for content. Child pornography is often accessed online via a file-sharing network.² As a consequence, many accessors are also charged with “distribution” because their computers will have allowed sharing (uploading of such images) to other computers in that network. In the federal system, where a child is defined as anyone under the age of 18 years, sentences for accessing child pornography online (which falls under federal jurisdiction) frequently result in a period of incarceration of at least two to four years.³ Sentences may be less severe in some state courts.

Following successful prosecution, most accessors will become convicted felons and will often serve time in prison away from their families. They will lose their voting rights and will be placed on a sex offender registry, frequently for years. This outcome can further restrict where they are permitted to reside and their ability to attend school activities with their own children.^{4,5} Arguably, the finding that significant numbers of individuals who access child pornography online do not pose a direct, or perhaps even an indirect, threat to children calls into question the justification for such severe consequences.

Significance of Self-Disclosed Offenses

Criminal justice research invariably involves some level of uncertainty regarding the possibility of undetected illegal acts. Hirschtritt *et al.*¹ addressed the question of whether some individuals who had been convicted of accessing child pornography may have also engaged in sexual acts with children that had previously been undetected, but which subsequently might have been self-disclosed. If such previously undetected acts had occurred, what relevance, if any, might such a finding have with respect to assessing future risk?

The authors referenced a 2009 retrospective study conducted at a Federal Bureau of Prisons facility in Butner, North Carolina, which suggested that more than 80 percent of men convicted for possessing

child pornography had engaged in previously undetected hands-on sexual activities involving children, based on their own self-disclosures while in treatment.⁶ Critics have pointed out that the Butner study relied heavily upon polygraph examinations, often considered unreliable by the scientific community.^{7,8} Critics have also pointed out that the child pornography offenders in the Butner study, all of whom were incarcerated and receiving treatment, may have felt pressured into falsely admitting to prior sexual contacts with a child to avoid accusations of being in denial. There is considerable published literature regarding the existence of false confessions made under pressure.⁹ In point of fact, some of the self-disclosures made in the Butner study were subsequently proven to be false.⁸

Canadian researchers reviewed several studies looking at the issue of self-disclosed prior sexual contact with children by individuals convicted for accessing and possessing child pornography.¹⁰ The Canadian meta-analysis reported a wide range of such self-disclosures. Often the exact nature of such self-disclosed contacts was unclear. For example, did such contacts involve penetrative sex, or touching a child’s leg while secretly feeling aroused? Frequently, the ages of such unidentified children had not been reported, nor was it clear that all of the self-disclosing adults had themselves been of legal age at the times of the incidents in question. It would appear that few, if any, of those self-disclosures resulted in reports being made to criminal justice authorities who could have then investigated their veracity.

At present, it is unclear precisely what percentage of persons convicted for accessing child pornography online have had some sort of a prior undisclosed sexual contact with a child. That said, with respect to assessing risk, there is no documented evidence that such self-disclosures, whether accurate or not, can reliably predict the probability of future similar acts. Such predictions would likely be even more unreliable when appropriate treatment, support, and supervision is implemented. Clinical experience suggests that significant numbers of men who have acknowledged prior sexual contact with a child have not subsequently engaged in similar acts.

Accessors’ Subsequent Contact Offenses

The conclusion cited by Hirschtritt *et al.*,¹ i.e., that most individuals who access child pornography (and who have not been convicted of a prior contact

sexual offense) are unlikely to engage in subsequent contact offenses, was based upon a thorough literature review and analysis. At least three relatively large prospective studies supported those findings.^{10,11,12} One study was performed in Switzerland, a second in Canada, and a third in the United States by the U.S. Sentencing Commission.

The Canadian study, which involved a cohort of 2,630 men convicted for possessing child pornography, documented that only two percent had gone on to commit a hands-on sexual offense over a six-year follow-up period.¹⁰ The Swiss study, involving a cohort of 231 men, found that fewer than one percent (2/231) of individuals who had been convicted for accessing child pornography (and who had no prior convictions for any sort of child sexual abuse) had gone on to commit a subsequent hands-on sexual offense over a six-year follow-up period.¹¹ The U.S. Sentencing Commission study, which included 610 men convicted for possessing child pornography, documented that only 3.6 percent had been accused of a subsequent hands-on sexual offense over an 8.5-year follow-up period.¹² More than 96 percent received no such subsequent allegations, let alone convictions. Although one could speculate that significant numbers of undetected crimes were still being committed, many of those individuals were being closely monitored and in treatment, making that less likely. These studies strongly suggest that, as a group, individuals convicted for accessing child pornography online (who have had no prior contact convictions) are at low risk of engaging in contact sexual offenses against children in the future.

Data Pertaining to a Given Individual

In attempting to assess risk, studies of the sort noted above analyze data gathered from groups of individuals who have been convicted for accessing child pornography. It is also possible to analyze data gathered from a specific individual who has been convicted for doing so. This can include an analysis of evidence obtained from that person's confiscated computers, cell phones, and other electronic devices. Such an analysis by an evaluating forensic psychiatrist can assist in better appreciating underlying motivations and interests.¹³ For example, do the confiscated electronic devices in a given instance show evidence of any attempts to engage in sexualized chats with children? Is there evidence that any of the child pornography accessed has ever been used to try

to groom a child sexually? Has the individual in question been accessing Internet sites that cater specifically to children? If the criminal case has generated publicity, have any children come forward alleging sexual misconduct? Have any children known to that individual made such an allegation? If the answer to each of the above noted questions is "no," this increases the probability that, despite a possible interest in voyeuristically viewing child pornography, the individual being evaluated is likely not motivated to seek out a child for sexual purposes. One can also look at the percentage of child pornography relative to the percentage of adult pornography on an individual's confiscated electronics to get some sense of that person's predominant interests. Though knowledge about group data of the sort reviewed above can be of importance in assessing risk, these factors specific to a given individual should also be considered.

Child Pornography as Fantasy Activity

From a psychiatric and psychological perspective, it is important to appreciate that accessing child pornography online is ordinarily a private fantasy-related activity. As such, it may not necessarily be reflective of real-life desires that involve others. For example, a percentage of women in therapy have reported experiencing sexually arousing fantasies about being raped.¹⁴ They may even have enjoyed reading romantic novels in which women are being mistreated sexually. This does not mean that those women actually want to be raped. Many individuals spend hours on their computers playing war games in which they pretend to kill others. That does not necessarily mean that they have a real-life interest in actually doing so. From a psychological and psychiatric perspective, an interest in viewing child pornography is not necessarily synonymous with an interest in engaging in contact sexual offenses with children.

Who Is Accessing Child Pornography?

In assessing the risk of a given individual, knowledge about statistical analysis of group data must be accompanied by a comprehensive psychiatric evaluation. That evaluation should include a review of relevant discovery materials, an in-depth clinical interview, a case-specific formulation, diagnostic considerations (including comorbidities), and treatment recommendations. Actuarial analysis of group data designed to assess risk provides little information

about the strengths, support system, and psychiatric vulnerabilities of a given evaluatee, yet such information may be crucial when considering risk. It can also be of importance when considering treatment recommendations and criminal justice options.

In considering risk and interventions that can assist in lowering risk, it is important to keep in mind that the well-being of actual people is at stake. That is true both with respect to concerns about the possibility of future victimization, as well as with respect to concerns about the lives of accessors of child pornography and their families.

Table 1 presents a brief synopsis of five individuals convicted for accessing child pornography.¹⁵ These five examples are not necessarily meant to be representative of the larger population. They are examples taken from forensic cases that included a psychiatric evaluation. The intention in presenting them is to illustrate the point that actuarial group data designed to assist in assessing risk often reveals little about the humanity, psychological makeup, or potential mental health needs of a given individual. Yet those factors can be important in assessing risk.

Distinguishing Types of Risk

Accessing child pornography is a behavior, and individuals can engage in similar behaviors for a variety of reasons. Understanding these reasons can be relevant in appreciating risk, as well as in guiding treatment and other interventions designed to manage any risks that may be present. From a clinical and forensic perspective, an important goal should center on reducing any risk that may exist, rather than simply trying to predict it in a vacuum.

The individual who has accessed child pornography relatively few times out of curiosity may be quite different from the person with a paraphilic disorder involving components of both pedophilia and voyeurism (other specified paraphilic disorder) who experiences recurrent sexual fantasies and urges about viewing it. Making a correct differential diagnosis that distinguishes between mere curiosity, a voyeuristic desire to view child pornography, and a real-life interest in being sexual with children can be important in determining what sorts of risks, if any, may be present.¹⁶ The finding that most accessors of child pornography (who have not been convicted of a contact sexual offense) do not subsequently become hands-on sexual offenders supports the conclusion that there is a subgroup of accessors for whom accessing and viewing it is an end in and of itself.

Arguably, anyone can access and view child pornography. Most persons, however, experience little or no desire to do so, let alone having to repeatedly resist recurrent urges and fantasies about doing so. Why some individuals experience urges to view child pornography, whereas most persons do not, remains a matter for future research.

Diagnosis, Treatment, and Reducing Risk

For the most part, legal statutes pertaining to accessing child pornography do little, if anything, to address related mental health conditions such as autism, dementia, pedophilia, or some other type of paraphilic disorder. Urges to view child pornography cannot be punished away, any more so than an urge for heroin or alcohol can be punished away. Under such circumstances, treatment may be a critical com-

Table 1 Five Examples of Convicted Child Pornography Accessors

Retired Senior	78-year-old retired man developed an interest in collecting erotica, some of which was categorized as child pornography. Not believing he had acted wrongfully, he took the computer containing those images for repair, and the computer technician notified legal authorities.
Gay Adolescent	18-year-old male periodically viewed pornographic images of 15-, 16-, and 17-year-old males online. He was prosecuted for receiving and possessing child pornography.
Traumatic Brain Injury	Young male in early 20s had sustained a traumatic brain injury a few years prior to arrest. Having become mildly disinhibited, he began spending hours in his mom's basement viewing pornography, some of which had been child pornography.
Autism	Young male in mid-20's on the autism spectrum had difficulty relating socially and sexually to peers. Still a virgin, his way of having sex was via masturbation while viewing pornography online, which included, at times, child pornography.
Sexting	18-year-old male received naked pictures of herself from his 16-year-old girlfriend. Her parents notified legal authorities, and he was charged with receiving and possessing child pornography.

ponent in reducing whatever risk may exist. Ordinarily the ability of treatment to reduce any such risk requires an understanding of the condition needing treatment, as well as an appreciation of evidence regarding treatment efficacy.

Hirschtritt and colleagues¹ address a number of treatment-related topics. In doing so, they note that behavioral approaches may include the use of aversion therapy. There is little evidence, however, that aversion therapy can change long-term sexual behaviors, as evidenced by the historically misguided effort to “decondition” homosexual desires.¹⁷ The authors also discuss the use of cognitive behavioral therapy to assist accessors in “appreciating the impact of online offending on its victims” (Ref. 1, p 162). One could debate the extent to which a given victim is actually harmed by an individual privately viewing child pornography, perhaps limiting the efficacy of such a cognitive approach. Victims are sometimes notified when a child pornography accessor has been convicted so that they can receive restitution from that individual.¹⁸ Whether the act of privately viewing such images (as wrong as it may be) causes that victim additional suffering, or whether notifying them about what had occurred simply keeps an old wound open, deserves further study. For an accessor to contend that his actions have not directly harmed a specific victim is not necessarily distorted thinking.

Hirschtritt and colleagues¹ suggest that pharmacological therapy (including androgen-deprivation therapy) for online accessors of child pornography should be “reserved for treatment-refractory cases” (Ref. 1, p 162) or based on patient preferences. Persons who experience urges to access and view child pornography should be educated, through an informed consent process, about the spectrum of available treatment options, including their potential benefits, risks, and alternatives. This is a standard of care that can be especially important in cases in which treatment failure can cause risks, including the risk of legal jeopardy for a patient. In the federal system, a second child pornography conviction can carry a minimum mandatory 10-year sentence. Pharmacological treatments should not necessarily be reserved for treatment-refractory cases.^{19,20}

Prevention as a Means of Risk Reduction

Hirschtritt and colleagues¹ refer to the Dunkelfeld project in Germany.²¹ That project reaches out to persons in the community who may be coping with

unacceptable or unwanted sexual urges. In the United States, one frequently hears public service announcements encouraging individuals who are depressed, addicted to alcohol or drugs, or who manifest a variety of other mental health needs to come in for treatment. With the possible exception of efforts by the Safer Society Foundation (www.saferociety.org), how often does one hear a public service announcement in this country encouraging individuals who may be struggling to maintain sexual self-control (including those who may be struggling to resist the urge to view child pornography) to come in for help? In Maryland, where this author practices, individuals wanting help for the urge to view child pornography have come forward seeking mental health assistance. Were an individual to seek such assistance in California, mental health professionals would be required to make a mandatory report to criminal justice authorities.²² It is unclear what evidence suggests that such an approach can help to reduce future risk.

Stigmatizing those who access child pornography, rather than attempting to better understand why anyone would experience such desires in the first place, and denying them easy access to treatment is likely not the best way to reduce risk. Forensic psychiatry is in a unique position to provide leadership, not only with respect to ascertaining risk but, perhaps more importantly, with respect to defining mental health needs and available interventions that can effectively reduce any risks that may be present. Doing so can be in the best interest of both accessors and potential accessors of child pornography, as well as in the best interest of the community.

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