# Danger increasing of child pornography on the internet

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***Abstract*****:** *Child pornography is a major problem with current virtual space that has spread through the internet on a global scale. The phenomenon has deep economic and social implications, affecting a large number of minor children who are subject to sexual abuse and exploitation. In Romania, the transition period was characterized by lack of authority, freedom misunderstood, insufficient legislation against this phenomenon and properly using cyberspace as well as poor economic conditions, creating an environment for criminals to speculate poverty and the difficulties to people for their benefit. This period was marked by numerous and serious crimes against Romanian children, committed, generally by foreigners of different backgrounds and occupations, often supported by Romanian citizens.*

***Keywords*****:** *child pornography; sanctions; pedophilia; abuse; protection*;

## Introduction

Analyzing abuse, sexual exploitation by various processes, including those in the field of pornography, and child maltreatment taking place around the world shows that victimization of children is maintained at high levels.

The danger arising from the presentation of child pornography on the Internet is very high, taking into account that the number of participants in cyberspace traffic is huge, covering virtually the entire planet. Unlike written materials or electronic movies that have a wide spread and speed restricted internet postings have spread immeasurable speed and instant. Number of materials containing pornographic content online where children appear increased quadrupled from 2007 to 2011, reaching 17.3 million such images and videos [1].

The rapid growth of the activities of child pornography in cyberspace, led to the adoption of important legal regulations at the international, regional level, which were considered to complement national laws [2]. For example, the *EU Council Declaration of 29 May 2000 on the fight against child pornography on the Internet* found that sexual exploitation of children, as the production, possession and distribution of child sexual abuse material is a common form of international organized crime whose magnitude creates a concern becoming more pronounced, so it is decided that the EU Member States to adopt the necessary measures to encourage Internet users to report cases of broadcasting pedophile pornographic material to authorities. In addition, Member States must establish specialized units to quickly process this information to identify those responsible and pedophile networks, to ensure a strong and rapid cooperation to facilitate the detection of crime committed on the Internet and take effective measures to penalize thereof.

However, the Council of Europe Convention, signed in Budapest on 23 November 2001 on Cybercrime, specifies in article 9 (Offences related to child pornography) that:

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offenses under its domestic law the following acts, when committed intentionally and without right:

a) producing child pornography on the topic to disseminate them through a computer system;

b) offering or making available child pornography through a computer system;

c) distributing or transmitting child pornography through a computer system;

d) act to procure or to buy for other people child pornography through a computer system;

e) possession of child pornography in a computer system or a computer data storage medium;

2. For the purposes of paragraph 1 above, "*the period on the subject of child pornography*" means any pornographic material that visually represents a:

a) a minor who indulge sexually explicit conduct;

b) an adult, presented as a minor, who indulge sexually explicit conduct;

c) realistic images representing a minor who indulge sexually explicit behavior;

3. For the purposes of paragraph 2 above, the term "minor" means any person aged less than 18 years. However, some may require a lower age limit, which must be at least 16 years.

In order to harmonize national legislation with international regulations, Romania adopted Law no. 678/2001 on preventing and combating trafficking in persons, which has been refined and adapted to new realities (by GEO no. 143/2002, Law no. 39/2003, GEO no. 79/2005, Law no. 287/2005, Law no. 230/2010, GEO no. 117/2010, GEO no. 41/2011, Law no. 187/2012) to ensure effective combat of child pornography, both on the Internet and by other means.

**Child pornography offense**

According to article18 paragraph 1 of the Law no. 678/2001 have been criminalized acts of exposing, selling or spreading, to rent, distribute, manufacture or otherwise produce, to transmit, provide or otherwise make available or to hold in order to spread objects, films, photographs, slides, or other visual emblems representing sexual positions or pornographic, showing or involving minors under the age of 18. According to article18 paragraph 2 of the same law, the offense is achieved through import or delivery of the items referred to in paragrph 1, to a carrier or supplier for sale or distribution.

**Examination of the elements of child pornography offense**

As in the context of massive legislative changes in almost all areas there are many difficulties in interpretation and application of regulations, including those covered by this material - adding them spread diversity of pornography because rapid evolution of science and technology, the mass media in general - consider that it requires analysis of the elements of the offense of child pornography in terms of all legal alternatives and ways of committing it.

This analysis may contribute to a greater extent on the correct application of the law, consistency in judicial practice and punitive measures increasing efficiency aimed to reduce this crime phenomenon.

**The Object of the offense of child pornography**

***Special legal object*** refers to social relations on the normal development of children, to ensure an appropriate environment for the physical, mental and moral development within the limits of morality, so as not to pervert decency and sexual instincts, encouraging debauchery and experience of traumatic experiences for children.

***Material object*** refers to the films, photographs, slides or other visual aids, such as engravings, drawings, logos, writings, prints, advertising, video, showing minors with sexually explicit conduct or involving minors. These materials may show sexual positions, sexual acts or other gestures of a sexual

explicit and not implicit. According to the doctrine [3] materials containing pornographic images may not have a real person, but to reliably simulate a minor with sexual behavior reliably. Pornographic materials or involving minors may have all of this character by their content and how they are presented, but may include only parts, where the emphasis is on the details of sexually explicit conduct.

**The Subjects of offense of child pornography**

***Active subject*** of this crime can be anyone (even a minor), which satisfies the conditions of criminal responsibility (age, responsibility, freedom of will and action).

Criminal participation is possible in all ways: coauthor, incitement, complicity.

***Passive subject*** is qualified by the offense being harmed the minors presented or involved in making pornographic materials and minors who have access to such materials by any means.

**The Content constituent of the offense of child pornography**

***The objective side of the crime***. The material element of the offense of child pornography can be achieved by several alternative ways: *exposure, sale, distribution, lease, distribute, manufacture, production, transmission, providing, provision, possession,* for the spread of objects, films, photographs, slides, or other visual emblems representing sexual positions or pornographic involving minors under the age of 18.

*Exposure* requires *disclosure, revelation, the settlement* to be seen of child pornographic material.

*Sales* of these materials involve *marketing, their alienation* in exchange for money.

*Dissemination* of pornographic material represent's their spreading, consisting in *distribution, propagation and scattering* them, operation that can be performed by the one who made it, or by other persons to whom they were distributed.

*Renting* involves *temporary transfer* to another person of pornographic material, which is or involves minors, in return for a rent.

*Distribution* of this material is material, consisting of apportionment and transmission to certain persons and entities.

*Manufacturing* means *creating* pornography that shows or involves minors, which includes: *designing, developing or producing* material through various processes (*printing, drawing, engraving, printing*, etc.).

*Production* is another way where pornography relating to minor involves the use of other manufacturing processes than for obtaining such material (for example: *photocopying, the combination* of existing equipment, *copying*).

*The transmission* consists of *granting* materials incriminated to others, based on agreements, different from selling or renting (eg. *exchange*).

*Giving* represent the proposal made to others to transmit pornographic materials for consideration or free.

*Provision* assumes *giving access to the offending material*, creating the possibility that another person may know the content of these materials.

*Possession* of pornographic material which is or involves minors, is in *keeping with any title materials*, even if they belong to other people, this way of committing makes the content of crime only if the possession is aimed at spreading the material.

Also, material element of normative version provided in article 18 paragraph 2 of Law no. 678/2001, is to carry out import operations of pornographic material involving or showing minors or handing over of such objects in a transport or distribution agent for the sale or distribution.

Both the variant in paragraph 1 and in the situation covered by paragraph 2 of the Act, the material element of the crime is accomplished by committing any of the alternative activities criminalized.

When the perpetrator made more of these activities, he commits a single crime - if specific conditions to criminal unit are met.

***The immediate result*** is to create a state of danger to morals, for the normal development of children, who may be influenced to debauchery and living harmful sexual experiences. Also, by committing the offending activities it harms the dignity, honor, image of minors present or involved in pornographic materials.

***Causation*** of immediate consequence produced and actions that realize the material element of the offense, resulting "*ex re*", that is implicit in the commission of the prohibited activities.

***The subjective side of the crime***. The crime of child pornography is made with direct or indirect intent.

For pornography possession, the offense is committed with direct intent only, taking into account the requirement referred to in the text of indictment, holding that aim distributing materials and not keeping them for personal use.

Also, the handing over of such objects to a carrier or distribution agent (paragraph 2 of article 18 of Law no. 678/2001) must be made for sale or distribution of pornographic materials, which involves direct intention as a guilt form of the perpetrator.

Making subjective element of the offense requires knowledge of the perpetrator, of the fact that the pornographic materials involving or presenting minors or otherwise its act t possibly achieves the content of other crimes (eg. the crime of spreading obscene materials provided by article 325 of the Criminal code) [4].

**The forms of child pornography offense**

***Preparatory acts and attempted*** are possible crime of child pornography being intentional and committed, in general, but these imperfect forms of crime are not punished as such. Among the ways of committing the crime, however, are also included *specific activities to preparatory acts* (possession, supply) that are punishable as consumed offenses.

Also, according to article15 paragrapf 2 of the law, the commission of that offense shall be punished as organized crime.

***Consuming the offense*** occurs when all components are made, i.e. when there has been one of the alternative activities with guilt as required by law. At the time of committing the offending activity, also occurs the state of danger for minors who may come into contact with pornography and violation of honor, dignity of minors present or involved in these materials.

***Exhaustion of crime*** occurs when continuous or continued criminal activity ceases. Thus, some alternative ways of committing the crime may have a long-term, such as holding or providing pornographic materials, thus achieving continuous permanent criminal offense. Other ways can be made through a single act or successive acts (spread, distribution of pornographic materials), which form the content of a single continuous successive offenses, all of which also have a moment of exhaustion.

**The ways of committing the offense of child pornography**

The crime of child pornography can be accomplished through several alternative ways: exposure, sale, distribution, lease, distribute, manufacture, transmitting, providing, provision, possession for the spread of pornographic materials involving minors (article 18 paragraph 1 of Law no. 678/2001) and the import or delivery of such items to a carrier or distribution for sale or distribution (paragraph 2 of the Law).

Each normative way can be achieved in a variety of factual ways by which the crime is committed, they are determined by the circumstances in which acts, participants, the amount of pornographic materials are committed.

**The sanctioning regime of the crime of child pornography**

Punishment provided for the offense of child pornography is from 3 to 10 years in prison, regardless of alternative means by which the offense is committed.

According to article 19 of Law no. 678/2001, money, valuables or other property acquired from the offense of child pornography, or those used to commit this crime, and other goods provided by article 118 of the criminal Code are subject to special confiscation under the conditions laid down by that article.

In accordance with article 181 of Law no. 678/2001, where the offense was committed by a legal entity, in addition to the fine apply dissolution or suspension of the activity or activities of that legal entity.

Cause of reducing by half the penalty limits provided for by article 20 paragrapf 2 of Law no. 678/2001 shall apply to those who committed an offense of child pornography, which denounce and facilitate during the investigation, the identification and criminal liability of other persons who have committed offenses under Law no. 678/2001, namely: major or minor trafficking, facilitating trafficking of persons without Romanian citizenship, child pornography.

**Conclusions**

Child pornography should be considered and dealt with in the context of actions of abusing children, including organized crime, including prostitution and human trafficking.

Development of communications and information systems requires a review of the constitutional paradigm of freedom of speech for the development of a virtual cyber-balanced society to enforce the same values and norms as universally accepted by real society, especially when the Area Virtual influences increasingly more and more the real world.

Fundamental rights and freedoms promoted and protected in the material, real world should be taxed in the virtual world without discrimination. The rules of law cannot be protected at random, they are the same regardless of space, real or virtual, in which it is conducted. Moreover, the Internet is not a perfect parallel society, it creates - through its facilities for communication and information dissemination - hazards that real world has not known before.

Existence in cyberspace of pornographic materials generated from decision makers, a particular concern internationally to deter and punish the production and dissemination of these materials and public pressure that has grown in recent years on this issue led gradually to the foundation of principles of action and application of extraterritorial legal rules likely to describe as precisely the matter under criminal sanction and facilitate international cooperation for preventing child pornography [5]. For example, Google is involved in eradicating child pornography on the

internet, through funding and finding effective methods for tracking, reclamation and removal of specific explicit images [6].

International organizations and national authorities are concerned to ensure legal protection in cyberspace of values protected by law, but without requiring censorship of information made available in this way. Also they aim to guarantee the exercise of rights and freedoms. Meanwhile, some Internet communication should be declared illegal, especially those related to terrorism, racism, organized crime and pornography, in these cases, freedom of expression must be "amputated" without fear that fundamental rights and freedoms will be violated.

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