

CHILD ABUSE IMAGES — LAW

What are Child Abuse Images?

The definition of child pornography was expanded in Bill C-2 in 2005. It includes the following:

- Any photo, film, video (or other visual representation) that shows a person who is or is depicted as being under 18 engaged in or depicted as engaged in explicit sexual activity, or which shows a sexual organ or anal region of someone under 18 for a sexual purpose
- Any written material, visual representation *or audio recording* that advocates or counsels sexual activity with someone under 18
- Written material whose dominant characteristic is the description, for a sexual purpose, of illegal sexual activity with someone under 18
- Any audio recording whose dominant characteristic is the description, presentation or representation, for a sexual purpose, of illegal sexual activity with someone under 18

Domestic Law

In 2004, Bill C-2 introduced stiffer penalties for child pornography offences, including minimum sentences. Previously, it was common for offenders convicted of child pornography offences to receive extremely light sentences, such as a few months house arrest. Now, for possessing or accessing child pornography, offenders receive a minimum of 14 days imprisonment. If distribution or publication is involved, the minimum sentences are 90 days and one year. If profit is the motive, then the court must consider this as an aggravating factor. All of this sends a clear message to would-be offenders that if they are involved in the any part of child pornography and are caught, they will go to jail.

Bill C-22 (Mandatory Reporting of Internet Child Pornography by Persons Who Provide an Internet Service) entered into force in December 2011. Those falling within the Act now have statutory obligations to report online child pornography.

Two main requirements of Bill C-22 are as follows:

1. Internet Service Providers (ISPs) are required to report websites containing child pornography
2. ISPs must tell police if they believe a child pornography offense has been committed using their service.

All of Canada's major ISPs already voluntarily report child pornography. The Act therefore codifies industry practice.

Who falls under the Act?

The Act applies to persons “providing an Internet service to the public”. An “Internet service” is defined broadly as “a service providing Internet access, Internet content hosting or electronic mail.” Besides traditional ISPs (Shaw, Telus), the Act also applies to email providers (Google, Hotmail); social networking sites (Facebook, Twitter); and even entities that provide Internet services such as colleges, hotels, and shopping malls. This language is broadly drafted, so it is not immediately clear what is intended by the legislation. The Act is ultimately subject to interpretation by the courts.

Sources

- *R v Sharpe*, 2001 Carswell BC 82 at 128 (SCC): The Supreme Court of Canada clarified that “visual representations of any activity that falls short of this threshold are not caught. Thus representations of casual intimacy, such as depictions of kissing or hugging” are not child pornography.
- *Criminal Code*, R.S.C. 1985, c. C-46 s. 163.1.
- Bill C-2, *An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act*, 1st Sess, 38th Parl, 2005, cl 4 and 5 (assented to 20 July 2005).
- Field Law, *Intellectual Property and Technology: Bill C-22 Mandatory Reporting and Obligations* (19 January 2012), online: www.fieldlaw.com/newsletters/intellectualproperty_e_bulletin_Jan_2012.htm.