



The electronic peep show

Last month, the NSW Government introduced a Bill which would make possession of computer images portraying child pornography a criminal offence. *CU* asked University of Auckland computer law expert, Delia Browne, to take a look at the Bill.

The world is reeling from the alarming prospect of an unregulated, anarchistic information society. Moral panic is breaking out with the emergence of technologies allowing people to download pornography. Calls to protect children from the volume of freely available sexually explicit material have spurred governments everywhere into a head spin.

Last month, the NSW Premier Bob Carr introduced criminal measures to combat child pornography. While the Bill goes some way towards appeasing the public panic, its effectiveness as a deterrent is doubtful.

Balancing the need to protect children and non-consenting adults from sexually explicit material against the individual's right to freedom of expression is the challenge for governments. If the push for regulation is a ruse to regulate sex on the Internet in general, it would constitute an indiscriminate extension and abuse of government regulation.

Freedom of expression and the notion of mass communications are inextricably linked. Concepts such as reasoned discourse, the democratic function of speech, public interest and the ability to dissent take on new

reality - a virtual reality on the Internet. Writer and philosopher, Ithiel de Sola Pool argues that regulation is the last recourse. The natural knee jerk reaction of governments is to attempt to regulate the Internet. But such attempts are likely to be as successful as King Canute's attempt to hold back the tide.

Child pornography is a thriving industry maintained and established through underground, technologi-

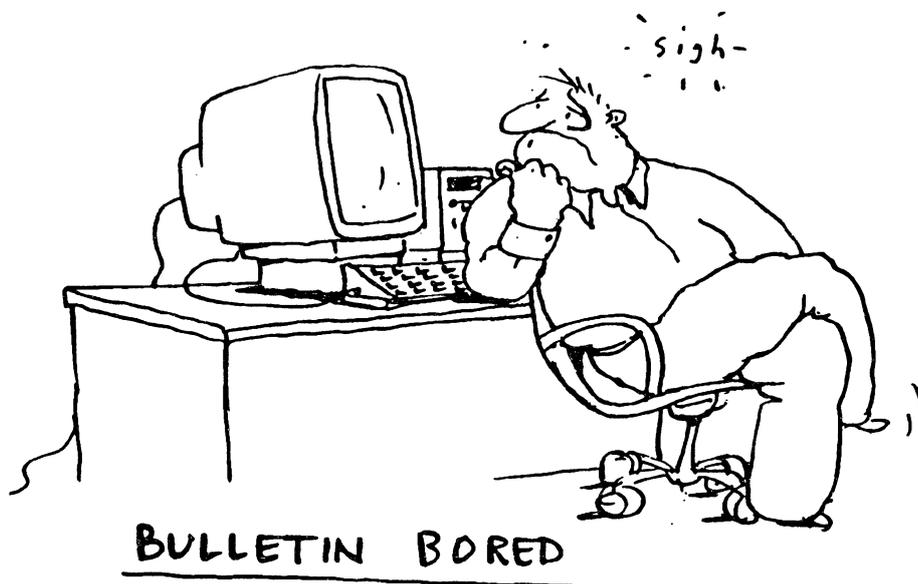
mail and teleconferencing where paedophiles may exchange conquest stories and in some cases, lists of willing child participants. Bulletin boards can be used to advertise, solicit, and promote child exploitation and pornography.

The age of computers has facilitated greater organisation and communication among the child exploitation subculture. Indisputably it is in every government's interest to

prevent such use of electronic information. The object of the NSW Crimes Amendment (Child Pornography) Bill 1995 is to amend the Crimes Act 1990 with respect to the possession of child pornography and to amend the Film and Computer Games Classification Act 1984 and the Indecent Articles and Classified Publica-

tions Act 1975. The Bill introduces a new possession offence, section 310(A) into the Crimes Act 1990, making it an offence for a person to possess child pornography and imposing a penalty of 12 months' imprisonment or a fine of \$10,000, or both.

The Bill also amends the Search Warrant Act 1985. The proposed section 357EB into the Crimes Act empowers a police officer to apply for a



cally advanced networks. Just as the advent of the videotape led to a proliferation of pornography, so has the development of the information highway led to the emergence of Internet Relay Chatlines, modem sex, and CD-ROM interactive sex games.

Child pornographers or paedophiles may use bulletin board systems and e-mail for more than just storing and transporting information. Bulletin boards provide access to e-



search warrant authorising the entry and search of premises if an officer believes an offence under section 310 (A) is being committed.

The Bill defines child pornography as:

- any film that has been, or that is subsequently refused classification under the Film and Computer Games Classification Act 1984 on the grounds that it is a child abuse film,
- any computer game that has been or that is subsequently refused classification under the Film and Computer Games Classification Act 1984 because it depicts a child engaged in sexual activity or otherwise in a manner that is likely to cause offence to a reasonable adult, or
- any publication, (book, picture, newspaper, photograph or other pictorial matter) that is likely to cause offence that has been, or that is subsequently classified as a prohibited publication under the Indecent Articles and Classified Publications Act 1975 because it contains indecent matter that depicts a child engaged in activity of a sexual nature (including posing) or who is in the presence of another person who is so engaged.

Defences

Possession is not a strict liability offence. It is a defence that the user did not know or could not have been reasonably expected to have known, that the material concerned had been refused classification or had been prohibited, or was likely to be refused classification or likely to be prohibited.

The definition of 'child' is amended to cover the depiction of a person who is a child or in the opinion of the censor, looks like a child. The present test assesses whether the person depicted or described is actually a child. The new definition covers digitally altered images and computer generated images of children.

This sends a strong message that the Government is unwilling to tolerate the sexual exploitation of children in any form. It is irrelevant that the image is computer created and the making of that image did not involve direct or physical sexual exploitation of a child. Some argue that computer generated images should not be included in the Bill as the person in the image is created by the computer and, therefore does not exist. This argument is flawed as it fails to recognise the most sinister aspect of child pornography which is that paedophiles use these images to lure children to engage in sexual activity.

Effectiveness of the Bill

Can the Government effectively regulate the distribution, importation or transportation or possession of child pornography? Once in computer-readable form through scanning, pictures can be distributed interstate and internationally over a computer information system. A computer cannot differentiate between innocuous or pornographic pictures. A piece of child pornography can be scanned and distributed by a file server, bulletin board or through e-mail like any other computer file. Bulletin boards dedicated to wrongful activities often have the tightest security measures to prevent access by the authorities. They frequently have several access levels with more hard core material available only to a few. Users of the board can also post messages anonymously making it impossible to identify the paedophile.

Encryption codes are employed to hide a program from law enforcement agencies. The encryption codes available can disguise a program to make it look like regular software; even if it was intercepted there would be no way of examining it without the password. The codes available may be of the same level as those used by US military, or be time specific so that a user can call a number

in Dallas where access is granted as required with the code changing regularly to prevent unauthorised access and detection.

The requirement of knowledge will provide some insulation for computer information systems such as networks, but it will clearly catch those computer users who knowingly traffic in pornographic material stored in computer files. As to the system operator's (sysop) liability, unless the sysop actually knew what was stored in the particular user's account, it is unlikely that the sysop will be held liable for having child pornography on his/her system as the section contains a knowledge requirement. However if the sysop had reason to know that the user had pictures of child pornography in his/her account then the sysop could be considered to have constructive knowledge of the presence of the material and could be charged with possession.

Unresolved problems

The Bill only covers publications in tangible form. It does not cover communication. Nor does it explicitly address the transmission of child pornography through computers. The Bill only prohibits the possession and depiction of child pornography. The use of computer bulletin boards to exchange conquest stories and information stories or as a forum promoting sex with children are not offences per se. Lists of the names and addresses of child victims do not constitute child pornography and are not covered by the Bill. It is argued that network communication is like a private conversation and therefore should not be subject to government control. Whatever the Government's power to control public dissemination of ideas inimical to public morality, it cannot constitutionally premise regulation on the desirability of someone's thoughts. □