

The Chinese Dilemma and Research on Internet Child Pornography Crime

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Abstract. With the development of the Internet Plus initiatives in all industries and sectors, internet child pornography crime has become a serious social issue. This article conducts research on the harm and impact of internet child pornography crime, as well as the inadequacies of legal measures. This study aims to provide theoretical support for combating internet child pornography crimes in China by analyzing the issues faced by China in combating this type of crime, and proposing legal suggestions for improving the regulation of criminal laws in China. Future research could focus on the causes of internet child pornography crime, international cooperation and experiences, and enhancing the strength of social education and public opinion guidance, providing theoretical support and practical guidance for the governance of internet child pornography crime.

Keywords: internet child pornography crime; Internet Plus initiatives; legal suggestion.

1. Introduction

In today's society, the internet has permeated every aspect of life, bringing us many conveniences but also giving rise to new problems. Among them, cybercrime has become increasingly prominent, especially concerning child pornography crimes on the internet, which have attracted widespread attention from various sectors of society. This form of crime not only seriously violates the rights of children but also poses a threat to the harmony and stability of society. Cyber pornography crime is a new form of crime that utilizes the internet to disseminate pornographic material, seriously undermining public morality and social order. Particularly, child pornography crimes on the internet pose a grave threat to the physical and mental health of minors. [1] However, due to the anonymity and transnational nature of the internet, combating and preventing this form of crime faces significant challenges.

Therefore, the aim of this study is to delve into the current state of internet child pornography crimes, analyze the challenges China faces in combatting such offenses, and propose enhancements to the criminal legislation. The objective is to offer theoretical underpinnings for combating internet child pornography crimes in China and to provide insights for refining pertinent laws and regulations. It is hoped that this will contribute to enhancing relevant laws and regulations and provide reference for China's efforts to combat internet child pornography crimes.

2. Theoretical Research on Internet Child Pornography Crimes

2.1 Definition of Internet Child Pornography Products

Internet child pornography crime refers to the use of the internet, mobile communication, and other information technology means to produce, duplicate, disseminate, sell, transmit, publish, display, store, trade, provide, entice, introduce, solicit, organize, guide, assist, or harbor child pornography products, or to produce, duplicate, disseminate, sell, transmit, publish, display, store, trade, provide, entice, introduce, solicit, organize, guide, assist, or harbor child pornography products for others, with the intention of gaining illegal profits.[2]

The definition of internet child pornography crime involves the following aspects: firstly, the content of the products of Internet child pornography products primarily involves children's nudity, sexual

activities, sexual innuendos, etc., including but not limited to images, videos, texts, etc. Secondly, approaches of production and dissemination of the products mainly utilize the internet, mobile communication, and other information technology means, making the production and dissemination of products more concealed, expedited, and widespread. Thirdly, the primary purpose of producing and disseminating internet child pornography products is to gain illegal profits, which may come from the sales, advertisements, sponsorships, etc., of the products. Fourthly, the production and dissemination of internet child pornography products have adverse effects on children's physical and mental health, social security, moral values, etc. These impacts may manifest as early sexual maturation, sexual abuse, and sexual crimes against children.[3] Lastly, the production and dissemination of internet child pornography products constitute criminal behavior and should be subject to legal sanctions. These sanctions may include criminal penalties, administrative penalties, civil compensation, etc.

2.2 The current situation and characteristics of Internet child pornography

The crime of child pornography on the Internet is a serious social problem, and its current situation and characteristics require in-depth empirical analysis. The following is the analysis of this issue:

Firstly, with the popularization of the Internet and the development of technology, the number of internet child pornography crimes is increasing year by year. These crimes not only cause serious harm to the physical and mental health of minors, but may also induce a series of crimes that cause harm to minors' physical and sexual rights. [4] Secondly, a distinctive feature of this form of crime is that it is highly concealed. Since criminal acts are mainly committed in cyberspace and there is no direct physical contact between the perpetrator and the victim, such criminal acts are often difficult to detect. Another characteristic is the novelty of the criminal methods, mainly the perpetrator uses threats, intimidation and other methods to force the victim child to record nude or obscene videos on his own after getting in touch with the child victim in cyberspace.

2.3 Harms of Internet Child Pornography Crimes

The impact and harm of internet child pornography crimes are profound and complex. Below is the analysis of this issue using the impact analysis method:

Firstly, harm on Children Themselves. The actions of internet child pornography crimes not only inflict severe trauma on children both mentally and physically but may also have long-term negative effects on their future lives. Secondly, harm on Society. Internet child pornography crimes deviate from societal moral standards, challenge national legal order, and seriously threaten the normal order of child protection, marriage, family, and other aspects. Such criminal behavior not only undermines societal moral values but also has negative implications for social stability and harmony.[5] Additionally, internet child pornography crimes pollute the online environment but also poses a threat to the security and stability of the internet. Thirdly, impact on Legal Systems. The emergence and development of internet child pornography crimes present new challenges to legal systems. Legal systems need constant updating and improvement to adapt to new situations and problems in the internet age.

The harm of internet child pornography crimes is multifaceted, including impacts on children themselves, society, the online environment, and legal systems. These harms are not only profound but also complex, requiring the collective attention and efforts of our entire society to address. [6] We need to combat internet child pornography crimes through various means such as legislation, law enforcement, and education to mitigate their impacts and harms on children, society, the online environment, and legal systems. Additionally, we need to discover and prevent the spread of internet child pornography products through research and technological innovation to build a safe, healthy, and harmonious online environment.

3. The Chinese Dilemma in Combating Internet Child Pornography Crimes

3.1 Current Legislative Status of Internet Child Pornography Crimes in China

Despite the increasingly grave situation of internet child pornography crimes, certain international organizations and some countries have already implemented specific legal regulations to address such offenses. However, China has yet to enact particular criminal legislation in this regard. This section aims to compile and introduce the international conventions related to internet child pornography crimes in which China has participated, as well as the current criminal law norms and judicial interpretations regulating these crimes. It analyzes China's legislative attitude and regulatory status concerning this offense.

3.1.1 China's Participation in International Conventions

In 1991, China ratified the United Nations Convention on the Rights of the Child, which prohibits the use of children in obscene materials and aims to protect children from sexual exploitation. In 2002, China further ratified the Convention on the Worst Forms of Child Labor and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography. These conventions require countries to adjust their domestic criminal norms to criminalize actions related to child pornography. China is expected to incorporate these provisions into its domestic criminal laws to better combat pornography-related crimes.

3.1.2 Current Status of Criminal Legislation in China

The amended Criminal Law of 1997 introduced new charges and provisions, establishing a relatively comprehensive criminal legal system to combat the exploitation and sexual assault of children. The Criminal Law prescribes penalties for child exploitation, such as crimes involving the abuse or exploitation of young children. However, the Criminal Law does not specifically address internet child pornography but rather includes it within the framework of crimes related to obscene materials. Despite the absence of direct provisions in the Criminal Law regarding internet child pornography crimes, two judicial interpretations issued by the Supreme People's Court and the Supreme People's Procuratorate have alleviated the difficulty in convicting and sentencing offenders in this regard.[7]

3.2 The Chinese Dilemma in Combating Internet Child Pornography Crimes

From the analysis above, it is evident that although China has joined several international conventions to protect children from sexual exploitation and has issued corresponding judicial interpretations to regulate internet child pornography crimes, the current level of legislative regulation and enforcement in China still falls short compared to international standards. This section will focus on analyzing the legislative status in China and the shortcomings and dilemmas of this legislative model in protecting children from pornography, aiming to identify the gap between China's legislative status and international trends.

3.2.1 Practical Challenges of the Judicial Interpretations

The judicial interpretations have temporarily eased the dilemma of combating internet child pornography crimes in China but face practical challenges. Firstly, lowering the age threshold for defining child obscene information to 14 years lacks protection for children aged 14 to 18. Secondly, regulation is limited to profit-oriented behavior, failing to cover other criminal acts, thus lacking sufficient enforcement. Additionally, there is inadequate provision for criminal liability of entities such as internet service providers, susceptible to market demands and economic interests, leading to engagement in internet child pornography crimes.

3.2.2 The Chinese Dilemma in Criminal Law Regulation

Firstly, sole regulation through judicial interpretations lacks legal authority. As described above, the judicial interpretations primarily regulate crimes involving the production, duplication, publication, and dissemination of obscene electronic information through the internet and mobile terminals.

Obscene electronic information involving children under 14 is only considered an aggravating circumstance in these crimes. This arrangement reflects China's insufficient attention to internet child pornography crimes, considering it merely as a minor aspect of social order management. Moreover, judicial interpretations, as summaries and guidance in judicial practice, have lower legal authority than criminal law norms. Therefore, China's existing legislation is inadequate to address the increasingly serious situation of internet child pornography crimes.

Secondly, inadequacy in aligning the protected interests with the relevant sections. Due to the lack of systematic regulation within the Chinese criminal law system to protect children from sexual exploitation and abuse, internet child pornography crimes are generally prosecuted and sentenced based on the provisions related to obscene items in crimes against public order in the Criminal Law. However, a careful analysis reveals significant differences between these two crimes. The object of the internet child pornography crime not only pertains to social morality and public order but more importantly, it violates children's rights to physical and sexual health.

4 Inspiration from Extraterritorial Legislation on Internet Child Pornography Crimes

4.1 Legislative Status Abroad

The United Nations Office on Drugs and Crime (UNODC) has established an expert group to comprehensively study issues related to cybercrime and the countermeasures taken by member states, the international community, and the private sector. The group's work involves reviewing various alternative solutions, strengthening existing measures, and proposing new national and international legal strategies or other measures to combat cybercrime.[8]

The European Union (EU) has implemented a model combining legislative regulation with industry self-regulation. It has enacted directives such as the "Recommendation on the Protection of Minors and Human Dignity" and the "Framework Decision on Combating Child Pornography." These directives clearly define internet child pornography crimes, prescribe criminal penalties for such offenses, and require member states to implement these provisions in their domestic laws. These measures aim to prevent the dissemination of internet child pornography by raising public awareness, enhancing cybersecurity, and encouraging industry self-regulation.

The United States passed the Children's Internet Protection Act in 2000, which stipulates that any act that exposes minors to harmful information through online dissemination for commercial purposes shall be subject to a fine of up to \$50,000 or imprisonment for up to six months, or both.[9] This law serves as an important tool in the United States' fight against internet child pornography crimes. It not only imposes criminal penalties on the production and distribution of internet child pornography but also penalizes those who use the internet to disseminate such materials.

The above are some of the legal provisions of certain countries and international organizations regarding internet child pornography crimes. In fact, countries worldwide are enacting legislation and policies to combat internet child pornography crimes. The goal of these legal provisions and policies is to protect children from sexual exploitation and abuse and prevent the spread of child pornography on the internet. Therefore, countries and international organizations need to further strengthen cooperation to address this global issue collectively.

4.2 Inspiration from Extraterritorial Legislation

Table 1 Legal advice provided by different countries or organizations

| Country /Organization | Legislative Situation | Practical Experience | Inspiration |
|-----------------------|-----------------------|----------------------|-------------|
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|----------------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------|--------------------------------------------------------|
| United States | the Children's Online Protection Act (COPA) | Vigorous regulation and crackdown on internet child pornography crimes | Clear legislation, strong enforcement |
| United Kingdom | the Children's Internet Safety Act (CNSA) | Establishment of robust law enforcement and cooperation mechanisms | Clear legislation, strong enforcement |
| Australia | the Cybercrime Act | Strengthening monitoring and prevention of internet child pornography crimes | Clear legislation, strong technical oversight |
| Canada | the Child Protection Act | Enhancing awareness and education about internet child pornography crimes | Clear legislation, strong educational campaigns |
| Japan | the Child Protection Act | Strengthening technical oversight of internet child pornography crimes | Clear legislation, strong technical regulations |
| United Nations | the United Nations Convention on the Rights of the Child | Issuance of relevant reports and proposals for solutions | International cooperation, information sharing |
| INTERPOL | Charter of the International Criminal Police Organization | Conducting collaborative research to combat transnational cybercrimes | International cooperation, joint action |
| UNICEF | Charter of the United Nations Children's Fund | Issuance of relevant reports and proposals for solutions | International cooperation, information sharing |
| China | Law of the People's Republic of China on Protection of Minors and the Criminal Law | Future research recommendations | Clear legislation, enforcement strength to be enhanced |

In the realm of internet child pornography crimes, countries such as the United States, United Kingdom, Australia, Canada, and Japan have established certain legislative frameworks to regulate these offenses. These laws specify definitions, nature, and penalties related to internet child pornography crimes, providing legal foundations for combating such offenses. These countries have also accumulated practical experience in combating internet child pornography crimes, such as strengthening law enforcement, enhancing international cooperation, and improving technical oversight. These experiences provide valuable references for similar efforts in China.

In China, although there are existing laws and regulations to regulate internet child pornography crimes, they are to some extent lagging behind the evolving nature of these crimes.[10] Issues such as insufficient enforcement, inadequate investigation of criminal activities, and insufficient protection measures for victims need to be addressed through future legislative and law enforcement improvements.

5 The Legal Suggestions of China's Internet Child Pornography Crime

The crime of internet child pornography poses a serious threat to the healthy growth of minors. In response to this problem, China has adopted a series of legal regulations and policy measures, but

there are still many shortcomings. In order to effectively curb the crime of internet child pornography in China, the article proposes the following suggestions:

5.1 Clarify the Connotation and Extension of the Concept of Internet Child Pornography Crimes

Currently, the definition of internet child pornography in China is still relatively vague, which can easily lead to confusion and loopholes in legal application. Therefore, the definition should be clarified and refined to determine its content and scope more accurately, in order to better combat and manage it. Referring to legislation in other countries and the UN Convention on the Rights of the Child, the age range specified in defining children should not be confined to the traditional criminal law standard of 12-14 years old, but should be expanded to 18 years old as a signatory to the convention. Additionally, it is essential to clearly define the forms of child pornography; it should not only be punishable when meeting the legal standard of "obscenity", but also include implicit child pornography content within the scope of legal regulation.

5.2 Increase Supervision and Punishment of Internet Child Pornography Crimes

It is necessary to strengthen supervision over internet platforms and content providers, establish sound supervision mechanisms, enhance the review and management of internet child pornography, promptly detect and remove harmful information, and protect the physical and mental health of minors. Furthermore, severe legal sanctions should be imposed on those involved in the production, dissemination, and distribution of internet child pornography. Additionally, law enforcement efforts and technical means should be intensified to effectively suppress and combat internet child pornography. Moreover, strengthening online education and protection for minors is urgent. The proliferation of internet child pornography is often related to the inadequate internet literacy and awareness of online safety among minors. Strengthening online education for minors and enhancing their internet literacy and safety awareness are necessary to guide them to use the internet correctly and avoid the harm of internet child pornography.

5.3 Improve Existing Legislation and Enforce the Law Rigorously

Revise and improve existing laws and regulations, increase the severity of punishment for internet child pornography crimes, and enhance the specificity and enforcement of the law. For instance, the following behaviors should also be considered criminal: first, participating in or producing internet child pornography for profit. Second, reproducing, publishing, selling, or disseminating child pornography for profit. Third, intentionally possessing child pornography without justification. Fourth, acts of internet service providers or website administrators knowingly allowing others to upload child pornography or providing other assistance. Additionally, rigorous law enforcement mechanisms should be established to strengthen supervision over internet platforms and content providers, and to promptly detect and combat illegal activities such as the production and dissemination of internet child pornography.

5.4 Provide Judicial Guarantees and Strengthen Social Supervision

Improve judicial efficiency, expedite the trial of internet child pornography cases, and severely punish criminals. This requires the establishment of a sound mechanism for the rapid trial of internet child pornography cases and the strengthening of prosecution and punishment of criminals. In addition, encourage citizens, social organizations, and other parties to participate in the supervision and combat of internet child pornography issues, enhance the society's capacity for governance, form a societal resistance and combat against internet child pornography, strengthen the supervision and attention of all sectors of society to the issue of internet child pornography, form a joint force, and safeguard social fairness and justice.

Through the measures to promote the construction of the rule of law mentioned above, internet child pornography crimes in China can be effectively addressed, protecting the physical and mental health of minors, and maintaining social stability and harmony.

6 Conclusion

The crime of internet child pornography seriously infringes on the rights and interests of minors and has far-reaching consequences. In the era of Internet Plus, this criminal activity spreads more widely, affects younger victims, and employs more covert means. The article conducts research on its harm and inadequacy of regulations. This crime has a significant impact on the physical and mental health of the affected children, erodes social morals and ethics, and also has a negative impact on the rule of law construction. To protect the rights and interests of minors, maintain social stability and the rule of law, it is necessary to strengthen regulatory enforcement, improve laws and regulations, raise social awareness, and jointly create a healthy and safe online environment. In the future, we need to deeply study the causes of internet child pornography crimes and seek solutions from multiple perspectives. International cooperation and experience sharing will be an important means to effectively address this issue. By strengthening international cooperation and exchanges and drawing on governance experiences from other countries, more effective countermeasures can be jointly formulated. At the same time, enhancing social education and public opinion guidance, raising public awareness and vigilance against internet child pornography crimes, will also play an important role in the future.

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